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COUNCIL REGULATION (EC) No 1638/98

of 20 July 1998

amending Regulation No 136/66/EEC on the establishment of a common organisation of the market in oils and fats

(OJ L 210, 28.7.1998, p. 32)

Amended by:

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►**M1**	Council Regulation (EC) No 1513/2001 of 23 July 2001	L 201	4	26.7.2001

Amended by:

►**A1**	Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded	L 236	33	23.9.2003

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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COUNCIL REGULATION (EC) No 1638/98

of 20 July 1998

amending Regulation No 136/66/EEC on the establishment of a common organisation of the market in oils and fats

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 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 in February 1997 the Commission submitted a communication to the European Parliament and the Council on the olive and olive oil sector, concluding that the current common organisation of the market in oils and fats needed reform; whereas that communication and the options for reform set out therein have been discussed within the Community institutions; whereas opinions concur on the need for reform; whereas, however, with a view to determining the best approach, more reliable information must be obtained, in particular on the number of olive trees in the Community, the areas planted and yields; whereas, given the time required to gather and analyse such data, the Commission has undertaken to submit a proposal for reform in the course of 2000 for application from the 2001/02 marketing year;

(2) Whereas experience has shown that some adjustments need to be made in the near future to the current common organisation of the market to reduce the difficulties of operators in the sector, improve checks conducted by the national authorities and protect the Community budget better; whereas provision should be made for the necessary adjustments to the present market organisation and the relevant prices and amounts should be fixed for the marketing years from 1998/99 to 2000/01;

(3) Whereas Article 5 of Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organisation of the market in oils and fats ([4]) provides for production aid fixed on a flat-rate basis for producers whose average production does not exceed 500 kg; whereas the measure was intended in particular to reduce the administrative costs connected with checking on entitlement to the aid; whereas, however, changes to the production aid scheme, and in particular the rise in the proportion of expenditure on aid paid to small producers and the increase in the level of aid, have transformed the two-tier system of aid to producers into a source of fraud; whereas the provisions relating specifically to aid for small producers should accordingly be deleted;

(4) Whereas the stabiliser mechanism for production aid is currently based on a maximum guaranteed quantity for the Community as a whole; whereas the maximum guaranteed quantity should be increased to take account, in particular, of production trends;

(5) Whereas, to encourage a reasonable level of production in each Member State, the maximum guaranteed quantity should be apportioned among the producer Member States in the form of National Guaranteed Quantities (NGQ); whereas the apportionment should essentially be based on production over a representative period, taking no account of extreme production

([1]) OJ C 136, 1. 5. 1998, p. 20.
([2]) OJ C 210, 6. 7. 1998.
([3]) OJ C 235, 27. 7. 1998.
([4]) OJ 172, 30. 9. 1966, p. 3025/66. Regulation as last amended by Regulation (EC) No 1581/96 (OJ L 206, 16. 8. 1996, p. 11).

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years; whereas, however, account should be taken of the situation in the sector in the different Member States and in particular of the specific allocation of aid previously granted to small producers and of the production potential of existing olive groves in Spain and Portugal;

(6) Whereas, in order to mitigate the effects of fluctuations in production, where the actual production of a Member State is lower than its NGQ, part of the shortfall may be added to that Member State's NGQ for the following marketing year; whereas the remainder of the shortfall can offset other Member States′ NGQ overruns in order to continue to ensure some solidarity between producers in the European Union;

(7) Whereas the production aid is payable to the olive growers; whereas the latter must receive the aid in full, irrespective of the various reductions provided for in the Community rules;

(8) Whereas, where necessary to allow support for table olives, Member States must be able to make use of part of the resources allocated to aid for olive oil production;

(9) Whereas consumption aid cannot be increased without a risk of fraud and is ineffective at its present level; whereas in the past it was reduced sharply without adverse effect on the consumption of olive oil in the Community; whereas abolishing it would enable checks on the production aid scheme to be stepped up, in particular by the inspection agencies provided for in Council Regulation (EEC) No 2262/84 of 17 July 1984 laying down special measures in respect of olive oil [1]; whereas Council Regulation (EEC) No 3089/78 of 19 December 1978 laying down general rules in respect of aid for the consumption of olive oil [2] must therefore be repealed;

(10) Whereas the provisions for promoting the consumption of olive oil and table olives in the Member States and third countries should be maintained, clarified and strengthened; whereas such measures are intended to establish better balance on the market and as a consequence the relevant expenditure should be deemed intervention within the meaning of Article 3 of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy [3]; whereas those provisions call for certain technical adaptations to Council Regulation (EEC) No 1970/80 of 22 July 1980 laying down general implementing rules for campaigns aimed at promoting the consumption of olive oil in the Community [4]; whereas that Regulation should be repealed and its provisions incorporated, with the requisite amendments, in Regulation No 136/66/EEC;

(11) Whereas the system of public buying-in constitutes a production incentive which is liable to destabilise the market; whereas buying-in must therefore be discontinued and the references to the intervention price must be deleted or replaced;

(12) Whereas, if the supply of olive oil is to be regulated when there is serious disturbance of the market, there is a need for a system of aid for private storage contracts, with priority for such contracts being given to producer groups and associations thereof recognised under Council Regulation (EC) No 952/97 of 20 May 1997 on producer groups and associations thereof [5];

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[1] OJ L 208 3. 8. 1984, p. 11. Regulation as last amended by Regulation (EC) No 2599/97 (OJ L 351, 23. 12. 1997, p. 17).

[2] OJ L 369, 29. 12. 1978, p. 12. Regulation as last amended by Regulation (EC) No 1582/96 (OJ L 206, 16. 8. 1996, p. 13).

[3] OJ L 94, 28. 4. 1970, p. 13. Regulation as last amended by Regulation (EC) No 1287/95 (OJ L 125, 8. 6. 1995, p. 1).

[4] OJ L 192, 26. 7. 1980, p. 5. Regulation as amended by Regulation (EEC) No 1651/86 (OJ L 145, 30. 5. 1986, p. 10).

[5] OJ L 142, 2. 6. 1997, p. 30.

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(13) Whereas the definitions of the categories of virgin olive oil in the Annex to Regulation No 136/66/EEC refer to an organoleptic assessment based on a particular method; whereas methods of sensory analysis have improved recently, although they retain an inherent risk of some subjectivity; whereas the definitions in question should be amended to refer, where necessary, to more effective analysis methods;

(14) Whereas, in order to improve knowledge of and checks on the production of olive oil at the level of the individual producer, special attention should be paid to work on the olive cultivation register during the 1998/99 to 2000/01 marketing years; whereas, to take account of experience gained, the method used for other crops in the context of the Integrated Administration and Control System should also be applied for the olive cultivation register; whereas the Commission must therefore determine the measures to be taken and the arrangements and criteria to be complied with to achieve the creation of a Geographical Information System; whereas it is therefore necessary to derogate from Regulation (EEC) No 154/75 ([1]) and Regulation (EEC) No 2261/84 ([2]);

(15) Whereas the options for the reform may encourage producers to plant new olive trees; whereas such new plantings would seriously jeopardise the future balance of the market, which is currently already in surplus; whereas, in order to forestall that risk, provision should be made at this stage to exclude new plantings from eligibility under any future aid scheme, unless they are part of a programme approved by the Commission; whereas, owing to the time elapsing between the presentation of the Commission's proposal and its adoption, plantings from the month following the date when operators are notified of the Commission's intention in this respect should also be ineligible;

(16) Whereas the need for a reform of the olive oil sector stems from the ultimate impossibility of maintaining certain measures provided for in Regulation No 136/66/EEC; whereas, despite the transitional adjustments provided for herein, the measures in question should be repealed with effect from 1 November 2001,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation No 136/66/EEC is amended as follows:

1. In Article 2a(2), the words ‘intervention price’ shall be replaced by the following: ‘production target price, less production aid and an amount taking account of market variations and the costs of transporting the olive oil from the areas of production to the areas of consumption,’.

2. Article 4 shall be replaced by the following:

‘Article 4

1. A production target price shall be fixed for the Community.

That price shall be fixed at the wholesale marketing stage for ordinary virgin olive oil with a free fatty acid content expressed as oleic acid of 3,3 g/100 g.

([1]) Council Regulation (EEC) No 154/75 of 21 January 1975 on the establishment of a register of olive oil cultivation in the Member States producing olive oil (OJ L 19, 24. 1. 1975, p. 1). Regulation as last amended by Regulation (EEC) No 3788/85 (OJ L 367, 31. 12. 1985, p. 1).

([2]) Council Regulation (EEC) No 2261/84 of 17 July 1984 laying down general rules on the granting of aid for the production of olive oil and of aid to olive oil producer organisations (OJ L 208, 3. 8. 1984, p. 3). Regulation as last amended by Regulation (EC) No 636/95 (OJ L 67, 25. 3. 1995, p. 1).

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2. For the 1998/99 to 2000/01 marketing years, the production target price provided for in paragraph 1 shall be ECU 383,77/100 kg.

3. Save as otherwise decided by the Council acting by a qualified majority on a proposal from the Commission, the olive oil marketing year shall run from 1 November to 31 October of the following year.';

3. Article 5 shall be replaced by the following:

'Article 5

1. Production aid shall be granted for olive oil. Such aid shall be intended to contribute towards establishing a fair income for producers.

The aid shall be granted to olive growers on the basis of the quantity of olive oil they actually produce.

Without prejudice to the different reductions provided for in the Community rules, the aid shall be paid in full to the olive growers.

2. For the 1998/99 to 2000/01 marketing years, the unit amount of the production aid provided for in paragraph 1 shall be ECU 132,25/100 kg.

3. The maximum quantity of olive oil to which the aid provided for in paragraph 1 shall apply shall be 1 777 261 tonnes per marketing year. That maximum guaranteed quantity shall be apportioned among the Member States as follows in the form of NGQs:

— Spain	760 027 tonnes
— France	3 297 tonnes
— Greece	419 529 tonnes
— Italy	543 164 tonnes
— Portugal	51 244 tonnes.

4. Under conditions to be approved by the Commission in accordance with the procedure laid down in Article 38, each Member State may allocate part of its NGQ and of its olive oil production aid to support for table olives.

In such cases, the NGQ used for applying paragraphs 5 and 6 shall be the one given in paragraph 3, reduced by a quantity corresponding to the aid granted to table olives.

5. Where actual production in any marketing year in a Member State is less than its NGQ:

(a) 20 % of the shortfall shall be distributed among the Member States which exceeded their NGQs during the same marketing year; the distribution shall be carried out in proportion to the NGQs of the beneficiary States; and

(b) 80 % of the shortfall shall be added, solely for the subsequent marketing year, to the NGQ of the Member State in question.

The residual quantities shall be distributed by the Commission in accordance with the procedure laid down in Article 38.

6. The aid fixed in paragraph 2 shall be granted in those Member States whose actual production recognised as eligible for the aid is lower than or equal to their NGQs, plus any increase in accordance with paragraph 5.

In the other Member States, the unit aid granted shall be equal to the amount fixed in paragraph 2, multiplied by a coefficient. That coefficient shall be arrived at by dividing the NGQ of the Member State concerned, plus any increase in accordance with paragraph 5, by the actual production recognised as eligible for the aid.

7. With a view to checks of the quantity of olive oil eligible for the aid, olive and olive oil yields shall be fixed for each marketing year per homogeneous production area.

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8. Recognised producer organisations and associations thereof may be associated in the work of determining actual production as referred to in paragraph 5 and of establishing yields as referred to in paragraph 7.

9. A percentage of the production aid allocated to all or some producers shall be used to finance regional measures to improve the quality of oil production and its environmental impact in each producer Member State.

For the 1998/99 to 2000/01 marketing years, the percentage referred to in the first subparagraph shall amount to 1,4 % of the production aid allocated to olive oil producers.

10. Acting by a qualified majority on a proposal from the Commission, the Council shall lay down general rules for applying this Article.

11. The yields referred to in paragraph 7 and the detailed rules for applying this Article shall be determined in accordance with the procedure laid down in Article 38 of this Regulation and, where applicable, the procedure laid down in Article 13 of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy (*).

(*) OJ L 94, 28.4.1970, p. 13. Regulation as last amended by Regulation (EC) No 1287/95 (OJ L 125, 8. 6. 1995, p. 1).';

4. Articles 5a, 7 and 8 shall be deleted;

5. Article 11 shall be replaced by the following:

'Article 11

1. The Community may undertake measures directly or indirectly to provide information or to promote, in Member States or third countries, the consumption of olive oil and table olives produced in the Community.

The measures referred to in the first subparagraph may entail the following:

(a) dissemination of existing knowledge, in particular regarding the nutritional qualities of olive oil;

(b) market studies to expand the market for olive oil;

(c) publicity, public relations and promotional campaigns to encourage the consumption of olive oil, in particular with a view to stressing its quality, and of products prepared with olive oil;

(d) research work, in particular covering scientific study of the nutritional aspects of olive oil;

(e) study to assess the results of promotional campaigns.

2. The Commission shall send the Council a programme of the measures it contemplates undertaking during the following marketing year(s). With a view to drawing up the programme, the Commission may in particular consult bodies specialising in market studies and publicity campaigns and research institutes.

3. The Commission shall decide on the measures listed in paragraph 1 after consulting the Management Committee for Oils and Fats in accordance with the procedure laid down in Article 39.

4. Expenditure incurred on measures referred to in paragraph 1 may be financed at a rate of 100 % by the Community and shall be deemed intervention within the meaning of Article 3 of Regulation (EEC) No 729/70.

5. Detailed rules for applying this Article shall be adopted in accordance with the procedure laid down in Article 38.';

6. the first paragraph of Article 11a shall be replaced by the following:

'The individual Member States shall take the necessary steps to penalise infringements of the aid scheme provided for in Article 5. Where infringements are reported by the inspection agencies

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provided for in Council Regulation (EEC) No 2262/84 of 17 July 1984 laying down special measures in respect of olive oil (*), the Member States shall decide on action to be taken within 12 months of the report.

(*) OJ L 208, 3.8.1984, p. 11. Regulation as last amended by Regulation (EC) No 2599/97 (OJ L 351, 23. 12. 1997, p. 17).';

7. Article 12 shall be deleted;

8. Article 12a shall be replaced by the following:

'Article 12a

In the event of serious disturbance of the market in certain regions of the Community, in order to regularise the market, a decision may be taken in accordance with the procedure laid down in Article 38 to authorise bodies offering sufficient guarantees, and approved by the Member States, to conclude contracts for the storage of olive oil that they market. Among the bodies concerned, priority shall be given to producer groups and associations thereof recognised in accordance with Regulation (EC) No 952/97 (*).

The measures referred to in the first paragraph may be implemented *inter alia* when the average price recorded on the market during a representative period is less than 95 % of the intervention price applicable during the 1997/98 marketing year.

The amount of the aid granted for the performance of contracts and the detailed rules for implementing this Article, in particular the quantities, qualities and duration of storage of the oils concerned, shall be established by the procedure laid down in Article 38 in such a way as to ensure a significant impact on the market. The aid may be granted by means of tenders.

(*) OJ L 142, 2.6.1997, p. 30.';

9. Article 20(2) shall be deleted;

10. the last subparagraph of Article 20a(2) and Article 20a(4) shall be deleted;

11. Article 20d(1) shall be replaced by the following:

'1. A percentage of the production aid shall be withheld from the amount paid to recognised producer groups and associations thereof under this Regulation. The resulting amount shall help finance activities under Article 5(7) and Article 20c.

For the 1998/99 to 2000/01 marketing years, the percentage of the production aid referred to in the first subparagraph shall be 0,8 %.';

12. Article 20d(3) shall be deleted;

13. point 1 of the Annex shall be replaced by the following:

'1. Virgin olive oils:

Oils obtained from the fruit of the olive tree solely by mechanical or other physical means under conditions, particularly thermal conditions, that do not lead to alterations in the oil, which have not undergone any treatment other than washing, decantation, centrifugation and filtration, to the exclusion of oils obtained using solvents or re-esterification processes and any mixture with oils of other kinds.

Virgin olive oils are classified and described as follows:

(a) Extra virgin olive oil:

Virgin olive oil having a maximum free acidity, in terms of oleic acid, of 1 g per 100 g, the other characteristics of which comply with those laid down for this category.

(b) Virgin olive oil (the expression "fine virgin oil"may be used at the production and wholesale stage):

Virgin olive oil having a maximum free acidity, in terms of oleic acid, of 2 g per 100 g, the other characteristics of which comply with those laid down for this category.

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(c) Ordinary virgin olive oil:

Virgin olive oil having a maximum free acidity, in terms of oleic acid, of 3,3 g per 100 g, the other characteristics of which comply with those laid down for this category.

(d) Lampante virgin olive oil:

Virgin olive oil having a free acidity, in terms of oleic acid, of more than 3,3 g per 100 g and/or the other characteristics of which comply with those laid down for this category.'

Article 2

1. Notwithstanding Regulation (EEC) No 154/75, work on the olive cultivation register during ►**M1** the 1998/99 to 2002/03 marketing years ◄ shall focus on the creation, updating and utilisation of a geographic information system (GIS).

The GIS shall be created using the data from the olive cultivation register. Additional data shall be supplied from the crop declarations attached to the aid applications. The information in the GIS shall be geographically situated using computerised aerial photographs.

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Cyprus, Malta and Slovenia shall introduce the GIS by 1 January 2005 at the latest.

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2. Member States shall verify that the information in the crop declarations corresponds to the information in the GIS. If this information does not correspond, the Member State shall carry out verifications and on-the-spot checks.

The Commission shall determine the detailed rules and criteria for ensuring correspondence as referred to in the first subparagraph and the acceptable tolerance. It shall also lay down the detailed rules and intensity for the verifications and on-the-spot checks to be carried out during each of ►**M1** the five marketing years from 1998/99 to 2002/03 ◄.

3. If, during the verifications and checks referred to in paragraph 2, the information in the crop declaration is found to be incorrect, particularly as regards the number of olive trees, the Member State shall apply, for one or more marketing years, and depending on the size of the discrepancies observed:

— a reduction in the quantity of olive oil eligible for aid, or

— exclusion of the olive trees concerned from eligibility for the aid,

in accordance with rules and criteria to be laid down by the Commission.

4. The Commission shall adopt the measures to be taken and the detailed rules, criteria and intensity of checks to be laid down under this Article for ►**M1** the 1998/99 to 2002/03 marketing years ◄, in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC.

5. The measures provided for in this Article shall apply by way of derogation from those laid down in Regulation (EEC) No 2261/84 as regards crop declarations and their links with the aid.

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Article 2a

As from 1 November 2003, olive trees and corresponding areas the presence of which is not attested by a geographic information system established in accordance with Article 2 of this Regulation or of olive oil produced therefrom cannot constitute a basis for an aid to be paid to olive producers under the common market organisation in oils and fats.

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Article 3

1. In accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC, the Commission may adopt the measures required for a smooth changeover from the arrangements in force for the 1997/98 marketing year to those resulting from the measures introduced by this Regulation.

2. On a proposal from the Commission to be presented in ►M1 2003 ◄, the Council shall decide on the common organisation of the market in oils and fats which is to replace, as from ►M1 1 November 2004 ◄, the one established by Regulation No 136/66/EEC.

Article 4

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No aid under the common organisation of the market in oils and fats in force from 1 November 2001 may be paid to olive growers in respect of additional olive trees or the relevant areas planted after 1 May 1998 for the Community except for Cyprus and Malta, for which the date shall be 31 December 2001, and those not covered by a cultivation declaration at a date to be determined.

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However:

— additional olive trees in connection with the conversion of an old olive plantation, or

— new plantings

on areas covered by a programme approved by the Commission may be taken into account within certain limits to be determined. For Greece, France and Portugal, the areas provided for by the programmes to be approved by the Commission during the period running until 1 November 2001 shall be 3 500 ha, 3 500 ha and 30 000 ha respectively.

Detailed rules for applying this Article shall be adopted in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC.

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Article 4a

1. Under the common organisation of the market in oils and fats, in force as from 1 November 2002, Member States producing olive oil may withhold within certain limits, a portion of aid, where appropriate intended for olive oil and/or table olives producers, to ensure Community finance of work programmes drawn up by approved producers' organisations, approved interbranch organisations or other approved operators' organisations or their associations in one or more of the following areas:

(a) market follow-up and administrative management in the olive oil and table olives sector;

(b) the improvement of the environmental impacts of the olive cultivation;

(c) the improvement of the production quality of olive oil and table olives;

(d) the traceability system, the certification and protection of olive oil and table olives quality, under the authority of the national administrations.

2. For the purposes of this Article, 'approved interbranch organisations', shall mean legal entities which:

— are made up of representatives of economic activities linked to the production of and/or trade in and/or processing of the products referred to in Article 1(2)(c) and (d) of Regulation No 136/66/EEC;

— are established at the initiative of all or some of the organisations or associations which constitute them;

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— have been recognised by the Member State in which they operate.

3. The limits referred to in paragraph 1 are fixed in order to prevent the emergence of market distortions:

— by the Council on a Commission proposal, for the total of the activities concerned and subsequently,

— by the Commission, for each area referred to in paragraph 1, in conformity with the management procedure laid down in Article 4 of Decision 1999/468/EC.

Within the fixed limits, the maximum Community funding for the work programmes referred to in paragraph 1 shall be equal to the part of the aids reserved by the Member States. This funding concerns the eligible cost with a maximum of:

— 100 % for the activities in areas referred to in (a) and (b),

— 100 % for the fixed assets investments and 75 % for the other activities in the area referred to in (c),

— 50 % for the activities in the area referred to in (d).

Complementary financing will be ensured by the Member State concerned taking into account a financial contribution from operators that shall be compulsory for the activities in the areas referred to under paragraph 1(c) and (d) and in the latter case shall be at least 25 %.

4. In accordance with the procedure provided for in Article 38 of Regulation No 136/66/EEC, the Commission shall specify:

(a) conditions for the approval of operators' organisations and their associations;

(b) the types of activities eligible under programmes in the four areas referred to in paragraph 1;

(c) the procedures for the approval of programmes by the Member States;

(d) the measures concerning the control and the sanctions;

(e) any other detailed rules that might be necessary for the rapid implementation, from 1 November 2002, of the programmes concerned.

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Article 5

Articles 5, 11a, 12a, 13 and 20a of Regulation No 136/66/EEC are hereby repealed with effect from ►M1 1 November 2004 ◄.

Regulations (EEC) Nos 3089/78 and 1970/80 are hereby repealed.

Article 6

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

It shall apply from 1 November 1998.

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