COMMISSION REGULATION (EEC) No 3602/92

of 14 December 1992

amending Regulation (EEC) No 27/85 laying down detailed rules for the application of Regulation (EEC) No 2262/84 laying down special measures in respect of 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 2262/84 of 17 July 1984 laying down special measures in respect of olive oil [1], as last amended by Regulation (EEC) No 593/92 [2], and in particular Article 5 thereof,

Whereas, under Article 1 (3) of Regulation (EEC) No 2262/84, the Commission may take part in the discussions held by the agency's management; whereas the arrangements for such participation in the discussions of the four agencies should therefore be laid down;

Whereas, under Article 1 (4) of Regulation (EEC) No 2262/84, Member States shall act upon the agency's findings and shall regularly communicate to the Commission details of the action taken and the sanctions applied as a result of the agency's findings; whereas the intervals at which such communications are to be made and their content are to be laid down;

Whereas experience has shown that the period provided for in Article 6 (2) of Commission Regulation (EEC) No 27/85 [3], as last amended by Regulation (EEC) No 2427/86 [4], within which the Commission is to take a decision with regard to the amount representing the agency's actual expenditure, is too short; whereas that period should therefore be extended;

Whereas checks to ensure the correct application of Community rules imply an effort to guarantee the quality of olive oil; whereas, therefore, agencies should be allowed to take samples of the olive oil held by the operators covered by the control arrangements;

Whereas the content of the agency's work schedule should be specified;

Whereas the areas in which personnel responsible for control must have the necessary technical knowledge should be specified;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Oils and Fats,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 27/85 is hereby amended as follows:

1. Article 2 (3) and (4) is replaced by the following:

'3. The number of staff on the agency's payroll, their level of training and experience, the resources made available to them and the manner in which the agency's departments are organized shall be such as to permit the duties referred to in Article 1 (2) of Regulation (EEC) No 2262/84 to be carried out.

More specifically, personnel responsible for control shall have the necessary technical knowledge and experience to enable them to carry out the checks specified in Council Regulations (EEC) No 3089/78 (*) and (EEC) No 2261/84 (**) and Commission Regulation (EEC) No 3061/84 (***) and (EEC) No 2677/85 (****), in particular as regards the assessment of agronomic data, technical checks on mills and processing undertakings and the scrutiny of stock records and accounts.

4. The officials shall, for the purpose of carrying out the duties assigned to them pursuant to Regulation (EEC) No 2262/84, be given appropriate powers by the Member State concerned to obtain any information or evidence and carry out any checks which may be necessary for the purpose of the controls provided for, and in particular:

(a) the authority to check books and other business records;

(b) the authority to make copies of or take extracts from business records;

(c) the right to request that information be given verbally, on the spot;

(d) the right of access to any business premises or land covered by the control arrangements;

(e) the authority to take samples of the olive oil held by the natural or legal persons subject to inspection.

[1] OJ No L 208, 3. 8. 1984, p. 11.
[2] OJ No L 64, 10. 3. 1992, p. 1.
[3] OJ No L 4, 5. 1. 1985, p. 5.
[4] OJ No L 210, 1. 8. 1986, p. 36.

Member States shall take whatever measures are necessary to safeguard the rights vested by their national legal orders in those natural and legal persons who are subject to inspection.

Member States shall recognize the officials' findings as having conclusive force under their national legal orders.

(*) OJ No L 369, 29. 12. 1978, p. 12.
(**) OJ No L 208, 3. 8. 1984, p. 3.
(***) OJ No L 288, 1. 11. 1984, p. 52.
(****) OJ No L 254, 25. 9. 1985, p. 5.'

2. Article 3 is amended as follows:

(a) Paragraphs 1 and 2 are replaced by the following:

'1. From the 1985/86 marketing year onwards the agency shall propose a work schedule and a budget estimate in respect of each marketing year.

The work schedule shall, without prejudice to the conditions laid down in the Community rules in force, be drawn up on the basis of the representativeness of the operators covered by the control arrangements.

Priority shall, however, be given to any area of activity or region in which there is a major risk of irregularities.

2. The work schedule shall include:

(a) a plan for the use of the data in the computerized files specified in Article 16 of Regulation (EEC) No 2261/84; such data shall include information arising from the register of olive cultivation;

(b) a schedule and description of the inspection work the agency plans to carry out;

(c) a schedule of the work to be carried out by the agency with a view to determining yields of olives and olive oil;

(d) a description of the checks to be conducted on the end-uses of olive oil, olive-residue oil and the by-products thereof, and on the origin of imported olive oil and olive-residue oil;

(e) a list of any other work to be carried out at the request of the Member State or the Commission pursuant to the second subparagraph of Article 1 (2) of Regulation (EEC) No 2262/84;

(f) details of the training which the agency intends to provide for its staff;

(g) a list of the officials responsible for liaising with the Commission.

The agency shall, moreover, indicate the estimated number of man-days required in respect of each area of activity in the work schedule'.

(b) Points 8 and 9 in paragraph 3 are replaced by the following:

'8. Contribution by the Community, by virtue of Article 1 (5) of Regulation (EEC) No 2262/84.

9. Income pursuant to Article 1 (5) of Regulation (EEC) No 2262/84'.

3. Article 4 is amended as follows:

(a) the second subparagraph of paragraph 1 is replaced by the following:

'The Commission may, within 30 days, and without prejudice to the responsibilities of the Member State concerned, request that the latter introduce any change in the budget or work schedule that the Commission considers appropriate.'

(b) the second subparagraph of paragraph 3 is replaced by the following:

'However, should an exceptional situation arise in which there is a risk of fraud seriously jeopardizing the correct application of Community rules in respect of olive oil, the agency shall inform the Member State in question and the Commission. In such a case, the agency may modify its plan and the inspection work after having obtained the agreement of the Member State in question. That Member State shall inform the Commission thereof without delay.'

4. Article 5 is amended as follows:

(a) paragraphs 2 and 3 are replaced by the following:

'2. The agency shall, not later than 30 days after the end of each quarter, submit to the Member State and the Commission a summary report on the work carried out by the agency, together with a financial statement showing the cash-flow situation and the expenditure incurred by the agency in respect of each budget chapter and a list of the infringements liable to give rise to administrative or penal sanctions recorded as a result of checks carried out over the quarter.

3. Representatives of the Commission, of the Member State concerned and of the agency shall meet at least once every quarter to consider the work carried out by the agency, the work which it intends to carry out in the future, the effects of such work and the general operation of the agency'.

(b) The following paragraph 4 is added:

'4. In order to ensure that the Commission is represented on the agency's management body, in compliance with Article 1 (3) of Regulation (EEC) No 2262/84, the agency shall inform the Commission, by telex or telecopier, at least six days before each meeting of its deliberative or management bodies, the date of such meeting, the relevant agenda and the documents to be discussed in it.'

5. Article 6 (2) is replaced by the following:

'2. Not later than six months after that date the Commission shall take a decision on the amount representing the agency's actual expenditure that is to be granted to the producer Member State in respect of the year in question. That amount, less the advance payments referred to in paragraph 4 shall be paid once it is established that the agency has performed the work assigned to it.'

6. Article 7 is replaced by the following:

'Article 7

In accordance with Article 1 (4) of Regulation (EEC) No 2262/84, Member States shall communicate to the Commission within 30 days of the end of each quarter:

— a list of the infringements liable to give rise to administrative or penal sanctions, recorded by the agency as a result of checks carried out over the preceding quarter, specifying the nature and seriousness of the infringement,

— the rulings relating to administrative or penal sanctions, or decisions not to proceed with a ruling, issued by the Member State's competent authorities on the basis of the agency's list referred to in the preceding indent, specifying, in respect of each ruling, the nature, severity and implications of the sanction, the amount of any fine imposed and, if appropriate, the fact that the infringement represents a second or subsequent offence, as well as the natural or legal person sanctioned and the competent authority which imposed the sanction.'

7. Article 8, and the second subparagraph of Article 9 are deleted.

8. The first subparagraph of Article 9 becomes Article 8.

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, 14 December 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission