COMMISSION REGULATION (EC) No 648/2001

of 30 March 2001

amending Regulation (EC) No 2366/98 laying down detailed rules for the application of the system of production aid for olive oil for the 1998/99, 1999/2000 and 2000/01 marketing years

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 organisation of the market in oils and fats [1], as last amended by Regulation (EC) No 2826/2000 [2],

Having regard to Council Regulation (EC) No 1638/98 of 20 July 1998 amending Regulation No 136/66/EEC on the establishment of a common organisation of the market in oils and fats [3], and in particular Article 4 thereof,

Having regard to Council Regulation (EEC) No 2261/84 of 17 July 1984 laying down general rules on the granting of aid for the production of olive oil and of aid to olive oil producer organisations [4], as last amended by Regulation (EC) No 1639/98 [5], and in particular Article 19 thereof,

Whereas:

(1) The management and monitoring of the system of production aid for olive oil requires information additional to that already provided for in Commission Regulation (EC) No 2366/98 of 30 October 1998 laying down detailed rules for the application of the system of production aid for olive oil for the 1998/99, 1999/2000 and 2000/01 marketing years [6], as last amended by Regulation (EC) No 1273/1999 [7], particularly with respect to the new planting referred to in Article 5, the homogeneous production zones referred to in Article 6, the quantities produced by the mills referred to in Article 11 of that Regulation and the national provisions on penalties.

(2) In order to simplify the administrative burden, any requirements that are not strictly necessary should be avoided.

(3) Under Article 14 of Regulation (EEC) No 2261/84 Member States must take the necessary steps to ensure that the product is eligible for aid. The measures in question relate, among others, to the activities of approved mills. It has been found that additional checks are needed on some mills, particularly where their situation does not allow clear confirmation of the declarations submitted based on objective facts or the declarations of other operators, or where there is a need to eliminate any risk of further irregularities on top of those already detected. In such cases, the additional checks should include the daily transmission of certain stock account data.

(4) Under Article 11a of Regulation No 136/66/EEC the individual Member States must take the necessary steps to penalise infringements of the aid scheme. Under Article 2(d) of Council Regulation (EEC) No 2262/84 of 17 July 1984 laying down special measures in respect of olive oil [8], as last amended by Regulation, (EC) No 150/1999 [9], Member States are to take specific and appropriate measures to penalise any infringements where it has been noted that a mill has not fulfilled the obligations arising under Regulation (EEC) No 2261/84. Article 13(4) of Regulation (EEC) No 2261/84 lays down that approval of a mill is to be withdrawn in cases where one of the conditions for approval referred to in paragraph 1 of that Article is no longer fulfilled. The conditions for approval are laid down in Articles 7, 8 and 9 of Regulation (EC) No 2366/98. Article 4(2) of Regulation (EEC) No 2262/84 provides for a mill's approval to be withdrawn for a period of between one and five marketing years where there is a substantial difference between the quantities of olives pressed or oil produced and the quantities shown in the stock records or where those stock records are deemed to be inadequate or inadequately communicated.

(5) To facilitate the application of the provisions on penalties laid down in a number of Council Regulations, their sequence must be specified and the concepts referred to in Article 4(2) of Regulation (EEC) No 2262/84 defined. In particular, to ensure that the associated severe penalties are reserved for serious infringements, certain differences in quantities, taking account of the size of mills, and time limits to be taken into consideration should be specified. In this context, it should be laid down that the discovery of an infringement concerning the physico-chemical properties of the category of oil in the declaration may be viewed as a serious irregularity in the stock records of all virgin olive oils which may be eligible for

[1] OJ 172, 30.9.1966, p. 3025/66.
[2] OJ L 328, 23.12.1999, p. 2.
[3] OJ L 210, 28.7.1998, p. 32.
[4] OJ L 208, 3.8.1984, p. 3.
[5] OJ L 210, 28.7.1998, p. 38.
[6] OJ L 293, 31.10.1998, p. 50.
[7] OJ L 151, 18.6.1999, p. 12.
[8] OJ L 208, 3.8.1984, p. 11.
[9] OJ L 18, 23.1.1999, p. 7.

aid. In addition, it should be specified that irregularities corrected within a certain time limit, other than those referred to in Article 4 of Regulation (EEC) No 2262/84, are not covered by Article 13(4) of Regulation (EEC) No 2261/84 but that penalties must be applied under Article 11a of Regulation No 136/66/EEC.

(6) The information to be provided by producers or their organisations under Article 10(1) of Regulation (EC) No 2366/98 is an important element of the system of production aid and its control.

(7) Criteria should be laid down for the application of Article 13(6) of Regulation (EEC) No 2261/84 concerning the approval of mills under special control arrangements. To establish whether a mill qualifies for those arrangements, its production during the olive processing period should be compared with that of the other mills in the same NUTS level III region or on an island forming part of a NUTS level III region [1]. Furthermore, in view of the seriousness of infringements committed, the system of additional checks should be applied to the mill in question at the very least. To avoid any delays in the application of that system during the period in which the mills operate, a deadline should be laid down for submitting applications for approval under the special control arrangements to the Commission and provision should be made for granting temporary approval.

(8) Article 16(1) of Regulation (EC) No 2366/98 lays down that the advance may be paid, subject to the results of checks carried out, from 16 October of each marketing year. In some cases the date from which the advance can be paid must be deferred to allow additional checks to be carried out on the producers and mills concerned. This is justified where the production in respect of which an aid application has been made corresponds to a much higher yield than that estimated for the zone concerned, or where a proposal has been made to withdraw approval from the mill in question for at least one year.

(9) 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 (EC) No 2366/98 is amended as follows:

1. The following paragraph 4 is added to Article 5:

'4. Before 31 October 2001, the Member States shall notify the Commission of the measures taken to monitor the application of the above paragraphs 2 and 3 and to penalise offenders, and of the number of olive trees from the 1998/99 and 1999/2000 marketing years regarding which, in accordance with paragraph 2:

— a declaration of intention to plant was lodged,

— the Member State considers that they are replacement plantings of grubbed trees,

— the Member State considers that they are plantings under an approved programme, in accordance with Article 4,

— the Member State considers that they are additional plantings not eligible for aid after 31 October 2001.'

2. The following text is added to Article 6(1)(a);

'— an estimate of the number of olive trees in production,

— an estimate of the area under olives,

— the average yield of virgin olive oil per kilogram of olives.'

3. The final paragraph of Article 7 is deleted.

4. In Article 8:

(a) in the second indent of point (b), the words 'to the competent agency and, where applicable, to the agency responsible for checks' are replaced by 'to the agency responsible for checks or, in the absence of such an agency, to the competent agency';

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

'(d) for a system of additional checks which involves in particular transmitting daily information on the quantities of olives pressed, the quantities of oil and olive residue obtained, the stocks of oil present and the amount of electricity consumed. Without prejudice to the monthly statement, that information shall be transmitted on the next working day to the inspection agency or, in the absence of such an agency, the competent agency.'

5. The following Article 9a is inserted:

'*Article 9a*

1. Approval shall be withdrawn from any mill failing to fulfil the conditions referred to in Article 13(1) of Regulation (EEC) No 2261/84, as laid down in Articles 7, 8 and 9 of this Regulation, for a period of time in keeping with the seriousness of the infringement.

[1] Eurostat publication ISBN 92-829-7275-0 — *Nomenclature of territorial units for statistics*, 1999 edition.

The withdrawal of approval referred to in the first subparagraph shall apply without prejudice to other penalties, including financial penalties, applicable under Article 11a of Regulation No 136/66/EEC.

2. In the case of irregularities other than those referred to in paragraph 3, Member States may decide not to withdraw approval and to apply a different penalty if the mill, when an infringement of the conditions for approval is first found, implements the measures needed to rectify that infringement within a time period to be laid down by the Member State and in any case not more than 90 days. That deadline shall be notified to the party concerned no later than 45 days after an infringement is first found.

3. In the case of the penalties referred to in paragraph 1, approval shall be withdrawn from a mill for a period of between one and five marketing years if the Member State finds irregularities including a substantial difference between the quantities of olives pressed or oil produced and the quantities shown in the stock records, or inadequacy in the stock records or in the communication thereof.

The irregularities referred to in the first subparagraph shall be considered to exist where one of the following conditions is found:

(a) a difference involving an increase of more than 25 % or 30 tonnes of oil between the total quantity of olive oil declared since the beginning of the marketing year and the quantity based on:

— plant capacity,

— energy use or workforce capacity,

— the quantities of olives entering the mill and the quantities pressed,

— the quantities and, where necessary, the composition of olive residue obtained,

— or the actual stocks of olives, oils or residues;

(b) the existence, based on an analysis of the samples referred to in Article 8(a), of oils that do not comply with the characteristics of virgin olive oils set out in point 1 of the Annex to Regulation No 136/66/EEC;

(c) a delay between December and April of the same marketing year of more than:

— 20 days in the case of transmission of the monthly statements referred to in Article 8(b).

However, the minimum value of the difference referred to in point a shall be 50 tonnes for mills with a capacity of more than 5 tonnes per working day of eight hours or an annual capacity of more than 500 tonnes.'

6. In Article 10:

(a) in the third subparagraph of paragraph 1, the words 'Producers' organisations shall notify the information in the second subparagraph to the competent body in the Member State, or where appropriate the control agency' are replaced by 'Producers' organisations shall notify the information in the second subparagraph to the control agency or, in the absence of such as agency, to the competent body in the Member State.;

(b) the following paragraph 3 is added:

'3. In the absence of the declaration of the quantities for each destination and the statement of the stock situation referred to in paragraph 1, the Member State concerned shall apply an appropriate penalty.'

7. Article 11 is replaced by the following:

'*Article 11*

1. Producer Member States shall notify the Commission, no later than the 10th day of the second month following the month in question, of the aggregate quantity of olive oil produced since the start of the marketing year, based on the aggregate of the mills' monthly statements.

2. At the request of a mill whose approval has been withdrawn, the Member State may grant approval under the special control arrangements on the conditions laid down by Article 13(6) of Regulation (EEC) No 2261/84. Those conditions shall be fulfilled only where the olive oil production of the mill concerned during the period from November to March inclusive is higher than the available processing capacity in that period in the previous marketing year of other mills in the same NUTS level III region as the mill in question or on an island forming part of a NUTS level III region.

The Member State concerned shall present to the Commission no later than the second month following withdrawal, an application from the mill for approval under the special control arrangements specifying the reasons and the type of controls it undertakes to apply to the mill concerned. If the Commission fails to deliver an opinion within 45 days, the application shall be considered to have been accepted.

In the case of approval withdrawn between 1 August and 31 March, at the request of the mill concerned and where production fulfils the conditions referred to in the first subparagraph, the Member State may grant temporary approval under its proposed special control arrangements, until expiry of the deadline laid down by the Commission in the second subparagraph.'

8. In Article 12(5), the date '1 September' is replaced by '5 September'.

9. In Article 14(4), the date '1 April' is replaced by '15 May'.

10. In Article 16:

(a) The first paragraph is replaced by the following:

'1. Without prejudice to paragraph 2, subject to the results of the checks carried out, the Member States shall pay the advance referred to in Article 12 of Regulation (EEC) No 2261/84 from 16 October of each marketing year.';

(b) the second paragraph is replaced by the following:

'2. Payment of at least 25 % of the advance shall be deferred in the case of:

(a) producers who lodge an aid application for production:

— that is more than twice the quantity resulting from the application to the number of olive trees declared of the average yield of the homogeneous zone in which the holding is mostly located,

— that comes mainly from a homogeneous zone for which aid applications correspond to total production exceeding by more than 30 % the quantity resulting from the application of the average yield for the zone to the number of olive trees on the holdings which are mostly located in that zone;

(b) producers whose production comes mainly from mills for which it has been proposed that approval be withdrawn for a period of between one and five years.

The margins by which the quantities resulting from average yields are exceeded, as referred to in point a, may be adjusted up or down by about 20 % by the Member States before 15 October of each marketing year taking account of the yields of the regional area.

Payment of the advance shall be suspended until 1 April following the end of the marketing year concerned in the cases referred to in point a, or until a decision is taken on the proposals as referred to in point b. However, Member States may decide not to suspend payment of the advance or to reduce the period of suspension in cases where an additional analysis provides objective proof of the yield given in the declarations of the party concerned.'

(c) Paragraph 2 becomes paragraph 3.

11. The following paragraph 4 is added to Article 30:

'4. A mill shall be subject to the additional checks referred to in Article 8(d) where:

(a) checks are unable to verify the mill's declarations in numerous cases or where significant volumes are concerned, and in particular where the majority of the checks carried out pursuant to paragraph 3 do not provide any proof of delivery of the quantities of olive oil declared by the mill in question;

(b) these are justified by the irregularities for which penalties are sought, particularly where a proposal to withdraw approval for between one and five marketing years is involved;

(c) approval has been granted under the special control arrangements referred to in Article 13(6) of Regulation (EEC) No 2261/84;

(d) at least 25 % of the total production of the mill is received from producers referred to in Article 16(2)(a), except where an additional analysis provides objective proof to the satisfaction of the Member State.

The additional checks shall apply from the second month following the month of the checks in question, and at least until the end of the following marketing year or, where appropriate, until the Member State decides on a proposed penalty.'

12. The following text is added to the second paragraph of Article 32:

'In particular, the Member States shall notify the Commission in the course of the month preceding the start of each marketing year of the national provisions in force providing for penalties for each case of irregularity.'

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, 30 March 2001.

For the Commission

Franz FISCHLER

Member of the Commission