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

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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 the second subparagraph of Article 3, Articles 103h, 121(a), 127, 134, 143(b), 148, 179, 192(2), 194 and 203a(8) 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.

(2) The implementing rules covering the fruit and vegetables and processed fruit and vegetables sectors are laid down in 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)]. That Regulation has been amended several times. In the interests of clarity, it is appropriate to incorporate all the implementing rules in a new Regulation, together with the amendments necessary in the light of experience, and to repeal Regulation (EC) No 1580/2007.

(3) Marketing years should be set for products of the fruit and vegetables and the processed fruit and vegetables sectors. Since there are no longer any aid schemes in the sectors which follow the harvesting cycle of the products concerned, all marketing years may be harmonised to fit the calendar year.

(4) Article 113(1)(b) and (c) of Regulation (EC) No 1234/2007 authorises the Commission to provide for marketing standards for fruit and vegetables and processed fruit and vegetables, respectively. Pursuant to Article 113a(1) of that Regulation, fruit and vegetables which are intended to be sold fresh to the consumer, may only be marketed if they are of sound, fair and marketable quality and if the country of origin is indicated. To harmonise the implementation of that provision, it is appropriate to set out details of and provide for a general marketing standard for all fresh fruit and vegetables.

Changes to legislation: *There are outstanding changes not yet made to Commission Implementing Regulation (EU) No 543/2011. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(5) Specific marketing standards should be adopted for those products for which it seems necessary to adopt a standard based on an assessment of its relevance, taking into account, in particular, which products are most traded in value terms on the basis of the figures held in the European Commission's reference database on international trade, Comext.

(6) In order to avoid unnecessary barriers to trade, where specific marketing standards are to be laid down for individual products, these standards should be those as set out in the standards adopted by the United Nations Economic Commission for Europe (UNECE). Where no specific marketing standard has been adopted at Union level, products should be considered as conforming to the general marketing standard where the holder is able to show that the products are in conformity with any applicable UNECE standard.

(7) Exceptions and exemptions from the application of marketing standards should be provided for in the case of certain operations which are either very marginal and/or specific, or take place at the start of the distribution chain, or in the case of dried fruit and vegetables and products intended for processing. Since some products will naturally develop and have a tendency to perish, they should be permitted to show a slight lack of freshness and turgidity, provided they are not in 'Extra' Class. Certain products which are normally not intact when sold should be exempted from the general marketing standard which would otherwise require this.

(8) The information particulars required by marketing standards should be clearly displayed on the packaging and/or label. To avoid fraud and cases of misleading consumers, the information particulars required by the standards should be available to consumers before purchase, especially in case of distance selling, where experience has shown the risks of fraud and avoidance of the consumer protection offered by the standards.

(9) Packages containing different species of fruit and vegetables are becoming more common on the market in response to demand from certain consumers. Fair trading requires that fruit and vegetables sold in the same package are of uniform quality. For products for which Union standards have not been adopted this can be ensured by recourse to general provisions. Labelling requirements should be laid down for mixes of different species of fruit and vegetables in the same package. They should be less strict than those laid down by the marketing standards in order to take into account, in particular, the space available on the label.

(10) In order to ensure that checks may be properly and effectively carried out, invoices and accompanying documents, other than those for consumers, should contain certain basic information included in the marketing standards.

(11) For the purposes of the selective checks, based on risk analysis, as provided for in Article 113a(4) of Regulation (EC) No 1234/2007 it is necessary to lay down detailed rules on such checks. In particular, the role of the risk assessment when selecting products for checks should be underlined.

(12) Each Member State should designate the inspection bodies responsible for carrying out conformity checks at each stage of marketing. One of those bodies should be responsible for contacts with and coordination between all other designated bodies.

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(13) Since knowledge of traders and their main characteristics is an indispensable tool in Member States' analysis, it is essential to set up a database on traders of fruit and vegetables in each Member State. In order to ensure that all actors in the marketing chain are covered and for the sake of legal certainty, a detailed definition of 'trader' should be adopted.

(14) Conformity checks should be carried out by sampling and should concentrate on traders most likely to have goods which do not comply with the standards. Taking into account the characteristics of their national markets, Member States should lay down rules prioritising checks on particular categories of traders. For the sake of transparency, those rules should be notified to the Commission.

(15) Member States should ensure that exports of fruits and vegetables to third countries conform to the marketing standards and should certify conformity, in accordance with the Geneva Protocol on standardisation of fresh fruit and vegetables and dry and dried fruit concluded within the UNECE and the Organisation for Economic Co-operation and Development (OECD) Scheme for the application of international standards for fruit and vegetables.

(16) Imports of fruit and vegetables from third countries should conform to the marketing standards or to standards equivalent to them. Conformity checks must therefore be carried out before those goods enter the customs territory of the Union, except in the case of small lots which the inspection bodies consider to be low risk. In certain third countries which provide satisfactory guarantees of conformity, pre-export checks may be carried out by the inspection bodies of those third countries. Where this option is applied, Member States should regularly verify the effectiveness and quality of the pre-export checks carried out by third country inspection bodies.

(17) Fruit and vegetables intended for processing are not required to conform to marketing standards, so it should be ensured that they are not sold on the market for fresh products. Such products should be appropriately labelled.

(18) Fruit and vegetables checked for conformity with the marketing standards should be subject to the same type of check at all stages of marketing. To this end, the inspection guidelines recommended by the UNECE in line with the relevant OECD recommendations, should be applied. Specific arrangements should, however, be laid down for checks at the retail sale stage.

(19) Provisions for the recognition of producer organisations for the products they request should be laid down. Where the recognition is requested for products intended solely for processing, it should be ensured that they are indeed delivered for processing.

(20) In order to help achieve the goals of the fruit and vegetables regime and to ensure that producer organisations carry out their work in a sustainable and effective way, there should be the utmost stability within producer organisations. Membership of a producer in the producer organisation should therefore be for a minimum period. It should be left up to Member States to lay down the notice periods and the dates on which resignation from membership are to take effect.

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(21) The main and essential activities of a producer organisation should relate to the concentration of supply and marketing. However, producer organisations should be allowed to engage in other activities, whether or not of a commercial nature.

(22) Cooperation between producer organisations should be encouraged by allowing the marketing of fruit and vegetables bought exclusively from another recognised producer organisation to be left out of the calculations both for the purposes of the main activity and for other activities. Where a producer organisa·tion is recognised for a product for which the provision of technical means is required, it should be allowed to provide those means through its members, through subsidiaries or by outsourcing.

(23) Producer organisations may hold shares in subsidiaries which help to increase the added value of the production of their members. Rules should be fixed for calculating the value of such marketed production. The main activities of such subsidiaries should be the same as those of the producer organisation, after allowing for a transitional period for adaptation.

(24) Detailed rules should be laid down on the recognition and functioning of the associations of producer organisations, transnational producer organisations and transnational associations of producer organisations provided for in Regulation (EC) No 1234/2007. For the sake of consistency, they should, as far as possible, reflect the rules laid down for producer organisations.

(25) In order to facilitate the concentration of supply, the merger of existing producer organisations to form new ones should be encouraged by providing rules for the merger of operational programmes of the merged organisations.

(26) While respecting the principles whereby a producer organisation must be formed on the own initiative of producers and scrutinised by the producers, it should be left up to Member States to lay down the conditions whereby other natural or legal persons are accepted as members of a producer organisation and/or an association of producer organisations.

(27) In order to ensure that producer organisations genuinely represent a minimum number of producers, Member States should take measures to ensure that a minority of members who may account for the bulk of production in the producer organisation do not unduly dominate its management and operation.

(28) In order to take account of different production and marketing circumstances in the Union, Member States should lay down certain conditions for the granting of preliminary recognition to producer groups which submit a recognition plan.

(29) To promote the setting-up of stable producer organisations capable of making a lasting contribution to the attainment of the objectives of the fruit and vegetables regime, preliminary recognition should be granted only to producer groups which can demonstrate their ability to meet all the requirements for recognition within a specified time limit.

(30) Provisions on information which the producer groups must provide in the recognition plan should be laid down. To enable producer groups to better meet the recognition

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conditions, changes to recognition plans should be authorised. To that end, provisions should be laid down enabling Member States to request from producer groups to take corrective action to ensure that their plan is implemented.

(31) The producer group may satisfy the conditions for recognition before the recognition plan is completed. Provision should be made to allow such groups to submit applications for recognition along with draft operational programmes. For the sake of consistency, the granting of such recognition to a producer group must signify the termination of its recognition plan, and the aid provided for should be discontinued. However, to take account of the multiannual financing of investments, investments qualifying for investment aid should be able to be carried over to operational programmes.

(32) To facilitate the correct application of the system of aid to cover the costs of formation and administrative operation of producer groups, that aid should be granted at a flat rate. That flat-rate aid should be subject to a ceiling in order to comply with budgetary constraints. Moreover, taking into account the differing financial needs of producer groups of different sizes, that ceiling should be adjusted in line with the value of marketable production of the producer groups.

(33) For the sake of consistency and a smooth transition to the status of a recognised producer group, the same rules on main activities of producer organisations and their value of marketed production should apply to producer groups.

(34) In order to take into account the financial needs of the new producers groups and to ensure the correct application of the aid scheme in the event of mergers, the possibility should be given for the aid to be granted to the producer groups resulting from the merger.

(35) To facilitate the use of the scheme of support to operational programmes, the marketed production of producer organisations should be clearly defined, including the specification of which products may be taken into account and the marketing stage at which the value of production is to be calculated. For control purposes and for the sake of simplification, it is appropriate to use a flat rate for the purposes of calculating the value of fruit and vegetables intended for processing, representing the value of the basic product, namely fruit and vegetables intended for processing, and activities which do not amount to genuine processing activities. Since the volumes of fruit and vegetables needed for the production of processed fruit and vegetables differ largely between groups of products, those differences should be reflected in the applicable flat rates. In the case of fruit and vegetables intended for processing that are transformed into processed aromatic herbs and paprika powder, it is also appropriate to introduce a flat rate for the purposes of calculating the value of fruit and vegetables intended for processing, representing only the value of the basic product. Additional methods of calculation of marketable production should also be made possible in case of yearly fluctuations or insufficient data. To prevent misuse of the scheme, producer organisations should not in general be permitted to change the methodology for fixing reference periods within the duration of a programme.

(36) In order to ensure the smooth transition to the new system for the calculation of the value of the marketed production for fruit and vegetables intended for processing, operational