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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 3284/83

of 14 November 1983

amending Regulation (EEC) No 1035/72 on the common organization of the market in fruit and vegetables as regards producers' organizations

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 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 14 of Council Regulation (EEC) No 1035/72 (4), as last amended by Regulation (EEC) No 2004/83 (5), makes provision for measures to encourage the formation and facilitate the operation of producers' organizations ; whereas such measures consist, in particular, of two systems of aid :

— aid, in respect of the three years following the date on which they are formed, fixed in proportion to the value of marketed production only, and

— a transitional system for aid not exceeding the actual cost of formation and administrative operation concerned to be granted over a five-year period ;

Whereas experience in the application of these measures has shown that some adjustment is necessary in order to ensure that producers' organizations comply more closely with the conditions laid down and that the period in respect of which aid is granted is more accurately and suitably determined ;

Whereas the introduction of a system whereby producers' organizations are recognized and are granted aid on the basis of such recognition may help to meet some of these requirements ; whereas provision should also be made for producers' organizations to keep specific accounts in respect of activities for which recognition is given ;

Whereas the second of the two systems of aid referred to above for the formation and operation of producers' organizations should, in the long term, help further to underpin the operation of the organizations concerned ; whereas, accordingly, provision should be made for this particular system to be maintained definitely and for the level of the aid granted under it to be raised ; whereas an adjustment in the method used for calculating the aid involving a reference to the value of the production actually marketed by the producers' organizations is also likely to help ensure that such organizations actually perform the tasks entrusted ; whereas, however, provision should also be made for the possibility of having recourse to the first system of aid for a limited period ;

Whereas the level of the aid to be granted should be determined accurately and in an appropriate manner in cases of mergers of organizations which already comply with the conditions ;

Whereas measures by the producers' organizations, within the meaning of Article 13 of Regulation (EEC) No 1035/72, are likely to contribute towards attaining the objectives of the common market organization in the sector concerned ; whereas in order to reinforce measures by these organizations, thus encouraging greater market stability, Member States should be permitted to extend, under certain conditions, to all producers not members of the organization in a region, the rules relating in particular to production and marketing adopted for its members by the organization or association in the region concerned ;

Whereas, in order to ensure the correct application of the scheme thus amended, a permanent power to check this scheme should be granted to the Commission ; whereas, to this end any extension of the marketing rules issued by the organization or association in question should be submitted to the Commission for its approval ;

(1) OJ No C 281, 4. 11. 1981, p. 3.
(2) OJ No C 182, 19. 7. 1982, p. 29.
(3) OJ No C 112, 3. 5. 1982, p. 34.
(4) OJ No L 118, 20. 5. 1972, p. 1.
(5) OJ No L 198, 21. 7. 1983, p. 2.

Whereas application of the scheme described above entails expenditure by the organization or association whose rules have been so extended; whereas it is therefore appropriate to oblige non-member producers to contribute towards these costs; whereas it also seems desirable to oblige these producers to contribute towards the cost of certain measures undertaken by the organization or the association in question; whereas compensation should also be granted to these producers for products which, while complying with quality standards, cannot be marketed or which have been withdrawn from the market;

Whereas, in order to ensure greater market stability for certain sensitive products, provision should be made for public buying in where a state of serious crisis has been recorded by an accelerated procedure following a drop in prices; whereas, since the degree of development of the producers' organizations varies as between Member States and its influence on maintaining market stability in those States, provision should be made for exempting Member States from compulsory buying in where the producers' organizations control a sufficient share of production, or where the production of the product in question is very small in comparison to Community production;

Whereas experience has shown that certain producers store less perishable products beyond the marketing year corresponding to the year of harvest; whereas, to prevent these products depressing the market during the following marketing year and thus being able to benefit from intervention measures during that year, such measures should, except in certain abnormal circumstances, apply only to products marketed during the marketing year in which they were harvested;

Whereas Article 23 of Regulation (EEC) No 1035/72 lays down certain criteria to be taken into account when fixing reference prices in the fruit and vegetables sector;

Whereas reference prices will help to ensure Community preference if the variation of their level takes account in a more systematic manner of production cost trends;

Whereas, in order to calculate reference prices for citrus fruit, the existing link between trends in the basic price and the buying-in price, in financial compensation and reference prices should be modified; whereas at the same time the reference prices should be updated to take account to a certain extent of the delay that this link has caused in the development of reference prices;

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1035/72 is hereby amended in accordance with the following Articles 2 to 11.

Article 2

Article 13 is replaced by the following:

'Article 13

1. For the purposes of this Regulation, "producers' organization" means any organization of fruit and vegetable producers:

(a) which is formed on the producers' own initiative for the purposes, in particular:

— of promoting the concentration of supply and the stabilization of prices at the producer stage in respect of one or more of the products referred to in Article 1, and

— of making suitable technical facilities available to producer members for presenting and marketing the relevant products;

(b) which requires the producer members:

— to sell through the producers' organization their total output of the product or products by reason of which they have become members; the organization may, however, waive this requirement in respect of certain quantities,

— to apply, with regard to production and marketing, rules which have been adopted by the producers' organization with a view to improving product quality and adapting the volume of supply to market requirements, and

— to provide the information requested by the organization on harvests and supplies;

(c) which has been recognized by the Member State concerned pursuant to paragraph 2.

2. Member States shall at the request of the organizations concerned grant them the recognition referred to in paragraph 1 (c) if:

— there is sufficient evidence as regards the duration and effectiveness of their activities, in particular the tasks referred to in paragraph 1,

— from the date of recognition they keep specific accounts in respect of the activities for which recognition is sought.

Member States :

— shall take a decision on the granting of recognition within three months from the filing of the request,

— shall notify the Commission, within a time limit of two months, of any decision to grant, refuse or withdraw recognition,

— shall draw up each year a report on the application of this Article and of Article 14 and forward it to the Commission by 1 April and for the first time by 1 April 1985. The report shall describe, in particular, the functioning of producers' organizations and the size of the output marketed through them in the various regions.'

Article 3

Article 14 is replaced by the following :

'Article 14

1. Member States may grant aid to recognized producers' organizations in respect of the five years following the date of their recognition, to encourage their formation and to facilitate their administrative operation. The amount of such aid :

— shall be, for the first, second, third, fourth and fifth years respectively, 5 %, 5 %, 4 %, 3 % and 2 % of the value of production marketed under the auspices of the producers' organization,

— shall not exceed the actual cost of formation and administrative operation of the organization concerned,

— shall be paid in annual instalments for a maximum of seven years following the date of recognition.

The value of each year's production shall be calculated on the basis of :

— the annual volume actually marketed in accordance with Article 13 (1) (b), first indent,

— the average producer prices obtained.

2. However, notwithstanding paragraph 1, Member States may grant to producers' organizations recognized before 1 July 1988 aid not exceeding, for the first, second and third years respectively, 3 %, 2 % and 1 % of the value of production marketed under the auspices of the producers' organization.

In such cases :

(a) in respect of each year, the value of production marketed shall be calculated on a standard basis, namely :

— producer members' average marketed production during the three calendar years immediately preceding the year in which they became members,

— average producer prices obtained by those members over the same period ;

(b) the aid shall be paid in annual instalments for a maximum of five years following the date of recognition.

3. Producers' organizations deriving from organizations which already comply to a large extent with the conditions of this Regulation shall qualify for aid under this Article only if they are formed as the result of a merger enabling the objectives referred to in Article 13 to be achieved more effectively.

However, in such a case, the aid shall be granted only in respect of the cost of formation of the organization (expenditure incurred in connection with the preparatory work and the drawing up of the memorandum and articles of association).

4. Member States may, during the five years immediately following the setting up of the intervention fund referred to in Article 15, grant aid to producers' organizations, either directly or through credit institutions, in the form of loans on special terms to cover part of the anticipated cost of the market intervention operations referred to in Article 15.

5. The aid referred to in this Article shall be notified to the Commission in a report from the Member States at the close of each financial year.

6. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 33.'

Article 4

The following Article 15b shall be inserted :

'Article 15b

1. In cases where

— a producers' organization or

— an association of producers' organizations having adopted the same rules,

operating in a specific economic area, is considered to be representative of production and producers in that area, the Member State concerned may, at the request of the organization or association and, during the first three years of application, after

consultation with the producers in the area, make the following rules binding on producers established in the area who do not belong to one of the organizations referred to above :

(a) the rules on notifying production referred to in the third indent of Article 13 (1) (b);

(b) the rules on production referred to in the second indent of Article 13 (1) (b);

(c) the rules on marketing referred to in the second indent of Article 13 (1) (b);

(d) for products listed in Annex II, the rules adopted by the organization or association with regard to market withdrawals, provided that the withdrawal price does not exceed the level laid down in Article 18 (1) (a),

on condition that these rules have been in force for at least one year.

2. For the purposes of this Article "economic area" shall be understood to mean a region made up of bordering or neighbouring production zones in which production and marketing conditions are homogeneous.

3. Member States shall notify the Commission of the rules which they intend to make binding on all producers in a specific economic area.

4. The rules which are made binding on all producers in a specific economic area must not cause any harm to intra-Community trade.

5. The rules referred to in paragraph 1 (c) may not be made binding until after they have been approved by the Commission. The Commission shall decide not later than 45 days after such rules are notified.

6. The Commission shall decide that the rules notified cannot be made binding, or shall repeal the extension of the rules decided on by the Member State,

— if it finds that the extension in question excludes competition in a substantial part of the common market or jeopardizes free trade, or that the objectives of Article 39 of the EEC Treaty are endangered,

— if it finds, pursuant to Article 2 of Regulation No 26, that Article 85 (1) of the Treaty is applicable to the agreement, decision or practice, the extension of which is notified or decided. The Commission's decision with regard to that agreement, decision or practice shall apply only from the date of such finding.

7. Member States shall take all appropriate measures

— to ensure that the rules referred to above are respected,

— to penalize infringements of these rules.

They shall notify the Commission of such measures immediately.

8. Where paragraph 1 is applied, the Member State concerned may decide that non-member producers are liable to the organization, or where appropriate the association, for all or part of the membership fees paid by the producer members in so far as these are used to cover :

— administrative costs resulting from application of the scheme referred to in paragraph 1,

— the cost of research, market research and sales promotion measures undertaken by the organization or association and benefiting all producers in the area.

9. Where paragraph 1 (c) and (d) is applied, Member States shall, through the producers' organizations or any other agency or natural or legal persons designated for the purpose, ensure the withdrawal of those products which do not comply with the marketing rules or which have not been able to be sold at a price level at least equal to the withdrawal price.

10. The Council, acting by a qualified majority on a proposal from the Commission, shall adopt the general rules for this Article.

11. The Member States shall forward the list of economic areas referred to in paragraph 2 to the Commission. Within one month after forwarding, the Commission shall approve the list or shall, after consultation with the Member State concerned, decide on the amendments which the latter must make to it.

12. The rules for implementing this Article shall be adopted in accordance with the procedure laid down in Article 33.

13. On expiry of the third year of application of the arrangements defined in this Article the Commission shall forward to the Council a report accompanied by, where appropriate, proposals enabling the Council to decide whether the arrangements referred to above should be maintained, amended or repealed.

As long as the Council has not taken a decision, the Article shall remain in force.'

Article 5

The following Article 18a shall be inserted:

'Article 18a

1. Where the provisions of Article 15b (1) (c) and (d) are applied, the Member State shall grant compensation to non-member producers in respect of the quantities of products covered by Annex II

— which cannot be marketed pursuant to Article 15b (1) (c), or

— which have been withdrawn from the market pursuant to Article 15b (1) (d).

2. This compensation shall be calculated in accordance with the second subparagraph of Article 19 (2).

3. Article 18 (3) shall apply to the granting of the compensation for products withdrawn from the market.

4. Detailed rules for the application of this Article shall be adopted where necessary in accordance with the procedure laid down in Article 33.'

Article 6

In Article 19 (1), 'peaches' is replaced by 'apricots, aubergines, peaches and tomatoes'.

In Article 19 (2), 'Article 15 (1)' is replaced by 'Article 15 (1) and 15b (1)'.

Article 7

Article 19a is replaced by the following:

'Article 19a

1. Notwithstanding Article 19, in cases where, for pears during the period 1 July to 31 August, for peaches, apricots, tomatoes and aubergines and on one of the representative markets referred to in Article 17 (2), the prices communicated to the Commission pursuant to paragraph 1 of that Article remain below the buying-in price, plus 5 % of the basic price, for two consecutive market days, the Commission shall, without delay, record that the market in the product in question is in a state of serious crisis.

2. Upon that finding, the producer Member States shall, through the body or the natural or legal persons appointed by them for the purpose, buy in the products of Community origin offered to them, provided that these products satisfy the quality and grading requirements laid down by the quality standards and that they have not been withdrawn from the market pursuant to Article 15 (1) or Article 15b (1). The products concerned shall be bought in at the price referred to in the second subparagraph of Article 19 (2) obtaining in the Member State in which the product originated.

3. Buying-in operations shall be suspended as soon as prices remain higher than the buying-in price plus 5 % of the basic price for two consecutive market days. Once this condition is fulfilled, the Commission shall record the fact without delay.

4. The Commission may exempt a producer Member State at its request from the obligation laid down in paragraph 2 provided that:

— in that Member State at least two-thirds of the national output of the product concerned is marketed through producers' organizations, or if

— in that Member State the national output of the product concerned is less than 8 % of the average Community output of that product; if a Member State makes the request for summer pears, the percentage may be 12 %.

5. Where the representative production markets in a given Member State do not permit the recording of prices the provisions referred to in paragraphs 1, 2 and 3 may be applied on the basis of the prices recorded at the wholesale stage on the most representative markets in the Member State concerned.

6. Detailed rules for the application of this Article shall be adopted in accordance with the procedures laid down in Article 33.'

Article 8

The following Article 19b shall be inserted:

'Article 19b

Intervention operations may be carried out pursuant to this Regulation only in respect of products which are marketed in the marketing year during which they were harvested.

However, where abnormal circumstances so justify, measures derogating from the first subparagraph may be adopted in accordance with the procedure referred to in Article 33.'

Article 9

In Article 20 (1), 'Articles 18, 19 and 19a' is replaced by 'Articles 18, 18a, 19 and 19a'.

Article 10

In Article 21 (1) and (2), 'under Article 18' is replaced by 'under Articles 15b and 18'.

Article 11

1. The first subparagraph of Article 23 (2) is replaced by the following :

'2. Reference prices shall be fixed for the first marketing year of application :

— on the basis of the arithmetic mean of producer prices in each Member State plus the amount defined in paragraph 4.

— taking into account the trend in production costs in the fruit and vegetables sector.

For subsequent marketing years they shall be fixed :

(a) for oranges, mandarins, satsumas, tangerines and other similar citrus hybrids, with the exception of clementines, until the 1989/90 marketing year at a level equal to that of the previous marketing year adjusted by an amount equal to the difference between, firstly, the amount resulting from the application to that reference price of the percentage increase in the basic prices and the buying-in prices in relation to the preceding marketing year, and, secondly, the amount corresponding to the increase in the financial compensation laid down by Regulation (EEC) No 2511/69 in relation to the said marketing year ;

(b) for the other products at a level equal to that of the previous year, plus, after deduction of the amounts referred to in paragraphs 2a and 4,

— a percentage corresponding to that of the average production cost trend in the fruit and vegetables sector less a figure corresponding to the growth in productivity,

— the amounts referred to in paragraphs 2a and 4 applying to the marketing year in question.

However, the level thus obtained may not exceed the arithmetic mean of producer prices of each Member State plus the amounts defined in paragraphs 2a and 4, plus a figure corresponding to the trend in production costs in the fruit and vegetables sector, less a figure corresponding to the growth in productivity ; the level to be adopted may moreover not be less than the reference price of the previous marketing year.

However, when calculating the reference prices of lemons, clementines and other citrus fruits referred to in the previous subparagraph, the amount of the reference price shall be increased beforehand by up to 15 % in order to take into account the difference between the amounts representing :

— on the one hand, the trend that reference prices for these products would have followed, had there been no variation in the financial compensation, and

— on the other hand the trend recorded for that compensation.

This increase shall be shared in equal parts between the first two marketing years following the date of entry into force of Regulation (EEC) No 3284/83.'

Article 12

1. In the case of producers' organizations which, before the date of entry into force of this Regulation, and acquired entitlement to aid under Article 14 (1) or (1) (a) of Regulation (EEC) No 1035/72 in the version which applied up to that date :

(a) those provisions shall continue to apply to annual payments yet to be made where the first annual payment had been made without granting the recognition referred to in Article 13 (2) of Regulation (EEC) No 1035/72 as it appears in this Regulation ;

(b) at their request, Article 14 (1) of Regulation (EEC) No 1035/72, as it appears in this Regulation, shall apply if, by the date on which recognition was granted in accordance with Article 13 (2) of the said Regulation, no annual payment had yet been made.

From the date of entry into force of this Regulation no further rights to aid under the version which is applicable up to that date of Article 14 (1) or (1) (a) of Regulation (EEC) No 1035/72 may be acquired.

2. The producers' organizations which have not been granted the recognition referred to in Article 13 (2) of Regulation (EEC) No 1035/72 shall cease to be entitled to the financial compensation referred to in Article 18 at the end of a period of 12 months calculated from the date of entry into force of this Regulation ; for Greece, however, the period shall be 24 months.

Article 13

This Regulation shall enter into force as soon as the Community has presented to the two candidate countries its declaration concerning the accession negotiations on fruit and vegetables.

The Council, acting by a qualified majority, on a proposal from the Commission, shall note when the condition referred to in the first paragraph has been fulfilled and shall fix the date on which this Regulation shall enter into force in accordance with that paragraph.

However, Article 11 shall apply to each product as from the beginning of the year following the date of entry into force of this Regulation.

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

Done at Brussels, 14 November 1983.

For the Council

The President

C. SIMITIS