COMMISSION REGULATION (EC) No 411/97

of 3 March 1997

laying down detailed rules for the application of Council Regulation (EC) No 2200/96 as regards operational programmes, operational funds and Community financial assistance

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organization of the market in fruit and vegetables [1], and in particular Articles 48 and 57 thereof,

Whereas Article 15 of Regulation (EC) No 2200/96 provides for financial assistance to be granted to producer organizations setting up an operational fund maintained and used within the framework of an operational programme in accordance with certain rules and within certain limits; whereas Article 13 of the abovementioned Regulation grants the same financial assistance to existing producer organizations needing a transitional period in order to qualify for recognition, provided that they comply with certain requirements and carry out a plan of action in accordance with certain rules; whereas Article 16 of the abovementioned Regulation lays down certain rules for the implementation of operational programmes; whereas detailed rules should be laid down for the application of those provisions;

Whereas, in the interests of simplification, operational programmes should be presented and approved in the same way as plans of action, and the producer organizations referred to in Articles 11 and 13 of Regulation (EC) No 2200/96 should be treated as producer organizations; whereas, to prevent misuse of the scheme, the marketed production of producer organizations should be defined as the entire production marketed by the organization itself or with its authorization; whereas, in order to facilitate the preparation of operational programmes and the calculation of the estimated amounts of the operational funds by the producer organizations in foreseeable conditions, the ceilings on Community financial assistance should be calculated on the basis of the value of production marketed during the year preceding that to which those ceilings relate;

Whereas, in the interests of sound management, the deadlines for the presentation and approval of operational programmes should be determined in the light not only of the time needed for the administrative procedures but also of the information and undertakings to be included in, and activities to be excluded from, the programmes; whereas, since the programmes are managed on an annual basis, it should be stipulated that programmes not approved before a given date should be postponed for one year;

Whereas there must be room for discrepancies between the actual execution of the programmes and the estimates contained therein, subject to certain limits and conditions, to prevent approved programmes from slipping away from their targets; whereas, in addition, there should be an annual procedure for amending operational programmes for the following year so that they can be adjusted to take account of any new conditions which could not have been foreseen when they were initially presented;

Whereas the procedure for determining and notifying information on the estimated amounts of the operational funds and the estimated amounts of financial assistance as referred to in the first subparagraph of Article 16 (2) of Regulation (EC) No 2200/96 should be supplemented by an additional stage whereby the Commission sets the estimated ceiling on the financial assistance, since this will give producer organizations guidance as to the definitive ceiling likely to be set in accordance with the third subparagraph of Article 15 (5) of the abovementioned Regulation;

Whereas arrangements should be made for creating a system of advance payments accompanied by appropriate securities; whereas it should be stipulated that, in order to prevent the systematic recovery of advances, such payments should not exceed the minimum level of financial assistance; whereas it should be possible for furnished securities to be progressively released as implementation of the operational programme proceeds, to the extent of up to 80 % of the advances paid, the remaining amount being retained until the balance of the assistance has been paid;

Whereas the information to be included in applications for assistance should be specified; whereas, in the interests of uniform application, the marketing stage at which the value of production is to be calculated must be specified; whereas it should also be specified that the financial contributions of members of the producer organization are based on the marketed production used to calculate the Community financial assistance; whereas, in order to avoid needless duplication of applications for amendments to operational programmes because of technical delays in their implementation, it must be possible for advances to be settled at the end of the operational programme, provided that the equivalent contribution from the producer organization is maintained in the operational fund;

[1] OJ No L 297, 21. 11. 1996, p. 1.

Whereas it should be stipulated that the ceiling on Community financial assistance applies uniformly to all applications for assistance in excess of 2 % and, from 1999, in excess of 2,5 % of the value of production, while applications not exceeding this minimum limit fixed by the Council will not be affected;

Whereas, in view of the very short time available for the implementation of this Regulation, certain transitional provisions should be laid down, particularly as regards the deadlines for presentation and approval of operational programmes; whereas, in addition, for the purpose of the initial application of the new arrangements, calculation of the ceiling set on assistance should be based on the value of production marketed during a three-year period, so as not to disadvantage organizations having had a year with a low level of marketed production;

Whereas the activities of producer organizations and their effectiveness should be monitored; whereas this can be achieved by means of periodical reports and an assessment;

Whereas strict control procedures should be laid down, together with deterrent penalties in the event of infringement, given the high degree of responsibility and initiative conferred on the producer organizations;

Whereas the deadline for transmission to the Commission of the national frameworks referred to in the second subparagraph of Article 16 (1) of Regulation (EC) No 2200/96 must be fixed; whereas, since for practical reasons that date is later than the deadline for approval by the Member States of the first set of operational programmes, those programmes must be approved by reference to the objectives laid down in Article 130r of the Treaty and the Community programme of policy and action in relation to the environment and sustainable development;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Fresh Fruit and Vegetables,

HAS ADOPTED THIS REGULATION:

CHAPTER I

Subject-matter and scope

Article 1

The rules laid down herein shall apply to Community financial assistance, operational funds and operational programmes as referred to in Article 15 (1) and (2) (b) of Regulation (EC) No 2200/96 and to plans of action as referred to in Article 13 (2) (a) of that Regulation.

For the purposes of this Regulation, unless it is stated otherwise, plans of action shall be treated in the same way as operational programmes.

Article 2

1. 'Producer organizations' as referred to in this Regulation means those recognized pursuant to Article 11 of Regulation (EC) No 2200/96 and those referred to in Article 13 of that Regulation subject to the conditions therein.

2. Where associations of producer organizations act on behalf of their members for the purposes of managing their operational funds in accordance with Article 16 (3) of Regulation (EC) No 2200/96, they shall be treated in the same way as producer organizations for the purposes of this Regulation. However, the provisions relating to verifications and penalties shall continue to apply to producer organizations which are members of such associations.

3. Producer organizations may qualify for Community financial assistance on the terms set out in Articles 15 and 16 of Regulation (EC) No 2200/96 and those laid down herein.

4. For the purposes of this Regulation, 'marketed production' means the products of members of producer organizations for which the latter are recognized, disposed of under the conditions laid down in Article 11 (1) (c) (3) of Regulation (EC) No 2200/96.

5. For the purpose of applying the third subparagraph of Article 15 (5) of Regulation (EC) No 2200/96, the ceiling on financial assistance shall be calculated on the basis of the value of marketed production for the year preceding that for which the ceiling is fixed.

6. Member States shall take the measures necessary to gather information on the value, as at the stage referred to in Article 9 (2) (a), of marketed production within the meaning of paragraph 5 of producer organizations which have not presented operational programmes.

CHAPTER II

Operational programmes and funds

Article 3

Proposed operational programmes shall be submitted for approval to the competent authorities in the Member State in which the producer organization has its headquarters by 15 September of the year preceding that in which they are to be implemented. However, the Member States may postpone that date.

The closing date for presenting plans of action before the expiry of the transitional period referred to in Article 13 (1) of Regulation (EC) No 2200/96 shall be 15 September 1998.

The programmes shall be implemented in annual periods running from 1 January to 31 December.

Article 4

1. Proposed operational programmes shall satisfy the requirements of Article 15 (4) of Regulation (EC) No 2200/96 or, in the case of plans of action, those required, once the plan of action is completed, for compliance with Article 11 (2) of that Regulation. They shall cover at least the following:

(a) the duration of the programme;

(b) a description of the initial situation, in particular as regards production, marketing and equipment;

(c) the objectives of the programme, bearing in mind the outlook for production and outlets;

(d) the operations to be undertaken and the means to be employed for attaining those objectives in each year of implementation of the programme;

(e) the financial aspects, namely the method of calculation and the financial contributions, the procedure for financing the operational fund as referred to in paragraph 3 (b), and the budget and timetable for undertaking operations for each year of implementation of the programme.

2. Proposed operational programmes shall not cover:

(a) administrative or operating expenditure, with the exception of expenditure relating to their implementation;

(b) fruit and vegetables produced by organization members outside the Community;

(c) supplements to income or prices;

(d) advertising campaigns for specific brand names;

(e) operations that could lead to distortion of competition in other business activities undertaken by the producer organization; operations or measures directly or indirectly benefiting other business activities undertaken by the producer organization shall be financed in proportion to their use by the sectors or products for which the producer organization is recognized.

3. Proposed operational programmes shall be admissible only if accompanied by:

(a) a written undertaking from the producer organization to comply with Regulation (EC) No 2200/96 and this Regulation, and not to receive, directly or indirectly, duplicate Community or national funding in respect of measures and/or operations qualifying for Community financing under this Regulation;

(b) evidence of the setting-up of an operational fund as referred to in Article 15 (1) of Regulation (EC) No 2200/96 and in particular of the opening of a bank account with a financial institution in the Member State in which the producer organization has its headquarters, to be used solely for transactions connected with the implementation of the programme, the administration of the operational fund and the financing of withdrawals in accordance with Article 15 (3) of Regulation (EC) No 2200/96.

Article 5

1. The competent national authorities shall take decisions on programmes before 15 December of the year in which they are submitted.

2. The national competent authorities shall verify:

(a) by all appropriate means, including on-the-spot inspections, the accuracy of information provided pursuant to Article 4 (1) (b) and (c);

(b) compliance of the objectives of programmes with Article 15 (4) of Regulation (EC) No 2200/96 or, in the case of plans of action, compliance of their objectives with Article 11 (2) of that Regulation;

(c) the economic consistency and technical quality of proposed programmes, the soundness of the estimates and the financing plan, and the planning of its implementation.

3. The competent national authorities shall, as appropriate:

(a) approve programmes which meet the requirements of Articles 15 and 16 of Regulation (EC) No 2200/96 and those of this Chapter;

(b) request changes to the proposed programmes; only programmes that incorporate the changes requested shall be approved;

(c) reject the programmes.

The competent national authorities shall notify producer organizations of their decisions.

4. Operational programmes approved before 15 December shall be implemented as from 1 January of the following year.

The implementation of programmes approved after 15 December shall be postponed for one year.

Article 6

1. Where unforeseeable circumstances arise, or in order to take account of the estimate of the ceiling on financial assistance drawn up in accordance with Article 7 (5), producer organizations may implement their operational programmes in part only; in such cases, programmes may continue, provided that a request for changes is submitted in accordance with paragraph 2 of this Article.

The expenditure set out in the approved programme may be exceeded by up to 20 % for each measure, provided that the estimated amount of the operational fund referred to in Article 7 (1) is not exceeded; programmes may continue provided that a request for changes is submitted in accordance with paragraph 2 if the excess is more than 5 % of the foreseeable expenditure under the operational programme.

2. Producer organizations may request changes to operational programmes each year by 15 September for implementation on 1 January of the following year. However, Member States may postpone the date for submitting requests.

Changes may include extending operational programmes on condition that their total duration does not exceed five years. In the case of plans of action as referred to in Article 13 (2) of Regulation (EC) No 2200/96, the duration shall commence on the entry into force of this Regulation.

Requests for changes shall be accompanied by all supporting documents.

The competent authorities shall take decisions on requests for changes to operational programmes before 15 December, after considering the evidence supplied, and with due regard for the requirements of Article 5 (2). Where a decision is not taken within the abovementioned time limit, the request shall be deemed to have been rejected.

CHAPTER III

Community financial assistance

Article 7

1. Each year by 15 September at the latest and, where applicable, at the same time as proposed operational programmes as referred to in Article 3 or requests for changes as referred to in Article 6 (2) of this Regulation, producer organizations implementing operational programmes shall forward the estimated amounts of the operational funds for the following year to the Member States in accordance with Article 16 (2) of Regulation (EC) No 2200/96.

Calculation of the estimated amount of operational funds shall be based on:

(a) the factors referred to in Article 16 (2) of Regulation (EC) No 2200/96 and contained in the proposed operational programmes and on estimated expenditure on withdrawals as referred to in Article 15 (3) thereof;

(b) an estimate of the value of marketed production during the current year.

2. When proposed programmes are being approved, Member States shall establish the estimated amount of financial assistance as referred to in the first subparagraph of Article 16 (2) of Regulation (EC) No 2200/96, taking into account its capping at 4 %, and from 1999 onwards at 4,5 %, of the value of the marketed production of the producer organization used to calculate the estimated amount of the operational fund. They shall notify the producer organizations of that amount before 15 December, together with the decisions as referred to in Article 5 (3) or in the fourth subparagraph of Article 6 (2) of this Regulation, in accordance with Article 16 (2) of Regulation (EC) No 2200/96.

3. Before 31 January of the year for which the estimated amount of the operational fund is fixed in accordance with paragraph 1, producer organizations shall communicate to Member States an update of the amount to take account of the definitive value of production marketed during the previous year.

As soon as Member States receive this communication, they shall update the estimated amount of financial assistance established in accordance with paragraph 2.

4. Before 20 February, Member States shall send the Commission a summary of the updated estimated amounts of the operational funds, indicating separately the definitive value of the production marketed during the previous year on which those amounts are calculated, and a summary of the updated estimated amounts of financial assistance, differentiating between aid amounting respectively to less than and more than 2 % and, from 1999, less than and more than 2,5 %, of the value of the production of the producer organizations marketed during the previous year. They shall also forward the information referred to in Article 2 (6).

5. The Commission shall draw up an estimate of the ceiling on financial assistance as referred to in Article 15 (5) of Regulation (EC) No 2200/96, which it shall forward to the Member States for their information.

Article 8

1. Producer organizations may on application be granted advance payments on the proportion of the operational fund to be used to finance an operational programme.

Applications for advance payments shall be made in January, April, July and October. They shall cover foreseeable expenditure arising from operational programmes for the three-month period starting in the month in which the application is submitted. Total advance payments made for a given year may not exceed 2 % of the definitive value of production marketed during the previous year, less the estimated expenditure on withdrawals as referred to at point (a) of the second subparagraph of Article 7 (1).

2. Advances shall be paid subject to the furnishing of a security equivalent to 110 % thereof.

Applications for the release of securities may be submitted during the year and shall be accompanied by the relevant supporting documents. Securities shall be released in respect of up to 80 % of advances paid.

Applications for the proportion of the financial assistance covering withdrawals as referred to in Article 15 (3) of Regulation (EC) No 2200/96 may, where applicable, be submitted at the same time as applications for the release of securities as referred to in the second subparagraph of this paragraph, accompanied by the relevant supporting documents. All applications for a proportion of the financial assistance shall, when added to that covered by previous applications, cover amounts and quantities not exceeding the limits laid down in the third subparagraph of Article 15 (3) and in Article 23 (3) and (4) of the abovementioned Regulation; from 2002 onwards, for the purposes of Article 23 (5) of Regulation (EC) No 2200/96, the maximum quantity of withdrawals to be considered for the purposes of the operational fund shall be determined on the basis of the quantities withdrawn, financed from the fund, in the previous two years. In the first two years of application, the maximum quantity referred to above shall be 13 %.

3. Securities shall be furnished in accordance with the conditions laid down in Commission Regulation (EEC) No 2220/85 [1].

The primary requirement within the meaning of Article 20 of that Regulation shall cover the performance of the operations set out in the operational programmes subject to the undertakings set out in Article 4 (3) (a) of this Regulation.

In the event of failure to comply with the primary requirement or of serious failure to meet the obligations referred to in Article 4 (3) (a), the security shall be forfeited, without prejudice to other penalties to be applied in accordance with Article 48 of Regulation (EC) No 2200/96.

In the event of failure to comply with other requirements, the security shall be forfeited in proportion to the gravity of the irregularity that has been established.

Article 9

1. Applications for financial assistance or the balance thereof shall be submitted, one only in respect of each programme, no later than 31 January of the year following that to which they relate.

2. Applications shall be accompanied by supporting documents showing:

(a) the quantity and value of the marketed production within the meaning of Article 2 (4) and (5), as at the 'ex-producer organization' stage and, where applicable, as 'packaged or prepared but not processed product';

(b) the financial contributions levied on members and paid into the operational fund, in accordance with the second subparagraph of Article 15 (1) of Regulation (EC) No 2200/96 for marketed production within the meaning of Article 2 (4) of this Regulation;

(c) the expenditure incurred in respect of the operational programme;

(d) the proportion of the operational fund intended to finance market withdrawals in accordance with Article 15 (3) of Regulation (EC) No 2200/96, the level of compensation and/or supplements paid to members, and also compliance with the limits laid down in the third subparagraph of Article 15 (3) and in Article 23 (3), (4) and (5) of the abovementioned Regulation.

3. Advances granted for operations which cannot be implemented within the time limits laid down in the programme shall only be deducted from the balance as referred to in paragraph 1 when the last balance for the last year of application of the programme in question is determined, provided that an equivalent contribution from the producer organization is maintained in the operational fund.

Article 10

Before 1 March, Member States shall send the Commission a summary of the financial assistance applied for by the producer organizations and the value of their marketed production within the meaning of Article 2 (5),

[1] OJ No L 205, 3. 8. 1985, p. 5.

differentiating between applications in respect of assistance of less than and more than 2 % and, from 1999, of less than and more than 2,5 %, of the value of the marketed production of the producer organization. They shall also forward the information referred to in Article 2 (6).

In accordance with the third subparagraph of Article 15 (5) of Regulation (EC) No 2200/96, before 1 April the Commission shall set the ceiling on financial assistance applicable to applications for assistance in excess of 2 % and, from 1999, in excess of 2,5 % of the value of marketed production.

CHAPTER IV

General provisions

Article 11

The implementation of operational programmes and withdrawal operations eligible for Community financing under an operational fund shall be the subject of annual reports, which shall accompany applications for financial assistance or, as appropriate, applications for the balance. The reports shall cover operational programmes implemented during the preceding year and withdrawals.

Final reports shall replace the reports referred to in the first paragraph for the final year of application of operational programmes.

Such final reports shall be accompanied by an assessment of the operational programmes, prepared, where applicable, with the assistance of a specialized consultancy office. Such assessments must verify attainment of the objectives pursued by the programmes and, where appropriate, suggest changes to operations and/or methods to be considered when subsequent operational programmes are drawn up.

Article 12

1. Member States shall carry out checks on producer organizations so as to ensure effective verification of compliance with the conditions for grant of assistance.

2. Checks shall relate at least to a significant sample of applications each year. The sample must represent at least 10 % of producer organizations and 30 % of total Community assistance.

Should the checks reveal significant irregularities in a region or part of a region, the competent authorities shall carry out additional checks during the year in question and shall increase the percentage of applications to be checked the following year for that region or part thereof.

3. The competent authorities shall determine which producer organizations to check on the basis, in particular, of a risk analysis and the representativeness of the assistance. The risk analysis shall take account of:

(a) the amount of assistance;

(b) the trend of annual programmes in relation to the previous year;

(c) the findings of the checks in previous years;

(d) other parameters to be determined by Member States.

Article 13

1. The recipient shall be required to reimburse double the amounts unduly paid out, plus interest calculated on the basis of the period elapsing between payment and reimbursement by the recipient, where checks carried out in accordance with Article 12 show that:

(a) the real value of marketed production within the meaning of Article 2 (4) and (5) is less than the amount used to calculate the Community financial assistance; or

(b) the operational fund has been maintained in a manner which does not comply with Article 15 (1) of Regulation (EC) No 2200/96 or has been used for purposes other than those referred to in Article 15 (2) of that Regulation; or

(c) the operational programme has been implemented in a manner which does not comply with the conditions for its approval by the Member State concerned, without prejudice to Article 6 of this Regulation.

The rate of interest referred to in the first subparagraph shall be that applied by the European Monetary Institute to transactions in ecus published in the 'C' series of the *Official Journal of the European Communities* and in force on the date on which the undue payment is made, plus three percentage points.

2. Where the difference between the aid actually paid and the aid due is greater than 20 % of the aid due, the recipient shall be required to repay all of the aid paid, plus the interest referred to in paragraph 1.

3. Sums recovered, with the interest accrued, shall be paid to the responsible paying agency and deducted by it from expenditure financed by the European Agricultural Guidance and Guarantee Fund.

4. In the event of a false declaration made deliberately or by serious negligence, the producers' organization concerned shall be debarred from receiving Community financial assistance for the year following that in respect of which the false declaration was discovered.

5. Paragraphs 1 to 4 shall apply without prejudice to other penalties to be adopted in accordance with Article 48 of Regulation (EC) No 2200/96.

Article 14

The national framework referred to in the second subparagraph of Article 16 (1) of Regulation (EC) No 2200/96 shall be transmitted to the Commission not later than 15 September 1997.

CHAPTER V

Transitional provisions

Article 15

1. For 1997, producer organizations which have lodged applications for recognition pursuant to Regulation (EC) No 2200/96 and those recognized pursuant to Council Regulation (EEC) No 1035/72 [1], may submit for approval until 30 June 1997 proposed operational programmes of a duration which may be limited to 31 December 1998 where they are accompanied by a undertaking from the organization to submit a new operational programme before 15 September 1998. Proposed programmes shall indicate the estimated amounts of operational funds as referred to in Article 7 (1) based on the average value of production marketed during 1994, 1995 and 1996.

2. Within three months the competent national authorities shall take a decision on proposals submitted. Proposals for operational programmes submitted by producer organizations which do not receive recognition shall be rejected automatically.

3. The competent national authorities shall notify the producer organizations of their decisions approving proposals and at the same time the estimated amount of the financial assistance for 1997 calculated in accordance with Article 7 (2).

4. Communications as referred to in Article 7 (4) shall be made before 15 September 1997.

5. For the purpose of applying Articles 9 and 10 in 1998, account shall be taken of the average value of production marketed during 1994, 1995 and 1996.

6. Implementation of operational programmes may commence once they have been submitted, at the producer organizations' own risk.

Article 16

This Regulation shall enter into force on the seventh 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, 3 March 1997.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ No L 118, 20. 5. 1972, p. 1.