COMMISSION REGULATION (EC) No 624/97

of 8 April 1997

amending Regulation (EEC) No 1164/89 laying down detailed rules concerning the aid for fibre flax and hemp

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1308/70 of 29 June 1970 on the common organization of the market in flax and hemp [1], as last amended by Regulation (EC) No 3290/94 [2], and in particular Article 4 (5) thereof,

Having regard to Council Regulation (EEC) No 619/71 of 22 March 1971 laying down general rules for granting aid for flax and hemp [3], as last amended by Regulation (EC) No 154/97 [4], and in particular Articles 5 (2), 6 and 6a thereof,

Whereas Commission Regulation (EEC) No 1164/89 [5], as last amended by Regulation (EC) No 466/96 [6], sets certain detailed rules of application for the aid for fibre flax and hemp;

Whereas Regulation (EEC) No 619/71 sets as requirements for granting of the aid conclusion of a contract between grower and primary processor (except in certain specific cases), an undertaking to process the flax, and approval of the primary processor; whereas detailed rules applying to this undertaking should therefore be specified and also requirements for primary processor approval; whereas rules for checking on the execution of contracts and compliance with undertakings to process and with terms of approval must be set and also procedures for cooperation between Member States; whereas provision should be made for withdrawal of approval if the terms on which it was granted are no longer met or irregularities are found;

Whereas in order to permit payment of the aid at as early as date as possible, provision should be made for security to be lodged to be lodged by the processor against processing of the flax straw within a reasonable time; whereas in view of the particular way in which primary processors operate, provision can be made for the aid to be paid without lodging of security if proof of processing has already been produced; whereas the provisions of Commission Regulation (EEC) No 2220/85 [7], as last amended by Regulation (EC) No 3403/93 [8], apply to securities;

Whereas for the purposes of payment of three-quarters of the aid to the primary processor, Member States may opt to use certificates or registered contracts; whereas these arrangements should be adjusted in line with the new terms on which aid is granted;

Whereas experience of operation of the aid scheme in the last few years has shown a need to adjust certain provisions in order to prevent the scheme from being abused; whereas in particular aid for flax produced from seed of varieties in course of examination by the national authorities that are not included in the list of varieties intended principally for fibre production should be discontinued with effect from the 1998/99 marketing year and additional information should be required in the declaration of areas sown and aid application;

Whereas Regulation (EEC) No 619/71 allows for transitional measures to be adopted for the first marketing year of application of the provisions introduced by Regulation (EC) No 154/97; whereas given the time needed for Member States to implement the approval provisions there is a need to permit provisional approval of processors and growers for the 1997/98 marketing year; whereas the case must also be accommodated of growers who have been able to have their flax straw processed in a third country;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1164/89 is amended as follows:

1. the first paragraph of Article 2 is replaced by the following:

'Aid shall be granted for flax grown from seed of the varieties listed in Annex A.';

[1] OJ No L 146, 4. 7. 1970, p. 1.
[2] OJ No L 349, 31. 12. 1994, p. 105.
[3] OJ No L 72, 26. 3. 1971, p. 2.
[4] OJ No L 27, 30. 1. 1997, p. 1.
[5] OJ No L 121, 29. 4. 1989, p. 4.
[6] OJ No L 65, 15. 3. 1996, p. 6.
[7] OJ No L 205, 3. 8. 1985, p. 5.
[8] OJ No L 310, 14. 12. 1993, p. 4.

2. Article 4 is amended as follows:

(a) the subparagraph of point (a) which begins with the words: 'The use referred to ...' and ends with the words: '... from the ground.', is replaced by the following:

'If the crop is cut the cutter bar must be no more than 10 cm from the ground for flax and 20 cm for hemp,';

(b) the following point (c) is added:

'(c) which in the case of flax are covered by a contract and/or undertaking to process as indicated in Article 3 (2) of Regulation (EEC) No 619/71.';

3. Article 5 is amended as follows:

(a) paragraph 2 is deleted;

(b) paragraph 3 is replaced by the following:

'3. The declaration shall include at least the following:

— the surname, first names and address of the declarant and his identification, if any, in the integrated administration and control system,

— the species and variety sown,

— the area sown, in hectares and ares,

— the area on which seedlings have emerged, in hectares and ares,

— the quantity of seed used, in kilograms per hectare,

— the reference to the areas sown in the integrated administration and control system or in the absence of this their cadastral reference or an indication recognized as equivalent by the body responsible for control checks on the areas,

— the date of sowing.

If crop contracts as referred to at (b) in Article 3a of Regulation (EEC) No 619/71 have been concluded a copy is to be attached.';

4. the following Articles 5a and 5b are inserted:

'Article 5a

1. Primary processors who intend to conclude contracts with textile flax growers must send the competent authority of the Member State in which the flax will be processed an application for approval giving the following information:

(a) name and address;

(b) a full description of his range of products from processing of flax straw. These must be yielded by the process of separating the fibre and the woody parts of the stalk. If the stalk is submitted to a process which renders necessary any additional treatment to lead to the separation, this process shall not count as processing for the purposes of this Regulation;

(c) if different from that required under (a), the address(es) at which the flax straw will be processed;

(d) the maximum area the crop from which can be processed annually by his equipment given a normal crop yield;

(e) a description of the type and characteristics of his processing equipment, specifying the maximum quantity of flax straw that can be processed (in tonnes/hour and tonnes/year).

If the equipment comprises several flax straw processing machines, the maximum quantity must be specified for each;

(f) the weight in kilograms of the flax straw needed to produce 1 kilogram of each of the products referred to at (b); a maximum and minimum may be specified with an indicative average;

(g) his storage capacity for straw and processed products;

(h) a descriptive plan of his installations for straw storage, processing and storage of processed products.

The application shall be accompanied by a commitment to keep records as indicated in paragraph 4 and to submit to any checks imposed for the purposes of the aid scheme.

2. Approval shall only be granted following a check on the spot and provided it is clear from this and from the information required under paragraph 1 that the existing installations can process each year the flax straw harvested from the maximum area referred to at (d) in paragraph 1 into the products referred to at (b) therein.

The competent authority shall assign an approval number to the primary processor.

Should the information given in the approval application change, the primary processor shall immediately notify the competent national authority.

3. The approval procedure referred to in paragraphs 1 and 2 shall apply *mutatis mutandis*:

(a) to growers as defined at (a) or (b) in Article 3a of Regulation (EEC) No 619/71 who undertake to process their own flax straw;

(b) to primary processors who process flax straw on a grower's behalf under (b) or (d) of Article 3 (2) of Regulation (EEC) No 619/71.

4. Approved primary processors and growers must keep records showing:

(a) the quantities of all raw materials bought in, broken down by supplier (or entering the processing premises in the case of growers undertaking to process their own flax), and stocks;

(b) the quantities of raw materials processed and the quantities and types obtained of the finished products listed in the application for approval, the quantities and types of co-products and by-products, and stocks;

(c) processing losses;

(d) quantities destroyed, with the reasons for destruction;

(e) the quantities and types of products sold or assigned by the processor, broken down by purchaser/subsequent processor;

(f) the names and addresses of purchasers and subsequent processors.

Article 5b

In cases covered by the first subparagraph of Article 3 (2) of Regulation (EEC) No 619/71 the undertaking to process must be made out by the primary processor for each contract and attached to it. It must take the form of an explicit commitment to process the flax straw from the area covered by the contract.

The competent authority may, however, allow a general undertaking to process covering all the processor's contracts to be transmitted directly to it with a copy to each grower.

In the cases indicated at (a) and (c) in the said Article 3 (2) the undertaking to process must be made out by the grower and comprise an explicit commitment to process the flax straw from the area for which aid is requested.

In the cases indicated at (b) and (d) in the said Article 3 (2) the undertaking to process must be made out by the grower and comprise an explicit commitment to have the flax straw from the area for which aid is requested processed on his behalf.

The undertaking to process must include the approval number.';

5. The following paragraphs 1a and 1b are inserted after Article 6 (1):

'1a Verification of execution of contracts and of compliance with undertakings to process and terms of approval, as mentioned in Article 5 (1) of Regulation (EEC) No 619/71, must be organized such that in each Member State at least half the total number of approved processors or growers as defined in Article 3a of that Regulation is inspected for each marketing year and that the maximum interval between inspections of a given undertaking does not exceed three years.

Inspection shall comprise physical checks and scrutiny of materials records, accounts and all commercial documents (invoices, delivery notes, etc.) relevant to the inspection.

1b Inspection under paragraph 1a of the primary processor by the Member State's competent authorities must cover all his processing of flax straw grown in the Community.

If the competent authorities of a Member State find irregularities of relevance to aid payments made or to be made by another Member State they shall immediately inform its competent authorities.

The competent authorities of one Member State may ask those of another to effect an inspection relating to the processing in its territory of flax straw grown in the requesting Member State. The Member State to which the request is addressed shall carry out the inspection within two months of receiving the request and immediately notify its findings to the competent authorities of the requesting Member State.';

6. Article 7 is replaced by the following:

'Article 7

1. If the checks provided for in Article 5 (1) of Regulation (EEC) No 619/71 show that the area declared is:

(a) less than that ascertained during the checks, the area ascertained shall be used;

(b) greater than that ascertained during the checks, the area used shall be the ascertained area minus the difference between the area originally declared and that ascertained, without prejudice to any penalties laid down under national law, except where the difference is considered justified by the Member State concerned; in that case the area ascertained shall be used.

2. If inspection pursuant to Article 5 (1) of Regulation (EEC) No 619/71 shows that the terms of approval indicated in Article 5a are no longer met approval shall be withdrawn with effect from the beginning of the marketing year following the date of inspection and the primary processor or grower in question shall not be granted fresh approval before the second marketing year following the date of inspection.

If the proof of processing indicated in Article 12a that is adduced does not correspond to reality approval shall be suspended from the beginning of the marketing year following the date of inspection for one or two marketing years depending on the seriousness of the irregularity.

The Member State may decide not to impose suspension if the irregularity was not committed deliberately or by serious negligence and is of minimal importance when set against the total operations of the primary processor or grower.

3. Member States shall notify the Commission of the measures taken for the application of this Article.';

7. Article 8 is amended as follows:

(a) the following indents are inserted after the second indent in paragraph 2:

'— the date of harvesting,

— the date of gathering,

— the quantity of straw harvested/gathered,'

(b) paragraph 3 is replaced by the following:

'3. The aid application must be accompanied by a copy of the contract and/or undertakings to process indicated in Article 3 (2) of Regulation (EEC) No 619/71.';

8. Article 10 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. If the grower processes the flax straw or has it processed on his own behalf he shall retain the certificate.

If the grower has concluded with an approved primary processor a contract as indicated in Article 3 (2) of Regulation (EEC) No 619/71, the certificate shall be given to the primary processor.

Without prejudice to application of Articles 6, 7 and 12a, three-quarters of the aid shall be paid to the person concerned on submission of the duly completed certificate. The certificate must be submitted by the last day of the marketing year at the latest.';

(b) in paragraph 3:

— the words: 'and also his identification in the integrated administration and control system or in the absence of this another number assigned by the competent authority', are added to the first indent,

— the words: 'and his approval number' are added to the fourth indent;

9. Articles 11 and 12 are replaced by the following:

'Article 11

If the Member State uses a system of registered contracts pursuant to Article 9, three-quarters of the aid shall be paid to the primary processor.

This Article shall apply without prejudice to Articles 6, 7 and 12a.

Article 12

Member States shall pay the aid for flax and hemp before 16 October following the end of the marketing year.

However, in cases where Article 12a (4) is applied this time-limit shall apply only to the quarter of the aid to be paid to growers who concluded a contract as indicated in the first subparagraph of Article 3 (2) of Regulation (EEC) No 619/71.';

10. the following Article 12a is inserted:

'Article 12a

1. The primary processor of textile flax shall, except where paragraph 4 is applied, lodge with the competent authorities of the Member State to which the aid application is made security equal to three-quarters of the aid plus 10 %, before that part of the aid is paid.

2. A grower as defined at (a) or (b) of Article 3a of Regulation (EEC) No 619/71 who undertakes to process his flax or have it processed on his behalf shall, except where paragraph 4 is applied, lodge with the competent authority of the Member State to which the aid application is made security equal to the total amount of the aid plus 10 %, before the aid is paid.

3. Regulation (EEC) No 2220/85 shall apply to securities lodged pursuant to this Article.

The primary requirement for the purposes of that Regulation shall be actual processing of all the quantities of flax straw from the areas covered by the contracts or undertakings to process (or of an equivalent quantity).

The secondary requirement for the purposes of that Regulation shall be that the primary requirement is met within at most 12 months of the end of the marketing year.

The primary requirement shall be considered to have been met in the same proportion that the quantity of flax straw for which proof of processing is given within 18 months of the end of the marketing year constitutes of the total quantities from the areas covered by contracts or undertakings to process.

Member States shall draw up a list of documentation which shall constitute such proof. The list shall include, as a minimum, monthly summaries of the materials records and copies of the sales invoices for the products of primary processing, for the entire period concerned.

4. At the request of the primary processor, or grower as indicated in paragraph 2, and with the competent authority's agreement, the aid may be paid without lodging of security provided that proof is given beforehand that the primary requirement specified in paragraph 3 has been met within 12 months of the end of the marketing year.

Payment shall be made in respect of the quantities of flax straw (as a proportion of the total quantities from the areas covered by contracts or undertakings to process) for which proof of processing is given within 18 months of the end of the marketing year. However, the competent authority may set a minimum payment amount.

If the time-limit for meeting the primary requirement is not met or if proof that it has been met is not given within the period set, the aid that would have been paid shall be reduced by a percentage equal to that of the part of the security that would have been forfeited had paragraph 3 applied.

5. If as a result of exceptional weather conditions part of the flax straw from the areas covered by contracts or undertakings to process is unfit for processing the competent authority shall following a check on the spot release the security, or pay the aid if paragraph 4 is applied, for the quantities concerned, unless the deterioration is attributable to the grower or the primary processor.'

11. The following Article 17a is inserted:

'Article 17a

1. The transitional arrangements set out in this Article shall apply to the 1997/98 marketing year.

2. Primary processors shall be considered as approved for the purposes of Article 3 (2) of Regulation (EEC) No 619/71 if they have concluded contracts and/or given undertakings to process in line with that provision.

Growers shall be considered as approved if they have given undertakings to process as indicated in that provision.

Article 5a (4) shall however apply to primary processors and growers from the 1997/98 marketing year.

3. Where growers, in line with local practice since at least the 1996/97 marketing year, have flax straw processed on their own behalf in installations located in the territory of a third country the provisions on approval shall not apply but the competent authority must ensure by physical inspection that the quantities of processed products brought back to the Member State are consistent with the quantities of straw harvested and delivered. In such cases the aid shall be paid in full to the grower following that inspection.'

Article 2

This Regulation shall enter into force on the seventh day following that of its publication in the *Official Journal of the European Communities.*

It shall apply from the 1997/98 marketing year. However, point 1 of Article 1 shall apply from the 1998/99 marketing year.

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

Done at Brussels, 8 April 1997.

For the Commission

Franz FISCHLER

Member of the Commission