

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);

- (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.

## 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;

- (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.

## *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

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*.

### *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.

## 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; and
  - d the administrative procedures for the approval, monitoring and fulfilling of recognition plans.

#### 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;
- (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.

#### Article 38

#### **Approval of recognition plans**

- 1 The competent authority of the Member State shall decide on a draft recognition plan within three months of the receipt of the 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.
- 3 Following the conformity checks referred to in Article 111, the competent authority of the Member State shall, as appropriate:



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

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

The competent authority of the Member State shall notify the legal entity or clearly defined part of a legal entity of its decision.

#### *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.

2 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.

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.

#### *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.

#### *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.

#### *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.

## Article 47

### Union contribution

1 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 remainder of the aid shall be paid as a flat-rate payment by the Member State. 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.

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

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

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

## Article 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 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.