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COUNCIL REGULATION (EEC) No 404/93
of 13 February 1993
on the common organization of the market in bananas
(OJ L 47, 25.2.1993, p. 1)

Amended by:

		Official Journal		
		No	page	date
► <u>M1</u>	Commission Regulation (EC) No 3518/93 of 21 December 1993	L 320	15	22.12.1993
► <u>M2</u>	Council Regulation (EC) No 3290/94 of 22 December 1994	L 349	105	31.12.1994
► <u>M3</u>	Council Regulation (EC) No 1637/98 of 20 July 1998	L 210	28	28.7.1998
► <u>M4</u>	Council Regulation (EC) No 1257/1999 of 17 May 1999	L 160	80	26.6.1999
► <u>M5</u>	Council Regulation (EC) No 216/2001 of 29 January 2001	L 31	2	2.2.2001
► <u>M6</u>	Council Regulation (EC) No 2587/2001 of 19 December 2001	L 345	13	29.12.2001
► <u>M7</u>	Council Regulation (EC) No 2013/2006 of 19 December 2006	L 384	13	29.12.2006

Amended by:

► <u>A1</u>	Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded	L 236	33	23.9.2003
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NB: This consolidated version contains references to the European unit of account and/or the ecu, which from 1 January 1999 should be understood as references to the euro — Council Regulation (EEC) No 3308/80 (OJ L 345, 20.12.1980, p. 1) and Council Regulation (EC) No 1103/97 (OJ L 162, 19.6.1997, p. 1).



COUNCIL REGULATION (EEC) No 404/93
of 13 February 1993
on the common organization of the market in bananas

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 Protocol on the tariff quota for imports of bananas annexed to the Implementing Convention on the Association of the Overseas Countries and Territories of the Community provided for in Article 136 of the Treaty, and in particular paragraph 4 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 operation and development of the common market for agricultural products must be accompanied by the introduction of a common agricultural policy including in particular a common organization of the agricultural markets which may take different forms depending on the products;

Whereas there currently exist within the Member States of the Community producing bananas national market organizations which seek to ensure that producers can dispose of their products on the national market and receive an income in line with the costs of production; whereas these national market organizations impose quantitative restrictions which hamper achievement of a single market for bananas; whereas some of the Member States which do not produce bananas provide preferential outlets for bananas from the ACP States while others have liberal importation rules, which even in one case include a privileged tariff situation; whereas these different arrangements prevent the free movement of bananas within the Community and implementation of common arrangements for trade with third countries; whereas, for the purposes of achievement of the single market, a balanced and flexible common organization of the market for the banana sector must replace the various national arrangements;

Whereas, so that the Community can respect Community Preference and its various international obligations, that common organization of the market should permit bananas produced in the Community and those from the ACP States which are traditional suppliers to be disposed of on the Community market providing an adequate income for producers and at fair prices for consumers without undermining imports of bananas from other third countries suppliers;

Whereas, to permit the market to be supplied with products of uniform and satisfactory quality with due regard to local peculiarities and the varieties produced and to ensure the disposal of Community products at profitable prices guaranteeing an adequate income, quality standards for fresh bananas and, if necessary, marketing rules for processed products on bananas should be introduced;

⁽¹⁾ OJ No C 232, 10. 9. 1992, p. 3.

⁽²⁾ OJ No C 21, 25. 1. 1993.

⁽³⁾ OJ No C 19, 25. 1. 1993, p. 99.

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Whereas, in order to maximize income from bananas produced within the Community, the formation of producers' organizations should be encouraged, principally through the granting of start-up aid; whereas, in order for such organizations to be given an effective role in concentrating supply, their members should undertake to market the whole of their production through the organization; whereas the formation of other types of associations, comprising producers' organizations and representatives of the other stages of production, should also be permitted; whereas the conditions under which such associations representing the various aspects of the banana sector may undertake measures of general interest and have their rules extended to non-members of either locally or regionally should be defined at a later date; whereas such organizations could also be consulted when framework programmes are drawn up and play an active role in implementing structural measures introduced as part of the market organization;

Whereas the structural shortcomings which restrict the ability of Community production to compete should be mitigated, chiefly to raise productivity; whereas programmes to achieve this in each region of production should be laid down under the Community support frameworks through cooperation between the Commission and the national and regional authorities and with the various types of organization in the sector referred to above being associated as closely as possible with preparation of the measures to be introduced;

Whereas national market organizations have hitherto enabled national banana producers to obtain from the market an adequate income to cover their production costs; whereas, since introduction of the market organization should not place producers in a worse situation than at present, and since it is likely to alter the levels of prices on those markets, provision should be made for compensation to cover the loss of income which may derive from implementation of the new system so as to permit the continuation of Community production at the costs entailed by the specific structural situation for as long as this remains unadjusted by the structural measures implemented; whereas provision should be made for aid to be adjusted to take account of increased productivity and trends in the various quality categories;

Whereas in certain very small regions of the Community where conditions are particularly unsuited to the production of bananas but better suited to alternative crops the definitive cessation of banana production should be encouraged through a premium for the cessation of banana production; whereas, in order to limit the cost of this operation, grubbing up should be carried out as soon as possible;

Whereas a forecast supply balance drawn up each year should assess the prospects for production and consumption in the Community; whereas it should be possible to revise that balance during the year in the light of circumstances, including specific climatic events;

Whereas in order to ensure satisfactory marketing of bananas produced within the Community and of products originating in the ACP States within the framework of the Lomé Convention Agreements, while maintaining traditional trade patterns as far as possible, provision should be made for the annual opening of a tariff quota; whereas, on the one hand, imports of bananas from third countries would be subject to a tariff of ECU 100 per tonne, which corresponds to the current rate under the Common Customs Tariff, and, on the other hand, imports of non-traditional bananas from the ACP would be subject to zero duty in accordance with the abovementioned agreements; whereas provision should be made in order to ensure the adaptation of the amount of the tariff quota based on changes in Community demand recorded in the forecast supply balance;

Whereas imports not falling within the tariff quota must be subject to sufficiently high rates of duty to ensure that Community production and traditional ACP quantities are disposed of in acceptable conditions;

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Whereas traditional imports of bananas from the ACP fall outside the duty-free tariff quota as part of traditional quantities which takes account of specific investments already made under programmes for increasing production;

Whereas in order to comply with the aims stated above, while taking into account the special features of marketing bananas, a distinction must be made when administering the tariff quota between, on the one hand, operators who have previously marketed third country bananas and non-traditional ACP bananas and, on the other, operators who have previously marketed bananas produced in the Community while leaving a quantity available for new operators who have recently embarked on commercial activity or are about to embark on commercial activity in this sector;

Whereas, in order not to disrupt existing commercial links, while at the same time allowing some development of marketing structures, the issue to each operator of separate import licences for each of the categories defined above must be on the basis of the average quantity of bananas marketed by the operator over the three preceding years for which statistical data are available;

Whereas in adopting additional criteria which operators should respect, the Commission is guided by the principle whereby the licences must be granted to natural or legal persons who have undertaken the commercial risk of marketing bananas and by the necessity of avoiding disturbing normal trading relations between persons occupying different points in the marketing chain;

Whereas, taking into account marketing structures, Member States must, on the basis of procedures and criteria adopted by the Commission, conduct a census of operators and establish quantities marketed to be used as a reference for the issue of certificates;

Whereas monitoring imports within the framework of the tariff quota requires an import licence scheme backed by a security;

Whereas the Commission should be able to take appropriate measures to deal with serious disturbances, or the threat of such disturbances, likely to jeopardize achievement of the objectives of Article 39 of the Treaty;

Whereas operation of the market organization would be undermined by the granting of certain assistance; whereas therefore the Treaty provisions permitting consideration of national aids granted by the Member States and the prohibition of those incompatible with the common market should be applied to the banana sector;

Whereas, to facilitate implementation of these provisions, a procedure involving close cooperation between the Member States and the Commission within a Management Committee should be included;

Whereas the common organization of the markets in the banana sector must also take appropriate account of the objectives set out in Articles 39 and 110 of the Treaty;

Whereas the replacement of the various national arrangements in operation when this Regulation comes into force by this common organization of the market threatens to disturb the internal market; whereas the Commission, as of 1 July 1993, should be able to take any transitional measures required to overcome the difficulties of implementing the new arrangements;

Whereas the scope of Council Regulation (EEC) No 1319/85 of 23 May 1985 on the reinforcement of supervision of the application of Community rules on fruit and vegetables⁽¹⁾ should be extended to the banana sector to permit checks that the standards laid down for bananas under that Regulation are being complied with;

⁽¹⁾ OJ No L 137, 27. 5. 1985, p. 39.

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Having regard to the social, economic, cultural and environmental importance of banana-growing in the Community regions of the French Overseas Departments, Madeira, the Azores, the Algarve, Crete, Lakonia and the Canary Islands, which are regions characterized by insularity, remoteness and structural backwardness, aggravated in some cases by economic dependence on bananagrowing,

Whereas the operation of this Regulation should be examined after an interim period of application and before the end of the tenth year after its entry into force so that the new arrangements to apply after that date can be considered,

HAS ADOPTED THIS REGULATION:

▼M6*Article 1*

1. A common organisation of the market in bananas is hereby established.
2. The organisation shall cover the following products:

CN codes	Description
0803 00 19	Fresh bananas, excluding plantains
ex 0803 00 90	Dried bananas, excluding plantains
ex 0812 95 90	Bananas provisionally preserved
ex 0813 50 99	Mixtures containing dried bananas
1106 30 10	Flour, meal and powder of bananas
ex 2006 00 99	Bananas preserved in sugar
ex 2007 10 99	Homogenised preparations of bananas
ex 2007 99 39 ex 2007 99 58 ex 2007 99 98	Jams, jellies, marmalades, purées and pastes of bananas
ex 2008 92 59 ex 2008 92 78 ex 2008 92 93 ex 2008 92 98	Mixtures containing bananas otherwise prepared or preserved
ex 2008 99 49 ex 2008 99 68 ex 2008 99 99	Bananas otherwise prepared or preserved
ex 2009 80 35 ex 2009 80 38 ex 2009 80 79 ex 2009 80 86 ex 2009 80 89 ex 2009 80 99	Banana juice

3. The marketing year shall run from 1 January to 31 December.

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TITLE I

Common quality and marketing standards*Article 2*

1. Quality standards shall be laid down for bananas intended to be supplied fresh to the consumer, excluding plantains, which shall take account of the different varieties produced.
2. Marketing standards may also be laid down for processed products made from bananas.

Article 3

1. Unless the Commission decides otherwise in accordance with the procedure laid down in Article 27 products for which common standards have been laid down may be marketed within the Community only if they comply with those standards.
2. For the purpose of establishing whether products comply with quality standards, checks may be carried out by the bodies designated by the Member States.

Article 4

Quality and marketing standards, the marketing stages at which products must comply with such standards and measures to ensure the uniform implementation of the provisions of Articles 2 and 3, including those concerning checks, shall be laid down in accordance with the procedure provided for in Article 27.

▼M7**▼B**

TITLE IV

Trade with third countries**▼M2***Article 15*

1. Unless this Regulation provides otherwise, the rates of duty in the Common Customs Tariff shall apply to the products listed in Article 1 (2).
2. In order to prevent or counteract adverse effects on the market in the Community which may result from imports of certain products listed in Article 1, imports of one or more of such products at the rate of duty laid down in Article 10 shall be subject to payment of an additional import duty if the conditions set out in Article 5 of the Agreement on Agriculture concluded in accordance with Article 228 of the Treaty in the framework of the Uruguay Round of multilateral trade negotiations have been fulfilled unless the imports are unlikely to disturb the Community market, or where the effects would be disproportionate to the intended objective.
3. The trigger prices below which an additional import duty may be imposed shall be those notified by the Community to the World Trade Organization.

The trigger volumes which must be exceeded for an additional import duty to be imposed shall be determined in particular on the basis of

▼ M2

Community imports over the three years preceding the year in which the adverse effects referred to in paragraph 2 have occurred or are likely to occur.

4. The import prices to be taken into account for the imposition of an additional import duty shall be determined on the basis of the cif import prices of the shipment concerned.

The cif import prices shall be verified for this purpose on the basis of representative prices for the product in question on the world market or on the Community import market for the product

5. The Commission shall adopt detailed rules for the application of this Article in accordance with the procedure laid down in Article 27. Such detailed rules shall specify in particular:

- (a) the products to which additional import duties shall be applied, in accordance with Article 5 of the Agreement on Agriculture;
- (b) the other criteria necessary for application of paragraph 1 in accordance with Article 5 of the said Agreement.

▼ M3**▼ M7****▼ B**

TITLE V

General provisions*Article 21*

1. Except where otherwise provided for in this Regulation,
- the levying of any charge having an effect equivalent to a customs duty,
 - the application of any quantitative restrictions or measure having equivalent effect,
- shall be forbidden on the import of products referred to in Article 1.

▼ M7**▼ M2***Article 22*

The general rules for the interpretation of the combined nomenclature and the special rules for its application shall apply to the classification of products covered by this Regulation; the tariff nomenclature resulting from the application of this Regulation shall be incorporated in the Common Customs Tariff.

Article 23

1. If, by reason of imports or exports, the Community market in one or more of the products listed in Article 1 is affected by, or is threatened with, serious disturbance likely to jeopardize the achievement of the objectives set out in Article 39 of the Treaty, appropriate measures may be taken in trade with third countries until such disturbance or threat of disturbance has ceased.

The Council, acting on a proposal from the Commission in accordance with the voting procedure laid down in Article 43 (2) of the Treaty, shall adopt general rules for the application of this paragraph and shall determine the cases in and limits within which Member States may take interim protective measures.

▼ M2

2. If the situation referred to in paragraph 1 arises, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the Member States shall be notified of such measures, which shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within three working days following receipt of the request.
3. Measures decided upon by the Commission may be referred to the Council by any Member State within three working days of the day on which they were notified. The Council shall meet without delay. It may, acting by a qualified majority, amend or annul the measure in question.
4. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 27.
5. This Article shall be applied having regard to the obligations arising from international agreements concluded in accordance with Article 228 (2) of the Treaty.

▼ B*Article 24*

Save as otherwise provided for in this Regulation, Articles 92 to 94 of the Treaty shall apply to the production of and trade in the products referred to in Article 1.

▼ M7**▼ M6***Article 27***▼ M7**

1. The Commission shall be assisted by the Management Committee for Fresh Fruit and Vegetables referred to in Article 46(1) of Regulation (EC) No 2200/96.

References to the Management Committee for Bananas shall be construed as references to the Committee referred to in the first subparagraph.

▼ M6

2. Where reference is made to this Article, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at one month.

3. The Committee shall adopt its rules of procedure.

▼ B*Article 28*

The Committee may consider any other question referred to it by its Chairman either on his own initiative or at the request of a representative of a Member State.

▼ M7*Article 29*

Member States shall provide the Commission with the information it requires to implement this Regulation.

▼ M7

Article 29a

Detailed rules for the application of this Regulation shall be adopted in accordance with the procedure referred to in Article 27(2).

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Article 33

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

It shall apply as from 1 July 1993.

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

▼ M5