Commission Implementing Regulation (EU) No 302/2012 of 4 April 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 302/2012

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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 and 127 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 103a of Regulation (EC) No 1234/2007 read in conjunction with Article 125e of that Regulation, Union aid may be granted to producer groups formed in Member States that recently acceded to the European Union, in the outermost regions of the Union and in the smaller Aegean Islands. That aid is to encourage the formation of producer groups, facilitate their administrative operation and enable producer groups to meet the recognition criteria for producer organisations, which are the basic actors of the fruit and vegetables sector.

(2) Articles 36 to 49 of Commission Implementing Regulation (EU) No 543/2011[(2)] lay down the detailed rules in respect of producer groups. In order to prevent situations in which operators artificially create the conditions for obtaining payments of Union aid, with a view to obtain advantages contrary to the objectives of Regulation (EC) No 1234/2007, it is appropriate to require Member States to lay down rules in order to prevent producers from shifting from one producer group to another with the aim to benefit from Union aid for a longer period than the period referred to in Article 125e(1) of Regulation (EC) No 1234/2007 and to prevent Member States from recognising legal entities or clearly defined parts of such entities as producer groups, where such entities could already meet the recognition criteria for producer organisations.

(3) Article 125e(1) of Regulation (EC) No 1234/2007 requires producer groups to present a phased recognition plan to the competent Member State. Member States should assess whether the duration of the proposed recognition plan is not unduly long and demand

modifications where a producer group could meet the recognition criteria for producer organisations before the end of the transitional period referred to in Article 125e(1).

(4) Article 39(2) of Implementing Regulation (EU) No 543/2011 provides that Member States shall set the conditions under which producer groups may request changes to plans during their implementation. In order to ensure a sound application of that Regulation and in the interest of financial predictability and sound budgetary management, rules should be laid down providing for a maximum percentage for a proposed increase of the expenditure under an approved recognition plan. However, different limits should apply to recognition plans approved before the entry into force of this Regulation and in the case of mergers of producer groups.

(5) For reasons of budgetary discipline and in order to optimise the allocation of financial resources in a sustainable and effective way, it is appropriate to provide a ceiling for the Union financing of the aid to cover part of the investments referred to in Article 103a(1)(b) of Regulation (EC) No 1234/2007. For reasons of financial security and legal certainty, a list of investments which may not be covered by recognition plans should be drawn up.

(6) For reasons of budgetary discipline, it is also necessary to provide for a ceiling for the expenditure to be financed by the European Agricultural Guarantee Fund (EAGF) in relation to the aid referred to in Article 103a(1) of Regulation (EC) No 1234/2007 and to set up a notification system, under which the Member States inform the Commission in respect of the financial implications of the recognition plans prior to their approval.

(7) In order to prevent any unjustified enrichment where a member leaves its producer group and benefits from investments on its own holding, rules should be laid down in order to allow the producer group to recover the investment or the residual value of the investment where the amortisation period has not yet expired.

(8) For the sake of financial predictability and budgetary forecasting, it is appropriate to provide for more detailed rules on notifications from Member States to the Commission regarding financial implications of recognition plans of producer groups.

(9) Checks should be conducted in such a manner as to permit Member States to react swifty to any possible abuse which implies a risk for the Union budget. For that purpose, it is appropriate to reinforce checks where significant irregularities have been revealed.

(10) Article 103e of Regulation (EC) No 1234/2007 provides that in regions of the Member States where the degree of organisation of producers is particularly low, Member States may be authorised by the Commission, on a duly substantiated request, to pay producer organisations national financial assistance equal to a maximum of 80 % of the financial contributions referred to in Article 103b(1)(a) of that Regulation.

(11) Pursuant to Article 103e of Regulation (EC) No 1234/2007, in regions of Member States where producer organisations market less than 15 % of the fruit and vegetable production and whose fruit and vegetable production represents at least 15 % of their total agricultural output, the national assistance may be reimbursed by the Union at the request of the Member State concerned.

(12) Article 92(2) of Implementing Regulation (EU) No 543/2011 provides that the Commission is to approve or refuse the request for the authorisation to grant national financial assistance within three months of its submission. If the Commission does not reply within that period, the request is deemed to have been approved. However, the period of three months may be suspended where a Member State makes an incomplete request.

(13) Experience has shown that the procedure for the adoption and notification to the Member State of a Commission Decision often requires more than three months and that the actual date from which a request is to be deemed approved cannot always be identified. For the sake of legal certainty, it is appropriate to provide that the Commission approves or refuses the request by way of a formal Decision.

(14) Article 103e of Regulation (EC) No 1234/2007 limits the proportion of national financial assistance which may be authorised to a maximum of 80 % of the financial contributions made by the members of a producer organisation or by the producer organisation itself. Article 95(4) of Implementing Regulation (EU) No 543/2011 limits the proportion of Union reimbursement of national financial assistance to 60 % of the national financial assistance granted to the producer organisations. For reasons of budgetary discipline, it is necessary to provide for a ceiling to the amount of national financial assistance that may be reimbursed by the Union by reference to the maximum amount of the Union financial assistance which may be granted to operational funds set up by producer organisations.

(15) For the sake of simplification, it is appropriate to fine-tune the procedure for the notification of producer prices of fruit and vegetables in the internal market on a voluntary basis.

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

(17) In order to ensure that legitimate expectations of producers are respected, it is necessary to provide that certain amendments made by this Regulation do not apply to recognition plans which have been accepted before the date of entry into force of this Regulation. However, in order to control budgetary expenditure and to ensure a level-playing field between economic operators, it should be provided that recognition plans that have been accepted before the entry into force of this Regulation should be treated in the same way as recognition plans adopted after the entry into force of this Regulation, with respect to the Union contribution to aid referred to in Article 103a(1)(b) of Regulation (EC) No 1234/2007, where the producer groups concerned have not yet committed themselves financially or have not yet entered into legally binding arrangements with third parties as regards the relevant investments prior to the date of entry into force of this Regulation.

(18) In order to ensure a smooth transition to the new rules applicable to Union reimbursement of national financial assistance, the relevant amendment made by this Regulation should not apply to situations where the request for authorisation to pay national financial assistance has been approved by the Commission prior to the entry into force of this Regulation, but where the Commission has not yet decided on the

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) No 302/2012. (See end of Document for details)*

reimbursement. In such situations Article 95(4) of Implementing Regulation (EU) No 543/2011 should continue to apply as not amended by this Regulation.

(19) In order to control Union expenditure for the fruit and vegetables sector, this Regulation should enter into force on the day of its publication.

(20) 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 36(2), the following point (e) is added:

(e) the rules to avoid that a producer benefits from Union aid for producer groups for more than 5 years.

(2) In Article 37, the following second paragraph is added:

The investments referred to in point (c) of the first paragraph shall not include investments listed in Annex Va.

(3) Article 38 is amended as follows:

(a) Paragraph 1 is replaced by the following:

1. The competent authority of the Member State shall take one of the decisions referred to in paragraph 3 within three months of receipt of a draft recognition plan accompanied by all supporting documents. Member States may provide for a shorter deadline.

(b) Paragraph 3 is replaced by the following:

3. Following the conformity checks referred to in Article 111, the competent authority of the Member State shall, as appropriate:

a provisionally accept the plan and grant preliminary recognition;

b request changes to the plan, including changes in relation to its duration. In particular, the Member State shall assess whether the phases proposed are not unduly long and demand modifications where a producer group could meet the recognition criteria for producer organisations before the end of the five-year period referred to in the third subparagraph of Article 125e(1) of Regulation (EC) No 1234/2007;

c reject the plan, especially in the case where the legal entities or clearly defined parts of such entities applying for preliminary recognition as producer groups already meet the criteria for recognition as a producer organisation.

Provisional acceptance may be granted, where necessary, only if the changes requested under point (b) have been incorporated in the plan.

(c) The following paragraphs 4, 5 and 6 are added:

4. The competent authority of the Member State shall notify the Commission, by 1 July in any given year, of the decisions provisionally accepting recognition plans and the financial implications of those plans, using the templates set out in Annex Vb.

5 Once the allocation coefficients referred to in the second subparagraph of Article 47(4) have been set, the competent authority of the Member State shall provide the producer groups concerned with an opportunity to amend or withdraw their recognition plan. Where a producer group does not withdraw its plan the competent authority shall accept such plan definitively subject to such amendments as the competent authority may deem necessary.

6 The competent authority of the Member State shall notify the legal entity or clearly defined part of a legal entity of decisions referred to in paragraphs 3 and 5.

(4) In Article 39, paragraph 2 is replaced by the following:

2. Member States shall set the conditions under which producer groups may request changes to plans during their implementation. Those requests shall be accompanied by all the necessary supporting documents.

Member States shall determine the conditions under which recognition plans may be amended during an annual or semestrial segment without prior approval by the competent authority of the Member State. Those changes shall only be eligible for aid if they are communicated by the producer group to the competent authority of the Member State without delay.

Producer groups may be authorised by the competent authority of the Member State, during a given year and in respect of that year, to increase the total amount of expenditure laid down in a recognition plan by a maximum of 5 % of the amount initially approved, or to decrease it by a maximum percentage to be fixed by Member States, in both cases provided that the overall objectives of the recognition plan are maintained and provided that the overall Union expenditure at the level of the Member State concerned does not exceed the amount of Union contribution allocated to that Member State in accordance with Article 47(4).

In the case of mergers of producer groups as referred to in Article 48, the limit of 5 % shall apply to the total amount of expenditure laid down in the recognition plans of the merging producer groups.

(5) In Article 44, the following third paragraph is added:

Investments may be implemented on individual holdings and/or premises of producer members of the producer group, provided that they contribute to the objectives of the recognition plan. If the member leaves the producer group, Member States shall ensure that the investment or its residual value, where its amortisation period has not yet expired, is recovered.