COUNCIL REGULATION (EEC) No 1789/89

of 19 June 1989

amending Regulation (EEC) No 2036/82 adopting general rules concerning specific measures for peas, field beans and sweet lupins

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1431/82 of 18 May 1982 laying down special measures for peas, field beans and sweet lupins [1], as last amended by Regulation (EEC) No 1104/88 [2], and in particular Article 3 (5) thereof,

Having regard to the proposal from the Commission,

Whereas the control systems provided for in Articles 13 and 14 of Regulation (EEC) No 2036/82 [3], as last amended by Regulation (EEC) No 1105/88 [4], are ill-adapted to the new market situation; whereas checks to ensure that imported peas and field beans are processed in such a way as to render them ineligible for aid must be stepped up in view of the development of imports from third countries; whereas under those circumstances, verification of the Community origin of peas, field beans and sweet lupins for which aid is applied for may be simplified;

Whereas the price paid to the producer should be verified at the level of the first buyer of the Community products in question; whereas, to streamline the administrative procedures for such controls, the declaration of delivery defined in Article 3 (2) and the certificate referred to in Article 4 (2) of Regulation (EEC) No 2036/82 may be abolished; whereas, however, provision should be made for the approval of the first buyer under conditions to be determined, which approval may be withdrawn in case of failure to comply with the rules laid down;

Whereas approved users who use the products in question may ensure compliance with the minimum price by undertaking to apply for the aid only in respect of products from an approved first buyer; whereas Articles 3 (4) and 5 (1) of Regulation (EEC) No 2036/82 should be amended accordingly;

Whereas the definition of sweet lupins in Article 11 (4) of Regulation (EEC) No 2036/82 entails difficulties of controls of the seed and does not afford any certainty that the products for which the aid is applied for have an acceptable bitter seed content; whereas provision should accordingly be made for a definition of sweet lupins permitting verification of products intended for use as feedingstuff to see whether they comply with the criteria of eligibility for the aid;

Whereas the definition and classification of the products actually used, as laid down in Article 5 (2) of Regulation (EEC) No 2036/82, take account of technical processing procedures the relevance and exhaustiveness of which depend on technical progress; whereas the said paragraph should indicate only the general conditions under which the products in question should be considered as having been used; whereas Article 6 (5) of Regulation (EEC) No 2036/82 must be adapted to the definition of the products actually used;

Whereas Article 7 of Regulation (EEC) No 2036/82 does not enable a member of an approved organization to market his products; whereas, to qualify under the aid system, producers must either market all their production or use it completely under an approved organization; whereas, for the sake of fairness, producers who market part of their production should be authorized to join an approved organization;

Whereas Article 12a (3) of Regulation (EEC) No 2036/82 provides for a carry-over of monetary gaps when calculating differential amounts where they differ by less than one point; whereas that rule leads in certain cases to an extension of the validity of monetary gaps which are no longer in force; whereas that rule should be abolished to make it easier to understand the calculation of the amount of the aid in national currencies;

Whereas the control system provided for in Article 13 of Regulation (EEC) No 2036/82 must be made more stringent by the possibility of providing for a guarantee ensuring that products imported are processed in such a way as to render them ineligible for aid;

Whereas the measures provided for in this Regulation lead to changes in the administrative procedures; whereas, where temporary adaptations are necessary, provision should be made for the possibility of adopting transitional measures,

[1] OJ No L 162, 12. 6. 1982, p. 28.
[2] OJ No L 110, 29. 4. 1988, p. 16.
[3] OJ No L 219, 28. 7. 1982, p. 1.
[4] OJ No L 110, 29. 4. 1988, p. 18.

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2036/82 is hereby amended as follows:

1. In Article 3 (1):

   — 'approved' is inserted before 'first buyer',

   — 'in accordance with the condition laid down in the second indent of Article 3 (3) of Regulation (EEC) No 1431/82,' is deleted.

2. The following is added to Article 3 (4):

   'and who in particular undertakes to apply for the aid only for peas, field beans and sweet lupins delivered by a producer to an approved first buyer;'.

3. In Article 3, point (2) is deleted and points (3), (4), (5) and (6) become points (2), (3), (4) and (5) respectively.

4. The following point is added to Article 3:

   '6. "sweet lupins" shall mean lupins not containing more than 5 % bitter seeds under conditions determined in accordance with the procedure laid down in Article 12 of Regulation (EEC) No 1117/88.'

5. Article 4 is replaced by the following:

   'Article 4

   1. In cases where the products are sold by the producer, the aid shall be granted for the products in question subject to their purchase by an approved first buyer.

   2. Approval as referred to in paragraph 1 shall be given by the Member State where the person concerned is established only to first buyers who:

   — undertake to conclude with the producer, in all cases where they purchase peas, field beans and sweet lupins produced in the Community, a contract providing for the payment of at least the minimum price referred to in the second indent of Article 3 (3) of Regulation (EEC) No 1431/82,

   — keep accounts in accordance with rules to be laid down,

   and

   — agree to submit to all controls laid down under the application of the aid arrangements.

   3. Without prejudice to the implementation of the provisions of paragraph 4, where approved first buyers fail to comply with the condition relating to the minimum price, they shall be required to compensate each producer concerned, under conditions to be determined.

   Compensation shall be equal to twice the difference between the minimum price and the price actually paid.

   4. Approval as referred to in paragraph 1 shall be withdrawn, temporarily or permanently depending on the gravity or the failure to comply with the provisions in question, if, except in cases of *force majeure*, one of the undertakings or one of the conditions for approval laid down in paragraph 2 is no longer fulfilled or satisfied.

   5. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 12 of Regulation (EEC) No 1117/88.'

6. Article 5 is replaced by the following:

   'Article 5

   1. In the case referred to in Article 4, the aid shall be granted to any approved user making use of the products provided that:

   — he lodges an application with the agency appointed by the Member State in whose territory the product has been used,

   — the quantity specified in the aid application has entered the undertaking and has actually been used.

   2. For the purposes of this Article, a product shall be deemed to have actually been used if it has been;

   (a) irreversibly processed and incorporated in feedingstuffs or is intended to be incorporated therein as a result of the type of processing which it has undergone;

   (b) irreversibly processed for use as foodstuffs, or available for sale after being prepared for market for consumption without further processing.

   Irreversible processing as referred to in points (a) and (b) and additional conditions may be determined in accordance with the procedure laid down in Article 12 of Regulation (EEC) No 1117/78.'

7. Article 6 (5) is replaced by the following:

   '5. The aid to be paid shall:

   (a) for the products referred to in Article 5 (2) (a), be the amount fixed in Article 3 (1) of Regulation (EEC) No 1431/82;

   (b) for the products referred to in Article 5 (2) (b), be the amount fixed in Article 3 (2) of Regulation (EEC) No 1431/82.'

8. In Article 7 (1), 'if a producer does not market the product' is replaced by 'if a producer does not market the entire amount produced'.

9. Article 11 (4) is deleted.

10. The second sentence of Article 12a (3) is deleted.

11. The following paragraph is added to Article 13 :

'For peas and field beans which have not undergone treatment to ensure that they are processed in such a way as to render them ineligible for aid, controls may also entail the lodging of a security, which may not be higher than that necessary to ensure that it is not worthwhile to fail to submit imported products to controls.'

Article 2

Where traditional measures prove necessary to facilitate the changeover from the arrangements in force to those provided for in this Regulation, such measures shall be adopted in accordance with the procedure laid down in Article 12 of Regulation (EEC) No 1117/78. They shall continue to apply for the period strictly required to facilitate the changeover from one set of arrangements to the other.

Article 3

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities.*

It shall apply from 1 July 1989.

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

Done at Luxembourg, 19 June 1989.

For the Council

The President

C. ROMERO HERRERA