COMMISSION REGULATION (EC) No 887/96

of 15 May 1996

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 Community,

Having regard to Council Regulation 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 the Act of Accession of Austria, Finland and Sweden, and Council Regulation (EC) No 3290/94 [2], and in particular Article 11 (8) thereof,

Whereas Article 5 (2) of Commission Regulation (EEC) No 2677/85 [3], as last amended by Regulation (EC) No 1292/95 [4], provides for the application of penalties to undertakings that have committed irregularities; whereas, with a view to clarifying the facts constituting infringements and to ensuring that the penalties applied are commensurate with the gravity of each case, the provisions concerned should be amended;

Whereas a reasonable time limit should be set for the further enquiries and investigations referred to in Articles 9 (3) and 11 (2) of Regulation (EEC) No 2677/85; whereas, to clarify certain existing provisions and in particular to stipulate the percentage of extra checks to be made upstream and downstream of packaging undertakings, Article 12 of Regulation (EEC) No 2677/85 should be amended;

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 2677/85 is amended as follows:

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

'2. Where the competent authority in any Member State finds that the oil in question does not meet any of the definitions referred to in paragraph 1:

— if the quality ascertained meets one of the other definitions set out in the Annex to Regulation No 136/66/EEC, it shall apply a penalty equal to between 20 % and 80 % of the monthly average of consumption aid applied for in the 12 months preceding that in which the samples were taken, depending on the seriousness of the infringement;

— in all other cases, it shall immediately withdraw the undertaking's approval for a period of one to five years, depending on the seriousness of the infringement, any other penalties notwithstanding. In addition, the undertaking in question shall be required to pay the Member State an amount equal to twice the average monthly consumption applied for in the 12 months preceding that in which the samples were taken.

The penalties provided for in the first subparagraph shall not apply where the packaging undertaking proves to the satisfaction of the Member State that the failure of the oil to meet the definitions in question is the result of exceptional circumstances beyond the undertaking's control.

The amounts referred to in the first subparagraph shall be deducted from the expenditure of the European Agricultural Guidance and Guarantee Fund by the authorities or paying agencies of the Member States.

Only those months in which aid applications are lodged shall be taken into account when calculating the monthly average.

Where irregularities other than those referred to in the first subparagraph are observed, the competent authorities shall be notified immediately in each case.'

2. Article 9 (3) is replaced by the following:

'3. The Member States shall pay the aid within 150 days of submission of aid applications in respect of quantities recognized as qualifying for the aid following on-the-spot checks. However, that time limit may be extended where further investigations prove necessary following such checks. The Member States shall determine that additional time limit, which may not, however, exceed 12 months, and shall notify the Commission thereof. The additional time limit may be extended by six months in exceptional, duly substantiated cases notified to the Commission.

[1] OJ No 172, 30. 9. 1966, p. 3025/66.
[2] OJ No L 349, 31. 12. 1994, p. 105.
[3] OJ No L 254, 25. 9. 1985, p. 5.
[4] OJ No L 125, 8. 6. 1995, p. 11.

Within 45 days of on-the-spot checks and at least 20 days before the expiry of the time limit provided for in the first subparagraph, the body responsible for verifying entitlement to the aid shall report to the paying agency on the result of its checks to ascertain approved undertakings' entitlement to the aid.'

3. In Article 11 (2), the sentences:

'The Member State shall determine the new deadline and inform the Commission. Where, in such cases, the party concerned does not submit proof of the extension of the duration of validity of the existing security or of the lodging of a new security before the end of the duration of validity of the original security, that security shall be forfeit.

If, however, proof is submitted during the 10 days following the end of the duration of validity of the initial security, 50 % of that security shall be forfeit.',

are replaced by the following:

'The Member State shall determine the new time limit, which, however, may not exceed 12 months and shall inform the Commission thereof. The new time limit may be extended by six months in exceptional, duly justified cases notified to the Commission. In all cases, where the party concerned does not submit proof of extension of the validity of the existing security or of lodging of a new security before the validity of the original security expires, that security shall be forfeit. If, however, proof is submitted within 10 days of the expiry of the original security, 50 % of that security shall be forfeit.'

4. Article 12 is amended as follows:

(a) in the first subparagraph of paragraph 1, the sentence: 'They shall also carry out random checks on the financial supporting documents relating to the transactions carried out by these undertakings,' is replaced by the following: 'They shall carry out random checks of the financial accounts of the undertakings.';

(b) the fourth subparagraph of paragraph 1 is deleted;

(c) the seventh subparagraph of paragraph 1 is replaced by the following:

'As a sector-wide check, the Member State shall conduct additional checks at the premises of the suppliers of raw materials and packaging and of operators to whom the packaged oil has been supplied. Such additional checks must cover at least 10 % of approved undertakings and must be conducted in all cases where deemed necessary for purposes of recognizing entitlement to the aid. To that end, the said suppliers and operators shall keep available to the inspection authorities the requisite documentation, to be defined by the Member State.';

(d) in the second subparagraph of paragraph 6, the words '... where the quantity for which aid has been improperly applied for exceeds the checked quantity for which entitlement to aid has been recognized by at least 20 % ...' are replaced by the following: '... where the quantity for which aid has been unduly applied for is at least 20 % of the total quantity subject to checking for which entitlement to aid has been recognized ...'.

5. In Article 12a (2), the words 'In duly justified, exceptional cases ...' are replaced by the following: 'In duly justified cases ...'.

Article 2

This Regulation shall enter into force on the seventh 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, 15 May 1996.

For the Commission

Franz FISCHLER

Member of the Commission