

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rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector (repealed)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 V

#### **General Provisions**

##### 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>(1)</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;

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- 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.

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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.



(1) OJ L 270, 21.10.2003, p. 1.