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COMMISSION REGULATION (EC) No 956/97

of 29 May 1997

laying down detailed rules for the application of Council Regulation (EC) No 2201/96 with regard to specific measures applicable to processed asparagus

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NB: This consolidated version contains references to the European unit of account and/or the ecu, which from 1 January 1999 should be understood as references to the euro — Council Regulation (EEC) No 3308/80 (OJ L 345, 20.12.1980, p. 1) and Council Regulation (EC) No 1103/97 (OJ L 162, 19.6.1997, p. 1).

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laying down detailed rules for the application of Council Regulation (EC) No 2201/96 with regard to specific measures applicable to processed asparagus

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2201/96 of 28 October 1996 on the common organization of the markets in processed fruit and vegetable products [1], and in particular Article 10 (4) thereof,

Whereas Article 10 of Regulation (EC) No 2201/96 provides for specific measures to promote products of importance at local or regional level which face strong international competition; whereas white asparagus for processing meets these criteria; whereas, in addition, in the case of asparagus for processing, Article 10 (3) provides for the grant of a flat-rate aid per hectare to facilitate the introduction of specific measures; whereas detailed rules must therefore be laid down for the application of those provisions;

Whereas, in the interests of efficiency, measures should be implemented to improve the competitiveness of the sector by means of programmes to be proposed and implemented by representative associations consisting of producers' organizations and associations of processors, and the conditions for their representativeness should be defined with reference both to the production region and to Community production;

Whereas, in view of the requirements of the sector, two different rates of Community financing should be fixed, according to the type of measure to be financed, as well as two ceilings on Community financing, depending on how representative the associations are; whereas, in order to facilitate the calculation of the ceiling by the representative associations, it should be laid down that the ceiling is calculated with reference to the value of production of representative associations during the three-year period 1994 to 1996;

Whereas, in the interests of sound management, the information and undertakings to be included in the programmes of specific measures, the measures to be excluded, the time-limit for approval by the Member States and the procedure for any amendment of the programmes should be defined;

Whereas provision should be made for a single advance payment subject to the appropriate securities and for six-monthly payments restricted to 85 % of the amount of the financial contribution; whereas it should be specified that the security will be released when the balance of the financial contribution is paid; whereas the activities of the associations should be monitored by means of periodical reports;

Whereas, in view of the high degree of responsibility vested in the representative associations, provision should be made for strict control procedures and deterrent penalties in the event of infringements;

Whereas, in order to ensure that the flat-rate aid per hectare is directed to the areas currently facing strong international competition, that aid should be restricted to areas specializing in the production of white asparagus for processing, planted not later than 1996, having a minimum yield and being covered by a contract with a processor;

Whereas, since the aid is granted for three years, provision should be made for the lodging of a single aid application, to be confirmed for subsequent years by a crop declaration; whereas, in order to comply with the restriction of the aid to an area of 9 000 ha, provision should be made for the Commission to be informed of the areas in respect of

[1] OJ No L 297, 21. 11. 1996, p. 29.

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which aid has been sought, and for a reduction coefficient to be fixed should this maximum area be overrun;

Whereas, in the interests of having an efficient flat-rate aid, provision should be made for control procedures which include the processors and involve deterrent penalties in the event of infringements;

Whereas the Management Committee for Processed Fruit and Vegetables has not delivered an opinion within the time-limit set by its chairman,

HAS ADOPTED THIS REGULATION:

CHAPTER I

Programmes of specific measures

Article 1

For the purposes of this Regulation:

(a) 'representative association' means any association, of whatever status, which:

— brings together, on the one hand, producer organizations as referred to in Articles 11 and 13 of Council Regulation (EC) No 2200/96 ([1]) and/or associations of producer organizations as referred to in Article 16 (3) of that Regulation and/or producer groups with preliminary recognition under Article 14 of that Regulation and, on the other, associations of processors recognized by the Member State,

— accounts for at least one third of the production of white asparagus intended for processing, and processed, in any production region and at least 15 % of Community production;

(b) 'programmes of specific measures' means programmes having a duration of four to six years, to be presented before ►**M1** 30 June 1999 ◄ by representative associations in the context of the specific measures referred to in Article 10 (1) of Regulation (EC) No 2201/96;

(c) 'value of marketed production' means the average annual value of the white asparagus delivered for processing during 1994, 1995 and 1996 by producers belonging to the producer organizations of a representative association.

Article 2

The programmes of specific measures implemented in accordance with Regulation (EC) No 2201/96 and this Regulation shall be financed by the Community up to 60 % of actual expenditure incurred under the programme for measures as referred to in Article 10 (1) (a), (b) and (d) of Regulation (EC) No 2201/96, and 40 % for the measures set out in points (c) and (e) of that Article.

Total financing for the entire period of application of the programme may not exceed 25 % of the value of marketed production. This percentage shall be increased to 35 % for a representative association which accounts for more than 50 % of Community production.

Article 3

1. Programmes of specific measures shall concern, in particular, one or more of the measures listed in the second subparagraph of Article 10 (1) of Regulation (EC) No 2201/96. Programmes shall contain the requisite elements to ensure an improvement in the competitiveness of the product by the end of their application.

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

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2. Programmes of specific measures shall contain at least the following information:

(a) the name and address of the organizations which have associated to implement the programme; proof of the representativeness of the association according to point (a) of Article 1 and an undertaking to notify all changes affecting representativeness; the most recent report on the activity of the organizations involved and, where applicable, the articles of association or internal rules of the association; designation of an individual responsible for the presentation and implementation of the programme;

(b) their duration;

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

(d) the objectives of the programme, bearing in mind the outlook for production and outlets; reference to the quantities covered by the programme;

(e) the operations to be undertaken and the means to be employed for attaining the objectives;

(f) financial aspects: the value of marketed production and the estimated amount of the Community's financial contribution; a budget and timetable for implementation of the measures.

3. Programmes of measures may not concern:

(a) administrative or operating expenditure, except where connected with implementation of the programme;

(b) raw material produced outside the Community or finished products not produced by the members of the representative association;

(c) supplements to income or prices;

(d) operations that could lead to distortion of competition in other business activities undertaken by the organizations belonging to the representative association; operations or measures directly or indirectly benefiting other business activities undertaken by these organizations shall be financed in proportion to their use by the asparagus sector.

4. Programmes of specific measures shall be admissible only if accompanied by:

(a) a written undertaking from the representative association to comply with Regulation (EC) No 2201/96 and with this Regulation, and not to receive, directly or indirectly, duplicate Community or national funding for measures and/or operations qualifying for Community financing under this Regulation;

(b) evidence of the opening of a bank account with a financial institution in the Member State in which the representative association has its headquarters, to be used solely for all the transactions connected with the implementation of the programme of specific measures.

Article 4

1. The competent national authorities shall take decisions on the programmes of specific measures presented within three months from the date on which the full dossier is presented.

2. The competent national authorities shall verify:

(a) by all appropriate means, including on-the-spot inspection, the accuracy of information provided under Article 3 (2) (a), (c) and (f);

(b) compliance of the objectives of the programmes with Article 10 (1) of Regulation (EC) No 2201/96;

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

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3. The competent national authorities shall, as appropriate,

(a) approve programmes which meet the requirements of Article 10 of Regulation (EC) No 2201/96 and those under this Chapter;

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

(c) reject the programmes.

The competent national authorities shall notify the representative associations concerned of their decisions. They shall send the Commission a summary of approved programmes.

Article 5

1. The expenditure set out in the approved programme may be exceeded by up to 20 % for each measure, provided that the total amount of expenditure is not exceeded; programmes may continue to be implemented provided a request for changes is submitted in accordance with paragraph 2 if the deviation is more than 5 % of the foreseeable expenditure under the programme.

2. Representative associations may request changes to programmes of specific measures each year not later than two months before the anniversary of the date of their approval.

Changes may include extending the duration of the programme by one year.

Requests for changes shall be accompanied by all supporting documents.

The competent authorities shall take decisions on requests for changes to programmes within two months after considering the supporting documents provided and with due regard for the criteria in Article 4 (2).

Article 6

1. From the date of approval of a programme of specific measures, representative associations may submit a single application for advance payment.

Advances may not exceed 30 % of the estimated amount of the Community's financial contribution.

Advances shall be paid subject to the lodging of a security equivalent to 110 % of the advance.

2. Securities shall be lodged in accordance with the conditions laid down in Commission Regulation (EEC) No 2220/85 ([1]). Securities shall be released on payment of the balance referred to in Article 7 (2).

The 'primary requirement' within the meaning of Article 20 of Regulation (EEC) No 2220/85 shall cover the performance of the operations set out in the programme of specific measures subject to the undertakings set out in point (a) of Article 3 (4) 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 point (a) of Article 3 (4), the security shall be forfeited without prejudice to other penalties to be applied in accordance with Article 25 of Regulation (EC) No 2201/96.

Article 7

1. The Community's financial contribution to the programme shall consist of six-monthly payments plus a balance.

The six-monthly payments shall be made on the basis of an application accompanied by supporting documents showing actual expenditure and an intermediate report on the progress made in implementing the

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

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programme. Such payments may not exceed 85 % of the estimated amount of the Community's financial contribution to the programme taking account of the ceilings referred to in Article 2. The first application for a six-monthly payment shall be submitted six months after approval of the programme.

2. The application for payment of the balance shall be submitted to the competent national authority not later than the end of the fourth month following the date of completion of the programme of specific measures. It shall be accompanied by supporting documents showing:

(a) actual expenditure on the programme and evidence that the association's own contribution has been paid, as well as its origin;

(b) the programme's achievements in the form of a final report accompanied by an assessment 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 new measures or approaches.

3. The competent national authority shall make the payments referred to in paragraphs 1 and 2 within 30 days from the receipt of an application referred to in the second subparagraph of paragraph 1 or the application for payment of the balance referred to in paragraph 2. However, it may postpone payment if additional verification is required.

Article 8

1. Member States shall carry out checks on the organizations belonging to the representative associations to verify compliance with the conditions for grant of the Community's financial contribution.

2. Checks shall relate to a significant sample of payment applications each year. The sample must represent at least 10 % of representative associations 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 of a region.

3. The competent national authorities shall determine which representative associations to check on the basis in particular of a risk analysis, which shall take account of:

(a) the amount of the Community's financial contribution;

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

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

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

Article 9

1. The recipient shall be required to reimburse double the amount 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 8 show that:

(a) actual expenditure is less than the amount indicated in the application for payment of the balance,

(b) the contribution of the representative association has not been paid, or

(c) the programme of specific measures 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 5.

The rate of interest 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.

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

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

4. In the event of a false declaration made deliberately or as a result of serious negligence, the representative association concerned shall be disqualified from receipt of the Community financial contribution.

5. Paragraphs 1 to 4 shall apply without prejudice to other penalties to be adopted in accordance with Article 25 of Regulation (EC) No 2201/96.

CHAPTER II

Flat-rate aid

Article 10

The flat-rate aid referred to in Article 10 (3) of Regulation (EC) No 2201/96 shall be granted during 1997, 1998 and 1999 for all areas sown with white asparagus for processing into products falling within CN code ex 2005 60 00, provided that:

(a) they were planted not later than 1996 or, in case of new plantations, they replace plantations which have existed on the same holding during the past three years;

(b) they have a yield of a least 2 500 kg/ha, except those planted for less than a year;

(c) they are the subject of a delivery contract with a processor relating to at least the quantity referred to at point (d) and covering the three-year period referred to above and requiring an undertaking from the processor to submit to the checks needed for implementation of the flat-rate aid;

(d) at least 90 % of the quantity of white asparagus produced is delivered to the processor and processed.

Article 11

1. The producer shall lodge a single application for flat-rate aid covering the entire three-year period with the competent authority designated by the Member State for the territory in which the areas are located, not later than 31 July 1997.

The application shall contain at least the following:

(a) the areas covered by the application for flat-rate aid, with cadastral references;

(b) the quantities harvested in 1997;

(c) proof that the conditions referred to in Article 10 have been met.

2. For 1998 and 1999, the information referred to in the second subparagraph of paragraph 1 shall be updated by means of a crop declaration to be submitted not later than 31 July.

Article 12

Member States shall communicate to the Commission the area for which flat-rate aid has been applied for not later than 15 September 1997.

The Commission shall inform the Member States of the overall area covered by aid applications throughout the Community and, if the maximum area referred to in Article 10 (3) of Regulation (EC) No 2201/96 is exceeded, shall fix the reduction coefficient for the areas for which aid will be granted under each application so that the total area eligible for aid is kept at the abovementioned maximum level.

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For 1997, Member States shall pay the aid within one month from the date on which this information is given or, as the case may be, the date of publication in the *Official Journal of the European Communities* of the coefficient referred to in the second paragraph. Payments for 1998 and 1999 shall be made before 30 September.

Article 13

Member States shall carry out checks on a significant sample of the aid applications or, where applicable, crop declarations presented, determined with due regard to the average area of holdings, the areas under white asparagus for processing, and the geographical distribution of such areas.

The sample must represent at least 10 % of aid applications or, where applicable, crop declarations, and 30 % of total flat-rate aid. These percentages shall be increased to 15 % and 40 % respectively from the current year if a significant number of irregularities is found.

Where an aid application or, where applicable, a crop declaration has been selected for verification, such verification shall include not only a detailed documentary check but also verification on the holding, including where necessary the measurement of the areas concerned, and verification at the premises of the processor, particularly of the stock records.

Where holdings also have areas under asparagus intended for sale as fresh products, Member States shall take the necessary steps to ensure that Article 10 (d) is complied with.

Article 14

1. The recipient shall be required to reimburse double the amount overpaid 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 13 show that the application or, where applicable, the crop declaration and the accompanying supporting documents are fraudulent. The producer and processor involved shall be disqualified from receipt of Community financing under Article 10 of Regulation (EC) No 2201/96.

The rate of interest 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 overpayment is made, plus three percentage points.

2. Where the difference between the flat-rate 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. The sums recovered, with the interest accrued, shall be paid to the responsible paying agency and deducted from expenditure financed by the European Agricultural Guidance and Guarantee Fund.

4. Paragraphs 1, 2 and 3 shall apply without prejudice to other penalties to be adopted in accordance with Article 25 of Regulation (EC) No 2201/96.

CHAPTER III

Final provisions

Article 15

This Regulation shall enter into force on the seventh day following that of 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.