

COMMISSION REGULATION (EEC) No 1272/88

of 29 April 1988

laying down detailed rules for applying the set-aside incentive scheme for arable land

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 797/85 of 12 March 1985 on improving the efficiency of agricultural structures ⁽¹⁾, as last amended by Regulation (EEC) No 137/88 ⁽²⁾, and in particular Article 1a (7) thereof,

Whereas, in order to determine which arable land is to be eligible for aid under the scheme, it would be appropriate to refer to the definitions laid down in Council Regulation (EEC) No 571/88 of 29 February 1988 on the organization of Community surveys on the structures of agricultural holdings between 1988 and 1997 ⁽³⁾, and Commission Decision 83/461/EEC of 4 July 1983 laying down, for the purposes of a structure survey for 1983 as part of a programme of surveys on the structure of agricultural holdings, the definitions relating to the list of characteristics and the list of agricultural products ⁽⁴⁾;

Whereas land used for both arable and permanent crops should be eligible for set-aside aid on condition that at least 50 % of the area concerned is used for arable crops; whereas any increase in production of permanent crops on the land in question should not be permitted;

Whereas Member States should determine the reference period during which arable land was effectively cropped, taking into account their own specific conditions of production; whereas in order to ensure uniform application of the scheme this period must lie between 1 July 1985 and 30 June 1988 and be no shorter than one farming year; whereas, moreover, in order to rule out speculative use, the scheme must exclude any areas recently converted to arable land;

Whereas it is necessary to define the measures needed to keep set-aside land in good cropping condition;

Whereas beneficiaries' obligations must be determined in cases where set-aside land is used for extensive stock grazing; whereas such grazing land must be permanent grassland consisting of plants with low yield, receiving no inputs other than those occurring naturally, except during the period of establishment of the grassland, and carrying a low density of grazing stock; whereas since extensive grazing is normally only practised over the entire area of a holding, it is essential, in order to keep control over the practice, to limit the stocking density for the entire holding or to ban any increase in the number of livestock units;

Whereas the basic minimum of information to be provided in applications for aid should be laid down; whereas in order to facilitate the necessary inspections the applicant must, in particular, undertake to allow the competent authorities access to this holding and not to hinder these inspections in any way;

Whereas allowance must be made for cases in which the farmer is not himself the owner of the holding, and particularly cases in which the holding is leased to him, by laying down minimum conditions to prevent any speculation when the scheme is put into effect which might result in termination or refusal to renew such farm leases;

Whereas, to allow accurate assessment of the loss of income caused by set-aside, Member States should take particular account when fixing rates of aid of the conditions of production in the various regions and areas, the beneficiary's obligations to maintain good cropping conditions and to protect the environment and natural resources, and of any income derived from non-agricultural use of the land; whereas in cases where set-aside land is used for grazing or for growing lentils, chick peas or vetch it seems appropriate to reduce the rate of aid by 40 to 60 % to take account of the smaller loss in income;

Whereas provisions should be laid down to allow for increases in the area of set-aside land and the transfer of holdings during the period of the undertaking; whereas, to ensure the flexibility of the scheme, the beneficiary should be allowed to ask for changes to be made in his undertaking;

⁽¹⁾ OJ No L 93, 30. 3. 1985, p. 1.

⁽²⁾ OJ No L 108, 29. 4. 1988, p. 1.

⁽³⁾ OJ No L 56, 2. 3. 1988, p. 1.

⁽⁴⁾ OJ No L 251, 12. 9. 1983, p. 100.

Whereas the verification procedure to be applied by Member States must be determined; whereas, moreover, Member States must take effective action in cases of failure of a beneficiary to comply with his undertakings;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Agricultural Structure,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation lays down detailed rules for applying the set-aside incentive scheme for arable land.

Article 2

1. For the purposes of this Regulation, arable land should be taken to mean the types of land listed in section D of the Annex to Regulation (EEC) No 571/88 and defined in the Annex to Commission Decision 83/461/EEC, with the exception of land mentioned under point D/21 and of land devoted to products without a market organization.

2. Where arable crops and permanent crops share the land concerned the utilized agricultural area shall be divided between the two types of crop according to the proportion of land occupied by each, and where the area used as arable land is at least 50 %, that proportion of the total area shall be eligible for inclusion in the scheme, provided the production capacity for permanent crops is not increased.

Article 3

1. The reference period referred to in Article 1a (2) of Regulation (EEC) No 797/85 during which arable land was effectively cropped must span not less than one marketing year between 1 July 1985 and 30 June 1988. Any areas converted to arable land during the first half of 1988 shall, however, be excluded from the incentive scheme referred to in Article 1.

2. The minimum area to be set-aside shall be one hectare per holding, except in Greece where the area shall be 0,5 hectare. For the efficient application of the scheme, Member States may provide that this area should be made up of adjacent plots of an appropriate configuration.

3. The area to be set aside must represent at least 20 % of the arable land on the holding at the time the application for aid is submitted.

Article 4

1. Where set-aside land is left fallow with the option of being included in a rotation system, action shall be taken to maintain good cropping conditions, particularly by:

(a) prohibiting:

- the spreading of organic waste, except on land where this is needed to condition the soil in order to prevent erosion or maintain soil fertility,
- the use of plant protection products, including herbicides, except for those which leave little residue; the latter may be used upon express authorization of the competent authorities;

(b) ensuring:

- the establishment or maintenance of appropriate plant cover, for the particular purpose of preventing erosion and nitrate leaching; this cover may be left in place year-around or ploughed in, depending on soil and climatic conditions,
- basic maintenance, in particular existing rows of trees, hedges, water courses, ponds and pools,
- sufficient mechanical cultivation of the soil, especially for the purpose of conserving water reserves and combating weeds.

2. Set-aside land used for non-agricultural purposes shall not be used for plant or animal production. The measures provided for in paragraph 1 may be adapted to the specific form of use involved.

3. The Member States may make it an obligation for the beneficiary to maintain the set-aside land in order to protect the environment and natural resources.

Article 5

Where land set aside is used for 'extensive' grazing, the applicant shall be required:

(a) in respect of the set-aside land:

- to sow an area of permanent grassland composed only of a mixture of forage species and of varieties which have a low yield,
- not to irrigate,
- not to spread mineral or organic fertilizers to supplement the droppings normally left by animals grazing the land, except during the period of establishment of the grassland,
- not to use plant protection products, including herbicides, except during the period of establishment of the grassland,
- to take only one grass cut per year, for the purpose of producing hay for the animals on the holding;

(b) in respect of the holding :

- either not to exceed a grazing stock density of one livestock unit (LU) per hectare of total forage area (TFA),
- or not to exceed the initial number of livestock units.

Article 6

1. Where the set-aside land is used for growing lentils, chick peas or vetch, the area sown to these crops during the reference period shall not be eligible for inclusion in the scheme.

2. The beneficiary shall undertake, in respect of the entire holding, not to increase the density of grazing stock expressed as LU per hectare of TFA.

Article 7

1. When submitting an aid application, the applicant shall provide the following particulars :

- (a) total area of the holding and location of parcels used for farming ;
- (b) breakdown between arable land, permanent grassland and farmland put to other uses ;
- (c) area of arable land effectively cropped during the reference period ;
- (d) area to be maintained as arable land and location thereof ;
- (e) area to be set aside and location thereof ;
- (f) use proposed for the area referred to in (e).

2. In addition, where set-aside land is used for extensive stock grazing, the applicant shall specify :

- the composition of the grazing stock and its annual feed needs during the reference period,
- the amount of feed available each year for the grazing stock during the reference period, to include feed produced on the holding and that purchased,
- anticipated changes to the undertaking mentioned in Article 5.

3. Where set-aside land is used for growing lentils, chick peas or vetch the applicant shall supply details of the area sown to these crops during the reference period.

4. The application for aid shall be accompanied by supporting documents showing :

- the type of occupancy of each parcel (owner farming, tenant farming, share cropping, other),
- the area and identification data of each of the parcels referred to in paragraph 1 (a).

Article 8

The applicant shall make a written undertaking specifying the following :

- (a) the information referred to in Article 7 ;
- (b) the action to be taken to maintain good cropping conditions, and, where necessary, that to be taken to protect the environment and natural resources, as referred to in Article 4 ;
- (c) where applicable, the undertakings referred to in Articles 5 or 6 ;
- (d) the duration of the undertaking ;
- (e) the obligation for the beneficiary to allow the authority concerned to verify that the undertakings have been fulfilled and, in particular, to allow such persons access to the holding for the purposes of verification ;
- (f) the obligation for the beneficiary to accompany, or to instruct a representative to accompany, the persons responsible for making inspections and to designate, on his responsibility, the parcels described in the application for aid.

Article 9

1. Land to be set aside shall attract aid only if the applicant :

- farms it at the time of submission of the application and throughout the period of the undertaking,
- has farmed it for a minimum period to be determined by the Member States, but which is not to exceed five years and which may vary according to the type of occupancy,
- has the right, under national law, at the time of submission of the application, to farm it throughout the period of the undertaking.

2. Should the applicant not fulfil the condition laid down in the third indent of paragraph 1 above, the Member States shall determine the conditions under which he may make an application.

Article 10

1. Member States shall differentiate the rate of aid granted in particular regions or areas if agronomic and economic conditions of production so require.

2. Account shall be taken of the obligations provided for in Article 4 and, where applicable, of the effects of placing the land laid fallow in a crop rotation system.

3. If the set-aside land is used for non-agricultural purposes, account shall be taken, when the rate of aid is determined, of the income to be derived from such uses, except in the case of afforestation.

4. A flat rate of aid may be set, with account nevertheless being taken of the factors mentioned in paragraphs 1 to 3 above.

Article 11

Where the land set aside is used for extensive stock grazing or for growing lentils, chick peas or vetch, the rate of aid shall be reduced by 40 to 60 % to offset the income to be derived from such activities.

Article 12

1. Where the total area of the holding is increased during the period of the undertaking, the farmer may, for the remaining period of the undertaking, receive aid under the set-aside scheme for additional land, on condition that he reduces the cropped area of such land as provided in this Regulation.

2. The beneficiary may apply to increase the area he has set aside or to make changes in its use during the first three years of his undertaking.

3. The beneficiary may apply to terminate this undertaking; such termination shall take effect only at the end of the third year.

4. If, after the aid has been granted, some or all of the holding is transferred during the period of the undertaking to another person, the aid beneficiary or his successors shall remain responsible for the transferee's execution of the original undertaking, except where the transferee himself gives an equivalent undertaking for the remainder of the period.

5. Paragraph 4 shall not apply in cases of expropriation or compulsory sale of set-aside land; Member States shall determine the consequences of the death of a beneficiary who does not satisfy the condition laid down in the third indent of Article 9 (1).

Article 13

Where the set-aside land is included in a crop rotation, the beneficiary shall notify the authority concerned of the area to be laid or kept fallow and the area to be re-cropped. Member States shall lay down detailed rules to apply in this regard and shall stipulate the length of notice required.

Article 14

1. Member States shall take the necessary action to ensure that beneficiaries fulfil their undertakings.

2. Member States shall inspect a representative sample of beneficiary holdings every year, taking account, in

particular, of the geographical distribution of the land concerned; the sample must be not less than 5 %.

Where significant irregularities are discovered in respect of at least 5 % of the beneficiary holdings inspected, Member States shall immediately inform the Commission thereof.

3. The inspections provided for in paragraph 2 shall comprise at least:

- verification of all the aspects of the beneficiary's undertaking and of all supporting documents,
- on-site verification in the form of an inspection of the set-aside land, and a check of the accuracy of the particulars given in the aid application,
- if the land set aside is used for extensive stock grazing or for growing lentils, chick peas or vetch, documentary and on-site checks to verify compliance with the conditions laid down in Articles 5 and 6.

A report on the fulfilment of the undertaking shall be drawn up on the basis of these verifications.

Article 15

1. Member States shall apply financial penalties as a minimum measure in the case of failure to comply with undertakings made, except in cases of *force majeure*.

Where serious irregularities are discovered, Member States shall decide on the levels of financial penalty to apply; these shall be at least equal to the wrongly paid amount of aid with the addition of interest, charged on the basis of the time elapsed between the payment of the aid and its recovery from the beneficiary.

This being the case, Member States shall determine this rate of interest annually.

2. Aid recovered shall be paid to the paying departments or agencies and deducted by them from expenditure claimed from the European Agricultural Guidance and Guarantee Fund in proportion to the Community contribution.

3. Where the sums paid cannot be recovered, the relevant losses shall be borne by the Community in proportion to its contribution.

Article 16

1. Before making any authorization as provided for in the third subparagraph of Article 1a (3) of Regulation (EEC) No 797/85, Member States shall communicate to the Commission the relevant economic information justifying a reduction in the said rate.

2. Before 1 July each year Member States shall send the Commission a report on the operation of the scheme, showing in particular:

- (a) a summary of the findings reported in the inspection reports ;
- (b) action taken against failure to fulfil undertakings ;
- (c) the distribution of the total number of beneficiaries and total area of set-aside land in relation to :
- the use of the land,
 - the type of farming practised on the holdings,
 - the size of the holdings,
- (d) an assessment of the contribution of the scheme to the adjustment of production to the needs of the market.
- the percentage of land set aside per holding,
 - the type of occupancy of the parcels set aside ;

Article 17

This Regulation shall enter into force on the third 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, 29 April 1988.

For the Commission:

Frans ANDRIESEN

Vice-President
