

Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors

TITLE II

CLASSIFICATION OF PRODUCTS

CHAPTER I

General rules

Article 3

Marketing standards; holders

1 The requirements of Article 113a(1) of Regulation (EC) No 1234/2007 shall be the general marketing standard. The details of the general marketing standard are set out in Part A of Annex I to this Regulation.

Fruit and vegetables not covered by a specific marketing standard shall conform to the general marketing standard. However, where the holder is able to show that the products are in conformity with any applicable standards adopted by the United Nations Economic Commission for Europe (UNECE), they shall be considered as conforming to the general marketing standard.

2 The specific marketing standards referred to in Article 113(1)(b) of Regulation (EC) No 1234/2007 are set out in Part B of Annex I to this Regulation as regards the following products:

- a apples,
- b citrus fruit,
- c kiwifruit,
- d lettuces, curled leaved and broad-leaved endives,
- e peaches and nectarines,
- f pears,
- g strawberries,
- h sweet peppers,
- i table grapes,
- j tomatoes.

3 For the purposes of Article 113a(3) of Regulation (EC) No 1234/2007, 'holder' means any natural or legal person who is in physical possession of the products concerned.

Article 4

Exceptions and exemptions from the application of marketing standards

1 By way of derogation from Article 113a(3) of Regulation (EC) No 1234/2007, the following products shall not be required to conform to the marketing standards:

- a provided they are clearly marked with the words ‘intended for processing’ or ‘for animal feed’ or any other equivalent wording, products:
 - (i) intended for industrial processing, or
 - (ii) intended for animal feed or other non-food use;
- b products transferred by the producer on his holding to consumers for their personal use;
- c products recognised in a Commission Decision taken at the request of a Member State in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007 as products of a given region which are sold by the retail trade of the region for well established traditional local consumption;
- d products having undergone a trimming or cutting making them ‘ready to eat’ or ‘kitchen ready’.
- e products marketed as edible sprouts, following germination of seeds of plants classified as fruit and vegetables under Article 1(1)(i) and Part IX of Annex I to Regulation (EC) No 1234/2007.

2 By way of derogation from Article 113a(3) of Regulation (EC) No 1234/2007, the following products shall not be required to conform to the marketing standards within a given production area:

- a products sold or delivered by the grower to preparation and packaging stations or storage facilities, or shipped from his holding to such stations; and
- b products shipped from storage facilities to preparation and packaging stations.

3 By way of derogation from Article 113a(3) of Regulation (EC) No 1234/2007, Member States may exempt from the specific marketing standards products presented for retail sale to consumers for their personal use and labelled ‘product intended for processing’ or with any other equivalent wording and intended for processing other than those referred to in paragraph 1(a)(i) of this Article.

4 By way of derogation from Article 113a(3) of Regulation (EC) No 1234/2007, Member States may exempt from the marketing standards products directly sold by the producer to the final consumer for personal use on markets reserved only for producers within a given production area defined by Member States.

5 By way of derogation from Article 113a(3) of Regulation (EC) No 1234/2007 as regards the specific marketing standards, fruit and vegetables other than the ‘Extra’ Class, at stages following dispatch, may show a slight lack of freshness and turgidity and slight deterioration due to their development and their tendency to perish.

6 By way of derogation from Article 113a(3) of Regulation (EC) No 1234/2007, the following products shall not be required to conform to the general marketing standard:

- a non-cultivated mushrooms of CN code 0709 59,
- b capers of CN code 0709 90 40,
- c bitter almonds of CN code 0802 11 10,
- d shelled almonds of CN code 0802 12,

- e shelled hazelnuts of CN code 0802 22,
- f shelled walnuts of CN code 0802 32,
- g pine nuts of CN code 0802 90 50,
- h pistachios of CN code 0802 50 00,
- i macadamia of CN code 0802 60 00,
- j pecans of CN code ex 0802 90 20,
- k other nuts of CN code 0802 90 85,
- l dried plantains of CN code 0803 00 90,
- m dried citrus of CN code 0805,
- n mixtures of tropical nuts of CN code 0813 50 31,
- o mixtures of other nuts of CN code 0813 50 39,
- p saffron of CN code 0910 20.

7 Evidence shall be supplied to the competent authority of the Member State that the products covered by paragraphs 1(a) and 2 fulfil the conditions laid down, in particular with regard to their intended use.

Article 5

Information particulars

1 The information particulars required by this Chapter shall be shown legibly and obviously on one side of the packaging, either indelibly printed directly onto the package or on a label which is an integral part of the package or affixed to it.

2 For goods shipped in bulk and loaded directly onto a means of transport, the information particulars referred to in paragraph 1 shall be given in a document accompanying the goods or shown on a notice placed in an obvious position inside the means of transport.

3 In the case of distance contracts within the meaning of Article 2(1) of Directive 97/7/EC of the European Parliament and of the Council⁽¹⁾, conformity with the marketing standards shall require that the information particulars shall be available before the purchase is concluded.

4 Invoices and accompanying documents, excluding receipts for the consumer, shall indicate the name and the country of origin of the products and, where appropriate, the class, the variety or commercial type if required in a specific marketing standard, or the fact that it is intended for processing.

Article 6

Information particulars at the retail stage

1 At retail stage, the information particulars required by this Chapter shall be legible and conspicuous. Products may be presented for sale provided the retailer displays prominently, adjacent to and legibly the information particulars relating to country of origin and, where appropriate, class and variety or commercial type in such a way as not to mislead the consumer.

2 For products which are pre-packaged within the meaning of Directive 2000/13/EC of the European Parliament and of the Council⁽²⁾, the net weight shall be indicated, in addition to all the information provided for in the marketing standards. However, in the case of products sold by number, the requirement to indicate the net weight shall not apply if the number of items may be clearly seen and easily counted from the outside or, if the number is indicated on the label.

Article 7

Mixes

1 The marketing of packages of a net weight of 5 kg or less containing mixes of different species of fruit and vegetables shall be allowed, provided that:

- a the products are of uniform quality and each product concerned complies with the relevant specific marketing standard or, where no specific marketing standard exists for a particular product, the general marketing standard,
- b the package is appropriately labelled, in accordance with this Chapter, and
- c the mix is not such as to mislead the consumer.

2 The requirements of paragraph 1(a) shall not apply to products included in a mix which are not products of the fruit and vegetables sector referred to in Article 1(1)(i) of Regulation (EC) No 1234/2007.

3 If the fruit and vegetables in a mix originate in more than one Member State or third country, the full names of the countries of origin may be replaced with one of the following, as appropriate:

- a 'mix of EU fruit and vegetables',
- b 'mix of non- EU fruit and vegetables',
- c 'mix of EU and non-EU fruit and vegetables'.

CHAPTER II

Checks on conformity to marketing standards

Section 1

General provisions

Article 8

Scope

This Chapter lays down rules on conformity checks, which shall mean the checks carried out on fruit and vegetables at all marketing stages, in order to verify that they conform to the marketing standards and other provisions of this Title and of Articles 113 and 113a of Regulation (EC) No 1234/2007.

Article 9

Coordinating authorities and inspection bodies

- 1 Each Member State shall designate:
 - a a single competent authority responsible for coordination and contacts in the areas covered by this Chapter, hereinafter called 'the coordinating authority'; and

- b an inspection body or bodies responsible for the application of this Chapter, hereinafter called ‘the inspection bodies’.

The coordinating authorities and inspection bodies referred to in the first subparagraph may be public or private. However, the Member States shall be responsible for them in either case.

- 2 The Member States shall notify the Commission of:
 - a the name and postal and e-mail address of the coordinating authority they have designated pursuant to paragraph 1(a);
 - b the name and postal and e-mail address of the inspection bodies they have designated pursuant to paragraph 1(b); and
 - c the exact description of the respective spheres of activity of the inspection bodies they have designated.
- 3 The coordinating authority may be the inspection body or one of the inspection bodies or any other body designated pursuant to paragraph 1.
- 4 The Commission shall make publicly available the list of coordinating authorities designated by the Member States in the manner it considers appropriate.

Article 10

Trader database

1 Member States shall set up a database on traders in fruit and vegetables, which shall list, under the conditions established in this Article, traders involved in the marketing of fruit and vegetables for which standards have been laid down pursuant to Article 113 of Regulation (EC) No 1234/2007.

For this purpose, Member States may use any other database or databases already established for other purposes.

- 2 For the purpose of this Regulation, ‘trader’ means any natural or legal person who:
 - a holds fruit and vegetables subject to marketing standards with a view to:
 - (i) displaying or offering them for sale,
 - (ii) selling them, or
 - (iii) marketing them in any other manner, or
 - b actually carries out any of the activities referred to in point (a) as regards fruit and vegetables subject to marketing standards.

The activities referred to in point (a) of the first subparagraph shall cover:

- a distance selling whether by internet or otherwise,
 - b such activities carried out by the natural or legal person for itself or on behalf of a third party, and
 - c such activities carried out in the Union and/or by export to third countries and/or import from third countries.
- 3 Member States shall determine the conditions under which the following traders are to be included or not in the database:

- a traders whose activities are exempt from the obligation to comply with the marketing standards pursuant to Article 4; and
- b natural or legal persons whose activities in the fruit and vegetables sector are limited either to the transport of goods, or to the sale at the retail stage.

4 Where the trader database is composed of several distinct elements, the coordinating authority shall ensure that the database, its elements and their updating are uniform. The updating of the database shall be done in particular using the information collected during conformity checks.

5 The database shall contain for each trader:

- a the registration number, name and address;
- b information needed for its classification in one of the risk categories mentioned in Article 11(2), in particular, position in the marketing chain and information concerning the importance of the firm;
- c information concerning findings made during previous checks of each trader;
- d any other information considered necessary for checks such as information concerning the existence of a quality assurance system or self-check system related to the conformity to the marketing standards.

The updating of the database shall be carried out in particular using the information collected during conformity checks.

6 Traders shall provide the information that Member States consider necessary to set up and update the database. Member States shall determine the conditions under which traders not established in their territory but trading on it shall be listed in their database.

Section 2

Conformity checks carried out by the Member States

Article 11

Conformity checks

1 Member States shall ensure that conformity checks are carried out selectively, based on a risk analysis, and with appropriate frequency, so as to ensure compliance with the marketing standards and other provisions of this Title and of Articles 113 and 113a of Regulation (EC) No 1234/2007.

The criteria to assess the risk shall include the existence of a conformity certificate referred to in Article 14 issued by a competent authority of a third country where the conformity checks have been approved pursuant to Article 15. The existence of such certificate shall be considered as a factor reducing the risk of non-conformity.

The criteria to assess the risk may also include:

- a the nature of the product, the period of production, the price of the product, the weather, the packing and handling operations, the storage conditions, the country of origin, the means of transport or the volume of the lot;
- b the size of the traders, their position in the marketing chain, the volume or value marketed by them, their product range, the delivery area or the type of business carried out such as storage, sorting, packing or sale;

- c findings made during previous checks including the number and type of defects found, the usual quality of products marketed, the level of technical equipment used;
- d the reliability of traders' quality assurance systems or self-checking systems related to the conformity to marketing standards;
- e the place where the check is carried out, in particular if it is the point of first entry into the Union, or the place where the products are being packed or loaded;
- f any other information that might indicate a risk of non-compliance.

2 The risk analysis shall be based on the information contained in the trader database referred to in Article 10 and shall classify traders in risk categories.

Member States shall lay down in advance:

- a the criteria for assessing the risk of non-conformity of lots;
- b on the basis of a risk analysis for each risk category, the minimum proportions of traders or lots and/or quantities which will be subject to a conformity check.

Member States may choose not to carry out selective checks on products not subject to specific marketing standards, based on a risk analysis.

3 Where checks reveal significant irregularities, Member States shall increase the frequency of checks in relation to traders, products, origins, or other parameters.

4 Traders shall provide inspection bodies with all the information those bodies judge necessary for organising and carrying out conformity checks.

Article 12

Approved traders

1 Member States may authorise traders classified in the lowest risk category and providing special guarantees on conformity to marketing standards to use the specimen in Annex II in the labelling of each package at the stage of dispatch and/or to sign the conformity certificate as referred to in Article 14.

2 The authorisation shall be granted for a period of at least one year.

3 Traders benefiting from this possibility shall:

- a have inspection staff who have received training approved by the Member States;
- b have suitable equipment for preparing and packing produce;
- c commit themselves to carry out a conformity check on the goods they dispatch and have a register recording all checks carried out.

4 Where an authorised trader no longer complies with the requirements for authorisation the Member State shall withdraw the authorisation.

5 Notwithstanding paragraph 1, authorised traders may continue to use specimens which conformed to Regulation (EC) No 1580/2007 on 30 June 2009 until stocks are exhausted.

Authorisations granted to traders before 1 July 2009 shall continue to apply for the period for which they were granted.

Article 13

Acceptance of declarations by customs

1 Customs may only accept export declarations and/or declarations for the release for free circulation for the products subject to specific marketing standards if:

- a the goods are accompanied by a conformity certificate, or
- b the competent inspection body has informed the customs authority that the lots concerned have been issued a conformity certificate, or
- c the competent inspection body has informed the customs authority that it has not issued a conformity certificate for the lots concerned because they do not need to be checked in the light of the risk assessment referred to in Article 11(1).

This shall be without prejudice to any conformity checks the Member State may carry out pursuant to Article 11.

2 Paragraph 1 shall also apply to products subject to the general marketing standard set out in Part A of Annex I and products referred to in Article 4(1)(a) if the Member State concerned considers it necessary in the light of the risk analysis referred to in Article 11(1).

Article 14

Certificate of conformity

1 Certificates of conformity may be issued by a competent authority to confirm that the products concerned conform to the relevant marketing standard (hereinafter referred to as 'certificate'). The certificate for use by competent authorities in the Union is set out in Annex III.

Instead of certificates issued by competent authorities in the Union, the third countries referred to in Article 15(4) may use their own certificates provided that they contain at least equivalent information to the Union certificate. The Commission shall make available, by the means it considers appropriate, specimens of such third country certificates.

2 The certificates may be issued either in paper format with original signature or in verified electronic format with electronic signature.

3 Each certificate shall be stamped by the competent authority and signed by the person or persons empowered to do so.

4 The certificate shall be issued in at least one of the official languages of the Union.

5 Each certificate shall bear a serial number, by which it can be identified. A copy of each issued certificate shall be retained by the competent authority.

6 Notwithstanding the first subparagraph of paragraph 1, Member States may continue to use certificates which conformed to Regulation (EC) No 1580/2007 on 30 June 2009 until stocks are exhausted.

Section 3

Conformity checks carried out by third countries

Article 15

Approval of conformity checks carried out by third countries prior to import into the Union

1 At the request of a third country, the Commission may, in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007, approve checks on conformity to specific marketing standards carried out by that third country prior to import into the Union

2 The approval referred to in paragraph 1 may be granted to third countries where the Union marketing standards, or at least equivalent standards, are met for products exported to the Union.

The approval shall specify the official authority in the third country under the responsibility of which checks referred to in paragraph 1 are carried out. That authority shall be responsible for contacts with the Union. The approval shall also specify the third country inspection bodies in charge of the proper checks.

The approval may only apply to products originating in the third country concerned and may be limited to certain products.

3 The third country inspection bodies shall be official bodies or bodies officially recognised by the authority referred to in paragraph 2 which provide satisfactory guarantees and dispose of the necessary personnel, equipment and facilities to carry out checks according to the methods referred to in Article 17(1) or equivalent methods.

4 The third countries where the conformity checks have been approved under this Article, and the products concerned, shall be set out in Annex IV.

The Commission shall make available, by the means it considers appropriate, details of the official authorities and inspection bodies concerned.

Article 16

Suspension of approval of the conformity checks

The Commission may suspend approval of the conformity checks if it is found that, in a significant number of lots and/or quantities, the goods do not correspond to the information in the certificates of conformity issued by the third country inspection bodies.

Section 4

Methods of inspection

Article 17

Methods of inspection

1 The conformity checks provided for in this Chapter, with the exception of those at the point of retail sale to the end consumer, shall be carried out in accordance with the methods of inspection laid down in Annex V, save as otherwise provided in this Regulation.

Member States shall lay down specific arrangements for checking conformity at the point of retail sale to the end consumer.

2 Where inspectors find that the goods conform with the marketing standards, the inspection body may issue a certificate of conformity as set out in Annex III.

3 Where the goods do not conform with the standards, the inspection body shall issue a finding of non-conformity for the attention of the trader or their representatives. Goods for which a finding of non-conformity has been issued may not be moved without the authorisation of the inspection body which issued that finding. That authorisation can be subject to the respect of conditions laid down by the inspection body.

Traders may decide to bring all or some of the goods into conformity. Goods brought into conformity may not be marketed before the competent inspection body has ensured by all appropriate means that the goods have actually been brought into conformity. The competent inspection body shall issue, where applicable, a certificate of conformity as set out in Annex III for the lot or part thereof only after the goods have been brought into conformity.

If an inspection body accepts a trader's wish to bring the goods into conformity in a Member State other than that where the check leading to a finding of non-conformity has been carried out, the trader shall notify the competent inspection body of the destination Member State of the non-conforming lot. The Member State issuing the finding of non-conformity shall send a copy of that finding to the other Member States concerned including the Member State of destination of the non-conforming lot.

Where the goods can neither be brought into conformity nor sent to animal feed, industrial processing or any other non-food use, the inspection body may, if necessary, request traders to take adequate measures in order to ensure that the products concerned are not marketed.

Traders shall supply all information deemed necessary by Member States for the application of this paragraph.

Section 5

Notifications

Article 18

Notifications

1 A Member State where a consignment from another Member State is found not to conform with the marketing standards because of defects or deterioration which could have been detected at the time of packaging shall notify forthwith the Commission and the Member States likely to be concerned.

2 A Member State where a lot of goods from a third country has been rejected from release into free circulation because of non-compliance with the marketing standards shall notify forthwith the Commission, the Member States likely to be concerned and the third country concerned and listed in Annex IV.

3 Member States shall notify the Commission of their provisions of inspection and risk analysis systems. They shall inform the Commission of any subsequent amendments to those systems.

4 Member States shall notify the Commission and the other Member States of the summarised results of the inspections at all marketing stages in a given year by 30 June of the following year.

5 The notifications referred to in paragraphs 1 to 4 shall be made by the means specified by the Commission.

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

- (1) OJ L 144, 4.6.1997, p. 19.
- (2) OJ L 41, 14.2.2003, p. 33.