

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 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⁽¹⁾.

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.

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;
 - 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:

- 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.

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

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 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:

- 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 III

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;
- 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 III

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.

4 Articles 105 and 107 shall apply mutatis mutandis.

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.

(1) [OJ L 30, 31.1.2009, p. 16.](#)