

COUNCIL REGULATION (EC) No 3318/94
of 22 December 1994
amending Regulation (EEC) No 3759/92 on the common organization of the
market in fishery products and aquaculture

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European 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 accession of certain new members to the Union will require changes in the rules on the recognition of producers' organizations and amendments to the list of species eligible under the intervention mechanisms of the common organization of the market;

Whereas the producers' organizations are the pivot on which the common organization of the market turns; whereas, given current adverse market conditions, their role must be strengthened so that they can implement more quickly the measures to regulate supply and stabilize prices; whereas for this purpose the validity of any decisions taken by the Member States obliging non-members of these organizations to comply with their rules must be checked after the event;

Whereas, should the market be seriously disturbed, the activities of the producers' organizations must be supported so that the effectiveness of the measures adopted by them can be ensured to the greatest possible extent; whereas, to this end, non-members who trade within the area of activity of a representative producers' organization must be obliged to comply with the rules adopted by the said organization as regards restricting supply, in so far as provisions are adopted pursuant to Articles 22, 23 and 24 of Regulation (EEC) No 3759/92 ⁽⁴⁾, and in respect of the products concerned; whereas in this case the Member States must grant these non-members an indemnity under certain conditions;

Whereas, for various reasons, the average prices of the most important products have suffered an appreciable and lasting fall on the Community market; whereas this trend has a significant effect on producers' income; whereas, while continuing to observe the Community's international obligations, measures should accordingly be adopted that can better match supply to the needs of the market so that a fair income for producers can be ensured as far as possible; whereas encouraging the producers' organizations to improve the quality of their products contributes to the achievement of these aims; whereas specific recognition giving right to financial aid under certain circumstances must be provided for so as to assist the initiatives of the producers' organizations in this regard;

Whereas, in applying the Community withdrawal or selling prices for the products listed in Annex I, the producers' organizations may make use of a 10 % margin of tolerance above and below the said prices; whereas, when the said products are being imported, account must be taken when comparing the free-at-frontier price and the reference price of any use by the producers' organization of the 10 % tolerance margin below the Community prices; whereas the use of this lower tolerance margin must not be permitted where imports of the products in question are required to observe the reference price or are subject to a countervailing charge;

Whereas in a turbulent market the producers' organizations are frequently required to deal with significant withdrawals of certain products, which is likely to adversely affect their liquidity and thus their ability to implement other market support measures; whereas provision should accordingly be made for special financial compensation, under certain conditions, once significant withdrawals occur over a limited period;

Whereas, in the case of the tuna market, the supply requirements of the Community industry and the need to protect the income of producers justifies maintaining the tariff status of the products in question and the compensatory mechanism in accordance with the provisions in force; whereas, to ensure that production does not develop abnormally, with a consequent deterioration in associated costs, the conditions under which the said mechanism is triggered should be reviewed; whereas, furthermore, in the light of experience, the compensatory allowance scheme should be simplified so as to reduce the length of time required for payment of the allowance to the producers' organizations eligible for it,

⁽¹⁾ OJ No C 298, 26. 10. 1994, p. 18.

⁽²⁾ Opinion delivered on 15 December 1994 (not yet published in the Official Journal).

⁽³⁾ Opinion delivered on 23 November 1994 (not yet published in the Official Journal).

⁽⁴⁾ OJ No L 388, 31. 12. 1992, p. 1.

HAS ADOPTED THIS REGULATION :

Article 1

Regulation (EEC) No 3759/92 is hereby amended as follows :

1. The following Article shall be inserted after Article 4 :

Article 4a

Member States may exclusively recognize a producers' organization for a special area of activity if it is found to be representative under the terms of Article 5 (1).'

2. Article 5 (2) shall be replaced by the following :

'2. Before their decision enters into force, Member States shall notify to the Commission the rules which they intend to make obligatory pursuant to paragraph 1.

Where the Commission is unsure as to validity of the decision, it may ask the Member State in question within one month of receipt of the said notification to suspend application of the decision in whole or in part. In this case and within two months from that same date, the Commission :

- shall confirm that the rules notified may be made obligatory,
- or
- by means of a reasoned decision, declare null and void the extension of the rules decided by the Member State where it finds them to be incompatible with Community law. In this case the Commission decision shall apply from the date on which the request to suspend the rules was sent to the Member State.

The Commission shall inform the other Member States promptly at each stage of the procedure foreseen in this paragraph.'

3. The following Article shall be inserted after Article 5 :

Article 5a

1. Non-members who market, within the area for which a producers' organization is representative, one or more products for which measures have been adopted pursuant to Article 22, 23 or 24 of this Regulation may, for the period in which the said measures apply, be required to comply with the rules referred to in Article 5 (1) (a) and (b), should the producers'

organization concerned apply them to the products in question.

In this case the Member States may apply Article 5 (4) and (5) and grant non-members an indemnity under the terms laid down in Article 6.

2. At the start of each fishing year, the Member States shall prepare and notify to the Commission the updated list of the producers' organizations that fulfil the conditions for representativeness and the corresponding areas for which they are representative.

This list shall be published as an annex to the measures adopted by the Commission pursuant to Article 22, 23 or 24.'

4. The following chapter shall be inserted in Title II :

'Chapter 3

Specific measures to improve product quality

Article 7a

1. The Member States may grant specific recognition to producers' organizations as referred to in Article 4 (1) that market the products for which common marketing standards have been laid down by Regulations (EEC) No 103/76 (*) and (EEC) No 104/76 (**) and that have submitted a plan to improve the quality and the marketing of the products approved by the competent national authorities.

2. The primary purpose of the plan referred to in paragraph 1 shall be to include all stages of the production and marketing of the plan, shall provide for the following in particular :

- a marked improvement in the quality of products on board,
- optimal quality maintenance during unloading, transport and marketing of the products,
- application of adequate improvements shall have, in principle, an innovative nature.

3. The Member States shall forward to the Commission the plans that the producers' organizations submit to them. These plans may not be approved by the competent authority in the Member State until they have been sent to the Commission and 60 days have subsequently elapsed during which the Commission can request changes or reject the plan.

4. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 32.

Article 7b

1. Article 7 notwithstanding, the Member States may grant the producers' organizations that have been specifically recognized under Article 7a (1) aid to facilitate the implementation of their plans to improve quality and marketing, unless the improvement is necessary to fulfil statutory requirements.

Entitlement to the aid in question shall be for the three years following the date on which specific recognition was granted.

2. The aid in the first, second and third years may not exceed 3 %, 2 % and 1 % respectively of the production value of the products covered by the plan and marketed by the producers' organizations. As a percentage of the research and administrative costs allocated by the organization to carry out the plan the aid may not be greater than 60 % in the first year, 50 % in the second year and 40 % in the third year.

The aid shall be paid in the year following that for which it was approved.

Fifty per cent of the aid granted shall be refunded by the European Agricultural Guidance and Guarantee Fund, Guidance Section.

3. The Member State shall monitor the implementation of the plans to improve quality and marketing which they have approved.

Each year they shall send the Commission, along with their application for payment of the Community contribution, a report describing progress as regards improvements in quality for each producers' organization benefiting from the specific recognition provided for in Article 7a.

4. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 32.

(¹) OJ No L 20, 28. 1. 1976, p. 29. Regulation as last amended by Regulation (EEC) No 1935/93 (OJ No L 176, 20. 7. 1993, p. 2).

(²) OJ No L 20, 28. 1. 1976, p. 35. Regulation as last amended by Regulation (EEC) No 3162/91 (OJ No L 300, 31. 10. 1991, p. 1).

5. The following subparagraph shall be added to Article 12 (1) (a) and Article 14 (1):

'The 10 % margin of tolerance below the Community price may not be applied to products whose importa-

tion is subject to the terms of Article 22 (4) (b) and (c);'

6. The following Article shall be inserted after Article 12:

'Article 12a

1. Where, in a given calendar month, the withdrawals effected by a producers' organization, due to exceptional circumstances beyond their control, reach, in the case of a product listed in Annex I A or D, 10 % of the quantities of the said product placed on sale in the same month pursuant to the rules adopted by the producers' organization in accordance with Article 4 (1), the Member State shall grant the producers' organization concerned which so requested it special financial compensation, equivalent to 93 % of the withdrawal price applied by the said organization, for the quantities of the product in question withdrawn from the market which do not exceed 14 % of the quantities placed on sale in the month in question.

Eligibility for this special financial compensation shall be granted subject to compliance with the terms and rules laid down in Article 12 (1), (2), (4) and (5), except for the increase mentioned in Article 12 (1) (c), which shall be reduced to five.

Special financial compensation may not be granted for more than two successive calendar months and may be granted only for a maximum of three calendar months over the whole fishing year.

The quantities accepted for special financial compensation shall not be eligible for the financial compensation provided for in Article 12, nor for the carry-over aid provided for in Article 14.

2. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 32.'

7. The word 'canning' in the heading of Chapter 3 of Title III shall be replaced by 'processing'.

8. Article 17 shall be replaced by the following:

'Article 17

1. The Council, acting by qualified majority on a proposal from the Commission, shall fix for each of the products listed in Annex III a Community producer price before the start of the fishing year. This price shall be established in accordance with the first and second indents of Article 9 (2).

In fixing this price, account shall also be taken of the need to

- consider the supply conditions for the Community processing industry,
- help support producers' incomes,
- avoid the creation of surpluses in the Community.

These prices shall apply throughout the Community and shall be fixed for each fishing year.

2. The Member States shall notify the Commission of the average prices recorded at representative wholesale markets or ports for products of Community origin as referred to in paragraph 1 which have defined commercial characteristics.

3. For the purposes of paragraph 2, the representative markets and ports in the Member States shall be those where a significant proportion of Community tuna production is marketed.

4. Detailed rules for the application of this Article, in particular the fixing of conversion factors for the various species, sizes and presentations of tuna and a list of the representative markets and ports referred to in paragraph 3, shall be adopted in accordance with the procedure laid down in Article 32.'

9. Article 18 shall be replaced by the following :

Article 18

1. An allowance may be granted to the producers' organizations for the quantities of products listed in Annex III caught by their members, then sold and delivered to processing industries established within the customs territory of the Community and intended for the industrial manufacture of products falling within CN code 1604. This allowance shall be granted when, for a given quarter,

- the average selling price recorded on the Community market
- and
- the free-at-frontier price referred to in Article 22 plus, where appropriate, the applicable counter-vailing charge

are both lower than a triggering threshold equivalent to 91 % of the Community producer price for the product in question.

The Member States shall prepare or update and notify to the Commission the list of the industries referred to in this paragraph before the start of each fishing year.

2. The amount of the allowance in any case may not exceed :

- either the difference between the triggering threshold and the average selling price of the product in question on the Community market,
- or a flat-rate amount equivalent to 12 % of this threshold.

3. The maximum total quantity of each of the products eligible for the allowance shall be limited to an amount equal to the average of the quantities sold and delivered, under the terms set out in paragraph 1, during the equivalent quarter in the three fishing years preceding the quarter for which the allowance is paid.

4. The amount of the allowance granted to each producers' organization shall be equal to :

- the ceiling laid down in paragraph 2 for the quantities of the product in question which have been disposed of in accordance with paragraph 1 and which do not exceed the average of the quantities sold and delivered under the same conditions by its members in the equivalent quarter in the three fishing years preceding the quarter for which the allowance is paid,
- 50 % of the ceiling laid down in paragraph 2 for the quantities of the product in question which exceed the quantities referred to in the first indent and which are equal to the surplus of the quantities resulting from the allocation of the quantities eligible pursuant to paragraph 3 among the producers' organizations.

The allocation shall be made proportionally between the producers' organizations in question on the basis of their respective average production in the equivalent quarter in the three fishing years preceding the quarter for which the allowance is paid.

5. The producers' organizations shall allocate the allowance granted to their members proportionally on the basis of the quantities produced by them and sold and delivered in accordance with paragraph 1.

6. Detailed rules for the application of this Article, in particular the amount and the conditions under which the allowance is granted, shall be adopted in accordance with the procedure laid down in Article 32.'

10. Annex I, point D is hereby replaced by the entry set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 1 January 1995.

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

Done at Brussels, 22 December 1994.

For the Council
The President
H. SEEHOFER

ANNEX

ANNEX I

CN codes	Descriptions
D. Live, fresh or chilled products or products cooked by steaming or by boiling in water :	
ex 0306 23 10 ex 0306 23 31 and ex 0306 23 39	Shrimps of the species <i>Crangon crangon</i> and Deep-water prawn (<i>Pandalus borealis</i>)