

Draft

**COMMISSION REGULATION (EC) No .../..**

**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**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)<sup>1</sup>, and in particular Articles 103h and 127 in conjunction with Article 4 thereof,

Whereas:

- (1) Article 103d(2) of Regulation (EC) No 1234/2007 provides for the grant of financial assistance to be capped at either 4,1 % or 4,6 % of the value of the marketed production of each producer organisation.
- (2) Article 52 of Commission Regulation (EC) No 1580/2007<sup>2</sup> lays down detailed rules on the calculation of the value of marketed production for a producer organisation. Pursuant to point (a) of paragraph 6 of that Article, a producer organisation is to invoice the marketed production of fruit and vegetables at the "ex-producer organisation" stage, where applicable, as product which is packaged, prepared, or has undergone first-stage processing.
- (3) Point (i) of Article 21(1) of Regulation (EC) No 1580/2007 contains a definition of "first-stage processing". However, that definition has given rise to difficulties of interpretation. Since legal certainty requires clear rules on the calculation of the value of marketed production, that definition should be deleted and the definition of "by product" should be adapted accordingly.
- (4) The calculation of the value of fruit and vegetables intended for processing has proven difficult. For control purposes and for the sake of simplification, it is appropriate to introduce a flat rate for the purposes of calculating the value of fruit and vegetables intended for processing, representing the value of the basic product, namely fruit and vegetables intended for processing, and activities which do not amount to genuine processing activities. Since the volumes of fruit and vegetables needed for the production of processed fruit and vegetables differ largely between groups of products, those differences should be reflected in the applicable flat rates.

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<sup>1</sup> OJ L 299, 16.11.2007, p. 1.

<sup>2</sup> OJ L 350, 31.12.2007, p. 1.

- (5) In the case of fruit and vegetables intended for processing that are transformed into processed aromatic herbs and paprika powder, it is also appropriate to introduce a flat rate for the purposes of calculating the value of fruit and vegetables intended for processing, representing only the value of the basic product.
- (6) In order to ensure the smooth transition to the new system for the calculation of the value of the marketed production for fruit and vegetables intended for processing, operational programmes approved by 20 January 2010 should not be affected by the new calculation method, without prejudice to the possibility to amend those operational programmes in accordance with Articles 66 and 67 of Regulation (EC) No 1580/2007. For the same reason, the value of the marketed production for the reference period of operational programmes approved after that date should be calculated under the new rules.
- (7) In order to allow for more flexibility in the use of market withdrawals, it is appropriated to increase the annual margin of overrun set out in Article 80(2) of Regulation (EC) No 1580/2007.
- (8) In order to facilitate free distribution, it is appropriate to provide for the possibility to allow charitable organisations and institutions to ask a symbolic contribution from the final recipients of products subjected to market withdrawals, in case those products have undergone processing.
- (9) The flat-rate amounts for transport, sorting and packaging costs for free distribution of fruit and vegetables withdrawn from the market set out in Article 83(1) and Annex XI of Regulation (EC) No 1580/2007 should be updated.
- (10) Regulation (EC) No 1580/2007 should therefore be amended accordingly.
- (11) 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*

*Amendments to Regulation (EC) No 1580/2007*

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

- (1) Article 21(1) is amended as follows:
  - (a) point (h) is replaced by the following:

"(h) 'by product' means a product which results from preparation of a fruit or vegetable product which has a positive economic value but is not the main intended result;"
  - (b) point (i) is replaced by the following;

"(i) 'preparation' means preparatory activities such as cleaning, cutting, peeling trimming and drying of fruit and vegetables, without transforming them into processed fruit and vegetables;"

(2) Article 52 is amended as follows:

(a) the following paragraph 2a is inserted:

"2a. The value of the marketed production shall not include the value of processed fruit and vegetables or any other product that is not a product of the fruit and vegetables sector.

However, the value of the marketed production of fruit and vegetables intended for processing, which have been transformed into one of the processed fruit and vegetables listed in Part X of Annex I to Regulation (EC) No 1234/2007 or any other agricultural product referred to in this Article and described further in Annex VIa to this Regulation, by either a producer organisation, an association of producer organisations or their members, who are producers or their cooperatives, or subsidiaries as referred to in paragraph 7 of this Article, either by themselves or through outsourcing, shall be calculated as a flat rate in percentage applied to the invoiced value of those processed products.

That flat rate shall be

- (a) 53% for fruit juices;
- (b) 73% for concentrated juices;
- (c) 77% for tomato concentrate;
- (d) 62% for frozen fruit and vegetables;
- (e) 48% for canned fruit and vegetables;
- (f) 70% for canned mushrooms of the genus *Agaricus*;
- (g) 81% for fruits provisionally preserved in brine;
- (h) 81% for dried fruits;
- (i) 27% for other processed fruit and vegetables;
- (j) 12% for processed aromatic herbs;
- (k) 41% for paprika powder."

(b) paragraph 6 is replaced by the following:

"6. The marketed production of fruit and vegetables shall be invoiced at the 'ex-producer organisation' stage where applicable, as product listed in Part IX of Annex I to Regulation (EC) No 1234/2007 which is prepared and packaged excluding

- (a) VAT;
- (b) internal transport costs, where the distance between the centralised collection or packing points of the producer organisation and the point of distribution of the producer organisation is significant.

For the purposes of point (b) of the first subparagraph, Member States shall provide for reductions to be applied to the invoiced value for products invoiced at different stages of delivery or transport."

- (3) in Article 53(7), the following subparagraphs are added:

"However, for operational programmes approved by 20 January 2010, the value of the marketed production for the years until 2007 shall be calculated on the basis of the legislation applicable in the reference period, whereas the value of the marketed production for the years from 2008 shall be calculated on the basis of the legislation applicable in 2008.

For operational programmes approved after 20 January 2010, the value of the marketed production for the years from 2008 shall be calculated on the basis of the legislation applicable at the time the operational programme has been approved."

- (4) in Article 80(2), the third subparagraph is replaced by the following:

"The percentages referred to in the first subparagraph shall be annual averages over a three year period, with 5 percentage points of annual margin of overrun."

- (5) in Article 81(2), the following subparagraph is inserted after the first subparagraph:

"Member States may allow the charitable organisations and the institutions referred to in points (a) and (b) of Article 103d(4) of Regulation (EC) No 1234/2007 to ask a symbolic contribution from the final recipients of products subjected to market withdrawals, in case those products have undergone processing."

- (6) in Article 83, paragraphs 1 and 2 are replaced by the following:

"1. The costs of sorting and packaging fresh fruit and vegetables withdrawn from the market for free distribution shall be eligible under operational programmes, in the case of products put up in packages of less than 25 kilograms net weight at the flat-rate amounts set out in Part A of Annex XII.

2. Packages of products for free distribution shall display the European emblem, together with one or more of the references set out in Part B of Annex XII."

- (7) Annex VIa, as set out in Annex I to this Regulation, is inserted.

- (8) Annex XI is replaced by the text in Annex II to this Regulation.

(9) Annex XII is replaced by the text in Annex III to this Regulation.

*Article 2*

This Regulation shall enter into force on the seventh day following that of 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, [...]

*For the Commission*

*[...]*

*The President*

**ANNEX**

**ANNEX I**

**"ANNEX VIa**

**PROCESSED PRODUCTS REFERRED TO IN ARTICLE 52(2a)**

Category	CN Code	Description
Fruit juices	ex 2009	<p>Fruit juices, excluding grape juice and grape must of subheadings 2009 61 and 2009 69, banana juice of subheading ex 2009 80 and concentrated juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter.</p> <p>Concentrated fruit juices are fruit juices coming under heading ex 2009 obtained by the physical removal of at least 50% of the water content, in packings of a net content of not less than 200 kg.</p>
Tomato concentrate	ex 2002 90 31 ex 2002 90 91	Tomato concentrate with a dry weight content of not less than 28% in immediate packings of a net content of not less than 200 kg.
Frozen fruit and vegetables	ex 0710  ex 0811  ex 2004	<p>Vegetables (uncooked or cooked by steaming or boiling in water) frozen, excluding sweetcorn of subheading 0710 40 00, olives of subheading 0710 80 10 and fruits of the genus <i>Capsicum</i> or of the genus <i>Pimenta</i> of subheading 0710 80 59.</p> <p>Fruit and nuts, uncooked or cooked by steaming or boiling in water, frozen, not containing added sugar or other sweetening matter, excluding frozen bananas falling within subheading ex 0811 90 95.</p> <p>Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than the products of heading 2006, excluding sweetcorn (<i>Zea mays</i> var. <i>saccharata</i>) of subheading ex 2004 90 10, olives of subheading ex 2004 90 30 and potatoes prepared or preserved in the form of flour, meal or flakes of subheading 2004 10 91</p>

Canned fruit and vegetables	ex 2001	Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid, excluding: — fruit of the genus <i>Capsicum</i> other than sweetpeppers or pimentos of subheading 2001 90 20 — sweetcorn ( <i>Zea mays</i> var. <i>saccharata</i> ) of subheading 2001 90 30 — yams, sweet potatoes and similar edible parts of plants containing 5 % or more by weight of starch of subheading 2001 90 40 — palm hearts of subheading 2001 90 60 — olives of subheading 2001 90 65  — vine leaves, hop shoots and other similar edible parts of plants falling within subheading ex 2001 90 97.
	ex 2002	Tomatoes prepared or preserved otherwise than by vinegar or acetic acid excluding tomato concentrate of subheadings ex 2002 90 31 and ex 2002 90 91 described above.
	ex 2005	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006 excluding olives of subheading 2005 70, sweetcorn ( <i>Zea mays</i> var. <i>saccharata</i> ) of subheading 2005 80 00 and fruit of the genus <i>Capsicum</i> , other than sweet peppers or pimentos of subheading 2005 99 10 and potatoes prepared or preserved in the form of flour, meal or flakes of subheading 2005 20 10.
	ex 2008	Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included, excluding: — peanut butter of subheading 2008 11 10 — other nuts, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included, of subheading ex 2008 19 — palm hearts of subheading 2008 91 00 — maize of subheading 2008 99 85 — yams, sweet potatoes and similar edible parts of plants, containing 5 % or more by weight of starch of subheading 2008 99 91 — vine leaves, hop shoots and other similar edible parts of plants falling within subheading ex 2008 99 99 — mixtures of banana otherwise prepared or preserved of subheadings ex 2008 92 59, ex 2008 92 78, ex 2008 92 93 and ex 2008 92 98  — bananas otherwise prepared or preserved of subheadings ex 2008 99 49, ex 2008 99 67 and ex 2008 99 99.
Canned mushrooms	2003 10	Mushrooms of the genus <i>Agaricus</i> prepared or preserved otherwise than by vinegar or acetic acid.
Fruits provisionally preserved in brine	ex 0812	Fruit and nuts, provisionally preserved in brine, but unsuitable in that state for immediate consumption, excluding bananas provisionally preserved falling within subheading ex 0812 90 98.
Dried fruits	ex 0813	Fruit, dried, other than that of headings 0801 to 0806;
	0804 20 90	Dried figs;
	0806 20	Dried grapes;
	ex 2008 19	Other nuts, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included, excluding tropical nuts and their mixtures.
Other processed fruit and vegetable		Processed fruit and vegetables listed in Part X of Annex 1 of Regulation (EC) No 1234/2007, different from the products listed in the categories above.
Processed aromatic herbs	ex 0910	Dried thyme
	ex 1211	Basil, melissa, mint, <i>origanum vulgare</i> (oregano/wild marjoram), rosemary, sage,

		dried, whether or not cut, crushed or powdered.
Paprika powder	ex 0904	Pepper of the genus Piper; dried or crushed or ground fruits of the genus Capsicum or of the genus Pimenta, excluding sweet peppers falling within subheading 0904 20 10.

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*ANNEX II*

*"ANNEX XI*

**TRANSPORT COSTS UNDER FREE DISTRIBUTION REFERRED TO IN ARTICLE 82(1)**

Distance between the place of withdrawal and the place of delivery	Transport costs (EUR/tonne)
Less than 25 km	18,2
From 25 km to 200 km	41,4
From 200 km to 350 km	54,3
From 350 km to 500 km	72,6
From 500 km to 750 km	95,3
750 km or more	108,3

Supplement for refrigerated transport: EUR 8,5/t."

*ANNEX III*

*"ANNEX XII*

*Part A*

**SORTING AND PACKING COSTS REFERRED TO IN ARTICLE 83(1)**

Product	Sorting and packing costs (EUR/tonne)
Apples	187,7
Pears	159,6
Oranges	240,8
Clementines	296,6
Peaches	175,1
Nectarines	205,8
Watermelons	167,0
Cauliflowers	169,1
Other products	201,1

## *Part B*

### **STATEMENT FOR PACKAGING OF PRODUCTS REFERRED TO IN ARTICLE 83(2)**

- Продукт, предназначен за бесплатна дистрибуция (Регламент (ЕО) № (1580/2007))  
Producto destinado a su distribución gratuita [Reglamento (CE) no 1580/2007]
- Produkt určený k bezplatné distribuci [nařízení (ES) č. 1580/2007]
- Produkt til gratis uddeling (forordning (EF) nr. 1580/2007)
- Zur kostenlosen Verteilung bestimmtes Erzeugnis (Verordnung (EG) Nr. 1580/2007)
- Tasuta jagamiseks mõeldud tooted [määrus (EÜ) nr 1580/2007]
- Προϊόν προοριζόμενο για δωρεάν διανομή [κανονισμός (ΕΚ) αριθ. 1580/2007]
- Product for free distribution (Regulation (EC) No 1580/2007)
- Produit destiné à la distribution gratuite [règlement (CE) no 1580/2007]
- Prodotto destinato alla distribuzione gratuita [regolamento (CE) n. 1580/2007]
- Produkts paredzēts bezmaksas izplatīšanai [Regula (EK) Nr. 1580/2007]
- Produkta skirtas nemokamai distribucijai [Reglamentas (EB) Nr. 1580/2007]
- Ingyenes szétosztásra szánt termék (1580/2007/EK rendelet)
- Prodott destinat għad-distribuzzjoni bla ħlas [Regolament (KE) nru. 1580/2007]
- Voor gratis uitreiking bestemd product (Verordening (EG) nr. 1580/2007)
- Produkt przeznaczony do bezpłatnej dystrybucji [Rozporządzenie (WE) nr 1580/2007]
- Produto destinado a distribuição gratuita [Regulamento (CE) n.o 1580/2007]
- Produs destinat distribuției gratuite [Regulamentul (CE) nr. 1580/2007]
- Výrobok určený na bezplatnú distribúciu [nariadenie (ES) č. 1580/2007]
- Proizvod, namenjen za prosto razdelitev [Uredba (ES) št. 1580/2007]
- Ilmaisjakeluun tarkoitettu tuote (asetus (EY) N:o 1580/2007)
- Produkt för gratisutdelning (förordning (EG) nr 1580/2007)"