COMMISSION REGULATION (EEC) No 466/92

of 27 February 1992

amending Regulation (EEC) No 1272/88 laying down detailed rules for applying the set-aside incentive scheme for arable land

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2328/91 of 15 July 1991 on improving the efficiency of agricultural structures [1] and in particular Article 2 (8) thereof,

Whereas in determining the arable land eligible for aid under the set-aside scheme provided for in Article 2 of Commission Regulation (EEC) No 1272/88 [2], as last amended by Regulation (EEC) No 3481/90 [3], account should be taken of the particular situation applying in the five new Länder of Germany;

Whereas in these new Länder of Germany the reference period provided for in Article 3 (1) of Regulation (EEC) No 1272/88 should be re-defined so as to permit more recent periods to be used;

Whereas the possibility of terminating a set-aside undertaking upon definitively ceasing agricultural activity should be extended to schemes for early retirement not covered by Council Regulation (EEC) No 1096/88 [4], as amended by Regulation (EEC) No 3808/89 [5] and accepted by the Commission;

Whereas in order to ensure efficient control of the scheme more specific provisions should be made regarding irregularities, sanctions and the recovery of amounts unduly paid;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Committee on Agricultural Structures and Rural Development,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1272/88 is hereby amended as follows:

1. The following subparagraph is added to Article 2 (1):

'In the five new Länder of Germany areas which in 1990/1991 were set-aside in accordance with the national scheme of set-aside may be taken into account.'

2. The following sub-paragraph is added to Article 3 (1):

'In the five new Länder of Germany, the reference period shall be the year 1989.'

3. The second subparagraph of Article 12 (3) is replaced by the following subparagraph:

'The beneficiary may terminate the undertaking at any time if he definitively ceases all agricultural activity in accordance with the conditions of Article 4 (1) of Council Regulation (EEC) No 1096/88 (*) or of any scheme of early retirement accepted by the Commission for this purpose. Such acceptance shall be subject, in particular, to the condition that the land set aside shall continue to be withdrawn from production and subject to the other conditions of the set-aside scheme at least for the remainder of the period of the undertaking.

(*) OJ No L 110, 29. 4. 1988, p. 1.'

4. Article 15 is replaced by the following:

'Article 15

1. If the check reveals a discrepancy of at least 2 % and 20 ares up to 10 % and two hectares 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. The same reduction shall apply to any aid paid in respect of previous years unless the beneficiary can prove that the discrepancy was not intentional or due to negligence on his part.

2. If the abovementioned excess is greater than the limits provided for in paragraph 1, no aid shall be due in respect of any period of the set-aside undertaking, without prejudice to any additional penalties which may be appropriate. However, aid paid in respect of previous years shall not be recovered if the beneficiary can prove that the discrepancy was not intentional or due to negligence on his part.

3. Member States shall apply financial penalties as a minimum measure in the case of failure to comply with undertakings made other than those covered by paragraphs 1 and 2, except in cases of *force majeure* or where such failure is due to other factors outside the control of the beneficiary. In the case of serious irregu-

(1) OJ No L 218, 6. 8. 1991, p. 1.
(2) OJ No L 121, 11. 5. 1988, p. 36.
(3) OJ No L 336, 1. 12. 1990, p. 71.
(4) OJ No L 110, 29. 4. 1988, p. 1.
(5) OJ No L 371, 20. 12. 1989, p. 1.

larities related to obligations covered by this paragraph, which shall include, in particular, all cases where there has been fraudulent intent on the part of the beneficiary or his successors, no aid shall be due in respect of any period of the set-aside undertaking, without prejudice to any additional penalties which may be appropriate.'

5. The following Article 15a is added:

'Article 15a

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. The rate shall be at least equivalent to the inter-bank offer rate applicable on the last working day of the month during which the amount was paid to the beneficiary, increased by 2 %.'

Article 2

This Regulation shall enter into force on the tenth 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, 27 February 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission