

COMMISSION REGULATION (EC) No 441/2009**of 27 May 2009****amending Regulation (EC) No 1580/2007 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**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾, and in particular Articles 103h and 127 in conjunction with Article 4 thereof,

Whereas:

- (1) Article 53(5) of Commission Regulation (EC) No 1580/2007 ⁽²⁾ provides that where recently recognised producer organisations have insufficient historical data on marketed production for the application of paragraph 2 of that Article, the value of the marketed production may be considered to be the value of marketable production and that 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.
- (2) In the interest of legal certainty, it should be made clear that the average value of marketable production in the three-year period in Article 53(5) of Regulation (EC) No 1580/2007 should be calculated by way of reference to the periods during those three years in which the producers were actually producing fruit and vegetables and that periods during which no fruit and vegetables were produced should be disregarded.
- (3) Articles 93 to 97 of Regulation (EC) No 1580/2007 implement Article 103e of Regulation (EC) No 1234/2007 on national financial assistance for producer organisations in regions where the degree of organisation of producers in the fruit and vegetable sector is particularly low, which should contribute to

improve the degree of organisation of producers in such regions. National financial assistance should be directly linked to the production in those regions. Therefore, it should be clarified in Article 93 of Regulation (EC) No 1580/2007 that only products of the fruit and vegetable sector produced in regions where the degree of organisation of producers in the fruit and vegetable sector is particularly low may benefit from national financial assistance.

- (4) The second subparagraph of Article 94(1) of Regulation (EC) No 1580/2007 concerns the information that should be accompanied in a Member State's request for national financial assistance. It is appropriate to require Member States that submit such a request to prove that the assistance is only granted for production that originates in the region where the degree of organisation of producers in the fruit and vegetable sector is particularly low, especially where producer organisations operating on its territory are active in more than one region.
- (5) Article 2 of Commission Regulation (EC) No 1943/2003 ⁽³⁾ allowed producer groups to include processing aids in the value of marketed production. This principle should be maintained for producer groups which were granted preliminary recognition under Council Regulation (EC) No 2200/96 ⁽⁴⁾ until processing aids systems are phased out. It is appropriate that producer groups referred to in Article 203a(4) of Regulation (EC) No 1234/2007 may continue to calculate processing aids received on the basis of Commission Regulations (EC) No 1621/1999 ⁽⁵⁾, (EC) No 1622/1999 ⁽⁶⁾, (EC) No 1535/2003 ⁽⁷⁾ and (EC) No 2111/2003 ⁽⁸⁾ into their sales. Such producer groups should be allowed to lodge an additional application for the aid referred to in Article 103a(1)(a) of Regulation (EC) No 1234/2007 to be calculated on the basis of this additional value of marketed production if these processing aid were not taken into account in the earlier standard applications. It is appropriate to lay down the rules for calculating the aid referred to in Article 103a(1)(a) of Regulation (EC) No 1234/2007 as regards producer groups in Member States which acceded to the European Union on 1 May 2004 or thereafter with annual segments of recognition plans that started in 2007 and ended in 2008.

⁽³⁾ OJ L 286, 4.11.2003, p. 5.

⁽⁴⁾ OJ L 297, 21.11.1996, p. 1.

⁽⁵⁾ OJ L 192, 24.7.1999, p. 21.

⁽⁶⁾ OJ L 192, 24.7.1999, p. 33.

⁽⁷⁾ OJ L 218, 30.8.2003, p. 14.

⁽⁸⁾ OJ L 317, 2.12.2003, p. 5.

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 350, 31.12.2007, p. 1.

- (6) Following the reform of the common organisation of the fruit and vegetables sector, certain culinary herbs are since 1 January 2008 subject to the rules applicable to this sector. As a result, from that 1 January 2008 onwards, Member States may recognise as producer organisations operators that are specialised in, or which production includes, the culinary herbs listed in Part IX of Annex I to Regulation (EC) No 1234/2007, including: saffron, thyme, fresh or chilled, basil, melissa, mint, *origanum vulgare* (oregano/wild marjoram), rosemary and sage, fresh or chilled. However, the application of Article 53(2) of Regulation (EC) No 1580/2007 to producer organisations which members started producing culinary herbs before 2008 resulted in a strict and short period for the inclusion of the value of these products into the value of the marketed production for the operational programmes for 2008 and 2009. It is therefore appropriate to allow producer organisations to include the value of those products into the value of the marketed production for operational programmes implemented in 2008 and 2009.
- (7) Regulation (EC) No 1580/2007 should therefore be amended accordingly.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1580/2007 is amended as follows:

1. In Article 53, paragraph 5 is replaced by the following:

‘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 period during those three years in which the producers who are members of the producer organisation when the application for recognition is submitted were actually producing.’

2. Article 93 is replaced by the following:

‘Article 93

Degree of organisation of producers

For the purposes of Article 103e(1) of Regulation (EC) No 1234/2007, 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 the fruit and vegetable production that was obtained in that region during the last three years for which the data are available.

Only fruit and vegetable production generated in the region referred to in the first paragraph may benefit from national financial assistance.’

3. in Article 94(1), the second subparagraph is replaced by the following:

‘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, that only products of the fruit and vegetable sector produced in that region benefit from assistance, 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 103b of Regulation (EC) No 1234/2007.’;

4. in Article 152, the following paragraphs are added:

‘11. By way of derogation from Article 44(1) of this Regulation, the calculation of value of marketed production of the producer groups referred to in Article 203a(4) of Regulation (EC) No 1234/2007 shall for the sales realised in 2007, 2008 and 2009 include aids received on the basis of Commission Regulations (EC) No 1621/1999 (*), (EC) No 1622/1999 (**), (EC) No 1535/2003 (***) and (EC) No 2111/2003 (****).

As regards producer groups in Member States which acceded to the European Union on 1 May 2004 or thereafter with annual segments of recognition plans that started in 2007 and end in 2008, the annual support referred to in Article 103a(1)(a) of Regulation (EC) No 1234/2007 is calculated as the sum of the value of sales invoiced in the relevant part of 2007 multiplied by the rate relevant for the annual segment considered and the value of sales invoiced in 2008 multiplied by the new rate relevant for the annual segment considered.

12. By way of derogation from Article 47(1) of this Regulation, the producer groups referred to in Article 203a(4) of 1234/2007 may submit a separate application for the aid referred to in Article 103a(1)(a) of that Regulation for the processing aids received on the basis of Regulations (EC) No 1621/1999, (EC) No 1622/1999, (EC) No 1535/2003 and (EC) No 2111/2003 for marketing years 2006/2007 and 2007/2008 if they were not taken into account in earlier applications.

13. By way of derogation from Article 53 of this Regulation, where producer organisations have produced culinary herbs that are listed in Part IX of Annex I to Regulation (EC) No 1234/2007, namely saffron; thyme, fresh or chilled; basil; melissa; mint; *origanum vulgare* (*oregano*/wild marjoram); rosemary and sage, fresh or chilled, in 2008 and 2009, the value of the marketed production for those

products for operational programmes implemented in those years shall be calculated as the actual value of the marketed production for the 12 month-period in which the operational programme was implemented.

(*) OJ L 192, 24.7.1999, p. 21.

(**) OJ L 192, 24.7.1999, p. 33.

(***) OJ L 218, 30.8.2003, p. 14.

(****) OJ L 317, 2.12.2003, p. 5.

Article 2

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

Points 2 and 3 of Article 1 shall apply to operational programmes implemented as from 1 January 2010.

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

Done at Brussels, 27 May 2009.

For the Commission

Mariann FISCHER BOEL

Member of the Commission
