

**TERMS AND CONDITIONS**  
**OF THE**  
**SCHEME OF AID FOR**  
**PRODUCER ORGANISATIONS**  
**IN THE FRUIT AND VEGETABLES SECTOR**

See also

**The National Strategy for Sustainable Operational Programmes 2009-2013**  
**incorporating the National Framework for Environmental Actions**

**Council Regulation (EC) No 1234/2007**

and

**Commission Regulation (EU) No 543/2011**

22 December 2011

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# Introduction

In the face of ever-greater concentration of demand, the grouping of supply through Producer Organisations (hereinafter referred to as ‘POs’) is more than ever an economic necessity in order to strengthen the position of producers in the market. Furthermore, production and marketing of fruit and vegetables should take full account of environmental concerns, including cultivation practices, the management of waste materials and the destruction of products withdrawn from the market, in particular as regards the protection of water quality, the maintenance of biodiversity and the upkeep of the countryside.

Accordingly, in its 2007 reform of the Common Organisation of the Market for Fruit and Vegetables, the European Union (hereinafter referred to as the EU) made further provision for financial assistance to producers grouping, on a voluntary basis, to form recognised POs and implement approved operational programmes that improve the quality and efficiency of operations and achieve the following objectives: improving the competitiveness and market orientation of the sector so as to contribute to achieving sustainable production that is competitive both on the EU and external markets; reducing fluctuations in producers’ incomes resulting from crises on the market; increasing the consumption of fruit and vegetables in the Community and continuing the efforts made by the sector to maintain and protect the environment.

The following terms and conditions of the Scheme of EU Aid For Producer Organisations in the Fruit and Vegetables Sector, (hereinafter called “the Scheme”), as laid down by the Department of Agriculture, Food and the Marine (hereinafter referred to as ‘the Department’) are in accordance with the provisions of Council Regulation (EC) No 1234/2007<sup>1</sup> and Commission Implementing Regulation (EU) No 543/2011<sup>2</sup>. The terms and conditions do not purport to be a legal interpretation of the above Regulations.

Enquiries and requests for application forms should be directed to

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This document is available on the Department’s website at [www.agriculture.gov.ie](http://www.agriculture.gov.ie)

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<sup>1</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:273:0001:0030:EN:PDF>

<sup>2</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2011R0543:20110901:EN:PDF>

# 1 RECOGNITION OF POs

POs that wish to be recognised as eligible for EU financial assistance under the Scheme shall meet the criteria specified in Sections 1.1 to 1.7 below in terms of their objectives, Articles of Association, capabilities, main activity, membership and value of marketed production (hereinafter referred to as “VMP”). Furthermore, transnational POs must comply with the conditions stipulated in Section 1.8. Application for recognition as a PO shall be made to the Department as set out in Section 1.9 below.

Department officials shall carry out regular checks to ascertain whether POs continue to comply with all recognition criteria. The Department may impose penalties on POs in the event of non-compliance with any of the recognition criteria or any significant breach of the provisions of the governing regulations and/or these terms and conditions. The Department may withdraw PO recognition with effect from the date from which the conditions for recognition were not fulfilled, or the irregularity or non-compliance first occurred.

## **DEFINITIONS:**

For the purposes of this Scheme, the following definitions, in addition to the terms defined in Commission Regulation (EU) No 543/2011, shall apply:

***Producer Organisation*** is defined as any legal entity, or clearly defined part of a legal entity, which complies with the following requirements:

- (a) it is formed on the initiative of farmers within the meaning of Article 2(a) of Regulation (EC) No 1782/2003, who are growers of one or more products listed in Article 1(2) of Regulation (EC) No 2200/96 and/or of such products intended solely for processing;
- (b) its objectives fulfil the requirements at paragraph 1.2 of these terms and conditions;
- (c) its articles of association and/or its rules provide for the specific requirements detailed at 1.3; and
- (d) it is recognised by the Department.

***An Association of Producer Organisations*** (hereinafter referred to as “An APO”) is defined as an association of POs that is formed on the initiative of recognised POs to carry out any of the activities of a PO; the APO must be recognised by the Department as being capable of effectively carrying out those activities and the Department must be satisfied that the APO does not hold a dominant position in a given market unless this is necessary in pursuance of the goals of Article 33 of the Treaty.

***An 'associated company' and 'control' are defined as follows:*** A company shall be treated as another company's associated company at a particular time if, at that time or at any time within one year previously, one of the two companies has control of the other company, or both companies are under the control of the same person or persons.

A person shall be taken to have control of a company if such person exercises, or is able to exercise or is entitled to acquire, control, whether direct or indirect, over the company's affairs, and in particular, but without prejudice to the generality of the foregoing, if such person possesses or is entitled to acquire—

1. the greater part of the share capital or issued share capital of the company or of the voting power in the company,
2. such part of the issued share capital of the company as would, if the whole of the income of the company were distributed among the participators (without regard to any rights which such person or any other person has as a loan creditor), entitle such person to receive the greater part of the amount so distributed, or
3. such rights as would, in the event of the winding up of the company or in any other circumstances, entitle such person to receive the greater part of the assets of the company which would then be available for distribution among the participators.

Where two or more persons together satisfy any of the conditions of subsection (2), they shall be taken to have control of the company.

For the purposes of subsection (2), a person shall be treated as entitled to acquire anything which such person is entitled to acquire at a future date or will at a future date be entitled to acquire.

For the purposes of subsections (2) and (3), there shall be attributed to any person any rights or powers of a nominee for such person, that is, any rights or powers which another person possesses on such person's behalf or may be required to exercise on such person's direction or behalf.

For the purposes of subsections (2) and (3), there may also be attributed to any person all the rights and powers of—

1. any company of which such person has, or such person and associates of such person have, control,
2. any two or more companies of which such person has, or such person and associates of such person have, control,
3. any associate of such person, or
4. any two or more associates of such person,

including the rights and powers attributed to a company or associate under subsection (5), but excluding those attributed to an associate under this subsection, and such attributions shall be made under this subsection as will result in the company being treated as under the control of five or fewer participators if it can be so treated.

“Business Relationship” shall mean a relationship in which a PO member, has been in the previous five years, or is currently, a director or an employee of a company or legal entity which is doing business with, or is undertaking one or more actions of the Operational Programme on behalf of the PO.

“Personal Relationship” shall mean a relationship in which a PO Member has an immediate family member such as spouse, offspring, sibling, parent, grandparent, brother or sister in-law who is currently, or has in the past five years been, either a Director or employee of a company or legal entity undertaking business with the PO or undertaking an outsourced action on behalf of the PO.

## **1.1 Recognition criteria**

1.1.1. To be recognised under Council Regulation (EC) No 1234/2007, the PO shall have legal personality and shall be formed on the initiative of **producers** of one or more of the products covered by the common organisation of the market in fruit and vegetables; those products fall within the Combined Nomenclature (CN) codes in Annex I. The PO is advised to check with the Department if any doubt exists as to whether a particular product is covered in this Annex. Potatoes and certain herbs are excluded.

1.1.2 To be recognised under Council Regulation (EC) No 1234/2007, the PO must comply with Sections 1.2 to 1.7 below in terms of their objectives, Articles of Association, capabilities, main activity, membership and VMP.

In addition, transnational POs must comply with Section 1.8 to obtain, or retain, recognition.

1.1.3. To be recognised as a PO in respect of products that are solely intended for processing, the PO shall provide evidence that such products are delivered for processing, whether through a system of supply contracts or otherwise.

## **1.2 Particular objectives of the PO**

The PO shall have the objective of using environmentally sound cultivation practices, production techniques and waste management practices, in particular to protect the quality of water, soil and landscape and to preserve or encourage biodiversity. It shall also have at least one of the following objectives:

- a) ensuring that production is planned and adjusted to demand, particularly in terms of quality and quantity, and/or,
- b) concentrating supply and placing members’ produce on the market, and/or,
- c) optimising production costs and stabilising producer prices.

## **1.3 Articles of Association of the PO**

1.3.1. The Articles of Association of the PO shall require its producer members to:

- a) apply the rules adopted by the PO relating to production, production reporting, marketing and protecting the environment;
- b) belong to only one PO in respect of a given holding’s production of the product or products for which the PO is recognised;

- c) market their entire production concerned through the PO - see possible limited exceptions in Section 1.3.2;
- d) provide statistical information requested by the PO and/or the Department, in particular information on production, growing areas, holdings, quantities cropped, yields and direct sales; and,
- e) pay the financial contributions provided for in its Articles of Association for establishing and replenishing the operational fund (see Section 2).

1.3.2. While members are required to commit their entire production of the crop(s) for which the PO is recognised to their PO, the following limited exceptions are allowed. These exceptions only apply where **the member writes to the PO, in advance, requesting derogation under this paragraph, and the PO specifically authorises and documents the arrangement and subsequently monitors the quantity:**

- a) members may sell a percentage of their production directly on their holdings and/or outside their holdings to consumers for their personal needs; if a member is allowed to avail of this option, the percentage shall not be more than 45%;
- b) members may market themselves, or through another PO that is designated by their own PO, quantities of products which are marginal in relation to the volume marketed by their own PO. In this context, marginal shall mean less than 10%;
- c) members may market themselves, or through another PO that is designated by their own PO, products which, because of their characteristics, are not normally marketed by their own PO.

The volumes marketed under any of these derogations shall be monitored and recorded by the PO and the records, including the written agreement or contract, shall be available for inspection.

1.3.3. The production marketed in accordance with Section 1.3.2 shall be excluded from the calculation of the PO's VMP. Production, which is marketed by another PO designated by the member's own PO in accordance with 1.3.2 (b) or (c) above, shall be included in the VMP of the PO who sold the product.

1.3.4. The Articles of Association of the PO shall also provide for:

- a) voting rights on the management and operation of the PO to avoid any abuse of power and influence by one or more members;
- b) procedures for determining, adopting and amending its rules;
- c) the imposition on members of the financial contributions that are needed to finance the PO;
- d) rules enabling the producer members to democratically scrutinise the PO and the decisions it takes;
- e) penalties for infringement of obligations under the Articles of Association, particularly non-payment of financial contributions, or of the PO rules;

- f) rules on the admission of new members, particularly a minimum membership period (see Section 1.6);
- g) the accounting and budgetary rules necessary for effectively operating the PO.

## **1.4 Competence of the PO**

1.4.1. The PO must demonstrate that it has the necessary staff, infrastructure and equipment to achieve its particular objectives and to ensure its essential functioning, in particular that it:

- a) has full knowledge of its members' production;
- b) can carry out its activities properly, both over time and in terms of effectiveness and concentration of supply;
- c) can effectively enable its members to obtain technical assistance in using environmentally-friendly cultivation practices;
- d) can effectively provide its members, where necessary, with the technical means for collecting, storing, packaging and marketing their produce;
- e) can ensure proper commercial and budgetary management of its activities;
- f) has centralised bookkeeping and invoicing systems;
- g) does not abuse its dominant position in any given market(s); and
- h) can meet the Department's obligations with regard to reporting arrangements as provided for at Section 3.7 below.

1.4.2. The PO may fulfil its obligation to provide an adequate level of technical means either directly, or through its members, or through subsidiaries, or by outsourcing.

1.4.3. The PO may outsource any activity, including to subsidiaries and/or members, provided that:

- a) the PO provides sufficient evidence to the Department, that such outsourcing is an appropriate way to achieve its objectives and the reasons are documented in the programme submitted and in each Annual and Final Report;
- b) the PO enters into a written agreement with each legal entity to whom it outsources any activity;
- c) the Department gives advance approval of the arrangements for outsourcing any PO activity, including the content of the relevant written agreement, if this is requested by the Department;
- d) the PO retains responsibility for ensuring that the outsourced activity is carried out in line with the approved operational programme;

- e) the PO retains documentary evidence of its overall management, control and supervision of the commercial arrangement for the outsourced activity;
- f) the PO can provide the requisite level of documentation relating to the outsourced activity to support its aid claims; and
- g) the PO complies with any limits imposed by the Department regarding the use of companies/service providers which are associated with PO members.

**1.4.4 Specific limitations with regard to outsourcing of actions to marketing companies.**

- (a) Each legal entity providing a marketing service to a PO must market, routinely and regularly, the production of at least two PO members.
- (b) Each producer member providing a marketing service to a PO must market, routinely and regularly, a minimum quantity of at least 25% of the production of another member(s), apart from the production of an associated company (see definition, pages 5-6) and/or a person or legal entity with whom the producer member has either a business relationship or a personal relationship. This quantity must equal at least 25% of the total production traded by that marketing company on behalf of the PO.
- (c) Without prejudice to the previous two paragraphs, a marketing company may market one or more products, produced by only one member of a PO, subject to compliance with any additional conditions that may be stipulated by the Department;
- (d) Where a producer member providing a marketing service to a PO fails to comply with paragraph (b) above and where paragraph (c) does not apply, the eligible costs of the marketing actions undertaken cannot be included in the claim for EU aid [the production marketed cannot be included for calculation of VMP purposes and the costs must not be paid from the Operational Fund];
- (e) Only costs, post initial cooling and refrigeration stage, may be included in the claim [the costs of the initial cooling to required temperature will, in all cases, be borne by the producer member and the PO must be able to provide proof that these costs have been excluded]; and
- (f) The eligible cost(s) of an action outsourced to a marketing company or companies shall not exceed 25% of the approved budget for the PO's operational programme

## **1.5 Main Activity of the PO**

- 1.5.1. The main activity of the PO shall relate to the concentration of supply and the placing on the market of the product(s) of its members for which it is recognised.

- 1.5.2. The VMP of the PO's members plus the VMP of any member(s) of other recognised PO(s) that it sells shall exceed the value of the non-PO production that it sells. This shall be calculated only on the basis of the product(s) for which the PO is recognised. Production which is marketed by a company which fails to comply with Section 1.4.4 (b) shall be counted as non-PO production, unless the provisions of Section 1.4.4(c) apply.

## **1.6 Membership of the PO**

- 1.6.1. The PO shall comprise at least five producer members. A producer member is an adult person who grows the product(s) for which the PO is seeking, or has been granted, recognition and who contracts to supply the PO with his/her entire production of those product(s), unless the limited exemptions at 1.3.2 above apply.
- 1.6.2. To ensure that a PO genuinely represents the legally required minimum number of producers, the Department shall regard each of the following as a single member:
- (i) a producer member, with two or more legal personalities and/or two or more holdings, and,
  - (ii) a legal entity representing two or more people.
- 1.6.3. The minimum period of membership for producers is one year.
- 1.6.4. The Department shall check that the membership agreement drawn up by the PO includes all provisions required under Article 125a of 1234/2007. Each member shall sign a membership agreement.
- 1.6.5. The PO shall immediately notify the Department in the event that the number of producing members falls below the minimum of five.
- 1.6.6. Resignation letters must be sent to the PO. The PO shall include, in its rules of association, the minimum resignation notice period that it requires from members who wish to resign. The required period of notice shall range between one and six months. Records of resignations shall be provided to Department officials, on request.
- 1.6.7. Producers may belong to more than one PO at a time, but a producer may not be a member of more than one PO for the same product.
- 1.6.8. Provisions for representation and voting rights in the rules of the PO shall ensure that there is no abuse of power or influence by one or more significant suppliers to the PO in relation to the management and operation of the PO and decisions in relation to the operational programme and/or use of funds.
- 1.6.9. Non-producers can also be PO members, but the PO shall be controlled by its producer members.
- 1.6.10. Non-producing members are excluded for the purpose of determining the minimum number of producers required for recognition as a PO.
- 1.6.11. Members shall only benefit directly from the measures that are co-financed by the EU for production sold through the PO.

1.6.12 Non-producing members shall not vote on any decision relating to the operational fund.

## **1.7 Minimum value of marketed production**

The certified VMP of the PO seeking recognition shall be at least €1,500,000. For the purposes of recognition, the VMP shall be calculated on the basis of the average value, taken over the three previous years, of the marketed production of members of the new PO of the product(s) for which the PO is seeking recognition, unless section 2.3.3 applies.

## **1.8. Transnational POs**

The Regulations allow for the establishment of transnational POs.

The head office of a transnational PO shall be established in the Member State where the organisation has its most significant holdings and/or number of members and/or achieves an important level of marketed production. The Member State where this head office is located is responsible for recognising the transnational PO, approving its operational programme and establishing the necessary administrative collaboration with the other Member State(s) in which members are located to ensure its continual compliance with the terms of recognition and the system of checks and penalties.

From 1 January 2012, it is a condition of recognition for a transnational producer organisation headquartered in Ireland that at least 60% of its marketed production must be produced within the State.

## **1.9. Applying for recognition**

1.9.1. The PO shall make its application for recognition on form **HORT PO AP 1**. The required details shall include:

- a) the product(s) for which recognition is being sought;
- b) the names and addresses of the members;
- c) the average annual turnover (supported by relevant evidence) and details of crop production (crop, production area and facilities, annual yield and value) for each member over the previous three years;
- d) the objectives of the PO;
- e) the Articles of Association of the PO and the rules governing the PO;
- f) the resources of the PO,
- g) for transnational POs, the % of its production produced within the State, and
- h) any other information that may be requested by the Department.

- 1.9.2. If members were previously, or are currently (see Section 1.6.5), in another PO, full particulars of previous and/or current memberships shall be supplied with the application for recognition of the PO.
- 1.9.3. An application for recognition may be made at any time. If an application for recognition is correctly submitted with all of the required supporting documentation, a decision shall be made by the Department and notified to the PO within three months of receipt of the application.
- 1.9.4. Granting of recognition is separate from, and does not imply approval of, an operational programme. The timing for submission and approval of operational programmes is detailed in Section 3.

## **1.10 Withdrawal or suspension of recognition**

Recognition shall be withdrawn or suspended if the PO does not continue to satisfy the recognition criteria. See also Section 6.1. below.

## 2 THE OPERATIONAL FUND

A PO that wishes to avail of financial assistance from the EU for an operational programme under this Scheme (see also Section 3) must set up an operational fund.

### 2.1 Management of the operational fund

- 2.1.1. A separate bank account shall be set up for the operational fund. The operational fund shall be managed to allow external auditors to identify, check and certify its revenue and expenditure annually. Bank statements in relation to the operational fund, and explanatory notes, shall be required with each application for EU financial assistance.
- 2.1.2 Bank statements for accounts operated by the PO, other than the operational fund account, including any account(s) through which the products for which the PO is recognised are traded, must be available for inspection by Department officials.
- 2.1.3. The operational fund shall be separately identifiable within the PO's audited accounts. The audited accounts shall also identify turnover from any non-member(s) and for products for which the PO is not recognised and in relation to any other non-eligible activities.
- 2.1.4 The auditors, when certifying the VMP, must deduct the turnover related to products for which the PO is not recognised, production of non-members, marginal and direct sales, sales of items other than recognised production of members and production of recognised product of PO members not marketed through companies complying with Section 1.4.4 (b) or by the PO itself.
- 2.1.5 The operational fund shall be used only for transactions directly connected with the implementation of an operational programme that has been approved by the Department.

The Operational Fund should include only the following (and nothing else):

- The financial contributions from the members of the PO
  - Eligible expenditure under the approved Operational Programme, and
  - EU aid received.
- 2.1.6 No payments shall be made from the Operational Fund for non-Operational Programme activities unless the Operational Fund has been credited in advance with the cost of the non-eligible item(s).
  - 2.1.7 The Department will, at a minimum, require the PO to reimburse the Operational Fund if any ineligible costs are paid from the Operational Fund. If the PO persistently uses the Operational Fund for non-eligible items, the Department may impose a financial penalty.

## **2.2 Financing of the operational fund**

- 2.2.1. The level of the financial contributions/levies to the operational fund shall be determined by the PO.
- 2.2.2. All producer members shall have the opportunity to participate democratically in decisions concerning the use of the PO funds and the financial contributions/levies to the operational fund.
- 2.2.3. Only members whose production contributes to the VMP of the PO have the opportunity to benefit from the operational fund.
- 2.2.4. The financial assistance from the EU shall be equal to the amount of the financial contributions/levies from the PO and its members, provided that:
- a) it does not exceed 50% of the actual expenditure incurred on the operational programme, with the exceptions listed in Section 2.2.5., and,
  - b) it shall be capped at 4.1% of the VMP of the PO for the designated agreed reference period, with the exceptions as set out at Section 2.2.6.
- 2.2.5. The financial assistance from the EU may be increased to 60% of the actual expenditure on an operational programme or part of an operational programme that meets one or more of the following conditions:
- a) it is submitted by several POs that are operating in different Member States on trans-national Schemes;
  - b) it covers solely specific support for the production of organic products;
  - c) it is the first operational programme to be submitted by a recognised PO that has merged with another recognised PO;
  - d) it covers solely specific support for action(s) that promote the consumption of fruit and vegetables and that are targeted at children in educational establishments.
- 2.2.6. The cap on the EU financial assistance may be increased to 4.6% of the VMP of the PO provided that the amount in excess of 4.1% of the VMP is used solely for crisis prevention and crisis management measures.
- 2.2.7. POs shall be deemed to be acting in the name and on behalf of their members in economic matters.
- 2.2.8. The source and use made of all monies in the Operational Fund must be transparent.

## **2.3. Value of Marketed Production (VMP)**

- 2.3.1. The VMP of the PO is calculated on the basis of the members' production of the product(s) for which the PO is recognised. The VMP shall include only the production of the members of the PO that is marketed by the PO itself or by companies to whom this action is outsourced by the PO (provided that Section 1.4.4(b) is complied with).

- 2.3.2. Production that is marketed by members themselves or by another designated PO shall be excluded from the VMP calculation. The Department shall apply penalties where a PO includes such production in their VMP.
- 2.3.3 The VMP may include the production of one or more members who leave or join the PO, provided that there is no potential for duplicate counting of the same production until the expiry of their current operational programme, or 31<sup>st</sup> December 2011 (whichever is sooner). The Department will examine each such situation on a case-by-case basis.
- 2.3.4. The marketed production shall be valued as invoiced at the ‘ex-producer organisation’ stage, where applicable as produce that has been prepared and/or has undergone first stage processing and/or has been packaged which excludes:
- a) VAT, and;
  - b) the internal transport costs, regardless of the distance between the centralised collection or packing point(s) of the PO and the point of distribution.
- 2.3.5. The marketed production may also be valued as invoiced at an ex-subsiary stage, provided that the PO owns at least 90% of the capital of the subsidiary. A subsidiary is any company in which the PO has taken shares and which contributes to the objectives of the PO.
- 2.3.6 The VMP of a PO shall be certified by their auditors in accordance with the provisions of Sections 2.1.3 and 2.1.4.
- 2.3.7 In the case of a merger of existing POs on or after 1 January 2012, the VMP reference period of the merged PO shall be calculated as follows:
- (a) on the basis of each member of the merged PO’s production of the product(s) for which the merged PO is recognised, which was marketed by the POs being merged during the approved VMP reference period;
  - (b) the value of the production of each new member shall be calculated in accordance with Section 2.3.3 above;
  - (c) the value of production is calculated in accordance with the provisions of 2.3.4 to 2.3.6 above.

## **2.4. Reference period for VMP**

- 2.4.1. The ceiling on the financial assistance from the EU shall be calculated annually on the basis of the VMP of the members of a PO during one of the following reference periods:
- a) a 12-month period, starting no earlier than 1 January three years before the year in which the operational programme is implemented and ending no later than 31 December of the year immediately before that in which the operational programme is implemented, or
  - b) the average value of three consecutive 12-month periods starting no earlier than 1 January five years before the year in which the operational programme is implemented and ending no later than 31 December of the

year immediately before that in which the operational programme is implemented.

- 2.4.2. The 12-month period shall coincide with the accounting period of the PO.
- 2.4.3 The Department shall determine the VMP reference period for each PO in the context of the production history of the PO and its ability to provide satisfactory accounts for the reference period. For new operational programmes commencing on or after 1 January 2012 the reference VMP will be calculated on the basis of the production (during the reference period) of only those producers who are PO members on the 1<sup>st</sup> January each operational year. The Department will verify the reference VMP and the VMP for the operational year by checking the accounting system of the PO and reconciling that information with the annual certified accounts and other sources.
- 2.4.4 The methodology for the calculation of the reference period shall not vary during an operational programme except in situations, accepted by the Department to constitute exceptional circumstances, and deemed to be outside the control of the PO.
- 2.4.5. If a reduction in the value of a product has occurred during a programme because of reason(s) that are duly justified, and the Department accepts that the cause was outside the responsibility and control of the PO, the reference VMP shall not be less than 65% of the value of the product in the previous VMP reference period.

## **2.5. Timing of EU financial assistance**

EU financial assistance is paid retrospectively. Subject to a correct claim being made (see also Section 4), payment is normally made in the year after the implementation of the operational programme year for which payment is sought. For this reason, the PO must find the resources to fully fund the implementation of the operational programme initially.

## **2.6. Carry-over of the operational fund**

The operational fund may be carried over from one year to the next. EU financial assistance is, however, based on the eligible expenditure that is incurred on the operational programme, and not the size of the operational fund.

## **3 OPERATIONAL PROGRAMMES**

The operational programme (hereinafter referred to as ‘the programme’) is a business plan that is prepared by the PO with the overall objective of improving its performance in the areas of production planning, marketing, product quality and environmental protection. The programme shall be consistent with the National Strategy for Sustainable Operational Programmes 2009-2013 (hereinafter referred to as ‘the National Strategy’). The PO shall submit its programme to the Department for approval.

### **3.1. Mandatory elements of a programme**

- 3.1.1. The programme shall have a minimum duration of three years and a maximum duration of five years.
- 3.1.2. The programme shall be implemented in annual periods from 1 January to 31 December inclusive.
- 3.1.3. The PO should implement the entire approved programme, unless any change(s) are approved in accordance with Section 3.6 below. The PO may, in accordance with Article 65(1) of Commission Implementing Regulation (EU) No 543/2011, request amendments to operational programmes, including their duration, by 15 September at the latest, to be applied as from 1 January of the following year. However, an operational programme must have a minimum duration of three years.
- 3.1.4. All programmes must include an objective relating to the use of environmentally friendly methods and one or more of the following objectives:
  - production planning;
  - improving product quality;
  - boosting the commercial value of products;
  - promoting products, whether in a fresh or processed form;
  - crisis prevention and management.
- 3.1.5. All programmes shall include at least two actions to develop the use of environmentally-sound techniques by the PO members in relation to cultivation practices and the management of waste materials, and/or the encouragement of biodiversity. These required actions must conform exactly to the approved wording in the Framework for Environmental Actions, which is annexed to the National Strategy for Sustainable Operational Programmes 2009 – 2013, which is available at:  
<http://www.agriculture.gov.ie/farmingsectors/horticulture/horticultureSchemes/>
- 3.1.6. Only the specific additional costs of undertaking approved environmental actions (i.e., the additional costs to the PO, calculated as the difference between the conventional costs and the costs actually incurred) are eligible for EU aid. Accordingly, the PO must submit details of the methodology used for

establishing the conventional costs. The methodology must be submitted to, and approved by, the Department before the operational programme can be approved.

## 3.2. Preparing an operational programme

- 3.2.1. Any PO that has been recognised under Council Regulation (EC) No 1234/2007 can submit a programme for approval by the Department.
- 3.2.2. Notwithstanding 3.2.1, a programme may also be submitted with the PO's application for recognition, but approval of the programme shall be subject to attaining recognition no later than the final date specified in Section 3.6.
- 3.2.3. The programme shall be prepared by the PO. The PO can seek the help of a trade association(s) and/or external consultant(s), if necessary. **However, the programme and its implementation shall remain solely the responsibility of the PO.** The application for approval of the programme shall be submitted on form **HORT PO AP 2**, which is available from the Department. The programme approval application shall include the following information:
- a) a description of the situation at the start of the programme, see Section 3.2.4 below;
  - b) the duration of the programme;
  - c) the objectives of the programme;
  - d) a detailed description of each measure, together with the component action(s), to be taken to achieve each of the objectives;
  - e) the financial provisions for fully implementing the programme;
  - f) performance indicators for each measure in the programme; and
  - g) any other information that may be requested by the Department, in support of the programme approval application.
- 3.2.4. The description of the situation at the start of the programme shall include, at least, details of the following:
- a) the names and addresses of the members;
  - b) the production area, yield and value of the crop(s) that are currently being produced by each member;
  - c) the qualifications and/or experience of each member in producing the crop(s) for which the PO is recognised;
  - d) details of any post-harvest equipment, pack-house(s) and/or cold-storage facilities owned by the members or by the PO; and
  - e) the current marketing arrangements and market outlets.
- 3.2.5. The PO shall clearly state all of the objectives of its programme. The objectives that are eligible for EU financial assistance are listed in Section 3 of the National Strategy for Sustainable Operational Programmes 2009 - 2013. The PO shall, when determining the objectives for its programme, take account of the outlook

for production, market outlets and the essential aims of the PO. The PO shall use objectives which are included in the National Strategy for Sustainable Operational Programmes 2009-2013.

- 3.2.6. The programme shall include a detailed description of each measure, with its component actions, that will be taken to achieve all of the stated objectives in every year of the programme. **The measures and actions that are eligible for EU financial assistance are listed in Section 3.2 of the National Strategy for Sustainable Operational Programmes 2009 - 2013.**
- 3.2.7. The PO shall supply the following details of its operational fund account and of the financial provisions for the programme:
- a) the method of calculation and the level of financial contributions to the operational fund from each of the PO members and the PO itself;
  - b) the procedure for financing the operational fund;
  - c) the information necessary to justify any different levels of contributions to the operational fund; and,
  - d) the budget and timetable for undertaking operations to implement each year of the programme.
- 3.2.8. Targets and performance indicators shall be established and agreed with the Department for each measure at the start of each operational programme year, or at the time of approval of any amendment(s) to any of the programme measures/actions (as appropriate), so that progress towards achieving the programme objectives can be monitored. The targets shall be specific, measurable, achievable, relevant and timed (SMART). The performance indicators for each eligible measure are set out in Section 3.2 of the National Strategy for Sustainable Operational Programmes 2009-2013. Other indicators may also be required, as appropriate.
- 3.2.9 Targets and performance indicators must be reported on fully in the Annual and Final Reports. Failure to do so may result in suspension of the programme (See also Sections 3.4.1 and 6.9).
- 3.2.10. Programme proposals shall also be accompanied by a written undertaking from the PO to comply with the requirements of Council Regulation (EC) No. 1234/2007 and Commission Regulation (EU) No. 543/2011, as amended, and with these terms and conditions.

### **3.3 Ineligible operations and expenditure**

- 3.3.1. Aid shall not be paid for any action that a PO or its members are obliged to carry out under national and/or EU law.
- 3.3.2. Measures and actions that are not included in the National Strategy for Sustainable Operational Programmes 2009-2013 are ineligible for financial assistance. The list of operations and expenditure that are ineligible for financial assistance, as set out in Annex IX to Commission Regulation (EU) No 543/2011, includes the following:
- a) general production costs;

- b) administrative or personnel costs, except those relating specifically to the management of the operational fund or implementation of the programme;
- c) investment in any means of transport, to be used for marketing or distribution by the PO, except additional on-the-truck facilities for cold-storage or controlled atmosphere transport;
- d) promotion of any individual commercial label or any label containing geographic references, with the exception of the PO's own brands/trade marks.

**Annex IX to Commission Regulation (EU) No 543/2011 is included at Annex 2 to this document.**

### **3.4. General principles and conditions regarding the eligibility of operations and expenditure.**

- 3.4.1. Payment of aid is subject to evidence of progress towards meeting the objectives of the programme.
- 3.4.2. The PO shall maintain clear records of the implementation of each action, or in the case of any outsourced action(s) such records must be readily available to the PO at all times.
- 3.4.3. Aid shall not normally be paid for a producer's personal time spent on any aspect of production or marketing of the producer's crop(s), regardless of whether or not the task forms part of the programme, unless the exceptions listed in Section 2 (b) of Annex IX to Commission Regulation (EU) No 543/2011 apply and the claim is supported by personnel timesheets or equivalent documentation acceptable to the Department.
- 3.4.4. Costs for personnel, who are directly employed by the PO shall be clearly documented by means of job descriptions, timesheets and/or diaries.

The PO shall retain an appropriate record of the implementation of outsourced actions and of the checks undertaken to demonstrate their continued control, supervision and management of outsourced actions.

The basis of the rate charged shall be justified to, and approved by, this Department.

- 3.4.5. Any travel expenses, not fully logged, vouched and documented, shall be automatically deemed ineligible. Claims in respect of meals or subsistence are ineligible for EU aid, unless they form part of an overseas trip by a representative of the PO, which is eligible under an approved action of the Operational programme.
- 3.4.6. EU financial assistance for the specific costs of environmental measures, organic or integrated production, and quality improvement measures shall be limited to those costs that exceed the conventional costs and any income foregone resulting from implementing any of these measures. The Department shall completely disallow any financial assistance claim for expenditure on any measure or action where the PO includes conventional costs in their claim.
- 3.4.7. Capital investments may be placed on the premises of a producer member if this advances the objectives of the PO provided that:

- a) the producer members take democratic decisions to make on-farm investments through the programme in accordance with the PO rules; such decisions between the PO and the member shall be documented with details of the location of each such on-farm investment, its possible use by another member(s) and maintenance arrangements;
  - b) ownership of the investment is retained by the PO, as stipulated in Commission Regulation (EU) No 543/2011;
  - c) the agreement includes appropriate provisions to allow the PO to recover the cost of the investment or its residual value if the member leaves the PO;
  - d) the investment(s) are financed from the operational fund, and,
  - e) the PO maintains an up-to-date assets register in a format acceptable to the Department.
- 3.4.8 Investments, with a repayment period exceeding the duration of the programme, may be carried over to a subsequent programme on duly justified economic grounds. Where repayment of investments for environmental actions is carried over to a subsequent programme, the investment may not be counted as one of the two mandatory environmental actions in the latter programme.
- 3.4.9. In general, investment in a replacement asset is ineligible for aid. Such an investment shall only be considered if it is supported by evidence that the asset performs previously executed functions with greater output or increased automation or efficiency. The residual value of the old asset shall either be added to the operational fund or subtracted from the cost of the replacement asset.
- 3.4.10 In accordance with Article 104 (e) of Commission Regulation (EU) No 543/2011, checks on operational programmes, and claims for assistance, will include checks to ensure that national and Community rules on public procurement and State Aid are being complied with in relation to the actions for which EU support is applied for. Each PO must draft and implement appropriate procurement procedures, which must be clearly documented. Records must be retained in respect of any deviations from the procedures and the reasons for the action taken must be explained in writing. The Department will examine PO records to determine whether it considers the exception(s) listed to justify the action taken. If the Department does not agree that the circumstances detailed in the PO records warranted the exceptional action taken, the expenditure involved will be disallowed.
- 3.4.11 **Certified copies of Tax Clearance Certificates** must be retained by the PO for all service providers to the PO, who receive more than €10,000 in any year from the PO. These records must be retained on-site and be available for inspection at all reasonable times. Failure to retain copies of up-to-date tax clearance certificates for suppliers paid more than €10,000 in any calendar year may lead to disallowance of the amounts involved and imposition of penalties, if appropriate.

### **3.4.12 Specific Conditions in relation to capital investments**

- a) The PO must purchase all goods centrally.
- b) A PO intending to invest more than €100,000 must advertise, at least annually, a list of intended capital investments and invite quotations from suppliers.
- c) Each PO must draft, annually, a business plan setting written objectives and priorities for deciding which types of investment they intend to purchase and where those items will be located.
- d) The PO must notify all members of their objectives and priorities with regard to types of investment(s) to be funded.
- e) Members must complete an application, including a business plan, site map etc.
- f) The PO must record receipt of each capital investment application received from members and of each quotation received from applicant suppliers, the decision made, the factors taken into account in approving or rejecting the application, the scoring system used. All stages, including each stage of the decision-making process, in relation to the purchase of capital investments must be evidenced in writing.
- g) At least three suppliers must be contacted in writing for a quotation for any capital investment. Where the PO intends spending more than €100,000 on capital investments in any year, at least five suppliers must be contacted in writing seeking a quotation for each type of investment being considered.
- h) All quotations must be examined by the PO, which must retain documentary evidence to substantiate equality of treatment of all applicants who submit quotations.
- i) All of the above documentation must be retained for at least six years and be available for inspection by the Department and/or auditors.
- j) With the exception of items retained on PO premises and items included in Section 5 of the Framework for Environmental Actions, only investments which are capable of being removed from the holding and operated elsewhere will be considered for funding under the Scheme.
- k) Only the cost of the actual equipment being purchased, and the cost of installation and/or commissioning by the supplier or an agent approved by the manufacturer of the equipment, will be considered eligible under this Scheme.
- l) In any case where a business or personal relationship exists between an intended supplier/installer of equipment to be purchased by the PO and a PO member, third party invoices must be submitted to the PO with the invoice to the PO. The PO shall not pay any supplier of equipment where such a relationship exists without first receiving the third party invoices from the actual equipment supplier/installer and ensuring that the cost invoiced is the actual cost.

## **3.5. Aid for administration of the programme**

- 3.5.1. A PO will normally claim 2% of the approved expenditure on the programme to cover the costs of administering the programme. However, a PO may choose

to claim the real costs of administering the programme, to a maximum of 10% of the cost of the programme.

3.5.2 Administrative and personnel costs relating to the implementation of operational funds and operational programmes are eligible for EU financial assistance and may include:

- (a) overheads specifically related to the operational fund or operational programme, including management and personnel costs, reports and evaluation studies, and the costs of keeping accounts and the management of accounts, by means of the payment of a standard flat rate equal to 2 % of the approved operational fund and up to a maximum of €180,000. The 2 % shall consist of 1 % of Community aid plus 1 % from the PO.

In the case of a recognised APO, the standard flat rate may be multiplied by the number member of producer organisations of the association, up to a maximum of €1,250,000;

- (b) personnel costs (including charges linked to wages and salaries, if these are borne by the PO) resulting from measures:
  - (i) to improve or maintain a high level of quality or environmental protection;
  - (ii) to improve the level of marketing.

The implementation of these measures shall essentially involve the use of qualified personnel. If, in such cases, the PO uses its own employees or member producers, the time worked shall be documented.

- (c) legal and administrative costs of mergers of POs or their acquisition, as well as legal and administrative costs related to creating transnational POs or transnational associations of POs; feasibility studies and proposals commissioned by POs in this respect.

3.5.3 The administrative tasks are normally carried out by the PO's own staff and/or by one or more consultants who are engaged directly by the PO. If another arrangement is put in place, it must be considered and approved by the Department, who must be satisfied that the costs can be verified.

3.5.4 The cost of auditing the annual claim for financial assistance may also be claimed, but the cost of producing the PO's annual audited accounts is ineligible for financial assistance.

3.5.5. Time spent by management and/or personnel and any other costs incurred on the following items are eligible for aid:

- a) preparing proposals for the programme and engaging in consultations and correspondence with officers of the Minister for approval of the programme;
- b) managing the operational fund and execution of expenditure on the programme;

- c) compiling the annual claim for financial assistance and engaging in meetings and correspondence with officers of the Minister on the processing of the claim;
  - d) compiling the Annual and Final Reports on the programme;
  - e) compiling statistical returns as required by the Department;
  - f) facilitating inspections carried out by the Department; and
  - g) travel expenses, provided they are fully logged, vouched and documented and the purpose of the travel is stated and is deemed eligible for inclusion by the Department.
- 3.5.6 The costs of consultants' fees, reports and evaluation studies relating to the programme are also eligible for aid, provided they are clearly documented and paid from the operational fund bank account.
- 3.5.7 If it is not practicable to pay the salaries of PO staff administering the operational programme directly from the operational fund account, evidence of their salaries must be provided, together with the amount of their time spent on administering the programme, which must be clearly documented.
- 3.5.8 General overhead costs such as utilities, phones (with the exception of dedicated EDI lines), accommodation, heating or IT support should not be claimed

### **3.6. Dates for submitting and amending programmes**

- 3.6.1. A new programme and its required supporting documents must be submitted to the Department not later than 15<sup>th</sup> September for a programme that is due to start on the following 1<sup>st</sup> January. The Department may approve or reject the programme or request modifications. A decision on the application shall normally be given by 15<sup>th</sup> December of the year in which it is submitted, and not later than 20<sup>th</sup> January of the following year. The conditions for programmes that are approved between 15<sup>th</sup> December and 20<sup>th</sup> January may stipulate that:
- a) expenditure on the programme shall be eligible from 1 January of the year following the application; or
  - b) the programme shall start not later than the 31<sup>st</sup> January following the approval date; or,
  - c) the implementation of the programme shall be postponed for one year.

The approval letter shall state the date of implementation of the operational programme.

- 3.6.2. By 15 September of each year of its approved programme, the PO shall either confirm that the programme for the following year shall be implemented, as approved, or submit its proposed change(s) for approval by the Department. Applications for approval of any amendment(s) shall be submitted on form **HORT PO AP 2**, which is available from the Department. The application form must be accompanied by supporting documents outlining the reasons for, the nature of, and the implications of the proposed change(s). The Department may approve or reject the amendment to the programme, or request a modification. A

decision on the application shall usually issue by 15<sup>th</sup> December of the same year, and not later than 20<sup>th</sup> January of the following year. The conditions for amended programmes approved between 15<sup>th</sup> December and 20<sup>th</sup> January may stipulate that:

- a) expenditure on the amended programme shall be eligible from 1 January of the year following the application; or
- b) the amended programme shall start not later than the 31<sup>st</sup> January following the approval date; or,
- c) the implementation of the amended programme shall be postponed for one year.

The approval letter shall state the date of implementation of the amended operational programme.

3.6.3. During the year, the PO may request, in writing, approval to:

- a) implement its operational programme in part only;
- b) change the contents of the programme, subject to a maximum of three such applications per calendar year;
- c) extend or reduce the programme duration provided the revised duration is at least three years and not more than five years;
- d) increase the amount of the operational fund by a maximum of 25% of the initially approved amount, or reduce it by up to 33 $\frac{1}{3}$ %, provided that the overall objectives of the programme are maintained.

The Department shall not accept any applications for in-year amendment(s) to operational programmes after 15<sup>th</sup> November, other than amendments to the budget provided for at 3.6.4 (c) below.

3.6.4. The following amendments can be made to programmes during the year without the Department's prior approval:

- a) any personnel/staff change(s), provided that they do not affect the overall effectiveness of the programme; and/or
- b) any change(s) from variations in the value of marketed production during the reference period, included by the PO for the purpose of determining the maximum aid which can be claimed; and/or
- c) any transfer(s) between different approved budget actions, provided that the maximum percentage allowed for any action or measure is not exceeded, a maximum increase of 5% or €50,000 (whichever is less) per action is observed, and provided that all such transfers are notified to the Department by 15<sup>th</sup> December; and/or
- d) a maximum increase of 5 % in the cost of any approved capital investment, subject to the overall budget for that action not being exceeded.

All budget transfers must be included as narrative in the Annual Report.

- 3.6.5 Unless a request is made to the Department for a change to its programme, the PO shall be expected to have implemented its approved programme in its entirety.
- 3.6.6 A request for inclusion of a new action in an Operational Programme must be submitted to, and approved by, the Department before it is implemented.
- 3.6.7 A request for a fundamental change to an existing action in an Operational Programme must be submitted to, and approved by, the Department before it is implemented. If in doubt about whether the change would be considered fundamental by the Department, contact the PO Section.

### 3.7 PO reports on its programme

3.7.1. Progress reporting is required in the form of an **Annual Report**, in the format requested by the Department, giving full details of the implementation of the programme, the main amendment(s) to the programme, and any variance(s) between the approved budget and the amount of aid claimed. The Annual Report must:

- a) describe the achievements and results of the programme by reference to its approved targets and performance indicators;
- b) summarise any major problem(s) encountered in managing the programme and any remedial measures taken to ensure its effective implementation, and,
- c) specify (where relevant) the safeguards that are in place to protect the environment from any possible increased pressures that may have been generated by any investment(s) approved under the programme.

The Annual Report shall be submitted with the claim for EU financial assistance by 15<sup>th</sup> February of the following year.

3.7.2. The PO shall submit a **Final Report**, in the format requested by the Department, when it completes its approved programme. The Final Report must:

- a) show the extent to which the objectives of the programme were achieved;
- b) explain any change(s) to any approved measure and/or action, and,
- c) identify any factor(s) that contributed to the success or failure of the programme's implementation which have already been, or shall be, considered when a subsequent programme is drawn up.

3.7.3. If a PO intends to submit a further programme for approval, it shall submit the Final Report when the penultimate year of its current operational programme is completed so that its findings can be taken into consideration when assessing the proposed new programme. The PO may opt to submit an Annual Report covering the penultimate year of the current operational programme, at the same time as they submit their claim for EU financial assistance, and to submit the Final Report and the mid term evaluation referred to in Section 5.1.2 with the proposed new programme later that year.

- 3.7.4 Payment of EU financial assistance for the final year of an operational programme is conditional on receipt of a Final Report on the operational programme, in the format required by the Department. The final report must contain sufficient information to evaluate the progress made towards achieving the objectives of the previous operational programme.

### **3.8 Programmes of merged POs**

When POs merge, they may:

- a) operate their approved programmes in parallel and separately until 1 January of the year after the merger, having requested approval for merging of their programmes in accordance with Section 3.6.2 above; or
- b) request approval for an immediate merger of the operational programmes in accordance with Section 3.6.3 above; or
- c) for duly substantiated reasons, request approval to implement separate operational programmes in parallel until they reach their natural conclusion.

## 4 CLAIMING FINANCIAL ASSISTANCE

### 4.1. Making a claim for EU financial assistance

- 4.1.1. The PO must submit its application for EU financial assistance for each calendar year of its approved programme to the Department by 15<sup>th</sup> February, at the latest, of the following year. If the claim is submitted after that date, the claim shall be reduced by 1% for each day between 15<sup>th</sup> February and the date of receipt by the Department (see also Section 6.2). This application shall be submitted to the Department on Form **HORT PO AP 4**, which is available from the Department.
- 4.1.2. Applications for EU financial assistance, which shall be accompanied by an Annual or Final Report on the programme (see also Section 3.7), shall include the following information:
- a) the audited, certified value of the marketed production of the recognised product(s) for the reference period, which shall be separately shown in the audited accounts of the PO, and in the PO's accounting system;
  - b) details of the financial contributions paid into the operational fund by member, and by the PO itself;
  - c) a statement, signed by the Chairman or CEO of the PO, detailing the amount of EU financial assistance which the PO is claiming, confirmation of the VMP for the reference year and for the calendar year of the claim being made, and a statement verifying that the account is in order, the work has been completed satisfactorily, the costs are fair and reasonable and that the application complies with these terms and conditions and the governing EU legislation;
  - d) a breakdown of the quantity and value of recognised product sold by each marketing company on a member by member basis, and,
  - e) the expenditure from the operational fund on each approved measure and action in the programme.
- 4.1.3. The claim shall cover only approved and eligible expenditure. If the amount claimed by the PO exceeds by more than 3% the amount that is deemed eligible by Department officials after their examination of the claim, a reduction shall be applied to the amount actually payable. The amount of the reduction shall be the difference between the claimed amount and the amount actually deemed to be eligible.
- 4.1.4. Claims must be substantiated by certified copies of invoices ([authorised for payment and stamped paid] rather than originals, and these should be cross-referenced to bank statement details). and original bank statements showing that all such expenditure was paid from the operational fund. Original bank statements can be returned to the PO, on request. Invoices shall be established in the name of the PO.

- 4.1.5 In accordance with Article 69(3) of Commission Implementing Regulation (EU) No 543/2011, the aid applications may cover expenditure programmed but not incurred if the following elements are proved:
- (a) the operations concerned could not be carried out by 31 December of the year of implementation of the operational programme, for reasons beyond the control of the producer organisation concerned;
  - (b) those operations can be carried out by 30 April of the year following the year for which the aid is requested; and
  - (c) an equivalent contribution from the producer organisation remains in the operational fund.
- 4.1.6 The PO shall give a written undertaking that it has not already received, nor shall it receive or submit a claim, either directly or indirectly, for any other EU or national funding for any measure and/or action qualifying for aid in the programme.
- 4.1.7 Penalties shall apply to any PO that submits a fraudulent or seriously negligent claim for EU financial assistance (see also Section 6).
- 4.1.8 Bank statements for any trading accounts, relating to the actual purchase and sale of the products for which the PO is recognised, shall be available for inspection.
- 4.1.9 The PO must state, in Section 6 of the application form, how much EU aid is being claimed in respect of each invoice submitted. The total claimed on foot of all invoices cannot exceed 4.1% of the reference VMP declared.

## **4.2. Claims for EU financial assistance for capital investments**

- 4.2.1 The PO shall explain and justify each instance where the item supplied is of a different specification to the item approved, to include why the decision to change was made.
- 4.2.2 Where a lower specification item is supplied, the Department may seek additional information to substantiate the cost of the lower specification item purchased.
- 4.2.3 The on-farm or capital investments must be fully installed and capable of being fully operational by 31<sup>st</sup> December of the year of the programme for which the investment is approved.

## **4.3. Date for payment of financial assistance**

The Department shall pay EU financial assistance by 15 October of the year after each completed annual cycle of the programme, unless the provisions of Article 114 of Regulation (EU) No 543/2011 (in relation to non-respect of recognition criteria) apply, or if the Department deems the claim, or any part thereof, to be ineligible for payment under the Scheme, in which case the

amount deemed ineligible, together with penalties, if applicable, will be deducted before payment issues.

#### **4.4. Publication of aid payments**

In accordance with the provisions of Council Regulation (EC) No. 1290/2005 on the financing of the Common Agricultural Policy (CAP), the Minister may be required to publish the following details on the website of the Department:

- (1) names,
- (2) municipality of residence, and,
- (3) amounts that were received by beneficiaries of Schemes that were funded or co-funded by the European Agricultural Guarantee Fund (EAGF) or the European Agricultural Fund for Rural Development (EAFRD).

This data may be used by national or EU auditing and investigating bodies to protect the financial interests of the EU.

The Data Protection Acts (1988) and (2003) describe the rights of data subjects, and how these rights must be exercised. The publication of these details was required by EU law (although legal proceedings may change this position). The published information cannot be used for any direct marketing or other purpose(s). A warning to this effect will be included on the website, if details of the payments are published.

# 5 MONITORING AND EVALUATING

## 5.1. Monitoring and evaluating by the PO

- 5.1.1. The PO shall monitor and evaluate its programme to assess the progress being made towards achieving the specific targets that have been set for the programme. For this purpose, the PO shall collect, collate, record and maintain the relevant information for the compilation of data in relation to performance indicators. The PO shall include information on the results of its monitoring of actual progress against the performance indicators in all Annual and Final Reports.
- 5.1.2. The PO shall also carry out a mid-term evaluation exercise to examine the efficiency and effectiveness of its programme and to measure the progress made towards achieving the overall programme objectives. The timing of this exercise shall allow the results of such an evaluation to be considered when preparing a subsequent programme. Where relevant, this mid-term evaluation exercise shall include a qualitative assessment of the results and the impact of those environmental actions that are intended to:
- a) prevent soil erosion,
  - b) reduce the use of and/or improve the management of plant protection products,
  - c) protect habitats and biodiversity, or
  - d) promote landscape conservation.

The Mid-Term Evaluation Report shall be annexed to the PO's Annual Report for the programme year in which it is completed (see also Section 3.7).

## 5.2. Monitoring by the Department

- 5.2.1. The Department is required to carry out on-the-spot checks on POs:
- a) before granting recognition, to verify compliance with the conditions for recognition;
  - b) before approving a new programme, to verify
    - (i) the accuracy of the information that was provided in the application for approval of the programme, and,
    - (ii) compliance with EU Regulations, the National Strategy for Sustainable Operational Programmes 2009-2013 and the National Framework for Environmental Actions; and,
  - c) on a sample of applications for EU financial assistance to:
    - (i) ensure continued compliance with the recognition criteria;

- (ii) verify the VMP;
- (iii) verify the implementation of the actions in the programme; and,
- (iv) verify the use of the operational fund for that year. On-the-spot checks of member producers and/or third parties to whom one or more action(s) is outsourced may also be undertaken. Each PO shall be subject to at least one on-the-spot inspection every three years.

5.2.2. All or part of an application for aid shall be rejected, if the PO, the member or the relevant representative prevents, or hinders, an on-the-spot check from being carried out.

### **5.3 Stability of the PO**

5.3.1 The purpose of the Scheme is to assist POs in their role of strengthening the position of producers in the market.

5.3.2 The stability of the PO shall be assessed before recognition is granted.

5.3.3 The Department reserves the right to withdraw approval for an ongoing operational programme in any situation where there is/are indication(s) that a PO is liable to cease its operations.

### **5.4 Auditing of claims for financial assistance**

Payment of EU funds shall be subject to inspection checks and/or audit by officials of the Department, external auditors on behalf of the EU Commission, officials of the EU Commission or the EU Court of Auditors and in this connection the PO shall be required to:

- a) provide facilities to allow on-site access to, and examination of, all relevant installations and records;
- b) provide copies of annual accounts, Final and Annual Reports, mid-term evaluations, details in relation to the calculation of its VMP and any other supplementary information deemed necessary by the Department;
- c) maintain and make available to such officers on request, records relating to expenditure incurred by the PO and any further supporting documentation/ files required to verify the validity and accuracy of those records, including where requested quotations, paid invoices, receipts, bank statements, returned paid cheques, records of electronic fund transfers, certificates issued by auditors etc, any or all of which may be verified independently by the Department;
- d) ensure that expenditure incurred which formed the basis of claims and the payment to the PO of EU funds is easily identifiable in the PO's accounting system. The PO must credit to the operational fund bank account any levies collected from members under the Scheme and any rebates, reductions or commission received which are not already included on the relevant invoice(s). The PO must notify the Department of any such amounts credited

to the Operational fund, and, at the latest, at the time of submission of the claim for EU financial assistance under this Scheme; and

- e) ensure that there is a clear audit trail from the claim to the source documents, to the item or service supplied to the PO.

## **6 PENALTIES**

The following penalties prescribed in Commission Regulation (EC) No. 543/2011 shall apply to those POs that, in the opinion of the Department, breach the terms and conditions of the PO Scheme. The relevant Articles of that Regulation are included in brackets after each penalty.

### **6.1. Failure to respect recognition criteria (Article 116)**

- 6.1.1. Recognition shall be withdrawn if the PO fails substantially to respect the criteria for recognition either deliberately or as a result of serious negligence (see Section 1).
- 6.1.2. Recognition shall be suspended rather than withdrawn where the failure to respect the criteria for recognition is substantial but temporary. No EU financial assistance shall be paid during the period of suspension, which shall take effect from the date on which the check took place and shall end on the date of the check which shows that the recognition criteria have been fulfilled. This period of suspension shall not exceed 12 months. Recognition shall be withdrawn where the relevant criteria have not been met within 12 months of the check giving rise to the suspension.
- 6.1.3. The aid that would have been paid during the period of suspension can be paid when the suspension is lifted, but not later than 15<sup>th</sup> October of the second year following the relevant annual cycle of the programme.
- 6.1.4. No aid shall be paid for any period where recognition is withdrawn from a PO. The provisions of Section 6.7 shall apply where aid was already paid for any part of the period where the PO was subsequently found to have breached its recognition criteria.
- 6.1.5. In other cases of failure to respect the recognition criteria, where Sections 6.1.1 and 6.1.2 do not apply, the Department shall send a warning letter stating the corrective measures to be taken. In such cases, payment will be delayed until the requested corrective measures have been implemented to the satisfaction of the Department within the deadline stipulated by the Department.

### **6.2 Late application for aid (Article 69(4))**

Where an application for EU financial assistance is submitted after 15 February in the year after the calendar year to which the claim relates, the aid shall be reduced by 1% for each day after 15<sup>th</sup> February.

### **6.3 Penalties – on-the-spot inspections and administrative or documentary checks**

- 6.3.1 Where, during an on-the-spot check or on request, the PO fails to provide adequate documentary evidence of the implementation of an action, payment for that action will be disallowed.
- 6.3.2 Where, during an on-the-spot check or an administrative or documentary check, part of the sample documentation selected for checking is deemed ineligible for whatever reason, payment for that action will be reduced by a penalty equal to the percentage of the sample deemed ineligible. This penalty will be in addition to any other penalty provided for under the governing legislation or these terms and conditions.

### **6.4 Fraud in respect of aid (Article 115)**

- 6.4.1 Without prejudice to any other penalties applicable under Community and national legislation, the Department shall withdraw the recognition of a PO if it is found to have committed fraud in respect of aid covered by Regulation (EC) No 1234/2007.
- 6.4.2 The Department may suspend the recognition of a PO, 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.
- 6.4.3 Without prejudice to other penalties detailed in this section, the Department shall report any PO that it suspects of making a fraudulent claim to An Garda Síochána.

### **6.5. Aid unduly claimed (Article 117 and 147)**

If the amount of aid being claimed by the PO exceeds by more than 3% the amount that is deemed eligible after the Department has completed its examination of the application, the amount deemed eligible by the Department shall be further reduced by the amount overclaimed. An aid application may be adjusted after its submission, but only in cases of obvious error(s) that are accepted as such by the Department. The amount claimed cannot be reduced by the PO, following notification, verbally or in writing, of any penalties being imposed by the Department.

## **6.6. Intentional false declaration or serious negligence**

Where a PO is found to have intentionally made a false declaration, or if the Department considers that the PO was seriously negligent in computing its claim, the measure(s) and/or actions in question shall be deemed ineligible for aid and any amounts already paid for those measure(s) and/or actions shall be recovered. In such cases, the PO shall also be excluded from receiving aid for those measure(s) in the following programme year.

## **6.7. Artificially created situations (Article 145)**

No payment shall be made to a PO which is deemed to have artificially created the conditions required for obtaining such payment with a view to obtaining an advantage that is contrary to the objectives of the Scheme.

## **6.8. Recovery of aid (Article 123)**

Unduly paid aid shall be recovered, with interest as appropriate, from the PO.

## **6.9 Failure to provide information required by the Department (Articles 96 and 97)**

- 6.9.1 If the PO fails to comply with a request from the Department for information as required under the EU Regulations, or if the information appears incorrect in the light of objective facts in the Department's possession, the Department shall suspend recognition of the PO.
- 6.9.2 Where an Annual and/or Final Report omits sufficient detail to monitor the performance in achieving the agreed targets for each measure/action, the Department shall suspend approval of the programme for the following year. However, in cases where the Annual or Final Report is considered to contain insufficient information to monitor progress only in respect of some of the actions or measures, the Department may decide to disallow payment on the amount claimed in respect of those measures or actions only.

## **7. REVIEW OF THESE TERMS AND CONDITIONS**

The Department reserves the right to alter, from time to time, the conditions attaching to, and the procedures to be followed, in relation to this Scheme. All such amendments shall be notified, in writing, to recognised POs, and shall include the date from which the change is to take effect.

## ANNEX I

### Products covered by the common organisation of the market in fruit and vegetables.

**See Section 1.1. of the Scheme.**

CN code	Description
0702 00 00	Tomatoes, fresh or chilled
0703	Onions, shallots, garlic, leeks and other alliaceous vegetables, fresh or chilled
0704	Cabbages, cauliflowers, kohlrabi, kale and similar edible brassicas, fresh or chilled
0705	Lettuce ( <i>Lactuca sativa</i> ) and chicory ( <i>Cichorium spp.</i> ), fresh or chilled
0706	Carrots, turnips, salad beetroot, salsify, celeriac, radishes and similar edible roots, fresh or chilled
0707 00	Cucumbers and gherkins, fresh or chilled
0708	Leguminous vegetables, shelled or unshelled, fresh or chilled
ex 0709	Other vegetables, fresh or chilled, excluding vegetables of subheadings 0709 60 91, 0709 60 95, 0709 60 99, 0709 90 31, 0709 90 39 und 0709 90 60
ex 0802	Other nuts, fresh or dried, whether or not shelled or peeled, excluding areca (or betel) and cola nuts falling within subheading 0802 90 20
0803 00 11	Fresh plantains
ex 0803 00 90	Dried plantains
0804 20 10	Figs, fresh
0804 30 00	Pineapples
0804 40 00	Avocados
0804 50 00	Guavas, mangos and mangosteens

0805	Citrus fruit, fresh or dried
0806 10 10	Fresh table grapes
0807	Melons (including watermelons) and pawpaws (papayas), fresh
0808	Apples, pears and quinces, fresh
0809	Apricots, cherries, peaches (including nectarines), plums and sloes, fresh
0810	Other fruit, fresh
0813 50 31 0813 50 39	Mixtures exclusively of dried nuts of CN codes 0801 and 0802
0910 20	Saffron
ex 0910 99	Thyme, fresh or chilled
ex 12 11 90 85	Basil, melissa, mint, <i>origanum vulgare</i> (oregano / wild marjoram), rosemary, sage, fresh or chilled
1212 99 30	Locust (or carob) beans

## ANNEX 2

*ANNEX IX (of Commission Implementing Regulation (EU) No 543/2011)*

### **LIST OF ACTIONS AND EXPENDITURE NOT ELIGIBLE UNDER OPERATIONAL PROGRAMMES REFERRED TO IN ARTICLE 60(1)**

1. General production costs and, in particular, plant protection products, including integrated control materials, fertilisers and other inputs; packing costs, storage costs, packaging costs, even as part of new processes, costs of packages; costs of collection or transport (internal or external); operating costs (in particular electricity, fuel and maintenance), except:
  - specific costs for quality improvement measures. In all cases costs for (even certified) mycelium, seeds and non-perennial plants shall not be eligible;
  - specific costs for biological plant protection materials (such as pheromones and predators) whether used in organic, integrated or conventional production;
  - specific costs for transport, sorting and packing related to free distribution as referred to in Articles 81 and 82;
  - specific costs for environmental measures, including costs generated by the environmental management of packaging;
  - specific costs for organic, integrated or experimental production, including specific costs for organic seeds and seedlings. The competent authority of the Member State shall lay down the eligibility criteria for an experimental production taking account of the newness of the procedure or concept and the risk involved;
  - specific costs to ensure the monitoring of compliance with the standards referred to in Title II of this Regulation, with plant-health rules and with maximum level of residues.

Specific costs shall mean the additional costs, calculated as the difference between the conventional costs and the costs actually incurred.

For each category of eligible specific costs referred to above, in order to calculate additional costs compared with conventional ones, Member States may fix, in a duly justified way, standard flat rates.

2. Administrative and personnel costs with the exception of expenditure relating to the implementation of operational funds and operational programmes which shall include:
  - (a) overheads specifically related to the operational fund or operational programme, including management and personnel costs, reports and evaluation studies, and the costs of keeping accounts and the management of accounts, by means of the payment of a standard flat rate

up to a maximum of 2 % of the operational fund as approved in accordance with Article 64 and up to a maximum of EUR 180 000, comprising both the EU contribution and the producer organisation contribution.

In the case of operational programmes submitted by recognised associations of producer organisations, overheads shall be calculated as the addition of the overheads of each producer organisation as provided for in the first paragraph but limited to a maximum of EUR 1 250 000 per association of producer organisations.

Member States may restrict funding to the real costs, in which case they should define the eligible costs;

- (b) personnel costs including charges linked to wages and salaries, if these are directly borne by the producer organisation, association of producer organisation or subsidiaries as referred to in Article 50(9) resulting from measures:
  - (i) to improve or maintain a high level of quality or environmental protection;
  - (ii) to improve the level of marketing.

The implementation of these measures shall essentially involve the use of qualified personnel. If, in such cases, the producer organisation uses its own employees or producer members, the time worked shall be documented.

If a Member State wishes to provide an alternative to restricting funding to the real costs, for all the eligible personnel costs referred to above, it shall fix, ex ante and in a duly justified way, standard flat rates up to a maximum of 20 % of the approved operational fund. This percentage may be increased in duly justified cases.

In order to request those standard flat rates, producer organisations shall furnish proof of the implementation of the action to the satisfaction of the Member State.

- (c) legal and administrative costs of mergers of producer organisations or their acquisition, as well as legal and administrative costs related to creating transnational producer organisations or transnational associations of producer organisations; feasibility studies and proposals commissioned by producer organisations in this respect.
3. Income or price supplements outside crisis prevention and management.
  4. Insurance costs outside the harvest insurance measures referred to in Section 6 of Chapter III of Title III.
  5. Reimbursement of loans taken out for an operation carried out before the beginning of the operational programme other than those referred to in Articles 48(4), 49(3) and 74.
  6. Purchase of land costing more than 10 % of all the eligible expenditure on the operation concerned and not built on except where purchase is necessary to carry out an investment included in the operational programme; in exceptional and duly justified cases, a higher percentage can be fixed for operations concerning environmental conservation.

7. Costs of meetings and training programmes except where they are related to the operational programme, including daily allowances, transport and accommodation costs, where appropriate, on a flat-rate basis.
8. Operations or costs relating to the quantities produced by the members of the producer organisation outside the Union.
9. Operations that could distort competition in the other economic activities of the producer organisation.
10. Second hand equipment which has been purchased with Union or national support within the seven previous years.
11. Investments in means of transport to be used for marketing or distribution by the producer organisation, with the exception of:
  - (a) investments in means of internal transport; at the moment of the purchase, the producer organisation shall duly justify to the concerned Member State that the investments shall only be used for internal transport;
  - (b) additional on-the-truck facilities for cold-storage or controlled atmosphere transport.
12. Hire except where economically justified as an alternative to purchase at the satisfaction of the Member State.
13. Operating costs of goods hired.
14. Expenditure linked to leasing contracts (taxes, interest, insurance costs, etc.) and operating costs, except:
  - (a) the leasing itself, within the limits of the net market value of the item and within the conditions laid down in point (b) of the first subparagraph of Article 55(1) of Regulation (EC) No 1974/2006;
  - (b) the leasing of second hand equipment which has not received Union or national support within the seven previous years.
15. Promotion of individual commercial labels or labels containing geographic references except:
  - brands/trademarks of producer organisation, associations of producer organisations and subsidiaries in the situation referred to in Article 50(9),
  - generic promotion and promotion of quality labels,
  - costs for promotional printing on packaging or on labels under any of the two previous indents on the condition that it is provided for in the operational programme

Geographical names are allowed only if:

- (a) they are a protected designation of origin or a protected geographical indication, covered by Council Regulation (EC) No 510/2006 ( 1 ); or
- (b) in all cases where the provision of point (a) does not apply, these geographical names are secondary to the principal message.

Promotional material for generic promotion and promotion of quality labels shall bear the emblem of the European Union (in the case of visual media only)

and include the following legend: ‘Campaign financed with the aid of the European Union’. Producer organisations, associations of producer organisations and those subsidiaries in the situation referred to in Article 50(9) shall not use the emblem of the European Union in promotion of their brands/trademarks.

16. Subcontracting or outsourcing contracts relating to the operations or expenditure mentioned as not eligible in this list.
17. VAT except non-recoverable VAT as referred to in Article 71(3)(a) of Regulation (EC) No 1698/2005.
18. Any national or regional taxes or fiscal levies.
19. Interest on debt except where the contribution is made in a form other than a non-repayable direct assistance.
20. Real estate purchase which has been purchased with Union or national support within the 10 previous years.
21. Investments in shares of companies if the investment represents a financial investment except investments contributing directly to the achievement of the goals of the operational programme.
22. Costs incurred by parties other than the producer organisation or its members and associations of producer organisations or their producer members or subsidiaries in the situation referred to in Article 50(9).
23. Investments or similar types of actions not on the holdings and/or premises of the producer organisation, association of producer organisations, or their producer members or a subsidiary in the situation referred to in Article 50(9).
24. Measures outsourced by the producer organisation outside the Union.