COMMISSION REGULATION (EC) No 1145/2008

of 18 November 2008

laying down detailed rules for implementing Council Regulation (EC) No 637/2008 as regards the national restructuring programmes for the cotton sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 637/2008 of 23 June 2008 amending Regulation (EC) No 1782/2003 and establishing national restructuring programmes for the cotton sector [1], and in particular Article 9 thereof,

Whereas:

(1) Chapter 2 of Regulation (EC) No 637/2008 contains provisions on restructuring programmes to be decided at Member State level to finance specific measures to assist the cotton sector. It is appropriate to fill out that framework by enacting implementing rules.

(2) It should be laid down which elements the restructuring programmes to be submitted by the Member States must contain. Furthermore, rules should be specified as regards changes to the restructuring programmes, so that they can be adjusted to take account of any new conditions which could have not been foreseen when they were initially presented.

(3) To ensure proper monitoring and evaluation of the restructuring programmes it is necessary to require submission of evaluation reports, which shall consist of detailed operational and financial information regarding the implementation of the restructuring programme.

(4) It should furthermore be ensured that all stakeholders have access to the information related to the restructuring programmes.

(5) There should be minimum requirements to manage the attribution and payment of support. Also, payment of one or more advances should be made possible for measures which are likely to concern considerable expenditure.

(6) Provisions should be laid down with regard to the obligation of Member States to control expenditure, specifically with regard to timing and nature of the on-the-spot checks of the dismantling and investment measures. To protect the financial interests of the Community specific rules for recoveries of undue payments and penalties are also necessary. To this end, Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy [2] and Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers [3] should be applicable.

(7) As regards full and permanent dismantling of ginning facilities, as provided for in Article 7(1)(a) of Regulation (EC) No 637/2008, it is necessary to define in detail the criteria that make up dismantling. Whereas it is proper for Member States to decide the amount of aid to be granted for dismantling on the basis of objective and non-discriminatory criteria, a maximum level needs to be established in order to avoid overcompensation.

(8) It is necessary to exactly define the support for the improvement in the processing of cotton, provided for in Article 7(1)(b) of Regulation (EC) No 637/2008 on aid for investments in the ginning industry and to determine eligible expenditure. Also, a maximum Community contribution must be laid down in order to ensure financial participation as well as commitment of the beneficiaries in the investment.

(9) As regards support for farmers participating in quality schemes for cotton, provided for in Article 7(1)(c) of Regulation (EC) No 637/2008, it is necessary to identify the relevant Community quality schemes, to establish the criteria for national quality schemes, to determine the level of the aid and the eligible costs.

(10) In order to ensure complementarity between the promotion measures referred to in Article 7(1)(d) of Regulation (EC) No 637/2008 and the rules concerning information and promotion actions established by Council Regulation (EC) No 3/2008 of 17 December 2007 on information provision and promotion measures for agricultural products on the internal market and in third countries [4] detailed requirements for support for the promotion of quality products should be laid down, in particular as regards beneficiaries and eligible activities.

[1] OJ L 178, 5.7.2008, p. 1.

[2] OJ L 209, 11.8.2005, p. 1.

[3] OJ L 141, 30.4.2004, p. 18.

[4] OJ L 3, 5.1.2008, p. 1.

(11) As regards aid to machinery contractors, as provided for in Article 7(1)(e) of Regulation (EC) No 637/2008 a precise definition of the aid needs to be laid down. Member States should decide the amount of aid to be granted on the basis of objective and non-discriminatory criteria, however, a maximum level needs to be established in order to avoid overcompensation.

(12) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL RULES

Article 1

Scope

This Regulation lays down implementing rules concerning national restructuring programmes under Regulation (EC) No 637/2008, containing the five eligible measures provided for in Article 7 of that Regulation.

Article 2

Content of restructuring programmes

Restructuring programmes submitted by Member States in accordance with Article 4(1) of Regulation (EC) No 637/2008, shall consist of the following elements:

(a) a detailed description of the measures proposed as well as their quantifiable objectives;

(b) the results of consultations held as provided for in the second subparagraph of Article 4(1) of Regulation (EC) No 637/2008;

(c) an appraisal showing the expected technical, economic, environmental and social impact;

(d) a description of the ginning facilities in the Member State concerned and use of their capacity since 2005, in case of inclusion in the restructuring programme of the measures referred to in Article 7(1)(a) and (b) of Regulation (EC) No 637/2008;

(e) a schedule for implementing each of the measures;

(f) a general financial table, following the model provided for in the Annex to this Regulation, showing the resources to be deployed and the envisaged allocation of the resources between the measures in accordance with the budgetary allocation fixed in Article 5(1) of Regulation (EC) No 637/2008;

(g) the criteria and quantitative indicators to be used for monitoring and evaluation of the measure of the restructuring programme as well as the steps taken to ensure that the programmes are implemented appropriately and effectively;

(h) the designation of competent authorities and bodies responsible for implementing the programme.

Article 3

Changes of restructuring programmes

Changes of restructuring programmes, as referred in Article 4(3) of Regulation (EC) No 637/2008, shall not be submitted more than once per year.

The modified programmes shall indicate clearly and precisely the proposed changes, the reasons for these changes and their financial consequences, and shall include, if applicable, a revised version of the financial table following the model provided for in the Annex to this Regulation.

Expenditure resulting from modification of restructuring programmes shall be eligible from the date of the submission of the revised programme to the Commission. Member States shall bear the responsibility for expenditure between the date on which their modified restructuring programme is received by the Commission and the date of its applicability in accordance with the second subparagraph of Article 4(2) of Regulation (EC) No 637/2008.

Article 4

Reporting and evaluation

1. Member States shall submit to the Commission a report on the implementation of the restructuring programme with the submission of each new restructuring programme, except of the first restructuring programme submitted in 2009 as referred to in Article 4(1) of Regulation (EC) No 637/2008.

2. The report submitted under paragraph 1 of this Article and that submitted with the communication requesting termination of the programme as referred to in Article 5(2) of Regulation (EC) No 637/2008 shall:

(a) list and describe the measures for which Community assistance under the restructuring programmes was granted, for each of the years of the programming period concerned;

(b) if applicable, describe any changes to the restructuring programme, the reasons therefore and its implications for the future;

(c) describe the results achieved with each measure, in light of the quantifiable objectives set out in the restructuring programme;

(d) contain a statement of expenditure by financial year already incurred in the programming period which will in no case overshoot the limit of the total financial amount allocated to the Member State pursuant to Article 5(1) of Regulation (EC) No 637/2008;

(e) support forecasts for expenditure until the end of the foreseen period of implementation of the restructuring programme, up to the limit of the total financial amount allocated to the Member State pursuant in Article 5(1) of Regulation (EC) No 637/2008;

(f) if applicable, contain an analysis of the involvements of other Community funds and their conformity with the aids financed by the restructuring programme.

3. Member States shall record the details of all restructuring programmes, whether or not amended, and of all measures carried out under those programmes.

Article 5

Public access to information on restructuring programmes

Member States shall make the restructuring programme, its modifications, the report on the implementation of the programme, and any national legislation concerning this programme, publicly available on a website.

Article 6

Requirements for application and payment

1. Member States shall for each measure contained in their restructuring programme and listed in Article 7(1) of Regulation (EC) No 637/2008:

(a) determine the elements to be contained in an application for support;

(b) set the start date and end date of the period for lodging an application;

(c) approve valid and complete applications on the basis of objective and non-discriminatory criteria, taking into account the financial resources available within the annual ceilings provided for in Article 5(1) of Regulation (EC) No 637/2008;

(d) pay the eligible support, or the remaining eligible support in case an advance has been paid, after completion of the measure and execution of controls as referred to in Article 7 of this Regulation.

2. For the measures referred to in Article 7(1), points (a), (b), (d), and (e) of Regulation (EC) No 637/2008, Member States may pay the beneficiary one or more advances. The combined level of all advances shall not be higher than 75 % of the eligible expenditure.

The payment of an advance shall be subject to the lodging of a security of an amount equal to 120 % of the amount of the advance concerned.

The securities shall be released provided that the measures have been completed and the controls, as referred to in Article 7, have been carried out.

3. All payments referred to in paragraphs 1 and 2 that relate to a particular application shall be made at the latest by 30 June of the fourth year following the year of the deadline for submission of the draft restructuring programmes as laid down in Article 4(1) of Regulation (EC) No 637/2008. Payments in the first year of the first programming period shall be made from 16 October 2009.

4. Member States shall lay down specific rules for the implementation of this Article.

Article 7

Monitoring and control

1. Notwithstanding the control obligations referred to in Regulation (EC) No 1290/2005, Member States shall monitor, control and verify the implementation of the restructuring programme as has become applicable.

For the measures referred to in Article 7(1), points (a) and (b) of Regulation (EC) No 637/2008, the Member States shall inspect on the spot each factory and production site which receives support under the restructuring programme before a final payment is made, to check that all conditions for obtaining the aid have been met.

With regard to the measure referred to in Article 7(1), point (a) of Regulation (EC) No 637/2008 an on-the-spot inspection shall be carried out on all relevant factory and production sites at the latest three months after the expiry of the one year period referred to in Article 10(1)(b) of this Regulation to verify that the requirements of that paragraph have been met.

2. For each on-the-spot inspection a report shall be established within one month, fully describing the work undertaken, the main findings and any follow-up action required. Specifically, the inspection reports shall:

(a) contain information regarding the beneficiary and the production site subject to inspection as well as the persons present;

(b) state whether notice of the visit was given to the beneficiary and, if so, the period of advance notice;

(c) state the requirements and standards subject to inspection;

(d) describe the nature and extent of the checks carried out;

(e) contain the findings;

(f) contain the elements in relation to which non-compliances are found;

(g) contain an evaluation providing an assessment of the importance of the non-compliance in respect of each element on the basis of, among others, its severity, extent, degree of permanence and history.

The beneficiary shall be informed of any non-compliance found.

Article 8

Recovery of undue payments

Undue payments shall be recovered, with interest, from the beneficiaries concerned. The rules fixed in Article 73 of Regulation (EC) No 796/2004 shall apply *mutatis mutandis*.

Implementation of administrative penalties and recovery of unduly paid amounts are without prejudice to communication of irregularities to the Commission pursuant to Commission Regulation (EC) No 1848/2006 ([1]).

Article 9

Penalties

1. If a beneficiary does not comply with one or more conditions for obtaining the aid under the measures of the restructuring programme, it shall be required to pay an amount equal to 10 % of the amount to be recovered under Article 8.

2. The penalties to be imposed pursuant to paragraph 1 shall not be imposed if the undertaking can demonstrate, to the satisfaction of the competent authority, that non-compliance is due to *force majeure* and if it has clearly identified the non-compliance in writing and in due time to the competent authority.

3. The penalties referred to in paragraph 1 shall not apply if the payment was made by error of the competent authorities itself of the Member States or of another authority concerned and the error could not reasonably be detected by the beneficiary and the beneficiary for his part acted in good faith.

4. If the non-compliance has been committed intentionally or as a result of grave negligence, the beneficiary shall be required to pay an amount equal to 30 % of the amount to be recovered under Article 8.

CHAPTER II

ELIGIBLE MEASURES

SECTION 1

Dismantling of ginning facilities

Article 10

Scope

1. Full and permanent dismantling of ginning facilities as referred to in Article 7(1)(a) of Regulation (EC) No 637/2008 shall require:

(a) the definitive and total cessation of the ginning of cotton in the factory or factories concerned;

(b) the dismantling of all ginning equipment thereof, and the removal of the ginning equipment from the site or sites, within one year of the approval of the application by the Member State;

(c) the definitive exclusion of the ginning equipment from cotton processing in the Community, by:

(i) removal of equipment to a third country;

(ii) guaranteed application of equipment in another sector; or

(iii) destruction of equipment;

(d) the restoring of the good environmental conditions of the factory site or sites and the facilitation of redeployment of the workforce; and

(e) the written commitment not to use the production site or sites for the ginning of cotton during a period of 10 years.

Ginning equipment means all specific equipment used for the transformation of unginned cotton into ginned cotton and its by-products, including feeders, dryers, cleaners, stick machines, gins, condensers, lint cleaners and bale presses.

([1]) OJ L 355, 15.12.2006, p. 56.

2. Member States may impose additional requirements with regard to dismantling as referred to in paragraph 1.

3. The ginning facilities referred to in paragraph 1 need to be in good working condition for an application to be eligible.

4. Factory buildings and sites may continue to be used for activities unrelated to cotton production, processing or trade.

Article 11

Community contribution

1. Member States shall decide, on the basis of objective and non-discriminatory criteria, the amount of aid to be granted under the measure referred to in Article 10.

2. The aid per ginning factory shall be limited to a maximum amount of EUR 100 per tonne of unginned cotton for the quantity of cotton processed in that factory, which has been eligible for support under Chapter V of Council Regulation (EC) No 1051/2001 [1], in the marketing year 2005/06.

SECTION 2

Investments in the ginning industry

Article 12

Scope

Support for the measure referred to in Article 7(1)(b) of Regulation (EC) No 637/2008 shall be granted for tangible or intangible investments which improve the overall performance of the enterprise and concern:

(a) the processing and/or marketing of cotton; and/or

(b) the development of new processes and technologies linked to cotton.

Article 13

Eligible expenditure

1. The supported investments shall respect the Community standards applicable to the investment concerned.

2. Eligible expenditure shall be:

(a) the improvement of immovable property;

(b) the purchase or lease purchase of new machinery and equipment, including computer software up to the market value of the asset, and excluding other costs connected with the leasing contract, such as lessor's margin, interest refinancing costs, overheads and insurance charges;

(c) general costs linked to expenditure referred to in points (a) and (b), such as fees of architects and engineers and consultation fees, feasibility studies, the acquisition of patent rights and licences.

3. Costs for the development of new processes and technologies as referred to in Article 12 shall concern preparatory operations, such as design, process or technology development and tests and tangible and/or intangible investments related to them, before the use of the newly developed processes and technologies for commercial purposes.

4. Simple replacement investments shall not be eligible expenditure.

Article 14

Community contribution

1. The Community contribution for support referred to in Article 12 shall be limited to the following maximum aid rates:

(a) 50 % in regions classified as convergence regions in accordance with Council Regulation (EC) No 1083/2006 [2];

(b) 40 % in regions other than convergence regions.

2. Support shall not be granted to the firms in difficulty within the meaning of Section 2.1 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty [3].

3. Article 72 of Council Regulation (EC) No 1698/2005 [4] shall apply *mutatis mutandis* to support referred to in Article 12.

SECTION 3

Participation of farmers in cotton quality schemes

Article 15

Scope

Support for the measure referred to in Article 7(1)(c) of Regulation (EC) No 637/2008 shall:

(a) be granted for Community quality schemes for cotton established under Council Regulation (EC) No 834/2007 [5], or Council Regulation (EC) No 510/2006 [6], or quality schemes recognised by the Member States;

[1] OJ L 148, 1.6.2001, p. 3. Regulation repealed by Regulation (EC) No 1782/2003 (OJ L 270, 21.10.2003, p. 1) as from 31 December 2005.

[2] OJ L 210, 31.7.2006, p. 25.
[3] OJ C 244, 1.10.2004, p. 2.
[4] OJ L 277, 21.10.2005, p. 1.
[5] OJ L 189, 20.7.2007, p. 1.
[6] OJ L 93, 31.3.2006, p. 12.

(b) be granted as an annual incentive payment whose level shall be determined according to the level of the fixed costs arising from participation in supported schemes, for a maximum duration of four years.

Schemes whose sole purpose is to provide a higher level of control of respect of obligatory standards under Community or national law shall not be eligible for support under this section.

Article 16

Eligibility criteria

1. To be eligible for support, quality schemes recognised by Member States, as referred to in point (a) of the first subparagraph of Article 15, shall comply with the following criteria:

(a) the specificity of the final product under such schemes shall be derived from detailed obligations on farming and processing methods that guarantee:

(i) specific characteristics including the production process; or

(ii) a quality of the final product that goes significantly beyond the commercial commodity standards as regards plant health or environmental protection;

(b) the schemes involve binding product specifications and compliance with those specifications shall be verified by an independent inspection body;

(c) the schemes shall be open to all producers;

(d) the schemes shall be transparent and assure complete traceability of the products;

(e) the schemes shall respond to current and foreseeable market opportunities.

2. Support may be granted to farmers participating in a quality scheme only if the quality product has been officially recognised under the Regulations and provisions of the Community schemes or quality schemes recognised by a Member State, as provided for in point (a) of the first subparagraph of Article 15.

As regards the quality schemes established under Regulation (EC) No 510/2006, support may only be granted in respect of names registered in the Community register.

3. Where support for participation in a quality scheme under Regulation (EC) No 834/2007 is included in a restructuring programme, the fixed costs resulting from the participation in that quality scheme shall not be taken into account in calculating the amount of support in the framework of an agri-environment measure to support organic farming.

4. For the purpose of point (b) of the first subparagraph of Article 15, 'fixed costs' means the costs incurred for entering a supported quality scheme and the annual contribution for participating in that scheme, including, where necessary, expenditure on checks required to verify compliance with the specifications of the scheme.

Article 17

Community contribution

Support for the measure referred to in Article 15 shall be limited to a maximum amount of EUR 3 000 per holding per year.

SECTION 4

Information and promotion

Article 18

Scope

1. Support for the measure referred to in Article 7(1)(d) of Regulation (EC) No 637/2008 shall concern cotton covered by the quality schemes referred to in Article 15 and products mainly produced with this cotton.

2. Information and promotion activities supported under Regulation (EC) No 3/2008 shall not qualify for support.

Article 19

Eligible activities

1. The information and promotion activities eligible for support shall be activities designed to induce consumers to buy cotton covered by quality schemes included in Article 15, or products mainly produced with this cotton.

Such activities shall draw attention to the specific features or advantages of the products concerned, notably the quality, specific production methods, and respect for the environment linked to the quality scheme concerned, and may include the dissemination of scientific and technical knowledge about those products. Such activities shall include, in particular, the organisation of, and/or participation in, fairs and exhibitions, similar public relations exercises and advertising via the different channels of communication or at the points of sale.

2. Only information, promotion and advertising activities in the internal market shall be eligible for support.

Such activities shall not incite consumers to buy a product due to its particular origin, except for products covered by the quality scheme introduced by Regulation (EC) No 510/2006. The origin of a product may nevertheless be indicated provided the mention of the origin is subordinate to the main message.

Activities related to the promotion of commercial brands shall not be eligible for support.

3. When activities referred to in paragraph 1 concern a product included in the Community quality schemes established under Regulation (EC) No 834/2007 or Regulation (EC) No 510/2006, the Community logo provided for under those schemes shall appear on information, promotion and/or advertising material.

4. The Member States shall ensure that all draft information, promotion and advertising materials drawn up in the context of a supported activity comply with Community legislation. To that end, beneficiaries shall transmit such draft materials to the competent authority of the Member State.

Article 20

Community contribution

Support for the measure referred to in Article 18 shall be limited to 70 % of the cost of the activity.

SECTION 5

Aid to machinery contractors

Article 21

Scope

Aid for the measure referred to in Article 7(1)(e) of Regulation (EC) No 637/2008 shall be granted on the basis of objective and non-discriminatory criteria, for the losses incurred including the loss of value of specialised harvest machinery, which can not be used for other purposes.

Article 22

Community contribution

1. Member States shall determine the level of aid to be granted under the measure referred to in Article 21. This aid shall not exceed the losses incurred and shall be limited to a maximum amount of EUR 10 per tonne for the quantity of unginned cotton harvested under contract in the marketing year 2005/06, that was delivered to a ginning factory subject to dismantling as provided for in Article 10.

2. Member States shall ensure the beneficiaries of the support comply with the criteria listed in Article 7(2)(d) of Regulation (EC) No 637/2008.

CHAPTER III

FINAL PROVISIONS

Article 23

Entry into force and application

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

It shall apply from 1 January 2009.

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

Done at Brussels, 18 November 2008.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

ANNEX

General financial table for the restructuring programme under Article 7 of Regulation (EC) No 637/2008

(1 000 EUR)

Member State:

Date of communication:

Amended table: Yes/No If Yes, number:

		Financial year				
Measures	Regulation (EC) No 637/2008	Year 1 (2010)	Year 2 (2011)	Year 3 (2012)	Year 4 (2013)	Total
Dismantling	Article 7(1)(a)					
Investments	Article 7(1)(b)					
Quality schemes	Article 7(1)(c)					
Information and promotion	Article 7(1)(d)					
Machinery contractors	Article 7(1)(e)					
	Total					