

L.N. 109 of 2015

**SUPPLIES AND SERVICES ACT
(CAP. 117)**

Fruit and Vegetables Marketing Standards Regulations, 2015

IN exercise of the powers conferred by article 3 of the Supplies and Services Act, the Minister for the Economy, Investment and Small Business, in consultation with the Minister for Sustainable Development, the Environment and Climate Change, has made the following regulations:-

1. (1) The title of these regulations is the Fruit and Vegetables Marketing Standards Regulations, 2015. Citation and scope.

(2) The scope of these regulations is to implement the relevant provisions of Council Regulation (EC) 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (single CMO Regulation) and Commission Regulation (EC) 543/2011 of 7 June 2011 laying down the detailed rules for the application of Council Regulation (EC) No. 1234/2007 in respect of the fruit and vegetables sectors.

2. For the purpose of these regulations and unless the context otherwise requires: Interpretation.

"Act" means the Supplies and Services Act; Cap. 117.

"competent authority" means the Agriculture Directorate;

"customs authority" means the Department of Customs;

"Director" means the Director responsible for Agriculture;

"Farmers' Market" means a market established in terms of regulation 3 of the Farmers' Markets Regulations; S.L. 117.31

"finding of non-conformity" means a statement issued by the competent authority in terms of regulation 13, stating that the products in question do not conform to the relevant marketing standards;

"general marketing standards" means those standards listed in Part A of Annex I to EC Regulation No. 543/2011 or any subsequent legislation;

"grower" means a person who cultivates fruit and vegetables;

"holder" means any natural or legal person physically in possession of the products concerned;

"holding" means non-commercial premises where fruits and vegetables are kept with a view of selling them directly to the consumer;

"Inspectorate Unit" means the Inspectorate Unit within the Regulatory Section within the Agriculture Directorate;

Cap. 249. "Malta" shall have the same meaning as that assigned to it by article 3 of the Interpretation Act;

"Minister" means the Minister responsible for Agriculture;

"product" means fruit and vegetables listed in Part IX of Annex I of EC Regulation No. 1234/2007;

"specific marketing standards" means those standards listed in Part B of Annex I to EC Regulation No. 543/2011 or any subsequent legislation;

"trader" means any natural or legal person who:

(a) holds fruit and vegetables subject to marketing standards with a view to:

(i) displaying or offering them for sale,

(ii) selling them, or

(b) marketing them in any other manner, or actually carries out any of the activities referred to in paragraph (a) as regards fruit and vegetables subject to marketing standards.

The activities referred to in paragraph (a) shall cover:

(a) distance selling whether by internet or otherwise,

(b) such activities carried out by the natural or legal person for itself or on behalf of a third party, and

(c) such activities carried out in the European Union and/or by export to third countries and/or import from third countries.

3. (1) No trader may trade in products in Malta unless such products conform to the general marketing standards or the specific marketing standards required in terms of these regulations. Marketing standards.

(2) The following products shall conform to the specific marketing standards:

- (a) apples,
- (b) citrus fruit,
- (c) kiwifruit,
- (d) lettuces, curled leaved and broad-leaved endives,
- (e) peaches and nectarines,
- (f) pears,
- (g) strawberries,
- (h) sweet peppers,
- (i) table grapes,
- (j) tomatoes.

(3) The marketing standard applicable to bananas falling within CN Code 080300, shall be as set out in Annex 1 of Regulation (EU) No. 1333/2011 and any subsequent Regulation.

(4) Products not required to conform to the specific marketing standards shall conform to the general marketing standards:

Provided that, where the holder is able to show that he is in conformity with any applicable standards adopted by the United Nations Economic Commission for Europe (UNECE), the product shall be considered as conforming to the general marketing standard.

(5) By way of derogation from Article 113a(3) of Regulation (EC) No. 1234/2007 as regards the specific marketing standards, fruit and vegetables other than the 'Extra' Class, at stages following dispatch, may show a slight lack of freshness and turgidity and slight deterioration due to their development and their tendency to perish.

4. (1) By way of derogation from Article 113a(3) of Regulation (EC) No. 1234/2007, the following products shall not be required to conform to the marketing standards: Exceptions and exemptions from the application of marketing standards.

(a) provided they are clearly marked with the words 'intended for processing' or 'for animal feed' or any other equivalent wording, products:

(i) intended for industrial processing, or

(ii) intended for animal feed or other non-food use;

(b) products transferred by the producer on his holding to consumers for their personal use;

(c) products recognised in a Commission Decision taken at the request of a Member State in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No. 1234/2007 as products of a given region which are sold by the retail trade of the region for well established traditional local consumption;

(d) products having undergone a trimming or cutting making them 'ready to eat' or 'kitchen ready';

(e) products marketed as edible sprouts, following germination of seeds of plants classified as fruit and vegetables under Article 1(1)(i) and Part IX of Annex I to Regulation (EC) No. 1234/2007.

(2) By way of derogation from Article 113a(3) of Regulation (EC) No. 1234/2007, the following products shall not be required to conform to the marketing standards within a given production area:

(a) products sold or delivered by the grower to preparation and packaging stations or storage facilities, or shipped from his holding to such stations; and

(b) products shipped from storage facilities to preparation and packaging stations.

(3) By way of derogation from Article 113a(3) of Regulation (EC) No. 1234/2007, the competent authority shall exempt from the specific marketing standards products presented for retail sale to consumers for their personal use and labelled 'product intended for processing' or with any other equivalent wording and intended for processing other than those referred to in sub-regulation (1)(a)(i).

(4) By way of derogation from Article 113a(3) of Regulation (EC) No. 1234/2007, the competent authority may exempt from the marketing standards products directly sold by the grower to the final

consumer for personal use on markets reserved only for producers within a given production area defined by Member States.

(5) By way of derogation from Article 113a(3) of Regulation (EC) No. 1234/2007 as regards the specific marketing standards, fruit and vegetables other than the 'Extra' Class, at stages following dispatch, may show a slight lack of freshness and turgidity and slight deterioration due to their development and their tendency to perish.

(6) By way of derogation from Article 113a(3) of Regulation (EC) No. 1234/2007, the following products shall not be required to conform to the general marketing standard:

- (a) non-cultivated mushrooms of CN code 0709 59,
- (b) capers of CN code 0709 90 40,
- (c) bitter almonds of CN code 0802 11 10,
- (d) shelled almonds of CN code 0802 12,
- (e) shelled hazelnuts of CN code 0802 22,
- (f) shelled walnuts of CN code 0802 32,
- (g) pine nuts of CN code 0802 90 50,
- (h) pistachios of CN code 0802 50 00,
- (i) macadamia of CN code 0802 60 00,
- (j) pecans of CN code ex 0802 90 20,
- (k) other nuts of CN code 0802 90 85,
- (l) dried plantains of CN code 0803 00 90,
- (m) dried citrus of CN code 0805,
- (n) mixtures of tropical nuts of CN code 0813 50 31,
- (o) mixtures of other nuts of CN code 0813 50 39,
- (p) saffron of CN code 0910 20,
- (q) plantains, fig bananas and bananas intended for processing not falling within CN code 080300.

Evidence shall be supplied to the competent authority that the

products falling under this sub-regulation and sub-regulations (1) to (5) fulfil the conditions laid down, in particular with regard to their intended use.

(7) Products directly sold by the grower directly to the final consumer for personal use represented in the 'Farmers' Market' shall be exempt from the application of marketing standards:

Provided that in case growers selling in the Farmers' Market decide to apply the marketing standards, the relative fruit and vegetables will become subject to all the provisions of these regulations. Traders opting to be included in the database shall inform the competent authority accordingly.

(8) Products sold by a grower from his own personal premises, being a garage or a farmhouse shall be exempt from the application of marketing standards.

(9) Imports from third countries referred to in Annex IV of the Commission Implementing Regulation (EU) No. 543/2011, which are in compliance with Article 15 of the said Regulation, shall be exempt from the application of marketing standards.

(10) Products subject to specific marketing standards presented for retail sale to consumers for their personal use and labelled "product intended for processing" or with any other equivalent wording and intended for processing, other than those referred to in sub-regulation (1)(a)(i), shall not be required to conform to specific marketing standards.

(11) Products recognised in a Commission Decision taken at the request of a Member State in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No. 1234/2007 as products of a given region which are sold by the retail trade of the region for well established traditional local consumption shall not be required to conform to specific marketing standards.

(12) The competent authority may, where it deems relevant, demand evidence to trace the intended use of the product.

Information
particulars.

5. (1) The information particulars required by the general marketing standards and the specific marketing standards shall be shown legibly and clearly on one side of the packaging, either by being printed directly onto the package or by means of a label, which is either an integral part of the package or which is affixed to it.

(2) For goods shipped in bulk and loaded directly onto a means of transport, the information particulars referred to in sub-

regulation (1) shall be given in a document accompanying the goods or shall be shown on a notice board placed in an obvious position inside the means of transport.

(3) In the case of distance contracts in terms of Article 2(1) of Directive 97/7/EC of the European Parliament and of the Council, conformity with the marketing standards shall require that the information particulars shall be made available before the purchase is concluded.

(4) Invoices and accompanying documents, excluding receipts from the consumer, shall indicate the name and the country of origin of the products and, where appropriate, the class, the variety or commercial type, if required, in a specific marketing standard, or the fact that they are intended for processing.

6. (1) At the retail stage, the information particulars required by the general marketing standards and the specific marketing standards shall be displayed legibly and in a conspicuous manner.

Information particulars at the retail stage.

(2) Products may be presented for sale provided the retailer displays prominently, adjacent to and legibly, the information particulars relating to country of origin and, where appropriate, class and variety or commercial type, in such manner as not to mislead the consumer.

(3) For products which are pre-packaged within the meaning of Directive 2000/13/EC of the European Parliament and of the Council, the net weight shall be indicated, in addition to all the information provided for in the marketing standards:

Provided that, in the case of products sold by number, the requirement to indicate the net weight shall not apply, if the number of items may be clearly seen and easily counted from the outside or, if the number is indicated on the label.

7. (1) The marketing of packages of products of a net weight of 5kg or less containing mixes of different types of fruit and vegetables shall be allowed, provided that:

Mixes.

(a) the products are of uniform quality and each product concerned complies with the relevant specific marketing standard or, where no specific marketing standard exists for a particular product, with the general marketing standard;

(b) the package is appropriately labelled in accordance

with the general marketing standards and the specific marketing standards; and

(c) the mix is not such so as to mislead the consumer.

(2) The requirements of sub-regulation (1)(a) shall not apply to products included in a mix which are not products of the fruit and vegetables sector referred to in Article 1(1)(i) of Regulation (EC) No. 1234/2007.

(3) If the fruit and vegetables in a mix originate in more than one Member State or third country, the full names of the countries of origin may be replaced with one of the following, as appropriate:

(a) "mix of EU fruit and vegetables",

(b) "mix of non-EU fruit and vegetables",

(c) "mix of EU and non-EU fruit and vegetables".

Duties of the competent authority and Inspectorate Unit.

8. (1) The competent authority shall be responsible for the implementation and enforcement of these regulations, including the establishment of the necessary contacts and coordination mechanisms relating to marketing standards.

(2) The Inspectorate Unit shall be responsible for carrying out conformity checks at each stage of marketing. The Inspectorate Unit shall report all its findings to the competent authority.

Traders database.

9. (1) The competent authority shall set up a database on traders in fruit and vegetables, which shall list, under the conditions established in Article 10 of Commission Implementing Regulation (EU) No. 543/2011, traders involved in the marketing of fruit and vegetables for which standards have been laid down pursuant to Article 113 of Regulation (EC) No 1234/2007.

(2) The following traders shall not be required to be included in the database:

(a) natural or legal persons whose activities in the fruit and vegetables sector are limited either to the transport of goods, or to the sale at the retail stage;

(b) natural or legal persons whose activities in the fruit and vegetable sector are limited to processing.

(3) Traders shall provide such information as the competent authority considers necessary to set up and update the database. The

traders database shall consist of:

- (a) the registration number, name and address;
- (b) information needed for its classification in one of the risk categories mentioned in Article 11(2) of Commission Implementing Regulation (EU) No. 543/2011, in particular, position in the marketing chain and information concerning the importance of the firm;
- (c) information concerning findings made during previous checks of each trader;
- (d) any other information considered necessary for checks such as information concerning the existence of a quality assurance system or self-check system related to the conformity to the marketing standards.

(4) The competent authority may if it deems necessary request from other authorities information which lies within the scope of these regulations, in order to be able to compile the database:

Provided that the data subject concerned is informed about the processing of personal data in accordance with article 19 of the Data Protection Act. Cap. 440.

(5) The updating of the database shall be carried out in particular using the information collected during conformity checks.

(6) These regulations shall also be applicable to traders not established in Malta, but are trading within it.

(7) Traders shall supply all information deemed necessary by the competent authority for the application of this regulation.

10. (1) The Inspectorate Unit shall perform conformity checks which are to be carried out selectively, based on a risk analysis, and with appropriate frequency, so as to ensure appropriate compliance with the marketing standards and other provisions of these regulations. Conformity checks.

(2) Where the conformity checks conducted in terms of sub-regulation (1) reveal significant irregularities, the Director shall order the increase in the frequency of checks in relation to traders, products, origins, or other parameters.

(3) Traders shall provide the competent authority and the Inspectorate Unit with all such information as they consider

necessary for organising and carrying out conformity checks.

(4) The competent authority shall in advance publish the criteria for assessing the risk of non-conformity of lots, on the basis of a risk analysis for each risk category. The competent authority shall in advance publish these criteria through a notice in the Gazette.

(5) The sample of the minimum rate of on-the-spot checks shall be drawn partly on the basis of a risk analysis and partly at random. The competent authority shall establish the risk factors. To assure relevant and efficient risk analysis, the effectiveness of the risk analysis shall be assessed and updated on an annual basis taking into account the relevance of each risk factor, comparing the results of randomly and risk-based selected samples and the specific situation in the particular risk category.

(6) The minimum control rate in respect of the marketing standards' obligations shall be established in accordance with the provisions of this regulation. In this regard the control rate shall be fixed at a minimum of 10% of traders present in the traders database and subject to marketing standards.

(7) The sampling of on-the-spot checks for marketing standards shall take into account the participation of such traders in relevant certifications systems. It should, however, be demonstrated when taking that participation into account, that the traders participating in such schemes represent a lesser risk than traders not participating in those schemes.

Selection of the control sample.

(8) (a) Control samples for on-the-spot checks under this regulation shall be selected by the competent authority on the basis of a risk analysis, as per data available in the traders database.

(b) To provide the element of representativeness, the competent authority shall select randomly 20% of the minimum number of traders to be subject to on-the-spot checks:

Of 100%

20% Random

- 20% Random

80% Risk

- 20% largest amount of revenue
- 20% largest variety of fruit and vegetables subject

to specific marketing standards

- 40 % previous cases on non-compliance

The effectiveness of the risk analysis shall be assessed and updated on an annual basis:

- (a) by establishing the relevance of each risk factor
- (b) by comparing the results of the risk based and randomly selected sample
- (c) by taking into account the specific situation.

The competent authority shall keep records of the reasons for the selection of each farmer for an on-the-spot check. The inspector carrying out the on-the-spot check shall be informed accordingly prior to the commencement of the on-the-spot check.

11. (1) The customs authority may only accept export declarations and, or declarations for the release for free circulation for the products subject to specific marketing standards, if: Acceptance of declaration.

- (a) the products are accompanied by a conformity certificate issued in terms of regulation 12; or
- (b) the competent authority has informed the customs authority that the lots concerned have been issued with a conformity certificate in terms of regulation 12; or
- (c) the competent authority has informed the customs authority that it has not issued a conformity certificate for the lots concerned, because they do not need to be checked in the light of the risk assessment referred to in regulation 10(1).

(2) The provisions of sub-regulation (1) shall be enforced without prejudice to any conformity checks that the Inspectorate Unit may carry out pursuant to regulation 10.

(3) Sub-regulation (1) shall also apply to products subject to the general marketing standards and products referred to in regulation 4(1)(a) if the Director considers it necessary in the light of the risk analysis referred to regulation 10(1) and also Article 11(1) of Commission Regulation 543/2011.

12. Conformity certificates confirming that products conform to the relevant marketing standard shall be issued by the competent authority, in terms of Article 14 of Commission Implementing Certificate of conformity.

Regulation (EU) No. 543/2011.

Method of
inspection.

13. (1) The competent authority shall publish in advance guidelines for specific arrangements for checking conformity at the point of retail or sale to the end consumer.

(2) The Inspectorate Unit may, at any time, and without giving any previous notice, except in cases of import and export, enter any premises for the purpose of inspection and of ensuring the carrying out of the provisions of these regulations or of any other law relating to the sale of fresh fruit and vegetables. For this purpose the Inspectorate Unit may request the assistance of the members of the Police Force.

(3) Where the Inspectorate Unit finds that the products conform with the marketing standards, the Inspectorate Unit shall make its recommendations to the competent authority. The competent authority shall then issue a conformity certificate in terms of regulation 12 on the form set out in Annex III of Commission Implementing Regulation (EU) No. 543/2011.

(4) (a) Where the products do not conform with the standards, the competent authority shall issue a finding of non-conformity for the attention of the traders or their representatives.

(b) Goods for which a finding of non-conformity has been issued may not be moved without the authorisation of the competent authority which issued that finding. That authorisation can be subject to the respect of conditions laid down by the competent authority.

(5) Traders may decide to bring all or some of the products into conformity. Products brought into conformity may not be marketed before the competent authority has ensured that the products have actually been brought into conformity.

(6) The competent authority shall issue, where applicable, a certificate of conformity on the form set out in Annex III of Commission Implementing Regulation (EU) No 543/2011 for the lot of products or part thereof, only after such products have been brought into conformity

(7) (a) If the competent authority accepts a trader's wish to bring the goods into conformity in a Member State other than that where the check leading to a finding of non-conformity has been carried out, the trader shall notify the competent authority of the destination Member State of the non-conforming lot.

(b) The competent authority issuing the finding of non-conformity shall send a copy of that finding to the other Member States concerned including the Member State of destination of the non-conforming lot.

(8) In the case of products that can neither be brought into conformity nor be sent as animal feed, industrial processing or any other non-food use, the competent authority may, if necessary, request traders to take adequate measures, in order to ensure that the products concerned are not marketed.

14. (1) Any person who contravenes or fails to comply with any of the provisions of these regulations shall be guilty of an offence against these regulations and shall, upon conviction, be liable - Offences and penalties.

(a) on a first conviction, to a fine (*multa*) of not less than five hundred euro (€500) but not exceeding one thousand two hundred euro (€1,200);

(b) on a second or subsequent conviction, to a fine (*multa*) of not less than one thousand two hundred euro (€1,200) but not exceeding two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37), and to the suspension of any permit, pass or licence, for a period of not less than one month but not exceeding six months.

(2) In every case of conviction for an offence against these regulations, the Court may order the forfeiture of the articles to which the offence relates and such articles shall be forfeited to the Government.

(3) Offences against these regulations shall be deemed to be contraventions but proceedings in respect thereof may be commenced at any time within one year of the commission of the offence.

(4) Proceedings in respect of an offence against these regulations shall be taken before the Courts of Magistrates sitting as a court of criminal judicature and the provisions of the Criminal Code relating to criminal proceedings before such court shall, subject to the preceding sub-regulations of this regulation, apply in respect of proceedings for offences against these regulations. Cap. 9.

15. (1) Where the Director has reasonable cause to believe that - Administrative penalties.

(a) an offence against these regulations has been committed by any person; and

(b) having regard to the previous conduct of the person concerned, it would be appropriate to impose a penalty under this article,

he may cause a notice in writing in accordance with sub-regulation (2) to be served on that person.

(2) A notice under sub-regulation (1) shall specify -

(a) the date and nature of the offence;

(b) a summary of the facts upon which the allegation that an offence has been committed is based (being a sufficient summary fully and fairly to inform the person of the allegation against him);

(c) any other matters (not being previous convictions) that the Director considers relevant to the imposition of a penalty; and

(d) the amount of the penalty due, and where the penalty due depends on a previous conviction, the date of such conviction, and shall be endorsed on a statement setting out the provisions of this article.

(3) Any person on whom a notice under sub-regulation (1) is served may, within thirty days after such service by notice in writing in the appropriate form served on the Director, require that proceedings in respect of the alleged offence shall be dealt with by the Court, in which case the following provisions shall apply:

(a) no further proceedings shall be taken under this regulation by the Director; and

(b) nothing in this regulation shall be construed to prevent the institution of any proceedings in respect of the alleged offence or the conviction of the person for the offence by the Court or the imposition of any penalty or forfeiture under these regulations upon such conviction.

(4) Any person on whom a notice under sub-regulation (1) is served who does not wish that proceedings in respect of the alleged offence be dealt with by the Court may by notice in writing served on the Director -

(a) admit the offence, and

(b) pay the amount of the penalty to the Director within thirty days after the notice of the penalty is served or

after such subsequent period as the Director may determine.

(5) Where under this regulation a person admits an offence, the Director shall impose a monetary penalty on that person in respect of the offence amounting to one-third of the maximum penalty to which the person would be liable if he were convicted of the offence by the Court under these regulations.

(6) The penalty imposed under sub-regulation (5) shall be due as a civil debt enforceable by the competent Court of civil jurisdiction in favour of the Government and the declaration by the person on whom the penalty is imposed that he admits the charge shall constitute an executive title for the purposes of article 253 of the Code of Organization and Civil Procedure in the same manner as if it were a judgement of the competent Court of civil jurisdiction. Cap. 12.

(7) Notwithstanding any other provisions of these regulations or of any other enactment, where an offence has been admitted under this regulation no charge may be laid in respect of the offence against any person by whom it has been admitted.

(8) Where a person on whom a notice under sub-regulation (1) is served does not, within thirty days after the notice is served on him admit the offence or does not serve the Director with a notice in accordance with sub-regulation (3), the Director shall institute proceedings or cause proceedings to be instituted before the Court in respect of the alleged offence.

