COMMISSION REGULATION (EEC) No 571/91

of 8 March 1991

amending Regulation (EEC) No 2677/85 laying down implementing rules in respect of the system of consumption aid for olive oil

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats [1], as last amended by Regulation (EEC) No 3577/90 [2], and in particular Article 11 (8) thereof,

Whereas Commission Regulation (EEC) No 2677/85 [3], as last amended by Regulation (EEC) No 3251/90 [4], laid down implementing rules in respect of the system of consumption aid for olive oil;

Whereas experience shows that the plant and packaging methods used by each undertaking should be inspected before approval is granted;

Whereas experience also demonstrates the need for more stringent checks on new undertakings during their first year of operation in order to avoid certain distortions; whereas, however, these particular provisions should not apply in Spain and Portugal during the first two years of operation of this aid scheme, which was introduced in those countries on 1 December 1990;

Whereas, to ensure the sound operation of the scheme, there should be closer checks on sales by approved undertakings direct to consumers; whereas, with the same aim in view, the checks on each undertaking should be stepped up and more precisely specified;

Whereas in certain cases, to ensure that checks are effective, inspections should extend to the retail level;

Whereas, in the interests of sound administration, the decanting of oil put up in small containers should be subject to stricter conditions and penalties should be increased where unauthorized decanting has occured;

Whereas, in the interests of sound administration, the responsibilities of the trade organizations should be more clearly defined and the penalties for failure to comply with those obligations should be laid down;

Whereas, in order to improve monitoring of the aid scheme in the various Member States, the supplementary information to be communicated periodically to the Commission should be specified;

Whereas the Common Customs Tariff has been replaced by the new combined nomenclature; whereas articles which refer to products under the former tariff headings should therefore be amended;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2677/85 is hereby amended as follows:

1. the following paragraph is added to Article 2:

   'For the purpose of granting approval, the competent authorities of the Member State shall carry out an on-the-spot inspection of the plant and packaging capacity of the undertaking seeking approval. In those Member States which have set up the inspection agency referred to in Regulation (EEC) No 2262/84, that agency may participate in such inspections if it considers this necessary.';

2. Article 3 (a) is replaced by the following:

   '(a) the stocks of olive oil, by origin and packaging, existing at the date on which it was approved and at the beginning of each marketing year;'

3. the following paragraphs are added to Article 3:

   'Where a packaging undertaking sells, either directly or through an outlet which it owns, olive oil to direct consumers, it shall record in its daily stock record, in respect of each batch exceeding 20 litres, the quantity and quality of the oil sold and the number of the corresponding sales invoice. In the case of batches not exceeding 20 litres, the reference to the invoice may be replaced by a reference to the dispatch note or other similar document relating to the batch.

(1) OJ No 172, 30. 9. 1966, p. 3025/66.
(2) OJ No L 353, 17. 12. 1990, p. 23.
(3) OJ No L 254, 25. 9. 1985, p. 5.
(4) OJ No L 311, 10. 11. 1990, p. 24.

However, even in the case of batches exceeding 20 litres, the reference to the sales invoice shall not be required if the undertaking keeps and daily record showing the name and address of each purchaser, the quantity and quality sold and the number of the relevant dipatch note.

The qualities referred to in this Article are those defined in the Annex to Regulation No 136/66/EEC.';

4. Article 11 (2) is replaced by the following:

'2. The security shall be lodged by an establishment meeting the criteria laid down by the Member State to which application for aid is made. The security shall be valid for at least six months.';

5. the following subparagraph is added to Article 11 (3):

'The body responsible for checking entitlement to aid shall notify the paying agency each month of its findings as regards the recognition of entitlement to aid of each approved undertaking.';

6. the following paragraph is added to Article 11:

'4. Notwithstanding paragraph 1, the grant of an advance to a newly-approved undertaking is subject to lodging of a security amounting to 130 % of each advance applied for during the first year of operation.

The security shall be valid for at least 12 months and shall be released as soon as the Member State has recognized entitlement to the aid in respect of the quantity shown in the application.

This paragraph shall apply to undertakings in Spain and Portugal from the 1992/93 marketing year.';

7. Article 12 is replaced by the following:

'Article 12

1. For the purposes of the checks referred to in Article 7 of Regulation (EEC) No 3089/78, Member States shall inspect the stock records of all approved undertakings. They shall also carry out random checks on the financial supporting documents relating to the transactions carried out by these undertakings. Each undertaking shall be inspected for this purpose at least once in each marketing year. Inspections shall cover a substantial percentage of the applications by each undertaking. Where inspection agencies are responsible for carrying out these checks, that percentage shall be indicated in the work schedules referred to in Article 3 of Regulation (EEC) No 27/85.

However, in the case of newly-approved undertakings, the inspection shall cover all applications submitted during the first year of operation. This subparagraph shall apply to undertakings in Spain and Portugal only from the 1992/93 marketing year.

In the course of the inspections referred to in the first subparagraph Member States shall check that:

— the total quantities of oil stored in bulk and packaged and the empty packagings physically present at the undertaking and the storage place referred to in Article 7,

correspond with

— the data contained in the stock records.

If any doubt arises as to the accuracy of the information given in the application for aid, Member States shall also check the accounts of approved undertakings.

The Member State may also subject approved undertakings to unannounced checks of the same type as those referred to above.

If the approved undertaking packages both olive and seed oil, the checks referred to in this Article may be extended to stock records and accounts in respect of the packaging of oils other than olive oil.

As a horizontal check and particularly where there is doubt about the accuracy of the figures in the aid applications, the Member State shall undertake regular checks among persons supplying raw materials and packaging and operators to whom the packaged oil has been supplied.

2. If any doubt arises as to the accuracy of the information given in the application for aid, the Member State shall suspend payment of aid in respect of the quantity of olive oil which is the subject of the inspection and take any steps necessary to ensure recovery of aid which may turn out to have been wrongly granted and the payment of any fines. The Member State shall also exclude the applicant from receiving aid in the form of an advance in respect of subsequent aid applications submitted during a period not exceeding 18 months. Where such an exclusion measure is taken, the Member State shall, within 180 days of submission of the aid application, carry out the checks required for aid to be granted.

3. Advances and aid wrongly paid shall be reimbursed together with interest calculated for the period between payment of the aid and reimbursement at the interbank rate applicable during the month in which the aid was paid to the applicant plus two percentage points.

The amount paid to the Member State shall be deducted from claims made on the EAGGF by the paying agencies or authorities of the Member States.

4. Where investigations are undertaken to discover fraud, all operators purchasing or selling olive oil put up in immediate containers of a net content not exceeding five litres, with the exception of direct consumers, shall be subject to possible checks.

5. If approval is temporarily withdrawn from a packaging undertaking pursuant to Article 3 (2) of Regulation (EEC) No 3089/78, renewed approval may not be applied for during the period of withdrawal by any natural or legal person carrying out packaging activities in the same establishment as the undertaking affected by the withdrawal unless the person in question proves to the satisfaction of the Member State concerned that such application for renewed approval is not intended to evade the withdrawal of approval provided for in the said Article.

6. Where it is found by the competent authority that an application for aid relates to a quantity greater than that for which the entitlement to aid was recognized, the Member State shall immediately withdraw approval for a period of from one to five years, depending on the seriousness of the infringement, without prejudice to any other penalties.';

8. the following Article 12a is inserted:

'Article 12a

1. Subject to paragraph 2, the decanting of olive oil put up in an immediate container of a net content not exceeding five litres shall be prohibited.

2. In duly justified exceptional cases, the Member State may authorize decanting subject to the lodging of a security equal to 150 % of the amount of consumption aid in respect of the quantity of oil that is to be decanted. The security shall be released when the operator can prove to the satisfaction of the Member State concerned that the olive oil decanted has been released for consumption without benefit of the aid or without the certificate referred to in Article 18 (3) having been obtained.

3. In case of unauthorized decanting, the operator shall pay to the Member State in which the operation is carried out an amount equal to double the consumption aid applicable to the quantities involved.

Where an operator is unable to furnish, to the satisfaction of the Member State concerned, proof of the use of oil purchased in immediate containers of a net content not exceeding five litres, the operator involved shall pay to the Member State an amount equal to double the consumption aid applicable to the quantities involved.

If the operator referred to in the previous subparagraphs is the occupier of an approved packaging undertaking, approval shall be withdrawn for a period of between one and five years.

The amount paid to the Member State shall be deducted from claims made on the EAGGF by the paying agencies or authorities of the Member States.';

9. the second subparagraph of Article 13 (1) is replaced by the following:

'In this case, the recognized trade organizations shall check, on the premises of the approved packaging undertakings indicated to them by the Member States, that the data given on the aid applications conforms to the stock records and that those records have been kept in accordance with Article 3.';

10. the second subparagraph of Article 13 (2) is replaced by the following:

'The trade organizations shall, without delay, inform the Member State in question:

— if they are not granted access to the packaging undertakings, or

— if they find in the course of the checks irregularities in the stock records.';

11. the following paragraph 3 is added to Article 13:

'3. Where checks on their activities reveal that a recognized trade organization has not complied with its obligations, the Member State shall impose an administrative fine of not less than 10 % of the deduction referred to in Article 11 (5) of Regulation No 136/66/EEC for the marketing year in question.

In the case of any further infringement, the Member State shall withdraw approval of the body concerned for a period of from one to five years, depending on the seriousness of the infringement detected. Withdrawal of approval shall take effect from the marketing year following that in which the infringement was detected.

Where approval of a trade organization is withdrawn, its members may submit their applications direct to the responsible body of the Member State or through another approved trade organization, which shall, in this case, assume the functions of the trade organization from which approval has been withdrawn.';

12. in Article 15 (1), 'falling within Common Customs Tariff subheading 15.17 B' and 'falling within Common Customs Tariff subheading 15.10 C' are replaced by 'falling within CN codes 1522 00 31 and 1522 00 39' and 'falling with CN codes 1519 19 00 and 1519 20 00' respectively;

13. in the second subparagraph of Article 16 (1), 'Article 12 (3)' is replaced by 'Article 12a';

14. in Article 17 (1), 'falling within subheading 15.07 A of the Common Customs Tariff' is replaced by 'falling within CN code 1509 or 1510';

15. in point (a) of the second subparagraph of Article 17 (2), 'falling within subheading 15.07 A I b) of the Common Customs Tariff' is replaced by falling within CN code 1509 10 10'.

    In point (b) of the second subparagraph of Article 17 (2), 'falling within subheading 15.07 A I c) of the Common Customs Tariff' is replaced by 'falling within CN code 1510 00 10';

16. in the fifth subparagraph of Article 17 (4), 'falling within subheading 15.07 A I a) of the Common Customs Tariff' is replaced by 'falling within CN code 1509 10 90'.

    In the sixth subparagraph of Article 17 (4), 'falling within subheading 15.07 A I b) or 15.07 A I c) of the Common Customs Tariff' is replaced by 'falling within CN code 1509 10 10 or 1510 00 10'.

    In the seventh subparagraph of Article 17 (4), 'falling within subheadings 15.07 A I c) and/or 15.07 A II b) of the Common Customs Tariff' is replaced by 'falling within CN codes 1510 00 10 and/or 1510 00 90';

17. in Article 18 (1) (c), 'preserved fish or vegetables' is replaced by 'preserved foodstuffs',

18. the following paragraphs are added to Article 19:

    'Each Member State shall notify to the Commission:

    (a) by the end of the second month following the beginning of each marketing year,

    — the number of approved undertakings,

    — the names of the recognized trade organizations and the undertakings to be inspected by each of them, together with their identification numbers,

    — for each undertaking, the quantities of oil in respect of which aid was paid during the previous two marketing years,

    — for each recognized trade organization, the total quantities, broken down by quality, packed by all the member undertakings receiving aid during the two preceding marketing years;

    (b) by the end of the second month following the end of each half year:

    — approved undertakings which began or ceased operations during that period,

    — for each undertaking, the quantities and qualities of oil in respect of which aid was applied for and recognized during that period, and the quantities and qualities sold to direct consumers,

    — undertakings in respect of which precautionary measures under Article 12 were taken or on which penalties were imposed during that period and the measure or penalty imposed on each undertaking,

    — the trade organizations on which penalties were imposed and the penalty imposed on each organization.

    The Commission shall regularly notify the Member States of the information received.';

19. (Does not concern the English text.);

20. the Annex is replaced by the Annex to this Regulation.

Article 2

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 Brussels, 8 March 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX

CERTIFICATE Regulation (EEC) No 2677/85	EC EG EF CE EK
Issuing body (name and address):	No ..... Original/Copy
	Holder (name, address and Member State):
Description:	Net weight (in figures):
	CN code:

Net weight (in words):

Declaration by the issuing body:

This is to certify that the olive oil described above has been made ineligible for consumption aid in accordance with Article 17 (1) of Regulation (EEC) No 2677/85 (packaged/exported/used in preserved products/released on the market for consumption without further treatment/used for industrial purposes) (1).

(Place) (Date)

(Signature) (Stamp)

(1) Delete as appropriate.