

Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector (repealed)

### TITLE III

## PRODUCER ORGANISATIONS

### CHAPTER I

#### Requirements and recognition

##### Section 1

##### **Definitions**

##### *Article 21*

##### **Definitions**

- 1 For the purposes of this Title:
  - a ‘producer’ means a farmer as referred to in Article 3(1)(a) of Regulation (EC) No 1182/2007;
  - b ‘subsidiary’ means a company in which one or more producer organisations or associations thereof have taken shares and which contributes to the objectives of the producer organisation or the association of producer organisations;
  - c ‘transnational producer organisation’ means any organisation where at least one of the producers’ holdings is located in a Member State other than where the organisation has its head office;
  - d ‘transnational association of producer organisations’ means any association of producer organisations in which at least one of the associated organisations is located in a Member State other than where the association has its head office;
  - e ‘Convergence Objective’ means the objective of the action for the least developed Member States and regions according to the Community legislation governing the European Regional Development Fund, the European Social Fund and the Cohesion Fund for the period from 1 January 2007 to 31 December 2013;
  - f ‘measure’ means one of the following:
    - (i) actions aimed at planning of production, including acquisition of fixed assets;
    - (ii) actions aimed at improving or maintaining product quality, including acquisition of fixed assets;
    - (iii) actions aimed at improving marketing, including acquisition of fixed assets, as well as promotion and communication activities, other than promotion and communication activities falling under point (vi);
    - (iv) research and experimental production, including acquisition of fixed assets;

- (v) training actions, other than training falling under point (vi), and actions aimed at promoting access to advisory services;
- (vi) any of the six crisis prevention and management instruments listed in points (a) to (f) of the first subparagraph of Article 9(2) of Regulation (EC) No 1182/2007;
- (vii) environmental actions as referred to in Article 9(3) of Regulation (EC) No 1182/2007, including acquisition of fixed assets;
- (viii) other actions, including acquisition of fixed assets other than those falling under points (i), (ii), (iii), (iv) and (vii) which fulfil one or more of the objectives referred to in Article 9(1) of Regulation (EC) No 1182/2007.
- g ‘action’ means a specific activity or instrument aimed at achieving a particular operational objective contributing to one or more of the objectives referred to in Article 9(1) of Regulation (EC) No 1182/2007;
- h ‘by product’ means a product which results from preparation and/or processing of a fruit or vegetable product which has a positive economic value but is not the main intended result;
- i ‘first-stage processing’ means processing of a fruit or vegetable product into another product listed in Annex I to the EC Treaty. Cleaning, cutting, trimming, drying and packaging of fresh products with a view to marketing shall not be considered as first-stage processing;
- j ‘interbranch basis’ as referred to in Article 10(3)(b) of Regulation (EC) No 1182/2007, means one or more of the activities listed in Article 20(c) of Regulation (EC) No 1182/2007 approved by the Member State and managed jointly by a producer organisation or an association of producer organisations and at least one other actor in the food processing and/or distribution chain;
- k ‘baseline indicator’ means any indicator reflecting a state or trend existing at the start of a programming period which may provide information useful:
  - (i) in the analysis of the initial situation, in order to establish a national strategy for sustainable operational programmes or an operational programme;
  - (ii) as a reference against which the results and impact of a national strategy or an operational programme may be assessed; and/or
  - (iii) in interpreting the results and impact of a national strategy or an operational programme.

2 Member States shall define the legal entities concerned in their territory for the purposes of Articles 3(1) and 7(1) of Regulation (EC) No 1182/2007 in the light of their national legal and administrative structures. They shall, if appropriate, also lay down provisions on the clear definition of parts of legal entities for the application of those Articles.

## Section 2

### **Requirements applicable to producer organisations**

#### *Article 22*

##### **Product coverage**

1 Member States shall recognise producer organisations under Article 4 of Regulation (EC) No 1182/2007 in respect of the product or the group of products specified in the application for recognition, subject to any decision taken under Article 4(1)(c) of that Regulation.

2 Member States shall only recognise producer organisations in respect of products solely intended for processing where they are able to ensure that such products are delivered for processing, whether through a system of supply contracts or otherwise.

#### *Article 23*

##### **Minimum number of members**

In laying down the minimum number of members of a producer organisation pursuant to Article 4(1)(b) of Regulation (EC) No 1182/2007, Member States may provide that where an applicant for recognition is wholly or partly made up of members which are themselves legal entities or clearly defined parts of legal entities made up of producers, the minimum number of producers may be calculated on the basis of the number of producers associated with each of the legal entities or clearly defined parts of legal entities.

#### *Article 24*

##### **Minimum length of membership**

1 The minimum membership period of a producer shall not be less than one year.

2 Resignation from membership shall be notified to the organisation in writing. The Member States shall lay down the notice periods, which shall not exceed six months, and the dates on which resignation shall take effect.

#### *Article 25*

##### **Structures and activities of producer organisations**

Member States shall ensure that producer organisations have at their disposal the staff, infrastructure and equipment necessary to fulfil the requirements laid down in Article 3(1) of Regulation (EC) No 1182/2007 and ensure their essential functioning, in particular as regards:

- (a) the knowledge of their members' production;
- (b) collecting, sorting, storing and packaging the production of their members;
- (c) commercial and budgetary management; and

- (d) centralised bookkeeping and a system of invoicing.

#### *Article 26*

### **Value or volume of marketable production**

For the purposes of Article 4(1)(b) of Regulation (EC) No 1182/2007, the value or volume of marketable production shall be calculated on the same basis as the value of marketed production set out in Articles 52 and 53 of this Regulation.

#### *Article 27*

### **Provision of technical means**

For the purposes of Article 4(1)(e) of Regulation (EC) No 1182/2007, a producer organisation which is recognised for a product for which the provision of technical means is necessary shall be considered to fulfil its obligation where it provides an adequate level of technical means itself or through its members, or through subsidiaries, or by outsourcing.

#### *Article 28*

### **Producer organisations' main activities**

1 The main activity of a producer organisation shall relate to the concentration of supply and the placing on the market of the products of its members for which it is recognised.

2 The value of the marketed production of the producer organisation's own members and of members of other producer organisations that it sells, shall be more than the value of all the other marketed production which it sells.

This calculation shall be based only on products for which the producer organisation is recognised.

3 Where Article 52(7) applies, paragraph 2 of this Article shall apply *mutatis mutandis* to the subsidiaries concerned from 1 January 2012.

#### *Article 29*

### **Outsourcing**

Outsourcing of an activity of a producer organisation shall mean that the producer organisation enters into a commercial arrangement with another entity, including one of its members or a subsidiary, for the provision of the activity concerned. The producer organisation shall nevertheless remain responsible for ensuring the carrying out of that activity, and overall management control and supervision of commercial arrangement for the provision of the activity.

The first paragraph shall apply *mutatis mutandis* where an association of producer organisations outsources an activity.

### *Article 30*

#### **Transnational producer organisations**

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

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

- a recognising the transnational producer organisation;
- b approving the transnational producer organisation's operational programme;
- c establishing the necessary administrative collaboration with the other Member States in which the members are located with respect to compliance with the terms of recognition and the system of checks and sanctions. Those other Member States shall be obliged to give all necessary assistance to the Member State in which the head office is located; and
- d providing, on request of other Member States, all relevant documentation, including any applicable legislation available to the other Member States in which the members are located, translated into an official language of the requesting Member States.

### *Article 31*

#### **Mergers of producer organisations**

1 Where producer organisations with previously different operational programmes have merged, they may operate the programmes in parallel and separately until 1 January of the year following the merger. In such cases, the producer organisations concerned shall request the merger of the operational programmes by means of an amendment in accordance with the provisions of Article 66. Otherwise, the producer organisations concerned shall request forthwith the merger of the operational programmes by means of an amendment in accordance with the provisions of Article 67.

2 By way of derogation from paragraph 1, Member States may authorise producer organisations which so request, for duly substantiated reasons, to implement separate operational programmes in parallel until they reach their natural conclusion.

### *Article 32*

#### **Non-producer members**

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

2 When setting the conditions referred to in paragraph 1, the Member States shall ensure, in particular, compliance with paragraphs 1(a) and 4(c) of Article 3 of Regulation (EC) No 1182/2007.

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

- a be taken into account for the recognition criteria;
- b benefit directly from the measures financed by the Community.

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

### *Article 33*

#### **Democratic accountability of producer organisations**

Member States shall take all measures they consider to be necessary in order to avoid any abuse of power or influence by one or more members over the management and operation of a producer organisation, which shall include voting rights.

### Section 3

#### **Associations of producer organisations**

### *Article 34*

#### **Recognition of associations of producer organisations**

1 Member States may only recognise associations of producer organisations under Article 5 of Regulation (EC) No 1182/2007 in respect of the activities concerning the product or products specified in the application for recognition.

2 An association of producer organisations may be recognised under Article 5 of Regulation (EC) No 1182/2007 and carry out any of the activities of a producer organisation, even when the marketing of the products concerned continues to be carried out by its members.

### *Article 35*

#### **Associations of producer organisations' main activities**

Article 28(2) and (3) shall apply *mutatis mutandis* to associations of producer organisations.

### *Article 36*

#### **Members of associations of producer organisations which are not producer organisations**

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

2 Members of a recognised association of producer organisations who are not recognised producer organisations shall not:

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

## Article 37

### **Transnational association of producer organisations**

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

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

- a recognising the association;
- b approving, where necessary, the association's operational programme;
- c establishing the necessary administrative collaboration with the other Member States in which the associated organisations are located with respect to compliance with the terms of recognition and the system of checks and sanctions. Those other Member States shall be obliged to give all necessary assistance to the Member State in which the head office is located; and
- d providing, on request of other Member States, all relevant documentation, including any applicable legislation available to the other Member States in which the members are located, translated into an official language of the requesting Member States.

## Section 4

### **Producer groups**

## Article 38

### **Submission of recognition plans**

1 A legal entity or clearly defined part of a legal entity shall submit the recognition plan referred to in Article 7(1) of Regulation (EC) No 1182/2007 to the competent authority of the Member State in which the entity has its head office.

2 Member States shall lay down:

- a the minimum criteria which the legal entity or clearly defined part of a legal entity shall meet to be able to submit a recognition plan;
- b the rules for the drafting, content and implementation of recognition plans;
- c the period during which a former member of a producer organisation shall be prohibited from joining a producer group after leaving the producer organisation in respect of the products for which the producer organisation was recognised; and
- d the administrative procedures for the approval, monitoring and fulfilling of recognition plans.

## Article 39

### **Content of recognition plans**

A draft recognition plan shall cover at least the following:

- (a) a description of the initial situation, in particular as regards the number of producer members, giving full details of members, production, including the value of marketed production, marketing and infrastructure, including infrastructure owned by individual members of the producer group if it is to be used by the producer group itself;
- (b) the proposed date for starting implementation of the plan and its duration, which shall not exceed five years; and
- (c) activities to be implemented in order to achieve recognition.

#### *Article 40*

### **Approval of recognition plans**

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

2 Following the checks referred to in Article 113, the competent national authority shall, as appropriate:

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

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

It shall notify the legal entity or clearly defined part of a legal entity of its decision.

#### *Article 41*

### **Implementation of recognition plans**

1 The recognition plan shall be implemented in annual segments starting on 1 January. Member States may allow producer groups to break down these annual segments into semestrial periods.

The recognition plan shall begin, in accordance with the proposed date under Article 39(b):

- a on 1 January following the date of its acceptance by the competent national authority; or
- b immediately following the date of its acceptance.

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

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



#### Article 42

### **Applications for recognition as a producer organisation**

Producer groups implementing a recognition plan may, at any time, submit an application for recognition under Article 4 of Regulation (EC) No 1182/2007. Such applications shall in any event be submitted before the end of the transitional period referred to in Article 7 of Regulation (EC) No 1182/2007.

From the date on which such an application is lodged, the group in question may submit a draft operational programme under Article 64.

#### Article 43

### **Producer groups' main activities**

Article 28 shall apply *mutatis mutandis* to producer groups.

#### Article 44

### **Value of marketed production**

1 Article 52 shall apply *mutatis mutandis* for producer groups.

2 Where a reduction in the value of marketed production has occurred due to reasons, duly justified to the Member State, falling outside the responsibility and control of the producer group, the value of the marketed production shall not be less than 65 % of the value declared in the previous application or applications for aid covering the most recent annual segment, as verified by the Member State, and in the absence thereof, of the value declared initially in the approved recognition plan.

#### Article 45

### **Financing of recognition plans**

1 The rates of aid referred to in Article 7(5) of Regulation (EC) No 1182/2007 shall be reduced by half in relation to marketed production which exceeds EUR 1 000 000.

2 The aid referred to in Article 7(3)(a) of Regulation (EC) No 1182/2007 shall be subject to a ceiling for each producer group of EUR 100 000 per annual segment.

3 Where a segment of implementation does not run for a complete calendar year the ceilings referred to in paragraph 2 shall be reduced proportionately.

4 The aid referred to in Article 7(3) of Regulation (EC) No 1182/2007 shall be paid:

- a in annual or semestrial instalments at the end of each annual or semestrial period for the implementation of the recognition plan; or
- b in instalments covering part of an annual period if the plan starts during the annual period or if recognition occurs under Article 4 of Regulation (EC) No 1182/2007 before the end of an annual period.

In order to calculate the instalments, the Member States may use as a basis the marketed production corresponding to a period other than that in respect of which the instalment is paid, where checks so require. The difference between the periods shall be less than the actual period concerned.

5 The exchange rate applicable to the amounts referred to in paragraphs 1 and 2 shall be the rate most recently published by the European Central Bank prior to the first day of the period for which the aid in question is granted.

#### *Article 46*

### **Aid for investments required for recognition**

As regards investments linked to implementation of recognition plans referred to in Article 39(c) of this Regulation for which aid is provided for under Article 7(3)(b) of Regulation (EC) No 1182/2007:

- (a) investments liable to distort competition where the other economic activities of the organisation are concerned shall be excluded; and
- (b) investments to the direct or indirect benefit of such measures shall be financed pro rata to their use for the sectors or products for which preliminary recognition is granted.

#### *Article 47*

### **Application for aid**

1 A producer group shall submit a single application for the aid referred to in Articles 7(3)(a) and (b) of Regulation (EC) No 1182/2007 within three months of the end of each annual or semestrial period as referred to in Article 45(4) of this Regulation. The application shall include a declaration of the value of marketed production for the period for which the aid is claimed.

2 Applications for aid covering semestrial periods may be submitted only if the recognition plan is broken into semestrial periods as referred to in Article 41(1)(2). All applications for aid shall be accompanied by a written declaration from the producer group to the effect that the latter:

- a complies and will comply with Regulation (EC) No 1182/2007 and with this Regulation; and
- b has not benefited, is not benefiting and will not benefit either directly or indirectly from duplicate Community or national financing for actions implemented under its recognition plan for which Community financing is granted pursuant to this Regulation.

3 Member States shall fix the deadline for paying the aid which in any case shall not be later than six months after the receipt of the application.

#### *Article 48*

### **Eligibility**

Member States shall evaluate the eligibility of producer groups for the aid under this Regulation in order to establish that the aid is duly justified, taking into account the conditions and the date on which any earlier public aid was granted to the producer

organisations or groups from which the members of the producer group in question originate and to any movements of members between producer organisations and producer groups.

#### *Article 49*

### **Community contribution**

1 The Community contribution towards aid as referred to in Article 7(3)(a) of Regulation (EC) No 1182/2007 shall amount to:

- a 75 % of eligible public expenditure in the regions eligible under the Convergence Objective; and
- b 50 % of eligible public expenditure in other regions.

2 The Community contribution towards aid as referred to in Article 7(3)(b) of Regulation (EC) No 1182/2007, expressed in terms of a capital grant or capital-grant equivalent, shall not exceed, as a percentage of eligible investment costs:

- a 50 % in the regions eligible under the Convergence Objective; and
- b 30 % in other regions.

The Member States concerned shall undertake to contribute at least 5 % of eligible investment costs.

Beneficiaries of aid towards eligible investment costs shall pay at least:

- a 25 % in the regions eligible under the Convergence Objective; and
- b 45 % in other regions.

#### *Article 50*

### **Mergers**

1 Aid as provided for in Article 7(3) of Regulation (EC) No 1182/2007 may be given, or may continue to be given, to producer groups which have been granted preliminary recognition and which result from the merger between two or more producer group granted preliminary recognition.

2 For the purposes of calculating the aid payable pursuant to paragraph 1, the producer group resulting from the merger shall replace the merging groups.

3 Where two or more producer groups merge, the new entity shall assume the rights and obligations of the producer group which has been granted pre-recognition status the earliest.

4 Where a producer group which has been granted preliminary recognition merges with a recognised producer organisation, the resulting entity shall no longer be eligible for preliminary recognition as a producer group, nor for the aid referred to in Article 7(3) of Regulation (EC) No 1182/2007. The resulting entity shall continue to be treated as the recognised producer organisation, provided that it respects the applicable requirements. If necessary, the producer organisation shall request a change to its operational programme, and to this end Article 31 shall apply *mutatis mutandis*.

However, actions carried out by producer groups before such a merger shall continue to be eligible under the conditions set out in the recognition plan.

### *Article 51*

#### **Consequences of recognition**

1 Aid as provided for in Article 7(3) of Regulation (EC) No 1182/2007 shall cease once recognition is granted.

2 Where an operational programme is submitted pursuant to this Regulation, the Member State concerned shall ensure that there is no duplicated financing of the measures set out in the recognition plan.

3 Investments qualifying for the aid or the costs referred to in Article 7(3)(b) of Regulation (EC) No 1182/2007 may be carried over to operational programmes provided they are in line with the requirements of this Regulation.

4 Member States shall fix the period, starting after implementation of the recognition plan, within which the producer group shall be required to be recognised as a producer organisation. The period shall not exceed four months.

## CHAPTER II

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

#### Section 1

#### **Value of marketed production**

### *Article 52*

#### **Basis for calculation**

1 For the purposes of this Chapter, the value of marketed production for a producer organisation shall be calculated on the basis of the production of members of producer organisations, for which the producer organisation is recognised.

2 The value of the marketed production shall include the production of members who leave or join the producer organisation. The Member States shall determine the conditions to avoid duplicate counting.

3 Member States may allow producer organisations to include the value of the by-products in the value of the marketed production.

4 The value of the marketed production shall include the value of market withdrawal disposed of as provided for in points (a) and (b) of Article 10(4) of Regulation (EC) No 1182/2007, estimated at the average price of those products marketed by the producer organisation in the previous year.

5 Only the production of the members of the producer organisation marketed by the producer organisation itself or in conformity with Article 3(3)(b) and (c) of Regulation (EC) No 1182/2007, shall be counted in the value of marketed production.

- 6 The marketed production shall be invoiced at the ‘ex-producer organisation’ stage:
- a where applicable, as product which is packaged, prepared, or has undergone first-stage processing;
  - b excluding VAT; and
  - c excluding internal transport costs, where the distance between the centralised collection or packing points of the producer organisation and the point of distribution of the producer organisation is significant. Member States shall provide for reductions to be applied to the invoiced value for products invoiced at different stages of processing or delivery or transport.
- 7 The value of the marketed production may also be calculated at the ex-subsi-diary stage, on the same basis as set out in paragraph 6, provided that at least 90 % of the capital of the subsidiary is owned:
- a by the producer organisations or association of producer organisations; or
  - b subject to Member State approval, by members, which are cooperatives, of the producer organisations or associations of producer organisations if doing so contributes to the objectives listed in Article 3(1)(b) and (c) of Regulation (EC) No 1182/2007.
- 8 Where a reduction in production occurs due to a climatic event or animal or plant diseases or pest infestations, any insurance indemnification received in respect of harvest insurance measures covered by Section 6 of Chapter III, or equivalent measures managed by the producer organisation, due to these causes may be included in the value of marketed production.

### *Article 53*

#### **Reference period**

- 1 The annual ceiling on aid referred to in Article 10(2) of Regulation (EC) No 1182/2007 shall be calculated each year on the basis of the value of marketed production during a 12-month reference period to be determined by the Member States.
- 2 The reference period shall be fixed by the Member States for each producer organisation as:
- a a 12-month period, starting no earlier than 1 January three years preceding the year in which the operational programme is implemented and ending no later than 1 August of the same year; or
  - b the average value of three subsequent 12-month periods starting no earlier than 1 January five years preceding the year in which the operational programme is implemented and ending no later than 1 August of the same year.
- 3 The 12-month period shall be the accounting period of the producer organisation concerned.

The reference period shall not vary during an operational programme except in duly justified situations.

- 4 Where a reduction in the value of a product has occurred due to reasons, duly justified to the satisfaction of a Member State, falling outside the responsibility and control of the producer organisation, the value of the marketed production referred to in paragraph 1 shall not be less than 65 % of the value of the product concerned in the previous reference period.

The reasons referred to in the first subparagraph shall be duly justified.

5 Where recently recognised producer organisations have insufficient historical data on marketed production for the application of paragraph 2 the value of marketed production may be considered to be the value of marketable production provided by the producer organisation for the purposes of recognition. This shall be calculated as the average value of the marketed production for the three previous years of all producers who are members of the producer organisation when the application for recognition is submitted.

6 Member States shall take the measures necessary to gather information on the value of marketed production of producer organisations which have not submitted operational programmes.

7 By way of derogation from paragraphs 1 and 6, the value of marketed production for the reference period shall be as calculated under the legislation applicable in this reference period.

## Section 2

### **Operational Funds**

#### *Article 54*

#### **Management**

Member States shall ensure that operational funds are managed in such a way that it is possible for external auditors to annually identify, check and certify their expenditure and revenue.

#### *Article 55*

#### **Financing of operational funds**

The financial contributions to the operational fund referred to in Article 8(1) of Regulation (EC) No 1182/2007 shall be determined by the producer organisation.

All producers shall have the opportunity to benefit from the operational fund, and all producers shall have the opportunity to participate democratically in decisions concerning the use of funds of the producer organisation and the financial contributions to the operational funds.

#### *Article 56*

#### **Communication of estimated amount**

Producer organisations shall communicate the estimated amounts of Community contribution, and the contribution of its members and of the producer organisation itself to the operational funds for the following year to the Member State by 15 September at the latest, together with the operational programmes or requests for approval of their amendments.

Member States may set a later date than 15 September.

Calculation of the estimated amount of operational funds shall be based on the operational programmes and the value of marketed production. The calculation shall be split between expenditure for crisis prevention and management measures and other measures.

### Section 3

## **Operational Programmes**

### *Article 57*

#### **National strategy**

1 The overall structure and content of the national strategy referred to in Article 12(2) of Regulation (EC) No 1182/2007 shall, from 1 January 2009, be established in accordance with the guidelines set out in Annex VII. Prior to that date, Member States shall determine its overall structure and content. It may be comprised of regional elements.

The national strategy shall integrate all the decisions taken and provisions adopted by the Member State in application of Title III of Regulation (EC) No 1182/2007 and this Title.

2 The national strategy, including the integration of the national framework referred to in Article 12(1) of Regulation (EC) No 1182/2007, shall be established before draft operational programmes are submitted in any given year. The national framework shall be integrated after having been submitted to the Commission and if appropriate, after having been amended, in accordance with the second subparagraph of Article 12(1) of Regulation (EC) No 1182/2007.

3 An analysis of the initial situation shall form part of the process of drawing up the national strategy and be carried out under responsibility of the Member State. It shall identify and assess the needs to be met, the ranking of the needs in terms of priorities, the goals to be achieved through the operational programmes to meet those priority needs, the results expected and the quantified targets to be attained in relation to the initial situation, and lay down the most appropriate instruments and actions for attaining those objectives.

4 Member States shall also ensure monitoring and evaluation of the national strategy and its implementation through operational programmes.

The national strategy may be amended, in particular in the light of monitoring and evaluation. Such amendments shall be made before the submission of draft operational programmes in any given year.

5 Member States shall set out in the national strategy maximum percentages of the fund which may be spent on any individual measure and/or type of action and/or expenditure in order to ensure an appropriate balance between different measures.

### *Article 58*

#### **National framework for environmental actions**

1 In addition to the notification foreseen under Article 12(1) of Regulation (EC) No 1182/2007 Member States shall also notify the Commission of any amendments to the national framework which shall be subject to the procedure set out in the second subparagraph of Article

12(1) of Regulation (EC) No 1182/2007. The Commission shall make the framework available to other Member States by the means it considers appropriate.

2 The framework shall set out a non-exhaustive list of environmental actions and the conditions therefore applicable in the Member State for the purposes of Article 9(3) of Regulation (EC) No 1182/2007 and, for each environmental action selected, shall indicate:

- a the specific commitment or commitments entailed; and
- b the justification of the action based on its expected environmental impact in relation to environmental needs and priorities.

#### *Article 59*

### **Complementary Member State rules**

Member States may adopt rules complementing Regulation (EC) No 1182/2007 and this Regulation concerning the eligibility of measures, actions or expenditure under operational programmes.

#### *Article 60*

### **Relationship with rural development programmes**

1 No support under the Member State's rural development programme or programmes approved under Regulation (EC) No 1698/2005, shall be granted to actions which are covered by measures set out by this Regulation, subject to paragraph 2.

2 Where support under Regulation (EC) No 1698/2005 has exceptionally been granted in accordance with Article 5(6) of that Regulation, to measures which would be potentially eligible under this Regulation, Member States shall ensure that a beneficiary may receive support for a given action only under one scheme.

To that end, when Member States, include measures containing such exceptions in their rural development programmes, they shall ensure that the national strategy as referred to in Article 57 of this Regulation lays down the criteria and administrative rules which they will apply in the rural development programmes.

Where relevant, and without prejudice to provisions of Articles 10(1) and (3) and 11 of Regulation (EC) No 1182/2007, the level of support for measures covered by this Regulation shall not exceed that applicable for the measures under the rural development programme.

Support for environmental actions, other than acquisition of fixed assets, shall be limited to the maximum amounts laid down in the Annex to Regulation (EC) No 1698/2005 for agri-environment payments. These amounts may be increased in exceptional cases taking account of specific circumstances to be justified in the national strategy as referred to in Article 57 of this Regulation.

#### *Article 61*

### **Contents of operational programmes and eligible expenditure**

1 Operational programmes shall include the following:



- a a description of the initial situation, based, where relevant, on the baseline indicators listed in Annex XIV;
- b the objectives of the programme, bearing in mind the outlook for production and outlets, and an explanation of how the programme contributes to the national strategy and confirmation that it is consistent with the national strategy, including in its balance between activities. The description of the objectives shall refer to objectives defined in the national strategy and indicate measurable targets, so as to facilitate the monitoring of progress gradually made in implementing the programme;
- c a detailed description of the measures, including those for crisis prevention and management, containing separate actions, to be taken and the means for attaining those objectives in each year of implementation of the programme. The description shall indicate the extent to which different measures proposed:
  - (i) complement and are consistent with other measures, including measures financed or eligible for support by other European Community funds, and in particular rural development support. In this respect, a specific reference shall also be made, if appropriate, to measures carried out under previous operational programmes;
  - (ii) do not entail any risk of double financing by European Community funds;
- d the duration of the programme; and
- e the financial aspects, namely:
  - (i) the method of calculation and the level of financial contributions;
  - (ii) the procedure for financing the operational fund;
  - (iii) information necessary to justify different levels of contribution; and
  - (iv) the budget and timetable for undertaking operations for each year of implementation of the programme.

2 Various environmental actions may be combined provided that they are complementary and compatible.

Where environmental actions are combined, the level of support shall take account of the specific income foregone and additional costs resulting from the combination.

3 Investments, including those under leasing contracts, whose repayment period exceeds the length of the operational programme may be carried over to a subsequent operational programme on duly justified economic grounds, and in particular in cases where the fiscal depreciation period is longer than five years.

Where investments are replaced, the residual value of the investments replaced shall be:

- a added to the operational fund of the producer organisation; or
- b subtracted from the cost of the replacement.

Investments or actions may be implemented on individual holdings of members of the producer organisation, provided that they contribute to the objectives of the operational programme. If the member leaves the producer organisation, Member States shall ensure that the investment or its residual value is recovered, unless the Member State provides otherwise.

4 Operational programmes shall not include actions or expenditure referred to in the list set out in Annex VIII.

5 Expenditure under operational programmes eligible for aid shall be restricted to the actual costs incurred. However, Member States may instead fix standard flat rates in advance and in a duly justified way in the following cases:

- a where such standard flat-rates are referred to in Annex VIII;
- b for additional per-kilometre external transport costs, compared to road haulage costs, incurred when using rail and/or ship transport as part of a measure to respect the environment; and
- c for additional costs and income foregone resulting from environmental actions, calculated in conformity with Article 53(2) of Regulation (EC) No 1974/2006.

Member States shall review such rates at least every five years.

6 In order for an action to be eligible, more than 50 % by value of the products concerned by it shall be those for which the producer organisation is recognised. To be counted in the 50 %, the products shall come from the producer organisation's members or members of another producer organisation. The appropriate rules in Article 52 shall apply to the calculation of the value.

#### *Article 62*

#### **Documents to be submitted**

Operational programmes shall be accompanied by, in particular:

- (a) evidence of the setting-up of an operational fund;
- (b) a written undertaking from the producer organisation to comply with Regulation (EC) No 1182/2007 and this Regulation; and
- (c) a written undertaking from the producer organisation that it has and will not receive, directly or indirectly, any other Community or national funding in respect of actions qualifying for aid under this Regulation.

#### *Article 63*

#### **Partial operational programmes**

1 Pursuant to Article 5 of Regulation (EC) No 1182/2007 a Member State may authorise an association of producer organisations to present a partial operational programme of its own, which shall consist of actions identified, but not implemented by two or more member producer organisations in their operational programmes.

2 The same rules shall apply to partial operational programmes as to other operational programmes and they shall be considered together with the operational programmes of the member producer organisations.

3 Member States shall ensure that:

- a the actions are fully financed from contributions of member producer organisations paid out of the operational funds of those organisations;
- b the actions and the corresponding financial participation are listed in the operational programme of each participating producer organisation; and
- c there is no risk of duplicate aid and that Article 60 is applied *mutatis mutandis*.

## Article 64

### **Time limit for submission**

Operational programmes shall be submitted for approval by the producer organisation to the competent authority in the Member State in which the producer organisation has its headquarters by 15 September at the latest of the year preceding that in which they are to be implemented. However, the Member States may postpone that date.

When a legal entity or clearly defined part of a legal entity, including a producer group, submits an application for recognition as a producer organisation it may at the same time submit the operational programme referred to in the first paragraph for approval. Approval of the programme shall be subject to obtainment of recognition no later than on the final date laid down in Article 65(2).

## Article 65

### **Decision**

- 1 The competent national authority shall, as appropriate:
  - a approve amounts of funds and programmes which meet the requirements of Regulation (EC) No 1182/2007 and those of this Chapter;
  - b approve the programmes, on condition that certain amendments are accepted by the producer organisation; or
  - c reject the programmes or part of the programmes.
- 2 The competent national authority shall take decisions on programmes and funds by 15 December at the latest of the year in which they are submitted.

Member States shall notify the producer organisations of those decisions by 15 December at the latest.

However, for duly justified reasons, the competent national authority may take a decision on operational programmes and funds by 20 January at the latest following the date of the application. The approval decision may stipulate that expenditure is eligible from 1 January of the year following the application.

## Article 66

### **Amendments to operational programmes for subsequent years**

1 Producer organisations may request amendments to operational programmes, including if necessary an extension of its duration up to a total duration of five years, by 15 September at the latest to be applied from 1 January of the following year.

However, Member States may postpone the date for submitting requests.

2 Requests for amendments shall be accompanied by supporting documents giving the reason, nature and implications of the changes.

3 The competent authority shall take decisions on requests for amendments to operational programmes by 15 December at the latest.

However, for duly justified reasons, Member States may take a decision on amendments to operational programmes not later than 20 January following the date of the application. The approval decision may stipulate that expenditure is eligible from 1 January of the year following the application.

#### *Article 67*

### **Amendments to operational programmes during the year**

- 1 Member States may authorise amendments to operational programmes during the year, under conditions to be determined by them.
- 2 Producer organisations may be authorised by the competent national authority, during the year to:
  - a implement their operational programmes in part only;
  - b change the contents of the operational programme, including if necessary the extension of its duration up to a total duration of five years;
  - c increase the amount of the operational fund by a maximum of 25 %, and decrease it by a percentage to be fixed by Member States, of the amount initially approved provided the overall objectives of the operational programme are maintained. Member States may increase this percentage in case of mergers of producer organisations as referred to in Article 31(1).
- 3 Member States shall determine the conditions under which operational programmes may be amended during the year without prior approval by the competent national authority. These changes are only eligible for aid if they are communicated by the producer organisation to the competent authority without delay.

#### *Article 68*

### **Operational programmes' format**

- 1 Operational programmes shall be implemented in annual periods running from 1 January to 31 December.
- 2 Operational programmes approved on 15 December at the latest shall be implemented from 1 January of the following year.

The implementation of programmes approved after 15 December shall be postponed for one year.

By way of derogation from the first and second subparagraphs of this paragraph, where the third subparagraph of Article 65(2) or the second subparagraph of Article 66(3) apply, the implementation of operational programmes approved in accordance with those provisions shall start not later than 31 January following their approval.

## Section 4

### Aid

#### Article 69

#### **Approved amount of aid**

Member States shall notify producer organisations and associations of producer organisations of the approved amount of aid, as required by Article 13(3) of Regulation (EC) No 1182/2007, by 15 December at the latest.

Where the third subparagraph of Article 65(2) or the second subparagraph of Article 66(3) of this Regulation apply, Member States shall give notification of the approved amount of aid not later than 20 January.

#### Article 70

#### **Applications**

1 Producer organisations shall submit an application for aid or the balance thereof to the competent authority for each operational programme for which aid is requested on 15 February at the latest of the year following that for which the aid is requested.

2 Applications shall be accompanied by supporting documents showing:

- a the aid requested;
- b the value of the marketed production;
- c the financial contributions levied on its members and those of the producer organisation itself;
- d the expenditure incurred in respect of the operational programme;
- e the expenditure concerning crisis prevention and management broken down by actions;
- f the proportion of the operational fund spent on crisis prevention and management broken down by actions;
- g compliance with Article 9(2) and Article 9(3)(a) or (b) and Article 10 of Regulation (EC) No 1182/2007;
- h a written undertaking that it has not received any duplicate Community or national funding in respect of measures and/or operations qualifying for aid under this Regulation; and
- i in the case of an application for payment based on a standard flat-rate as referred to in Article 61(4), proof of the implementation of the action concerned.

3 Applications may cover expenditure programmed but not incurred if the following elements are proved:

- a the operations concerned could not be carried out by 31 December at the latest of the year of implementation of the operational programme for reasons beyond the control of the producer organisation concerned;
- b those operations can be carried out by 30 April at the latest of the following year at the latest; and
- c an equivalent contribution from the producer organisation remains in the operational fund.

The aid shall be paid and the security lodged in accordance with Article 72(3) shall be released only on condition that proof of implementation of the programmed expenditure referred to in point (b) of the first subparagraph is provided by 30 April at the latest of the year following that for which the expenditure in question was programmed, and on the basis of the entitlement to the aid actually established.

4 Where applications are submitted after the date provided for in paragraph 1, the aid shall be reduced by 1 % for each day late.

In exceptional and duly justified cases, the competent authority may accept applications after the date provided for in paragraph 1, if the necessary checks have been carried out and the time limit for payment provided for in Article 71 is complied with.

#### *Article 71*

#### **Payment of the aid**

Member States shall pay the aid by 15 October at the latest of the year following the year of implementation of the programme.

#### *Article 72*

#### **Advance payments**

1 Member States may permit producer organisations to apply for the advance payment of the part of the aid corresponding to the foreseeable expenditure resulting from the operational programme during the three- or four-month period starting in the month in which the application is submitted.

2 Applications for advance payments shall be submitted as decided by the Member State, either on three-monthly basis in January, April, July and October or on a four-monthly basis in January, May and September.

Total advance payments made for a given year may not exceed 80 % of the initially approved amount of aid for the operational programme.

3 Advances shall be paid subject to the lodging of a security equivalent to 110 % thereof in accordance with Regulation No 2220/85.

Conditions shall be provided for by the Member States to ensure that financial contributions to the operational fund have been levied in accordance with Article 54 and Article 55 of this Regulation and previous advance payments have actually been spent.

4 Applications for the release of securities may be submitted during the current programme year and shall be accompanied by the relevant supporting documents.

Securities shall be released in respect of up to 80 % of advances paid.

5 The primary requirement within the meaning of Article 20 of Regulation (EC) No 2220/85 shall cover the performance of the operations set out in the operational programmes subject to the undertakings provided for in Article 62(b) and (c) of this Regulation.

In the event of failure to comply with the primary requirement or of serious failure to meet the obligations provided for in Article 62(b) and (c) the security shall be forfeited,

without prejudice to other penalties to be applied in accordance with Section 3 of Chapter V.

In the event of failure to comply with other requirements, the security shall be forfeited in proportion to the gravity of the irregularity that has been established.

6 Member States may set a minimum amount and the deadlines for advance payments.

#### *Article 73*

### **Partial payments**

Member States may permit producer organisations to apply for the payment of the part of the aid corresponding to the expenditure resulting from the operational programme.

Applications may be submitted at any time, but no more than three times in any given year. They shall be accompanied by suitable supporting documents.

Total payments in respect of applications for parts of the aid may not exceed 80 % of the initially approved amount of aid for the operational programme or of the real expenditure, whichever is less.

Member States may set a minimum amount and the deadlines for partial payments.

## CHAPTER III

### **Crisis prevention and management measures**

#### Section 1

### **General provisions**

#### *Article 74*

### **Selection of crisis prevention and management measures**

Member States may provide that one or more of the measures listed in Article 9(2) of Regulation (EC) No 1182/2007 shall not apply in their territory.

#### *Article 75*

### **Loans to finance crisis prevention and management measures**

Loans taken out to finance crisis prevention and management measures pursuant to the third subparagraph of Article 9(2) of Regulation (EC) No 1182/2007 whose repayment period exceeds the length of the operational programme may be carried over to a subsequent operational programme on duly justified economic grounds.

## Section 2

### **Market withdrawals**

#### *Article 76*

##### **Definition**

This Section lays down rules concerning market withdrawals as referred to in Article 9(2)(a) of Regulation (EC) No 1182/2007. For the purposes of this Chapter, ‘products withdrawn from the market’, ‘withdrawn products’ and ‘products not put up for sale’ mean products which are so withdrawn from the market.

#### *Article 77*

##### **Marketing standards**

1 Where a marketing standard as referred to in paragraphs 2 and 7 of Article 2 of Regulation (EC) No 1182/2007 exists for a given product, such product withdrawn from the market shall comply with those standards, except for the provisions on the presentation and marking of products. Products may be withdrawn in bulk, all sizes together, provided that the minimum requirements for class II, in particular as regards quality and size, are complied with.

However, miniature produce as defined in the relevant standards shall comply with the applicable marketing standards, including the provisions on the presentation and marking of products.

2 If no such marketing standards exist for a given product, the minimum requirements laid down in Annex IX shall be met by products withdrawn from the market. The Member States may lay down additional rules supplementing those minimum requirements.

#### *Article 78*

##### **Three-year average for market withdrawals for free distribution**

The limit of 5 % of the volume of marketed production referred to in Article 10(4) of Regulation (EC) No 1182/2007 shall be calculated on the basis of an arithmetic mean of the overall volumes of products for which the producer organisation is recognised and are marketed through the producer organisation during the three previous years.

For recently recognised producer organisations, the data for marketing years prior to recognition shall be:

- (a) where the organisation was a producer group, the equivalent data for that producer group, where applicable; or
- (b) the volume applicable to the application for recognition.



## Article 79

### **Prior notification of withdrawal operations**

1 Producer organisations and associations of producer organisations shall notify in advance the competent national authorities, by written telecommunication or electronic message, of each withdrawal operation they intend to undertake. Such notification shall specify, in particular, the list of products taken into intervention and their principal characteristics according to the relevant marketing standards, the estimated quantity of each product concerned, their intended destination and the place where the withdrawn products may be inspected as provided for in Article 110. Notifications shall include a certificate attesting that the withdrawn products conform to the applicable marketing standards or minimum requirements referred to in Article 77.

2 Member States shall lay down detailed rules for producer organisations as regards notifications provided for in paragraph 1, in particular as regards time limits.

3 Within the time limits referred to in paragraph 2, the Member States shall:

- a either carry out the check referred to in Article 110(1), following which, if no irregularities are detected, it shall authorise the withdrawal operation as noted in the check; or;
- b in the cases referred to in Article 110(3), not carry out the check referred to in Article 110(1), in which case it shall inform the producer organisation of this by a written telecommunication or an electronic message and authorise the withdrawal operation as notified.

## Article 80

### **Support**

1 The support, comprising both the Community contribution and the producer organisation contribution, for market withdrawals shall be no more than the amounts set out in Annex X for the products referred to in that Annex. For other products, Member States shall set maximum amounts of support.

2 Market withdrawals shall not exceed 5 % as a proportion of the volume of the marketed production of any given product in any given producer organisation.

The volume of marketed production shall be calculated as average of the volume of marketed production in the previous three years. If this information is not available, the volume of marketed production for which the producer organisation was recognised shall be used.

The percentages referred to in the first subparagraph shall be annual averages over a three year period, with a 3 % annual margin of error.

## Article 81

### **Destinations for withdrawn products**

1 Member States shall lay down the permissible destinations for products subjected to market withdrawals. They shall adopt provisions to ensure that no negative impact on

the environment nor any negative phytosanitary consequences result from the withdrawal or its destination. Costs incurred by the producer organisations due to compliance with these provisions shall be eligible as part of the support for market withdrawals under the operational programme.

2 The destinations referred to in paragraph 1 of this Article shall include free distribution which shall mean those referred to in points (a) and (b) of Article 10(4) of Regulation (EC) No 1182/2007 and any other equivalent destinations approved by Member States.

Member States shall take all the necessary steps to facilitate contacts and co-operation between producer organisations and the recipients they have approved, on request, for free distribution.

3 Disposal of products to the processing industry shall be possible only on condition that there is no resulting distortion of competition for the industries concerned within the Community or for imported products.

#### *Article 82*

#### **Transport costs**

1 The transport costs for the free distribution of all products withdrawn from the market shall be eligible under the operational programme on the basis of the flat-rate amounts set according to the distance between the point of withdrawal and the place of delivery set out in Annex XI.

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

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

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

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

#### *Article 83*

#### **Sorting and packing costs**

1 The costs of sorting and packaging fresh fruit and vegetables withdrawn from the market for free distribution shall be eligible under operational programmes at the flat-rate amount of EUR 132 per tonne net weight, in the case of products put up in packages of less than 25 kilograms net weight.

2 Packages of products for free distribution shall display the European emblem, together with one or more of the references set out in Annex XII.

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

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

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

#### *Article 84*

### **Conditions for the recipients of withdrawn products**

1 The recipients of withdrawn products referred to in points (a) and (b) of Article 10(4) of Regulation (EC) No 1182/2007 shall undertake to:

- a comply with this Regulation;
- b keep separate stock records and financial accounts for the operations in question;
- c accept the checks provided for by the Community rules; and
- d provide the supporting documents on the final destination of each of the products concerned, in the form of a take-over certificate (or equivalent document) attesting that the withdrawn products have been taken over by a third party with a view to their free distribution.

Member States may decide that recipients do not have to keep records or accounts referred to in point (b) of the first subparagraph, if they receive only small quantities and where they consider that the risk is low. That decision and its justification shall be recorded.

2 The recipients of withdrawn products for other destinations shall undertake to:

- a comply with this Regulation;
- b keep separate stock records and financial accounts for the operations in question if the Member States considers it as appropriate despite the fact that the product has been denatured before delivery;
- c accept the checks provided for by the Community rules; and
- d not request additional aid for the alcohol produced from the products concerned in the case of withdrawn products intended for distillation.

#### Section 3

### **Green harvesting and non-harvesting**

#### *Article 85*

### **Definitions of green harvesting and non-harvesting**

1 Green harvesting shall mean the total harvesting of non-marketable products on a given area carried out before the beginning of the normal harvest. The products concerned shall not have been already damaged prior to the green harvesting, whether due to climatic reasons or disease or otherwise.

2 Non-harvesting shall be where no commercial production is taken from the area concerned during the normal production cycle. However destruction of products due to climatic event or disease shall not be considered as non-harvesting.

3 Green harvesting and non-harvesting shall be additional to and different from normal cultivation practices.

#### *Article 86*

#### **Conditions for the application of green harvesting and non-harvesting**

1 In relation to green harvesting and non-harvesting measures, Member States shall:

- a adopt detailed provisions on the implementation of the measures, including on prior notifications of non-harvesting and green harvesting, their content and deadlines, on the amount of compensation to be paid and on the application of the measures, as well as the list of products eligible under the measures;
- b adopt provisions to ensure that no negative impact on the environment nor any negative phytosanitary consequences result from their application;
- c ensure that it is possible to check that the measures are carried out correctly, and not approve the application of the measures where this is not the case;
- d apply such checks to ensure that the measures are carried out correctly, including in relation to the provisions mentioned in points (a) and (b).

2 Producer organisations and associations of producer organisations shall notify in advance the competent national authorities, by written telecommunication or electronic message, of each green harvesting or non-harvesting operation they intend to undertake.

They shall include in the first notification of any given year and for a given product, an analysis based on the expected market situation which justifies green harvesting as a crisis prevention measure.

3 Green harvesting and non-harvesting shall not both be applied for the same product and the same given area in any given year, or in any two consecutive years.

4 Compensation amounts, comprising both the Community contribution and the producer organisation contribution, for green harvesting and non-harvesting shall be per hectare payments set by the Member State under paragraph 1(a):

- a at the level to cover only additional costs generated by the application of the measure, taking into account the environmental and phytosanitary management needed to comply with the provisions adopted pursuant to paragraph 1(b); or
- b at a level to cover not more than 90 % of the maximum support level for market withdrawals as referred to in Article 80.

## Section 4

### **Promotion and communication**

#### *Article 87*

#### **Implementation of promotion and communication measures**

1 Member States shall adopt detailed provisions on the implementation of promotion and communication measures. These provisions shall allow for the rapid application of the measures when required.

2 Actions under promotion and communication measures shall be additional to any on-going promotion and communication actions being applied by the producer organisation concerned.

## Section 5

### **Training**

#### *Article 88*

#### **Implementation of training measures**

In relation to training measures, Member States shall adopt detailed provisions on the implementation of those measures.

## Section 6

### **Harvest insurance**

#### *Article 89*

#### **Objective of harvest insurance measures**

Harvest insurance actions shall be managed by a producer organisation which shall contribute to safeguarding producers' incomes and to covering market losses incurred by the producer organisation and/or its members where these are affected by natural disasters, climatic events and, where appropriate, diseases or pest infestations.

#### *Article 90*

#### **Implementation of harvest insurance measures**

1 In relation to harvest insurance measures, Member States shall adopt detailed provisions on the implementation of those measures, including those necessary to ensure that harvest insurance measures do not distort competition in the insurance market.

2 Member States may contribute additional national financing to support for harvest insurance measures which are benefiting from the operational fund. However, total public support for harvest insurance may not exceed:

- a 80 % of the cost of the insurance premiums paid for by producers for insurance against losses as a result of adverse climatic events which can be assimilated to natural disasters;
- b 50 % of the cost of the insurance premiums paid for by producers for insurance against:
  - (i) losses referred to in point (a) and against other losses caused by adverse climatic events; and
  - (ii) losses caused by animal or plant diseases or pest infestations.

The limit set out in point (b) of the first subparagraph shall apply even in cases where the operational fund is otherwise eligible for 60 % Community financial assistance pursuant to Article 10(3) of Regulation (EC) No 1182/2007.

3 Harvest insurance measures shall not cover insurance payments which compensate producers for more than 100 % of the income loss suffered, taking into account any compensation the producers obtain from other support schemes related to the insured risk.

4 For the purposes of this Article, an 'adverse climatic event which can be assimilated to a natural disaster' shall have the same meaning as in Article 2(8) of Commission Regulation (EC) No 1857/2006<sup>(1)</sup>.

## Section 7

### **Support for the administrative cost of setting up mutual funds**

#### *Article 91*

### **Conditions for support for the administrative cost of setting up mutual funds**

1 In relation to support for the administrative cost of setting up mutual funds, Member States shall adopt detailed provisions for the implementation of that measure.

2 Support for the administrative cost of setting up mutual funds shall be, in the first, second and third year of operation of the mutual fund respectively, the following proportion of the contribution of the producer organisation to the mutual fund in the first, second and third year of its operation:

- a 10 %, 8 % and 4 % in the Member States which acceded to the European Union on 1 May 2004 or thereafter;
- b 5 %, 4 % and 2 % in other Member States.

3 Member States may fix ceilings for the amounts that may be received by a producer organisation as support for the administrative cost of setting up mutual funds.

## Section 8

### **State aids for crisis prevention and management measures**

#### *Article 92*

#### **Detailed provisions in national strategies**

Member States paying State aid in accordance with point (c) of the second subparagraph of Article 43 of Regulation (EC) No 1182/2007 shall set out detailed provisions for the implementation of that provision in their national strategies.

## CHAPTER IV

### **National Financial Assistance**

#### *Article 93*

#### **Degree of organisation of producers**

For the purposes of Article 11(1) of Regulation (EC) No 1182/2007, the degree of organisation of producers in a region of a Member State shall be considered as particularly low where producer organisations, associations of producer organisations and producer groups have marketed less than 20 % of the average value of fruit and vegetable production in the last three years for which the data are available.

#### *Article 94*

#### **Authorisation to pay national financial assistance**

1 Member States shall submit a request to the Commission for authorisation to pay national financial assistance pursuant to the first subparagraph of Article 11(1) of Regulation (EC) No 1182/2007 in any given calendar year by 15 January of that year.

The request shall be accompanied by evidence showing that the degree of organisation of producers in the region concerned is particularly low, as defined in Article 93 of this Regulation, as well as details of the producer organisations concerned, the amount of assistance concerned and the proportion of financial contributions being made pursuant to Article 8(1)(a) of Regulation (EC) No 1182/2007.

2 The Commission shall approve or refuse the request within three months of its submission. If the Commission does not reply within this period the request shall be considered to have been approved.

#### *Article 95*

#### **Application for and payment of the national financial assistance**

Producer organisations shall apply for the national financial assistance, and Member States shall pay the aid, in accordance with Articles 70 to 73.

### *Article 96*

#### **Maximum proportion of Community reimbursement of the national financial assistance**

The proportion of Community reimbursement of national financial assistance shall be 60 % of the national financial assistance granted to the producer organisation.

### *Article 97*

#### **Community reimbursement of the national financial assistance**

1 Member States shall request Community reimbursement of approved national financial assistance actually paid to producer organisations, before 1 March of the year following the yearly implementation of the operational programmes.

The request shall be accompanied by evidence showing that the conditions set out in the second subparagraph of Article 11(1) of Regulation (EC) No 1182/2007 have been fulfilled in the previous three years, as well as details of the producer organisations concerned, the amount of assistance actually paid and the proportion of financial contributions actually made pursuant to Article 8(1)(a) of Regulation (EC) No 1182/2007.

2 The Commission shall take a decision to approve or refuse the request.

3 Where Community reimbursement of the assistance has been approved, the eligible expenditure shall be declared to the Commission in accordance with the procedure set out in Article 5 of Commission Regulation (EC) No 883/2006<sup>(2)</sup>.

## CHAPTER V

### **General Provisions**

#### Section 1

### **Communications**

### *Article 98*

#### **Producer organisations' reports**

1 Producer organisations shall submit annual reports, accompanying applications for aid, on the implementation of operational programmes.

Those reports shall concern the following:

- a operational programmes implemented during the preceding year;
- b main amendments to operational programmes; and
- c variances between estimated aid and aid applied for.

2 For each operational programme implemented, the annual report shall indicate:



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*Status: This is the original version (as it was originally adopted).*

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- a the achievements and results of the operational programme, based on, where relevant, the common output and result indicators set out in Annex XIV and, where appropriate, additional output and result indicators set out in the national strategy; and
- b a summary of the major problems encountered in managing the programme and any measures taken to ensure the quality and effectiveness of programme implementation.

Where relevant, the annual report shall specify what effective safeguards are in place, in accordance with the national strategy and in application of Article 9(5) of Regulation (EC) No 1182/2007, to protect the environment from possible increased pressures coming from investments supported under the operational programme.

3 For the final year of application of an operational programme, a final report shall replace the annual report referred to in paragraph 1.

Final reports shall show to what extent the objectives pursued by the programmes have been achieved. They shall explain changes to actions and/or methods and identify factors which contributed to the success or failure of the programme's implementation, which have been or will be considered when subsequent operational programmes are drawn up, or when existing operational programmes are amended.

4 Without prejudice to specific provisions in this Regulation, where a producer organisation fails to make a communication to the Member State as required under this Regulation or Regulation (EC) No 1182/2007 or if the communication appears incorrect in the light of objective facts in the Member State's possession, the Member State shall suspend approval for the relevant operational programme for the following year until the communication is correctly made.

The Member State shall include in its annual report referred to in Article 99(3) of this Regulation details of such cases.

#### *Article 99*

#### **Required communications from Member States**

1 Member States shall designate a single competent authority responsible for communications between the Commission and the Member State which concern producer organisations, producer groups and associations of producer organisations. They shall notify the Commission of this designation and the contact details of the authority.

2 Member States shall communicate to the Commission not later than 31 January the total amount of the operational fund approved that year for all operational programmes. This communication shall make clear both the total amount of the operational fund and also the total amount of Community financing of that operational fund. These figures shall be further broken down between amounts for crisis prevention and management measures and other measures.

3 Member States shall communicate to the Commission not later than 15 November in any given year an annual report on producer organisations and producer groups and operational funds, operational programmes and recognition plans running in the previous year. The annual report shall contain in particular the information set out in Annex XIII.

## Section 2

### Checks

#### *Article 100*

#### **Unique identification system**

Member States shall ensure that a unique identification system applies with regard to all aid applications submitted by the same producer organisation or producer group. This identification shall be compatible with the system to record identity referred to in Article 18(1)(f) of Council Regulation (EC) No 1782/2003<sup>(3)</sup>.

#### *Article 101*

#### **Aid applications**

Without prejudice to specific provisions of this Regulation, Member States shall provide for appropriate procedures for the submission of applications for support, for requests for recognition or approval of operational programme, as well as for payment claims.

#### *Article 102*

#### **Sampling**

Where it is appropriate to carry out checks by sampling, Member States shall ensure, by their nature and frequency and on the basis of a risk analysis, that the checks are appropriate to the measure concerned.

#### *Article 103*

#### **Administrative checks**

Administrative checks shall be carried out on all applications for support or payment claims, and shall cover all possible and appropriate elements to be checked by administrative means. The procedures shall require the recording of undertaken operations, the results of the verification and the measures taken in respect of discrepancies.

#### *Article 104*

#### **On-the-spot checks**

1 Every on-the-spot check shall be the subject of a monitoring report in order to make it possible to review the details of the checks carried out. The report shall indicate in particular:

- a the aid scheme and the application checked;
- b the persons present;
- c the actions, measures and documents checked; and
- d the results of the check.

2 The beneficiary may be given the opportunity to sign the report to attest his presence at the check and to add observations. Where irregularities are found the beneficiary may receive a copy of the monitoring report.

3 Advance notice of on-the-spot checks may be given, provided that the purpose of the check is not jeopardised. The advance notice should be limited to the minimum time necessary.

4 Where possible, on-the-spot checks provided for in this Regulation and other checks provided for in Community rules regarding agricultural subsidies shall be carried out at the same time. However, in 2008, where necessary, on-the-spot checks may be carried out by different bodies at different times.

#### *Article 105*

##### **Approval of requests for recognition and approval of operational programmes**

1 Before recognising a producer organisation under Article 4(2)(a) of Regulation (EC) No 1182/2007, Member States shall conduct an on-the-spot visit to the producer organisation prior to granting recognition to verify compliance with the conditions for recognition.

2 Before approving an operational programme under Article 65, the competent national authority shall verify by all appropriate means, including on-the-spot checks, the operational programme submitted for approval and, if applicable, the requests for modification. These checks shall in particular concern:

- a the accuracy of information provided pursuant to Article 61(1)(a), (b) and (e);
- b compliance of the programmes with Article 9 of Regulation (EC) No 1182/2007 as well as with the national framework and the national strategy;
- c the eligibility of the actions and the eligibility of the expenditure proposed;
- d the consistency and technical quality of programmes, the soundness of the estimates and the aid plan, and the planning of its implementation. Checks shall verify whether measurable targets have been set, so that their achievement can be monitored, and whether the targets set are achievable through implementing the proposed actions; and
- e the compliance of the operations for which support is requested with applicable national and Community rules on, in particular, and where relevant, public procurement, State aid and the other appropriate obligatory standards established by national legislation or established in the national framework or the national strategy.

#### *Article 106*

##### **Checks on applications for aid for operational programmes**

Prior to granting the payment, Member States carry out administrative checks on all applications for aid as well as on-the-spot checks by sampling.

#### *Article 107*

##### **Administrative checks on applications for aid for operational programmes**

1 Administrative checks on applications for aid shall include in particular, and as far as this is appropriate for the claiming question, a verification of:

- a the annual or, where applicable, the final report transmitted together with the application on the execution of the operational programme;
- b the value of marketed production, the contributions to the operational fund and the expenditure incurred;
- c the delivery of the products and services and the genuineness of expenditure claimed;
- d the conformity of the actions executed with those included in the operational programme as approved; and
- e the respect of financial or other limits and ceilings imposed.

2 Payments financed under the operational programme shall be supported by invoices and documents proving that payment has been made. Where this cannot be done, payments shall be supported by documents of equivalent probative value. Invoices used must be established in the name of the producer organisation, association of producer organisations, producer group or subsidiary as foreseen in Article 52(7) or, subject to Member State approval, in the name of one or more of its members.

#### *Article 108*

#### **On-the-spot checks on applications for aid for operational programmes**

1 In the context of the verification of the application for aid referred to in Article 70(1), Member States shall carry out on-the-spot checks on the producer organisations so as to ensure compliance with the conditions for grant of aid or the balance thereof for the year in question.

Such checks shall in particular concern:

- a compliance with the recognition criteria for the year in question;
- b the use of the operational fund in the given year including expenditure declared in claims for advance payments or partial payments; and
- c second level checks for the expenses of market withdrawals and green harvesting and non-harvesting.

2 The checks referred to in paragraph 1 shall relate to a significant sample of applications each year. The sample shall represent at least 30 % of the total aid amount, in Member States which have more than 10 recognised producer organisations. In other cases, each producer organisation shall be visited at least once every three years.

At least one check shall be made on each producer organisation before the payment of the aid or the balance thereof relating to the final year of its operational programme.

3 The results of the on-the-spot checks shall be evaluated to establish whether any problems encountered are of a systemic character, entailing a risk for other similar actions, beneficiaries or bodies. The evaluation shall also identify the causes of such situations, any further examination which may be required and the necessary corrective and preventive action.

If the checks reveal significant irregularities in a region or part of a region or for a specific producer organisation, the Member State shall carry out additional checks during the year in question and shall increase the percentage of corresponding applications to be checked the following year.

4 The Member State shall determine which producer organisations to check on the basis of a risk analysis.

The risk analysis shall in particular take account of:

- a the amount of aid;

- b the findings of the checks in previous years;
- c a random element; and
- d other parameters to be determined by Member States, in particular whether producer organisations are involved in a quality assurance programme officially recognised by the Member States or by independent certifying bodies.

#### *Article 109*

##### **On-the-spot checks on measures of operational programmes**

1 Through the on-the-spot checks concerning the measures of operational programmes, Member States shall verify in particular the following:

- a the implementation of the actions contained in the operational programme;
- b that the implementation or intended implementation of the action is consistent with the use described in the operational programme as approved;
- c for an adequate number of expenditure items, that the nature and timing of the relevant expenditure comply with Community provisions and correspond to the approved specifications;
- d that the expenditure incurred can be supported by accounting or other documents; and
- e the value of marketed production.

2 The value of marketed production shall be verified on the basis of data of the accounting system required under national law.

To that end, the Member States may decide that the declaration of the value of marketed production shall be certified in the same way as the accounting data required under national law.

The check on the declaration of the value of marketed production may be carried out before the relevant application for aid is transmitted.

3 Except in exceptional circumstances, the on-the-spot check shall include a visit to the action or, if the action is intangible, to the action promoter. In particular actions on individual holdings covered by the sample referred to in Article 108(2) shall be subject of at least one visit to verify their execution.

However, Member States may decide not to carry out such visits for smaller operations, or where they consider that the risk is low that the conditions for receiving aid are not fulfilled, or that the reality of the operation has not been respected. That decision and its justification shall be recorded.

4 The on-the-spot check shall cover all the commitments and obligations of the producer organisation or its members which can be checked at the time of the visit.

5 Only checks meeting all the requirements of this Article may be counted towards the fulfilment of the checking rate set out in Article 108(2).

#### *Article 110*

##### **First-level checks on withdrawal operations**

1 Member States shall make first-level checks on withdrawal operations in each producer organisation, comprising a documentary and identity check and a physical check,

where appropriate by sampling, of the weight of the products withdrawn from the market and a check on compliance with the rules in Article 77, in accordance with the procedures laid down in Chapter II of Title II. The check shall take place following receipt of the notification referred to in Article 79(1), within the deadlines provided for in Article 79(2).

2 The first-level checks provided for in paragraph 1 shall cover 100 % of the quantity of products withdrawn from the market. At the end of this check, the withdrawn products other than those for free distribution shall be denatured or disposed of to the processing industry under the supervision of the competent authorities under the terms and conditions laid down by the Member State under Article 81.

However, where the products are for free distribution, Member States may check a smaller percentage than that set out in paragraph 2 of this Article, provided it is not less than 10 % of the quantities concerned during the marketing year. The check may take place at the producer organisation and/or at the sites of the recipients of the products. In the event that the checks reveal significant irregularities, the competent authorities shall carry out additional checks.

### *Article 111*

#### **Second-level checks on withdrawal operations**

1 In the framework of the checks referred to in Article 108, Member States shall make second-level checks.

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

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

- a the specific stock and accounting records to be kept by all producer organisations which carry out one or more withdrawal operations during the marketing year concerned;
- b verification of the quantities marketed as declared in the applications for aid, checking in particular the stock and accounting records, the invoices and, where necessary, their veracity and ensuring that the declarations tally with the accounting and/or tax data of the producer organisations concerned;
- c checks that the accounts are correct, in particular the veracity of net receipts by the producer organisations as declared in their payment applications, the proportionality of any withdrawal costs, the entries in the accounts regarding the receipt by the producer organisations of the Community support and any amounts thereof paid on to members, ensuring that these tally; and
- d checks on the destination of withdrawn products as declared in the payment application and checks on the appropriate denaturing to ensure that the producer organisations and recipients have complied with this Regulation.

3 The checks referred to in paragraph 2 shall be carried out on the producer organisations concerned and the recipients associated with those organisations. Each check shall include a

sample representing at least 5 % of the quantities withdrawn during the marketing year by the producer organisation.

4 The stock and accounting records referred to in point (a) of paragraph 2 shall show, for each product withdrawn, the amounts moved, expressed in volume, of:

- a the production delivered by members of the producer organisation and by members of other producer organisations in accordance with Article 3(3)(b) and (c) of Regulation (EC) No 1182/2007;
- b sales by the producer organisation, broken down by products prepared for the fresh market and other types of products including raw materials for processing; and
- c products withdrawn from the market.

5 The checks on the destination of products referred to in point (c) of paragraph 4 shall include, in particular:

- a a sample check on the separate accounts to be kept by recipients and, where necessary, verification that these tally with the accounts required under national law; and
- b checks on compliance with the relevant environmental requirements;

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

#### *Article 112*

### **Green harvesting and non-harvesting**

1 Before a green harvesting operation takes place, Member States shall verify by an on-the-spot check that the products concerned are not damaged and the plot has been well maintained. After green harvesting, Member State shall verify that the area concerned has been harvested in total and the harvested product has been denatured.

After the end of the harvest period, Member States shall verify the reliability of the analysis based on the expected market situation referred to in Article 86(2). They shall also analyse any differences between the expected market situation and the real market situation.

2 Before a non-harvesting operation takes place, Member States shall verify by an on-the-spot check that the given area has been well maintained, that no partial harvest has already taken place and that the product is well developed and would in general be sound, fair and of marketable quality.

Member States shall ensure that the production is denatured. If this is not possible, they shall ensure, by an on-the-spot visit or visits during the harvest season, that no harvest takes place.

3 Paragraphs 1, 2, 3 and 6 of Article 111 shall apply *mutatis mutandis*.

### Article 113

#### **Checks before approving recognition plans of producer groups**

1 Before approving a recognition plan of a producer group under Article 7(1) of Regulation (EC) No 1182/2007, Member States shall conduct an on-the-spot check on the legal entity or clearly defined part of the legal entity.

2 The Member State shall verify by all appropriate means, including the on-the-spot check:

- a the accuracy of the information provided in the recognition plan;
- b the commercial consistency and the technical quality of the plan, the soundness of the estimates and the planning of its implementation;
- c the eligibility of the actions and the eligibility and reasonableness of the expenditure proposed; and
- d the compliance of the operations for which support is requested with applicable national and Community rules and in particular, rules on public procurement, State aid and the other appropriate obligatory standards established by national legislation or established in the national framework or the national strategy.

### Article 114

#### **Checks on applications for aid of producer groups**

1 Prior to granting payment, Member States carry out administrative checks on all applications for aid made by producer groups, as well as on-the-spot checks on by sampling.

2 Following the submission of the application for aid referred to in Article 47, Member States shall carry out on-the-spot checks on producer groups so as to ensure compliance with the conditions for grant of aid for the year in question.

Those checks shall in particular concern:

- a compliance with the recognition criteria for the year in question; and
- b the value of marketed production as well as the implementation of the measures contained in the recognition plan and the expenses incurred.

3 The checks referred to in paragraph 2 shall relate to a significant sample of applications each year. The sample shall represent at least 30 % of the total amount of aid.

All producer groups shall be checked at least once every five years.

4 Articles 107 and 109 shall apply *mutatis mutandis*.

### Article 115

#### **Transnational producer organisations and transnational associations of producer organisations**

1 The Member State in which a transnational producer organisation or a transnational association of producer organisations has its head office shall have overall responsibility for



organisation of checks on that organisation or association and shall apply sanctions to it where necessary.

2 The other Member States required to provide the administrative co-operation referred to in Article 30(2)(c) and Article 37(2)(c) shall carry out such administrative and on the spot checks as required by the Member State referred to in paragraph 1 of this Article, and report the results to them. They shall respect all deadlines set by the Member State referred to in paragraph 1.

3 The rules applicable in the Member State referred to in paragraph 1 shall apply in relation to the producer organisation and the operational programme and operational fund. However in respect of environmental, phytosanitary questions, and in relation to the disposal of withdrawn products, the rules of the Member State where the production takes place shall apply.

### Section 3

#### Sanctions

#### Article 116

##### **Non-respect of recognition criteria**

1 Member States shall withdraw the recognition of a producer organisation if a failure to respect the criteria for recognition is substantial and results from the fact that the producer organisation acted deliberately or by serious negligence.

Member States shall in particular withdraw the recognition of a producer organisation if a failure to respect the criteria for recognition concerns:

- a a breach of the requirements of Articles 23, 25, 28(1) and (2) or 33; or
- b a situation where the value of marketed production falls, in two consecutive years, below the limit set by the Member State pursuant to Article 4(1)(b) of Regulation (EC) No 1182/2007.

The withdrawal of recognition under this paragraph shall take effect from the date from which the conditions for recognition were not fulfilled, subject to any applicable horizontal legislation at national level on limitation periods.

2 Where paragraph 1 does not apply, Member States shall suspend the recognition of a producer organisation if a failure to respect the criteria for recognition is substantial but is only temporary.

During the period of suspension, no aid shall be paid. The suspension shall take effect from the day where the check has taken place and shall end on the day of the check which shows that the criteria concerned have been fulfilled.

The period of suspension shall not exceed 12 months. If the criteria concerned are subsequently not fulfilled after 12 months, recognition shall be withdrawn.

Member States may make payments after the deadline set out in Article 71 where this is necessary in order to apply this paragraph.

3 In other cases of a failure to respect the criteria for recognition, where paragraphs 1 and 2 do not apply, Member States shall send a warning letter stating the corrective measures to be taken. Member States may delay payments of aid until the corrective measures are taken.

A failure to take the corrective measures within a 12 month period shall be regarded as substantial failure to respect the criteria and paragraph 2 shall subsequently be applied.

#### *Article 117*

##### **Fraud**

1 Without prejudice to any other penalties applicable under Community and national legislation, Member States shall withdraw the recognition of a producer organisation, an association of producer organisations or a producer group if it is found to have committed fraud in respect of aid covered by Regulation (EC) No 1182/2007.

2 Member States may suspend the recognition of a producer organisation, an association of producer organisations or a producer groups, or suspend payments to such a body if they are suspected of having committed fraud in respect of aid covered by Regulation (EC) No 1182/2007.

#### *Article 118*

##### **Producer groups**

1 Member States shall apply, *mutatis mutandis*, the sanctions provided for in Article 116 and/or 119 to recognition plans.

2 In addition to paragraph 1, if, after the end of the period set by the Member State under Article 51(4), the producer group is not recognised as producer organisation, the Member State shall recover:

- a 100 % of the aid paid to the producer group if the failure to achieve recognition was due to the producer group acting deliberately or by serious negligence; or
- b 50 % of the aid paid to the producer group in all other cases.

#### *Article 119*

##### **Operational programme**

1 Payments shall be calculated on the basis of what is found eligible.

2 The Member State shall examine the application for aid received from the beneficiary, and establish the amounts that are eligible for support. It shall establish:

- a the amount that would be payable to the beneficiary based solely on the application;
- b the amount that is payable to the beneficiary after an examination of the eligibility of the application.

3 If the amount established pursuant to point (a) of paragraph 2 exceeds the amount established pursuant to point (b) of paragraph 2 by more than 3 %, a reduction shall be applied to the amount actually payable to the beneficiary. The amount of the reduction shall be the difference between the amounts calculated in points (a) and (b) of paragraph 2.

However, no reduction shall be applied if the producer organisation or producer group is able to demonstrate that it is not responsible for the inclusion of the ineligible amount.

4 Paragraphs 2 and 3 shall apply *mutatis mutandis* to ineligible expenditure identified during on-the-spot checks.

5 If the value of marketed production is declared and checked before the application for aid, a reduction shall be applied to the value of marketed production used in calculating amounts in accordance with paragraphs 2 and 3.

6 If a beneficiary is found to have intentionally made a false declaration the operation in question shall be excluded from support of the operational programme or recognition plan and any amounts already paid for that operation shall be recovered. Moreover, the beneficiary shall be excluded, for that operation, from receiving support under the operational programme in question in the following year.

#### *Article 120*

##### **Sanctions following first-level checks on withdrawal operations**

If, following the check referred to in Article 110, irregularities are found with regard to the marketing standards or the minimum requirements referred to in Article 77, the beneficiary shall be required:

- (a) to pay a penalty of the amount of the compensation, calculated on the basis of the quantities of withdrawn products not in conformity with the marketing standards or minimum requirements, if those quantities are less than 10 % of the quantities notified pursuant to Article 79 for the withdrawal operation in question;
- (b) to pay a penalty of the double amount of the compensation, if those quantities are between 10 % and 25 % of the quantities notified; or
- (c) to pay a penalty of the amount of the compensation for the entire quantity notified pursuant to Article 79, where those quantities exceed 25 % of the quantity notified.

#### *Article 121*

##### **Other sanctions applicable to producer organisations regarding withdrawal operations**

1 The sanctions referred to in Article 119 shall cover aid applied for in respect of withdrawal operations as integrated parts of operational programme expenditure.

2 Expenditure for withdrawal operation shall be considered as ineligible if the products not put up for sale have not been disposed of as provided for by the Member State under Article 81(1) or that the withdrawal or its destination has had a negative impact on the environment or any negative phytosanitary consequences in contravention of the provisions adopted under Article 81(1).

#### *Article 122*

##### **Sanctions applicable to recipients of withdrawn products**

Where irregularities attributable to the recipients of withdrawn products are detected during checks made in accordance with Articles 110 and 111, the following sanctions shall apply:

- (a) the recipients shall cease to be eligible to receive withdrawals; and
- (b) recipients of products withdrawn from the market shall be obliged to repay the value of the products they received plus the related sorting, packaging and transport costs in

accordance with the rules laid down by the Member States. In this case, the producer organisation shall reimburse the Community contribution.

The sanction provided for in point (a) take effect immediately and continues for at least one marketing year, and may be extended depending on the seriousness of the irregularity.

#### *Article 123*

### **Green harvesting and non-harvesting**

1 With regard to green harvesting, if it is found that the producer organisation has not fulfilled its obligations the producer organisation shall pay by way of penalty the amount of the compensation relating to the areas for which the obligation has not been respected. A failure to fulfil obligations shall include cases where:

- a the Member State finds, during the verification referred to in the second subparagraph of Article 112(1), that the green harvesting measure was not justified on the basis of the analysis of the expected market situation existing at the time;
- b the area notified for green harvesting is not eligible for green harvesting; or
- c the area is not totally harvested or the production not denatured.

2 With regard to non-harvesting, if it is found that the producer organisation has not fulfilled its obligations the producer organisation shall pay by way of penalty the amount of the compensation relating to the areas for which the obligation has not been respected. A failure to fulfil obligations shall include cases where:

- a the area notified for non-harvesting is not eligible for non-harvesting;
- b a harvest or partial harvest has nevertheless taken place; or
- c there has been a negative impact on the environment or any negative phytosanitary consequences for which the producer organisation is responsible.

3 The penalties in paragraphs 1 and 2 shall apply in addition to any reduction in payments made pursuant to Article 119.

#### *Article 124*

### **Preventing an on-the-spot check**

An application for aid shall be rejected for the part of expenditure concerned if the producer organisation, the member or the relevant representative prevents an on-the-spot check from being carried out.

#### *Article 125*

### **Recovery of aid**

Unduly paid aid shall be recovered, with interest, from the producer organisations, associations of producer organisations, producer groups or other operators concerned. The rules fixed in Article 73 of Regulation (EC) No 796/2004<sup>(4)</sup> shall apply *mutatis mutandis*.

Implementation of administrative sanctions and recovery of unduly paid amounts, as provided for in this section, are without prejudice to communication of irregularities to the Commission pursuant to Commission Regulation (EC) No 1848/2006<sup>(6)</sup>.

#### Section 4

### **Monitoring and evaluation of operational programmes and of national strategies**

#### *Article 126*

#### **Common set of performance indicators**

1 Both the national strategies and the operational programmes shall be subject to monitoring and evaluation aimed at assessing the progress made towards achieving the objectives set for operational programmes, as well as efficiency and effectiveness in relation to those objectives.

2 Progress, efficiency and effectiveness shall be assessed by means of a common set of performance indicators relating to the baseline situation as well as to the financial execution, outputs, results and impact of the operational programmes implemented.

3 The common set of performance indicators are listed in Annex XIV to this Regulation.

4 Where deemed appropriate by a Member State, the national strategy shall specify a limited set of additional indicators specific to that strategy, reflecting national and/or regional needs, conditions and objectives specific to the operational programmes implemented by producer organisations. Where available, additional indicators concerning environmental objectives which are not covered by common performance indicators shall be included.

#### *Article 127*

#### **Monitoring and evaluation procedures in relation to operational programmes**

1 Producer organisations shall ensure the monitoring and evaluation of their operational programmes by making use of relevant indicators among the common set of performance indicators referred to in Article 126 and, where appropriate, of the additional indicators specified in the national strategy.

To this end they shall establish a system to collect, record and maintain information useful for the compilation of those indicators.

2 Monitoring shall be aimed at assessing the progress made towards achieving the specific targets that have been set for the operational programme. It shall be carried out by means of financial, output and result indicators. The results of the exercise are intended to serve:

- a to verify the quality of programme implementation;
- b to identify any need for adjustments or review of the operational programme aimed at achieving the goals set for the programme or at improving the management of the programme, including its financial management;
- c to contribute to meeting reporting requirements concerning the implementation of the operational programme.

Information concerning the results of the monitoring activities shall be included in each annual report, as referred to in Article 98(1), which the producer organisation is required to transmit to the National Authority in charge of the management of the national strategy.

3 Evaluation shall take the form of a separate mid-term evaluation report.

The mid-term evaluation exercise, which may be carried out with the aid of a specialised consultancy office, shall be aimed at examining the degree of utilisation of financial resources, the efficiency and the effectiveness of the operational programme, and assessing the progress made in relation to the overall objectives of the programme. To this end, use shall be made of common indicators relating to the baseline situation, results and, where appropriate, impacts.

Where relevant, the mid-term evaluation exercise shall include a qualitative assessment of the results and the impact of the environmental actions aimed at:

- a the prevention of soil erosion;
- b a reduction in the use of and/or better management of plant protection products;
- c the protection of habitats and biodiversity; or
- d landscape conservation.

The results of the exercise shall be used:

- a to improve the quality of the operational programmes managed by the producer organisation;
- b to identify any need for substantive change of the operational programme;
- c to contribute to meeting reporting requirements concerning the implementation of the operational programmes; and
- d to draw lessons useful in improving the quality, efficiency and effectiveness of future operational programmes managed by the producer organisation.

The mid-term evaluation exercise shall be carried out during the implementation of the operational programme, in time for allowing the results of the evaluation to be considered in the preparation of the subsequent operational programme.

The mid-term evaluation report shall be annexed to the corresponding annual report referred to in Article 98(1).

#### *Article 128*

##### **Monitoring and evaluation procedures in relation to the national strategy**

1 Monitoring and evaluation of the national strategy shall be carried out by using relevant indicators among the common set of performance indicators referred to in Article 126 and, where appropriate, additional indicators specified in the national strategy.

2 Member States shall establish a system to collect, record and maintain information in computerised form adequate for the purpose of compiling the indicators referred to in Article 126. To this end, they shall build on the information transmitted by the producer organisation in relation to the monitoring and the evaluation of their operational programmes.

3 Monitoring shall be on going and aimed at assessing the progress made towards achieving the objectives and the targets set for the operational programmes. It shall be carried out by means of financial, output and result indicators. To this end, use shall be made of the information provided in the annual progress reports transmitted by the producer organisation

concerning the monitoring of their operational programmes. The results of the monitoring exercises shall be used:

- a to verify the quality of the implementation of the operational programmes;
- b to identify any need for adjustments or review of the national strategy aimed at achieving the goals set for the strategy or at improving the management of the strategy implementation, including the financial management of the operational programmes; and
- c to contribute to meeting reporting requirements concerning the implementation of the national strategy.

4 Evaluation shall be aimed at assessing the progress made towards the overall objectives of the strategy. It shall be carried out by means of indicators relating to the baseline situation, results and, where appropriate, impact. To this end, use shall be made of the results of the monitoring and mid-term evaluation of the operational programmes as indicated in the annual progress reports and final reports transmitted by the producer organisations. The results of the evaluation exercises shall be used:

- a to improve the quality of the strategy;
- b to identify any need for substantive change of the strategy; and
- c to contribute to meeting reporting requirements concerning the implementation of national strategy.

The evaluation shall include a evaluation exercise carried out in 2012, but in time to allow its results to be included in a separate evaluation report to be annexed, in the same year, to the annual national report referred to in Article 99(3). The report shall examine the degree of utilisation of financial resources, the efficiency and effectiveness of the operational programmes implemented, and assess the effects and impact of those programmes, in relation to the objectives, targets and goals set by the strategy and, where appropriate, other objectives set in Article 9(1) of Regulation (EC) No 1182/2007. It shall be aimed at drawing lessons useful in improving the quality of future national strategies, and in particular at identify possible shortcomings in the definition of objectives, targets or measures eligible for support, or needs for defining new instruments.

## CHAPTER VI

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

#### *Article 129*

### **Notification of list of economic areas**

Notification as provided for in the second subparagraph of Article 14(2) of Regulation (EC) No 1182/2007 of the list of economic areas shall include all the information needed to assess whether the conditions laid down in the first subparagraph of Article 14(2) of that Regulation have been complied with.

### *Article 130*

#### **Notification of binding rules; representativeness**

1 When a Member State notifies rules it has made binding for a given product and economic area pursuant to Article 15 of Regulation (EC) No 1182/2007, it shall inform at the same time the Commission of:

- a the producer organisation or association of organisations which requested the extension of the rules;
- b the number of producers who belong to that organisation or association and the total number of producers in the economic area concerned; such information shall be given in respect of the situation obtaining at the time when the application for extension is made;
- c the total production of the economic area and the production marketed by the producer organisation or association during the last marketing year for which figures are available;
- d the date from which the rules to be extended have applied to the producer organisation or association concerned; and
- e the date from which the extension is to take effect and the duration of application of the extension.

2 For the purposes of determining representativeness within the meaning of Article 14(3) of Regulation (EC) No 1182/2007, the Member States shall lay down rules excluding:

- a producers whose production is intended essentially for direct sale to consumers on the holding or in the production area;
- b direct sales as referred to in point (a);
- c produce delivered for processing as referred to in Article 14(4)(b) of Regulation (EC) No 1182/2007 except where the rules in question apply entirely or partly to such produce.

### *Article 131*

#### **Financial contributions**

Where a Member State decides, pursuant to Article 17 of Regulation (EC) No 1182/2007, that producers who do not belong to producer organisations are liable for a financial contribution, it shall forward to the Commission the information needed to assess compliance with the conditions laid down in that Article. Such information shall include in particular the basis on which the contribution is calculated and the unit amount thereof, the beneficiary or beneficiaries and the nature of the various costs referred to in points (a) and (b) of Article 21.

### *Article 132*

#### **Extensions beyond one marketing year**

Where it is decided to apply an extension for a period exceeding one marketing year, the Member States shall verify in respect of each marketing year that the conditions with regard to representativeness laid down in Article 14(3) of Regulation (EC) No 1182/2007 continue to be complied with throughout the period of application of the



extension. If they find that the conditions are no longer complied with, they shall immediately repeal the extension with effect from the beginning of the following marketing year. They shall immediately inform the Commission of any repeal, which shall make such information publicly available by means it considers appropriate.

### *Article 133*

#### **Produce sold on the tree; buyers**

1 In cases where producers not belonging to a producer organisation sell their produce on the tree, the buyer shall, for the purposes of compliance with the rules referred to in points 1(e), 1(f) and 3 of Annex I to Regulation (EC) No 1182/2007, be considered as having produced that produce.

2 The Member State concerned may decide that rules listed in Annex I to Regulation (EC) No 1182/2007 other than those referred to in paragraph 1 may be made binding on buyers where they are responsible for the management of the production concerned.

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*Status: This is the original version (as it was originally adopted).*

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- (1) OJ L 358, 16.12.2006, p. 3.
- (2) OJ L 171, 23.6.2006, p. 1.
- (3) OJ L 270, 21.10.2003, p. 1.
- (4) OJ L 141, 30.4.2004, p. 18.
- (5) OJ L 355, 15.12.2006, p. 56.