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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 2908/83

of 4 October 1983

on a common measure for restructuring, modernizing and developing the fishing industry and for developing aquaculture

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 (1),

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

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

Whereas Article 9 (2) of Council Regulation (EEC) No 101/76 of 19 January 1976 laying down a common structural policy for the fishing industry (4) provides that common measures may be decided upon for the attainment of the objectives mentioned in paragraph 1 of the same Article in so far as they relate to the objectives set out in Article 39 (1) (a) of the Treaty; whereas these common measures may be financed by the Guidance Section of the European Agricultural Guidance and Guarantee Fund by virtue of Article 1 (3) of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy (5), as last amended by Regulation (EEC) No 3509/80 (6);

Whereas changes in the international framework within which fishing activities are carried out, together with demands inherent in the conservation and management of fish stocks in the maritime waters of the Community, have reduced the scope for fishing available to Community fleets and made fishermen's earnings insecure;

Whereas, in order to set limits to the economic insecurity in which Community fishermen work, the fleets concerned must be restructured, under a common measure, by renewal and, where necessary, economically appropriate expansion in line with actual catch potential which will ensure optimum productivity in the long term of these production facilities;

Whereas the development of aquaculture can contribute towards an improvement in supplies of fishery products in the Member States; whereas this common measure must therefore provide for the encouragement of this activity;

Whereas coastal areas in the Mediterranean Sea should be protected by the installation of artificial structures to facilitate re-stocking and to permit, after a transitional period, the optimum exploitation of these areas;

Whereas, so as to ensure that the fishing industry or aquaculture are restructured or developed on a technically and economically sound basis, participation by the European Agricultural Guidance and Guarantee Fund in investment projects should be subject to the inclusion of those projects in multiannual guidance programmes containing a detailed analysis whereby the Commission can assess both the initial structural situation and each Member State's forecasts with regard to the new production structures; whereas, for the creation of areas protected by artificial structures, it seems sufficient for each Member State to send the

(1) OJ No C 243, 22. 9. 1980, p. 5.
(2) OJ No C 346, 19. 12. 1980, p. 112.
(3) OJ No C 348, 31. 12. 1980, p. 18.
(4) OJ No L 20, 28. 1. 1976, p. 19.
(5) OJ No L 94, 28. 4. 1970, p. 13.
(6) OJ No L 367, 31. 12. 1980, p. 87.

Commission a descriptive summary of the investments to be made in the sector;

Whereas, to enable structural progress to be monitored accurately, the annual review of the programme must include consideration of the investments made; whereas the relevant information must therefore be collected by the Member States and set out in a summary document to be forwarded to the Commission together with any necessary programme amendments, if appropriate, to be submitted for Commission approval;

Whereas, during the first year of the common measure, it should be possible, in order to allow time for programmes or descriptive summaries to be drawn up, to finance projects which do not fall within them;

Whereas criteria should be laid down for identifying the projects to be given priority consideration;

Whereas, in order to ensure a balance between the measure of the Community and that of the Member State, the projects to be financed by the Fund must first be approved by the Member State concerned, which should also contribute to the cost;

Whereas the provision by the Fund of a capital subsidy not exceeding 25 % of the value of the investment would, in general, be an appropriate contribution thereto;

Whereas Greenland, Ireland, Northern Ireland, the Mezzogiorno, the French overseas departments and Greece are in a special situation because of their belated economic and social development, their self-financing difficulties and their outlying position in the Communty; whereas valid economic initiatives cannot be encouraged in those regions without a specially intensive effort; whereas Fund participation in these regions should consequently be allowed to amount to 50 %;

Whereas this increased rate of participation should also be applied to projects for the construction of artificial structures to facilitate restocking of coastal areas, given the heavy investment involved in relation to the short-term benefits accruing to communities living from fishing;

Whereas, in order to ensure that beneficiaries observe the conditions imposed when Fund aid is granted, an effective control procedure should be provided for with the possibility of suspending, reducing or discontinuing the aid from the Fund;

Whereas a procedure for examination of the programmes should be provided for to ensure close cooperation between the Member States and the Commission within the Standing Committee for the Fishing Industry; whereas, for the approval of projects, in addition to the procedure in the Standing Committee, provision must be made for consultation, concerning the financial aspects, of the Fund Committee referred to in Article 11 of Regulation (EEC) No 729/70,

HAS ADOPTED THIS REGULATION:

Article 1

1. In order to promote the necessary structural changes within the guidelines of the common fisheries policy and to enable the objectives set out in Article 9 of Regulation (EEC) No 101/76 to be attained, a common measure shall be undertaken to restructure, modernize and develop certain fishing fleets and to develop aquaculture.

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

3. The Commission may, in accordance with the provisions of Titles III and IV, grant aid for the common measure, by financing projects which satisfy the conditions of this Regulation, through the Guidance Section of the European Agricultural Guidance and Guarantee Fund (hereinafter referred to as 'the Fund').

Article 2

For the purposes of this Regulation:

— 'multiannual guidance programme' (hereinafter referred to as 'programme') means a set of objectives, together with a statement of the means for attaining them, designed to restructure,

modernize and develop certain fishing fleets and to develop aquaculture, in a Member State,

— 'projects' means any public, semi-public or private capital investment projects relating entirely or partly to:

(a) the purchase or construction of new fishing vessels, and the modernization or conversion of fishing vessels already in use;

(b) the construction, equipment or modernization of installations for rearing fish, crustaceans and molluscs;

(c) the construction, within an area of three miles from the base lines, of artificial structures to facilitate re-stocking of Mediterranean coastal areas.

TITLE I

Multiannual guidance programmes

Article 3

For the investments provided for in (a) and (b) of the second indent of Article 2, Member States shall draw up, on the basis of the particulars referred to in Article 4, programmes whose implementation shall cover at least the proposed duration of the common measure.

The programmes must specify the method, measures and facilities or resources that will be used in order to attain the following objectives in the long term:

(a) in respect of the fishing sector, a satisfactory balance between the fishing capacity to be deployed by the production facilities covered by the programmes and the stocks which are expected to be available during the period of validity of the programme;

(b) in respect of aquaculture, a substantial and economically profitable volume of production of fish, crustaceans or molluscs.

Article 4

Programmes shall give at least the following information:

A. *In respect of the fishing industry*

1. The initial situation and discernible trends as regards the various categories of vessels making up the fleet.

2. An overall estimate of the fishing capacity of the categories of vessels referred to under 1 on the basis of a list of fishing vessels in use.

3. An estimate of the future capacity of the fleet, worked out as follows:

— an estimate of the number of vessels to be withdrawn from fishing, with an indication of their fishing capacity,

— an estimate of the number of vessels to be laid up periodically,

— an estimate of the number, tonnage and fishing capacity of vessels to be commissioned during the period within which the programme is to be implemented, taking into account the number of vessels on order by Community shipowners in the shipyards of the Member State concerned.

B. *In respect of acquaculture*

1. Delimitation of the area concerned by the programme, reasons for that delimitation, and designation and description of priority development sites.

2. Initial situation and list of existing facilities.

3. Brief description of the farming methods and particularly of the intensive farming methods to be employed for each of the species concerned.

4. Estimate of the areas to be used for the new extensive, semi-intensive and intensive farming installations, with expected output.

C. *In respect of both sectors*

1. Expected effects of the programme on:

— the general economic situation of the regions concerned,

— the economic viability of enterprises,

— the employment situation.

2. Status of the programme in relation to any other measures designed to encourage the harmonious development of the general economy of the geographical area concerned, in particular link-ups with regional development programmes.

3. Estimated time required for the execution of the programme.

4. The laws, regulations and administrative provisions designed to facilitate the restructuring or development of the fleet or of aquaculture installations.

Article 5

1. The Member State concerned shall forward the programmes to the Commission.

2. The Commission shall consider whether, having regard to the production potential, the measures for the conservation and management of fish stocks, the demand for the products concerned and the guidelines of the common fisheries policy, the programmes drawn up pursuant to Articles 3 and 4 constitute a suitable framework for projects which may qualify for financial support from the Community.

3. Not later than six months from notification of each programme a decision shall be taken on its approval, in accordance with the procedure provided for in Article 21.

Article 6

1. Each programme approved by the Commission shall be reviewed annually. The Standing Committee for the Fishing Industry shall be consulted.

2. For the purpose of the review provided for in paragraph 1, the Member State concerned shall send to the Commission each year before 30 September a summary report on the state of progress of the programme, together with any necessary amendments.

3. The Commission shall decide whether to approve the amendments in accordance with the procedure laid down in Article 21.

Article 7

The Member States concerned shall draw up a descriptive summary, for the Commission's information, of the investments to be made in the sectors referred to in (c) of the second indent of Article 2, showing the scheduled timetable of these investments and an estimate of the expenditure entailed.

TITLE II

Projects

Article 8

1. The projects provided for in (a) and (b) of the second indent of Article 2 shall:

(a) be consistent with the guidelines laid down by the programmes;

(b) offer a satisfactory guarantee of yielding a profit;

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

2. The projects referred to in (c) of the second indent of Article 2 must be included in the summary description referred to in Article 7 and an indication must be given of their relevance to the activity of coastal populations earning a livelihood from fishing or aquaculture as well as an indication of the benefits they will bring them.

3. By way of derogation from paragraphs 1 and 2 and until 30 November 1984, projects may qualify for Fund aid even if they are not included in a programme approved by the Commission nor in a descriptive summary within the meaning of Article 7.

Article 9

1. To be eligible for aid from the Fund, the projects referred to in (a) of the second indent of Article 2 must relate to fishing vessels which are between nine and 33 metres in length, measured between perpendiculars, and which have the necessary equipment for fishing operations and crew safety.

Modernization or conversion work on fishing vessels in use as referred to in (a) of the second indent of Article 2 must be substantial, be undertaken to rationalize fishing operations, improve conditions of storage of catches or save energy and must amount to at least 20 000 ECU per project.

The limit of 20 000 ECU shall be reduced to 10 000 ECU for projects concerning fishing vessels which are between nine and 12 metres in length, measured between perpendiculars.

2. To be eligible for aid from the Fund, the aquaculture projects referred to in (b) of the second indent of Article 2 must have a capacity sufficient to ensure sustained commercial operation.

Furthermore, shellfish-farming projects must be situated in waters meeting national or Community quality standards.

3. To be eligible for aid from the Fund, the projects for artificial structures referred to in (c) of the second indent of Article 2 must involve the installation of fixed or movable components intended to constitute the boundaries of protected areas and to create the substrata on which or around which stocks of fish, crustaceans or molluscs may develop. These components must correspond to a model approved by the competent authorities of the Member States concerned.

Furthermore, all fishing, including fishing with fixed gear or direct harvesting, must be prohibited in the protected areas during the first three years.

Article 10

Member States shall ensure that the projects are carried out by natural or legal persons who satisfy the following conditions:

1. *Fishing*

— In the case of natural persons, their main professional activity shall, for at least five years, have been fishing or related activities; in the case of partnerships, at least one partner must fulfil this condition.

— In the case of legal persons, the applicant shall have acquired substantial experience of fishing or related activities during the five years preceding that for which the project is submitted; legal persons established for less than five years shall be composed by at least 60 % of natural or legal persons meeting the above requirements.

— In all cases, the skipper of the vessel concerned by a project must be trained to a level such that the best use can be made of that vessel's equipment.

2. *Aquaculture*

They shall show satisfactory professional competence in the farming of fish, crustaceans or molluscs.

3. *Construction of artifical structures*

They shall be a recognized producer organization, a producer cooperative or an agency appointed for that purpose by the competent authority of the Member State concerned.

Article 11

1. The following projects meeting the requirements laid down in Articles 8 and 9 shall enjoy priority consideration for Fund aid:

(a) in respect of the purchase or construction of new fishing vessels, the commissioning of vessels:

— intended to replace vessels more than 12 years old,

— intended to replace vessels lost as a result of accident or wreck, irreparably damaged, broken up or permanently withdrawn from use as fishing vessels,

— based in coastal areas where fishing is traditionally an important economic activity, in particular in the regions referred to in Annex VII to the Council resolution of 3 November 1976;

(b) in respect of the modernization of fishing vessels, projects designed to encourage a more rational use of fuel or fuel-saving types of fishing and projects which are coordinated in their economic and technical aspects and projects aimed at improving the processing of catches;

(c) in respect of aquaculture, the launching of pilot projects designed to guide and develop production in the sector and, where appropriate, to facilitate retraining of fishermen.

2. Without prejudice to paragraph 1, in the evaluation of projects the Commission shall take account of the following factors:

(a) the diversification of economic activity through the catching or rearing of certain species of fish, crustaceans or molluscs;

(b) the living and working conditions on board and, in particular, the safety of the workers concerned;

(c) the beneficiary's membership of a producers' organization;

(d) the requirement for environmental protection;

(e) the interests of consumers.

TITLE III

Procedure for the examination of projects

Article 12

1. Applications for aid from the Fund shall be submitted through the Member State concerned after approval by that Member State.

2. The Commission shall take decisions on aid applications twice yearly, in accordance with the procedure laid down in Article 21 and after consulting the Fund Committee on the financial aspects. Its decisions shall be taken not later than 30 April and 31 October. The first decision in each year shall cover the applications submitted by 31 October of the previous year. The second decision shall cover the applications submitted by 31 March of the current year.

3. The decision on aid shall be notified to the Member State concerned and to the beneficiaries.

4. The particulars to be given in the applications and the form in which they are to be submitted shall be determined in accordance with the procedure laid down in Article 21.

5. In 1984, by way of derogation from paragraph 2, the Commission's decisions shall be taken not later than 15 June and 30 November. The first decision shall cover the applications submitted by 15 January 1984 at the latest. The second decision shall cover the applications submitted by 31 March 1984 at the latest.

Article 13

1. Projects which receive Community aid under other common measures within the meaning of Article 6 (2) of Regulation (EEC) No 729/70, or aid from the European Regional Development Fund, shall not be covered by this Regulation.

2. Projects relating to the construction of fishing vessels intended to replace vessels which have received aid for the permanent reduction of capacity under Directive 83/515/EEC [1] shall be ineligible.

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[1] See page 15 of this Official Journal.

TITLE IV

Financial and general provisions

Article 14

1. The proposed duration of the common measure shall be three years from 1 January 1983.

2. The estimated total cost of the common measure to the Fund shall be 156 million ECU.

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

Article 15

1. Aid from the Fund shall consist of capital subsidies paid in one or more instalments.

2. For each project, in relation to the investment considered for an aid from the Fund:

— the aid granted by the Fund shall not exceed 25 %,

— the conribution of the benficiary shall be at least 50 %.

3. By way of derogation from paragraph 2:

(a) in Greenland, Greece, Ireland, Northern Ireland, the Mezzogiorno and the French overseas departments:

— the aid granted by the Fund may reach 50 %,

— the contribution of the beneficiary shall be at least 25 %;

(b) for projects relating to the operations referred to in (c) of the second indent of Article 2, in relation to the investment made:

— the aid granted by the Fund may reach 50 %,

— the contribution of the beneficiary shall be at least 5 %.

4. The financial contribution of the Member State shall be at least 5 %.

Article 16

Fishing vessels which have received aid from the Fund under a project referred to in (a) of the second indent of Article 2 may not:

(i) be sold outside the Community,

(ii) normally carry out their activities from a port other than a port situated within the Community,

(iii) give up fishing, except in cases of *force majeure*,

for a period of:

— at least 10 years from the date of commissioning of a fishing vessel,

— at least five years from the date on which modernization or conversion work is completed.

Article 17

The granting of aid from the Fund shall not affect the conditions of competition in a manner incompatible with the principles set out in the relevant provisions of the Treaty.

Article 18

1. Aid from the Fund shall be granted to natural or legal persons or groups thereof bearing the ultimate financial responsibility for carrying out the project.

Payments by way of aid from the Fund shall be made by agencies appointed for this purpose by the Member State concerned.

2. Throughout the period in which aid is being provided by the Fund, the authority or agency appointed for this purpose by the Member State shall send to the Commission on request all supporting documents and all documents showing that the financial or other conditions imposed for each project are satisfied. The Commission may, if necessary, make an inspection visit.

After consulting the Fund Committee on the financial aspects, the Commission may decide to suspend, reduce or discontinue aid from the Fund, in accordance with the procedure laid down in Article 21:

— if the project is not carried out as specified, or

— if certain conditions imposed are not satisfied, or

— if the beneficiary, contrary to the particulars given in his application and repeated in the decision granting aid, has not, within two years from the date of notification of that decision, begun the work or if he has not, before the end of this period, supplied satisfactory assurances that the project will be carried out.

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

The Commission shall take steps to recover any sums unduly paid.

3. Any appropriations made available by a decision taken under paragraph 2 or because the beneficiary has abandoned the project or reduced the investment provided for in the decision granting aid may be used to finance other projects.

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 19

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 results of the project, in particular on the financial results.

This report shall be submitted:

— two years after the last aid payment to projects referred to in (a) and (b) of the second indent of Article 2;

— five years after the last aid payment to projects referred to in (c) of the second indent of Article 2.

2. If the beneficiary does not fulfil the obligations laid down in paragraph 1, the Commission may, after giving the beneficiary due notice, decide to reverse in whole or in part its decision to grant aid, acting in accordance with the procedure laid down in Article 21, after consulting the Fund Committee on the financial aspects. The decision shall be notified to the Member State concerned and to the beneficiary. The Commission shall recover in whole or in part the sums paid.

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 21, after consultation of the Fund Committee on the financial aspects.

Article 20

1. An application for aid from the Fund submitted to the Commission but not accepted for lack of funds may, with the consent of the applicant, be carried forward to the following financial year by the Member State concerned. Applications to carry forward shall be submitted to the Commission within 30 days of the date

on which the Member State received notification of the result of the procedure provided for in Article 12. An application for aid may only be carried forward once.

2. An application for aid from the Fund submitted for the first time to the Commission under Council Regulation (EEC) No 31/83 of 21 December 1982 on an interim common measure for restructuring the inshore fishing industry and acquaculture (1), but not accepted for lack of funds, may be taken into consideration under the terms and conditions of this Regulation.

Article 21

1. Where the procedure laid down in this Article is to be followed, the chairman shall refer the matter to the Standing Committee for the Fishing Industry (hereinafter referred to as 'the Committee') 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 measure to be taken. The Committee shall deliver its opinion within a time limit to be set by the chairman according to the urgency of the matter. Opinions shall be adopted by a majority of 45 votes, the votes of the Member States being weighted as laid down in Article 148 (2) of the Treaty. The chairman shall not vote.

3. The Commission shall adopt the measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, the Commission shall forthwith communicate them to the Council. In that event the Commission may defer their application for not more than one month from the date of such communication. The Council, acting by a qualified majority, may adopt different measures within one month.

Article 22

By way of derogation from Article 1 of Regulation (EEC) No 129/78 (2), the amount referred to in Article 9 (1) of this Regulation shall be converted into national currencies at the representative rates in force on 1 January of the year preceding the year in which the Commission decides for the first time, within the meaning of Article 12, on the relevant aid application.

Article 23

The first decisions to grant aid under this Regulation shall relate to the 1983 financial year. They shall be taken in respect of applications submitted by 15 January 1984.

Article 24

Articles 92, 93 and 94 of the Treaty shall apply, in the sector covered by this Regulation, to national aid granted by Member States other than the aid provided for in this Regulation.

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 Luxembourg, 4 October 1983.

For the Council

The President

C. SIMITIS

(1) OJ No L 5, 7. 1. 1983, p. 1.

(2) OJ No L 20, 25. 1. 1978, p. 16.