

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 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>[F1]</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>(1)</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**

- F1** 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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**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 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**

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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>(2)</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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## 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>(3)</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.

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- (1) [<sup>F1</sup>OJ L 228, 1.9.2009, p. 3.]
- (2) OJ L 30, 31.1.2009, p. 16.
- (3) OJ L 355, 15.12.2006, p. 56.

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**Textual Amendments**

- F1** 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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