

COMMISSION REGULATION (EEC) No 3902/92

of 23 December 1992

setting detailed rules for granting financial compensation on certain fishery products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3759/92 of 17 December 1992 on the common organization of the market in fishery and aquaculture products⁽¹⁾, and in particular Article 12 (6) thereof,

Whereas under Article 12 of Regulation (EEC) No 3759/92 Member States are to grant financial compensation to producers' organizations which, observing certain requirements, withdraw from the market products listed in Annex I (A) and (D) of that Regulation;

Whereas, in order to give maximum encouragement to action to stabilize the market, producers' organizations not observing the Community withdrawal price throughout the fishing year should be debarred from receiving financial compensation;

Whereas in order to guarantee normal conditions of competition between producers' organizations making use of the margin of tolerance provided for at (a) in Article 12 (1) of the abovementioned Regulation it is necessary to specify requirements pertaining to its application; whereas in order to ensure transparency of the market recourse to the margin of tolerance must be adequately publicized;

Whereas the purpose of the activities of producers' organizations is to ensure rationality of fishing operations and improve selling conditions for their members' catches; whereas it is accordingly necessary to restrict financial compensation to fish caught by members of such organizations;

Whereas since demand may fluctuate within the duration of any selling operation products should not be withdrawn from the market before being put up for sale; whereas compensation should accordingly be granted only on products that, having been put up for sale in the normal way, have not found a buyer at the Community withdrawal price;

Whereas compensation must be clearly disallowed on fish on which the carryover aid provided for in Article 14 of Regulation (EEC) No 3759/92 has been granted;

Whereas systematic compliance with common marketing standards as indicated in Article 2 of Regulation (EEC) No 3759/92 is, irrespective of their obligatory character, a determining factor in price formation and a contributory element to stabilization of the market; whereas the granting of compensation on eligible quantities should therefore be made conditional on compliance with the standards for all quantities of the product in question put up for sale by the producers' organization or its members throughout the fishing year;

Whereas financial compensation cannot be paid until the end of the fishing year; whereas to facilitate the operation of producers' organizations it should be made possible for advances to be granted against lodging of security;

Whereas rules for calculating advances on financial compensation and fixing the security amount required should be set; whereas the conversion rate for the compensation and for advances must also be set;

Whereas the granting of compensation should extend to fish put up for sale and withdrawn by producers' organizations or their members in other Member States; whereas the authorities of the other Member State in which the fish was put up for sale and withdrawn or carried over should issue a certifying document and transmit a copy;

Whereas each Member State should introduce a control system for verifying that the figures given in applications for financial compensation correspond to the quantities actually put up for sale and withdrawn;

Whereas in cases of infringement of limited consequence of the financial compensation scheme the producers' organization should not, for the restricted financial advantage arising from the infringement, be penalized by complete withdrawal of entitlement to financial compensation but merely by a flat rate reduction therein;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Fishery Products,

⁽¹⁾ OJ No L 388, 31. 12. 1992, p. 1.

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation lays down detailed rules for granting the financial compensation referred to in Article 12 of Regulation (EEC) No 3759/92, hereinafter referred to as the 'basic Regulation'.

Article 2

1. Financial compensation shall be granted to producers' organizations only if they apply, and ensure that their members comply with, the Community withdrawal price throughout the fishing year, when the products are first put up for sale, in accordance with the conditions laid down in Article 12 (1) (a) and (d) of the basic Regulation.

2. Should the use of the margin of tolerance provided for in Article 12 (1) (a) of the basic Regulation lead to the fixing of different withdrawal price levels for the same product category by producers' organizations established in a given area, each of these organizations may adopt the price level fixed by another producers' organization in the same area with effect from the date it becomes applicable and for the relevant period.

3. The withdrawal price level fixed by a producers' organization using the margin of tolerance shall apply to all the quantities offered for sale by that organization or its members, including those offered for sale outside its area of activity.

However, any producers' organization or one of its members, selling its products in an area other than its own area of activity, may apply either its own withdrawal price level which must not be lower than the price level in the zone concerned or one of those adopted, after eventual application of the margin of tolerance, by the producers' organizations established in that area.

4. The withdrawal price shall not include expenses incurred after landing of the products with the exception of those, including transport costs, made necessary by auction or quayside sales.

Article 3

1. Any producers' organization applying the margin of tolerance to the Community withdrawal price shall communicate to the competent authorities of the Member State in which it is recognized the level of the withdrawal price adopted for each category of products in all parts of its area of activity, at least two working days before it is to become applicable.

If a producers' organization intends to change the period of application of the margin of tolerance or the level of the withdrawal price, or make use of the option provided

for in Article 2 (2), it shall inform the competent authorities thereof at least two working days before the date of application of its decision.

All decisions referred to in this Article shall apply for five working days at least.

2. The competent authorities of the Member State concerned shall ensure that all the information communicated pursuant to paragraph 1 is publicized without delay in accordance with regional ways and customs.

3. For the purposes of this Article, the provisions of Council Regulation (EEC, Euratom) No 1182/71⁽¹⁾ shall apply. However, for the purposes of this Regulation, Saturdays, Sundays and public holidays shall be treated as working days provided putting up for sale is done in accordance with Article 4 (1) (c).

Article 4

1. Quantities withdrawn from the market shall be considered to be quantities eligible for financial compensation only if:

- (a) they were caught by a member of a producers' organization;
- (b) they were put up for sale:
 - through the producers' organization,
 - or
 - by a member in accordance with common rules established by the producers' organization, as referred to in the first indent of Article 4 (1) of the basic Regulation;
- (c) prior to withdrawal they were put up for a sale accessible to all interested parties in accordance with regional and local ways and customs, during which it was established that they did not find a buyer at the price fixed in accordance with Article 12 (1) (a) of the basic Regulation;
- (d) for which no request has been made and which have not benefited from the carryover aid referred to in Article 14 of the basic Regulation.

2. The grant of financial compensation for quantities eligible pursuant to paragraph 1 shall be subject to the condition that, for the product or group of products concerned, all the quantities put up for sale by the producers' organization or its members during the fishing year must have been classified previously in accordance with the marketing standards referred to in Article 2 of the basic Regulation.

Article 5

1. The financial compensation shall be paid to producers' organizations, on application, after the end of each fishing year.

⁽¹⁾ OJ No L 124, 8. 6. 1971, p. 1.

2. Applications for payment of the financial compensation shall be submitted by producers' organizations to the competent authorities of the Member State four months after termination of the fishing year concerned at the latest.

3. The conversion rate applying to financial compensation shall be the agricultural conversion rate in effect on 31 December of the year in question, even where the fishing year is extended beyond that date.

4. The national authorities shall pay the financial compensation within eight months at the latest of the end of the fishing year.

Each Member State shall communicate to the other Member States and the Commission the name and address of the body responsible for granting the financial compensation.

Article 6

1. On application by the producers' organization concerned, Member States shall grant each month an advance on the financial compensation on condition that the applicant has lodged a security equal to 105 % of the amount of the advance.

Advances shall be calculated in accordance with the method specified in Annex I.

2. The conversion rate to be applied to the advance shall be the agricultural conversion rate applicable on the last day of the month for which the advance is applied for. If the fishing year is extended beyond 31 December of the calendar year concerned, the agricultural conversion rate to be applied to the advance for the month or months concerned by this extension shall be that applicable on 31 December.

The conversion rate to be applied to the balance of the financial compensation shall be the agricultural conversion rate applicable on 31 December of the fishing year in question, even if the fishing year is extended beyond that date.

Article 7

If a producers' organization or one of its members puts up for sale its products in a Member State other than that in which it is recognized, the competent authority of the first Member State shall issue, on application and without delay, to the organization in question or its member, a certificate the contents of which shall be in accordance with the specimen given in Annex II, and shall transmit at the same time, through official channels, a copy of this certificate to the body responsible for granting the financial compensation in the other Member State.

Applications for the issue of the certificate shall be submitted to the competent authority concerned immediately after the products are put up for sale.

Article 8

Member States shall introduce a control system to verify that the information given in applications for payment corresponds to the quantities actually put up for sale and withdrawn from the market by the producers' organization concerned.

Member States shall inform the Commission of the measures taken pursuant to the preceding paragraph as soon as they are adopted, and in any case by 31 January 1993.

Article 9

1. If an infringement of the financial compensation scheme, of limited consequence, is committed by a producers' organization or one of its members, and the organization shows to the satisfaction of the Member State concerned that the infringement was committed without fraudulent intent or serious negligence, the Member State shall retain an amount equal to 10 % of the Community withdrawal price applicable to the quantities concerned which were withdrawn and not intended for carryover.

The amount retained shall be credited to the EAGGF.

2. Where an infringement of the financial compensation scheme is committed as a consequence of gross negligence or with intent to defraud by a producers' organization or one of its members, aid will be withheld from the producers' organization in question for the fishing year concerned and for the following year. Any advances paid for that fishing year shall be refunded.

3. Member States shall inform the Commission each month of the cases in which they have applied the provisions of paragraph 1.

Article 10

Commission Regulation (EEC) No 3137/82 of 19 November 1982 laying down detailed rules for the granting of financial compensation in respect of certain fishery products⁽¹⁾ is hereby repealed.

Article 11

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

It shall apply from 1 January 1993.

⁽¹⁾ OJ No L 335, 29. 11. 1982, p. 1.

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

Done at Brussels, 23 December 1992.

For the Commission

Manuel MARÍN

Vice-President

ANNEX I

CALCULATION OF ADVANCES ON FINANCIAL COMPENSATION (1)

Species :

Month :

A. Quantity offered for sale between 1 January and last day of month : kg

B. Total cumulated withdrawals over same period : kg

C. Average withdrawal percentage : % (B : A × 100)

FIRST BLOCK : (Quantities offered for sale × 0,07 = ... kg)

Financial compensation = 0,875 × withdrawal price)

	1. Quantity withdrawn (kg)	2. Corresponding withdrawal price (ECU/kg)	3. Level of compensation	4. Estimated compensation (ECU) (1 × 2 × 3)
Category			0,875	
Category			0,875	
-----			0,875	
Total				

SECOND BLOCK : (Quantities offered for sale × 0,07 = ... kg)

(Financial compensation = 0,750 × withdrawal price)

Same table as for first block

THIRD BLOCK : Quantity withdrawn in excess of 14 % of cumulative quantity offered for sale
(no financial compensation paid)

The advance for the month is the sum of the advances in respect of each block.

1. Total estimated advance (block 1 + block 2)	2. Total advances received for past months	3. Advance to be received for month (1) - (2)

(1) If necessary on provisional figures (to be made definite within the next two months).

ANNEX II

MEMBER STATE :

Certificate issued under Article 7 of Regulation (EEC) No 3902/92

1. Applicant

(a) Producers' organization (name and address):

.....

(b) Member acting in name of that organization (name):

.....

(c) Name of vessel and registration number :

.....

2. Quantities sold (by product and weight in kg)

3. Date :

4. Was the Community withdrawal price (see Article 11 (1) of Regulation (EEC) No 3759/92) applied on the quantities indicated at 2 ?

Yes	No
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Was the regional withdrawal price (see Article 11 (2) of Regulation) applied ?

Yes	No
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5. Of the quantities indicated at 2. the following volumes were withdrawn from the market so that financial compensation could be granted :

(a) product	category	quantity (kg)
.....
.....
.....

(b) The products withdrawn were, in line with Commission Regulation (EEC) No 1501/83 (1), disposed of as follows :

product	quantity (kg)	option
.....
.....
.....

Original issued to producers' organization or member named at 1.

Copy to body responsible for granting compensation in Member State in which producers' organization at 1. is recognized.

.....
(Signature of applicant)

.....
(Signature/stamp of competent authority
of Member State)

(1) OJ No L 152, 10. 6. 1983, p. 22.