COMMISSION REGULATION (EEC) No 382/89

of 15 February 1989

on measures to facilitate the implementation of Council Directive 85/397/EEC on health and animal-health problems affecting intra-Community trade in heat-treated milk

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1079/77 of 17 May 1977 on a coresponsibility levy and on measures for expanding the markets in milk and milk products [1], as last amended by Regulation (EEC) No 2234/88 [2], and in particular Article 4 thereof,

Whereas Council Directive 85/397/EEC [3] provides that certain quality standards should be met by milk which is exported as heat-treated milk; whereas the minimum standards to be met by producers delivering milk are laid down in Annex A, Chapter VI, Section D; whereas the analyses necessary to verify compliance with these minimum standards are not yet carried out in every case; whereas, therefore, it would seem appropriate to assist the laboratories to acquire the necessary equipment;

Whereas the organizations, institutes and producer groups possessing the necessary qualifications and experience should therefore be invited to propose detailed programmes which they themselves would carry out;

Whereas Article 16 of Directive 85/397/EEC requires the Member States to ensure that the provisions of the Directive are implemented by 1 January 1989; whereas equipment purchased on or after 1 October 1988 should be eligible for financing; whereas, as regards other arrangements, the main provisions of Commission Regulation (EEC) No 615/85 [4], taking account of relevant experience, may be repeated in this case;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. Aid shall be granted for the following measures:

(a) bacteriological analysis of milk;

(b) tests relating to the health aspects of milk;

(c) checks to ascertain whether water has been added to milk;

(d) the equipment of milk tankers with automatic sampling devices;

(e) the testing of milking machines;

(f) measures to improve the quality of raw milk, including the communication of results, and measures to improve the image of milk and milk products.

2. The measures referred to in paragraph 1 shall be eligible only if begun after 30 September 1988; they shall be completed wihtin one year of the signature of the contract referred to in Article 5 (3) and in any case before 1 October 1990. In exceptional cases, however, a longer period may be agreed in accordance with Article 5 (3) to ensure maximum effectiveness of the measures concerned.

3. The time limit fixed in paragraph 2 shall not prevent subsequent agreement to an extension of that limit where the party to a contract, before the fixed expiry date, makes the appropriate application to the competent authority and proves that to exceptional circumstances beyond his control, he is unable to meet the deadline originally stipulated. However, the extension may not exceed six months.

Article 2

1. Measures as referred to in Article 1 (1) shall be proposed and carried out by institutions, or producer groups which:

(a) have the necessary qualifications and experience in the quality control of milk;

(b) ensure the satisfactory completion of the work.

Proposals by individual firms will be considered only where they are particularly justified and where they would not prejudice the operations of regional organizations specializing in the field.

2. The Community contribution shall not exceed 75 % of the expenditure incurred on measures pursuant to Article 1 (1) (a) to (e) or 90 % of the expenditure incurred on measures pursuant to Article 1 (1) (f). Not more than 33 % of the total sum available to a Member State may be spent on measures of the latter type.

(1) OJ No L 131, 26. 5. 1977, p. 6.
(2) OJ No L 197, 26. 7. 1988, p. 36.
(3) OJ No L 226, 24. 8. 1985, p. 13.
(4) OJ No L 69, 9. 3. 1985, p. 32.

3. In the case of the measures referred to in Article 1 (1) account shall be taken for purposes of Community contribution only of the first fitting-out with :

(a) equipment (which may include incubators) for examining the bacteriological content of milk, including any combined data-processing equipment, but excluding software ;

(b) equipment for detecting antibiotics, inhibitory substances and impurities in raw milk, and for determining its freshness, including any combined data-processing equipment, but excluding software ;

(c) equipment for detecting somatic cells in raw milk ;

(d) equipment for determining the freezing point ;

(e) equipment for monitoring milking machines ;

(f) automatic sampling equipment on milk tankers, including coding units for the marking of samples ;

(g) equipment for monitoring of cooling tanks in dairy farms.

The first fitting-out of already existing laboratories with improved, more economic, equipment shall be regarded as a measure referred to in Article 1 (1).

Such equipment shall be financed only where its technical capacity will be effectively utilized.

Article 3

1. Those concerned are hereby invited to submit, before 1 April 1989, to the competent authority appointed by the Member States, hereinafter called 'the competent authority', complete detailed proposals concerning the measures referred to in Article 1 (1).

Where this date is not complied with, the proposal shall be considered null and void.

2. Further details for submission of proposals shall be as set out in the notices from the competent authorities published in *Official Journal of the European Communities* No C 312 of 6 December 1986, page 7.

Article 4

1. Complete proposals shall include :

(a) the name and address of the applicant ;

(b) all details concerning the measures proposed, including the time required for completion, the expected results and details of any third parties to be involved ;

(c) the total cost of these measures, net of tax, expressed in the currency of the Member State on whose territory the applicant is established, giving an itemized breakdown of this amount and setting out the source of finance ;

(d) the desired form of payment of the Community contribution (Article 7 (1) (a) or (b)) ;

(e) the most recent report available on the applicant's activities, unless this is already in the possession of the competent authority.

2. Proposals shall be valid only where :

(a) they are submitted by an applicant fulfilling the conditions laid down in Article 2 (1) ;

(b) they are accompanied by an undertaking that the applicant will comply with the provisions of this Regulation.

Article 5

1. Before 1 June 1989 the competent authorities shall :

(a) examine all proposals submitted and any supporting documents to check that they are in the correct form and contain the information required. They shall ensure that the proposals comply with the provisions of Article 4 and shall ask applicants for further details if necessary ;

(b) compile a list of all the proposals received and send it to the Commission together with copies of each proposal and a reasoned opinion indicating whether or not the proposal conforms with this Regulation.

2. After consulting the relevant interest groups in the milk industry, and following examination of the proposals by the Management Committee for Milk and Milk Products in accordance with Article 31 of Council Regulation (EEC) No 804/68 (1), the Commission shall establish before 1 August 1989 a list of the proposals selected for financing.

3. The competent authorities shall conclude contracts with those parties whose proposals have been selected before 1 October 1989 in at least two copies and signed by the interested party and the competent authority. The competent authorities shall for this purpose use standard form contracts to be provided by the Commission.

4. The competent authority shall inform each applicant as soon as possible of the decision taken in respect of its proposal.

Article 6

1. The contract referred to in Article 5 (3) shall :

(a) include the details referred to in Article 4 (1) or make reference to them ; and

(b) supplement these details, where necessary, by additional conditions resulting from the application of Article 5 (1).

2. The competent authority shall send a copy of the contract to the Commission wihthout delay.

3. The competent authority shall ensure compliance with the agreed conditions in particular by means of on-the-spot checks.

(1) OJ No L 148, 28. 6. 1968, p. 13.

Article 7

1. The competent authority shall pay to the party in question, in accordance with the choice indicated in the latter's proposal, either:

(a) within six weeks of the date of signature of the contract, a single payment on account amounting to 60 % of the agreed Community contribution; or

(b) at four-monthly intervals, four equal instalments each amounting to 20 % of the agreed Community contribution, the first such instalment being paid within six weeks of the date of signature of the contract.

However, while a contract is being performed, the competent authority may:

— defer payment of an instalment either wholly or in part where it finds, in particular during the checks referred to in Article 6 (3), irregularities in carrying out the measures concerned or a substantial interval between the due date for payment of the instalment and the date when the party concerned will actually incur the forecast expenditure,

— in exceptional cases, advance payment of an instalment either wholly or in part if the party concerned submits a reasoned request and shows that he must incur a substantial part of the expenditure significantly earlier than the date laid down for payment of the Community contribution towards the said expenditure.

2. The payment of each instalment shall be conditional upon the lodging with the competent authority of a security equal to the amount of the instalment, plus 10 %.

3. The release of securities and payment of the balance by the competent authority shall be subject to:

(a) confirmation by the competent authority that the party concerned has fulfilled his obligations as laid down in the contract;

(b) transmission to the competent authority of the report referred to in Article 8 (1) and verification of the details contained in this report by the competent authority.

However, on reasoned request by the party concerned, the balance can be paid after the measure has been completed, and after submission of the report referred to in Article 8, and on condition that securities equal to the total amount of the Community contribution plus 10 % have been lodged;

(c) the competent authority finding that the party concerned, or any third party named in the contract, has spent his own contribution for the purposes laid down.

4. In so far as the conditions set out in paragraph 3 are not fulfilled, the securities shall be forfeit. In this event, the amount in question shall be deducted from the expenditure of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund, and more particularly from that arising out of the measures referred to in Article 4 of Regulation (EEC) No 1079/77.

Article 8

1. Each party responsible for one of the measures referred to in Article 1 (1) shall submit to the competent authority, within four months of the final date fixed in the contract for completion of the measures, a detailed report on the utilization of the Community funds allocated and on the results of the measures in question.

2. On performance of each contract, the competent authority shall send to the Commission a statement to this effect and a copy of the final report.

Article 9

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

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

Done at Brussels, 15 February 1989.

For the Commission

Ray MAC SHARRY

Member of the Commission