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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 2503/88

of 25 July 1988

on customs warehouses

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas it is in the interests of economic operators who do not know what customs treatment will finally apply to non-Community goods or who do not yet wish such treatment to be applied to the goods to store those goods for some period without their being subject to the payment of import duties or the application of commercial policy measures; whereas this need is met by the establishment of customs warehouses and the use of the customs warehousing procedure; whereas this procedure ensures the promotion of Community activities relating to foreign trade and, in particular, the distribution of goods within the Community and elsewhere and whereas, therefore, the customs warehousing procedure is an essential instrument of the Community's commercial policy;

Whereas Directive 69/74/EEC ⁽⁴⁾, as last amended by the Act of Accession of Spain and Portugal, laid down the rules to be incorporated in Member States' own provisions governing customs warehouses; whereas the importance of the procedure in the context of the customs union calls for it to be applied uniformly throughout the Community; whereas the rules currently in force should therefore be supplemented and clarified and enacted in a form directly applicable in the Member States, thus strengthening legal certainty for individuals;

Whereas the customs warehousing procedure should apply both to Community goods which qualify for certain export-related benefits as a result of being placed in

a customs warehouse and to Community goods which are subject in intra-Community trade to charges imposed under the common agricultural policy for such time as such charges are applied;

Whereas it should be possible for goods other than those placed under the customs warehousing arrangements to be stored under certain conditions on customs warehouse premises; whereas in those circumstances it falls to the Member States, where such goods are liable to domestic taxes, to decide on the conditions for, and the consequences of, placing them in customs warehouses, without prejudice to Community tax provisions;

Whereas, in keeping with the current situation in the Member States, there should be provision for identifying the different types of customs warehouse; whereas authorization to operate a specific type of customs warehouse should be issued on the basis of economic requirements and the ability of the customs authority to exercise supervision;

Whereas certain procedural facilities should be provided; whereas in particular it should be possible for goods stored in customs warehouses to be released for free circulation on certain conditions without the goods being presented or a declaration made in advance;

Whereas, where circumstances so warrant, it should be possible to use the customs warehousing procedure without the goods being stored on premises approved as a customs warehouse;

Whereas it is necessary to lay down certain rules for the charging of duties where a customs debt arises in respect of non-Community goods; whereas it should be provided that, in certain circumstances, value added within the customs territory of the Community is not to be included in the customs value of such goods;

Whereas, to ensure uniform application of this Regulation, a Community procedure for the enactment of implementing rules should be established; whereas a committee should be set up to provide a forum for close and effective cooperation between the Member States and the Commission in this field,

⁽¹⁾ OJ No C 283, 6. 11. 1985, p. 3.

⁽²⁾ OJ No C 120, 20. 5. 1986, p. 16.

⁽³⁾ OJ No C 283, 20. 10. 1986, p. 6.

⁽⁴⁾ OJ No L 58, 8. 3. 1969, p. 7.

HAS ADOPTED THIS REGULATION:

TITLE 1

General provisions

Article 1

1. This Regulation lays down the rules governing the customs warehousing procedure.
2. The customs warehousing procedure shall allow for storage in a customs warehouse of:
 - (a) non-Community goods, these goods not being subject to import duties or, save as otherwise provided, to commercial policy measures;
 - (b) Community goods for which specific Community rules provide, as a result of their being placed in a customs warehouse, the benefit of measures normally attaching to the export of such goods.
3. For such time as Community goods are subject in intra-Community trade to charges imposed under the common agricultural policy, those goods may be stored under the customs warehousing procedure in a customs warehouse without such charges being applied.
4. For the purposes of this Regulation:
 - (a) '*customs warehouse*' means any place approved by and under the supervision of the customs authority where goods may be stored under conditions laid down in accordance with this Regulation ;
 - (b) '*public warehouse*' means a customs warehouse available for use by all persons for the warehousing of goods;
 - (c) '*private warehouse*' means a customs warehouse reserved for the warehousing of goods by the warehousekeeper;
 - (d) '*warehousekeeper*' means any person authorized to operate a customs warehouse;
 - (e) '*depositor*' means the person bound by the declaration placing the goods under the customs warehousing procedure or to whom the rights and obligations of such a person have been transferred;
 - (f) '*Community goods*' means goods:
 - entirely obtained in the customs territory of the Community, without the addition of goods from third countries or territories which are not part of the customs territory of the Community,
 - from countries or territories not forming part of the customs territory of the Community which have been released for free circulation in a Member State,

- obtained, in the customs territory of the Community, either from the goods referred to exclusively in the second indent or from the goods referred to in the first and second indents;

- (g) '*non-Community goods*' means goods other than those referred to in (f).

Without prejudice to the agreements concluded with third countries for the implementation of the Community transit arrangements, goods which, while fulfilling the conditions laid down in (f), are reintroduced into the customs territory of the Community after export therefrom shall also be considered as non-Community goods;

- (h) '*import duties*' means not only customs duties and charges having equivalent effect but also agricultural levies and other import charges provided for under the common agricultural policy or under specific arrangements applicable to certain goods resulting from the processing of agricultural products;
- (i) '*customs authority*' means any authority competent to apply customs rules, even if that authority is not part of the customs administration;
- (j) '*person*' means:
 - a natural person,
 - a legal person, or
 - when this possibility is provided for in the rules in force, an association of persons recognized as having legal capacity but lacking the legal status of legal persons.

Article 2

1. Subject to paragraph 2 and Article 4, the goods referred to in Article 1 (2) and (3) may be placed under the customs warehousing procedure whatever their nature, quantity and country of origin or consignment or their destination.

2. Paragraph 1 shall not preclude the imposition of prohibitions or restrictions on grounds of public morality, public policy or public security, protection of health and life of humans, animals or plants, the protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial and commercial property.

TITLE II

Authorization to operate a customs warehouse

Article 3

1. The operation of a customs warehouse by a person other than a customs authority shall be subject to an authorization from that authority.
2. Any person wishing to operate a customs warehouse must make a request in writing containing the information required for granting the authorization, in particular demonstration that an economic need for warehousing exists.

The request must be supported by any document which the customs authority considers necessary.

3. Authorization shall be granted only to persons established in the Community and offering the necessary guarantees of compliance with the provisions of this Regulation, and only if the necessary supervision and checks can be carried out without requiring the establishment of an administrative system out of proportion to the economic needs involved.

Article 4

The special conditions for the operation of the customs warehouse shall be set out in the authorization.

The authorization shall specify *inter alia* the customs office responsible for supervising the warehouse. It may also specify, where appropriate, that goods which present a danger or are likely to spoil other goods or which, for other reasons, require particular facilities must be placed in customs warehouses specially equipped to receive them.

If a private warehouse is concerned, it may also specify the categories of goods which may be admitted to that warehouse.

Article 5

The warehousekeeper shall be required to notify the customs authority of all factors arising after the issue of the authorization which are likely to influence its continuation or contents.

Article 6

Without prejudice to Article 7, where the circumstances under which the authorization was issued are found to have changed, the customs authority shall amend the authorization accordingly.

Article 7

Cases where the authorization is to be revoked and cases where it is found to be null and void, as well as the consequences deriving therefrom, shall be determined in accordance with the procedure laid down in Article 28.

TITLE III

Responsibility and guarantee

Article 8

The warehousekeeper shall be responsible for:

- (a) ensuring that while the goods are in the customs warehouse they are not removed from customs supervision;

- (b) executing the obligations that arise from the storage of goods covered by the customs warehousing procedure; and
- (c) complying with the particular conditions specified in the authorization.

Article 9

1. By way of derogation from Article 8, where the authorization concerns a public warehouse it may provide that some or all of the responsibilities referred to in Article 8 (a) and (b) devolve exclusively upon the depositor. In this case, the depositor must be informed of his responsibilities by the warehousekeeper and the customs warehouse shall be designated a public warehouse under the responsibility of the depositor.

2. The depositor shall at all times be responsible for executing the obligations arising from the placing of goods under the customs warehousing procedure.

Article 10

The rights and obligations of a warehousekeeper or of a depositor arising from this Regulation may, with the agreement of the customs authority, be transferred to another person.

Article 11

Without prejudice to the guarantees provided with regard to the common agricultural policy, the customs authority may demand a guarantee in connection with the responsibilities specified in 8 and 9.

TITLE IV

Placing of goods under the customs warehousing procedure

Article 12

The conditions governing the placing of goods under the customs warehousing procedure shall be determined in accordance with the procedure laid down in Article 28.

They shall provide in particular, in addition to the usual procedure, that goods may be placed under the customs warehousing procedure:

- (a) when the goods are physically deposited in the customs warehouse, subject to:
 - entry of the information necessary for their identification in the stock records referred to in Article 14, or

- production of the goods to the customs authority and lodging of a commercial or administrative document accepted by the customs authorities containing the information necessary for their identification;
- (b) without the goods being stored in a customs warehouse.

TITLE V

Operation of the customs warehouse and the customs warehousing procedure

Article 13

The customs authority shall take all the measures required to supervise and ensure the smooth operation of the customs warehouse and to carry out checks on goods placed under the customs warehousing procedure.

Article 14

Save as provided in Article 16 (2), the person designated by the customs authority must keep, in a form approved by that authority, stock records of all the goods placed under the customs warehousing procedure. These stock records must be kept at the disposal of the customs authority to enable it to carry out the checks referred to in Article 13.

Article 15

1. Where an economic need exists and customs supervision is not adversely affected, the customs authority may allow:
 - (a) Community goods other than those referred to in Article 1 (2) (b) and (3) to be stored on the premises of the customs warehouse;
 - (b) non-Community goods to be processed on the premises of the customs warehouse under inward processing arrangements, subject to the conditions provided for by those arrangements. The formalities which may be dispensed with in a customs warehouse will be determined in accordance with the procedure laid down in Article 31 of Regulation (EEC) No 1999/85 ⁽¹⁾;
 - (c) non-Community goods to be processed on the premises of the customs warehouse under the arrangements for processing under customs control, subject to the conditions provided for by those arrangements. The formalities which may be dispensed with in a customs warehouse will be determined in accordance with the procedure laid down in Article 31 of Regulation (EEC) No 1999/85.
2. In the cases referred to in paragraph 1, goods shall not be regarded as placed under the customs warehousing procedure.

⁽¹⁾ OJ No L 188, 20. 7. 1985, p. 1.

3. The customs authority may require the goods referred to in paragraph 1 to be entered in the stock records provided for in Article 14.

Article 16

1. Goods placed under the customs warehousing procedure must be entered in the stock records provided for in Article 14 as soon as they are deposited in the customs warehouse.
2. The customs authority may permit the administrative document referred to in Article 12 (a), second indent, to replace the entry in the stock records, as referred to in paragraph 1, with the proviso that such document entails the obligation to discharge it upon completion of the customs warehousing procedure.

Article 17

1. The period of storage of goods under the customs warehousing procedure shall not be limited.

However, in exceptional cases, the customs authority may set a time-limit within which the depositor must deal with the goods in one of the ways provided for in Article 21 or Article 24.

2. Specific time-limits for certain goods referred to in Article 1 (2) (b) covered by the common agricultural policy may be laid down in accordance with the procedure laid down in Article 28, without prejudice to Article 29.

Article 18

1. Where non-Community goods, or the Community goods referred to in Article 1 (3), are placed under the customs warehousing procedure, they may undergo the usual forms of handling intended to ensure preservation, to improve their presentation or marketable quality or to prepare them for distribution or resale.

A list of cases in which those forms of handling shall be prohibited for goods covered by the common agricultural policy may be drawn up if this is necessary to ensure the smooth operation of the common organization of markets.

2. Community goods referred to in Article 1 (2) (b) which are placed under the customs warehousing procedure and covered by the common agricultural policy may undergo only the forms of handling expressly stipulated for such goods.

3. The forms of handling provided for in the first subparagraph of paragraph 1 and paragraph 2 must be authorized in advance by the customs authority, which shall lay down the conditions under which they may take place.

4. The lists of the forms of handling referred to in paragraph 1 and 2 shall be established in accordance with the procedure laid down in Article 28, without prejudice to Article 29.

Article 19

Where the circumstances so warrant, goods placed under the customs warehousing procedure may be temporarily removed from the customs warehouse. This removal must be given prior authorization by the customs authority, which shall set out the conditions on which it may take place.

During the period for which they are outside the customs warehouse the goods may undergo the handling referred to in Article 18 on the conditions set out therein.

Article 20

The customs authority may allow goods placed under the customs warehousing procedure to be transferred from one warehouse to another. The conditions under which goods may be transferred from one warehouse to another without the procedure being terminated shall be determined in accordance with the procedure laid down in Article 28.

TITLE VI

Discharge of the customs warehousing procedure

Article 21

Without prejudice to special provisions adopted under specific customs arrangements, the customs warehousing procedure shall be discharged for non-Community goods:

- released for free circulation or placed under another customs procedure, or
- placed in a free zone, or
- exported, or
- abandoned to the Exchequer, where national regulations provide for this possibility, or
- destroyed under the supervision of the customs authority; waste and scrap resulting from this destruction may be dealt with in one of the ways for which provision is made in the preceding indents.

The abandoning or destruction of goods must not give rise to any expense to the Exchequer.

Article 22

1. Where a customs debt is incurred in respect of non-Community goods placed under the customs warehousing procedure, the customs value of such goods

shall be determined in accordance with Regulation (EEC) No 1224/80 ⁽¹⁾, as last amended by the Act of Accession of Spain and Portugal.

Where the customs value is based on a price actually paid or payable which includes the cost of the warehousing and of preserving goods while they remain in the warehouse, those costs need to be included in the customs value if they are distinguished from the price actually paid or payable for the goods.

2. Where the said goods have undergone the usual forms of handling within the meaning of Article 18, the nature of the goods, the value for customs purposes and the quantity to be taken into consideration in determining the amount of import duties shall, at the request of the declarant, be those which would be taken into consideration if the goods concerned had not undergone the said handling. However, derogations from this provision may be adopted in accordance with the procedure laid down in Article 28.

Article 23

1. Community goods referred to in Article 1 (2) (b) which are covered by the common agricultural policy and placed under the customs warehousing procedure must be dealt with in one of the ways provided for by the rules under which they are eligible, because they are placed under the said procedure, for measures normally attaching to the export of such goods.

2. Application may be made for cancellation of the declaration placing the goods under the customs warehousing procedure. The customs authority shall grant such application where the specific rules governing cases of non-compliance with the specified intended use of the goods have been followed. The list of cases in which the declaration may not be cancelled shall be drawn up in accordance with Article 28, without prejudice to Article 29.

3. If, on expiry of the time-limit set pursuant to Article 17 (2), no request has been made for the Community goods covered by that provision to be dealt with in one of the ways referred to in paragraph 1, the customs authority shall revoke the declaration placing the goods under the customs warehousing procedure and shall take the measures referred to in paragraph 2.

Article 24

Community goods referred to in Article 1 (3) which have been placed under the customs warehousing procedure may be put to any purpose which is permitted for such goods.

Article 25

The conditions for the discharge of the customs warehousing procedure shall be laid down in accordance with Article 28. In particular, they shall provide, in addition to the usual procedure, that:

⁽¹⁾ OJ No L 134, 31. 5. 1980, p. 1.

- the release for free circulation of non Community goods and the entry for home use of Community goods referred in Article 1 (3), which are placed under the customs warehousing procedure, shall take place without the goods being presented to the customs authority and before the declaration relating thereto is lodged:
 - (a) on condition that the nature of the goods, the value for customs purposes and the quantity of the goods were recognized or permitted when the goods were placed under the customs warehousing procedure. These charges shall also be applied at the time of release for free circulation unless the party concerned requests that, on release for free circulation, more favourable charges be applied and provided that such charges can be verified without a physical examination of the goods,
 - or
 - (b) subject to the information necessary for their identification being entered in the stock records referred to in Article 14;
- the exportation or dispatch of the goods placed under the customs warehousing procedure shall take place without the goods being presented to the customs authority and before the declaration relating thereto is lodged subject to the information necessary for their identification being entered in the stock records referred to in Article 14;
- for the other permitted customs purposes, the simplified procedures provided for in connection with such purposes shall be applied.

TITLE VII

Final provisions

Article 26

1. A Committee on Customs Warehouses and Free Zones, hereinafter called 'the committee', is hereby established; it shall be composed of representatives of the Member States; a representative of the Commission shall be chairman.
2. The committee shall adopt its own rules of procedure.

Article 27

The committee may examine any matter concerning the implementation of this Regulation raised by its chairman either on his own initiative or at the request of the representative of a Member State.

Article 28

1. The provisions required to implement this Regulation shall be adopted in accordance with the procedure laid down in paragraphs 2 and 3.

2. The representative of the Commission shall submit to the committee a draft of the provisions to be adopted. The committee shall deliver its opinion on the draft within a time-limit set by the chairman, having regard to the urgency of the matter. Opinions shall be delivered by a majority of votes, as provided in Article 148 (2) of the Treaty.

The chairman shall not vote.

3. (a) The Commission shall adopt the provisions envisaged where they are in accordance with the opinion of the committee.
- (b) Where the provisions envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall without delay propose to the Council the provisions to be adopted. The Council shall act by a qualified majority.
- (c) If, within three months of the proposal being submitted to it, the Council has not acted, the proposed provisions shall be adopted by the Commission.

Article 29

This Regulation shall be without prejudice to the adoption of specific provisions relating to the common agricultural policy, which remains subject to the rules on the implementation of the aforesaid policy.

Article 30

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

It shall be implemented one year after the date of entry into force of the implementing provisions adopted in accordance with the procedure laid down in Article 28.

2. Directive 69/74/EEC and the provisions of Directive 71/235/EEC⁽¹⁾ which are adopted for the application thereof shall be repealed on the date on which this Regulation is implemented. References to those Directives shall be construed as references to this Regulation.

3. Authorizations granted by customs authorities regarding the operation of customs warehouses shall be revoked when their substance conflicts with the provisions of this Regulation. They shall continue to apply in all other cases.

⁽¹⁾ OJ No L 143, 29. 6. 1971, p. 28.

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

Done at Brussels, 25 July 1988

For the Council
The President
Th. PANGALOS

COUNCIL REGULATION (EEC) No 2504/88

of 25 July 1988

on free zones and free warehouses

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas free zones and free warehouses are parts of, or premises within, the Community customs territory, separate from the rest of that territory, in which there is generally a concentration of activities related to external trade; whereas, because of the customs facilities available in them, these free zones and free warehouses ensure the promotion of the aforesaid activities and, in particular, that goods are redistributed within the Community and elsewhere; whereas, therefore, the provision concerning them forms an essential instrument of the Community's commercial policy;

Whereas Directive 69/75/EEC ⁽⁴⁾, as last amended by the Act of Accession of Spain and Portugal, laid down the rules to be incorporated in Member States' provisions governing free zones; whereas the importance of those zones in the context of the customs union calls for provisions relating to them to be applied uniformly throughout the Community; whereas the rules currently in force should therefore be supplemented and clarified and enacted in a form directly applicable in the Member States, thus affording greater legal security for individuals;

Whereas free zones and free warehouses should not be given any competitive advantage where the application of import duties is concerned; whereas, on the other hand, the customs formalities in such zones or warehouses should, in view of the special circumstances, be simpler than those applying in other parts of the Community customs territory;

Whereas non-Community goods placed in free zones or free warehouses should be allowed to remain there for an unlimited period without the payment of import duties or the application of such duties and measures, the goods in these free zones or free warehouses should therefore be considered

as not being within the customs territory of the Community;

Whereas it should be borne in mind that Community goods placed in free zones or free warehouses qualify for certain benefits normally attaching to their export; whereas it is also necessary to determine the consequences of placing in a free zone or free warehouse Community goods which are subject in intra-Community trade to charges imposed under the common agricultural policy for such time as such charges are applied; whereas it should also be possible to place other Community goods in a free zone or free warehouse; whereas, where such goods are liable to domestic taxes, it is for the Member State to decide on the conditions for, and consequences of, placing them in free zones or free warehouses without prejudice to Community fiscal provisions;

Whereas it is necessary to lay down certain rules for the charging of duties where a customs debt arises in respect of goods placed in a free zone or free warehouse; whereas it should be provided that, in certain circumstances, value added within the customs territory of the Community is not to be included in the customs value of such goods;

Whereas the uniform application of this Regulation must be ensured and accordingly a Community procedure for the enactment of implementing rules should be established; whereas close and effective cooperation in this area between the Member States and the Commission should be organized through the Committee on Customs Warehouses and Free Zones established under Council Regulation (EEC) No 2503/88 of 25 July 1988 on customs warehouses ⁽⁵⁾,

HAS ADOPTED THIS REGULATION:

TITLE I

General provisions

Article 1

1. This Regulation lays down the rules governing free zones and free warehouses.
2. In a free zone or free warehouse:
 - (a) non-Community goods shall be subject neither to import duties nor, save as otherwise provided, to commercial policy measures;

⁽¹⁾ OJ No C 283, 6. 11. 1985, p. 9.

⁽²⁾ OJ No C 120, 20. 5. 1986, p. 16.

⁽³⁾ OJ No C 283, 20. 10. 1986, p. 6.

⁽⁴⁾ OJ No L 58, 8. 3. 1969, p. 11.

⁽⁵⁾ See page 1 of this Official Journal.

(b) Community goods for which specific Community rules so provide, shall benefit, as a result of their being placed in a free zone, from measures normally attaching to the export of such goods;

(c) no customs formalities or controls shall apply to the entry, holding or removal of goods other than as provided in this Regulation.

3. For such time as Community goods are subject in intra-Community trade to charges imposed under the common agricultural policy, such charges shall not apply in a free zone or free warehouse.

4. For the purposes of this Regulation:

(a) '*free zone*' means parts of the customs territory of the Community, separate from the rest of that territory, in which non-Community goods placed in them are considered, for purposes of the application of import duties and commercial policy import measures, as not being within the customs territory of the Community provided they are not released for free circulation or entered under another customs procedure under the conditions laid down in this Regulation;

(b) '*free warehouse*' means premises situated within the Community's customs territory, in which non-Community goods placed in them are considered, for purposes of the application of import duties and commercial policy import measures, as not being within the customs territory of the Community provided they are not released for free circulation or entered under another customs procedure under the conditions laid down in this Regulation;

(c) '*Community goods*' means goods:

— entirely obtained in the customs territory of the Community without the addition of goods from third countries or territories which are not part of the customs territory of the Community;

— from countries or territories not forming part of the customs territory of the Community which have been released for free circulation in a Member State;

— obtained in the customs territory of the Community either from the goods referred to exclusively in the second indent or from goods referred to in the first and second indents;

(d) '*non-Community goods*' means goods other than those referred to in (c).

Without prejudice to the agreements concluded with third countries for the implementation of the Community transit arrangements, goods which, while fulfilling the conditions laid down in (c), are reintroduced into the customs territory of the Community after export therefrom are also considered as non-Community goods;

(e) '*import duties*' means customs duties and charges having equivalent effect, agricultural levies and other import charges laid down under the common agricultural policy or under the specific arrangements applicable to certain goods resulting from the processing of agricultural products;

(f) '*export duties*' means agricultural levies and other export charges laid down under the common agricultural policy or under the specific arrangements applicable to certain goods resulting from the processing of agricultural products;

(g) '*customs authority*' means any authority competent to apply customs rules, even if that authority is not part of the customs administration;

(h) '*person*' means:

— a natural person, or

— a legal person, or

— when this possibility is provided for in the rules in force, an association of persons recognized as having legal capacity but lacking the legal status of a legal person.

Article 2

1. Member States may designate parts of the customs territory of the Community as free zones or authorize the establishment of free warehouses.

2. Member States shall determine the area covered by each free zone. Premises which are to be designated as free warehouses must be approved by Member States.

3. Member States shall ensure that free zones are enclosed and shall determine the entry and exit points of free zones and free warehouses.

4. The construction of any building in a free zone shall require the prior authorization of the customs authority.

Article 3

1. The perimeter and the entry and exit points of free zones and free warehouses shall be subject to supervision by the customs authorities.

2. Persons and means of transport entering or leaving a free zone or a free warehouse may be subjected to a customs check.

3. Access to a free zone or a free warehouse may be denied to persons who do not provide every guarantee necessary for compliance with the rules provided for in this Regulation.

4. The customs authority may check goods entering, leaving or remaining in a free zone or free warehouse. To

enable such checks to be carried out, a copy of the transport document, which must accompany goods entering or leaving, must be handed to, or kept at the disposal of, the customs authority by any person designated for this purpose by such authority. Where these checks are required, the goods must be made available to the customs authority.

TITLE II

Placing of goods in free zones or free warehouses

Article 4

1. Free zones and free warehouses shall be open to all goods irrespective of their nature, quantity and country of origin, consignment or destination.
2. Paragraph 1 shall not preclude:
 - (a) the imposition of prohibitions or restrictions justified on grounds of public morality, public policy or public security, the protection of human, animal or plant health and life, the protection of national treasures of artistic, historic or archaeological value, or the protection of industrial or commercial property;
 - (b) the right of the customs authority to require that goods which present a danger or are likely to spoil other goods or which, for other reasons, require special facilities be placed in premises specially equipped to receive them.

Article 5

1. Without prejudice to Article 3 (4), goods entering a free zone or free warehouse need not be presented to the customs authority, nor need a customs declaration be lodged.
2. Goods need be presented to the customs authority only where:
 - (a) they have been placed under a customs procedure which is discharged when they enter a free zone or free warehouse; however, where the customs procedure in question permits exemption from the obligation to present goods, such presentation need not be required;
 - (b) they have been placed in a free zone or free warehouse on the authority of a decision to grant repayment or remission of import duties;
 - (c) a request has been made for advance payment of export refunds on the goods under the common agricultural policy.
3. The customs authority may require that goods subject to export duties or to other export provisions shall be notified to the customs authority.

4. At the request of the party concerned, the customs authority shall certify that the goods placed in a free zone or free warehouse are either Community goods or non-Community goods.

TITLE III

Operation of a free zone or free warehouse

Article 6

1. There shall be no limit on the length of time goods may stay in free zones or free warehouses.
2. Specific time limits imposed in accordance with Article 17 (2) of Council Regulation (EEC) No 2503/88 shall apply to certain goods.

Article 7

1. Subject to Articles 8 and 9, any industrial, commercial or service activity shall be authorized in a free zone or free warehouse subject to the conditions laid down in this Regulation.
2. However, the customs authority may impose certain prohibitions or restrictions on such activities, having regard to the nature of the goods concerned or the requirements of customs supervision.
3. The customs authority may prohibit persons who do not provide the necessary guarantees for the correct application of this Regulation from carrying on an activity in a free zone or free warehouse.

Article 8

Where an activity referred to in Article 7 involves working of non-Community goods, the following provisions shall apply:

- (a) without prejudice to Article 13 (2), no authorization shall be required for usual forms of handling within the meaning of Article 18 (1) of Council Regulation (EEC) No 2503/88;
- (b) processing operations other than usual forms of handling shall be carried out in accordance with Council Regulation (EEC) No 1999/85 of 16 July 1985 on inward processing relief arrangements⁽¹⁾. Member States may, however, insofar as is necessary to take into account conditions of operation and customs supervision in free zones and free warehouses, adapt the relevant methods of control. The formalities which may be dispensed with in a free zone or free warehouse

⁽¹⁾ OJ No L 188, 20. 7. 1985, p. 1.

will be determined in accordance with the procedure laid down in Article 31 of Regulation (EEC) No 1999/85.

By way of derogation from the first subparagraph, processing operations within the territory of the Old Free Port of Hamburg shall not be subject to conditions of an economic nature.

However, if conditions of competition in a specific economic sector in the Community are affected as a result of this derogation, the Council, acting by a qualified majority on a proposal from the Commission, shall decide that the economic conditions laid down for the Community with regard to inward processing shall apply to the corresponding economic activity within the territory of the Old Free Port of Hamburg;

- (c) processing under customs control shall be carried out in accordance with Council Regulation (EEC) No 2763/83 of 26 September 1983 on arrangements permitting goods to be processed under customs control before being put into free circulation ⁽¹⁾, as last amended by Regulation (EEC) No 4151/87 ⁽²⁾. Member States may, however, insofar as is necessary to take into account conditions of operation and customs supervision in free zones and free warehouses, adapt the relevant methods of control. The formalities which may be dispensed with in a free zone or free warehouse will be determined in accordance with the procedure laid down in Article 31 of Regulation (EEC) No 1999/85.

Article 9

Where an activity referred to in Article 7 involves the working of Community goods, the following provisions shall apply:

- (a) the Community goods referred to in Article 1 (2) (b) which are covered by the common agricultural policy may undergo only the forms of handling expressly referred to in respect of these goods in Article 18 (2) of Regulation (EEC) No 2503/88. Such handling may be undertaken without authorization;
- (b) the Community goods referred to in Article 1 (3) may undergo without authorization the usual forms of handling referred to in Article 18 (1) of Regulation (EEC) No 2503/88 or be destroyed in accordance with the fourth indent of Article 10 (1).

Article 10

1. Without prejudice to Article 8, non-Community goods placed in a free zone or free warehouse may, while they remain in a free zone or free warehouse, be:

- put into free circulation;
- entered under temporary importation procedure;
- abandoned to the Exchequer, where national regulations provide for this possibility;
- destroyed, provided that the person concerned provides the customs authority with all the information it considers necessary; the scrap and waste resulting from such destruction may be dealt with as described in one of the preceding indents or in Article 8.

The abandoning or destruction of goods must not give rise to any expense to the Exchequer.

2. Where paragraph 1 is not applied, the non-Community goods and the Community goods referred to in Article 1 (2) (b) and (3) may not be consumed or used in free zones or in free warehouses.

3. Without prejudice to the provisions applicable to supplies of stores, where the procedure concerned so provides, paragraph 2 shall not preclude the use or consumption of goods the release for free circulation or temporary importation of which would not entail application of import duties, measures under the common agricultural policy or the commercial policy or the charges referred to in Article 1 (3). In that event, no declaration of release for free circulation or temporary importation shall be required.

A declaration shall, however, be required if such goods are to be charged to a quota or a ceiling.

Article 11

1. Persons carrying on an activity involving the storage, working or processing, or sale or purchase, of goods in a free zone or free warehouse must keep stock accounts in a form approved by the customs authority. Goods must be entered in the stock accounts as soon as they are brought on to such persons' premises. The stock accounts must enable the customs authority to identify the goods, and must record their movements.

The stock accounts must be kept at the disposal of the customs authority to enable it to carry out such controls as it considers necessary.

2. Where goods are transhipped within a free zone, the documents relating to the operation must be kept at the disposal of the customs authority. The short-term storage of goods in connection with such transhipment shall be deemed to be an integral part of the operation.

⁽¹⁾ OJ No L 272, 5. 10. 1983, p. 1.

⁽²⁾ OJ No L 391, 31. 12. 1987, p. 1.

TITLE IV

Removal of goods from a free zone or a free warehouse

Article 12

Without prejudice to special provisions adopted under specific customs arrangements, non-Community goods being removed from a free zone or free warehouse may be:

- exported out of the customs territory of the Community; or
- moved, in accordance with Community rules, to another part of the customs territory of the Community.

Article 13

1. Where a customs debt arises in respect of non-Community goods, the customs value of such goods shall be determined in accordance with Regulation (EEC) No 1224/80⁽¹⁾, as last amended by the Act of Accession of Spain and Portugal.

Where the customs value is based on a price actually paid or payable which includes the cost of warehousing or of preserving goods while they remain in the free zone or free warehouse, such costs need not be included in the customs value if they are distinguished from the price actually paid or payable for the goods.

2. Where the said goods have undergone, in the free zone or free warehouse, one of the usual forms of handling within the meaning of Article 18 (1) of Regulation (EEC) No 2503/88, the nature of the goods, the value for customs purposes and the quantity to be taken into consideration in determining the amount of import duties shall, at the request of the declarant and provided that such handling was covered by an authorization issued in accordance with Article 18 (3) of that Regulation, be those which would be taken into account if the goods concerned had not undergone such handling. Derogations from this provision may, however, be adopted in accordance with the procedure laid down in Article 28 of Regulation (EEC) No 2503/88.

Article 14

1. Community goods covered by the common agricultural policy and referred to in Article 1 (2) (b) must be dealt with, when placed in a free zone or free warehouse, in one of the ways provided for by the rules under which they are eligible, because they are placed in a free zone, for measures normally attaching to the export of such goods.

2. Should such goods be returned to another part of the customs territory of the Community, or if no application to

have them dealt with in one of the ways provided for in paragraph 1 has been made by the expiry of a time limit set pursuant to Article 6 (2), the customs authority shall take the measures described by the specific rules concerned relating to the case of failure to deal with the goods in the specified way.

Article 15

Community goods referred to in Article 1 (3) placed in a free zone or a free warehouse may be dealt with in any of the ways allowed for such goods.

Article 16

1. Where goods are to be returned to another part of the customs territory of the Community, or placed under a customs procedure, the certificate referred to in Article 5 (4) may be used as proof of the Community or non-Community status of the goods as the case may be.

2. Where no such certificate or other evidence of the Community or non-Community status of the goods is available, the goods shall be deemed to be:

- Community goods, for the purposes of applying export duties and export certificates or export measures laid down under the commercial policy;
- non-Community goods in all other cases.

Article 17

The customs authority shall ensure that rules governing the export or consignment of goods from Member States are complied with where such goods are exported or consigned from a free zone or free warehouses.

TITLE V

Final provisions

Article 18

The Committee on Customs Warehouses and Free Zones set up under Article 26 of Regulation (EEC) No 2503/88 may examine any matter concerning the implementation of this Regulation raised by its chairman either on his own initiative or at the request of a representative of a Member State.

Article 19

The provisions required to implement this Regulation shall be adopted in accordance with the procedure laid down in Article 28 of Regulation (EEC) No 2503/88.

⁽¹⁾ OJ No L 134, 31. 5. 1980, p. 1.

Article 20

This Regulation shall be without prejudice to the adoption of special provisions relating to the common agricultural policy, which remain subject to the rules governing the establishment of that policy.

Article 21

Where specific Community rules refer to free zones, that reference shall be taken to include a reference to free warehouse.

Article 22

This Regulation shall apply without prejudice to Council Regulation (EEC) No 1736/75 of 24 June 1975 on the external trade statistics of the Community and statistics of trade between Member States ⁽¹⁾, as last amended by Regulation (EEC) No 1629/88 ⁽²⁾.

Article 23

Nothing in this Regulation shall affect the provisions of Council Regulation (EEC) No 353/79 of 5 February 1979

laying down the conditions for coupage and wine making in the free zones within Community territory for wine products originating in third countries ⁽³⁾.

Article 24

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

It shall be implemented one year after the date of entry into force of the implementing provisions adopted in accordance with the procedure laid down in Article 19.

2. Directive 69/75/EEC and the provisions of Directive 71/235/EEC ⁽⁴⁾ which are adopted for the application thereof shall be repealed on the date on which this Regulation is implemented. References to those Directives shall be deemed to be references to this Regulation.

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

Done at Brussels, 25 July 1988.

For the Council
The President
Th. PANGALOS

⁽¹⁾ OJ No L 183, 14. 7. 1975, p. 3.

⁽²⁾ OJ No L 147, 14. 6. 1988, p. 1.

⁽³⁾ OJ No L 54, 5. 3. 1979, p. 94.

⁽⁴⁾ OJ No L 143, 29. 6. 1971, p. 28.

COUNCIL REGULATION (EEC) No 2505/88

of 26 July 1988

amending Regulation (EEC) No 2179/83 laying down general rules for distillation operations involving wine and the by-products of wine-making

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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 35 (7), 36 (5), 39 (8), 41 (8), 42 (4) and 79 (2) thereof,

Having regard to the proposal from the Commission,

Whereas, where wine-growers' cooperatives have formed themselves into associations, the administrative and material operations for the delivery of wine for distillation may be facilitated if the associations in question are allowed to carry out such operations; whereas it therefore seems advisable to allow, for a limited period at the end of which the results will be assessed, Member States, under certain conditions, to authorize the associations to substitute themselves for the wine-growers' cooperatives party thereto for the purposes of the conclusion of contracts and the delivery of wine; whereas it must be stipulated that the same guarantees offered by the normal procedure with regard to compliance with obligations and the limitation of advantages for the producers must be ensured;

Whereas the checks on products intended for distillation should be reinforced;

Whereas it is particularly important to lay down specific rules to ensure that wine delivered for one of the optional distillation operations comes from the producers' own production; whereas, to that end, provision should be made that such producer must furnish proof that he has actually produced and that he holds the wine to be delivered; whereas rules should also be drawn up ensuring a sufficient check on the essential elements of the distillation contracts;

Whereas, following administrative problems encountered in the past, proof of distillation and payment of the minimum purchase price for the wine to the producer must be required before the aid is paid to the distiller.

Whereas the tolerances laid down at present for quantities and alcoholic strengths appearing in delivery contracts have proved to be too high; whereas they should accordingly be

reduced; whereas it should also be specified that the maximum and minimum limits laid down for certain distillation operations must not be exceeded following the application of the abovementioned tolerances;

Whereas the factors used to calculate the aid should be defined more precisely;

Whereas compulsory distillation is a vital factor in achieving balance on the market in table wine and an indirect factor in the structural adjustment of wine-growing potential to requirements; whereas it is therefore vital that compulsory distillation be enforced very strictly and that all persons subject to the obligation to distil actually deliver for distillation the quantities corresponding to their obligation; whereas exclusion from intervention measures under Article 47 of Regulation (EEC) No 822/87 has proved insufficient in certain cases to ensure that obligations are met by persons subject thereto; whereas provision must therefore be made for additional Community measures to be adopted for producers who do not fulfill their obligations before the fixed time-limit but who do fulfil them before another date to be specified;

Whereas, in order to prevent a disproportionate burden, certain small producers are exempt from the obligation to deliver their by-products of wine-making for distillation; whereas it should be stipulated that such producers are nevertheless free to deliver their by-products.

Whereas it should be stipulated that, in respect of that part of their wine production actually delivered for distillation under Articles 36 and 39 of Regulation (EEC) No 822/87, producers are required to deliver only by-products of wine-making for distillation as provided for in Article 35 of that Regulation.

Whereas in certain wine-growing areas, distillation of by-products represents, for certain producers of small quantities subject to the obligation to distil, a disproportionate burden; they should therefore be granted, at the request of the Member State from which they come, the option of freeing themselves from their obligation by withdrawal under control;

Whereas, since the Community is responsible for the disposal of certain wine alcohols, it is incumbent upon it to obtain a better insight into the transactions carried out on the alcohol market; whereas for this reason, the information that the Member States communicated to the Commission on the subject of alcohol deriving from compulsory distillation should be extended to alcohol deriving from voluntary distillation, held by the intervention agencies;

⁽¹⁾ OJ No L 84, 27. 3. 1987, p. 1.

⁽²⁾ OJ No L 198, 26. 7. 1988, p. 35.

Whereas the characteristics which products that could be delivered for distillation must present should be better defined;

Whereas the physical checks on products entering for distillation should be carried out under procedures ensuring adequate representativity;

Whereas the consequences of the producer's non-compliance with his obligations must be set out; however, provision should be made for the Commission to adopt rules to be applied, in respect of rights to aid, to distillers who do not comply with certain administrative time-limits, in particular to take into account the proportionality principle;

Whereas to take into account certain practices existing in certain Member States with regard to the transport of products to the distillery, in particular where small quantities are involved, Member States should be authorized to allow them to be transported in bulk;

Whereas certain definitions and administrative procedures should be laid down;

Whereas in these circumstances, Regulation (EEC) No 2179/83 ⁽¹⁾, as last amended by Regulation (EEC) No 3805/85 ⁽²⁾, should be amended accordingly; whereas on that occasion it is appropriate to amend it also to take into account the consolidation of the basic Regulation in the wine sector affected by Regulation (EEC) No 822/87.

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2179/83 is hereby amended as follows:

1. Article 1 is replaced by the following.

'Article 1

This Regulation lays down:

- (a) in Title I, the general rules for the distillation operations provided for in Articles 38, 41 and 42 of Regulation (EEC) No 822/87;
- (b) in Title II, the general rules for the distillation operations provided for in Articles 35, 36 and 39 of Regulation (EEC) No 822/87;
- (c) in Title III, the general rules applicable to all the distillation operations covered by Titles I and II.'

2. In Article 2:

- (a) the second indent of paragraph 1 (a) is replaced by the following:
 - 'for the purposes of Title II: any natural or legal person or group of such persons having

produced wine from fresh grapes, grape must or partially fermented grape must or from new wine still in fermentation, obtained personally or purchased, or any natural or legal person or group of such persons subject to the obligations referred to in Article 35 of Regulation (EEC) No 822/87;

(b) the following paragraphs are inserted:

'3. Member States may, in accordance with rules which they determine, lay down that, for the purposes of the conclusion of contracts and the delivery of wine for distillation, associations of wine-growers' cooperatives shall on request be regarded as producers in respect of those quantities of wine produced and handed over by member cooperatives. The latter shall in any case continue to hold the rights and be bound by the obligations laid down in Community regulations.

Should an association intend during a specified wine year to carry out, in agreement with the wine-growers' cooperatives concerned, a distillation operation referred to in Article 1 (a), it shall inform the intervention agency in writing. In that case:

- member cooperatives may not individually sign distillation contracts or make deliveries for the distillation in question;
- the quantities of wine delivered for distillation by the said association shall be booked to the member cooperatives on whose behalf the delivery is made.

With regard to the application of Article 47 of Regulation (EEC) No 822/87, failure to comply with the obligations laid down therein by one or more member cooperatives shall mean, irrespective of the consequences for the latter, that the association is excluded from deliveries for the distillation in question, within the limit of the quantities of wine to be delivered on behalf of the wine-growers' cooperatives which committed the infringement.

Member States which exercise the option set out in this paragraph shall inform the Commission accordingly and shall notify it of the provisions which they have adopted for this purpose. The Commission shall inform the other Member States.

4. Paragraph 3 shall apply until 31 August 1992.

Before 31 March 1992, the Commission shall submit to the Council a report on application of the aforementioned paragraph, accompanied, if necessary by an appropriate proposal. The Council shall then act on any measures to apply as from 1 September 1992.'

⁽¹⁾ OJ No L 212, 3. 8. 1983, p. 1.

⁽²⁾ OJ No L 367, 31. 12. 1985, p. 39.

3. Article 4 is replaced by the following:

'Article 4

1. Any producer intending to deliver a wine of his own production for one of the distillation operations specified in Article 1 (a) for which he satisfies the conditions laid down for each wine year and each distillation in the Community rules shall conclude a delivery contract, hereinafter referred to as the "contract", with a distiller and submit it to the competent intervention agency for approval, by a date to be specified.

At the same time he shall provide proof that he has actually produced, and that he holds, the quantity of wine to be delivered.

Producers subject to the obligations referred to in Article 47 (1) of Regulation (EEC) No 822/87 shall also provide the competent intervention agency with proof that they have fulfilled those obligations during the reference period set in accordance with the said Article.

2. The contract shall specify for the wine concerned at least:

- (a) the quantity;
- (b) the various characteristics, in particular:
 - colour,
 - actual alcoholic strength by volume.

The producer may not deliver the wine for distillation unless the contract has been approved by the competent intervention agency by a date to be specified.

Where distillation is carried out in a Member State other than that in which the contract is approved, the intervention agency which approved the contract shall forward a copy thereof to the intervention agency of the first Member State.

In case of distillation pursuant to Article 41 (1) or (2) of Regulation (EEC) No 822/87, it may be decided that a contract submitted by a producer who, during the same wine year, has obtained approval for a contract relating to a delivery for distillation pursuant to Article 38 of that Regulation shall not be approved unless he provides proof that at least a quantity to be specified of the wine to which the contract approved under Article 38 refers has been delivered to a distiller or a maker of fortified wine.

Where the option provided for in Article 41(3) of Regulation (EEC) No 822/87 is exercised, submission of proof as referred to in the fourth subparagraph of this paragraph shall be required.

3. The distiller shall pay to the producer for the wine delivered to him at least the price specified in Article 38 (2), 41 (6), or 42 (3) of Regulation (EEC) No 822/87, as the case may be, such prices to apply to bulk merchandise ex producer's premises.

4. The minimum buying-in price referred to in paragraph 3 shall be paid by the distiller to the producer within a period to be determined.

5. Member States shall carry out, by means of representative spot checks, physical checks on at least the following elements:

- actual production and holding by the producer of the quantity of wine intended for delivery;
- colour of wine entered in the contract;
- actual alcoholic strength by volume entered in the contract; however, a variation of 0,8 % volume is permitted between the actual alcoholic strength determined at the time of checking.

The checks shall be carried out at any time between the submission of the contract for approval and the entry of the wine into the distillery.

Detailed rules concerning the representativeness of the spot checks referred to in the first subparagraph of paragraph 1 shall be adopted under the procedure laid down in Article 83 of Regulation (EEC) No 822/87.

4. In Article 5:

(a) The second subparagraph of paragraph 1 is replaced by the following:

'Producers subject to the obligations referred to in Article 47 (1) of Regulation (EEC) No 822/87 shall also provide the competent intervention agency with proof that they have fulfilled those obligations during the reference period set in accordance with Article 47 (3) of that Regulation.'

(b) The last subparagraph of paragraph 2 is replaced by the following:

'Article 4 shall apply, the reference to the contract being deemed also to refer to the declaration.'

5. Article 6 is replaced by the following:

'Article 6

1. For each producer from whom he has received deliveries of wine, the distiller shall, in respect of each delivery, communicate to the competent intervention agency the quality, colour and actual alcoholic strength by volume of the wine, together with the number of the document provided for in Article 71 (1) of Regulation (EEC) No 822/87 and used for the transport of the wine to the distiller's premises.

2. If distillation is carried out by the producer himself in his capacity as a distiller or by a distiller acting on the producer's behalf, the information referred to in paragraph 1 shall be submitted to the competent intervention agency by the producer.

3. The distiller shall provide the intervention agency, within a time-limit to be specified, with:

- proof that the total quantity of wine stipulated in the contract or declaration has been distilled within the time-limit laid down;
- proof that he has paid the producer the minimum purchase price referred to in Article 4 (3), within the time-limit laid down.

In the case referred to in paragraph 2, only the proof referred to in the first indent shall be supplied by the producer to the intervention agency.

4. The intervention agency shall pay the distiller or, in the cases referred to in paragraph 2, the producer, the aid calculated in accordance with Article 7 within three months of submission of the proof referred to in paragraph 3.'

6. Article 7 is replaced by the following:

'Article 7

The aid to be paid to the distiller or, in the cases referred to in Article 6 (2), to the producer, for wine which has undergone one of the distillation operations provided for in Articles 38, 41 and 42 of Regulation (EEC) No 822/87 shall be fixed, per % volume of alcohol and per hectolitre of the product of distillation, on the basis of the minimum purchase price fixed for the distillation operation in question, the standard transport and processing costs, the technical losses and the market price for the products of distillation.

Aid granted where neutral spirits are obtained from wine may not be less than aid granted where the other products referred to in Article 3 (1) are obtained.'

7. Article 8 is replaced by the following:

'Article 8

1. The characteristics of the wine delivered for distillation may not differ from those indicated in the contract or in the declaration, pursuant to Article 4 (2).

However, as regards the alcoholic strength, a discrepancy of 0,8% volume shall be permitted between the actual alcoholic strength by volume as set out in the contract or declaration and the actual alcoholic strength by volume as determined when the wine enters the distillery.

2. No aid shall be due:

- where the quantity of wine actually delivered for distillation is less than 95% of that shown in the contract or declaration.

— for that quantity of wine exceeding 105% of the quantities shown in the contract or declaration.

— for that quantity of wine exceeding the maximum quantity laid down for the distillation operation in question.

3. Except in the case of distillation as provided for in Article 42 of Regulation (EEC) No 822/87, the quantity of wine delivered for distillation must not be less than a minimum quantity to be determined.'

8. Article 9 is replaced by the following:

'Article 9

1. The distiller or, in the case referred to in Article 6 (2), the producer, may request that an amount equal to the lowest aid fixed for the distillation operation in question be advanced to him, on condition that he has lodged a guarantee in favour of the intervention agency. That guarantee shall be equal to 110% of the said amount in request of all distillation operations, with the exception of the distillation operation provided for in Article 38 of Regulation (EEC) No 822/87, for which the guarantee shall be equal to 120% of the said amount.

The amount referred to in the first subparagraph shall be calculated per % volume of alcohol indicated in respect of the wine referred to in the contract or delivery declaration and per hectolitre of that wine.

The amount may only be paid if the contract or delivery declaration has been approved.

2. The guarantee shall be released by the intervention agency after submission, within the time-limit laid down, of the proof referred to in Article 6 (3) and, where appropriate, in accordance with detailed rules to be adopted under the procedure provided for in Article 83 of Regulation (EEC) No 822/87.'

9. Article 10 (1) is replaced by the following:

'1. In the case of the distillation operations referred to in Article 41 (1) and (2) of Regulation (EEC) No 822/87, the producer may benefit from the measure only in respect of a quantity of table wine no greater than the quantity specified in the contract or declaration.'

10. Article 11 is replaced by the following:

'Article 11

1. Producers subject to an obligation to distil under Articles 35, 36 and 39 of Regulation (EEC) No 822/87 shall discharge their obligations by delivering to a distiller, before a date to be specified, the quantities of product to be distilled as determined in accordance with the abovementioned Articles and with the measures taken in implementation thereof.

2. Producers subject to one of the obligations referred to in paragraph 1 who have delivered, by the

date fixed in accordance with paragraph 1, at least 90 % of the quantity of product which they are obliged to deliver may discharge that obligation by delivering the remaining quantity before a date to be fixed by the competent national authority.

In such cases:

- the purchase price for the remaining quantities referred to in the first subparagraph and the price for the alcohol produced therefrom and delivered to the intervention agency shall be reduced by an amount equal to the aid fixed, in respect of the distillation operation in question, for neutral spirits in accordance with Article 16;
- for alcohol delivered to the intervention agency in accordance with the second indent of the first subparagraph of Article 35 (6) and the second indent of the first subparagraph of Article 36 (4) of Regulation (EEC) No 822/87, the EAGGF contribution to expenditure by the intervention agency determined in accordance with Articles 35 and 36 of the said Regulation shall be adjusted;
- no aid shall be paid for products of distillation not delivered to intervention agencies;
- the obligation shall be considered to have been discharged by the time-limit set in accordance with paragraph 1;
- the time-limit for distillation, the time-limit for submission of proof of payment of the price referred to in the first indent and the time-limit for delivery of the alcohol to the intervention agency shall be adjusted by the competent authority to the extension of the time-limit for delivery.

3. The measures applicable to producers who have not discharged their obligations by the date referred to in paragraph 1 but by another date to be specified shall be adopted in accordance with the procedure provided for in Article 83 of Regulation (EEC) No 822/87.

11. Article 12 is replaced by the following:

'Article 12

1. The buying-in price referred to in Article 35 (5a) of Regulation (EEC) No 822/87 shall apply to bulk merchandise ex distiller's premises.

However, where the transport costs payable by the producer are borne by the distiller, the amount of these costs shall be deducted from the buying-in price to be paid by the distiller.

2. The buying-in price referred to in Articles 36 (3) and 39 (6) of Regulation (EEC) No 822/87 shall apply to bulk merchandise ex producer's premises.'

12. Article 13 is replaced by the following:

'Article 13

1. The obligations provided for in Article 35 of Regulation (EEC) No 822/87 shall not apply to:

- producers who withdraw by-products of wine-making under supervision in accordance with Article 14 (1);
- producers of quality sparkling wines of the aromatic type and of quality sparkling wines of the aromatic type produced in specified regions as referred to in the first subparagraph of Article 18 (1) of Regulation (EEC) No 358/79 who have prepared such wines from grape must or partially fermented grape must which has been purchased and has undergone stabilizing procedures to eliminate the lees.

Producers who have not made wine or processed grapes in any other manner on cooperative premises and who, during the wine year in question, do not produce more than 25 hectolitres of wine or must shall be free not to deliver any quantities.

It may be decided that the second subparagraph shall apply, subject to conditions to be determined, to producers who have not made wine or processed grapes in any other manner on cooperative premises and who, during the wine year in question, produce more than 25 hectolitres but not more than 40 hectolitres of wine or must.

For that part of their production of wine actually delivered to a distillery under one of the distillation operations provided for in Articles 36 and 39 of Regulation (EEC) No 822/87, producers shall be required to deliver, under the distillation operation provided for in Article 35 (2) of that Regulation, only the by-products of wine-making.

2. The percentage mentioned in the second subparagraph of Article 35 (2) of Regulation (EEC) No 822/87 shall be reduced in the case of:

- (a) producers who deliver marc for the manufacture of oenocyanin;
- (b) producers of white quality wines psr, in respect of the part of their production which qualifies for this description.

3. In the case of producers who deliver wine of their own production to the vinegar industry, the quantity of alcohol, expressed in terms of pure alcohol, contained in the wine delivered to the vinegar factory shall be deducted from the quantity of alcohol, expressed in terms of pure alcohol, contained in the wine to be delivered for distillation to discharge the obligation referred to in Article 35 (2) of Regulation (EEC) No 822/87.'

13. Article 14 is replaced by the following:

'Article 14

1. Only the following producers may exercise the option mentioned in Article 35 (5) of Regulation (EEC) No 822/87:

- those established in wine-growing areas where distillation represents a disproportionate burden. A list of the wine-growing areas concerned shall be

drawn up by the competent authorities of the Member States. The latter shall inform the Commission of this list;

- those who have not carried out vinification or any other processing of grapes in cooperative plants and who have disproportionate distillation costs on account of their low volume of production and the location of the distilleries. The implementing rules governing this provision shall be adopted, at the request of the Member State concerned, in accordance with the procedure laid down in Article 83 of Regulation (EEC) No 822/87.

2. For the purposes of implementing Article 35 (4) and (5) of Regulation (EEC) No 822/87, the average minimum alcoholic strength of the by-products of wine-making to be withdrawn shall be laid down in accordance with the procedure laid down in Article 83 of Regulation (EEC) No 822/87.

The by-products shall be withdrawn without delay and no later than the end of the wine year in which they were obtained. Withdrawal, together with an indication of the estimated quantities, shall either be entered in the registers kept in accordance with Article 71 (2) of Regulation (EEC) No 822/87 or be certified by the competent authority.

Member States whose wine production exceeds 25 000 hectolitres a year shall, by means of sampling, check at least whether the average minimum alcoholic strength referred to in the first paragraph has been complied with and whether the by-products have been withdrawn in full and within the time limits set.'

14. Article 15 (1) is replaced by the following:

'1. The distiller shall provide the producer, as proof of delivery, with a certificate stating at least the nature, the quantity and the alcoholic strength by volume of the product delivered, together with the date of delivery.

However, if a producer delivers the products which he is to have distilled to a distillery located in a Member State other than that in which the said products were obtained, the distiller shall require the intervention agency of the Member State in which distillation takes place to certify, on the official document provided for in Article 71 (1) of Regulation (EEC) No 822/87, covering transport of the products, that the latter have been taken over by the distillery. The distiller shall forward to the producer a copy of the said document, thus certified, within one month of receipt of the products to be distilled.'

15. Article 16 is replaced by the following:

'Article 16

The aid to be paid to the distiller for products which have undergone one of the distillation operations

provided for in Articles 35, 36 and 39 of Regulation (EEC) No 822/87 shall be fixed, per % volume alcohol and per hectolitre of the product of distillation, on the basis of the minimum purchase price fixed for the distillation operation in question, the standard transport costs where they are to be taken into account, the standard processing costs, the technical losses and the market price for the products of distillation.

The aid granted in respect of neutral alcohol may not be less than the aid granted in respect of the other products listed in Article 3 (1).

No aid shall be due for quantities of wine delivered for distillation exceeding the obligation of the producer as provided for in Article 11 (1) by more than 2 %.'

16. Article 17 is replaced by the following:

'Article 17.

1. In order to qualify for aid, the distiller shall submit an application to the intervention agency, by a date to be fixed, enclosing, in respect of the quantities for which the aid is requested:

- (a) (i) with regard to wine and wine lees, a list of the deliveries made by each producer, indicating at least:

- the nature, quantity, colour and alcoholic strength by volume,

- the number of the document provided for in Article 71 (1) of Regulation (EEC) No 822/87 where that document is required for the transport of the products to the distiller's premises or, where it is not required, the reference to the document used in accordance with national provisions;

- (ii) with regard to grape marc, a list of the names of the producers who have delivered marc to him and the quantities of alcohol contained in the marc delivered under the distillation operation provided for in Article 35 of Regulation (EEC) No 822/87, duly endorsed by the supervisory authority responsible for keeping accompanying documents relating to deliveries made:

- (b) a declaration, endorsed by the competent authority designated by the Member State, indicating at least:

- the quantities of products obtained from distillation, broken down into the categories specified in Article 3 (1)

- the dates on which the products were obtained;
- (c) evidence that he has paid the producer, within the time-limit laid down, the minimum purchase price stipulated for the distillation operation in question.

2. Where distillation is carried out by the producer himself, the documents referred to in paragraph 1 shall be replaced by a declaration, endorsed by the competent authority of the Member State, indicating at least:

- the nature, quantity, colour and alcoholic strength by volume of the produce to be distilled;
- the quantities of the products obtained from distillation, broken down into the categories specified in Article 3 (1);
- the dates on which the products were obtained.

3. The intervention agency shall pay the distiller or, in the cases referred to in paragraph 2, the producer the aid calculated in accordance with Article 16 within three months of submission of the application together with the requisite documents.'

17. Article 18 is replaced by the following:

'Article 18

1. Distillers may deliver to the intervention agency, within a time-limit to be determined, products with an alcoholic strength of 92 % volume or more.

The operations necessary to obtain the product referred to in the first subparagraph may be carried out either at the premises of the distiller who delivers the said product to the intervention agency or at the premises of a jobbing distiller.

2. The buying-in prices referred to in the third and fourth subparagraphs of Article 35 (6), the third and fourth subparagraphs of Article 36 (4) and the third and fourth subparagraphs of Article 39 (7) of Regulation (EEC) No 822/87 shall be fixed per hectolitre and per % volume of pure alcohol.

They shall apply to bulk merchandise free at the warehouse of the intervention agency. They shall be fixed on the basis of the minimum buying-in price for the products for the distillation operation in question, standard transport costs for the products to be distilled where these are to be taken into account, standard transport costs for the products of distillation, standard processing costs and technical losses.

If the distiller has qualified for aid under the conditions laid down in Article 17, the prices referred to in the first subparagraph shall be reduced by an amount equal to the amount of the aid.

3. At the same time as the standard price fixed in accordance with paragraph 2, differentiated prices shall be fixed for products delivered to the intervention agency under the third subparagraph of Article 35 (6) of Regulation (EEC) No 822/87, depending on whether the product has been distilled from grape marc, wine lees or wine, so that account is taken, where appropriate, of the differing costs and losses.

The Member States may decide to apply differentiated prices where the application of the standard price would or could make it impossible to have one or more of the by-products of wine-making distilled in certain regions of the Community. The level of prices fixed for the product distilled from the various by-products must be such that the weighted average of these prices does not exceed the standard price.'

18. Article 19 is replaced by the following:

'Article 19

The amount of the contribution from the EAGGF, Guarantee Section, to expenditure incurred by intervention agencies in taking over the products of the distillation operations referred to in Articles 35 and 36 of Regulation (EEC) No 822/87 shall be fixed at a standard rate per hectolitre and per % volume of alcohol on the basis of the buying-in price for neutral alcohol taken into intervention and the price charged for such alcohol on the Community market.'

19. Article 20 is deleted and replaced by the following, for insertion in Title III before Article 21:

'Article 20

For each of the distillation operations referred to in Articles 35, 36, 38, 39, 41 and 42 of Regulation (EEC) No 822/87, the Member States shall communicate the following information to the Commission every two months, distinguishing between neutral alcohol, raw alcohol and potable spirits:

- quantities produced during the previous period;
- quantities taken over by their intervention agencies on the basis of Community or national rules during the previous period;
- quantities disposed of by those intervention agencies during the previous period;
- quantities held by those intervention agencies at the end of the previous period.

In respect of quantities disposed of by these intervention agencies, they shall also communicate the selling prices charged, and shall state that the products have been consigned within the Community or exported, as the case may be.'

20. Article 21 is replaced by the following:

'Article 21

1. The distillation operations referred to in this Regulation may be carried out only during periods to be determined.
2. The characteristics which products delivered for distillation must present, in particular as regards volatile acidity level, shall be determined in accordance with the procedure laid down in Article 83 of Regulation (EEC) No 822/87.
3. The characteristics of the products delivered for distillation, and in particular quantity, colour and alcoholic strength, shall be checked using as a basis:
 - the document provided for in Article 71 (1) of Regulation (EEC) No 822/87 under cover of which transport is carried out;
 - an analysis performed on samples collected when the product enters the distillery, under the supervision of an official body of the Member State in which the distillery is located. This procedure may take the form of representative spot checks;
 - the contract concluded pursuant to Article 4.

The analyses shall be performed by approved laboratories, which shall forward the results to the intervention agency of the Member States where distillation takes place.

In accordance with the procedure laid down in Article 83 of Regulation (EEC) No 822/87 detailed rules shall be adopted concerning:

- application of the result of the analysis referred to in the second indent of the first subparagraph to the entire quantity conveyed by the contract or delivered, with particular reference to compliance with the principle of proportionality;
- the representativeness of the spot checks referred to in the second indent of the first subparagraph.

4. If, in accordance with the Community provisions in force, the document referred to in the first indent of paragraph 3 has not been made out, the characteristics of the product intended for distillation shall be checked using as a basis the analyses referred to in the second indent of that paragraph.

A representative of an official body shall check the quantity of product distilled and the date of distillation.'

21. Article 22 is replaced by the following:

'Article 22

1. Should verification of the file reveal that, in respect of all or part of the products delivered, the

producer does not satisfy the conditions laid down by Community rules for the distillation operation in question, the competent intervention agency shall inform the distiller and the producer accordingly.

2. For the quantities of products referred to in paragraph 1, the distiller shall not be required to keep to the price referred to in Article 4 (3) or Article 12.

3. Without prejudice to Article 8 or Article 16 (3), should the producer or the distiller not satisfy, in respect of all or part of the products delivered for distillation, the conditions laid down by Community rules for the distillation operation in question:

- aid shall not be due for the quantities in question;
- the distiller may not deliver the products obtained from distillation of the quantities in question to the intervention agency.

If the aid has already been paid, the intervention agency shall recover it from the distiller.

If the products of distillation have already been delivered, the intervention agency shall recover an amount equal to the aid specified for the distillation operation in question from the distiller.

However, where the various time-limits laid down by this Regulation have not been met, a reduction of the aid may be decided upon. Detailed rules for the application of this subparagraph shall be adopted in accordance with the procedure laid down in Article 83 of Regulation (EEC) No 822/87.'

22. Article 25 is replaced by the following:

'Article 25

1. Wine which is to undergo one of the distillation operations referred to in this Regulation may be fortified for distillation. In such cases, the product of distillation of such fortified wine must be one of the products specified at point (b) of the first subparagraph of Article 3 (1).

2. Wine shall be fortified for distillation only under official supervision.

For this purpose:

- the document(s) and register(s) required under Article 71 of Regulation (EEC) No 822/87 shall show the increase in actual alcoholic strength by volume, expressed in % volume, by indicating the strength before and after addition of the distillate to the wine;
- a sample of the wine shall be taken under official supervision before it is fortified in order that the

actual alcoholic strength by volume may be determined analytically by an official laboratory or a laboratory working under official supervision;

- two copies of the report on the analysis referred to in the second indent shall be sent to the manufacturer of the fortified wine and the manufacturer shall transmit one of these copies to the intervention agency of the Member State in which the wine is fortified.

3. Wine shall be fortified for distillation during the same period as that laid down in accordance with Article 21 (1) for the distillation operation in question. However, in the case of wine fortified for the distillation referred to in Article 36 of Regulation (EEC) No 822/87, a shorter period shall be set.

Articles 22 and 23 shall apply, subject to any necessary adjustments.

4. Wine fortified for distillation shall be distilled in accordance with detailed rules to be laid down. Such distillation shall take place within a period to be set.

5. Member States may restrict the number of locations at which wine may be fortified for distillation, should this be necessary to ensure that the most suitable method of supervision can be used.'

23. Article 26 is replaced by the following:

'Article 26

1. When the option referred to in Article 25 (1) is exercised and where the wine is not fortified for distillation by the distiller or on his behalf, the producer shall conclude a delivery contract with an approved manufacturer and shall submit it for approval to the competent intervention agency before a date to be specified.

However, if the producer is approved as a manufacturer of fortified wine and intends to fortify the wine for distillation himself, the contract referred to in the first subparagraph shall be replaced by a declaration of delivery.

2. The contracts and declarations referred to in paragraph 1 shall be governed by Articles 4, 5 and 8, subject to the necessary adjustments.

3. The manufacturer of fortified wine shall pay the producer, for the wine delivered, at least the price referred to, as the case may be, in Articles 35 (5a), 36 (3), 38 (2), 39 (6), 41 (6) or 42 (3) of Regulation (EEC) No 822/87; these prices shall apply to bulk merchandise;

- free at distiller's premises in the case of the distillation referred to in Article 35 of Regulation (EEC) No 822/87;
- ex producer's premises in other cases.

Subject to the necessary adjustments, the manufacturer of fortified wine shall be subject to the same obligations as the distiller under Articles 4, 6, 12, 15 and 17.

The aid to be paid to the manufacturer of fortified wine for the respective distillation operations shall be fixed per % volume of actual alcoholic strength and per hectolitre of wine before fortification, on the basis of the minimum buying-in price for the distillation operation in question, standard transport costs, where these are to be taken into account, standard processing costs and the market price for the product of distillation.

4. The aid shall be paid by the competent intervention agency to the manufacturer of fortified wine on condition that he provides a guarantee equal to 110% of the aid to be received.

Where the manufacturer fortifies wine for distillation operations governed by various provisions of Regulation (EEC) No 822/87, he may provide a single guarantee. In such case the guarantee shall be equal to 110% of all the aid to be paid to the manufacturer in respect of the said distillation operations.

The guarantees referred to in the first and second subparagraphs shall be provided in accordance with the second subparagraph of Article 9 (1).

The guarantee shall be released by the intervention agency after:

- proof of distillation, within the time-limit laid down, of the total quantity of wine fortified for distillation specified in the contract or declaration; and
- proof of payment, within the time-limit laid down, of the minimum purchase price referred to in Articles 4 (3) and 15 (2);

has been submitted within the time-limit laid down, and where appropriate, in accordance with detailed rules to be adopted in accordance with the procedure laid down in Article 83 of Regulation (EEC) No 822/87.

In cases covered by the second subparagraph of paragraph 1, only the proof referred to in the first indent shall be supplied by the producer to the intervention agency.'

24. Article 26a is replaced by the following:

'Article 26a

1. Where fortified wine is distilled in a Member State other than that in which the contract or declaration was approved, the aid payable in respect of distillation operations may, by way of derogation from Article 26 (4), be paid to the distiller on condition that

he submits an application within two months following the deadline specified for carrying out the distillation operation in question to the intervention agency of the Member State in whose territory the distillation has taken place.

2. The application referred to in paragraph 1 shall be accompanied by the following:

- a document endorsed by the competent authorities of the Member State in the territory of which the wine was fortified, transferring entitlement to the aid from the manufacturer of the fortified wine to the distiller and showing the quantities of fortified wine concerned and the amount of the corresponding aid;
- a copy of the contract or declaration referred to in Article 26 (1), approved by the relevant intervention agency;
- a copy of the analysis report referred to in Article 25;
- proof of payment of the minimum purchase price of the wine to the producer;
- the document required under Article 71 of Regulation (EEC) No 822/87 for the transport of fortified wine to the distillery, showing the increase in actual alcoholic strength, by volume, expressed in % volume, by indicating the strength before and after addition of the distillate to the wine;
- proof of distillation of the fortified wine concerned.

3. In cases covered by paragraph 1 the manufacturer of fortified wine shall not be required to lodge the guarantee referred to in Article 26 (4).

4. The aid shall be paid by the intervention agency not later than three months after the application and the documents referred to in paragraph 2 have been submitted.'

25. In Article 27:

(a) the following subparagraph is added to paragraph 1:

'Member States may provide that, where products referred to in this Regulation are delivered for distillation by more than one producer, they shall be transported in bulk. In such cases, the checking of the characteristics of the products referred to in Article 21 shall be carried out in accordance with the detailed rules adopted by the Member States concerned.'

(b) paragraph 2 is replaced by the following:

'2. Member States which exercise the option set out in the second and third subparagraphs of paragraph 1 shall inform the Commission accordingly and shall notify the Commission of the provisions which they have adopted for this purpose. The Commission shall inform the other Member States in the case referred to in the second subparagraph of paragraph 1.'

Article 2

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.

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

Done at Brussels, 26 July 1988.

For the Council

The President

Y. PAPANTONIOU

COUNCIL REGULATION (EEC) No 2506/88

of 26 July 1988

instituting a Community programme to assist the conversion of shipbuilding areas (RENAVAL programme)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1787/84 of 19 June 1984 on the European Regional Development Fund ⁽¹⁾, and in particular Article 7 (4) thereof,

Having regard to the proposal from the Commission ⁽²⁾,

Having regard to the opinion of the European Parliament ⁽³⁾,

Having regard to the opinion of the Economic and Social Committee ⁽⁴⁾,

Whereas Title V of the Treaty provides in particular for the strengthening of economic and social cohesion;

Whereas Article 7 of Regulation (EEC) No 1787/84, hereinafter referred to as the Fund Regulation, provides for participation by the Fund in Community programmes the purpose of which is to help in solving serious problems affecting the socio-economic situation in one or more regions and which are designed to provide a better link between the Community's objectives for the structural development or conversion of regions and the objectives of other Community policies;

Whereas on 26 January 1987 the Council adopted Directive 87/167/EEC on aid to shipbuilding ⁽⁵⁾ and whereas that Directive has to be seen in the context of a further reduction in shipbuilding capacity in the Community and an even greater reduction in employment; whereas the foregoing considerations also apply to ship conversion and repair;

Whereas a number of areas in the Community which are highly dependent on shipbuilding and which have already suffered major job losses as a result of the decline in shipbuilding are likely to see a worsening of these adverse consequences;

Whereas the Community should support the effort which must be made to replace jobs lost as a result of restructuring through the development of new sources of appropriate employment in other sectors in the regions affected;

Whereas, in adopting the said Directive, the Council also took the view that additional measures should be taken to alleviate the social and regional consequences of the restructuring of the shipbuilding industry; whereas, to that end, the Commission sent to the Council and to the European Parliament a communication on the industrial, social and regional aspects of shipbuilding; whereas, in that communication, the Commission proposed in particular that a Community programme within the meaning of Article 7 of the Fund Regulation should be instituted for the conversion of the worst-hit areas in the Community;

Whereas, on 7 October 1980, the Council adopted Regulation (EEC) No 2617/80 ⁽⁶⁾, as last amended by Regulation (EEC) No 3635/85 ⁽⁷⁾, which instituted a specific Community regional development measure contributing to overcoming constraints on the development of new economic activities in certain zones adversely affected by restructuring of the shipbuilding industry; whereas the areas in the new Member States adversely affected by the restructuring of shipbuilding should be allowed to benefit, in the form of a Community programme, from measures analogous to those introduced by the said Regulation;

Whereas, on account of the worsening difficulties faced by shipyards, it will also be necessary to introduce in other areas of the Community, in the form of a Community programme, measures analogous to those already taken in certain areas of the Community under Regulation (EEC) No 2617/80 as amended, and, where appropriate, to reinforce as part of the same programme the existing measures in those areas;

Whereas the Member States concerned have provided the Commission with the necessary information and whereas, pursuant to Article 11 of Directive 87/167/EEC, they are moreover required to supply the Commission with yearly reports on the attainment of the restructuring objectives;

Whereas, by assisting with the conversion of the declining industrial regions affected by restructuring of the shipbuilding industry, the Community programme contributes to the furtherance of both regional development objectives and the Community's objectives with regard to shipbuilding; whereas the level of Community participation must therefore be the maximum permissible under the Fund Regulation and whereas, at the same time, the programme is given priority in the management of Fund resources;

⁽¹⁾ OJ No L 169, 28. 6. 1984, p. 1.

⁽²⁾ OJ No C 291, 31. 10. 1987, p. 8, and amendments forwarded on 19 May 1988 and 28 June 1988 (not yet published in the Official Journal).

⁽³⁾ OJ No C 187, 18. 7. 1988.

⁽⁴⁾ OJ No C 356, 31. 12. 1987, p. 49.

⁽⁵⁾ OJ No L 69, 12. 3. 1987, p. 55.

⁽⁶⁾ OJ No L 271, 15. 10. 1980, p. 16.

⁽⁷⁾ OJ No L 350, 27. 12. 1985, p. 8.

Whereas it is necessary to avoid combining aid granted under the specific Community measures instituted pursuant to former Regulation (EEC) No 724/75 ⁽¹⁾, or Regulation (EEC) No 3634/85 ⁽²⁾ with aid granted under this Community programme;

Whereas Community assistance must be provided in the form of multiannual programmes drawn up by the competent authorities in the Member States concerned; whereas, to ensure sound financial management of the Fund, the Member States must transmit those aid programmes to the Commission within a certain period after the areas to be covered by the Community programme have been determined; whereas it is for the Commission, in adopting those programmes, to ensure that the operations proposed therein are in keeping with this Regulation;

Whereas, in view of the Community nature of these programmes, it is particularly desirable for the European Parliament to be properly informed of the content and implementation of the programmes of assistance specified in Article 7 of this Regulation;

Whereas, this Community programme fits in the prospect of the reform of the Structural Funds provided for in Article 130 d of the Treaty, the choice of regions provided for in that programme and the criteria on which this choice is based should be consistent with the approach to be followed in the abovementioned reform,

HAS ADOPTED THIS REGULATION:

Article 1

A Community programme within the meaning of Article 7 of the Fund Regulation that makes a major contribution to the conversion of certain declining industrial regions in the Community adversely affected by the restructuring of the shipbuilding industry is hereby established.

Article 2

The purpose of the Community programme shall be to contribute, in the areas concerned, to the removal of obstacles to the development of new, job-creating economic activities. To this end, the programme shall provide for the implementation of a series of consistent, multiannual measures aimed at improving the infrastructure and the physical and social environment in the areas concerned, as well as the establishment of new activities, the growth of small and medium-sized undertakings and the development of innovation. The Community programme shall thereby seek to provide a better link between the Community's objectives for the conversion of regions and the objectives of the Community's policy on shipbuilding.

Article 3

1. (a) The Community programme shall concern areas which have experienced substantial job losses in

⁽¹⁾ OJ No L 73, 21. 3. 1975, p. 1.

⁽²⁾ OJ No L 350, 27. 12. 1985, p. 6.

shipbuilding in the past three years and not earlier than 1 January 1984, or which are currently experiencing or threatened with such losses, whenever this sector determines their economic development, such losses resulting in a serious aggravation of unemployment in these areas.

- (b) The Community programme shall also concern areas which correspond or belong to a NUTS level III territorial unit satisfying all the following criteria:

- the average rate of unemployment must have been above the recorded Community average in the last three years;
- the percentage share of industrial employment in total employment must have equalled or exceeded the Community average in any reference year since 1975 (included);
- there must have been an observable fall in industrial employment compared with the reference year chosen in accordance with the preceding indent;

provided that they also satisfy the sectoral criteria stated in (a).

The Community programme may be extended to adjoining areas satisfying the criteria stated above.

2. The Community programme shall apply, subject to a decision by the Commission, to the areas referred to in paragraph 1. The Commission shall take its decision within three months of the date on which the Member State concerned submits an application in respect of the areas which may qualify under the Community programme. Applications shall be sent to the Commission by 30 April 1990 and shall be supported by the requisite information, notably concerning job losses in shipbuilding; such information shall be consistent with that provided in the annual reports on the attainment of the restructuring objectives which Member States are required to transmit to the Commission pursuant to Article 11 of Directive 87/167/EEC.

3. As soon as this Regulation has entered into force, the Community programme shall also apply to the areas in Spain and Portugal in which major job losses in shipbuilding have occurred in the years preceding the period used in paragraph 1, namely:

- the Murcia region in Spain;
- the Setubal area in Portugal.

Article 4

The Fund may participate, under the Community programme, in operations such as those defined in Article 4 of Regulation (EEC) No 2617/80, with the exception of point 2.

In the context of this Regulation, the Fund may also take part in the financing of infrastructure contributing to the creation, the development and the adaptation of job-creating productive activities.

In addition, the aids referred to in Article 4 (8) of Regulation (EEC) No 2617/80 may, for the purposes of this Regulation, concern investment in tourism activities.

Article 5

1. The Community programme shall be financed jointly by the Member State concerned and the Community. Assistance from the Fund, which may not exceed 55 % of the total public expenditure taken into account in the programme, shall be provided from the appropriations entered for this purpose in the general budget of the European Communities. The Community contribution for each type of operation may not exceed the rate fixed in Article 5 (1) of Regulation (EEC) No 2617/80, with the exception of point (b).

With regard to the infrastructure referred to in the second paragraph of Article 4 of this Regulation, Community participation may be up to 50 % of public expenditure.

2. Where the Community programme concerns areas in Portugal, the level of the Fund participation provided for in paragraph 1 shall be increased until 31 December 1990 by 20 percentage points, subject to a ceiling of 70 %.

Article 6

1. All or part of the aid may be in the form of a capital grant or an interest subsidy.

2. The following shall be eligible for Fund assistance in respect of the operations referred to in Article 4: public authorities, local and regional authorities, local and regional development corporations, other businesses, cooperatives or self-employed persons carrying on a productive activity.

3. Aid granted under the Community programme shall not be combined with aid granted for the same project under

specific Community measures introduced pursuant to former Fund Regulation (EEC) No 724/75 or to Regulation (EEC) No 3634/85.

In addition, the aid referred to in Article 5 (1) (c) and (e) of Regulation (EEC) No 2617/80 and, where it benefits businesses directly, the aid referred to in Article 5 (1) (g) of the said Regulation, may not have the effect of reducing the share of expenditure met by recipient businesses to less than 20 % of total expenditure.

Article 7

1. The programme of assistance drawn up by the competent authorities in the Member State concerned shall be sent to the Commission:

- (a) in respect of the areas referred to in Article 3 (3), within six months of the date of entry into force of this Regulation;
- (b) in respect of the areas referred to in Article 3 (2), from the date on which the Member State submits an application relating to the areas which may qualify under the Community programme and at the latest within six months of the date of the Commission decision to be adopted pursuant to the said paragraph 2.

Where the Commission's decision relates to an area already referred to in Article 3 (3) or covered by a Commission decision within the meaning of Article 3 (2), the programme of assistance shall be adapted accordingly.

2. The duration of the programme of assistance may not extend beyond 31 December 1993.

Article 8

The amount of Fund assistance may not exceed the amount laid down by the Commission when adopting the programme agreement referred to in Article 13 (1) of the Fund Regulation.

Article 9

This Regulation shall enter into force on the day following 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, 26 July 1988

For the Council
The President
Y. PAPANTONIOU