COMMISSION REGULATION (EC) No 1432/2003

of 11 August 2003

laying down detailed rules for the application of Council Regulation (EC) No 2200/96 regarding the conditions for recognition of producer organisations and preliminary recognition of producer groups

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 Regulation (EC) No 47/2003 [2], and in particular Article 11(2)(a) and Article 48 thereof,

Whereas:

(1) In the light of the experience acquired in recent years, it is proving necessary to amend the provisions of Commission Regulation (EC) No 412/97 of 3 March 1997 laying down detailed rules for the application of Council Regulation (EC) No 2200/96 as regards the recognition of producer organisations [3], as last amended by Commission Regulations (EC) No 43/2003 [4] and No 478/97 of 14 March 1997 laying down detailed rules for the application of Regulation (EC) No 2200/96 as regards preliminary recognition of producer organisations [5] as amended by Commission Regulation (EC) No 243/1999 [6].

(2) In the interests of clarity and rationality, the provisions of the above regulations and their amendments should be concentrated in a single regulation replacing them.

(3) Commission Regulations (EC) No 412/97 and (EC) No 478/97 should therefore be repealed.

(4) Article 11(1)(a) and (3) of Regulation (EC) No 2200/96 make provision for different types of producer organisations. All producer organisations for which an application for recognition is submitted should, as a rule, fall into one of the categories laid down. Provision should however be made to enable a producer organisation to be recognised for some categories of product, for one or several of these categories.

(5) A minimum number of members and a minimum volume of marketable production needs to be laid down. Member States should therefore be allowed to lay down minimum conditions more stringent than those provided for by this Regulation.

(6) In order to help achieve the goals of the common organisation of markets and to ensure that producer organisations carry out their work in a sustainable and effective way, there should be the utmost stability within producer organisations. Membership of a producer organisation should therefore be for a minimum period, particularly with regard to the obligations relating to an operational programme as referred to in Article 15 of Regulation (EC) No 2200/96. It should be left up to the Member States to lay down the notice periods and the dates on which resignation from membership are to take effect.

(7) A producer organisation may not be able to ensure directly in an efficient manner that all its activities take place. Member States should be authorised to lay down appropriate rules.

(8) The main and essential activities of a producer organisation should relate to the production of its members. However, producer organisations should be allowed to engage in other activities, whether or not of a commercial nature, within certain limits. Cooperation between producer organisations should be encouraged by allowing the marketing of fruit and vegetables bought exclusively from another recognised producer organisation to be left out of the calculations both for the purposes of the principal activity and for other activities.

(9) Producer organisations may hold shares in subsidiaries which help to increase the added value of their production of their members. In the case in point, rules should be fixed for calculating the value of marketed production.

(10) In view of the nature of the products, their production and their marketing, the holdings of members of a producer organisation may be located in Member States other than that in which the producer organisation has its head office.

(11) To promote the concentration of supply in the Community, the functions of associations of producer organisations and minimum criteria for their recognition should be laid down, together with certain rules where these associations are transnational in nature.

(12) In order to facilitate the concentration of supply, the merger of existing producer organisations to form new ones should be encouraged and rules determined for the operational programmes of the organisations resulting from mergers.

[1] OJ L 297, 21.11.1996, p. 1.
[2] OJ L 7, 11.1.2003, p. 64.
[3] OJ L 62, 4.3.1997, p. 16.
[4] OJ L 7, 11.1.2003, p. 25.
[5] OJ L 75, 15.3.1997, p. 4.
[6] OJ L 27, 2.2.1999, p. 8.

(13) While upholding the respect for principles whereby a producer organisation must be formed on the own initiative of producers and scrutinised by the producers, it should be left up to the Member States to establish the conditions whereby other natural or legal persons are accepted as members of a producer organisation.

(14) In order to ensure that producer organisations genuinely represent a minimum number of producers, Member States should take steps to ensure that a minority of members who may account for the bulk of production in the producer organisation do not unduly dominate its management and operation.

(15) Article 14 of Regulation (EC) No 2200/96 provides for the possibility of a transitional period of preliminary recognition to enable new producer groups or those which have not been recognised under Regulation (EC) No 2200/96 to satisfy the conditions for recognition laid down in Article 11 of Regulation (EC) No 2200/96. As a result, in order to take account of different production and marketing circumstances in the various Member States, the latter should lay down certain conditions for the grant of preliminary recognition to producer groups which submit a recognition plan.

(16) To promote the setting-up of stable producer organisations capable of making a lasting contribution to the attainment of the objectives of the common market organisation, preliminary recognition should be granted only to producer organisations which can demonstrate their ability to meet all the requirements of Article 11 of Regulation (EC) No 2200/96 within a specified time limit.

(17) To enable producer groups to submit a recognition plan in accordance with Article 14 of Regulation (EC) No 2200/96, the information which producer groups must provide in the plan should be laid down.

(18) To enable producer groups better to meet the recognition conditions, there is a need to authorise changes to recognition plans. To that end, provision should be made for each Member State to be able to request the producer organisation to take corrective action to ensure that the plan is implemented.

(19) The producer group may satisfy the conditions laid down in Article 11 of Regulation (EC) No 2200/96 before the recognition plan is completed. Provision should be made to allow such organisations to submit applications for recognition under this Regulation. For the sake of consistency, the grant of such recognition to a producer organisation must signify the termination of its recognition plan.

(20) To give producer groups granted preliminary recognition the opportunity to implement an operational programme in accordance with 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 programmes, operational funds and Community financial aid [1] as soon as recognition has been granted, it should be possible for such organisations to submit a draft operational programme when they submit their application for recognition.

(21) In order to ensure the sound operation of the market organisation, Member States should keep the Commission regularly informed about the situation regarding the granting of preliminary recognition.

(22) In order to make it more efficient, the system of checks and penalties needs to be clarified as do the consequences which arise from a decision to withdraw recognition, or non-recognition, from a producer organisation.

(23) The provisions of Commission Regulation (EC) No 412/97 in regard to the minimum number of members and minimum volume of marketed production should continue to apply until 31 December 2003 so as to leave the Member States time to lay down new provisions.

(24) 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

Scope

This Regulation lays down detailed rules for the application of Regulation (EC) No 2200/96 regarding the conditions for recognition of producer organisations and preliminary recognition of producer groups referred to in Articles 11 and 14 respectively of that Regulation.

Article 2

Definitions

For the purposes of this Regulation:

(a) 'producer' means any individual or legal person who is a member of a producer organisation and delivers production to it for marketing in accordance with Regulation (EC) No 2200/96;

[1] See page 25 of this Official Journal.

(b) 'value of marketed production' means the value of marketed production as defined in Article 3 of Regulation (EC) No 1433/2003;

(c) 'value of marketable production' means the value of marketed production;

(d) 'producer group' means all organisations which have lodged an application and are granted preliminary recognition under Article 14 of Regulation (EC) No 2200/96;

(e) 'subsidiary' means a company in which one or more producer organisations or associations thereof have taken shares and which helps to increase the added value of the production of their members;

(f) 'associations of producer organisations' means the associations as referred to in Article 16(3) of Regulation (EC) No 2200/96;

(g) 'transnational producer organisation' means any organisation where at least one of the producers' holdings is located in a Member State other than where the organisation has its head office;

(h) 'transnational association of producer organisations' means any association of producer organisations in which at least one of the associated organisations is located in a Member State other than where the association has its head office.

CHAPTER II

PRODUCER ORGANISATIONS

Article 3

Categories of producer organisations

1. Producer organisations may be recognised, at their request, for one or more of the categories of products referred to in Article 11(1)(a)(ii) to (vii) of Regulation (EC) No 2200/96.

With regard to the category of products referred to in Article 11(1)(a)(i) of Regulation (EC) No 2200/96 only individual recognition is possible.

2. Member States shall determine the procedures for individual or multiple recognition of producers in accordance with Article 11 of Regulation (EC) No 2200/96.

Article 4

Minimum size of producer organisations

1. The minimum number of members referred to in Article 11(2)(a) of Regulation (EC) No 2200/96 is hereby fixed at five producers by category.

The minimum volume of marketable production referred to in Article 11(2)(a) of Regulation (EC) No 2200/96 is hereby fixed at EUR 100 000.

2. Member States may fix minimum numbers of producers and minimum volumes of marketable production greater than those laid down in paragraph 1.

They shall forthwith inform the Commission thereof.

3. Where a producer organisation is wholly or partly made up of members which are themselves organisations with legal personality made up of producers, the minimum number of producers referred to in the first indent of the first paragraph shall be calculated on the basis of the number of producers associated with each of the organisations with legal personality.

Article 5

Minimum length of membership

1. The minimum membership period of a producer shall not be less than one year. However, where an operational programme pursuant to Regulation (EC) No 2200/96 has been submitted, no member may renounce their obligations under that programme while it is still running, unless the producer organisation concerned gives its approval.

The Member States may set longer periods for the minimum length of membership provided for in the previous paragraph.

2. Resignation from membership shall be notified to the organisation in writing. The Member States shall lay down the notice periods, which shall not exceed six months, and the dates on which resignation shall take effect.

Article 6

Structures and activities of producer organisations

1. Member States shall satisfy themselves that producer organisations have at their disposal the staff, infrastructure and equipment necessary to achieve the aims laid down in Article 11 of Regulation (EC) No 2200/96 and ensure their essential functioning, in particular:

— the knowledge of their members' production,

— sorting, storing and packaging the production of their members,

— commercial and budgetary management,

— centralised bookkeeping and a system of invoicing.

2. Member States shall determine the conditions on which a producer organisation may entrust to third parties the performance of the tasks set out in Article 11 of Regulation (EC) No 2200/96.