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COMMISSION REGULATION (EEC) No 1858/93

of 9 July 1993

laying down detailed rules for applying Council Regulation (EEC) No 404/93 as regards the aid scheme to compensate for loss of income from marketing in the banana sector

(OJ L 170, 13.7.1993, p. 5)

Amended by:

		Official Journal		
		No	page	date
► <u>M1</u>	Commission Regulation (EC) No 705/94 of 29 March 1994	L 85	7	30.3.1994
► <u>M2</u>	Commission Regulation (EC) No 796/95 of 7 April 1995	L 80	17	8.4.1995
► <u>M3</u>	Commission Regulation (EC) No 1062/1999 of 21 May 1999	L 129	24	22.5.1999
► <u>M4</u>	Commission Regulation (EC) No 1467/1999 of 5 July 1999	L 170	7	6.7.1999
► <u>M5</u>	Commission Regulation (EC) No 471/2001 of 8 March 2001	L 67	52	9.3.2001
► <u>M6</u>	Commission Regulation (EC) No 789/2005 of 25 May 2005	L 132	13	26.5.2005
► <u>M7</u>	Commission Regulation (EC) No 1913/2006 of 20 December 2006	L 365	52	21.12.2006

**COMMISSION REGULATION (EEC) No 1858/93****of 9 July 1993****laying down detailed rules for applying Council Regulation (EEC) No 404/93 as regards the aid scheme to compensate for loss of income from marketing in the banana sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organization of the market in bananas ⁽¹⁾, and in particular Articles 12 (4) and (8), 14 and 30 thereof;

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy ⁽²⁾, and in particular Article 6 (2) thereof,

Whereas, in order to ensure that Community production is maintained and in order not to put producers in a situation which is less favourable than their current one, Regulation (EEC) No 404/93 provides for compensatory aid in order to cover the loss of income, likely to result from the application of the new scheme;

Whereas in order to be eligible for the compensatory aid the bananas must comply with Community quality standards; whereas, however, pending the entry into force of these standards, provision should be made for the bananas to be graded, packed and removed from the packing shed so that they may be marketed;

Whereas, for determining the 'flat-rate reference income', account should be taken of the most recent years for which complete data are available; whereas this flat-rate reference income must be calculated for the ex packing shed stage and must correspond to the average of the prices at the delivered at first port of unloading in the rest of the Community stage for bananas produced in the most representative regions on the Community, less the average costs of transport and delivery FOB;

Whereas the 'average production income' must be calculated for each year for the same ex-packing shed stage on the basis of the information to be provided by the Member States;

Whereas the mechanism for reducing, by region and producer, the quantities of bananas marketed for which aid is granted should be determined, to provide for the situation where the volumes indicated in applications exceed the quantities laid down pursuant to Article 12 of Regulation (EEC) No 404/93; whereas this mechanism must make possible some offsetting between the various production regions within the overall quantity laid down in Regulation (EEC) No 404/93 and operate in proportion to the quantities marketed, in the case of both the production regions and individual producers;

Whereas detailed rules on the submission of applications and the payment of the compensatory aid should be laid down; whereas, in view of the fact that the compensatory aid for a given year cannot be determined and paid until the beginning of the following year, it is necessary to grant advances in order to maintain normal disposal of Community produce and achieve the measures objective; whereas,

⁽¹⁾ OJ No L 47, 25. 2. 1993, p. 1.

⁽²⁾ OJ No L 387, 31. 12. 1992, p. 1.

▼B

however, these advances must be paid subject to a security to cover the possibility of the aid eventually paid being less than the total of the advances;

Whereas Regulation (EEC) No 404/93 lays down that the compensatory aid is to be granted to producers who are members of a recognized producers' organization within the meaning of Article 5 of that Regulation; whereas, pending the creation of these organizations and their recognition, it is necessary to make provision for aid applications to be submitted by individual producers;

Whereas the economic objective of the aid is attained when the bananas are marketed; whereas, however, to take account of the market organization system, the agricultural conversion rate applicable at the beginning of each quarterly marketing period should be used to convert the aid and advances into national currency;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Bananas,

HAS ADOPTED THIS REGULATION:

Article 1

The compensatory aid provided for in Article 12 of Regulation (EEC) No 404/93 shall be granted for the marketing of fresh bananas falling within CN code ex 0803, excluding plantains, which comply with the quality standards laid down pursuant to Title I of that Regulation.

▼M2

▼B

Article 2

1. The 'flat-rate reference income' referred to in Article 12 (4) of Regulation (EEC) No 404/93 shall be determined on the basis of the date recorded during the 1991. It shall be calculated for the ex packing shed stage.

▼M3

2. The flat-rate reference income shall be EUR 62,25/100 kg net weight of green bananas ex-packing shed for 1998 and EUR 64,03/100 kg net weight from 1999.

▼M4

Article 3

1. The average production income for bananas produced and marketed in the Community as referred to in Article 12(5) of Regulation (EEC) No 404/93 shall be calculated for the ex-packing shed stage.

2. In the case of bananas marketed in the Community outside their producer region as defined in Article 12 of Regulation (EEC) No 404/93, the average production income shall be determined for each year on the basis of the average of the prices of bananas from the producer regions at the stage of delivery at first port of unloading (goods not unloaded), less a flat-rate amount of EUR 18,7/100 kg net weight corresponding to average costs of transport and delivery fob.

In the case of bananas produced and marketed in a producer region as defined in Article 12 of Regulation (EEC) No 404/93, the average production income shall be determined on the basis of the average selling prices on local markets, less a flat-rate amount of EUR 0,29/100 kg net weight corresponding to the forwarding costs to the markets concerned.

▼ M4

3. The flat-rate amounts referred to in paragraph 2 shall be reviewed if the average costs of transport, delivery fob or forwarding change substantially.

▼ B*Article 4*

1. Applications for advances may be submitted in accordance with the timetable laid down in Article 7 (2).

2. The amount of each advance shall be determined by multiplying the quantities marketed during the period in question by a average 70 % of the amount of aid paid in respect of the preceding year.

▼ M1

3. Payment of the advance shall be subject to the lodging of a security. The amount of this security shall be fixed at 50 % of the advance.

▼ B

4. The security shall be forfeit in proportion to the part of the aid usually paid where:

- the definitive amount of the aid proves to be less than the amount of the advances, and/or
- the quantities of bananas marketed for which advances have been applied for exceeds the total quantity of production referred to in Article 12 (2) of Regulation (EEC) No 404/93.

5. The security shall be released as soon as the definitive aid is paid by the competent authorities.

Article 5

Applications for compensatory aid and advances shall be submitted by the recognized producers' organizations within the meaning of Article 5 of Regulation (EEC) No 404/93. They shall cover the quantities marketed by each producer through the producers, organization.

▼ M4

▼ M2

▼ B*Article 7*

1. Applications for compensatory id and advances shall be submitted to the competent authorities designated by each Member State in which the products are harvested.

▼ M5

2. Applications shall be submitted:

- (a) in the case of advances, at the latest on 30 March, 30 May, 30 July, 30 September and 30 November of the marketing year and at the latest on 30 January of the year following that in respect of which the aid is applied for, for bananas marketed during the two-month period preceding the month of application;
- (b) in the case of payment of the balance of the aid, at the latest on 10 February of the year following that in respect of which the aid is applied for.

▼M5

The balance shall comprise the adjustment to the amounts paid for bananas marketed during the periods referred to in point (a), on the basis of the definitive amount of aid.

▼M6

Where applications for payment of the balance are submitted after the date referred to in point (b) of the first subparagraph, a 1 % reduction per working day shall be applied to the amount of the balance to which the producer would have been entitled had the application been submitted in time. Where the delay exceeds 15 days, the application shall be inadmissible.

In duly justified exceptional cases, the competent authority may accept applications for payment of the balance after the date referred to in point (b) of the first subparagraph, if this delay does not prevent the checks under Article 10(1) from going ahead. In such cases the provisions of the preceding subparagraph shall not apply.

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3. Applications shall include the following information at least:
- the names, first names and addresses of the individual producers,
 - the name and address of the producers' organization submitting the application,

▼M4

- the quantities of bananas produced and marketed during the period in question. Such quantities shall be broken down into the bananas referred to in the first subparagraph of Article 3(2) and those referred to in the second subparagraph of this paragraph. Applications for the balance shall cover the total quantities marketed during the year in question, broken down in the same way.

▼M6

4. Applications shall be accompanied by the following:
- the certificates of conformity or, if appropriate, the certificate of exemption referred to in Article 7 of Commission Regulation (EC) No 2898/95 ⁽¹⁾,
 - sales invoices,
 - the transport documents, in the case of bananas marketed outside the production region.

The documents submitted must prove that the goods have been accepted by the buyer.

4a. Applications without the information referred to in paragraph 3 and not accompanied by the supporting documents and proofs mentioned in paragraph 4 shall be inadmissible.

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5. Applications for payment of the balance may not be accompanied by supporting documents submitted for applications for advances.

▼M4*Article 8*

1. Member States shall inform the Commission, without delay at the end of each period laid down for the payment of advances, of the quantities marketed for which applications for payment have been submitted. These quantities shall, be broken down as indicated in the third indent of Article 7(3).

2. Within 20 days of the end of the period for lodging applications for payment of the balance as referred to in Article 7(2)(b), they shall forward to the Commission, for each two-month period:

⁽¹⁾ OJ L 304, 16.12.1995, p. 17.

▼M4

- in the case of bananas as referred to in the first subparagraph of Article 3(2), the quantities in question, the average selling prices for green bananas and the average prices at the stage of delivery at first port of unloading (goods not unloaded),
- in the case of bananas as referred to in the second subparagraph of Article 3(2), the quantities in question and the average selling prices on local markets.

▼M2*Article 9*

1. Where, the quantities laid down for each region in Article 12 (2) of Regulation (EEC) No 404/93 are exceeded, the aid shall be granted for all the quantities applied for, up to a total quantity of 854 000 tonnes net weight.

2. If the total quantity actually marketed exceeds 854 000 tonnes, the quantities marketed giving entitlement to the aid shall be reduced for each producer region concerned in proportion to the overrun of the quantity fixed for that region.

The Commission shall fix the reduction percentages applicable for each region and shall inform the Members States thereof.

Where the second subparagraph is applied, the competent authorities shall apply the uniform reduction percentage to the quantities indicated in each aid application.

▼M4*Article 10*

1. After verifying aid applications and supporting documents, the competent national authorities shall pay the amount of the advance or the balance of the aid, as the case may be, within two months of the month in which the application was lodged.

2. Advances and the balance of the aid shall be paid to beneficiaries in full.

▼M7*Article 11*

The operative event for the exchange rate applicable to the compensatory aid shall be that referred to in Article 2(6) of Commission Regulation (EC) No 1913/2006 ⁽¹⁾.

▼B*Article 12***▼M4**

1. Where aid is paid unduly in respect of bananas which have not been marketed in accordance with Article 1, the competent authorities shall recover the amounts paid, plus interest calculated from the date of payment of the aid up to actual recovery thereof.

The rate of interest to be applied by the producer Member States with the exception of Greece shall be that fixed by the European Central Bank and published in the *Official Journal of the European Communities*.

The rate of interest to be applied by Greece shall be that in force for similar recovery operations under national law. This rate may not be lower than the yield on three-month Treasury bonds as applied on the day of payment, plus one percentage point.

Member States may decide not to collect interest if it amounts to EUR 20 or less.

⁽¹⁾ OJ L 365, 21.12.2006, p. 52.

▼B

2. The aid recovered and, where applicable, the interest shall be paid to the paying agencies or authorities and deducted by them from the expenditure financed by the European Agricultural Guidance and Guarantee Fund, Guarantee Section.

▼M4*Article 13*

On request, producer Member States shall inform the Commission of the following:

- the development of Community production and marketing,
- the development of the real costs of transport and delivery fob,
- the situation regarding the quantities available in ripening depots,
- the development of the price of Community bananas at the various stages of the chain of production up to the wholesale and retail stages, and of bananas originating in third countries from the cif stage up to the retail stage.

Article 13a

If Community bananas are marketed in a producer region during a given two-month period at prices significantly below the average price for bananas marketed in that producer region during the same period, Member States shall intensify the checks on compliance with quality standards provided for in Commission Regulation (EC) No 2898/95 ⁽¹⁾.

▼B*Article 14*

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

It shall apply from 1 July 1993.

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

▼M4

⁽¹⁾ OJ L 304, 16.12.1995, p. 17.