

COMMISSION REGULATION (EEC) No 3481/90

of 30 November 1990

amending Regulation (EEC) No 1272/88 as regards the scheme for specific aid for the use of arable land for non-food purposes

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 797/85 of 12 March 1985 on improving the efficiency of agricultural structures⁽¹⁾, as last amended by Council Regulation (EEC) No 2176/90⁽²⁾, and in particular Article 1a (7) thereof,

Whereas, by Regulation (EEC) No 2176/90 the Council introduced a specific aid scheme for the use of arable land for non-food purposes; whereas Commission Regulation (EEC) No 1272/88 of 29 April 1988 laying down detailed rules for applying the set-aside incentive scheme for arable land⁽³⁾, as amended by Regulation (EEC) No 3981/89⁽⁴⁾, should therefore be supplemented;

Whereas, in order in particular to prevent the quantities of cereals produced under this scheme being marketed on the food market, cultivation of the same species of cereals as that covered by the specific aid should be forbidden outside the area covered by this aid; whereas, however, derogation from this rule may be allowed in cases where a Member State is able to introduce additional control measures to avoid such a risk;

Whereas provision should be made for all the cereals produced on the areas covered by the specific aid to be used for the manufacture of non-food products; whereas this quantity may be estimated on the basis of the indicative yields for the region, but also in the light of the performance of the holding in question; whereas, since fluctuations in supply are inevitable, these must be taken into consideration;

Whereas the uses for non-food purposes qualifying for the specific aid should be determined; whereas this list should be drawn up so as to exclude food products and to avoid distortions in competition between similar sectors of industrial activity; whereas, moreover, provision should be made for efficient controls to exclude the cumulation of the specific aid with the aid schemes provided for in Articles 11a and 11b of Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals⁽⁵⁾, as last amended by Regulation

(EEC) No 1340/96⁽⁶⁾; whereas, for the purposes of these checks, provision should be made for the submission by processors of a declaration indicating the scheme chosen for each finished product; whereas changing from one scheme to the other may be allowed under certain conditions; whereas the side-by-side operation of the two schemes by the same processor makes additional checks necessary;

Whereas, in order to ensure the proper functioning of the specific aid scheme, it is necessary to lay down the terms to be included in the contract between the producer and the processor;

Whereas, where the choice is made to cultivate a cereal of the same species but of a distinct variety outside the areas qualifying for the specific aid, provision should be made for a cultivation declaration indicating certain details, and, moreover, performance of the contract by the processor should be ensured by a guarantee;

Whereas producers should be enabled to change from the set-aside aid scheme to the specific aid scheme during the course of their original undertaking;

Whereas, in view of the special nature of the scheme, special supervisory rules are indispensable to ensure that the main objectives of this scheme are achieved;

Whereas the Standing Committee on Agricultural Structures has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1272/88 is hereby amended as follows.

1. The following subparagraph is added to Article 3 (3):

'In the case of the specific aid referred to in Article 1a (3a) of Regulation (EEC) No 797/85, the percentages of arable land on the holdings in question shall be established at the time the application for specific aid is submitted.'

⁽¹⁾ OJ No L 93, 30. 3. 1985, p. 1.

⁽²⁾ OJ No L 198, 28. 7. 1990, p. 6.

⁽³⁾ OJ No L 121, 11. 5. 1988, p. 36.

⁽⁴⁾ OJ No L 380, 29. 12. 1989, p. 22.

⁽⁵⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽⁶⁾ OJ No L 134, 28. 5. 1990, p. 1.

2. The following paragraph 1a is hereby inserted in Article 4:

'1a. In the case of the specific aid referred to in Article 1a (3a) of Regulation (EEC) No 797/85, the second and third indents of paragraph 1 (b) shall apply.'

3. The following Article 6a is inserted:

Article 6a

1. In the case of the specific aid referred to in Article 1a (3a) of Regulation (EEC) No 797/85, a producer may not, during the course of one of the contracts referred to in Article 7 (5), grow, sell or use cereals of the same species as those covered by the contract outside the areas concerned.

These species are defined in Article 1 (a) of Council Regulation (EEC) No 2727/75 (*).

However, the competent authorities of the Member State may authorize the producer to grow a cereal of the same species but of a variety with characteristics which make it different, in the field and in store on the farm, from the variety which is the subject of the contract referred to in Article 7 (5).

Member States intending to make use of the possibility provided for in the previous subparagraph shall inform the Commission thereof, not later than two months after the beginning of the marketing year in question and, in the case of the 1990/91 marketing year, before 1 February 1991, and shall submit to it the control provisions enabling the simultaneous use of different varieties of the same species of cereal to be verified.

2. The cereals produced each marketing year on the areas qualifying for the specific aid referred to in Article 1a (3a) of Regulation (EEC) No 797/85 shall be eligible for the aid only if the total quantity of cereals concerned is delivered for the manufacture of non-food products.

To this end, the non-food sector shall consist of all products of the combined nomenclature with the exception of:

- dextrines and other modified starches falling within CN code ex 3505 10,
- starch-based raw materials falling within CN codes 3809 10 and 3809 20,
- all of the products falling within Chapters 1 to 24 of the combined nomenclature, with the exception of denatured ethyl alcohol falling within CN code 2207 20 00 for direct use in motor fuel or for processing for use in motor fuel,
- mannitol and sorbitol falling within CN codes 2905 43 00, 2905 44 and 3823 60.

3. The processor must choose, for each finished product falling within a combined nomenclature code,

between this scheme and that provided for in Articles 11a and 11b of Regulation (EEC) No 2727/75 by presenting a declaration to the competent national authorities at least one month before transfer to the new scheme chosen for each product falling within a code of the nomenclature.

Beneficiaries of this scheme shall not be entitled to benefit from that provided for in Articles 11a and 11b of Regulation (EEC) No 2727/75 until all the cereals acquired pursuant to the contracts referred to in Article 7 (5) have been processed.'

(* OJ No L 281, 1. 11. 1975, p. 1.

4. The following paragraphs is added to Article 7:

'5. In the case of the specific aid referred to in Article 1a (3a) of Regulation (EEC) No 797/85, the producer shall submit in support of his application, prior to the first sowing of the cereals concerned, a contract concluded with the processor specifying at least the following:

- the contract's duration,
- the areas concerned and their location,
- the species or, where applicable, the variety of cereals concerned,
- the forecast yield, the agreed payment terms and any conditions which may apply to the delivery of the actual quantity produced,
- an indication of the end-use of the cereals, the secondary products and the by-products, as well as the quantities,
- the obligation of the producer to deliver all the cereals produced on the arable areas concerned and the obligation of the processor to take delivery of all of these cereals and to guarantee their use for non-food products used within the Community,
- the obligation of the processor to lodge the security referred to in the sixth subparagraph,
- the time required for the processing of the products.

In the case of a producer's group within the meaning of the fourth subparagraph of Article 1a (3a) of Regulation (EEC) No 797/85, the particulars referred to in the first subparagraph must be specified for each of the contracting parties.

For the first year of operation of this scheme, the producer may conclude a contract after sowing.

Where the producer plans to cultivate two varieties of the same species of cereals as provided for in the third paragraph of Article 6a (1), he shall submit each year to the competent authority a cultivation declaration showing, for each variety, the following particulars:

- the name of the varieties,
- the areas concerned,
- the forecast yields.

Member States may provide that each applicant may conclude only one supply contract.

Prior to taking delivery of the products to which the contract relates, the processor shall lodge a security equivalent to 120 % of the value of the aid actually granted each year for the areas covered by the contract, so as to guarantee the proper execution of the contract by the processor. This security shall be lodged with the competent authority in the Member State where the processing takes place. Where the processing takes place in a Member State other than that of production, the competent authority in the Member State where the processing takes place shall furnish the competent authority in the Member State of production with confirmation that the security has been lodged. The processing of the quantities specified in the contract constitutes a primary requirement within the meaning of Article 20 of Commission Regulation (EEC) No 2220/85 (*).

The processor shall inform the competent authority of the dates when the processing operations commence, are interrupted and finish and in respect of each contract, the quantities actually delivered, the use to which they have been put, broken down by finished product, the quantities of finished and secondary products and by-products as well as their intended use.

(*) OJ No L 205, 3. 8. 1985, p. 5.

5. The following subparagraph is added to Article 12 (2) :

'The beneficiary may at any time ask to adjust his undertaking in order to fulfil the requirements of the specific aid scheme referred to in Article 1a (3a) of Regulation (EEC) No 797/85. Such adjustment may, in particular, consist in an increase in the area and an extension of the undertaking in order to cover the duration of the processing contract in question.'

6. In Article 14 :

(a) the following indent is added to paragraph 3 :

'— in the case of the specific aid referred to in Article 1a (3a) of Regulation (EEC) No 797/85, verification of the quantity of the cereals held in stock and/or in the field as well as verification of compliance with the obligations referred to in Article 6a (1)';

(b) the following paragraph 4 is added :

'4. In the case of the specific aid referred to in Article 1a (3a) of Regulation (EEC) No 797/85 :

(a) the processors shall keep stock records, according to a model defined by the competent authorities, containing at least daily entries of quantities purchased broken down by contract, quantities processed, finished products and by-products obtained, processing losses and products leaving the factory. They shall draw up a stock inventory at least once a month ;

(b) the competent authorities shall verify, by taking samples of at least 10 % of the contracts, that

the quantities actually delivered tally with the indicative yields referred to in (d) below. In the event of irregularities an inspection of the producer's holding shall be arranged ;

(c) the competent authorities shall, without prior notification, carry out the following checks in the processing establishments :

— annually, a detailed verification of the stock records and stocks,

— a check on the stock records and a physical check on products and sampling of finished products and by-products. The number of visits during each year shall be at least equal to 5 % of the number of operating days of the establishment in question but shall not be less than eight per year. In cases where, during the same marketing year, a processor has benefited from this scheme and from that provided for in Articles 11a and 11b of Regulation (EEC) No 2727/75, the number of visits laid down in the preceding indent shall be increased to not less than 10 % of the number of operating days of the establishment ;

(d) Member States shall fix, for each marketing year, at regional and local level where appropriate, indicative yields for each species or, if necessary, each variety covered by the contract.

These checks and verifications shall be carried out in such a manner as to ensure :

— coherence between the delivery of cereals, final production and by-products.

These relationships shall be verified in particular on the basis of the technical processing coefficients for the cereals, taking account of the provisions set out in Council Regulation (EEC) No 1999/85 (*). The coefficients applied must be forwarded to the Commission,

— the final intended use of the products and by-products,

— the non-cumulation of the specific aid with other Community support measures.

In the case of :

— significant irregularities affecting 3 % or more of the operations checked,

— significant deviation from the previous activities of the beneficiary,

— the detection of processing operations aimed at obtaining by-products the quantities or value of which are disproportionate by comparison with the coefficients referred to in the previous subparagraph,

Member States shall intensify the checks referred to above and shall immediately inform the Commission.'

(*) OJ No L 188, 20. 7. 1985, p. 1.

7. The following paragraph 1a is inserted in Article 15 :

'1a. In the case of the specific aid referred to in Article 1a (3a) of Regulation (EEC) No 797/85, a producer who, during the period of his contract, cultivates, sells or utilizes on the holding cereals of a species or, where applicable, of a variety identical to those covered by the contract, shall be considered to be infringing the obligation referred to in Article 6a. As regards the undertakings entered into by the processor, he shall also be subject to the provisions laid down in paragraph 1.'

- the number of contracts, grouped according to duration,
- a summary of the information contained in the cultivation declarations,
- the area concerned for each contract as well as the geographic situation, drawn up for each agricultural region,
- the final use of the cereals by type of end product,
- the quantity of end products, secondary products and by-products, as well as their intended use.'

8. The following point (e) is added to Article 16 (2) :

'(e) and moreover, in the case of the specific aid referred to in Article 1a (3a) of Regulation (EEC) No 797/85 :

Article 2

This Regulation shall enter into force on the third 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, 30 November 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission
