

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- (3) Commission Regulations (EC) No 412/97 and (EC) No 478/97 should therefore be repealed.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

*Article 7***Producer organisations' main activity**

1. The main activity of a producer organisation shall relate to the marketing of the products of its members for which it is recognised.

2. The value of a producer organisation's marketed production shall not be less than the value of its other activities.

'Other activities' shall mean selling products included in the category or categories of recognition which do not come from its own members.

3. The following activities shall be excluded both from the calculation of the principal activity and that of other activities:

- (a) the marketing of fruit and vegetables not belonging to the category or categories of recognition,
- (b) the marketing of fruit and vegetables, whether relating or not to the recognition category, bought directly from another producer organisation recognised under Regulation (EC) No 2200/96,
- (c) activities relating to the production of other agricultural products and their packaging, including processing,
- (d) supply of services,
- (e) producer organisations' non-farming activities.

*Article 8***Producer organisations' subsidiaries**

The value of marketable production may be calculated at the ex-subsidiary stage providing the producer organisations or their associations own at least 90 % of the capital.

*Article 9***Associations of producer organisations**

1. Member States shall determine the procedures and criteria for the recognition of associations of producer organisations in accordance with Article 11 of Regulation (EC) No 2200/96. These associations shall be set up on the initiative and under the supervision of producer organisations recognised under that Regulation.

2. Member States shall determine the conditions on which the associations of producer organisations may carry out in whole or in part the tasks of their members described in Regulation (EC) No 2200/96, Article 11, and laid down in Article 6(1) of this Regulation. They shall take the necessary steps to avoid any abuse of a dominant position and any agreement liable to restrict competition, other than those provided for by Regulation (EC) No 2200/96.

3. Legal persons who are members of a recognised association of producer organisations who are not recognised producer organisations under Regulation (EC) No 2200/96 may not:

- be considered for the recognition criteria,
- vote on decisions relating to operational funds,
- benefit directly from the measures financed by the Community.

*Article 10***Transnational producer organisations**

1. A transnational producer organisation's head office must be established in the Member State where the organisation has significant holdings or a significant number of members and/or achieves an important level of marketed production.

2. The Member State in which the head office of the transnational producer organisation is located shall be responsible for the following:

- (a) recognising the producer organisation,
- (b) approving the transnational producer organisation's operational plan,
- (c) establishing the necessary administrative collaboration with the other Member State(s) in which the members are located with respect to compliance with the terms of recognition and the system of checks and penalties.

*Article 11***Transnational association of producer organisations**

1. The head office of the transnational association of producer organisations shall be established in a Member State in which this association has a significant number of member organisations and/or the member organisations achieve an important level of marketed production.

2. The Member State in which the head office of the transnational association of producer organisations is located shall be responsible for the following:

- (a) recognising the association;
- (b) approving, where necessary, the association's operational programme;
- (c) establishing the necessary administrative collaboration with the other Member State(s) in which the associated organisations are located with respect to compliance with the terms of recognition and the system of checks and penalties.

*Article 12***Mergers of producer organisations**

1. Where producer organisations with previously different operational programmes have merged, they shall operate the programmes in parallel and separately until 1 January of the year following the merger. Such organisations shall request the merger of the operational programmes by means of a change, in accordance with the provisions of Article 14 of Regulation (EC) No 1433/2003.

2. Notwithstanding paragraph 1, the Member States may authorise the producer organisations which request it, for duly substantiated reasons, to implement separate operational programmes in parallel until they reach their natural conclusion.

*Article 13***Non-producer members**

1. The Member States may determine whether and on what conditions any individual or legal person who is not a producer may be accepted as a member of a producer organisation.

2. When setting the conditions referred to in paragraph 1, the Member States shall ensure, in accordance with Article 11(1)(a) and (d)(3) of Regulation (EC) No 2200/96, that

- (a) the rule whereby a producer organisation must be formed on the own initiative of producers is respected,
- (b) the rules of association of producer organisations shall contain rules enabling the producer members to scrutinise their organisation and its decisions democratically.

3. The natural or legal persons referred to in paragraph 1 may not:

- (a) be considered for the recognition criteria,
- (b) benefit directly from the measures financed by the Community.

Member States may restrict or prohibit access of these individuals to vote on decisions relating to operational funds, in line with the conditions laid down in paragraph 2.

*Article 14***Democratic accountability of producer organisations**

1. Member States shall take such measures as are required to avoid any abuse of power or influence by one or more members over the management and operation of a producer organisation.

2. No member of a producer organisation may have more than 20 % of the voting rights. However, the Member State may increase this percentage up to a maximum of 49 % in proportion to the member's contribution to the value of the marketed production of the producer organisation.

CHAPTER III

PRODUCER GROUPS*Article 15***Submission of recognition plans**

1. New producer groups requesting preliminary recognition in accordance with Article 14 of Regulation (EC) No 2200/96 shall submit a recognition plan for acceptance by the competent authority of the Member State in which the producer group has its head office.

2. Member States shall define:

- (a) the minimum criteria which producer groups must meet to be able to submit a recognition plan,
- (b) the rules for the drafting, content and implementation of recognition plans,
- (c) the administrative procedures for the approval, monitoring and fulfilling of recognition plans.

*Article 16***Content of recognition plans**

A draft recognition plan shall cover at least the following:

- (a) a description of the initial situation, in particular as regards the number of producer members, giving full details of members, production, marketing and infrastructure;
- (b) expected duration of the plan, which may not exceed five years;
- (c) measures to be implemented to achieve recognition.

*Article 17***Approval of recognition plans**

1. The competent national authority shall decide on a draft recognition plan within three months of receipt of the plan accompanied by all supporting documents.

2. The competent national authority shall verify by all appropriate means, including on-the-spot inspections,

- (a) the accuracy of the information provided in the recognition plan;

- (b) the commercial consistency and the technical quality of the plan, the soundness of the estimates in the investment plan, and the planning of its implementation.

3. The competent national authority shall, as appropriate:

- (a) accept the plan and grant preliminary recognition;
- (b) request changes to the plan;
- (c) reject the plan.

Acceptance may be granted, where necessary, only if the changes requested under point (b) have been incorporated in the plan.

4. It shall notify the producer group of its decision.

5. The Member State shall send the Commission, in the month following notification of acceptance of the recognition plan to the producer group, particulars of the latter, the date of preliminary recognition and the duration of the plan.

Article 18

Implementation of recognition plans

1. The recognition plan shall be implemented in annual segments starting from the date of its acceptance by the competent national authority.

2. Member States shall set the conditions on which producer groups may request changes to plans during their implementation. These requests shall be accompanied by all the necessary supporting documents.

3. The competent national authority shall decide on changes to plans within three months of receipt of the request for change, after considering the evidence supplied. Where no decision is taken on a request for change within that period, the request shall be deemed to have been rejected.

4. No later than the fourth month following the end of a year of a recognition plan, the producer group shall send the competent authority in the Member State a copy of the balance sheet for the preceding year.

Article 19

Fulfilment of recognition plans

1. Producer groups implementing a recognition plan may, at any time, submit an application for recognition under Article 11 of Regulation (EC) No 2200/96 on the terms laid down in this Regulation.

2. From the date on which such an application is lodged, the group in question may submit a draft operational programme on the terms laid down in Regulation (EC) No 1433/2003.

CHAPTER IV

CHECKS AND PENALTIES

Article 20

Checks

1. In the context of the checks referred to in Regulation (EC) No 2200/96, Articles 12(1) and 14(5), Member States shall conduct an on-the-spot visit of all new producer organisations or producer groups prior to granting recognition or preliminary recognition.

2. Member States shall check a significant sample of producer organisations and producer groups each year to monitor compliance with the recognition or preliminary recognition criteria. The sample must correspond to at least 30 % of recognised producer organisations or of producer groups granted preliminary recognition.

3. All producer organisations and groups must be checked at least once every five years.

4. The Member States shall notify the Commission of the measures taken in accordance with this Article.

Article 21

Penalties

1. Where a check carried out by the competent authorities of the Member States in accordance with Article 20(2) reveals that the conditions required for the recognition of a producer organisation have not been met, the said authority shall take a temporary decision within a time period not exceeding one month. This decision shall immediately be notified to the relevant producer organisation.

2. A recognised producer organisation which has acted in good faith shall wholly retain the rights which devolve from its recognition right up to the moment that its recognition is withdrawn and, in the case of the aid schemes referred to in Council Regulation (EC) No 2201/96, Articles 2 and 6a and also Article 1 of Council Regulation (EC) No 2202/96, until the end of the current marketing year.

Nevertheless, in the event that a producer organisation deliberately or by serious negligence fails to meet its obligations, the decision to withdraw recognition shall take effect from the date from which the conditions for recognition are no longer being fulfilled.

3. The competent national authority must call upon a producer group to take corrective action if it finds shortcomings in the implementation of the plan which may compromise its fulfilment.

4. Member States shall recover at least 50 % of the aid paid under Article 14 of Council Regulation (EC) No 2200/96 if the implementation of the recognition plan does not result in recognition, unless for duly substantiated reasons demonstrated to the satisfaction of the Member State.

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

CHAPTER V

REPEAL AND FINAL PROVISIONS

Article 22

Member States' provisions

The Member States shall notify the Commission of the measures taken under Articles 4, 6, 13, 14 and 15 of this Regulation in accordance with Article 26 of Regulation (EC) No 1433/2003.

Article 23

Repeal

Regulations (EC) No 412/97 and (EC) No 478/97 are hereby repealed.

References to the repealed Regulation shall be construed as referring to this Regulation.

Article 24

Entry into force

This Regulation shall enter into force on the seventh day following that of its publication in the *Official Journal of the European Union*.

Nevertheless, the provisions of the first indent of Article 2(1) of Commission Regulation (EC) No 412/97 shall remain in force until the adoption by the Member States of the provisions of Article 4(2) of this Regulation, and at the latest 31 December 2003.

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

Done at Brussels, 11 August 2003.

For the Commission

Franz FISCHLER

Member of the Commission
