

COMMISSION REGULATION (EC) No 762/94

of 6 April 1994

laying down detailed rules for the application of Council Regulation (EEC) No 1765/92 with regard to the set-aside scheme

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops ⁽¹⁾, as last amended by Regulation (EC) No 232/94 ⁽²⁾, and in particular the second subparagraph of Article 7 (1) and Article 12 thereof,

Having regard to Council Regulation (EC) No 231/94 of 24 January 1994 amending Regulation (EEC) No 1765/92 establishing a support system for producers of certain arable crops ⁽³⁾, and in particular Article 2 thereof,

Whereas eligibility for the compensatory payment under the general scheme referred to in Article 2 (5) of Regulation (EEC) No 1765/92 is subject to an obligation on the part of the producer concerned to set aside part of his land; whereas detailed rules for the application of the scheme should be laid down;

Whereas, to ensure that the set-aside of land contributes to stabilizing markets, the detailed rules of application should be laid down in such a way as to ensure the necessary effectiveness of the scheme and maintain consistency with the entire set-aside scheme establishing by Regulation (EEC) No 1765/92; whereas, to that end, while not permanently excluding from the scheme other areas than those referred to in Article 9 of the said Regulation, it should be laid down that the areas taken into consideration for set-aside are to be comparable with those that have been taken into consideration for calculating the regional base area; whereas it may help the effectiveness of the scheme to lay down also that set-aside is to be applied to continuous land of a minimum area; whereas provisions should also be laid down regarding maintenance and use of the areas set aside;

Whereas the minimum period for which land must remain set aside must correspond to the growing cycle of the arable crops referred to in Regulation (EEC) No 1765/92; whereas, however, in order to take account of certain specific circumstances, it should be made possible

for the land set aside to be used before the expiry of the minimum set-aside period;

Whereas special provisions should be laid down in respect of land set aside previously under Council Regulation (EEC) No 2328/91 of 15 July 1991 on improving the efficiency of agricultural structures ⁽⁴⁾, as last amended by Regulation (EC) No 3669/93 ⁽⁵⁾;

Whereas, in order to ensure that the set-aside scheme is effective in terms of controlling production, it is laid down that in principle set-aside must be based on rotation; whereas the concept of rotation should be defined;

Whereas Regulation (EEC) No 1765/92 provides for compensation for set-aside which exceeds a producer's obligation in order to help control production; whereas the provisions necessary for ensuring such control should be laid down; whereas this objective cannot be attained unless the set-aside effected is deducted from the area down to arable crops; whereas the necessary provisions on the subject must take account of the diversity of agricultural structures in the Community; whereas the Member States should therefore be responsible for drawing them up;

Whereas, in order to be able to implement environmental measures on the non-rotational fallow, a scheme should be introduced which guarantees a minimum payment to farmers who undertake to set aside certain areas for a period of five marketing years; whereas provision should be made for the adjustments and penalties applicable under the scheme;

Whereas, in Portugal, 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 ⁽⁶⁾, as amended by Regulation (EEC) No 738/93 ⁽⁷⁾, provides for direct aid per hectare for certain cereals during a transitional period; whereas, pursuant to Article 7 (5) of Regulation (EEC) No 1765/92, such aid may be taken into account only when calculating the compensation for the obligation to set land aside;

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 12.

⁽²⁾ OJ No L 30, 3. 2. 1994, p. 7.

⁽³⁾ OJ No L 30, 3. 2. 1994, p. 2.

⁽⁴⁾ OJ No L 218, 6. 8. 1991, p. 1.

⁽⁵⁾ OJ No L 338, 31. 12. 1993, p. 26.

⁽⁶⁾ OJ No L 362, 27. 12. 1990, p. 28.

⁽⁷⁾ OJ No L 77, 31. 3. 1993, p. 1.

Whereas Regulation (EEC) No 1765/92 provides for the possibility of transferring the set-aside obligation to other producers; whereas, in order to prevent the scheme from being unnecessarily complicated to administer and to avoid reducing its effectiveness in terms of controlling production, the number of producers involved in a transfer should be restricted;

Whereas, since the marketing year is already well under way, Member States should be given the possibility of postponing to the 1995/96 marketing year the application either of all of the Regulation or of that part of it which deals with the transfer of set-aside;

Whereas Commission Regulation (EEC) No 2293/92⁽¹⁾, as last amended by Regulation (EEC) No 2594/93⁽²⁾, should therefore be replaced with effect from the 1994/95 marketing year;

Whereas the Joint Management Committee for Cereals, Oils and Fats and Dried Fodder has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation lays down detailed rules for the application of Articles 2 (6) and 7 of Regulation (EEC) No 1765/92 with regard to set-aside.

Article 2

Without prejudice to Article 7 (4) of Regulation (EEC) No 1765/92, 'set-aside' means the leaving fallow of an area which has been cultivated in the previous year with a view to a harvest.

However, areas set aside previously under Regulations (EEC) No 2328/91 and (EEC) No 1765/92 shall, without prejudice to Article 4 (1) of this Regulation, be treated as areas under cultivation.

Article 3

1. Land set aside under this Regulation must cover an area of the least 0,3 contiguous hectares and have a width of at least 20 metres. Smaller areas shall not be considered unless they involve whole fields with permanent bounda-

ries such as walls, hedges or watercourses. Member States may take into consideration entire parcels of less than 20 metres in width in regions where such parcels constitute a traditional form of fragmentation.

2. The areas set aside must be cared for so as to maintain good cropping conditions. They may not be used for agricultural production of any sort other than that referred to in Article 7 (4) of Regulation (EEC) No 1765/92, nor put to any lucrative use incompatible with the growing of an arable crop.

3. Member States shall apply the appropriate measures which correspond to the specific situation of the land set aside so as to ensure the protection of the environment. These measures may also concern a green cover; in that case, the measures must provide that the plant cover may not be used for seed production and that it may on no account be used for agricultural purposes before 31 August or produce, before the following 15 January, crops which are intended for commercial use.

Member States shall decide the penalties which are appropriate and proportional to the seriousness of the environmental consequences of not observing the said measures. These penalties may, in particular, provide for a reduction or, where appropriate, cancellation of the benefits accruing from the scheme provided for in Regulation (EEC) No 1765/92. Member States shall inform the Commission of the measures taken to apply this paragraph.

4. To be considered under the scheme provided for in Regulation (EEC) No 1765/92, the areas set aside must:

- have been farmed by the applicant during the previous two years, save in special cases, duly justified according to objective criteria laid down by the Member State concerned, such as circumstances relating to the type of tenure, installation, or expansion of the holding by succession,

- remain set aside for a period commencing on 15 January at the latest and ending on 31 August at the earliest. However, Member States shall set the conditions under which producers may be authorized to sow seed, from 15 July, for harvesting in the following year and the conditions to be met in order for grazing to be authorized from 15 July in Member States where transhumance is traditionally practised. In addition, areas set aside under Regulation (EEC) No 2328/91 for which the commitment expires after 15 January and before 1 June may be regarded as having been set aside from 15 January under this Regulation.

⁽¹⁾ OJ No L 221, 6. 8. 1992, p. 19.

⁽²⁾ OJ No L 238, 23. 9. 1993, p. 19.

5. An area which has been set aside under Council Regulations (EEC) Nos 2078/92⁽¹⁾ and 2080/92⁽²⁾ may not be counted for the purposes of the set-aside provided for in this Regulation.

Article 4

1. The rotational set-aside obligation referred to in the second subparagraph of Article 7 (1) of Regulation (EEC) No 1765/92 shall be regarded as met where none of the plots withdrawn has been set aside under the special set-aside referred to in Article 2 (6) or under the set-aside referred to in Article 7 during one of the previous five years. However, a plot which has already been set aside may be reused if the producer has no further land available enabling him to comply with the above-mentioned period.

2. Set-aside which does not conform to the definition in paragraph 1 shall be regarded as any other form of set-aside within the meaning of the second subparagraph of Article 7 (1) of Regulation (EEC) No 1765/92.

3. Member States shall, where necessary, take steps to ensure that the set-aside of land over and above the producer's obligation, pursuant to Article 7 (6) of Regulation (EEC) No 1765/92, reduces the area down to arable crops, thereby controlling production and not contributing to the base area's being exceeded.

In the light of experience the Commission will, if necessary, adopt additional rules for future marketing years in accordance with the procedure laid down in Article 23 of Council Regulation (EEC) No 1766/92⁽³⁾.

4. Producers must indicate on their applications for area-related aid whether the set-aside is rotational or non-rotational.

Article 5

1. Without prejudice to Article 2 (6) of Regulation (EEC) No 1765/92, producers who, under their set-aside obligation or for areas previously set aside under Regulation (EEC) No 2328/91, have opted for a form of set-aside other than rotational and who undertake to set aside the same plots for five marketing years shall receive the compensation payable under the rules in force at the time of the commitment, without prejudice to any subsequent increase, and for the duration thereof.

2. Where a producer has, in his area-related aid application, expressly gone back on his commitment before

the end of the period referred to in paragraph 1, he must reimburse a sum equal to 5 % of the compensation paid in respect of the previous marketing year for land set aside under this Article, multiplied by the number of years during which he did not comply with his original obligation.

3. A producer who has opted for the scheme provided for in paragraph 1 may go back on his commitment without incurring the penalty provided for in paragraph 2:

- (a) in the event that he decides to submit the land in question to one of the schemes provided for in Regulations (EEC) No 2078/92 or (EEC) No 2080/92;
- (b) in special cases authorized by the Member States which entail a change in farm structure independently of the producer's will, such as land consolidation.

4. If during the period of the set-aside commitment, as the result of a change in the farm's structure, the area set aside under this Article exceeds the limit laid down in the first subparagraph of Article 7 (6) of Regulation (EEC) No 1765/92 the areas covered by the commitment shall be adjusted so as to observe that limit.

Article 6

Areas set aside in accordance with the second subparagraph of Article 7 (6) of Regulation (EEC) No 1765/92 shall be subject to the rules laid down in this Regulation. However, if certain plots do not meet the minimum requirements laid down in Article 3 (1) of this Regulation their area may be adjusted, within the holding, so that the said requirements are met.

Article 7

1. If the declared set-aside is smaller than the area corresponding to the percentage laid down in the second subparagraph of Article 7 (1) of Regulation (EEC) No 1765/92, increased as appropriate pursuant to specific provisions of that Regulation, the maximum area eligible for compensatory payments to producers of arable crops shall be calculated on the basis of the declared area set aside and *pro rata* to the various crops.

2. The *pro rata* rule referred to in paragraph 1 shall also be applicable in cases where Article 9 (4) of Commission Regulation (EEC) No 3887/92⁽⁴⁾ applies.

⁽¹⁾ OJ No L 215, 30. 7. 1992, p. 85.

⁽²⁾ OJ No L 215, 30. 7. 1992, p. 96.

⁽³⁾ OJ No L 181, 1. 7. 1992, p. 21.

⁽⁴⁾ OJ No L 391, 31. 12. 1992, p. 36.

Article 8

In the case of Portugal the compensation referred to in Article 7 (5) of Regulation (EEC) No 1765/92 in respect of the set-aside referred to in the second subparagraph of paragraph 1 of that Article shall be increased by the amounts listed in the Annex hereto. Those amounts shall be financed in accordance with Article 5 of Regulation (EEC) No 3653/90.

Article 9

1. The area-related aid applications referred to in Regulation (EEC) No 3887/92 shall be broken down by region within the meaning of Article 3 of Regulation (EEC) No 1765/92.
2. An application for compensatory payments in a give yield region must correspond to a set-aside declaration in respect of at least the corresponding number of hectares cultivated in the same yield region.
3. There may be derogations from paragraph 2 according to objective criteria laid down by the Member State.
4. Notwithstanding paragraph 1, in Spain, in the case of a holding situated in 'secano' and 'regadio' production regions, the compulsory set-aside corresponding to an application for compensatory payment submitted in respect of areas situated in the 'regadio' region may be effected entirely or partly in the 'secano' region. In such case the number of transferred hectares to be set aside in the 'secano' region shall be calculated by multiplying the area to be set aside in the 'regadio' region by the ratio between the yields in the 'regadio' and 'secano' regions.

Article 10

1. Producers who transfer all or part of their obligation to another producer must indicate in their application for area-related aid the identity of the producer who is actually setting the land aside, together with the basis of which the transfer is being made. Producers to whom set-aside is transferred shall indicate the identity of the producer on whose behalf land is being set aside.

A set-aside obligation which is transferred in its entirety may not be performed by more than two other producers.

In the case of partial transfers, only one other producer may perform the obligation transferred.

2. Where a set-aside obligation is transferred in accordance with Article 7 (7) of Regulation (EEC) No 1765/92, the total area set aside on the holding to which the set-aside is transferred may not exceed the limit laid down in the first subparagraph of Article 7 (6) of Regulation (EEC) No 1765/92.

3. In the event of a transfer, the Member State shall pay the producers concerned the compensatory payments and/or the compensation due in respect of the areas down

to arable crops and the areas set aside on their respective holdings.

4. Without prejudice to the second subparagraph of Article 7 (7) of Regulation (EEC) No 1765/92, the area to be set aside which corresponds to a transferred obligation shall be assessed in terms of the form of set-aside practised on the holding to which the set-aside is transferred.

5. In the event of a partial transfer that part of the set-aside obligation which is not transferred shall be subject to the rules governing non-rotational set-aside.

6. Where this Article applies, the producers involved may not simultaneously transfer their obligation and perform another producer's obligation in respect of the same marketing year.

7. In the event of transfer, a producer may not perform a set-aside obligation on behalf of more than one other producer.

8. Producers covered by the simplified scheme may not perform the set-aside obligation on behalf of another producer.

9. For the purposes of the second indent of the first subparagraph of Article 7 (7) of Regulation (EEC) No 1765/92, the maximum radius of 20 km shall be measured from:
 - the farmstead on the holding or, failing that
 - the covered area on the holding where the main agricultural machinery is stored.

Article 11

Member States shall notify the Commission by 31 May 1994 at the latest of the measures adopted pursuant to this Regulation and in particular the derogations decided pursuant to Article 3 (4) and Article 9 (3) hereof.

Article 12

Regulation (EEC) No 2293/92 is hereby repealed with effect from the 1994/95 marketing year.

Article 13

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

It shall apply from the 1994/95 marketing year and to set-aside effected for that marketing year.

However, on a temporary basis, Member States are hereby authorized not to apply this Regulation and to continue to apply Regulation (EEC) No 2293/92 in respect of set-aside effected in order to receive compensatory payments and compensation for the 1994/95 marketing year. They are also hereby authorized not to apply Article 10 of this Regulation for the 1994/95 marketing year.

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

Done at Brussels, 6 April 1994.

For the Commission
René STEICHEN
Member of the Commission

ANNEX

SUPPLEMENTARY COMPENSATION FOR SET-ASIDE IN PORTUGAL

(in ECU)

Marketing year	1994/95	1995/96	1996/97	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03
Supplementary compensation	22,25	19,95	17,62	15,26	12,87	10,45	7,98	5,44	2,82