

## COMMISSION REGULATION (EC) No 481/1999

of 4 March 1999

## laying down general rules for the management of promotional programmes for certain agricultural products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organisation of the market in oils and fats<sup>(1)</sup>, as last amended by Regulation (EC) No 1638/98<sup>(2)</sup>, and in particular Article 11(5) thereof,

Having regard to Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organisation of the market in wine<sup>(3)</sup>, as last amended by Regulation (EC) No 1627/98<sup>(4)</sup>, and in particular Article 46(4) thereof,

Having regard to Council Regulation (EEC) No 1195/90 of 7 May 1990 on measures to increase the consumption and utilisation of apples<sup>(5)</sup>, and in particular Article 5 thereof,

Having regard to Council Regulation (EEC) No 1201/90 of 7 May 1990 on measures to increase the consumption of citrus fruit<sup>(6)</sup>, and in particular Article 4 thereof,

Having regard to Council Regulation (EEC) No 1332/92 of 18 May 1992 introducing specific measures for table olives<sup>(7)</sup>, as last amended by Regulation (EC) No 1267/95<sup>(8)</sup>, and in particular Article 5 thereof,

Having regard to Council Regulation (EEC) No 2067/92 of 30 June 1992 on measures to promote and market quality beef and veal<sup>(9)</sup>, and in particular Article 4 thereof,

Having regard to Council Regulation (EEC) No 2073/92 of 30 June 1992 on promoting consumption in the Community and expanding the markets for milk and milk products<sup>(10)</sup>, and in particular Article 4 thereof,

Having regard to Council Regulation (EC) No 2275/96 of 22 November 1996 introducing specific measures for live plants and floricultural products<sup>(11)</sup>, and in particular Article 5 thereof,

Whereas Commission Regulations (EEC) No 3461/85<sup>(12)</sup>, as last amended by Regulation (EC) No 1402/97<sup>(13)</sup>, (EEC) No 2282/90<sup>(14)</sup>, as last amended by Regulation (EC) No 2404/96<sup>(15)</sup>, (EEC) No 3601/92<sup>(16)</sup>, as amended by Regulation (EC) No 2507/94<sup>(17)</sup>, (EEC) No 1318/93<sup>(18)</sup>, as last amended by Regulation (EC) No 351/1999<sup>(19)</sup>, (EC) No 3582/93<sup>(20)</sup>, as last amended by Regulation (EC) No 1432/97<sup>(21)</sup>, and (EC) No 803/98<sup>(22)</sup>, on the promotion of grape juice, apples, citrus fruit, table olives, quality beef and veal, milk and milk products, and live plants and floricultural products respectively lay down different rules for different sectors as regards the duration of programmes, the financial management of contracts and, in particular, the terms of payment;

Whereas the various rules on the implementation of promotional contracts should be harmonised in the interests of sound financial management, in particular as regards the duration of the contracts;

Whereas the various provisions concerning fulfilment of the commitments made must be laid down in contracts concluded between the parties concerned and the competent national authorities within a reasonable time limit on the basis of standard contracts supplied by the Commission;

Whereas, in order to ensure that contracts are properly carried out, contractors should lodge a security in favour of the competent body, equal to 15 % of the Community contribution; whereas, for the same purpose, a security should be lodged if an advance payment is requested;

Whereas, for the purposes of the primary requirement within the meaning of Article 20 of Commission Regulation (EEC) No 2220/85<sup>(23)</sup>, as last amended by Regulation (EC) No 3403/93<sup>(24)</sup>, the quality beef and veal sector should, because of its special features, be distinguished from the other sectors included in the promotional programmes;

<sup>(1)</sup> OJ L 172, 30. 9. 1966, p. 3025/66.

<sup>(2)</sup> OJ L 210, 28. 7. 1998, p. 32.

<sup>(3)</sup> OJ L 84, 27. 3. 1987, p. 1.

<sup>(4)</sup> OJ L 210, 28. 7. 1998, p. 8.

<sup>(5)</sup> OJ L 119, 11. 5. 1990, p. 53.

<sup>(6)</sup> OJ L 119, 11. 5. 1990, p. 65.

<sup>(7)</sup> OJ L 145, 27. 5. 1992, p. 1.

<sup>(8)</sup> OJ L 123, 3. 6. 1995, p. 4.

<sup>(9)</sup> OJ L 215, 30. 7. 1992, p. 57.

<sup>(10)</sup> OJ L 215, 30. 7. 1992, p. 67.

<sup>(11)</sup> OJ L 308, 29. 11. 1996, p. 7.

<sup>(12)</sup> OJ L 332, 10. 12. 1985, p. 22.

<sup>(13)</sup> OJ L 194, 23. 7. 1997, p. 1.

<sup>(14)</sup> OJ L 205, 3. 8. 1990, p. 8.

<sup>(15)</sup> OJ L 327, 18. 12. 1996, p. 27.

<sup>(16)</sup> OJ L 366, 15. 12. 1992, p. 17.

<sup>(17)</sup> OJ L 267, 18. 10. 1994, p. 3.

<sup>(18)</sup> OJ L 132, 29. 5. 1993, p. 83.

<sup>(19)</sup> OJ L 44, 18. 2. 1999, p. 10.

<sup>(20)</sup> OJ L 326, 28. 12. 1993, p. 23.

<sup>(21)</sup> OJ L 196, 24. 7. 1997, p. 51.

<sup>(22)</sup> OJ L 115, 17. 4. 1998, p. 5.

<sup>(23)</sup> OJ L 205, 3. 8. 1985, p. 5.

<sup>(24)</sup> OJ L 310, 14. 12. 1993, p. 4.

Whereas, for the purposes of budget management, provision must be made for a penalty for failure to submit payment applications or non-compliance with the deadline for the submission of intermediate quarterly payment applications or for late payment by Member States;

Whereas the payments to be made may take up the whole of the Community financial contribution, leaving no balance to pay; whereas, in order to avoid that risk and in the interests of sound financial management, it should be stipulated that the advance and the various intermediate payments cannot exceed 75 % of the Community contribution; whereas, in the same interests, the application for the balance should be made by the competent body within a set time limit;

Whereas Member States must monitor the implementation of measures and the Commission must be kept informed of the results of the measures provided for in this Regulation; whereas, in the interests of sound financial management, cooperation between Member States should be provided for where measures are carried out in a Member State other than that in which the competent body is established;

Whereas, for reasons of sound financial management and in order to improve the effectiveness of the measures carried out, provision should be made for independent evaluation of measures, in addition to internal evaluation by the contractor; whereas rules for carrying out and financing such external evaluation should be laid down;

Whereas, where the overall budget for a programme to be evaluated is relatively low and the cost of evaluation may turn out to be disproportionately high compared with the budget, provision should be made, by way of an exception, to waive the requirement for such external evaluation;

Whereas, where several programmes are implemented in any Member State, it may prove economical to entrust a single body with the task of evaluating all the programmes in that Member State;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committees for Wine, Milk and Milk Products, Fruit and Vegetables, Beef and Veal, Live Plants, and Oils and Fats,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

This Regulation lays down general indirect management rules applying to promotional programmes for the following:

- grape juice,
- milk and milk products,
- apples and citrus fruit,
- quality beef and veal,
- live plants and floricultural products,
- olive oil and table olives, where this type of management applies.

#### *Article 2*

1. Under the programme selection procedure:

- as soon as the Member State is notified of the Commission decision approving promotional programmes, or
- in the case of live plants and floricultural products, as soon as the final list of measures selected by the Member State concerned is drawn up,

all applicants shall be informed whether or not their applications have been selected.

2. The competent bodies shall conclude contracts with the parties concerned within 30 calendar days of notification of the Commission decision or, in the case of live plants and floricultural products, of the drawing up of the final list of measures selected by the Member State concerned. Beyond that deadline, no contracts may be concluded without prior authorisation from the Commission.

The competent bodies shall use standard contracts supplied by the Commission. Those contracts shall contain the conditions applicable, which the two contracting parties shall be deemed to know and accept.

Subject to extension authorised by the Commission, the measures provided for in the contract shall be implemented within 12 months of the date on which the contract is signed by the two parties. Any extension may not exceed three months and must be the subject of a duly reasoned application from the contractor to the competent body before the expiry date.

3. Contracts may not be concluded by the two parties until a security has been lodged equal to 15 % of the maximum Community financial contribution in order to guarantee satisfactory performance of the contract. The security shall be lodged in accordance with Title III of Regulation (EEC) No 2220/85.

However, if the contractor is a body governed by public law or acts under the supervision of such a body, a written guarantee from the supervisory authority covering an amount equal to the percentage specified in the first subparagraph may be accepted by the competent body, provided that the supervisory authority undertakes to verify that:

- the obligations entered into are properly discharged,
- the sums received are used properly to discharge the obligations entered into.

Proof of lodging of the security must reach the competent body before the expiry of the time limit laid down in the first subparagraph of paragraph 2.

The security shall be released within the time limits and under the conditions laid down in Article 4 of this Regulation for payment of the balance.

4. The primary requirement within the meaning of Article 20 of Regulation (EEC) No 2220/85 shall be the implementation of the measures covered by the contract.

However, in the case of quality beef and veal, two other primary requirements within the meaning of that Article shall apply, namely:

- (a) the implementation of the measures provided for in the control record referred to in Article 4(2)(b) of Regulation (EEC) No 1318/93;
- (b) where appropriate, the application of the penalties provided for in the rules of procedure of the body referred to in Article 4(2)(e) of the abovementioned Regulation in the event of non-compliance with the specifications by its members, and comprising in particular the withdrawal of eligibility for the promotional measure.

5. The competent body shall send a copy of the contract and proof of lodging of the security to the Commission immediately.

If the contract provides for implementation of measures in another Member State, the competent body shall notify the authorities of the latter Member State that the contract has been signed.

### Article 3

1. Within 30 calendar days of the signing of the contract, the contractor may submit an application for an advance to the competent body, accompanied by the security as indicated in paragraph 3. Beyond that date, no applications for an advance may be made.

The advance may cover up to 30 % of the Community financing.

2. The competent authority must pay the advance within 30 calendar days of submission of the payment application. Where payment is made late, the rules laid down in Article 4 of Commission Regulation (EC) No 296/96<sup>(1)</sup> shall apply.

3. The advance shall be paid subject to the lodging by the contractor of a security equal to 110 % of that advance in favour of the competent body in accordance with the conditions laid down in Title III of Regulation (EEC) No 2220/85.

However, if the contractor is a body governed by public law or acts under the supervision of such a body, a written guarantee from the supervisory authority covering an amount equal to the percentage specified in the first subparagraph may be accepted by the competent body, provided that the supervisory authority undertakes to pay the amount covered by the guarantee should entitlement to the advance paid not be established.

### Article 4

1. Subsequent applications for intermediate payments shall be submitted before the end of the calendar month following the expiry of each period of 90 calendar days calculated from the date of signature of the contract. These applications shall cover expenditure incurred and paid during that quarter and shall be accompanied by the relevant supporting documents and an interim report on the implementation of the contract. Where no expenditure has been incurred during the three-month period in question, information to that effect shall be submitted within the same time limits as for applications for intermediate payments.

Except in cases of *force majeure*, where an application for an intermediate payment and the relevant documents are submitted late, the payment shall be reduced by 3 % for each whole month by which it is overdue.

The payments and the advance referred to in Article 3(1) may not in aggregate exceed 75 % of the total Community financial contribution. Once that level is reached, no more intermediate payment applications shall be submitted.

2. Applications for payment of the balance (equal to at least 25 %) shall be submitted within four months of completion of the measures covered by the contract.

To be considered as duly submitted, applications must be accompanied by:

- (a) all relevant supporting documents relating to expenditure;
- (b) a summary of the work carried out (report on operations);
- (c) an internal evaluation report, drawn up by the contractor, on the results obtained, as ascertainable on the date of the report, and the use that can be made of them.

Except in cases of *force majeure*, where an application for payment of the balance is submitted late, the balance shall be reduced by 3 % for each month by which it is overdue.

3. The balance shall be paid subject to verification of the documents referred to in paragraph 2.

The balance paid shall be reduced according to the extent of non-compliance with the primary requirement referred to in Article 2(4).

<sup>(1)</sup> OJ L 39, 17. 2. 1996, p. 5.

4. The security referred to in Article 3(3) shall be released on condition that definitive entitlement to the advance paid has been established.

5. The competent body shall make the payments referred to in the previous paragraphs within 60 calendar days of receipt of the application. However, at any time within 60 days of the date the application for payment is first recorded as received, that period may be interrupted by notifying the contractor concerned that the application is not acceptable because the amount is not due, because the supporting documents required for all additional applications have not been supplied or because the competent body sees the need for further information or checks. The payment period shall start running again from the date of receipt of the information requested, which must be transmitted within 30 calendar days. Except in cases of *force majeure*, where the above payments are made late, the amount reimbursed to the Member State shall be reduced in accordance with the rules laid down in Article 4 of Regulation (EC) No 296/96.

6. The security referred to in Article 2(3) must remain valid until the balance is paid and shall be released by means of a letter of discharge issued by the competent body.

7. Within 30 calendar days of receipt, the competent body shall send the Commission:

- the quarterly reports on implementation of the contract,
- the summary of the work carried out, and
- the internal evaluation report.

8. After the balance has been paid, the competent body shall send the Commission a financial statement detailing the expenditure incurred under the contract.

The competent body shall also certify that, in the light of checks carried out, all the expenditure may be considered eligible under the terms of the contract.

9. Securities withheld and penalties imposed shall be deducted from the expenditure declared to the EAGGF Guarantee Section.

#### Article 5

1. The competent bodies shall take the steps necessary, in particular by means of technical, administrative and accounting checks on the contractor, any partners or subcontractors, to verify:

- (a) the accuracy of the information and supporting documents supplied; and
- (b) the fulfilment of all the obligations laid down in the contract.

Without prejudice to Council Regulation (EEC) No 595/91<sup>(1)</sup>, they shall inform the Commission at the earliest opportunity of any irregularities detected during checks.

2. For the purposes of paragraph 1, where the contractor implements measures in a Member State other than that in which the contracting competent body is established, the competent body of the Member State concerned, duly notified at least 10 working days in advance, shall afford the latter all necessary assistance in verification and checking.

3. The competent body of the Member State concerned shall determine the most appropriate way of carrying out checks on measures implemented in third countries and shall notify the Commission thereof.

4. The Commission may take part at any time in the verifications and checks referred to in paragraphs 1, 2 and 3. To that end, the competent bodies of the Member States shall notify the Commission in good time of verifications and checks as indicated in paragraphs 2 and 3.

The Commission may also carry out any additional checks it considers necessary.

#### Article 6

1. With a view to the drafting of the reasoned opinion on each programme presented or, in the case of live plants and floricultural products, to the drawing up of the provisional list of measures selected, the competent body of the Member State concerned shall conduct an ex-ante analysis of the suitability of the proposed measures in relation to the general and specific objectives set in the programme concerned, in accordance with the rules in force in the sector.

2. With due regard to Community rules, the competent body shall ensure as far as possible and by all appropriate means that independent bodies compete to undertake an external evaluation. The choice of evaluator must be approved by the Commission. In the case of live plants and floricultural products, the evaluation shall be conducted during the final year of implementation of the programme.

The external evaluation shall comprise the following:

- monitoring of the planned measures using a significant sample,
- an ex-post evaluation of the results obtained in relation to the objectives originally set,
- a cost/benefit analysis of the main measures of the programme on the basis of performance indicators (cost, output and impact).

The evaluation report, to be drawn up within four months of completion of the measures, shall be forwarded to the Commission at the earliest opportunity.

<sup>(1)</sup> OJ L 67, 14. 3. 1991, p. 11.

By way of an exception, where the total budget for the programme to be evaluated is less than EUR 100 000, the Commission may, on a reasoned request from the competent body, waive the requirement for an evaluation of that programme.

3. Where more than one programme is implemented in a given Member State, a single body may be given the task of conducting the external evaluation of all the programmes in that Member State. The cost of evaluation shall be broken down among the various programmes in proportion to their individual budgets.

4. The evaluation shall be financed on the same terms as the measures contained in the programme.

5. Subject to the last subparagraph of paragraph 2, where evaluation is not carried out or is incomplete, the Commission shall take this into account when considering subsequent programmes, irrespective of the financial implications for the evaluating body.

#### *Article 7*

The exchange rate applicable shall be governed by Commission Regulation (EC) No 2799/98 <sup>(1)</sup>.

#### *Article 8*

1. Where undue payments are made, the beneficiary shall repay the amounts concerned, plus interest on the time elapsing between payment and repayment by the beneficiary.

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

Done at Brussels, 4 March 1999.

The interest rate to be used shall be that applied by the European Monetary Institute to its operations in euro on the date of the undue payment, as published in the 'C' series of the *Official Journal of the European Communities*, plus three percentage points.

2. Amounts recovered and the relevant interest shall be paid to the paying agencies and departments and deducted by them from the expenditure financed by the European Agricultural Guidance and Guarantee Fund in proportion to the Community financial contribution.

#### *Article 9*

The following provisions are repealed:

- the final sentence of Article 2(3), Article 2(3a) and (4), the second sentence of the fourth indent of Article 3(2), the final subparagraph of Article 3(2) and Articles 5 and 6 of Regulation (EEC) No 3461/85,
- Articles 1(2), (3) and (4) and 6 to 9 of Regulation (EC) No 3582/93,
- Articles 1(3), 7, 8, 8a, 9, 9a and 10 of Regulation (EEC) No 2282/90,
- Articles 1(3), 7, 8 and 9 of Regulation (EEC) No 3601/92,
- Articles 2(1), 6, 7, 8(1) and (2) and 9 of Regulation (EEC) No 1318/93,
- Articles 7 to 11 of Regulation (EC) No 803/98.

#### *Article 10*

This Regulation shall enter into force on 15 March 1999.

It shall apply to contracts concluded from that date.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

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<sup>(1)</sup> OJ L 349, 24. 12. 1998, p. 1.