

**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<sup>(1)</sup>, 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<sup>(2)</sup> 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 always 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of Council Regulation (EC) No 2200/96 as regards the fixing of the conditions for the distillation of certain fruit withdrawn from the market<sup>(3)</sup> 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 Regulations (EC) No 659/97 and (EC) No 1492/97 should therefore be repealed.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- (3) Since the terms 'products not put up for sale', 'market withdrawals' and 'products withdrawn from the market' are equivalent, they should be covered by a single definition.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<sup>(4)</sup> 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.

<sup>(1)</sup> 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).

<sup>(2)</sup> 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).

<sup>(3)</sup> OJ L 202, 30.7.1997, p. 28.

<sup>(4)</sup> 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<sup>(1)</sup> 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.

<sup>(1)</sup> 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.

4. The Commission shall decide on a case-by-case basis whether to authorise the operation concerned, subject to amendments where necessary, by evaluating the justification referred to in paragraph 3 and taking account, in particular, of:

- (a) the performance guarantees;
- (b) the market situation in the Community and the third countries concerned;
- (c) the existence of a humanitarian crisis;
- (d) whether a request has been formulated by the beneficiary countries;
- (e) the existence of clearly identified needs of well-defined vulnerable groups;
- (f) compliance with the principles set out in the London Food Aid Convention <sup>(1)</sup>.

5. All subsequent substantial amendments to operations as referred to in paragraph 3 shall be notified to the Commission, which shall have one month in which to object to such amendments.

6. The Member States shall forward to the Commission a copy of the notification made to the Committee on Surplus Disposal of the Food and Agriculture Organisation (FAO) for each operation.

7. After each operation, the Member States shall send the Commission the information provided for in Annex IV. At its request, they shall inform the Commission about the course of each operation in the third countries.

#### Article 13

##### Processing at the expense of the charitable organisation

Any charitable organisation as referred to in Article 10 may process the products withdrawn from the market, or have them processed at its expense, for free distribution operations. All the resulting products must be distributed free of charge.

#### Article 14

##### Processing with payment in kind

1. No later than the date set by the competent national authority, interested charitable organisations, institutions and establishments referred to in Articles 10 and 11 respectively shall inform that authority of their requirements for products processed from fruit and vegetables withdrawn from the market, undertaking to take them over and distribute the full quantity free of charge.

2. Depending on their requirements as indicated in accordance with paragraph 1, the Member States may have the products that are withdrawn from the market and intended for

free distribution processed by processors accepting payment in kind. To that end, they may organise, in accordance with the terms of this Article, one or more standing invitations to tender, public auctions or other procedures as decided by the Member State which ensure that competition between interested operators takes place under equal conditions. The processed products intended for free distribution shall then be distributed by the charitable organisations, institutions or establishments concerned.

3. Member States wishing to implement a procedure referred to in paragraph 2 shall ensure that it is appropriately publicised. The processing period covered by the procedure may not exceed one year.

4. Where necessary, the Member State shall group the requirements expressed under paragraph 1 into batches of processed products.

#### Article 15

##### Draft contracts and obligations on processors

1. After implementing the procedure referred to in Article 14(2), the Member State shall draft a contract for a processor detailing, for each batch, at least the following information:

- (a) the fresh produce concerned and the period during which products withdrawn from the market may be available;
- (b) the geographical areas in which products withdrawn from the market are likely to be available;
- (c) a description of the procedure followed by the Member State to choose the processor;
- (d) the identity of the processor selected;
- (e) a detailed description of the product processed from fruit and vegetables to be supplied and its preparation for distribution, the date by which it must be supplied and the quantity which the processor undertakes to supply for a given quantity of withdrawn products available;
- (f) the identity of the charitable organisations, institutions or establishments for which the products are intended.

2. The Member State shall forward the draft contract to the Commission for approval. The Commission shall reject any draft contracts where the ratio of fresh produce to processed products is too high. The Member State shall award the contract once the Commission has approved it.

3. For each batch, the Member State shall inform the processor, as withdrawals are made, of the producer organisations from which it may obtain supplies of fresh products, and shall grant the processor priority over other possible destinations for the withdrawn products.

<sup>(1)</sup> OJ L 222, 24.8.1999, p. 40.

4. The processor must process all the products withdrawn from the market which are delivered to it. Any withdrawn products in excess of the quantities needed to manufacture the processed products intended for free distribution shall be payment in kind to compensate for the processor's manufacturing costs.

5. After manufacture, the processed product shall be made available to the charitable organisations, institutions or establishments concerned no later than one month after the processor receives the raw materials, in proportion to the quantity of fresh product made available to the contractor.

6. The processor shall lodge a security to ensure that the products are supplied in accordance with the tender. This security shall be based on the net weight of fresh product requested against the processed product manufactured. It shall be equivalent:

- (a) for the products referred to in Annex II to Regulation (EC) No 2200/96, to the Community withdrawal compensation referred to in Article 26 of that Regulation;
- (b) for other products, to an amount fixed by the Member State.

The security shall be released as supplies of the processed product are delivered and once the successful tenderer has provided evidence that all the fresh products made available to it against the delivery of the processed product have been processed.

#### Article 16

##### Transport costs

1. The transport costs for the free distribution of all products withdrawn from the market shall be met by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) on the basis of the flat-rate amounts set according to the distance between the point of withdrawal and the place of delivery set out in Annex V.

In the case of free distribution outside the Community, the flat-rate amounts set out in Annex V shall cover the distance between the point of withdrawal and the point of exit from the Community.

In the case of sea transport, the Commission shall determine the transport costs which may be met on the basis of the real transport costs and the distance. The compensation thus determined may not exceed the cost of land transport over the shortest route between the place of loading and the theoretical point of exit. A correcting coefficient of 0,6 shall be applied to the amounts provided for in Annex V.

2. The transport costs shall be paid to the party which actually bears the financial cost of the transport operation in question.

Payment shall be subject to the presentation of supporting documents certifying in particular:

- (a) the names of the beneficiary organisations;
- (b) the quantity of the products concerned;
- (c) acceptance by the beneficiary organisations and the means of transport used;
- (d) the transport costs actually incurred.

#### Article 17

##### Sorting and packing costs

1. The costs of sorting and packaging fresh fruit and vegetables withdrawn from the market for free distribution as referred to in Article 30(1) of Regulation (EC) No 2200/96 shall be borne by the EAGGF Guarantee Section at the flat-rate amount of EUR 132 per tonne net weight, in the case of products put up in packages of less than 25 kilograms net weight. The cost of fresh products intended for the manufacture of processed products as referred to in Articles 13 and 14 of this Regulation shall not be borne.

2. Packages of products for free distribution shall display the European emblem, together with one or more of the following references:

- Producto destinado a su distribución gratuita [Reglamento (CE) nº 103/2004]
- Produkt určený k bezplatné distribuci [nařízení (ES) č. 103/2004]
- Produkt til gratis uddeling (forordning (EF) nr. 103/2004)
- Zur kostenlosen Verteilung bestimmtes Erzeugnis (Verordnung (EG) Nr. 103/2004)
- Tasuta jagamiseks mõeldud tooted [määrus (EÜ) nr 103/2004]
- Προϊόν προοριζόμενο για δωρεάν διανομή [κανονισμός (ΕΚ) αριθ. 103/2004]
- Product for free distribution (Regulation (EC) No 103/2004)
- Produit destiné à la distribution gratuite [règlement (CE) nº 103/2004]
- Prodotto destinato alla distribuzione gratuita [regolamento (CE) n. 103/2004]
- Produkts paredzēts bezmaksas izplatīšanai [Regula (EK) Nr. 103/2004]
- Produktas skirtas nemokamai distribucijai [Reglamentas (EB) Nr. 103/2004]

- Térítésmentes terjesztésre szánt termék (103/2004. sz. EK rendelet)
- Prodott destinat għad-distribuzzjoni bla ħlas [Regolament (KE) nru. 103/2004]
- Voor gratis uitreiking bestemd product (Verordening (EG) nr. 103/2004)
- Produkt przeznaczony do bezpłatnej dystrybucji [rozporządzenie (WE) nr 103/2004]
- Produto destinado a distribuição gratuita [Regulamento (CE) nº 103/2004]
- Výrobok určený na bezplatnú distribúciu [nariadenie (ES) č. 103/2004]
- Proizvod, namenjen za prosto razdelitev [Uredba (ES) št. 103/2004]
- Ilmaisjakeluun tarkoitettu tuote (asetus (EY) N:o 103/2004)
- Produkt för gratisutdelning (förordning (EG) nr 103/2004).

Where distribution is to take place outside the Community, the reference shall also be written in the language(s) of the third countries concerned.

Packages of fresh products to be used in the manufacture of the processed products referred to in Articles 13 and 14 shall not show these references.

3. The costs of sorting and packaging shall be paid to the producer organisations which have performed those operations.

Payment shall be subject to the presentation of supporting documents certifying in particular:

- (a) the names of the beneficiary organisations;
- (b) the quantity of the products concerned;
- (c) acceptance by the beneficiary organisations, specifying the presentation.

## SECTION 2

### Distillation, non-food uses and animal feed

#### Article 18

##### Common rules

1. The supply of, and award of contracts for, the products referred to in the fourth and fifth indents of Article 30(1)(a) of Regulation (EC) No 2200/96 with a view to non-food uses or for use in animal feed after processing by the feedingstuffs industry, and the products referred to in Article 30(1)(c) of that Regulation for distillation into alcohol of a strength of more than 80 % by volume shall be carried out either by a standing invitation to tender, public auction or other procedure adopted by a Member State ensuring that competition between interested operators takes place on an equal basis.

2. The supply and award of contracts referred to in paragraph 1 shall be carried out no later than three months after the beginning of the marketing year of the product in question.

3. The list of bodies designated by the Member States to carry out the supply and award referred to in paragraph 1 shall be published by the Commission in the C series of the *Official Journal of the European Union*.

4. Member States shall take the measures necessary to prevent any distortion of competition in the supply of, and award of contracts for, the products to the distilleries concerned.

5. At the Commission's request, Member States shall communicate the results of the operations covered by paragraphs 1 to 4 within seven days.

#### Article 19

##### Distillation

In the case of distillation as referred to in Article 30(1) of Regulation (EC) No 2200/96, the alcohol obtained from the products concerned shall be subject to special denaturing in accordance with Commission Regulation (EC) No 3199/93<sup>(1)</sup> and shall be for industrial and not food use.

#### Article 20

##### Animal feed

1. The products withdrawn from the market during a given marketing year may be delivered fresh to livestock farmers approved by the Member States at their request, in accordance with paragraph 2, for feeding to livestock. Zoos, game reserves and other enterprises having livestock to which withdrawn fresh products can suitably be fed shall be treated as livestock farmers.

2. The Member States shall approve the livestock farmers and similar undertakings. The approval shall state, for each livestock farmer or similar undertaking, the maximum quantities of withdrawn products which may be delivered, in view of the livestock concerned and the authorised methods for distributing the withdrawn products to the animals. Approval shall be given for a maximum period of three years.

## SECTION 3

### Obligations on recipients of products and national framework

#### Article 21

##### Undertakings by the recipients of withdrawn products

The recipients of withdrawn products referred to in Articles 10, 11 and 18 shall undertake to:

- (a) comply with this Regulation;
- (b) keep separate stock records and financial accounts for the operations in question;

<sup>(1)</sup> OJ L 288, 23.11.1993, p. 12.



- (c) accept the checks provided for by the Community rules;
- (d) provide the supporting documents referred to in Article 7(3)(d).

Recipients of withdrawn products intended for distillation shall also undertake not to receive additional aid for the alcohol produced from the products concerned.

#### Article 22

### Environmental management

1. Member States shall notify the Commission by electronic mail of the national framework referred to in the third paragraph of Article 25 of Regulation (EC) No 2200/96. They shall inform the Commission of any amendments to the above framework. The Commission shall forward each framework to all the other Member States.

2. The frameworks referred to in paragraph 1 shall lay down the terms under which producer organisations are authorised to avail themselves of Article 30(2) of Regulation (EC) No 2200/96, including the composting and biodegradation processes authorised by a Member State, the procedures to be followed by the producer organisations which use them and the documents certifying the final destination of the products which must be submitted by producer organisations together with their payment applications as provided for in Article 7(3)(d) of this Regulation.

3. If a Member State authorises the livestock farmers referred to in Article 20(2) to distribute the withdrawn products to animals by spreading them on the ground on an agricultural plot, the framework shall also stipulate the terms on which farmers are authorised to avail themselves of this possibility.

#### CHAPTER IV

### CHECKS AND PENALTIES

#### SECTION 1

#### Checks

#### Article 23

### First-level checks

1. The Member States shall make first-level checks on withdrawal operations in each producer organisation, comprising a documentary and identity check and a physical check, where appropriate by sampling, of the weight of the products withdrawn from the market and a check on compliance with the rules in Article 3, in accordance with the procedures laid down

in Annex IV to Commission Regulation (EC) No 1148/2001<sup>(1)</sup>. The check shall take place following receipt of the notification referred to in Article 6(1) of this Regulation, within the deadlines provided for in Article 6(2).

2. The first-level checks provided for in paragraph 1 shall cover 100 % of the quantity of products withdrawn from the market during the marketing year for each product. At the end of this check, the withdrawn products shall be denatured under the supervision of the competent authorities under the terms and conditions laid down by the Member State and to its satisfaction.

3. Where the first, second and third indents of Article 30(1)(a) and Article 30(1)(b) of Regulation (EC) No 2200/96 apply, the Member States may check a smaller percentage, provided it is not less than 10 % of the quantities concerned during the marketing year. The products concerned shall not be denatured in accordance with paragraph 2 of this Article. In the event that the checks reveal significant irregularities, the competent authorities shall carry out additional checks.

#### Article 24

### Second-level checks

1. At the end of the marketing year, the Member States shall make second-level checks. They shall lay down criteria for analysing and evaluating the risk of any given producer organisation carrying out non-compliant withdrawal operations. Such criteria shall relate, among other things, to the findings of previous first- and second-level checks, and whether or not a producer organisation has some form of quality-assurance procedure. They shall use these criteria to determine for each producer organisation a minimum frequency of second-level checks.

2. The checks referred to in paragraph 1 shall comprise documentary and, if necessary, on-the-spot checks on intervention operations at the premises of producer organisations and the recipients of withdrawn products, in order to ensure that the requisite conditions for payment of Community withdrawal compensation have been complied with. These checks shall include:

- (a) the specific stock and accounting records to be kept by all producer organisations which carry out one or more withdrawal operations during the marketing year concerned;
- (b) verification of the quantities marketed as declared in the payment applications, checking in particular the stock and accounting records, the invoices and, where necessary, their veracity and ensuring that the declarations tally with the accounting and/or tax data of the producer organisations concerned;

<sup>(1)</sup> OJ L 153, 13.6.2001, p. 9.

(c) checks that the accounts are correct, in particular the veracity of net receipts by the producer organisations as declared in their payment applications, the proportionality of any withdrawal costs, the entries in the accounts regarding the receipt by the producer organisations of the Community withdrawal compensation and any amounts thereof paid on to members, ensuring that these tally;

(d) checks on the destination of withdrawn products as declared in the payment applications and checks to ensure that the producer organisations and recipients have complied with this Regulation.

The checks referred to in the first subparagraph shall be made each year on at least 30 % of the producer organisations concerned and the recipients associated with those organisations and, for each producer organisation concerned, at least once every five years during which withdrawals are carried out. Each check shall include a sample representing at least 5 % of the quantities withdrawn during the marketing year by the producer organisation.

The stock and accounting records referred to in (a) in the first subparagraph shall show, for each product withdrawn, the following movements (expressed in quantities):

(a) the production delivered by members of the producer organisation and by members of other producer organisations in accordance with the second and third indents of Article 11(1)(c)(3) of Regulation (EC) No 2200/96;

(b) the production delivered by operators not covered by (a);

(c) sales by the producer organisation, broken down by products prepared for the fresh market and other types of products (including raw materials for processing);

(d) products withdrawn from the market.

The checks on the destination of products referred to in (d) in the first subparagraph shall include, in particular:

(a) a sample check on the separate accounts to be kept by recipients and, where necessary, verification that these tally with the accounts required under national law;

(b) checks on compliance with the relevant environmental requirements;

(c) for distillation, checks that the product for which the contract is awarded has been processed into alcohol of a strength of more than 80 % by volume, denatured and put to an industrial use.

3. If the second-level checks reveal significant irregularities, the competent authorities shall carry out more detailed second-level checks for the marketing year concerned and shall increase the frequency of second-level checks on the producer organisations (or their associations) concerned during the following marketing year.

## SECTION 2

### Recovery and penalties

#### Article 25

#### Recovery

Unduly paid compensation shall be recovered, with interest, from the producer organisations, independent producers or recipients of withdrawn products concerned, in particular where:

(a) the products not put up for sale have not been disposed of as provided for in Article 30 of Regulation (EC) No 2200/96;

(b) the disposal of the products not put up for sale causes substantial environmental damage and/or does not comply with the framework referred to in Article 22 of this Regulation.

The interest rate to be applied shall be calculated in accordance with national legislation, and shall not be lower than the interest rate generally applicable to recovery under national rules.

#### Article 26

#### Financial penalties

1. If, following the notification provided for in Article 6 and a check as referred to in Article 23, irregularities are found with regard to the standards referred to in Article 2 of Regulation (EC) No 2200/96 or the minimum quality requirements set out in Annex I to this Regulation, the recipient/applicant shall be required:

(a) to pay the amount of the compensation unduly applied for, calculated on the basis of the quantities of withdrawn products not in conformity with the standards or minimum requirements, if those quantities are less than 10 % of the quantities notified pursuant to Article 6 of this Regulation;

(b) to pay the double amount of the compensation unduly applied for, calculated on the basis of the quantities of withdrawn products not in conformity with the standards or minimum requirements, if those quantities are between 10 % and 25 % of the quantities notified pursuant to Article 6 of this Regulation;

(c) to pay the amount of the compensation for the entire quantity notified pursuant to Article 6 of this Regulation, where the quantities of withdrawn products not in conformity with the standards or minimum requirements exceed 25 % of the quantity notified.

2. Except in cases of obvious error, where irregularities are found in the application of this Regulation, the recipient/applicant shall be required:

- (a) if the compensation has already been paid, in addition to recovery as provided for in Article 25:
  - (i) to pay an amount equal to the amount unduly paid, in cases of fraud;
  - (ii) to pay 50 % of the amount unduly paid, in other cases;
- (b) in cases where applications for compensation have been submitted under Article 7 but no compensation has been paid:
  - (i) to pay the compensation unduly applied for, in the case of fraud;
  - (ii) to pay 50 % of the amount unduly applied for, in other cases.

#### Article 27

#### Additional penalties

1. Where irregularities attributable to the recipients of withdrawn products are detected during checks made in accordance with Articles 23 and 24, the following shall apply:

- (a) The approval of recipients as referred to in Article 10 and Article 20(2) shall be withdrawn. This shall take effect immediately and continue for at least one marketing year, and may be extended depending on the seriousness of the irregularity. Institutions and establishments as referred to in Article 11 shall not be eligible to benefit from free distribution operations in the following marketing year.
- (b) Recipients as referred to in Articles 18, 19 and 20 shall be excluded from benefiting from the Articles concerned for at least one marketing year, which may be extended depending on the seriousness of the irregularity.
- (c) Recipients of products withdrawn from the market shall be obliged to repay the value of the products they receive, calculated in accordance with Article 3(4) of Regulation (EC) No 1433/2003, the sorting and packaging costs received and the transport costs received, plus interest calculated by reference to the time which has elapsed between receipt of the product and repayment by the beneficiary.

2. In the event of a false declaration made deliberately or through gross negligence, the Member State shall exclude the producer organisation from Community withdrawal compensation and entitlement to make withdrawals as referred to in Article 15(2)(a) of Regulation (EC) No 2200/96 for one to five marketing years following that in which the irregularity is detected, depending on the seriousness of the irregularity.

#### Article 28

#### Payment of amounts

Sums recovered, with the interest accrued and the amount of the penalty, shall be paid to the responsible paying agency and deducted from expenditure financed by the EAGGF.

#### Article 29

#### National provisions

Articles 23 to 28 shall apply without prejudice to any measures which the Member States deem necessary to ensure compliance with Title IV and Article 15 of Regulation (EC) No 2200/96 and any other penalties to be adopted pursuant to Article 48 of that Regulation.

#### CHAPTER V

#### TRANSITIONAL AND FINAL PROVISIONS

#### Article 30

#### Transitional provisions

1. As an exception to Article 4, the 2004/05 marketing year shall cover the following periods:

- (a) for melons and watermelons, from 1 April 2004 to 31 December 2004;
- (b) for cauliflowers, apricots, nectarines, peaches and table grapes, from 1 May 2004 to 31 December 2004;
- (c) for pears, from 1 June 2004 to 31 July 2005;
- (d) for apples, from 1 July 2004 to 31 July 2005;
- (e) for lemons, from 1 June 2004 to 30 September 2005.

2. For the 2002/03 and 2003/04 marketing years, the three-year period referred to in Article 5 to be taken into consideration shall be that covered by the 2002/03, 2003/04 and 2004/05 marketing years.

#### Article 31

#### Repeal

Regulations (EC) No 659/97 and (EC) No 1492/97 are hereby repealed.

However, Article 7 of Regulation (EC) No 659/97 shall apply until 1 July 2004.

References to the repealed regulations shall be construed as references to this Regulation and are to be read in conjunction with the correlation table in Annex VI.

*Article 32***Entry into force**

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

It shall apply for each product from the beginning of the first marketing year following its entry into force for the product concerned as defined in Article 4 and Article 30(1).

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

Done at Brussels, 21 January 2004.

*For the Commission*  
Franz FISCHLER  
*Member of the Commission*

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## ANNEX I

**MINIMUM REQUIREMENTS FOR PRODUCTS INTENDED FOR INTERVENTION**

1. Products intended for intervention must be:
  - whole,
  - sound; products affected by rotting or deterioration such as to make them unfit for consumption are excluded,
  - clean, practically free from any visible foreign matter,
  - practically free from pests and damage caused by pests,
  - free of abnormal external moisture,
  - free of any foreign taste and/or smell.
2. Products must be sufficiently developed and ripe, taking account of their type.
3. Products must be characteristic of the variety and/or commercial type.

## ANNEX II

**MAXIMUM SUPPLEMENTS TO THE COMMUNITY WITHDRAWAL COMPENSATION**

<i>(EUR/tonne)</i>	
Product	Maximum supplement
Tomatoes	80,1
Cauliflowers	65,0
Apples	62,3
Grapes	74,3
Apricots	91,9
Nectarines	123,9
Peaches	115,4
Pears	64,4
Aubergines	36,5
Oranges	18,5
Mandarins	44,8
Clementines	7,0
Satsumas	0,0
Lemons	42,6
Melons	42,0
Water melons	27,0

## ANNEX III

**INTERVENTION REPORTING****Information which the Member States must transmit to the Commission at the end of each marketing year in accordance with Article 9(2)**

1. For each product listed in Annex II to Regulation (EC) No 2200/96, and for every other product concerned:
  - (a) total quantities not put up for sale (tonnes);
  - (b) the amounts of payments by the Member States (in euro or in national currency), broken down into Community withdrawal compensation, supplements to Community withdrawal compensation and compensation for withdrawal of products not listed in Annex II.
2. For each product referred to in Annex II to Regulation (EC) No 2200/96 and, at the Commission's request, certain products not listed in Annex II which have been withdrawn in significant quantities during the marketing year concerned or a previous marketing year:
  - (a) monthly breakdown of quantities not put up for sale (tonnes);
  - (b) breakdown of quantities not put up for sale (tonnes) by destination as provided for in Article 30 of Regulation (EC) No 2200/96.
3. Summary table showing quantities marketed and not put up for sale (tonnes) by recognised producer organisation and by product (listed in Annex II to Regulation (EC) No 2200/96 and, where applicable, not listed in Annex II).

## ANNEX IV

**INFORMATION ON FREE DISTRIBUTION OPERATIONS OUTSIDE THE COMMUNITY**

Member State:

Commission decision number:

Quantity distributed (by product):

Name and headquarters of the producer organisation making the withdrawals:

Name and headquarters of the charitable organisations involved in the operation:

Name and headquarters of the processing undertaking responsible for processing the products (where applicable):

Means of transport, name and headquarters of the transporter:

Country and place of final destination:

Population group for which the products are intended, with the estimated number of beneficiaries:

Dates of withdrawal, departure and delivery of the products:

## ANNEX V

## TRANSPORT COSTS UNDER FREE DISTRIBUTION ARRANGEMENTS

Distance between the place of withdrawal and the place of delivery <sup>(1)</sup>	Transport costs (EUR/tonne)
Less than 25 km	15,5
From 25 km to 200 km	32,3
From 200 km to 350 km	45,2
From 350 km to 500 km	64,5
From 500 km to 750 km	83,9
750 km or more	102

Supplement for refrigerated transport: EUR 7,7/tonne.

<sup>(1)</sup> In the case referred to in Article 13, the distance between the place of withdrawal and the place of delivery of the processed product, via the place of processing.

In the case referred to in Article 14, the distance between the place of processing and the place of distribution of the processed product (fresh produce as referred to in Article 14 does not qualify for reimbursement of transport costs).

## ANNEX VI

## CORRELATION TABLE

Regulation (EC) No 659/97	Regulation (EC) No 1492/97	This Regulation
Article 1		Article 1
Article 2(1) Article 2(2) Article 2(3)		Article 2(1) Article 3(1) Article 3(2)
Article 3		Article 2(2)
Article 4		Article 4
Article 5(1) Article 5(2) Article 5(3)		Article 7(1) Article 7(2) and (3) Article 7(6)
Article 6(1) Article 6(2) and (3)		Article 8(1) Article 8(2)
Article 7		—
Article 8(1) Article 8(2) Article 8(3)		Article 6(1), (2) and (3) — Article 6(4)
Article 9(1) Article 9(2) Article 9(3)		Article 9(1) Article 9(2) Article 9(3)
Article 10		Article 22
Article 11(1) Article 11(2) Article 11(3)		Article 10(1) Article 21 Article 10(2)
Article 12		Article 11
Article 13		Article 10(3)
Article 14(1) Article 14(2) Article 14(3)		Article 10(1) Article 12(1) Article 12(2) to (6)
Article 14a		Article 13
Article 14b(1) Article 14b(2) Article 14b(3) Article 14b(4) Article 14b(5) Article 14b(6) Article 14b(7) Article 14b(8)		Article 14(2) and Article 15(4) Article 14(3) Article 14(1) Article 14(4) Article 15(1) and (2) Article 15(3) Article 15(5) Article 15(6)
Article 15(1) Article 15(2)		Article 16(1) Article 16(2)
Article 16(1) Article 16(2) Article 16(3)		Article 17(1) Article 17(2) Article 17(3)
Article 17(1) Article 17(2) Article 17(3) Article 17(4)		— Article 23(1) and (2) Article 24(1) and (2) Article 24(3)



Regulation (EC) No 659/97	Regulation (EC) No 1492/97	This Regulation
Article 18(1) Article 18(2) Article 18(3) Article 18(4)		— Article 23(3) — —
Article 19(1)  Article 19(2) Article 19(3)		Article 25 Article 26(2) Article 28 Article 27(2)
Article 20(1) Article 20(2) Article 20(3) Article 20(4) Article 20(5) Article 20(6) Article 20(7)		Article 27(1) Article 27(1) Article 27(1) — Article 27(1) Article 25 Article 28
Article 21		Article 29
Annex I Annex II Annex III Annex IV Annex V Annex VI Annex VII Annex VIII		— — — Annex III Annex V Annex IV Annex I Annex II
	Article 1 Article 2 Article 3 Article 4 Article 5 Article 6 Article 7	Article 18(1) Article 18(2) Article 18(3) Article 19 Article 24(2) Article 18(4) Article 18(5)