COMMISSION REGULATION (EC) No 2111/2003

of 1 December 2003

laying down detailed rules for the application of Council Regulation (EC) No 2202/96 introducing a Community aid scheme for producers of certain citrus fruits

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2202/96 of 28 October 1996 introducing a Community aid scheme for certain producers of citrus fruits [1], as last amended by Regulation (EC) No 2699/2000 [2], and in particular Article 2(2), Article 3(4) and Article 6 thereof,

Whereas:

(1) In the light of experience over recent years, it is necessary to amend Commission Regulation (EC) No 1092/2001 of 30 May 2001 laying down detailed rules for the application of Council Regulation (EC) No 2202/96 introducing a Community aid scheme for producers of certain citrus fruits [3], as amended by Regulation (EC) No 350/2002 [4]. In the interests of clarity and rationality, Regulation (EC) No 1092/2001 should be repealed and replaced by a new Regulation.

(2) The marketing years and equivalent periods for citrus fruits harvested within the Community and listed in Article 1 of Regulation (EC) No 2202/96 should be defined with a view to applying uniformly the aid scheme established by that Regulation.

(3) The aid scheme for producers of certain citrus fruits is based on contracts between producer organisations recognised or granted preliminary recognition under Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables [5], as last amended by Commission Regulation (EC) No 47/2003 [6], on the one hand, and processors, on the other hand. Producer organisations may also act as processors in certain circumstances. The types and duration of contracts and the particulars to be included therein should be specified for the purposes of applying the aid scheme.

(4) Taking account of the different structural and varietal aspects of production and of the marketing conditions for fresh and processed citrus fruits observed in Member States, and in order to ensure regular supplies for processing industries and a correct monitoring of the aid scheme by the competent authorities, the minimum duration of contracts other than multiannual should be fixed at at least five complete and consecutive months of the marketing year in question. Those *short-term* contracts should be concluded at different dates of the marketing year in question depending on the length of time covered. To ensure proper application of the aid scheme, time periods covered by two different short-term contracts should be continuous and should not overlap with one another.

(5) For each of the products referred to in Article 1 of Regulation (EC) No 2202/96 contracts should be concluded before a given date, so that the producer organisations can establish their plans and guarantee processors a steady supply. To ensure that the scheme is as effective as possible, the parties to such contracts should nevertheless be authorised to conclude amendments adjusting, subject to certain limits, the quantities originally stipulated therein.

(6) Subject to Article 2 of Regulation (EC) No 2202/96, and in order to allow Community producers and processors to adapt to evolving market demands and increasing international competition, a margin of discretion should be allowed to Member States as regards the fixing of the date before which contracts must be concluded.

(7) In order to improve the way the scheme operates, the competent authorities should know of all producer organisations marketing the production of their members, of members of other producer organisations and of individual producers who wish to qualify under the scheme. The competent authorities should also know of the processors signing contracts with such producer organisations and of the processing capacity of their facilities. To this end, processors of citrus fruits wishing to participate in the aid scheme should make a request to the competent authorities before a date to be determined by the latter.

(8) Due to economic and social factors, the bulk of the processing of citrus fruits harvested in the Community takes place in those Member States that have a national threshold for the product in question, as set out in Annex II to Regulation (EC) No 2202/96. In order to ensure the correct implementation of the system by means of contracts concluded between producer organisations and processors and also guarantee supplies of finished products to consumers at reasonable prices and quality, processors of citrus fruits operating in those Member States should be approved by the competent authorities before they conclude contracts.

[1] OJ L 297, 21.11.1996, p. 49.
[2] OJ L 311, 12.12.2000, p. 9.
[3] OJ L 150, 6.6.2001, p. 6.
[4] OJ L 55, 26.2.2002, p. 20.
[5] OJ L 297, 21.11.1996, p. 1.
[6] OJ L 7, 11.1.2003, p. 64.

(9) In order to reinforce the administration of the aid scheme, Member States that do not have a national threshold for the product in question, as set out in Annex II to Regulation (EC) No 2202/96 should be given the possibility to lay down requirements for approval of processors whose processing plants are located in their territory.

(10) There is a close link between the raw material delivered for processing and the finished product obtained. The raw material should therefore meet certain minimum requirements.

(11) To facilitate a more flexible application of the system, notifications required from producer organisations in order to maintain controls on production should be based on a risk analysis set up by the Member States concerned.

(12) In order to assure and reinforce checks by the competent authorities, whenever processing takes place in a Member State different from that in which the head office of the producer organisation signing the contract is situated, Member States concerned should lay down the necessary additional common provisions and administrative procedures as regards the notifications required from producer organisations and delivery certificates.

(13) Aid applications for each product should include all the information needed to check their acceptability, given the information contained in the contracts.

(14) In order to ensure that the aid scheme is properly applied, producer organisations and processors should forward appropriate information and keep up-to-date documentation. They should, in particular, specify the areas under oranges, small citrus fruits, lemons, grapefruit and pomelos, on the basis of Council Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes ([1]), as last amended by Commission Regulation (EC) No 495/2001 ([2]), and 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]), as amended by Regulation (EC) No 2550/2001 ([4]), for the purposes of all inspections and controls deemed necessary.

(15) For the purposes of administering the aid scheme, procedures should be laid down for physical and documentary checks on delivery and processing operations, which should cover a sufficiently representative number of aid applications. Penalties should be laid down for producer organisations and processors which breach the regulations, in particular by making false declarations, by failing to observe the terms of the contract or by failing to process products delivered. Nevertheless, a margin of discretion should be allowed to Member States as regards those cases where producer organisations are not in a position to comply with their contractual obligations due to the fault of the processor.

(16) While respecting the guarantees and quality of the controls carried out, the number of compulsory checks on the reality of stocks should be reduced. Nevertheless, as regards processors or processing plants that did not participate in the aid scheme in the previous marketing year, at least two checks should be carried out during the first year in which they participate in the scheme.

(17) In order to enable the Commission to implement and monitor this aid scheme and, if necessary, to adapt it swiftly to changing market conditions, the Commission should receive from Member States timely, reliable and updated information.

(18) To facilitate the transition from the previous arrangements to those established by this Regulation, transitional provisions should be adopted.

(19) 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

GENERAL PROVISIONS

Article 1

Definitions

1. For the purposes of this Regulation the following definitions shall apply:

(a) 'producer organisations' means producer organisations as referred to in Article 11 of Regulation (EC) No 2200/96 and producer organisations granted preliminary recognition under Article 14 of that Regulation;

(b) 'association of producer organisations' means an association as referred to in Article 16(3) of Regulation (EC) No 2200/96, set up on the initiative of and controlled by the producer organisations recognised under that Regulation;

(c) 'producer' means any natural or legal person who is a member of a producer organisation delivering their produce to that organisation for the purposes of marketing it under the conditions laid down in Regulation (EC) No 2200/96;

(d) 'individual producer' means any natural or legal person as referred to in Article 4(1) of Regulation (EC) No 2202/96 not belonging to a producer organisation and growing on his holding raw material intended for processing;

([1]) OJ L 355, 5.12.1992, p. 1.
([2]) OJ L 72, 14.3.2001, p. 6.
([3]) OJ L 327, 12.12.2001, p. 11.
([4]) OJ L 341, 22.12.2001, p. 105.

(e) 'processor' means any natural or legal person operating, for economic ends and on its own responsibility, one or more plants with facilities for manufacturing one or more of the products listed in Article 1 of Regulation (EC) No 2202/1996 and, where applicable, approved in accordance with Article 5 of this Regulation;

(f) 'competent authorities' means the body or bodies designated by the Member State for the implementation of this Regulation.

2. Producer organisations which have their head office situated in a Member State may participate in the Community aid scheme provided for in Article 1 of Regulation (EC) No 2202/96, provided that the Member State concerned has a national threshold for the product in question, as set out in Annex II to that Regulation.

3. For the purposes of this Regulation, any references to producer organisations shall be construed as a reference to associations of producer organisations.

Article 2

Marketing years and delivery periods

1. The marketing years within the meaning of Article 6 of Regulation (EC) No 2202/96, hereinafter referred to as the 'marketing years', shall run from 1 October to 30 September for:

(a) sweet oranges,

(b) mandarins, clementines and satsumas,

(c) grapefruit and pomelos,

(d) lemons.

2. Aid to producer organisations delivering mandarins and clementines shall be granted solely on products delivered to the processing industry from 1 October to 30 June.

3. Aid to producer organisations delivering satsumas shall be granted solely on products delivered to the processing industry from 1 October to 31 March.

4. For a given marketing year, the 'equivalent period' referred to in the second subparagraph of Article 5(2) of Regulation (EC) No 2202/96 shall run from 1 April of the previous marketing year to 31 March of the current year.

Article 3

Identification of parcels

For the purposes of this Regulation the parcel identification system shall be that used for the integrated system referred to in Article 4 of Regulation (EEC) No 3508/92. The areas are to be declared in hectares to two decimal places. Article 22 of Regulation (EC) No 2419/2001 shall apply for the purposes of determining the area of parcels during checks provided for in Article 27 of this Regulation.

CHAPTER II

CONTRACTS

Article 4

Form of contracts

1. The contracts referred to in Article 2(1) of Regulation (EC) No 2202/96 (hereinafter referred to as 'contracts') shall be concluded in writing. They shall be concluded separately for each of the basic products listed in Article 1 of that Regulation and shall bear an identification number.

2. Contracts may take one of the following forms:

(a) a contract between a producer organisation, and a processor;

(b) a commitment to supply, where the producer organisation also acts as a processor.

At any time and for each of the basic products listed in Article 1 of Regulation (EC) No 2202/96, no more than one short-term contract and/or single multiannual contract referred to in Article 6(1), may be in force between a producer organisation and a processor.

Article 5

Requests to participate in the aid scheme and approval of processors

1. Processors of sweet oranges, mandarins, clementines, satsumas, lemons, grapefruit and pomelos wishing to participate in the aid scheme for the first time, shall make a request to the competent authorities of the Member State in which their processing plants are located before a date to be determined by the latter. This request shall notably specify the processing capacity per hour of the processor and, where appropriate, the hourly extraction, pasteurisation and concentration capacity of each processing plant operated by the processor.

2. The Member States that have a national threshold for the product in question, as set out in Annex II to Regulation (EC) No 2202/96, shall lay down the requirements for approval of processors whose processing plants are located on their territory and notify them to the Commission. Those requirements shall ensure that processors have the capacity to carry out the necessary operations.

Upon examination of the requests submitted by processors whose processing plants are located on their territory, the competent authorities of the Member States that have a national threshold for the product in question shall publish, for each product, a list of approved processors and their processing plants at least one month before the starting of the marketing year.

3. Member States that do not have a national threshold for the product in question, as set out in Annex II to Regulation (EC) No 2202/96 may also decide to implement the provisions laid down in paragraph 2.

4. Processors whose processing plants are located in a Member State that has a national threshold for the product in question, as set out in Annex II to Regulation (EC) No 2202/96, shall be approved by the national competent authorities before they conclude contracts.

Article 6

Periods and quantities covered by contracts

1. Short-term contracts shall cover at least five complete and consecutive months of the marketing year in question.

Multiannual contracts within the meaning of Article 3(2)(a) of Regulation (EC) No 2202/96 shall cover at least three consecutive marketing years.

In the case of clementines, separate contracts shall be concluded for the two possible uses: juice or segments.

2. Periods covered by two short-term contracts concluded between the same parties in the same marketing year shall be continuous and shall not overlap with one another.

3. Multiannual contracts may cover both the production of the members of the producer organisation signing the contract and the production of members of other producer organisations where the second and third indents of Article 11(1)(c)(3) of Regulation (EC) No 2200/96 apply.

4. To qualify for the aid laid down in Table 2 of Annex I to Regulation (EC) No 2202/96, quantities delivered under multiannual contracts must be at least 1 000 tonnes per contract, product and marketing year.

Article 7

Contents of contracts

1. Contracts shall specify, in particular:

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

(b) the name and address of the processor;

(c) the quantities of raw materials to be delivered for processing, broken down by marketing year in the case of multiannual contracts;

(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.

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

2. In the case of short-term contracts, the price referred to in paragraph 1(f) may be adjusted, with the agreement of both parties, by the written amendments referred to in Article 11(1) and solely for the additional quantities fixed by those amendments.

In the case of multiannual contracts, the price referred to in paragraph 1(f) for each marketing year shall be established when the relevant contract is signed. However, the price applicable to a given marketing year may be revised, with the agreement of both parties, by a written amendment to the contract before 1 November of the marketing year in question.

Article 8

National additional provisions

The Member States may adopt additional provisions covering contracts, in particular as regards compensation payable by processors or producer organisations that fail to fulfil their contractual obligations.

Article 9

Conclusion of contracts in case of a commitment to supply

In the case of a commitment to supply within the meaning of Article 4(2)(b), contracts covering the production of the members of the producer organisation concerned shall be deemed to have been concluded after the following particulars have been notified to the competent authorities:

(a) the name and address of each producer and the reference data and areas of the parcels on which each producer cultivates the raw material;

(b) the estimated total harvest;

(c) the quantity intended for processing, broken down by type of contract;

(d) the period covered and the provisional delivery schedule referred to in Article 7(1)(d);

(e) an undertaking by the producer organisation to process the quantities delivered under the contract in question.

The name and address of each producer referred to in point (a) may be replaced by any other information required by national legislation to allow the producer to be determined unequivocally to the satisfaction of the competent authorities.

The notification shall be sent to the competent authorities by the deadline laid down in Article 12(2).

Article 10

Dates of conclusion of contracts

1. The Member States shall decide the date(s) by which short-term contracts shall be concluded by producer organisations that have their head office located in their territory. In any case, short-term contracts shall be concluded:

(a) no later than 1 November of the marketing year in question in the case of short-term contracts that cover at least eight complete and consecutive months; or

(b) no later than 28 February of the marketing year in question in the case of short-term contracts that cover at least five but less than eight complete and consecutive months.

2. Multiannual contracts shall be concluded no later than 1 November of the marketing year in question.

Article 11

Amendments to contracts

1. In the case of short-term contracts, the quantity initially laid down in the processing contract referred to in Article 7(1)(c) may be amended:

(a) with the agreement of both parties by one or two written amendment(s) in the case of short-term contracts that cover at least eight complete and consecutive months; or

(b) with the agreement of both parties by one written amendment in the case of short-term contracts that cover at least five but less than eight complete and consecutive months.

The total quantity laid down in the amendment(s) referred to in point (a) may not exceed 40 % of the quantity initially laid down in the contract. Where there are two amendments, they shall not relate to more than 20 % of the said initial quantity each.

The total quantity laid down in the amendment referred to in point (b) may not exceed 20 % of the quantity initially laid down in the contract.

The amendments shall include the identification number of the contract to which it relates.

The quantities delivered by the new members or individual producers referred to in Article 15(5) shall be included in the amendments.

2. In the case of multiannual contracts, the quantity initially laid down for each year, within the meaning of Article 7(1)(c), may be amended once each marketing year with the agreement of both parties by a written amendment.

The amendment shall include the identification number of the contract to which it relates. Amendments shall be concluded before 28 February of the marketing year in question.

The quantity to be delivered each year as laid down in the amendment may not exceed:

(a) 40 % of the quantity initially laid down in the contract for the given marketing year if the amendment has been concluded before 1 November of the marketing year in question; or

(b) 30 % of the quantity initially laid down in the contract for the given marketing year if the amendment has been concluded after 1 November but before 28 February of the marketing year in question.

Article 12

Communication to the competent authorities

1. Producer organisations signing contracts shall forward a copy of each contract and any amendment thereto to the competent authorities of the Member State in which their head office is situated and, if appropriate, to the competent authorities of the Member State where processing is to take place.

The total quantity covered by all the contracts signed by a given producer organisation may not exceed, per product, the quantity intended for processing indicated by that producer organisation under point (c) of the first paragraph of Article 9 and Article 15(1)(c).

2. The copies referred to in the first subparagraph of paragraph 1 shall reach the competent authorities no later than 10 working days after the conclusion of the contract or amendment thereto and no less than five working days before the start of deliveries.

In exceptional and duly justified cases, the Member States may accept contracts and amendments thereto that reach their competent authorities after the time limit laid down in the first subparagraph, provided that such late acceptance does not have an adverse effect on controls on the production aid scheme.

3. In any case, no Community aid shall be paid for quantities of raw materials delivered by producer organisations to processors before the competent authorities have received the copies specified in the first subparagraph of paragraph 1.