COMMISSION REGULATION (EC) No 590/2008

of 23 June 2008

amending Regulation (EC) No 1580/2007 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 and derogating from that Regulation

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1182/2007 of 26 September 2007 laying down specific rules as regards the fruit and vegetable sector, amending Directives 2001/112/EC and 2001/113/EC and Regulations (EEC) No 827/68, (EC) No 2200/96, (EC) No 2201/96, (EC) No 2826/2000, (EC) No 1782/2003 and (EC) No 318/2006 and repealing Regulation (EC) No 2202/96 [1], and in particular Article 42(b), (f) and (j),

Whereas:

(1) Article 11 of Regulation (EC) No 1182/2007 provides that national financial assistance may be granted in regions where the degree of organisation of producers is particularly low. This assistance should be additional to the operational fund. In order to permit a producer organisation to include the additional support in its operational programme, the operational programme should be amended if necessary. In this case Member States should be able to increase the percentage limit set in Article 67(2)(c) of Commission Regulation (EC) No 1580/2007 [2] by which the amount of the operational fund initially approved can be increased.

(2) Article 82(2)(d) of Regulation (EC) No 1580/2007 provides that payment for transport costs for free distribution shall be subject to the presentation of documents certifying the transport costs actually incurred. However, the transport costs related to free distribution are financed by flat-rate amounts set in Annex XI to that Regulation, so there is no need for such information, but instead information should be required on the distance which is used as a basis for the calculation of the flat-rate amount.

(3) It is appropriate to change the date set in Article 94(1) of Regulation (EC) No 1580/2007 by which Member States shall submit a request to the Commission for authorisation to grant national financial assistance to producer organisations to 31 January, in order to take into account the existing possibility for Member States to postpone the approval of operational programmes and funds until 20 January.

(4) Article 97(1) of Regulation (EC) No 1580/2007 establishes that Member States should request Community reimbursement of approved national financial assistance actually paid to producer organisations before 1 March of the year following the yearly implementation of the operational programmes. Since Member States pay the producer organisations by 15 October of the year following the year of implementation of the programme, the deadline for Member States to request reimbursement from the Commission, should therefore be extended to 1 January of the second year following the year of implementation of the programme.

(5) The fourth subparagraph of Article 116(2) of Regulation (EC) No 1580/2007 provides that Member States may make payments after the deadline set out in Article 71 of that Regulation where this is necessary. However, a final deadline should be set for such payments for reasons of good financial management. A similar set of provisions should also be added to Article 116(3) of that Regulation for the same reasons.

(6) Point (b) of the first paragraph of Article 122 of Regulation (EC) No 1580/2007 requires that producer organisations be required to reimburse the Community contribution where recipients of products withdrawn from the market are obliged to repay the value of the products they received plus the related sorting, packaging and transport costs due to irregularities. However, producer organisations should not be made responsible for irregularities attributable to the recipients of withdrawn products and therefore this requirement should be removed.

(7) In order to ensure legal certainty and equality between Member States, it should be made clear that for operational programmes implemented in 2007 provisions identical to those contained in Commission Regulation (EC) No 544/2001 of 20 March 2001 laying down rules for the application of Council Regulation (EC) No 2200/96 as regards additional financial assistance to operational funds [3] should continue to apply.

[1] OJ L 273, 17.10.2007, p. 1.

[2] OJ L 350, 31.12.2007, p. 1. Regulation as last amended by Regulation (EC) No 498/2008 (OJ L 146, 5.6.2008, p. 7).

[3] OJ L 81, 21.3.2001, p. 20.

(8) Article 47(2) of Regulation (EC) No 1580/2007 provides that applications for aid covering semestrial periods may be submitted only if the recognition plan is broken into semestrial periods. However, such applications could be made for plans approved prior to 2008 under Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organization of the market in fruit and vegetables [1]. It is appropriate to provide for a transitional measure to allow for such applications in this case.

(9) In the interests of legal certainty, and to ensure a smooth transition between the regime under Regulation (EC) No 2200/96 and that under Regulation (EC) No 1182/2007, it is important to clarify that the aid rates should remain unchanged for recognition plans accepted under Regulation (EC) No 2200/96 which continue to benefit from acceptance pursuant to Article 55(4) of Regulation (EC) No 1182/2007 for producer groups not in Member States which acceded to the Community on 1 May 2004 or after that date and not in the outermost regions of the Community as referred to in Article 299(2) of the Treaty or in the smaller Aegean islands as referred to in Article 1(2) of Council Regulation (EC) No 1405/2006 of 18 September 2006 laying down specific measures for agriculture in favour of the smaller Aegean islands and amending Regulation (EC) No 1782/2003 [2] and for producer groups which benefitted from Article 14(7) of Regulation (EC) No 2200/96.

(10) In the interests of legal certainty, and to protect acquired rights, it is important to clarify that payments of Community withdrawal compensation and related checks which concern 2007 withdrawals but which were not yet made by 31 December 2007 may nevertheless be made after that date in accordance with the rules in force at that date.

(11) In the interests of legal certainty, and to protect legitimate expectations, it should be clarified that sanctions should not be applied on an application for aid for operational programmes implemented in 2007 for acts or omissions in that period which would be more severe than that applicable under the legislation in force at the time.

(12) Regulation (EC) No 1580/2007 should therefore be amended accordingly.

(13) Given the difficulties of Member States to adapt to the new rules on national financial assistance in Regulation (EC) No 1580/2007 for operational programmes implemented in 2007 and 2008, it is appropriate to adopt transitional rules to allow for derogations from the dates set in Article 94 of that Regulation.

(14) 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

Regulation (EC) No 1580/2007 is amended as follows:

1. in Article 67(2), point (c) is replaced by the following:

'(c) increase the amount of the operational fund by a maximum of 25 %, and decrease it by a percentage to be fixed by Member States, of the amount initially approved provided the overall objectives of the operational programme are maintained. Member States may increase this percentage in case of mergers of producer organisations as referred to in Article 31(1) and in case of application of Article 94a.';

2. in Article 82(2), point (d) is replaced by the following:

'(d) the distance between the place of withdrawal and the place of delivery.';

3. in Article 94(1), the first subparagraph is replaced by the following:

'Member States shall submit a request to the Commission for authorisation to grant national financial assistance pursuant to the first subparagraph of Article 11(1) of Regulation (EC) No 1182/2007 for operational programmes to be implemented in any given calendar year by 31 January of that year.';

4. after Article 94, the following Article 94a is inserted:

'*Article 94a*

Modifications to the operational programme

A producer organisation wishing to apply for national financial assistance shall, if necessary, modify its operational programme pursuant to Article 67.';

5. in Article 97, paragraph 1 is replaced by the following:

'1. Member States shall request Community reimbursement of approved national financial assistance actually paid to producer organisations, before 1 January of the second year following the year of implementation of the programme.

[1] OJ L 297, 21.11.1996, p. 1. Regulation as last amended by Regulation (EC) No 1234/2007 (OJ L 299, 16.11.2007, p. 1).
[2] OJ L 265, 26.9.2006, p. 1.

The request shall be accompanied by evidence showing that the conditions set out in the second subparagraph of Article 11(1) of Regulation (EC) No 1182/2007 have been fulfilled in three of the previous four years, as well as details of the producer organisations concerned, the amount of assistance actually paid and a description of the operational fund broken out between total amount, contributions from Community, Member State (national financial assistance) and producer organisations and members.';

6. Article 116 is amended as follows:

(a) the fourth subparagraph of paragraph 2 is replaced by the following:

'Member States may make payments after the deadline set out in Article 71 where this is necessary in order to apply this paragraph. However, these 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.';

(b) after the first subparagraph of paragraph 3, the following subparagraph is inserted:

'Member States may make payments after the deadline set out in Article 71 where this is necessary in order to apply this paragraph. However, these 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.';

7. in point (b) of the first paragraph of Article 122, the second sentence is deleted;

8. in Article 152, the following paragraphs are added:

'4. By way of derogation from Article 47(2) of this Regulation, producers groups which are implementing recognition plans to which Article 55(4) of Regulation (EC) No 1182/2007 applies and which are not broken into semestrial periods may submit applications for aid covering semestrial periods. Such applications may cover only semestrial periods corresponding to the yearly segments which started before 2008.

5. By way of derogation from Article 96, in respect of operational programmes implemented in 2007, additional financial assistance to operational funds shall be financed by EAGF at a level of 50 % of the financial assistance granted to the producer organisation.

6. Recognition plans accepted under Regulation (EC) No 2200/96 which continue to benefit from acceptance pursuant to Article 55(4) of Regulation (EC) No 1182/2007 for producer groups not in Member States which acceded to the Community on 1 May 2004 or after that date and not in the outermost regions of the Community as referred to in Article 299(2) of the Treaty or in the smaller Aegean islands as referred to in Article 1(2) of Regulation (EC) No 1405/2006 shall be financed at the rates set out in Article 7(5)(b) of Regulation (EC) No 1182/2007.

Recognition plans accepted under Regulation (EC) No 2200/96 which benefitted from Article 14(7) of that Regulation and continue to benefit from acceptance pursuant to Article 55(4) of Regulation (EC) No 1182/2007 shall be financed at the rates set out in Article 7(5)(a) of Regulation (EC) No 1182/2007.

7. Payments of Community withdrawal compensation and related checks which concern 2007 withdrawals but which were not yet made by 31 December 2007 may nevertheless be made after that date in accordance with Title IV of Regulation (EC) No 2200/96 as it existed at that date.

8. Where, in respect of an application for aid submitted for operational programmes implemented in 2007 or before, and in relation to acts or omissions which occurred in that period, a sanction would apply under Section 3 of Chapter V of Title III but a less severe sanction or no sanction would have applied under the legislation in force at the time, then that less severe sanction, or as the case may be, no sanction, shall apply.'

Article 2

By way of derogation from Article 94 of Regulation (EC) No 1580/2007, in respect of operational programmes implemented in 2007 and 2008, Member States shall submit a request to the Commission for authorisation to pay national financial assistance pursuant to the first subparagraph of Article 11(1) of Regulation (EC) No 1182/2007 by 1 July 2008.

Article 3

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 23 June 2008.

For the Commission
Mariann FISCHER BOEL
Member of the Commission