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**COMMISSION REGULATION (EC) No 2318/2001
of 29 November 2001**

► M1 laying down detailed rules for the application of Council Regulation (EC) No 104/2000 as regards the recognition of producer organisations and associations of producer organisations in the fishery and aquaculture sector ◀

(OJ L 313, 30.11.2001, p. 9)

Amended by:

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COMMISSION REGULATION (EC) No 2318/2001
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►M1 laying down detailed rules for the application of Council Regulation (EC) No 104/2000 as regards the recognition of producer organisations and associations of producer organisations in the fishery and aquaculture sector ◀

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 104/2000 of 17 December 1999 on the common organisation of the markets in fishery and aquaculture products ⁽¹⁾, amended by Commission Regulation (EC) No 939/2001 ⁽²⁾, and in particular Article 5(4) and Article 6(7) thereof,

Whereas:

- (1) Commission Regulation (EC) No 2939/94 of 2 December 1994 laying down detailed rules for the application of Council Regulation (EEC) No 105/76 on the recognition of producers' organisations in the fishing industry ⁽³⁾, as amended by Regulation (EC) No 1762/96 ⁽⁴⁾, requires considerable amendments. It should therefore be repealed and replaced.
- (2) It is necessary to lay down the conditions and procedure for the Member States' granting of recognition to, and withdrawal of recognition from, producer organisations in such a way as to guarantee consistent application of the rules governing the common organisation of the markets in fishery and aquaculture products.
- (3) A producer organisation is required, under Article 5(2) of Regulation (EC) No 104/2000, to provide evidence that it is sufficiently active economically to merit recognition. It is therefore necessary to define the criteria for considering that condition to have been met.
- (4) It is also necessary to specify the conditions for recognising an association of producer organisations.
- (5) There is a need to provide for the laying down of common rules which members of producer organisations would be obliged to observe.
- (6) It would be advisable to specify what information must be supplied by an applicant for recognition. Deadlines for granting and refusing recognition and certain rules on the withdrawal of recognition should be laid down.
- (7) Measures should be provided for verifying compliance with the conditions attaching to recognition, and for determining the consequences of any fraudulent application for, or use of, such recognition.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Fishery Products,

HAS ADOPTED THIS REGULATION:

Article 1

1. A producer organisation as defined in Article 5(1) of Regulation (EC) No 104/2000 shall be deemed to be sufficiently active economically, for the purposes of Article 5(2) thereof, if:

⁽¹⁾ OJ L 17, 21.1.2000, p. 22.

⁽²⁾ OJ L 132, 15.5.2001, p. 10.

⁽³⁾ OJ L 310, 3.12.1994, p. 12.

⁽⁴⁾ OJ L 231, 12.9.1996, p. 6.

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- (a) on the basis of its size, the total capacity of fishing vessels operating from it and the regularity and size of the landings, the area covered by the application for recognition is deemed by the Member State to be of sufficient importance; and
 - (b) any of the following conditions is fulfilled:
 - (i) the number of vessels operated by members of the producer organisation is at least 20 % of the total number of vessels habitually present in that area; or
 - (ii) for the species or group of species for which recognition is sought, the producer organisation disposes of either:
 - at least 15 % by weight of the total production in its area, or
 - at least 30 % by weight of the total production in a major port or market in its area, the Member State concerned defining what is meant by 'major' for this purpose.
2. The Member States shall decide which of the conditions laid down in paragraph 1(b) shall apply in their territory.

They shall notify the Commission and interested parties of their decision within two months of publication of this Regulation.

In the event of the structure of a market being altered, the Member States may decide to change the condition. They shall notify the Commission and interested parties thereof without delay.

3. Where a producer organisation is made up of producers at least 30 % of whom normally operate in one or more areas other than that in which the vessels operated by the members have their home port, that organisation shall be considered to be sufficiently active economically for the purposes of Article 5(2) of Regulation (EC) No 104/2000 if, for the species or group of species for which recognition is sought, it disposes of at least 4 % by weight of national production.

4. In the interests of more efficient management, the Member State may set at between 15 % and 30 % the percentage referred to in the first indent of paragraph 1(b)(ii), may set at between 30 % and 50 % the percentage referred to in the second indent of paragraph 1(b)(ii), and may set at between 30 % and 50 % the percentage regarding producers referred to in paragraph 3.

5. Where recognition is sought for aquaculture products, economic activity shall be considered sufficient for the purposes of Article 5(2) of Regulation (EC) No 104/2000 if the producer organisation disposes of at least 25 % of total production of the species or group of species in question, in a production area which is deemed sufficiently large by the Member State concerned on the basis of criteria established by that Member State.

In order to take account of the specific characteristics of regional production the Member State may set the percentage referred to in the first subparagraph within a bracket of 25 % to 50 %.

Member States shall, within two months of publication of this Regulation, inform the Commission of the percentage which they have chosen to apply.

▼M1*Article 2*

1. A Member State may grant recognition to an association of producer organisations recognised in that Member State only on condition that:
- (a) it comprises a minimum proportion of the total number of producer organisations recognised by the Member State concerned in a given branch; and
 - (b) the value of the production marketed by the association represents at least 20 % of the value of national production in that branch.

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2. A Member State may grant recognition to an association of producer organisations recognised in different Member States, on condition that:

- (a) the association has its official headquarters on the territory of that Member State;
- (b) the value of the production marketed by the association represents a minimum proportion of the production of a certain fishery product in a given area;
- (c) the producer organisations forming the association deal with the fishing, production and marketing of jointly exploited fishery resources; and
- (d) the association performs its tasks without prejudice to the provisions governing the allocation of fishing opportunities among Member States in accordance with Article 20 of Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy ⁽¹⁾.

3. The Member State hosting the official headquarters of the association shall set up, in collaboration with the other Member States concerned, the administrative cooperation needed to ensure that the conditions for recognition are respected and to carry out checks on the activities of the association. Such administrative cooperation shall also cover the withdrawal of recognition.

4. An association of producer organisations may not hold a dominant position on a given market unless necessary in pursuance of the goals of Article 33 of the Treaty.

5. Articles 3, 4, 5, 6 and 7 of Regulation (EC) No 2318/2001 shall apply *mutatis mutandis* to the associations of producer organisations recognised in one and more than one Member State.

6. Article 2(2) of Commission Regulation (EC) No 908/2000 shall not apply to the associations of producer organisations recognised in different Member States.

▼B*Article 3*

1. Without prejudice to Commission Regulation (EC) No 2508/2000 ⁽²⁾, the rules on fishing, production and marketing referred to in Article 5(1)(c)(1) of Regulation (EC) No 104/2000 shall be drawn up in writing.

2. In accordance with Article 5(1)(c)(4) of Regulation (EC) No 104/2000, the requirement that members are to dispose of their total production through their producer organisation may be waived if products are disposed of in accordance with common rules established in advance. In such cases, these common rules must at least require compliance with the organisation's withdrawal prices.

3. By way of derogation from Article 5(1)(c)(4) of Regulation (EC) No 104/2000, the quantities of products for which members of a producer organisation have concluded contracts before becoming members do not have to be disposed of through the producer organisation, provided that the members have informed the organisation of the extent and duration of the contracts before joining, and provided that the organisation has agreed to waive the requirement.

Article 4

When seeking recognition, the applicant shall supply the following:

- (a) the constitution of the producer organisation;

⁽¹⁾ OJ L 358, 31.12.2002, p. 59.

⁽²⁾ OJ L 289, 16.11.2000, p. 8.

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- (b) the rules and regulations of the producer organisation;
- (c) the names of persons with authority to act for and on behalf of the producer organisation;
- (d) details of those of its activities on which the application for recognition is based;
- (e) evidence that it complies with Article 1 or Article 2.

Article 5

Within three months of receiving an application for recognition the Member State shall inform the producer organisation in writing of its decision. If recognition is refused, the Member State shall give reasons for the refusal.

Article 6

Where it is planned to withdraw recognition, the Member State shall notify that intention to the producer organisation, together with the reasons for the withdrawal. The Member State shall allow the producer organisation to submit its observations within a specified period.

Article 7

1. In accordance with Article 6(1)(b) of Regulation (EC) No 104/2000, Member States shall carry out a check at least once a year to ascertain that producer organisations comply with the terms and conditions for recognition.

2. Where recognition is withdrawn because the producer organisation concerned has sought or used recognition fraudulently, any aid granted under Article 15(1) of Council Regulation (EC) No 2792/1999 ⁽¹⁾ shall be recovered by the Member State.

Article 8

Regulation (EC) No 2939/94 is hereby repealed.

Article 9

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

It shall apply from 1 January 2002.

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

⁽¹⁾ OJ L 337, 30.12.1999, p. 10.