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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 355/77

of 15 February 1977

on common measures to improve the conditions under which agricultural products are processed and marketed

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 42 and 43 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas in the Community the vast majority of agricultural products undergo processing before reaching the end consumer; whereas improvement of the processing and marketing of agricultural products, in particular improvement in their quality and presentation, opens up wider markets and improves the return obtained, thus contributing towards increased agricultural productivity;

Whereas the measures to be taken in this field are of a Community nature and are intended to achieve the objectives set out in Article 39 (1) (a) of the Treaty; whereas they therefore constitute common measures within the meaning of Article 6 of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy (3), as last amended by Regulation (EEC) No 2788/72 (4);

Whereas in order to ensure coherent improvement in the processing and marketing of agricultural products, the financial contribution of the Guidance Section of the European Agricultural Guidance and Guarantee Fund to investment projects should be conditional on their inclusion in specific programmes containing a detailed analysis of the situation in the sector and of the improvements proposed;

Whereas, to be eligible for Community financing, projects must permit in particular the achievement of improvement and rationalization of processing and marketing structures in respect of agricultural products and of a lasting beneficial effect on agriculture;

Whereas, with a view to guiding the aid given by the Fund, criteria should be laid down enabling it to be established which projects must primarily be considered;

Whereas, in order to ensure consistency between the measures taken by the Community and those of the Member State concerned, it is necessary that the Member State approve the projects to be financed by the Fund and also contribute to their financing;

Whereas, in order to ensure that beneficiaries observe the conditions imposed at the time aid from the Fund is granted, a procedure should be laid down for an effective check and for the possible suspension, reduction or discontinuation of aid from the Fund;

Whereas aid from the Fund in the form of a capital grant of not more than 25 % of the total of the investment constitutes an appropriate contribution to the implementation thereof; whereas, for certain projects, an increased contribution might however be justified in order to take account of the particular difficulties experienced by certain regions;

Whereas the aid from the Fund must not affect or be likely to affect conditions of competition in a manner incompatible with the principles of the Treaty; whereas in particular it must neither strengthen nor create a dominant position in the common market or in a substantial part of it, save where this proves necessary for achieving the aims of this Regulation;

(1) OJ No C 178, 2. 8. 1976, p. 36.
(2) OJ No C 45, 27. 2. 1976, p. 11.
(3) OJ No L 94, 28. 4. 1970, p. 13.
(4) OJ No L 295, 30. 12. 1972, p. 1.

Whereas aid from the Fund over a period of five years, amounting to an estimated 400 million units of account, would contribute to the improvement of the conditions for the processing and marketing of agricultural products ;

Whereas, for the approval both of programmes and projects, a procedure should be laid down ensuring close cooperation between Member States and the Commission within the Standing Committee on Agricultural Structure, set up under Article 1 of the Council Decision of 4 December 1962 on the coordination of agricultural structural policies (1) or, for matters relating to fisheries, within this Committee and the Standing Committee for the Fishing Industry set up under Article 11 of Council Regulation (EEC) No 101/76 of 19 January 1976 laying down a common structural policy for the fishing industry (2) ; whereas, in the case of projects, provision should also be made for the Fund Committee referred to in Article 11 of Regulation (EEC) No 729/70 to be consulted ;

Whereas, for the first years of the implementation of the common measures, provision must be made for the financing of projects not included in programmes, in view of the time required to establish the latter,

HAS ADOPTED THIS REGULATION :

Article 1

1. In order to improve the structure of the markets in agricultural products and, in particular, to facilitate such adaptations or guidance of agriculture as may be necessitated by the economic consequences of the common agricultural policy, or as are designed to meet the requirements of that policy, common measures shall be introduced to facilitate the development or rationalization of undertakings engaged in the treatment, processing or marketing of agricultural products.

2. All the measures provided for in this Regulation shall constitute common measures within the meaning of Article 6 (1) of Regulation (EEC) No 729/70.

3. The Commission may grant aid for common measures, in accordance with Titles III and IV, by financing projects which are included in the specific programmes described in Title I and which satisfy the conditions of Title II, through the Guidance Section of the European Agricultural Guidance and Guarantee Fund, hereinafter referred to as the 'Fund'.

(1) OJ No 136, 17. 12. 1962, p. 2892/62.
(2) OJ No L 20, 28. 1. 1976, p. 19.

TITLE I

Specific programmes

Article 2

Specific programmes, hereinafter referred to as 'programmes', shall be designed to develop or rationalize the treatment, processing or marketing of one or more agricultural products in part of or all of the Community.

They shall be drawn up by the Member States.

Article 3

1. Programmes shall include at least the following details :

(a) a definition of the geographical area and of the sector covered by the programme and reasons for this definition ;

(b) the initial situation and the trends which can be inferred from it, in particular as regards :

— the economic and social situation of the geographical area in general, in so far as this has a bearing on the programme, and in particular the prospective outlets for agricultural products,

— the importance of agricultural activity,

— the situation as regards the processing and marketing of the agricultural products covered by the programme and especially the existing capacity of the undertakings concerned ;

(c) the needs to be met by the programme and the objectives which it is intended to achieve, in particular the capacity to be reached ;

(d) the economic importance of the programme for the products concerned and the implications of the programme for agricultural undertakings in the geographical area concerned ;

(e) the means proposed for achieving the objectives of the programme, particularly the total amount of investment ;

(f) the relationship of the programme to any other measures to encourage the harmonious development of the overall economy of the geographical area in question ;

(g) the estimated time required for the execution of the programme which in principle should not be more than three to five years.

2. The details referred to in paragraph 1 must not be out of date.

Article 4

1. Programmes and any modifications thereto shall be forwarded to the Commission by the Member State or States on the territory of which they are to be carried out.

2. At the request of the Commission, the Member State or States involved in a programme shall submit supplementary background information in the context of the details required under Article 3.

Article 5

Within six months of the date of receipt of each programme or of modifications thereto and on condition that all the details specified in Article 3 have been provided, the Commission shall take a decision, under the procedure laid down in Article 22, as to their approval.

TITLE II

Projects

Article 6

1. For the purposes of this Regulation 'project' means any project involving public, semi-public or private material investment relating wholly or in part to buildings and/or equipment for :

(a) rationalizing or developing storage, market preparation, preservation, treatment or processing of agricultural products ;

(b) improving marketing channels ;

(c) better knowledge of the facts relating to prices and to their formation on the markets for agricultural products.

2. This Regulation shall not apply to investments at the retail level.

Article 7

1. Projects shall relate to the marketing of the products set out in Annex II to the Treaty or to the production of the processed products set out in that Annex.

2. In so far as this proves necessary, the Council, acting by a qualified majority on a proposal from the Commission, may decide that projects may also relate to the processing of agricultural products listed in Annex II to the Treaty into goods not covered by that Annex, or to the marketing of such goods, if and in so far as the production or marketing of such goods constitutes a major outlet for the agricultural products involved.

Article 8

In view of the Community's production objectives, the Council, acting by a qualified majority on a proposal from the Commission, may temporarily suspend the application of this Regulation or temporarily amend the provisions thereof in respect of certain sectors.

Article 9

1. Projects must contribute to improving the situation of the basic agricultural production sector in question ; in particular they must guarantee the producers of the basic agricultural product an adequate and lasting share in the resulting economic benefits.

2. Aid from the Fund may be granted only if the beneficiary provides sufficient evidence that the conditions defined in Article 7 and in paragraph 1 of this Article are fulfilled. Account may be taken *inter alia* of long-term supply contracts concluded with the producers of the basic agricultural product, on reasonable terms for such producers.

Article 10

Projects must :

(a) form part of programmes ;

(b) offer adequate guarantees that they will be profitable ;

(c) contribute to the lasting economic effect of the structural improvement aimed at by the programmes.

Article 11

1. Without prejudice to Article 9, aid from the Fund shall be primarily for projects fulfilling one or more of the following criteria :

(a) that they help to guide production in a direction sought by the common agricultural policy or involve the development of new outlets for agricultural production, particularly through the manufacture of new products ;

(b) that they are likely to lighten the burden on the intervention mechanisms of the common organization of markets by meeting a need for structural improvement in the long term ;

(c) that they are in regions experiencing particular difficulty in adjusting to the conditions and economic consequences of the common agricultural policy, or that they benefit those regions ;

(d) that they help to shorten or improve the marketing channels for agricultural products or to rationalize the method of processing such products ;

(e) that they contribute to the improvement of the quality, presentation and market preparation of products or the better use of by-products, in particular by the recycling of waste.

2. The Council, acting by a qualified majority on a proposal from the Commission, may amend or add to the list of criteria given in paragraph 1.

Article 12

1. By way of derogation from Article 10 (a), until 31 December 1980 projects relating to sectors and geographical areas for which programmes have not yet been approved may receive aid from the Fund.

2. From 1 January 1979 priority for aid from the Fund shall be given to projects included in approved programmes.

TITLE III

Procedure for the examination of projects

Article 13

1. Applications for aid from the Fund must be submitted through the Member State concerned before 1 May.

2. The Commission shall take decisions twice yearly on applications for aid which have been submitted. Its decisions shall be taken not later than 30 June and 31 December.

Decisions taken during the first half of a year shall be limited to applications for aid submitted by 31 December of the preceding year. Applications for aid submitted between 1 January and 30 April cannot be considered until the second half of the same year.

3. In order to receive aid from the Fund, a project must have been approved by the Member State on the territory of which it is to be carried out.

4. An application for aid must be accompanied by information making it possible to establish that the project satisfies the requirements laid down in Title II.

5. The particulars which must be given in the applications and the form in which they must be presented shall be determined in accordance with the procedure laid down in Article 22, after the Fund Committee has been consulted on the financial aspects.

Article 14

1. The Commission shall decide upon aid from the Fund according to the procedure laid down in Article 22 after consulting the Fund Committee on the financial aspects.

2. The Member State concerned and the beneficiary shall be notified of the Commission's decision.

Article 15

1. In taking its decision the Commission shall take account in particular of the allocation to the project concerned of any direct or indirect investment aid other than that provided for in this Regulation. The Member State concerned shall, to that end, inform the Commission of any such aid.

2. Projects which are eligible for Community aid under other common measures within the meaning of Article 6 (1) of Regulation (EEC) No 729/70 shall not come within the scope of this Regulation.

TITLE IV

Financial and general provisions

Article 16

1. The estimated time required for carrying out the common measures is five years from 1 January 1978.

2. Before the end of the period referred to in paragraph 1, this Regulation shall be re-examined by the Council on a proposal from the Commission.

3. The estimated cost of the common measures financed by the Fund for the period from 1 January 1978 to 31 December 1982 is 400 million units of account, i.e. an estimated cost of 80 million units of account per year.

4. Article 6 (5) of Regulation (EEC) No 729/70 shall apply to this Regulation.

Article 17

1. Aid from the Fund shall consist of capital grants paid in a lump sum or in instalments.

2. For each project, in relation to the investment made :

(a) the financial contribution of the beneficiary must be not less than 50 % ;

(b) the financial contribution of the Member State on the territory of which the project is to be carried out must be not less than 5 % ;

(c) the aid granted by the Fund shall be equal to not more than 25 % ; however, the Commission may, in accordance with the procedure laid down in Article 22, increase this to a maximum of 30 % in the case of projects referred to in Article 11 (c).

3. Aid from the Fund for projects provided for in Article 12 (1) may not exceed, in relation to the investment made :

— 25 % in the case of projects financed under provisions made for the financial years 1978 and 1979 ;

— 15 % in the case of projects financed under provisions made for the financial year 1980.

Article 18

The granting of aid from the Fund must not affect the conditions of competition in such a way as to be incompatible with the principles contained in the Treaty.

Article 19

1. Aid from the Fund shall be granted to the natural or legal persons, or groups thereof, who are ultimately responsible for the cost of carrying out the project.

Aid from the Fund shall be paid through agencies appointed for that purpose by the Member State concerned.

2. Throughout the period during which aid is granted from the Fund, the authority or agency appointed for that purpose by the Member State concerned shall, at the request of the Commission, forward to it all supporting documents which are of relevance in proving that the financial or other conditions laid down for each project have been fulfilled. The Commission may, if necessary, carry out an on-the-spot check.

After it has consulted the Fund Committee on the financial aspects the Commission may decide, in accordance with the procedure laid down in Article 22, to suspend, reduce or discontinue aid from the Fund :

— if the project has not been carried out as planned, or

— if certain of the conditions laid down have not been fulfilled, or

— if the beneficiary, contrary to the details contained in his application and set out in the decision to grant aid, has neither begun the work within two years of the date of notification of that decision nor furnished adequate assurances before the end of the said period that the project will be carried out.

The Member State concerned and the beneficiary shall be notified of the decision.

The Commission shall recover any sums the payment of which was not or is no longer justified.

3. Without prejudice to Article 6 (5) of the Financial Regulation of 25 April 1973 applicable to the general budget of the European Communities (1), as last amended by the Financial Regulation of 21 December 1976 (2), appropriations made available by a decision taken in accordance with the second subparagraph of paragraph 2 of the present Article or because the beneficiary abandons the project or reduces the investment laid down in the decision to grant aid, may be used for the financing of other projects.

4. Appropriations made available in accordance with Article 22 (3) of Council Regulation No 17/64/EEC of 5 February 1964 on the conditions for granting aid from the European Agricultural Guidance and Guarantee Fund (3), as last amended by Regulation (EEC) No 3171/75 (4), may be used for the financing of projects submitted under this Regulation as from the year in which the financing of projects under Regulation No 17/64/EEC ceases in accordance with Article 6 (4) of Regulation (EEC) No 729/70.

5. The detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 13 of Regulation (EEC) No 729/70.

Article 20

1. For each project which has received aid from the Fund the beneficiary shall forward to the Commission, through his Member State, a report on the financial results of the project. This report shall be submitted within the period laid down by the Commission in its decision to grant aid.

2. If the beneficiary does not fulfil the obligation laid down in paragraph 1, the Commission, after giving the beneficiary due notice, may decide to reverse in whole or in part its decision to grant aid, acting in accordance with the procedure laid down in Article 22 and after consulting the Fund Committee on the financial aspects. The decision shall be communicated to the Member State concerned and to the beneficiary. The Commission shall recover in whole or in part the sums paid.

(1) OJ No L 116, 1. 5. 1973, p. 1.
(2) OJ No L 362, 31. 12. 1976, p. 52.
(3) OJ No 34, 27. 2. 1964, p. 586/64.
(4) OJ No L 315, 5. 12. 1975, p. 1.

3. Detailed rules for the application of this Article, particularly as regards the contents of the report referred to in paragraph 1, shall be adopted in accordance with the procedure laid down in Article 22, after consultation of the Fund Committee on the financial aspects.

Article 21

Applications for aid from the Fund submitted to the Commission in respect of projects which could not be granted aid owing to the insufficiency of the resources available may, with the agreement of the applicants, be carried forward to the next financial year by the Member States concerned.

Requests that such applications be carried forward must be submitted to the Commission within a period of 30 days from the date on which the Member State receives notification of the result of the procedure laid down in Article 22. An application for aid may, however, be carried forward once only.

Article 22

1. Where the procedure laid down in this Article is to be followed, the matter shall be referred to the Standing Committee on Agricultural Structure, or, for matters relating to fisheries, to that Committee and the Standing Committee for the Fishing Industry jointly, by the chairman either on his own initiative or at the request of the representative of a Member State.

2. The representative of the Commission shall submit a draft of the measures to be taken. The Standing Committee on Agricultural Structure, or, where appropriate, this Committee together with the Standing Committee for the Fishing Industry, shall deliver an opinion on those measures by a majority of 41 votes, within a time limit set by the chairman according to the urgency of the matter under examination; the votes of the Member States shall be weighted as provided for in Article 148 (2) of the Treaty. The chairman shall not vote.

3. The Commission shall adopt the measures which shall be immediately applicable. However, if such measures are not in accordance with the opinion of the Standing Committee on Agricultural Structure or, where appropriate, with the joint opinion of this Committee and of the Standing Committee on the Fishing Industry, they shall be communicated forthwith by the Commission to the Council. In that case, the Commission may defer for not more than one month from the date of such communication, application of the measures which it has adopted.

The Council, acting by a qualified majority, may adopt a different decision within one month.

Article 23

Articles 92, 93 and 94 of the Treaty shall remain applicable in respect of matters covered by this Regulation.

Article 24

1. The first decisions to grant aid under this Regulation shall be taken for the financial year 1978. They shall relate to applications submitted between the date of entry into force of this Regulation and 30 April 1978.

2. As from the entry into force of this Regulation, Part Two of Regulation No 17/64/EEC shall cease to apply in the fields referred to in Article 11 (1) (c) and (d) thereof. It shall however continue to apply in those fields as regards decisions to be taken for the financial year 1977.

3. Projects relating to the fields referred to in paragraph 2 and

— submitted to the Commission under Regulation No 17/64/EEC between 20 December 1976 and the date of entry into force of this Regulation, or

— carried over from the 1977 to the 1978 financial year,

may be taken into consideration under this Regulation on the conditions laid down in it.

Article 25

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, 15 February 1977.

For the Council

The President

J. SILKIN