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#### COVER NOTE

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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 13 March 2017

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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No. Cion doc.: C(2017) 1528 final

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Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 13.3.2017  
supplementing Regulation (EU) No 1308/2013 of the European Parliament  
and of the Council with regard to the fruit and vegetables and processed  
fruit and vegetables sectors and supplementing Regulation (EU) No  
1306/2013 of the European Parliament and of the Council with regard to  
penalties to be applied in those sectors and amending Commission  
Implementing Regulation (EU) No 543/2011

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Delegations will find attached document C(2017) 1528 final.

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Encl.: C(2017) 1528 final



Brussels, 13.3.2017  
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**COMMISSION DELEGATED REGULATION (EU) .../...**

**of 13.3.2017**

**supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the fruit and vegetables and processed fruit and vegetables sectors and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to penalties to be applied in those sectors and amending Commission Implementing Regulation (EU) No 543/2011**

## 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 laid down new rules regarding the producer organisations in the Fruit and Vegetables Sector. This Regulation also empowers the Commission to adopt delegated and implementing acts.

The purpose of this delegated act is to supplement Regulation (EU) No 1308/2013 as regards the recognition criteria of producer organisations in the fruit and vegetables sector, the associations of producer organisations, operational funds and operational programmes, crisis prevention and management measures, national financial assistance, reports and notifications, penalties, extension of rules, entry price system and import duties.

This delegated act amends the corresponding Articles of 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.

### **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

Consultations, involving experts from all the 28 Member States have been carried out within the Expert Group on delegated acts under the single common organisation of the markets. Considering the large number of Articles, during the first five meetings (14 April, 5 May, 9 June, 3 and 27 July 2015) the revised texts were discussed by bundles of Articles. These meetings allowed for a presentation of the Commission's ideas on the scope of this act and an exchange of views. At the sixth meeting held on 29 September 2015 the completed versions of the draft texts both for the delegated and implementing acts were presented for the first time. The discussion continued with the Expert Group at meetings held on 12 and 27 October, 24 November and 15 December 2015 and 19 January, 15 February, 15 March, 19 April, 17 May, 14 June, 12, 19 July and 25 August 2016. The exercise consisted in clarifying the Commission's approach and hearing experts' views. The draft was then refined taking into account the observations and comments made orally during those meetings and sent in writing to the Commission. The draft versions of the present act were transmitted to the European Parliament and to the Council when the Expert Group meetings were convened.

The draft delegated regulation was posted in the Better Regulation portal from 13 January 2017 to 10 February 2017 and received feedback from 55 stakeholders (10 related to the draft implementing regulation). Feedback was positive in general and consisted in particular of suggestions for specific actions, which were discussed already with Member States and have not been taken into account in particular due to considerable increase of the level of expenditure and due to the risk for the EAGF. However two of the issues raised in several contributions have been taken on board. The first one relates to Article 12 of this act on Marketing of the production outside the producer organisation where the percentage of the production of any producer member marketed outside the producer organisation shall not exceed 25% which can be calculated either in terms of volume or in terms of value. This is introduced to take into account the sales particularities in some Member States. The second modification concerns Article 78 on notification of force majeure where based on the

comments received the period for notification was extended from originally proposed 10 working days to 30 working days of the date on which the case of force majeure took place.

### **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

This delegated act contains provisions supplementing certain rules of Regulations (EU) No 1308/2013 and (EU) No 1306/2013 that are necessary to ensure the proper functioning of the producer organisations in the Fruit and Vegetables Sector in the new legal framework. It also adds clarity to certain provisions and introduces elements of simplification.

The act amends the corresponding Articles of 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. Articles on marketing standards are not amended because they will be reviewed in a wider framework. To allow for a smooth implementation of the amendments, transitional rules are included as well as a sufficient period of time between publication and application of the Regulation.

COMMISSION DELEGATED REGULATION (EU) .../...

of 13.3.2017

**supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the fruit and vegetables and processed fruit and vegetables sectors and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to penalties to be applied in those sectors and amending Commission Implementing Regulation (EU) No 543/2011**

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 1037/2001 and (EC) No 1234/2007<sup>1</sup>, and in particular Article 37(a)(i), (ii), (iii) and (vi), (b), (c), (d)(i), (iii) to (vi), (viii), (x), (xi) and (xii) and (e)(i), Article 173(1)(b), (c), (d) and (f) to (j), Article 181(2), Article 223(2)(a) 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) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008<sup>2</sup>, and in particular Articles 62(1) and 64(6)(a) thereof,

Whereas:

- (1) Regulation (EU) No 1308/2013 has replaced Council Regulation (EC) No 1234/2007<sup>3</sup> and lays down new rules concerning the fruit and vegetables and processed fruit and vegetables sectors. It also empowers the Commission to adopt delegated and implementing acts in that respect. Those acts should replace the corresponding provisions of Commission Implementing Regulation (EU) No 543/2011<sup>4</sup>.
- (2) In order to strengthen the bargaining power of fruit and vegetables producers and to foster a fairer distribution of added value along the supply chain, the recognition of producer organisations and their associations should be encouraged. This has to be achieved while respecting national legal and administrative structures.

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<sup>1</sup> OJ L 347, 20.12.2013, p. 671.

<sup>2</sup> OJ L 347, 20.12.2013, p. 549.

<sup>3</sup> 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).

<sup>4</sup> 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).

- (3) Provisions for the recognition of producer organisations in respect of the products they request should be laid down. Where the recognition is requested for products intended solely for processing, it should be ensured that they are indeed delivered for processing. Producer organisations should have at their disposal the structures necessary to ensure their functioning. Moreover, to implement an operational programme, producer organisations should be required to achieve a minimum value of marketed production, which should be laid down by the Member State in order to ensure efficiency of the support received and thereby help strengthen the bargaining power of the fruit and vegetable producers.
- (4) In order to help achieve the goals of the fruit and vegetables regime and to ensure that producer organisations carry out their work in a sustainable and effective way, there needs to be stability within producer organisations. Membership of producer organisation should therefore be for a minimum period. It should be left to Member States to lay down the notice periods and the dates on which resignation from membership can take effect.
- (5) Where a producer organisation is recognised for a product for which the provision of technical means is required, it should be allowed to provide those means through its members, through subsidiaries, through an association of producer organisations of which it is a member or by outsourcing.
- (6) The main and essential activities of a producer organisation should relate to the concentration of supply and the placing on the market of their products so that the bargaining power of fruit and vegetables producers is strengthened and a fairer distribution of the resulting benefits along the supply chain is achieved. However, producer organisations should be allowed to engage in other activities, whether or not of a commercial nature. Cooperation between producer organisations should be encouraged and in that regard producer organisations should be allowed to market fruit and vegetables bought exclusively from another recognised producer organisation provided the value of this produce is left out of the calculations of value of the marketed production both for the purposes of the main activity and for other activities.
- (7) Although the main activity of a producer organisation is the concentration of supply and the placing on the market of the products of its members for which it is recognised, in some cases the producer members should be allowed to sell a certain percentage of their production outside the producer organisation where the producer organisation so authorises and where this is in compliance with the terms and conditions of the Member State and the producer organisation. The total percentage of sales outside the producer organisation should not exceed a maximum threshold.
- (8) Provisions regarding outsourcing where the activities are outsourced to entities closely related to the producer organisations should be further specified.
- (9) In order to facilitate the concentration of supply, the merger of existing producer organisations to form new ones should be encouraged by providing rules for the merger of the operational programmes of the merged organisations.
- (10) While respecting the principles whereby a producer organisation must be formed on the initiative of producers themselves and scrutinised by the producers, it should be left to Member States to lay down the conditions under which other natural or legal

persons may be accepted as members of a producer organisation or an association of producer organisations.

- (11) In order to ensure that producer organisations genuinely represent a minimum number of producers, Member States should take measures to ensure that a minority of members who may account for the bulk of production or the shares or capital in the producer organisation do not unduly dominate its management and operation. Democratic accountability is already ensured where entities have a legal form requiring it under national legislation before they are recognised as a producer organisation. In other cases, Member States should set a maximum percentage of voting rights or shareholdings and carry out relevant checks.
- (12) Rules should be laid down on the recognition and functioning of associations of producer organisations, transnational producer organisations and transnational associations of producer organisations. For the sake of consistency, they should, as far as possible, reflect the rules laid down for producer organisations.
- (13) To facilitate the use of the scheme of support to operational programmes, the value of marketed production of producer organisations should be clearly defined, including rules on which products may be taken into account and the marketing stage at which the value of production is to be calculated. For control purposes and for the sake of simplification, it is appropriate to use a flat rate for the purpose of calculating the value of fruit and vegetables intended for processing. This flat rate should be calculated on the basis of the value of the basic product, namely the fruit and vegetables intended for processing, to which is added the value of only those activities which are not genuine processing activities. Since the volumes of fruit and vegetables needed for the production of processed fruit and vegetables differ largely between groups of products, those differences should be reflected in the applicable flat rates. In the case of fruit and vegetables intended for processing that are transformed into processed aromatic herbs and paprika powder, it is also appropriate to introduce a flat rate for the purpose of calculating the value of fruit and vegetables intended for processing, which represents the value of the basic product only. The method of calculation of the value of marketed production should attenuate yearly fluctuations or insufficient data and avoid double counting, in particular in the case of transnational producer organisations and their associations. To prevent misuse of the scheme, producer organisations should not be permitted in general to change the methodology for fixing the reference period within the duration of a programme.
- (14) Producer organisations may hold shares or capital in subsidiaries which help to increase the added value of the production of their members. Rules should be fixed for calculating the value of such marketed production. The main activities of such subsidiaries should be the same as those of the producer organisation.
- (15) To ensure the correct use of aid, rules should be laid down for the management and bookkeeping of operational funds and members' financial contributions, allowing for as much flexibility as possible on condition that all producers may take advantage of the operational fund and may democratically participate in decisions on its use.
- (16) Provisions should be laid down establishing the scope and structure of the national strategy for sustainable operational programmes and the national framework for environmental actions. The aim should be to optimise the allocation of financial

resources and to improve the quality of the strategy. Provisions should also be laid down to avoid double funding of the same action by other support schemes such as rural development or promotion programmes.

- (17) For reasons of financial security and legal certainty, a list of operations and expenditure which may not be covered and a non-exhaustive list of operations which may be covered by operational programmes should be drawn up. Provisions regarding eligible expenditure, the use of flat-rates and scales of unit costs as well as investments should be laid down. Article 33 of Regulation (EU) No 1308/2013 establishes a number of objectives for operational programmes including objectives concerning the products produced both in fresh and in processed form. With a view to ensuring that those objectives are achieved, it is appropriate that the conditions under which actions related to the transformation of fruit and vegetables into processed fruit and vegetables may be eligible for support should be laid down. In respect of investments implemented on individual holdings, provisions for the recovery of the residual value should be laid down for cases where a member resigns from the producer organisation.
- (18) Although operational programmes of associations of producer organisations are to be subject to the same rules as operational programmes of producer organisations, some requirements should be applied at the level of the member producer organisations.
- (19) In order to allow appropriate evaluation of the information by the competent authorities and measures and actions to be included in, or excluded from, the programmes, procedures for the presentation and approval of operational programmes, including deadlines, should be laid down. Since the programmes are managed on an annual basis, it should be provided that programmes not approved before a given date are postponed for a year.
- (20) There should be a procedure for the amendment of operational programmes for subsequent years, so that they can be adjusted to take account of any new conditions which could not have been foreseen when they were initially presented. In addition, it should be possible for measures and amounts of the operational fund to be changed during the year of execution of a programme. To ensure that the approved programmes maintain their overall objectives, all such changes should be subject to certain limits and conditions to be defined by Member States and to obligatory notification of changes to the competent authorities.
- (21) To prevent cash-flow difficulties, a system of advance payments accompanied by appropriate securities should be available to producer organisations. In case of a cessation of an operational programme or of withdrawal of recognition, be it voluntary or compulsory, or of dissolution of a producer organisation, it has to be ensured that the aims for which aid has been paid have been attained, otherwise the aid paid should be reimbursed to the European Agricultural Guarantee Fund.
- (22) The production of fruit and vegetables is unpredictable and the products are perishable. Surplus on the market, even if it is not too large, can significantly disturb the market. Rules on the scope and application of crisis management and prevention measures in respect of the products referred to in Article 1(2)(i) of Regulation (EU) No 1308/2013 should therefore be laid down. As far as possible, those rules should provide for flexibility and for rapid application in crises and therefore should allow decisions to be taken by Member States and producer organisations themselves.



Nevertheless, those rules should guard against abuse of Union financial assistance and should therefore provide for limits on the use of certain measures, including in financial terms. They should also ensure that phytosanitary and environmental requirements are duly respected.

- (23) As regards withdrawals from the market, rules should be adopted taking into account the potential importance of that measure. In particular, rules should be laid down providing for a system of increased support for fruit and vegetables withdrawn from the market which are distributed free of charge as humanitarian aid by charitable organisations and certain other establishments and institutions. In order to facilitate free distribution, it is appropriate to provide for the possibility which allows charitable organisations and institutions to request a symbolic contribution from the final recipients of the withdrawn products. In addition, maximum levels of support for market withdrawals should be fixed in order to ensure that withdrawals do not become a permanent alternative outlet for products compared to placing them on the market. In this context, it is appropriate to continue using common levels of support for the main products. For other products, where experience has not yet shown any risk of excessive withdrawals, it is appropriate to fix maximum levels of support as a percentage of the average of recorded prices in each Member State. In all cases, however, for similar reasons, it is appropriate to set a quantitative limit of withdrawals per product per producer organisation.
- (24) On the basis of past experience, the provisions on green harvesting and non-harvesting should be further elaborated. Similarly, the provisions on support for the administrative costs of setting up mutual funds and replanting of orchards following mandatory grubbing-up should be simplified.
- (25) Rules should be adopted concerning the national financial assistance that Member States may grant in regions of the Union where the degree of organisation of producers is particularly low, including rules on how the degree of organisation is calculated and a low degree of organisation is confirmed. Those rules should reflect those currently applicable.
- (26) Support to producer groups has become part of the rural development policy under Regulation (EU) No 1305/2013 of the European Parliament and of the Council<sup>5</sup>, but rules on notifications regarding producer groups formed pursuant to Article 125e of Regulation (EC) No 1234/2007 that are necessary to implement the provisions of the aid scheme should be maintained in this Regulation.
- (27) Provisions concerning the type, format and means of notifications necessary to implement this Regulation should be laid down. Those provisions should include notifications from producers and producer organisations to the Member States and from the Member States to the Commission. Past experience regarding the data recorded allows for some simplification on the number and frequency of the data requested.
- (28) Provision should be made for appropriate monitoring and evaluation of ongoing programmes and schemes in order to assess their effectiveness and efficiency by both

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<sup>5</sup> Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (OJ L 347, 20.12.2013, p. 487).

producer organisations and Member States. It is possible to reduce the number and detail of the current requirements without affecting the quality of the assessment.

- (29) Measures should be laid down as regards the appropriate administrative penalties applicable where irregularities are found. Those measures should involve both specific checks and administrative penalties laid down at Union level as well as additional national checks and administrative penalties.
- (30) Procedural provisions should be adopted concerning the conditions under which the rules issued by producer organisations, associations of producer organisations and interbranch organisations in the fruit and vegetables sector may be extended to all operators established in a specific economic area. In respect of produce sold on the tree it should be made clear which rules are to be extended to the producers and the buyers, respectively.
- (31) Rules concerning the entry price system for fruit and vegetables should be adopted. The fact that most of the perishable fruit and vegetables concerned are supplied on consignment creates special difficulties for determining their value. The possible methods for the calculation of the entry price on the basis of which imported products are classified in the common customs tariff should be set. There should also be rules for the provision of a guarantee in certain circumstances to ensure that the system is correctly applied.
- (32) Provisions concerning notification of prices and quantities of products imported need to be laid down to ensure that the necessary information reaches the Commission in a timely and coherent manner. Rules on the notification of cases of *force majeure* need to be provided for to address the consequences of such situations.
- (33) For reasons of clarity and legal certainty, the provisions of Implementing Regulation (EU) No 543/2011 that are replaced by this Delegated Regulation and Commission Implementing Regulation (EU) 2017/xxx<sup>6</sup> should be deleted. The provisions of Implementing Regulation (EU) No 543/2011 on marketing standards should be maintained until they are replaced. Provisions concerning producer groups formed pursuant to Article 125e of Regulation (EC) No 1234/2007 directly should be maintained, while some other Articles concerning them indirectly should continue to apply until the end of the implementation of their recognition plan and their recognition as producer organisation.
- (34) Transitional provisions should be laid down in order to ensure a smooth transition from the former requirements to the new ones. Producer organisations should have the possibility to finalise the on-going operational programmes under the previous rules.
- (35) This Regulation should enter into force on and apply from the seventh day following that of its publication in the *Official Journal of the European Union*.

HAS ADOPTED THIS REGULATION:

## TITLE I

### INTRODUCTORY PROVISIONS

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<sup>6</sup> Commission Implementing Regulation xxx/xxx of xxx [full title of parallel IA] (OJ L xxx, xxx, p. xxx).

## *Article 1*

### **Subject matter and scope**

This Regulation supplements Regulation (EU) No 1308/2013 as regards the fruit and vegetables and processed fruit and vegetables sectors as referred to in Article 1(2)(i) and (j) of that Regulation, with the exception of marketing standards, and supplements Regulation (EU) No 1306/2013 as regards penalties to be applied in those sectors.

However, Title II of this Regulation shall only apply to products of the fruit and vegetables sector as referred to in Article 1(2)(i) of Regulation (EU) No 1308/2013 and to such products intended for processing.

## TITLE II

### **PRODUCER ORGANISATIONS**

#### *CHAPTER I*

#### ***Requirements and recognition***

##### Section 1

#### **Definitions**

#### *Article 2*

#### **Definitions**

For the purposes of this Title the following definitions shall apply:

- (a) ‘producer’ means a farmer within the meaning of Article 4(1)(a) of Regulation (EU) No 1307/2013 of the European Parliament and of the Council<sup>7</sup> producing fruit and vegetables as referred to in Article 1(2)(i) of Regulation (EU) No 1308/2013 and such products intended solely for processing;
- (b) ‘producer member’ means a producer or legal entity constituted by producers that is a member of a producer organisation or association of producer organisations;
- (c) ‘subsidiary’ means a company in which one or more producer organisations or associations of producer organisations have taken shares or constituted capital and which contributes to the objectives of those organisations or associations;
- (d) ‘transnational producer organisation’ means any organisation in which at least one of the producers’ holdings is located in a Member State other than where the organisation has its head office;

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<sup>7</sup> Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ L 347, 20.12.2013, p. 608).

- (e) 'transnational association of producer organisations' means any association of producer organisations in which at least one of the associated organisations is located in a Member State other than where the association has its head office;
- (f) 'measure' means one of the following:
  - (i) actions aimed at the planning of production, including investments in physical assets;
  - (ii) actions aimed at improving or maintaining product quality, whether in a fresh or processed form, including investments in physical assets;
  - (iii) actions aimed at boosting the commercial value of products and improving marketing, including investments in physical assets, as well as promotion of the products, whether in a fresh or processed form, and communication activities other than promotion and communication activities falling under point (vi);
  - (iv) research and experimental production actions, including investments in physical assets;
  - (v) training and exchange of best practices actions, other than training falling under point (vi), and actions aimed at promoting access to advisory services and technical assistance;
  - (vi) any of the crisis prevention and management actions listed in the first subparagraph of Article 33(3) of Regulation (EU) No 1308/2013;
  - (vii) environmental actions as referred to in Article 33(5) of Regulation (EU) No 1308/2013, including investments in physical assets;
  - (viii) other actions, including investments in physical assets, other than those falling under points (i) to (vii) which fulfil one or more of the objectives referred to or set out in Article 33(1) of Regulation (EU) No 1308/2013;
- (g) 'action' means a specific activity or instrument aimed at contributing to one or more of the objectives referred to or set out in Article 33(1) of Regulation (EU) No 1308/2013;
- (h) 'investment in physical assets' means the acquisition of tangible assets aimed at contributing to one or more of the objectives referred to or set out in Article 33(1) of Regulation (EU) No 1308/2013;
- (i) 'by-product' means a product which results from preparation of a fruit or vegetable product which has a positive economic value but is not the main intended product;
- (j) 'preparation' means preparatory activities such as cleaning, cutting, peeling, trimming and drying of fruit and vegetables, without transforming them into processed fruit and vegetables;
- (k) 'interbranch basis' as referred to in Article 34(3)(b) of Regulation (EU) No 1308/2013 means activities pursuing one or more of the objectives listed in Article 157(1)(c) of that Regulation approved by the Member State and managed jointly by a producer

organisation or an association of producer organisations and at least one other actor in the food processing or distribution chain;

- (l) ‘baseline indicator’ means any indicator reflecting a state or trend existing at the start of a programming period which may provide information useful:
  - (i) in the analysis of the initial situation, in order to establish a national strategy for sustainable operational programmes or an operational programme;
  - (ii) as a reference against which the results and impact of a national strategy or an operational programme may be assessed; or
  - (iii) in interpreting the results and impact of a national strategy or an operational programme;
- (m) ‘specific costs’ means the additional costs, calculated as the difference between the conventional costs and the costs actually incurred, and income foregone resulting from an action, excluding additional income and costs savings.

## Section 2

### **Recognition criteria and other requirements**

#### *Article 3*

#### **Legal status of producer organisations**

Member States shall define the legal entities which may apply for recognition pursuant to Article 154 of Regulation (EU) No 1308/2013 in the light of their national legal and administrative structures. Where applicable, they shall also lay down provisions on clearly defined parts of legal entities which may apply for recognition pursuant to that Article. Member States may adopt complementary rules on recognition of producer organisations and on legal entities which may apply for recognition as producer organisations.

#### *Article 4*

#### **Product coverage**

1. Member States shall recognise producer organisations in respect of the product or the group of products specified in the application for recognition.

2. Member States shall recognise producer organisations in respect of the product or the group of products solely intended for processing where the producer organisations are able to ensure that such products are delivered for processing, whether through a system of supply contracts or otherwise.

#### *Article 5*

#### **Minimum number of members**

For the purposes of Article 154(1)(b) of Regulation (EU) No 1308/2013, Member States shall lay down a minimum number of members.

When laying down the minimum number of members of a producer organisation, Member States may provide that where an applicant for recognition is wholly or partly made up of members which are themselves legal entities or clearly defined parts of legal entities made up of producers, the minimum number of producers may be calculated on the basis of the number of producers associated with each of the legal entities or clearly defined parts of legal entities.

#### *Article 6*

### **Minimum length of membership**

1. The minimum membership period of a producer shall not be less than one year.
2. Resignation from membership shall be notified to the producer organisation in writing. Member States shall lay down the notice period, which shall not exceed six months, and the date on which resignation shall take effect.

#### *Article 7*

### **Structures and activities of producer organisations**

Member States shall verify that producer organisations have at their disposal the staff, infrastructure and equipment necessary to fulfil the requirements laid down in Articles 152, 154 and 160 of Regulation (EU) No 1308/2013 and to ensure their essential functioning, in particular as regards:

- (a) the knowledge of their members' production;
- (b) the technical means for collecting, sorting, storing and packaging the production of their members;
- (c) marketing the production of their members;
- (d) commercial and budgetary management; and
- (e) centralised cost-based accounting and a system of invoicing according to national law.

#### *Article 8*

### **Value or volume of marketable production**

1. For the purposes of Article 154(1)(b) of Regulation (EU) No 1308/2013, the value or volume of marketable production shall be calculated on the same basis as the value of marketed production set out in Articles 22 and 23 of this Regulation.
2. In circumstances when the historical data on marketed production of a member for the application of paragraph 1 is not sufficient, the value of the marketable production shall be equal to the actual value of marketed production during a period of 12 consecutive months.

Those 12 months shall fall within the three years preceding the year in which the application for recognition is submitted.

#### *Article 9*

### **Minimum value of marketed production**

For the purposes of Article 154(1)(b) of Regulation (EU) No 1308/2013, Member States shall, in addition to a minimum number of members, lay down a minimum value of marketed production for producer organisations implementing an operational programme.

#### *Article 10*

### **Provision of technical means**

For the purposes of Article 154(1)(c) of Regulation (EU) No 1308/2013 and Article 7(b) of this Regulation, a producer organisation which is recognised for a product for which the provision of technical means is necessary, shall be considered to fulfil its obligation in that regard, where it provides an adequate level of technical means itself or through its members, or through subsidiaries, or through an association of producer organisations of which it is a member or by outsourcing.

#### *Article 11*

### **Producer organisations' main activities**

1. The main activity of a producer organisation shall relate to the concentration of supply and the placing on the market of the products of its members for which it is recognised.

The placing on the market referred to in the first subparagraph 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 13. Placing on the market shall include among others the decision on the product to be sold, the way of selling and unless the sale is by means of auction, the negotiation of its quantity and price.

Producer organisations shall keep records, including accounting documents, for at least five years, which demonstrate that the producer organisation concentrated supply and placed on the market members' products for which it is recognised.

2. A producer organisation may sell products from producers that are not a member of a producer organisation or of an association of producer organisations, where it is recognised in respect of those products and provided that the economic value of that activity is below the value of its marketed production calculated in accordance with Article 22.

3. The marketing of fruit and vegetables that are bought directly from another producer organisation and of products for which the producer organisation is not recognised shall not be considered as forming part of the producer organisation's activities.

4. Where Article 22(8) applies, paragraph 2 of this Article shall apply *mutatis mutandis* to the subsidiaries concerned.

## Article 12

### Marketing of the production outside the producer organisation

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

- (a) sell products directly or outside their holdings to consumers for their personal needs;
- (b) market by 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 of the products concerned;
- (c) market by 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.

2. The percentage of the production of any producer member marketed outside the producer organisation shall not exceed 25% in volume or in value. However, Member States may set a lower percentage. Nevertheless, Member States may increase that percentage up to 40% in case of products covered by Council Regulation (EC) No 834/2007<sup>8</sup> or where producer members market their production through another producer organisation designated by their own producer organisation.

## Article 13

### Outsourcing

1. The activities that a Member State may permit to be outsourced in accordance with Article 155 of Regulation (EU) No 1308/2013 shall relate to the 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 written commercial arrangement by way of a contract, agreement or protocol 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.

However, the activity shall be considered as carried out by the producer organisation if it is carried out by an association of producer organisations or a cooperative whose members are themselves cooperatives where the producer organisation is a member thereof or by a subsidiary complying with the 90% requirement referred to in Article 22(8).

3. The overall management control and supervision referred to in the first subparagraph of paragraph 2 shall be effective and require that the outsourcing contract, agreement or protocol:

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<sup>8</sup> Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 (OJ L 189, 20.7.2007, p. 1).



- (a) enables the producer organisation to issue binding instructions and includes provisions enabling the producer organisation to terminate the contract, agreement or protocol if the service provider does not meet the terms and conditions of the outsourcing contract;
- (b) lays down detailed terms and conditions, including regular reporting obligations and deadlines which enable the producer organisation to exercise effective control over the outsourced activities.

Outsourcing contracts, agreements or protocols as well as the reports referred to in point (b) of the first subparagraph 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.

#### *Article 14*

### **Transnational producer organisations**

1. The head office of a transnational producer organisation shall be located in the Member State in which the organisation achieves the majority of the value of marketed production calculated in accordance with Articles 22 and 23.

Alternatively, the head office may be established in the Member State where the majority of producer members are located, if the Member States concerned so agree.

2. Where the transnational producer organisation implements an operational programme and where, at the moment of applying for a new operational programme, the majority of the value of marketed production is achieved in another Member State or where the majority of the producer members are located in a Member State other than that where the head office of that transnational producer organisation is located, the head office shall be maintained in the current Member State until the end of the implementation of the new operational programme.

However, if at the end of the implementation of that new operational programme, the majority of the value of marketed production is still achieved or the majority of the organisation's members are still located in a Member State other than that where the head office is currently located, the head office shall be transferred to that other Member State, unless the Member States concerned agree that the location of the head office shall not be changed.

3. The Member State in which the head office of the transnational producer organisation is located shall be responsible for the following:

- (a) recognising the transnational producer organisation;
- (b) approving the transnational producer organisation's operational programme;
- (c) establishing the necessary administrative cooperation with the other Member States in which the members are located with respect to compliance with the terms of recognition and the system of checks and administrative penalties. Those other Member States shall give all necessary assistance to the Member State in which the head office is located in due time; and

- (d) providing, on the request of a Member State in which the members are located, all relevant documentation, including any applicable legislation available, translated into the official language or one of the official languages of that Member State.

### *Article 15*

#### **Mergers of producer organisations**

1. Where producer organisations merge, the producer organisation resulting from the merger shall assume the rights and obligations of the individual producer organisations that merged. The Member State shall ensure that the new producer organisation complies with all recognition criteria and shall assign to it a new number for the purposes of the unique identification system as referred to in Article 22 of Implementing Regulation (EU) 2017/xxx.

The producer organisation resulting from the merger may either operate the programmes in parallel and separately until 1 January of the year following the merger, or merge the operational programmes from the moment of the merger.

Article 34 of this Regulation shall apply to operational programmes that are merged.

2. By way of derogation from the second subparagraph of paragraph 1, Member States may authorise on the basis of a duly substantiated request, operational programmes to continue to be implemented in parallel until they reach their natural conclusion.

### *Article 16*

#### **Non-producer members**

1. Member States may determine the conditions under which any natural or legal person who is not a producer may be accepted as a member of a producer organisation.

2. When setting the conditions referred to in paragraph 1, Member States shall ensure, in particular, compliance with Article 153(2)(c) and Article 159(a)(i) of Regulation (EU) No 1308/2013.

3. The natural or legal persons referred to in paragraph 1 shall not:

- (a) be taken into account for the recognition criteria;
- (b) benefit directly from the measures financed by the Union.

Member States may restrict or prohibit the natural or legal persons' right to vote on decisions relating to operational funds, in line with the conditions referred to in paragraph 1.

### *Article 17*

#### **Democratic accountability of producer organisations**

1. Where a producer organisation has a legal structure requiring democratic accountability under the applicable national legislation, it shall be considered to fulfill this requirement for the purposes of this Regulation unless the Member State decides otherwise.

2. For producer organisations other than the one referred to in paragraph 1, Member States shall set a maximum percentage of voting rights and shares or capital which any natural or legal person may hold in a producer organisation. The maximum percentage of voting rights and shares or capital shall be below 50 % of the total voting rights and below 50 % of the shares or capital.

In duly justified cases, Member States may set a higher maximum percentage of shares or capital that a legal person may hold in a producer organisation provided that measures are adopted to ensure that an abuse of power by such legal person is in any case avoided.

By way of derogation from the first subparagraph, in the case of producer organisations implementing an operational programme on 17 May 2014, the maximum percentage of shares or capital set by the Member State pursuant to the first subparagraph shall only apply after the end of that operational programme.

3. Member States' authorities shall carry out checks, based on a risk analysis, on voting rights and shareholdings. Where the members of the producer organisation are legal persons themselves, these checks shall include the identities of the natural or legal persons that hold shares or capital of the members.

4. 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.

### Section 3

#### **Associations of producer organisations**

##### *Article 18*

#### **Rules on producer organisations applicable to associations of producer organisations**

Articles 3, 6, 11(3), 13, 15 and 17 shall apply *mutatis mutandis* to associations of producer organisations. Where the association of producer organisations sells the products of its member producer organisations, Article 11(2) shall apply *mutatis mutandis*.

##### *Article 19*

#### **Recognition of associations of producer organisations**

1. Member States may recognise associations of producer organisations under Article 156 of Regulation (EU) No 1308/2013 in respect of the activity or activities concerning the product or the group of products specified in the application for recognition where the association of producer organisations is capable of carrying out effectively those activities.

2. An association of producer organisations recognised under Article 156 of Regulation (EU) No 1308/2013 may carry out any of the activities or functions of a producer organisation,

even when the marketing of the products concerned continues to be carried out by its members.

3. For a given product or group of products and activity, a producer organisation shall be a member only of one association of producer organisations that implements an operational programme.

4. Member States may adopt complementary rules on recognition of associations of producer organisations.

#### *Article 20*

##### **Members of associations of producer organisations who are not producer organisations**

1. Member States may determine the conditions under which natural or legal persons other than a recognised producer organisation may be a member of an association of producer organisations.

2. Members of a recognised association of producer organisations who are not recognised producer organisations shall not:

- (a) be taken into account for the recognition criteria;
- (b) benefit directly from the measures financed by the Union.

Member States may permit, restrict or prohibit those members' right to vote on decisions relating to operational programmes.

#### *Article 21*

##### **Transnational association of producer organisations**

1. The head office of a transnational association of producer organisations shall be located in the Member State in which the member producer organisations achieve the majority of the value of marketed production.

Alternatively, the head office may be established in the Member State where the majority of member producer organisations are located, if the Member States concerned so agree.

2. Where the transnational association of producer organisations implements an operational programme and where, at the moment of applying for a new operational programme, the majority of the value of marketed production is achieved in another Member State or where the majority of member producer organisations are located in a Member State other than that where the head office of that transnational association is located, the head office shall be maintained in the current Member State until the end of the implementation of the new operational programme.

However, if at the end of the implementation of that new operational programme, the majority of the value of marketed production is still achieved or the majority of member producer organisations are still located in a Member State other than that where the head office is

currently located, the head office shall be transferred to that other Member State, unless the Member States concerned agree that the location of the head office shall not be changed.

3. The Member State in which the head office of the transnational association of producer organisations is located shall be responsible for the following:

- (a) recognising the association;
- (b) approving, where applicable, the transnational association's operational programme;
- (c) establishing the necessary administrative cooperation with the other Member States in which the associated organisations are located with respect to compliance with the terms of recognition, the implementation of the operational programme by the member producer organisations and the system of checks and administrative penalties. Those other Member States shall give all necessary assistance to the Member State in which the head office is located; and
- (d) providing, on the request of a Member State in which the members are located, all relevant documentation, including any applicable legislation available, translated into the official language or one of the official languages of that Member State.

## *CHAPTER II*

### *Operational funds and operational programmes*

#### Section 1

#### **Value of marketed production**

##### *Article 22*

#### **Basis for calculation**

1. The value of marketed production for a producer organisation shall be calculated on the basis of the production of the producer organisation itself and its producer members, and shall only include the production of those fruit and vegetables for which the producer organisation is recognised. The value of marketed production may include fruit and vegetables that are not required to conform to the marketing standards, where those standards do not apply.

The value of marketed production for an association of producer organisations shall be calculated on the basis of the production marketed by the association of producer organisations itself and by its member producer organisations, and shall only include the production of those fruit and vegetables for which the association of producer organisations is recognised. In making this calculation duplicate counting shall be avoided.

2. The value of the marketed production shall not include the value of processed fruit and vegetables or any other product that is not a product of the fruit and vegetables sector.

However, the value of the marketed production of fruit and vegetables intended for processing, which have been transformed into one of the processed fruit and vegetable products listed in Part X of Annex I to Regulation (EU) No 1308/2013 or any other processed product referred to in this Article and described further in Annex I to this Regulation, by

either a producer organisation, an association of producer organisations or their producer members or subsidiaries complying with the 90% requirement referred to in paragraph 8 of this Article, either by themselves or through outsourcing, shall be calculated as a flat rate in percentage applied to the invoiced value of those processed products. That flat rate shall be:

- (a) 53 % for fruit juices;
- (b) 73 % for concentrated juices;
- (c) 77 % for tomato concentrate;
- (d) 62 % for frozen fruit and vegetables;
- (e) 48 % for canned fruit and vegetables;
- (f) 70 % for canned mushrooms of the genus *Agaricus*;
- (g) 81 % for fruits provisionally preserved in brine;
- (h) 81 % for dried fruits;
- (i) 27 % for processed fruit and vegetables other than those referred to in points (a) to (h);
- (j) 12 % for processed aromatic herbs;
- (k) 41 % for paprika powder.

3. Member States may allow producer organisations to include the value of the by-products in the value of marketed production.

4. The value of marketed production shall include the value of market withdrawals disposed of as provided for in Article 34(4) of Regulation (EU) No 1308/2013. The value shall be calculated on the basis of the average price of those products marketed by the producer organisation in the concerned period.

5. Only the production of the producer organisation and its producer members which is marketed by that producer organisation shall be counted in the value of marketed production. The production of the producer members of the producer organisation marketed by another producer organisation designated by their own organisation shall be counted in the value of marketed production of the second producer organisation. Duplicate counting shall be avoided.

6. Except where paragraph 8 applies, the marketed production of fruit and vegetables shall be invoiced at the 'ex-producer organisation' stage as a product listed in Part IX of Annex I to Regulation (EU) No 1308/2013 that is prepared and packaged, excluding:

- (a) VAT;
- (b) costs of transport internal to the producer organisation, for the distance between the centralised collection or packing points of the producer organisation and the point of distribution of the producer organisation which exceeds 300 km.

7. The value of marketed production may also be calculated at the ‘ex-association of producer organisation’ stage and on the same basis as set out in paragraph 6.

8. The value of marketed production may also be calculated at the ‘ex-subsiary’ stage, on the same basis as set out in paragraph 6, provided that at least 90 % of the shares or capital of the subsidiary is owned:

- (a) by one or more producer organisations or associations of producer organisations; or
- (b) subject to Member State approval, by producer members of the producer organisations or associations of producer organisations, if doing so contributes to the objectives listed in Article 152(1)(c) of Regulation (EU) No 1308/2013.

9. In case of outsourcing, the value of marketed production shall be calculated at the ‘ex-producer organisation’ stage and shall include the added economic value of the activity that has been outsourced by the producer organisation to its members, third parties or to another subsidiary than the one referred to in paragraph 8.

10. Where a reduction in production occurs due to a natural disaster, climatic event, animal or plant diseases or pest infestations, any insurance indemnification received in respect of harvest insurance actions covered by Section 7 of Chapter III, or equivalent actions managed by the producer organisation, due to those causes may be included in the value of marketed production.

### *Article 23*

#### **Reference period and ceiling on Union financial assistance**

1. Member States shall determine for each producer organisation a 12-month reference period, starting no earlier than 1 January of the year that is three years prior to the year for which the aid is requested and ending no later than 31 December of the year preceding the year for which the aid is requested.

The 12-month reference period shall be the accounting period of the producer organisation concerned.

The methodology for fixing the reference period shall not vary during an operational programme except in duly justified situations.

2. The ceiling on Union financial assistance referred to in Article 34(2) of Regulation (EU) No 1308/2013 shall be calculated each year on the basis of the value of the marketed production during the reference period of the producers who are members of the producer organisation or association of producer organisations on 1 January of the year for which the aid is requested.

3. As an alternative to the method set out in paragraph 2, for non-transnational producer organisations or associations of producer organisations, Member States may decide to use the actual value of the marketed production in the reference period concerned of the producer organisation or association of producer organisations in question. In that case, the rule shall apply to all non-transnational producer organisations and associations of producer organisations in that Member State.

4. Where a reduction of at least 35 % in the value of a product has occurred due to reasons falling outside the responsibility and control of the producer organisation, the value of marketed production of that product shall be deemed to represent 65 % of its value in the previous reference period.

The producer organisation shall justify the reasons referred to in the first subparagraph to the competent authority of the Member State concerned.

This paragraph shall also apply for the purpose of determining compliance with the minimum value of marketed production as provided for in Article 9.

5. Where historical data on marketed production for newly recognised producer organisations is insufficient for the purpose of the application of paragraph 1, the value of marketed production shall be the value of marketable production provided by the producer organisation for the purposes of recognition.

#### *Article 24*

### **Accounting**

Member States shall ensure that producer organisations comply with the national standards of cost-based accounting that allow independent auditors to promptly identify, check and certify their expenditure and revenue.

#### Section 2

### **Operational funds**

#### *Article 25*

### **Financing of operational funds**

1. The financial contributions to the operational fund referred to in Article 32(1)(a) of Regulation (EU) No 1308/2013 shall be determined by the producer organisation or association of producer organisations.

2. All producer members or member organisations shall have the opportunity to benefit from the operational fund and to participate democratically in decisions concerning the use of the operational fund of the producer organisation or association of producer organisations and of the financial contributions to the operational fund.

3. The statutes of a producer organisation or rules of association of an association of producer organisations shall require its producer members or member organisations to pay the financial contributions in accordance with its statutes or rules of association for the establishment and replenishment of the operational fund provided for in Article 32 of Regulation (EU) No 1308/2013.

#### *Article 26*

### **Notification of estimated amount**



1. Producer organisations and associations of producer organisations shall notify the Member State, which has granted the recognition, of the estimated amounts of Union financial assistance and of the contribution, of its members and of the producer organisation or association itself, to the operational funds for the following year, by 15 September at the latest, together with the operational programmes or any request for approval of amendments to an existing operational programme.

However, Member States may set a later date than 15 September.

2. The calculation of the estimated amount of operational funds shall be based on the operational programmes and the value of marketed production. The calculation shall be split between expenditure for crisis prevention and management measures and other measures.

### Section 3

## Operational programmes

### Article 27

#### National strategy

1. The national strategy referred to in Article 36(2) of Regulation (EU) No 1308/2013, including the national framework referred to in Article 36(1) of that Regulation shall be established prior to the annual submission of the draft operational programmes. The national framework shall be integrated into the national strategy after having been submitted to the Commission and, where applicable, after having been amended in accordance with the second subparagraph of Article 36(1) of Regulation (EU) No 1308/2013.

The national strategy may be subdivided into regional elements.

2. In addition to the elements referred to in Article 36(2) of Regulation (EU) No 1308/2013, the national strategy shall integrate all the decisions taken and provisions adopted by the Member State for the purposes of Articles 152 to 165 of Regulation (EU) No 1308/2013.

3. An analysis of the initial situation shall form part of the process of drawing up the national strategy and be carried out under responsibility of the Member State.

It shall identify and assess the priority needs, the objectives, the results expected and the quantified targets against the initial situation.

It shall also lay down the instruments and actions to attain those objectives.

4. Member States shall monitor and evaluate the national strategy and its implementation through operational programmes.

The national strategy may be amended prior to the annual submission of the draft operational programmes.

5. Member States shall set out in the national strategy the maximum percentages of the operational fund which may be spent on any individual measure or type of action in order to ensure a balance between different measures.

## *Article 28*

### **National framework for environmental actions**

In addition to the submission of the proposed framework referred to in the second subparagraph of Article 36(1) of Regulation (EU) No 1308/2013, Member States shall notify the Commission of any amendments to the national framework, which shall be subject to the procedure set out in that subparagraph.

The Commission shall make the national framework available to other Member States by the means that it considers appropriate.

## *Article 29*

### **Complementary Member State rules**

Member States may adopt rules complementing Regulation (EU) No 1308/2013, this Regulation and Implementing Regulation (EU) 2017/xxx concerning the eligibility of measures, actions or expenditure under operational programmes.

## *Article 30*

### **Relationship with rural development, state aid and promotion programmes**

1. Where support under the Member State's rural development programme or programmes has been granted to operations which are identical to actions that would be potentially eligible under Regulation (EU) No 1308/2013, that Member State shall ensure that a beneficiary may receive support for a given action only under one scheme.

Where a Member State includes such operations in its rural development programme or programmes, it shall ensure that the national strategy indicates the safeguards, provisions and checks put in place to avoid double funding of the same action or operation.

2. Producer organisations which have been granted the support provided for in Article 27 of Regulation (EU) No 1305/2013 or Article 19 of Commission Regulation (EU) No 702/2014<sup>9</sup> shall not implement an operational programme in the same period.

3. Where applicable, and without prejudice to Article 34(1) and (3) and Article 35 of Regulation (EU) No 1308/2013, the level of support for measures covered by that Regulation shall not exceed the level applicable for the measures under the rural development programme.

4. Support for environmental actions that are identical to agri-environment-climate or organic farming commitments as referred to in Articles 28 and 29 of Regulation (EU) No 1305/2013 respectively, shall be limited to the maximum amounts laid down in Annex II to that Regulation for agri-environment-climate payments or for organic farming payments. Those

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<sup>9</sup> Commission Regulation (EU) no 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 193, 1.7.2014, p. 1).

amounts may be increased in duly substantiated cases taking account of specific circumstances to be justified in the national strategy and in the operational programmes of the producer organisations.

5. Paragraph 4 shall not apply to environmental actions which do not relate directly or indirectly to a particular parcel.

6. Where producer organisations, associations of producer organisations or interbranch organisations benefit from promotion programmes approved under Regulation (EU) No 1144/2014 of the European Parliament and of the Council<sup>10</sup>, Member States shall ensure that a beneficiary may receive support for a given action only under one scheme.

### *Article 31*

#### **Eligibility of actions under operational programmes**

1. Operational programmes shall not include actions or expenditure listed in Annex II. A non-exhaustive list of eligible actions is set out in Annex III.

2. Expenditure under operational programmes eligible for aid shall be restricted to the actual costs incurred. However, Member States may fix standard flat rates or scales of unit costs in the following cases:

- (a) where such standard flat rates or scales of unit costs are referred to in Annex III;
- (b) for additional per-kilometre external transport costs, compared to road haulage costs, incurred when using rail or ship transport as part of a measure to respect the environment.

In addition, Member States may decide to use differentiated scales of unit costs to take into account regional or local specificities.

Member States shall review the standard flat rates or scales of unit costs at least every five years.

3. Member States shall ensure that the relevant calculations are adequate and accurate and established in advance on the basis of a fair, equitable and verifiable calculation. To that end Member States shall:

- (a) ensure that a body, that is functionally independent from the authorities responsible for the programme implementation and possesses the appropriate expertise, performs the calculations or confirms the adequacy and accuracy of the calculations;
- (b) keep all the documentary evidence concerning the establishment of standard flat rates or scales of unit costs and their review.

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<sup>10</sup> Regulation (EU) No 1144/2014 of the European Parliament and of the Council of 22 October 2014 on information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries and repealing Council Regulation (EC) No 3/2008 (OJ L 317, 4.11.2014, p. 56).

4. In order for an action to be eligible, products for which the producer organisation is recognised shall account for more than 50 % of the value of the products covered by that action. In addition, the products concerned shall come from the producer organisation's members or producer members of another producer organisation or association of producer organisations. Articles 22 and 23 shall apply *mutatis mutandis* to the calculation of the value.

5. Investments in physical assets shall entail the following commitments:

- (a) without prejudice to paragraph 4, the physical assets acquired shall be used in accordance with their intended use, as described in the approved operational programme concerned;
- (b) without prejudice to the third and fourth subparagraphs of paragraph 6, the physical assets acquired shall remain both in the property and possession of the beneficiary until either the end of the fiscal depreciation period of the physical asset or for 10 years, whichever period is shorter. The beneficiary shall also ensure the maintenance of the physical asset during that period. However, where the investment is made on ground rented under particular national property rules, the requirement of being in the property of the beneficiary may not apply provided that the investments have been in the possession of the beneficiary at least for the period required in the first sentence of this point;
- (c) where the producer organisation is the owner and the member of the producer organisation is the holder of the physical asset to which the investment relates, the producer organisation shall have access rights to that asset for the duration of the fiscal depreciation period.

However, for the purposes of point (b) of the first subparagraph, Member States may provide that a period different to that of the fiscal depreciation period shall apply. Such period shall be indicated and duly justified in their national strategy and cover at least the period referred to in Article 71(1) of Regulation (EU) No [1303/2013](#) of the European Parliament and of the Council<sup>11</sup>.

6. Investments, including those under leasing contracts, may be financed through the operational fund in one amount or in identical instalments as approved in the operational programme. Member States may approve amendments to the operational programme providing for a new distribution of the instalments in duly justified cases.

If the fiscal depreciation period of an investment exceeds the length of the operational programme, it may be carried over to a subsequent operational programme.

Where investments are replaced, the residual value of the investments replaced shall be:

- (a) added to the operational fund of the producer organisation; or
- (b) subtracted from the cost of the replacement.

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<sup>11</sup> Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).

If the investment is sold before the end of the period referred to in paragraph 5 but it is not replaced, the Union aid paid to finance the investment shall be recovered and reimbursed to the European Agricultural Guarantee Fund (EAGF) in proportion to the number of full years that remain until the end of the depreciation period referred to in point (b) of the first subparagraph of paragraph 5.

7. Actions, including investments, may be implemented on individual holdings or premises of producer members of the producer organisation, association of producer organisations or their subsidiaries complying with the 90% requirement as referred to in Article 22(8), including where the actions are outsourced to members of the producer organisation or association of producer organisations, provided that they contribute to the objectives of the operational programme.

If the producer member leaves the producer organisation, Member States shall ensure that the investment or its residual value is recovered by the producer organisation and in the latter case, added to the operational fund.

However, in duly justified circumstances, Member States may provide that the producer organisation shall not be required to recover the investment or its residual value.

8. Actions, including investments, related to the transformation of fruit and vegetables into processed fruit and vegetables may be eligible for support where such actions and investments pursue the objectives set out in Article 33(1) of Regulation (EU) No 1308/2013, including those referred to in Article 160 of that Regulation, and provided that they are identified in the national strategy referred to in Article 36 of Regulation (EU) No 1308/2013.

9. Investments in intangible assets may be eligible for support where such investments pursue the objectives set out in Article 33(1) of Regulation (EU) No 1308/2013, including those referred to in Article 160 of that Regulation, and provided that they are identified in the national strategy referred to in Article 36 of Regulation (EU) No 1308/2013.

## Article 32

### **Operational programmes of associations of producer organisations**

1. Member States may authorise that producer members of associations of producer organisations which are not producer organisations, but which are members of such associations pursuant to Article 20, finance the measures implemented by the association of producer organisations in proportion to the contribution of member producer organisations.

2. Articles 30, 31, 33 and 34 of this Regulation and Articles 4 to 7 of Implementing Regulation (EU) 2017/xxx shall apply *mutatis mutandis* to operational programmes of associations of producer organisations. However, a balance between the activities referred to in Article 4(1)(b) of Implementing Regulation (EU) 2017/xxx shall not be required in respect of partial operational programmes of associations of producer organisations.

3. The ceiling for the crisis management and prevention expenditure, referred to in the fourth subparagraph 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.

## *Article 33*

### **Decision**

1. Member States shall:

- (a) approve amounts of operational funds and operational programmes which meet the requirements of Regulation (EU) No 1308/2013 and those of this Chapter;
- (b) approve the operational programmes, on condition that certain amendments are accepted by the producer organisation; or
- (c) reject the operational programmes or parts thereof.

2. Member States shall take decisions on operational programmes and operational funds by 15 December of the year in which they are submitted.

Member States shall notify the producer organisations of those decisions by 15 December.

However, for duly justified reasons, such decisions may be taken after that date, but no later than 20 January following the date of submission. The approval decision may provide that expenditure is eligible from 1 January of the year following the submission.

## *Article 34*

### **Amendments to operational programmes**

1. Producer organisations may request amendments to operational programmes, including their duration, for subsequent years. Member States shall set deadlines for the submission and approval of such requests so that the approved amendments apply as from 1 January of the following year.

For duly justified reasons, such requests may be approved after the deadlines set by Member States, but no later than 20 January following the year of the request. The approval decision may provide that expenditure is eligible from 1 January following the year of the request.

2. Member States may authorise amendments to operational programmes during the year, under conditions to be determined by them. The decisions on those amendments shall be taken by 20 January of the year following the year on which amendments are requested.

Producer organisations may be authorised by Member States, during the year to:

- (a) implement their operational programmes in part only;
- (b) change the content of the operational programmes;
- (c) increase the amount of the operational fund by a maximum of 25 %, and decrease it by a percentage to be fixed by Member States, of the amount initially approved, provided that the overall objectives of the operational programme are maintained;
- (d) add national financial assistance to the operational fund in case of application of Article 53.

Member States shall determine the conditions under which operational programmes may be amended during the year without prior approval by the competent authority of the Member State. Those amendments shall only be eligible for aid if they are notified by the producer organisation to the competent authority without delay.

Member States may modify the percentages referred to in point (c) of the second subparagraph in case of mergers of producer organisations as referred to in Article 15(1).

3. Requests for amendments shall be accompanied by supporting documents giving the reason, nature and implications of the changes.

## Section 4

### **Aid**

#### *Article 35*

### **Advance payments**

1. Member States may permit producer organisations to apply for an advance payment of a part of the aid. That advance payment shall correspond to the forecast expenditure resulting from the operational programme during the three or four-month period starting in the month in which the application for an advance payment is submitted.

Member States shall provide for conditions to ensure that financial contributions to the operational fund have been levied in accordance with Articles 24 and 25 and previous advance payments and the corresponding producer organisation contribution have actually been spent.

2. Applications for the release of securities may be submitted during the current programme year and shall be accompanied by supporting documents, such as invoices and documents proving that payment has been made.

Securities shall be released in respect of up to 80 % of advances paid.

3. In the event of failure to comply with the operational programmes or of serious failure to meet the obligations provided for in Article 5(b) and (c) of Implementing Regulation (EU) 2017/xxx the security shall be forfeited, without prejudice to other administrative penalties to be applied in accordance with Section 3 of Chapter V of this Title.

In the event of failure to comply with other requirements, the security shall be forfeited in proportion to the gravity of the irregularity that has been established.

#### *Article 36*

### **Cessation of an operational programme and discontinuity of recognition**

1. If a producer organisation or association of producer organisations ceases to implement its operational programme before the end of its scheduled duration, no further payments shall be made to that organisation or association for actions implemented after the date of cessation.

2. Aid received for eligible actions carried out before the cessation of the operational programme shall not be recovered, provided that:

- (a) the producer organisation or association of producer organisations complied with the recognition criteria and the objectives of the actions laid down in the operational programme have been fulfilled at the moment of cessation; and
- (b) the investments financed with support from the operational fund are maintained in the possession of and used by the producer organisation, association of producer organisations or its subsidiaries complying with the 90% requirement referred to in Article 22(8) or its members at least until the end of their depreciation period as referred to in Article 31(5). Otherwise, the Union financial assistance paid to finance those investments shall be recovered and reimbursed to the EAGF.

3. Union financial assistance for multiannual commitments, such as environmental actions, where their long term objectives and expected benefits cannot be realised because of the interruption of the measure shall be recovered and reimbursed to the EAGF.

4. This Article shall apply *mutatis mutandis* in case of voluntary discontinuity of recognition, withdrawal of recognition or dissolution of the producer organisation or association of producer organisations.

5. Unduly paid aid shall be recovered in accordance with Article 67.

### *CHAPTER III*

#### *Crisis prevention and management measures*

##### Section 1

#### **General provisions**

##### *Article 37*

#### **Selection of crisis prevention and management measures**

Member States may provide that one or more of the measures listed in the first subparagraph of Article 33(3) of Regulation (EU) No 1308/2013 shall not apply in their territory.

##### *Article 38*

#### **Loans to finance crisis prevention and management measures**

Loans taken out to finance crisis prevention and management measures pursuant to the fifth subparagraph of Article 33(3) of Regulation (EU) No 1308/2013 may, on duly justified economic grounds, be carried over to a subsequent operational programme, if their repayment period exceeds the length of the operational programme.

##### Section 2



## **Investments making the management of the volumes placed on the market more efficient**

### *Article 39*

#### **Investments related to the management of volumes**

1. Member States shall include in their national strategy the list of eligible investments aimed at making the management of volumes placed on the market more efficient as referred to in point (a) of the first subparagraph of Article 33(3) of Regulation (EU) No 1308/2013.
2. Before approving the operational programmes containing actions relating to the investments referred to in paragraph 1, Member States shall require justification that the proposed investment is suitable to effectively prevent or better withstand a crisis.

### Section 3

#### **Support for the administrative costs of setting up mutual funds**

### *Article 40*

#### **Conditions for support for the administrative cost of setting up mutual funds**

1. Member States shall adopt detailed provisions concerning support for the administrative cost of setting up mutual funds as referred to in point (d) of the first subparagraph of Article 33(3) of Regulation (EU) No 1308/2013.
2. The support referred to in paragraph 1 shall comprise both the Union financial assistance and the contribution from the producer organisation. The total amount of that support shall not exceed 5 %, 4 % and 2 % respectively of the contribution of the producer organisation to the mutual fund in the first, second and third year of its operation:
3. A producer organisation may receive the support referred to in paragraph 1 only once and only within the three first years of the operation of the fund. Where a producer organisation only asks for support in the second or the third year of operation of the fund, the support shall be 4 % and 2 % respectively.
4. Member States may fix ceilings for the amounts that may be received by a producer organisation as support for the administrative cost of setting up mutual funds.

### Section 4

#### **Replanting of orchards following mandatory grubbing-up**

### *Article 41*

#### **Replanting of orchards**

1. Where Member States include in their national strategy the replanting of orchards, following mandatory grubbing-up for health or phytosanitary reasons as referred to in point

(e) of the first subparagraph of Article 33(3) of Regulation (EU) No 1308/2013, the measures taken shall comply with Council Directive 2000/29/EC<sup>12</sup>.

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

## Section 5

### Market withdrawals

#### Article 42

##### Scope

This Section lays down rules concerning market withdrawals and free distribution as referred to respectively in point (f) of the first subparagraph of Articles 33(3) and 34(4) of Regulation (EU) No 1308/2013.

#### Article 43

##### Three-year average for market withdrawals for free distribution

1. The limit of 5 % of the volume of marketed production referred to in Article 34(4) of Regulation (EU) No 1308/2013 shall be calculated on the basis of an arithmetic mean of the overall volumes of products for which the producer organisation is recognised and which are marketed through the producer organisation during the three previous years.

2. For newly recognised producer organisations, the data for marketing years prior to recognition shall be:

- (a) where the organisation was a producer group, the equivalent data for that producer group, where applicable; or
- (b) the volume applicable to the application for recognition.

#### Article 44

##### Prior notification of withdrawal operations

1. Producer organisations and associations of producer organisations shall notify the competent authorities of the Member States in writing or by electronic means in advance of an intention to withdraw products.

Such notification shall specify, in particular, the list of products to be withdrawn and their principal characteristics according to the relevant marketing standards, the estimated quantity of each product concerned, their intended destination and the place where the withdrawn

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<sup>12</sup> 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).

products may be inspected as provided for in Article 29 of Implementing Regulation (EU) 2017/xxx.

Notifications shall include a written statement attesting that the products to be withdrawn conform to the applicable marketing standards or minimum requirements referred to in Article 15 of Implementing Regulation (EU) 2017/xxx.

2. Member States shall lay down detailed rules for producer organisations and associations of producer organisations as regards notifications provided for in paragraph 1, in particular as regards time limits.

#### *Article 45*

#### **Support**

1. The support for market withdrawals, comprising both the Union financial assistance and the producer organisation contribution, shall be no more than the amounts set out in Annex IV.

For products not included in Annex IV, Member States shall set maximum amounts of support, comprising both the Union financial assistance and the producer organisation contribution, at a level not exceeding 40% of the average market prices for the previous five years in case of free distribution and at a level not exceeding 30% of the average of market prices for the previous five years for destinations other than free distribution.

Where the producer organisation has received compensation from third parties for withdrawn products, the support referred to in the first subparagraph shall be reduced by an amount equivalent to the compensation received. In order to be eligible for support, the products concerned shall not enter again the commercial market for fruit and vegetables.

2. Market withdrawals shall not exceed 5 % of the volume of the marketed production of any given product of any given producer organisation. However, amounts which are disposed of in one of the ways referred to in Article 34(4) of Regulation (EU) No 1308/2013 or any other way approved by Member States under Article 46(2) of this Regulation shall not be taken into account in that proportion.

The volume of marketed production referred to in the first subparagraph shall be the average of the volume of marketed production in the previous three years. If this information is not available, the volume of marketed production for which the producer organisation was recognised shall be used.

The percentage referred to in the first subparagraph shall be annual averages of a three year period including the year in question and the previous two years, with five percentage points of annual margin of overrun.

3. The Union financial assistance in case of market withdrawals of fruit and vegetables which are disposed of by way of free distribution to the charitable organisations and institutions referred to in Article 34(4) of Regulation (EU) No 1308/2013 shall only cover payment for the disposed products in accordance with paragraph 1 of this Article and the costs referred to in Articles 16(1) and 17(1) of Implementing Regulation (EU) 2017/xxx.

## Article 46

### Destinations for withdrawn products

1. Member States shall lay down the permissible destinations for products withdrawn from the market. They shall adopt provisions to ensure that no negative impact on the environment nor any negative phytosanitary consequences result from the withdrawal or its destination.

2. The destinations referred to in paragraph 1 shall include free distribution within the meaning of Article 34(4) of Regulation (EU) No 1308/2013 and any other equivalent destinations approved by Member States.

Upon request, Member States may authorise the charitable organisations and institutions referred to in Article 34(4) of Regulation (EU) No 1308/2013 to ask for a contribution from the final recipients of products withdrawn from the market.

When the charitable organisations and institutions concerned have obtained the authorisation, they shall, in addition to the obligations under Article 47(1) of this Regulation, keep financial accounts for the operation in question.

Payment in kind by the beneficiaries of free distribution to processors of fruit and vegetables may be allowed, where such payment only compensates for processing costs and where the Member State in which the payment takes place has provided for rules ensuring that processed products are intended for consumption by the final recipients referred to in the second subparagraph.

Member States shall take all the necessary steps to facilitate contacts and co-operation between producer organisations and the charitable organisations and institutions referred to in Article 34(4) of Regulation (EU) No 1308/2013 they have approved.

3. Disposal of products to the processing industry shall be possible. Member States shall adopt detailed provisions to ensure that no distortion of competition occurs for the industries concerned within the Union or for imported products and that products withdrawn do not enter the commercial market again. The alcohol resulting from distillation shall be used exclusively for industrial or energy purposes.

## Article 47

### Conditions for the recipients of withdrawn products

1. The recipients of withdrawn products referred to in Article 34(4) of Regulation (EU) No 1308/2013 shall undertake to:

- (a) comply with the rules laid down in and pursuant to Regulation (EU) No 1308/2013;
- (b) keep separate stock records for the operations in question;
- (c) accept the checks provided for by Union law; and
- (d) provide the supporting documents on the final destination of each of the products concerned, in the form of a take-over certificate or equivalent document certifying that

the withdrawn products have been taken over by a third party with a view to their free distribution.

Member States may decide that recipients do not have to keep records as referred to in point (b) of the first subparagraph, if they receive quantities below a maximum to be determined by them based on a documented risk analysis.

2. The recipients of withdrawn products for other destinations shall undertake to:

- (a) comply with the rules laid down in and pursuant to Regulation (EU) No 1308/2013;
- (b) keep separate stock records and financial accounts for the operations in question if the Member State considers it as necessary despite the fact that the product has been denatured before delivery;
- (c) accept the checks provided for by Union law; and
- (d) not request additional aid for the alcohol produced from the products concerned in the case of withdrawn products intended for distillation.

## Section 6

### **Green harvesting and non-harvesting**

#### *Article 48*

#### **Conditions for the application of green harvesting and non-harvesting**

1. Green harvesting and non-harvesting as referred to in point (g) of the first subparagraph of Article 33(3) of Regulation (EU) No 1308/2013 shall be additional to and different from normal cultivation practices.

2. Fruit and vegetable plants having undergone green harvesting or non-harvesting shall not be used for further production purposes in the same growing season after the operation has taken place.

3. Green harvesting measures shall not be undertaken in respect of fruit and vegetables of which the normal harvest has already begun, and non-harvesting measures shall not be undertaken where commercial production has been taken from the area concerned during the normal production cycle.

The first subparagraph shall not apply where fruit and vegetable plants have a harvesting period exceeding one month. In such cases, the amounts referred to in paragraph 4 shall only compensate for the production to be harvested in the six weeks following the green harvesting and non-harvesting operation. Those fruit and vegetable plants shall not be used for further production purposes in the same growing season after the operation has taken place.

For the purposes of the second subparagraph, Member States may prohibit the application of green harvesting and non-harvesting measures if, in the case of green harvesting, a significant part of the normal harvest has been carried out and, in the case of non-harvesting, a significant part of the commercial production has already been taken. A Member State intending to apply this provision shall lay down in its national strategy the part it deems to be significant.

Green harvesting and non-harvesting shall not be applied for the same product and the same given area in any given year, except for the purposes of the second subparagraph where both operations may be applied simultaneously.

4. Support for green harvesting shall only cover the products which are physically on the fields and which are actually green harvested. Compensation amounts, comprising both the Union financial assistance and the producer organisation contribution for green harvesting and non-harvesting shall be per hectare payments set by the Member State under point (a) of the first paragraph of Article 49 at a level to cover not more than 90 % of the maximum support level for market withdrawals applicable to withdrawals for destinations other than free distribution as referred to in Article 34(4) of Regulation (EU) No 1308/2013.

5. Producer organisations and associations of producer organisations shall notify the competent authorities of the Member State in writing or by electronic means in advance of an intention of green harvesting or non-harvesting.

#### *Article 49*

### **Obligations of the Member States**

Member States shall adopt:

- (a) detailed provisions on the implementation of the green harvesting and non-harvesting measures, including on prior notifications of green harvesting and non-harvesting, their content and deadlines, on the amount of compensation to be paid and on the application of the measures, as well as the list of products eligible under the measures;
- (b) provisions to ensure that no negative impact on the environment nor any negative phytosanitary consequences results from the implementation of the measures.

Member States shall check that the measures are carried out correctly, including in relation to the provisions referred to in points (a) and (b) of the first paragraph. If Member States find that the measures have not been carried out correctly, they shall not approve the application of the measures.

#### Section 7

### **Harvest insurance**

#### *Article 50*

### **Objective of harvest insurance actions**

Actions relating to harvest insurance as referred to in point (h) of the first subparagraph of Article 33(3) of Regulation (EU) No 1308/2013 shall contribute to safeguarding producers' incomes and to covering market losses incurred by the producer organisation or its members where they are affected by natural disasters, climatic events and, where applicable, diseases or pest infestations.

## *Article 51*

### **Implementation of harvest insurance actions**

1. Member States shall adopt detailed provisions on the implementation of harvest insurance actions, including provisions necessary to ensure that harvest insurance actions do not distort competition in the insurance market.

2. Member States may grant additional national financing to support harvest insurance actions which are benefiting from the operational fund. However, total public support for harvest insurance shall not exceed:

- (a) 80 % of the cost of the insurance premiums paid for by producers for insurance against losses as a result of adverse climatic events which can be assimilated to natural disasters;
- (b) 50 % of the cost of the insurance premiums paid for by producers for insurance against:
  - (i) losses referred to in point (a) and against other losses caused by adverse climatic events; and
  - (ii) losses caused by animal or plant diseases or pest infestations.

The limit set out in point (b) of the first subparagraph shall apply even in cases where the operational fund is otherwise eligible for 60 % Union financial assistance pursuant to Article 34(3) of Regulation (EU) No 1308/2013.

3. Harvest insurance actions shall not cover insurance payments which compensate producers for more than 100 % of the income loss suffered, taking into account any compensation the producers obtain from other support schemes related to the insured risk.

## *CHAPTER IV*

### *National financial assistance*

## *Article 52*

### **Degree of organisation of producers and definition of a region**

1. For the purposes of Article 35(1) of Regulation (EU) No 1308/2013, the degree of organisation of producers in a region of a Member State shall be calculated on the basis of the value of fruit and vegetables produced in the region concerned and marketed by:

- (a) recognised producer organisations and associations of producer organisations; and
- (b) producer groups formed pursuant to Article 125e of Regulation (EC) No 1234/2007 and producer organisations and producer groups referred to in Article 27 of Regulation (EU) No 1305/2013.

The value of the fruit and vegetables produced shall be divided by the total value of the fruit and vegetable production that was produced in that region.

The value of fruit and vegetables produced in the region concerned and marketed by the organisations, associations and groups referred to in points (a) and (b) of the first subparagraph shall only include those products for which those producer organisations, associations and groups are recognised. Article 22 shall apply *mutatis mutandis*.

Only the fruit and vegetables produced in the region concerned by producer organisations, associations of producer organisations, producer groups and their members obtained and marketed by them shall be included in the calculation of that value.

For the calculation of the total value of the fruit and vegetables produced in that region, the methodology set out in Annex I to Regulation (EC) No 138/2004 of the European Parliament and of the Council<sup>13</sup> shall apply *mutatis mutandis*.

2. The degree of organisation of producers in a region of a Member State shall be considered as particularly low where the average of the degrees of organisation, calculated in accordance with paragraph 1, for the last three years for which the data are available, is less than 20 %.

3. Only fruit and vegetables produced in the region referred to in paragraphs 1 and 2 shall benefit from national financial assistance.

4. For the purposes of this Chapter, Member States shall define the regions as a distinct part of their territory in accordance with objective and non-discriminatory criteria, such as their agronomic and economic characteristics and their regional agricultural/fruit and vegetable potential, or their institutional or administrative structure and for which data are available in order to calculate the degree of organisation in accordance with paragraph 1.

The regions defined by a Member State for the purposes of this Chapter shall not be amended for at least five years unless such amendment is objectively justified by substantive reasons unconnected with the calculation of the degree of organisation of producers in the region or regions concerned.

Where a Member State requests a partial reimbursement of the national financial assistance in accordance with Article 20 of Implementing Regulation (EU) 2017/xxx, such a request shall concern the same definition of the regions as specified in the request for authorisation.

### *Article 53*

#### **Amendments to the operational programme**

A producer organisation wishing to apply for national financial assistance shall, if necessary, amend its operational programme pursuant to Article 34.

### *CHAPTER V*

#### ***General provisions***

#### **Section 1**

#### **Notifications and reports**

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<sup>13</sup> Regulation (EC) No 138/2004 of the European Parliament and of the Council of 5 December 2003 on the economic accounts for agriculture in the Community (OJ L 33, 5.2.2004, p. 1).



#### *Article 54*

### **Member States' notifications concerning producer organisations, associations of producer organisations and producer groups**

Member States shall notify the Commission of the following information and documents:

- (a) by 31 January each year, the total amount of the operational funds approved that year for all operational programmes. This notification shall show the total amount of the operational funds and the total amount of Union financial assistance granted included in those funds. Those figures shall be further broken down between amounts for crisis prevention and management measures and other measures;
- (b) by 15 November each year, an annual report on producer organisations and associations of producer organisations, as well as on producer groups formed pursuant to Article 125e of Regulation (EC) No 1234/2007, and operational funds, operational programmes and recognition plans in operation during the previous year. This annual report shall contain the information set out in Annex V to this Regulation;
- (c) by 31 January each year, the amounts corresponding to each forthcoming annual period of implementation of the recognition plans of producer groups formed pursuant to Article 125e of Regulation (EC) No 1234/2007, including the current implementing year. Approved or estimated amounts shall be provided. This notification shall include the following information for each producer group and each annual forthcoming period of implementation of the plan:
  - (i) the total amount for the annual period of implementation of the recognition plan, the Union financial assistance and the contributions from the Member States, the producer groups and the members of the producer groups;
  - (ii) a breakdown between the aid granted pursuant to Article 103a(1)(a) and (b) of Regulation (EC) No 1234/2007, respectively.

#### *Article 55*

### **Member States' notifications concerning producer prices of fruit and vegetables on the internal market**

1. Member States shall notify the Commission, by 12.00 hours (Brussels time) each Wednesday of the weighted average recorded prices for fruit and vegetables listed in Annex VI during the previous week, where data are available.

For fruit and vegetables covered by the general marketing standard set out in Part A of Annex I to Implementing Regulation (EU) No 543/2011, only prices of products meeting that standard shall be notified, whereas prices for products covered by a specific marketing standard set out in Part B of that Annex shall only concern products of class I.

Member States shall notify a single weighted average price corresponding to the types and varieties of products, sizes and presentations specified in Annex VI to this Regulation. Where recorded prices concern other types, varieties, sizes or presentations than those specified in

that Annex, Member States shall notify the Commission of the types, varieties, sizes and presentations of the products to which prices correspond.

Notified prices shall be ex-packaging station, sorted, packaged and, where applicable, on pallets, expressed in euro per 100 kilograms net weight.

2. Member States shall identify representative markets in the production area of the fruit and vegetables concerned. Member States shall notify the Commission of the representative markets and their weight in the average with the first notification or when they modify them. Member States may notify other prices on a voluntary basis.

## Section 2

### **Monitoring and evaluation of operational programmes and of national strategies**

#### *Article 56*

##### **Common performance indicators**

1. The operational programmes and the national strategies shall be subject to monitoring and evaluation aimed at assessing the progress made towards achieving the objectives set for operational programmes, as well as the efficiency and the effectiveness in relation to those objectives.

2. Progress, efficiency and effectiveness shall be assessed by means of common performance indicators, as set out in Annex II to Implementing Regulation (EU) 2017/xxx, relating to the baseline situation as well as to the inputs (financial execution), outputs, results and impact of the operational programmes implemented.

3. Member States may specify additional indicators in their national strategy.

#### *Article 57*

##### **Monitoring and evaluation procedures in relation to operational programmes**

1. Producer organisations and associations of producer organisations shall establish a system to collect, record and maintain information for the compilation of the applicable indicators for the monitoring and evaluation of the operational programmes.

2. The monitoring exercise shall be carried out in such a way that its results:

- (a) verify the quality of programme implementation;
- (b) identify any need for adjustments or review of the operational programme;
- (c) provide information for reporting requirements. Information concerning the results of the monitoring activities shall be included in the annual report referred to in Article 21(2) of Implementing Regulation (EU) 2017/xxx.

3. Evaluation shall take the form of a report in the last but one year of the implementation of the operational programme as referred in Article 21(4) of Implementing Regulation (EU) 2017/xxx.

The evaluation exercise shall examine the progress made in relation to the overall objectives of the programme. Common performance indicators relating to the baseline situation, output and results shall be used for this purpose.

Where applicable, the evaluation exercise shall include a qualitative assessment of the results and the impact of the environmental actions aimed at:

- (a) the prevention of soil erosion;
- (b) a reduction in the use or better management of plant protection products;
- (c) the protection of habitats and biodiversity; and
- (d) landscape conservation.

The results of the exercise shall be used to:

- (a) improve the quality of the operational programme;
- (b) identify any need for substantive change of the operational programme; and
- (c) draw lessons useful in improving future operational programmes.

The evaluation report shall be attached to the corresponding annual report referred to in Article 21(2) of Implementing Regulation (EU) 2017/xxx.

#### *Article 58*

### **Monitoring and evaluation procedures in relation to the national strategy**

1. Member States shall establish a system to collect, record and maintain information in electronic form adequate for the purpose of compiling the indicators referred to in Article 56. To this end, they shall use the information transmitted by the producer organisations and associations of producer organisations in relation to the monitoring and the evaluation of their operational programmes.

2. Monitoring shall be on-going in order to assess the progress made towards achieving the objectives of the operational programmes. For this purpose, use shall be made of the information provided in the annual reports transmitted by the producer organisations and associations of producer organisations. The monitoring exercise shall be carried out in such a way that its results:

- (a) verify the quality of the implementation of the operational programmes;
- (b) identify any need for adjustments or review of the national strategy aimed at achieving the goals set for the strategy or at improving the management of the strategy implementation, including the financial management of the operational programmes.

3. Evaluation shall be aimed at assessing the progress made towards the overall objectives of the strategy. For this purpose, use shall be made of the results of the monitoring and evaluation of the operational programmes as indicated in the annual and last but one annual reports transmitted by the producer organisations. The results of the evaluation exercise shall be used to:

- (a) improve the quality of the strategy;
- (b) identify any need for substantive change of the strategy.

The evaluation shall include an evaluation exercise carried out in 2020. Its results shall be part of the same year annual national report referred to in Article 54(b). The report shall examine the degree of utilisation of financial resources, the efficiency and effectiveness of the operational programmes implemented, and assess the effects and impact of those programmes, in relation to the objectives, targets and measures set by the strategy and, where applicable, other objectives set in Article 33(1) of Regulation (EU) No 1308/2013.

### Section 3

#### **Administrative penalties**

##### *Article 59*

#### **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 5 and 7, Article 11(1) and (2) and Article 17, it shall send to the producer organisation in question no later than two months after the failure has been identified, by registered delivery, a warning letter stating the failure identified, the corrective measures required and the time periods within which these measures have to be taken, which shall not exceed four 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 take the corrective measures 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 start immediately after the expiry of the time period fixed for taking those corrective measures and 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 calendar month or part thereof during which recognition is suspended.

The suspension shall end on the day of the check which confirms 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 recognition following the commencement of connected legal proceedings. Outstanding aid concerning the period during which the failure has been identified 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 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 two months after the failure has been established, by registered delivery, a warning letter stating the failure identified, the corrective measures required and the time periods within which these measures have to be taken, which shall not exceed four 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 calendar month, or part thereof, following the expiry of 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. Member States shall withdraw recognition if the producer organisation does not prove compliance with the minimum volume or value of marketed production criteria as required by Article 154(1)(b) of Regulation (EU) No 1308/2013 by 15 October of the second year following the year in which those criteria were not complied with. Withdrawal shall take 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. Outstanding aid concerning the period during which the failure has been identified shall not be paid and unduly paid aid shall be recovered.

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 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 the 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 10 of Implementing Regulation (EU) 2017/xxx. However, these payments shall not be made later than 15 October of the second year following the year of implementation of the programme.

8. Paragraphs 1 to 5 shall apply *mutatis mutandis* in cases of failure by a producer organisation to provide the Member State with the information required under Article 21 of Implementing Regulation (EU) 2017/xxx.

## Article 60

### Fraud

1. Member States shall suspend payments to and the recognition of a producer organisation or an association of producer organisations, which are under investigation by a national authority in connection with a charge of fraud in respect of aid covered by Regulation (EU) No 1308/2013, until the charge has been determined.
2. Where a producer organisation or an association of producer organisations has committed fraud in respect of aid covered by Regulation (EU) No 1308/2013, Member States shall, without prejudice to any other penalties applicable under Union and national legislation:
  - (a) withdraw the recognition of that organisation or association;
  - (b) exclude the actions concerned from support under the operational programme concerned and recover any aid already paid with respect to those actions; and
  - (c) exclude that organisation or association from recognition during the following year.

## Article 61

### Penalty for ineligible amounts

1. Payments shall be calculated on the basis of eligible actions.
2. The Member State shall examine the aid application, and establish the amounts that are eligible for support. It shall establish the amount that:
  - (a) would be payable to the beneficiary based solely on the application;
  - (b) is payable to the beneficiary after an examination of the eligibility of the application.
3. If the amount established pursuant to paragraph 2(a) exceeds the amount established pursuant to paragraph 2(b) by more than 3 %, a penalty shall be applied. The amount of the penalty shall be the difference between the amounts calculated pursuant to paragraph 2(a) and (b). However, no penalty shall be applied if the producer organisation is able to demonstrate that it is not responsible for the inclusion of the ineligible amount.
4. Paragraphs 2 and 3 shall apply *mutatis mutandis* to ineligible expenditure identified during on-the-spot or subsequent checks.
5. If the value of marketed production is declared and checked before the application for aid, the declared and approved values shall be used when establishing the amounts pursuant to paragraph 2(a) and (b), respectively.
6. Where at the end of the operational programme, the conditions referred to in Article 33(5)(b) of Regulation (EU) No 1308/2013 have not been complied with, the total amount of support for the last year of the operational programme shall be reduced in proportion to the amount of expenditure not incurred on environmental actions.

## *Article 62*

### **Administrative penalties following first-level checks on withdrawal operations**

1. If, following the check referred to in Article 29 of Implementing Regulation (EU) 2017/xxx, non-compliances are found with regard to the marketing standards or the minimum requirements referred to in Article 15 of Implementing Regulation (EU) 2017/xxx, exceeding the established tolerances, the producer organisation concerned shall be required to pay a penalty calculated according to the proportion of the withdrawn products not complying:

- (a) where those quantities are less than 10 % of the quantities actually withdrawn pursuant to Article 44 of this Regulation, the penalty shall be equal to the Union financial assistance, calculated on the basis of the quantities of the non-complying withdrawn products;
- (b) where those quantities are between 10 % and 25 % of the quantities actually withdrawn, the penalty shall be double the amount of the Union financial assistance, calculated on the basis of the quantities of the non-complying withdrawn products; or
- (c) where those quantities exceed 25 % of the quantity actually withdrawn, the penalty shall be equal to the amount of the Union financial assistance for the entire quantity notified pursuant to Article 44 of this Regulation.

2. The penalties referred to in paragraph 1 shall apply without prejudice to any penalty applied pursuant to Article 61.

## *Article 63*

### **Administrative penalty applicable to producer organisations regarding withdrawal operations**

Expenditure for withdrawal operations shall not be eligible if the products have not been disposed of as provided for by the Member State under Article 46(1) or if the operation had a negative impact on the environment or any negative phytosanitary consequences, without prejudice to any penalty applied pursuant to Article 61.

## *Article 64*

### **Administrative penalties applicable to recipients of products withdrawn from the market**

Where irregularities attributable to the recipients of products withdrawn from the market are detected during checks made in accordance with Articles 29 and 30 of Implementing Regulation (EU) 2017/xxx, those recipients:

- (a) shall be excluded from the right to receive products withdrawn from the market; and
- (b) shall be required to pay the value of the products they received plus the related sorting, packaging and transport costs in accordance with the rules laid down by the Member States.

The exclusion provided for in point (a) of the first paragraph shall take effect immediately and last for at least one year with a possibility of extension.

#### *Article 65*

##### **Administrative penalties in relation to green harvesting and non-harvesting**

1. If the producer organisation has not fulfilled its obligations with regard to green harvesting, it shall pay by way of penalty the amount of the compensation relating to the areas for which the obligation has not been respected. A failure to fulfil obligations shall include cases where:

- (a) the area notified for green harvesting is not eligible for green harvesting;
- (b) the area is not totally harvested or the production not denatured;
- (c) there has been a negative impact on the environment or a negative phytosanitary consequence for which the producer organisation is responsible.

2. If the producer organisation has not fulfilled its obligations with regard to non-harvesting, it shall pay, by way of penalty, the amount of the compensation relating to the areas for which the obligation has not been respected. A failure to fulfil obligations shall include cases where:

- (a) the area notified for non-harvesting is not eligible for non-harvesting;
- (b) a harvest or partial harvest has nevertheless taken place;
- (c) there has been a negative impact on the environment or a negative phytosanitary consequence for which the producer organisation is responsible.

Point (b) of the first subparagraph of this paragraph shall not apply where the second subparagraph of Article 48(3) applies.

3. The penalties referred to in paragraphs 1 and 2 shall apply in addition to any penalty imposed pursuant to Article 61.

#### *Article 66*

##### **Preventing an on-the-spot check**

A request for recognition, approval of an operational programme or an aid application shall be rejected for the item or the part of expenditure concerned, if a producer organisation, including its members or relevant representatives, prevents an on-the-spot check from being carried out.

#### *Article 67*

##### **Payment of recovered aid and penalties**



1. Producer organisations and associations of producer organisations or other operators concerned shall reimburse unduly paid aid with interest and pay the penalties provided for in this Section.

The interest shall be calculated:

- (a) on the basis of the period elapsing between receipt of undue payment and its reimbursement by the beneficiary;
- (b) at the rate applied by the European Central Bank to its main refinancing operations published in the 'C' series of the *Official Journal of the European Union* and in force on the date on which the undue payment is made, plus three percentage points.

2. Aid recovered, interest and penalties imposed shall be paid to the EAGF.

## *CHAPTER VI*

### *Extension of rules*

#### *Article 68*

#### **Conditions for the extension of rules**

1. Article 164 of Regulation (EU) No 1308/2013 shall apply to products of the fruit and vegetables and processed fruit and vegetables sectors provided that the rules referred to in paragraph 4 of that Article:

- (a) have been in force for at least one year;
- (b) are made binding for no more than three years.

However, Member States may derogate from the condition laid down in point (a) of the first subparagraph of this paragraph where the aim of the rules to be extended is one of those referred to in points (a), (e), (f), (h), (i) (j), (m) and (n) of the first subparagraph of Article 164(4) of Regulation (EU) No 1308/2013.

2. The rules which are made binding on all producers in a specific economic area shall not apply to products delivered for processing under a contract signed before the beginning of the harvest, unless the extension of rules expressly covers such products, with the exception of the rules on market reporting referred to in point (a) of the first subparagraph of Article 164(4) of Regulation (EU) No 1308/2013.

3. Rules of producer organisations or associations of producer organisations may not be made binding on producers of organic products covered by Regulation (EC) No 834/2007 unless they have been agreed by at least 50% of producers covered by that Regulation in the economic area in which the producer organisation or the association of producer organisations operates and that organisation or association covers at least 60% of such production of that area.

4. The rules referred to in point (b) of the first subparagraph of Article 164(4) of Regulation (EU) No 1308/2013 shall not apply to products which were produced outside the specific economic area referred to in Article 164(2) of that Regulation.

## *Article 69*

### **National rules**

1. For the purposes of Article 164(2) of Regulation (EU) No 1308/2013, Member States may decide that the economic area that is taken into account in the case of extension of rules of an interbranch organisation is a region or the entire national territory where production and marketing conditions are homogenous.
2. For the purpose of determining representativeness of producer organisations and associations of producer organisations within the meaning of Article 164(3) of Regulation (EU) No 1308/2013, Member States shall lay down rules excluding:
  - (a) producers whose production is intended essentially for direct sale to consumers on the holding or in the production area;
  - (b) direct sales as referred to in point (a);
  - (c) produce delivered for processing under a contract signed before the beginning of the harvest, unless the extended rules expressly cover such products;
  - (d) producers or production of organic products covered by Regulation (EC) No 834/2007.

## *Article 70*

### **Notification of extension of rules and economic areas**

1. When a Member State notifies rules it has made binding for a given product and economic area pursuant to Article 164(6) of Regulation (EU) No 1308/2013, it shall immediately inform the Commission of:
  - (a) the economic area in which those rules will apply;
  - (b) the producer organisation, association of producer organisations or interbranch organisation which requested the extension of the rules and the data showing the compliance with Article 164(3) of Regulation (EU) No 1308/2013;
  - (c) where the extension of rules is requested by a producer organisation or association of producer organisations, the number of producers who belong to that organisation or association and the total number of producers in the economic area concerned; such information shall be given in respect of the situation at the time when the request for extension is made;
  - (d) where the extension of rules is requested by a producer organisation or association of producer organisations, the total production of the economic area and the production marketed by that organisation or association during the last year for which figures are available;
  - (e) the date from which the rules to be extended have applied to the producer organisation, association of producer organisations or interbranch organisation concerned; and
  - (f) the date from which the extension is to take effect and its duration.

2. Where a Member State has laid down national rules regarding representativeness in case of extension of rules of interbranch organisations pursuant to the second subparagraph of Article 164(3) of Regulation (EU) No 1308/2013, it shall notify those rules to the Commission and their justification together with the notification of the extension of rules itself.

3. Before making the extended rules publicly available, the Commission shall inform Member States of those rules by any means it considers appropriate.

#### *Article 71*

### **Repeal of extension of rules**

The Commission shall adopt the decision referred to in Article 175(d) of Regulation (EU) No 1308/2013 requiring a Member State to repeal an extension of rules decided on by that Member State pursuant to Article 164(1) of that Regulation where it finds that:

- (a) the decision of the Member State excludes competition in a substantial part of the internal market or jeopardises the free trade, or that the objectives of the Article 39 of the Treaty are endangered;
- (b) Article 101(1) of the Treaty applies to the rules extended to other producers;
- (c) the provisions of this Chapter have not been complied with.

The Commission's decision with regard to those rules shall apply from the date of the notification of such a finding to the Member State concerned.

#### *Article 72*

### **Buyers of produce sold on the tree**

1. In cases where producers not belonging to a producer organisation sell their produce on the tree, the buyer shall, for the purposes of compliance with the rules regarding production reporting and marketing, be considered as having produced that produce.

2. The Member State concerned may decide that rules other than those referred to in paragraph 1 may be made binding on buyers where they are responsible for the management of the production concerned.

## **TITLE III**

### **TRADE WITH THIRD COUNTRIES**

#### **ENTRY PRICE SYSTEM**

#### *Article 73*

### **Definitions**

For the purposes of this Chapter:

- (a) 'lot' means the goods presented under a declaration of release for free circulation, covering only goods of the same origin falling within one single CN code; and
- (b) 'importer' means the declarant within the meaning of Article 5(15) of Regulation (EU) No 952/2013 of the European Parliament and of the Council<sup>14</sup>.

#### *Article 74*

### **Notification of prices and quantities of products imported**

1. For each product and for the periods set out in Part A of Annex VII, for each market day and origin, Member States shall notify the Commission, by 12.00 noon (Brussels time) the following working day, of:

- (a) the average representative prices of the products imported from third countries sold on Member States' import markets; and
- (b) the total quantities relating to the prices referred to in point (a).

For the purposes of point (a) of the first subparagraph, Member States shall notify the Commission of the import markets they consider representative and which shall include London, Milan, Perpignan and Rungis.

Where the total quantities referred to in point (b) of the first subparagraph are less than ten tonnes, the corresponding prices shall not be notified to the Commission.

2. The prices referred to in point (a) of the first subparagraph of paragraph 1 shall be recorded:

- (a) for each of the products listed in Part A of Annex VII;
- (b) for all of the available varieties and sizes; and
- (c) at the importer/wholesaler stage or the wholesaler/retailer stage where no prices at the importer/wholesaler stage are available.

They shall be reduced by the following amounts:

- (a) a marketing margin of 15 % for the marketing centres of London, Milan and Rungis and of 8 % for other marketing centres; and
- (b) costs of transport and insurance within the customs territory of the Union.

For the costs of transport and insurance to be deducted pursuant to the second subparagraph, Member States may fix standard amounts for deduction. Such standard amounts and the methods for calculating them shall be notified to the Commission immediately.

3. The prices recorded in accordance with paragraph 2 shall, where they are established at the wholesale/retail stage, be reduced by:

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<sup>14</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

- (a) an amount equal to 9 % to take in respect of the wholesaler's trade margin, and
- (b) an amount equal to EUR 0,7245 per 100 kilograms in respect of the costs of handling and market taxes and charges.

4. For products listed in Part A of Annex VII covered by a specific marketing standard, the following prices shall be deemed to be representative:

- (a) prices of Class I products where the quantities in that class account for at least 50 % of the total quantities marketed;
- (b) prices of Class I and Class II products where the quantities in those classes account for at least 50 % of the total quantities marketed;
- (c) prices of Class II products, where Class I products are not available, unless it is decided to apply an adjustment coefficient to them if, as a result of their quality characteristics, those products are not normally marketed in Class I.

The adjustment coefficient referred to in point (c) of the first subparagraph shall be applied after deduction of the amounts referred to in paragraph 2.

For products listed in Part A of Annex VII that are not covered by a specific marketing standard, prices of products complying with the general marketing standard shall be deemed to be representative.

## *Article 75*

### **Entry price basis**

1. For the purposes of Article 181(1) of Regulation (EU) No 1308/2013, the products of the fruit and vegetables and processed fruit and vegetables sectors referred to in that Article shall be those listed in Annex VII to this Regulation.

2. When the customs value of the products listed in Part A of Annex VII is determined in accordance with the transaction value referred to in Article 70 of Regulation (EU) No 952/2013 and that customs 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 provide a guarantee as referred to in Article 148 of Commission Implementing Regulation (EU) 2015/2447<sup>15</sup>. For this purpose, the amount of import duty for which the products listed in Part A of Annex VII to this Regulation may 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 Three of Annex I to Council Regulation (EEC) No 2658/87<sup>16</sup>, or where the declarant requests the immediate entry in the accounts of the

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<sup>15</sup> Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558)

<sup>16</sup> 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).

amount of duties to which the goods may ultimately be liable instead of providing a guarantee.

3. When the customs value of the products listed in Part A of Annex VII is calculated in accordance with Article 74(2)(c) of Regulation (EU) No 952/2013, the duty shall be deducted as provided for in Article 38(1) of Implementing Regulation (EU) 2017/xxx. In that case, the importer shall provide a guarantee 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 customs value of the goods imported on consignment shall be directly determined in accordance with Article 74(2)(c) of Regulation (EU) No 952/2013, and for this purpose, the standard import value calculated in accordance with Article 38 of Implementing Regulation (EU) 2017/xxx shall apply 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 70 of Regulation (EU) No 952/2013, or to determine the customs value referred to in Article 74(2)(c) of that Regulation.

Failure to meet one of these deadlines shall entail the loss of the guarantee provided, without prejudice to the application of paragraph 6.

The guarantee provided shall be released to the extent that proof of the conditions of disposal is provided to the satisfaction of the customs authorities. Otherwise the guarantee 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 of Implementing Regulation (EU) No 543/2011 require the product variety or the type of the fruit and vegetables to be indicated on the packaging, the product variety or the 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 105 of Regulation (EU) No 952/2013. 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.

#### TITLE IV

## GENERAL, TRANSITIONAL AND FINAL PROVISIONS

### *Article 76*

#### **National penalties**

Without prejudice to any penalties set out in Regulation (EU) No 1306/2013, Regulation (EU) No 1308/2013, this Regulation or Implementing Regulation (EU) 2017/xxx, Member States shall apply penalties at national level in relation to irregularities with regard to requirements set out in those regulations, including in respect of producer organisations not implementing an operational programme. Those penalties shall be effective, proportionate and dissuasive so that they provide adequate protection for the financial interests of the Union.

### *Article 77*

#### **Notifications**

1. Member States shall designate a single competent authority or body responsible for fulfilling the notification obligations with respect to each one of the following topics:

- (a) producer groups, producer organisations, associations of producer organisations, and interbranch organisations, as provided for in Article 54;
- (b) producer prices of fruit and vegetables on the internal market, as provided for in Article 55;
- (c) prices and quantities of the products imported from third countries and sold on the representative import markets referred to in Article 74;
- (d) import volumes put into free circulation, as provided for in Article 39 of Implementing Regulation (EU) 2017/xxx.

2. Member States shall notify the Commission of the designation and the contact details of the authority or body concerned, and every change of this information.

The list of the designated authorities or bodies containing their names and addresses shall be made available to the Member States and to the public by every appropriate means via the information systems put in place by the Commission, including publication on the Internet.

3. The notifications provided for in this Regulation and in Implementing Regulation (EU) 2017/xxx shall be made in accordance with Commission Regulation (EC) No 792/2009<sup>17</sup>.

4. If a Member State fails to make a notification as required under Regulation (EU) No 1308/2013, this Regulation or Implementing Regulation (EU) 2017/xxx, or if the notification appears incorrect in the light of objective facts in the Commission's possession, the

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<sup>17</sup> Commission Regulation (EC) No 792/2009 of 31 August 2009 laying down detailed rules for the Member States' notification to the Commission of information and documents in implementation of the common organisation of the markets, the direct payments' regime, the promotion of agricultural products and the regimes applicable to the outermost regions and the smaller Aegean islands (OJ L 228, 1.9.2009, p. 3).

Commission may suspend part or all of the monthly payments referred to in Article 17 of Regulation (EU) No 1306/2013 as regards the fruit and vegetables sector until the notification is made correctly.

#### *Article 78*

### **Notification of force majeure**

For the purposes of Articles 59(7) and 64(2)(a) of Regulation (EU) No 1306/2013, any case of *force majeure* shall be notified to the competent authority of the Member State, with relevant evidence to the satisfaction of that authority, within 30 working days of the date on which the case of *force majeure* took place.

#### *Article 79*

### **Amendment of Implementing Regulation (EU) No 543/2011**

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

- (1) Article 2 is deleted;
- (2) Articles 19 to 35 are deleted;
- (3) Articles 50 to 148 are deleted;
- (4) Annexes VI to XVIII are deleted.

#### *Article 80*

### **Transitional provisions**

1. Without prejudice to Article 34, at the request of a producer organisation or association of producer organisations an operational programme approved under Implementing Regulation (EU) No 543/2011 may:

- (a) continue to operate until its end under the conditions applicable under Implementing Regulation (EU) No 543/2011;
- (b) be modified to meet the requirements of Regulation (EU) No 1308/2013, this Regulation and Implementing Regulation (EU) 2017/xxx; or
- (c) be replaced by a new operational programme approved under Regulation (EU) No 1308/2013, this Regulation and Implementing Regulation (EU) 2017/xxx.

2. By way of derogation from Article 23, the ceiling on Union financial assistance for 2017 shall be as calculated under Implementing Regulation (EU) No 543/2011.

3. As regards producer groups formed pursuant to Article 125e of Regulation (EC) No 1234/2007, the deleted provisions of Implementing Regulation (EU) No 543/2011 as referred to in Article 79 of this Regulation shall continue to apply until those producer groups have



been recognised as producer organisations or the Member State concerned has recovered the aid paid pursuant to Article 116(2) of Implementing Regulation (EU) No 543/2011.

*Article 81*

**Entry into force and application**

This Regulation shall enter into force on the seventh day following that 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, 13.3.2017

*For the Commission*  
*The President*  
*Jean-Claude JUNCKER*