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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 866/90

of 29 March 1990

on improving the processing and marketing conditions for agricultural products

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 10 (1) of Council Regulation (EEC) No 4256/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the EAGGF Guidance Section (4) provides for a Council Decision on the forms of the Fund's contribution to measures to improve the conditions under which agricultural products are processed and marketed with a view to achieving the objectives referred to in Council Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (5);

Whereas the types of investments eligible for a contribution from the EAGGF Guidance Section (hereinafter referred to as the 'Fund') should be defined, taking account of the current situation both on the agricultural markets and in the agriculture and food sector, as well as the prospects for developing outlets for agricultural products;

Whereas, in order to ensure a coherent improvement in the processing and marketing of agricultural products, financial assistance from the Fund for investments in that field should be made conditional on the inclusion of such investments in sectoral plans containing an in-depth analysis of the situation in the sector and the proposed improvement;

Whereas, for such plans, the Commission should adopt sectoral Community support frameworks, to be drawn up in agreement with the Member States concerned, within the framework of the partnership, taking account, as appropriate, of the Community support frameworks adopted for plans relating to Objectives 1 and 5 (b) defined in Article 1 of Regulation (EEC) No 2052/88 (6);

Whereas an effective means should be adopted for ensuring that Community action is consistent with the common agricultural policy; whereas the most effective way to achieve this is to adopt selection criteria with which to determine which investments should be given priority for consideration;

Whereas in order to ensure the necessary transparency in the operations of the Fund, eligible expenditure should be defined;

Whereas it must be ensured that investments are viable and that farmers have a share in the economic benefits of the action taken;

Whereas application of the measure should in general be restricted to the agricultural products listed in Annex II to the Treaty; whereas in certain cases, however, processed products no longer included in the Annex may be of importance to farmers insofar as they create new market outlets and/or increase the added value of the basic product;

Whereas, in connection with the reform of the Structural Funds, Regulation (EEC) No 4256/88 provides for new forms of assistance by the Fund as regards improving structures for processing and marketing agricultural products; whereas general rules should therefore be laid down for its implementation;

(1) OJ No C 240, 20. 9. 1989, p. 16.
(2) OJ No C 304, 4. 12. 1989, p. 375.
(3) OJ No C 56, 7. 3. 1990, p. 51.
(4) OJ No L 374, 31. 12. 1988, p. 25.
(5) OJ No L 374, 31. 12. 1988, p. 1.
(6) OJ No L 185, 15. 7. 1988, p. 9.

Whereas, to allow for the differing structural situations in the various regions of the Community, contribution rates should be differentiated by category of region;

Whereas, to ensure harmony between the Community's actions and those of the Member State and to ensure the additionality of Community assistance, the investments selected for financing by the Fund should be co-financed by the Member State;

Whereas, to ensure a smooth transition for the financing arrangements under Regulation (EEC) No 355/77 (1), as last amended by Regulation (EEC) No 4256/88, to the new provisions in this Regulation, provision should be made for transitional rules regarding action by the Fund approved before the entry into force of this Regulation;

Whereas provision should be made for the possibility of laying down certain specific implementing rules adapted to the special nature of the measure that is the subject of this Regulation, to ensure that it is implemented effectively,

HAS ADOPTED THIS REGULATION:

Article 1

Objectives of the common measure

1. A common measure within the meaning of Article 2 (1) of Regulation (EEC) No 4256/88 and under Objective 5 (a), as defined in Article 1 of Regulation (EEC) No 2052/88, is hereby introduced with the aim of facilitating the improvement and rationalization of the treatment, processing and marketing of agricultural products. This measure shall also help to achieve Objectives 1 and 5 (b) as set out in the said Article 1, namely promoting the development of those regions in which development is lagging behind and rural areas.

2. To facilitate the improvement and rationalization of the treatment, processing and marketing of agricultural products, the EAGGF Guidance Section, hereinafter referred to as the 'Fund', may contribute to the financing of investments which satisfy at least one of the following criteria:

(a) helping to guide production in keeping with foreseeable market trends or encouraging the development of new outlets for agricultural products, in particular through facilitating the production and marketing of new products or of high-quality products, including organically-grown products;

(b) relieving the intervention mechanisms of the market organizations by furthering long-term structural improvement where this is needed;

(c) being located in regions which are faced with special problems in adapting to the economic consequences of developments on the agricultural markets, or being of benefit to such regions;

(d) helping to improve or rationalize marketing channels or processing procedures for agricultural products;

(e) helping to improve the quality, presentation and preparation of products or encouraging a better use of by-products, particularly by recycling waste.

TITLE I

Sectoral plans, Community support frameworks and selection criteria

Article 2

Role of the sectoral plans, Community support frameworks and selection criteria

In order to ensure that the processing and marketing sectors develop in a way that is consistent with Community policy, and particularly with the common agricultural policy, and to ensure the effectiveness of Community aid, the financing of investments must take place within the framework of plans designed to improve the structures relating to the various products in question (hereinafter referred to as 'sectoral plans') to be drawn up by the Member States, and on the basis of corresponding Community support frameworks, drawn up with due regard for the criteria of selection of investments eligible for Community financing (hereinafter referred to as 'selection criteria') to be laid down by the Commission.

Article 3

Content of the plans

1. The sectoral plans shall include at least the information specified in Articles 4 and 5.

2. The information forwarded with the sectoral plans must reflect:

— the situation throughout the territory of the Member State in question, for the information referred to in Article 4, in cases where, and to the extent that, this is necessary in examining whether the plans have a sound basis,

— the situation in the part of the territory affected by the planned investment in the context of the plans, in the case of information referred to in Article 5.

3. In the case of regions and areas covered by Objectives 1 and 5 (b) of the reform of the Structural Funds, it must be shown that sectoral plans are consistent with the regional or rural development plans and with the appropriate Community support frameworks.

(1) OJ No L 51, 23. 2. 1977, p. 1.

Article 4

Analysis of the initial situation

1. The information referred to in Article 3 (1) must, as regards the description of the current situation of the processing and marketing sector, include at least the following:

(a) demarcation of the sector, and the reasons therefor;

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

— the economic and social situation in general, insofar as this has a bearing on the plan, and in particular the prospective outlets for agricultural products,

— the importance of agriculture,

— the situation as regards the processing and marketing of the agricultural products covered by the plan, and especially the existing capacity of the undertakings concerned and their geographical distribution.

2. The information referred to in paragraph 1 must be up to date.

Article 5

Objectives and implementation of the plans

1. The information referred to in Article 3 (1) must, as regards the objectives and resources relating to the plan, include at least the following:

(a) the needs to be met by the plan and the objectives which it is intended to achieve, in particular the capacity to be reached;

(b) the economic importance of the plan for the sector concerned and the implications for agricultural undertakings;

(c) any aid measures in place in the sector covered by the plan;

(d) the means proposed for achieving the objectives, particularly the total amount of investment and the financial participation of the Member State;

(e) the relationship of the plan to any other measures to encourage the harmonious development of the whole economy;

(f) the estimated time required for the execution of the plan, which in principle should be between three and five years;

(g) the likely effects on the environment and, where appropriate, the measures to be taken in this sector in accordance with Community legislation;

2. Member States shall also forward information concerning conditions for the implementation of the plans, either overall for all the plans, or for each sectoral plan; this information must include at least the following:

(a) the administrative, legislative or financial measures adopted or to be taken to implement the plan, in particular details of the intended form of action and the authorities or bodies designated in accordance with Articles 14 (1) and 16 (1) of Regulation (EEC) No 4253/88;

(b) a description of the national arrangements for the management and control of the operational programmes or global grants which are the subject of the application for aid.

Article 6

Updating and new plans

If the period initially estimated by the Member State for implementation of a plan has expired, or if economic developments make it necessary for the plan to be adjusted, an updated or new plan must, in addition to the information referred to in Articles 4 and 5, include a report showing:

(a) the progress made in relation to the forecasts in the plan, including the public funds made available;

(b) a description of developments in the situation regarding the processing and marketing of products, showing that there is a need for updating or for a new plan.

Article 7

Submission of sectoral plans and decision on corresponding Community support frameworks

1. The sectoral plans and any amendments thereto shall be forwarded to the Commission by the Member States concerned.

2. The Community support frameworks relating to sectoral plans shall be established in agreement with the Member State concerned, within the partnership, and by Commission Decision under the procedure laid down in Article 29 of Regulation (EEC) No 4253/88. In accordance with the rules laid down in Title III of that Regulation, Community support frameworks shall include a statement of the priorities for Community intervention, the total amount of the financial assistance chargeable to the Fund and an indicative figure for the rate of aid envisaged as the Fund's contribution.

3. The Commission shall, as part of the procedure referred to in paragraph 2, ensure that the sectoral plans are consistent with the priorities of Community policies, in particular those of the common agricultural policy.

Article 8

Selection criteria

1. The selection criteria referred to in Article 2 shall be used to determine which investments are to receive assistance from the Fund, within the framework of the approval of the operational programmes or global grants referred to in Article 9. The criteria shall lay down priorities and indicate investments which must be excluded from Community financing.

2. The selection criteria shall be drawn up in accordance with the guidelines of the Community's policies, particularly the common agricultural policy.

3. The selection criteria and, where applicable, amendments thereto shall be adopted by the Commission in accordance with the procedure laid down in Article 29 of Regulation (EEC) No 4253/88. The Decision shall be communicated to the Member States and published in the *Official Journal of the European Communities.*

TITLE II

Operational programmes and global grants

Article 9

Forms of assistance

The Fund shall provide assistance in the implementation of the measure which is the subject of this Regulation by means of:

(a) contributions to operational programmes within the meaning of Article 5 (5) of Regulation (EEC) No 2052/88;

or

(b) the provision of global grants within the meaning of Article 5 (2) (c) of Regulation (EEC) No 2052/88.

Article 10

Applications for aid

1. The authorities and intermediaries referred to in Article 14 (1) and 16 (1) of Regulation (EEC) No 4253/88 may submit through the Member State concerned applications for aid in the form of operational programmes or global grants.

2. Applications for aid must supply the necessary information to enable the Commission to:

— evaluate the conformity of the proposed activities and measures with Community policies, particularly the common agricultural policy,

— evaluate the contribution the proposed action will make to the improvement of processing and marketing structures, the coherence of the measures which constitute it and their conformity with the sectoral plans, the Community support frameworks and the selection criteria,

— assess the socio-economic impact of the measures in the areas concerned, with particular reference to the production sectors affected,

— assess the impact of the proposed measures on the environment and their effectiveness in that field,

— check that the execution methods and the financing are suited to the effective implementation of the measures,

— determine the precise form of assistance to be provided by the Fund, where appropriate on the basis of information already given in any corresponding Community support framework.

Article 11

Eligible investments and expenditure

1. To be eligible for aid from the Fund in the forms listed in Article 9, investments must relate to:

— rationalizing or developing the preparation, preservation, treatment and processing of agricultural products or recycling of by-products or manufacturing waste,

— improving marketing channels, including the transparency of price formation,

— applying new processing techniques, including the development of new products and by-products, or opening up new markets and innovative investments,

— improving product quality.

2. Special priority may be given to investments to improve the marketing structures for agricultural products, particularly if such investments encourage the development of new outlets by facilitating the marketing of new products or of high-quality products having characteristics which comply with the Community's policy on foodstuffs, including organically-grown products.

3. Eligible expenditure in respect of the investments referred to in paragraph 1 may include:

(a) the construction and acquisition of immovable property, with the exception of land purchase;

(b) new machinery and equipment, including computer software and programmes;

(c) general costs, such as architects', engineers' and consultants' fees and feasibility studies, up to a ceiling of 12 % of the cost referred to in (a) and (b).

Article 12

Products concerned and participation of the producers

1. Investments must contribute to improving the situation of the basic agricultural production sector in question; in particular, having regard to the specific nature of each sector, they must guarantee the producers of the basic products an adequate and lasting share in the resulting economic benefits.

2. The investments must concern the products listed in Annex II to the Treaty, to the exclusion of those covered by Council Regulation (EEC) No 4042/89 of 19 December 1989 on the improvement of the conditions under which fishery and aquaculture products are processed and marketed (1). However, investments concerning the products of CN codes 4502, 4503 and 4504 shall also be allowed.

(1) OJ No L 388, 30. 12. 1989, p. 1.

The Commission may accept investments relating to other products provided the aid recipients have direct contractual links with the producers of the basic agricultural products.

3. Sufficient evidence must be given that the investments will be profitable.

Article 13

Ineligible investments

The following investments shall be excluded:

— investments at the retail level,

— investments in the processing or marketing of products from third countries,

— investments in respect of which work commenced more than six months before the date on which the Commission receives the application for assistance.

Article 14

Recipients

1. Aid from the Fund shall be granted to the natural or legal persons, or groups thereof, who are ultimately responsible for financing the investments.

2. Aid from the Fund shall be paid through:

— the authorities designated in accordance with Article 14 (1) of Regulation (EEC) No 4253/88, or

— the intermediary designated in accordance with Article 16 (1) of Regulation (EEC) No 4253/88.

Article 15

Decision to grant aid and budget commitment

1. The Commission shall decide on the granting of aid from the Fund in accordance with the procedure laid down in Article 29 of Regulation (EEC) No 4253/88, within six months of receipt of the applications, provided that all of the required information has been provided.

2. The decision referred to in paragraph 1 shall be communicated to the authority referred to in Article 14 (1) of Regulation No 4253/88 or to the intermediary referred to in Article 16 (1) of that Regulation, and to the Member State concerned.

3. In the case of multiannual operations, the authority or intermediary referred to in paragraph 2 shall forward to the Commission each year the information required for the commitment of the annual instalments referred to in Article 20 (2) of Regulation (EEC) No 4253/88 and for checking that the investments to be made comply with the decisions taken in accordance with paragraph 1 and Article 7 (2).

TITLE III

Financial and general provisions

Article 16

Aid rates and rules

1. Aid from the Fund may not exceed, in relation to the eligible costs of the selected investments:

(a) 50 % in the Objective 1 regions referred to in point 1 of Article 1 of Regulation (EEC) No 2052/88;

(b) 30 % in other regions.

2. Aid from the Fund shall in general take the form of capital grants. If other forms of assistance are used, they must not exceed the said capital grant equivalent.

3. The Member States concerned must undertake to participate in financing the investments selected by the Commission for assistance from the Fund, to at least 5 % of the eligible costs.

4. The financial contribution by the recipients referred to in Article 14 (1) in relation to the eligible costs of the selected investments must be not less than:

(a) 25 % in the Objective 1 regions referred to in point 1 of Article 1 of Regulation (EEC) No 2052/88;

(b) 45 % in other regions.

5. Within the field of application of this Regulation, Member States may take aid measures which are subject to conditions or rules concerning granting which differ from those provided for in this Regulation, or, where the amounts of aid exceed the ceilings specified herein, on condition that such measures comply with Articles 92 to 94 of the Treaty.

Article 17

Procedures for payment of the aid

1. Payment of advances or balances to be carried out in accordance with Article 21 of Regulation (EEC) No 4253/88 shall be made to the authority designated in accordance with Article 14 (1) of the said Regulation or, where applicable, to the intermediary referred to in Article 16 (1) of that Regulation, the Member States concerned being duly informed of these payments.

2. The authority or intermediary referred to in paragraph 1 shall check the supporting documents relating to the expenditure of the final recipients and ensure that they are in order before paying the Community contribution. It shall also make on-the-spot checks to verify that the information contained in the application corresponds to the true situation.

Payment to final recipients must take place within six weeks of the date when the application was lodged, provided that the application contains all the documents required to establish that the expenditure was justified.

3. At the end of each quarter the authority or intermediary referred to in paragraph 1 shall forward to the Commission a statement of the payments made to recipients.

4. An implementation report shall be sent to the Commission every year.

Article 18

Checks

Pursuant to Article 23 of Regulation (EEC) No 4253/88, the authority designated in accordance with Article 14 (1) of that Regulation or, where appropriate, the intermediary referred to in Article 16 (1) of that Regulation, shall forward to the Commission, at the latter's request, all supporting documents and evidence that can establish that the financial or other conditions have been met.

Article 19

Transition period for the approval of plans

Without prejudice to Articles 20 and 22, until 31 December 1990 a decision may be taken to provide the assistance referred to in Article 9 in respect of measures which are not part of an approved sectoral plan, provided that the sector in question is covered by a specific programme approved by the Commission under Article 5 (1) of Regulation (EEC) No 355/77 and that the implementation period laid down has not expired.

Article 20

Discontinuance of carry-over

By way of derogation from Article 10 (3) of Regulation (EEC) No 4256/88, Article 21 of Regulation (EEC) No 355/77 shall not apply to projects which have not been granted aid from the Fund for 1990.

However, projects submitted on or after 1 May 1988 in accordance with Regulation (EEC) No 355/77 which are not selected for aid may be included in operational programmes to be financed in 1990 and 1991 provided that they meet the criteria and conditions stipulated in this Regulation. The third indent of Article 13 shall not apply.

Article 21

Transitional provisions for payments in respect of projects under Regulation (EEC) No 355/77

1. From 1 January 1991, the payment of aid in respect of the projects referred to in Article 10 (3) of Regulation (EEC) No 4256/88 shall be carried out in accordance with Articles 17 and 18 of this Regulation.

2. Member States shall, not later than 15 December 1990, communicate to the Commission

— the authorities they have designated to pay out the aid in question,

— the estimated amount of the payments for the first half of 1991, and

— the basis on which that estimate was calculated.

3. On receipt of the duly substantiated communication, the Commission shall make an initial lump-sum payment; it will make additional payments on the basis of the quarterly statements referred to in Article 17 (3), according to the estimated needs communicated by the Member States.

Article 22

Extension of programmes

Specific programmes relating to agricultural products, approved in accordance with Article 5 of Regulation (EEC) No 355/77 and for which the deadlines for completion are between 1 January 1989 and the date of entry into force of this Regulation, shall be extended until 31 December 1990 and, in respect of the projects referred to in the second paragraph of Article 20 of this Regulation, until 31 December 1991.

Article 23

Application

The Commission shall adopt detailed rules for the application of this Regulation in accordance with the procedure laid down in Article 29 of Regulation (EEC) No 4253/88.

Article 24

Entry into force

This Regulation shall enter into force on 1 January 1990.

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

Done at Luxembourg, 29 March 1990.

For the Council

The President

M. O'KENNEDY