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COMMISSION REGULATION (EC) No 1943/2003

of 3 November 2003

laying down rules for the application of Council Regulation (EC) No 2200/96 as regards aid to producer groups granted preliminary recognition

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COMMISSION REGULATION (EC) No 1943/2003

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laying down rules for the application of Council Regulation (EC) No 2200/96 as regards aid to producer groups granted preliminary recognition

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 Commission Regulation (EC) No 47/2003 ([2]), and in particular Article 48 thereof,

Whereas:

(1) In the view of experience gained during the last years, it is necessary to amend Commission Regulation (EC) No 20/98 of 7 January 1998 laying down rules for the application of Council Regulation (EC) No 2200/96 as regards aid to producer organisations granted preliminary recognition ([3]), as last amended by Regulation (EC) No 983/2000 ([4]). In the interests of clarity and rationality, that Regulation should be replaced by a new Regulation.

(2) Regulation (EC) No 20/98 should consequently be repealed.

(3) Article 14 of Regulation (EC) No 2200/96 states that new producer groups may be allowed a transitional period of no more than five years in which to meet the conditions for recognition laid down in Article 11 of that Regulation. Commission Regulation (EC) No 1432/2003 ([5]) establishes the conditions for granting preliminary recognition to producer groups.

(4) In order to encourage the formation of producer groups, Article 14 of Regulation (EC) No 2200/96 also states that Member States may grant two sorts of aid to producer groups granted preliminary recognition in the five years following such preliminary recognition, one to cover the costs of their formation and administrative operation and one to cover part of the investments required to attain recognition and set out in their recognition plans.

(5) To facilitate the correct application of the system of aid to cover the costs of formation and administrative operation, that aid should be granted at a flat rate. That flat-rate aid should be subject to a ceiling in order to comply with budgetary constraints. Moreover, to take account of the differing financial needs of producer groups of different sizes, that ceiling should be adjusted in line with the marketable production of the producer groups.

(6) In order to guarantee equal treatment between the producer organisations referred to in Article 11 of Regulation (EC) No 2200/96 and the producer groups referred to in Article 14 of the same regulation, the aid referred to in Article 2 of Council Regulation (EC) No 2201/96 of 28 October 1996 on the common organisation of the markets in processed fruit and vegetables ([6]), as last amended by Commission Regulation (EC) No 453/2002 ([7]), and in Article 1 of Council Regulation (EC) No 2202/96 of 28 October 1996 introducing a Community aid scheme for

([1]) OJ L 297, 21.11.1996, p. 1.
([2]) OJ L 7, 11.1.2003, p. 64.
([3]) OJ L 4, 8.1.1998, p. 40.
([4]) OJ L 113, 12.5.2000, p. 36.
([5]) OJ L 203, 12.8.2003, p. 18.
([6]) OJ L 297, 21.11.1996, p. 29.
([7]) OJ L 72, 14.3.2002, p. 9.

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producers of certain citrus fruits [1], as last amended by Regulation (EC) No 2699/2000 [2], should be added to the appropriate value of marketed production, as provided for in Article 3 of Commission Regulation (EC) No 1433/2003 of 11 August 2003 laying down detailed rules for the application of Council Regulation (EC) No 2200/96 as regards operational funds, operational programmes and financial assistance [3].

(7) Natural disasters can cause a steep fall in marketed production in a given year. In such cases, in order to avoid such drastic reductions in the Community aid to producer groups granted preliminary recognition as might jeopardise its operation, there should be a limit on the reduction in marketed production taken into account for the purposes of calculating the aid. That limit should be determined by reference to the yield and the average prices obtained by the producer groups granted preliminary recognition or by their members in the three years preceding the year of the disaster, and should be fixed to take account of normal production fluctuations due to weather conditions.

(8) In order to ensure that the aid provided for in this Regulation is applied properly, the Member State in question should check that the grant of the aid is duly justified, account being taken of any previous grants of aid for the launching of producer groups and of any movements of producers between producer groups and/or organisations. The Member States should also ensure that duplicate Community or national financing is not granted for measures qualifying for Community financing in accordance with this Regulation.

(9) In the event of mergers, the possibility should be given for the aid to be granted to the producer groups resulting from the merger, in order to take into account the financial needs of the new producers groups and to ensure the correct application of the aid scheme.

(10) The aid provided for in this Regulation should be discontinued once the producer group is recognised by the Member State. However, to take account of the multiannual financing of investments, those qualifying for investment aid pursuant to this Regulation can be carried over to operational programmes as referred to in Article 15 of Regulation (EC) No 2200/96.

(11) Article 14(7) of Regulation (EC) No 2200/96 provides a special scheme for Portugal. Provisions should be laid down to ensure compliance with that special scheme. The provisions fixing the value of the marketed production in case of natural disasters should also apply to Portugal.

(12) Strict control procedures should be laid down, together with deterrent sanctions in the event of infringement, given the high degree of responsibility and initiative conferred on the producer groups. In the interest of simplification and rationality, these sanctions should be applied as provided for in Regulation (EC) No 1433/2003.

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

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[1] OJ L 297, 21.11.1996, p. 49.
[2] OJ L 311, 12.12.2000, p. 9.
[3] OJ L 203, 12.8.2003, p. 25.

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HAS ADOPTED THIS REGULATION:

Article 1

Scope

This Regulation lays down rules on the granting of aid as provided for in Article 14(2) of Regulation (EC) No 2200/96 to producer groups granted preliminary recognition.

Article 2

Definitions

1. For the purposes of this Regulation, 'marketed production' means the production of a producer group's members in the category for which preliminary recognition is granted:

(i) delivered to the producer group and actually sold through the group fresh or processed;

(ii) sold under the terms of the second and third indents of Article 11(1)(c)(3), second subparagraph, of Regulation (EC) No 2200/96 with the group's authorisation.

The production shall include 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 the producer groups for the same annual or semestrial period referred to in Article 3.

Marketed production shall not include the production of members of other producer organisations or groups marketed through the group in question in accordance with the second and third indents of Article 11 (1)(c)(3), second subparagraph, of Regulation (EC) No 2200/96.

2. For the purposes of this Regulation, 'value of marketed production' means the value of marketed production at the 'ex-producer group' stage, or, where appropriate, as a 'wrapped or prepared unprocessed product'.

3. In the event of a natural disaster recognised by the competent national authorities, marketed production shall be deemed to be at least 70 % of the average theoretical value equal to the area belonging to the producer group granted preliminary recognition and sown to the product in question during the year of the natural disaster, multiplied by the average yield and average price obtained

— by the producer group or its members for the product in question during the three years prior to the natural disaster, or

— where the Member State so decides, in the same production region during the three years prior to the disaster.

Article 3

Financing of recognition plans

1. The aid provided for in Article 14(2)(a) of Regulation (EC) No 2200/96 shall be granted towards the costs of setting up and running the producer group, at a flat rate.

2. The aid referred to in paragraph 1 shall be determined for each producer group on the basis of its value of marketed production, and shall:

(a) amount, for the first, second, third, fourth and fifth years, to 5 %, 5 %, 4 %, 3 % and 2 % respectively of the value of marketed production up to a maximum of EUR 1 000 000;

(b) amount, for the first, second, third, fourth and fifth years, to 2,5 %, 2,5 %, 2,0 %, 1,5 % and 1,5 % respectively of the value of marketed production exceeding EUR 1 000 000;

(c) be subject to a ceiling for each producer group of:

— EUR 100 000 for the first year,

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— EUR 100 000 for the second year,

— EUR 80 000 for the third year,

— EUR 60 000 for the fourth year,

— EUR 50 000 for the fifth year;

(d) be paid

— in annual or semestrial instalments at the end of each annual or semestrial period for the implementation of the recognition plan, or

— in instalments covering part of an annual period if recognition occurs according to Article 11 of Regulation (EC) No 2200/96 before the end of an annual period.

In order to calculate the instalments referred to in the first indent of subparagraph (d), the Member States may use as a basis the marketed production corresponding to a period other than that in respect of which the instalment is paid, where checks so require. The period by which the period used fails to coincide with the actual period concerned must be less than the length of the actual period.

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Article 4

Aid for investments required for recognition

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1. ►M1 To cover part of the cost of investments linked to implementation of the measures in recognition plans described in Article 16 of Regulation (EC) No 1432/2003, aid as provided for in Article 14(2)(b) of Regulation (EC) No 2200/96 shall be granted:

(a) directly, in capital or

(b) indirectly, through credit institutions, in the form of special loans. ◄

Investments liable to distort competition where the other economic activities of the organisation are concerned shall be excluded.

2. Investments to the direct or indirect benefit of such activities shall be financed pro rata to their use for the sectors or products for which preliminary recognition is granted.

Article 5

Application for aid

1. Producer groups shall each submit a single application for the aid referred to in Articles 3 and 4 within three months of the end of ►C1 each annual or semestral period as referred ◄ to in Article 3(2)(d).

2. All applications for aid shall be accompanied by a written declaration from the producer group to the effect that the latter:

(a) complies and will comply with Regulations (EC) No 2200/96 and (EC) No 1432/2003 and with this Regulation;

(b) has not benefited, is not benefiting and will not benefit either directly or indirectly from duplicate Community or national financing for measures and/or actions for which Community financing is granted pursuant to this Regulation.

3. Member States shall pay the aid within six months of receipt of a full application.

Article 6

Eligibility

Member States shall evaluate the eligibility of producer groups for the aid under this Regulation in order to establish that the aid is duly

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justified, regard being had to the conditions and the date on which any earlier public aid was granted to the producer organisations or groups from which the members of the producer group in question originate and to any movements of members between organisations and producer groups.

Article 7

Community assistance

Expenditure incurred by Member States on aid as referred to in Articles 3 and 4 shall qualify for assistance from the EAGGF Guarantee Section.

Article 8

Community contribution

1. The Community contribution towards aid as referred to in Article 3 shall amount to:

— 75 % of eligible public expenditure in Objective 1 and 2 regions as referred to in Article 1 of Council Regulation (EC) No 1260/1999 ([1]),

— 50 % of eligible public expenditure in other regions.

2. ►**M1** The Community contribution towards aid as referred to in Article 4, expressed in terms of a capital grant or capital-grant equivalent, shall not exceed, as a percentage of eligible investment costs as referred to in Article 4:

— 50 % in Objective 1 and 2 regions as referred to in Article 1 of Regulation (EC) No 1260/1999,

— 30 % in other regions. ◄

The Member States concerned must undertake to contribute at least 5 % of eligible investment costs as referred to in Article 4.

Beneficiaries of aid towards eligible investment costs as referred to in Article 4 shall pay at least:

— 25 % in Objective 1 and 2 regions as referred to in Article 1 of Regulation (EC) No 1260/1999,

— 45 % in other regions.

Article 9

Mergers

1. Aid as provided for in Articles 3 and 4 of this Regulation may be given, or may continue to be given, to producer groups which have been granted preliminary recognition under Regulation (EC) No 1432/2003 and which result from the merger between a producer group granted preliminary recognition under that Regulation and one or more of the following:

(a) one or more producer groups granted preliminary recognition pursuant to Regulation (EC) No 1432/2003;

(b) one or more producer organisations recognised pursuant to Regulation (EC) No 2200/96.

2. For the purposes of calculating the aid payable pursuant to paragraph 1, the producer group resulting from the merger shall replace the merging groups or organisations.

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

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Article 10

Consequences of recognition

1. Aid as provided for in Articles 3 and 4 shall cease once recognition is granted.

2. Where an operational programme is submitted pursuant to Regulation (EC) No 1433/2003, the Member State shall ensure that there is no duplicate financing of the measures financed under the recognition plan.

3. Investments qualifying for the aid or the costs referred to in Article 4 may be carried over to operational programmes provided they are in line with Regulation (EC) No 1433/2003.

Article 11

Specific clauses for Portugal

Where the Portuguese authorities demonstrate that, in a given year, the aid payable to a producer group in Portugal in accordance with this Regulation is less than that stipulated in Article 14(7) of Regulation (EC) No 2200/96, the aid provided for in Article 3(2) shall be increased so as to satisfy the provisions of the aforesaid Article 14.

In the event of a natural disaster recognised by the Portuguese authorities, Article 2(3) of this Regulation shall apply for the calculation of the value of marketed production to be used for the purposes of Article 14(7) of Regulation (EC) No 2200/96.

Article 12

Checks

Without prejudice to checks carried out in accordance with Title VI of Regulation (EC) No 2200/96, Member States shall carry out checks on producer groups to verify compliance with the conditions for the grant of aid as referred to in Articles 3 and 4.

Article 13

Recovery of aid and sanction

Recovery of aid and sanctions as provided for in Article 24 of Regulation (EC) No 1433/2003 shall apply where a check carried out pursuant to Article 12 of this Regulation shows that:

(a) the value of marketed production is less than the amount used for calculating aid as referred to in Article 3;

(b) aid covered by this Regulation has not been used in accordance with the regulations applicable or with the approved recognition plan.

Article 14

Repeal

Regulation (EC) No 20/98 is repealed.

References to the repealed regulation shall be construed as references to this Regulation.

Article 15

Entry into force

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

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