

## I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

## REGULATIONS

## COUNCIL REGULATION (EC) No 1182/2007

of 26 September 2007

**laying down specific rules as regards the fruit and vegetable sector, amending Directives 2001/112/EC and 2001/113/EC and Regulations (EEC) No 827/68, (EC) No 2200/96, (EC) No 2201/96, (EC) No 2826/2000, (EC) No 1782/2003 and (EC) No 318/2006 and repealing Regulation (EC) No 2202/96**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 36 and 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

Having regard to the Opinion of the European Economic and Social Committee <sup>(1)</sup>,

Having regard to the Opinion of the Committee of the Regions,

Whereas:

- (1) The current regime for the fruit and vegetables sector is laid down in Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables <sup>(2)</sup>, Council Regulation (EC) No 2201/96 of 28 October 1996 on the common organisation of the markets in processed fruit and vegetable products <sup>(3)</sup> and Council Regulation (EC) No 2202/96 of 28 October 1996 introducing a Community aid scheme for producers of certain citrus fruits <sup>(4)</sup>.
- (2) In the light of experience it is necessary to change the regime for the fruit and vegetables sector in order to achieve the following objectives: improving the competitiveness and market orientation of the sector so as to

contribute to achieving sustainable production that is competitive both on internal and external markets; reducing fluctuations in producers' income resulting from crises on the market; increasing the consumption of fruit and vegetables in the Community; and continuing the efforts made by the sector to maintain and protect the environment.

- (3) Since those objectives cannot be sufficiently achieved by the Member States due to the common nature of the market in fruit and vegetables and can therefore, by reason of the need for further common action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

- (4) The Commission has submitted a separate proposal for a Council Regulation establishing a common organisation of agricultural markets which could initially incorporate certain provisions of a horizontal nature covering the fruit and vegetables sector and applying to a range of other agricultural products, in particular provisions on a management committee. It is appropriate to leave such provisions in Regulations (EC) No 2200/96 and (EC) No 2201/96. Those provisions should however be updated, simplified and streamlined so as to allow for their easy incorporation into the Regulation establishing a common organisation of agricultural markets.

- (5) As regards other provisions specific to the fruit and vegetables sector, the scope of the changes to the current regime make it necessary, in the interests of clarity, to incorporate all such provisions into a separate Regulation. Where such provisions are to some extent also of a horizontal nature and apply to a range of other agricultural

<sup>(1)</sup> OJ C 175, 27.7.2007, p. 53.

<sup>(2)</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>(3)</sup> OJ L 297, 21.11.1996, p. 29. Regulation as last amended by the Act of Accession of 2005.

<sup>(4)</sup> OJ L 297, 21.11.1996, p. 49. Regulation as last amended by the Act of Accession of 2003.

products, such as those on marketing standards and trade with third countries, they should also be updated and simplified so as to allow for their easy incorporation, at a later date, into the abovementioned Regulation establishing a common organisation of agricultural markets. This Regulation should not, therefore, repeal or change existing instruments of a horizontal nature unless they have become obsolete, redundant or should not, by their very nature, be dealt with at Council level.

- (6) The scope of this Regulation should be products covered by the common market organisations of the markets in fruit and vegetables and processed fruit and vegetables. However, the provisions on producer organisations and interbranch organisations and agreements apply only to products covered by the common market organisation for fruit and vegetables and this distinction should be maintained. The scope of the common market organisation in fruit and vegetables should also be extended to certain culinary herbs to allow them to benefit from that regime. Thyme and saffron are currently covered by Council Regulation (EEC) No 827/68 of 28 June 1968 on the common organisation of the market in certain products listed in Annex II to the Treaty <sup>(1)</sup>, from which they should therefore be removed.
- (7) Marketing standards, in particular relating to definition, quality, grading into classes, sizing, packaging, wrapping, storage, transport, presentation, marketing and labelling, should apply in respect of certain products to permit the market to be supplied with products of uniform and satisfactory quality. Moreover, special measures, in particular up-to-date methods of analysis and other measures to determine the characteristics of the standards concerned, may need to be adopted to avoid abuses as regards the quality and authenticity of the products presented to the consumers and the significant disturbances on the markets to which such abuses may give rise.
- (8) Currently, Council Directive 2001/112/EC of 20 December 2001 relating to fruit juices and certain similar products intended for human consumption <sup>(2)</sup> and Council Directive 2001/113/EC of 20 December 2001 relating to fruit jams, jellies and marmalades and sweetened chestnut purée intended for human consumption <sup>(3)</sup> lay down specific provisions regarding production, composition and labelling of these products. However, those rules are not fully updated to take account of developments in relevant international standards and should therefore be modified to allow for such updating.
- (9) The production and marketing of fruit and vegetables should take full account of environmental concerns, including cultivation practices, the management of waste

materials and the disposal of products withdrawn from the market, in particular as regards the protection of water quality, the maintenance of biodiversity and the upkeep of the countryside.

- (10) Producer organisations are the basic actors in the fruit and vegetables regime, the decentralised operation of which they ensure at their level. In the face of ever greater concentration of demand, the grouping of supply through these organisations continues to be an economic necessity in order to strengthen the position of producers in the market. Such grouping should be effected on a voluntary basis and prove its utility by the scope and efficiency of the services offered by producer organisations to their members. Since producer organisations act exclusively in the interests of their members, they should be deemed as acting in the name and on behalf of their members in economic matters.
- (11) Experience shows that producer organisations are the proper tool for grouping supply. However, the spread of producer organisations in different Member States has been uneven. In order to further improve the attractiveness of producer organisations, provision should be made for more flexibility in their operation wherever possible. Such flexibility should concern in particular the product range of a producer organisation, the extent of direct sales permitted and the extension of rules to non-members as well as permitting associations of producer organisations to carry out any of the activities of their members and permitting the outsourcing of activities, including to subsidiaries, in both cases subject to necessary conditions.
- (12) A producer organisation should not be recognised by its Member State as able to contribute to the achievement of the objectives of the common market organisation unless its articles of association impose certain requirements on it and its members. The establishment and proper functioning of operational funds require that producer organisations should in general take charge of the whole of the relevant fruit and vegetable production of their members.
- (13) Producer groups in Member States which acceded to the European Union on 1 May 2004 or after that date and wishing to acquire the status of producer organisations in accordance with this Regulation should be allowed the benefit of a transitional period during which national and Community financial support can be given against certain commitments by the producer group.
- (14) In order to give producer organisations greater responsibility for their financial decisions in particular and to gear the public resources assigned to them towards future requirements, terms should be set for the use of these resources. Joint financing of operational funds set up by producer organisations is an appropriate solution. Additional scope for financing should be permitted in particular cases. In order to control Community expenditure, there should be a cap on assistance granted to producer organisations that establish operational funds.

<sup>(1)</sup> OJ L 151, 30.6.1968, p. 16. Regulation as last amended by Regulation (EC) No 865/2004 (OJ L 161, 30.4.2004, p. 97, corrected by OJ L 206, 9.6.2004, p. 37).

<sup>(2)</sup> OJ L 10, 12.1.2002, p. 58.

<sup>(3)</sup> OJ L 10, 12.1.2002, p. 67. Directive as amended by Directive 2004/84/EC (OJ L 219, 19.6.2004, p. 8).

- (15) In regions where the organisation of production is weak, the grant of additional, national, financial contributions should be allowed. In the case of Member States which are at a particular disadvantage with regard to structures, those contributions should be reimbursable by the Community.
- (16) In order to simplify and reduce the cost of the scheme it could be helpful to align, where possible, the procedures and rules for the eligibility of expenditure under operational funds with those of rural development programmes by requiring Member States to establish a national strategy for operational programs.
- (17) In order to further boost the impact of producer organisations and associations thereof and ensure the market as much stability as is desirable, Member States should be allowed on certain conditions to extend to non-member producers in their region the rules, particularly on production, marketing and environmental protection, adopted for its members by the organisation or association for the region concerned. Where proper justification is given, certain costs arising from the extension of the rules should be chargeable to the producers concerned since they will benefit from the extension. However, organic producers should not be subject to the extension of the rules without the consent of a substantial part of such producers. It is necessary to permit the rapid extension of such rules for crisis prevention and management measures in order to deal promptly with crises.
- (18) A number of heterogeneous aid schemes for certain fruit and vegetables were set out in Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 2202/96. The number and variety of those schemes have made them complex to administer. Whilst they were targeted at certain specific fruits and vegetables, they have not been able to fully take into account regional conditions of production, and have not covered all fruit and vegetables. It is therefore appropriate to seek a different tool for supporting fruit and vegetable producers.
- (19) Furthermore, the aid schemes for fruit and vegetables were not fully integrated into Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers <sup>(1)</sup>. This had led to certain complexities and rigidities in the administration of those schemes.
- (20) In the interests of a more targeted but flexible system of support for the fruit and vegetables sector and in the interests of simplification, it is therefore appropriate to abolish the existing aid schemes and fully include fruit and vegetables in the scheme established by Regulation (EC) No 1782/2003. To this end it is necessary to provide that farmers who produced fruit and vegetables in the reference period should be eligible for the single payment scheme. Provision should also be made for the establishment by Member States of reference amounts and eligible hectares under the single payment scheme on the basis of a representative period appropriate to the market of each fruit and vegetable product and of appropriate objective and non-discriminatory criteria. Areas planted with fruit and vegetables, including permanent fruits and vegetables as well as nurseries should be eligible for the single payment scheme. National ceilings should be amended accordingly. In order to provide time for the sectors concerned to adapt to their integration into the single payment scheme, transitional periods should be provided for. In particular, provision should be made for decoupled fruit and vegetables payments and temporary coupled area aids for certain products intended for processing, which were eligible under the existing aid schemes, as well as strawberries and raspberries. For the latter products a national top-up to the Community aid may also be granted. Provision should also be made for the Commission to adopt detailed implementing rules and any necessary transitional measures with regard to the above.
- (21) The production of fruit and vegetables is unpredictable and the products are perishable. Surplus on the market, even if it is not too great, can significantly disturb the market. Some schemes for market withdrawals have been operated but have proved somewhat complex to administer. A number of further measures for crisis management should be introduced in a manner as easy to apply as possible. Integration of all such measures into the operational programmes of producer organisations appears the best approach in these circumstances, and should also provide for increased attractiveness of producer organisations for producers. However in order to allow crisis management measures to be extended to non-members of producer organisations, Member States should be authorised for a transitional period to grant a state aid in such cases. The aid should however be less than that received by members of the producer organisation in order to make membership attractive. The operation of this state aid should be reviewed at the end of the transitional period.
- (22) The integration of ware potatoes into the scheme set out in Regulation (EC) No 1782/2003 implies that, in order to safeguard the proper working of the single market based on common prices, the provisions of the Treaty governing State aid should also apply to ware potatoes, subject to a transitional period to allow for the adaptation of the sector.
- (23) Council Regulation (EC) No 2826/2000 of 19 December 2000 on information and promotion actions for agricultural products on the internal market <sup>(2)</sup> provides for a Community contribution to certain promotion actions of up to 50 %. In order to promote the consumption of fruit and vegetables amongst children in educational establishments, that percentage should be increased for promotion of fruit and vegetables in this case.

<sup>(1)</sup> OJ L 270, 21.10.2003, p. 1. Regulation as last amended by Commission Regulation (EC) No 552/2007 (OJ L 131, 23.5.2007, p. 10).

<sup>(2)</sup> OJ L 328, 23.12.2000, p. 2. Regulation as amended by Regulation (EC) No 2060/2004 (OJ L 357, 2.12.2004, p. 3).

- (24) Interbranch organisations set up on the initiative of individual or already grouped operators can, if they account for a significant proportion of the members of the various occupational categories of the fruit and vegetable sector, contribute to behaviour taking closer account of market realities and facilitate a commercial approach that will improve production reporting, in particular as regards the organisation of production, product presentation and marketing. Since the work of these organisations is able to contribute in general to attaining the objectives of Article 33 of the Treaty, and in particular those of this Regulation, it should, once the relevant forms of action are defined, be possible to grant specific recognition to those organisations which provide proof of sufficient representativeness and carry out practical action in regard to those objectives. The provisions on extending the rules adopted by producer organisations and their associations and on sharing the costs resulting from such extension should, given the similarity of the objectives pursued, also apply to interbranch organisations.
- (25) The creation of a single Community market involves the introduction of a trading system at the external borders of the Community. That trading system should include import duties and should, in principle, stabilise the Community market. The trading system should be based on the undertakings accepted under the Uruguay Round of multilateral trade negotiations.
- (26) The application of the entry price system for fruit and vegetables requires the adoption of specific provisions to take account of the international commitments of the Community.
- (27) Monitoring the volume of trade in agricultural products with third countries may, in respect of certain products, require the introduction of licensing systems for imports and exports including the lodging of a security to ensure that the transactions for which such licences are issued are actually carried out. The Commission should, therefore, be empowered to introduce licensing systems in respect of such products.
- (28) In order to prevent or counteract adverse effects on the Community market which could result from imports of certain agricultural products, imports of such products should be subject to payment of an additional duty, if certain conditions are fulfilled.
- (29) It is appropriate, under certain conditions, to confer on the Commission the power to open and administer tariff quotas resulting from international agreements concluded in accordance with the Treaty or from other acts of the Council.
- (30) The customs duty system makes it possible to dispense with all other protective measures at the external frontiers of the Community. The internal market and duty mechanism could, in exceptional circumstances, prove to be inadequate.
- In such cases, in order not to leave the Community market without defence against disturbances that might ensue, the Community should be able to take all necessary measures without delay. Such measures should comply with the international commitments of the Community.
- (31) To ensure that those trading arrangements can function properly, provision should be made for regulating or, when the situation on the market so requires, prohibiting the use of inward or outward processing arrangements.
- (32) To continue to provide for a legal base for export refunds for sugar incorporated into certain processed fruit and vegetables products as provided for in Article 16(1)(b) of Regulation (EC) No 2201/96, the list of products concerned should be added to that contained in Annex VII to Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector <sup>(1)</sup>.
- (33) Directives 2001/112/EC and 2001/113/EC and Regulations (EEC) No 827/68, (EC) No 2200/96, (EC) No 2201/96, (EC) No 2826/2000, (EC) No 1782/2003 and (EC) No 318/2006 should therefore be amended accordingly.
- (34) Since the common markets in agricultural products are continuously evolving, the Member States and the Commission should keep each other informed of relevant developments.
- (35) The proper working of the single market based on common prices would be jeopardised by the granting of national aid. Therefore, the provisions of the Treaty governing State aid should, as a general rule, apply to the products covered by this Regulation. However, provision should be made for a one-off State aid for the tomato processing sector in Italy and Spain in order to support its adaptation to the provisions of this Regulation.
- (36) Expenditure incurred by the Member States as a result of the obligations arising from the application of this Regulation should be financed by the Community in accordance with Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy <sup>(2)</sup>.
- (37) The fruit and vegetables regime provides for compliance with certain obligations. To guarantee compliance with those obligations, there is a need for controls and the application of penalties in case of non-compliance with such obligations. Power should therefore be conferred on

<sup>(1)</sup> OJ L 58, 28.2.2006, p. 1. Regulation as amended by Commission Regulation (EC) No 247/2007 (OJ L 69, 9.3.2007, p. 3).

<sup>(2)</sup> OJ L 209, 11.8.2005, p. 1. Regulation as last amended by Regulation (EC) No 378/2007 (OJ L 95, 5.4.2007, p. 1).

the Commission to introduce the corresponding rules, including those concerning the recovery of undue payments and the reporting obligations of the Member States. The special corps of inspectors in the fruit and vegetables sector will no longer be necessary under the new regime and should therefore be abolished.

- (38) The aid scheme established by Regulation (EC) No 2202/96 is to be abolished. That Regulation will thus no longer have any purpose and should therefore be repealed.
- (39) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(1)</sup>.
- (40) In the interests of simplification, the separate committees for fresh fruit and vegetables, and processed fruit and vegetables should be abolished and replaced by a single committee for fruit and vegetables to be established under Regulation (EC) No 2200/96.
- (41) The change-over from the existing arrangements to those provided for by this Regulation could give rise to difficulties which are not dealt with in this Regulation. In order to deal with such difficulties, the Commission should be enabled to adopt transitional measures. Furthermore, provision should be made for continued recognition of producer organisations and associations of producer organisations recognised under Regulation (EC) No 2200/96 and the possible continuation of operational programmes approved under that Regulation, as well as similar provisions for producer groups recognised under Regulation (EC) No 2200/96 and their recognition plans.
- (42) This Regulation should, as a general rule, apply from 1 January 2008. However, in order to avoid the interruption of the aid schemes for processed fruit and vegetable products and citrus fruits part-way through a marketing year, such aid schemes should be allowed to run until the end of the 2007/2008 marketing year,

HAS ADOPTED THIS REGULATION:

#### TITLE I

### INTRODUCTORY PROVISIONS

#### Article 1

#### Scope

This Regulation lays down specific rules applying to the products listed in Article 1(2) of Regulation (EC) No 2200/96 and in Article 1(2) of Regulation (EC) No 2201/96.

<sup>(1)</sup> OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

However Titles III and IV of this Regulation shall only apply in respect of the products listed in Article 1(2) of Regulation (EC) No 2200/96 and/or of such products intended solely for processing.

Article 43 shall also apply to potatoes, fresh or chilled of CN code 0701.

#### TITLE II

### CLASSIFICATION OF PRODUCTS

#### Article 2

#### Marketing standards

1. The products listed in Article 1(2) of Regulation (EC) No 2200/96 which are intended to be sold fresh to the consumer, may only be marketed if they are sound, fair and of marketable quality and if the country of origin is indicated.
2. Provision may be made by the Commission for marketing standards for one or more of the products listed in Article 1(2) of Regulation (EC) No 2200/96 and in Article 1(2) of Regulation (EC) No 2201/96.
3. In so doing, the Commission shall take account of the Standard recommendations adopted by the United Nations Economic Commission for Europe (UNECE).
4. The marketing standards referred to in paragraphs 1 and 2:
  - (a) shall apply at all marketing stages including import and export unless otherwise provided for by the Commission;
  - (b) shall be established taking into account, in particular, the specificities of the products concerned, the need to ensure the conditions for a smooth disposal of those products on the market and the interest of consumers in receiving adequate and transparent product information as regards in particular the country of origin, the class and, where appropriate, the variety (or the commercial type) of the product;
  - (c) may in particular relate to quality, grading into classes, sizing, packaging, wrapping, storage, transport, presentation, marketing and labelling.
5. The holder of products covered by the adopted marketing standards may not display such products or offer them for sale or deliver or market them in any manner within the Community other than in conformity with those standards. The holder shall be responsible for ensuring such conformity.
6. Without prejudice to any specific provisions which may be adopted by the Commission in accordance with Article 42, Member States shall check selectively, based on a risk analysis, whether those products conform to those marketing standards. These checks shall be focused on the stage prior to dispatch from the production areas when the products are being packed or loaded. For products from third countries, checks shall be done prior to release for free circulation.

7. Until new marketing standards are adopted, the marketing standards drawn up pursuant to Regulation (EC) No 2200/96 and Regulation (EC) No 2201/96 shall continue to apply.

### TITLE III

## PRODUCER ORGANISATIONS

### CHAPTER I

#### *Requirements and recognition*

#### Article 3

#### **Requirements**

1. For the purposes of this Regulation, a producer organisation shall be any legal entity or clearly defined part of a legal entity which complies with the following requirements:

- (a) it is formed on the initiative of farmers within the meaning of Article 2(a) of Regulation (EC) No 1782/2003, who are growers of one or more products listed in Article 1(2) of Regulation (EC) No 2200/96 and/or of such products intended solely for processing;
- (b) it has the objective of the use of environmentally sound cultivation practices, production techniques and waste management practices, in particular to protect the quality of water, soil and landscape, and preserve or encourage biodiversity;
- (c) it has one or more of the following objectives:
  - (i) ensuring that production is planned and adjusted to demand, particularly in terms of quality and quantity;
  - (ii) concentration of supply and the placing on the market of the products produced by its members;
  - (iii) optimising production costs and stabilising producer prices;
- (d) its articles of association provide for the specific requirements as laid down in paragraph 2; and
- (e) it has been recognised by the Member State concerned pursuant to Article 4.

2. The articles of association of a producer organisation shall require its producer members, in particular, to:

- (a) apply the rules adopted by the producer organisation relating to production reporting, production, marketing and protection of the environment;
- (b) belong to only one producer organisation in respect of a given holding's production of any given product referred to in paragraph 1(a);

- (c) market their entire production concerned through the producer organisation;
- (d) provide the information requested by the producer organisation for statistical purposes, in particular on growing areas, quantities cropped, yields and direct sales;
- (e) pay the financial contributions provided for in its articles of association for the establishment and replenishment of the operational fund provided for in Article 8.

3. Notwithstanding paragraph 2(c), where the producer organisation so authorises and where this is in compliance with the terms and conditions laid down by the producer organisation, the producer members may:

- (a) sell no more than a fixed percentage of their production and/or products directly on their holdings and/or outside their holdings to consumers for their personal needs, such percentages being fixed by Member States at not less than 10 %;
- (b) market themselves or through another producer organisation designated by their own organisation, quantities of products which are marginal in relation to the volume of marketable production of their organisation;
- (c) market themselves or through another producer organisation designated by their own organisation products which, because of their characteristics, are not normally covered by the commercial activities of the producer organisation concerned.

4. The articles of association of a producer organisation shall also provide for:

- (a) procedures for determining, adopting and amending the rules referred to in paragraph 2;
- (b) the imposition on members of financial contributions needed to finance the producer organisation;
- (c) rules enabling the producer members to scrutinise democratically their organisation and its decisions;
- (d) penalties for infringement of obligations under the articles of association, particularly non-payment of financial contributions, or of the rules laid down by the producer organisation;
- (e) rules on the admission of new members, particularly a minimum membership period;
- (f) the accounting and budgetary rules necessary for the operation of the organisation.

5. Producer organisations shall be deemed to be acting in the name and on behalf of their members in economic matters.

#### Article 4

##### Recognition

1. Member States shall recognise producer organisations within the meaning of Article 3(1) applying for such recognition, provided that:

- (a) they meet the requirements laid down in Article 3 and provide the relevant evidence thereof;
- (b) they have a minimum number of members and cover a minimum volume or value of marketable production to be laid down by Member States, and provide the relevant evidence thereof;
- (c) there is sufficient evidence that they can carry out their activities properly over time and in terms of effectiveness and concentration of supply, for which purpose Member States may decide which of the products or groups of products referred to in Article 3(1)(a) should be covered by the producer organisation;
- (d) they effectively enable their members to obtain technical assistance in using environmentally-sound cultivation practices;
- (e) they effectively provide their members, where necessary, with the technical means for collecting, storing, packaging and marketing their produce;
- (f) they ensure proper commercial and accounting management of their activities; and
- (g) they do not hold a dominant position in a given market unless this is necessary in pursuance of the goals of Article 33 of the Treaty.

2. Member States shall:

- (a) decide whether to grant recognition to a producer organisation within three months of the lodging of an application accompanied by all the relevant evidence;
- (b) carry out checks at regular intervals to ascertain whether producer organisations comply with this Title, impose the penalties on such organisations in the event of non-compliance or irregularities concerning the provisions of this Regulation and decide, where necessary, to withdraw recognition;
- (c) notify the Commission, once per year, of every decision to grant, refuse or withdraw recognition.

#### Article 5

##### Associations of producer organisations

An association of producer organisations shall be formed on the initiative of recognised producer organisations and may carry out

any of the activities of a producer organisation. To this end Member States may recognise, on request, an association of producer organisations where:

- (a) the Member State considers that the association is capable of effectively carrying out those activities; and
- (b) the association does not hold a dominant position in a given market unless this is necessary in pursuance of the goals of Article 33 of the Treaty.

Article 3(5) shall apply *mutatis mutandis* to actions of associations of producer organisations.

#### Article 6

##### Outsourcing

Member States may permit a recognised producer organisation or a recognised association of producer organisations to outsource any of its activities, including to subsidiaries, provided that it provides sufficient evidence to the Member State that doing so is an appropriate way to achieve the objectives of the producer organisation or association of producer organisations concerned.

#### Article 7

##### Producer groups

1. For the purposes of this Regulation, a producer group shall be any legal entity or clearly defined part of a legal entity which is formed on the initiative of farmers within the meaning of Article 2(a) of Regulation (EC) No 1782/2003, who are growers of one or more products listed in Article 1(2) of Regulation (EC) No 2200/96 and/or of such products intended solely for processing, with a view to being recognised as a producer organisation.

Producer groups in Member States which acceded to the European Union on 1 May 2004 or after that date, or in the outermost regions of the Community as referred to in Article 299(2) of the Treaty or in the smaller Aegean Islands as referred to in Article 1(2) of Council Regulation (EC) No 1405/2006<sup>(1)</sup> may be allowed a transitional period in which to meet the conditions for recognition laid down in Article 4.

In order to qualify, those producer groups shall present a phased recognition plan to the relevant Member State, acceptance of which shall signal the start of the transitional period referred to in the second subparagraph and shall constitute a preliminary recognition. The transitional period shall be no more than five years.

2. Before acceptance of the recognition plan, Member States shall inform the Commission of their intentions and the likely financial implications thereof.

3. During the transitional period, Member States may grant to the producer groups:

- (a) aid to encourage their formation and facilitate their administrative operation;

<sup>(1)</sup> OJ L 265, 26.9.2006, p. 1.

(b) aid, provided either directly or through credit institutions, to cover part of the investments required to attain recognition and set out in the recognition plan referred to in the third subparagraph of paragraph 1.

4. The aid referred to in paragraph 3 shall be reimbursed by the Community in accordance with the rules adopted pursuant to Article 42(b)(ii).

5. The aid referred to in paragraph 3(a) shall be determined for each producer group on the basis of its marketed production and shall amount, for the first, second, third, fourth and fifth years, to:

- (a) 10 %, 10 %, 8 %, 6 % and 4 %, respectively, of the value of marketed production in the case of producer groups in Member States which acceded to the European Union on 1 May 2004 or after that date; and
- (b) 5 %, 5 %, 4 %, 3 % and 2 %, respectively, of the value of marketed production in the case of producer groups in the outermost regions of the Community as referred to in Article 299(2) of the Treaty or in the smaller Aegean Islands as referred to in Article 1(2) of Regulation (EC) No 1405/2006.

Those rates may be reduced in relation to the value of marketed production which exceeds a threshold. A ceiling may be applied to the aid payable in any given year to a producer group.

## CHAPTER II

### **Operational funds and operational programmes**

#### *Article 8*

#### **Operational funds**

1. Producer organisations may set up an operational fund. The fund shall be financed by:

- (a) financial contributions of members or of the producer organisation itself;
- (b) Community financial assistance which may be granted to producer organisations.

2. Operational funds shall be used only to finance operational programmes approved by Member States in accordance with Article 13.

#### *Article 9*

#### **Operational programmes**

1. Operational programmes shall have two or more of the objectives referred to in Article 3(1)(c) or of the following objectives:

- (a) planning of production;
- (b) improvement of product quality;

- (c) boosting the commercial value of products;
- (d) promotion of the products, whether in a fresh or processed form;
- (e) environmental measures and methods of production respecting the environment, including organic farming;
- (f) crisis prevention and management.

2. Crisis prevention and management shall be related to avoiding and dealing with crises on the fruit and vegetable markets and shall cover in this context:

- (a) market withdrawal;
- (b) green harvesting or non-harvesting of fruit and vegetables;
- (c) promotion and communication;
- (d) training measures;
- (e) harvest insurance;
- (f) support for the administrative costs of setting up mutual funds.

Crisis prevention and management measures, including any repayment of capital and interest as referred to in the third subparagraph, shall not comprise more than one-third of the expenditure under the operational programme.

In order to finance crisis prevention and management measures, producer organisations may take out loans on commercial terms. In this case, the repayment of the capital and interest on those loans may form part of the operational programme and so may be eligible for Community financial assistance under Article 10. Any specific action under crisis prevention and management shall be financed either by such loans or directly, but not both.

3. Member States shall provide that:

- (a) operational programmes shall include two or more environmental actions, or
- (b) at least 10 % of the expenditure under operational programmes shall cover environmental actions.

Environmental actions shall respect the requirements for agri-environment payments set out in the first subparagraph of Article 39(3) of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) <sup>(1)</sup>.

Where at least 80 % of the producer members of a producer organisation are subject to one or more identical agri-environment commitments under that provision then each one of those commitments shall count as an environmental action as referred to in point (a) of the first subparagraph.

<sup>(1)</sup> OJ L 277, 21.10.2005, p. 1. Regulation as last amended by Regulation (EC) No 2012/2006 (OJ L 384, 29.12.2006, p. 8).



Support for the environmental actions referred to in the first subparagraph shall cover additional costs and income foregone resulting from the action.

4. Paragraph 3 shall only apply in Bulgaria and Romania from 1 January 2011.

5. Investments which increase environmental pressure shall only be permitted in situations where effective safeguards to protect the environment from these pressures are in place.

#### Article 10

##### Community financial assistance

1. The Community financial assistance shall be equal to the amount of the financial contributions referred to in Article 8(1)(a) as actually paid but limited to 50 % of the actual expenditure incurred.

2. The Community financial assistance shall be capped at 4,1 % of the value of the marketed production of each producer organisation.

However, that percentage may be increased to 4,6 % of the value of the marketed production provided that the amount in excess of 4,1 % of the value of the marketed production is used solely for crisis prevention and management measures.

3. At the request of a producer organisation, the percentage provided for in paragraph 1 shall be 60 % for an operational programme or part of an operational programme where it meets at least one of the following conditions:

- (a) it is submitted by several Community producer organisations operating in different Member States on transnational schemes;
- (b) it is submitted by one or more producer organisations engaged in schemes operated on an interbranch basis;
- (c) it covers solely specific support for the production of organic products covered by Council Regulation (EEC) No 2092/91 of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs <sup>(1)</sup>;
- (d) it is submitted by a producer organisation in one of the Member States which acceded to the European Union on 1 May 2004 or after that date for measures running no later than the end of 2013;
- (e) it is the first to be submitted by a recognised producer organisation which has merged with another recognised producer organisation;
- (f) it is the first to be submitted by a recognised association of producer organisations;
- (g) it is submitted by producer organisations in Member States where producer organisations market less than 20 % of fruit and vegetables production;

<sup>(1)</sup> OJ L 198, 22.7.1991, p. 1. Regulation repealed by Regulation (EC) No 834/2007 (OJ L 189, 20.7.2007, p. 1) as from 1 January 2009.

(h) it is submitted by a producer organisation in one of the outermost regions of the Community;

(i) it covers solely specific support for actions to promote the consumption of fruit and vegetables targeted at children in educational establishments.

4. The percentage provided for in paragraph 1 shall be 100 % in the case of market withdrawals of fruit and vegetables, which shall not exceed 5 % of the volume of marketed production of each producer organisation and which are disposed of by way of:

- (a) free distribution to charitable organisations and foundations, approved to that effect by the Member States, for use in their activities to assist persons whose right to public assistance is recognised in national law, in particular because they lack the necessary means of subsistence;
- (b) free distribution to penal institutions, schools and public education institutions, and to children's holiday camps as well as to hospitals and old people's homes designated by the Member States, which shall take all necessary steps to ensure that the quantities thus distributed are additional to the quantities normally bought in by such establishments.

#### Article 11

##### National financial assistance

1. In regions of the Member States where the degree of organisation of producers is particularly low, Member States may be authorised by the Commission, on a duly substantiated request, to pay producer organisations national financial assistance equal to a maximum of 80 % of the financial contributions referred to in Article 8(1)(a). This assistance shall be additional to the operational fund.

In regions of Member States where producer organisations market less than 15 % of the value of fruit and vegetable production and whose fruit and vegetable production represents at least 15 % of their total agricultural output, the assistance referred to in the first subparagraph may be reimbursed by the Community at the request of the Member State concerned.

2. Articles 87, 88 and 89 of the Treaty shall not apply to the national financial assistance authorised pursuant to paragraph 1.

#### Article 12

##### National framework and national strategy for operational programmes

1. Member States shall establish a national framework for drawing up the general conditions relating to the actions referred to in Article 9(3). This framework shall provide in particular that such actions shall meet the appropriate requirements of Regulation (EC) No 1698/2005 including those on complementarity, consistency and conformity, as set out in Article 5 of that Regulation.

Member States shall submit their proposed framework to the Commission, which may require modifications within three months if it finds that the proposal does not enable the attainment of the objectives set out in Article 174 of the Treaty and in the Sixth Community Environment Action Programme <sup>(1)</sup>. Investments on individual holdings supported by operational programmes shall also respect those objectives.

2. Member States shall establish a national strategy for sustainable operational programmes in the fruit and vegetable market. Such a strategy shall provide for the following elements:

- (a) an analysis of the situation in terms of strengths and weaknesses and the potential for development;
- (b) justification of the priorities chosen;
- (c) the objectives of operational programmes and instruments, as well as performance indicators;
- (d) assessment of operational programmes;
- (e) reporting obligations for producer organisations.

The national strategy shall also integrate the national framework referred to in paragraph 1.

3. Paragraphs 1 and 2 shall not apply to Member States which have no recognised producer organisations.

#### Article 13

##### Approval of operational programmes

1. Draft operational programmes shall be submitted to the competent national authorities, which shall approve or reject them or request their modification in line with the provisions of this Chapter.

2. Producer organisations shall communicate to the Member State the estimated amount of the operational fund for each year and shall submit appropriate reasons therefor based on operational programme estimates, expenditure for the current year and possibly expenditure for previous years and, if necessary, on estimated production quantities for the next year.

3. The Member State shall notify the producer organisation or association of producer organisations of the estimated amount of Community financial assistance in line with the limits set out in Article 10.

4. Community financial assistance payments shall be made on the basis of expenditure incurred for the schemes covered by the operational programme. Advances may be made in respect of the same schemes subject to the provision of a guarantee or security.

5. The producer organisation shall notify the Member State of the final amount of expenditure for the previous year, accompanied by the necessary supporting documents, so that it may receive the balance of the Community financial assistance.

6. Operational programmes and their financing by producers and producer organisations on the one hand and by Community funds on the other shall have a minimum duration of three years and a maximum duration of five years.

#### CHAPTER III

##### Extension of rules to producers of an economic area

#### Article 14

##### Extension of rules

1. In cases where a producer organisation operating in a specific economic area is considered, in respect of a specific product, to be representative of production and producers in that area, the Member State concerned may, at the request of the producer organisation, make the following rules binding on producers established in that economic area who do not belong to the producer organisation:

- (a) the rules referred to in Article 3(2)(a);
- (b) the rules required to implement the measures referred to in Article 9(2)(c).

The first subparagraph shall apply on condition that those rules:

- (a) have been in force for at least one marketing year;
- (b) are included in the exhaustive list in Annex I;
- (c) are made binding for no more than three marketing years.

However, the condition referred to in point (a) of the second subparagraph shall not apply if the rules concerned are those listed in points 1, 3 and 5 of Annex I. In this case, the extension of rules may not apply for more than one marketing year.

2. For the purposes of this Chapter, 'economic area' means a geographical zone made up of adjoining or neighbouring production regions in which production and marketing conditions are homogeneous.

Member States shall notify a list of economic areas to the Commission.

Within one month of notification, the Commission shall approve the list or shall, after consultation with the Member State concerned, decide on the amendments which the latter is to make to it. The Commission shall make the approved list publicly available using the methods it considers appropriate.

<sup>(1)</sup> Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme (OJ L 242, 10.9.2002, p. 1).

3. A producer organisation shall be deemed representative within the meaning of paragraph 1 where its members account for at least 50 % of the producers in the economic area in which it operates and it covers at least 60 % of the volume of production of that area. Without prejudice to paragraph 5, in calculating these percentages account shall not be taken of producers or production of organic products covered by Regulation (EEC) No 2092/91.

4. The rules which are made binding on all producers in a specific economic area:

- (a) shall not cause any damage to other producers in the Member State concerned or in the Community;
- (b) shall not apply, unless they expressly cover them, to products delivered for processing under a contract signed before the beginning of the marketing year, with the exception of the rules on production reporting referred to in Article 3(2)(a);
- (c) shall not be incompatible with Community and national rules in force.

5. Rules may not be made binding on producers of organic products covered by Regulation (EEC) No 2092/91 unless such a measure has been agreed to by at least 50 % of such producers in the economic area in which the producer organisation operates and that organisation covers at least 60 % of such production of that area.

#### Article 15

#### Notification

Member States shall forthwith notify the Commission of the rules which they have made binding on all producers in a specific economic area pursuant to Article 14(1). The Commission shall make these rules publicly available using the methods it considers appropriate.

#### Article 16

#### Repeal

The Commission shall decide that a Member State shall repeal an extension of the rules decided on by that Member State pursuant to Article 14(1):

- (a) where it finds that the extension in question to other producers excludes competition in a substantial part of the internal market or jeopardises free trade, or that the objectives of Article 33 of the Treaty are endangered;
- (b) where it finds that Article 81(1) of the Treaty applies to the rules extended to other producers. The Commission's decision with regard to those rules shall apply only from the date of such a finding;

- (c) where it finds after checks that this Chapter has not been complied with.

#### Article 17

#### Financial contributions of non-member producers

Where Article 14(1) is applied, the Member State concerned may decide, on scrutiny of evidence presented, that non-member producers shall be liable to the producer organisation for the part of the financial contributions paid by the producer members, insofar as these are used to cover:

- (a) administrative costs resulting from application of the rules referred to in Article 14(1);
- (b) the cost of research, market studies and sales promotion undertaken by the organisation or association and benefiting all producers in the area.

#### Article 18

#### Extension of rules of associations of producer organisations

For the purposes of this Chapter, any reference to producer organisations shall also be construed as a reference to recognised associations of producer organisations.

#### CHAPTER IV

#### Report

#### Article 19

#### Report

By 31 December 2013, the Commission shall present a report to the European Parliament and the Council on the implementation of this Title as regards producer organisations, operational funds and operational programmes.

#### TITLE IV

#### INTERBRANCH ORGANISATIONS AND AGREEMENTS

#### CHAPTER I

#### Requirements and recognition

#### Article 20

#### Requirements

For the purposes of this Regulation, an 'interbranch organisation' shall be any legal entity which:

- (a) is made up of representatives of economic activities linked to the production of and/or trade in and/or processing of the products listed in Article 1(2) of Regulation (EC) No 2200/96;
- (b) is established at the initiative of all or some of the organisations or associations which constitute it;

- (c) carries out two or more of the following activities in one or more regions of the Community, taking into account the interests of consumers:
- (i) improving knowledge and the transparency of production and the market;
  - (ii) helping to coordinate better the way fruit and vegetables are placed on the market, in particular by means of research and market studies;
  - (iii) drawing up standard forms of contract compatible with Community rules;
  - (iv) exploiting to a fuller extent the potential of the fruit and vegetables produced;
  - (v) providing the information and carrying out the research necessary to adjust production towards products more suited to market requirements and consumer tastes and expectations, in particular with regard to product quality and protection of the environment;
  - (vi) seeking ways of restricting the use of plant-health products and other inputs and ensuring product quality and soil and water conservation;
  - (vii) developing methods and instruments for improving product quality;
  - (viii) exploiting the potential of and protecting organic farming as well as designations of origin, quality labels and geographical indications;
  - (ix) promoting integrated production or other environmentally sound production methods;
  - (x) laying down rules, as regards the production and marketing rules referred to in points 2 and 3 of Annex I, which are stricter than Community or national rules;
- (d) has been recognised by the Member State concerned in accordance with Article 21.

#### Article 21

#### Recognition

1. If warranted by the Member State's structures, Member States may recognise as interbranch organisations all organisations established on their territory which make an appropriate application, on condition that:

- (a) they carry out their activity in one or more regions in the Member State concerned;
- (b) they represent a significant share of the production of and/or trade in and/or processing of fruit and vegetables and products processed from fruit and vegetables in the region or regions in question and, where more than one

region is involved, they can demonstrate a minimum level of representativeness in each region for each of the branches that they group;

- (c) they carry out two or more of the activities referred to in Article 20(c);
- (d) they are not themselves engaged in the production or processing or marketing of fruit and vegetables or products processed from fruit and vegetables;
- (e) they do not engage in any of the agreements, decisions and concerted practices referred to in Article 22(4).

2. Before granting recognition Member States shall notify the Commission of the interbranch organisations which have applied for recognition, providing all relevant information about their representativeness and their various activities, together with all other information needed for an assessment.

The Commission may object to recognition within a time limit of two months after notification.

3. Member States shall:

- (a) decide whether to grant recognition within three months of the lodging of an application with all relevant supporting documents;
- (b) carry out checks at regular intervals to ascertain that interbranch organisations comply with the terms and conditions for recognition, impose penalties on such organisations in the event of non-compliance or irregularities concerning the provisions of this Regulation and decide, where necessary, to withdraw recognition;
- (c) withdraw recognition if:
  - (i) the requirements and conditions for recognition laid down in this Chapter are no longer met;
  - (ii) the interbranch organisation engages in any of the agreements, decisions and concerted practices referred to in Article 22(3), without prejudice to any other penalties to be imposed pursuant to national law;
  - (iii) the interbranch organisation fails to comply with the notification obligation referred to in Article 22(2);

(d) notify the Commission, within two months, of any decision to grant, refuse or withdraw recognition.

4. The terms and conditions on which and the frequency with which Member States are to report to the Commission on the activities of interbranch organisations shall be drawn up in accordance with the procedure referred to in Article 46(2) of Regulation (EC) No 2200/96.

The Commission may, as a result of checks, request a Member State to withdraw recognition.

5. Recognition shall constitute an authorisation to carry out the activities listed in Article 20(c), subject to the other provisions of this Regulation.

6. The Commission shall make publicly available a list of recognised interbranch organisations, using the methods it considers appropriate, indicating the economic sphere or the area of their activities and the activities carried out within the meaning of Article 23. Withdrawals of recognition shall also be made publicly available.

## CHAPTER II

### Competition rules

#### Article 22

#### Application of competition rules

1. Notwithstanding Article 1 of Council Regulation (EC) No 1184/2006 of 24 July 2006 applying certain rules of competition to the production of, and trade in, agricultural products <sup>(1)</sup>, Article 81(1) of the Treaty shall not apply to the agreements, decisions and concerted practices of recognised interbranch organisations where the object is to carry out the activities referred to in Article 20(c) of this Regulation.

2. Paragraph 1 shall apply only provided that:

- (a) the agreements, decisions and concerted practices have been notified to the Commission;
- (b) within two months of receipt of all the details required the Commission has not found that the agreements, decisions or concerted practices are incompatible with Community rules.

3. The agreements, decisions and concerted practices may not be put into effect before the lapse of the period referred to in paragraph 2(b).

4. The following agreements, decisions and concerted practices shall in any case be considered incompatible with Community rules:

- (a) agreements, decisions and concerted practices which may lead to the partitioning of markets in any form within the Community;
- (b) agreements, decisions and concerted practices which may affect the sound operation of the market organisation;
- (c) agreements, decisions and concerted practices which may create distortions of competition which are not essential to achieving the objectives of the common agricultural policy pursued by the interbranch organisation activity;

(d) agreements, decisions and concerted practices which entail the fixing of prices, without prejudice to activities carried out by interbranch organisations in the application of specific Community rules;

(e) agreements, decisions and concerted practices which may create discrimination or eliminate competition in respect of a substantial proportion of the products in question.

5. If, following expiry of the two-month period referred to in paragraph 2(b), the Commission finds that the conditions for the application of paragraph 1 have not been met, it shall take a Decision declaring that Article 81(1) of the Treaty applies to the agreement, decision or concerted practice in question.

The Commission's Decision shall not apply earlier than the date of its notification to the interbranch organisation concerned, unless that interbranch organisation has given incorrect information or abused the exemption provided for in paragraph 1.

6. In the case of multiannual agreements, the notification for the first year shall be valid for the subsequent years of the agreement. However, in that event, the Commission may, on its own initiative or at the request of a Member State, issue a finding of incompatibility at any time.

## CHAPTER III

### Extension of rules

#### Article 23

#### Extension of rules

1. In cases where an interbranch organisation operating in a specific region or regions of a Member State is considered to be representative of the production of or trade in or processing of a given product, the Member State concerned may, at the request of that interbranch organisation, make binding some of the agreements, decisions or concerted practices agreed on within that organisation for a limited period on other operators operating in the region or regions in question, whether individuals or groups, who do not belong to the organisation.

2. An interbranch organisation shall be deemed representative within the meaning of paragraph 1 where it accounts for at least two thirds of the production of or trade in or processing of the product or products concerned in the region or regions concerned of a Member State. Where the application for extension of its rules to other operators covers more than one region, the interbranch organisation shall demonstrate a minimum level of representativeness for each of the branches it groups in each of the regions concerned.

<sup>(1)</sup> OJ L 214, 4.8.2006, p. 7.

3. The rules for which extension to other operators may be requested:

- (a) shall have one of the following aims:
  - (i) production and market reporting;
  - (ii) stricter production rules than those laid down in Community or national rules;
  - (iii) drawing up of standard contracts which are compatible with Community rules;
  - (iv) rules on marketing;
  - (v) rules on protecting the environment;
  - (vi) measures to promote and exploit the potential of products;
  - (vii) measures to protect organic farming as well as designations of origin, quality labels and geographical indications;
- (b) shall have been in force for at least one marketing year;
- (c) may be made binding for no more than three marketing years;
- (d) shall not cause any damage to other operators in the Member State concerned or the Community.

However, the condition referred to in point (b) of the first subparagraph shall not apply if the rules concerned are those listed in points 1, 3 and 5 of Annex I. In this case, the extension of rules may not apply for more than one marketing year.

4. The rules referred to in paragraphs 3(a)(ii), (iv) and (v) shall not be other than those set out in Annex I. The rules referred to in paragraph 3(a)(ii) shall not apply to products which were produced outside the specific region or regions referred to in paragraph 1.

#### Article 24

### Notification and repeal

1. Member States shall notify the Commission forthwith of the rules which they have made binding on all operators in one or more specific regions pursuant to Article 23(1). The Commission shall make those rules publicly available using the methods it considers appropriate.

2. Before the rules are made publicly available, the Commission shall inform the Committee established by Article 46(1) of Regulation (EC) No 2200/96 of any notification of extension of interbranch agreements.

3. The Commission shall decide that a Member State must repeal an extension of the rules decided on by that Member State in the cases referred to in Article 16.

#### Article 25

### Financial contributions of non-members

In cases where rules for one or more products are extended and where one or more of the activities referred to in Article 23(3)(a) are pursued by a recognised interbranch organisation and are in the general economic interest of those persons whose activities relate to one or more of the products concerned, the Member State which has granted recognition may decide that individuals or groups which are not members of the interbranch organisation but which benefit from those activities shall pay the organisation an amount equal to all or part of the financial contributions paid by its members to the extent that such contributions are intended to cover costs directly incurred as a result of pursuing the activities in question.

#### TITLE V

### TRADE WITH THIRD COUNTRIES

#### CHAPTER I

### General provisions

#### Article 26

### General principles

Unless otherwise provided for in this Regulation or in provisions adopted pursuant thereto, the following shall be prohibited in trade with third countries:

- (a) the levying of any charge having equivalent effect to a customs duty;
- (b) the application of any quantitative restriction or measure having equivalent effect.

#### Article 27

### Combined Nomenclature

The general rules for interpreting the Combined Nomenclature and the special rules for its application shall apply to the tariff classification of products covered by this Title. The tariff nomenclature resulting from the application of this Regulation shall be included in the Common Customs Tariff.

#### CHAPTER II

### Imports

#### Section I

### Import licences

#### Article 28

### Optional import licence systems

The Commission may make imports into the Community of one or more products covered by this Regulation subject to presentation of an import licence.

*Article 29***Issue of licences**

Import licences shall be issued by Member States to any applicant, irrespective of his place of establishment in the Community, unless otherwise provided by the Council and without prejudice to measures taken for the application of this Chapter.

*Article 30***Validity**

Import licences shall be valid throughout the Community.

*Article 31***Security**

1. Unless otherwise provided for in accordance with the procedure referred to in Article 46(2) of Regulation (EC) No 2200/96, licences shall be issued subject to the lodging of a security guaranteeing that the products are imported during the term of validity of the licence.

2. Except in cases of *force majeure*, the security shall be forfeited in whole or in part if the import is not carried out, or is carried out only partially, within the period of validity of the licence.

*Article 32***Implementing rules**

Detailed rules for the application of this Section, including the terms of validity of the licences and the rate of security, shall be adopted in accordance with the procedure referred to in Article 46(2) of Regulation (EC) No 2200/96.

**Section II****Import duties and entry price system***Article 33***Import duties**

Unless otherwise provided for in this Regulation, the import duty rates in the Common Customs Tariff shall apply to products covered by this Regulation.

*Article 34***Entry price system**

1. Should application of the Common Customs Tariff duty rate depend on the entry price of the imported consignment, the veracity of this price shall be checked using a flat-rate import value calculated by the Commission, by product and by origin, on the basis of the weighted average of prices for the product on Member States' representative import markets or on other markets, where appropriate.

Specific provisions may, however, be adopted for verifying the entry price of products imported primarily for processing, in accordance with the procedure referred to in Article 46(2) of Regulation (EC) No 2200/96.

2. Where the declared entry price of the consignment in question is higher than the flat-rate import value, increased by a margin set in accordance with the procedure referred to in Article 46(2) of Regulation (EC) No 2200/96 which may not exceed the flat-rate value by more than 10 %, the lodging of a security equal to the import duty determined on the basis of the flat-rate import value shall be required.

3. If the entry price of the consignment in question is not declared at the time of customs clearance, the Common Customs Tariff duty rate to be applied shall depend on the flat-rate import value or be arrived at by application of the relevant customs legislation provisions under conditions to be determined in accordance with the procedure referred to in Article 46(2) of Regulation (EC) No 2200/96.

4. Detailed implementing rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 46(2) of Regulation (EC) No 2200/96.

*Article 35***Additional import duties**

1. An additional import duty shall apply to imports at the rate of duty laid down in Articles 33 and 34 of one or more products covered by this Regulation, in order to prevent or counteract adverse effects on the market of the Community which may result from those imports, if:

- (a) the imports are made at a price below the level notified by the Community to the World Trade Organisation ('the trigger price'); or
- (b) the volume of imports in any year exceeds a certain level ('the trigger volume').

The trigger volume shall be based on market access opportunities defined as imports as a percentage of the corresponding domestic consumption during the three previous years.

2. Additional import duties shall not be imposed where the imports are unlikely to disturb the Community market, or where the effects would be disproportionate to the intended objective.

3. For the purposes of paragraph 1(a), import prices shall be determined on the basis of the CIF import prices of the consignment under consideration.

CIF import prices shall be checked against the representative prices for the product concerned on the world market or on the Community import market.

4. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 46(2) of Regulation (EC) No 2200/96. Such detailed rules shall specify in particular:

- (a) the products to which additional import duties shall be applied;
- (b) other criteria necessary to ensure application of paragraph 1.

## Section III

**Import quota management***Article 36***Tariff quotas**

1. Tariff quotas for imports of products covered by this Regulation resulting from agreements concluded in accordance with Article 300 of the Treaty or from an act of the Council shall be opened and administered by the Commission under detailed rules adopted in accordance with the procedure referred to in Article 46(2) of Regulation (EC) No 2200/96.

2. Tariff quotas shall be administered in a manner which avoids any discrimination between the operators concerned, by applying one of the following methods or a combination of them or another appropriate method:

- (a) a method based on the chronological order of the lodging of applications ('first come, first served' principle);
- (b) a method of distribution in proportion to the quantities requested when the applications were lodged (using the 'simultaneous examination method');
- (c) a method based on taking into account traditional trade patterns (using the 'traditional/newcomers method').

3. The method of administration adopted shall, where appropriate, give due weight to the supply requirements of the Community market and the need to safeguard the equilibrium of that market.

*Article 37***Opening of tariff quotas**

The Commission shall, in accordance with the procedure referred to in Article 46(2) of Regulation (EC) No 2200/96, provide for the annual tariff quotas, if necessary suitably phased over the year, and determine the administrative method to be used.

Detailed rules for the implementation of this Section shall be adopted in accordance with the same procedure, in particular on:

- (a) guarantees covering the nature, provenance and origin of the product;
- (b) recognition of the document used for verifying the guarantees referred to in point (a);
- (c) the conditions under which import licences shall be issued and their term of validity.

## Section IV

**Safeguard measures and inward processing***Article 38***Safeguard measures**

1. Safeguard measures against imports into the Community shall be taken by the Commission, subject to paragraph 3 of this Article, in accordance with Council Regulation (EC) No 519/94 of 7 March 1994 on common rules for imports from certain third countries <sup>(1)</sup> and Council Regulation (EC) No 3285/94 of 22 December 1994 on the common rules for imports <sup>(2)</sup>.

2. Unless otherwise provided by the Council, safeguard measures against imports into the Community provided for in international agreements concluded in accordance with Article 300 of the Treaty shall be taken by the Commission in accordance with paragraph 3 of this Article.

3. Safeguard measures referred to in paragraphs 1 and 2 may be taken by the Commission at the request of a Member State or on its own initiative. If the Commission receives such a request from a Member State, it shall take a decision thereon within five working days following receipt of the request.

The Member States shall be notified of such safeguard measures, which shall be immediately applicable.

Decisions taken by the Commission pursuant to paragraphs 1 and 2 may be referred to the Council by any Member State within five working days of the date on which they were notified. The Council shall meet without delay. It may, acting by qualified majority, amend or repeal the decision in question within one month following the date on which it was referred to the Council.

4. Where the Commission considers that any safeguard measure taken in accordance with paragraphs 1 or 2 should be revoked or amended, it shall proceed as follows:

- (a) where the measure was enacted by the Council, the Commission shall propose to the Council that it be revoked or amended. The Council shall act by qualified majority;
- (b) in all other cases, Community safeguard measures shall be revoked or amended by the Commission.

*Article 39***Suspension of inward processing arrangements**

1. Where the Community market is disturbed or is liable to be disturbed by inward processing arrangements, the Commission may at the request of a Member State or on its own initiative fully

<sup>(1)</sup> OJ L 67, 10.3.1994, p. 89. Regulation as last amended by Regulation (EC) No 427/2003 (OJ L 65, 8.3.2003, p. 1).

<sup>(2)</sup> OJ L 349, 31.12.1994, p. 53. Regulation as last amended by Regulation (EC) No 2200/2004 (OJ L 374, 22.12.2004, p. 1).



or partially suspend the use of inward processing arrangements for products covered by this Regulation. If the Commission receives a request from a Member State, it shall take a decision thereon within five working days following receipt of the request.

The Member States shall be notified of such measures, which shall be immediately applicable.

Measures decided on by the Commission pursuant to the first subparagraph may be referred to the Council by any Member State within five working days of the date on which they were notified. The Council shall meet without delay. It may, acting by qualified majority, amend or repeal the measures in question within one month following the date on which they were referred to the Council.

2. To the extent necessary for the proper functioning of the common organisations of the market for the products covered by this Regulation, the use of inward processing arrangements for those products may be fully or partially prohibited by the Council, acting in accordance with the procedure laid down in Article 37(2) of the Treaty.

#### CHAPTER III

#### Exports

##### Section I

#### Export licences

##### Article 40

#### Optional export licence systems

1. The Commission may decide that exports from the Community of products covered by this Regulation shall be subject to presentation of an export licence.
2. Articles 29, 30 and 31 shall apply *mutatis mutandis*.
3. Detailed rules for the application of this Article, including the terms of validity of the licences and the rate of security, shall be adopted in accordance with the procedure referred to in Article 46(2) of Regulation (EC) No 2200/96.

##### Section II

#### Suspension of outward processing

##### Article 41

#### Suspension of outward processing arrangements

1. Where the Community market is disturbed or is liable to be disturbed by outward processing arrangements, the Commission may at the request of a Member State or on its own initiative fully or partially suspend the use of outward processing arrangements for the products covered by this Regulation. If the Commission receives a request from a Member State, it shall take a decision thereon within five working days following receipt of the request.

The Member States shall be notified of such measures, which shall be immediately applicable.

Measures decided on by the Commission pursuant to the first subparagraph may be referred to the Council by any Member State within five working days of the date on which they were notified. The Council shall meet without delay. It may, acting by qualified majority, amend or repeal the measures in question within one month following the date on which they were referred to the Council.

2. To the extent necessary for the proper functioning of the common organisations of the market in the products covered by this Regulation, the use of outward processing arrangements for those products may be fully or partially prohibited by the Council, acting in accordance with the procedure laid down in Article 37(2) of the Treaty.

#### TITLE VI

### IMPLEMENTING, AMENDING AND FINAL PROVISIONS

#### CHAPTER I

#### Implementing provisions

##### Article 42

#### Detailed implementing rules

Detailed rules for the implementation of this Regulation shall be adopted in accordance with the procedure referred to in Article 46(2) of Regulation (EC) No 2200/96. These rules may include, in particular:

- (a) rules for the implementation of Title II, including:
  - (i) the products subject to standardisation and the making of provision for marketing standards referred to in Article 2, in particular to define what constitutes a product which is of sound, fair and of marketable quality;
  - (ii) rules on conformity inspections, in particular on their consistent application in Member States;
  - (iii) rules on derogations and exemptions from the application of the marketing standards;
  - (iv) rules on presentation, marketing and labelling;
  - (v) rules on the application of the marketing standards to products imported into the Community and products exported from the Community;
- (b) rules for the implementation of Title III, including:
  - (i) rules on transnational producer organisations and transnational associations of producer organisations including administrative assistance to be given by the relevant competent authorities in the case of transnational cooperation;

- (ii) rules on financing of the measures referred to in Article 7, inter alia, the thresholds and ceilings for aid and the degree of Community co-financing of the aid;
- (iii) the proportion of and detailed rules for reimbursement of the assistance referred to in Article 11(1);
- (iv) rules on investments on individual holdings;
- (v) the dates for the communications and notifications referred to in Article 13;
- (vi) provision for partial payments of the Community financial assistance referred to in Article 13;
- (c) rules for the implementation of Title IV;
- (d) rules concerning administrative and physical controls to be carried out by the Member States with regard to the fulfilment of obligations resulting from the application of this Regulation;
- (e) a system for the application of administrative penalties where non-compliances with any of the obligations resulting from the application of this Regulation are found. The administrative penalties shall be graduated according to the severity, extent, permanence and repetition of the non-compliance found;
- (f) rules regarding the recovery of undue payments resulting from the application of this Regulation;
- (g) rules on the reporting of the controls carried out as well as their results;
- (h) rules for the implementation of Title V, including the measures specifically referred to in that Title;
- (i) rules to determine what information is necessary for the purposes of application of Article 44, as well as those on its form, content, timing and deadlines and on arrangements for transmitting or making available information and documents;
- (j) measures required to facilitate the transition from the arrangements provided for in Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 2202/96 to those laid down in this Regulation, including those for the implementation of Article 55 of this Regulation.
- the products listed in Article 1(2) of Regulation (EC) No 2200/96 and Article 1(2) of Regulation (EC) No 2201/96, and potatoes, fresh or chilled, of CN code 0701.
- By way of derogation from the first subparagraph:
- (a) Member States may continue to provide State aid under any existing schemes in respect of the production of and trade in potatoes, fresh or chilled, of CN code 0701 until 31 December 2011;
- (b) Spain and Italy may provide, during the 2007/2008 marketing year, State aid of up to EUR 15 million in order to support the adaptation of the tomato processing sector to the provisions set out in this Regulation;
- (c) Member States may provide state aid until 31 December 2010 under the following conditions:
- (i) the State aid is paid only to producers of fruit and vegetables who are not members of a recognised producer organisation and who sign a contract with a recognised producer organisation in which they accept that they shall apply the crisis prevention and management measures of the producer organisation concerned;
- (ii) the amount of State aid paid to such producers is no more than 75 % of the Community support received by the members of the producer organisation concerned; and
- (iii) by 31 December 2010, the Member State concerned presents a report to the Commission on the effectiveness and efficiency of the State aid, in particular analysing how much it has supported the organisation of the sector. The Commission shall examine the report and decide whether to make any appropriate proposals.

#### Article 44

#### Communications

Member States and the Commission shall provide each other with any information necessary for the application of this Regulation, for market monitoring and analysis and for complying with the international obligations concerning the products covered by this Regulation.

#### Article 45

#### Expenditure

Expenditure under this Regulation shall be deemed to be intervention measures to regulate agricultural markets as referred to in Article 3(1)(b) of Regulation (EC) No 1290/2005.

#### CHAPTER II

#### *Amendments, repeal and final provisions*

#### Article 43

#### State aid

Unless otherwise provided for in this Regulation, Articles 87, 88 and 89 of the Treaty shall apply to the production of and trade in

## Article 46

**Amendment to Regulation (EEC) No 827/68**

In the Annex to Regulation (EEC) No 827/68, the entry for CN code 0910 shall be replaced by the following:

'ex 0910 Ginger, turmeric (*curcuma*), bay leaves, curry and other spices, excluding thyme and saffron'.

## Article 47

**Amendments to Regulation (EC) No 2200/96**

Regulation (EC) No 2200/96 is hereby amended as follows:

- in Article 1(2), the table shall be replaced by the following:

'CN code	Description
0702 00 00	Tomatoes, fresh or chilled
0703	Onions, shallots, garlic, leeks and other alliaceous vegetables, fresh or chilled
0704	Cabbages, cauliflowers, kohlrabi, kale and similar edible brassicas, fresh or chilled
0705	Lettuce ( <i>Lactuca sativa</i> ) and chicory ( <i>Cichorium spp.</i> ), fresh or chilled
0706	Carrots, turnips, salad beetroot, salsify, celeriac, radishes and similar edible roots, fresh or chilled
0707 00	Cucumbers and gherkins, fresh or chilled
0708	Leguminous vegetables, shelled or unshelled, fresh or chilled
ex 0709	Other vegetables, fresh or chilled, excluding vegetables of subheadings 0709 60 91, 0709 60 95, 0709 60 99, 0709 90 31, 0709 90 39 and 0709 90 60
ex 0802	Other nuts, fresh or dried, whether or not shelled or peeled, excluding areca (or betel) and cola nuts falling within subheading 0802 90 20
0803 00 11	Fresh plantains
ex 0803 00 90	Dried plantains
0804 20 10	Figs, fresh
0804 30 00	Pineapples
0804 40 00	Avocados
0804 50 00	Guavas, mangos and mangosteens
0805	Citrus fruit, fresh or dried
0806 10 10	Fresh table grapes
0807	Melons (including watermelons) and pawpaws (papayas), fresh
0808	Apples, pears and quinces, fresh

CN code	Description
0809	Apricots, cherries, peaches (including nectarines), plums and sloes, fresh
0810	Other fruit, fresh
0813 50 31 0813 50 39	Mixtures exclusively of dried nuts of CN codes 0801 and 0802
0910 20	Saffron
ex 0910 99	Thyme, fresh or chilled
ex 1211 90 85	Basil, melissa, mint, <i>origanum vulgare</i> (oregano/wild marjoram), rosemary, sage, fresh or chilled
1212 99 30	Locust (or carob) beans'

- Titles I to VI, Articles 43 and 44, Articles 47 to 57 and Annexes I to V shall be deleted.
- Article 46 shall be replaced by the following:

*Article 46*

1. The Commission shall be assisted by a Management Committee for Fruit and Vegetables (hereinafter referred to as "the Committee").

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at one month.'

*Article 48***Amendments to Regulation (EC) No 2201/96**

Regulation (EC) No 2201/96 is hereby amended as follows:

- Article 1(3) shall be replaced by the following:

'3. The marketing years for the products referred to in paragraph 2 shall be fixed, if necessary, in accordance with the procedure referred to in Article 46(2) of Regulation (EC) No 2200/96.'

- Titles I and II, Articles 23 to 32 and Annexes I to III shall be deleted.

*Article 49***Amendments to Regulation (EC) No 2826/2000**

Regulation (EC) No 2826/2000 is hereby amended as follows:

- the following subparagraph shall be added to Article 5(3):

'As regards the promotion of fresh fruits and vegetables, a special focus shall be given to promotion targeted at children in educational establishments.'

2. The following subparagraph shall be added to Article 9(2):

‘The percentage referred to in the first subparagraph shall be 60 % in the case of promotion of fruit and vegetables targeted only at children in educational establishments.’

*Article 50*

**Amendment to Directive 2001/112/EC**

The following indent shall be added to Article 7 of Directive 2001/112/EC:

- bringing this Directive into line with developments in relevant international standards, where appropriate.’

*Article 51*

**Amendment to Directive 2001/113/EC**

The following indent shall be added to Article 5 of Directive 2001/113/EC:

- bringing this Directive into line with developments in relevant international standards, where appropriate.’

*Article 52*

**Amendments to Regulation (EC) No 1782/2003**

Regulation (EC) No 1782/2003 is hereby amended as follows:

1. In Article 33(1), point (a) shall be replaced by the following:

‘(a) they have been granted a payment in the reference period referred to in Article 38 under at least one of the support schemes referred to in Annex VI or, in the case of olive oil, in the marketing years referred to in the second subparagraph of Article 37(1), or, in the case of sugar beet, cane and chicory, if they have benefited from market support in the representative period referred to in point K of Annex VII, or, in the case of bananas, if they have benefited from compensation for loss of income in the representative period referred to in point L of Annex VII, or, in the case of fruit and vegetables, ware potatoes and nurseries, if they were producers of fruit and vegetable products, ware potatoes or nurseries in the representative period applied by Member States for those products in accordance with point M of Annex VII;’

2. The following subparagraph shall be added to Article 37(1):

‘For fruit and vegetables, ware potatoes and nurseries the reference amount shall be calculated and adjusted in accordance with point M of Annex VII.’

3. Article 40(2) shall be replaced by the following:

‘2. If the whole reference period was affected by the case of *force majeure* or exceptional circumstances, the Member State shall calculate the reference amount on the basis of the 1997 to 1999 period.

In the case of sugar beet, cane and chicory, the reference amount shall be calculated on the basis of the closest marketing year prior to the representative period chosen in accordance with point K of Annex VII. In the case of bananas, it shall be calculated on the basis of the closest marketing year prior to the representative period chosen in accordance with point L of Annex VII. In the case of fruit and vegetables, ware potatoes and nurseries, it shall be calculated on the basis of the closest marketing year prior to the representative period chosen in accordance with point M of Annex VII. In those cases, paragraph 1 shall apply *mutatis mutandis*.’

4. The following subparagraph shall be added to Article 42(8):

‘However, in the case of application of paragraph 5, Member States may decide that, for 2007, unused payment entitlements corresponding to an equivalent number of hectares declared by the farmer and used for ware potatoes or for fruits and vegetables shall not revert to the national reserve.’

5. In Article 43(2), point (a) shall be replaced by the following:

‘(a) in the case of potato starch, dried fodder, seed, olive groves, and tobacco aids listed in Annex VII, the number of hectares whose production has been granted the aid in the reference period, as calculated in accordance with points B, D, F, H and I of Annex VII;

(aa) in the case of sugar beet, cane and chicory, the number of hectares as calculated in accordance with point 4 of point K of Annex VII;

(ab) in the case of bananas, the number of hectares as calculated in accordance with point L of Annex VII;

(ac) in the case of fruit and vegetables, ware potatoes and nurseries, the number of hectares as calculated in accordance with point M of Annex VII;’

6. In Article 44(2), the second subparagraph shall be replaced by the following:

“Eligible hectare” shall also mean one of the following:

(a) areas planted with hops or being under a temporary resting obligation;

(b) areas under olive trees;

(c) areas planted with bananas;

(d) areas with permanent fruit and vegetables crops;

(e) nurseries.’

7. The following paragraph shall be added to Article 45:

'3. However, for 2007, in Member States that have not made use of the option in Article 71 and that are not making use of the option set out in the second subparagraph of Article 51, unused payment entitlements corresponding to an equivalent number of hectares declared by the farmer and used for ware potatoes or for fruit and vegetables shall not revert to the national reserve.'

8. Article 51 shall be replaced by the following:

*Article 51*

### **Agricultural use of the land**

Farmers may use the parcels declared in accordance with Article 44(3) for any agricultural activity except for permanent crops. However, farmers may use the parcels for the following:

- (a) hops;
- (b) olive trees;
- (c) bananas;
- (d) permanent fruit and vegetable crops;
- (e) nurseries.

By way of derogation from the first subparagraph, a Member State may decide, by 1 November 2007, that until a date to be fixed by the Member State but no later than 31 December 2010, the parcels in one or more regions of the Member State may continue not to be used for:

- (a) the production of one or more of the products referred to in Article 1(2) of Regulation (EC) No 2200/96 and in Article 1(2) of Regulation (EC) No 2201/96. However in this case, Member States may decide to allow secondary crops to be cultivated on the eligible hectares during a maximum period of three months starting each year on 15 August; however, at the request of a Member State, this date may be modified in accordance with the procedure referred to in Article 144(2) for regions where cereals are normally harvested earlier for climatic reasons; and/or
- (b) the production of ware potatoes; and/or
- (c) nurseries.'

9. Article 60(8) shall be replaced by the following:

'8. Where a Member State decides to use the derogation in the second subparagraph of Article 51, it may also decide, by 1 November 2007, to apply paragraphs 1 to 7 of this Article for the same period. Paragraphs 1 to 7 of this Article shall not apply in any other case.'

10. The following subparagraph shall be added to Article 63(3):

'With regard to the inclusion of the fruit and vegetables, ware potatoes and nurseries payments component in the single payment scheme, Member States may decide, by 1 April 2008, to apply the derogation provided for in the first subparagraph.'

11. Article 64(2) shall be replaced by the following:

'2. According to the choice made by each Member State, the Commission shall fix, in accordance with the procedure referred to in Article 144(2), a ceiling for each of the direct payments provided for in Articles 66 to 69.

This ceiling shall be equal to the component of each type of direct payment in the national ceilings referred to in Article 41, multiplied by the percentages of reduction applied by Member States in accordance with Articles 66 to 69. The total amount of the fixed ceilings shall be deducted from the national ceilings referred to in Article 41 in accordance with the procedure referred to in Article 144(2).'

12. Article 65(1) shall be replaced by the following:

'1. For the entitlements to be allocated to farmers, after any possible reduction under Article 41, the component of the reference amount which results from each of the direct payments provided for in Articles 66 to 69 shall be reduced by the percentage to be fixed by Member States within the limit fixed in those Articles, and, for direct payments provided for in Article 68b, within the period fixed by Member States in accordance with that Article.'

13. The following Article shall be inserted after Article 68a:

*Article 68b*

### **Transitional fruit and vegetables payments**

1. Member States may decide, by 1 November 2007, to retain, until 31 December 2011, up to 50 % of the component of national ceilings referred to in Article 41 corresponding to certain tomatoes which are supplied for processing and were eligible under the aid scheme set out in Regulation (EC) No 2201/96.

In this case and within the limit of the ceiling fixed in accordance with Article 64(2), the Member State concerned shall make, on a yearly basis, an additional payment to farmers.

The additional payment shall be granted to farmers producing such tomatoes under the conditions provided for in Chapter 10g of Title IV.

2. Member States may decide, by 1 November 2007, to retain:

- (a) until 31 December 2010, up to 100 % of the component of national ceilings referred to in Article 41 corresponding to certain fruit and vegetable crops other than annual crops listed in the third subparagraph of this paragraph which are supplied for processing and were eligible under the aid schemes set out in Regulations (EC) No 2201/96 and (EC) No 2202/96; and
- (b) from 1 January 2011 to 31 December 2012, up to 75 % of the component of national ceilings referred to in Article 41 corresponding to certain fruit and vegetable crops other than annual crops listed in the third subparagraph of this paragraph which are supplied for processing and were eligible under the aid schemes set out in Regulations (EC) No 2201/96 and (EC) No 2202/96.

In this case and within the limit of the ceiling fixed in accordance with Article 64(2), the Member State concerned shall make, on a yearly basis, an additional payment to farmers.

The additional payment shall be granted to farmers producing one or more of the following fruit and vegetables which are supplied for processing and were eligible under the aid schemes set out in Regulations (EC) No 2201/96 and (EC) No 2202/96, as determined by the Member State concerned, under the conditions provided for in Chapter 10g of Title IV:

- (a) fresh figs;
- (b) fresh citrus fruits;
- (c) table grapes;
- (d) pears;
- (e) peaches and nectarines; and
- (f) certain types of plums derived from "d'Ente" plums.

3. The component of national ceilings referred to in paragraph 1 corresponding to tomatoes shall be as follows:

Member State	Amount (EUR million per calendar year)
Bulgaria	5,394
Czech Republic	0,414
Greece	35,733
Spain	56,233
France	8,033
Italy	183,967

Member State	Amount (EUR million per calendar year)
Cyprus	0,274
Malta	0,932
Hungary	4,512
Romania	1,738
Poland	6,715
Portugal	33,333
Slovakia	1,018

4. The component of national ceilings referred to in paragraph 2 corresponding to fruit and vegetable crops other than annual crops shall be as follows:

Member State	Amount (EUR million per calendar year)
Bulgaria	0,851
Czech Republic	0,063
Greece	153,833
Spain	110,633
France	44,033
Italy	131,700
Cyprus	In 2008: 4,793 In 2009: 4,856 In 2010: 4,919 In 2011: 4,982 In 2012: 5,045
Hungary	0,244
Romania	0,025
Portugal	2,900
Slovakia	0,007

14. Article 71g shall be deleted.

15. The following subparagraph shall be added to Article 71k(2):

'However, with regard to the inclusion of the fruit and vegetables payments component in the single payment scheme, new Members States may decide, by 1 April 2008, or by 1 August of the year preceding the first year of application of the single payment scheme, to apply the derogation provided for in the first subparagraph.'

16. In Title IV, the following Chapters shall be added after Chapter 10f:

'CHAPTER 10g

**TRANSITIONAL FRUIT AND VEGETABLES PAYMENTS**

*Article 110t*

**Transitional area aid**

1. In the case of application of Articles 68b(1) or 143bc(1) during the period referred to in those provisions, a transitional area aid may be granted, under the conditions laid down in this Chapter, to farmers producing certain tomatoes, as determined by the Member States, which are supplied for processing.

2. In the case of application of Articles 68b(2) or 143bc(2) during the period referred to in those provisions, a transitional area aid may be granted, under the conditions laid down in this Chapter, to farmers producing certain fruit and vegetable products listed in the third subparagraph of Article 68b(2), as determined by the Member States, which are supplied for processing.

*Article 110u*

**Amount of the aid and eligibility**

1. Member States shall fix the aid per hectare on which tomatoes and each fruit and vegetable listed in the third subparagraph of Article 68b(2) is grown on the basis of objective and non-discriminatory criteria.

2. The total amount of payments shall in no case exceed the ceiling fixed in accordance with Article 64(2) or Article 143bc.

3. The aid shall be granted only in respect of areas whose production is covered by a contract for processing into one of the products listed in Article 1(2) of Regulation (EC) No 2201/1996.

4. Member States may make the granting of Community aid subject to further objective and non-discriminatory criteria, including being conditional on farmers being members of a producer organisation or producer group recognised, respectively, under Articles 4 or 7 of Council Regulation (EC) No 1182/2007 of 26 September 2007 laying down specific rules as regards the fruit and vegetable sector (\*).

5. By 1 November 2007, Member States shall notify the Commission of their decision to apply Articles 68b or 143bc, the amount retained under those Articles and the criteria referred to in paragraph 1 of this Article.

CHAPTER 10h

**TRANSITIONAL SOFT FRUIT PAYMENT**

*Article 110v*

**Soft fruit payment**

1. A transitional area aid shall apply during the period ending on 31 December 2012 in respect of strawberries falling within CN code 0810 10 00 and raspberries falling within CN code 0810 20 10 which are supplied for processing.

2. The aid shall be granted only in respect of areas whose production is covered by a contract for processing into one of the products listed in Article 1(2) of Regulation (EC) No 2201/1996.

3. The Community aid shall be EUR 230 per hectare per year.

4. Member States may grant national aid in addition to the Community aid. The total amount of Community and national aid paid shall not exceed EUR 400 per hectare per year.

5. The aid shall be paid only in respect of maximum national guaranteed areas allocated to Member States as follows:

Member State	National guaranteed area (hectares)
Bulgaria	2 400
Hungary	1 700
Latvia	400
Lithuania	600
Poland	48 000

If the eligible area in a given Member State and in a given year exceeds the maximum national guaranteed area, the aid amount referred to in paragraph 3 shall be reduced proportionately to the overrun of the maximum national guaranteed area.

6. Articles 143a and 143c shall not apply to the transitional soft fruit payment.

(\*) OJ L 273, 17.10.2007, p. 1'

17. Article 143b(1) shall be replaced by the following:

'1. The new Member States may decide not later than on the date of accession to replace the direct payments, with the exception of the aid for energy crops established in Chapter 5 of Title IV and of the transitional soft fruit payment established in Chapter 10h of Title IV, during the period of application referred to in paragraph 9, by a single area payment which shall be calculated in accordance with paragraph 2.'

18. The third indent of Article 143b(3) shall be replaced by the following:

‘— adjusted using the relevant percentage specified in Article 143a for the gradual introduction of direct payments, except for the amounts available in accordance with point 2 of point K of Annex VII or in accordance with the differential between these amounts and those actually applied as referred to in Article 143ba(4), and except for the amounts corresponding to the fruits and vegetable sector in accordance with paragraphs 3 and 4 of Article 68b or in accordance with the differential between these amounts and those actually applied as referred to in Articles 143bb(4) and 143bc(3).’

19. The following Articles shall be inserted after Article 143ba:

‘Article 143bb

#### **Separate fruit and vegetables payment**

1. By way of derogation from Article 143b, the new Member States applying the single area payment scheme may decide, by 1 November 2007, to grant a separate fruit and vegetables payment to farmers eligible under the single area payment scheme. It shall be granted on the basis of objective and non-discriminatory criteria such as those set out in the first paragraph of point M of Annex VII and in respect of a representative period as set out in that paragraph.

2. The separate fruit and vegetables payment shall be granted within the limits of the component of the national ceiling referred to in Article 71c corresponding to fruit and vegetables.

3. By way of derogation from paragraph 2, each new Member State concerned may decide, by 1 November 2007, on the basis of objective criteria to apply for the separate fruit and vegetables payment a lower ceiling than that set out in that paragraph.

4. The funds made available for granting the separate fruit and vegetables payment in accordance with paragraphs 1, 2 and 3 shall not be included in the annual financial envelope referred to in Article 143b(3).

5. Articles 143a and 143c shall not apply to the separate fruit and vegetables payment.

6. In the case of actual or anticipated inheritance, the separate fruit and vegetables payment shall be granted to the farmer who inherited the holding, under the condition that this farmer is eligible under the single area payment scheme.

Article 143bc

#### **Transitional fruit and vegetables payment**

1. By way of derogation from Article 143b, the new Member States applying the single area payment scheme may decide, by 1 November 2007, to retain, until 31 December 2011, up to 50 % of the component of national ceilings referred to in Article 41 corresponding to tomatoes falling within CN code 0702 00 00.

In this case and within the limit of the ceiling fixed in accordance with the procedure referred to in Article 144(2), the Member State concerned shall make, on a yearly basis, an additional payment to farmers.

The additional payment shall be granted to farmers producing tomatoes under the conditions provided for in Chapter 10g of Title IV.

2. By way of derogation from Article 143b, the new Member States applying the single area payment scheme may decide, by 1 November 2007, to retain:

- (a) until 31 December 2010, up to 100 % of the component of national ceilings referred to in Article 71c corresponding to the fruit and vegetable crops other than annual crops listed in the third subparagraph of Article 68b(2);
- (b) from 1 January 2011 until 31 December 2012, up to 75 % of the component of national ceilings referred to in Article 71c corresponding to fruit and vegetable crops other than annual crops listed in the third subparagraph of Article 68b(2).

In this case and within the limit of the ceiling fixed in accordance with the procedure referred to in Article 144(2), the Member State concerned shall make, on a yearly basis, an additional payment to farmers.

The additional payment shall be granted to farmers producing one or more of the fruit and vegetables, as determined by the Member State concerned, listed in the third subparagraph of Article 68b(2).

3. The funds made available for granting the transitional fruit and vegetables payment in accordance with paragraphs 1 and 2 shall not be included in the annual financial envelope referred to in Article 143b(3).

4. Articles 143a and 143c shall not apply to the transitional fruit and vegetables payment.’

20. In Article 145, the following point shall be inserted after point (d)c):

‘(d)d) detailed implementing rules relating to the inclusion of fruit and vegetables, ware potatoes and nurseries support in the single payment scheme and relating to the payments referred to in Chapters 10g and 10h of Title IV;’.



21. Article 155 shall be replaced by the following:

*Article 55*

*'Article 155*

### **Transitional provisions**

#### **Other transitional rules**

Further measures required to facilitate the transition from the arrangements provided for in the Regulations referred to in Articles 152 and 153 and in Regulations (EEC) No 404/93, (EC) No 2200/96, (EC) No 2201/96, (EC) No 2202/96 and (EC) No 1260/2001 to those established by this Regulation, notably those related to the application of Articles 4 and 5 of and the Annex to Regulation (EC) No 1259/1999 and Article 6 of Regulation (EC) No 1251/1999, and from the provisions related to the improvement plans provided for in Regulation (EEC) No 1035/72 to those referred to in Articles 83 to 87 of this Regulation, may be adopted in accordance with the procedure referred to in Article 144(2) of this Regulation. Regulations and Articles referred to in Articles 152 and 153 shall continue to apply for the purpose of the establishment of the reference amounts referred to in Annex VII.'

22. The Annexes shall be amended in accordance with Annex II to this Regulation.

*Article 53*

#### **Amendments to Regulation (EC) No 318/2006**

Regulation (EC) No 318/2006 shall be amended as follows:

1. In paragraphs 1, 2 and 4 of Article 32, the words 'or Annex VIII' shall be inserted after 'Annex VII'.
2. The following Annex shall be added after Annex VII:

*'ANNEX VIII*

#### **Processed fruit and vegetable products**

The products listed in Article 1(2)(b) of Council Regulation (EC) No 2201/96 of 28 October 1996 on the common organisation of the markets in processed fruit and vegetable products (\*).

(\*) OJ L 297, 21.11.1996, p. 29. Regulation as last amended by Regulation (EC) No 1182/2007 (OJ L 273, 17.10.2007, p. 1).'

*Article 54*

#### **Repeal**

Regulation (EC) No 2202/96 shall be repealed.

1. The aid schemes set out in Regulations (EC) No 2201/96 and (EC) No 2202/96 and abolished by this Regulation shall remain applicable in respect of each of the products concerned for the marketing year for that product ending in 2008.

2. Producer organisations and associations of producer organisations already recognised under Regulation (EC) No 2200/96 before the date of entry into force of this Regulation shall continue to be recognised under this Regulation. Where necessary, they shall make adaptations to the requirements of this Regulation by 31 December 2010.

3. At the request of a producer organisation, an operational programme approved under Regulation (EC) No 2200/96 before the date of application of this Regulation:

- (a) may continue to run until its end; or
- (b) be modified to meet the requirements of this Regulation; or
- (c) be replaced by a new operational programme approved under this Regulation.

Article 10(3)(e) and (f) shall apply to operational programmes submitted in 2007 but not yet approved on the date of application of this Regulation which otherwise meet the criteria laid down in those points.

4. Producer groups which were granted preliminary recognition under Regulation (EC) No 2200/96 shall continue to benefit from that preliminary recognition under this Regulation. Recognition plans accepted under Regulation (EC) No 2200/96 shall continue to benefit from that acceptance under this Regulation. However, the plans shall be modified, if necessary, so as to permit the producer group to be able to meet the criteria for recognition as a producer organisation laid down in Article 4 of this Regulation. As concerns such producer groups in Member States which acceded to the European Union on 1 May 2004 or after that date, the aid rates set out in Article 7(4)(a) shall apply to recognition plans from the date of application of this Regulation.

5. The contracts referred to in Article 3(2) of Regulation (EC) No 2202/96 covering more than one marketing year of the aid scheme for processing citrus fruits which relate to the marketing year beginning on 1 October 2008 or to subsequent marketing years may, with the agreement of both parties to the contract, be amended or terminated to take into account the repeal of that Regulation and the consequential abolition of the aid. No penalties shall be applied under that Regulation or its implementing rules to the parties concerned as a result of such an amendment or termination.

6. Where a Member State makes use of the transitional arrangement under Articles 68b or 143bc of Regulation (EC) No 1782/2003, the rules adopted pursuant to Article 6 of Regulation (EC) No 2201/96 or Article 6 of Regulation (EC) No 2202/96 on the minimum characteristics of the raw material supplied for processing and minimum quality requirements for finished products shall remain applicable in respect of the raw materials harvested in the territory of that Member State.

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

Done at Brussels, 26 September 2007.

*Article 56*

**Entry into force**

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

It shall apply from 1 January 2008.

*For the Council*

*The President*

J. SILVA

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## ANNEX I

**Exhaustive list of rules that may be extended to non-member producers pursuant to Articles 14 and 23**

1. Rules on production information:
    - (a) notification of growing intentions, by product and where appropriate by variety;
    - (b) notification of sowings and plantings;
    - (c) notification of total areas grown, by product and if possible variety;
    - (d) notification of anticipated tonnages and probable cropping dates by product and if possible variety;
    - (e) periodic notification of quantities cropped and available stocks, by variety;
    - (f) information on storage capacities.
  2. Production rules:
    - (a) choice of seed to be used according to intended destination (fresh market/industrial processing);
    - (b) thinning in orchards.
  3. Marketing rules:
    - (a) specified dates for commencement of cropping, staggering of marketing;
    - (b) minimum quality and size requirements;
    - (c) preparation, presentation, packaging and marking at first marketing stage;
    - (d) indication of product origin.
  4. Rules on the protection of the environment:
    - (a) use of fertiliser and manure;
    - (b) use of plant-health products and other crop protection methods;
    - (c) maximum residue content in fruit and vegetables of plant-health products and fertilisers;
    - (d) rules on disposal of by-products and used material;
    - (e) rules concerning products withdrawn from the market.
  5. Rules on promotion and communication in the context of crisis prevention and management as referred to in Article 9(2)(c).
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## ANNEX II

The Annexes to Regulation (EC) No 1782/2003 are hereby amended as follows:

## 1. In Annex I:

- (a) the row 'Dried grapes' shall be deleted; and
- (b) after the row 'Sugar beet and cane used for the production of sugar', the following rows shall be inserted:

Fruit and vegetables delivered for processing	Title IV, Chapter 10g of this Regulation	Transitional fruit and vegetables payments
Strawberries and raspberries delivered for processing	Title IV, Chapter 10h of this Regulation	Transitional soft fruit payment
Fruit and vegetables	Article 143bb of this Regulation	Separate fruit and vegetables payment'

## 2. Annex II shall be replaced by the following:

## 'ANNEX II

**National ceilings referred to in Article 12(2)**

(EUR million)

Member State	2005	2006	2007	2008	2009	2010	2011	2012
Belgium	4,7	6,4	8,0	8,0	8,1	8,1	8,1	8,1
Denmark	7,7	10,3	12,9	12,9	12,9	12,9	12,9	12,9
Germany	40,4	54,6	68,3	68,3	68,3	68,3	68,3	68,3
Greece	45,4	61,1	76,4	79,7	79,7	79,7	79,7	79,7
Spain	56,9	77,3	97,0	103,8	103,9	103,9	103,9	103,9
France	51,4	68,7	85,9	87,0	87,0	87,0	87,0	87,0
Ireland	15,3	20,5	25,6	25,6	25,6	25,6	25,6	25,6
Italy	62,3	84,5	106,4	116,5	116,6	116,6	116,6	116,6
Luxembourg	0,2	0,3	0,4	0,4	0,4	0,4	0,4	0,4
Netherlands	6,8	9,5	12,0	12,0	12,0	12,0	12,0	12,0
Austria	12,4	17,1	21,3	21,4	21,4	21,4	21,4	21,4
Portugal	10,8	14,6	18,2	19,6	19,6	19,6	19,6	19,6
Finland	8,0	10,9	13,7	13,8	13,8	13,8	13,8	13,8
Sweden	6,6	8,8	11,0	11,0	11,0	11,0	11,0	11,0
United Kingdom	17,7	23,6	29,5	29,5	29,5	29,5	29,5	29,5'

## 3. In Annex V, the rows 'Dried grapes', 'Citrus for processing' and 'Tomatoes for processing' shall be deleted.

## 4. In Annex VII, the following point shall be added:

## M. Fruit and vegetables, ware potatoes and nurseries

Member States shall determine the amount to be included in the reference amount of each farmer on the basis of objective and non-discriminatory criteria such as:

- the amount of market support received, directly or indirectly, by the farmer in respect of fruit and vegetables, ware potatoes and nurseries,
- the area used to produce fruit and vegetables, ware potatoes and nurseries,
- the amount of fruit and vegetables produced, ware potatoes and nurseries,

in respect of a representative period which could be different for each product, of one or more marketing years starting from the marketing year ending in 2001 and, in case of the Member States which acceded to the European Union on 1 May 2004 or after that date, from the marketing year ending in 2004, up to the marketing year ending in 2007.

Member States shall calculate the applicable hectares referred to in Article 43(2) on the basis of objective and non-discriminatory criteria such as the areas referred to in the second indent of the first paragraph.

The application of the criteria in this point may be varied between different fruit and vegetable products, ware potatoes and nurseries, if duly justified on an objective basis. On the same basis, Member States may decide not to determine the amounts to be included in the reference amount and the applicable hectares under this point before the end of a transitional three year period ending on 31 December 2010.

For the purposes of this Regulation, "fruit and vegetables" shall mean the products listed in Article 1(2) of Regulation (EC) No 2200/96 and in Article 1(2) of Regulation (EC) No 2201/96, and "ware potatoes" shall mean potatoes of CN code 0701 other than those intended for the manufacture of potato starch for which aid is granted under Article 93.'

5. Annexes VIII and VIIIa shall be replaced by the following:

'ANNEX VIII

**National ceilings referred to in Article 41**

(EUR '000)

Member State	2005	2006	2007	2008	2009	2010 and subsequent
Belgium	411 053	580 376	593 395	606 935	614 179	611 805
Denmark	943 369	1 015 479	1 021 296	1 027 278	1 030 478	1 030 478
Germany	5 148 003	5 647 175	5 695 607	5 744 240	5 770 254	5 774 254
Greece	838 289	2 143 603	2 171 217	2 365 298	2 367 713	2 178 382
Spain	3 266 092	4 635 365	4 649 913	4 830 954	4 838 536	4 840 413
France	7 199 000	8 236 045	8 282 938	8 382 272	8 407 555	8 415 555
Ireland	1 260 142	1 335 311	1 337 919	1 340 752	1 342 268	1 340 521
Italy	2 539 000	3 791 893	3 813 520	4 151 330	4 163 175	4 184 720
Luxembourg	33 414	36 602	37 051	37 051	37 051	37 051
Netherlands	386 586	428 329	833 858	846 389	853 090	853 090
Austria	613 000	633 577	737 093	742 610	745 561	744 955
Portugal	452 000	504 287	571 377	608 601	609 131	608 827
Finland	467 000	561 956	563 613	565 690	566 801	565 520
Sweden	637 388	670 917	755 045	760 281	763 082	763 082
United Kingdom	3 697 528	3 944 745	3 960 986	3 977 175	3 985 834	3 975 849

## ANNEX VIIIa

## National ceilings referred to in Article 71c

(EUR '000)

Calendar year	Bulgaria	Czech Republic	Estonia	Cyprus	Latvia	Lithuania	Hungary	Malta	Romania	Poland	Slovenia	Slovakia
2005		228 800	23 400	8 900	33 900	92 000	350 800	670		724 600	35 800	97 700
2006		294 551	27 300	12 500	43 819	113 847	446 305	830		980 835	44 184	127 213
2007	200 384	377 919	40 400	17 660	60 764	154 912	540 286	1 668	441 930	1 263 706	59 026	161 362
2008	246 766	470 463	50 500	27 167	75 610	193 076	677 521	3 017	532 444	1 579 292	73 618	201 937
2009	287 399	559 622	60 500	31 670	90 016	230 560	807 366	3 434	623 399	1 877 107	87 942	240 014
2010	327 621	645 222	70 600	36 173	103 916	267 260	933 966	3 851	712 204	2 162 207	101 959	276 514
2011	407 865	730 922	80 700	40 676	117 816	303 960	1 060 666	4 268	889 814	2 447 207	115 976	313 114
2012	488 209	816 522	90 800	45 179	131 716	340 660	1 187 266	4 685	1 067 425	2 732 307	129 993	349 614
2013	568 553	902 222	100 900	49 682	145 616	377 360	1 313 966	5 102	1 245 035	3 017 407	144 110	386 214
2014	648 897	902 222	100 900	49 682	145 616	377 360	1 313 966	5 102	1 422 645	3 017 407	144 110	386 214
2015	729 241	902 222	100 900	49 682	145 616	377 360	1 313 966	5 102	1 600 256	3 017 407	144 110	386 214
2016 and subsequent years	809 585	902 222	100 900	49 682	145 616	377 360	1 313 966	5 102	1 777 866	3 017 407	144 110	386 214'