

COUNCIL REGULATION (EEC) No 1765/92

of 30 June 1992

establishing a support system for producers of certain arable crops

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 42 and 43 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas the common agricultural policy aims to attain the objectives referred to in Article 39 of the Treaty, taking account of the market situation;

Whereas, in order to ensure better market balances, a new support system has to be established; whereas the best way to achieve this objective is to approximate the Community prices of certain arable crops to the prices of the world market and to compensate the loss of income caused by the reduction of the institutional prices by a compensatory payment for producers who sow such products; whereas therefore the area eligible should be restricted to the area down to arable crops or publicly funded set aside in the past; whereas application of this principle at the level of the individual producer would give rise to problems which differ between Member States; whereas therefore the Member States should have the opportunity to choose between individual past references and regional ones in the light of their specific circumstances;

Whereas the new support system shall be applied with effect from the marketing year 1993/94 onwards;

Whereas the compensatory payments should be introduced for existing holdings and the participation in the support system should be voluntary,

Whereas such compensatory payments should reflect the specific structural characteristics that influence yield and whereas the drawing up of a regionalization plan based on objective criteria should be left to the Member

States; whereas uniform average yields should be established by the regionalization plans; whereas these plans must be consistent with the average yields of each region achieved in a given period; whereas a specific procedure should be provided in order to examine these plans at Community level;

Whereas maize has a different yield which distinguishes it from other cereals and therefore may justify a separate treatment;

Whereas, in order to calculate the cereals compensatory payment, a basic amount per tonne should be multiplied by the average cereals yield determined for the region concerned;

Whereas the present policy concerning durum wheat is to discourage production especially outside the traditional production zones and whereas this policy should be continued; whereas, however, a supplement to the cereals compensatory payment should be paid for producers of durum wheat in the traditional production zones as currently defined; whereas this supplement should compensate durum wheat producers in these regions for the income loss due to alignment on the price for other cereals;

Whereas, in order to calculate the compensatory payment for oilseeds, it is necessary to establish a projected reference price, a Community reference amount, the calculation method and appropriate corrective measures;

Whereas rules must be established in order to take into account the specific situation in Spain and Portugal, including the different rates of progress towards integration as foreseen in the 1985 Act of Accession;

Whereas, in order to facilitate administration and control, the compensatory payments should be granted under a 'general scheme' open to all producers and a 'simplified scheme' open only to small producers;

Whereas small producers should be defined on the basis of an area equivalent to annual production of not more than 92 tonnes of cereals; whereas the yield averages for cereals in the different regions, which have been defined in the regionalization plans for the aid, should be also used to determine small producers;

Whereas, in order to benefit from the compensatory payments under the 'general scheme', producers must set aside a predetermined percentage of their arable area; whereas the set-aside should normally be organized on

⁽¹⁾ OJ No C 303, 22. 11. 1991, p. 1.

⁽²⁾ OJ No C 125, 18. 5. 1992.

⁽³⁾ OJ No C 98, 21. 4. 1992, p. 15.

the basis of a rotation of areas; whereas non-rotational fallow should be permitted but at a higher percentage rate which should be determined on the basis of a scientific study of the comparative effectiveness in terms of production restraint of rotational and non-rotational fallow; whereas the land set aside would have to be cared for so as to meet certain minimum environmental standards; whereas the areas set aside as temporary fallow can also be used for non-food purposes, provided effective control systems can be applied;

Whereas the set-aside requirement should be fixed initially at 15 % of the land of the holding for which claims for payments are made; whereas this percentage should be re-examined to take account of production and market developments;

Whereas the set-aside obligation should be subject to due compensation; whereas the compensation should be equivalent to the definitive compensatory aid per hectare for cereals calculated at the regional level;

Whereas under the 'simplified scheme' for small producers, no set-aside requirement is imposed and the compensatory payment for cereals shall be paid for all areas irrespective of the crops actually sown; whereas, however, producers applying for this scheme have to accept certain procedures to facilitate controls;

Whereas compensatory payments should be paid once a year for a given area; whereas areas previously not cultivated should not be eligible for aid, with the exception of an area that has been set aside in previous years under the existing voluntary set-aside arrangements;

Whereas it is necessary to determine certain conditions for applying for compensatory payments and to specify when producers shall be paid;

Whereas a quality policy for rape seed is required;

Whereas expenditure incurred by the Member States as a result of the obligations arising out of the application of this Regulation will be financed by the Community in accordance with Articles 2 and 3 of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy ⁽¹⁾, as last amended by Regulation (EEC) No 2048/88 ⁽²⁾;

Where it is necessary to provide for transitional measures and to enable the Commission to adopt, if necessary, additional transitional measures;

Whereas the new support system will not be fully introduced before the marketing year 1995/96; whereas for the transitional, as well as for the definitive application period, existing Community legislation for the products concerned should be adapted; whereas these adaptations should be the subject of separate regulations,

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation hereby establishes a system of compensatory payments for producers of arable crops.
2. For the purposes of this Regulation:
 - the marketing year shall run from 1 July to 30 June,
 - 'arable crops' are taken to mean those listed in Annex I.

TITLE 1

Compensatory payment

Article 2

1. Community producers of arable crops may apply for a compensatory payment under the conditions set out in this Title.
2. The compensatory payment shall be fixed on a per hectare basis and regionally differentiated.

The compensatory payment is granted for the area which is down to arable crops or subject to set-aside in accordance with Article 7 of this Regulation and which does not exceed a regional base area. This is established as the average number of hectares within it down to arable crops or where appropriate fallowed in conformity with a publicly funded scheme during 1989, 1990 and 1991. A region in this sense should be understood to mean a Member State or a region within the Member State, at the option of the Member State concerned.

Where an area is not the subject of an application for aid under this Regulation but is used to justify an application for aid under Regulation (EEC) No 805/68 ⁽³⁾ the said area shall be subtracted from the regional base area for the period in question.

⁽¹⁾ OJ No L 94, 28. 4. 1970, p. 13.

⁽²⁾ OJ No L 185, 15. 7. 1988, p. 1.

⁽³⁾ OJ No L 148, 28. 6. 1968.

3. Instead of a system of regional base areas, a Member State may apply an individual base area system for all of its territory. A base area for each holding is established as the average number of hectares which were down to arable crops, or which were fallowed in conformity with a publicly funded scheme, during 1989, 1990 and 1991. However, where a producer alters the use to which his areas are put, his base area shall be reduced at his request.

For the purposes of establishing individual base areas, areas used with a view to taking advantage of the provisions of Regulation (EEC) No 805/68 shall not be taken into account.

4. Where an initial choice is made for the scheme referred to in paragraph 2, subsequent recourse to the scheme referred to in paragraph 3 shall be authorized.

5. The compensatory payment shall be granted under:

- (a) a 'general scheme', open to all producers, or
- (b) a 'simplified scheme' open to small producers.

Producers applying for the compensatory payment under the general scheme shall be subject to an obligation to set aside part of the land of their holding from production and shall receive a compensation for this obligation.

6. In the case of a regional base area, and when the sum of the individual areas for which aid is claimed under the arable producers' scheme, including the set-aside provided for under that scheme, and set-aside provided for under Council Regulation (EEC) No 2328/91 of 15 July 1991 on improving the efficiency of agricultural structures⁽¹⁾, is in excess of the regional base area, the following will be applied in the region in question:

- during the same marketing year, the eligible area per farmer will be reduced proportionately for all the aids granted under this Title,
- in the following marketing year, producers in the general scheme will be required to make, without compensation, a special set-aside. The percentage rate for special set-aside shall be equal to the percentage by which the regional base has been exceeded. This shall be additional to the set-aside requirement given in Article 7.

Article 3

1. Each Member State shall establish a regionalization plan setting out the criteria for the establishment of separate production regions. The criteria used must be appropriate, objective and provide the necessary flexi-

bility for the recognition of distinctive homogeneous zones, which are of a minimum size and allow for specific characteristics that influence yields such as soil fertility, including when appropriate due differentiation between irrigated and non-irrigated areas. These regions must not cross the boundaries of the base area regions mentioned in the second subparagraph of Article 2.

Member States may in their regionalization plans apply a different yield figure for maize compared with other cereals. In this case, regional or individual base areas as referred to in Article 2 (2) and (3), with the same boundaries, must be established separately for maize and other arable crops.

2. For each production region, the Member State shall give details of the areas and yields of cereals, oilseeds, and protein crops produced in that region during the five year period 1986/87 to 1990/91. Average cereals and where possible oilseed yields shall be separately calculated for each region by excluding the year with the highest and the year with the lowest yield during that period.

However, this obligation may be fulfilled in the case of Portuguese cereals by providing data having been supplied pursuant to Council Regulation (EEC) No 3653/90 of 11 December 1990 introducing transitional measures governing the common organization of the market in cereals and rice in Portugal⁽²⁾ and in the case of the five new German Länder by providing the average crop yield applicable in the other German Länder.

Where a Member State decides to treat maize separately from other cereals, the average cereals yield, which shall not be changed, shall also be broken down between maize alone, and cereals without maize.

3. Member States shall submit their regionalization plan to the Commission by 1 August 1992 together with all available supporting information. In order to fulfil this obligation, they may refer to their regionalization plan submitted to the Commission in accordance with Council Regulation (EEC) No 3766/91 of 12 December 1991 establishing a support system for producers of soya beans, rapeseed and colza seed and sunflower seed⁽³⁾.

⁽¹⁾ OJ No L 218, 6. 8. 1991, p. 1.

⁽²⁾ OJ No L 362, 27. 12. 1990, p. 28.

⁽³⁾ OJ No L 356, 24. 12. 1991, p. 17.

4. The Commission shall examine the regionalization plans submitted by the Member States and shall ensure that each plan is based on appropriate, objective criteria and is consistent with available historical information. The Commission may object to plans which are not compatible with the aforementioned relevant criteria in particular with the average yield of the Member State. In this case the plans shall be subject to adjustment by the Member State concerned after consultation with the Commission.

5. The regionalization plan may be revised by the Member State concerned at the request of the Commission or at the initiative of that Member State in accordance with the same procedure as outlined in paragraphs 1 to 4.

Article 4

1. The cereals compensatory payment is calculated by multiplying the basic amount per tonne by the average cereals yield determined in the regionalization plan for the region concerned. Where maize is treated separately, maize and other cereals' respective average yields shall be used.

2. The basic amount per tonne is fixed at:

- ECU 25 for the 1993/94 marketing year,
- ECU 35 for the 1994/95 marketing year and
- ECU 45 from the 1995/96 marketing year onwards.

3. A supplement to the compensatory payment shall be granted for the area down to durum wheat in the traditional production zones listed in Annex II, within the limit of the number of hectares which were down to durum wheat and eligible for durum wheat aid during 1988/89, 1989/90, 1990/91 or 1991/92. The producer chooses which marketing year shall be used.

The supplement is fixed at ECU 297 per hectare from the marketing year 1993/94 on.

Article 5

1. The compensatory payment per hectare for oil seeds is calculated in the following way:

- (a) a projected reference price for oil seeds is set at ECU 163 per tonne;
- (b) a Community reference amount for oil seeds is set at ECU 359 per hectare from the 1993/94 marketing year onwards;
- (c) for each production region determined in the regionalization plan, a projected regional reference amount

for oil seeds shall be established by the Commission which reflects the comparison between either the cereals yield for that region and the average cereals yield for the Community (4,6 tonnes per hectare) or the oil seeds yield for that region and the average oil seeds yield for the Community (2,36 tonnes per hectare). Each Member State shall specify for each region on the basis of appropriate objective criteria which formula should be used; when exercising this choice, the Member State may not come to a global result which would be higher than if it had used exclusively either cereals yields or oil seeds yields;

- (d) before 30 January in each marketing year the Commission, in accordance with the procedure laid down in Article 38 of Council Regulation 136/66/EEC of 21 September 1966 on the establishment of a common organization of the market in oils and fats⁽¹⁾ shall determine a final regional reference amount based on the observed reference price for oil seeds. This amount shall be calculated by substituting the observed reference price for the projected reference price; no account shall be taken of price variations within 8% of the projected reference price.

2. For Spain and Portugal a national projected reference amount for producers of sunflower seed will be set as the point of departure for regionalization within those Member States. The amount for Portugal will be set at ECU 272 per hectare. The amount for Spain will be set at ECU 295 per hectare for 1993/94 and ECU 311 per hectare for 1994/95.

Until the end of the 1994/95 marketing year, the compensation payment for non-professional producers of sunflower seed in Spain and Portugal will be fixed by the Commission in such a way as to avoid any distortion which might arise from transitional arrangements for sunflower seed producers in these Member States.

3. The Commission shall publish the aforementioned amounts in the *Official Journal of the European Communities*. The publication shall include a succinct explanation of the calculations made.

Article 6

From the 1993/94 marketing year onwards, the compensatory payment per hectare of protein crops is ECU 65 multiplied by the regional yield for cereals, excluding maize yields in those regions where a separate yield is applied for maize.

⁽¹⁾ OJ No L 172, 30. 9. 1966, p. 3025.

Article 7

1. The set-aside requirement for each producer applying for compensatory payments under the general scheme is fixed:

- in the case of a regional base area, as a proportion of his area down to the arable crops concerned and for which a claim is made, and left in set-aside, pursuant to this Regulation,
- in the case of an individual base area, as a percentage reduction of his relevant base area.

The set-aside requirement to apply with effect from the sowings for the 1993/94 marketing year onwards, shall be 15 %. The land set aside shall be subject to rotation. However non-rotational set-aside shall be permitted in return for a higher set-aside percentage rate. This rate will be decided before 31 July 1993 by the Council by qualified majority acting on a proposal from the Commission and it may vary in different regions of the Community.

2. In the case of a farm where there are areas set aside in compliance with Article 2 of Regulation EEC No 2328/91 these areas cannot be used to fulfill the set-aside requirement given in paragraph 1.

3. Member States shall apply appropriate environmental measures which correspond to the specific situation of the land set aside.

4. The land set aside may be used for the provision of materials for the manufacture within the Community of products not primarily intended for human or animal consumption, provided that effective control systems are applied.

5. The compensation for the obligation to set aside land is fixed at the level of the compensatory payment which would be paid from the marketing year 1995/96 for the same areas if cultivated with cereals. This compensation will be paid for the number of hectares needed to satisfy the requirement set out in paragraph 1. In the case of Portugal, the compensation takes account of the aid scheme provided for in Regulation EEC No 3653/90.

6. Where national environmental rules have the implication that a farmer who sets aside some of his arable land would be forced to reduce his animal production, this farmer may arrange to transfer his set-aside obligation to another farmer in the same Member State. His right to compensation will depend on the full performance of this obligation by the farmer to whom it has been transferred. If the transfer is made to a different yield region, the area to be set aside shall be adjusted accordingly. Such transferred obligations will be subject

to the general rules on non-rotational set-aside unless they provided for rotation on the holding on which the responsibility is undertaken. The Member State may require that such transfers remain within the same region within the meaning of Article 2 (2).

Article 8

1. Small producers of arable crops may apply for the compensatory payment under the simplified scheme.

2. Small producers are producers who make a claim for compensatory payments for an area no bigger than the area which would be needed to produce 92 tonnes of cereals, if they achieve the average cereals yield which has been determined for their region or, in the case of the Member States who operate the system of individual base areas, whose individual base area is no bigger than that area.

3. Under the simplified scheme:

- no set-aside requirement is imposed,
- the compensatory payment shall be paid at the rate applicable for cereals for all areas sown to arable crops.

Article 9

Applications for the compensatory payment and for fulfilling the set-aside obligations may not be made in respect of land which was under permanent pasture, permanent crops, forest, or non-agricultural uses on 31 December 1991.

Article 10

1. The compensatory payments for cereals, and protein crops, as well as the compensation for the set-aside obligation, shall be paid between 16 October and 31 December next following the harvest.

2. In order to qualify for the compensatory payment, a producer must, at the latest by 15 May preceding the relevant harvest:

- have sown the seed,
- have lodged an application.

3. The application must be accompanied by references enabling the areas concerned to be identified. The areas down to arable crops and the areas set aside in accordance with this Regulation shall be shown in the form of separate entities.

4. The Commission, in accordance with the procedure laid down in Article 23 of Regulation EEC No 1766/92 (*) may decide that certain varieties of durum wheat are ineligible for the supplement referred to in Article 4 (3).

5. Member States shall take the necessary measures to remind applicants of the need to respect existing environmental legislation.

Article 11

1. Access to the compensatory payment for growers of oil seed rape and colza shall be restricted to those growers using seed of an approved quality and variety. The Commission, in accordance with the procedure laid down in Article 38 of Regulation 136/66/EEC shall establish what rapeseed and colza seed shall be eligible for aid.

2. Producers who apply for an oil seeds compensation payment shall be entitled to an advance payment of no more than 50 % of the Projected Regional Reference Amount. Member States shall carry out the necessary checks to ensure entitlement to the advance is justified. Once entitlement to the payment is established, payment of the advance should be made.

3. In order to qualify for an advance payment, a producer must by the date specified for the region in question, have sown the seed and have lodged with the competent agency of the Member State a detailed cultivation plan for this holding showing the land to be used for cultivating oil seeds.

4. Where an advance has been made, a balance shall be paid equal to the difference, if any, between the amount of the advance and the Final Regional Reference Amount.

5. Where a producer demonstrates that he has retained ownership of the product for a period to be determined, an orderly marketing bonus may be payable. The amount of the bonus and the conditions determining eligibility shall be adopted by the Commission in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC.

6. The timetable of the regionalized system of payments to applicants shall be established by the Commission in accordance with the procedure referred to in Article 38 of Regulation No 136/66/EEC.

Article 12

Detailed rules for the application of this Title shall be adopted in accordance with the procedure laid down respectively in Article 38 of Regulation No 136/66/EEC, in Article 12 of Regulation (EEC) No 1117/78 (*) and in Article 23 of Regulation (EEC) No 1766/92 and in particular:

- those relating to the establishment and management of base areas and those concerning the application of Article 2 (4),
- those relating to the establishment of production regionalization plans, including the determination of the minimum size of a region,
- those relating to the determination of the amounts and the payment of the compensatory aids,
- those relating to the minimum area to be cultivated; such rules shall take particular account of the monitoring requirements and of the sought-after effectiveness of the scheme in question,
- those determining the eligibility requirements for the durum wheat supplement,
- those relating to monitoring; without prejudice to specific provisions on an integrated management and control system, such rules shall include the use of remote sensing and/or plausibility monitoring on the basis of binding official documents that are already available in the national administrations,
- those allowing the dates in Articles 10 (2) and 11 (3) to be varied in certain areas where exceptional climatic conditions render the normal dates inapplicable,
- those relating to the special and normal set aside requirements; such rules shall define especially the notion of rotation, the minimum annual set-aside period and the measures to be taken in favour of the environment and determine the regions where, for climatic reasons, these measures may be replaced by other more appropriate measures,
- those relating to the conditions for applying Article 7 (4) and Article 9,
- those relating to the specific administrative procedures to assist controls for the simplified scheme,

(*) See page 21 of this Official Journal.

(?) OJ No L 142, 30. 5. 1978, p. 1.

— those relating to the effects of property and tenure changes on the application of the scheme.

According to the same procedure, the Commission may add minor crops to the list given in Annex I and determine the consequences of such extensions in particular insofar as base areas and set-aside requirements are concerned.

Article 13

The measures defined in this Title shall be deemed to be interventions intended to stabilize the agricultural markets within the meaning of Article 3 (1) of Regulation (EEC) No 729/70.

TITLE II

General and transitional provisions

Article 14

1. The 1992 harvest is the last harvest in respect of which new applications may be made for participation in the set-aside scheme provided for in Article 2 of Regulation (EEC) No 2328/91. Producers still participating after that time have the option to leave the said scheme, between 1 September and 15 December in 1992 to 1996. This option is restricted to holdings which are subject to the set-aside requirement set out in Article 7.

2. The authorization in the third subparagraph of Article 2 (3) of Council Regulation (EEC) No 2328/91 concerning the use of set-aside arable land for:

- grazing for extensive livestock farming,
 - growing lentils, chick-peas and vetches,
- shall continue to apply.

Article 15

1. The amounts of the compensatory payments and the compensation for the set-aside obligation, as well as the percentage area to be set aside fixed in this Regulation may be changed in the light of developments in

production, productivity and the markets, according to the procedure laid down in Article 43 (2) of the Treaty.

2. From the 1994/95 marketing year onwards, the Council may decide, according to the procedure laid down in Article 43 (2) of the Treaty that the arrangements for making the compensatory payments for oil seeds shall also apply to the case of protein crops.

3. The payments referred to in this Regulation are to be paid over to the beneficiaries in their entirety.

Article 16

Should specific measures be necessary to facilitate the transition from the system in force to that established by this Regulation, in particular if the introduction of this system gives rise to substantial difficulties in respect of certain products, such measures shall be adopted in accordance with the procedure laid down in Article 38 of Regulation 136/66/EEC, in Article 12 of Regulation (EEC) No 1117/78 or in Article 23 of Regulation (EEC) No 1766/92.

Article 17

1. The provisions relating to oil seeds aids contained in this Regulation supersede those contained in Regulation (EEC) No 3766/91 for oil seeds sown for harvest after 1 July 1993.

2. The provisions of this Regulation which concern aid to protein crops shall replace those of Regulation (EEC) No 1431/82⁽¹⁾ for protein crops sown with a view to being harvested after 1 July 1993.

The provisions of Regulation (EEC) No 1431/82 and the corresponding provisions in the Regulations in force on 30 June 1993 shall continue to apply after this date to protein crops harvested in the Community and identified on 30 June 1993.

Article 18

This Regulation shall enter into force on 1 July 1992.

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

Done at Luxembourg, 30 June 1992.

For the Council

The President

Arlindo MARQUES CUNHA

⁽¹⁾ OJ No L 162, 12. 6. 1982, p. 28.

ANNEX I

Definition of products

CN code	Description
I. CEREALS	
1001 10	Durum wheat
1001 90	Other wheat and meslin other than durum wheat
1002 00 00	Rye
1003 00	Barley
1004 00	Oats
1005	Maize
1007 00	Grain sorghum
1008	Buckwheat, millet and canary seed; other cereals
II. OIL SEEDS	
1201 00	Soya beans
1205 00	Rape seed
1206 00	Sunflower seed
III. PROTEIN CROPS	
0713 10	Peas
0713 50	Field beans
1209 29 50	Sweet lupins

ANNEX II

Traditional production zones for durum wheat

ITALY

Regions

Abruzzi
Basilicata
Calabria
Campania
Latium
Marches
Molise
Apulia
Sardinia
Sicily
Tuscany

FRANCE

Regions

Provence-Alpes-Côte d'Azur
Languedoc-Roussillon

GREECE

Regions

Central Greece
Peloponnese
Ionian Islands
Thessaly

Macedonia

Aegean Islands

Thrace

SPAIN

Comunidades Autonomas

Andalucia

Navarra

Provincias

Badajoz

Burgos

Salamanca

Toledo

Zamora

Zaragoza

PORTUGAL

Distritos

Santarém

Lisboa

Setúbal

Portalegre

Evora

Beja

Faro