

COUNCIL REGULATION (EC) No 231/94

of 24 January 1994

amending Regulation (EEC) No 1765/92 establishing a support system for producers of certain arable crops

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 42 and 43 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 Member States are required, for the operation of the support system for producers of certain arable crops introduced by Regulation (EEC) No 1765/92 ⁽⁴⁾, to establish regionalization plans based on objective criteria; whereas these criteria should be modified to give Member States a greater margin of manoeuvre without in any way departing from average yields in the past;

Whereas, given the risks involved with this greater margin of manoeuvre, specific provisions should be adopted covering cases where a Member State chooses to establish production regions separate from those of the base areas, in order to ensure that past yields are respected in practice;

Whereas differentiation of yields may be permitted for irrigated and non-irrigated areas, provided there is no extension of total irrigated area; whereas that objective may be achieved by introducing a maximum area, fixed by region of products; eligible for compensation based on the yield obtained from irrigated areas; whereas, Member States may also restrict such payments to a single crop of oilseeds; whereas Member States may instead of the maximum area grant compensation payments under a system of base areas that are separated for irrigated crops;

Whereas for the sake of efficiency set-aside should be on a rotational basis; whereas, for the purposes of applying this Regulation, a specific definition of rotation should be

adopted; whereas, however, to ensure that the system is better adapted to agronomic requirements there should be provision for other forms of set-aside, such as fixed set-aside, the combination of rotational and fixed set-aside ('mixed' set-aside), and rotational set-aside based on a frequency other than that laid down for rotational set-aside at the rate of 15 %; whereas, in order to guarantee the same degree of effectiveness where a type of set-aside other than rotational set-aside at 15 % is applied, a rate higher than 15 % should be laid down for those alternative forms of set-aside;

Whereas the compensation for set-aside should be increased;

Whereas in certain cases producers may wish to set aside more of their land than is compulsory; whereas this can be allowed; whereas in this connection special provisions must be adopted to enable account to be taken of areas set aside under Council Regulation (EEC) No 2328/91 of 15 July 1991 on improving the efficiency of agricultural structures ⁽⁵⁾; whereas Member States should be able not to utilize this option where specific circumstances of their agriculture so require;

Whereas there may be situations where transfer of set-aside obligations would allow more rational use of land and better tackling of environmental objectives; whereas given the real risk of a reduction in the impact of set-aside such transfers must be carefully supervised;

Whereas to give greater flexibility they should be facilitated but restricted to the immediate neighbourhood or to areas in certain regions, in particular for environmental reasons; whereas to offset possible differences in productivity between the farmers involved a higher set-aside rate should be imposed; whereas Member States should be allowed not to permit transfers within their territory;

Whereas Article 9 of Regulation (EEC) No 1765/92 defines what land is eligible for the compensatory payment; whereas to take account of certain specific situations where its provisions are unduly restrictive certain derogations from that Article must be permitted that

⁽¹⁾ OJ No C 265, 30. 9. 1993, p. 6.

⁽²⁾ OJ No C 315, 22. 11. 1993.

⁽³⁾ OJ No C 352, 30. 12. 1993, p. 41.

⁽⁴⁾ OJ No L 181, 1. 7. 1992, p. 12. Regulation as last amended by Regulation (EEC) No 1552/93 (OJ No L 154, 25. 6. 1993, p. 19).

⁽⁵⁾ OJ No L 218, 6. 8. 1991, p. 1.

should be managed by the Member States in line with their individual situations; whereas, however, the application of derogations may undermine the efficiency of the arrangements laid down by Regulation (EEC) No 1765/92, whereas, to reduce that risk, adequate measures should be laid down in order that, depending on the individual case, the total amount of eligible areas can be kept unchanged or any appreciable increase in that amount avoided;

Whereas the quality of products derived from arable crops, in particular durum wheat and sunflower, could be improved by the use of certified seed; whereas making the payment of compensation dependent on the use of such seed is a means of achieving that objective;

Whereas to facilitate industrial disposal of certain agricultural products it should be made possible for them to be grown on land set aside, where appropriate without compensation,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1765/92 is hereby amended as follows:

1. The following second subparagraph shall be added to Article 2 (6):

'Areas which are the subject of a special set-aside in accordance with the second indent of the preceding subparagraph shall not be taken into account in applying this paragraph'.

2. Article 3 (1) shall be replaced by the following:

Article 3

1. For the purpose of setting average yields to be used for calculation of the compensatory payment, each Member State shall establish a regionalization plan setting out the relevant objective criteria for determination of the separate production regions in order to arrive, where possible, at distinct homogeneous areas.

With this in mind, Member States shall take due account of specific situations in drawing up their regionalization plans. They may in particular adjust average yields in line with any structural differences between production regions.

They may also in their regionalization plans apply a different yield figure for maize than for other cereals.

- Where the yield for maize is higher than for other cereals a regional or individual base areas, as mentioned in Article 2 (2) and (3), shall be estab-

lished separately for maize, covering in the case of the regional base area, one or more maize production regions, at the choice of the Member State.

Member States may also, in the regions in question, establish regional or individual base areas separately for arable crops other than maize. In such cases, if the base area for maize is not reached in a given marketing year, the balance of hectares shall be allocated for the same marketing year to the corresponding base areas for arable crops other than maize.

- Where the yield for maize is equal to or less than that for other cereals, a base area may also be established separately for maize in accordance with the preceding indent. In such cases and if the Member State chooses to establish a base area for "arable crops other than maize":
 - if the base area for "maize" is not reached in a given marketing year, the balance of hectares shall be allocated for the same marketing year to the corresponding base areas for other crops,
 - if the base area for "arable crops other than maize" is not reached in a given marketing year, the balance of hectares shall be allocated for the same marketing year to the base area for "maize" concerned.

Should these base areas be exceeded, Article 2 (6) shall apply.

Member States may also in their regionalization plans set different yields for non-irrigated and irrigated land. Compensation paid on the basis of "irrigated" yields shall be granted within the limit of a ceiling set for each production region as defined in the regionalization plan. The ceiling shall be equal to the average area irrigated from 1989 to 1991 with a view to harvesting arable crops. The ceiling may be increased by newly irrigated areas devoted to the same crops in respect of which it has been established that investment began before 1 August 1992.

If applications for aid at the "irrigated" rate exceed the ceiling, compensation payments shall be reduced by 1,5 times the rate of overshoot recorded during the current marketing year. However, if the overrun is 10 % or more, the yield to be used for irrigated crops shall be that applicable to non-irrigated crops in the same region.

In the place of the ceiling arrangements referred to in this Article, Member States may grant compensation payments on the basis of an "irrigated" yield under a system of separated base areas established for areas bearing irrigated crops.

In that case, the irrigated base area shall be established in accordance with the rules set down for fixing the abovementioned ceiling, without however leading to any increase in the total base area of the Member State concerned.

Should these base areas be exceeded, Article 2 (6) shall apply.

The regionalization plan must in all cases ensure that the average yield of the Member State concerned established for the period and in accordance with the criteria referred to in paragraph 2 is respected.'

3. The third subparagraph of Article 3 (2) shall be replaced by the following :

'If a Member State decides to treat :

- maize separately from other cereals, the average cereals yield, which shall not be altered, shall be broken down between maize and other cereals,
- irrigated land separately from non-irrigated land, the corresponding average yield, which shall not be altered, shall be broken down between the two types.

Member States shall be authorized to limit eligibility for "irrigated" compensatory payments in a region to a single oilseed crop. In that case, a specific ceiling for the crop in question must be fixed for the region concerned and the rules governing ceilings shall apply.'

4. The following paragraph shall be added to Article 3 :

'6. Should a Member State, pursuant to paragraph 1, choose to establish production regions the demarcation of which does not correspond to that of regional base areas, it shall send the Commission a summary statement of aid applications and the yields pertaining to these. If it emerges from this information that, in a Member State, the average yield resulting from the regionalization plan applied in 1993, in accordance with Article 3 (2), is exceeded, all compensatory payments to be made in that Member State for the following marketing year shall be reduced in proportion to the overrun which has been recorded. However, this provision shall not apply where the quantity for which aid applications were made, expressed in tonnes of cereals, does not exceed that resulting from the product of the total base areas of the Member State by the aforementioned average yield.

Member States may decide to ascertain whether there has been any exceeding of the average yield for each

base area. In such cases, the provisions of this paragraph must be applied to the compensatory payments to be paid in each base area concerned.'

5. The second subparagraph of Article 7 (1) shall be replaced by the following :

'The rotational set-aside requirement shall be 15 % as from the 1993/94 marketing year. For the purposes of this Regulation, the concept of rotation shall be defined in accordance with the procedure in Article 23 of Regulation (EEC) No 1766/92.

Any form of set-aside other than that referred to above shall be carried out at the rotational set-aside rate plus five percentage points. However, a rate increased by only three percentage points shall be authorized in the cases referred to in Regulation (EEC) No 1541/93.'

6. Article 7 (5) shall be replaced by the following :

'5. The compensation for the set-aside obligation shall be ECU 57 multiplied by the average cereal yield worked out in the regionalization plan. Compensation shall be paid on the number of hectares needed to meet the requirement set out in paragraph 1. In the case of Portugal, compensation shall take account of the aid granted under Regulation (EEC) No 3653/90.'

7. In Article 7 paragraph 6 shall be deleted and the following paragraphs 6 and 7 shall be added :

'6. To help reduce production, producers may be granted the compensation provided for in paragraph 5 on land set aside in excess of their obligation in order to better control production. In such cases, the area set aside may not exceed the area under arable crops for which compensatory payment is requested. In this connection, the special set-aside referred to in Article 2 (6) shall be regarded as an area under arable crops for which compensatory payment is required. Member States may prescribe a lower set-aside limit for a specific reason with respect to their agriculture such as protection of the environment or the risk of excessive reduction of farming in certain areas.

By way of derogation from the previous subparagraph, producers who, pursuant to Regulation (EEC) No 2328/91, have set aside a greater area of land than that on which they intend to grow eligible arable crops, and who have not recommenced the growing of crops on that land, may, at the end of the period of commitment referred to in Article 2 (3) of the abovementioned Regulation, continue to set aside land which they had already set aside pursuant to this measure for a further period of 60 months. Payment

of the set-aside shall then be established at the rate of ECU 40 per tonne for the portion exceeding that under arable crops for which compensatory payment is requested. In this connection, the special set-aside referred to in Article 2 (6) shall be regarded as an area under arable crops for which compensatory payment is requested. This option shall also be available to producers whose set-aside requirement ended in September 1993 and who, in view of the uncertainty about future rules, have recommenced the growing of crops on that land with a view to a 1994 harvest. However, Member States shall be free not to apply this option for the same reasons as those in the previous subparagraph.

7. A producer may transfer a set-aside requirement to another producer in the same Member State :

- if under national environmental rules a producer setting aside some of his arable land is required to reduce his livestock. The Member State may prohibit transfers across the boundaries of regions as indicated in Article 2 (2),
- under a plan presented in advance to the Commission, which shall verify that it does not affect the effectiveness of the set-aside scheme. Transfers under such plans shall be restricted to a maximum distance of 20 km or be made within a particular area for which, in particular, specific environmental objectives are sought. The set-aside rate referred to in the second subparagraph of paragraph 1 shall be increased by five percentage points. However, in the cases referred to in Regulation (EEC) No 1541/93, this increase shall be limited to three percentage points.

A Member State may decide not to apply the scheme provided for in this indent.

If the transfer is made to another yield region, the area to be set aside shall be adjusted accordingly.

The entitlement to compensation of a producer transferring his set-aside obligation shall be conditional on full execution of that obligation by the producer to whom it is transferred.

Transfer of obligations shall be subject to the rules applied to the holding on which the land is actually set aside.

8. Article 9 shall be replaced by the following :

Article 9

Applications for the compensatory payment and set-aside declarations may not be made in respect of land that on 31 December 1991 was under permanent pasture, permanent crops or trees or was used for non-agricultural purposes.

Member States may, on terms to be determined, depart from these provisions under certain specific circumstances, in particular for areas subject to restructuring programmes or for areas subject to standard rotations of multi-annual arable crops with those crops listed in Annex I. In such cases, they shall take action to prevent any significant increase in the total eligible agricultural area. This may in particular involve deeming previously eligible areas ineligible as an offsetting measure.

Member States may also depart from the provisions of the first subparagraph under certain specific circumstances relating to one or other form of public intervention where such intervention results in a farmer growing crops on land previously regarded as ineligible in order to continue his normal agricultural activity and if the intervention in question means that land originally eligible ceases to be so with the result that the total amount of eligible land is not increased significantly.

Moreover, Member States may, in certain cases not covered by the previous two subparagraphs, depart from the first subparagraph if they provide proof in a plan submitted to the Commission that the total amount of eligible land remains unchanged.

9. In Article 12, the first indent shall be replaced by the following :

- those relating to the establishment and management of base areas and ceilings for irrigated crops, and those concerning the application of Article 2 (4).

10. In Article 12, the third indent shall be replaced by the following :

- those relating to the determination of the amounts and the payment of the compensatory aids; without prejudice to Article 11 (1), these rules should provide the possibility for Member States to make the granting of specific aid for arable crops subject to the use of certified seed.

11. In Article 12, the fifth indent shall be replaced by the following :

- those determining the eligibility requirements for the durum wheat supplement; these rules shall provide the possibility for Member States to make the granting of the supplement provided for in Article 4 (3) subject to the use of certified seed.'

12. In Article 12, the eighth indent shall be replaced by the following :

- those relating to set-aside; these rules shall define in particular forms of set-aside other than rotational, the minimum annual set-aside period and the measures to be taken in favour of the environment where, for certain climatic reasons, these measures may be replaced by other more appropriate measures; in addition, these rules shall establish the conditions :

- for the transfer of set-aside,
- for implementing the set-aside of a holding located in a number of production regions, and also any exemptions to be laid down, in particular in the case of "secano" rather than "regadio" production areas the fulfilment of the set-aside obligation relating to a "regadio" area, totally or partially in a "secano" area, taking account of yield differences.'

13. In Article 12, the ninth indent shall be replaced by the following :

— those relating to the conditions for applying :

- Article 7 (4); these conditions may include the growing of products without compensation,
- Article 9; these conditions shall specify under what circumstances the provisions of Article 9 may be waived and Member States' obligation to refer envisaged action to the Commission for approval. These derogations may, in the case of the new German Länder, cover certain forms of restructuring applied to 2 500 hectares on which arable crops are grown with a view to the 1993/94 harvest.'

Article 2

If specific measures are necessary to facilitate transition from the present system to that established by this Regulation, measures shall be adopted in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92.

Article 3

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

It shall apply as from the 1994/95 marketing year. As regards the provisions concerning set-aside, it shall apply forthwith to set-aside carried out with a view to that marketing year.

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

Done at Brussels, 24 January 1994.

For the Council

The President

G. MORAITIS