Commission Delegated Regulation (EU) No 499/2014 of 11 March 2014 supplementing Regulations (EU) No 1308/2013 of the European Parliament and of the Council and Regulation (EU) No 1306/2013 of the European Parliament and of the Council by amending Commission Implementing Regulation (EU) No 543/2011 relating to the fruit and vegetables and processed fruit and vegetables sectors

COMMISSION DELEGATED REGULATION (EU) No 499/2014

of 11 March 2014

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

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/01 and (EC) No 1234/07[(1)], and in particular Article 37(c)(iv) and (d)(xiii), Article 173(1) (b) and (c) and (f), Article 181(2) and Article 231(1) thereof,

Having regard to Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/00, (EC) No 1290/05 and (EC) No 485/2008[(2)], and in particular, Article 64(6) thereof,

Whereas:

(1) Commission Implementing Regulation (EU) No 543/2011[(3)] was adopted on the basis of Council Regulation (EC) No 1234/2007[(4)] which was repealed and replaced by Regulation (EU) No 1308/2013.

(2) Regulation (EU) No 1308/2013 includes some new provisions concerning the fruit and vegetables and processed fruit and vegetable sectors. These provisions need to be supplemented as regards the financial contribution of the members of the producer organisation in the fruit and vegetables sector (producer organisation), the marketing of entire production through the producer organisation, the outsourcing of the activities, the democratic accountability, the fixing of ceilings for the crisis management and prevention expenditure, the conditions for replanting of orchard as crisis prevention and management measure, certain elements of the procedure in case of non-respect of the recognition criteria and the application of the entry price system as well as conditions for lodging the security.

(3) Article 160 of Regulation (EU) No 1308/2013 provides for the statutes of a producer organisation to require that its producer members market their entire production concerned through the organisation. In order to allow for flexibility in the fruit and vegetables sector, it is appropriate to allow producers, under certain conditions, to market their production outside the producer organisation.

(4) According to Article 26 of Implementing Regulation (EU) No 543/2011, the main activity of a producer organisation has to relate to the concentration of supply and the placing on the market of the products of its members for which it is recognised. It is necessary to clarify how this activity is carried out, in particular in case of outsourcing. Furthermore, in order to allow Member States to carry out the necessary controls, producer organisation should keep records which allow the Member State to verify that the producer organisation complied with its tasks.

(5) Article 27 of Implementing Regulation (EU) No 543/2011 provides that producer organisations have to remain responsible for the activities outsourced. It is appropriate to specify in more detail the means of ensuring that outsourced activities remain under control of the producer organisation that has outsourced those activities.

(6) Article 31 of Implementing Regulation (EU) No 543/2011 provides that Member States have to take all measures they consider necessary in order to avoid any abuse of power or influence by one or several members of a producer organisation. Producer organisations should provide evidence to Member States of their democratic accountability with regard to their producer members. To this end, the maximum percentage of voting rights and shares any individual or legal person may hold in a producer organisation should be limited.

(7) Article 153(2)(b) of Regulation (EU) No 1308/2013 provides for the statutes of a producer organisation to impose on its members a financial contribution needed to finance it. In order to ensure that the producer organisation's members pay the financial contributions required for the establishment and replenishment of the operational fund provided for in Article 32 of that Regulation, it is necessary to provide for the inclusion of such obligation in the statutes of the producer organisation.

(8) In order to avoid situations where crisis prevention and management measures give rise to uneven funding within an association of producer organisations, ceilings for a crisis management and prevention expenditure under the operational programmes of associations of producer organisations should be calculated at the level of each member producer organisation. In addition, conditions for replanting of orchards as crisis prevention and management measure should also be established. In order to avoid the uneven funding of operational programmes, a maximum percentage of expenditure that can be dedicated to replanting of orchards should be fixed.

(9) Article 114 of Implementing Regulation (EU) No 543/2011 establishes the sanctions to be applied in case of non-respect of the recognition criteria. Pursuant to Article 154(4) of Regulation (EU) No 1308/2013, Member States have to carry out checks at regular intervals to ascertain that producer organisations comply with the recognition criteria, impose penalties on such organisations in the event of non-compliance or irregularities

***Changes to legislation:** There are currently no known outstanding effects for the Commission Delegated Regulation (EU) No 499/2014. (See end of Document for details)*

and decide, where necessary, to withdraw the recognition. A system which distinguishes between substantial and minor failures to comply with the recognition criteria would be more efficient and avoid divergent interpretations by Member States. It is therefore appropriate to establish a simplified procedure and progressive sanctioning as provided for in Article 64 of Regulation (EU) No 1306/2013 to prevent producer organisations which cease to meet recognition criteria to unduly benefit from Union support.

(10) Article 181 of Regulation (EU) No 1308/2013 provides for the application of the Customs Code for the clearance of goods subject to the entry price system. As the goods in question are perishable and their value at the moment of customs clearance is not always established, it is necessary to allow the Commission to adopt rules for the purpose of checking the veracity of the declared entry price of a consignment against a flat-rate import value to accelerate the custom clearance procedures. Furthermore, experience gained in the application of the entry price system has shown as appropriate to request the lodging of a security when the custom value determined in accordance with the transaction value referred to in Article 29 of Council Regulation (EEC) No 2913/92[(5)] exceeds by more than 8 % the standard import value calculated by the Commission.

(11) Implementing Regulation (EU) No 543/2011 should therefore be amended accordingly.

(12) In order to ensure a smooth transition for the operational programmes approved under Regulation (EC) No 1234/2007 into the new rules under Regulation (EU) No 1308/2013, transitional provisions should be provided for.

(13) The provisions on crisis prevention and management should apply from 1 January 2014, i.e. the date from which the related new provisions of Regulation (EU) No 1308/2013 apply. In order to allow producer organisations to adapt to the new rules on the requirements for the outsourcing activities and democratic accountability, the relevant provisions should apply only as from 1 January 2015. Article 181 of Regulation (EU) No 1308/2013 applies from 1 October 2014 on and hence the corresponding new provisions of this Regulation on checking the veracity of the declared entry price of a consignment and on conditions for lodging a security should apply from the same date,

HAS ADOPTED THIS REGULATION:

Article 1

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

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

> The placing on the market shall be carried out by the producer organisation, or under the control of the producer organisation in the case of outsourcing as set out in Article 27. It shall include the decision on the product to be sold, the choice of the distribution channel and unless the sale is done by means of auction, the negotiation on its quantity and price.
>
> Producer organisations shall keep records, including accounting documents, for at least 5 years, which demonstrate that the producer organisation concentrated supply and placed on the market members' products for which it is recognized.

(2) The following Article 26*a* is inserted:

Article 26a

Marketing of the production outside the producer organisation

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

(1) sell no more than a fixed percentage of their production or products directly or outside their holdings to consumers for their personal needs, such percentages being fixed by Member States at not less than 10 %;

(2) market themselves or through another producer organisation designated by their own organisation, quantities of products which are marginal in relation to the volume of marketable production of their organisation;

(3) market themselves or through another producer organisation designated by their own organisation products which, because of their characteristics, are not normally covered by the commercial activities of the producer organisation concerned.

(3) Article 27 is replaced by the following:

Article 27

Outsourcing

1 The activities that a Member State may permit to be outsourced in accordance with Article 155 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council[6] shall relate to the producer organisations' objectives as set out in Article 152(1)(c) of that Regulation and may include, among others, collecting, storing, packaging and marketing the product of the members of the producer organisation.

2 A producer organisation outsourcing an activity shall enter into a commercial arrangement by way of a written contract with another entity, including one or several of its members or a subsidiary, for the purpose of carrying out of the activity concerned. The producer organisation shall remain responsible for ensuring the carrying out of the outsourced activity and overall management control and supervision of the commercial arrangement for the carrying out of the activity.

3 The overall management control and supervision referred to in paragraph 2 shall be effective and require that the outsourcing contract:

a enables the producer organisation to issue binding instructions and includes provisions enabling the producer organisation to terminate the contract if the service provider does not meet the terms and conditions of the outsourcing contract,

b lays down detailed terms and conditions, including reporting obligations and deadlines which enable the producer organisation to evaluate and practise genuine control over the outsourced activities.

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

(4) Article 31 is replaced by the following:

Article 31

Democratic accountability of producer organisations

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

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

2 Member States' authorities shall carry out checks on voting rights and shareholdings, including checks on the identities of the individuals or legal persons holding the shares of the members of the producer organisation which are legal persons themselves.

3 Where a producer organisation is a clearly defined part of a legal entity, Member States shall adopt measures to restrict or prohibit the powers of that legal entity to modify, approve or reject decisions of the producer organisation.

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

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

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

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

(7) The following Article 89*a* is inserted:

Article 89a

Replanting of orchards following mandatory grubbing-up

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