

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

TITLE III

PRODUCER ORGANISATIONS

CHAPTER V

General Provisions

Section 3

Sanctions

Article 114

Non-respect of recognition criteria

1 Member States shall withdraw the recognition of a producer organisation if a failure to respect the criteria for recognition is substantial and results from the fact that the producer organisation acted deliberately or by serious negligence.

Member States shall in particular withdraw the recognition of a producer organisation if a failure to respect the criteria for recognition concerns:

- a a breach of the requirements of Articles 21, 23, 26(1) and (2) or 31; or
- b a situation where the value of marketed production falls, in two consecutive years, below the limit set by the Member State pursuant to Article 125b(1)(b) of Regulation (EC) No 1234/2007.

The withdrawal of recognition under this paragraph shall take effect from the date from which the conditions for recognition were not fulfilled, subject to any applicable horizontal legislation at national level on limitation periods.

2 Where paragraph 1 does not apply, Member States shall suspend the recognition of a producer organisation if a failure to respect the criteria for recognition is substantial but is only temporary.

During the period of suspension, no aid shall be paid. The suspension shall take effect from the day where the check has taken place and shall end on the day of the check which shows that the criteria concerned have been fulfilled.

The period of suspension shall not exceed 12 months. If the criteria concerned are subsequently not fulfilled after 12 months, recognition shall be withdrawn.

Member States may make payments after the deadline set out in Article 70 where this is necessary in order to apply this paragraph. However, those later payments may not

in any case be made later than 15 October of the second year following the year of implementation of the programme.

3 In other cases of a failure to respect the criteria for recognition, where paragraphs 1 and 2 do not apply, Member States shall send a warning letter stating the corrective measures to be taken. Member States may delay payments of aid until the corrective measures are taken.

Member States may make payments after the deadline set out in Article 70 where this is necessary in order to apply this paragraph. However, those later payments may not in any case be made later than 15 October of the second year following the year of implementation of the programme.

A failure to take the corrective measures within a 12 month period shall be regarded as substantial failure to respect the criteria and paragraph 2 shall subsequently be applied.

Article 115

Fraud

1 Where a producer organisation, an association of producer organisations or a producer group is found to have committed fraud in respect of aid covered by Regulation (EC) No 1234/2007, Member States shall, without prejudice to any other sanctions and penalties applicable under Union and national legislation:

- a withdraw the recognition of the producer organisation, association of producer organisations or producer group;
- b exclude the actions or operations concerned from support under the operational programme or recognition plan concerned and recover any aid already paid for that operation; and
- c exclude the producer organisation, association of producer organisations or producer group from support under the operational programme or recognition plan concerned during the next year.

2 Member States may suspend the recognition of a producer organisation, an association of producer organisations or a producer groups, or suspend payments to such a body if they are suspected of having committed fraud in respect of aid covered by Regulation (EC) No 1234/2007.

Article 116

Producer groups

1 Member States shall apply, *mutatis mutandis*, the sanctions and penalties provided for in Article 114 and/or 117 to recognition plans.

2 In addition to paragraph 1, if, after the end of the period set by the Member State under Article 49(4), the producer group is not recognised as producer organisation, the Member State shall recover:

- a 100 % of the aid paid to the producer group if the failure to achieve recognition was due to the producer group acting deliberately or by serious negligence; or
- b 50 % of the aid paid to the producer group in all other cases.

Article 117

Operational programme

- 1 Payments shall be calculated on the basis of what is found eligible.
- 2 The Member State shall examine the application for aid received from the beneficiary, and establish the amounts that are eligible for support. It shall establish:
 - a the amount that would be payable to the beneficiary based solely on the application;
 - b the amount that is payable to the beneficiary after an examination of the eligibility of the application.
- 3 If the amount established pursuant to paragraph 2(a) exceeds the amount established pursuant to paragraph 2(b) by more than 3 %, a penalty shall be applied. The amount of the penalty shall be the difference between the amounts calculated in paragraph 2(a) and (b).

However, no penalty shall be applied if the producer organisation or producer group is able to demonstrate that it is not responsible for the inclusion of the ineligible amount.
- 4 Paragraphs 2 and 3 shall apply mutatis mutandis to ineligible expenditure identified during on-the-spot or subsequent checks.
- 5 If the value of marketed production is declared and checked before the application for aid, the declared and approved values shall be used when establishing the amounts pursuant to paragraph 2(a) and (b) respectively.

Article 118

Sanctions following first-level checks on withdrawal operations

If, following the check referred to in Article 108, irregularities are found with regard to the marketing standards or the minimum requirements referred to in Article 76, the beneficiary shall be required:

- (a) to pay a penalty of the amount of the Union contribution, calculated on the basis of the quantities of withdrawn products not in conformity with the marketing standards or minimum requirements, if those quantities are less than 10 % of the quantities notified pursuant to Article 78 for the withdrawal operation in question;
- (b) to pay a penalty of the double amount of the Union contribution, if those quantities are between 10 % and 25 % of the quantities notified; or
- (c) to pay a penalty of the amount of the Union contribution for the entire quantity notified pursuant to Article 78, where those quantities exceed 25 % of the quantity notified.

Article 119

Other sanctions applicable to producer organisations regarding withdrawal operations

- 1 The penalties referred to in Article 117 shall cover aid applied for in respect of withdrawal operations as integrated parts of operational programme expenditure.

2 Expenditure for withdrawal operation shall be considered as ineligible if the products not put up for sale have not been disposed of as provided for by the Member State under Article 80(1) or that the withdrawal or its destination has had a negative impact on the environment or any negative phytosanitary consequences in contravention of the provisions adopted under Article 80(1).

Article 120

Sanctions applicable to recipients of withdrawn products

Where irregularities attributable to the recipients of withdrawn products are detected during checks made in accordance with Articles 108 and 109, the following sanctions shall apply:

- (a) the recipients shall cease to be eligible to receive withdrawals; and
- (b) recipients of products withdrawn from the market shall be obliged to repay the value of the products they received plus the related sorting, packaging and transport costs in accordance with the rules laid down by the Member States.

The sanction provided for in point (a) shall take effect immediately and continue for at least one marketing year. It may be extended depending on the seriousness of the irregularity.

Article 121

Green harvesting and non-harvesting

1 With regard to green harvesting, if it is found that the producer organisation has not fulfilled its obligations the producer organisation shall pay by way of penalty the amount of the compensation relating to the areas for which the obligation has not been respected. A failure to fulfil obligations shall include cases where:

- a the Member State finds, during the verification referred to in the second subparagraph of Article 110(1), that the green harvesting measure was not justified on the basis of the analysis of the expected market situation existing at the time;
- b the area notified for green harvesting is not eligible for green harvesting; or
- c the area is not totally harvested or the production not denatured.

2 With regard to non-harvesting, if it is found that the producer organisation has not fulfilled its obligations the producer organisation shall pay by way of penalty the amount of the compensation relating to the areas for which the obligation has not been respected. A failure to fulfil obligations shall include cases where:

- a the area notified for non-harvesting is not eligible for non-harvesting;
- b a harvest or partial harvest has nevertheless taken place; or
- c there has been a negative impact on the environment or any negative phytosanitary consequences for which the producer organisation is responsible.

3 The penalties referred to in paragraphs 1 and 2 shall apply in addition to any penalty imposed pursuant to Article 117.

Article 122

Preventing an on-the-spot check

An aid application shall be rejected for the part of expenditure concerned if the producer organisation, the member or the relevant representative prevents an on-the-spot check from being carried out.

Article 123

Payment of recovered aid and penalties

1 Producer organisations, associations of producer organisations, producer groups or other operators concerned shall reimburse unduly paid aid with interest and pay the penalties provided for in this Section.

The interest shall be calculated:

- a on the basis of the period elapsing between payment and reimbursement by the beneficiary;
- b at the rate applied by the European Central Bank to its main refinancing operations published in the 'C' series of the *Official Journal of the European Union* and in force on the date on which the undue payment is made, plus three percentage points.

2 Aid recovered, interest and penalties imposed shall be paid to the European Agricultural Guarantee Fund.

Article 124

Notification of irregularities

The application of administrative sanctions and penalties and the recovery of unduly paid amounts, as provided for in this Section, are without prejudice to the notification of irregularities to the Commission pursuant to Commission Regulation (EC) No 1848/2006⁽¹⁾.

- (1) [OJ L 355, 15.12.2006, p. 56.](#)