

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 II

Operational funds and operational programmes

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.

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 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⁽¹⁾, 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.

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;
- 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⁽²⁾.

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;

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- 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⁽³⁾.

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 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.

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.

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.

- (1) OJ L 277, 21.10.2005, p. 1.
- (2) OJ L 368, 23.12.2006, p. 15.
- (3) OJ L 365, 31.12.1994, p. 10.