

COMMISSION REGULATION (EC) No 746/96
of 24 April 1996

laying down detailed rules for the application of Council Regulation (EEC) No 2078/92 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2078/92 of 30 June 1992 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside⁽¹⁾, as last amended by Commission Regulation (EC) No 2772/95⁽²⁾, and in particular Article 9 thereof,

Whereas the scheme instituted by Regulation (EEC) No 2078/92 is implemented by means of programmes drawn up by Member States and regions;

Whereas experience gained during the initial stage of the preparation and implementation of the environmental programmes raised various general questions and revealed a number of administrative problems; whereas, in order to apply the measure effectively throughout the Community, it is necessary to regulate those matters by means of rules of application which will add detail to the framework provided by Regulation (EEC) No 2078/92 itself;

Whereas those rules of application should be restricted to those matters which currently need to be regulated at Community level, there being no desire to lay down exhaustive rules regarding all the problems arising during the preparation and implementation of agri-environmental programmes;

Whereas this Regulation does not prejudice the broad scope given to Member States by Regulation (EEC) No 2078/92 to determine the agri-environmental measures which are most appropriate to the various situations and natural circumstances in their own agriculture and to define in detail the conditions for the granting of aid in conformity with Article 5 of the said Regulation;

Whereas provision should be made to define certain conditions for the grant of aid which Member States must comply with when drawing up and implementing their agri-environmental programmes; whereas those conditions are based on the programme approval practice which the Commission has followed to date with the agreement of the Member States;

Whereas pursuant to Regulation (EEC) No 2078/92, the main undertakings to be given by farmers should

normally go beyond the mere implementation of good farming practice, in particular by means of a substantial reduction in the use of inputs, without prejudice to the need, under specific conditions, to help farmers to continue farming in unfavourable areas, to respect new legal constraints with regard to the environment and to maintain environmental practices already introduced;

Whereas consistency between the agri-environmental measures and other measures under the various Community policies must be ensured during the implementation of the agri-environmental programmes, in particular those environmental policies which affect agriculture and economic and social cohesion; whereas, in particular, any over-compensation owing to the combination of aid and any other inconsistency in the definition of undertakings must be avoided;

Whereas the content of the agri-environmental programmes must take account of developments in the Community's agricultural and environmental policies;

Whereas definition of the minimum conditions to be respected by farmers in connection with the various undertakings will ensure a more balanced application of the measures, taking account of the objectives of Regulation (EEC) No 2078/92;

Whereas the rules governing the cohesion of aid must be specified;

Whereas several matters of a general nature have been raised by Member States regarding the performance of undertakings; whereas common rules should be adopted in this respect so as to guarantee the necessary flexibility, in particular to take account of events which could affect the five-year undertakings given, without, however, jeopardizing the effective implementation of the scheme;

Whereas administrative provisions will permit better administration, monitoring and control of the agri-environmental measures; whereas in the interests of simplicity such provisions are based, as far as possible, on existing rules such as the integrated administration and control system set out in Council Regulation (EEC) No 3508/92⁽³⁾, as last amended by Regulation (EC) No 3235/94⁽⁴⁾;

⁽¹⁾ OJ No L 215, 30. 7. 1992, p. 85.

⁽²⁾ OJ No L 288, 1. 12. 1995, p. 35.

⁽³⁾ OJ No L 355, 5. 12. 1992, p. 1.

⁽⁴⁾ OJ No L 338, 28. 12. 1994, p. 16.

Whereas by virtue of Council Decision 94/729/EC of 31 October 1994 concerning budgetary discipline ⁽¹⁾ and in particular Article 6 (3) thereof, the Commission is required to establish a system of financial monitoring which enables it to react within the framework of the warning system for budgetary discipline in order to respect the agriculture guideline;

Whereas a substantially new scheme such as that introduced by Regulation (EEC) No 2078/92 requires particular effort on the part of Member States and the Commission as regards its monitoring and evaluation; whereas such monitoring and evaluation will permit the early identification of any shortcomings in the implementation of programmes, requiring, where necessary, adjustments to the measures concerned in order to bring them more closely into line with specific needs and thus enabling the objectives of Regulation (EEC) No 2078/92 to be achieved;

Whereas farmers who do not fulfil their undertakings must repay the aid received and be subject to penalties respecting the principle of proportionality; whereas Member States, when fixing such penalties, must take account of the fact that it will be difficult to carry out a systematic check on compliance with certain undertakings;

Whereas the rules on reimbursement of aid and penalties contained in this Regulation apply without prejudice to the general rules established in this respect by Council Regulation (EEC) No 595/91 ⁽²⁾ and by Council Regulation (EC, Euratom) No 2988/95 ⁽³⁾;

Whereas this Regulation repeats the provisions of Commission Regulation (EC) No 1405/94 of 20 June 1994 laying down detailed rules for the financial monitoring of programmes approved under Council Regulation (EEC) No 2078/92 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside ⁽⁴⁾; whereas that Regulation should therefore be repealed;

Whereas transitional provisions should ensure that the rules of this Regulation do not affect the content of undertakings already given; whereas the provisions of an administrative nature should be applied to current undertakings;

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:

CHAPTER I

CONDITIONS FOR GRANT OF AID

Article 1

Principle

The aid for farmers referred to in Article 2 (1) of Regulation (EEC) No 2078/92 shall be granted in respect of undertakings which have a positive impact on the environment and countryside. Taking into account the objectives set out in Article 1 of the said Regulation, the undertakings must make methods of production more compatible with the requirements of protection of the environment and thus contribute to an improvement in good farming practice.

Article 2

Respect for Community rules

1. Member States shall take all necessary steps to ensure that agri-environmental measures are compatible with Community rules. They shall, in preparing, implementing, as well as in monitoring and evaluating the measures, ensure coordination between the authorities responsible for the realization of the objectives set out in Article 1 of Regulation (EEC) No 2078/92.
2. In order to define the content of the various undertakings and determine the level of the different aids, Member States shall take account in particular of:
 - the common market organizations and especially the rules controlling production in the different sectors,
 - Community rules on quality products and organically produced products,
 - specific Community provisions on the protection of the agricultural environment.
3. Where necessary, agri-environmental measures shall be revised subsequently, in line with environmental aspects of Community rules concerning the markets in the various products.

Article 3

Conversion of arable land into pasture

An undertaking by a farmer to convert arable land into extensive pasture as provided for in point (b) of Article 2 (1) of Regulation (EEC) No 2078/92 shall include at least an obligation to respect the equivalent of a stocking density per hectare of land converted, which, calculated over a period of 12 months, may not in any instance exceed 1,4 LU.

⁽¹⁾ OJ No L 293, 12. 11. 1994, p. 14.

⁽²⁾ OJ No L 67, 14. 3. 1991, p. 11.

⁽³⁾ OJ No L 312, 23. 12. 1995, p. 1.

⁽⁴⁾ OJ No L 154, 21. 6. 1994, p. 12.

*Article 4***Extensification**

An undertaking by a farmer to extensify livestock production as provided for in point (c) of Article 2 (1) of Regulation (EEC) No 2078/92 shall comply, at least, with the following conditions:

- the maximum initial stocking density to be taken into consideration for the calculation of the aid shall not exceed 4,5 LU/ha of forage area,
- the maximum stocking density fixed by the Member State to be attained by the end of the first year of the undertaking and maintained until its expiry, may not in any instance exceed 2 LU/ha of forage area,
- extensification shall not be achieved by increasing the size of the intensive forage area on the holding,
- the livestock shall be distributed across the holding in such a way that the whole of the forage area is maintained, thus avoiding both over-grazing and under utilization.

Member States shall determine a minimum threshold below which extensification shall have no value or pose no threat to the environment, bearing in mind the specific situation in the regions concerned.

*Article 5***Linear units**

Where undertakings concerning other production practices compatible with the environment and the maintenance of the countryside, as provided for in point (d) of Article 2 (1) of Regulation (EEC) No 2078/92, are normally measured in linear units, the aid may be determined by converting the inherent costs in linear metres into hectare equivalents in the programme. This equivalence shall result in aid per hectare which must respect the maximum amounts contained in Article 4 (2) and (3) of Regulation (EEC) No 2078/92 in respect of the whole area of the holding.

*Article 6***Abandoned land**

1. For the purposes of point (e) of Article 2 (1) of Regulation (EEC) No 2078/92 farmland may be considered abandoned if it has not been the subject of any agricultural use or farming activity for at least three successive

years prior to the undertaking and if it has not been included in a crop-rotation scheme during that period.

2. For the purposes of point (e) of Article 2 (1) of Regulation (EEC) No 2078/92 woodland may be considered abandoned if it has not been used for any woodland purpose or if no woodland practice that may have been necessary has taken place in the 10 years prior to the undertaking, if the condition of the land poses a threat to the environment as a result of the lack of upkeep and if the owner of the land cannot be required to carry out such work.

3. Aid for the upkeep of abandoned farmland or woodland is, in principle limited to farmers. The granting of aid to persons other than farmers, where no farmers are available, is to specific terms to be determined by Member States. Works undertaken by a public authority by its own means may not be the subject of an aid for upkeep. The owner of woodland who is not a farmer may not benefit from an aid for upkeep.

*Article 7***Environmental set-aside**

The measure for long-term set-aside provided for in point (f) of Article 2 (1) of Regulation (EEC) No 2078/92 may not be applied to extensive pasture, save where, in the context of the establishment of biotope reserves, natural parks or specific measures for the protection of water, the set-aside would represent a better means of protection of the environment than the maintenance of extensive pasture.

*Article 8***Courses, traineeships and demonstration projects**

1. In the context of courses, traineeships and demonstration projects within the meaning of Articles 2 (2) and 6 of Regulation (EEC) No 2078/92, the cost of durable equipment shall be eligible for part-financing only in proportion to the use to which the equipment is put for such courses, traineeships and demonstration projects.

2. Demonstration projects within the meaning of Article 6 (2) of Regulation (EEC) No 2078/92 shall be designed to demonstrate the feasibility and viability of new farming techniques on which research has previously been carried out producing practical results. Research and development costs shall not be eligible for Community part-financing.

Member States shall see to it that the results of demonstration projects are disseminated at the appropriate level.

*Article 9***Determination of aid**

1. Member States shall determine the incentive component of the aid as provided for in point (b) of Article 5 (1) of Regulation (EEC) No 2078/92 on the basis of objective criteria. It shall not exceed 20 % of the loss of income and additional costs incurred as a result of the undertaking, except in the case of specific undertakings where a higher rate proves to be indispensable for the effective implementation of the measure. Any such higher rate, as well as any differentiation in the incentive component, must be duly substantiated, having regard to all the objectives of Regulation (EEC) No 2078/92.

2. Where a Member State provides, for the same agri-environmental practices, aid for the maintenance of those practices and aid for the introduction of those practices, it shall differentiate the aid for maintenance and the aid for introduction, if such differentiation is required having regard to the loss of income, the additional costs and the incentive component.

3. The costs of preparing aid applications shall not be taken into consideration when determining the level of the aid.

*Article 10***Combination of aids**

1. The same undertaking may not be the subject of payments simultaneously under Regulation (EEC) No 2078/92 and under another Community aid scheme.

In this context:

- agri-environmental measures on land set aside pursuant to Article 7 of Council Regulation (EEC) No 1765/92⁽¹⁾ shall qualify for aid only if the undertakings so beyond the appropriate environmental measures referred to in Article 7 (3) of that Regulation,
- in the case of extensification of beef production, the aid shall take account of the additional premium paid pursuant to point (h) of Article 4 (1) of Council Regulation (EEC) No 805/68⁽²⁾,
- agri-environmental measures on holding eligible for a compensatory allowance pursuant to Articles 17, 18 and 19 of Council Regulation (EEC) No 2328/91⁽³⁾ shall qualify for aid only if the undertakings go beyond the conditions laid down for the grant of the compensatory allowances pursuant to point (c) of Article 19 (1) of that Regulation.

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 12.

⁽²⁾ OJ No L 148, 28. 6. 1968, p. 24.

⁽³⁾ OJ No L 218, 6. 8. 1991, p. 1.

2. The various aid accruing to undertakings provided for in Article 2 of Regulation (EEC) No 2078/92 may be combined with one another and with other Community aid provided that the terms of the undertakings are complementary and compatible.

Where there is such a combination, the level of the aid shall take account of income losses and specific additional costs arising from the combination.

Aid for long-term set-aside as provided for in point (f) of Article 2 (1) of Regulation (EEC) No 2078/92 may not be aggregated with compensation for loss of income in the context of afforestation (Article 2 of Council Regulation (EEC) No 2080/92⁽⁴⁾).

CHAPTER II

PERFORMANCE OF UNDERTAKINGS

*Article 11***Transfer of holding**

1. When, during the period of an undertaking, a beneficiary transfers all or part of his holding to another person, the latter may take on the undertaking for the remainder of the period. If such a continuation does not take place, the beneficiary shall reimburse, in accordance with Article 20 (1), the aid paid. Member States may choose not to require such reimbursement if, in the case of a definitive cessation of agricultural activities by a beneficiary who has already completed three years of his undertaking, a continuation of the undertaking by a successor proves not to be feasible.

Member States may take specific measures, in the case of minor changes to the situation of the holding, to avoid that the application of the first subparagraph leads to inappropriate results in the light of the undertaking entered into.

2. Where a beneficiary is unable to continue to comply with undertakings given by virtue of the fact that the holding is subject to reparcellation or other similar public exercise of land consolidation, Member States shall take the measures necessary to provide for the adaptation of the undertakings to the new situation of the holding. If such adaptation proves impossible, the undertaking shall expire and reimbursement shall not be required in respect of the period in which the undertaking was effective.

⁽⁴⁾ OJ No L 215, 30. 7. 1992, p. 96.

*Article 12***Force majeure**

1. Without prejudice to actual circumstances to be taken into consideration in individual cases, Member States may recognize, in particular, the following cases of *force majeure*:

- (a) death of the farmer;
- (b) long-term professional incapacity of the farmer;
- (c) expropriation of a large part of the holding if such expropriation could not be anticipated on the day the undertaking was given;
- (d) a severe natural disaster gravely affecting the holdings' agricultural land;
- (e) the accidental destruction of livestock buildings on the holding;
- (f) an epizootic affecting part or all the farmer's livestock.

Member States shall notify the Commission of cases which they recognize as *force majeure*.

2. Cases of *force majeure* with relevant evidence to the satisfaction of the competent authority must be lodged in writing with the competent authority within 10 working days of the date on which the farmer is in a position to do so.

*Article 13***Transformation of undertakings**

Member States may authorize the transfer from one undertaking to another undertaking during the period of operation of the undertakings on condition that:

- any such transfer is of unquestionable benefit to the environment,
- the existing undertaking is significantly reinforced, and
- the approved programme includes the measures concerned.

Under the conditions set out in the first subparagraph, first and second indents, a transfer from an undertaking under Regulation (EEC) No 2078/92 to an undertaking for afforestation under Regulation (EEC) No 2080/92 may be authorized. The undertaking under Regulation (EEC) No 2078/92 shall cease without reimbursement being required.

CHAPTER III

ADMINISTRATIVE PROVISIONS*Article 14***Rules governing undertakings and payment procedures**

1. The date on which an undertaking takes effect shall be fixed in the beneficiary's undertaking so as to enable

effective verification. This date shall in no circumstances be earlier than the date of submission of the initial application.

2. Except in duly substantiated cases, aid shall be paid to beneficiaries at least once per year. It shall be paid within a period to be determined by the Member State. This period must expire not later than four months after the end of the period in respect of which the payment must be made.

3. Where aid is paid to beneficiaries at least once per year, payments subsequent to that for the first year in which an application is submitted shall be made on the basis of an annual request for payment of the aid. In any event, changes which have taken place or are planned and which have a bearing on the undertaking entered into, must be reported by the beneficiary, at least on an annual basis.

*Article 15***Information and publicity**

Member States shall ensure that the agri-environmental measures are given adequate publicity in order to:

- alert potential beneficiaries and farming organizations to the specific objectives of the agri-environmental measures and the opportunities afforded,
- alert beneficiaries and the general public to the role played by the Community in relation to the aid scheme.

*Article 16***Monitoring and evaluation**

1. Member States shall be responsible for the monitoring and evaluation of agri-environmental measures.

2. Monitoring must make it possible to determine how the undertakings have been implemented in practice. In addition, monitoring shall facilitate, if necessary, the adjustment of the agri-environmental measures on the basis of the needs that come to light during implementation.

3. The evaluation of agri-environmental measures shall take account of the objectives of Regulation (EEC) No 2078/92 and of the specific objectives of the measure in question and cover the socioeconomic, agricultural and environmental aspects. Evaluation shall be devised on the basis of trends in and the characteristics of the area of application.

4. Member States shall inform the Commission of the plans and procedures for, and the results of, monitoring and evaluation carried out for the various agri-environmental measures.

Article 17

Financial monitoring

1. Member States shall forward information on progress in implementing each programme approved under Regulation (EEC) No 2078/92 as at 15 April and 15 October of each financial year using the table set out in Annex I hereto and distinguishing, where applicable, between Objective 1 regions and other regions. The information must reach the Commission within 45 days of the stated dates.

2. Member States shall also forward forecasts of expenditure to the Commission each quarter using the table set out in Annex II.

The forecasts must reach the Commission by 31 March, 30 June, 30 September and 31 December.

Article 18

Amendment of programmes

Without prejudice to Article 3 (3) of Regulation (EEC) No 2078/92, amendments of programmes shall be duly substantiated. Requests for amendments shall contain, in particular:

- the reasons and problems of implementation, if any, justifying adjustment of the programme,
- the expected effects of the amendment,
- the implications for financing and verification of undertakings.

Article 19

Verification

1. Initial applications to a scheme and successive applications for payment shall be checked in a manner which ensures effective verification of compliance with the conditions for the granting of the aid. In line with the nature of the undertakings, Member States shall define the systems and means for their verification as well as the persons who shall be subject to checks. In all appropriate cases, Member States shall have recourse to the integrated administration and control system established by Regulation (EEC) No 3508/92.

2. Verifications shall be carried out by means of administrative and on-the-spot checks.

3. Administrative checks shall be exhaustive and include cross-checks, *inter alia* in all appropriate cases with data from the integrated administration and control system, on areas of land and livestock covered by an undertaking in order to avoid all unjustified double payments of aid in respect of the same application year. Compliance with the five-year undertaking shall also be checked.

4. On-the-spot checks shall be undertaken in accordance with Articles 6 and 7 of Commission Regulation (EEC) No 3887/92⁽¹⁾. They shall concern at least 5 % of beneficiaries each year, covering all the different types of undertaking set out in the programmes.

In as far as possible, all undertakings given by a beneficiary shall be the subject of checking. If necessary, checks on specific undertakings shall be made at different times of the year.

5. Land areas and animals shall be identified in accordance with Articles 4 and 5 of Regulation (EEC) No 3508/92.

Where the application for payment is included with an application for 'area' aid in the integrated control system, the Member State shall ensure that parcels for which the aid set out in Article 2 (1) of Regulation (EEC) No 2078/92 is requested are declared separately in the application for 'area' aid in the integrated control system.

Article 20

Reimbursement of aid and penalties

1. In cases of wrongful payment, the farmer concerned shall be required to reimburse the amount in question plus interest for the period between payment and the reimbursement by the beneficiary.

The rate of interest applicable shall be calculated in accordance with the provisions of national law and shall, in no case, be lower than the interest rate applicable in the case of recovery of national amounts.

No interest or, at the most, an amount to be determined by the Member State corresponding to the undue benefit, shall be levied if the wrongful payment was an error of the competent authority.

However, Member States may decide that the amount owed should not be reimbursed but deducted from the first advance or first payment due to the farmer concerned after the date on which the reimbursement decision was taken. No interest shall run after the beneficiary has been informed of the wrongful payment.

⁽¹⁾ OJ No L 391, 31. 12. 1992, p. 36.

Member States may decide not to claim repayment of amounts of ECU 100 or less per farmer per calendar year provided that their national law includes corresponding non-recovery rules for similar circumstances.

2. Member States shall determine a system of penalties to be imposed in the event of breaches of undertakings entered into and of regulatory provisions applicable to the case, and take all necessary steps to put the system into operation. Such penalties shall be effective, shall be commensurate with their purpose and shall have adequate deterrent effect. Member States shall inform the Commission of their system of penalties.

3. Where a false declaration is made intentionally or as a result of gross negligence, the farmer in question shall be excluded from all aid under Regulation (EEC) No 2078/92. He may provide a new agri-environment undertaking only after a period of two years. This penalty shall apply without prejudice to additional penalties provided for under national rules.

CHAPTER IV

FINAL PROVISIONS

Article 21

State aid

This Regulation shall apply without prejudice to the right of Member States to apply additional aid measures

pursuant to Article 10 (1) of Regulation (EEC) No 2078/92. This Regulation shall not affect the authorization of such aid by the Commission.

Article 22

Regulation (EEC) No 1405/94 is repealed.

Article 23

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

2. Articles 1 to 10 shall apply to undertakings given from 1 January 1997.

Articles 11 to 14 and Articles 19 and 20 shall apply with effect from 1 January 1997. As regards undertakings given before that date, the said Articles shall apply only in respect of actions taken and events occurring from that date.

3. Member States shall, if necessary, adopt their programmes to the provisions of this Regulation and submit them to the Commission by 30 September 1996. These changes shall be considered to conform to this Regulation if the Commission raises no objection within a period of three months from the date of receipt.

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

Done at Brussels, 24 April 1996.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX I

Information to be forwarded under Regulation (EEC) No 2078/92

Member State:

Programme:

Objective 1 regions / non-Objective 1 regions (delete as appropriate):

Scheme concerned (please specify):

Period for submission of requests by farmers:

Duration of individual undertakings (years):

Number of outstanding applications to the scheme:

	Previous cumulative position at ...	Period from ... to ... ⁽²⁾		New cumulative position at ...
		Withdrawals from scheme following expiry or termination of contracts	New undertakings	
I. Applications to scheme accepted, following scrutiny (a) Number of beneficiaries whose applications have been accepted (b) Number of: — hectares ⁽¹⁾ — LU ⁽¹⁾ for which undertakings have been given (c) Average annual eligible premium — per hectare ⁽¹⁾ — per LU ⁽¹⁾				
II. Budget cost of applications accepted (a) Total for new cumulative position (estimate) <i>of which:</i> (b) EAGGF Guarantee Section	Up to 15.10.199.. financial year (t) ⁽³⁾	Financial year (t+1)	Financial year (t+2)	Financial year (t+3) Financial year (t+4)

⁽¹⁾ Depending on scheme being declared.⁽²⁾ For the declaration of the situation at 15 April, the period runs from 16 October of the previous year to 15 April of the current one. For that at 15 October, the period runs from 16 April to 15 October of the current year.⁽³⁾ For the declaration of the situation at 15 April, the financial year (t) refers to the current EAGGF financial year. For that at 15 October, the financial year (t) refers to the one just ended.

ANNEX II

Expenditure forecasts to be forwarded under Regulation (EEC) No 2078/92

Member State:

Notification of (1) ...

	Financial years	
	Up to 15. 10. 19... financial year (t)	Financial year (t+1)
A. Forecast of total expenditure eligible for Community part-financing (in national currency) of which: expenditure in Objective 1 regions		
B. Expenditure chargeable to the EAGGF Guarantee Section		

(1) Give date.

Notes:

1. The forecasts must not be confined to applications that have received final approval but must also cover other prospective payments.
2. Financial year (t) is the current EAGGF financial year.