# Commission Implementing Regulation (EU) No 701/2012 of 30 July 2012 amending Implementing Regulation (EU) No 543/2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors

## COMMISSION IMPLEMENTING REGULATION (EU) No 701/2012

## of 30 July 2012

## amending Implementing Regulation (EU) No 543/2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)[(1)], and in particular Articles 103h, 127(c) and 143 in conjunction with Article 4 thereof,

Whereas:

(1) Regulation (EC) No 1234/2007 establishes a common organisation of agricultural markets which includes the fruit and vegetables and processed fruit and vegetables sectors. Pursuant to Article 103c of that Regulation, operational programmes in the fruit and vegetables sector may include crisis prevention and management measures, aimed at avoiding and dealing with crises on the fruit and vegetable markets.

(2) In accordance with Article 79(1) of Commission Implementing Regulation (EU) No 543/2011[(2)], Annex XI to that Implementing Regulation sets out the maximum amounts of support for market withdrawals for the products listed therein. Those amounts should be fixed so as to avoid that withdrawals become a permanent alternative outlet for products compared to placing them on the market and to ensure, at the same time, that withdrawals remain an effective instrument for crisis prevention and management.

(3) In order to ensure that withdrawals remain an effective instrument for crisis prevention and management, the maximum amounts of support for market withdrawals should be increased for those fruit and vegetables where current support levels are particularly low compared to the average producer prices in the Union. This is the case for tomatoes, grapes, apricots, pears, aubergines and melons. In addition, in order to avoid overcompensation of withdrawals of lower-priced tomatoes intended for processing, a differentiated amount should be introduced for tomatoes produced from 1 June to 31 October, which is the period in which tomatoes intended for processing may be withdrawn.

(4) In order to encourage the free distribution of withdrawn fruit and vegetables within the meaning of Article 103d(4) of Regulation (EC) No 1234/2007 and any other equivalent

**Changes to legislation:** *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) No 701/2012. (See end of Document for details)*

destinations approved by the Member States, a higher maximum amount of aid should be fixed than for other destinations, if the difference between the average producer price in the Union and the current maximum support levels allows this without creating an alternative outlet for the products compared to placing them on the market. This is the case for cauliflowers, tomatoes, apples, grapes, apricots, pears, aubergines, melons, watermelons, clementines and lemons.

(5) In order to facilitiate the distribution of withdrawn products by charitable organisations and institutions, those organisations and institutions should only be obliged to keep financial accounts for the operation in question if they have requested and obtained the authorisation from the competent authorities of the Member State to ask a symbolic financial contribution from the final recipients. The possibility to request such a contribution should also be extended to fresh products.

(6) In order to take past experiences in applying crisis prevention and management measures into account, it is appropriate to clarify the definitions of green harvesting and non-harvesting and the situations in which green harvesting and non-harvesting measures may be undertaken. In addition, so as to align the various crisis prevention and management measures and to increase their effectiveness, it is appropriate to delete the specific obligation provided for in Article 85(2) of Implementing Regulation (EU) No 543/2011 to include a compulsory market analysis in the first notification of each intended green harvesting operation.

(7) In order to react to a sudden crisis situation, green harvesting and non-harvesting should be possible for fruit and vegetables with a longer harvesting period, although the normal harvest has already begun or commercial production has already been taken from the area in question, subject to restrictions to be decided by Member States. In such cases, only the production to be harvested in the six weeks following the operation should be compensated. As plants bearing fruit and vegetables with a longer harvesting period often bear both ripe and unripe products at the same time, it is appropriate to derogate from the general rule opposing the application of green harvesting and non-harvesting measures for the same product and the same given area in any given year.

(8) In order to ensure that the obligation to demonstrate that each lot was disposed of in accordance with the relevant conditions is fulfilled and to allow for effective customs controls based on risk analysis, detailed rules should be set out as regards the obligation to make available to the customs authorities certain documents relevant for the controls to be undertaken.

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

(10) It is appropriate to apply the new amounts of support for market withdrawals retroactively as from 1 July 2012 when the summer marketing season starts. In order to give time to importers to adapt to the new rules concerning the entry price system, those rules should apply from 1 September 2012.

(11) The Management Committee for the Common Organisation of Agricultural Markets has not delivered an opinion within the time limit set by its Chair,

HAS ADOPTED THIS REGULATION:

*Article 1*

**Amendments to Implementing Regulation (EU) No 543/2011**

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

(1) In Article 80(2), the second subparagraph is replaced by the following:

> Upon request, Member States may authorise the charitable organisations and institutions referred to in Article 103d(4) of Regulation (EC) No 1234/2007 to ask a symbolic 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 83(1) of this Regulation, keep financial accounts for the operation in question.

(2) In Article 83(1), point (b) is replaced by the following:

> (b) keep separate stock records for the operations in question;

(3) In Article 84(1), points (a) and (b) are replaced by the following:

> (a) "green harvesting" means the total harvesting of unripe non-marketable products on a given area. The products concerned shall not have been damaged prior to the green harvesting, whether due to climatic reasons or disease or otherwise;
>
> (b) "non-harvesting" means the termination of the current production cycle from the area concerned where the product is well developed and is of sound, fair and marketable quality. Destruction of products due to a climatic event or disease shall not be considered as non-harvesting.

(4) Article 85 is amended as follows:

> (a) in paragraph 2, the second subparagraph is deleted;
>
> (b) paragraph 3 is replaced by the following:
>
> 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.
>
> However, 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 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.

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Green harvesting and non-harvesting shall not both 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.

(c) in paragraph 4, point (b) is replaced by the following:

(b) 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 103d(4) of Regulation (EC) No 1234/2007.

(5) In Article 109(5), point (a) is replaced by the following:

(a) a sample check on the stock records to be kept by recipients and on the financial accounts of the charitable organisations and institutions concerned where the second subparagraph of Article 80(2) applies;

(6) Article 110 is amended as follows:

(a) in paragraph 1, the second subparagraph is deleted;

(b) in paragraph 2, the following third subparagraph is added:

Where the second subparagraph of Article 85(3) applies, the requirement provided for in the first subparagraph of this paragraph that no partial harvest has taken place shall not apply.

(c) the following paragraph 2a is inserted:

2a. Where the second subparagraph of Article 85(3) applies, Member States shall ensure that the fruit and vegetable plants on which non-harvesting and green harvesting measures have been undertaken shall not be used for further production purposes.

(7) Article 121 is amended as follows:

(a) in paragraph 1, point (a) is deleted;

(b) in paragraph 2, the following subparagraph is added:

Point (b) of the first subparagraph of this paragraph shall not apply where the second subparagraph of Article 85(3) applies.

(8) In Article 137(4), the following fourth and fifth subparagraphs are added:

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. This shall include documents relating to the transport, insurance, handling and storage of the lot.

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