

COMMISSION REGULATION (EEC) No 3888/92
of 23 December 1992

**establishing certain transitional provisions in the beef and veal sector pending
the entry into force of the integrated administration and control system for
certain Community aid schemes**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organization of the market in beef and veal⁽¹⁾, as last amended by Regulation (EEC) No 2066/92⁽²⁾, and in particular Articles 4b (8), 4c (4), 4d (8), 4e (5), 4g (5), 4h (2) and 4k (2) thereof,

Whereas the provisions relating to aid applications, the identification and recording of bovine animals and the controls provided for in Council Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes⁽³⁾, (hereinafter referred to as 'integrated system') will not enter into force until 1 February 1993; whereas there should be certain transitional provisions in order to ensure that the premium arrangements established in the beef and veal sector by the reform of the common agricultural policy are fully operational with effect from 1 January 1993; whereas they should take into account wherever possible the solutions used for the integrated system;

Whereas applications submitted under the arrangements provided for by this transitional Regulation will also be affected by certain provisions of the integrated system, in particular in respect of forage area, controls, penalties and recovery of incorrect payments; whereas the attention of the producers concerned should be drawn to this point;

Whereas it is necessary to clarify the concept of forage area in order to help producers organize their production;

Whereas the agricultural holding is the reference unit for administering the above-mentioned aid scheme; whereas, to prevent the stabilizing effects of the reform on agricultural production from being evaded by the artificial subdivision of existing holdings, Member States should be

allowed to refuse to recognize such subdivisions in certain circumstances;

Whereas the compulsory content of the livestock aid application should be specified bearing in mind the need to administer and monitor the premium arrangements concerned;

Whereas compliance with the provisions on Community aid must be effectively monitored; whereas, in view of the restricted period of application of this Regulation, the basic provisions relating to livestock controls should be restricted; whereas, however, in view of the fact that grant of the special premium on slaughter or on the first placing on the market will be fully operational from 1 January 1993, the control criteria in that regard should be specified;

Whereas, in the light of experience and having regard to the principle of proportionality and the special problems linked to cases of *force majeure* and natural circumstances, provisions should be adopted to prevent and penalize irregularities and fraud effectively; whereas, to this end, having regard to the specific features of the livestock aid scheme, there should be sanctions graded according to the gravity of the irregularity concerned, up to and including total exclusion from a scheme for the year in question and the year thereafter;

Whereas the Management Committee for Beef and Veal has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation shall apply to livestock aid applications submitted prior to the date of implementation of the detailed rules for applying the integrated administration and control system for certain Community aid schemes under the following arrangements:

- special premiums,
- deseasonalization premiums,

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 24.

⁽²⁾ OJ No L 215, 30. 7. 1992, p. 49.

⁽³⁾ OJ No L 355, 5. 12. 1992, p. 1.

- suckler cow premiums, and
- compensatory amounts

referred to in Articles 4a to 4h and 4k of Regulation (EEC) No 805/68.

2. However, without prejudice to Article 4, the provisions relating to areabased aid applications, administrative and on-the-spot controls, penalties relating to forage areas and recovery of incorrect payments which are applicable to the applications referred to in paragraph 1 shall be adopted at a later date under the integrated system arrangements.

Article 2

1. For the purposes of this Regulation :

- (a) A parcel of land that both contains trees and is used for crop production covered by Article 1 of Regulation (EEC) No 3508/92 shall be considered agricultural land provided that production can be carried out in a similar way as on parcels without trees in the same area.
- (b) Where a forage area is used in common, the competent authorities shall assign it between the individual farmers in proportion to their use of it.
- (c) Each forage area must be available for raising livestock for a minimum period of seven months, starting on a date to be determined by the Member State, which must be between 1 January and 31 March.

2. The competent authority shall consider several holdings as a single holding if separation has been carried out after 30 June 1992 where, taking account of all the economic and legal aspects of the case in question, this has been done principally to evade individual limits on eligibility for premiums referred to in Articles 4a to 4k of Regulation (EEC) No 805/68.

The preceding subparagraph shall not apply where the interested parties are able to prove a substantial change in the physical or financial structure of the holding which could, in itself, justify the transformation of the holding in its previous form.

3. For the purposes of the integrated system, if a forage area is situated in a Member State other than that in which the principal place of business of the producer using it is situated, that area shall be deemed at the request of the applicant to be part of the holding of that producer provided :

- it is situated in the immediate vicinity of the holding, and

- the relative majority of all the agricultural land used by that producer is situated in the Member State in which he/she has his/her principal place of business.

Article 3

1. In order to qualify for one of the schemes referred to in Article 1 each producer shall submit one or more livestock aid applications (hereinafter referred to as 'applications') at the latest by the dates specified for the schemes concerned.

2. Without prejudice to the requirements pertaining to applications for premiums established by Regulation (EEC) No 3886/92⁽¹⁾, an application shall contain all necessary information, in particular :

- the identity of the applicant,
- the number of bovine animals in respect of which a premium is applied for,
- where applicable, an undertaking by the producer to keep these animals on his/her holding during the retention period and information on the location or locations where the animals will be held including, where applicable, the period or periods concerned and the identity numbers of the animals; when the location changes during that period the producer is obliged to inform the competent authority in writing in advance,
- where applicable, the individual ceiling for the animals concerned,
- where applicable, the individual milk reference quantity assigned to the applicant at the beginning of the 12-month period of application of the additional levy scheme which commences in the calendar year concerned; when the reference quantity is not known on the date on which the application is lodged, it shall be notified to the competent authority as soon as possible,
- a statement by the producer that he/she is aware of the requirements pertaining to the grant of the aids in question.

The Member State may decide that some of this information need not be included in the aid application, where that information has already been communicated to the competent authority.

3. Where an application has to be accompanied by additional documents, the documents shall be deemed to form an integral part of it.

4. While respecting the dates or periods provided in the Community rules for the submission of applications, Member States may decide that a single application may cover several livestock aid applications.

⁽¹⁾ See page 20 of this Official Journal.

Article 4

1. Member States shall carry out an administrative check on applications.
2. These administrative checks shall be supplemented by on-the-spot checks.
3. The administrative and on-the-spot checks shall be made in such a way as to ensure effective verification of compliance with the terms on which the premiums are granted.
4. On-the-spot checks shall be unannounced and cover all the animals covered by one or more applications. Advance warning limited to the strict minimum necessary may however be given. This should not generally exceed 48 hours.
5. Notwithstanding the preceding paragraph, where a special premium is granted on slaughter or on the first placing on the market of animals with a view to their slaughter in accordance with Article 8 of Regulation (EEC) No 3886/92, each on-the-spot check shall comprise :
 - verification on the basis of the private register kept by the producer that all the animals for which applications were submitted prior to the on-the-spot check have been kept throughout the retention period, and
 - verification that all the male bovine animals more than 30 days old present on the holding are properly identified and entered in the private register.

Article 5

Except in cases of *force majeure*, late lodgement of an application shall lead to a 1 % reduction per working day in the premium amounts affected by the application to which the farmer would have been entitled if the application had been lodged within the deadline. If the delay amounts to more than 20 days the application shall be considered inadmissible and no premium shall be granted.

Article 6

1. Where an individual ceiling is applicable the number of animals shown in premium applications shall be reduced to the ceiling set for the applicant concerned.
2. If the number of actually eligible bovine animals found on inspection is lower than the number declared in a premium application the premium shall be calculated on the basis of the number of animals found. However, except in cases of *force majeure* and after paragraph 5 has

been applied, the unit amount of the premium shall be reduced :

- (a) in the case of an application relating to a maximum of 20 animals : the unit amount of the premium shall be reduced :
 - by the percentage corresponding to the difference found if this is not more than two animals,
 - by twice the percentage corresponding to the difference found if this is more than two animals but not more than four animals.

If the difference is greater than four animals no premium shall be granted ;

(b) in other cases,

- by the percentage corresponding to the difference found if this is not more than 5 %,
- by 20 % if the difference found is more than 5 % but not more than 10 %,
- by 40 % if the difference found is more than 10 % but not more than 20 %.

If the difference found is more than 20 % no premium shall be granted.

The percentages referred to under (a) shall be calculated on the basis of the number declared, and those mentioned under (b) on the basis of the number found.

However, where it is found that a false declaration was made intentionally or as a result of serious negligence :

- the producer in question shall be excluded from the aid scheme concerned in respect of the calendar year in question, and
- from the same aid scheme for the following calendar year.

If a producer has been unable to comply with his retention undertaking as a result of *force majeure* he shall retain his right to a premium in respect of the number of animals actually eligible at the time when the case of *force majeure* occurred.

In no case may premiums be granted on a greater number of animals than that shown in the aid application.

For the purposes of this paragraph animals eligible for different premiums shall be treated separately.

3. Without prejudice to the preceding paragraph, where it is found, during implementation of the arrangements for granting the special premium on slaughter or on the first placing on the market, that the number of animals present on the holding and for which an application is likely to be submitted does not correspond to the number of animals entered in the private register the total amount of the special premiums to be granted to the producer in respect of the calendar year concerned shall, except in cases of *force majeure*, be reduced proportionately.

However :

- if the difference found during on-the-spot check is greater than or equal to 20 % of the number of animals present or if a difference greater than or equal to 3 % or two animals is found during each of two checks in the same year, no premium shall be granted for that calendar year, and
- if inaccurate entries in the register are found to be intentional or the result of serious negligence by the producer in question, he shall be excluded from the special premium scheme in respect of the current calendar year and the following calendar year.

4. Bovine animals shall not be counted unless identified in the aid application or, in the case when paragraph 3 is applied, entered in the register.

However, a suckler cow declared for the premium may be replaced by another suckler cow provided that replacement occurs within 20 days of the animal's departure from the holding and that the replacement is entered in the register not later than three days after the day of replacement.

5. In cases where owing to the impact of natural circumstances in the life of his herd the producer cannot meet his commitment to keep the animals notified for a premium throughout the compulsory retention period he shall be entitled to the premium for the number of eligible animals actually kept throughout the period, provided that he has informed the competent authority in writing within 10 working days of finding any reduction in the number of animals.

Article 7

1. The penalties laid down in this Regulation shall be without prejudice to additional penalties laid down at national level.

2. A case of *force majeure* with relevant proof to the satisfaction of the competent authority must be notified in writing to that authority within 10 working days of the date on which the applicant is in a position to do so.

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

Done at Brussels, 23 December 1992.

3. Without prejudice to the actual circumstances to be taken into account in individual cases, the competent authorities may recognize the following cases of *force majeure*:

- (a) the death of the producer;
- (b) long-term professional incapacity of the producer;
- (c) expropriation of a large area of the agricultural land of the holding managed by the producer if such expropriation could not be anticipated on the day the application was submitted;
- (d) a severe natural disaster gravely affecting the holding's agricultural land;
- (e) the accidental destruction of the producer's cattle housing;
- (f) an epizootic affecting part or all of the producer's cattle herd.

The Member States shall notify the Commission of the cases which they will recognize as *force majeure*.

Article 8

Except in cases of *force majeure*, if an on-the-spot check cannot be made through the fault of the application shall be rejected.

Article 9

Member States shall take all further measures required for application of this Regulation and shall give the mutual assistance needed for the purposes of checks required under this Regulation.

Article 10

For the period of application of this Regulation, references to the provisions applicable under the integrated system in Regulation (EEC) No 3886/92 shall be construed as references to this Regulation.

Article 11

This Regulation shall enter into force on 1 January 1993.

For the Commission

Ray MAC SHARRY

Member of the Commission