



Brussels, 11.3.2014
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COMMISSION DELEGATED REGULATION (EU) No .../..

of 11.3.2014

supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council and Regulation (EU) No 1306/2013 of the European Parliament and of the Council by amending Commission Implementing Regulation (EU) No 543/2011 relating to the fruit and vegetables and processed fruit and vegetables sectors

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products (Single CMO Regulation) empowers the Commission to adopt delegated acts.

The purpose of this delegated act is to lay down rules concerning elements introduced by the new Single CMO regarding operational programmes in the fruit and vegetables sector and entry price system, extend two provisions already in force in the scheme under Council Regulation (EC) No 1234/2007 and clarify the rules concerning certain recognition criteria, as well as introducing a step by step sanction mechanism in case of non-compliance with recognition criteria.

This delegated act amends 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. By doing so, the newly introduced or newly extended measures are integrated into the provisions that apply to the fruit and vegetables sector.

Concerning provisions on the entry price system the basic acts aligns the clearance of goods subject to the entry price, to the Custom Code, in order to harmonise the clearance of customs also for products covered by entry price. The Commission is empowered to provide by delegated act a flat rate value to verify the veracity of the declared entry price of a consignment and to provide conditions to lodge a security.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In the meeting of the Group of Experts for Delegated acts under the Single CMO held on 5 November 2013, the Commission services presented a working document on all elements of this act and a first exchange of views took place. The exercise consisted in clarifying the Commission's approach and hearing experts' views. A second discussion took place during the meeting of the Experts Group held on 26 November 2013. At this meeting the draft text was presented with amendments following suggestions by the experts. The draft was then refined taking into account the observations and comments made, both during the meeting and subsequently in writing. A further exchange of views was held in the Experts Group on 10 December 2013. The draft versions of the present act were transmitted to the European Parliament and to the Council after convening the Experts Group meetings.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The act contains provisions supplementing certain parts of the Single CMO Regulation that are necessary in respect of the new measures in fruit and vegetables sector.

The new provisions lay down respectively a ceiling for expenditures on crisis prevention and management for the operational programmes of associations of producer organisations and supplement the new crisis prevention and management measure on replanting of orchards following mandatory grubbing-up for health or phytosanitary reasons. The extended provisions concern the payment of financial contributions of the producer members of the producer organisation to the operational fund and the exceptions to the marketing of the whole production of the producer members through the producer organisation.

The provisions on placing on the market of the production of a producer organisation, outsourcing of activities and democratic control of a producer organisation are defined more clearly. A step by step sanction system is introduced in case of non-compliance with recognition criteria, which gives producer organisations the possibility to remedy the situation while protecting the EU budget by the suspension of aid payments to producer organisations violating these criteria and avoiding the current difficulty for Member States to prove intent or serious negligence of the producer organisation before they can suspend or withdraw recognition.

There is a later date of entry into force for certain articles of this act to allow for on-going outsourcing contracts to adapt to the new rules, as well as for the compliance with upper limits for the voting rights and shares producers may hold in their producer organisations.

Concerning provisions on the entry price system, the basic act aligns the clearance of goods subject to the entry price, to the Custom Code. The Commission lays down provisions to lodge a security and establishes that a flat rate, the standard import value, can be used to clear customs when products are sold on consignment. These provisions will apply from 1 October 2014.

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supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council and Regulation (EU) No 1306/2013 of the European Parliament and of the Council by amending Commission Implementing Regulation (EU) No 543/2011 relating to 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 Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/01 and (EC) No 1234/07¹, and in particular Article 37(c)(iv) and (d)(xiii), Article 173(1)(b) and (c) and (f), Article 181(2) and Article 231(1) thereof,

Having regard to Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) 165/94, (EC) No 2799/98, (EC) No 814/00, (EC) No 1290/05 and (EC) No 485/2008², and in particular, Article 64(6) thereof,

Whereas:

- (1) Commission Implementing Regulation (EU) No 543/2011³ was adopted on the basis of Council Regulation (EC) No 1234/2007⁴ which was repealed and replaced by Regulation (EU) No 1308/2013.
- (2) Regulation (EU) No 1308/2013 includes some new provisions concerning the fruit and vegetables and processed fruit and vegetable sectors. These provisions need to be supplemented as regards the financial contribution of the members of the producer organisation in the fruit and vegetables sector ('producer organisation'), the marketing of entire production through the producer organisation, the outsourcing of the activities, the democratic accountability, the fixing of ceilings for the crisis management and prevention expenditure, the conditions for replanting of orchard as crisis prevention and management measure, certain elements of the procedure in case of non-respect of the recognition criteria and the application of the entry price system as well as conditions for lodging the security.
- (3) Article 160 of Regulation (EU) No 1308/2013 provides for the statutes of a producer organisation to require that its producer members market their entire production

¹ OJ L 347, 20.12.2013, p. 671.

² OJ L 347, 20.12.2013, p. 549.

³ 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 (OJ L 157, 15.6.2011, p. 1).

⁴ 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) (OJ L 299, 16.11.2007, p. 1).

concerned through the organisation. In order to allow for flexibility in the fruit and vegetables sector, it is appropriate to allow producers, under certain conditions, to market their production outside the producer organisation.

- (4) According to Article 26 of Implementing Regulation (EU) No 543/2011, the main activity of a producer organisation has to relate to the concentration of supply and the placing on the market of the products of its members for which it is recognised. It is necessary to clarify how this activity is carried out, in particular in case of outsourcing. Furthermore, in order to allow Member States to carry out the necessary controls, producer organisation should keep records which allow the Member State to verify that the producer organisation complied with its tasks.
- (5) Article 27 of Implementing Regulation (EU) No 543/2011 provides that producer organisations have to remain responsible for the activities outsourced. It is appropriate to specify in more detail the means of ensuring that outsourced activities remain under control of the producer organisation that has outsourced those activities.
- (6) Article 31 of Implementing Regulation (EU) No 543/2011 provides that Member States have to take all measures they consider necessary in order to avoid any abuse of power or influence by one or several members of a producer organisation. Producer organisations should provide evidence to Member States of their democratic accountability with regard to their producer members. To this end, the maximum percentage of voting rights and shares any individual or legal person may hold in a producer organisation should be limited.
- (7) Article 153(2)(b) of Regulation (EU) No 1308/2013 provides for the statutes of a producer organisation to impose on its members a financial contribution needed to finance it. In order to ensure that the producer organisation's members pay the financial contributions required for the establishment and replenishment of the operational fund provided for in Article 32 of that Regulation, it is necessary to provide for the inclusion of such obligation in the statutes of the producer organisation.
- (8) In order to avoid situations where crisis prevention and management measures give rise to uneven funding within an association of producer organisations, ceilings for a crisis management and prevention expenditure under the operational programmes of associations of producer organisations should be calculated at the level of each member producer organisation. In addition, conditions for replanting of orchards as crisis prevention and management measure should also be established. In order to avoid the uneven funding of operational programmes, a maximum percentage of expenditure that can be dedicated to replanting of orchards should be fixed.
- (9) Article 114 of Implementing Regulation (EU) No 543/2011 establishes the sanctions to be applied in case of non-respect of the recognition criteria. Pursuant to Article 154(4) of Regulation (EU) No 1308/2013, Member States have to carry out checks at regular intervals to ascertain that producer organisations comply with the recognition criteria, impose penalties on such organisations in the event of non-compliance or irregularities and decide, where necessary, to withdraw the recognition. A system which distinguishes between substantial and minor failures to comply with the recognition criteria would be more efficient and avoid divergent interpretations by Member States. It is therefore appropriate to establish a simplified procedure and progressive sanctioning as provided for in Article 64 of Regulation (EU) No 1306/2013 to prevent producer organisations which cease to meet recognition criteria to unduly benefit from Union support.

- (10) Article 181 of Regulation (EU) No 1308/2013 provides for the application of the Customs Code for the clearance of goods subject to the entry price system. As the goods in question are perishable and their value at the moment of customs clearance is not always established, it is necessary to allow the Commission to adopt rules for the purpose of checking the veracity of the declared entry price of a consignment against a flat-rate import value to accelerate the custom clearance procedures. Furthermore, experience gained in the application of the entry price system has shown as appropriate to request the lodging of a security when the custom value determined in accordance with the transaction value referred to in Article 29 of Council Regulation (EEC) No 2913/92⁵ exceeds by more than 8% the standard import value calculated by the Commission.
- (11) Implementing Regulation (EU) No 543/2011 should therefore be amended accordingly.
- (12) In order to ensure a smooth transition for the operational programmes approved under Regulation (EC) No 1234/2007 into the new rules under Regulation (EU) No 1308/2013, transitional provisions should be provided for.
- (13) The provisions on crisis prevention and management should apply from 1 January 2014, i.e. the date from which the related new provisions of Regulation (EU) No 1308/2013 apply. In order to allow producer organisations to adapt to the new rules on the requirements for the outsourcing activities and democratic accountability, the relevant provisions should apply only as from 1 January 2015. Article 181 of Regulation (EU) No 1308/2013 applies from 1 October 2014 on and hence the corresponding new provisions of this Regulation on checking the veracity of the declared entry price of a consignment and on conditions for lodging a security should apply from the same date,

HAS ADOPTED THIS REGULATION:

Article 1

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

1. In Article 26(1), the following second and third subparagraphs are added:

‘The placing on the market shall be carried out by the producer organisation, or under the control of the producer organisation in the case of outsourcing as set out in Article 27. It shall include the decision on the product to be sold, the choice of the distribution channel and unless the sale is done by means of auction, the negotiation on its quantity and price.

Producer organisations shall keep records, including accounting documents, for at least 5 years, which demonstrate that the producer organisation concentrated supply and placed on the market members' products for which it is recognized.’
2. The following Article 26a is inserted:

‘Article 26a

Marketing of the production outside the producer organisation

⁵ Council Regulation (EEC) No 2913/1992 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).

Where the producer organisation so authorises and where this is in compliance with the terms and conditions laid down by the producer organisation, the producer members may:

- (1) sell no more than a fixed percentage of their production or products directly or outside their holdings to consumers for their personal needs, such percentages being fixed by Member States at not less than 10 %;
- (2) market themselves or through another producer organisation designated by their own organisation, quantities of products which are marginal in relation to the volume of marketable production of their organisation;
- (3) market themselves or through another producer organisation designated by their own organisation products which, because of their characteristics, are not normally covered by the commercial activities of the producer organisation concerned.'

3. Article 27 is replaced by the following:

'Article 27

Outsourcing

- (1) The activities that a Member State may permit to be outsourced in accordance with Article 155 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council* shall relate to the producer organisations' objectives as set out in Article 152(1)(c) of that Regulation and may include, among others, collecting, storing, packaging and marketing the product of the members of the producer organisation.
- (2) A producer organisation outsourcing an activity shall enter into a commercial arrangement by way of a written contract with another entity, including one or several of its members or a subsidiary, for the purpose of carrying out of the activity concerned. The producer organisation shall remain responsible for ensuring the carrying out of the outsourced activity and overall management control and supervision of the commercial arrangement for the carrying out of the activity.
- (3) The overall management control and supervision referred to in paragraph 2 shall be effective and require that the outsourcing contract:
 - (a) enables the producer organisation to issue binding instructions and includes provisions enabling the producer organisation to terminate the contract if the service provider does not meet the terms and conditions of the outsourcing contract,
 - (b) lays down detailed terms and conditions, including reporting obligations and deadlines which enable the producer organisation to evaluate and practise genuine control over the outsourced activities.

Outsourcing contracts, as well as the reports referred to in point (b) shall be kept by the producer organisation for at least 5 years for the purpose of *ex-post* checks and be accessible to all members on request.

* Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/01 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671).'

4. Article 31 is replaced by the following:

‘Article 31

Democratic accountability of producer organisations

- (1) Member States shall set a maximum percentage of voting rights and shares which any individual or legal person may hold in a producer organisation. The maximum percentage of voting rights and shares must be below 50% of the total voting rights and below 50% of the shares. In duly justified cases, Member States may set a higher maximum percentage of shares that a legal person may hold in a producer organisation provided that abuse of power of such legal person in any case is avoided.

By way of derogation from the first subparagraph, in the case of producer organisations implementing an operational programme on [dd.mm.yyyy] [OPOCE insert date of entry into force of this delegated act], the maximum percentage of shares fixed by the Member State in application of the first subparagraph shall only apply after the end of the operational programme.

- (2) Member States’ authorities shall carry out checks on voting rights and shareholdings, including checks on the identities of the individuals or legal persons holding the shares of the members of the producer organisation which are legal persons themselves.
- (3) Where a producer organisation is a clearly defined part of a legal entity, Member States shall adopt measures to restrict or prohibit the powers of that legal entity to modify, approve or reject decisions of the producer organisation.’

5. In Article 53, the following paragraph 3 is added:

‘3. The statutes of a producer organisation in the fruit and vegetables sector shall require its producer members to pay the financial contributions provided for in its rules of association for the establishment and replenishment of the operational fund provided for in Article 32 of Regulation (EU) No 1308/2013.

6. In Article 62, the following paragraph 5 is added:

‘5. The ceiling for the crisis management and prevention expenditure, referred to in fourth paragraph of Article 33(3) of Regulation (EU) No 1308/2013, under the operational programmes of associations of producer organisations shall be calculated at the level of each member producer organisation.’

7. The following Article 89a is inserted:

‘Article 89a

Replanting of orchards following mandatory grubbing-up

Where Member States include in their national strategy the replanting of orchards, following mandatory grubbing-up for health or phytosanitary reasons as a crisis measure, they shall determine the species and, where necessary, the varieties eligible for and the conditions relating to the application of that measure. In case of grubbing-

up for phytosanitary reasons, the measures taken by Member States for the replanting of orchards shall comply with Council Directive 2000/29/EC*.

Replanting of orchards shall not cover more than 20% of the total expenditure under operational programmes. Member States may decide to set up a lower percentage.

* Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (OJ L 169, 10.7.2000, p. 1).'

8. Article 114 is replaced by the following:

Article 114

Non-respect of recognition criteria

- (1) If a Member State has established that a producer organisation fails to respect one of the recognition criteria linked to the requirements of Articles 21, 23, 26(1) and (2) and Article 31, it shall send to the producer organisation in question no later than 2 months after the failure has been identified, by registered delivery, a warning letter stating the failure identified, the corrective measures and the time periods within which these measures shall be taken, which shall not exceed 4 months. As from the moment a failure is established, Member States shall suspend payments of aid until the corrective measures are taken to their satisfaction.
- (2) A failure to respect recognition criteria referred to in paragraph 1 within the time period fixed by the Member State shall lead to the suspension of the recognition of the producer organisation. The Member State shall notify the producer organisation of the period of suspension, which shall not exceed 12 months from the date of the receipt of the warning letter by the producer organisation. This is without prejudice to the application of horizontal national legislation which may provide for the suspension of such an action following the commencement of connected legal proceedings.

During the suspension of the recognition, the producer organisation may continue its activity, but aid payments shall be withheld until the suspension of the recognition is lifted. The yearly aid amount shall be reduced by 2% for each started calendar month during which recognition has been suspended.

The suspension shall end on the day of the check which shows that the recognition criteria in question have been fulfilled.
- (3) If the criteria are not fulfilled by the end of the period of suspension set by the competent authority of the Member State, the Member State shall withdraw the recognition with effect from the date from which the conditions for recognition were not fulfilled, or, if it is not possible to identify that date, from the date when the failure was established. This is without prejudice to the application of horizontal national legislation which may provide for the suspension of such an action following the commencement of connected legal proceedings. Outstanding aid shall not be paid and unduly paid aid shall be recovered.
- (4) If a Member State has established that a producer organisation fails to respect any other of the recognition criteria laid down in Article 154 of Regulation (EU) No 1308/2013 other than those mentioned in paragraph 1, it shall send to the producer organisation in question, no later than 2 months after the failure

has been established, by registered delivery, a warning letter stating the failure identified, the corrective measures and the time periods within which these measures shall be taken, which shall not exceed 4 months.

- (5) A failure to take the corrective measures referred to in paragraph 4 within the time period fixed by the Member State shall lead to a suspension of payments and a reduction of the yearly aid amount by 1% for each started calendar month that exceeds that time period. This is without prejudice to the application of horizontal national legislation which may provide for the suspension of such an action following the commencement of connected legal proceedings.
- (6) However, when a producer organisation delivers to the Member State proof that due to natural disasters, adverse climatic events, diseases or pest infestations, despite having undertaken the necessary risk prevention measures it is not able to respect the recognition criteria laid down in Article 154(1)(b) of Regulation (EU) No 1308/2013 in respect of the minimum volume or value of marketable production laid down by Member States, the Member State may, for the year in question, derogate from minimum volume or value of marketable production for this producer organisation.
- (7) In cases where paragraphs 1, 2, 4 and 5 apply, Member States may make payments after the deadline set out in Article 70 where this is necessary for applying this Article. However, these payments may not be made later than 15 October of the second year following the year of implementation of the programme.'

9. Article 137 is replaced by the following:

'Article 137

Entry price basis

- (1) Article 181(1) of Regulation (EU) No 1308/2013 shall apply to the products listed in Annex XVI.
- (2) When the custom value of the products listed in Part A of Annex XVI is determined in accordance with the transaction value referred to in Article 29 of Regulation (EEC) No 2913/92 and that custom value is higher by more than 8% than the flat-rate calculated by the Commission as a standard import value at the time the declaration of release of the products for free circulation is made, the importer must lodge the security referred to in Article 248(1) of Regulation (EEC) No 2454/93. For this purpose, the amount of import duty for which the products listed in Part A of Annex XVI may finally be liable, shall be the amount of the duty due if the product in question had been classified on the basis of the standard import value concerned.

The first subparagraph shall not apply when the standard import value is higher than the entry prices listed in Annex 2 of Section I of Part III of Annex I to Council Regulation (EEC) No 2658/87*, and where the declarant requests the immediate entry in the accounts of the amount of duties to which the goods may ultimately be liable instead of lodging the security.

- (3) When the custom value of the products listed in Part A of Annex XVI is calculated in accordance with Article 30(2)(c) of Regulation (EEC) No 2913/92, the duty shall be deducted as provided for in Article 136(1) of this

Regulation. In that case, the importer shall lodge a security as referred to in Article 248(1) of Regulation (EEC) No 2454/93, equal to the amount of duty which he would have paid if the classification of the products had been made on the basis of the standard import value applicable.

- (4) The custom value of the goods imported on consignment is directly determined in accordance with Article 30(2)(c) of Regulation (EEC) No 2913/92, and for this purpose, the standard import value calculated in accordance with Article 136 applies during the periods in force.
- (5) The importer shall have one month from the sale of the products in question, subject to a limit of four months from the date of acceptance of the declaration of release for free circulation, to prove that the lot was disposed of under the conditions confirming the correctness of the prices referred to in Article 29 of Regulation (EEC) No 2913/92, or to determine the customs value referred to in Article 30(2)(c) of that Regulation. Failure to meet one of these deadlines shall entail the loss of the security lodged, without prejudice to the application of paragraph 6.

The security lodged shall be released to the extent that proof of the conditions of disposal is provided to the satisfaction of the customs authorities. Otherwise the security shall be forfeit by way of payment of the import duties.

In order to prove that the lot was disposed of under the conditions set out in the first subparagraph, the importer shall make available, in addition to the invoice, all documents needed for the carrying out of the relevant customs controls in relation to the sale and disposal of each product of the lot in question, including documents relating to the transport, insurance, handling and storage of the lot.

Where the marketing standards referred to in Article 3 require the product variety or the commercial type of the fruit and vegetables to be indicated on the packaging, the product variety or the commercial type of the fruit and vegetables that form part of the lot shall be indicated on documents related to transport, invoices and the delivery order.

- (6) The time limit of four months referred to in the first subparagraph of paragraph 5 may be extended by the competent authorities of the Member State by a maximum of three months at the request of the importer, which must be duly justified.

If on verification the competent authorities of the Member States establish that the requirements of this Article have not been met, they shall recover the duty due in accordance with Article 220 of Regulation (EEC) No 2913/92. The amount of the duty to be recovered or remaining to be recovered shall include interest from the date the goods were released for free circulation up to the date of recovery. The interest rate applied shall be that in force for recovery operations under national law.

* Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).'

Article 2

Transitional rules

Where a Member State approved an operational programme pursuant to the third subparagraph of Article 64(2) of Implementing Regulation (EU) No 543/2011 before 20 January 2014, that operational programme shall be deemed approved under Regulation (EC) No 1234/2007.

Without prejudice to Articles 65 and 66 of Implementing Regulation (EU) No 543/2011, at the request of a producer organisation, an operational programme approved under Regulation (EC) No 1234/2007 may:

- (a) continue to run until its end;
- (b) be modified to meet the requirements of Regulation (EU) No 1308/2013; or
- (c) be replaced by a new operational programme approved under Regulation (EU) No 1308/2013.

Article 3

Entry into force and application

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

Article 1(6) and (7) and Article 2 shall apply from 1 January 2014.

Article 1(9) shall apply from 1 October 2014.

Article 1(3) and (4) shall apply from 1 January 2015.

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

Done at Brussels, 11.3.2014

For the Commission
The President
José Manuel BARROSO