Commission Implementing Regulation (EU) No 72/2012 of 27 January 2012 amending and derogating from 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 72/2012

of 27 January 2012

amending and derogating from 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 Article 103h(b) 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. Article 103e(1) of Regulation (EC) No 1234/2007 provides that in regions of the Member States where the degree of organisation of producers in the fruit and vegetable sector 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.

(2) Article 91(1) of Commission Implementing Regulation (EU) No 543/2011[(2)] provides that for the purposes of Article 103e(1) of Regulation (EC) No 1234/2007, the degree of organisation of producers in a region of a Member State is to be calculated as the value of fruit and vegetable production that was obtained in the region and marketed by producer organisations, associations of producer organisations and producer groups divided by the total value of the fruit and vegetable production that was obtained in that region. In order to ensure the correct use of the national assistance, it is appropriate to clarify the rules on the calculation of the degree of organisation.

(3) Pursuant to the second subparagraph of Article 91(2) of Implementing Regulation (EU) No 543/2011 a region is to be considered as a distinct part of the territory of a Member State, as a result of its administrative, geographical or economic characteristics. For the purposes of consistency and verifiability, it is appropriate to clarify the definition of a region and to lay down a minimum period of time during which changes to the definition of a region are not allowed, unless objectively justified.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) No 72/2012. (See end of Document for details)*

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

(5) The first subparagraph of Article 92(1) of Implementing Regulation (EU) No 543/2011 provides that requests to the Commission for the authorisation to grant national financial assistance for operational programmes to be implemented in any given calendar year are to be submitted by 31 January of that year. In order to allow the amended Article 91 of Implementing Regulation (EU) No 543/2011 to be applied in 2012, it is appropriate to provide for a derogation from the deadline provided for in the first subparagraph of Article 92(1) of that Implementing Regulation. Furthermore, a correction of requests sent before the entry into force of this Regulation should be provided for.

(6) In order to ensure that requests for authorisation to grant national financial assistance for operational programmes to be implemented in 2012 can be submitted in accordance with the new rules, this Regulation should enter into force on the day following that of its publication. However, Article 95(1) of Implementing Regulation (EU) No 543/2011 also requires a request for Union reimbursement to be accompanied by evidence showing the degree of organisation of producers in the region concerned. This Regulation should therefore be without prejudice to requests for Union reimbursement in accordance with Article 95(1) of Implementing Regulation (EU) No 543/2011 of national financial assistance authorised by the Commission before the date of entry into force of this Regulation.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

Amendment of Implementing Regulation (EU) No 543/2011

Article 91 of Implementing Regulation (EU) No 543/2011 is replaced by the following:

Article 91

Degree of organisation of producers and definition of a region

1 For the purposes of Article 103e(1) of Regulation (EC) No 1234/2007, the degree of organisation of producers in a region of a Member State shall be calculated as the value of fruit and vegetable production that was obtained in the region concerned and marketed by producer organisations, associations of producer organisations and producer groups, divided by the total value of the fruit and vegetable production that was obtained in that region.

The value of fruit and vegetable production that was obtained in the region concerned and marketed by producer organisations, associations of producer organisations and producer groups referred to in the first subparagraph shall only include the products for which those producer organisations, associations of producer organisations and producer groups are recognised. Articles 42 and 50 shall apply *mutatis mutandis*. Only the production of producer organisations, associations of producer organisations, producer groups and their members obtained in the

region concerned which has been marketed by producer organisations, associations of producer organisations and producer groups shall be included in the calculation of that value.

For the calculation of the total value of the fruit and vegetable production that was obtained in that region, the methodology set out in Annex I to Regulation (EC) No 138/2004 of the European Parliament and of the Council[3] 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, calculated as provided for in paragraph 1 for the last three years for which the data are available, is less than 20 %.

3 Only fruit and vegetable production generated in the region referred to in this Article may 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 altered for at least 5 years unless such alteration is objectively justified by substantive reasons unconnected with the calculation of the degree of organisation of producers in the region or regions concerned.

Article 2

Derogation from Article 92(1) of Implementing Regulation (EU) No 543/2011

By way of derogation from the first subparagraph of Article 92(1) of Implementing Regulation (EU) No 543/2011, Member States shall submit their request for authorisation to grant national financial assistance pursuant to Article 103e(1) of Regulation (EC) No 1234/2007 for operational programmes to be implemented in 2012 by 29 February 2012.

Member States shall identify the regions, including their geographic delimitation as provided for in Article 91(4) of Implementing Regulation (EU) No 543/2011 as amended by this Regulation, in their first request for authorisation submitted after the date of entry into force of this Regulation. Where appropriate, Member States shall correct requests for authorisation for 2012 sent to the Commission before the date of entry into force of this Regulation by 29 February 2012.

Article 3

Entry into force

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

It shall be without prejudice to requests for Union reimbursement in accordance with Article 95(1) of Implementing Regulation (EU) No 543/2011 of national financial assistance authorised by the Commission before the date of entry into force of this Regulation.