COMMISSION REGULATION (EC) No 396/2002

of 1 March 2002

laying down detailed rules for the application of the specific measures adopted in respect of fruit, vegetables, plants and flowers for the benefit of the Canary Islands

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1454/2001 of 28 June 2001 introducing specific measures for certain agricultural products for the Canary Islands and repealing Regulation (EEC) No 1601/92 (Poseican) [1], and in particular Article 9(2), Article 10(5), Article 11(2) and Article 14(3) thereof,

Whereas:

(1) Detailed rules should be laid down for the application of Articles 9, 10 and 11 of Regulation (EC) No 1454/2001, which provide for aid measures for fruit, vegetables, plants and flowers, and Article 14, which provides for aid measures for the cultivation of potatoes.

(2) Article 14 of Regulation (EC) No 1454/2001 provides for the grant of area aid for the cultivation of potatoes for human consumption in respect of an area not exceeding 9 000 hectares cultivated and harvested each year. Detailed rules for the grant of the aid should be laid down to reflect the distinctive cultural and climatic features of the Canary Islands archipelago.

(3) Article 9 of Regulation (EC) No 1454/2001 provides for the grant of aid for the marketing on the Canary Islands market of the products referred to in that Article. The aid must be fixed on a flat-rate basis in the light of the average value of each of the products to be determined, within the limits of annual quantities established for each product category. To make it possible for this provision to be implemented, a list should be drawn up of the products eligible for the aid based on the supply requirements of the regional markets, the categories should be established on the basis of the average value of the products covered, a maximum quantity should be fixed for the Canary Islands as a whole and detailed rules should be laid down for the grant of the aid.

(4) For the grant of the different aid amounts a distinction should be made between the producer organisations referred to in Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables [2], as last amended by Commission Regulation (EC) No 911/2001 [3], and other producers.

(5) For the purpose of implementing the marketing aid measures and financing the economic study referred to in Articles 10 and 11 respectively of Regulation (EC) No 1454/2001, and in the interests of legislative simplification, the provisions adopted by Commission Regulation (EEC) No 2173/92 of 30 July 1992 laying down detailed rules for the application of specific measures adopted in respect of fruit, vegetables, plants and flowers for the benefit of the Canary Islands [4], as repealed by Regulation (EC) No 21/2002 [5], should be incorporated in this Regulation subject to the adjustments which experience has shown to be desirable and which the amendments to the Council Regulation demand.

(6) With regard in particular to the marketing aid for the conclusion of annual contracts referred to in abovementioned Article 10, the concept of annual contract needs to be defined and a basis established for calculating the amount of the aid, set at 10 % of the value of the production marketed, free at destination, and at 13 % in situations where Article 10(4) applies. Provision should be made, lastly, for arrangements for allocating the quantities qualifying for aid in situations where there is an overrun of the limits set in that Article.

(7) Specific rules should be laid down to ensure that the quantities fixed are monitored and that the conditions set for the grant of the aid are met. To that end, a system of approval of operators involved in the distribution and catering sectors, local authorities and food processors who undertake to meet certain requirements would appear to ensure the satisfactory administration of the local marketing aid scheme. General provisions applicable to these measures as a whole, especially those concerning monitoring and notification, should also be set out in a final chapter.

(8) To ensure the continuity of the aid schemes for the cultivation of potatoes and for marketing outside the Community and financing of the economic study, the provisions of Titles I, III and IV of this Regulation need to be made applicable with effect from 1 January 2002.

(9) The joint meeting of the Management Committees for Fresh Fruit and Vegetables, for Processed Fruit and Vegetables, for Hops, and for Live Plants and Floriculture Products has not delivered an opinion within the time limit laid down by its Chairman,

[1] OJ L 198, 21.7.2001, p. 45.

[2] OJ L 297, 21.11.1996, p. 1.
[3] OJ L 129, 11.5.2001, p. 3.
[4] OJ L 217, 31.7.1992, p. 56.
[5] OJ L 8, 11.1.2002, p. 15.

HAS ADOPTED THIS REGULATION:

TITLE I

Potato production

Article 1

1. Aid for the cultivation of potatoes for consumption falling within CN codes 0701 90 50 and 0701 90 90 as provided for in Article 14 of Regulation (EC) No 1454/2001 shall be granted in respect of areas:

(a) that have been sown and for which all normal cultivation work has been completed;

(b) for which an aid application has been made in accordance with Article 2 below, such applications being deemed to be declarations of cultivated area.

2. Aid may be granted twice each year in respect of a given area.

3. In order to check that the maximum area referred to in Article 14 of Regulation (EC) No 1454/2001 has been observed, where cultivation aid is granted twice in a given year in respect of a given area, the area in question shall be multiplied by 2.

Where the total area for which aid is requested exceeds the maximum area referred to in Article 14 of Regulation (EC) No 1454/2001, the aid shall be granted to applicant producers in proportion to the area shown in their aid applications.

4. Where the potato crop has not reached harvesting stage, the competent Spanish authorities may acknowledge that cases of *force majeure* and natural disasters seriously affecting the area cultivated by the declarant justify continued entitlement to the aid.

Cases of *force majeure* and natural disasters shall be notified to the competent Spanish authorities within five working days of the date on which they occur. Evidence thereof shall be provided within one month following notification.

Spain shall inform the Commission forthwith of cases of *force majeure* or natural disasters it recognises as justifying continued entitlement to the aid.

Article 2

1. Interested growers shall submit an aid application to the competent authorities by a date to be set by them. The date set shall allow the necessary on-the-spot checks to be carried out.

2. Aid applications shall contain at least:

— the name, first name and address of the applicant,

— the cultivated area in hectares and ares, and the land register reference or particulars regarded as equivalent by the body responsible for checking areas of land.

TITLE II

Local marketing

Article 3

1. The lists of the products qualifying for the aid provided for in Article 9 of Regulation (EC) No 1454/2001, classified by category, shall be as shown in column II of Annex I for fruit and vegetables, and in column II of Annex II for flowers and live plants.

2. The products shall be the subject of supply contracts as referred to in Article 4 and comply with the standards established in accordance with Title I of Regulation (EC) No 2200/96 as regards fruit and vegetables and in accordance with Council Regulation (EEC) No 316/68 of 12 March 1968 fixing quality standards for fresh cut flowers and fresh ornamental foliage [1], as regards flowers and plants, or, where no such standards have been adopted, the quality specifications contained in the contracts.

3. The aid shall be granted within the limits of the annual quantities shown in column III of Annexes I and II, by product category.

4. The aid amounts applicable for each product category are shown in columns IV and V of Annexes I and II. The amounts shown in column V shall apply, for all products, to producer organisations recognised in accordance with Articles 11 and 14 of Regulation (EC) No 2200/96 and the amounts shown in column IV shall apply to other individual producers and producer groups.

Article 4

1. Supply contracts as referred to in Article 9(1) of Regulation (EC) No 1454/2001 shall be concluded between individual producers, producer groups or producer organisations and the approved operators referred to in Article 5.

2. Contracts shall include:

(a) the business names of the parties to the contract;

(b) a precise description of the products covered by the contract;

(c) the total quantity to be supplied and the forecast supply schedule;

(d) the references and areas of the parcels on which the products are grown and the names and addresses of each grower concerned;

(e) the duration of the undertaking;

(f) the method of packaging and particulars concerning transport (conditions and costs);

(g) the precise stage of delivery.

3. Contractors may increase, by not more than 30 %, the quantity initially specified in the contract, by means of an amending clause.

4. Contracts and amending clauses shall be signed not less than 10 days before the start of the deliveries concerned and before a deadline set by the competent authorities, which may differ for each product.

[1] OJ L 71, 21.3.1968, p. 8.

5. The competent authorities may adopt additional provisions concerning contracts, in particular regarding compensation in the event of failure to observe contractual obligations or the fixing of a minimum quantity for each contract.

Article 5

1. Economic operators in the wholesale or retail food trade or in catering, local authorities and food processors wishing to participate in the aid scheme shall submit an application for approval to the body designated by the competent authorities before a date set by the latter.

The body shall lay down the conditions for approval and shall publish each year a list of approved operators not less than one month before the deadline for the signing of contracts.

2. The approved operators shall give an undertaking to:

(a) market or process the products covered by the supply contracts exclusively in the Canary Islands;

(b) keep specific accounts for the performance of the supply contracts;

(c) forward, at the request of the competent departments, any supporting documents concerning the performance of the contracts and the fulfilment of undertakings given under this Regulation.

Article 6

Producers, producer groups and producer organisations wishing to qualify under the aid scheme shall send a declaration together with a copy of the contract referred to in Article 4 to the competent authorities before a date set by the latter.

Article 7

1. Where the documents referred to in Article 6 indicate that the quantities provided for in Article 3(3) are likely to be exceeded, the competent authorities shall fix a temporary reduction coefficient to be applied to aid applications falling within this category and shall inform the interested parties thereof. The coefficient, which shall be equivalent to the ratio between the quantities shown in columns III of Annexes I and II, and the quantities contained in the contracts plus any additional amounts under amending clauses, shall be set before any decision is taken to grant the aid and at the latest one month after the deadline referred to in Article 4(4).

2. Where paragraph 1 is applied, the competent authorities shall establish, at the end of the year, the definitive reduction coefficient to be applied to aid applications falling within the category concerned and submitted during the year.

TITLE III

Marketing outside the Canary Islands

Article 8

1. For the purposes of Article 10 of Regulation (EC) No 1454/2001, 'annual contract' means a contract in which an operator, whether a natural or legal person, established elsewhere in the Community gives an undertaking before the start of the marketing period for the product or products in question to buy all or part of the production of an individual producer or a producer organisation with a view to marketing it outside the Canary Islands.

2. Operators who intend to submit an application for aid shall send the annual contract to the competent Spanish authorities before the start of the marketing period for the product or products in question. The contract shall include at least:

(a) the business names of the contracting parties and their places of establishment;

(b) a precise description of the products covered by the contract;

(c) the total quantity to be supplied and the forecast supply schedule;

(d) the references and areas of the parcels on which the products are grown and, in the case of producer organisations, the names and addresses of each producer;

(e) the duration of the undertaking;

(f) the method of packaging and particulars concerning transport (conditions and costs);

(g) the exact delivery stage.

3. The competent authorities shall assess the contracts for conformity with Article 10 of Regulation (EC) No 1454/2001 and this Regulation. They shall verify that the contracts contain all the information specified in paragraph 2. They shall inform the operator whether paragraph 6 is likely to be applied.

4. For products other than tomatoes and for the purpose of calculating the aid, the value of marketed production, delivered to destination zone, shall be evaluated on the basis of the annual contract, the particular transport documents and any other supporting documents submitted to justify the application for payment.

The value of the marketed production to be taken into account shall be equivalent to that of a delivery at the first port or airport of unloading.

The competent authorities may request any additional information or supporting documentation required to calculate the aid.

5. Applications for aid shall be submitted by the buyer who enters into the commitment to market the product.

6. Where the quantities covered by aid applications exceed the limit of 300 000 tonnes in the case of tomatoes falling within CN code 0702 or 10 000 tonnes in the case of other products, as laid down in Article 10(2) of Regulation (EC) No 1454/2001, the competent authorities shall decide on a uniform reduction coefficient to be applied to all aid applications for the products concerned.

7. The increase in aid provided for in Article 10(4) of Regulation (EC) No 1454/2001 shall be paid on presentation of the commitments entered into by the partners to pool, for a period of not less than three years, the knowledge and know-how required to achieve the objective of the joint venture. These commitments shall include a clause prohibiting cancellation before the end of the aforementioned three-year period.

Where the aforementioned commitments are broken, the buyer may not submit an application for aid for the marketing year concerned.

TITLE IV

Study concerning fruit and vegetables

Article 9

1. The contract to carry out the study referred to in Article 11 of Regulation (EC) No 1454/2001 shall be awarded by invitation to tender on the responsibility of the competent authorities.

2. The draft invitation to tender and the specifications shall be sent to the Commission by the competent authorities. The Commission shall make known its observations, if any, within a period of one month following the date of receipt of the draft.

3. The competent authorities shall send a copy of the final study to the Commission, which shall present its observations, if any, within 45 days of the date of receipt of the study.

4. The Community's financial contribution shall be paid subject to:

— compliance with the provisions of Article 11 and the specifications together with the observations presented,

— payment of the contribution from the Spanish public authorities.

TITLE V

General provisions

Article 10

1. The marketing year shall run from 1 January to 31 December.

2. Applications for aid shall be submitted to the department designated by the Spanish authorities in accordance with the models established by the latter and within the periods laid down by them.

3. The applications for marketing aid shall be accompanied by invoices and all other supporting documents relating to the measures undertaken, in particular the references of the supply contracts and annual contracts.

4. The competent administration, having verified the applications for aid and the relevant supporting documents, shall, in the three months following the end of the period for lodging applications, pay the aid calculated in accordance with this Regulation.

5. Within 15 working days of receipt of the aid referred to in Title II, the producer organisation shall pay its members, by bank or postal transfer, the full amount received.

Article 11

Spain shall communicate to the Commission:

(a) no later than 31 May, a report on the implementation of the measures referred to in this Regulation in the preceding marketing year showing in particular:

— the areas which have qualified for the aid referred to in Title I,

— broken down by aid amount and by product set out in Annexes I and II, the quantities which have qualified for the aid referred to in Title II,

— broken down by product and their value within the meaning of the second subparagraph of Article 8(4), the quantities which have qualified for the aid and the increased aid referred to in Title III,

(b) no later than 31 May, broken down by category or product, provisional data concerning the quantities covered by contract for the current year;

(c) no more than one month following their publication, the detailed rules adopted for the application of this Regulation.

Article 12

1. The national authorities shall take all the measures necessary to guarantee compliance with the conditions to which the grant of the aid provided for in Articles 9, 10 and 14 of Regulation (EC) No 1454/2001 is subject.

2. Checks carried out shall involve administrative and on-the-spot checks. The administrative checks shall be exhaustive and shall involve cross-checks, in particular with the data of the integrated administration and control system.

On the basis of a risk analysis, the national authorities shall carry out random on-the-spot checks on aid applications representing at least 10 % of the quantities, 5 % of the areas and 5 % of the growers for the marketing aids referred to in Articles 9 and 10 and accounting for at least 5 % of the areas and 5 % of the beneficiaries of the aid for the cultivation of potatoes referred to in Article 14.

The national authorities shall withdraw the approvals referred to in Article 5 where the commitments to which they are subject are not fulfilled. They may suspend the payment of aid for one or more marketing years depending on the seriousness of the irregularities uncovered.

3. Where aid has been paid out unduly, the competent administration shall recover the sums paid out, with interest from the date on which the aid is paid out to the date on which it is repaid by the beneficiary.

Where the undue payment has been made because of a false declaration, false documents or serious negligence on the part of the recipient, a penalty equal to the amount paid out unduly, with interest calculated in accordance with the first subparagraph, shall be imposed.

The interest rate shall be that applied by the European Central Bank to its principal refinancing transactions published in the 'C' series of the *Official Journal of the European Communities*, in force on the date of the undue payment and increased by three percentage points.

4. The aid recovered shall be paid to the paying authorities or agencies and deducted by them from the expenditure financed by the European Agricultural Guidance and Guarantee Fund.

TITLE VI

Final provisions

Article 13

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

Titles I, III and IV shall apply from 1 January 2002.

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

Done at Brussels, 1 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX I

FRUIT AND VEGETABLES

Product category	CN code	Product	Quantity (tonnes)	Aid (EUR/tonne)	
I	II		III	IV	V
A	ex 0703 10	Onions	16 320	40	120
	0704 90	Cabbages			
	0709 90 60	Sweet com			
	ex 0709 90 90	Pumpkins			
	ex 0709	Other vegetables not elsewhere specified			
	0805 40 00	Grapefruit			
	0805 50 10	Lemons			
	0807 11 00	Watermelons			
	ex 0807 19 00	Melons			
B	0703 20 00	Garlic	32 830	90	180
	ex 0703 90 00	Leeks			
	0704 10 00	Cauliflowers			
	0705	Lettuce and chicory			
	ex 0706 10 00	Carrots			
	0707 00 05	Cucumbers			
	0709 30 00	Aubergines (egg-plants)			
	0709 40 00	Celery			
	ex 0709 60 10	Peppers			
	0709 90 20	Chard and cardoons			
	0709 90 70	Courgettes			
	0714 20	Sweet potatoes			
	0805 10	Oranges			
	ex 0805 20	Mandarins			
	0806 10 10	Tables grapes			
	0808 10	Apples			
	0808 20	Pears			
	0809 10 00	Apricots			
	0809 30	Peaches and nectarines			
	0809 40 05	Plums			
	ex 0810 90 95	Other temporate fruit not elsewhere specified			
C	0708 20 00	French beans	14 550	120	210
	ex 0709 70 00	Spinach			
	ex 0709 90	Cress			
	ex 0802	Almonds			
	0804 20 10	Fresh figs			
	0804 30 00	Pineapples			
	0804 40 00	Avocados			
	ex 0804 50 00	Mangoes			
	0807 20 00	Papaws (papayas)			
	0810 10 00	Strawberries			
	ex 0810 90 95	Cactus figs (prickly pears) and other tropical fruit not elsewhere specified			
D	ex 0701 90	Potatoes harvested from 1 April to 31 December	30 000	60	150

ANNEX II

FLOWERS AND LIVE PLANTS

Product category	CN code	Product	Quantity (units)	Aid (EUR/unit)	
I	II		III	IV	V
Category A: Cuttings					
A	0602 90 45	Cuttings	24 000 000	0,010	0,011
Category B: Flowers					
B 1	0603 10	Flowers with a value of between EUR 0,07 and EUR 0,15/unit	8 000 000	0,018	0,019
B 2	0603 10	Flowers with a value of between EUR 0,16 and EUR 0,45/unit	6 000 000	0,040	0,044
B 3	0603 10	Flowers with a value of between EUR 0,46 and EUR 1,20/unit	1 090 000	0,060	0,066
Category C: Plants					
C 1	0602 90	Plants with a value of between EUR 0,15 and EUR 0,45/unit	2 500 000	0,045	0,048
C 2	0602 90	Plants with a value of between EUR 0,46 and EUR 1,50/unit	1 000 000	0,222	0,240
C 3	0602 90	Plants with a value of between EUR 1,51 and EUR 3,00/unit	750 000	0,456	0,480
C 4	0602 90	Plants with a value of more than EUR 3,01/unit	500 000	0,601	0,637