COMMISSION REGULATION (EEC) No 3353/90

of 22 November 1990

laying down detailed rules for the application of the aid scheme for small producers of certain arable crops

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1346/90 of 14 May 1990 instituting aid for small producers of certain arable crops (1), and in particular Article 3 thereof,

Whereas Article 2 of Regulation (EEC) No 1346/90 defines the concept of small producers benefiting from the aid scheme; whereas the factors to be taken into account for the application of the criteria adopted should be defined;

Whereas, as regards the criterion of the main source of agricultural income, the gross standard margins laid down in Commission communication 88/C/133/01 (2) should be taken as a basis; whereas, however, in certain cases the utilized agricultural area under crops eligible for aid may, compared to the total utilized agricultural area of the holding, be sufficient to provide the main income;

Whereas, as regards the criterion of farming as main occupation, the special provisions laid down in Council Regulation (EEC) No 797/85 of 12 March 1985 on improving the efficiency of agricultural structures (3), as last amended by Regulation (EEC) No 2176/90 (4), should be taken into account;

Whereas, for the proper functioning of the aid scheme, Member States must carry out checks ensuring that aid is granted in accordance with the conditions laid down; whereas aid applications must include a minimum amount of information for the purposes of the checks to be carried out;

Whereas, to ensure efficient application, provision should be made for random on-the-spot checks of the accuracy of applications submitted; whereas these checks should be made on a sufficiently representative number of aid applications;

Whereas provision should be made for the recovery of aid in the case of undue payment and for appropriate penalties to be imposed for false declarations;

Whereas, for the proper operation of the aid scheme, provision should be made for the data given in aid applications to be computerized;

Whereas the Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

The aid referred to in Article 1 of Regulation (EEC) No 1346/90 shall be granted to producers satisfying the conditions set out in Article 2 of that Regulation and in accordance with the detailed rules laid down in this Regulation.

Article 2

1. For the purposes of Article 2 (1) of Regulation (EEC) No 1346/90, 'utilized agricultural area' means the total area of arable land, permanent grassland and pasture, land given over to permanent crops and family gardens of an agricultural holding. However, Member States may exclude waste land in the areas referred to in the Annex and where fallow is normally part of the rotation system from the calculation of the total area.

For the purposes of this Regulation, 'agricultural holding' means a techno-economic unit under a single management producing agricultural products.

2. The condition laid down in the second indent of Article 2 (1) of Regulation (EEC) No 1346/90 shall be deemed to have been met when:

— the total standard gross margin for the crops referred to in Article 1 (1) of Regulation (EEC) No 1346/90 is greater than the total standard gross margin for other crop and livestock enterprises; the standard gross margin to be taken into account for the purposes of this Regulation are those determined pursuant to Commission Decision 85/377/EEC (5) and listed in Commission communication 88/C 133/01, or

— at least 75 % of the utilized agricultural area of the holding is given over to the crops referred to in Article 1 (1) of Regulation (EEC) No 1346/90 and on condition that the aid application does not indicate the presence on the holding of intensive livestock farming in excess of:

  — 3 livestock units per ha UAA, and /or

  — 100 pigs and/or calves and/or 1 000 head of poultry per holding.

(1) OJ No L 134, 28. 5. 1990, p. 10.
(2) OJ No C 133, 24. 5. 1988, p. 1.
(3) OJ No L 93, 30. 3. 1985, p. 1.
(4) OJ No L 198, 28. 7. 1990, p. 6.
(5) OJ No L 220, 17. 8. 1985, p. 1.

The table given in the Annex to Regulation (EEC) No 797/85 shall be used to convert cattle, equines, sheep and goats into livestock units.

3. For the purposes of this Regulation, Member States shall define the concept of farmers who practise farming as their main occupation referred to in the third indent of Article 2 (1) of Regulation (EEC) No 1346/90.

For natural persons this definition shall include at least the condition that the part of the income coming from the agricultural holding must be not less than 50 % of the farmer's total income and that the working time devoted to activities outside the holding must be less than half the farmer's total working time.

For persons other than natural persons, Member States shall define the said concept taking into account the criteria mentioned above.

4. Member States shall communicate to the Commission the definition adopted pursuant to paragraph 3.

Article 3

1. All producers of the products referred to in Article 1 (1) of Regulation (EEC) No 1346/90 satisfying the requirements laid down in Article 2 of that Regulation shall submit an aid application to the competent body of the Member State concerned before a date to be fixed by that Member State and at the latest by 31 May of each year for the current marketing year.

2. The aid application shall include at least the following information :

— the name, first name(s) and address of the applicant,

— the total utilized agricultural area of the holding in hectares and ares, distinguishing between the area owner-farmed and the area farmed as a tenant. Should the applicant also own areas which are let out, he shall mention this in the application, indicating the names, first names and addresses of the tenants of the areas in question,

— the area in hectares and ares given over to the crops referred to in Article 1 (1) of Regulation (EEC) No 1346/90, where these are main crops, the area given over to other crops and the area of waste land,

— the cadastral reference of the areas referred to in the second and third indents or an equivalent document recognized by the body responsible for checking the areas such as a map or an aerial or satellite photograph allowing the inspection authorities to clearly identify the location of the areas,

— the number of livestock units broken down by species, including the number of poultry, present on the holding at the time the application is submitted,

— a declaration by the applicant, under penalty of rejection of the application, that the application for aid includes all the areas belonging to the categories referred to in the second and third indents,

— an undertaking by the applicant that he will submit himself to any checks allowing his capacity as a 'small producer' to be verified.

Article 4

1. Member States shall set up a system of administrative and physical checks ensuring that the conditions for the grant of the aid are met. They shall carry out on-the-spot random checks on the accuracy of the applications submitted and verify compliance with the conditions referred to in Article 2 (2) and (3).

2. The on-the-spot checks shall be carried out on 5 % of applications submitted in each competent administrative unit each year. The holdings checked must be representative of the various types of production and the geographical and topographical distribution of the holdings in question.

Article 5

1. The checks shall relate primarily to the area sown with one or other of the crops giving entitlement to the aid. In these checks, all the areas covered by an application must be visited and the crops in question must be verified.

The areas shall be measured as follows :

(a) continuous areas : systematic measurement ;

(b) fragmented areas : in accordance with the following formula :

— from two to five : the largest and one medium-sized area must be measured,

— from six to ten : the two largest plus one medium-sized area must be measured,

— more than ten : the two largest plus three medium-sized areas must be measured.

In cases covered by (b), the results of measurement shall be extrapolated to all the areas covered by the application. However, the applicant may request all the said areas to be measured.

2. At the request of the Member State concerned, the measurement referred to in paragraph 1 may also be carried out by measuring the areas on aerial or satellite photographs. In this case the Member State shall give the undertaking that :

— the information referred to in the fourth indent of Article 3 (2) allows the inspectors to identify the areas involved,

— the method used and the results obtained have the same probative force under the national legal system as on-the-spot measuring methods,

— the Commission will be informed regularly of the cases in which this paragraph is applied and of the progress of work and the results obtained.

Article 6

1. The percentage referred to in Article 4 (2) shall be increased to 10 % in cases where, on checking the applications for aid in any administrative unit, it is found that 20 % of the applications checked have led to a correction to the detriment of the beneficiaries.

2. Should paragraph 1 be applied, Member States shall inform the Commission without delay.

Article 7

The areas referred to in the second indent of Article 3 (2) shall be checked and the number of livestock units, including the number of poultry, on the holding shall be verified by a visit to the holding involved, and/or by any cross-checking possible for enterprises benefiting under a special scheme.

Article 8

1. Member States shall pay the amount of aid by 31 March of the marketing year following the end of that in respect of which the aid is granted at the latest.

2. For the purposes of Article 6 of Council Regulation (EEC) No 1676/85 (1), the operative event for entitlement to the aid shall be considered to have occurred on 1 July of the following marketing year.

3. The aid shall be converted into national currency using the agricultural conversion rate for cereals.

Article 9

1. If the check reveals a discrepancy in the aid application of up to 10 % and a maximum of one hectare between the area for which aid was applied and that determined, the aid shall be calculated on the basis of the area determined less the excess.

2. If the abovementioned excess is greater than the limits provided for in paragraph 1, the application for the marketing year in question shall be rejected. Furthermore, if the excess is the result of an application containing, either wilfully or as a result of gross negligence, incorrect information, the applicant shall be excluded from aid for the following marketing year.

3. In cases where the condition laid down in the first indent of Article 2 (1) of Regulation (EEC) No 1346/90 is not met, either wilfully or as a result of gross negligence, the applicant shall lose his entitlement to aid for the following marketing year and any aid already paid, recovered under Article 12 (1), shall be increased by 20 %.

Article 10

Each inspection visit must be recorded in a report indicating among other things the number of parcels visited, those measured, the measuring instruments used, and all the reasons which led to the application being rejected or accepted in part.

Article 11

If the check cannot be carried out for reasons attributable to the applicant, Article 9 (2) shall apply, except in cases of *force majeure*. Evidence indicating the existence of a case of *force majeure* must be submitted by the party concerned in writing within 10 days from the date of the planned verification.

Article 12

1. In the case of undue payment of the aid, the amounts involved shall be recovered, plus interest calculated on the basis of the time elapsing between payment of the aid and repayment by the beneficiary. Member States shall fix the rate of interest to be applied for this calculation on the basis of the interbank interest rates applicable on the last working day of the month of payment of the aid to the applicant, plus at least two percentage points.

2. The amounts referred to in paragraph 1 shall be paid to the disbursing authorities and agencies, who shall deduct them from the expenditure financed by the EAGGF, Guarantee Section.

Article 13

Member States shall take any additional measures necessary for the application of this Regulation, in particular those intended to prevent several applications being made for the same area. For this purpose Member States shall computerize the data given in the aid applications. These measures shall be communicated to the Commission without delay.

Article 14

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 the 1990/91 marketing year.

(1) OJ No L 164, 24. 6. 1985, p. 1.

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

Done at Brussels, 22 November 1990.

For the Commission
Ray MAC SHARRY
Member of the Commission

ANNEX

Areas where waste land may be excluded for the calculation of the UAA

1. Portugal : the entire territory ;
2. Spain : the areas referred to in the Annex to Commission Regulation (EEC) No 777/89 (1) ;
3. France : the areas referred to in the Annex to Commission Regulation (EEC) No 778/89 (2) ;
4. Italy : the areas referred to in the Annex to Commission Regulation (EEC) No 2157/89 (3).

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(1) OJ No L 84, 29. 3. 1989, p. 25.
(2) OJ No L 84, 29. 3. 1989, p. 27.
(3) OJ No L 207, 19. 7. 1989, p. 14.