Commission Implementing Regulation (EU) No 585/2011 of 17 June 2011 laying down temporary exceptional support measures for the fruit and vegetable sector

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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 191 in conjunction with Article 4 thereof,

Whereas:

(1) The Union fruit and vegetables market is undergoing an unprecedented crisis following a deadly enterohaemorrhagic *Escherichia coli* (E. coli) outbreak in Germany, which has been associated with the consumption of certain fresh fruit and vegetables. The crisis started on 26 May 2011, when press reports appeared concerning allegations of cucumbers being the cause of the outbreak.

(2) Precautionary measures have been adopted by several Member States and third countries and a sudden loss of consumer confidence due to perceived public health risks is causing a very significant disturbance of the Union fruit and vegetables market, especially in respect of cucumbers, tomatoes, sweet peppers, courgettes and certain products of the lettuce and endive families produced in the Union.

(3) In view of the current and expected market situation, and having regard to the fact that Regulation (EC) No 1234/2007 and Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector[(2)], to be replaced as from 22 June 2011 by 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[(3)] do not specifically provide for sector-specific instruments adequate to address the practical problems occurring in the fruit and vegetables sector, it is necessary to adopt exceptional measures, as a matter of urgency and for a limited period of time.

(4) As cucumbers, tomatoes, sweet peppers, courgettes and certain products of the lettuce and endive families are the main products affected by the fruit and vegetables crisis, it is appropriate to limit the scope of the exceptional measures to those products.

(5) In view of the specific nature of the fruit and vegetables sector, crisis management and market support measures referred to in Article 103c(2) of Regulation (EC) No 1234/2007 are most appropriate to support producer organisation recognised for the production of fruit and vegetables.

(6) Additional support should be granted by the Union in respect of market withdrawals, green harvesting and non-harvesting of cucumbers, tomatoes, sweet peppers, courgettes and certain products of the lettuce and endive families intended for fresh consumption. Having regard to the significant disturbance of the fruit and vegetables market and the relatively limited membership of producer organisations in some Member States, it is also necessary to grant Union support for such measures to producers of fruit and vegetables who are not members of a recognised producer organisation and who signed a contract with a recognised producer organisation to withdraw, cucumbers, tomatoes, sweet peppers, courgettes and certain products of the lettuce and endive families.

(7) For the sake of uniformity and in order to avoid overcompensation, maximum levels of additional Union support for withdrawals, green harvesting and non-harvesting should be set at Union level. In order to take the particular characteristics of non-harvesting and green harvesting operations into account, Member States should convert the kg based approach for withdrawals into a hectare based approach, on the basis of yields.

(8) Producer organisations are the basic actors of the fruit and vegetables sector and are the most suited entities to ensure that Union support is paid to producers who are not members of a recognised producer organisation. They should ensure that Union support is paid to the producers who are not members of a recognised producer organisation through the conclusion of a contract. As not all Member States have the same degree of organisation at the supply side of the fruit and vegetables market, it is appropriate to allow the competent authority of the Member States to pay the Union support directly to the producers where this is duly justified.

(9) For the sake of budgetary discipline, it is necessary to provide for a ceiling for the expenditure to be financed by the European Agricultural Guarantee Fund (EAGF) and to set up a notification and monitoring system, under which the Member States inform the Commission in respect of their withdrawal, non-harvesting and green harvesting operations.

(10) In order to limit the impact of the harm caused to the fruit and vegetables sector, this Regulation should cover a period starting on 26 May 2011. For reasons of urgency, this Regulation should enter into force on the day of its publication.

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

HAS ADOPTED THIS REGULATION:

Article 1

Scope

1 Exceptional support shall be granted to producer organisations referred to in Article 122 (a)(iii) of Regulation (EC) No 1234/2007 and to producers who are not members of those organisations, for the period from 26 May 2011 to 30 June 2011 and in relation to the following products of the fruit and vegetables sector intended for fresh consumption:

a tomatoes falling within CN code 0702 00 00;

b lettuce falling within CN code 0705 11 00 and CN 0705 19 00 and curled-leaved and broad-leaved (Batavian) endives falling within CN 0705 29 00;

c cucumbers falling within CN code 0707 00 05;

d sweet peppers falling within CN code 0709 60 10;

e courgettes falling within CN code 0709 90 70.

2 The measures taken under this Regulation shall be considered to be intervention measures to regulate agricultural markets within the meaning of Article 3(1)(b) of Council Regulation (EC) No 1290/2005.[(4)]

[F1 Article 2

Maximum amount of support

Total Union expenditure incurred for the purposes of this Regulation shall not exceed EUR 227 000 000. It shall be financed by the European Agricultural Guarantee Fund (EAGF) and be used solely for the purpose of financing the measures provided for under this Regulation.**]**

Textual Amendments

F1 Substituted by Commission Implementing Regulation (EU) No 768/2011 of 2 August 2011 amending Implementing Regulation (EU) No 585/2011 of 17 June 2011 laying down temporary exceptional support measures for the fruit and vegetable sector.

Article 3

Applicability of rules

Save as explicitly provided for otherwise in this Regulation, Regulation (EC) No 1234/2007, Regulation (EC) No 1580/2007 and Implementing Regulation (EU) No 543/2011 shall apply in respect of producer organisations and its members and shall apply *mutatis mutandis* in respect of the producers referred to in Article 5.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) No 585/2011. (See end of Document for details)*

Article 4

Producer organisations

1 The 5 % ceiling referred to in Article 80(2) of Regulation (EC) No 1580/2007 and in Article 79(2) of Implementing Regulation (EU) No 543/2011 shall not apply in respect of the products referred to in Article 1(1) of this Regulation when those products are withdrawn during the period referred to in that Article.

2 Non-harvesting measures referred to in Article 85(2) of Regulation (EC) No 1580/2007 and in Article 84(1)(b) of Implementing Regulation (EU) No 543/2011 may, in respect of products and during the period referred to in Article 1(1) of this Regulation, be undertaken even where commercial production has been taken from the producing area concerned during the normal production cycle. In such cases, the compensation amounts referred to in Article 86(4) of Regulation (EC) No 1580/2007 and in Article 85(4) of Implementing Regulation (EU) No 543/2011 shall be proportionally reduced to the production already harvested, as established on the basis of the accounting and/or tax data of the producer organisations concerned.

3 The Union contribution to the maximum amounts set by Member States in accordance with Article 80 of Regulation (EC) No 1580/2007 or with Article 79 of Implementing Regulation (EU) No 543/2011 shall not exceed the amounts set out in Part A of Annex I to this Regulation, in case of withdrawals for destinations, other than free distribution. Those amounts shall be doubled in case of free distribution.

4 The ceiling of one-third of expenditure referred to in the second subparagraph of Article 103c(2) of Regulation (EC) No 1234/2007 and the 25 % maximum ceiling for the increase of operational fund referred to in Article 67(1)(c) of Regulation (EC) No 1580/2007 and in Article 66(3)(c) of Implementing Regulation (EU) No 543/2011 shall not apply in respect of expenditure incurred for measures referred to in paragraphs 1 and 2 of this Article during the period referred to in Article 1(1).

5 Additional Union support shall be granted in respect of withdrawal, non-harvesting and green harvesting operations carried out in relation to the products and during the period referred to in Article 1(1). Support for green harvesting shall cover only the products which are physically on the fields and which are effectively green harvested.

The additional Union support shall not be included in the operational programmes of the producer organisations and not be taken into account for the purpose of the calculation of the ceilings of 4,1 % and 4,6 % referred to in Article 103d(2) of Regulation (EC) No 1234/2007.

The amounts of additional Union support for withdrawals are set out in Part B of Annex I to this Regulation.

In case of non-harvesting and green harvesting, Member States shall set the amounts of additional Union support per hectare at a level to cover not more than 90 % of the amounts fixed for withdrawals in Part B of Annex I to this Regulation.

The additional Union support shall be granted even if producer organisations do not provide for those operations in the framework of their operational programmes.

6 Expenditure incurred in accordance with this Article shall form part of the operational fund of the producer organisations. Articles 103b(2) and 103d(1) of Regulation (EC) No

1234/2007 shall not apply for the additional Union support referred to in paragraph 5 of this Article.

Article 5

Producer non-members of producer organisations

1 Union support shall be granted to producers of fruit and vegetables who are not members of a recognised producer organisation (hereinafter referred to as 'producer non-members') to carry out withdrawal, non-harvesting and green harvesting operations in respect of the products and during the period referred to Article 1(1). Where a producer organisation has been suspended in accordance with Article 116(2) of Regulation (EC) No 1580/2007 or Article 114(2) of Implementing Regulation (EU) No 543/2011, its members shall be deemed to be a producer non-members for the purpose of this Regulation.

Support for green harvesting shall cover only the products which are physically on the fields and which are effectively green harvested.

2 In case of withdrawals, producer non-members shall sign a contract with a recognised producer organisation.

The Union support shall be paid to such producers by the producer organisation with which they signed such a contract. The second and the fifth subparagraphs of Article 4(5) and Article 4(6) shall apply *mutatis mutandis.*

3 The amounts of support to be granted pursuant to paragraph 1 in the situation referred to in paragraph 2 shall be the amounts set out in Part B of Annex I, less the amounts that correspond to the real costs incurred by the producer organisation for withdrawing the respective products, which the producer organisation shall retain. Evidence of those costs shall be provided by means of invoices. Producer organisations shall accept all reasonable requests from producers that are not a member of a producer organisation for the purposes of this Regulation.

4 For duly justified reasons, such as the limited degree of organisation of the producers in the Member State concerned, and in a non-discriminatory way, Member States may authorise that a producer non-member makes a notification to the competent authority of the Member State, instead of signing the contract referred to in paragraph 2. For such notification, Article 79 of Regulation (EC) No 1580/2007 or Article 78 of Implementing Regulation (EU) No 543/2011 shall apply *mutatis mutandis*.

In those cases, the competent authority of the Member State shall pay the Union support directly to the producer, in accordance with its own legislation. The amounts of the support shall be the amounts set out in Part B of Annex I.

5 In case of non-harvesting and green harvesting operations, producer non-members shall make the appropriate notification to the competent authority of the Member State in accordance with the detailed provisions adopted by the Member State pursuant to Article 86(1)(a) of Regulation (EC) No 1580/2007 or to Article 85(1)(a) of Implementing Regulation (EU) No 543/2011.

The amounts of Union support for non-harvesting and green harvesting operations shall be the amounts set pursuant to the fourth subparagraph of Article 4(5).