COMMISSION REGULATION (EC) No 1647/98

of 27 July 1998

amending Regulation (EC) No 411/97 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 organisation of the market in fruit and vegetables [1], as amended by Commission Regulation (EC) No 2520/97 [2], and in particular Article 48 thereof,

Whereas Article 4(2) of Commission Regulation (EC) No 411/97 [3], as last amended by Regulation (EC) No 214/98 [4], lists operations and expenditure which may not be covered by operational programmes; whereas, after one year's experience of application of the system, it is necessary, for reasons of legal certainty, to replace those provisions by a more specific and detailed list of ineligible operations and expenditure; whereas certain ineligible operations and expenditure should be permitted temporarily or within certain limits;

Whereas it is necessary to stipulate in Article 5(2) of that Regulation laying down the criteria for approval of operational programmes that the competent national authorities must verify the eligibility of the proposed operations and expenditure, taking account, *inter alia*, of the aforementioned list, thus providing them with the possibility of introducing additional national criteria and rejecting proposed operations on the basis of an assessment which takes account of the particular circumstances of each case;

Whereas this Regulation must apply to all operational programmes to be implemented from 1999; whereas, however, in the case of programmes already approved, the deadline for submission of requests for changes to programmes should be extended from 15 September 1998 to 15 October 1998 to allow producer organisations to justify the need for such changes; whereas, however, it is appropriate to allow Member States the option of maintaining operational programmes approved before the entry into force of this Regulation, if adjustments are inappropriate given their advanced state of implementation;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 411/97 is hereby amended as follows:

1. Article 4(2) is replaced by the following:

   '2. Proposed operational programmes shall not cover operations or expenditure on the non-exhaustive list of ineligible operations and expenditure given in the Annex.';

2. the following point (b)a is added to Article 5(2):

   '(b)a eligibility of the operations and the expenditure proposed, account being taken of the non-exhaustive list of ineligible operations and expenditure in the Annex.'

Article 2

Operational programmes approved by the Member States before the entry into force of this Regulation, implementation of which continues in 1999, shall comply with the provisions of this Regulation. Where necessary, producer organisations shall submit a request for changes to their programme by 15 October 1998.

However, Member States shall be permitted to maintain operational programmes approved before the entry into force of this Regulation, if adjustments are inappropriate given their advanced state of implementation.

Article 3

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

It shall apply to programmes implemented from 1999.

[1] OJ L 297, 21. 11. 1996, p. 1.
[2] OJ L 346, 17. 12. 1997, p. 41.
[3] OJ L 62, 4. 3. 1997, p. 9.
[4] OJ L 22, 29. 1. 1998, p. 10.

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

Done at Brussels, 27 July 1998.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

INELIGIBLE OPERATIONS AND EXPENDITURE

1. General production costs, in particular:

   — seeds and plants, except for perennial crops (perennials, trees and shrubs),

   — plant protection products, including biological or integrated control materials, fertilisers and other inputs,

   — packing costs, storage costs, packaging costs, even as part of new processes,

   — costs of collection or transport, whether or not within the producer organisation,

   — operating costs (in particular electricity, fuel and maintenance).

   However, in the case of organic, integrated or experimental/pilot products [1], and as part of environmental measures (including recyclable packaging) or quality improvement measures (including certified seeds and plants), the specific production costs are eligible for the duration of a single operational programme. In the case of short-duration programmes in accordance with Article 15(1) of this Regulation giving rise to an undertaking to present programmes of normal duration, such costs may be eligible for five years.

2. Overheads including in particular:

   — management costs,

   — personnel costs; however, personnel costs are not considered as overheads if resulting from measures to improve or maintain a high level of quality, marketing or environmental protection, implementation of which essentially involves the use of qualified personnel; if, in such cases, the producer organisation uses its own employees or member producers, the time worked must be documented by time sheets,

   — the costs involved in preparing the operational programme and monitoring its implementation,

   — the cost of preparing the annual reports, final report and the evaluation study referred to in Article 11,

   — the costs of keeping accounts and the separate bank account referred to in Article 4(3)(b).

   These expenses are met by means of the payment of a lump sum equal to 2 % of the operational fund and up to a maximum of ECU 60 000. However, the Member States may restrict funding to the real costs, in which case they should define the eligible costs.

3. Income or price supplements.

4. Insurance costs including individual or group insurance premiums and the creation of insurance funds within a producer organisation.

5. Reimbursement (especially in the form of annual payments) of loans taken out for an operation carried out in full or in part before the beginning of the operational programme.

6. Purchase of land not built on, except where purchase is necessary to carry out an investment included in the programme [2].

7. Payments to producers participating in training courses, other than daily allowances covering transport and accommodation costs, where appropriate, on a flat-rate basis.

8. Operations or costs relating to the quantities produced by the members of the producer organisation outside the Community.

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[1] The competent national authority must lay down the eligibility criteria for an experimental/pilot operation taking account of the newness of the procedure or concept and the risk involved.

[2] The competent national authority should set additional conditions for the acceptance of this type of expenditure in order to avoid all speculation; these conditions may include in particular forbidding the sale of the investment/land during a minimum period and the setting of a maximum correlation between the value of the land and the value of the investment.

9. Operations that could distort competition in the other economic activities of the producer organisation; operations or measures which profit directly or indirectly other economic activities of the producer organisation should be financed in proportion to their use by the sectors or products for which the producer organisation is recognised.

10. Second-hand equipment, except in exceptional cases and provided that it has not already received aid.

11. Investment in means of transport to be used for marketing or distribution trips by the producer organisation, except for such investments relating to cold-storage or controlled-atmosphere transport.

12. Hire as an alternative to purchase, unless economically justified; the operating cost of the goods hired.

13. Leasing, where the amount exceeds the net market value of the item; expenditure linked to leasing contracts (taxes, interest, insurance costs, etc.) and operating costs; if the total duration of the leasing contract exceeds that of the operational programme, the amounts (rental payments) paid after the end of the programme.

14. Promotion of individual commercial labels; generic promotion and/or promotion of collective labels is not eligible where geographical names other than those covered by Council Regulation (EEC) No 2081/92 [1] are used on publicity, except where these are secondary to the principal message and are not reserved for the use of the producer organisation concerned.

15. Subcontracting contracts relating to the operations or expenditure mentioned in this list.

16. Taxes and other national charges, except for charges linked to wages.

[1] OJ L 208, 24. 7. 1992, p. 1.