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COMMISSION IMPLEMENTING REGULATION (EU) .../...

of XXX

laying down rules concerning checks on conformity to marketing standards for the fruit and vegetables sector, certain processed fruit and vegetable products and the bananas sector

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laying down rules concerning checks on conformity to marketing standards for the fruit and vegetables sector, certain processed fruit and vegetable products and the bananas sector

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007¹, and in particular Article 90a(6), first subparagraph, point (c), and Article 91, first paragraph, points (b), (f) and (g), thereof,

Whereas:

- (1) Regulation (EU) No 1308/2013 establishes a common organisation of agricultural markets, which includes, among others, the fruit and vegetables sector, processed fruit and vegetable products sector and bananas sector. It also empowers the Commission to adopt implementing acts in respect to checks of conformity to marketing standards and related notifications.
- (2) Commission Implementing Regulation (EU) No 543/2011² provides for marketing standards and checks on conformity to marketing standards for all fresh fruit and vegetables and requirements for notifications. Commission Implementing Regulation (EU) No 1333/2011³ lays down marketing standards, rules on the verification of compliance with marketing standards and requirements for notifications in the bananas sector.
- (3) In the interest of clarity, it is appropriate to incorporate all the rules concerning checks on conformity to marketing standards and requirements for notifications of non-conformity for the products and sectors covered by Commission Delegated Regulation (EU) 2023/[DA PLAN/2022/1908 – to be completed by OP]⁴ in a single new Regulation, taking into account the experience acquired in the application of the existing specific Regulations. In addition, Implementing Regulations (EU) No

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¹ OJ L 347, 20.12.2013, p. 671.

² Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors (OJ L 157, 15.6.2011, p. 1).

³ Commission Implementing Regulation (EU) No 1333/2011 of 19 December 2011 laying down marketing standards for bananas, rules on the verification of compliance with those marketing standards and requirements for notifications in the banana sector (OJ L 336, 20.12.2011, p. 23).

⁴ Commission Delegated Regulation (EU) 2023/[to be completed by OP] of [...] supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards marketing standards for the fruit and vegetables sector, certain processed fruit and vegetable products and the bananas sector, and repealing Commission Regulation (EC) No 1666/1999 and Commission Implementing Regulations (EU) No 543/2011 and (EU) No 1333/2011 (OJ L [...], [...], p. [...]).

543/2011 and (EU) No 1333/2011 are repealed by Delegated Regulation (EU) 2023/[DA PLAN/2022/1908 – to be completed by OP].

- (4) For the purposes of the selective checks based on a risk analysis as provided for in Article 90a(3) of Regulation (EU) No 1308/2013, it is necessary to lay down detailed rules on such checks. In particular, the role of the risk analysis when selecting products for checks should be detailed.
- (5) Each Member State should designate the inspection bodies responsible for carrying out conformity checks at each stage of marketing. A single competent authority should be responsible for contacts with and coordination between all designated inspection bodies.
- (6) Since knowledge of traders and their main characteristics is an indispensable tool in Member States' analysis, it is essential to set up a database on traders of fruit and vegetables and bananas in each Member State. In order to ensure that all actors in the marketing chain are covered and for the sake of legal certainty, a detailed definition of 'trader' should be laid down.
- (7) Conformity checks should be carried out by sampling and should concentrate on traders most likely to have goods which do not comply with the marketing standards. Taking into account the characteristics of their national markets, Member States should lay down rules prioritising checks on particular categories of traders. For the sake of transparency, those rules should be notified to the Commission.
- (8) Where conformity checks identify possible fraudulent or deceptive practices in respect of the marketing standards, competent authorities should take appropriate action in accordance with Regulation (EU) 2017/625 of the European Parliament and of the Council⁵ and exchange fraud notifications in accordance with Commission Implementing Regulation (EU) 2019/1715⁶.
- (9) Member States should ensure that exports of fruits and vegetables to third countries conform to the marketing standards. Member States should certify conformity with the Geneva Protocol on standardisation of fresh fruit and vegetables and dry and dried fruit, concluded within the United Nations Economic Commission for Europe (UNECE), and with the Scheme for the application of international standards for fruit and vegetables of the Organisation for Economic Co-operation and Development (OECD).
- (10) Imports of fruit and vegetables from third countries should conform to the marketing standards or to standards equivalent to them. Conformity checks should therefore be carried out before those goods enter the customs territory of the Union, except in the

⁵ Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation) (OJ L 095 7.4.2017, p. 1).

⁶ Commission Implementing Regulation (EU) 2019/1715 of 30 September 2019 laying down rules for the functioning of the information management system for official controls and its system components (the IMSOC Regulation) (OJ L 261 14.10.2019, p. 37).

case of small lots which the inspection bodies consider to be low risk. It should be provided that in certain third countries which provide satisfactory guarantees of conformity, pre-export checks may be carried out by the inspection bodies of those third countries. Where that option is applied, Member States should regularly verify the effectiveness and quality of the pre-export checks carried out by third country inspection bodies.

- (11) Fruit and vegetables checked for conformity to the marketing standards should be subject to the same type of check at all stages of marketing. To this end, the inspection guidelines recommended by the UNECE, in line with the relevant OECD recommendations, should be applied. Specific arrangements should, however, be laid down for checks at the retail sale stage.
- (12) In order to ensure the coherence between the marketing standards and their checks, this Regulation should enter into force on, and apply from, the same day as Delegated Regulation (EU) 2023/[DA PLAN/2022/1908 – to be completed by OP].
- (13) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the Common Organisation of the Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Chapter I

INTRODUCTORY PROVISIONS

Article 1

Subject matter and scope

This Regulation lays down rules on:

- (a) checks on conformity to marketing standards for the sectors and products referred to in Article 1 of Delegated Regulation (EU) 2023/[DA PLAN/2022/1908 – to be completed by OP] at all marketing stages; and
- (b) the requirements for notifications of non-conformity following conformity checks.

Chapter II

CHECKS ON CONFORMITY TO MARKETING STANDARDS

SECTION 1

GENERAL PROVISIONS

Article 2

Coordinating authorities and inspection bodies

1. Each Member State shall designate:

- (a) a single competent authority responsible for coordination and contacts in the areas covered by this Regulation, hereinafter called ‘the coordinating authority’; and
 - (b) an inspection body or bodies responsible for the application of this Regulation, hereinafter called ‘the inspection bodies’.
2. The coordinating authorities and inspection bodies referred to in paragraph 1 may be public or private. However, the Member States shall be responsible for them in either case.
- The Member States shall notify the Commission of:
- (a) the name and postal and e-mail addresses of the coordinating authority they have designated pursuant to paragraph 1, point (a);
 - (b) the name and postal and e-mail addresses of the inspection bodies they have designated pursuant to paragraph 1, point (b);
 - (c) the exact description of the respective spheres of activity of the inspection bodies they have designated.
3. The coordinating authority may be the inspection body or one of the inspection bodies or any other body designated pursuant to paragraph 1.
4. The Commission shall make publicly available the list of coordinating authorities designated by the Member States on the Europa website.

Article 3 *Trader database*

1. Member States shall set up a database on traders in the sectors and products referred to in Article 1 of Delegated Regulation (EU) 2023/[DA PLAN/2022/1908 – to be completed by OP] (hereinafter ‘trader database’), under the conditions laid down in this Article.

For this purpose, Member States may use any other database or databases already established for other purposes.

2. For the purposes of this Regulation, ‘trader’ means any natural or legal person who:
- (a) holds products referred to in Article 1 of Delegated Regulation (EU) 2023/[DA PLAN/2022/1908 – to be completed by OP], with a view to:
 - (i) displaying or offering them for sale;
 - (ii) selling them;
 - (iii) marketing them in any other manner; or
 - (b) actually carries out any of the activities referred to in point (a) as regards the sectors and products subject to marketing standards.

The activities referred to in the first subparagraph, point (a), shall cover:

- (a) distance selling whether by internet or otherwise;
- (b) such activities carried out by the natural or legal person for itself or on behalf of a third party;
- (c) activities carried out in the Union and/or by export to third countries and/or import from third countries.

3. Member States shall determine the conditions under which the following traders are to be included or not in the trader database:
 - (a) traders whose activities cover products that are exempt from the obligation to comply with the marketing standards pursuant to Article 5 of Delegated Regulation (EU) 2023/[DA PLAN/2022/1908 – to be completed by OP];
 - (b) natural or legal persons whose activities are limited to the transport of goods;
 - (c) traders whose activities are limited to the sale at the retail stage.
4. Where the trader database is composed of several distinct elements, the coordinating authority shall ensure that the database, its elements and their updating are uniform.
5. The trader database shall contain for each trader:
 - (a) the registration number, name and address and the indication of the relevant sectors or products in which it operates among the ones referred to in paragraph 1;
 - (b) information needed for its classification in one of the risk categories referred to in Article 5(2), in particular, position in the marketing chain and information concerning the importance of the firm;
 - (c) information concerning findings made during previous checks of each trader;
 - (d) any other information considered necessary for checks such as information concerning the existence of a quality assurance system or self-check system related to the conformity to the marketing standards;
 - (e) the indication whether or not the trader has been approved in accordance with Article 4.

Member States shall update the trader database where necessary, taking into account in particular the information collected during conformity checks.

6. Without prejudice of paragraph 3, all traders shall be registered and shall provide the information that Member States consider necessary to set up and update the trader database. Member States shall determine the conditions under which traders not established in their territory but trading on it shall be included in their database.

Article 4 *Approved traders*

1. Member States may authorise traders classified in the lowest risk category in accordance with the conformity checks referred to in Article 5, on their request and subject to the provision of special guarantees on conformity to marketing standards, to:
 - (a) sign the certificate of conformity as referred to in Article 7;
 - (b) use, in the labelling of each package at the stage of dispatch, the specimen set out in Annex I for fresh fruit and vegetables and bananas produced in the Union; or
 - (c) use the certificate of exemption set out in Annex II for bananas produced in third countries.

Member States may restrict the authorisations referred to in the first subparagraph to one or two of the sectors and products referred to in Article 1 of Delegated Regulation (EU) 2023/[DA PLAN/2022/1908 – to be completed by OP].

The certificate of exemption referred to in the first subparagraph, point (c), shall apply to the whole of the Union market for bananas unloaded in the Member State which granted the exemption.

2. The authorisation shall be granted for a period of at least one year.
3. Traders benefiting from the possibility referred to in paragraph 1 shall:
 - (a) have inspection staff who have received training or have relevant experience;
 - (b) have suitable equipment for preparing, packing and checking produce;
 - (c) commit themselves to carry out a conformity check on the goods they dispatch and have a register recording all checks carried out;
 - (d) allow checks by coordinating authorities.
4. Where an approved trader no longer complies with the requirements for its authorisation, the Member State shall withdraw the authorisation.
5. Member States shall establish a list of approved traders indicating the registration number referred to in Article 3(5), first subparagraph, point (a), as well as the products and the period for which the authorisation has been granted. Member States shall take appropriate steps to make such information publicly available.

SECTION 2

CONFORMITY CHECKS CARRIED OUT BY THE MEMBER STATES

Article 5

Conformity checks

1. Member States shall ensure that conformity checks are carried out selectively, based on a risk analysis, and with appropriate frequency, so as to ensure compliance with, and to identify possible fraudulent or deceptive practices in respect of the marketing standards laid down in Articles 75 and 76 of Regulation (EU) No 1308/2013 and Delegated Regulation (EU) 2023/[DA PLAN/2022/1908 – to be completed by OP] .

The criteria to assess the risk may include:

- (a) the existence of a certificate of conformity referred to in Article 7 of this Regulation issued by a competent authority;
- (b) the existence of a certificate of conformity issued by a competent authority of a third country where the conformity checks have been approved pursuant to Article 8 of this Regulation;
- (c) the nature of the product, the period of production, the price of the product, the weather, the packing and handling operations, the storage conditions, the country of origin, the means of transport or the volume of the lot;

- (d) the size of the traders, their position in the marketing chain, the volume or value marketed by them, their product range, the delivery area or the type of business carried out such as storage, sorting, packing or sale;
 - (e) findings made during previous checks including the number and type of defects found, the usual quality of products marketed, the level of technical equipment used;
 - (f) the reliability of traders' quality assurance systems or self-checking systems related to the conformity to marketing standards;
 - (g) the place where the check is carried out, in particular if it is the point of first entry into the Union, or the place where the products are being packed or loaded;
 - (h) any other information that might indicate a risk of non-compliance.
2. The certificates of conformity referred to in paragraph 1, second subparagraph, point (b), shall be considered as a factor reducing the risk of non-conformity.
 3. The risk analysis shall be based on the information contained in the trader database referred to in Article 3 and Member States shall classify traders in risk categories on the basis of such risk analysis.

Member States shall lay down in advance:

- (a) the criteria for assessing the risk of non-conformity of lots;
- (b) the minimum proportions of traders or lots and/or quantities which will be subject to a conformity check, on the basis of a risk analysis for each risk category.

For products subject to the general marketing standard, based on a risk analysis, Member States may choose not to carry out selective checks.

4. Where checks reveal significant irregularities, Member States shall increase the frequency of checks in relation to concerned traders, products, origins, or other parameters.
5. Traders shall provide inspection bodies with all the information and facilities those bodies consider necessary for organising and carrying out conformity checks.

Article 6

Acceptance of declarations by customs

1. Customs may only accept export declarations and/or declarations for the release into free circulation for the products subject to specific marketing standards if one of the following conditions is fulfilled:
 - (a) the goods are accompanied by a certificate of conformity as referred to in Article 7 or, in the case of bananas, by the certificate of exemption set out in Annex II; or
 - (b) the competent inspection body has informed the customs authority that it has issued a certificate of conformity for the lots concerned; or
 - (c) the competent inspection body has informed the customs authority that it has not issued a certificate of conformity for the lots concerned because they did

not need to be checked in the light of the risk analysis referred to in Article 5(1).

The acceptance of declarations referred to in the first subparagraph shall be without prejudice to any conformity checks the Member State may carry out pursuant to Article 5.

2. Member States may also apply paragraph 1 to products subject to the general marketing standard set out in Part A of Annex I to Delegated Regulation (EU) 2023/[DA PLAN/2022/1908 – to be completed by OP] and products referred to in Article 5(1), point (a)(i), of that Delegated Regulation if the Member State concerned considers it necessary in the light of the risk analysis referred to in Article 5(1) of this Regulation.

Article 7

Certificate of conformity and certificate of exemption

1. Certificates of conformity for fresh fruit and vegetables or bananas subject to marketing standards and certificates of exemption for bananas may be issued by a competent authority.

The certificate of conformity is issued to confirm that the products concerned conform to the relevant marketing standard. The certificate of conformity for use by competent authorities in the Union is set out in Annex III.

For fresh fruits and vegetables, instead of certificates of conformity issued by competent authorities in the Union, the third countries referred to in Article 8(2) may use their own certificates of conformity, provided that they contain at least equivalent information to the Union certificate. The Commission shall make publicly available specimens of such third country certificates on the Europa website.

2. The certificate of exemption may be issued by the competent authority to confirm that the approved trader in question has the capacities to assure the conformity of the imported bananas to the relevant marketing standard. The certificate of exemption is set out in Annex II.
3. The certificates may be issued by the competent authority either in paper format with its stamp or in verified electronic format. They shall be signed by the person or persons empowered to do so by the competent authority either with a handwritten or with an electronic signature. Traders approved pursuant to Article 4 may also sign the certificate of conformity either with a handwritten or with an electronic signature.
4. The certificates shall be issued in at least one of the official languages of the Union.
5. Each certificate shall bear a serial number, by which it can be identified. The competent authority shall retain a copy of each issued certificate.

SECTION 3

CONFORMITY CHECKS CARRIED OUT BY THIRD COUNTRIES

Article 8

Approval of conformity checks carried out by third countries prior to import into the Union

1. The request of a third country for the approval referred to in Article 9(1) of Delegated Regulation (EU) 2023/[DA PLAN/2022/1908 – to be completed by OP]

shall specify the official authority in the third country under the responsibility of which checks on conformity to marketing standards set out in that Delegated Regulation are carried out. That authority shall be responsible for contacts with the Commission. The request for approval shall also provide the necessary information to assess the requirements referred to in Article 9(4) of that Delegated Regulation.

2. The third countries where the conformity checks have been approved under the conditions laid down in Article 9 of Delegated Regulation (EU) 2023/[DA PLAN/2022/1908 – to be completed by OP] and this Article, and the products concerned, are set out in Annex IV to this Regulation. For any new approval, the Commission shall update that Annex in accordance with Article 91, first paragraph, point (f), of Regulation (EU) No 1308/2013.
3. The Commission shall make publicly available details of the official authorities and inspection bodies concerned on the Europa website.

Article 9

Suspension of approval of the conformity checks

The Commission may suspend approval of the conformity checks carried out by third countries if it is found that, in a significant number of lots and/or quantities, the goods do not correspond to the information in the certificates of conformity issued by the third country inspection bodies. In case of suspension of approval, the Commission shall update Annex IV in accordance with Article 91, first paragraph, point (f), of Regulation (EU) No 1308/2013.

SECTION 4

METHODS OF INSPECTION

Article 10

Methods of inspection and rules on findings of non-conformity

1. The conformity checks provided for in this Regulation, with the exception of those at the point of retail sale to the end consumer, shall be carried out in accordance with the methods of inspection laid down in Annex V, save as otherwise provided in this Regulation or in Delegated Regulation (EU) 2023/[DA PLAN/2022/1908 – to be completed by OP].

Member States shall lay down specific arrangements for checking conformity at the point of retail sale to the end consumer.

2. Where the inspection body finds that the goods conform with the marketing standards, the inspection body may issue a certificate of conformity as set out in Annex III in accordance with Article 7.
3. Where the inspection body finds that the goods do not conform with the marketing standards, the inspection body shall issue a finding of non-conformity for the attention of the trader or their representatives. Goods for which a finding of non-conformity has been issued may not be moved without the authorisation of the inspection body which issued that finding. That authorisation can be subject to conditions laid down by the inspection body.

Traders may decide to bring all or some of the goods into conformity. Goods brought into conformity may not be marketed before the inspection body has ensured by all appropriate means that the goods have actually been brought into conformity. The inspection body shall issue, where applicable, a certificate of conformity as set out in Annex III for the lot or part thereof only after the goods have been brought into conformity.

If an inspection body accepts a trader's request to bring the goods into conformity in a Member State other than that where the check leading to a finding of non-conformity has been carried out, the trader shall notify the inspection body of the destination Member State of the non-conforming lot. The Member State issuing the finding of non-conformity shall send a copy of that finding to the Member State of destination of the non-conforming lot as well as to other Member States concerned.

Where the goods can neither be brought into conformity nor are intended for industrial processing, use for animal feed or any other non-food use, the inspection body may, if necessary, request traders to take adequate measures in order to ensure that the products concerned are not marketed.

Traders shall supply inspection bodies with all information deemed necessary by Member States for the application of this paragraph.

4. Where conformity checks provided for in this Regulation identify possible fraudulent or deceptive practices in respect of the marketing standards, competent authorities shall take appropriate action in accordance with Regulation (EU) 2017/625 and exchange fraud notifications in accordance with Implementing Regulation (EU) 2019/1715.

SECTION 5

NOTIFICATIONS

Article 11 *Notifications*

1. A Member State where a consignment from another Member State is found not to conform with the marketing standards because of defects or deterioration which could have been detected at the time of packaging shall notify forthwith the Member States likely to be concerned, including those where the goods were packaged.
2. A Member State where a lot of goods from a third country has been rejected from release into free circulation because of non-compliance with the marketing standards shall notify forthwith the Member States likely to be concerned and the third country concerned if listed in Annex IV.
3. Member States shall notify the Commission and the other Member States of the summarised results of the inspections at all marketing stages in a given year by 30 June of the following year. As regards imports from third countries listed in Annex IV, this notification shall include the number of lots of goods that has been rejected during the previous year from the release into free circulation because of non-compliance with the marketing standard.

4. The notifications to the Commission referred to in paragraph 3 shall be made in accordance with Commission Delegated Regulation (EU) 2017/1183⁷.

CHAPTER III

FINAL PROVISIONS

Article 12

Entry into force and application

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

It shall apply from 1 January 2025.

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

Done at Brussels,

For the Commission

The President

Ursula VON DER LEYEN

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⁷ Commission Delegated Regulation (EU) 2017/1183 of 20 April 2017 on supplementing Regulations (EU) No 1307/2013 and (EU) No 1308/2013 of the European Parliament and the Council with regard to the notifications to the Commission of information and documents (OJ L 171, 4.7.2017, p. 100).