

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 III

## PRODUCER ORGANISATIONS

### CHAPTER I

#### *Requirements and recognition*

##### *Section 1*

#### **Definitions**

##### *Article 19*

#### **Definitions**

- 1 For the purposes of this Title:
  - a ‘producer’ means a farmer as referred to in Article 2(2)(a) of Regulation (EC) No 1234/2007;
  - b ‘producer member’ means a producer or a cooperative of producers, who is a member of a producer organisation or association of producer organisations.
  - c ‘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;
  - d ‘transnational producer organisation’ means any organisation in which at least one of the producers’ holdings is located in a Member State other than where the organisation has its head office;
  - e ‘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;
  - f ‘Convergence Objective’ means the objective of the action for the least developed Member States and regions according to the Union 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;
  - g ‘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);

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- (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 103c(2) of Regulation (EC) No 1234/2007;
- (vii) environmental actions as referred to in Article 103c(3) of Regulation (EC) No 1234/2007, including acquisition of fixed assets;
- (viii) other actions, including acquisition of fixed assets other than those falling under points (i) to (iv) and (vii) which fulfil one or more of the objectives referred to in Article 103c(1) of Regulation (EC) No 1234/2007;
- h ‘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 103c(1) of Regulation (EC) No 1234/2007;
- i ‘by-product’ means a product which results from preparation of a fruit or vegetable product which has a positive economic value but is not the main intended result;
- j ‘preparation’ means preparatory activities such as cleaning, cutting, peeling trimming and drying of fruit and vegetables, without transforming them into processed fruit and vegetables;
- k ‘interbranch basis’ as referred to in Article 103d(3)(b) of Regulation (EC) No 1234/2007 means one or more of the activities listed in Article 123(3)(c) of Regulation (EC) No 1234/2007 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;
- l ‘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 which have to comply with Article 125b of Regulation (EC) No 1234/2007 in the light of their national legal and administrative structures. They may adopt complementary rules on the recognition of producer organisations and shall, where appropriate, also lay down provisions on clearly defined parts of legal entities for the application of Article 125b of Regulation (EC) No 1234/2007.

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## Section 2

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

#### Article 20

##### **Product coverage**

- 1 Member States shall recognise producer organisations under Article 125b of Regulation (EC) No 1234/2007 in respect of the product or the group of products specified in the application for recognition, subject to any decision taken under Article 125b(1)(c) of that Regulation.
- 2 Member States shall only recognise producer organisations in respect of the product or the group of products solely intended for processing where the producer organisations are able to ensure that such products are delivered for processing, whether through a system of supply contracts or otherwise.

#### Article 21

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

When laying down the minimum number of members of a producer organisation pursuant to Article 125b(1)(b) of Regulation (EC) No 1234/2007, 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 22

##### **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 23

##### **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 point (c) of the first paragraph of Article 122 and Article 125b(1)(e) of Regulation (EC) No 1234/2007 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;

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- (c) commercial and budgetary management; and
- (d) centralised book keeping and a system of invoicing.

#### *Article 24*

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

1 For the purposes of Article 125b(1)(b) of Regulation (EC) No 1234/2007, the value or volume of marketable production shall be calculated on the same basis as the value of marketed production set out in Articles 50 and 51 of this Regulation.

2 Where one or more members of a producer organisation have insufficient historical data on marketed production for the application of paragraph 1, the value of their marketable production may be calculated as the average value of their marketable production during a period of three years preceding the year in which the application for recognition is submitted and in which the members of the concerned producer organisation were actually producing.

#### *Article 25*

### **Provision of technical means**

For the purposes of Article 125b(1)(e) of Regulation (EC) No 1234/2007, 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 26*

### **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 A producer organisation may sell products from producers that are not a member of a producer organisation nor of an association of producer organisations, where it is recognised for those products and provided that the economic value of that activity is below the value of its marketed production calculated in accordance with Article 50.

3 The marketing of fruit and vegetables that are bought directly from another producer organisation and of products for which the producer organisation is not recognised shall not be considered as forming part of the producer organisation's activities.

4 Where Article 50(9) applies, paragraph 3 of this Article shall apply *mutatis mutandis* to the subsidiaries concerned from 1 January 2012.

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## Article 27

### Outsourcing

1 The activities that a Member State may permit to be outsourced, in accordance with Article 125d of Regulation (EC) No 1234/2007 may include, among others, collecting, storing, packaging and marketing the produce of the members of the producer organisation.

2 Outsourcing of an activity of a producer organisation shall mean that the producer organisation enters into a commercial arrangement with another entity, including one or several 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.

## Article 28

### 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 within a reasonable period of time; 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 29

### Mergers of producer organisations

1 Where producer organisations have merged, the producer organisation resulting from the merger shall replace the merging producer organisations. The new entity shall assume the rights and obligations of the merging producer organisations.

The newly merged entity may operate the programmes in parallel and separately until 1 January of the year following the merger or merge the operational programmes from the moment of the merger. The operational programmes shall be merged in accordance with Articles 66 and 67.

2 By way of derogation from the second subparagraph of paragraph 1, Member States may authorise producer organisations which so request, for duly substantiated reasons, to

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continue implementing separate operational programmes in parallel until they reach their natural conclusion.

### *Article 30*

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

1 Member States may determine whether and on what conditions any natural 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 point (a)(iii) of the first paragraph of Article 122 and Article 125a(3)(c) of Regulation (EC) No 1234/2007.

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 Union.

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

### *Article 31*

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

1 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.

2 Where a producer organisation is a clearly defined part of a legal entity, Member States may adopt measures to restrict or prohibit the powers of that legal entity to modify, approve or reject decisions of the producer organisation.

### *Section 3*

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

### *Article 32*

#### **Rules on producer organisations applicable to associations of producer organisations**

Articles 22, 26(3), 27 and 31 shall apply mutatis mutandis to associations of producer organisations. Where the association of producer organisations carries out the selling activity, Article 26(2) shall apply mutatis mutandis.

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### Article 33

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

1 Member States may only recognise associations of producer organisations under Article 125c of Regulation (EC) No 1234/2007 in respect of the activity or activities concerning the product or the group of products specified in the application for recognition.

2 An association of producer organisations may be recognised under Article 125c of Regulation (EC) No 1234/2007 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 34

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

1 Member States may determine whether and on what conditions any natural 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 benefit directly from the measures financed by the Union.

Member States may permit, restrict or prohibit those members' right to vote on decisions relating to operational programmes.

### Article 35

#### **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.

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## Section 4

### Producer groups

#### Article 36

#### 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 125e(1) of Regulation (EC) No 1234/2007 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; <sup>[F1]</sup> and]
- d the administrative procedures for the approval, monitoring and fulfilling of recognition plans <sup>[F2]</sup>; and]
- <sup>[F3]</sup>e the rules to avoid that a producer benefits from Union aid for producer groups for more than 5 years.]

#### Textual Amendments

- F1** Deleted by Commission Implementing Regulation (EU) No 302/2012 of 4 April 2012 amending Implementing Regulation (EU) No 543/2011 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.
- F2** Substituted by Commission Implementing Regulation (EU) No 302/2012 of 4 April 2012 amending Implementing Regulation (EU) No 543/2011 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.
- F3** Inserted by Commission Implementing Regulation (EU) No 302/2012 of 4 April 2012 amending Implementing Regulation (EU) No 543/2011 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.

#### Article 37

#### 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 that is at the producer group's disposal, including infrastructure owned by individual members of the producer group;



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- (b) the proposed date for starting implementation of the plan and its duration, which shall not exceed five years; and
- (c) activities and investments to be implemented in order to achieve recognition.

[<sup>F3</sup>The investments referred to in point (c) of the first paragraph shall not include investments listed in Annex Va.]

#### Textual Amendments

- F3** Inserted by [Commission Implementing Regulation \(EU\) No 302/2012 of 4 April 2012 amending Implementing Regulation \(EU\) No 543/2011 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.](#)

### Article 38

#### Approval of recognition plans

[<sup>F21</sup> The competent authority of the Member State shall take one of the decisions referred to in paragraph 3 within three months of receipt of a draft recognition plan accompanied by all supporting documents. Member States may provide for a shorter deadline.]

2 Member States may adopt additional rules concerning the eligibility of operations and expenditure under recognition plans, including rules on the eligibility of investments, for the purpose of achieving compliance by producer groups with the recognition criteria for producer organisations referred to in Article 125b(1) of Regulation (EC) No 1234/2007.

[<sup>F23</sup> Following the conformity checks referred to in Article 111, the competent authority of the Member State shall, as appropriate:

- a provisionally accept the plan and grant preliminary recognition;
- b request changes to the plan, including changes in relation to its duration. In particular, the Member State shall assess whether the phases proposed are not unduly long and demand modifications where a producer group could meet the recognition criteria for producer organisations before the end of the five-year period referred to in the third subparagraph of Article 125e(1) of Regulation (EC) No 1234/2007;
- c reject the plan, especially in the case where the legal entities or clearly defined parts of such entities applying for preliminary recognition as producer groups already meet the criteria for recognition as a producer organisation.

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

[<sup>F34</sup> The competent authority of the Member State shall notify the Commission, by 1 July in any given year, of the decisions provisionally accepting recognition plans and the financial implications of those plans, using the templates set out in Annex Vb.

5 Once the allocation coefficients referred to in the second subparagraph of Article 47(4) have been set, the competent authority of the Member State shall provide the producer groups concerned with an opportunity to amend or withdraw their recognition plan. Where a producer group does not withdraw its plan the competent authority shall accept such plan definitively subject to such amendments as the competent authority may deem necessary.

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6 The competent authority of the Member State shall notify the legal entity or clearly defined part of a legal entity of decisions referred to in paragraphs 3 and 5.]

#### Textual Amendments

- F2** Substituted by [Commission Implementing Regulation \(EU\) No 302/2012 of 4 April 2012 amending Implementing Regulation \(EU\) No 543/2011 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.](#)
- F3** Inserted by [Commission Implementing Regulation \(EU\) No 302/2012 of 4 April 2012 amending Implementing Regulation \(EU\) No 543/2011 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.](#)

### Article 39

#### 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 segments.

For the first year of implementation in accordance with the proposed date referred to in Article 37(b), the recognition plan shall begin:

- a on 1 January following the date of its acceptance by the competent authority of the Member State; or
- b on the first calendar day following the date of its acceptance.

The first year of implementation of the recognition plan shall in any event end on 31 December of the same year.

[<sup>F2</sup> Member States shall set the conditions under which producer groups may request changes to plans during their implementation. Those requests shall be accompanied by all the necessary supporting documents.

Member States shall determine the conditions under which recognition plans may be amended during an annual or semestrial segment without prior approval by the competent authority of the Member State. Those changes shall only be eligible for aid if they are communicated by the producer group to the competent authority of the Member State without delay.

Producer groups may be authorised by the competent authority of the Member State, during a given year and in respect of that year, to increase the total amount of expenditure laid down in a recognition plan by a maximum of 5 % of the amount initially approved, or to decrease it by a maximum percentage to be fixed by Member States, in both cases provided that the overall objectives of the recognition plan are maintained and provided that the overall Union expenditure at the level of the Member State concerned does not exceed the amount of Union contribution allocated to that Member State in accordance with Article 47(4).

In the case of mergers of producer groups as referred to in Article 48, the limit of 5 % shall apply to the total amount of expenditure laid down in the recognition plans of the merging producer groups.]

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3 The competent authority of the Member State 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. Member States may provide for a shorter deadline.

#### **Textual Amendments**

- F2** Substituted by [Commission Implementing Regulation \(EU\) No 302/2012 of 4 April 2012 amending Implementing Regulation \(EU\) No 543/2011 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.](#)

#### *Article 40*

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

1 Producer groups implementing a recognition plan may, at any time, submit an application for recognition under Article 125b of Regulation (EC) No 1234/2007. Such applications shall in any event be submitted before the end of the transitional period referred to in Article 125e(1) of Regulation (EC) No 1234/2007.

2 From the date on which such an application is lodged, the group in question may submit a draft operational programme under Article 63.

#### *Article 41*

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

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

2 A producer group may sell products from producers which are not a member of a producer group, where it is recognised for those products and provided that the economic value of that activity is below the value of the marketed production of the producer group's own members and of members of other producer groups.

#### *Article 42*

### **Value of marketed production**

1 Article 50(1) to (4) and (7) and the first sentence of paragraph 6 of that Article shall apply mutatis mutandis to producer groups.

2 Where a reduction of the value of marketed production of at least 35 % has occurred due to reasons, duly justified to the Member State, falling outside the responsibility and control of the producer group, the total value of marketed production shall be deemed to represent 65 % of the total 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.

3 The value of marketed production shall be as calculated under the legislation applicable as regards the period for which the aid is claimed.

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### Article 43

#### Financing of recognition plans

1 The rates of aid referred to in Article 103a(3) of Regulation (EC) No 1234/2007 shall be reduced by half in relation to marketed production which exceeds EUR 1 000 000.

2 The aid referred to in Article 103a(1)(a) of Regulation (EC) No 1234/2007 shall be subject to an annual ceiling for each producer group of EUR 100 000.

3 The aid referred to in Article 103a(1) of Regulation (EC) No 1234/2007 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 125b of Regulation (EC) No 1234/2007 before the end of an annual period. In that case, the ceiling referred to in paragraph 2 of this Article shall be reduced proportionately.

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.

4 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 44

#### Aid for investments required for recognition

Investments linked to the implementation of recognition plans referred to in Article 37(c) of this Regulation for which aid is provided for under Article 103a(1)(b) of Regulation (EC) No 1234/2007 shall be financed pro rata to their use for the products of the members of a producer group for which preliminary recognition is granted.

Investments likely to distort competition in respect of the other economic activities of the producer group shall be excluded from Union aid.

[<sup>F3</sup>Investments may be implemented on individual holdings and/or premises of producer members of the producer group, provided that they contribute to the objectives of the recognition plan. If the member leaves the producer group, Member States shall ensure that the investment or its residual value, where its amortisation period has not yet expired, is recovered.]

#### Textual Amendments

- F3** Inserted by Commission Implementing Regulation (EU) No 302/2012 of 4 April 2012 amending Implementing Regulation (EU) No 543/2011 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.

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## Article 45

### Application for aid

1 A producer group shall submit a single application for the aid referred to in Article 103a(1)(a) and (b) of Regulation (EC) No 1234/2007 within three months of the end of each annual or semestrial period as referred to in Article 43(3) 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 39(1). 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 1234/2007 and with this Regulation; and
- b has not benefited, is not benefiting and will not benefit either directly or indirectly from duplicate Union or national financing for actions implemented under its recognition plan for which Union 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 46

### 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.

## [<sup>F2</sup>Article 47

### Union contribution

1 Subject to paragraph 4 of this Article, the Union contribution towards aid as referred to in Article 103a(1)(a) of Regulation (EC) No 1234/2007 shall amount to:

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

The Member State may pay its national aid as a flat-rate payment. The aid application shall not be required to include evidence as to the use of the aid.

2 The Union contribution towards aid as referred to in Article 103a(1)(b) of Regulation (EC) No 1234/2007, 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.

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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.

3 Subject to paragraph 4 of this Article, the Union contribution to the aid referred to in Article 103a(1)(b) of Regulation (EC) No 1234/2007 shall be determined for each producer group on the basis of its value of marketed production and shall be subject to the following rules:

- a in respect of producer groups in Member States which acceded to the European Union on 1 May 2004 or thereafter, no ceiling shall apply in the first two years of implementation of their recognition plan, and a ceiling of 70 %, 50 % and 20 % of the value of the marketed production shall apply in the third, fourth and fifth year of implementation of their recognition plan respectively;
- b in respect of producer groups in the outermost regions of the Union as referred to in Article 349 of the Treaty or in the smaller Aegean Islands as referred to in Article 1(2) of Council Regulation (EC) No 1405/2006<sup>(1)</sup>, the Union contribution shall be capped at 25 %, 20 %, 15 %, 10 % and 5 % of the value of the marketed production in the first, second, third, fourth and fifth year of implementation of their recognition plan respectively.

4 The total expenditure for the Union contribution towards aid as referred to in Article 103a of Regulation (EC) No 1234/2007 shall not exceed EUR 10 000 000 per calendar year.

On the basis of the notifications referred to in Article 38(4) the Commission shall set allocation coefficients and establish the total available Union contribution per Member State per year on the basis of those coefficients. If for any year the total amount resulting from the notifications referred to in Article 38(4) does not exceed the maximum amount of the Union contribution, the allocation coefficient shall be set at 100 %.

The Union contribution shall be granted in accordance with the allocation coefficient referred to in the second subparagraph. No Union contribution shall be granted in respect of recognition plans that were not notified in accordance with Article 38(4).

The exchange rate applicable to the Union contribution per Member State shall be the rate most recently published by the European Central Bank prior to the date provided for in Article 38(4).]

#### Textual Amendments

- F2** Substituted by [Commission Implementing Regulation \(EU\) No 302/2012 of 4 April 2012 amending Implementing Regulation \(EU\) No 543/2011 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.](#)

### Article 48

#### Mergers

1 Aid as provided for in Article 103a(1) of Regulation (EC) No 1234/2007 may be given, or may continue to be given, to producer groups which have been granted preliminary

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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 preliminary recognition 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 103a(1) of Regulation (EC) No 1234/2007. 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 29 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 49*

### **Consequences of recognition**

1 Aid as provided for in Article 103a(1) of Regulation (EC) No 1234/2007 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 103a(1)(b) of Regulation (EC) No 1234/2007 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.

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## CHAPTER II

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

#### *Section 1*

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

##### *Article 50*

#### **Basis for calculation**

1 The value of marketed production for a producer organisation shall be calculated on the basis of the production of the producer organisation itself and its producer members, and shall only include the production of those fruits and vegetables for which the producer organisation is recognised. The value of marketed production may include fruit and vegetables that are not required to conform to the marketing standards, where those standards do not apply pursuant to Article 4.

2 The value of 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 The value of the marketed production shall not include the value of processed fruit and vegetables or any other product that is not a product of the fruit and vegetables sector.

However, the value of the marketed production of fruit and vegetables intended for processing, which have been transformed into one of the processed fruit and vegetable products listed in Part X of Annex I to Regulation (EC) No 1234/2007 or any other processed product referred to in this Article and described further in Annex VI to this Regulation, by either a producer organisation, an association of producer organisations or their producer members or subsidiaries as referred to in paragraph 9 of this Article, either by themselves or through outsourcing, shall be calculated as a flat rate in percentage applied to the invoiced value of those processed products. That flat rate shall be:

- a 53 % for fruit juices;
- b 73 % for concentrated juices;
- c 77 % for tomato concentrate;
- d 62 % for frozen fruit and vegetables;
- e 48 % for canned fruit and vegetables;
- f 70 % for canned mushrooms of the genus *Agaricus*;
- g 81 % for fruits provisionally preserved in brine;
- h 81 % for dried fruits;
- i 27 % for other processed fruit and vegetables;
- j 12 % for processed aromatic herbs;
- k 41 % for paprika powder.

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



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5 The value of marketed production shall include the value of market withdrawals disposed of as provided for in Article 103d(4) of Regulation (EC) No 1234/2007, estimated at the average price of those products marketed by the producer organisation in the previous reference period.

6 Only the production of the producer organisation and/or its producer members which is marketed by that producer organisation shall be counted in the value of marketed production. The production of the producer members of the producer organisation marketed by another producer organisation designated by their own organisation, pursuant to Article 125a(2)(b) and (c) of Regulation (EC) No 1234/2007 shall be counted in the value of marketed production of the second producer organisation.

7 The marketed production of fruit and vegetables shall be invoiced at the ‘ex-producer organisation’ stage where applicable, as product listed in Part IX of Annex I to Regulation (EC) No 1234/2007 which is prepared and packaged, excluding:

- a VAT;
- b 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 delivery or transport and shall duly justify in their national strategy what distance shall be considered as significant.

8 The value of marketed production may also be calculated at the ‘ex-association of producer organisation’ stage and on the same basis as set out in paragraph 7.

9 The value of marketed production may also be calculated at the ‘ex-subsiary’ stage, on the same basis as set out in paragraph 7, provided that at least 90 % of the capital of the subsidiary is owned:

- a by one or more producer organisations or associations of producer organisations; and/or
- b subject to Member State approval, by producer members of the producer organisations or associations of producer organisations, if doing so contributes to the objectives listed in point (c) of the first paragraph of Article 122 and Article 125b(1)(a) of Regulation (EC) No 1234/2007.

10 In case of outsourcing, the value of marketed production shall be calculated at the ‘ex-producer organisation’ stage and shall include the added economic value of the activity that has been outsourced by the producer organisation to its members, third parties or to another subsidiary than the one referred to in paragraph 9.

11 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 those causes may be included in the value of marketed production.

## Article 51

### Reference period

1 The annual ceiling on aid referred to in Article 103d(2) of Regulation (EC) No 1234/2007 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.

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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 for which the aid is requested and ending no later than 31 December of the year preceding the year for which the aid is requested; or
- b the average value of three consecutive 12-month periods starting no earlier than 1 January five years preceding the year for which the aid is requested and ending no later than 31 December of the year preceding the year for which the aid is requested.

3 The 12-month period shall be the accounting period of the producer organisation concerned.

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

4 Where a reduction of at least 35 % in the value of a product has occurred due to reasons falling outside the responsibility and control of the producer organisation, the value of marketed production of that product shall be deemed to represent 65 % of its value in the previous reference period.

The producer organisation shall justify the reasons referred to in the first subparagraph to the competent authority of the Member State concerned.

5 Where recently recognised producer organisations have insufficient historical data on marketed production for the purpose of 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.

The first subparagraph shall apply *mutatis mutandis* to new members of a producer organisation who join a producer organisation for the first time.

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 that reference period.

However, for operational programmes approved by 20 January 2010, the value of the marketed production for the years until 2007 shall be calculated on the basis of the legislation applicable in the reference period, whereas the value of the marketed production for the years from 2008 shall be calculated on the basis of the legislation applicable in 2008.

For operational programmes approved after 20 January 2010, the value of the marketed production for the years from 2008 shall be calculated on the basis of the legislation applicable at the time the operational programme has been approved.

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## Section 2

### **Operational Funds**

#### Article 52

#### **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 53

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

1 The financial contributions to the operational fund referred to in Article 103b(1) of Regulation (EC) No 1234/2007 shall be determined by the producer organisation.

2 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 the operational fund of the producer organisation and of the financial contributions to the operational fund.

#### Article 54

#### **Notification of estimated amount**

1 Producer organisations shall notify their Member State of the estimated amounts of Union contribution, and the contribution of its members and of the producer organisation itself to the operational funds for the following year 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.

2 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 55

#### **National strategy**

1 The overall structure and content of the national strategy referred to in Article 103f(2) of Regulation (EC) No 1234/2007 shall be established in accordance with the guidelines set out in Annex VII. It may be comprised of regional elements.

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The national strategy shall integrate all the decisions taken and provisions adopted by the Member State in application of Sections I and Ia of Chapter II of Title II of Part II of Regulation (EC) No 1234/2007 and this Title.

2 The national strategy, including the integration of the national framework referred to in Article 103f(1) of Regulation (EC) No 1234/2007, 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 103f(1) of Regulation (EC) No 1234/2007.

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 56*

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

1 In addition to the submission of the proposed framework referred to in the second subparagraph of Article 103f(1) of Regulation (EC) No 1234/2007, Member States shall also notify the Commission of any amendments to the national framework which shall be subject to the procedure set out in that subparagraph. The Commission shall make a national framework available to other Member States by the means it considers appropriate.

2 The national framework shall indicate in a separate section the general requirements on complementarity, consistency and conformity that environmental actions selected under an operational programme shall fulfil, as referred to in the second sentence of the first subparagraph of Article 103f(1) of Regulation (EC) 1234/2007. The Commission shall provide the Member States with a model of that section.

The national framework shall also set out a non-exhaustive list of environmental actions and the conditions thereof applicable in the Member State for the purposes of Article 103c(3) of Regulation (EC) No 1234/2007. For each environmental action, the national framework shall indicate:

- a the justification of the action, on the basis of its environmental impact; and
- b the specific commitment or commitments entailed.

3 Environmental actions which are similar to agri-environmental commitments supported under a rural development programme shall have the same duration as those commitments. They shall be continued in a subsequent operational programme, where the duration of similar agri-environmental commitments would exceed the duration of the

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initial operational programme. However, Member States may authorise shorter durations for environmental actions or even their discontinuance in duly justified cases, and in particular based upon the results of the mid-term evaluation referred to in Article 126(3) of this Regulation.

The national framework shall indicate the duration of the actions referred to in subparagraph 1 and, where appropriate, the obligation to continue the action in a subsequent operational programme.

#### *Article 57*

### **Complementary Member State rules**

Member States may adopt rules complementing Regulation (EC) No 1234/2007 and this Regulation concerning the eligibility of measures, actions or expenditure under operational programmes.

#### *Article 58*

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

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

2 Where in accordance with Article 5(6) of Regulation (EC) No 1698/2005 support has exceptionally been granted 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 55 of this Regulation indicates the criteria and administrative rules which they will apply in the rural development programmes.

3 Where relevant, and without prejudice to the provisions of Articles 103a(3), 103d(1) and (3) and 103e of Regulation (EC) No 1234/2007 and Article 47 of this Regulation, the level of support for measures covered by this Regulation shall not exceed that applicable for the measures under the rural development programme.

4 Support for environmental actions, other than acquisition of fixed assets, shall be limited to the maximum amounts laid down in the Annex I to Regulation (EC) No 1698/2005 for agri-environment payments. Those amounts may be increased in exceptional cases taking account of specific circumstances to be justified in the national strategy as referred to in Article 55 of this Regulation and in the operational programmes of the producer organisations. The amounts for environmental actions may also be increased in order to support operations related to the priorities identified in Article 16a of Regulation (EC) No 1698/2005.

5 Paragraph 4 shall not apply to environmental actions which do not relate directly or indirectly to a particular parcel.

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## Article 59

### Contents of operational programmes

Operational programmes shall include the following:

- (a) a description of the initial situation, based, where relevant, on the common baseline indicators listed in Annex VIII;
- (b) the objectives of the programme, taking into consideration 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 the different measures proposed:
  - (i) complement and are consistent with other measures, including measures financed or eligible for support by other Union 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 Union 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.

## Article 60

### Eligibility of actions under operational programmes

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

2 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 IX;

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- 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 Commission Regulation (EC) No 1974/2006<sup>(3)</sup>.

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

3 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 producer members of another producer organisation or association of producer organisations. Article 50 shall apply *mutatis mutandis* to the calculation of the value.

4 The following rules shall apply to environmental actions:

- a 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;
- b commitments to limit the use of fertilisers, plant protection products or other inputs shall be accepted only if such limitations can be assessed in a way that provides reasonable assurance about compliance with those commitments;
- c actions related to the environmental management of packaging shall be properly justified and go beyond the requirements set out by the Member State in accordance with Directive 94/62/EC of the European Parliament and of the Council<sup>(4)</sup>.

Member States shall, in the national strategies referred to in Article 55 of this Regulation, set out a maximum percentage of the annual expenditure under an operational programme that may be spent on actions related to the environmental management of packaging. That percentage shall not be higher than 20 %, except in order to take account of specific national/regional circumstances to be justified in the national strategy.

5 Investments, including those under leasing contracts, the repayment period of which 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.

6 Investments or actions may be implemented on individual holdings and/or premises of producer members of the producer organisation, or association of producer organisations including where the actions are outsourced to members of the producer organisation or association of producer organisations, provided that they contribute to the objectives of the operational programme. If the producer member leaves the producer organisation, Member States shall ensure that the investment or its residual value is recovered. However, in duly justified circumstances, Member States may provide that the producer organisation shall not be required to recover the investment or its residual value.

7 Investments and actions related to the transformation of fruit and vegetables into processed fruit and vegetables may be eligible for support where such investments and actions

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pursue the objectives referred to in Article 103c(1) of Regulation (EC) No 1234/2007, including those referred to in point (c) of the first paragraph of Article 122 of that Regulation, and provided that they are identified in the national strategy referred to in Article 103f(2) of Regulation (EC) No 1234/2007.

### Article 61

#### Documents to be submitted

Operational programmes shall in particular be accompanied by:

- (a) evidence of the setting-up of an operational fund;
- (b) a written undertaking from the producer organisation to comply with Regulation (EC) No 1234/2007 and this Regulation; and
- (c) a written undertaking from the producer organisation that it has not received and will not receive, directly or indirectly, any other Union or national funding in respect of actions qualifying for aid under this Regulation.

### Article 62

#### Operational programmes of associations of producer organisations

1 A Member State may authorise an association of producer organisations to present an entire or a partial operational programme, which shall consist of actions identified, but not implemented by two or more member producer organisations in their operational programmes.

2 The operational programmes of the associations of producer organisations shall be considered together with the operational programmes of the member producer organisations, including as regards the fulfilment of the objectives and limits established in Article 103c of Regulation (EC) 1234/2007.

3 Member States shall ensure that:

- a the actions are fully financed from contributions of members of associations of producer organisations which are producer organisations, paid out of the operational funds of those producer organisations. However, the actions may be financed in a proportional amount to the contribution of member producer organisations, by producer members of associations of producer organisations which are not producer organisations pursuant to Article 34;
- b the actions and the corresponding financial participation are listed in the operational programme of each participating producer organisation;
- c there is no risk of duplicate aid.

4 Articles 58, 59 and 60, Article 61(b) and (c) and Articles 63 to 67 shall apply *mutatis mutandis* to operational programmes of associations of producer organisations. However, a balance between the activities referred to in Article 59(b) shall not be required in respect of partial operational programmes of associations of producer organisations.



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## Article 63

### Time limit for submission

1 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 of the year preceding that in which they are to be implemented, at the latest. However, the Member States may postpone that date.

2 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 paragraph 1 for approval. Approval of the operational programme shall be subject to obtainment of recognition no later than on the final date laid down in Article 64(2).

## Article 64

### Decision

1 The competent authority of the Member State shall, as appropriate:

- a approve amounts of operational funds and operational programmes which meet the requirements of Regulation (EC) No 1234/2007 and those of this Chapter;
- b approve the operational programmes, on condition that certain amendments are accepted by the producer organisation; or
- c reject the operational programmes or parts thereof.

2 The competent authority of the Member State shall take decisions on operational programmes and operational funds by 15 December of the year in which they are submitted.

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

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

## Article 65

### Amendments to operational programmes for subsequent years

1 Producer organisations may request amendments to operational programmes, including their duration, by 15 September at the latest, to be applied as 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 of the Member State shall take decisions on requests for amendments to operational programmes by 15 December of the year of the request.

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However, for duly justified reasons, the competent authority of the Member State may take a decision on amendments to operational programmes by 20 January following the year of the request. The approval decision may stipulate that expenditure is eligible from 1 January following the year of the request.

#### *Article 66*

##### **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 The competent authority of the Member States shall take decisions on amendments to operational programmes requested under paragraph 1 by 20 January of the year following the year for which amendments have been requested.

3 Producer organisations may be authorised by the competent authority of the Member State, during the year to:

- a implement their operational programmes in part only;
- b change the contents of the operational programme;
- 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 that 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 29(1);
- d add national financial assistance to the operational fund in case of application of Article 93.

4 Member States shall determine the conditions under which operational programmes may be amended during the year without prior approval by the competent authority of the Member State. Those amendments are only eligible for aid if they are notified by the producer organisation to the competent authority without delay.

#### *Article 67*

##### **Format of operational programmes**

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 64(2) or the second subparagraph of Article 65(3) apply, the implementation of operational programmes approved in accordance with those provisions shall start not later than 31 January following their approval.

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## Section 4

### *Aid*

#### Article 68

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

1 Member States shall notify producer organisations and associations of producer organisations of the approved amount of aid, as required by Article 103g(3) of Regulation (EC) No 1234/2007, by 15 December of the year preceding the year for which aid is requested.

2 Where the third subparagraph of Article 64(2) or the second subparagraph of Article 65(3) apply, Member States shall give notification of the approved amount of aid by 20 January of the year for which aid is requested.

#### Article 69

#### **Aid applications**

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

2 The aid applications shall be accompanied by supporting documents showing:

- a the aid requested;
- b the value of 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 103c(2), with the first subparagraph of Article 103c(3) and with Article 103d of Regulation (EC) No 1234/2007;
- h a written undertaking that it has not received any duplicate Union 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 60(2), proof of the implementation of the action concerned.

3 The aid 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 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 of the year following the year for which the aid is requested; and
- c an equivalent contribution from the producer organisation remains in the operational fund.

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The aid shall be paid and the security lodged in accordance with Article 71(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 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 of the Member State 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 70 is complied with.

5 Associations of producer organisations may submit an application for aid as referred to in paragraph 1 in the name and on behalf of their members, where those members are producer organisations and provided that the supporting documents requested under paragraph 2 are submitted for each member. The producer organisations shall be the final beneficiaries of the aid.

#### *Article 70*

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

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

#### *Article 71*

#### **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 for an advance payment 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 Commission Regulation (EEC) No 2220/85<sup>(5)</sup>.

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 52 and Article 53 of this Regulation and previous advance payments and the corresponding producer organisation contribution have actually been spent.

4 Applications for the release of securities may be submitted during the current programme year and shall be accompanied by supporting documents, such as invoices and documents proving that payment has been made.

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

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5 The primary requirement within the meaning of Article 20(2) of Regulation (EEC) No 2220/85 shall cover the performance of the operations set out in the operational programmes subject to the undertakings provided for in Article 61(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 61(b) and (c) the security shall be forfeited, without prejudice to other sanctions and 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 72*

### **Partial payments**

Member States may permit producer organisations to apply for the payment of the part of the aid corresponding to the amounts already spent under 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 supporting documents, such as invoices and documents proving that payment has been made.

Payments in respect of applications for parts of the aid may not exceed 80 % of the part of the aid corresponding to the amounts already spent under the operational programme for the period concerned. Member States may set a minimum amount for partial payments and deadlines for applications.

## *CHAPTER III*

### *Crisis prevention and management measures*

#### *Section 1*

### **General Provisions**

#### *Article 73*

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

Member States may provide that one or more of the measures listed in Article 103c(2) of Regulation (EC) No 1234/2007 shall not apply in their territory.

#### *Article 74*

### **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 103c(2) of Regulation (EC) No 1234/2007 the repayment

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period of which exceeds the length of the operational programme may, on duly justified economic grounds, be carried over to a subsequent operational programme.

## Section 2

### **Market withdrawals**

#### Article 75

##### **Definition**

This Section lays down rules concerning market withdrawals as referred to in Article 103c(2)(a) of Regulation (EC) No 1234/2007.

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 76

##### **Marketing standards**

1 Where a marketing standard as referred to in Title II exists for a given product, such product withdrawn from the market shall comply with that standard, 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 standard shall comply with the applicable marketing standard, including the provisions on the presentation and marking of products.

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

#### Article 77

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

1 The limit of 5 % of the volume of marketed production referred to in Article 103d(4) of Regulation (EC) No 1234/2007 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.

2 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.

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## Article 78

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

1 Producer organisations and associations of producer organisations shall notify in advance the competent authorities of the Member States, 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 108.

Notifications shall include a certificate attesting that the withdrawn products conform to the applicable marketing standards or minimum requirements referred to in Article 76.

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 108(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 108(3), not carry out the check referred to in Article 108(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 79

### **Support**

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

In case the producer organisation has received compensation from third parties for withdrawn products, the support referred to in the first subparagraph shall be reduced by the net receipts earned by the producer organisations from the products withdrawn from the market. In order to be eligible for support, the products concerned shall be withdrawn from the commercial market for fruit and vegetables.

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. However, amounts which are disposed of in one of the ways referred to in Article 103d(4) of Regulation (EC) No 1234/2007 or any other way approved by Member States under Article 80(2) of this Regulation shall not be taken into account in that proportion.

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.

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The percentages referred to in the first subparagraph shall be annual averages over a three year period, with 5 percentage points of annual margin of overrun.

3 The Union financial assistance in case of market withdrawals of fruit and vegetables which are disposed of by way of free distribution to the charitable organisations and the institutions referred to in Article 103d(4) of Regulation (EC) No 1234/2007 shall only cover payment for the disposed products in accordance with paragraph 1 of this Article and the costs referred to in Articles 81(1) and 82(1) of this Regulation.

#### *Article 80*

### **Destinations for withdrawn products**

1 Member States shall lay down the permissible destinations for products withdrawn from the market. 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 shall include free distribution within the meaning of Article 103d(4) of Regulation (EC) No 1234/2007 and any other equivalent destinations approved by Member States.

Member States may allow the charitable organisations and institutions referred to in Article 103d(4) of Regulation (EC) No 1234/2007, to ask a symbolic contribution from the final recipients of products withdrawn from the market, in case those products have undergone processing.

Payment in kind by the beneficiaries of free distribution to processors of fruit and vegetables may be allowed, where such payment only compensates for processing costs and where the Member State in which the payment takes place has provided for rules ensuring that processed products are indeed destined for consumption by the final recipients referred to in the second subparagraph.

Member States shall take all the necessary steps to facilitate contacts and co-operation between producer organisations and the charitable organisations and institutions referred to in Article 103d(4) of Regulation (EC) No 1234/2007 they have approved.

3 Disposal of products to the processing industry shall be possible. Member States shall adopt detailed provisions to ensure that no distortion of competition occurs for the industries concerned within the Union or for imported products and that products withdrawn do not enter the commercial market again. The alcohol resulting from distillation shall be used exclusively for industrial or energy purposes.

#### *Article 81*

### **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 XII.



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In the case of sea transport, the Member States shall determine the distance between the point of withdrawal and the place of delivery. The compensation may not exceed the cost of land transport over the shortest route between the place of loading and the theoretical point of exit where land transport is possible. A correcting coefficient of 0,6 shall be applied to the amounts as set out in Annex XII.

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 distance between the place of withdrawal and the place of delivery.

#### *Article 82*

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

1 The costs of sorting and packaging fruit and vegetables withdrawn from the market for free distribution shall be eligible under operational programmes, in the case of products put up in packages of less than 25 kilograms net weight at the flat-rate amounts set out in Part A of Annex XIII.

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

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 83*

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

1 The recipients of withdrawn products referred to in Article 103d(4) of Regulation (EC) No 1234/2007 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 Union law; 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) certifying that the withdrawn products have been taken over by a third party with a view to their free distribution.

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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 Union law; 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 84*

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

- 1 For the purposes of this Regulation, the following definitions shall apply:
  - a ‘green harvesting’ means 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.
  - b ‘non-harvesting’ means the situation 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.
- 2 Green harvesting and non-harvesting shall be additional to and different from normal cultivation practices.

##### *Article 85*

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

- 1 In relation to green harvesting and non-harvesting, 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 the implementation of the measures;
  - c check that the measures are carried out correctly, including in relation to the provisions referred to in points (a) and (b), and, if this is not the case, not to approve the application of the measures.

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2 Producer organisations and associations of producer organisations shall notify in advance the competent authorities of the Member State, 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 Union 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 79.

#### *Section 4*

### ***Promotion and communication***

#### *Article 86*

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

1 Member States shall adopt detailed provisions on the implementation of promotion and communication measures. Those 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 not related to crisis prevention and management being applied by the producer organisation concerned.

#### *Section 5*

### ***Training***

#### *Article 87*

### **Implementation of training actions**

Member States shall adopt detailed provisions on the implementation of training actions.

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## Section 6

### **Harvest insurance**

#### Article 88

#### **Objective of harvest insurance actions**

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 they are affected by natural disasters, climatic events and, where appropriate, diseases or pest infestations.

#### Article 89

#### **Implementation of harvest insurance actions**

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

2 Member States may grant additional national financing to support harvest insurance actions 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 % Union financial assistance pursuant to Article 103d(3) of Regulation (EC) No 1234/2007.

3 Harvest insurance actions 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>(6)</sup>.

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## Section 7

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

#### Article 90

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

- 1 Member States shall adopt detailed provisions for support for the administrative cost of setting up mutual funds.
- 2 Support for the administrative cost of setting up mutual funds shall comprise both the contribution from the Union and the contribution from the producer organisation. The total amount of support for the administrative cost of setting up mutual funds shall not exceed 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 % respectively in the Member States which acceded to the European Union on 1 May 2004 or thereafter;
  - b 5 %, 4 % and 2 % respectively in other Member States.
- 3 A producer organisation may receive the support referred to in the paragraph 2 only once and only within the three first years of operation of the fund. Where a producer organisation only asks for support in the second or the third year of operation of the fund, the support shall be:
  - a 8 % and 4 % respectively in the Member States which acceded to the European Union on 1 May 2004 or thereafter;
  - b 4 % and 2 % respectively in other Member States.
- 4 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.

## CHAPTER IV

### **National Financial Assistance**

#### *[<sup>F4</sup>Article 91*

#### **Degree of organisation of producers and definition of a region**

- 1 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 calculated as the value of fruit and vegetable production that was obtained in the region concerned and marketed by producer organisations, associations of producer organisations and producer groups, divided by the total value of the fruit and vegetable production that was obtained in that region.

The value of fruit and vegetable production that was obtained in the region concerned and marketed by producer organisations, associations of producer organisations and producer groups referred to in the first subparagraph shall only include the products for which those producer organisations, associations of producer organisations and producer groups are recognised. Articles 42 and 50 shall apply *mutatis mutandis*. Only the production of producer organisations, associations of producer organisations, producer groups and their members obtained in the region concerned which has

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been marketed by producer organisations, associations of producer organisations and producer groups shall be included in the calculation of that value.

For the calculation of the total value of the fruit and vegetable production that was obtained in that region, the methodology set out in Annex I to Regulation (EC) No 138/2004 of the European Parliament and of the Council<sup>(7)</sup> shall apply *mutatis mutandis*.

2 The degree of organisation of producers in a region of a Member State shall be considered as particularly low where the average of the degrees, calculated as provided for in paragraph 1 for the last three years for which the data are available, is less than 20 %.

3 Only fruit and vegetable production generated in the region referred to in this Article may benefit from national financial assistance.

4 For the purposes of this Chapter, Member States shall define the regions as a distinct part of their territory in accordance with objective and non-discriminatory criteria such as their agronomic and economic characteristics and their regional agricultural/fruit and vegetable potential, or their institutional or administrative structure and for which data are available in order to calculate the degree of organisation in accordance with paragraph 1.

The regions defined by a Member State for the purposes of this Chapter shall not be altered for at least 5 years unless such alteration is objectively justified by substantive reasons unconnected with the calculation of the degree of organisation of producers in the region or regions concerned.]

#### Textual Amendments

- F4** Substituted by [Commission Implementing Regulation \(EU\) No 72/2012 of 27 January 2012 amending and derogating from Implementing Regulation \(EU\) No 543/2011 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.](#)

### Article 92

#### Authorisation to pay national financial assistance

1 Member States shall submit a request to the Commission for authorisation to grant national financial assistance pursuant to Article 103e(1) of Regulation (EC) No 1234/2007 for operational programmes to be implemented in any given calendar year by 31 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 91 of this Regulation, that only products of the fruit and vegetables 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(1) of Regulation (EC) No 1234/2007.

[<sup>F2</sup> The Commission shall approve or refuse the request by way of a Decision within three months. That period shall begin on the day following the day on which the Commission received a complete request. If the Commission does not demand additional information within the three-month period, the request shall be deemed complete.]

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#### **Textual Amendments**

- F2** Substituted by [Commission Implementing Regulation \(EU\) No 302/2012 of 4 April 2012 amending Implementing Regulation \(EU\) No 543/2011 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.](#)

#### *Article 93*

### **Amendments to the operational programme**

A producer organisation wishing to apply for national financial assistance shall, if necessary, amend its operational programme pursuant to Articles 65 or 66.

#### *Article 94*

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

- 1 Producer organisations shall apply for the national financial assistance, and Member States shall pay the aid, in accordance with Articles 69 and 70.
- 2 Member States may adopt additional rules on the payment of the national financial assistance, including the possibility of advance and partial payments.

#### *Article 95*

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

- 1 Member States may request Union reimbursement of approved national financial assistance actually paid to producer organisations, before 1 January of the second year following the year of implementation of the programme.

The request shall be accompanied by evidence showing that the conditions set out in Article 103e(1) of Regulation (EC) No 1234/2007 have been fulfilled in three of the previous four years, as well as details of the producer organisations concerned, the amount of assistance actually paid and a description of the operational fund broken out between total amount, contributions from Union, Member State (national financial assistance) and producer organisations and members.

- 2 The Commission shall take a decision to approve or refuse the request. The request shall be refused where the rules on the authorisation and reimbursement of national financial assistance have not been complied with or where the rules on producer organisations, the operational fund and operational programmes laid down in this Regulation or Regulation (EC) 1234/2007 have not been respected by the requesting Member State.
- 3 Where Union 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>(8)</sup>.
- 4 The proportion of Union reimbursement of national financial assistance shall not exceed 60 % of the national financial assistance granted to the producer organisation. <sup>[F3]</sup>The

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amount reimbursed shall not exceed 48 % of the financial assistance referred to in Article 103b(1)(b) of Regulation (EC) No 1234/2007.]

#### **Textual Amendments**

- F3** Inserted by [Commission Implementing Regulation \(EU\) No 302/2012 of 4 April 2012 amending Implementing Regulation \(EU\) No 543/2011 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.](#)

## *CHAPTER V*

### *General Provisions*

#### *Section 1*

#### *Reports and notifications*

#### *Article 96*

#### **Producer groups and producer organisations' reports**

1 At the request of the competent authority of the Member State, producer groups and producer organisations shall provide any relevant information needed for the drawing up of the annual report referred to in Article 97(b).

2 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.

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

- a the achievements and results of the operational programme, based on, where relevant, the common output and result indicators set out in Annex VIII 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 103c(5) of Regulation (EC) No 1234/2007, to protect the environment from possible increased pressures coming from investments supported under the operational programme.

4 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



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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.

5 Without prejudice to specific provisions in this Regulation, where a producer group or a producer organisation fails to notify the Member State as required under this Regulation or Regulation (EC) No 1234/2007 or if the notification appears incorrect in the light of objective facts in the Member State's possession, the Member State shall suspend the preliminary recognition of the producer group or the recognition of the producer organisation until the notification is correctly made.

The Member State shall include details of such cases in its annual report referred to in Article 97(b) of this Regulation.

#### Article 97

#### **Member States' notifications concerning producer organisations, associations of producer organisations and producer groups**

Member States shall notify the Commission of the following information and documents:

- (a) by 31 January in any given year, the total amount of the operational funds approved that year for all operational programmes. This notification shall make clear both the total amount of the operational funds and the total amount of Union aid granted to those funds. Those figures shall be further broken down between amounts for crisis prevention and management measures and other measures;
- (b) by 15 November in any given year, an annual report on producer organisations, associations of producer organisations and producer groups and operational funds, operational programmes and recognition plans running in the previous year. [<sup>F5</sup>The annual report shall contain in particular the information set out in Annex XIV and its notification shall be made in accordance with Commission Regulation (EC) No 792/2009]<sup>(9)</sup>;
- (c) [<sup>F2</sup>by 31 January in any given year, the financial amounts corresponding to each forthcoming annual period of implementation of the recognition plans including the current implementing year. Approved or estimated amounts shall be provided. The notification shall include the following information for each producer group and each annual forthcoming period of implementation of the plan:
  - (i) the total amount of the annual period of implementation of the recognition plan, the contributions from the Union, the Member States and the producer groups and/or members of the producer groups;
  - (ii) a breakdown between the aid referred to in, respectively, Article 103a(1)(a) and (b) of Regulation (EC) No 1234/2007.]

#### **Textual Amendments**

- F2** Substituted by [Commission Implementing Regulation \(EU\) No 302/2012 of 4 April 2012 amending Implementing Regulation \(EU\) No 543/2011 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.](#)

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*Changes to legislation: There are outstanding changes not yet made to Commission Implementing Regulation (EU) No 543/2011. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)*

**F5** Substituted by [Commission Implementing Regulation \(EU\) No 996/2011 of 7 October 2011 amending Regulations \(EC\) No 657/2008, \(EC\) No 1276/2008 and Implementing Regulation \(EU\) No 543/2011 as regards the notification obligations within the common organisation of agricultural markets.](#)

## Article 98

### **Member States' notifications concerning producer prices of fruit and vegetables in the internal market**

1 The competent authorities of the Member States shall notify the Commission, by 12.00, at noon (Brussels time) of each Wednesday, for each market day, of average recorded prices for fruit and vegetables traded on the representative markets listed in Part A of Annex XV.

For fruit and vegetables covered by the general marketing standard, only prices of products meeting that standard shall be notified, whereas prices for products covered by a specific marketing standard shall only concern products of class I.

Notified prices shall be ex packaging station, sorted, packaged and, where applicable, on pallets, expressed in euro per 100 kilograms net weight.

Where data are available, Member States shall notify prices corresponding to the types and varieties of products, sizes and/or presentations specified in Part A of Annex XV. Where recorded prices concern other types, varieties, sizes and/or presentations than those specified in Part A of Annex XV, the competent authorities of Member States shall notify the Commission of the types, varieties, sizes and/or presentations of the products to which prices correspond.

2 Member States shall identify representative markets in the production area of the fruit and vegetables concerned, on the basis of transactions carried out on physically identifiable markets, such as wholesale markets, auctions or other physical places where supply meets demand, or on the basis of direct transactions between producers, including producer organisations, and individual buyers, such as wholesalers, traders, distribution centres or other relevant operators. Representative markets may also be identified on the basis of a combination of transactions carried out on physically identifiable markets and direct transactions.

3 The competent authorities of the Member States may notify the Commission of producer prices of the fruit and vegetables and other products listed in Part B of Annex XV on a voluntary basis.

[<sup>F24</sup> The notifications referred to in paragraph 3 shall be made in accordance with models made available to the Member States by the Commission. Those models shall not apply until the Management Committee for the Common Organisation of Agricultural Markets has been informed.]

#### **Textual Amendments**

**F2** Substituted by [Commission Implementing Regulation \(EU\) No 302/2012 of 4 April 2012 amending Implementing Regulation \(EU\) No 543/2011 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.](#)

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## Section 2

### Checks

#### Article 99

#### **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 15(1)(f) of Council Regulation (EC) No 73/2009<sup>(10)</sup>.

#### Article 100

#### **Submission procedures**

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

#### Article 101

#### **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 102

#### **Administrative checks**

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

#### Article 103

#### **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.

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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 shall 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 Union law concerning agricultural subsidies shall be carried out at the same time.

#### *Article 104*

### **Granting of recognition and approval of operational programmes**

1 Prior to granting recognition to a producer organisation under Article 125b(2)(a) of Regulation (EC) No 1234/2007, Member States shall conduct an on-the-spot visit to the producer organisation to verify compliance with the conditions for recognition.

2 Prior to the approval of an operational programme under Article 64, the competent authority of the Member State shall verify by all appropriate means, including on-the-spot checks, the operational programme submitted for approval and, if applicable, the requests for amendment. Those checks shall in particular concern:

- a the accuracy of information referred to in Article 59(a), (b) and (e), which shall be included in the draft operational programme;
- b compliance of the programmes with Article 103c of Regulation (EC) No 1234/2007 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 aid is requested with applicable national and Union law 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 105*

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

1 Prior to granting the aid, Member States shall carry out administrative checks on all aid applications, which shall be supplemented by on-the-spot checks by sampling as specified in Article 106.

2 Administrative checks on aid applications shall include, in particular, and as far as this is appropriate for the submitted application, 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;

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- d the conformity of the actions executed with those included in the operational programme as approved;
- e the respect of financial or other limits and ceilings imposed.

3 Expenditure incurred under the operational programme shall be supported by invoices and documents, such as bank extracts, proving that payment has been made. Where this cannot be done, payments shall be supported by documents of equivalent probative value. Invoices used shall be established in the name of the producer organisation, association of producer organisations or the subsidiary in the situation referred to in Article 50(9) or, subject to Member State approval, in the name of one or more of its producer members. However, where relevant, invoices in respect of the personnel costs referred to in Annex IX (2)(b) shall be established in the name of the producer organisation, association of producer organisation or subsidiary in the situation referred to in Article 50(9).

#### *Article 106*

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

1 In the context of the verification of the aid application referred to in Article 69(1), Member States shall carry out on-the-spot checks at the premises of producer organisations so as to ensure compliance with the conditions for granting an aid or the balance thereof for the year concerned.

Such checks shall in particular concern:

- a the compliance with the recognition criteria for the year concerned;
- b the use of the operational fund in the given year including expenditure declared in claims for advance payments or partial payments, the value of marketed production, the contributions to the operational fund and the expenditure declared as supported by accounting or other documents;
- 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 applied for, 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 concerned and shall increase the percentage of corresponding applications to be checked the following year.

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

The risk analysis shall in particular take account of:

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- 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.

#### *Article 107*

### **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 Union law 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 the financial accounting system as audited and certified 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 financial accounting data.

The check on the declaration of the value of marketed production may be carried out before the relevant aid application is transmitted. They shall be carried out at the latest before payment of the aid.

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 106(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 actions, 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 106(2).

#### *Article 108*

### **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 Article 76, in accordance with the procedures laid down in Chapter II

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of Title II. The check shall take place following receipt of the notification referred to in Article 78(1), within the time limits set in accordance with Article 78(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 80.

3 By way of derogation from paragraph 2, where the products are for free distribution, Member States may check a smaller percentage than that laid down in that paragraph, provided it is not less than 10 % of the quantities concerned during the marketing year of any given producer organisation. The check may take place at the premises of 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 of the Member State shall carry out additional checks.

#### *Article 109*

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

1 In the framework of the checks referred to in Article 106, Member States shall make second-level checks on withdrawal operations.

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 those 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 conditions for payment of Union aid have been complied with. Those 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 aid applications, 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, ensuring that those amounts are correct; 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 at the premises of 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 specific stock and accounting records referred to in paragraph 2(a) shall show, for each product withdrawn, the amounts moved, expressed in volume, of:

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- a the production delivered by members of the producer organisation and by members of other producer organisations in accordance with Article 125a(2)(b) and (c) of Regulation (EC) No 1234/2007;
  - 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 paragraph 4(c) 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 of the Member State shall carry out more detailed second-level checks for the marketing year concerned and shall increase the frequency of second-level checks at the premises of producer organisations or their associations concerned during the following marketing year.

#### *Article 110*

### **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 given area has been well maintained. After green harvesting, Member States shall verify that the area concerned has been harvested in total and the harvested product has been denatured.

After the harvest period, Member States shall verify the reliability of the analysis based on the expected market situation referred to in Article 85(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 Article 109(1),(2),(3) and (6) shall apply *mutatis mutandis*.

#### *Article 111*

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

1 Before approving a recognition plan of a producer group under Article 125e(1) of Regulation (EC) No 1234/2007, 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;



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- 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 Union law and in particular, provisions 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 112

### Checks on aid applications of producer groups

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

2 Following the submission of the aid application referred to in Article 45, Member States shall carry out on-the-spot checks on producer groups so as to ensure compliance with the conditions for granting aid for the year concerned.

Those checks shall in particular concern:

- a compliance with the recognition criteria for the year concerned; 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.

[<sup>F3a</sup> The results of the on-the-spot checks referred to in paragraph 2 shall be evaluated to establish whether any problems encountered are of a systemic character, pointing to the likelihood of irregularities in respect of 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 group, the Member State shall carry out additional checks during the year concerned and shall increase the percentage of corresponding applications to be checked the following year.

3b The Member State shall determine which producer groups are to be subject to on-the-spot checks 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 an element to ensure randomisation; and
- d other parameters to be determined by Member States.]

4 Articles 105 and 107 shall apply mutatis mutandis.

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#### Textual Amendments

- F3** Inserted by [Commission Implementing Regulation \(EU\) No 302/2012 of 4 April 2012 amending Implementing Regulation \(EU\) No 543/2011 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.](#)

### Article 113

#### 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 in respect of notably the operational programme and operational fund and shall apply sanctions to it where necessary.

2 The other Member States required to provide the administrative co-operation referred to in Article 28(2)(c) and Article 35(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 law of the Member State where the production takes place shall apply.

#### Section 3

#### Sanctions

### Article 114

#### 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 21, 23, 26(1) and (2) or 31; 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 125b(1)(b) of Regulation (EC) No 1234/2007.

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.

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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 70 where this is necessary in order to apply this paragraph. However, those later payments may not in any case be made later than 15 October of the second year following the year of implementation of the programme.

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.

Member States may make payments after the deadline set out in Article 70 where this is necessary in order to apply this paragraph. However, those later payments may not in any case be made later than 15 October of the second year following the year of implementation of the programme.

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 115*

#### **Fraud**

1 Where a producer organisation, an association of producer organisations or a producer group is found to have committed fraud in respect of aid covered by Regulation (EC) No 1234/2007, Member States shall, without prejudice to any other sanctions and penalties applicable under Union and national legislation:

- a withdraw the recognition of the producer organisation, association of producer organisations or producer group;
- b exclude the actions or operations concerned from support under the operational programme or recognition plan concerned and recover any aid already paid for that operation; and
- c exclude the producer organisation, association of producer organisations or producer group from support under the operational programme or recognition plan concerned during the next year.

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 1234/2007.

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## Article 116

### Producer groups

1 Member States shall apply, mutatis mutandis, the sanctions and penalties provided for in Article 114 and/or 117 to recognition plans.

2 In addition to paragraph 1, if, after the end of the period set by the Member State under Article 49(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 117

### 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 paragraph 2(a) exceeds the amount established pursuant to paragraph 2(b) by more than 3 %, a penalty shall be applied. The amount of the penalty shall be the difference between the amounts calculated in paragraph 2(a) and (b).

However, no penalty 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 or subsequent checks.

5 If the value of marketed production is declared and checked before the application for aid, the declared and approved values shall be used when establishing the amounts pursuant to paragraph 2(a) and (b) respectively.

## Article 118

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

If, following the check referred to in Article 108, irregularities are found with regard to the marketing standards or the minimum requirements referred to in Article 76, the beneficiary shall be required:

- (a) to pay a penalty of the amount of the Union contribution, 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 78 for the withdrawal operation in question;

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- (b) to pay a penalty of the double amount of the Union contribution, if those quantities are between 10 % and 25 % of the quantities notified; or
- (c) to pay a penalty of the amount of the Union contribution for the entire quantity notified pursuant to Article 78, where those quantities exceed 25 % of the quantity notified.

#### *Article 119*

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

1 The penalties referred to in Article 117 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 80(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 80(1).

#### *Article 120*

### **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 108 and 109, 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.

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

#### *Article 121*

### **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 110(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

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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 referred to in paragraphs 1 and 2 shall apply in addition to any penalty imposed pursuant to Article 117.

#### *Article 122*

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

An aid application 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 123*

### **Payment of recovered aid and penalties**

1 Producer organisations, associations of producer organisations, producer groups or other operators concerned shall reimburse unduly paid aid with interest and pay the penalties provided for in this Section.

The interest shall be calculated:

- a on the basis of the period elapsing between payment and reimbursement by the beneficiary;
- b at the rate applied by the European Central Bank to its main refinancing operations published in the 'C' series of the *Official Journal of the European Union* and in force on the date on which the undue payment is made, plus three percentage points.

2 Aid recovered, interest and penalties imposed shall be paid to the European Agricultural Guarantee Fund.

#### *Article 124*

### **Notification of irregularities**

The application of administrative sanctions and penalties and the recovery of unduly paid amounts, as provided for in this Section, are without prejudice to the notification of irregularities to the Commission pursuant to Commission Regulation (EC) No 1848/2006<sup>(11)</sup>.

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## Section 4

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

#### Article 125

##### **Common 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 common performance indicators, as set out in Annex VIII, relating to the baseline situation as well as to the financial execution, outputs, results and impact of the operational programmes implemented.

3 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 126

##### **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 performance indicators referred to in Article 125 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 96(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

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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 performance 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 96(1).

#### *Article 127*

### **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 performance indicators referred to in Article 125 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 125. 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



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- 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 an 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 97(b). 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 103c(1) of Regulation (EC) No 1234/2007. It shall be aimed at drawing lessons useful in improving the quality of future national strategies, and in particular at identifying 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 128*

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

The notification of the list of economic areas referred to in the second subparagraph of Article 125f(2) of Regulation (EC) No 1234/2007 shall include all the information needed to assess whether the conditions laid down in the first subparagraph of Article 125f(2) of that Regulation have been complied with.

#### *Article 129*

##### **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 125g of Regulation (EC) No 1234/2007, it shall inform at the same time the Commission of:

- a the producer organisation or association of producer organisations which requested the extension of the rules;
- b the number of producers who belong to that producer organisation or association of producer organisations and the total number of producers in the economic area

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- 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 of producer organisations 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 of producer organisations 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 125f(3) of Regulation (EC) No 1234/2007, 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 125f(4)(b) of Regulation (EC) No 1234/2007 except where the rules in question apply entirely or partly to such produce.

#### *Article 130*

### **Financial contributions**

Where a Member State decides, pursuant to Article 125i of Regulation (EC) No 1234/2007, 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 Article 125i of Regulation (EC) No 1234/2007.

#### *Article 131*

### **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 125f(3) of Regulation (EC) No 1234/2007 continue to be complied with throughout the period of application of the extension.

If Member States 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.

Member States shall immediately inform the Commission of any repeal, which shall make such information publicly available by means it considers appropriate.

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## *Article 132*

### **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 XVIa to Regulation (EC) No 1234/2007, be considered as having produced that produce.

2 The Member State concerned may decide that rules listed in Annex XVIa to Regulation (EC) No 1234/2007 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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- (1) [<sup>F2</sup>OJ L 265, 26.9.2006, p. 1.]
- (2) OJ L 277, 21.10.2005, p. 1.
- (3) OJ L 368, 23.12.2006, p. 15.
- (4) OJ L 365, 31.12.1994, p. 10.
- (5) OJ L 205, 3.8.1985, p. 5.
- (6) OJ L 358, 16.12.2006, p. 3.
- (7) [<sup>F4</sup>OJ L 33, 5.2.2004, p. 1.]
- (8) OJ L 171, 23.6.2006, p. 1.
- (9) [<sup>F5</sup>OJ L 228, 1.9.2009, p. 3.]
- (10) OJ L 30, 31.1.2009, p. 16.
- (11) OJ L 355, 15.12.2006, p. 56.

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#### Textual Amendments

- F2** Substituted by Commission Implementing Regulation (EU) No 302/2012 of 4 April 2012 amending Implementing Regulation (EU) No 543/2011 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.
- F4** Substituted by Commission Implementing Regulation (EU) No 72/2012 of 27 January 2012 amending and derogating from Implementing Regulation (EU) No 543/2011 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.
- F5** Substituted by Commission Implementing Regulation (EU) No 996/2011 of 7 October 2011 amending Regulations (EC) No 657/2008, (EC) No 1276/2008 and Implementing Regulation (EU) No 543/2011 as regards the notification obligations within the common organisation of agricultural markets.

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