

COMMISSION REGULATION (EC) No 1678/98**of 29 July 1998****amending Regulation (EEC) No 3887/92 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes⁽¹⁾, as last amended by Regulation (EC) No 820/97⁽²⁾, and in particular Article 12 thereof,

Whereas it should be laid down that areas are to be declared in hectares to two decimal places;

Whereas, in order to guarantee that direct per-hectare aid is not paid for parcels without justification, parcels subject to certain other arrangements not covered by the integrated administration and control system established by Regulation (EEC) No 3508/92 (hereinafter 'the integrated system') should be declared separately;

Whereas, in view of the requirement to use a minimum quantity of certified seed in the case of declared and sown durum wheat, deterrent penalties should be provided for; whereas similar penalties should be laid down for infringements of the provisions on varieties;

Whereas, by analogy with agricultural rules in other sectors, farmers should be given the opportunity, under certain conditions, of correcting information in their applications which could lead to the imposition of penalties;

Whereas rules for the charging of interest, irrespective of the method of recovery chosen, should be laid down;

Whereas, in order to ensure uniform application throughout the Community of the principle of legitimate expectation where amounts unduly paid are recovered, the conditions under which that principle may be invoked should be laid down without prejudice to the treatment of irregular expenditure as provided for, in particular, in Articles 5 and 8 of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy⁽³⁾, as last amended by Regulation (EC) No 1287/95⁽⁴⁾;

Whereas, in the light of experience, the amount below which the competent authorities may decide not to demand repayment of amounts paid in error should be increased;

Whereas Regulation (EC) No 820/97 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products stipulates that the system for identification and registration of bovine animals is to include eartags to identify animals individually, computerised databases, animal passports and individual registers kept on each holding;

Whereas effective control of bovine animals requires that animals be identified and recorded; whereas, to this end, Regulation (EC) No 820/97 lays down specific provisions;

Whereas to ensure the effective functioning of the rules for Community aid for eligible animals and the general veterinary rules laid down for the implementation of Regulation (EC) No 820/97 by Commission Regulations (EC) No 2630/97⁽⁵⁾ and (EC) No 494/98⁽⁶⁾ checks and sanctions pursuant to the integrated system and checks and sanctions for veterinary purposes should be considered separately; whereas an exchange of data and common controls are not excluded;

Whereas Article 5 of Regulation (EEC) No 3508/92 stipulates that the system for identification and registration of animals to be taken into account for the granting of aid is to be set up in accordance with Regulation (EC) No 820/97;

Whereas experience has shown that implementation of Regulation (EEC) No 3508/92 in respect of bovine animals has not been entirely satisfactory and needs improvement; whereas, the entry into force of Regulation (EC) No 820/97 provides the opportunity to integrate certain elements of common control practice in the Member States, and also to clarify, harmonise and simplify control procedures and practice; whereas, to this end, the minimum content of checks and reporting of controls should be specified;

⁽¹⁾ OJ L 355, 5. 12. 1992, p. 1.

⁽²⁾ OJ L 117, 7. 5. 1997, p. 1.

⁽³⁾ OJ L 94, 28. 4. 1970, p. 13.

⁽⁴⁾ OJ L 125, 8. 6. 1995, p. 1.

⁽⁵⁾ OJ L 354, 30. 12. 1997, p. 23.

⁽⁶⁾ OJ L 60, 28. 2. 1998, p. 78.

Whereas it should be ensured that Community aid is granted only for bovines for which the obligations of identification and registration in accordance with Regulation (EC) No 820/97 have been complied with; whereas reliable control practice requires that all eligible bovine animals, that is to say all bovines for which applications have been lodged or which may be the subject of future aid applications, on the holding of an aid applicant be subject to on-the-spot checks; whereas, the identification and registration of bovine animals introduced by Regulation (EC) No 820/97 is applicable to all bovine animals;

Whereas provisions should be adopted to prevent and penalise irregularities and fraud effectively; whereas, to this end, there should be sanctions graded according to the gravity of the irregularity committed; whereas, the infringements should be defined in the light of experience with the application of sanctions;

Whereas therefore Commission Regulation (EEC) No 3887/92⁽¹⁾, as last amended by Regulation (EC) No 613/97⁽²⁾, should be amended accordingly;

Whereas the Committee for the European Agricultural Guidance and Guarantee Fund has not delivered an opinion within the time limit laid down by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 3887/92 is amended as follows:

1. Article 4(1) is amended as follows:

(a) the second indent of the first subparagraph is replaced by the following:

‘— particulars permitting identification of all agricultural parcels on the holding, their area expressed in hectares to two decimal places, location, use, whether the parcel is irrigated, and the aid scheme concerned;’

(b) in the third subparagraph, the following indents are added:

‘— agricultural production compatible with the requirements of environmental protection and maintenance of the countryside as referred to in Regulation (EEC) No 2078/92,

— cotton, as referred to in Council Regulation (EC) No 1554/95^(*),

— hops, as referred to in Council Regulation (EEC) No 1696/71^(**),

— flax and hemp, as referred to in Council Regulation (EEC) No 1308/70^(***).

^(*) OJ L 148, 30. 6. 1995, p. 48.

^(**) OJ L 175, 4. 8. 1971, p. 1.

^(***) OJ L 146, 4. 7. 1970, p. 1’.

2. Article 6 is amended as follows:

(a) Paragraph 2 is replaced by the following:

‘2. The administrative checks referred to in Article 8(1) of Regulation (EEC) No 3508/92 shall include in particular:

(a) cross-checks on parcels and animals declared in order to ensure that aid is not granted twice in respect of the same calendar year without justification;

(b) once the computerised database is fully operational in accordance with Article 5 of Council Regulation (EC) No 820/97^(*), cross-checks with a view to ensuring that Community aid is granted only for bovine animals for which the births, movements and deaths have been duly notified by the applicant for Community aid to the competent authority referred to in Article 7(1) of Council Regulation (EC) No 820/97.

^(*) OJ L 117, 7. 5. 1997, p. 1.’;

(b) in paragraph 4, the following indent is added:

‘— infringements of Regulation (EC) No 820/97.’;

(c) in paragraph 5, the second subparagraph is replaced by the following:

‘With the exception of male bovine animals for which a special premium is granted according to Article 8 of Commission Regulation (EEC) No 3886/92^(*) at the time of slaughter or at the first placing on the market with a view to their slaughter, at least 50 % of the minimal checks on animals shall be made during the retention period. Checks may be effected outside that period only if the registers provided for in Article 4 of Directive 92/102/EEC or Article 3(d) of Regulation (EC) No 820/97 are available.

On-the-spot checks pursuant to this Regulation may be carried out in conjunction with any other inspection provided for by Community legislation.

⁽¹⁾ OJ L 391, 31. 12. 1992, p. 36.

⁽²⁾ OJ L 94, 9. 4. 1997, p. 1.

^(*) OJ L 391, 31. 12. 1992, p. 20.’;

(d) paragraph 6 is replaced by the following:

‘6. On-the-spot checks of livestock for the aid scheme concerned shall include in particular:

- (a) a check that the total number of animals present on the holding, and eligible for the scheme concerned, corresponds to the number of such eligible animals entered in the register;
- (b) a check on the basis of the register kept by the producer that all the animals for which aid applications were submitted in the 12 months prior to the on-the-spot check have been kept throughout the retention period;
- (c) a check of the register by sampling of supporting documents such as purchase and sales invoices, slaughter certificates, veterinary certificates and passports as provided for in Article 6 of Regulation (EC) No 820/97;
- (d) a check that all bovine animals present on the holding, for which aid applications have been lodged or which may be the subject of future aid applications, are identified by eartags and passports and recorded in the register in accordance with Regulation (EC) No 820/97.

The check provided for in the first subparagraph, point (d), shall be made individually for all male bovines for which an application has been submitted for special beef premium. However, for all other bovine animals eligible for Community aid which are present on such holdings, the check on correct recording in the register may be made by sampling provided that a reliable and representative level of control is achieved.

Where sample checks reveal serious anomalies, the extent and scope of the check shall be increased to ensure an appropriate level of control’.

3. Article 9 is amended as follows:

- (a) the sixth subparagraph of paragraph 2 is replaced by the following two subparagraphs:

‘For the purposes of this Article, “determined area” means the area for which all of the conditions laid down in the rules have been met, including the following provisions:

- for rape seed: Article 4 of Commission Regulation (EC) No 658/96 (*),
- for sunflower: Article 4(5) of Regulation (EC) No 658/96,
- for linseed: Article 6a(4) of Regulation (EEC) No 1765/92,

— for durum wheat: Article 6(5) of Regulation (EC) No 658/96.

With regard to areas declared and actually sown in durum wheat, where a discrepancy is found between the minimum quantity of certified seed fixed by the Member State and the quantity actually used, “determined area” shall mean the area calculated by dividing the total quantity of certified seed for which the producer has furnished proof of use by the minimum quantity per hectare laid down by the Member State for the region of the producer in question. The area thus determined is used, after application of paragraph 2, for the calculation of the right to the supplement or to the specific aid provided for at Article 4 of Regulation (EEC) No 1765/92.

(*) OJ L 91, 12. 4. 1996, p. 46.’;

- (b) paragraph 5 is deleted.

4. Article 10 is replaced by the following:

‘Article 10

1. Where an individual limit or individual ceiling is applicable, the number of animals shown in aid applications shall be reduced to the limit or ceiling set for the farmer concerned.
2. If the number of animals declared in an aid application exceeds that established during administrative or on-the-spot-checks carried out in accordance with Article 6(6), the aid shall be calculated on the number of eligible animals established. However, except in cases of *force majeure* and after paragraph 11 of this Article has been applied as regards natural circumstances, that aid shall be reduced pursuant to paragraph 3.
3. Where the application concerns a maximum of 20 animals, the amount of the aid shall be reduced:
 - (a) by the percentage corresponding to the difference found if this is not more than two animals, or
 - (b) by twice the percentage corresponding to the difference found if this is more than two but not more than four animals.

If the difference is greater than four animals, no premium shall be granted.

In other cases, the amount of the aid shall be reduced:

 - (a) by the percentage corresponding to the difference found if this is not more than 5 %, or
 - (b) by twice the percentage corresponding to the difference found if this is more than 5 % but not more than 20 %.

If the difference found is more than 20 %, no aid shall be granted.

The percentages mentioned in points (a) and (b) of the first subparagraph shall be calculated on the basis of the number declared, and those mentioned in points (a) and (b) of the third subparagraph on the basis of the number found.

4. As regards bovine animals other than those covered by paragraphs 2 and 3, where on-the-spot checks reveal that the number of animals eligible for Community aids established on the holding does not correspond to the number of eligible animals entered in the register or to the number of passports of eligible animals held on the holding, and when such findings are revealed on at least two checks within a period of 24 months, the total amount of the aid granted to the applicant for the aid scheme concerned for the 12 months prior to the second on-the-spot check revealing such findings shall, except in cases of *force majeure*, be reduced proportionately.

However, as regards the special beef premium pursuant to Article 8 of Regulation (EEC) No 3886/92, a reduction in accordance with the first subparagraph shall apply after each on-the-spot check where such findings are established.

If the difference found during an on-the-spot check is greater than 20 % of the number of eligible animals established, or if a difference of at least 3 % and at least two animals are found during two checks in the same calendar year, no premium shall be granted for the 12 months prior to the on-the-spot check.

5. As regards bovine animals, an animal established within the meaning of paragraphs 2, 3 and 4 above at the time of an on-the-spot check is one which:

- (a) is individually identified by a passport in accordance with Article 6 of Regulation (EC) No 820/97, which indicates at least the date of birth, sex, movements and death within the meaning of the second indent of Article 7(1) of Council Regulation (EC) No 820/97;
- (b) is properly recorded in the register in accordance with the first indent of Article 7(1) of Council Regulation (EC) No 820/97;
- (c) is individually identified by eartags provided for by Article 4 of Council Regulation (EC) No 820/97;

- (d) in the case of an animal declared for Community aid, is found at the location notified by the applicant in accordance with the fourth indent of Article 5(1) of this Regulation.

However, a bovine animal which has lost one of the two eartags shall be regarded as being established providing that it is clearly and individually identified by all other relevant conditions mentioned in the first subparagraph. Furthermore, as regards bovine animals incorrectly entered in the register or for which passports issued are incorrectly completed due to reasons attributable to the applicant with regard to the date of birth, sex, movements and death, Community aid shall be reduced in accordance with paragraphs 2, 3 and 4 only if such omissions are established on at least two checks within a period of 24 months.

6. Where it is found that a false declaration in the aid application, register or passport was made as a result of serious negligence, the farmer in question shall be excluded from the aid scheme concerned for the calendar year in question. In the case of a false declaration made intentionally, he shall be excluded from the same aid scheme for the following calendar year as well.

7. If a farmer has been unable to comply with his retention undertaking as a result of *force majeure* he shall retain his right to aid in respect of the number of animals actually eligible at the time when the case of *force majeure* occurred.

In no case may aid be granted on a greater number of animals than that shown in the aid application.

8. If the compensatory allowance provided for in Council Regulation (EC) No 950/97 (*) is calculated on the basis of livestock units, the determining of the number present and the sanctions provided for in paragraphs 2 to 6 shall apply on the basis of the number of livestock units corresponding to the number of animals declared and established.

9. Bovine animals present on the holding shall not be counted unless identified in the aid application.

However, a suckler cow declared for the premium or a bovine declared for the compensatory allowance provided for in Regulation (EC) No 950/97 may be replaced by another suckler cow or bovine respectively provided that replacement occurs within 20 days of the animal's departure from the holding and that the replacement is entered in the register not later than three days after the day of replacement.

10. If the compensatory allowance provided for in Regulation (EC) No 950/97 is calculated on the basis of the number of livestock units without distinguishing between the species of animals concerned, animals declared can be replaced by other animals eligible for this allowance on condition that the corresponding number of livestock units does not decrease and that replacements take place according to the conditions provided for in paragraph 9.

11. In cases where, owing to the impact of natural circumstances on the herd, the farmer cannot meet his commitment to keep the animals notified for a premium throughout the compulsory retention period, he shall be entitled to the premium for the number of eligible animals actually kept throughout the period, provided that he has informed the competent authority in writing within 10 working days of finding any reduction in the number of animals.

12. For the purposes of paragraphs 1 to 11, animals eligible for different Community aids shall be treated separately.

(*) OJ L 142, 2. 6. 1997, p. 1'.

5. In Article 11, the following paragraph 1a is inserted:

'1a. The penalties applicable according to Articles 9 and 10 shall not be imposed in cases where the farmer, on finding that the application which he has lodged contains errors other than those made intentionally or by serious negligence incurring one or more of the said penalties, within 10 working days of finding these errors, informs the competent authority in writing, provided that the authority has not notified the farmer of its intention to carry out an on-the-spot control, the farmer has not been able to learn of this intention in any other way and the authority has not already informed the farmer of the irregularity in the application'.

6. Article 12 is replaced by the following:

'Article 12

Every on-the-spot check shall be the subject of a report setting out, in particular, the reasons for the visit, the aid schemes and applications checked, the persons present, the number of parcels visited, those measured, the measuring methods used, the number of animals of each species found and, where applicable, the eartag numbers and entries to the register subject to checks as well as the result of the checks and if appropriate particular findings relating to specific identification numbers. It shall be open to the farmer or his rep-

resentative to sign the report. He may either merely attest his presence at the inspection or also add his observations.

Where Member States carry out on-the-spot checks pursuant to this Regulation in conjunction with inspections pursuant to Commission Regulation (EC) No 2630/97 (*), the report shall be supplemented by the report referred to in Article 2(5) of Regulation (EC) No 2630/97.

Where on-the-spot checks conducted in accordance with Article 6(5) of this Regulation reveal infringements of Regulation (EC) No 820/97, copies of the reports of the on-the-spot checks pursuant to this Regulation shall be sent without delay to the authorities which are competent for the implementation of Regulation (EC) No 2630/97.

(*) OJ L 354, 30. 12. 1997, p. 23'.

7. Article 14 is replaced by the following:

'Article 14

1. If undue payment is made, the farmer shall repay the amount in question plus interest calculated in accordance with paragraph 3.

2. Member States may decide that recovery of an undue payment shall be by deduction of the amount to be recovered from the first advance or first payment made to the farmer following the date of the decision to recover. However, the farmer may repay the amount without waiting for the deduction.

3. The interest shall be calculated for the period elapsing between payment and either repayment or deduction.

The rate of interest applicable shall be calculated according to the provisions of national law but shall not be lower than the interest rate applicable for the recovery of national amounts.

No interest shall be charged on undue payments made by error of the competent authority.

4. The repayment obligation referred to in paragraph 1 shall not apply if the payment was made by error of the competent authority itself or by error of another authority and if the error could not reasonably be detected by the farmer, who for his part acted in good faith and complied with all the rules in force.

However, where the error relates to factual elements relevant for the calculation of the payment concerned, the first subparagraph shall only apply if the decision to recover was not communicated within 12 months of the payment.

For the purposes of the first and second subparagraphs, any third party whose acts are imputable to the farmer shall be treated as the farmer.

5. Paragraph 4 shall not apply in the case of advances and payments the return of which is claimed because a penalty has been imposed under Articles 8, 9 or 10 or any other Community or national provision.

6. Member States may decide not to claim return of amounts of ECU 100 or less, not including interest, per farmer and per aid application to which the claim applies, provided that their national law provides for non-recovery in such cases.

7. In the case of aid or premiums financed by the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee Section, paying agencies shall

deduct amounts recovered and interest paid from the expenditure of that Section, without prejudice to Article 7 of Regulation (EEC) No 595/91¹.

Article 2

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

Points 1(b), 2, 3, 4 and 6 of Article 1 shall apply to aid applications lodged on or after 1 January 1999.

Point 1(a) of Article 1 shall apply to aid applications lodged on or after 1 January 2000.

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

Done at Brussels, 29 July 1998.

For the Commission

Franz FISCHLER

Member of the Commission
