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**Positions and interpretations in connection with
implementation of promotion and information programmes**

Questions clasifications

Theme	Positions
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Eligibility	11, 18, 19, 21, 43, 44, 51, 54, 56, 61
Examination	3, 4, 11, 16, 18, 19, 21, 28, 29, 35, 44, 48, 51, 54, 56, 61, 62
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1. APPLICATION OF NATIONAL LEGAL PROVISIONS

The Member State authorities and other players comply with applicable national legislation when implementing programmes. This may require them to modify the provisions of the model contract.

(bilateral meeting with a Netherlands delegation, Wednesday 16 May 2006)

2. EXTENSION OF CONTRACTS

1. A contract extension may not be agreed between the contracting parties at the request of one of them in accordance with Article 1(2), first subparagraph, of the model contract.

2. Such an extension may be granted by the competent authority in exceptional circumstances such as force majeure, following an examination of the specific case.

(memo from Unit AGRI-H-1 ref. 009797 of 10 April 2006)

3. CALCULATION OF OVERHEADS

Annex II to the current version of the model contract, in the table “Summary budget”, allows the ceiling of 3% or 5% overheads to be calculated from the total expenditure for the measures plus the cost of providing a performance security, the fees of the implementing body and the cost of measuring results.

(meeting of Unit AGRI-D-4, Thursday 17 May 2006)

4. REPRESENTATIVENESS OF PROFESSIONAL AND INTERPROFESSIONAL ORGANISATIONS

Neither Article 6(1) of Regulation (EC) No 2826/2000, nor Article 7(1) of Regulation (EC) No 1071/2005, nor the guidelines lay down any criteria for the representativeness of professional or interprofessional organisations. Consequently, this must be assessed by the Member State and verified by the Commission.

(memo from Unit AGRI-H-1 ref. 017897 of 11 July 2006)

5. DATE OF CONCLUSION OF CONTRACT WITH PROPOSING ORGANISATIONS

Article 11(1), second paragraph, of Commission Regulation (EC) No 1071/2005 states that: *“The Member States shall conclude contracts with the selected proposing organisations within 90 calendar days of notification of the Commission decision referred to in Article 8(3). Beyond that deadline, no contracts may be concluded without prior authorisation from the Commission.”*

This means that derogations must remain exceptional and that any decision to authorise a derogation from the stipulated period must, where appropriate, be based on objective and convincing facts.

(reply to a question from the Belgian authorities, letter ref. AGR 028172 of 24 October 2006)

6. RETENTION OF INVOICES AND SUPPORTING DOCUMENTS BY THE MEMBER STATES

Invoices and other supporting documents relating to expenditure under co-financed programmes must be retained and kept at the Commission’s disposal in accordance with the provisions of Article 9 of Regulation (EC) No 885/2006, i.e. for three years.

They may be kept on paper or in digital form.

(reply to a question from the Belgian authorities by e-mail dated 15 December 2006)

7. CHANGE TO THE TARGET COUNTRIES OF A PROGRAMME

The list of target countries is an important part of the description of the programme forwarded by the Member State and scrutinised by the Commission. Any change to the list would alter the identity of this programme. As the programme has been approved by a Commission decision, a change cannot be authorised.

If the measures envisaged in a target country cannot be carried out or are no longer appropriate, this part of the programme is cancelled and the budget is reduced accordingly.

(e-mail to the Netherlands authorities of Tuesday 19 December 2006; similar reply to the Greek authorities)

8. DELAY IN SUBMITTING APPLICATIONS FOR INTERMEDIATE PAYMENT OF CONTRIBUTIONS FROM MEMBER STATES AND THE EUROPEAN UNION

The existing practice in some Member States, according to which applications for intermediate payment of the Community and Member State contributions referred to in Article 13 of Regulation No 1071/2005 and Article 14 of Regulation No 1346/2005 are submitted by the proposing organisations to the Member States towards the end of the annual contract period rather than by the deadlines stipulated in those provisions, is not consistent with Community law.

(consultation of the Agricultural Law Unit through memo ref. AGRI 028555 of 26 October 2006 and reply ref. VI/32621 of 6 December 2006)

9. AUTHORISATION BY THE MEMBER STATE TO MOVE ON TO THE SECOND ANNUAL PHASE OF A CONTRACT

This authorisation must be issued in writing before the end of the current annual phase. It may be refused by the Member State if the required appropriations are not available under the Community budget or in the absence of the progress report which the proposer must submit. This temporary suspension of the contract does not render it null and void and does not give the contractor the right to cancel the contract.

(consultation of DG AGRI's Agricultural Law Unit: its reply, memo ref. 016131 of 26 June 2007)

10. FORFEITURE OF CONTRACT PERFORMANCE SECURITY

Referring to the performance security mentioned in Article 10(3) of Regulation (EC) No 94/2002, Article 10(4) states that the primary requirement within the meaning of Article 20 of Regulation (EEC) No 2220/85 is the implementation of the measures covered by the contract. In accordance with Article 22 of Regulation (EEC) No 2220/85, breaching a primary requirement leads to the forfeiture of the security provided for this purpose, unless compliance was impossible for reasons of force majeure.

(consultation of DG AGRI's Agricultural Law Unit: its reply, memo ref. 016131 of 26 June 2007)

11. PROMOTION OF PROCESSED MEAT

The regulations, and more specifically the list of eligible products in Annex I to Regulations (EC) No 1071/2005 and 1346/2005, seen in the light of the Combined Nomenclature published in the Annex to Regulation (EC) No 1549/2006, do not allow Community co-financing of products consisting of processed meat (prepared meat products, pâté, etc.), except where such products are covered by a protected designation.

(letter to the Spanish authorities ref. 022414 of 3 September 2007; letter to the Czech authorities ref. D(2007)002 of 10 January 2007)

To be read in connection with position No 43 on cooked meat production.

12. APPLICATION OF THE EURO EXCHANGE RATE

1. For programmes managed directly by the competent authority, approved on the basis of Article 9(1) of Regulation (EC) No 3/2008, Member States that have not adopted the euro and that publish an invitation to tender in that currency must, in accordance with Articles 8 and 11 of Commission Regulation (EC) No 1913/2006, calculate promotion expenditure using the exchange rate set by the European Central Bank for the final day for the submission of tenders.

For expenditure on programme implementation, the rate applicable is the most recent rate set by the European Central Bank prior to the first day of the month in which the expenditure was incurred. That date is determined in accordance with the provisions of Regulation (EC) No 1913/2006.

2. For programmes adopted on the basis of Article 6 of Regulation (EC) No 3/2008, the exchange rate applicable to payments between the paying agency, the proposing organisation and the implementing body is determined by the national authorities, in compliance with the provisions that appear in Section D of Annex III of the model contract, i.e. the applicable exchange rate is the penultimate exchange rate set by the European Central Bank prior to the month for which the expenditure incurred is recorded or declared to the Commission in accordance with Article 7(2) of Commission Regulation (EC) No 883/2006.

When a programme is submitted to the Commission, only the budget expressed in euros is taken into account and specified in the decision. If the programme is approved, in accordance with the contract and more particularly with Section D of Annex III thereof, the two budget tables must appear in the contract. However, the limit applicable to expenditure is the limit that appears in the budget expressed in euros: the amounts that appear there are specified in the Commission decision and may not be exceeded.

(letter to the Polish authorities No 024803 of 27 September 2007 and e-mails to the United Kingdom authorities of 13 and 15 July 2009)

13. DISSEMINATION OF PROGRAMME EVALUATION SHEETS

The possible dissemination of programme evaluation sheets produced by the Commission to persons requesting them is subject to the horizontal provisions on access to documents in Regulation (EC) No 1049/2001.

(position of the Agricultural Law Unit expressed in its memo ref. 028074 of 30 October 2007 in reply to a question raised at a meeting of the Advisory Group on Promotion of Agricultural Products)

14. APPLICATION OF VAT TO TOTAL EXPENDITURE

According to the provisions of the model contract, the Community's financial contribution to co-financed promotion programmes does not cover VAT on expenditure incurred.

The proposing organisation, as the final purchaser of promotion services, is liable to VAT in accordance with the provisions of the sixth VAT Directive 77/388/EEC.

(position of the Agricultural Law Unit expressed in its memo ref. 028074 of 30 October 2007 in reply to a question raised at a meeting of the Advisory Group on Promotion of Agricultural Products)

15. ANNUAL DECLARATION OF THE COSTS OF MEASUREMENT OF RESULTS

The deadline of four months for the submission of applications for payment of the balance referred to in Article 14 of Regulation (EC) No 1071/2005 and Article 15 of Regulation (EC) No 1346/2005 applies in particular to costs associated with measuring the results of the activities, as referred to in section C.5 of Annex III to the model contract. Evaluations must be undertaken annually after each phase. Concentrating these costs on the final year of a multiannual programme is therefore not permitted.

(position of the Agricultural Law Unit expressed in its memo ref. 028709 of 8 November 2007 in reply to a question raised by a Member State)

16. NATIONALITY OF THE AUTHORITY RESPONSIBLE FOR PUBLIC HEALTH REFERRED TO IN THE SECOND SUBPARAGRAPH OF ARTICLE 4(3) OF REGULATION (EC) NO 1071/2005

Information and promotion messages are targeted at consumers in the country where the promotion actions are being carried out. It is only logical, therefore, that references to the effects on health of consuming the products concerned must be accepted by the national authority responsible for public health in the Member State in which the promotion actions are being carried out.

(position of the Agricultural Law Unit expressed in its memo ref. 032763 of 18 December 2007 in reply to a question raised by a Member State)

17. 10% LIMIT ON THE VARIATIONS IN EXPENDITURE AUTOMATICALLY TOLERATED IN RESPECT OF EACH BUDGET ITEM

"Budget item" means the action or section lines set out in the simplified budget table appearing in the programme (section 8 of the application form) and in the contract (Annex II). In addition, Article 4 of the model contract refers to "each detailed item relating to the programme measures".

However, the proposing organisations are obliged to carry out the actions as provided for in the contract and described in the accepted programme. Transfers can be made from one item to another without entailing an amendment only in respect of amounts which are "saved" under the original line and not in respect of actions not carried out. Moreover, such transfers can be made without entailing an amendment only in respect of actions already provided for in the contract (and not in respect of new actions).

(reply given by Unit AGRI-D-4 in an e-mail dated 8 February 2008 to a Member State)

18. REFERENCES TO NATIONAL AND REGIONAL TRADEMARKS AND ORIGINS IN THIRD-COUNTRY PROGRAMMES

18.a) Reference to trademarks The promotion of a commercial trademark is included in a product's marketing costs. On this basis, in order for promotion services not to be considered to be export subsidies within the meaning of Article 9 of the 1994 WTO Agreement on Agriculture, these services must be "widely available".

The term "widely available" is not defined in the agreement.

It would also be helpful to examine in greater depth the compatibility of aid for promoting private trademarks with Community law. Any kind of unequal treatment of undertakings has to be avoided. This type of treatment could arise if the promotion of private trademarks was only available to certain companies (SMEs) and not others (large companies).

18.b) References to national and regional origins

The Community system for promotion does not encourage the inclusion of an indication of the region or Member State of origin. This is because of the principle of the common market and non-discrimination of products based on their origin. However, an indication of the origin of a product could be made as part of an information or promotion measure, if there is a designation recognised under Community rules.

(position of the Agricultural Law Unit in its memo ref. 014666 of 17 June 2008 in reply to a question raised by the unit in charge of promotion)

19. PROMOTION OF COLLECTIVE TRADEMARKS

In order for a collective trademark to be selected to be the subject of a promotion measure under Council Regulation (EC) No 3/2008, it may not be a commercial trademark (for example, one used by a supermarket to sell its products) and has to represent one or more of the characteristics set out in Article 2(1)(a) with regard to the product in question (i.e. draw attention to the intrinsic features and advantages of Community products, notably the quality and safety of food, specific production methods, nutritional and health aspects, labelling, animal welfare and respect for the environment).

(position of the Agricultural Law Unit in its memo ref. 18805 of 30 July 2008 in reply to a question raised by the unit in charge of promotion)

20. TIMEFRAMES INVOLVED IN INTERMEDIATE PAYMENTS AND PAYMENT OF BALANCES

1. In accordance with Article 18(1) of Commission Regulation (EC) No 501/2008, applications for intermediate payments have to be submitted by the proposing organisations to the Member State before the end of the calendar month following the month in which each period of three months expires. In the event of no payment being

made during a three-month period, it is possible that the information contained in the financial and operating reports will differ from each other.

2. In accordance with Article 19(1) of Commission Regulation (EC) No 501/2008, applications for payments of the balance have to be submitted by the proposing organisations to the Member State within four months of completion of the annual measures. After this time, payments cannot be made and any which are fall within the scope of Article 9(1)(a) and (1)(b) of Commission Regulation (EC) No 883/2006.

(position of DG AGRI in its letter D/26170 of 29 October 2008 in reply to a question from the German authorities).

21. MAXIMUM LEVEL OF COMMUNITY CO-FINANCING INCREASED TO 60% FOR CERTAIN MEASURES

In accordance with Article 13(2) of Council Regulation (EC) No 3/2008, the Community's contribution can be increased to 60% of the budget for information measures conducted in the Community on responsible patterns of consumption and the perils of dangerous consumption of alcohol. A "mixed" campaign could be envisaged, in which case the contribution of the Community in the other measures would remain subject to a maximum of 50%.

(position of DG AGRI in its letter D/26170 of 29 October 2008 in reply to a question from the German authorities).

22. USE MADE OF THE MATERIAL PRODUCED IN THE FRAMEWORK OF PROMOTION PROGRAMMES

Authorisations for the use outside the promotion programmes of material produced in the framework of those programmes may be granted by Member State authorities in a decentralised manner in accordance with Article 23(2) of Commission Regulation (EC) No 501/2008.

When the authorisations granted concern the use of the logos and slogans of the proposing organisations, it must be verified that the intended usage is compatible with the objectives of the promotion programme defined in Article 1(2) of Regulation (EC) No 3/2008, namely a generic promotion that does not encourage the consumption of a specific product on the basis of its make or its origin.

(position of the Agricultural Law Unit expressed in its memo ref. 30581 of 18 December 2008 in reply to a question raised by the German authorities)

23. APPLICATION OF THE EXEMPTION FROM THE PROVISIONS OF THE TREATY ON STATE AID FOR NATIONAL CONTRIBUTIONS TO PROMOTION PROGRAMMES

In accordance with Article 13(6) of Council Regulation (EC) No 3/2008, Articles 87, 88 and 89 of the Treaty do not apply to financial contributions made by Member States or from parafiscal revenue.

The non-application of Articles 87, 88 and 89 of the Treaty means that the Member States do not have to notify the measure in accordance with Article 88(3) of the Treaty.

(position of the Agricultural Law Unit on competition expressed in its memo No 31193 of 23 December 2008 following a question raised by the unit in charge of promotion and passed on to the Belgian authorities (Flemish) who had asked the question by e-mail on 8 January 2009) [sic]

24. RELEASE OF THE PERFORMANCE GUARANTEE WHEN THE LAST PAYMENT HAS BEEN MADE, WITH ACCOUNTING DOCUMENTS KEPT BY THE PAYING AGENCIES

1. The promotion of agricultural products by Regulations (EC) Nos 3/2008 and 501/2008 constitutes a common agricultural policy measure financed in the framework of the European Agricultural Guarantee Fund (EAGF), which is financed by Regulations (EC) Nos 1290/2005 and 885/2006.

The provisions of these regulations apply across the board to all market measures and so, in particular, to promotion programmes part-financed by the European Union in application of Regulations (EC) Nos 3/2008 and 501/2008, as recalled in the first two paragraphs of the 'guidelines to be considered when assessing and managing part-financing programmes for promoting Community agricultural products'¹.

2. The question as to whether supporting documents are returned by paying agencies to professional organisations that submit them or whether they are instead kept by the paying agencies is governed by Article 9 of Regulation (EC) No 885/2006 on the conservation of accounting information.

The performance guarantee referred to in Article 21 of Regulation (EC) No 501/2008 is a supporting document and professional organisations cannot therefore insist on its being returned by the paying agencies once the last payment has been made.

(position of the Agricultural Law Unit in an e-mail of 21 April 2009 in reply to a question raised by the unit in charge of promotion)

25. TENDERING PROCEDURES FOR AGENCIES RESPONSIBLE FOR IMPLEMENTING PARTS OF PROMOTION PROGRAMMES

It is not contrary to Article 8(3) of Regulation (EC) No 501/2008 to choose the agency responsible for part of the implementation of a programme, in this case the renting of

¹ Working document AGRI/60787/2007 of 25 April 2007.

advertising spaces, through an invitation to tender covering all promotion programmes implemented over a given period, rather than making a choice on an individual basis for the promotion programme in question.

(position of the Agricultural Law Unit expressed in its memo ref. Ares-166166 of 10 July 2009 in reply to a question raised by the Belgian (Flemish) authorities)

26. PRINTING OF THE EUROPEAN UNION LOGO ON MATERIAL PRODUCED IN THE FRAMEWORK OF PROMOTION PROGRAMMES PART-FINANCED BY THE EU

The printing process, referred to in Annex IV of the model contract, must fulfil the following conditions:

- a) Monochrome printing in a colour other than black on a coloured background is authorised. The same principles apply as for reproduction on a white background. The emblem and message must always be clearly legible.
- b) Material submitted without an emblem or a message is not eligible. Implementing agencies must therefore choose only material compatible with the obligation to include a legible emblem and message. This excludes, in particular, objects that are too small.

(position of the Promotion of Agricultural Products Unit communicated to the French authorities by e-mail on 13 July 2009 in reply to a question that they had submitted)

27. CALCULATING THE INTEREST RATE

Article 26 of Regulation (EC) No 501/2008, which refers to Article 86 of Regulation (EC) No 2342/2002, stipulates that interest be paid on amounts recovered by national authorities from the agencies that implement the programmes.

The rules for repayment are as follows:

- a) The practice of the Commission is to calculate interest on the sum initially owed, without capitalisation of interest.
- b) The recovery of interest linked to amounts unduly paid under Community law must, in the absence of Community provisions, be carried out in accordance with national law, subject to the limits imposed by Community law.

(position of the Agricultural Law Unit in reply to a query sent by e-mail from the Promotion of Agricultural Products Unit on 13 July 2009, following a question put by the French authorities in a bilateral meeting with the Commission)

28. CHARGING TRAVEL AND SUBSISTENCE EXPENSES

When applying Annex III of the model contract and particularly point B, section 2 on "travel and subsistence costs", it is useful to distinguish between the following cases:

- travel and subsistence expenses borne by speakers or journalists who visit or participate in one of the programme's activities, such as a seminar: these expenses are part of the cost of the activity;
- travel and subsistence costs of the implementing agency: the provisions of the contract signed between the proposing agency and this agency apply;
- travel and subsistence costs of the proposing agency: these costs are part of the general costs of the organisation and are therefore eligible for the percentages mentioned in point A.2 of Annex III of the model contract.

(reply given by the Commission to a question raised by the Greek delegation at the meeting of the management committee of 11 November 2009)

29. PAYMENT OF ADMINISTRATIVE COSTS ON A FLAT-RATE BASIS

In accordance with point A.2 of Annex III to the model contract at the disposal of the Member States, the overheads of the organisation that proposed the programme, including in particular the costs of administration, are eligible for reimbursement by the Commission for a maximum of 3% of the actual costs of carrying out the measures in the case of programmes aimed at the internal market (5% in the case of multi-country programmes – 4% and 6%, respectively, for programmes carried out in third countries). The reimbursements cover actual expenditure and the relevant supporting documents must be in the contractor's possession.

These overheads are eligible for reimbursement in so far as they meet the conditions presented in point A.4 of the Annex, i.e.

- they can be verified;
- they include no cost already charged to another expenditure category under this contract;
- they are not funded from another project.

Documentary evidence of the expenditure must be available as proof of compliance with these conditions.

(position of the Agricultural Law Unit in its memo ref. 008 315 of 27 March 2007 in reply to a question put by a delegation at a meeting of the management committee and transmitted by the Promotion of Agricultural Products Unit.

30. RIGHT TO USE THE RESULTS OF THE MEASURES COVERED BY REGULATION 501/2008

It should be determined whether the right to use the results of the measures as referred to in Article 8(2) of the model contract also covers separately each of the elements (such as texts, images, photos, etc.) used to create the promotional material (for example

brochures or posters), keeping in mind that these elements existed already and have been used by the contractor or the implementing organisation in other contexts.

I would like to state the following in reply to your memo:

1. Under Article 23(2) of Regulation (EC) No 501/2008, the material produced and financed under a programme referred to in paragraph 1, including graphic, visual and audiovisual works and websites, may be used subsequently provided that prior written authorisation is obtained from the Commission, the proposing organisations and, in cases where one or more Member State(s) contribute(s) financially to the programme, by the Member State(s) concerned, account being taken of the contractors' rights under the national law governing the contract. Pursuant to Article 8(1) of the model contract, the contractor undertakes to protect, or arrange for protection for, all results obtained while performing this contract that may qualify for intellectual property rights. According to paragraph 2, the contractor also undertakes, on behalf of the contractor itself, the implementing bodies and any subcontractors, to allow the Commission and, where applicable, the Member State(s) all rights to use the results of the measures covered by this contract.

2. The above-mentioned provisions of Regulation (EC) No 501/2008 and of the model contract only concern the final promotional material produced under the promotion programme. Article 23(2) of Regulation (EC) No 501/2008 refers to the material produced and financed under the programme, while Article 8 refers to the results of the measures that are the object of this contract, i.e. the programme.

3. Article 8(2) of the model contract thus refers to the final material which has an added value and has been produced under the promotion programme. The different elements specified in the final material that already existed and were used prior to the programme and the production of the promotional material cannot be covered each separately by the provisions of Article 8(2) of the model contract.

It is further recalled in this connection that all material produced and financed under a promotion programme and covered by Article 8(2) of the model contract may be used subsequently, provided that prior written authorisation is obtained from the Commission, the proposing organisations concerned and the Member States that contribute financially to the programme, account being taken of the contractors' rights under the national law governing the contract.

(position of the Agricultural Law Unit in an e-mail (ref. Ares(2011)100886) in reply to a question raised by the unit in charge of promotion (ref. Ares(2010)21251)).

31. ADDITIONAL ACTIONS FINANCED BY CONTRACT BENEFICIARY AND MEMBER STATE FUNDS

The applicable provisions for State aids in the context of promotion measures in third countries are point 159 of the Community Guidelines for State aid in the agriculture and forestry sector 2007 to 2013 ("the Guidelines") and Council Regulation (EC) 3/2008. Generally, promotion measures in third countries constitute State aid under Article 107(1) TFEU which can be found compatible by the Commission if the conditions of point 159 of the Guidelines are fulfilled. However, regarding co-financed promotion programs falling in the scope of Regulation 3/2008, Article 13(6) of Regulation (EC) 3/2008 provides derogation from the State aid rules, by declaring that Articles 107-109 TFEU do not apply to the Member States financial contributions for those programmes. Consequently, it has to be distinguished between Member States financial contributions

as part of promotion programmes under Regulation (EC) 3/2008 which do not constitute State aids and additional Member States funding to which the State aid rules fully apply. In the case at stake, according to your note Germany grants additional national funds on top of the co-financed promotion programmes under Regulation (EC) 3/2008. This additional funding thus is not covered by Article 13(6) of the above regulation and therefore it would constitute a State aid according to Article 107(1) TFEU which is to be notified to the Commission and evaluated pursuant to point 159 of the Guidelines. Further, since the measure in question has already been put into effect, it is to be pointed out that should the Germany authorities have not notified it to the Commission, it would constitute unlawful aid which would be also incompatible as the incentive effect requirement stipulated in point 16 of the Guidelines is not fulfilled.

(position de l'unité de législation agricole exprimée dans un courriel (ref. Ares(2010)880169) à la suite d'une question soulevée par l'unité en charge de la promotion (ref. Ares(2010)854740))

32. VERIFICATION OF INVOICES BY SUBCONTRACTORS

In the question “shall the Competent National Authority require from the proposing organisation to present invoices paid by the subcontractors or it is enough for it to receive and verify the invoice from the first subcontractor?” the following are applying: According to Articles 18 and 19 of Regulation (EC) No 501/2008, applications for payments shall be accompanied, among others, by copies of the relevant invoices and supporting documents. Intermediate payments and the balance shall be paid only on condition that the Member State has checked those documents.

Although the implementing body may subcontract the implementation of part of the programme, the provisions in the standard contract regarding eligible expenditure, supporting documents thereof and the rights and guarantees enjoyed by the competent national authority and the Commission apply *mutatis mutandis* to any subcontracting party.

Therefore, in a situation where the implementing body has entrusted by contract a subcontractor to implement parts of the programme, the provisions in the model contract apply equally to the sub-contractor.

It results from the above that:

- accommodation costs incurred in implementing measures under the contract are eligible on presentation of supporting documents (see Section B.2.1 of Annex III to the model contract);

(position de l'unité de promotion des produits agricoles communiquée aux autorités LT par courriel (Ref. Ares(2011)63173 - 20/01/2011))

33. FINANCING OF EXCHANGE RATE LOSSES BY THE IMPLEMENTING BODY.

In the question “should expenses be compensated as originally incurred or could currency exchange losses allegedly made by a subcontractor be included in the invoice to the implementing body and consequently be compensated by the EU?” The following are applying:

Losses on exchange of currencies are ineligible (see Section E of Annex III to the model

contract).

(position of the unit D4 promotion of agricultural products communicated to the Latvian authorities (Ref. Ares(2011)63173 - 20/01/2011))

34. EXTENSION OF THE DEADLINE FOR SIGNING THE CONTRACT IN COMBINATION WITH A REDUCTION OF THE APPROVED BUDGET

Acceptance of the extension of the deadline under the condition that the contract will be signed for the programme budget as approved by Commission Decision C (2011) 4611 in accordance with article 1 (2) of the standard contract concerning the possible contract amendments after signing of the contract

(position of the unit D4 promotion of agricultural products communicated BLE – Bundesanstalt für Landwirtschaft und Ernährung (ref. Ares(2011)1050102 - 04/10/2011 Request: Ref. Ares(2011)991002 19.09.2011)

35. POSSIBILITY TO REVERT TO A PAST COMPETITIVE PROCEDURE FOR THE SELECTION OF AN IMPLEMENTING BODY FOR PROGRAMME PROPOSALS TO BE SUBMITTED IN THE NEXT ROUND OF PROGRAMME SUBMISSION.

The relevant rules regarding the selection of the implementing body (Article 11 (2) of Council Regulation (EC) 3/2008 and Article 8 (3) of Commission Regulation (EC) 501/2008) do not seem to prevent such possibility.

Thus, an implementing body selected beginning of 2011 for a programme in the same product sector can also be considered for the proposal to be submitted in the context of the special round for fresh fruit and vegetables. Please note that it is essentially the responsibility of the Member State concerned to validate the appropriateness of the competitive procedure that has been used for the selection of the implementing body.

(position of the unit D4 promotion of agricultural products communicated BLE – Bundesanstalt für Landwirtschaft und Ernährung (Ref. Ares(2011) 882157 - 16/08/2011, Request: Ares(2011)1066868).

36. APPLICATION OF PENALTY FOR LATE SUBMISSION OF PAYMENT REQUESTS. HOW SHOULD THE PENALTY BE CALCULATED?

A 3% penalty should be applied as from 1 full month of delay in the amount of 3% for each full month of delay. In our opinion, the penalty should not be applied if the delay is shorter than 1 month. We also consider that the calculation of a daily penalty is not in line with the provisions of Reg. 501/2008.

(position of the unit D4 promotion of agricultural products communicated to the Slovenian authorities (Ref. Ares(2010)299467 - 02/06/2010, Ares(2010)428543 - 14/07/2010).

37. USE OF OTHER EMBLEM AT THE SAME LEVEL AS THE EU EMBLEM

It is questioned whether the national emblem or other emblems can be placed next to the EU emblem. It is possible that these emblems can be placed next to the EU emblem with the condition that they have to be in line with the rules laid down by the annex IV of the model contract (visibility, size of the EU emblem in relation to the other emblems of the Members States and of the contractors).

(position of the unit D4 promotion of agricultural products communicated to the French authorities (Ref. Ares(2011)1055317 - 05/10/2011).

38. USE OF MATERIAL AFTER THE PROGRAMME'S CONCLUSION: REQUEST TO KEEP USING THE WEBSITE

Request for the Commission to authorise the use by the proposing organisation of the website produced in the framework of the programme after the programme's conclusion. Conditions subject to which the Commission's authorisation can be given:

- **respect of the objectives set out by Article 1(2) of Regulation (EC) No 3/2008**, that is the content of the website and of the material should be generic and not brand-oriented and should not encourage the consumption of any product on grounds of its specific origins;
- the **European emblem** should be removed;
- **the mention** that the campaign has been financed with the aid from the European Union **must be replaced** with a simple indication that the material in question has been originally produced in the framework of a programme co-financed by the European Union.

(position of the unit D4 promotion of agricultural products communicated to the Italian authorities (Ref. Ares(2011)1055317 - 05/10/2011).

39. EXTENSION OF DEADLINE FOR INTERMEDIATE PAYMENTS AND DIRECT PAYMENT OF SUBCONTRACTORS (TO THE IMPLEMENTING BODY) FROM THE PROPOSING ORGANIZATION.

The Commission services cannot derogate from the rules by granting additional time for intermediate payments. In the specific case, Article 18 of Regulation 501/2008 is applicable and if the late filing of the claim might be justified by national authorities as being due to a "force majeure", the penalty of 3 % for each full month of delay is not applicable.

Concerning the direct payment of invoices due, by the implementing body to suppliers, by the proposing organization, the Commission services cannot give their agreement because these obligations are exclusively of the implementing body. If the proposing organisation wants to pay the bills in question, it can do, but without co-financing of the Commission.

It is obvious that under these conditions for the proper execution of the program, another enforcement agency must be selected from candidates who participated in the initial procedure for selecting a new implementing agency.

(position of the unit D4 promotion of agricultural products communicated to the French authorities (Ref. Ares(2011)822949).

40. USE OF GRAPHICS CREATED UNDER CONTRACT

The Commission services have no objections if the following conditions are met.

-Compliance with the objectives of Article 1 (2) of Regulation (EC) No 3 / 2008 'actions are not directed towards particular brand names and do not encourage the consumption of a product due to its specific origin "

-European logo must be removed.

-the word "campaign funded with support from the European community" must be removed or replaced with "the material in question was originally produced as part of a program funded by the European Union.

(position of the unit D4 promotion of agricultural products communicated to the French authorities (Ref. Ares(2011)).

41. REQUEST PERMISSION TO CHANGE THE LOGO FOR THE ACTION OF 2 OF A PROGRAMME

It is permitted but the EU logo features prominently somewhere and that reference is made to the proposing organization.

(position of the unit D4 promotion of agricultural products communicated to the French authorities (Ref. Ares(2011)).

42. THE PROPOSING ORGANISATION WANTS TO REPEAT THE PROVISION OF TEACHING KITS CREATED AS PART OF EDUCATIONAL ACTIVITIES WITHIN AN ENDED CONTRACT:

The materials (educational kits) can be used up to the exhaustion of their stock. The EU logo should not be removed from the materials.

(position of the unit D4 promotion of agricultural products communicated to the French authorities (Ref. Ares(2011)).

43. ELIGIBLE PRODUCTS FOR CO-FINANCED PROMOTION MEASURES IN THIRD COUNTRIES

Cooked production like sausage, ham, smoked sausage and other similar products) fall within the definition of food preparations based on fresh, chilled and frozen beef, veal and pigmeat. Therefore, they are eligible for promotion measures in third countries.

(position of the Director General DG AGRI communicated to the Lithuanian authorities (Ref. Ares(2011)741773 - 7/07/2011)).

44. REPRESENTATIVENESS OF AN ORGANISATION TO SUBMIT A PROGRAMME

Which type of organisation would be eligible to prepare a programme for actions of information on responsible drinking patterns and harm linked to hazardous alcohol consumption? Could an association representing retail chains be considered as representative for this purpose?

As regards the eligibility of an organisation to submit promotion and information programmes, it belongs to the Member State to define which trade and/or inter-trade organisation(s) are representative of the sectors concerned and this for the themes and products listed in Section A of Annex I to Regulation (EC) No 501/2008 concerning the Internal Market.

As for the guidelines for wines set out in Section B of Annex I, they identify 2 types of goals and associated key messages for this eligible product: (i) To inform consumers about the variety, quality and production conditions of Community wines; (ii) to inform consumers about responsible drinking patterns and the risks of alcohol abuse.

In this context, it is conceivable that an organisation that groups wine retailers, and does not include wine producers or processors, could be deemed eligible to submit such information programmes.

However, such programme would have to be exclusively focused on the second range of the above stated objectives (that is, responsible drinking).

(position of Unit D.4 of DG AGRI communicated to the Lithuanian authorities (Ref. Ares(2011)290792 - 16/03/2011).

45. ACCOUNTING PROCEDURES (VAT) IN MULTI COUNTRY PROGRAMMES ON THE INTERNAL MARKET

Question/request :

The proposing organisation has its seat in Germany. The programme's implementing body, has its seat in Germany as well. The implementing body concludes contracts with the programme's partner organizations in the different target countries. The programme's target countries include Germany, Poland, France, The Netherlands and the United Kingdom.

The proposing organisation is asking for clarification as to whether invoices of the partner organizations in the target countries can be sent to the implementing body for verification/control and at the same time be issued in the name of the proposing organisation who would also pay the invoices. The proposing organisation argues that this approach allows meeting the requirements of the German VAT law while at the same time not putting at risk the liquidity of the proposing organisation.

Interpretation/position :

The Directorate-General for Agriculture and Rural Development cannot agree to the approach proposed by the proposing organisation. Proposing organisation and implementing body should be independent bodies, the latter being selected by the former through the means of an appropriate competitive procedure (article 8(3) of Commission

Regulation (EC) No 501/2008). The approach proposed by the proposing organisation would weaken this separation. Moreover, the contracts with the partner organisations in the target countries were concluded between them and the implementing body. Thus, there is no contractual basis for payments from the proposing organisation to the partner organisations.

Related articles (Reg. 501/2008 / Reg. 3/2008):

Article 8(3) of Commission Regulation (EC) No 501/2008

Source of the position : Legal service- Unit D4

Signature Director-General, visa M.1

To whom this position was provided:

German authorities, Bundesanstalt für Landwirtschaft und Ernährung (BLE)

Ref (No of ARES registration)::

Ares(2011)1169032 - 03/11/2011

46. SHORT TERM CHANGES TO THE PROVISIONAL TIMETABLE

Question/request :

If the contractor communicates a change in the timetable less than 15 days before the implementation of the activity, is this activity still eligible for co-financing?

Interpretation/position :

If the change in the timetable is communicated less than 15 days before the foreseen implementation of the activity, the activity cannot be considered eligible for EC co-financing.

Related articles (Reg. 501/2008 / Reg. 3/2008):

Standard contract Article 4 (6)

Source of the position :

Legal service- DG AGRI Unit D4, informal consultation (e-mail) of M.1

To whom this position was provided:

German authorities, Bundesanstalt für Landwirtschaft und Ernährung (BLE)

Ref (No of ARES registration):

Ares(2011)147832 - 10/02/2011

47. USE OF SLOGAN OUTSIDE OF PROGRAMME (PROGRAMME FOR PDOs/PGIs)

Question/request :

Can the associations of PDO/PGI products that form the programme use the slogan of the programme outside of the programme for their own company and brand marketing?

Interpretation/position :

To make sure that provisions of article 1 (2) of Regulation (EC) No 3/2008 (EG) are met, the slogan of the cofinanced programme may not be used in the context of company or brand marketing, even if outside the programme.

However, the PDO/PGI umbrella organisations themselves may use the slogan outside the programme under the condition that it will not be used in the context of company or brand marketing of their members.

Related articles (Reg. 501/2008 / Reg. 3/2008):

Article 1 (2) of Council Regulation (EC) No 3/2008

Source of the position : Legal service- Unit D4

D.4, visa M.1

To whom this position was provided:

German authorities, Bundesanstalt für Landwirtschaft und Ernährung (BLE)

Ref (No of ARES registration):

Ares(2011)160880 - 14/02/2011

48. MESSAGES ON THE EFFECTS ON HEALTH IN PROGRAMMES ON THE INTERNAL MARKET

Question/request :

Question whether messages on the effects on health can be assessed exclusively on the basis of the Health Claims Regulation (EC) No 1924/2006 of the European Parliament and of the Council. This would mean that only messages that are part of the list of approved health claims of Regulation 1924/2006 would be considered eligible for use in promotion programmes on the internal market.

Interpretation/position :

The list containing the approved health claims of Regulation 1924/2006 can form a basis of the assessment insofar as health claims that are part of the list do not need additional approval by the national competent body. However, messages on effects on health not included in this list may also still be valid and such messages still need an approval of the national competent body according to article 4 (3) of Commission Regulation (EC) 501/2008.

Related articles (Reg. 501/2008 / Reg. 3/2008):

Article 4 (3) of Commission Regulation (EC) No 501/2008

Health Claims Regulation (EC) No 1924/2006 of the European Parliament and of the Council

Source of the position : Legal service- Unit D4

DGAGRI Unit D.4

To whom this position was provided:

German authorities, Bundesanstalt für Landwirtschaft und Ernährung (BLE)

No of ARES registration:

Ares(2011)1120058 - 20/10/2011

49. CHANGE OF PROPOSING ORGANISATION DUE TO ORGANISATIONAL RESTRUCTURING AND RESULTING DEPENDENCE OF IMPLEMENTING BODY.

Question/request :

The proposing organisation ceases to exist and is incorporated into a new organisation. As consequence the implementing body will not be fully independent from the proposing organisation.

- 1) May the newly created organisation take over as proposing organisation for the programme?
- 2) Does a new implementing body need to be selected?

Interpretation/position :

The new organisation can take over as proposing organisation for the programme under the condition that

- 1) The national law permits such a succession
- 2) The national authorities can guarantee that all legal provisions including the ones regarding the representativeness of the new proposing organisation are respected

The implementing body has to be independent of the proposing organisation. As the independence of the implementing body is no longer given, a new implementing body has to be selected.

Related articles:

Article 16 (2) of Regulation (EC) No 501/2008

Article 1(2) of standard contract

Article 8(3) of Regulation (EC) No 501/2008

Source of the position :

Legal service- DG AGRI Unit D4, DG AGRI. M.1 Ares(2009)342993

To whom this position was provided:

Danish authorities (Ministeriet for Fodevarer, Landbrug og Fiskeri)

Ref (No of ARES registration):

Ares(2010)40296

50. CONTINUATION OF CONTRACT BY NEW PROPOSING ORGANIZATION

Question/request :

Is it possible to modify the proposing organization in an ongoing contract whilst guaranteeing the implementation of the programme according to the signed contract?

Interpretation/position :

According to Article 14 of the Standard Contract, the "contract is governed by the law of the country of the competent national authority". Therefore, if on the basis of Dutch law a new proposing organization can be considered as the lawful successor of the initial contracting party, then the European Commission could consider the acceptance of a new proposing organization to continue the execution of related co-financed programmes.

In order to guarantee a proper continuation of the execution of the running programmes it should be clear however that the new contracting party ought to fulfil all requirements. More specifically its personnel needs to have the necessary competences, the bank guarantee must be renewed (or updated), a new bank account needs to be foreseen, the proposing organization must remain representative for the sector and when executing certain parts of the programme itself the five year experience needs to be demonstrated through the employment of personnel with the minimum required experience.

An addendum to the contract must be foreseen together with an extensive note justifying the circumstances and the adjustments affecting the contracting parties on the basis of the conditions mentioned in the two previous paragraphs.

Thereby the implementation of the programme must continue to be done according to the signed contract and the applicable rules (Regulation (EC) No 03/2008, Regulation (EC) No 501/2008, Standard Contract).

The future proposing organization does not necessarily need to be currently involved, financially or otherwise, though they do need to subscribe all obligations of the initially contracting party.

Related articles (Reg. 501/2008 / Reg. 3/2008):

Art 16§2 (Reg 501/2008)

Art 14 Standard Contract

Source of the position :

DG AGRI, Unit D4 + Legal Service

To whom this position was provided:

Ministry of Economic Affairs, National Service for the Implementation of Regulations of Netherlands

Ref (No of ARES registration):

Ares(2013)513106

51. BRAND NAMES ON FACEBOOK

Question/request :

As Facebook is a live forum, not an advert, the Proposing organisation would like to mention the company or brand names on the Facebook page. No one brand or company would be favoured, the campaign would rotate mentions and ensure all companies get one mention. The proposing organisation argues that current regulations and guidelines were drawn up before the development of the social media situation.

Interpretation/position :

According to (EC) Regulation N°3/2008 Article 1, the information and promotion that may be co-financed by the Community budget shall not be brand-oriented. This restriction cannot be relaxed, even on a live forum like Facebook and even when no one brand or company is favoured. Therefore, no logo nor company or brand names can appear on the Facebook page of the co-financed programme.

However, the programme's website may contain links to external, not co-financed websites, where it would be possible to find these logos presented in a free manner and any other information about the members of Sustain.

Related articles (Reg. 501/2008 / Reg. 3/2008):

Article 1 of Council Regulation (EC) N°3/2008.

Source of the position :

Legal service- DG AGRI Unit D4

To whom this position was provided:

Rural Payments Agency

Ref (No of ARES registration):

Ares(2013)555660

52. MODIFICATION OF THE STATUS OF A PROPOSING ORGANIZATION

Question/request :

Is it possible to modify the status of a proposing organization that has one programme approved and one programme running.

Interpretation/position :

It is noted that the creation of a new status of a proposing organization is targeting the better operation of the organization and this will improve the management and the implementation of promotion programmes approved within the framework of promotion Regulations (EC) No 3/2008 and (EC) No 501/2008. Furthermore it is noted that, under the new status, there is not any deviation from the set objectives of the programmes and that there are further precautions, support and improvement on the implementation of the programmes. The agreement of the competent authority and approval of this modification for the continuation of the programmes of the proposing organization is taken into account. The proposing organization is a representative organization of the sector. In view of the above elements the change of the status is accepted of the proposing organization and the continuation of the current programmes of the organization. The relevant modifications to the contracts should be undertaken to correspond in this modification.

Related articles :

Reg. 501/2008 and Reg. 3/2008

Source of the position :

DG AGRI, Unit D4

To whom this position was provided:

Ministry of Rural Development and Food of Greece

Ref (No of ARES registration):

Ares(2013)54941

53. EXCHANGE RATE TO USE IN PROMOTION PROGRAMS

Question/request :

France wants to know how proposing organizations and implementing organizations have to apply the rule mentioned in the standard contract

Interpretation/position :

The rule does only concern the relation between the Commission and the Paying Agencies and for Member States which are not in the euro zone. For the transactions between the Paying Agency and the organizations, the rules are to be decided by the national authorities.

The French authorities have been applying a rule that did not concern them

Related articles (Reg. 501/2008 / Reg. 3/2008):

Standard Contract

Source of the position : Legal service- Unit D4

Legal service- Unit D4

To whom this position was provided:

To France by letter and to all Member States via Management Committee and CIRCA

No of ARES registration:

DDG2.D4/MO/cl D(2013)774310

54. CO-FINANCING OF PROGRAMMES BY A STATE OWED ORGANIZATION

Question/request :

1. Can a stated owed organization participate in the co-financing of 50% that corresponds to the proposing organization or the national part.
2. Can public or fiscal money complement the contribution of producers or associations which submit the proposal? What about money generated from a product levy?

Interpretation/position :

Article 13 on financing of Council Regulation (EC) No 3/2008 lays down the following rules:

1. Without prejudice to paragraph 4, the Community shall fully fund the measures referred to in Article 10. The Community shall also fully fund the costs to cover the technical assistants selected in accordance with Article 11(1)(a).
2. The Community's financial participation in the programmes selected under Articles 8 and 9 shall not exceed 50 % of the actual cost of these programmes. Where information and promotion programmes have a duration of two or three years, the participation for each year of implementation shall not exceed this ceiling. The percentage referred to in the first subparagraph shall be 60 % for measures for the promotion of fruit and vegetables intended specifically for children in schools of the Community. The percentage provided for in the first subparagraph shall be 60 % for measures carried out in the Community concerning information on responsible drinking patterns and harm linked to hazardous alcohol consumption.
3. Proposing organisations shall participate in the funding of the programmes they propose to a level of at least 20 % of the actual costs of the programmes, with the remaining funding being borne by the Member States concerned, where appropriate, taking account of the Community's financial participation referred to in paragraph 2. The share paid by the Member States and the proposing organisations respectively shall be fixed when the programme is submitted to the Commission in accordance with Article 7(2). State owned organisation can propose a program only under article 9(1) of Council Regulation (EC) No 3/2008. In consequence AMC can co-finance this program up to 50% by covering the contribution of the Member State and of the proposing organisation. In the case, where another proposing organisation not state owned, proposes a program under article 6(1) of the same Regulation, article 9(1) cannot be applied anymore but State owned organisations can co-finance up to 30% which covers the contribution of the Member State. It is noted that a state owned organisation cannot substitute the contribution of the proposing organisation in the second case. As regards the second question, payments made by Member States or proposing organisations may come from parafiscal charges or mandatory contributions (levy). However the contribution of this kind by the proposing organisations (levy) should be at least 20% and be covered by the organisation itself.

Related articles (Reg. 501/2008 / Reg. 3/2008):

Articles 6, 7, 8, 9, 11 and 13 of Council Regulation (EC) No 3/2008

Source of the position : Legal service- Unit D4

DG AGRI -Unit D4

To whom this position was provided:

Agricultural Marketing Center for Hungary-Hungarian Ministry of Rural Development

No of ARES registration:

ARES(2011)653911

55. USE OF MATERIAL AFTER THE PROGRAMME'S CONCLUSION: REQUEST TO KEEP USING THE WEBSITE

Related articles (Reg. 501/2008 / Reg. 3/2008):

Article 23(2) of Regulation (EC) No 501/2008

Question/request :

Request for the Commission to authorise the use by the proposing organisation of the website produced in the framework of the programme after the programme's conclusion

Interpretation/position :

Conditions subject to which the Commission's authorisation can be given:

- **respect of the objectives set out by Article 1(2) of Regulation (EC) No 3/2008**, that is the content of the website and of the material should be generic and not brand-oriented and should not encourage the consumption of any product on grounds of its specific origins;
- the **European emblem** should be removed;
- **the mention** that the campaign has been financed with the aid from the European Union **must be replaced** with a simple indication that the material in question has been originally produced in the framework of a programme co-financed by the European Union.

Source of the position : Legal service- Unit D4

Unit D4

To whom this position was provided:

Italian authorities

No of ARES registration:

56. ELIGIBILITY OF PRODUCTS FOR PROMOTION PROGRAMMES CARRIED OUT ON THE INTERNAL MARKET AND IN THIRD COUNTRIES

Question/request :

- (1) Is it possible to prepare a promotional programme for both organic products (e.g. dairy products) and a product with PGI (e.g. meat product)?
- (2) When writing a promotional programme for organic products whether the combinations like organic cheeses and organic bread, or organic cheeses and organic honey are possible?

Interpretation/position :

Article 6 of Commission Regulation (EC) No 501/2008 stipulates that:

"1. The list of themes and products that may be covered by measures to be implemented on the internal market, [...], is set out in Part A of Annex I to this Regulation.

[...]

2. The list of products that may be covered by measures to be implemented in third countries, /.../, is set out in Part A of Annex II to this Regulation.

[...]"

In addition, according to Article 10 of Commission Regulation (EC) No 501/2008, preference shall be given, in the case of programmes submitted by several Member States and targeting third countries, to those covering a group of products and placing particular emphasis on quality, nutritional value and food safety aspects of Community production.

As a consequence,

(1) Yes, it is possible to prepare a promotion programme for both organic products and PGI products, provided that:

- they form a coherent group (basket) of products that can be successfully promoted together;
- guidelines for each product group are respected, in particular sections 2. Goals for promotion programme targeting the internal market.

(2) The indicated combinations are possible and both seem to form a coherent set of products. Please note that to avoid any confusion it should clearly be indicated in the proposal that the programme is promoting organic farming products. Guidelines for this category should therefore be followed if targeting the internal market.

Related articles (Reg. 501/2008 / Reg. 3/2008):

Article 6 of Commission Regulation (EC) No 501/2008

Article 10 of Commission Regulation (EC) No 501/2008

Source of the position : Legal service- Unit D4

Unit D4

To whom this position was provided:

Ministry of Agriculture and Food - Bulgaria

No of ARES registration:

57. DEADLINES TO COMMUNICATE THE PROVISIONAL TIMETABLE TO THE MS AND ELIGIBILITY OF RELATED EXPENSES

Question/request :

It is questioned whether it should be accepted a timetable received for the activities of the next quarter, as well as approve and authorise the costs related to the activities that were implemented before receiving this calendar.

Which working days should be considered: the working days of the competent national authority's Member State, or of the target country.

Interpretation/position :

I can confirm that Article 4 of the contract applies and that any changes from the provisional timetable should be sent 15 working days in advance.

In addition, the working days to be considered are the working days of the competent national authority's Member State, here Bulgaria, and not the working days of the targeted country of the activities.

According to your initial email of 3rd April, your beneficiary submitted the provisional timetable to you on time but did not notify you the changes of dates of some activities 15 working days in advance.

Therefore, we would suggest that you accept the timetable received while the costs related to the activities that were implemented before receiving this calendar and during the following 15 Bulgarian working days, should be considered as ineligible and should not be approved and authorised.

Related articles (Reg. 501/2008 / Reg. 3/2008):

Article 4 of the contract

Source of the position : Legal service- Unit D4

Legal Service

To whom this position was provided:

Ministry of Agriculture and Food - Bulgaria

No of ARES registration:

Ref. Ares(2013)694858 - 15/04/2013

Ref. Ares(2013)1257482 - 22/05/2013

58. ELIGIBILITY OF EXPENSES FOLLOWING THE MODIFICATION OF THE CONTRACT

Question/request :

In the event of changes to the program, the beneficiaries have given indication that expenses only become eligible after the addendum is signed, which means that if an addendum (between IFAP and the beneficiary) is signed after completion of the action (which is changed or added) the expenditure is not eligible.

However, it seems that this procedure is not being followed by other MS (French concrete situation sent). They indeed consider eligible expenses with an action performed before signing the addendum, on the grounds that the addendum applies to quarter, so that all expenses will be covered for the same quarter.

The Portuguese authorities asked for clarification on this aspect.

Interpretation/position :

Article 2 of the standard contract states that:

"1. This contract shall enter into force on the date of signing by contracting party.

[...]

3. The measures provided for in the documents referred to in Article 1 implemented during the various phases of the programme starting from of entry into force of the contract and [...].

Addenda being contracts, these provisions should also be applied to these.

Therefore, the costs related to activities that are modified by an addendum and that were implemented before signing this addendum should be considered as ineligible.

In addition, we would like to remind you that Article 4 of the standard contract also applies. It stipulates that any changes from the provisional timetable should be sent to the Member State 15 working days in advance. Failure to communicate such information implies that the costs of the measure(s) concerned should be considered as ineligible too.

Related articles (Reg. 501/2008 / Reg. 3/2008):

Article 2 of the standard contract

Source of the position :

Legal service- Unit D4

To whom this position was provided:

IFAP

No of ARES registration:

Ref. Ares(2013)2737995 - 23/07/2013

59. L'AUTORISATION DE MODIFIER LE CALENDRIER DE CERTAINES ACTIONS POUR LE DERNIER TRIMESTRE DU PROGRAMME

Question/request :

Le 28 novembre 2012, l'IFAP informait par email mon service que l'organisme proposant (Vinhos Verdes) a demandé le 27 novembre 2012 l'autorisation de modifier le calendrier de certaines actions pour le dernier trimestre du programme [compris du 26 nov. 2012 au 26 fév. 2013]. Il s'agit d'organiser les actions *in-store tastings* à Sao Paulo, en plus des actions déjà prévues à Salvador da Bahia et à Belo Horizonte. Aucune modification du budget n'est envisagée. L'IFAP rappelle qu'un avenant au contrat ne peut être signé au cours des trois derniers mois du programme, sauf en cas de circonstances exceptionnelles (article 1, paragraphe 2 du contrat). L'IFAP demande à mon service si cette modification peut être acceptée ou non.

Le 30 novembre 2012, la Commission demande à l'IFAP des précisions supplémentaires sur la nature et sur les modalités d'information de ce changement.

Le 3 décembre, l'IFAP précise qu'informé de cette modification par téléphone le 23 novembre il ne l'a été par écrit que le 27 et pour des actions prévues début décembre.

Interpretation/position :

Au vue des informations soumises à la Commission (les 28 nov. et 3 déc. 2012), il apparaît qu'en tout état de cause, qu'il s'agisse d'un avenant (article 1) ou d'un changement relevant de l'article 4, la modification demandée l'a été hors délais.

En effet, pour autoriser une action non prévue à l'annexe VII faisant l'objet d'un avenant, il eut fallu signer l'avenant avant le 26 nov. 2012. S'il s'agissait de mettre une action déjà prévue à l'annexe VII au calendrier, il eut fallu en informer l'IFAP au moins quinze jours ouvrables avant l'échéance de l'action, cf. art.4.

Related articles (Reg. 501/2008 / Reg. 3/2008):

Article 1 – Objet

2. [...]

Le présent contrat ne peut pas être modifié durant la période de trois mois qui précède la fin de la dernière phase visée à l'article 2, paragraphe 3. Toutefois, dans des circonstances exceptionnelles dument motivées, l'autorité nationale compétente peut autoriser une dérogation à cette disposition.

Article 4 – Exécution des dépenses

6. Le contractant informe l'autorité nationale compétente en lui transmettant, trente jours avant le début de chaque trimestre, un calendrier provisoire des actions prévues, selon le modèle de l'annexe VII. Lorsqu' il y a des changements par rapport à ce calendrier provisoire, il transmet, au moins quinze jours ouvrables à l'avance, une indication des dates ou périodes de réalisation des actions prévues au programme. [...]

Source of the position : Legal service- Unit D4

Legal service

To whom this position was provided:

IFAP

No of ARES registration:

Ref. Ares(2012)1488904 - 13/12/2012

60. RETARD BALANCE DE PAIEMENT ET APPLICATION DE L'EXEMPTION POUR CAS DE FORCE MAJEURE

Question/request :

Dans le cadre du programme 2010-TC-440-PT, nous avons reçu le 19 octobre 2012 un email de l'IFAP nous informant que l'IVBAM (l'organisation proposante) a été contrôlé par la section régionale du tribunal de Madère entre fin 2011 et le 7 septembre 2012. Pendant ce contrôle, bien que les activités prévues dans le programme aient été exécutées, l'IVBAM a été dans l'incapacité d'émettre des factures auprès de l'IFAP.

L'IFAP nous demandait s'ils pouvaient considérer ce cas comme un cas de force majeure afin de ne pas appliquer une réduction du solde de 3% par mois de retard.

Interpretation/position :

D'après l'article 19 du Règlement (EC) No 501/2008, l'organisation proposante doit introduire la demande de paiement du solde auprès de l'Etat membre dans un délai de quatre mois suivant la date d'achèvement des actions annuelles prévues dans le contrat. Or, le contrat en question ayant été signé le 21 février 2011, ce délai expirait le 21 juin 2012. Dans l'article 19, il est également prévu que le dépôt tardif d'une demande de paiement du solde donne lieu à une réduction du solde de 3% par mois de retard. Enfin, il y est stipulé que cette clause ne s'applique pas dans les cas de force majeure.

La question est donc de savoir si les conditions pour la reconnaissance d'un cas de force majeure sont réunies en l'espèce. La notion de force majeure doit être entendue dans le sens de circonstances étrangères à la personne concernée, anormales et imprévisibles, dont les conséquences n'auraient pu être évitées qu'au prix de sacrifices excessifs, malgré toutes les diligences déployées².

La force majeure comporte un élément objectif, relatif aux circonstances anormales et étrangères à l'opérateur, et un élément subjectif, tenant à l'obligation, pour l'intéressé, de se prémunir contre les conséquences de l'événement anormal en prenant des mesures appropriées sans consentir des sacrifices excessifs. En particulier, l'opérateur doit surveiller soigneusement le déroulement de la procédure entamée et, notamment, faire preuve de diligence afin de respecter les délais prévus³.

Dans le cas présent, l'événement qui devrait être qualifié de force majeure est l'incapacité de l'IVBAM à produire des factures. Ceci devrait donc être analysé en vérifiant d'abord si ce fait représente une circonstance anormale et surtout étrangère à l'opérateur. Pourquoi donc l'organisation proposante était-elle en incapacité d'émettre des factures? Par exemple, conformément à la jurisprudence de la Cour, ne sont pas étrangères à l'opérateur les actes, mêmes frauduleux, commis par ses cocontractants.

Il importe de souligner que la force majeure constitue une exception à la règle générale et qu'elle doit, à ce titre, être interprétée et appliquée de manière restrictive, ce qui justifie aussi que les preuves exigées de l'organisation proposante soient incontestables. Et deuxièmement, il faudrait analyser quelles ont été les mesures prises par l'organisation proposante pour se prémunir contre une telle situation.

Les éléments que vous nous avez fournis ne nous permettent pas de conclure à l'existence ou pas d'un cas de force majeure. L'absence de d'avantage de détails nous conduit plutôt à conclure à une absence de cas de force majeure.

Je voudrais également vous rappeler qu'aux termes du point IV de la Communication sur la force majeure⁴, les administrations nationales sont chargées d'appliquer concrètement la clause de force majeure et doivent s'y engager avec la plus grande prudence tant en ce qui concerne l'appréciation des faits invoqués que des preuves apportées à l'appui des demandes concernées. Celles-ci sont plus en mesure d'analyser la situation de fait

² Arrêts de la Cour du 11 juillet 1968, *Schwarzwaldmilch*, 4/68, Rec. p. 549, p. 563 ; du 17 décembre 1970, *Internationale Handelsgesellschaft*, 11/70, Rec. p. 1125, point 23 ; du 15 décembre 1994, *Transáfica*, C-136/93, Rec. p. 1-5757, point 14, et du 17 octobre 2002, *Parras Medina*, C-208/01, Rec. p. 1-8955, point 19

³ Arrêt de la Cour du 15 décembre 1994, *Bayer/Commission*, C-195/91 P, Rec. p. 1-5619, point 32

⁴ Communication C(88) 1696 de la Commission relative à la *force majeure* en droit agricole européen (88/C 259/07)

existante et de constater que la preuve d'un cas de force majeure a été rapportée à suffisance de droit.

Related articles (Reg. 501/2008 / Reg. 3/2008):

l'article 19 du Règlement (EC) No 501/2008

Source of the position : Legal service- Unit D4

Legal service

To whom this position was provided:

IFAP

No of ARES registration:

Ref. Ares(2012)1492636 - 14/12/2012

61. ELIGIBILITE PROGRAMME RIZ

Question/request :

Le 9 janvier 2013, l'IFAP demandait par email (Ares (2013)37397) à mon service la confirmation de la non-éligibilité d'un programme de promotion potentiel dont les actions de promotion concerneraient le riz.

Interpretation/position :

Par conséquent, si le programme en question vise à promouvoir le riz sur le marché intérieur, le riz comme tel n'est pas repris dans l'annexe I et n'est donc *a priori* pas un produit éligible. On peut néanmoins noter que le riz pourrait être considéré comme un produit éligible s'il rentre dans l'une des catégories suivantes de l'annexe I:

- *symbole graphique des régions ultrapériphériques comme indiqué dans la législation agricole,*
- *appellation d'origine protégée (AOP), indication géographique protégée (IGP) ou spécialité traditionnelle garantie (STG) conformément aux règlements (CE) N. 509/2006 du Conseil et (CE) N. 510/2006 du Conseil et produits enregistrés dans le cadre de ces régimes,*
- *agriculture biologique conformément au règlement (CEE) N. 2092/91 du conseil et produits enregistrés conformément audit règlement.*

Si le programme en question vise à promouvoir le riz dans les pays tiers, seuls les "produits transformés à base de [...] riz" sont éligibles comme indiqué dans l'annexe II.

Related articles (Reg. 501/2008 / Reg. 3/2008):

L'article 6 du Règlement (CE) N. 501/2008 de la Commission fixe l'objet des actions à réaliser:

1. *La liste des thèmes et des produits pouvant faire l'objet des actions à réaliser sur le marché intérieur [...] figure à l'annexe I, partie A, du présent règlement. [...]*
2. *La liste des produits pouvant faire l'objet des actions à réaliser dans les pays tiers [...] figure à l'annexe II, partie A, du présent règlement. [...]*

l'annexe I

l'annexe II

Source of the position : Legal service- Unit D4

Legal service

To whom this position was provided:

IFAP

No of ARES registration:

Ref. Ares(2013)114932 - 30/01/2013

62. ELIGIBILITY OF PASTRY

Question/request :

Email sent by the Rural Payment Agency (UK):

We have recently had some interest from the bakery industry regarding Information and Promotion measures in Third Countries. Before I provide some advice I would like some clarification myself. Please see below.

Annex II.A of Commission Regulation R501/2008 includes products processed from cereals and rice among those that are eligible. However there are no definitions or guidelines for promotion in Third Countries. Please supply details, with examples, of the products included in this group. For example are only bread based products eligible? Or is confectionary included.

Interpretation/position :

I received your question concerning the eligibility of bakery and confectionary products for co-financing of information and promotion programmes.

As you noted, Annex II.A of Commission Regulation R501/2008 which lists the products that may be covered by promotional measures in third countries includes products processed from cereals. We consider that only products essentially made of cereals are included in this category, which is not the case of pastry and confectionary products. Therefore, the latter are not eligible for co-financing of information and promotion programmes.

Related articles (Reg. 501/2008 / Reg. 3/2008):

Annex II.A of Commission Regulation R501/2008

Source of the position : Legal service- Unit D4

To whom this position was provided:

Rural Payment Agency (UK), Mr. Steve Wood

No of ARES registration:

63. ELIGIBILITY OF PRODUCTS AND MEASURES –CONTINUATION OF A RUNNING PROGRAMME

Question/request :

Clarifications provided by Unit B.5 to Member States on the eligibility of products, continuation of running programmes and the cost of hiring a celebrity.

Interpretation/position :

Products processed from cereals and rice

As regards the product category "products processed from cereals and rice" of annex II.A of Commission Regulation (EC) No 501/2008 the following applies:

- Pastry or confectionary products are not included in this product category as it is only products essentially made of cereals which are included in this category. Therefore these products are not eligible.
- Pasta products are eligible as they are made predominantly from cereals. In consequence pasta products are eligible for financial support.
- Rice ready for human consumption goes through processing such as husking, milling or other and it is included in this category. Therefore rice ready for human consumption is eligible for financial support.

Fruits and vegetables

As regards the product categories "processed fruits and vegetables" of annex I.A of Commission Regulation (EC) No 501/2008 and "fresh and processed fruits and vegetables" of annex II.A of the same Regulation, the following elements should be taken into account:

- Fruit juices, marmalades and jams are products included in Annex I of the Treaty. Therefore these products are eligible for financial support and included in the above product categories of the annexes of the promotion Regulation.
- Tomato sauce (falling under CN code 2103) and vegetable soups (falling under CN code 2104) are not eligible for financial support as they are not included in the Annex I of the Treaty.

Fresh, chilled or frozen beef, veal and pigmeat, food preparations based on these products - pâté

As regards the product category "fresh, chilled or frozen beef, veal and pigmeat, food preparations based on these products" listed in annex II.A of Commission Regulation (EC) No 501/2008, "Pâté" meat products can be considered eligible if they contain at least 80% of meat from pork, veal or beef. The appropriate CN codes and product descriptions are the following ones:

CN code	product description
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- ex 1601 00 10 pâtés of liver, put up in sausage casings or pressed into the characteristic shape of sausages, containing by weight 80% or more of meat or meat offal of domestic swine or bovine animals or a mixture thereof
- ex 1601 00 99 pâtés, put up in sausage casings or pressed into the characteristic shape of sausages, containing by weight 80% or more of meat or meat offal of domestic swine or bovine animals or a mixture thereof
- ex 1602 20 90 pâtés of liver, containing by weight 80% or more of meat or meat offal of domestic swine or bovine animals or a mixture thereof
- ex 1602 49 19 pâtés, containing by weight 80% or more of meat or meat offal of domestic swine, including fats of any kind or origin
- ex 1602 50 95 pâtés, containing by weight 80% or more of meat or meat offal of bovine animals

Cost of hiring a celebrity

Actions involving the employment of a celebrity (for instance a chef) can be presented as an honorarium per day. Although the Commission services are in favour of the involvement of a celebrity chef it cannot accept co-financing of daily fees higher than 2500€.

Continuation of a running programme

A first continuation of a programme will be acceptable only if the annual report of the first annual phase of the running programme is already submitted to the Commission. If a proposal is at least the second continuation, then the proposal will not be considered eligible unless the **final** evaluation report of the previous programme is submitted to the Commission first.

Related articles (Reg. 501/2008 / Reg. 3/2008):

Annex of Commission Regulation (EC) No 501/2008

Source of the position : Legal service- Unit D4

Legal service-Unit B.5

To whom this position was provided:

Member States

No of ARES registration:

Ares(2014)893124 of 24/03/2014