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REGULATION (EEC) No 2454/72 OF THE COUNCIL

of 21 November 1972

amending Regulation (EEC) No 1035/72 on the common organisation
of the market in fruit and vegetables

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 43 thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament;

Whereas Article 16 of Council Regulation (EEC) No 1035/72¹ of 18 May 1972, on the common organisation of the market in fruit and vegetables, lays down criteria for fixing basic and buying-in prices; whereas experience has shown that these criteria are too rigid to enable these prices to be fixed at levels such as ensure the stabilisation of prices at a fair level for the producer without the formation of structural surpluses in the Community; whereas in order to offset this disadvantage the mathematical criterion for fixing the basic price should no longer be retained;

Whereas Article 18 of Regulation (EEC) No 1035/72 lays down that the Member States shall grant financial compensation to producers' organisations which intervene on the market, provided that their withdrawal price does not exceed the level specified in the said article;

Whereas experience has shown that, in order to ensure more effective support of the market, the possibility should be provided for of authorising groups of producers to fix their withdrawal price at a higher level without, however, losing the benefit of financial compensation;

Whereas Article 19(1) of Regulation (EEC) No 1035/72 lays down that where for a given

product the prices remain below the buying-in price for three consecutive market days the Commission shall record that the market in the product in question is in a state of serious crisis; whereas paragraph 2 of the said article lays down that upon such finding the Member States shall ensure, through the bodies or natural or legal persons appointed by them for the purpose, the buying-in of products of Community origin offered to them;

Whereas experience has shown that as withdrawals made by groups of producers cover a large proportion of production the Member States no longer have recourse to public buying-in except in Italy for a limited number of products; whereas in consequence the aforementioned provisions should be amended by laying down that a state of serious crisis should be recorded only at the request of the Member State concerned;

Whereas Article 21(1) of Regulation (EEC) No 1035/72 determines the uses and purposes of products withdrawn from the market; whereas in certain cases these different uses have been shown to be insufficient to ensure disposal of the said products; whereas it is therefore advisable to lay down in addition in certain cases that these products may be used after processing by distributing them to schools;

Whereas experience has shown that the criteria for fixing reference prices laid down in Article 23 of Regulation (EEC) No 1035/72 are too rigid to enable these prices to be fixed at levels that ensure protection of Community products without harming the interests of consumers; whereas in order to offset this disadvantage these criteria should therefore be amended;

Whereas Article 24(3) of the aforementioned Regulation lays down that, for calculating the entry price, the cost of transporting products from the frontier crossing point to the representative import markets shall be deducted from the prices; whereas, as a result of this

¹ OJ L 118, 20.5.1972, p. 1.

system which has led in particular to the application of forfeits to avoid discriminations based on the different means of transport, Community products have been at a disadvantage on certain markets in relation to imported products; whereas in order to eliminate this disadvantage consideration should be given, when fixing the reference price, to the cost of transporting Community products between production areas and the large consumption centres; whereas, in view of the special measures taken to ensure outlets for Community production of oranges, mandarins, satsumas, clementines, tangerines and other similar citrus hybrids, transport costs should not be taken into account when calculating the reference price for these products;

Whereas Article 24 of Regulation (EEC) No 1035/72 lays down the criteria for calculating the entry price of imported products; whereas experience has shown that the recorded rates do not always give a true picture of the market situation because they sometimes refer to a small proportion of the goods placed on the market; whereas the nature of the prices and the quantities of the products to be taken into consideration when calculating the entry price should henceforth be specified;

Whereas, for certain products which are particularly sensitive to market fluctuations, and where in particular the prices recorded on the representative import markets refer to quantities which are negligible in relation to total imports when the Community market is characterised by falling prices for Community products, the latter prices should be used for calculating the entry price;

Whereas, where significant quantities of certain products are the subject of intervention measures, imports of such products from third countries are likely to aggravate the state of the Community market still further; whereas in order to offset this disadvantage, the Community should be enabled to take all the necessary measures rapidly;

Whereas the system provided for in Article 30 of Regulation (EEC) No 1035/72 does not, as regards products which are marketed only for a few months, enable refunds to be granted for exports effected at the beginning of the marketing year; whereas to remedy these difficulties this system should be adapted so that the refund may be calculated on the basis of prices obtaining on the Community market at the beginning of the marketing year;

Whereas experience has shown that the measures taken do not in all cases offer a security which

satisfies trade requirements as regards the period of validity of the refunds; whereas it is therefore important to provide for the possibility of fixing the refund in advance in the fruit and vegetables sector for contracts concluded before or during the marketing year,

HAS ADOPTED THIS REGULATION:

Article 1

Article 16 of Regulation (EEC) No 1035/72 shall be replaced by the following:

Article 16

1. A basic price and a buying-in price for each of the products listed in Annex II shall be fixed annually before 1 August for the marketing year beginning in the following year, in accordance with the procedure laid down in Article 42 (2) of the Treaty. However, prices for the 1973/74 marketing year shall be fixed before 1 April 1973.

These prices shall be valid for the whole Community and shall be fixed for each marketing year or for each of the periods into which the marketing year may be subdivided on the basis of seasonal price trends.

In determining the duration of the marketing year, slack market periods at the beginning and at the end of the marketing year shall be disregarded.

2. The basic prices shall be fixed taking particular account of the need:

- to contribute to the support of the incomes of farmers;
- to stabilise market prices without leading to the formation of structural surpluses in the Community;
- to consider the interests of consumers on the basis of the development of the average of the prices recorded during the preceding three years on the most representative Community production markets, for a product with defined commercial characteristics such as variety or type, quality class, sizing and packaging.

3. The buying-in price shall be fixed between:

- 40 and 45 % of the basic price in the case of cauliflowers and tomatoes,
- 50 and 55 % of the basic price in the case of apples and pears,
- 60 and 70 % of the basic price in the case of the remaining products listed in Annex II,

taking special account, for each of the relevant products, of the characteristics of the market and, more particularly, the extent to which market prices fluctuate.

4. For a product with commercial characteristics different from those of the products by reference to which the basic price is fixed, the price at which that product is bought-in pursuant to Article 19 shall be calculated by applying conversion factors to the buying-in price.

The conversion factors shall be fixed in accordance with the procedure laid down in Article 33.'

Article 2

Article 18 of Regulation (EEC) No 1035/72 shall be replaced by the following:

'Article 18

1. Member States shall grant financial compensation to producers' organisations which intervene pursuant to Article 15, provided that:

(a) the withdrawal price does not exceed:

- the price referred to in the first indent of Article 19 (2) plus 10 % of the basic price, in respect of products which have the characteristics laid down in the quality standards for Class II or higher classes,
- the buying-in price referred to in the second indent of Article 19 (2) plus 10 % of the basic price, in respect of products which have the characteristics laid down in the quality standards for Class III.

(b) the indemnity granted to members in respect of quantities withdrawn from the market does not exceed the amount which results from applying the withdrawal price to those quantities.

However, it may be decided, in accordance with the procedure laid down in Article 33, in view of the characteristics of the market in the product under consideration, that the withdrawal price practised by the producers' organisations may, under determined conditions, exceed the levels referred to in (a).

2. The value of the financial compensation shall be equal to the indemnities paid by the producers' organisations, less net receipts from products withdrawn from the market.

However, if the last indent of paragraph 1 is applied, the financial compensation may not exceed the amounts resulting from the application of the prices referred to in paragraph 1 (a) to the quantities withdrawn, less net receipts from products withdrawn from the market.

3. The granting of financial compensation shall, in respect of products which the producers' organisations are unable to dispose of for use as stipulated in the first, second, third or sixth indent of Article 21 (1) (a), be subject to the products being used in a way which complies with directives issued by the Member State pursuant to Article 21.'

Article 3

1. Article 19 (1) of Regulation (EEC) No 1035/72 shall be replaced by the following:

'1. Where, for a given product on one of the representative markets referred to in Article 17 (2), the prices communicated to the Commission pursuant to Article 17 (1) remain below the buying-in price for three consecutive market days the Commission shall without delay record that the market in the product in question is in a state of serious crisis, if the Member State in which such a state exists so requests.'

2. Article 19 (5) is deleted.

Article 4

1. The fifth indent of Article 21 (1) (a) of Regulation (EEC) No 1035/72 shall be amended as follows:

- processing and free distribution of the processed products to the natural or

legal persons referred to in the first and sixth indents.

2. The following subparagraph of Article 21 (3) shall be replaced by the following:

‘3. It shall be the responsibility of Member States to organise the free distribution provided for in the first and sixth indents of paragraph 1 (a).’

Article 5

Article 23 of Regulation (EEC) No 1035/72 shall be replaced by the following:

‘Article 23

1. In order to obviate disturbances caused by offers from third countries at abnormal prices, reference prices shall be fixed each year before the beginning of the marketing year.

These prices shall be valid for the whole Community and shall be fixed for each marketing year or for each of the periods into which the marketing year may be subdivided on the basis of seasonal price trends.

2. Reference prices shall be fixed:

- on the basis of the arithmetic mean of producer prices in each Member State plus, except in the case of oranges, mandarins, satsumas, clementines, tangerines and other similar citrus hybrids, the amount defined in paragraph 4,
- taking into account the average trend in the basic and buying-in prices.

3. Producer prices shall correspond to the average of the prices recorded during the three years prior to the date of fixing the reference price for a home-grown product with defined commercial characteristics, on the representative market or markets situated in the production areas where prices are lowest, for the products or varieties which represent a considerable proportion of production marketed for part of the year or throughout the whole year and which fall within quality Class I and satisfy specified requirements as regards market preparation.

When the average of prices recorded on each representative market is being calcu-

lated, prices which could be considered excessively high or excessively low in relation to normal price fluctuations on that market shall be disregarded.

4. The amount referred to in paragraph 2, which may be calculated at a standard rate, shall be based on the cost of transporting products between the production areas and the representative Community consumption centres for the marketing of home-grown products and products imported from third countries.’

Article 6

Article 24 of Regulation (EEC) No 1035/72 shall be replaced by the following:

‘Article 24

1. The Commission shall, on the basis of information supplied by Member States or gathered by itself, regularly follow the trend of average prices for products imported from third countries on the most representative import markets of the Member States, for a product with defined commercial characteristics, for each exporting country.

2. For each product subject to a reference price, an entry price shall be calculated each marketing day for each exporting country on the basis of prices recorded at, or converted to, the import/wholesale stage.

The following shall be considered as representative:

- the prices for Class I products, provided the quantities in this class represent at least 50 % of the total quantities marketed,
- the prices for Class I products, supplemented, if the products in this class represent less than 50 % of the total quantities, by the prices, adopted as they stand, for Class II products for quantities sufficient to cover 50 % of the total quantities marketed,
- the prices, adopted as they stand, for Class II products, if Class I products are in short supply, provided it has not been decided to adjust them by a conversion factor if, by reason of production conditions in the exporting country, such products have not, because of their

quality, been normally and traditionally marketed in Class I.

3. The entry price, for a given exporting country, shall be equal to the lowest representative price or to the average lowest representative price recorded for at least 30 % of the quantities from the exporting country in question marketed on all representative markets for which prices are available; such price or prices being first of all reduced by:

- the customs duties in the Common Customs Tariff,
- any countervailing charges,
- other import charges the incidence of which is included in the price.

The conversion factor referred to in the third indent of paragraph 2 shall be applied to the prices after deduction of customs duties.

4. However, with regard to summer pears from 1 July to 31 August, tomatoes, cucumbers, table grapes and peaches, the prices of Community products shall also be adopted for calculating the entry price if:

- the quantities imported are significant,
- and the quantities marketed on the representative import markets are not significant compared with total imports.

The Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, shall adopt the general conditions for the application of this paragraph.'

Article 7

Article 26 of Regulation (EEC) No 1035/72 shall be replaced by the following:

'Article 26

1. Once introduced the charge shall not be altered so long as:

- the variation of the factors in its calculation does not lead, after it is put into effect for three consecutive market days, to an alteration of its amount by more than 1.0 unit of account,
- regrouping of exporting countries does not become necessary.

2. A decision to withdraw the charge for an exporting country shall be taken when the entry price has been at least equal to the reference price for two consecutive market days. This decision shall also be taken if there are no prices in respect of that country for six consecutive working days unless application of Article 24 (4) or application of the first indent of paragraph 1 leads to the charge being fixed at zero.'

Article 8

The first subparagraph of Article 29 (1) of Regulation (EEC) No 1035/72 shall be replaced by the following:

'1. Appropriate measures may be applied in trade with third countries if:

- by reason of imports or exports, the Community market in one or more of the products referred to in Article 1 experiences or is threatened with serious disturbances which may endanger the objectives set out in Article 39 of the Treaty, or,
- for the products listed in Annex III a, the withdrawal or buying-in operations effected pursuant to Articles 18 and 19 concern significant quantities.

Such measures may be applied only until, depending on the case, either the disturbance or threatened disturbance disappears or the quantities withdrawn or bought-in have decreased substantially.'

Article 9

Paragraphs 1 and 3 of Article 30 of Regulation (EEC) No 1035/72 shall be replaced by the following:

'1. To the extent necessary to enable the products referred to in Article 1 to be exported in economically significant quantity, on the basis of prices for those products on the world market, the difference between those prices and Community prices may be covered by an export refund.

3. The Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, shall adopt general

rules for the granting and advance fixing of export refunds and criteria for fixing the amount of such refunds.'

Article 10

Annex III a, annexed to this Regulation, shall be added to Regulation (EEC) No 1035/72.

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

Done at Brussels, 21 November 1972.

Article 11

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

Articles 2, 3, 4 and 9 shall apply as from 1 December 1972.

Articles 1, 5, 6, 7, 8 and 10 shall apply, for each of the products concerned, as from the first day of the 1973/74 marketing year.

For the Council

The President

P. LARDINOIS

ANNEX III a

Cauliflowers

Tomatoes

Table grapes

Peaches

Apples (other than cider apples), except those coming from overseas countries

Pears (other than perry pears), except those coming from overseas countries.
