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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 389/82

of 15 February 1982

on producer groups and associations thereof in the cotton sector

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the 1979 Act of Accession, and in particular paragraph 9 of Protocol 4 thereto,

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

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

Whereas the abovementioned Protocol states that, in order to stabilize the market by structural improvements at the level of supply and marketing, the system of aid to production should be supplemented by aid for producer groups and associations thereof:

— which have been formed at the initiative of the producers themselves,

— which offer sufficient guarantee as to the duration and effectiveness of their operations,

— which are recognized by the Member State concerned;

Whereas the said Protocol also stipulates that it is for the Council, acting on a proposal from the Commission, to adopt the general rules governing the abovementioned system;

Whereas it is essential, in the first instance, to lay down precise conditions for recognition so that the groups and associations meet the requirements of the said Protocol, particularly in respect of the duration and effectiveness of their operations; whereas, to this end, these conditions should include, in particular, centralized handling of all supplies, the exercise of adequate control over production and marketing, and the provisions necessary to ensure that the groups and associations have a sufficiently stable membership and an adequate level of economic activity;

Whereas the nature and the amount of the aid granted to groups and associations should also be specified; whereas the granting of aid to cover formation and administrative operating expenses during the first three years and of aid towards the investments necessary for the performance of their respective supply and marketing functions could be an appropriate incentive for the creation of groups and associations thereof; whereas, to ensure that the system envisaged is implemented in all regions of the Community where it proves necessary, the granting of the abovementioned forms of aid should be made obligatory;

Whereas the aid granted towards the formation and operating expenses of associations should be subject to an overall ceiling, to take account of the fact that each of the groups belonging to such an association has already received or is still receiving such aid; whereas the level of aid to be granted to organizations existing prior to the introduction of this system and the level of aid to be granted in the case of amalgamations of organizations already meeting the set requirements should also be fixed in a precise and appropriate manner;

Whereas it should be stipulated that investment aid should be granted in respect of structures to be used by groups or associations or to be used jointly by their members; whereas it should also be ensured that such aid contributes towards the systematic improvement of existing structures; whereas, therefore, it is appropriate to stipulate that such aid should be granted under programmes comprising a thorough analysis of the situation in the sector and the improvement envisaged, such programmes being drawn up by the Member States and approved by the Commission under a procedure ensuring close cooperation between the Member States and the Commission; whereas the

(1) OJ No C 272, 24. 10. 1981, p. 4.
(2) OJ No C 327, 14. 12. 1981, p. 120.

appropriate body for ensuring such cooperation is the Standing Committee on Agricultural Structures set up by Article 1 of the Council Decision of 4 December 1962 on the coordination of policies on the structure of agriculture (1);

Whereas, in order that Community expenditure relating to the application of the system envisaged should be governed by adequate financial rules and procedures, the provisions of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy (2), as last amended by Regulation (EEC) No 3509/80 (3), should be applied to this specifically agricultural sector;

Whereas the planned duration and estimated cost of Community aid should be specified; whereas aid granted for a period of five years and at an estimated total cost of 14 million ECU could make an effective contribution towards structural improvements in the supply of cotton and towards the adaptation of cotton production to market requirements;

Whereas the Commission must be able to verify that the measures taken by the Member States to implement the system envisaged comply with the conditions thereof; whereas the Commission must also be able to assess each year the practical results of the implementation of the said system,

HAS ADOPTED THIS REGULATION:

TITLE I

Provisions concerning the formation and the functions of producer groups and associations thereof and the launching aids granted to them

Article 1

1. For the purposes of this Regulation, 'producer group' shall be taken to mean any organization of producers of cotton, not carded or combed, falling within heading No 55.01 of the Common Customs Tariff which has been set up at the initiative of the producers themselves with the aim of:

— furthering the centralization of supply,

— adapting supply to market requirements,

and which has been recognized by the Member State concerned in accordance with Article 2.

2. For the purposes of this Regulation, 'association' shall be taken to mean any organization consisting of producer groups which pursues the same objectives as the latter and which has been recognized by the Member State concerned in accordance with Article 2.

Article 2

1. Member States shall recognize producer groups and associations thereof, including those in existence when this Regulation comes into force, which apply for recognition and which fulfil the following conditions:

(a) their statutes shall make it obligatory for producers who are members of groups and for groups which are members of associations:

— to provide the information requested by the group or association concerning harvests and supplies,

— to apply the rules which the group or association has adopted on production and marketing,

— to market their entire production through the group or association.

However:

— this latter obligation shall not apply to that part of production in respect of which producers had concluded sales contracts or agreed to options before joining the group, provided that the group was informed, before the producer concerned became a member, of the extent and duration of the obligations thus contracted,

— the group or association may authorize its members to market part of their production themselves on a contractual basis, in accordance with rules which they shall lay down and the implementation of which they shall supervise;

(b) the extent of their economic activity must be adequate. For this purpose they must:

— represent at least 10 producers, in the case of groups and 50 groups in the case of associations,

— control an annual volume of unginned cotton production amounting to at least 175 tonnes in the case of groups and 10 000 tonnes in the case of associations.

However, by way of exception to these provisions:

— producer groups in Sicily must control an annual volume of production of at least 100 tonnes of unginned cotton,

— associations in Italy must represent producer groups existing at the level of each production region,

(1) OJ No 136, 17. 12. 1962, p. 2892/62.
(2) OJ No L 94, 28. 4. 1970, p. 13.
(3) OJ No L 367, 31. 12. 1980, p. 87.

— associations in the west and north-east of mainland Greece, may, with the Commission's approval, represent producer groups existing at the level of each of these regions if otherwise the proper functioning of the associations could not be guaranteed because of difficulties of movement due to the existing transport network;

(c) they shall have legal personality or sufficient legal capacity to exercise rights and be subject to obligations in accordance with national laws;

(d) their statutes shall include provisions to ensure that members of a group or of an association who wish to withdraw from membership may do so:

— after they have been members of the group or of the association for a minimum of three years following recognition thereof, and

— on condition that they inform the group or the association in writing of their intention to withdraw not less than 12 months before so doing.

These provisions shall apply without prejudice to national laws or provisions designed to protect the group or association or their creditors, in specified cases, against any financial consequences which might result from the withdrawal of a member or to preclude withdrawal of a member in the course of the financial year;

(e) they shall keep separate accounts for the activities in respect of which they are recognized. These separate accounts and those relating to other activities of the group or association are to be kept so that the aid provided for in Article 4 can be calculated and the use made of the aid provided for in Article 5 can be ascertained;

(f) they shall not hold a dominant position within the common market;

(g) they shall not, over the whole range of their activities, exercise any discrimination between producers which runs counter to the operation of the common market or the achievement of the general objectives of the Treaty and shall not, in particular, exercise any discrimination connected with nationality or place of establishment.

2. For the purposes of paragraph 1 (a), 'marketing' shall cover the following operations relating to the product referred to in Article 1:

— centralization of supply,

— preparation for sale,

— supply to bulk buyers.

Article 3

1. Member States shall:

— take a decision on recognition within three months of the date on which recognition is requested,

— make known to the Commission, within two months, any decision taken to grant, refuse or withdraw recognition.

2. Recognition of a producer group or of an association shall be withdrawn:

(a) if the conditions for recognition laid down in this Regulation were not or are no longer fulfilled;

(b) if such recognition is based on erroneous information;

(c) if the group or association obtained recognition by irregular means;

(d) if the Commission decides that Article 85 (1) of the Treaty applies to the agreements, decisions and practices referred to in paragraph 3.

In the case provided for in (c), withdrawal of recognition shall have retroactive effect and aid granted pursuant to Articles 4 and 5 shall be recovered.

3. Should the Commission decide that Article 85 (1) of the Treaty is applicable to agreements, decisions or practices:

— by which persons referred to in the second indent of Article 1 (1), join together in a group fulfilling the conditions laid down in this Regulation, or groups form an association fulfilling the conditions of this Regulation,

— or by which the common rules referred to in the second indent of Article 2 (1) (a) are adopted or executed,

a decision relating thereto shall apply only from the date on which the Commission reached its conclusion.

Article 4

1. The Member States concerned shall grant aid to groups and associations, during the three years following the date of their recognition to encourage their formation and to facilitate their administrative operation. Such aid may be paid over five years.

2. The amount of aid granted to producer groups for the first, second and third years respectively:

(a) shall be equal to: a maximum of 3, 2 and 1 % of the value of the products:

— coming from the producer groups referred to in Article 1 (1), and

— to which recognition relates and which are placed on the market;

(b) may not, however, exceed 60, 40 and 20 % of the actual formation and administrative operating expenditure.

3. The amount of aid granted to associations :

(a) shall be equal to a maximum of 60, 40 and 20 % of the actual formation and administrative operating expenditure for the first, second and third years respectively ;

(b) may not, however, exceed a total of 50 000 ECU.

4. The value of the products referred to in paragraph 2 (a) shall be calculated for each year on a flat rate basis of :

— the annual volume placed on the market in accordance with the third indent of Article 2 (1) (a),

— the average producer prices obtained.

5. The actual formation and administrative operating expenditure within the meaning of paragraphs 2 (b) and 3 (a) shall be determined in accordance with Regulation (EEC) No 2084/80 (1).

6. The aid provided for in this Article shall be granted :

(a) to groups and associations formed before the entry into force of this Regulation only in proportion to the additional expenditure incurred in complying with the requirements of Article 2 ;

(b) to groups and associations formed from existing organizations already complying with the requirements of this Regulation only :

— if they are the result of an amalgamation designed to achieve more fully the objectives specified in Article 1,

— in proportion to the expenditure incurred in their formation (expenditure on preparation and on the drawing up of their instruments of incorporation and statutes).

TITLE II

Investment aid for which producer groups and associations thereof are eligible

Article 5

1. To contribute towards structural improvements at the level of supply and marketing and towards the standardization and improvement of quality, Member States shall grant to recognized producer groups and associations thereof constituted on the basis of Article 2, aid for investments :

(a) necessary for :

— the implementation of the common rules referred to in the second indent of Article 2 (1) (a),

— the marketing referred to in the third indent of Article 2 (1) (a),

and in particular investments in harvesting, ginning, storage and packaging facilities ;

(b) in facilities which are to be used by the group or associations, or the use of which is to be shared by their members ;

(c) which form part of programmes approved in accordance with Article 8.

2. The aid provided for in paragraph 1 shall not exceed 50 % of the cost of the investment made.

Article 6

1. The programmes shall relate to the development and rationalization of cotton production and marketing. They shall be drawn up by the Member States and shall cover all or part of their territory.

2. The programmes shall provide at least the following information :

(a) a definition of the geographical area and the activities concerned ;

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

— cotton production (quantity, area, importance relative to total production, structure, existing position with regard to mechanization),

— present and prospective outlets,

— the existing position as regards supply, marketing and preparation for sale, and in particular the capacities of the undertakings concerned (including ginning establishments) ;

(c) the needs to be met by the programme and the objectives which it is intended to achieve including :

— capacities to be achieved overall and per region concerned, broken down according to the various types of establishment and the various stages in their completion,

— the profitability criteria to be applied ;

(d) the effects of the programme on farm incomes in the geographical area concerned ;

(e) the means employed to achieve the objectives of the programme, in particular : the total amount of investment (including the method of calculation) ; the distinction made between the sums allocated for modernization and those for development ; and between the sums earmarked for the various types of investment and those for the various regions concerned ;

(1) OJ No L 203, 5. 8. 1980, p. 9.

(f) the rate of aid planned by the Member State for the various types of investment;

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

Article 7

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 6.

Article 8

1. 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 6 of this Regulation have been provided, the Commission shall take a decision as to their approval, in accordance with the procedure laid down in Article 22 of 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 [1].

2. When a programme is approved in accordance with paragraph 1, the Commission shall, if necessary, determine by agreement with the Member State concerned which are the main aspects of the programmes which should receive attention in the report referred to in the second indent of Article 14.

TITLE III

Financial provisions

Article 9

The measures provided for under Titles I and II shall be considered as common measures within the meaning of Article 6 (1) of Regulation (EEC) No 729/70.

Article 10

1. The period envisaged for carrying out the common measures shall be five years from the date of the entry into force of this Regulation.

2. Before the end of the period referred to in paragraph 1, this Regulation shall be reviewed by the Council on the basis of a report from the Commission concerning the results of its application.

3. The estimated total cost, under Title I of the common measure to be borne by the Guidance Section of the Fund is 2 million ECU.

4. The estimated total cost, under Title II, of the common measure to be borne by the Guidance Section of the Fund is 12 million ECU.

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

Article 11

1. The expenditure incurred by the Member States in connection with the measures provided for in Titles I and II shall be chargeable to the Guidance Section of the Fund.

2. The Guidance Section of the Fund shall refund 40 % of the chargeable expenditure to the Member States.

3. Detailed rules for the application of paragraph 2 shall be adopted in accordance with the procedure laid down in Article 13 of Regulation (EEC) No 729/70.

Article 12

1. Applications for reimbursement shall relate to expenditure incurred by the Member States during one calendar year and shall be submitted to the Commission before 1 May of the following year.

2. The decision to grant aid from the Fund shall be taken in accordance with Article 7 (1) of Regulation (EEC) No 729/70.

3. Payments on account may be granted by the Commission.

4. 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 13

This Regulation shall not prejudice the right of the Member States to adopt, within the sphere of the aid provided for in Article 4 (2) and (3), additional aid measures, the conditions or procedures for the granting of which differ from those laid down in Article 4 (2) and (3) or the amounts of which exceed the upper limits laid down therein, provided that those measures are taken in accordance with Articles 92, 93 and 94 of the Treaty.

[1] OJ No L 51, 23. 2. 1977, p. 1.

TITLE IV

General provisions

Article 14

The Member States concerned shall communicate to the Commission :

— the laws, regulations and administrative provisions concerning the application of this Regulation not later than one month after they have been adopted,

— a report on the results of the application of this Regulation each year before 31 March, and for the first time before 31 March 1983.

Article 15

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 1982.

For the Council

The President

P. de KEERSMAEKER