# COMMISSION REGULATION (EC) No 609/2001

## of 28 March 2001

## laying down detailed rules for the application of Council Regulation (EC) No 2200/96 as regards operational programmes, operational funds and Community financial assistance, and repealing Regulation (EC) No 411/97

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 last amended by Regulation (EC) No 2826/2000 [2], and in particular Article 48 thereof,

Whereas:

(1) Article 15 of Regulation (EC) No 2200/96 provides for financial assistance to be granted to producer organisations setting up an operational fund in accordance with certain rules and within certain limits. Article 13 grants financial assistance to existing producer organisations needing a transitional period in order to qualify for recognition. Article 16 lays down certain rules for the implementation of operational programmes, and action plans in the case of producer organisations recognised under Article 13. Detailed rules should be laid down for the application of those provisions.

(2) So as to promote regrouping of supply and facilitate the implementation of certain measures within operational programmes, producer organisations should be able to confer the partial or total implementation of actions in their operational programme to a recognised association of producer organisations. However, specific provisions are necessary in order to avoid abuses or double financing.

(3) To facilitate the use of the scheme, the marketed production of producer organisations should be clearly defined, including the specification of the eligibility of product and the marketing stage at which the value of production is to be calculated. To guarantee equal treatment for all products intended for processing eligible for an aid system under Council Regulations (EC) No 2201/96 of 28 October 1996 on the common organisation of the markets in processed fruit and vegetables [3], as last amended by Regulation (EC) No 2699/2000 [4], and (EC) No 2202/96 of 28 October 1996 introducing a Community aid scheme for producers of certain citrus fruits [5], as last amended by Regulation (EC) No 2699/2000, the aid referred to in Article 2 of Regulation (EC) No 2201/96 and Article 1 of Regulation (EC) No 2202/96 should be added to the appropriate value of marketed production. For consistency, the ceilings on Community financial assistance should be calculated on the basis of the value of production marketed during a 12-month period. To ensure flexibility of this system for operators, Member States may define limited options for calculating this 12-month period; additional methods of calculation of marketable production should also be made possible in case of yearly fluctuations or insufficient data. To prevent misuse of the scheme, producer organisations should not be permitted to change reference periods within the duration of a programme.

(4) To ensure correct use of Community funds, rules must be laid down for the management of operational funds and members' financial contributions towards these funds. In particular it should be specified that the financial contributions of members of the producer organisation are based on the marketed production used to calculate the Community financial assistance. Different levels of contributions may be set to take into account different levels of participation in an operational programme by different groups of members, on condition that the collective nature of the operational programme is not weakened.

(5) In the interests of sound management, procedures for the presentation and approval of operational programmes, including deadlines, should be laid down so as to enable the adequate evaluation of the information by the competent authorities, and measures and activities to be included in or excluded from the programmes. Since the programmes are managed on an annual basis, it should be stipulated that programmes not approved before a given date should be postponed for one year.

(6) There should be an annual procedure for amending operational programmes for the following year, so that they can be adjusted to take account of any new conditions which could not have been foreseen when they were initially presented. In addition, it must be possible for measures to be changed within the year of execution of a programme. All such changes should be subject to certain limits and conditions, to be defined by Member States and including obligatory notification of changes to the competent authorities, to ensure the approved programmes maintain their overall objectives.

[1] OJ L 297, 21.11.1996, p. 1.
[2] OJ L 328, 23.12.2000, p. 2.
[3] OJ L 297, 21.11.1996, p. 29.
[4] OJ L 311, 12.12.2000, p. 9.
[5] OJ L 297, 21.11.1996, p. 49.

(7) For reasons of financial and legal security, lists of operations and expenditure which may or may not be covered by operational programmes should be drawn up; these lists should be non-exhaustive. For transparency and ease of application of Community rules, eligibility criteria of certain measures should, where appropriate, follow guidelines set in Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the structural funds [1]. Certain operations and expenditure should be permitted temporarily or within certain limits.

(8) In the interests of sound management of Community finances, a written undertaking should be made by the producer organisation, on behalf of itself and its members, not to receive duplicate financing of Community or national funding of in respect of measures qualifying for Community financing under this Regulation.

(9) To ensure the effective implementation of operational programmes, producer organisations shall receive notification of the decisions of the competent authorities on operational programmes and the approved amount of financial assistance on or before 15 December of the year preceding implementation of the programme.

(10) To prevent cash-flow difficulties, a system of advance payments accompanied by appropriate securities should be available to producer organisations. It should be stipulated that, in order to prevent the systematic recovery of advances, such payments should not exceed the minimum level of financial assistance. It should be possible for furnished securities to be progressively released as implementation of the operational programme proceeds, to the extent of up to 80 % of the advances paid, the remaining amount being retained until the balance of the assistance has been paid. An alternative system should be available for the reimbursement, at periods throughout the year, of expenditure already incurred.

(11) To ensure correct application of the scheme, the information to be included in applications for assistance should be specified. To provide against unforeseen circumstances in the implementation of operational programmes, applications for advances or payment may be carried over to the following year for operations which for reasons beyond the control of the producer organisation could not be implemented within the time limits laid down. All applications should be subject to administrative checks for verification. In the interests of sound financial management, penalties should be determined for late submission of applications for financial assistance.

(12) The ceiling on Community financial assistance applies to all applications at the level fixed by Article 15(5) of Regulation (EC) No 2200/96.

(13) The activities of producer organisations and their effectiveness should be monitored. This can be achieved by means of periodical reports and an assessment.

(14) Strict control procedures should be laid down, together with deterrent penalties in the event of infringement, given the high degree of responsibility and initiative conferred on the producer organisations. These penalties should be weighted according to the severity of the infringement. To ensure fair treatment, conditions should be laid down to cover ineligible actions included in error by the producer organisation in an operational programme and approved by the Member State, whereby Member States should not be obliged to withhold aid payments or recover sums paid, in accordance with the jurisprudence of the Court of Justice.

(15) The competent authorities responsible for verifying the eligibility of the proposed measures in operational programmes and their execution must be provided with the possibility of introducing complementary national legislative measures to ensure the correct application of this scheme.

(16) This Regulation must apply to all operational programmes to be implemented from 2001. Programmes already approved whose application continues into 2001 must be amended unless their advanced state of implementation makes this inappropriate.

(17) To ensure correct application of this scheme, Member States should forward all details of complementary and additional measures taken in the framework of this Regulation. An adequate record of the activities of producer organisations and use of the operational funds should be made available to the Commission for statistical, budget and control purposes.

(18) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Fresh Fruit and Vegetables,

HAS ADOPTED THIS REGULATION:

## CHAPTER I

## SUBJECT MATTER AND SCOPE

### *Article 1*

1. The rules laid down herein shall apply to Community financial assistance, operational funds and operational programmes as referred to in Article 15(1) and (2)(b) of Regulation (EC) No 2200/96 and to action plans as referred to in Article 13(2)(a) of that Regulation.

2. For the purposes of this Regulation, unless it is stated otherwise, action plans shall be treated in the same way as operational programmes.

[1] OJ L 161, 26.6.1999, p. 1.

*Article 2*

1. 'Producer organisations' as referred to in this Regulation means those recognised pursuant to Article 11 of Regulation (EC) No 2200/96 and those referred to in Article 13 of that Regulation subject to the conditions therein.

2. Where a recognised 'association of producer organisations' acts on behalf of its members for the purposes of fully managing their operational funds in accordance with Article 16(3) of Regulation (EC) No 2200/96, it shall be treated in the same way as a producer organisation for the purposes of this Regulation.

3. A recognised association of producer organisations may act on behalf of its members for the partial implementation of their operational programmes. In such cases, Member States may authorise such associations to present a partial operational programme on their own:

(i) consisting of actions identified, but not implemented by the member producer organisations within their operational programmes;

(ii) in accordance with the provisions of Articles 4, 5, 6, 7 and 8; the partial programme shall be considered together with the operational programmes of the member producer organisations.

In this case Member States shall ensure that:

(a) these actions are fully financed from contributions of member producer organisations paid out of the operational funds of these organisations;

(b) these actions and the corresponding financial participation are listed in the operational programme of each participating producer organisation;

(c) there is no risk of duplicate financing.

4. Producer organisations may qualify for Community financial assistance on the terms set out in Articles 15 and 16 of Regulation (EC) No 2200/96 and those laid down herein.

The provisions of Regulation (EC) No 2200/96 and of this Regulation relating to verifications and penalties shall apply to both the associations of producer organisations and the member producer organisations.

5. For the purposes of this Regulation, the 'value of marketed production' is based on the production of members of producer organisations:

(a) for which the producer organisations are recognised;

(b) disposed of under the conditions laid down in the first and second subparagraphs of Article 11(1)(c)(3), with the exception of:

(i) the first indent thereof,

(ii) the second indent thereof, in cases of marginal quantities of product marketed fresh or to the processing industry by the producer members themselves,

of Regulation (EC) No 2200/96;

(c) invoiced at the 'ex-producer organisation' stage:

(i) where applicable, as 'packaged or prepared but not processed product',

(ii) excluding VAT,

(iii) excluding internal transport costs [1],

where applicable, Member States shall define reductions to be applied to the invoiced value for products invoiced at different stages of processing or delivery/transport;

(d) including, where relevant, the amount of the aid as provided for in Article 2 of Regulation (EC) No 2201/96 and Article 1 of Regulation (EC) No 2202/96 received by producer organisations during the same period;

(e) including, under conditions determined by Member States to avoid duplicate counting, the production of members who leave or join the producer organisation up to the time of submission of the operational programme or of the submission of changes to the programme as in Article 6(1) of this Regulation.

6. The annual ceiling on financial assistance referred to in the third subparagraph of Article 15(5) of Regulation (EC) No 2200/96 shall be calculated each year on the basis of the value of marketed production during a 12-month reference period to be determined by Member States, which may be based on:

(a) an actual 12-month period, commencing no earlier than 1 January two years preceding the year in which the operational programme is implemented and ending no later than 30 June of the year preceding the operational programme year; or

(b) the average value of three subsequent 12-month periods between 1 January of the fourth year and 30 June of the year preceding the operational programme year.

7. Different reference periods may be defined by the Member States for different producer organisations to take into account various production, sales and accounting periods for different products or groups of products. The reference period shall not vary during an operational programme except in duly justified situations.

8. Where a reduction in value of a product has occurred due to reasons falling outside the responsibility and control of the producer organisation, the value of the marketed production referred to in paragraph 6 shall not be less than 65 % of the value of the previous reference period.

[1] Where the distance between the centralised collection or packing points of the producer organisation and the point of distribution of the producer organisation is significant.

9. Where recently recognised producer organisations have insufficient historical data on marketed production for the application of paragraph 6, the value of marketed production shall be considered to be the value of marketable production provided by the producer organisation for the purposes of recognition.

10. Member States shall take the measures necessary to gather information on the value of marketed production within the meaning of paragraph 5 of producer organisations which have not presented operational programmes.

CHAPTER II

**OPERATIONAL FUNDS AND PROGRAMMES**

*Article 3*

**Operational funds**

1. Operational funds set up by producer organisations as referred to in Article 15(1) of Regulation (EC) No 2200/96 shall:

(a) be used solely for transactions connected with:

1. the implementation of the operational programme,

2. the administration of the operational fund, and

3. the financing of withdrawals, in accordance with Article 15(3) of Regulation (EC) No 2200/96;

(b) be managed:

1. in a bank account with a financial institution in the Member State in which the producer organisation has its headquarters, or

2. at the request of a producer organisation and upon decision of the Member State, in financial accounts managed by the organisation, comprising accounts for each operation in which each item of expenditure and revenue relating to the operational fund can be identified and can be checked and certified annually by external auditors.

2. Financial contributions to the operational fund shall be levied in accordance with Article 15(1) of Regulation (EC) No 2200/96. The producer organisation may set the levy:

(a) on the basis of volume or value of the marketed production, or a combination of both;

(b) at different levels for different products or groups of members on the basis of objective criteria set by the producer organisation, taking into account in particular different levels of participation in an operational programme by different groups of members under the following conditions:

(i) if the collective nature of the operational programmes is not weakened,

(ii) where the contribution of each individual member of that group is calculated on the basis referred to in paragraph 2(a).

3. An operational programme shall be deemed to be of a collective nature if its actions:

(i) involve a significant number or proportion of members; and

(ii) are approved democratically by the members of the producer organisation.

4. Under conditions set by Member States, producer organisations may advance members' contributions to the fund for a given year of implementation of the operational programme, conditional to compensation against the levies collected from their members by 31 January of the following year.

5. Any credit to the operational fund other than members contributions is not eligible for the financial assistance referred to in Article 15(1) of Regulation (EC) No 2200/96.

*Article 4*

**Operational programme submission to Member States**

Proposed operational programmes shall be submitted for approval to the competent authorities in the Member State in which the producer organisation has its headquarters on or before 15 September of the year preceding that in which they are to be implemented. However, the Member States may postpone that date.

*Article 5*

**Operational programme approval by Member States**

1. The competent national authorities shall take decisions on programmes and funds on or before 15 December of the year in which they are submitted.

2. The national competent authorities shall verify:

(a) by all appropriate means, including on-the-spot inspections, the accuracy of information provided pursuant to Article 8(1)(b)(c) and (e);

(b) compliance of the objectives of programmes with Article 15(4) of Regulation (EC) No 2200/96 or, in the case of action plans, compliance of their objectives with Article 11(2) of that Regulation;

(c) eligibility of the operations and the expenditure proposed, account being taken of the operations in Article 8(2) and the non-exhaustive list of ineligible operations and expenditure in Annex I;

(d) the economic consistency and technical quality of proposed programmes, the soundness of the estimates and the financing plan, and the planning of its implementation.

3. The competent national authorities shall, as appropriate:

(a) approve programmes which meet the requirements of Articles 15 and 16 of Regulation (EC) No 2200/96 and those of this chapter;

(b) request changes to the proposed programmes, in which event only programmes that incorporate the changes requested shall be approved;

(c) reject the programmes.

The competent national authorities shall notify producer organisations of their decisions.

4. Operational programmes approved on or before 15 December shall be implemented as from 1 January of the following year.

The implementation of programmes approved after 15 December shall be postponed for one year.

*Article 6*

**Operational programme changes**

1. Producer organisations may request changes for the subsequent year(s) of operational programmes each year on or before 15 September for implementation on 1 January of the following year.

However, Member States may postpone the date for submitting requests.

2. Requests for changes shall be accompanied by supporting documents justifying the reason, nature and implications of the changes.

The competent authorities shall take decisions on requests for changes to operational programmes on or before 15 December, after considering the evidence supplied, and with due regard for the verification of the authorities as in Article 5(2). Where a decision is not taken within the abovementioned time limit, the request shall be deemed to have been rejected.

3. Under conditions to be determined by Member States and subject to approval by Member States, producer organisations may be allowed, during any given year to:

(a) implement their operational programmes in part only;

(b) change the contents of the operational programme. Changes may include extending operational programmes on condition that their total duration does not exceed five years;

(c) change the amount of operational fund approved for financing withdrawals as in Article 15(2)(a) of Regulation (EC) No 2200/96 within the limits laid down in the third subparagraph of Article 15(3) and in Article 23(3), (4) and (5),

provided the overall objectives of the operational programme are maintained and the amount of the operational fund referred to in Article 9(1) is not exceeded.

4. Member States shall determine the conditions under which in-year changes to operational programmes as in paragraph 3(a) and (b) of this Article may go ahead without the prior approval of Member States.

These changes are only eligible for financing if they are communicated by the producer organisation to the competent authorities without delay.

5. Any increase of the amount of operational fund approved for financing withdrawals as in Article 15(2)(a) of Regulation (EC) No 2200/96 must in all cases be the subject of prior approval by the competent authorities.

*Article 7*

**Operational programme format**

Operational programmes shall be implemented in annual periods running from 1 January to 31 December.

*Article 8*

**Operational programme contents**

1. Proposed operational programmes shall satisfy the requirements of Article 15(4) of Regulation (EC) No 2200/96 or, in the case of action plans, those required, once the action plan is completed, for compliance with Article 11(2) of that Regulation.

They shall cover at least the following:

(a) the duration of the operational programme;

(b) description of the initial situation, in particular as regards production, marketing and equipment;

(c) the objectives of the programme, bearing in mind the outlook for production and outlets;

(d) the operations to be undertaken and the means to be employed for attaining those objectives in each year of implementation of the programme;

(e) the financial aspects, namely:

(i) the method of calculation and the level of financial contributions;

(ii) the procedure for financing the operational fund as referred to in Article 3;

(iii) if applicable, all necessary information to justify different levels of contribution levied in accordance with Article 3;

(iv) the budget and timetable for undertaking operations for each year of implementation of the programme.

2. Proposed operational programmes as in paragraph 1 may cover in particular:

(a) costs of plants in the case of perennial crops (perennials, trees and shrubs);

(b) specific costs for:

(i) organic, integrated or experimental production [1],

(ii) organic plant protection materials [2],

(iii) environmental measures (including re-useable packaging),

(iv) quality improvement measures (including certified seeds and plants),

for a maximum of 10 years per measure from the beginning of the first operational programme;

(c) overheads specifically related to the operational fund or programme [3] by means of the payment of a lump sum equal to 2 % of the approved operational fund and up to a maximum of EUR 180 000 [4];

(d) personnel costs (including charges linked to wages and salaries, if these are borne by the producer organisation) resulting from measures:

(i) to improve or maintain a high level of quality or environmental protection,

(ii) to improve the level of marketing,

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;

(e) investments in means of transport equipped with cold-storage or controlled-atmosphere transport;

(f) additional external transport costs, compared with road haulage costs, incurred when using rail and/or ship as part of a measure to respect the environment, set by Member States per kilometre on a flat-rate basis;

(g) costs of meetings and training programmes related to implementation of actions in the operational programme, including daily allowances of participants covering transport and accommodation costs (where appropriate on a flat-rate basis);

(h) generic promotion and promotion of collective labels [5]. Geographical names are allowed only:

(i) if covered by Council Regulation (EEC) No 2081/92 [6], and which in particular use a protected designation of origin or a protected geographical indication, or

(ii) if these geographical names are secondary to the principal message and are not reserved for the use of the producer organisation concerned.

Promotional material must bear the emblem of the European Community (in the case of visual media only) and include the following legend: 'Campaign financed with the assistance of the European Community';

(i) legal and administrative costs of mergers of producer organisations or their acquisition; feasibility studies and proposals commissioned by producer organisations in this respect;

(j) second-hand equipment within the conditions laid down in Rule No 4 of Commission Regulation (EC) No 1685/2000 [7];

(k) land not built on where purchase is necessary to carry out an investment included in the programme, within the conditions laid down in paragraphs 1.1(a), (b) and (c) and 1.2 of Rule No 5 of Regulation (EC) No 1685/2000 [8];

(l) leasing within the limits of the net market value of the item and within the conditions laid down in paragraph 3 of Rule No 10 of Regulation (EC) No 1685/2000;

(m) hire as an alternative to purchase where economically justified;

(n) real estate purchase within the conditions laid down in paragraphs 2.1, 2.2 and 2.3 of Rule No 6 of Regulation (EC) No 1685/2000;

(o) investments or actions on individual holdings, on condition that:

(i) the collective nature of the operational programme in the sense of Article 3(3) of this Regulation is not weakened, and

(ii) appropriate provisions are made in order to recover the investment or its value if the member leaves the organisation;

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

[2] Organic plant protection materials (such as pheromones and predators), whether used in organic, integrated or conventional production.

[3] Including management and personnel costs, reports and evaluation studies; the costs of keeping accounts and the management of accounts referred to in Article 3(1)(b).

[4] Member States may restrict funding to the real costs, in which case they should define the eligible costs.

[5] Collective labels must not be restricted to producer organisation members and must not represent an individual producer organisation name or trademark

[6] OJ L 208, 24.7.1992, p. 1.

[7] OJ L 193, 29.7.2000, p. 39.

[8] The competent national authority may set additional conditions to Rule No 5 of Regulation (EC) No 1685/2000 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.

(p) replacements for investments, provided that the residual value of the replaced investments is either:

(i) added to the operational fund of the producer organisation, or

(ii) subtracted from the cost of the replacement.

Investments, including those under leasing contracts, whose repayment period exceeds the length of the operational programme may be carried over to a subsequent operational programme on duly justified economic grounds, and in particular in cases where the fiscal depreciation period is longer than five years.

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

4. Proposed operational programmes shall be admissible only if accompanied by:

(a) evidence of the setting-up of an operational fund as referred to in Article 3;

(b) a written undertaking from the producer organisation to comply with Regulation (EC) No 2200/96 and this Regulation, and for neither it nor its members to receive, directly or indirectly, duplicate Community or national funding in respect of measures and/or operations qualifying for Community financing under this Regulation.

## CHAPTER III

## COMMUNITY FINANCIAL ASSISTANCE

*Article 9*

### Estimates of operational funds

1. Each year on or before 15 September and, where applicable, at the same time as proposed operational programmes as referred to in Article 4 of this Regulation or requests for changes as referred to in Article 6(2) are submitted, producer organisations implementing operational programmes shall forward the estimated amounts of the operational funds for the following year to the Member States in accordance with Article 16(2) of Regulation (EC) No 2200/96.

Calculation of the estimated amount of operational funds shall be based on:

(a) the factors referred to in Article 16(2) of Regulation (EC) No 2200/96 and contained in the proposed operational programmes and on estimated expenditure on withdrawals as referred to in Article 15(3) thereof;

(b) the value of marketed production established in accordance with Article 2(5) of this Regulation.

2. When proposed programmes are being approved, Member States shall establish the approved amount of financial assistance as referred to in the first subparagraph of Article 16(2) of Regulation (EC) No 2200/96.

3. Member States shall notify the producer organisations on or before 15 December of:

(a) the approved amount of financial assistance referred to in paragraph 2 of this Article;

(b) the decisions on the operational programmes as referred to in Article 5(1) or changes to the operational programmes as in Article 6(2) of this Regulation, in accordance with Article 16(2) of Regulation (EC) No 2200/96.

4. Member States shall report estimates of operational funds to the Commission within the framework provided for under Article 17 of this Regulation.

*Article 10*

### Advance payments

1. Producer organisations may on application be granted advance payments on the proportion of the operational fund to be used to finance an operational programme.

Applications for advance payments shall be made in January, April, July and October. They shall cover foreseeable expenditure arising from operational programmes for the three-month period starting in the month in which the application is submitted. Total advance payments made for a given year may not exceed 90 % of the approved amount of financial assistance for the operational programme.

2. Advances shall be paid subject to the furnishing of a security equivalent to 110 % thereof and according to conditions to be set by Member States:

(i) to ensure that financial contributions to the operational fund have been levied in accordance with Article 3(2), (3) and (4);

(ii) to ensure previous advance payments have actually been spent.

Applications for the release of securities may be submitted during the year and shall be accompanied by the relevant supporting documents. Securities shall be released in respect of up to 80 % of advances paid.

3. Securities shall be furnished in accordance with the conditions laid down in Commission Regulation (EEC) No 2220/85 [1].

The primary requirement within the meaning of Article 20 of that Regulation shall cover the performance of the operations set out in the operational programmes subject to the undertakings set out in Article 8(4)(b) of this Regulation.

[1] OJ L 205, 3.8.1985, p. 5.

In the event of failure to comply with the primary requirement or of serious failure to meet the obligations referred to in Article 8(4)(b) the security shall be forfeited, without prejudice to other penalties to be applied in accordance with Article 48 of Regulation (EC) No 2200/96 and Article 15 of this Regulation.

In the event of failure to comply with other requirements, the security shall be forfeited in proportion to the gravity of the irregularity that has been established.

4. Alternatively, at their request producer organisations may opt for a system of applications for a proportion of the Community financial assistance covering:

(a) expenditure resulting from the operational programme. Applications shall be submitted in April, July and October and shall cover expenditure incurred during the three preceding months. They shall be accompanied by suitable supporting documents.

Total payments in respect of applications for a proportion of the financial assistance may not exceed 90 % of the approved amount of financial assistance for the operational programme or of the real expenditure, whichever is less;

(b) withdrawals. Applications may, where applicable, be submitted together with applications as referred to in paragraph 4(a). Such applications shall be subject to the limits laid down in the third subparagraph of Article 15(3) and in Article 23(3), (4) and (5) of Regulation (EC) No 2200/96.

*Article 11*

**Producer organisation applications for aid**

1. Applications for financial assistance or the balance thereof shall be submitted, one only in respect of each programme, no later than 31 January of the year following that to which they relate.

2. Applications shall be accompanied by supporting documents showing:

(a) the value of the marketed production within the meaning of Article 2(5);

(b) the financial contributions levied on members and paid into the operational fund, in accordance with the second subparagraph of Article 15(1) of Regulation (EC) No 2200/96 and Article 3 of this Regulation, for marketed production within the meaning of Article 2(5) of this Regulation;

(c) the expenditure incurred in respect of the operational programme;

(d) the proportion of the operational fund spent on the financing of market withdrawals in accordance with Article 15(3) of Regulation (EC) No 2200/96, the level of compensation and/or supplements paid to members, and also compliance with the limits laid down in the third subparagraph of Article 15(3) and in Article 23(3), (4) and (5) of that Regulation.

3. Applications for financial assistance or the balance thereof may cover expenditure programmed but not incurred relating to operations for which it is proved to the satisfaction of the competent national authority that:

(i) these operations could not be carried out on or before 31 December of the year of implementation of the operational programme for reasons beyond the control of the producer organisation concerned, and that they can be carried out on or before 30 April of the following year;

(ii) an equivalent contribution from the producer organisation is maintained in the operational fund.

The assistance shall be paid out and the security lodged in accordance with Article 10(2) shall be released only on condition that proof of implementation of the programmed expenditure referred to in the preceding subparagraph is provided on or before 30 April of the year following that for which the expenditure in question was programmed, and on the basis of the entitlement to the assistance actually established.

4. Applications and their supporting documents are subject to administrative checks. Member States shall pay the financial assistance due to the producer organisations at the latest on 30 June of the year following the year of implementation of the programme. However Member States may postpone this date until 31 August.

5. Where applications for financial assistance or the balance thereof are submitted later than the date set in paragraph 1, the aid is reduced by 1 % for each day late.

6. In exceptional and duly justified cases, Member States may accept applications for financial assistance or the balance thereof after the date set in paragraph 1, and not apply the provisions of paragraph 5, if this does not prejudice either the carrying out of the checks or the payment deadline by Member States set in paragraph 4.

*Article 12*

**Reporting applications for aid**

Member States shall report details on applications for aid to the Commission within the framework provided for under Article 17 of this Regulation.

CHAPTER IV

**GENERAL PROVISIONS**

*Article 13*

**Producer organisation reports**

1. The implementation of operational programmes and withdrawal operations eligible for Community financing under an operational fund shall be the subject of annual reports, which shall:

(a) accompany applications for financial assistance or, as appropriate, applications for the balance;

(b) cover operational programmes implemented during the preceding year and withdrawals;

(c) contain reasoned details of

(i) main changes to operational programmes, and

(ii) variances between estimated and actual aid applied for.

2. Final reports shall replace the reports referred to in the first paragraph for the final year of application of operational programmes.

Such final reports shall be accompanied by an assessment of the operational programmes, prepared, where applicable, with the assistance of a specialised consultancy office. Such assessments must verify attainment of the objectives pursued by the programmes and, where appropriate, detail changes to operations and/or methods which have been or will be considered when subsequent operational programmes are drawn up.

*Article 14*

**Checks**

1. Member States shall carry out checks on producer organisations, with little or no prior notification and including checks on the spot, so as to ensure effective verification of compliance with the conditions for grant of assistance, and in particular on:

(a) implementation of the measures in the operational programme, and in particular relating to investments;

(b) real costs and expenses incurred compared with declared amounts.

2. The checks referred to in paragraph 1 shall relate at least to a significant sample of applications each year. The sample must represent at least 20 % of producer organisations and 30 % of total Community assistance.

Should the checks reveal significant irregularities in a region or part of a region or a specific producer organisation, the competent authorities shall carry out additional checks during the year in question and shall increase the percentage of corresponding applications to be checked the following year.

3. The competent authorities shall determine which producer organisations to check on the basis, in particular, of a risk analysis and the representativeness of the assistance. The risk analysis shall take account of:

(a) the amount of assistance;

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

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

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

4. At least one check must be made on each producer organisation before the payment of aid or the balance thereof relating to the final year of its operational programme.

5. Member States shall report details on checks to the Commission within the framework provided for under Article 17 of this Regulation.

*Article 15*

**Recovery and sanctions**

1. Amounts unduly paid shall be recovered and sanctions shall be applied to the producer organisations concerned, in particular where:

(a) the real value of marketed production within the meaning of Article 2(5) is less than the amount used to calculate the Community financial assistance; or

(b) the operational fund has been maintained in a manner which does not comply with Article 15(1) of Regulation (EC) No 2200/96 or has been used for purposes other than those referred to in Article 15(2) of that Regulation; or

(c) the operational programme 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 6 of this Regulation.

2. Without prejudice to the provisions of Article 7(4) of Council Regulation (EC) No 1258/1999 [1], in the case of a measure which is subsequently found to be ineligible, and which has been implemented in conformity with an operational programme approved by the Member State, the latter may:

(a) pay the relevant aid due, or

(b) not proceed to the recovery of aid already paid out,

if it would proceed in such a way for comparable cases financed from the national budget and if the producer organisation has not acted negligently.

3. Where recovery and/or sanctions apply as in paragraph 1, the recipient/applicant shall be required:

(a) in cases where aid has already been paid:

(i) in the case of obvious error, to reimburse the amounts unduly paid out, plus interest,

(ii) in the case of fraud, to reimburse double the amounts unduly paid out, plus interest;

(iii) in all other cases, to reimburse the amounts unduly paid out, increased by 20 %, plus interest;

[1] OJ L 160, 26.6.1999, p. 103.

(b) in cases where applications for financial assistance have been submitted according to Article 11 of this Regulation but no aid has been paid:

(i) in the case of fraud, to pay the amounts unduly applied for,

(ii) in all cases other than those of obvious error, to pay 20 % of the amounts unduly applied for.

4. The interest referred to in paragraph 3(a) shall be calculated:

(a) on the basis of the period elapsing between payment and reimbursement by the recipient;

(b) at the rate applied by the European Central Bank to its main refinancing operations 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.

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

6. In the event of a false declaration made deliberately or by serious negligence, the producers' organisation concerned shall be debarred from receiving Community financial assistance for the year following that in respect of which the false declaration was discovered.

7. Paragraphs 1 to 6 shall apply without prejudice to other penalties to be adopted in accordance with Article 48 of Regulation (EC) No 2200/96.

8. Member States shall report details on recovery and sanctions to the Commission within the framework provided for under Article 17 of this Regulation.

CHAPTER V

*Article 16*

**Member State provisions**

1. Member States may adopt complementary rules to Regulation (EC) No 2200/96 and to this Regulation concerning operations or expenditure eligible for assistance.

2. Member States shall report details on provisions adopted to the Commission within the framework provided for under Article 17 of this Regulation.

*Article 17*

**Member State reporting**

1. Member States shall report financial and qualitative data on producer organisations, operational funds and operational programmes and controls as set out in Annex II.

2. Member States shall communicate to the Commission all measures and conditions set by them in the framework of this Regulation, and in particular:

(a) the procedure for financing the operational funds as in Article 8(1)(e)(i), (ii) and (iii);

(b) conditions set for enabling in-year changes to be made to operational programmes as in Article 6(3) and (4);

(c) provisions made, if relevant, for the application of Article 15(2);

(d) the provisions adopted under Article 16(1).

*Article 18*

Commission Regulation (EC) No 411/97 [1] is repealed.

However the provisions of Article 10 of Regulation (EC) No 411/97 shall continue to apply for operational funds relating to the year 2000.

*Article 19*

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities* with the following provisions:

(a) operational programmes approved by Member States before the entry into force of this Regulation and whose application continues into 2001 must comply with this Regulation, if necessary by means of an amendment to be requested by producer organisations on or before 15 September 2001;

(b) member States may provide for the retention of programmes approved before the entry into force of this Regulation if adjusting them would be inappropriate given their state of advancement;

(c) upon request by interested parties, the provisions of Article 15 may apply to cases occurring prior to the entry into force of this Regulation.

[1] OJ L 62, 4.3.1997, p. 9.

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

Done at Brussels, 28 March 2001.

*For the Commission*
Franz FISCHLER
*Member of the Commission*

*ANNEX I*

**INELIGIBLE OPERATIONS AND EXPENDITURE**

As far as they are not covered by Article 8(2), the following operations and expenditure are ineligible:

1. General production costs, and in particular:
   — seeds and plants,
   — plant protection products, including integrated control materials, fertilisers and other inputs,
   — packing costs, storage costs, packaging costs, even as part of new processes,
   — costs of collection or transport (internal or external),
   — operating costs (in particular electricity, fuel and maintenance).
2. Overheads.
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.
7. Payments to producers, participating in meetings and training programmes, to compensate for loss of income.
8. Operations or costs relating to the quantities produced by the members of the producer organisation outside the Community.
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.
11. Investment in means of transport to be used for marketing or distribution by the producer organisation.
12. Hire as an alternative to purchase; the operating cost of the goods hired.
13. Expenditure linked to leasing contracts (taxes, interest, insurance costs, etc.) and operating costs.
14. Promotion of individual commercial labels or containing geographic references.
15. Subcontracting contracts relating to the operations or expenditure mentioned in this list.
16. VAT and other taxes or charges within the conditions laid down in paragraph 4 of Rule No 7 of Regulation (EC) No 1685/2000.
17. Investments for the processing of fresh products (operations carried out by producer organisations concerning preparation of the product, in particular cleaning, cutting, trimming, drying and packaging, with a view to its marketing, are not deemed processing).

*ANNEX II*

**MEMBER STATE REPORTING REQUIREMENTS**

**Information to be forwarded by Member States to the Commission by 1 June of each year, according to formats to be provided by the Commission**

PART 1: *Producer organisations*

1. Administrative information (in particular concerning recognition number, legal form, number of physical and legal members).
2. Production information (including the calculation of the value of marketed production calculation and information on key products).

PART 2: *Operational funds and operational programmes*

1. Reference period(s) used.
2. Aid estimates (Article 9).
3. Applications for aid and final aid payments actually made (Article 11) including the percentage of operational fund spent on withdrawals.
4. Main categories of expenditure (including significant changes made in-year).

PART 3: *Checks (Article 14); recovery and sanctions (Article 15)*

1. Producer organisations checked.
2. Checking authority and summary including results of controls (key points only).

Updated final figures relating to final aid payments actually made as in Part 2(3) may be submitted up to 1 October at the latest.