COUNCIL REGULATION (EC) No 951/97

of 20 May 1997

on improving the processing and marketing conditions for agricultural products

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 42 and 43 thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the European Parliament [2],

Having regard to the opinion of the Economic and Social Committee [3],

(1) Whereas Council Regulation (EEC) No 866/90 of 29 March 1990, on improving the processing and marketing conditions for agricultural products [4] has been substantially amended several times; whereas, in the event of new amendments being made to the said Regulation, in order to clarify and rationalize matters, the provisions in question should be recast;

(2) Whereas Article 10 (1) of Council Regulation (EEC) No 4256/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the EAGGF Guidance Section [5] provides for a Council Decision on the forms of the Fund's contribution to measures to improve the conditions under which agricultural products are processed and marketed with a view to achieving the objectives referred to in Council Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments [6];

(3) Whereas the types of investments eligible for a contribution from the EAGGF Guidance Section (hereinafter referred to as 'the Fund') should be defined, taking account of the current situation both on the agricultural markets and in the agriculture and food sector, as well as the prospects for developing outlets for agricultural products;

(4) Whereas, in order to ensure a coherent improvement in the processing and marketing of agricultural products, financial assistance from the Fund for investments in that field should be made conditional on the inclusion of such investments in sectoral plans containing an in-depth analysis of the situation in the sector and the proposed improvement;

(5) Whereas, for such plans, the Commission should adopt sectoral Community support frameworks, to be drawn up in agreement with the Member States concerned, within the framework of the partnership, taking account, as appropriate of the Community support frameworks adopted for plans relating to Objectives 1, 6 and 5 (b) defined in Article 1 of Council Regulation (EEC) No 2052/88 of 24 June 1988, on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments [7];

(6) Whereas an effective means should be adopted for ensuring that Community action is consistent with

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[1] OJ No C 115, 19.4.1996, p. 53.
[2] Opinion delivered on 13 May 1997 (not yet published in the Official Journal).
[3] OJ No C 204, 15.7.1996, p. 38.
[4] OJ No L 91, 6.4.1990, p. 1. Regulation as last amended by Regulation (EC) No 2843/94 (OJ No L 302, 25.11.1994, p. 1).
[5] OJ No L 374, 31.12.1988, p. 25. Regulation as amended by Regulation (EEC) No 2085/93 (OJ No L 193, 31.7.1993, p. 44).
[6] OJ No L 374, 31.12.1988, p. 1. Regulation as last amended by Regulation (EC) No 3193/94 (OJ No L 337, 24.12.1994, p. 11).
[7] OJ No L 185, 15.7.1988, p. 9. Regulation as last amended by Regulation (EC) No 3193/94 (OJ No L 337, 24.12.1994, p. 11).

the common agricultural policy; whereas the most effective way to achieve this is to adopt selection criteria with which to determine which investments should be given priority for consideration;

(7) Whereas, in order to ensure the necessary transparency in the operations of the Fund, eligible expenditure should be defined;

(8) Whereas it must be ensured that investments are viable and that farmers have a share in the economic benefits of the action taken;

(9) Whereas application of the measure should in general be restricted to the agricultural products listed in Annex II to the Treaty, whereas in certain cases, however, processed products no longer included in the Annex may be of importance to farmers in so far as they create new market outlets and/or increase the added-value of the basic product;

(10) Whereas, in connection with the reform of the Structural Funds, Regulation (EEC) No 4256/88 provides for new forms of assistance by the Fund as regards improving structures for processing and marketing agricultural products; whereas general rules should therefore be laid down for its implementation;

(11) Whereas, to allow for the differing structural situations in the various regions of the Community, contribution rates should be differentiated by category of region;

(12) Whereas, to ensure harmony between the Community's actions and those of the Member State concerned and to ensure the additionality of Community assistance, the investments selected for financing by the Fund should be co-financed by the Member State;

(13) Whereas provision should be made for the possibility of laying down certain specific implementing rules adapted to the special nature of the common measure that is the subject of this Regulation, to ensure that it is implemented effectively,

HAS ADOPTED THIS REGULATION:

Article 1

Objectives of the common measure

1. A common measure within the meaning of Article 2 (1) of Regulation (EEC) No 4256/88 and under Objective 5 (a), as defined in Article 1 of Regulation (EEC) No 2052/88, is hereby introduced with the aim of facilitating the improvement and rationalization of the treatment, processing and marketing of agricultural products. This measure shall also help to achieve Objectives 1, 6 and 5 (b) as set out in the said Article 1.

2. To facilitate the improvement and rationalization of the treatment, processing and marketing of agricultural products, the Fund may contribute to the financing of investments which satisfy at least one of the following criteria:

(a) helping to guide production in keeping with foreseeable market trends or encouraging the development of new outlets for agricultural products, in particular through facilitating the production and marketing of new products or of high-quality products, including organically-grown products;

(b) relieving the intervention mechanisms of the market organizations by furthering long-term structural improvement where this is needed;

(c) being located in regions which are faced with special problems in adapting to the economic consequences of developments on the agricultural markets, or being of benefit to such regions;

(d) helping to improve or rationalize marketing channels or processing procedures for agricultural products;

(e) helping to improve the quality, presentation and preparation of products or encouraging a better use of by-products, particularly by recycling waste;

(f) contributing to the adjustment of sectors facing new situations as a result of the reform of the common agricultural policy;

(g) helping to facilitate the adoption of new technologies relating to environmental protection;

(h) encouraging the improvement and monitoring of quality and of health conditions.

TITLE I

PLANS, COMMUNITY SUPPORT FRAMEWORKS AND SELECTION CRITERIA

Article 2

Plans and Community support frameworks

1. In order to ensure that the marketing and processing sectors develop in a way that is consistent with Community policy, and particularly with the common agricultural policy, and to ensure the effectiveness of Community aid, the financing of investments must take place within the framework of plans designed to improve the structures relating to the various products in question, to be presented by the Member States, and on the basis of the corresponding Community support frameworks.

2. Measures under this Regulation shall be included in the plans drawn up and presented by the Member States for the Objective 1 and 6 regions.

3. In the case of regions not eligible under Objectives 1 or 6, the plans referred to in paragraph 1 shall be prepared by the Member States with the information relating to Objective 5 (b) areas given separately from that relating to the rest of the territory.

Article 3

Content of the plans

The plans must include at least the following information:

(a) determination of the sectors covered and the reasons for such determination;

(b) the initial situation and the trends which can be inferred from it, particularly as regards:

— the importance of agriculture and the prospective outlets for agricultural products,

— the situation as regards the processing and marketing of agricultural products and in particular the existing capacity of the undertakings concerned and their geographical distribution;

(c) the plan's aims and means:

— the estimated time required for the execution of the plan, which, in principle, should be between three and six years,

— the needs to be met by the plan and the objectives which it is intended to achieve, in particular the capacity to be reached and the implications for agricultural undertakings,

— any aid measures established in the sector covered by the plan,

— the means proposed for achieving the objectives, particularly the total amount of investment and the financial participation of the Member State,

— the arrangements made to associate the competent environmental authorities designated by the Member State in the preparation and implementation of the measures laid down in the plan and to ensure compliance with Community rules on the environment.

Article 4

The plans corresponding to the phase of execution beginning in 1994 shall be submitted to the Commission by 30 April 1994 at the latest.

Article 5

The Republic of Austria, the Republic of Finland and the Kingdom of Sweden shall present the plans within three months from their accession.

Article 6

Updating and new plans

If the period initially estimated by the Member State for implementation of a plan has expired, or if economic developments make it necessary for the plan to be adjusted, an updated or new plan must, in addition to the information referred to in Article 3, include a report showing:

(a) the progress made in relation to the forecasts in the plan, including the public funds made available;

(b) a description of developments in the situation regarding the processing and marketing of products, showing that there is a need for updating or for a new plan.

Article 7

Community support frameworks

1. The Community support frameworks relating to the plans, concerning the regions not covered by Objectives 1 or 6, submitted to the Commission by the Member States shall be prepared in partnership, in accordance with the procedure laid down in subparagraphs 2 to 5 of Article 29 (1) of Regulation (EEC) No 4253/88, so as to ensure consistency with the allocation of appropriations between the Member States pursuant to the second subparagraph

of Article 12 (4) of Regulation (EEC) No 2052/88. The Community support frameworks may be revised annually, in accordance with the same procedure, in particular in order to keep within the resources available for all the measures referred to in Article 2 of Regulation (EEC) No 4256/88.

2. In accordance with the principles laid down in Title III of Regulation (EEC) No 4253/88, Community support frameworks shall include a statement of the priorities for Community intervention, the total amount of the financial assistance chargeable to the Fund and an indicative figure for the rate of aid envisaged as the Fund's contribution.

3. In the case of Objective 1 and 6 regions, the information specified in paragraph 2 shall be included in the Community support frameworks in accordance with Article 8 (7) of Regulation (EEC) No 2052/88.

4. In the case of regions not covered by Objectives 1 and 6, the Community support frameworks must include two financial indicative tables, one of which relates to Objective 5 (b) areas and the other to the rest of the territory.

Article 8

Selection criteria

1. Investments eligible shall meet selection criteria fixing priorities and indicating investments which are not eligible.

2. The selection criteria shall be drawn up in accordance with the guidelines of the Community's policies, particularly the common agricultural policy.

3. The selection criteria and, where applicable, amendments thereto shall be adopted by the Commission in accordance with the procedure laid down in subparagraphs 2 to 5 of Article 29 (1) of Regulation (EEC) No 4253/88. The Decision shall be communicated to the Member States and published in the *Official Journal of the European Communities*.

TITLE II

OPERATIONAL PROGRAMMES AND GLOBAL GRANTS

Article 9

Forms of assistance

The Fund shall provide assistance by means of one of the following:

(a) the part-financing of operational programmes, or

(b) the provision of global grants.

Article 10

Applications for aid and single programming document

1. Member States shall:

(a) submit their aid applications in accordance with Article 14 (1) and (2) of Regulation (EEC) No 4253/88;

(b) communicate to the Commission the laws, regulations and administrative provisions for implementing the common measure.

2. Both for regions covered by Objectives 1 and 6 and for regions not covered by those Objectives, Member States may submit a single programming document which includes all the information required in the plans and that required in the aid applications. If they do so, the Commission shall adopt a single decision on a single document in accordance with the last subparagraph of Article 10 (1) of Regulation (EEC) No 4253/88.

Article 11

Eligible investments and expenditure

1. To be eligible for aid from the Fund, investments must relate to:

— rationalizing or developing the preparation, preservation, treatment and processing of agricultural products or recycling of by-products or manufacturing waste and eliminating or treating waste,

— improving marketing channels, including the transparency of price formation,

— applying new processing techniques, including the development of new products and by-products, or opening up new markets and innovative investments, or

— improving product quality.

2. Special priority may be given to investments to improve the marketing structures for agricultural products, particularly if such investments encourage the development of new outlets by facilitating the marketing of new products or of high-quality products having characteristics which comply with the Community's policy on foodstuffs, including organically-grown products.

3. Eligible expenditure in respect of the investments referred to in paragraph 1 may include:

(a) the construction and acquisition of immovable property, with the exception of land purchase;

(b) new machinery and equipment, including computer software and programs;

(c) general costs, such as architects', engineers' and consultants' fees and feasibility studies, up to a ceiling of 12 % of the cost referred to in (a) and (b).

Article 12

Products concerned and participation of the producers

1. Investments must contribute to improving the situation of the basic agricultural production sector in question; in particular, having regard to the specific nature of each sector, they must guarantee the producers of the basic products and adequate and lasting share in the resulting economic benefits.

2. The investments must concern the products listed in Annex II to the Treaty, to the exclusion of those covered by Council Regulation (EC) No 3699/93 of 21 December 1993 laying down the criteria and arrangements regarding Community structural assistance in the fisheries and aquaculture sector and the processing and marketing of its products [1]. However, investments concerning the products of CN codes 4502, 4503 and 4504 shall also be allowed.

The Commission, acting in accordance with the procedure laid down in subparagraph 2 to 5 of Article 29 (1) of Regulation (EEC) No 4253/88, the Commission may accept investments relating to other products provided:

— the aid recipients have direct contractual links with the producers of the basic agricultural products, or

— the products in question have been processed from products listed in Annex II to the Treaty and proper justification can be provided that links exist proving the benefit to the producers of the basic agricultural products.

3. Sufficient evidence must be given that the investments will be profitable.

[1] OJ No L 346, 31.12.1993, p. 1. Regulation as last amended by Regulation (EC) No 965/95 (OJ No L 131, 1.6.1996, p. 1).

Article 13

Ineligible investments

The following investments shall be excluded:

— investments at the retail level,

— investments in the processing or marketing of products from third countries.

Article 14

Recipients

Aid from the Fund shall be granted to the natural or legal persons, or groups thereof, who are ultimately responsible for financing the investments.

Article 15

Decision to grant aid and budget commitment

1. The Commission shall decide on the granting of aid from the Fund in accordance with Article 14 of Regulation (EEC) No 4253/88 and, where appropriate, the second and third subparagraphs of Article 10 (1) of the said Regulation.

2. The decision referred to in paragraph 1 shall be communicated to the authority referred to Article 14 (1) of Regulation (EEC) No 4253/88 or to the intermediary referred to in Article 16 (1) of that Regulation, and to the Member State concerned.

TITLE III

FINANCIAL AND GENERAL PROVISIONS

Article 16

Aid rates and rules

1. Aid from the Fund may not exceed, in relation to the eligible costs of the selected investments:

(a) 50 % in the Objective 1 and 6 regions;

(b) 30 % in other regions.

2. Aid from the Fund shall in general take the form of capital grants. If other forms of assistance are used, they must not exceed the said capital grant equivalent.

3. Member States must participate in financing the investments to at least 5 % of the eligible costs.

4. The financial contribution by the recipients in relation to the eligible costs of the investments must be at least:

(a) 25 % in the Objective 1 and 6 regions;

(b) 45 % in other regions.

5. Within the field of application of this Regulation, Member States may take aid measures which are subject to conditions or rules concerning granting which differ from those provided for in this Regulation, or, where the amounts of aid exceed the ceilings specified herein, on condition that such measures comply with Articles 92 to 94 of the Treaty.

Article 17

Procedures for payment of the aid

1. Payment of advances or balances to be carried out in accordance with Article 21 of Regulation (EEC) No 4253/88 shall be made to the authority designated in accordance with Article 14 (1) of the said Regulation or, where applicable, to the intermediary referred to in Article 16 (1) of the Regulation, the Member States concerned being duly informed of these payments.

2. The authority or intermediate shall check the supporting documents relating to the expenditure of the final recipients and ensure that they are in order before paying the Community contribution. It shall also make on-the-spot checks to verify that the information contained in the application corresponds to the true situation.

3. At the end of each quarter the authority of intermediary shall forward to the Commission a statement of the payments made to recipients.

4. An implementation report shall be sent to the Commission every year.

Article 18

Checks

Checks shall be carried out in accordance with Article 23 of Regulation (EEC) No 4253/88.

Article 19

Transitional provisions

1. The operational programmes introduced at the latest by 31 December 1993 pursuant to this Regulation and which have not been granted aid from the fund may be included in the operational programmes to be financed during the period 1994 to 1999, provided they fulfil the criteria and conditions stipulated in this Regulation and provided they fall within a Community support framework. Article 15 (2) of Regulation (EEC) No 4253/88 shall not apply.

2. Investments eligible under this Regulation and for which work has begun between 1 July 1993 and 31 December 1993 and which it has not been possible to insert into the operational programmes, may be financed during the period 1994 to 1999, provided they fulfil the criteria and conditions stipulated in this Regulation and provided they are covered by a request for aid to be submitted by the Member State not later than 30 April 1994.

3. The criteria for choice applicable to the operational programmes shall be those in force at the date of receipt of the request for aid.

4. Payment of aid under projects referred to in Article 10 (3) of Regulation (EEC) No 4256/88 shall be made in accordance with Articles 17 and 18 of this Regulation.

Article 20

Application

The Commission shall adopt detailed rules for the application of this Regulation in accordance with the procedure laid down in subparagraphs 2 to 5 of Article 29 (1) of Regulation(EEC) No 4253/88.

Article 21

1. Regulation (EEC) No 866/90 is hereby repealed.

2. References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in the Annex.

Article 22

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, 20 May 1997.

For the Council

The President

J. VAN AARTSEN

ANNEX

CORRELATION TABLE

Regulation (EEC) No 866/90	This Regulation
Article 1	Article 1
Article 2	Article 2
Article 3 (1)	Article 3
Article 3 (2) first subparagraph	Article 4
Article 3 (2) second subparagraph	Article 5
Article 6	Article 6
Article 7	Article 7
Article 8	Article 8
Article 9	Article 9
Article 10	Article 10 (1)
Article 10a	Article 10 (2)
Article 11	Article 11
Article 12	Article 12
Article 13	Article 13
Article 14	Article 14
Article 15	Article 15
Article 16	Article 16
Article 17	Article 17
Article 18	Article 18
Article 19	Article 19 (1), (2) and (3)
Article 21 (1)	Article 19 (4)
Article 23	Article 20
—	Article 21
Article 24	Article 22