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COMMISSION REGULATION (EC) No 2879/2000

of 28 December 2000

laying down detailed rules for applying Council Regulation (EC) No 2702/1999 on measures to provide information on, and to promote, agricultural products in third countries

(OJ L 333, 29.12.2000, p. 63)

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2702/1999 of 14 December 1999 on measures to provide information on, and to promote, agricultural products in third countries [1], and in particular Article 11 thereof,

Whereas:

(1) Detailed rules should be laid down for applying the measures to provide information on, and to promote, agricultural products and secondarily foodstuffs in third countries.

(2) In the interests of sound management, the frequency at which lists of products and markets eligible under the abovementioned measures are to be drawn up should be specified.

(3) In order to prevent any risk of distortion of competition, guidelines should be drawn up on the way the specific origin of products covered by promotion and information campaigns is to be referred to.

(4) The procedure for presenting programmes and selecting implementing bodies should be determined with a view to ensuring the broadest possible competition and free movement of services.

(5) Criteria governing the selection of programmes by the Member States and their approval by the Commission should be established with a view to ensuring that the Community rules are complied with and that the measures to be implemented are effective, in particular in the light of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts [2], as last amended by European Parliament and Council Directive 97/52/EC of 13 October 1997 amending Directives 92/50/EEC, 93/36/EEC and 93/37/EEC concerning the coordination of procedures for the award of public service contracts, public supply contracts and public works contracts respectively [3].

(6) The same rules should be applied to measures to be implemented by the international organisations referred to in Article 6 of Regulation (EC) No 2702/1999.

(7) With a view to ensuring that the Community measures are effective, the Member States must ensure that the programmes approved are consistent with, and complement, their national and regional programmes.

(8) To that end, preferential criteria must be laid down for selecting programmes so as to optimise their impact.

(9) In the case of programmes of interest to more than one Member State, provision must be made for measures to ensure that the Member States concerned cooperate in submitting and scrutinising programmes.

(10) The consequences must be spelled out for cases where a programme is rejected for a lack of part-financing by a Member State and the second subparagraph of Article 9(3) of Regulation (EC) No 2702/1999 does not apply.

(11) Detailed rules must be laid down on the way the Monitoring Group provided for in Article 8(3) of Regulation (EC) No 2702/1999 is to operate.

(12) The checks to be carried out by the Member States in respect of programmes managed directly by them are to be determined.

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(1) OJ L 327, 21.12.1999, p. 7.
(2) OJ L 209, 24.7.1992, p. 1.
(3) OJ L 328, 28.11.1997, p. 1.

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(13) Detailed rules on the Community's financial contribution must be laid down in the interests of sound financial management.

(14) The various arrangements to ensure that the commitments entered into are fulfilled must be laid down in contracts to be concluded between the parties concerned and the competent national authorities within a reasonable time limit on the basis of standard contracts supplied by the Commission.

(15) With a view to the proper performance of the contracts, contractors must lodge a security equal to 15 % of the Community contribution in favour of the competent authority. To the same end, a security must be lodged where an advance payment is applied for.

(16) The primary requirement within the meaning of Article 20 of Commission Regulation (EEC) No 2220/85 [1], as last amended by Regulation (EC) No 1932/1999 [2], must be defined.

(17) With a view to budget management requirements, a penalty must be laid down for failure to submit, or late submission of, intermediate payment applications and for late payment by the Member States.

(18) In the interests of sound financial management and in order to avoid any danger that payments to be made take up the whole of the Community financial contribution and leave no balance to pay, provision should be made for the advance and the various intermediate payments not to exceed 80 % of the Community contribution. To the same end, applications for payment of the balance must reach the competent authorities within a specified time limit.

(19) The Member States must monitor the implementation of the measures covered by this Regulation and the Commission must be kept informed of the results thereof. In the interests of sound financial management, provision should be made for the Member States to cooperate where measures are implemented in a Member State other than that in which the competent authority signing the contract is established.

(20) The period of application of this Regulation should be the same as that laid down in Article 15 of Regulation (EC) No 2702/1999.

(21) The measures provided for in this Regulation are in accordance with the opinion of the Joint Meeting of Management Committees — Promotion of Agricultural Products,

HAS ADOPTED THIS REGULATION:

Article 1

In accordance with Articles 7(1) and 9(4) of Regulation (EC) No 2702/1999, 'programme' means a coherent set of measures of a scope that is sufficient to contribute towards improving information on, and sales of, the products concerned.

Article 2

1. The promotion and/or information message passed on to consumers and other target groups must be based on the intrinsic qualities and/or characteristics of the product concerned.

2. Promotion and/or information measures may not encourage the consumption of a product on grounds of its specific origin.

Any reference to the origin of products must be secondary to the central message of the campaign.

3. However, the origin of a product may be indicated in the case of a designation under Community rules or a feature of a typical product needed to illustrate the promotion or information campaign.

(1) OJ L 205, 3.8.1985, p. 5.
(2) OJ L 240, 10.9.1999, p. 11.

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Article 3

The lists of products and markets referred to, respectively, in Articles 3 and 4 of Regulatlon (EC) No 2702/1999 shall be drawn up by 31 December at the 1atest every second year. The first lists shall be as set out in the Annex hereto.

Article 4

Where Article 6 of Regulation (EC) No 2702/1999 is applied, the international organisations referred to in that Article shall present the Commission before 1 October each year with programmes as referred to in Article 9(4) of that Regulation containing the measures planned for the following year.

The conditions governing the granting and payment of the Community contribution shall be laid down in an agreement on assistance concluded between the Community and the international organisation concerned.

Article 5

Programmes as referred to in Article 7(1) of Regulation (EC) No 2702/1999 shall be implemented over a period of at least one year to not more than three years from the date on which the relevant contract takes effect.

Article 6

1. In the case of programmes as referred to in Article 7(1) of Regulation (EC) No 2702/1999 that are of interest to more than one Member State, preference shall be given to those covering a group of products and placing particular emphasis on the quality, nutritional and food safety aspects of the Community products.

2. In the case of programmes of interest to a single Member State or concerning a single product, preference shall be given to those that emphasise the Community interest in particular in terms of the quality, nutritional value, safety and representativeness of the products they cover.

Article 7

1. With a view to the implementation of measures contained in programmes as referred to in Article 5, the trade or intertrade organisations in the Community that are representative of the sector(s) concerned shall submit programmes in response to calls for proposals issued by the Member States concerned. Such programmes shall comply with the specifications stipulating exclusion, selection and award criteria and published to that end by the Member States concerned.

2. The Member States shall take the necessary steps to ensure that the authorities awarding contracts concerning them enforce Directive 92/50/EEC.

The abovementioned Directive shall apply to measures as referred to in Article 6 of Regulation (EC) No 2702/1999.

3. Where a promotion programme of interest to more than one Member State is planned, the Member States concerned shall cooperate in drawing up compatible specifications and calls for proposals.

4. In response to such calls for proposals, the organisations as referred to in paragraph 1 shall draw up information and promotion programmes, where appropriate in cooperation with an implementing body that they have selected by a competitive procedure checked by the Member State. Such programmes may be presented by trade or intertrade organisations of Community scope or originating in one or more Member States.

5. The individual Member States shall see to it that any national or regional measures they undertake are in agreement with measures part-financed under Regulation (EC) No 2702/1999 and that programmes presented complement national and regional campaigns.

6. The Member State(s) concerned shall check the suitability of the programmes and the compliance of the programmes and the proposed implementing bodies with Community rules and with their own specifi-

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cations. They shall also verify that the programmes offer value for money. In particular, they shall check programmes against the following criteria:

— consistency between the strategies proposed and the objectives set,

— the merit of the proposed measures,

— their likely impact and success in increasing demand for the products concerned,

— assurances that the proposing organisations are effective and representative,

— assurances that the proposed implementing body is effective and has the required technical capacity.

7. After examining the programmes presented and without prejudice to the second subparagraph of Article 9(3) of Regulation (EC) No 2702/1999, the Member State(s) concerned shall undertake to contribute to the financing of the selected programmes.

In the case of programmes of interest to more than one Member State and proposed in response to a joint call for proposals, the Member States concerned shall cooperate in selecting the programmes and shall undertake to contribute to their financing in accordance with the second sentence of Article 10(2).

Article 8

In cases where a Member State makes no financial contribution and the second subparagraph of Article 9(3) of Regulation (EC) No 2702/1999 is not applied, the trade or intertrade organisation of that Member State shall be excluded from the programme.

Article 9

1. ►**M1** No later than 30 April each year and in the first instance 15 June 2001, the Member States shall send the Commission the list of programmes and implementing bodies they have selected and a copy of each programme. ◄ In the case of programmes of interest to more than one Member State, this notification shall be carried out by common accord of the Member States concerned.

2. The Commission shall examine the programmes presented to ensure that they comply with Community rules and meet the criteria referred to in Article 7(6).

Where the Commission finds that a programme does not comply with Community rules or fails to meet the criteria referred to in Article 7(6), it shall immediately notify the Member State(s) concerned that all or part of that programme is ineligible.

3. After evaluating the programmes, where necessary with the help of one or more technical assistants as referred to in Article 8(1) of Regulation (EC) No 2702/1999, and, where applicable, after consulting the Standing Group on the Promotion of Agricultural Products of the Advisory Committee on Agricultural Product Health and Safety, the Commission shall take a decision by 30 September at the latest on the programmes presented and their implementing bodies in accordance with the procedure laid down in Article 11 of Regulation (EC) No 2702/1999.

4. The proposing trade or intertrade organisations shall be responsible for the proper implementation of the programmes selected.

Article 10

1. The Community's financial contribution to measures as referred to in Article 9(1)(b) of Regulation (EC) No 2702/1999 shall amount to:

(a) 50 % of the actual cost of measures under programmes lasting one year;

(b) 60 % of the actual cost of measures during the first year and 40 % during the second year under programmes lasting two years, up to a total Community contribution not exceeding 50 % of the total cost of the programme;

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(c) 60 % of the actual cost of measures during the first year, 50 % during the second year and 40 % during the third year under programmes lasting three years, up to a total Community contribution not exceeding 50 % of the total cost of the programme.

This financial contribution shall be paid to Member States as referred to in Article 8(4) of Regulation (EC) No 2702/1999.

2. The Member States' financial contributions to measures as referred to in Article 9(2) of Regulation (EC) No 2702/1999 shall amount to 20 % of their actual cost. Where more than one Member State contributes to the financing, the share to be paid by each shall be proportionate to the financial contribution of the proposing organisation established in its territory.

Article 11

1. Under the procedure for selecting programmes referred to in Article 7(1) of Regulation (EC) No 2702/1999, as soon as the Member States concerned have been notified of the Commission's decision to approve promotion programmes, they shall inform the individual organisations concerned whether or not their applications have been accepted.

2. The Member States shall conclude contracts with the selected organisations within 30 calendar days of notification of the Commission's decision. Beyond that deadline, no contracts may be concluded without prior authorisation from the Commission.

The Member States shall use standard contracts supplied by the Commission.

3. Contracts may not be concluded by the two parties until a performance security equal to 15 % of the maximum financial contribution from the Community and the Member State(s) concerned has been lodged in order to ensure satisfactory performance of the contract. Performance securities shall be lodged in accordance with Title III of Regulation (EEC) No 2220/85.

However, where the contractor is a body governed by public law or acts under the supervision of such a body, the competent authority of the Member State may accept a written guarantee from the supervisory body covering an amount equal to the percentage specified in the first subparagraph, provided that that body undertakes to ensure that:

— the obligations entered into are properly discharged, and

— the sums received are used properly to discharge the obligations entered into.

Proof that the performance security has been lodged must reach the Member State within the time limit laid down in the first subparagraph of paragraph 2.

Performance securities shall be released within the time limit and on the terms laid down in Article 13 of this Regulation for payment of the balance.

4. The primary requirement within the meaning of Article 20 of Regulation (EEC) No 2220/85 shall be the implementation of the measures covered by the contract.

5. The Member State shall immediately send the Commission a copy of the contract and proof that the performance security has been lodged. It shall also send a copy of the contract concluded by the selected organisation with the implementing body.

The latter contract shall contain the provision that the implementing body must submit to the checks provided for in Article 14.

Article 12

1. Within 30 calendar days of signing of the contract, the contractor may submit an application for an advance payment to the Member State, together with the security provided for in paragraph 3. Beyond that date, no applications for an advance payment may be made.

The advance payment may amount to no more than 30 % of the sum of the contribution from the Community and the Member State(s) concerned.

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2. The Member State shall pay the advance within 30 calendar days of submission of the application for advance payment. Where payment is made late, Article 4 of Commission Regulation (EC) No 296/96 [1] shall apply.

3. The advance shall be paid on condition that the contractor lodges a security equal to 110 % of that advance in favour of the Member State in accordance with Title III of Regulation (EEC) No 2220/85.

However, if the contractor is a body governed by public law or acts under the supervision of such a body, the competent authority may accept a written guarantee from the supervisory body covering an amount equal to the percentage specified in the first subparagraph, provided that that body undertakes to pay the amount covered by its guarantee should entitlement to the advance paid not be established.

Article 13

1. Applications for intermediate payments of the Community and Member States' contributions shall be submitted before the end of the calendar month following the month in which each period of 90 calendar days calculated from the date of signing of the contract expires. Such applications shall cover the expenditure incurred during the quarter concerned and shall be accompanied by a summary financial statement, the relevant supporting documents and an interim report on the implementation of the contract. Where no expenditure has been incurred during the quarter concerned, a statement to that effect shall be submitted within the same time limit as for applications for intermediate payments.

Except in cases of *force majeure*, where an application for intermediate payment and the relevant documents are submitted late, the payment shall be reduced by 3 % for each whole month by which it is overdue.

Intermediate payments and the advance payment referred to in Article 12(1) taken together may not exceed 80 % of the total financial contribution from the Community and the Member States concerned. Once that percentage is reached, no more intermediate payment applications may be submitted.

2. Applications for payment of the balance shall be submitted within four months of completion of the measures covered by the contract.

To be considered as duly submitted, applications must be accompanied by:

(a) a summary financial statement showing all expenditure schedules and incurred and all relevant supporting documents relating to the expenditure;

(b) a summary of the work carried out (report on operations);

(c) an internal report, drawn up by the contractor, evaluating the results obtained, as ascertainable at the date of the report, and the use that can be made of them.

Except in cases of *force majeure*, where an application for payment of the balance is submitted late, the balance shall be reduced by 3 % for each month by which it is overdue.

3. The balance shall not be paid until the documents referred to in paragraph 2 have been checked.

Where the primary requirement referred to in Article 11(4) is not satisfied in full, the balance payable shall be reduced proportionately.

4. The security referred to in Article 12(3) shall be released on condition that definitive entitlement to the advance paid has been established.

5. The Member State shall make the payments referred to in the previous paragraphs within 60 calendar days of receipt of the application for payment. However, that period may be interrupted at any time during the 60 days after the application for payment is first recorded as received, by notifying the contractor concerned that the application is not admissible either because the amount is not due or because the supporting documents required for all additional applications have not been supplied or because the Member State sees the need for further information or checks. The payment period shall start running again from the date of receipt of the information requested, which

[1] OJ L 39, 17.2.1996, p. 5.

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must be forwarded within 30 calendar days. Except in cases of *force majeure*, where the above payments are made late, the amount reimbursed to the Member State shall be reduced in accordance with Article 4 of Regulation (EC) No 296/96.

6. Performance securities as provided for in Article 11(3) must remain valid until the balance is paid and shall be released by means of a letter of discharge issued by the competent authority.

7. Within 30 calendar days of receipt, the Member State shall send the Commission:

— the quarterly reports on implementation of the contract,

— the summaries referred to in paragraph 2(a) and (b), and

— the internal evaluation report.

8. After the balance has been paid, the Member State shall send the Commission a financial statement detailing the expenditure incurred under the contract.

It shall also certify that in the light of checks carried out all the expenditure may be considered eligible under the terms of the contract.

9. Any securities forfeit and penalties imposed shall be deducted from the expenditure part-financed by the Community and declared to the EAGGF Guarantee Section.

Article 14

1. In particular by means of technical, administrative and accounting checks at the premises of the contractor and the implementing body, the Member States shall take the steps necessary to verify that:

(a) the information and supporting documents supplied are accurate, and

(b) all the obligations laid down in the contract have been fulfilled.

Without prejudice to Council Regulation (EEC) No 595/91 ([1]), the Member States shall inform the Commission at the earliest opportunity of any irregularities detected during checks.

2. The Member State concerned shall determine the most appropriate way of checking on the measures covered by this Regulation and shall notify the Commission thereof.

3. In the case of programmes proposed by organisations operating in more than one Member State, the Member States concerned shall take the necessary steps to coordinate their checks and shall inform the Commission thereof.

4. The Commission may take part at any time in the verifications and checks provided for in paragraphs 2 and 3. To that end, the competent authorities of the Member States shall notify the Commission in good time of verifications and checks planned.

It may also carry out any additional checks it considers necessary.

5. The Monitoring Group provided for in Article 8(3) of Regulation (EC) No 2702/1999 shall meet regularly to monitor progress in implementation of the various programmes.

To that end, the Monitoring Group shall be informed of the timetable for the planned measures under each programme, the programme implementation reports and the results of the checks carried out in accordance with Articles 13 and 14.

The Monitoring Group shall be chaired by a representative of the Member State concerned; where programmes are proposed by organisations operating in more than one Member State, it shall be chaired by a representative designated by the Member States concerned.

Article 15

1. Where undue payments are made, the beneficiary shall repay the amounts concerned plus interest calculated on the basis of the time elapsing between payment and repayment by the beneficiary.

([1]) OJ L 67, 14.3.1991, p. 11.

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The interest rate applicable shall be that applied by the European Monetary Institute to its operations in euro on the date of the undue payment, as published in the 'C' series of the *Official Journal of the European Communities*, plus three percentage points.

2. Amounts recovered and the relevant interest shall be paid to the paying agencies and departments and deducted by them from the expenditure financed by the European Agricultural Guidance and Guarantee Fund in proportion to the Community financial contribution.

Article 16

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

It shall apply until 31 December 2004.

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

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ANNEX

List of third-country markets where promotion measures may be carried out

— Switzerland
— Norway
— Central and Eastern Europe
— Russia
— Japan
— China
— South Korea
— South-East Asia
— India
— Middle East
— North Africa
— Republic of South Africa
— North America
— Latin America
— Australia and New Zealand

List of products which may be covered by promotion measures in third countries

— Fresh, chilled and frozen beef, veal and pigmeat; food preparations based on these products
— Quality poultrymeat
— Cheese and yoghurt
— Olive oil and table olives
— Quality wines psr, table wines with a geographical indication
— Spirit drinks with a geographical indication or a reserved traditional description
— Fresh and processed fruit and vegetables
— Products processed from cereals and rice