COMMISSION REGULATION (EC) No 103/2004

of 21 January 2004

laying down detailed rules for implementing Council Regulation (EC) No 2200/96 as regards intervention arrangements and market withdrawals in the fruit and vegetable sector

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], and in particular Article 30(6) and (7) and Article 48 thereof,

Whereas:

(1) The experience gained from the implementation of Commission Regulation (EC) No 659/97 of 16 April 1997 laying down detailed rules for the application of Council Regulation (EC) No 2200/96 as regards intervention arrangements in the fruit and vegetables sector [2] has shown that certain changes need to be made to those arrangements. In the interests of ensuring that the rules implementing Regulation (EC) No 2200/96 are alway clear, Regulation (EC) No 659/97 should be replaced. With a view to rationalising the rules on withdrawals, Commission Regulation (EC) No 1492/97 of 29 July 1997 laying down detailed rules for the application of Council Regulation (EC) No 2200/96 as regards the fixing of the conditions for the distillation of certain fruit withdrawn from the market [3] should also be incorporated into the new regulation. Regulations (EC) No 659/97 and (EC) No 1492/97 should therefore be repealed.

(2) Title IV of Regulation (EC) No 2200/96 establishes the intervention arrangements for the products referred to in Article 1(2) thereof and provides for the grant of Community compensation for the products listed in Annex II thereto. Article 15(3) of the same regulation provides that operational funds may be used to finance withdrawals, particularly of products not listed in Annex II, or to pay a supplement to the Community compensation provided for in Title IV. Detailed rules should be laid down for implementing those provisions.

(3) Since the terms 'products not put up for sale', 'market withdrawals' and 'products withdrawn from the market' are equivalent, they should be covered by a single definition. The terms 'marketed quantity' and 'marketed production' should also be covered by a single definition, which should be consistent with the term 'value of production marketed' as used in 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 [4] and should thus include quantities withdrawn from the market for subsequent free distribution.

(4) It should be specified that the provisions relating to packaging requirements are to apply to products withdrawn from the market only in the case of miniature products which might otherwise be confused with products not meeting the minimum size requirements.

(5) The marketing years for the products concerned and detailed rules on averages over a three-year period as referred to in Article 23(5) of Regulation (EC) No 2200/96 should be defined.

(6) In order to enable the inspection authorities to plan their inspection operations, producer organisations must notify them in advance of each withdrawal operation. Those authorities will then authorise each withdrawal operation on the basis of the findings from any checks they perform. Provision should be made for those authorities to be present at the denaturing of withdrawn products which are not intended for human consumption after free distribution.

(7) Article 23(3) of Regulation (EC) No 2200/96 determines the Community withdrawal compensation for the products listed in Annex II thereto. The arrangements for paying this compensation should permit compliance at all times with the limits laid down in Article 23 of Regulation (EC) No 2200/96 as well as payment within reasonable deadlines.

(8) Since the withdrawals provided for in Article 15(3) of Regulation (EC) No 2200/96 are financed by the operational funds, payment should be made in accordance with Regulation (EC) No 1433/2003. In the interests of clarity, however, the maximum supplements to the Community withdrawal compensation referred to in the second subparagraph of Article 15(3) of Regulation (EC) No 2200/96 should be fixed.

[1] OJ L 297, 21.11.1996, p. 1. Regulation as last amended by Commission Regulation (EC) No 47/2003 (OJ L 7, 11.1.2003, p. 64).

[2] OJ L 100, 17.4.1997, p. 22. Regulation as last amended by Regulation (EC) No 1135/2001 (OJ L 154, 9.6.2001, p. 9).

[3] OJ L 202, 30.7.1997, p. 28.

[4] OJ L 203, 12.8.2003, p. 25.

(9) Under the first, second and third indents of Article 30(1)(a) and Article 30(1)(b) of Regulation (EC) No 2200/96, fruit and vegetables withdrawn from the market may be distributed free of charge as humanitarian aid to certain categories of the needy by charitable organisations and certain establishments and institutions, both inside the Community and outside it. The charitable organisations involved should be approved beforehand. The procedures for implementing food aid should be compatible with the general principles pursued by the Community regarding food aid in kind.

(10) In order to facilitate the free distribution of withdrawn products, the processing of products withdrawn for free distribution should be authorised, either at the expense of the charitable organisation or through any other procedure which guarantees equal treatment of the processors concerned.

(11) Where fruit and vegetables withdrawn from the market are intended for free distribution, the transport, sorting and packaging costs are to be borne by the Community pursuant to Article 30(6) of Regulation (EC) No 2200/96. It must be stipulated that the transport costs must be paid. Standard rates should be fixed for the payment of transport, sorting and packaging costs.

(12) Article 30(1) of Regulation (EC) No 2200/96 provides that products withdrawn from the market may be put to certain uses other than free distribution. The Member States should be allowed to use the most appropriate destination, provided this does not distort competition among the industries concerned. For certain products withdrawn from the market, one such destination may be processing into alcohol. In order to ensure that the distillation of such products does not disturb the market in alcohol, such distillation alcohol should be denatured and intended for industrial, non-food uses.

(13) Article 25 of Regulation (EC) No 2200/96 requires the Member States to establish a national framework for drawing up the general conditions relating to the withdrawal methods which respect the environment. The minimum content of such conditions should be defined, in order to ensure that withdrawals are conducted in conditions which respect the environment, in particular where withdrawn products are destroyed or distributed to animals by spreading on the ground.

(14) Procedures are needed for physical and documentary checks on withdrawal operations, both at the time of withdrawal and at the end of the marketing year. In the event of infringements, detailed rules should be laid down for the recovery of sums wrongly paid and for deterrent penalties in proportion to the seriousness of the irregularity committed. Monitoring operations must cover the producer organisations and charitable organisations involved.

(15) Since setting up the arrangements for implementing this Regulation will temporarily entail an additional administrative workload for the Member States, this Regulation should apply, depending on the products, from the first marketing year following the date of its entry into force. Moreover, the provisions relating to transmission of the producer prices provided for in Regulation (EC) No 659/97 must continue to apply until 1 July 2004, pending the adoption of new provisions in a separate act.

(16) 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 RULES

Article 1

Scope

This Regulation lays down detailed rules for implementing:

(a) intervention as referred to in Title IV of Regulation (EC) No 2200/96 for the products listed in Annex II to that Regulation;

(b) withdrawals from the market as referred to in Article 15(3) of Regulation (EC) No 2200/96 for products referred to in Article 1(2) of that Regulation but not listed in Annex II thereto.

Article 2

Definitions

1. For the purposes of this Regulation, 'products withdrawn from the market', 'market withdrawals' and 'products not put up for sale' mean products:

(a) not sold through a producer organisation as referred to in Article 11 of Regulation (EC) No 2200/96, in accordance with the intervention arrangements referred to in Title IV of that Regulation;

(b) withdrawn from the market as referred to in Article 15(2)(a) of that Regulation.

2. For each product, the 'marketed quantity' of a producer organisation, as referred to in Article 23(3) of Regulation (EC) No 2200/96, shall be the sum of:

(a) the production of members actually sold through the producer organisation or processed by it;

(b) the production of members of other producer organisations marketed through the producer organisation concerned in accordance with the second and third indents of Article 11(1)(c)(3) of that Regulation;

(c) products withdrawn from the market and intended for free distribution as referred to in Article 30(1)(a) and (b) of Regulation (EC) No 2200/96.

The marketed quantity referred to in the first subparagraph shall not include the production of members of producer organisations marketed in accordance with the first, second and third indents of Article 11(1)(c)(3) of Regulation (EC) No 2200/96.

The marketed production referred to in Article 24 of Regulation (EC) No 2200/96 shall be equivalent to the marketed quantity as defined in the first subparagraph of this paragraph.

CHAPTER II

MARKET WITHDRAWALS

Article 3

Marketing standards

1. Where standards have been adopted pursuant to Article 2 of Regulation (EC) No 2200/96, products withdrawn from the market must comply with those standards, except for the provisions on the presentation and marking of products. Products may be withdrawn in bulk in large-capacity crates, all sizes together, provided the minimum requirements for class II, in particular as regards quality and size, are complied with.

However, miniature produce as defined in the relevant standards must comply with the applicable marketing standards, including the provisions on the presentation and marking of products.

2. If no marketing standards have been adopted pursuant to Article 2 of Regulation (EC) No 2200/96, the minimum requirements laid down in Annex I hereto must be met. The Member States may lay down additional rules supplementing these minimum requirements.

Article 4

Marketing years

The marketing year for products qualifying for Community withdrawal compensation as referred to in Article 23(3) of Regulation (EC) No 2200/96 and products qualifying for withdrawal as referred to in Article 15(3) of that Regulation shall run from 1 January to 31 December for all products except:

(a) apples and pears, for which it shall run from 1 August to 31 July of the following year;

(b) citrus fruit, for which it shall run from 1 October to 30 September the following year.

Article 5

Three-year average

The average over a three-year period referred to in Article 23(5) of Regulation (EC) No 2200/96 shall be the arithmetic mean of the withdrawals recorded as a percentage of the quantity marketed during the current marketing year and the two previous marketing years.

Article 6

Prior notification of withdrawal operations

1. Producer organisations and associations thereof shall notify the competent national authorities, by written telecommunication or electronic message, of each withdrawal operation they undertake. Such notification shall specify, in particular, the list of products taken into intervention and their chief characteristics according to the relevant marketing standards, the estimated quantity of each product concerned, their intended destination and the place where the withdrawn products may be inspected as provided for in Article 23(1). Notifications shall include a certificate attesting that the withdrawn products conform to the standards in accordance with Article 2 of Regulation (EC) No 2200/96 or, where no such standards exist, the minimum requirements laid down in Annex I hereto.

2. The Member States shall lay down the arrangements for producer organisations to make the notification provided for in paragraph 1, in particular as regards time limits.

3. Within the time limits referred to in paragraph 2, the Member States shall:

(a) either carry out a check as referred to in Article 23(1), following which, if no irregularities are detected, it shall authorise the withdrawal operation as noted in the check;

(b) or, in the cases referred to in Article 23(3), not carry out a check as referred to in Article 23(1), in which case it shall inform the producer organisation of this by written telecommunication or electronic message and authorise the withdrawal operation as notified.

4. The Member States shall take any measures needed to ensure that growers who do not belong to a producer organisation are actually able to benefit from the intervention arrangements provided for in Article 24 of Regulation (EC) No 2200/96.

Article 7

Payment of Community withdrawal compensation

1. For the products listed in Annex II to Regulation (EC) No 2200/96, the Community withdrawal compensation referred to in Articles 23, 24 and 26 of that Regulation shall be paid, provided the producer organisations referred to in Article 11 of Regulation (EC) No 2200/96 or their associations submit a payment application file to the competent authority of the Member State.

2. The Member States shall fix the minimum period to be covered by the payment application files referred to in paragraph 1.

3. The payment application files referred to in paragraph 1 shall be accompanied by supporting documents relating to:

(a) the quantities of each product marketed since the beginning of the marketing year concerned;

(b) the quantities of each of the products withdrawn from the market;

(c) the net receipts earned from the withdrawn products concerned;

(d) the final destination of each of the products concerned, in the form of a take-over certificate (or equivalent document) attesting that the withdrawn products have been taken over by a third party with a view to their free distribution, distillation, use as animal feed or industrial non-food use;

(e) a statement that the withdrawal operations concerned have been authorised by the Member State for the quantities concerned in accordance with Article 6(3).

The quantities referred to at (a) and (b) shall be broken down as between:

— producer organisations themselves,

— individual growers not belonging to a producer organisation, on whose behalf a producer organisation has made withdrawals in accordance with Article 24 of Regulation (EC) No 2200/96.

In the case of products which have been composted or biodegraded, payment application files must contain a supporting document as drawn up by the Member States pursuant to Article 22 of this Regulation.

4. Producer organisations must send all their full payment-application files to the national authorities no later than one month after the end of the marketing year for the products concerned.

5. Where a producer organisation fails to submit its payment application files by the deadline provided for in paragraph 4, the amount of Community withdrawal compensation paid shall be reduced by 20 % if the file is less than one month late, 50 % if it is less than three months late and 100 % if it is more than three months late.

6. When considering each application, the Member States shall ensure that the quantity not put up for sale since the beginning of the marketing year concerned does not exceed the limits laid down in Articles 23 and 24 of Regulation (EC) No 2200/96. Where those limits are exceeded, the Community withdrawal compensation shall be paid only up to those limits, and taking account of the compensation already paid. Surplus quantities shall be included when the next file is considered.

7. Subject to the penalties provided for in Articles 26 and 27, the Member States shall pay the Community withdrawal compensation to producer organisations or their associations, minus the net receipts they have earned on the products withdrawn from the market, within four months of receiving their complete payment application file.

Article 8

Specific rules on withdrawals financed from operational funds

1. Regulation (EC) No 1433/2003 shall apply to the payment of withdrawal compensation for products not listed in Annex II to Regulation (EC) No 2200/96 and the grant of a supplement to the Community withdrawal compensation provided for in (a) and (b) of the first subparagraph of Article 15(3) of Regulation (EC) No 2200/96.

2. Member States fixing a maximum level for the supplement to the Community withdrawal compensation according to the second subparagraph of Article 15(3) shall take account of the following factors:

(a) withdrawals are a short-term instrument for stabilising supply of the market in fresh produce;

(b) withdrawals may under no circumstances be used as an alternative outlet to the market;

(c) withdrawals must not disturb the management of the market in fruit and vegetables intended for processing.

Member States shall ensure that producer organisations also take account of these factors when fixing the amount of withdrawal compensation referred to in (a) in the first subparagraph of Article 15(3) of Regulation (EC) No 2200/96.

The maximum supplements which may be paid by Member States applying the second subparagraph of Article 15(3) of Regulation (EC) No 2200/96 shall be as set out in Annex II hereto.

Article 9

Reporting data on withdrawals

1. Before the 15th day of each month, the Member States shall forward to the Commission by electronic mail, in the format drawn up by the Commission, an estimate of the products not put up for sale in the previous month, broken down by product.

2. At the end of each marketing year, the Member States shall forward to the Commission the details set out in Annex III for each product concerned.

These details shall be sent:

(a) not later than 15 May following each marketing year in the case of tomatoes, aubergines, cauliflowers, apricots, peaches, nectarines, grapes, melons, watermelons and products not listed in Annex II to Regulation (EC) No 2200/96;

(b) not later than 15 February following each marketing year in the case of pears, apples, lemons, sweet oranges, satsumas, clementines and mandarins.

3. If the Member States do not forward the details referred to in paragraph 2, or if the details forwarded appear incorrect in the light of objective facts in the Commission's possession, the Commission may suspend payment of the advances on the provision for expenditure referred to in Article 7(2) of Council Regulation (EC) No 1258/1999 [1] pending provision of the requisite details.

CHAPTER III

DESTINATION OF WITHDRAWN PRODUCTS

SECTION 1

Free distribution

Article 10

Free distribution to charitable organisations

1. In accordance with the first and third indents of Article 30(1)(a) of Regulation (EC) No 2200/96, products withdrawn from the market during a given marketing year may be made available to charitable organisations approved by the Member States for free distribution, at their request.

2. Every three years, the Member States shall send the Commission by electronic mail the list of approved charitable organisations referred to in paragraph 1. The Commission shall forward these lists to all the Member States.

3. The Member States shall take the necessary steps to facilitate contacts and operations between producer organisations and approved charitable organisations.

[1] OJ L 160, 26.6.1999, p. 103.

Article 11

Free distribution to institutions and establishments

Products withdrawn from the market may be made available to penal institutions and social, educational and health institutions as referred to in the second indent of Article 30(1)(a), and Article 30(1)(b) of Regulation (EC) No 2200/96 and designated by the Member States.

Old people's homes, nurseries and psychiatric institutions shall be treated as belonging to the above establishments.

Article 12

Free distribution outside the Community for the benefit of vulnerable groups in third countries

1. Paragraphs 2 to 7 of this Article shall apply in the case referred to in the third indent of Article 30(1) of Regulation (EC) No 2200/96.

2. Products dispatched by the charitable organisations referred to in Article 10 as humanitarian aid shall not be eligible for export refunds. Products withdrawn from the market and then processed in accordance with Articles 13 and 14 may not be distributed in third countries by the charitable organisations concerned.

The customs export document, the transit document and any T5 document issued shall be endorsed 'without refund'.

3. The Member States may submit to the Commission a request to carry out an operation to distribute products withdrawn from the market in cases justified by an emergency. All requests must be justified by providing the following information in particular:

(a) the country of destination and the reasons for each operation, based on the existence of a recognised humanitarian crisis, a request from the beneficiary countries and clearly identified needs of well-defined vulnerable groups;

(b) the type of products to be supplied and their nutritional value in relation to the grounds for the operation;

(c) the number of beneficiaries justifying the volumes to be distributed;

(d) the beneficiary communities and groups and the planned distribution points in the third countries;

(e) the names of the charitable organisations involved in each operation and their respective roles;

(f) the request from the government of the country or countries of destination for the planned operation.