

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

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾, and in particular Articles 103h and 127 in conjunction with Article 4 thereof,

Whereas:

- (1) Regulation (EC) No 1234/2007 establishes a common organisation of agricultural markets which includes the fruit and vegetables and processed fruit and vegetables sectors. Pursuant to Article 103a of Regulation (EC) No 1234/2007 read in conjunction with Article 125e of that Regulation, Union aid may be granted to producer groups formed in Member States that recently acceded to the European Union, in the outermost regions of the Union and in the smaller Aegean Islands. That aid is to encourage the formation of producer groups, facilitate their administrative operation and enable producer groups to meet the recognition criteria for producer organisations, which are the basic actors of the fruit and vegetables sector.
- (2) Articles 36 to 49 of Commission Implementing Regulation (EU) No 543/2011 ⁽²⁾ lay down the detailed rules in respect of producer groups. In order to prevent situations in which operators artificially create the conditions for obtaining payments of Union aid, with a view to obtain advantages contrary to the objectives of Regulation (EC) No 1234/2007, it is appropriate to require Member States to lay down rules in order to prevent producers from shifting from one producer group to another with the aim to benefit from Union aid for a longer period than the period referred to in Article 125e(1) of Regulation (EC) No 1234/2007 and to prevent Member States from recognising legal entities or clearly defined parts of such entities as producer groups, where such entities could already meet the recognition criteria for producer organisations.
- (3) Article 125e(1) of Regulation (EC) No 1234/2007 requires producer groups to present a phased recognition plan to the competent Member State. Member States

should assess whether the duration of the proposed recognition plan is not unduly long and demand modifications where a producer group could meet the recognition criteria for producer organisations before the end of the transitional period referred to in Article 125e(1).

- (4) Article 39(2) of Implementing Regulation (EU) No 543/2011 provides that Member States shall set the conditions under which producer groups may request changes to plans during their implementation. In order to ensure a sound application of that Regulation and in the interest of financial predictability and sound budgetary management, rules should be laid down providing for a maximum percentage for a proposed increase of the expenditure under an approved recognition plan. However, different limits should apply to recognition plans approved before the entry into force of this Regulation and in the case of mergers of producer groups.
- (5) For reasons of budgetary discipline and in order to optimise the allocation of financial resources in a sustainable and effective way, it is appropriate to provide a ceiling for the Union financing of the aid to cover part of the investments referred to in Article 103a(1)(b) of Regulation (EC) No 1234/2007. For reasons of financial security and legal certainty, a list of investments which may not be covered by recognition plans should be drawn up.
- (6) For reasons of budgetary discipline, it is also necessary to provide for a ceiling for the expenditure to be financed by the European Agricultural Guarantee Fund (EAGF) in relation to the aid referred to in Article 103a(1) of Regulation (EC) No 1234/2007 and to set up a notification system, under which the Member States inform the Commission in respect of the financial implications of the recognition plans prior to their approval.
- (7) In order to prevent any unjustified enrichment where a member leaves its producer group and benefits from investments on its own holding, rules should be laid down in order to allow the producer group to recover the investment or the residual value of the investment where the amortisation period has not yet expired.
- (8) For the sake of financial predictability and budgetary forecasting, it is appropriate to provide for more detailed rules on notifications from Member States to the Commission regarding financial implications of recognition plans of producer groups.

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

- (9) Checks should be conducted in such a manner as to permit Member States to react swiftly to any possible abuse which implies a risk for the Union budget. For that purpose, it is appropriate to reinforce checks where significant irregularities have been revealed.
- (10) Article 103e of Regulation (EC) No 1234/2007 provides that in regions of the Member States where the degree of organisation of producers is particularly low, Member States may be authorised by the Commission, on a duly substantiated request, to pay producer organisations national financial assistance equal to a maximum of 80 % of the financial contributions referred to in Article 103b(1)(a) of that Regulation.
- (11) Pursuant to Article 103e of Regulation (EC) No 1234/2007, in regions of Member States where producer organisations market less than 15 % of the fruit and vegetable production and whose fruit and vegetable production represents at least 15 % of their total agricultural output, the national assistance may be reimbursed by the Union at the request of the Member State concerned.
- (12) Article 92(2) of Implementing Regulation (EU) No 543/2011 provides that the Commission is to approve or refuse the request for the authorisation to grant national financial assistance within three months of its submission. If the Commission does not reply within that period, the request is deemed to have been approved. However, the period of three months may be suspended where a Member State makes an incomplete request.
- (13) Experience has shown that the procedure for the adoption and notification to the Member State of a Commission Decision often requires more than three months and that the actual date from which a request is to be deemed approved cannot always be identified. For the sake of legal certainty, it is appropriate to provide that the Commission approves or refuses the request by way of a formal Decision.
- (14) Article 103e of Regulation (EC) No 1234/2007 limits the proportion of national financial assistance which may be authorised to a maximum of 80 % of the financial contributions made by the members of a producer organisation or by the producer organisation itself. Article 95(4) of Implementing Regulation (EU) No 543/2011 limits the proportion of Union reimbursement of national financial assistance to 60 % of the national financial assistance granted to the producer organisations. For reasons of budgetary discipline, it is necessary to provide for a ceiling to the amount of national financial assistance that may be reimbursed by the Union by reference to the maximum amount of the Union financial assistance which may be granted to operational funds set up by producer organisations.
- (15) For the sake of simplification, it is appropriate to fine-tune the procedure for the notification of producer prices of fruit and vegetables in the internal market on a voluntary basis.
- (16) Implementing Regulation (EU) No 543/2011 should therefore be amended accordingly.
- (17) In order to ensure that legitimate expectations of producers are respected, it is necessary to provide that certain amendments made by this Regulation do not apply to recognition plans which have been accepted before the date of entry into force of this Regulation. However, in order to control budgetary expenditure and to ensure a level-playing field between economic operators, it should be provided that recognition plans that have been accepted before the entry into force of this Regulation should be treated in the same way as recognition plans adopted after the entry into force of this Regulation, with respect to the Union contribution to aid referred to in Article 103a(1)(b) of Regulation (EC) No 1234/2007, where the producer groups concerned have not yet committed themselves financially or have not yet entered into legally binding arrangements with third parties as regards the relevant investments prior to the date of entry into force of this Regulation.
- (18) In order to ensure a smooth transition to the new rules applicable to Union reimbursement of national financial assistance, the relevant amendment made by this Regulation should not apply to situations where the request for authorisation to pay national financial assistance has been approved by the Commission prior to the entry into force of this Regulation, but where the Commission has not yet decided on the reimbursement. In such situations Article 95(4) of Implementing Regulation (EU) No 543/2011 should continue to apply as not amended by this Regulation.
- (19) In order to control Union expenditure for the fruit and vegetables sector, this Regulation should enter into force on the day of its publication.
- (20) The Management Committee for the Common Organisation of Agricultural Markets has not delivered an opinion within the time limit set by its Chair,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Implementing Regulation (EU) No 543/2011

Implementing Regulation (EU) No 543/2011 is amended as follows:

- (1) In Article 36(2), the following point (e) is added:

‘(e) the rules to avoid that a producer benefits from Union aid for producer groups for more than 5 years.’

- (2) In Article 37, the following second paragraph is added:

‘The investments referred to in point (c) of the first paragraph shall not include investments listed in Annex Va.’

(3) Article 38 is amended as follows:

(a) Paragraph 1 is replaced by the following:

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

(b) Paragraph 3 is replaced by the following:

'3. Following the conformity checks referred to in Article 111, the competent authority of the Member State shall, as appropriate:

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

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

(c) The following paragraphs 4, 5 and 6 are added:

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

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

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

(4) In Article 39, paragraph 2 is replaced by the following:

'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.

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

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

(5) In Article 44, the following third paragraph is added:

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

(6) Article 47 is replaced by the following:

'Article 47

Union contribution

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

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

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

2. The Union contribution towards aid as referred to in Article 103a(1)(b) of Regulation (EC) No 1234/2007, expressed in terms of a capital grant or capital-grant equivalent, shall not exceed, as a percentage of eligible investment costs:

- (a) 50 % in the regions eligible under the Convergence Objective; and
- (b) 30 % in other regions.

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

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

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

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

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

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

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

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

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

(*) OJ L 265, 26.9.2006, p. 1.'

(7) In Article 92, paragraph 2 is replaced by the following:

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

(8) In Article 95(4), the following sentence is added:

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

(9) In Article 97, point (c) is replaced by the following:

'(c) 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.'

(10) In Article 98, paragraph 4 is replaced by the following:

'4. 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.'

(11) In Article 112, the following paragraphs 3a and 3b are inserted:

‘3a. 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.’

(12) Annex Va, as set out in Annex I to this Regulation, is inserted.

(13) Annex Vb, as set out in Annex II to this Regulation, is inserted.

Article 2

Transitional provisions

1. Points (2), (3)(b), and (12) of Article 1 of this Regulation shall not apply to recognition plans which have been accepted before the date of entry into force of this Regulation.

2. Point (6) of Article 1 of this Regulation, as regards Article 47(3) and (4) of Implementing Regulation (EU) No 543/2011, shall not apply to recognition plans which have been accepted before the date of entry into force of this Regulation and in respect of which either:

- (a) the producer group concerned has already committed itself financially or has entered into legally binding arrangements

with third parties as regards the relevant investments referred to in Article 103a(1)(b) of Regulation (EC) No 1234/2007 prior to the date of entry into force of this Regulation, or

- (b) the recognition plan concerned covers only aid referred to in Article 103a(1)(a) of Regulation (EC) No 1234/2007.

3. For recognition plans accepted before the date of entry into force of this Regulation but in respect of which the producer group concerned has not yet committed itself financially or has not as yet entered into legally binding arrangements with third parties as regards the relevant investments prior to the date of entry into force of this Regulation the following rules shall apply:

- (a) by 1 July 2012 the competent authority of the Member State shall notify the Commission of recognition plans to which this paragraph applies;

- (b) when setting the allocation coefficients in accordance with the second subparagraph of Article 47(4) of Implementing Regulation (EU) No 543/2011 the Commission shall take into account the notifications received pursuant to point (a) of this paragraph. The Union contribution towards the aid referred to in Article 103a(1)(b) of Regulation (EC) No 1234/2007 shall be granted in accordance with those allocation coefficients;

- (c) the allocation coefficients set in accordance with the second subparagraph of Article 47(4) of Implementing Regulation (EU) No 543/2011 shall not apply in respect of the aid referred to in Article 103a(1)(a) of Regulation (EC) No 1234/2007;

- (d) once the allocation coefficients referred to in the second subparagraph of Article 47(4) of Implementing Regulation (EU) No 543/2011 have been set, the competent authority of the Member State shall provide the producer groups to which this paragraph applies with an opportunity to amend or withdraw their recognition plan. In the case of withdrawal, expenditure incurred by the producer group after the initial acceptance of the plan in respect of its formation and administration shall be reimbursed by the Union up to an amount not exceeding 3 % of the aid that the producer group would have been entitled to under Article 103a(1)(a) of Regulation (EC) No 1234/2007 if their recognition plan had been implemented.

4. Point (8) of Article 1 shall not apply to cases where the request for authorisation to pay national financial assistance has been approved by the Commission in accordance with Article 92(2) of Implementing Regulation (EU) No 543/2011 prior to the date of entry into force of this Regulation, but where the Commission has not yet decided on Union reimbursement of the national financial assistance in accordance with Article 95 of Implementing Regulation (EU) No 543/2011.

*Article 3***Entry into force**

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 4 April 2012.

For the Commission
The President
José Manuel BARROSO

ANNEX I

'ANNEX Va

INELIGIBLE INVESTMENTS REFERRED TO IN THE SECOND PARAGRAPH OF ARTICLE 37

1. Investments in means of transport to be used for marketing or distribution by the producer group, with the exception of:
 - (a) investments in means of internal transport; at the moment of the purchase, the producer group shall duly justify to the concerned Member State that the investments shall only be used for internal transport;
 - (b) additional on-the-truck facilities for cold-storage or controlled atmosphere transport.
 2. Purchase of land costing more than 10 % of all the eligible expenditure on the operation concerned and not built on except where purchase is necessary to carry out an investment included in the recognition plan;
 3. Second hand equipment which has been purchased with Union or national aid within the seven previous years.
 4. Hire, unless the competent authority of the Member State accepts hire as an economically justified alternative to purchase.
 5. Real estate purchase which has been purchased with Union or national aid within the 10 previous years.
 6. Investments in shares.
 7. Investments or similar types of actions outside the holdings and/or premises of the producer group or its members.'
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ANNEX II

ANNEX Vb

Templates for notification per producer group as referred to in Article 38(4)

Notification in accordance with Article 38 (4) of Commission Regulation (EU) No 543/2011

Member State:

Total number of PG proposed for recognition:

Currency:

Date:

ID (if already attributed)	Name	Number of members	Years of transition period	Years of implementation	Aid to encourage formation and facilitate administrative operation. Article 103a (1)(a) of Regulation (EC) No 1234/2007			Aid to cover part of the investments. Article 103a (1)(b) of Regulation (EC) No 1234/2007				Value of the marketed production (Art 42 Reg 543/2011)	Total Union contribution	Total MS contribution	Total PG	
					Total	Union contribution	Member State contribution	Total expenditure	Union contribution	Member State contribution	producer group and members of the producer group contribution					
					(1) = (2) + (3)	(2)	(3)	(4) = (5) + (6) + (7)	(5)	(6)	(7)					(8)
			1/5	201...												
			2/5	201...												
			3/5	201...												
			4/5	201...												
			5/5	201...												
				Total												

One different Excel sheet shall be completed for every Producer Group (PG)

Notification in accordance with Article 38 (4) of Commission Regulation (EU) No 543/2011

Member State: Total number of PG proposed for recognition:

Currency: National currency Date:

Number of PGs proposed for recognition	Years	Aid to encourage formation and facilitate administrative operation. Article 103a (1)(a) of Regulation (EC) No 1234/2007			Aid to cover part of the investments. Article 103a (1)(b) of Regulation (EC) No 1234/2007				Value of the marketed production (Art 42 Reg 543/2011)	Total Union contribution	Total MS contribution	Total PG
		Total	Union contribution	Member State contribution	Total expenditure	Union contribution	Member State contribution	producer group and members of the producer group contribution				
		(1) = (2) + (3)	(2)	(3)	(4) = (5) + (6) + (7)	(5)	(6)	(7)	(8)	(9) = (2) + (5)	(10) = (3) + (6)	(11) = (1) + (4)
	201...											
	201...											
	201...											
	201...											
	201...											
	201...											
	Total											

This Excel sheet refers to all Producer Groups proposed for recognition per Member State'