COMMISSION REGULATION (EC) No 444/2004

of 10 March 2004

amending Regulation (EC) No 1535/2003 laying down detailed rules for applying Council Regulation (EC) No 2201/96 as regards the aid scheme for products processed from fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2201/96 of 28 October 1996 on the common organisation of the markets in processed fruit and vegetable products [1], and in particular Articles 6, 25 and 27(1) thereof,

Whereas:

(1) Since publication of Commission Regulation (EC) No 1535/2003 [2], the Member States and the Commission have identified a number of ways of improving the provisions on the management of contracts between producers and processors.

(2) Checks should be made more operational, in particular as regards the checks to be carried out to verify the yield of raw materials processed into the finished product obtained.

(3) The conditions governing interest rates for the reduction of the aid in case of discrepancy between the aid applied for and the amount due should be brought into line with Article 49(3) of Commission Regulation (EC) No 2419/2001 of 11 December 2001 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes established by Council Regulation (EEC) No 3508/92 [3].

(4) To ensure the smooth operation of the system, the disposal of the production of producers participating in the system should be ensured in cases where processors are not in a position to comply with their contractual obligations.

(5) Notification procedures should be improved in the case of processing in another Member State, to make them more flexible and adapt them to the specific circumstances, without compromising checking requirements under any circumstances.

(6) In order to comply with the principle of proportionality, the provisions on the penalties to be applied to processors who do not pay the contract price to producers of raw materials should be clarified.

(7) Regulation (EC) No 1535/2003 should therefore be amended accordingly.

(8) In order to respect the legitimate expectations of the operators concerned, this Regulation should apply from the 2004/05 marketing year.

(9) However, since contracts between tomato producers and processors for the 2004/05 marketing year have already been signed, the application of certain provisions on contracts should be postponed until the 2005/06 marketing year in the case of tomatoes.

(10) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Products Processed from Fruit and Vegetables,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1535/2003 is amended as follows:

1. Article 7 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Contracts must specify, in particular:

(a) the name and address of the signatory producer organisation;

(b) the name and address of the processor;

(c) the quantities of raw materials to be delivered for processing;

(d) the period covered and the provisional schedule of deliveries to processors;

(e) an undertaking by the processors to process the quantities delivered under the contract in question;

(f) the price to be paid to the producer organisation for the raw materials, which may vary by variety and/or quality and/or delivery period and shall be paid only by bank or post office transfer;

(g) the compensation payable should either party fail to fulfil its contractual obligations, in particular as regards the payment in full of the price specified in the contract, the respect of time limits for payment, and the obligation to deliver and accept the quantities covered by the contract.

[1] OJ L 297, 21.11.1996, p. 29. Regulation last amended by Commission Regulation (EC) No 453/2002 (OJ L 72, 14.3.2002, p. 9).
[2] OJ L 218, 30.8.2003, p. 14.
[3] OJ L 327, 12.12.2001, p. 11. Regulation last amended by Regulation (EC) No 118/2004 (OJ L 17, 24.1.2004, p. 7).

The contract shall also indicate the delivery stage to which the price referred to in point (f) applies and the payment terms. The time limit for payment may not exceed two months from the end of the month of delivery of each consignment.'

(b) in paragraph 2, the phrase 'the price referred to in paragraph 1(e) of this Article' is replaced by 'the price referred to in point (f) of the first subparagraph of paragraph 1 of this Article';

2. Article 9(3) is replaced by the following:

'3. The price of the additional quantity laid down in the amendment may differ from the price referred to in point (f) of the first subparagraph of Article 7(1).';

3. Article 11(4) is replaced by the following:

'4. In exceptional and duly justified cases, Member States may accept contracts and amendments thereto that reach their competent authorities after the time limit laid down in paragraph 3, provided that such late arrival does not hinder their checks.

In the case of amendments to contracts for tomatoes, Member States may authorise, for duly justified reasons, a time limit shorter than the five days laid down in paragraph 3, provided that this does not hinder effective checks on the production aid scheme.';

4. the first subparagraph of Article 21(2) is replaced by the following:

'2. On the basis of a risk analysis, carried out by the Member State where processing takes place or by the Member State in which the producer organisation has its head office, of the producer organisations and processors involved, the Member States may, as far as they are directly concerned, decide to exempt producer organisations from the obligations laid down in paragraph 1.';

5. Article 31(2)(b) is replaced by the following:

'(b) physical and/or accounting checks on at least 5 % of finished products to verify the yield of raw materials processed into the finished product obtained under contract and otherwise than under contract;'

6. Article 33(1) is replaced by the following:

'1. Where it is ascertained, for a given product, that the aid applied for in respect of any marketing year exceeds the amount due, then that amount shall be reduced, unless the difference is clearly due to error. The reduction shall be equal to the difference. If the aid has already been paid, the beneficiary shall pay back double the difference, plus interest calculated in accordance with Article 35a(2).';

7. the following Article 33a is inserted:

'Article 33a

Cancellation of a contract due to the fault of the other party

Where one of the parties to the contracts referred to in Articles 3 and 6a of Regulation (EC) No 2201/96 is not in a position to comply with its contractual obligations due to the fault of the other party, the party concerned may be authorised by the competent authorities of the Member State concerned, in accordance with national law, to cancel such contracts or to transfer them, unchanged, to another approved processor in the case of producer organisations or to another producer organisation in the case of processors.';

8. Article 35 is amended as follows:

(a) the first subparagraph of paragraph 1 is replaced by the following:

'1. Except in cases of *force majeure*, where it is found that the full quantity of tomatoes, peaches or pears accepted for processing under contract has not been processed into one of the products listed in Article 6a(1) of, and Annex I to, Regulation (EC) No 2201/96, the processor shall pay the competent authorities an amount equal to twice the unit amount of the aid multiplied by the quantity of the raw material concerned which has not been processed, plus interest calculated in accordance with Article 35a(2).';

(b) paragraph 2 is replaced by the following:

'2. The Member States shall exclude the processor from the aid scheme provided for in Regulation (EC) No 2201/96 where:

(a) the producer organisation makes false declarations with the collaboration of the processor,

(b) the processor repeatedly fails to pay the price referred to in point (f) of the first subparagraph of Article 7(1) of this Regulation,

(c) the processor repeatedly fails to meet the payment deadline referred to in the second subparagraph of Article 7(1) of this Regulation,

(d) where the processor fails to pay the penalties provided for in paragraph 1 of this Article,

(e) the processor fails to comply with the obligations referred to in Article 30(1), (2), (3), (4) or (5) of this Regulation.

The duration of the exclusion of the processor from the aid scheme shall be not less than one marketing year and shall be determined by the Member States having regard to the seriousness of the failure.';

(c) paragraph 3 is deleted;

9. the following Article 35a is added:

'Article 35a

Payment of the amount recovered

1. Amounts recovered and interest due pursuant to this Chapter shall be paid to the competent paying agency and deducted from expenditure financed by the European Agricultural Guidance and Guarantee Fund.

2. The interest rate to be applied shall be calculated in accordance with national law, and shall not be lower than the interest rate generally applicable to recovery under the national rules.';

10. Article 39 is amended as follows:

(a) in paragraph 2, points (c) and (d) are replaced by the following:

'(c) the quantity of raw materials used to manufacture each of the products referred to in (b);

(d) the quantity of products as referred to in (b) in stock at the end of the previous marketing year in the case of products processed from tomatoes, peaches and pears, broken down, in the case of tomatoes, into products sold and products unsold;'

(b) paragraph 3 is replaced by the following:

'3. No later than 30 September, each Member State shall send the Commission a report on the checks made during the previous marketing year, specifying the number of checks and the results, broken down by type of finding.';

(c) the following paragraph 5 is added:

'5. Member States shall adopt the necessary provisions to ensure that all data contained in the notifications and reports to the Commission referred to in paragraphs 1, 2, 3 and 4 are correct, complete, definitive and have been duly verified by the competent authorities prior to being communicated to the Commission.';

11. the second paragraph of Article 41 is replaced by the following:

'References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in the Annex hereto.';

12. the text in the Annex to this Regulation is added as an Annex to Regulation (EC) No 1535/2003.

Article 2

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 the 2004/05 marketing year. However, Article 1(1)(a) shall apply from the 2005/06 marketing year in the case of tomatoes.

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

Done at Brussels, 10 March 2004.

For the Commission

Franz FISCHLER

Member of the Commission