

**TERMS AND CONDITIONS**

**OF THE**

**SCHEME OF EU AID FOR**

**PRODUCER ORGANISATIONS**

**IN THE FRUIT AND VEGETABLES SECTOR**

**(2017)**

See also

The National Strategy for Sustainable Operational Programmes 2009-2013, as extended/amended, and incorporating the National Framework for Environmental Actions

**Council Regulation (EC) No 1234 of 2007 / Regulation (EU) of the European Parliament of the Council No 1308/2013**

**and**

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

**Effective from: 10 May, 2017**

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# Introduction

This scheme provides EU aid to producers grouping, on a voluntary basis, to form recognised Producer Organisations (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 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> (applies to operational programmes commencing before 1 January 2014), Regulation (EU) of the European Parliament of the Council No 1308/2013<sup>2</sup> (which applies to all operational programmes commencing on or after 1 January 2014) and Commission Implementing Regulation (EU) No 543/2011<sup>3</sup>.

The Terms and Conditions do not purport to be a legal interpretation of the above Regulations.

These Terms and Conditions are in addition to, and not in substitution of **Council Regulation (EC) No 1234/2007**<sup>1</sup> of 22 October 2007 [establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)], **Regulation (EU) No 1308/2013**<sup>2</sup> 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 1234/2007] and **Commission Implementing Regulation (EU) No 543/2011**<sup>3</sup> [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].

**These Terms and Conditions should be read in conjunction with the aforementioned Regulations, as amended from time to time by the EU. The Department accepts no responsibility for any omissions and readers are, therefore, directed to read the EU Regulations themselves.**

If, having read the Terms and Conditions and the governing legislation, you have any further queries, enquiries and/or requests for application forms, please contact email [POScheme@agriculture.gov.ie](mailto:POScheme@agriculture.gov.ie).

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/legal-content/EN/TXT/PDF/?uri=CELEX:02007R1234-20131231&qid=1406545068903&from=EN>

<sup>2</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R1308-20140101&qid=1406544518134&from=EN>

<sup>3</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2011R0543:20110901:EN:PDF>

## **DEFINITIONS:**

For the purposes of this Scheme, the following definitions, in addition to the terms defined in the Council Regulation and the Commission Regulation shall apply:

*An 'associated company' and 'control' are defined as follows:*

- (1) 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.
- (2) 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—
  - a) the greater part of the share capital or issued share capital of the company or of the voting power in the company,
  - b) 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
  - c) 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.
- (3) Where two or more persons together satisfy any of the conditions of subsection (2), they shall be taken to have control of the company.
- (4) 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.
- (5) 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.
- (6) For the purposes of subsections (2) and (3), there may also be attributed to any person all the rights and powers of—
  - a) any company of which such person has, or such person and associates of such person have, control,
  - b) any two or more companies of which such person has, or such person and associates of such person have, control,
  - c) any associate of such person, or
  - d) 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;

**“Council Regulation”** shall, unless otherwise stated, mean, for operational programmes which commenced before 1 January 2014, 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), as amended, or for operational programmes commencing on or after 1 January 2014, Regulation (EU) of the European Parliament of the Council No 1308/2013;

**“Commission Regulation”** shall, unless otherwise stated, mean Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of the Council Regulation in respect of the fruit and vegetables and processed fruit and vegetables sector, as amended;

**“Department”** shall mean the Department of Agriculture, Food and the Marine, the competent authority responsible for implementing the PO Scheme in Ireland;

**“Holding”** is as defined in Article 2(b) of Council Regulation (EC) No 73/2009 of 19 January 2009;

**“Minister”** shall mean the Minister for Agriculture, Food and the Marine;

**“National Strategy”** shall, for Operational Programmes commencing on or before 1 January 2015 and not subsequently amended, mean the National Strategy for Sustainable Operational Programmes 2009-2013. For operational programmes commencing on or after 1 January 2015, or for operational programmes commencing before that date but subsequently amended, “National Strategy” shall mean the National Strategy for Sustainable Operational Programmes 2009-2013 extended to 2016.

**“Operational Programme”** (hereinafter referred to as ‘the programme’) is defined as a 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, including their capital investment plan if intending to invest €250,000 or more in any calendar year, for a period spanning 3, 4 or 5 consecutive calendar years. The programme shall be consistent with the relevant National Strategy;

**“Producer Member”** shall have the meaning assigned to it by Article 19 of the Commission Regulation. However, in order to be considered an **“active producer member”** for the purposes of this Scheme, only a producer member of the PO whose entire production, up to the date of resignation, is included in the VMP of the PO for that operational year (unless the limited exemptions at Section 1.2.2 apply), and whose production is either marketed by the PO itself or by a marketing agent contracted by the PO which complies with Section 1.3.3. of these Terms and Conditions for the operational year, is considered to be an **“active producer member”**. A PO member whose production, being otherwise eligible, is not claimed by the PO to form part of its VMP because the PO member did not abide by all of these Terms and Conditions and/or the Member’s agreement, and/or the PO’s rules cannot be considered an active producer member.

**“Producer Organisation (hereinafter referred to as “a PO”)**” is defined as an organisation which is, at the time in question, recognised by the Department for the purposes of this Scheme.

**“Production”** means the entire production of all products for which the PO is recognised grown on all holdings owned or leased by the producer member situated within the territory of the European Union minus the quantity, if any, exempted under Section 1.2.2 of these Terms and Conditions.

**“Written evidence”** shall mean a hard copy of any document, letter, quotation, invoice, email, etc.

# RECOGNITION OF PRODUCER ORGANISATIONS

## 1.1 Recognition criteria

Article 19(2) of the Commission Regulation makes provision for the Department to adopt complementary rules on the Recognition of POs. These complementary rules will be adopted by inclusion in these Terms and Conditions and include the following conditions:

- 1.1.1. To be recognised as a PO, an applicant PO must undertake, in writing, to fully comply with the Council Regulation, the Commission Regulation and these Terms and Conditions.
- 1.1.2. It is a condition of recognition for a producer organisation headquartered in Ireland that at least 50% of the volume of its marketed production in a calendar year must be grown within the State.
- 1.1.3. POs formed following a merger of recognised POs must also comply with Section 1.7.
- 1.1.4. The Department can only pay financial assistance to POs which have been recognised by the Department for the purposes of this Scheme for the period being claimed.
- 1.1.5. A recognised PO must continue to fully comply with the provisions of the Council Regulation, as amended, the Commission Regulation, as amended, and with these Terms and Conditions, as amended.

## 1.2 Articles of Association of the PO

- 1.2.1. In addition to the requirements of the Council Regulation and the Commission Regulation with regard to the Articles of Association of the PO; the PO must require its producer members to:
  - a) belong to only one PO in respect of production of the product, or products, for which the PO is recognised grown on the holding of the member; and
  - b) market their entire production concerned through the PO unless the possible limited exceptions in Sections 1.2.2 and/or 1.4.7 apply.
- 1.2.2. In accordance with the second paragraph of Article 160 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council, “*the statutes of a producer organisation in the fruit and vegetables sector shall require its producer members to market their entire production concerned through the producer organisation*”.

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 (as provided for by Article 125a (2) of the Council Regulation and Article 26a of the Commission Regulation). 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 25% of the member’s production,

- 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% of the member's production;
- 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 covered by the commercial activities of the PO concerned.

The volumes marketed under any of these exceptions shall be monitored, recorded and carefully supervised by the PO to ensure the volumes do not exceed the percentages above and the records, including the written agreement or contract, shall be made available to a Department official for inspection on request.

The production marketed in accordance with these exceptions shall be excluded from the calculation of the value and volume of production marketed by the PO. The production of the members of one PO, marketed by a second PO designated by their own PO, shall be included in the value of the marketed production of the second PO.

- 1.2.3. The Articles of Association of the PO must comply with the requirements of the Council Regulation and the Commission Regulation.
- 1.2.4 In accordance with Article 31 of the Commission Regulation, each Member State shall set a maximum percentage of voting rights and shares which any individual or legal person may hold in a producer organisation. In Ireland, each PO member shall have equal voting rights and equal shareholding in the PO.

### **1.3 Competence of the PO, Democratic accountability, Outsourcing**

- 1.3.1. Clear evidence will be necessary to show that where a small number of members account for a significant percentage of production there is no undue influence on PO activities.
- 1.3.2. The PO may outsource any activity, except production, including to subsidiaries and/or members, provided that:
  - (a) The PO provides sufficient evidence to the Department, that the decision to outsource has been properly decided in accordance with the principles of democracy, transparency and good governance. The decision to outsource shall be supported by evidence that such outsourcing is an appropriate way to achieve the POs objectives. An evaluation of the appropriateness of the outsourcing shall be included in the Final Report of each Operational Programme. In carrying out the evaluation the following elements shall be considered and reported on:
    - the initial situation at the PO;
    - the targets of the PO in terms of the activity to be outsourced;
    - the advantages should be weighed against the disadvantages;
    - in circumstances where a PO proposes to outsource to a company under the control of a producer member or to a company associated with a producer member, the PO has ensured that the interests of the other PO members are protected in such a proposal and the arrangement does not constitute undue influence on PO activities.
  - (b) Once a PO has reached a decision to outsource an activity and in circumstances where the PO wishes to claim for some or all of the costs associated with the

outsourced action the Department requires the PO to comply with the following provisions:

- (i) the PO enters into a written agreement or contract with each legal entity to whom it outsources any activity. The written agreement or contract shall specify, in detail, the activity to be carried out and the charge for the provision of the activity. The written agreement or contract shall also provide for regular reviews by the PO that the terms of the written agreement or contract are being fulfilled and must include penalties, or specify some other form of redress or corrective action to be taken, in the event that a term or terms in the written agreement or contract are not fulfilled;
  - (ii) the written agreement or contract referred to in (i) must specify the documentary evidence that will be available to the Department to verify that the outsourced activity has been carried out. The evidence must be available for inspection in the PO's offices.
- (c) In order for the Department to evaluate the eligibility and the cost of outsourced actions as part of an Operational Programme, the Department will require the methodology for calculating the cost for each outsourced action. The Department must be satisfied with the methodology used in determining the cost, or the rate to be applied. The PO must provide evidence in support of the cost/rate being charged for the outsourced activity. The Department shall not approve the budget for an Operational Programme in the absence of this information.
- (d) In order for the Department to approve a budget for outsourced actions, the following is required:
- (i) The Department gives an advance approval of the arrangements for outsourcing any PO activity, including the content of the relevant written agreement or contract and the documentation which will be available;
  - (ii) The PO retains responsibility for ensuring that the outsourced activity is carried out in accordance with the written agreement or contract referred to 1.3.2.(b)(i) and the approved Operational Programme;
  - (iii) The PO retains documentary evidence that, in any instance where the written agreement or contract was not complied with by the service provider, appropriate action was taken by the PO, as referred to in 1.3.2.(b)(i);
  - (iv) The PO can provide verifiable documentary evidence relating to the outsourced activity to support its aid claims, as referred to in 1.3.2.(b)(ii); and
  - (v) Payment in respect of each outsourced activity will be dependent on the Terms and Conditions of the written agreement or contracts between the PO and the service provider(s) being observed by all parties, in addition to compliance with all governing legislation.
- (e) The PO complies with any limits imposed by the Department regarding outsourcing to companies/service providers which are associated with PO members.

**1.3.3. 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) Without prejudice to the previous paragraph, a marketing company may market one or more products, grown by only one member of a PO, subject to

compliance with any additional conditions that may be stipulated by the Department;

- (c) 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];
- (d) The PO must retain records, available to all PO members, showing all deductions made by the marketing company from the retail price paid to the marketing company and must specify what the figure represents, the basis for its calculation including the nature and extent of the exact services provided and included in the calculation as agreed between the marketing company and the PO; and;
- (e) The PO must pay from the operational fund only those charges and levies that are approved as part of the Operational Programme by the Department.

## **1.4 Membership of the PO**

- 1.4.1. The PO must comprise at least five active producer members.
- 1.4.2. To ensure that a PO genuinely represents the legally required minimum number of active producer members, the Department shall regard each of the following as a single member:
  - (i) a producer member, with two or more legal personalities
  - (ii) a producer member with more than one holding, and,
  - (iii) producer members that share common majority beneficial owners.
- 1.4.3. The minimum period of membership for producers is one calendar year. The PO may require a longer commitment to membership, e.g., for the duration of the operational programme. Details of the minimum membership period must be included in the Member's Agreement.
- 1.4.4. The PO must ensure that its membership agreement includes all provisions required under the Council Regulation. Each member shall sign a membership agreement. The PO must retain the original signed membership agreement for inspection by the Department. The PO must be in a position to demonstrate by verifiable documentary evidence that all parties complied with all provisions of the Agreement.
- 1.4.5. The PO must immediately notify the Department in the event that the number of active producer members falls below the minimum of five.
- 1.4.6. *Resignations by members must be notified in writing to the PO. The PO must 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 not exceed six months. Records of resignations shall be provided to Department officials, on request, and a list of resignations must be notified to the Department, as part of each annual claim for financial assistance.*
- 1.4.7. Producers may belong to more than one PO at a time in cases where the PO is not recognised for all products grown by the member. However, a producer may not be a member of more than one PO for the same product.

In the case of a member of a transnational PO recognised in Ireland, the entire production of recognised product grown within the Member State must be channelled through the PO, unless the limited exemptions at 1.2.2 apply.

If the member has holding(s) in another Member State in which recognised production of the transnational PO is grown, the member can choose whether or not to channel their production in this other Member State through the PO. However, if

the PO member chooses to sell recognised production grown in this other Member State through the PO, all his/her production of recognised product grown on his/her holdings in that Member State must be channelled through the PO, unless the limited exemptions at 1.2.2 apply.

- 1.4.8. The PO must have rules dealing with a situation where it is discovered that one or more of its members is in breach of 1.4.7.

The VMP of a PO which includes production of a member who is found to be supplying another PO (outside of the limited exceptions permitted at Section 1.2.2) will be reduced by the value of the production supplied by that member for the entire period during which the member was a member of more than one PO recognised for the same product. Any EU aid paid in respect of production of the member in question will be recouped by the Department, in full, with interest if appropriate, from the PO. The PO member found to simultaneously be a member of two POs for the same recognised product will be prohibited from being a member of a PO recognised by the Department for a period of at least five years from the date of detection.

- 1.4.9. Provisions for representation and voting rights in the rules of the PO must ensure that there is no abuse of power or influence by one or more members of the PO in relation to the management and operation of the PO and regarding decisions in relation to the operational programme and/or use of funds.
- 1.4.10. Non-producers can also be PO members, but the PO must be controlled by its producer members. Non-producing members cannot benefit from EU aid.
- 1.4.11. Non-producing members are excluded for the purpose of determining the minimum number of producers required for recognition as a PO.
- 1.4.12. Non-producing members shall not vote on any decision relating to the operational fund.
- 1.4.13. The PO must notify the Department where any of its members acquires a new or additional growing site or increases its production capability of the recognised products. The PO must retain, for inspection, records in relation to members whose production area changed.
- 1.4.14. Before admitting a new member to the PO, the PO must notify the Department of the member's full name and address, produce marketed, acreage or in the cases of mushrooms, the production area in m<sup>2</sup> and if the applicant was previously a member of another PO, details of their former PO and their membership number in that PO. Where the applicant member was previously a member of another PO, the letter of resignation from the former PO must be copied to the new PO, which must retain it for inspection.

## **1.5 Applying for recognition**

- 1.5.1. The PO must make its application for recognition on form **HORT PO AP 1**. Only fully completed application forms on the prescribed form, accompanied by all of the required supporting documentation, will be accepted.
- 1.5.2. Granting of recognition is separate from, and does not imply approval of, an operational programme.
- 1.5.3 The certified VMP of the PO seeking recognition shall be at least €2,500,000.

## **1.6 Membership of previous PO**

If members were previously, or are currently, in another PO, full particulars of previous and/or current memberships shall be supplied with the application for recognition of the PO.

## **1.7 Mergers of POs**

1.7.1. POs may consider the possibility of merging with other recognised PO(s). It is not within the Department's remit to advise POs if a merger is the right thing to do for their organisation.

1.7.2. In the case of a prospective merger, the Department may seek recovery of aid on any capital funded items which have not been fully depreciated and which are disposed of by the merged PO.

1.7.3. Before a merger can take place the organisations concerned will need to consult with **all** of their members and obtain their agreement to the merger. This can either be done at an Annual General Meeting of the PO, an Emergency General Meeting of the PO or via correspondence. A copy of the minutes of any AGM or EGM held to consult with members on the proposed merger must be retained by the PO. If an AGM or EGM was not held, the PO must retain evidence of their consultation with members (such as copies of any communications issued and replies received from members). The PO must retain a copy of all correspondence entered into in relation to the merger or proposed merger.

### **1.7.4. Application for recognition**

The newly merged group will need to apply for recognition on application form HORT PO AP 1 form (copies available from the Department). In addition, the application should set out the reasons for the merger, and the process by which the decision to merge was arrived at. They will need to supply the Department with:

- a) the documentation to be retained per Section 1.7.3. above; and
- b) a list of assets of the individual POs;
- c) a full VMP history of the merging POs.

### **1.7.5. Application deadline**

An application can be made at any time during the year. However, POs who have existing operational programmes will need to apply by the 15 September deadline if they want to achieve recognition and the commencement of a merged operational programme by 1 January of the following calendar year.

Following a merger of POs, it may, in some cases, be possible to continue with the individual operational programmes until they are completed. POs should inform the Department of their proposals and these requests will be dealt with on a case by case basis.

1.7.6 Each of the POs considering a merger must fully meet all recognition criteria in the Member State in which the PO is currently recognised.

## **1.8 Withdrawal or suspension of recognition**

Failure to comply, in part or in full, with any or all of these Terms and Conditions, the Council Regulation and/or the Commission Regulation may result in the Department applying sanctions against a PO.

## 2. THE 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. A PO with one or more holdings in a non-Euro currency Member State may set up a separate operational fund for that currency.
- 2.1.3. 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.
- 2.1.4. 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.
- 2.1.5. The PO, when certifying the VMP, shall ensure that the VMP figure arrived at is in accordance with the Council and Commission Regulations.
- 2.1.6. The operational fund shall be used only for transactions directly connected with the financing of an operational programme that has been approved by the Department and the administration of the approved operational programme.
- 2.1.7. 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).
- 2.1.8. 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 uses the Operational Fund for non-eligible items, the Department may impose a financial sanction to their payment.

### 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. Only active 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 active producer members have the opportunity to benefit from the operational fund. It is recognised that in many cases POs are diverse operations. However, as a general principle, scheme expenditure/investments should benefit members on a fair basis - all members should benefit from the fund.
- 2.2.4. The source and use made of all monies in the Operational Fund must be transparent.
- 2.2.5. The Department must be able to identify, via the PO accounting system, the contribution made to the Operational Fund by each member and the funding provided by the PO itself. Differing rates of the members' contribution must be explained to the satisfaction of the Department in the PO's Annual Report. It must be possible for the Department to identify the source of all contributions to the Operational Fund and the purpose and eligibility of all expenditure from the Operational fund.

- 2.2.6. Costs incurred for measures taken under the operational programme must be settled directly from the operational fund account. It is not permissible for the PO to pay invoices from the general account or for members to settle invoices themselves and then reclaim the costs from the PO's operating fund. If individual members or marketing agents pay for expenditure directly and then seek repayment from the operational fund of the PO, this expenditure will be deemed ineligible for EU aid by the Department.
- 2.2.7. Only invoices in the name of the PO should be paid from the operational fund.
- 2.2.8. Where the PO's 50% contribution to programme aid is funded by members' contributions, the contributions must be made before payment of aid can be authorised. Members' contributions can be made by taking levy from PO members, one-off payments from each member or by using profits made by the PO. This list is not exhaustive and the PO should decide how this contribution is collected before the programme commences.

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

- 2.3.1. The VMP of the PO is calculated on the basis of their members' production of the product(s) for which the PO is recognised. The VMP shall be equal to the full market price of 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 1.3.3. is complied with).
- 2.3.2. In order to be included in the VMP calculation, the sale (of recognised product) must be invoiced at the time of sale either by the PO itself or by the third party to whom the marketing was outsourced.
- 2.3.3. The VMP for the operational year 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. The Department will examine each such situation on a case-by-case basis.
- 2.3.4. The VMP of a PO must be certified by their auditors in accordance with the provisions of Sections 2.1.4 and 2.1.5. Where Department checks establish that the VMP is higher than that declared in the certified accounts, the VMP certified by the PO's audited accounts shall be used for the purposes of establishing the maximum EU aid payable.
- 2.3.5. In order to retain recognition, the minimum certified VMP of a recognised PO must be at least €2,500,000 each calendar year.

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

- 2.4.1. For new operational programmes commencing on or after 1 January 2013 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 of each operational year.
- 2.4.2. 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. Where the PO cannot support the reference VMP declared to the Department, or the VMP for the operational year, recognition may be suspended until such time as the VMP can be reconciled.

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

EU financial assistance is paid retrospectively. Payment will not be made until 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 PO must submit its programme to the Department for approval no later than 15 September in the year preceding commencement of the programme.

Article 57 of the Commission Regulation makes provision for the Department to adopt complementary rules concerning the eligibility of measures, actions or expenditure under operational programmes. These complementary rules will be adopted by inclusion in these Terms and Conditions and include the following conditions:

#### 3.1. Mandatory elements of a programme

- 3.1.1. The programme shall be implemented in annual periods from 1 January to 31 December inclusive.
- 3.1.2. Unless the exceptions at 3.1 of the Framework for Environmental Actions at Annex A of the National Strategy apply, all operational 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 environmental actions must conform exactly to the approved wording in the Framework for Environmental Actions, which is annexed to the National Strategy, which is available at:

<http://www.agriculture.gov.ie/farmingsectors/horticulture/horticultureSchemes/>

Please note that only eligible expenditure, as listed in the aforementioned Framework for Environmental Actions, will be considered for payment. The Department will examine each proposed action to determine whether the action should be classified as an environmental action or whether the proposed action would be more suited to inclusion under a different objective or measure. The decision of the Department in such determinations shall be final.

- 3.1.3. Only the specific additional costs of undertaking approved environmental actions and income foregone resulting from the action, (i.e., the additional costs to the PO [taking into account possible cost savings resulting from the action, e.g., reduced volume of fertilisers/plant protection products/water used or the possible reduced costs for fertiliser/plant protection products distribution and the possible higher price for products], calculated as the difference between the conventional costs determined on a real cost basis) are eligible for EU aid.

In the case of environmental actions that reduce fuel, energy or water usage or prevent emissions into the air, water or soil, the PO must provide an attestation from an independent body of the reduction to be made as a result of the investment. If the potential reduction is solely for one of these measures, the reduction must be at least 25%. If the action also contributes to, or leads to, another environmental benefit, the water/fuel/energy reduction can be reduced to a minimum of 10%.

Prior to approving the action, an attestation must be provided by the PO, which must be acceptable to the Department, and will be used as proof of the potential savings of carrying out the proposed action. Actual savings must be reported on fully in the PO's annual/final report and its mid-term evaluation, which must include explanations where the anticipated savings were not achieved. Should the saving fall below the minimum 10% or if the PO fails to report the actual savings in their Annual report, the Department will recover the EU aid paid over the lifetime of the programme for that investment.

- 3.1.4. In relation to actions referred to in Section 1 of Annex IX to the Commission Regulation, only the specific additional costs of undertaking the action (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. Additional costs, income foregone, as well as cost savings and additional earnings will be taken into account when determining the additional costs.

## 3.2 Preparing an operational programme

- 3.2.1. 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**, (available from the Department). The Department will not accept any application which is not submitted on the latest version of the prescribed form or any application which is incomplete or is not accompanied by the required supporting documentation.

The Department may request any other information in support of the programme approval application.

- 3.2.2. 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.
- 3.2.3. The PO must 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. The PO must, 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 must use objectives which are included in the National Strategy.
- 3.2.4. 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.**
- 3.2.5. The PO must 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.
- 3.2.6. Targets and performance indicators shall be established and agreed with the Department for each action at the start of each operational programme year, or at the time of approval of any amendment 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 time constrained (SMART). The performance indicators for each eligible measure are set out in Section 3.2 of the National Strategy. Other indicators may also be required, as appropriate.

- 3.2.7. 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 recognition of the PO in accordance with the provisions of Article 96 (5) of the Commission Regulation.
- 3.2.8. The records required to support staff costs are job descriptions, contemporaneous timesheets and/or diaries or documents of equal probative value, and payroll records. Additionally for specialist staff, whose primary function is undertaking the action for which the claim is being made, the contract or agreement between the PO and agent detailing the services to be provided must be available, and the fees agreed must be specified in the contract
- 3.2.9. Any change in the rate charged for any action must be justified to, and agreed with the Department, before being implemented. Otherwise, payment will be restricted to the previous rate.
- 3.2.10. The Department will base its determination solely on the supporting documentation submitted at the time of application.

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

- 3.3.1. Measures and actions that are not included in the National Strategy are ineligible for financial assistance.
- 3.3.2. The Department may apply a maximum duration to environmental actions, other than environmental actions which solely relate to the acquisition of capital investments, listed in the Framework for Environmental Actions. This applies to operational programmes commencing on or after 1 January 2015.
- 3.3.3. The Department may apply a ceiling to the aid payable in respect of a particular action, for example, the Department may set an upper percentage of the budget available for an action as part of the approval process.
- 3.3.4. An action cannot exceed 30% of the operational programme budget (excluding administrative costs) and cannot account for any more than 30% of the EU aid paid.
- 3.3.5. A measure cannot exceed 50% of the operational programme budget (excluding administrative costs) and cannot account for any more than 50% of the EU aid paid.

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

- 3.4.1. Payment of aid is subject to the PO continuing to comply with all recognition criteria and fulfilling the regulatory requirements.
- 3.4.2. The PO
  - (i). shall maintain clear records of the implementation of each action, and in the case of any outsourced action(s) records that demonstrate the PO's overall management, control and supervision of the commercial arrangement for the provision of the action.
  - (ii). Records for actions must be made readily available to a Department official on request. If during an inspection, the required documentation is not available at the PO's offices, the action will be disallowed in part or in full;
- 3.4.3. The PO must retain an appropriate record of the implementation of outsourced actions and of the control checks undertaken to demonstrate their continued management, control and supervision of outsourced actions. These records shall be made readily available to a Department official on request.
- 3.4.4. The eligible costs for staff approved under the programme are limited to gross salary costs actually incurred, including employers National Insurance.

- 3.4.5. Any travel expenses, not fully logged, vouched and documented, shall be automatically deemed ineligible. Claims in respect of **meals and/or subsistence** are ineligible for EU aid.
- 3.4.6. **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.
- 3.4.7. See also the **specific conditions in relation to capital investments – at Annex I attached.**

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

- 3.5.1. A PO may claim 2% of the approved expenditure on the programme to cover the costs of administering the programme. The sum of the budgets for the actions of the operational programme will be approved at 100%, excluding a maximum of 2% for administration costs.
- 3.5.2. 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. It must also be verifiable by documentary evidence that shall be made available to a Department official on request. These costs are included in the 2% allowed for administration costs.
- 3.5.3. Below is a non-exhaustive list of tasks which are included in the 2% administration:  
Time spent by management and/or personnel and any other costs incurred on the following items:
- (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 and the mid-term evaluation of 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.
- 3.5.4. 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 by contemporaneous timesheets.
- 3.5.5. General overhead costs such as utilities, phones, office accommodation, heating or IT support should not be claimed.

### 3.6. Submitting and amending programmes

- 3.6.1. The approval letter shall state the date of implementation of the operational programme and the budget for the first year of the operational programme. Budgets declared by POs on an application for a new or revised operational programme or an in year amendment for subsequent years of the operational programme are indicative budgets only. The approved budget for each subsequent year will be notified to the PO, in writing, on or before the 20 January of the year being approved.
- 3.6.2. By 15 September of each year of its approved programme, the PO must 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** (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). Incomplete application forms, or applications which are not on the prescribed form, will be rejected. An application form to amend an existing operational programme must include details of all actions in the existing programme and must highlight any changes sought.

In accordance with Article 64(1) of Commission Implementing Regulation (EU) No 543/2011, the Department shall, as appropriate;

- a) *approve amounts of operational funds and operational programmes which meet the requirements of Regulation (EC) No 1234/2007 or 1308/2013 and those of this Chapter (Chapter II of Commission Implementing Regulation (EU) No 543/2011);*
- b) *approve the operational programmes, on condition that certain amendments are accepted by the producer organisation; or*
- c) *reject the operational programmes or parts thereof*

To comply with Article 64(1)(b), the PO will be required to confirm their acceptance in writing of the Operational Programme as amended by the Department, including any conditions attached to the approval.

The approval letter shall state the date of implementation of the amended operational programme and the dates from which expenditure is eligible.

A request to change the programme to take account of any new conditions or situations which could not have been foreseen when the programme was initially presented can be made to the Department.

All applications to amend the operational programme for the following year(s) must be accompanied by full supporting documentation justifying the requested changes.

The changed programme must not alter significantly the original programme and objectives agreed initially. All changes must include baseline indicators and it must be possible to quantify progress using the reporting indicators.

Where a PO decides not to revise its operational programme for the following year, the starting point for the budget for the following year will be the most recent budget declared by the PO for that year included in an application submitted by the PO, which was at least part approved by the Department. The Department reserves the right to decrease the budget declared for any action for the following year in line with the approved budget for the preceding year and to take account of any decisions, clarifications, audit findings, information from other competent authorities and any other factors (including experience of implementing the Scheme) which the Department considers to be relevant when the Department is determining the budget

for the year in question. The Department will notify in writing the PO of the approved budget no later than 20 January in the year of the operational programme.

- 3.6.3. During the year, the PO may request, in writing, by submitting a maximum of two in-year amendment applications, approval to:
- (a) implement its operational programme in part only;
  - (b) change the contents of the programme;
  - (c) 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 and the request is justified by the PO, and accepted by, the Department.

The Department will accept two in-year amendment applications per calendar year. The latest date for receipt of an in-year amendment application in the first half of the year is **15 June**. The latest date for receipt of an in-year amendment application in the second half of the year is **15 October** for the operational year. Notification of budgetary changes permitted at 3.6.4 (c) does not constitute an in-year amendment application and are not subject to the deadlines outlined above. Only fully completed in-year amendment application forms on the prescribed form, accompanied by all of the required supporting documentation, will be accepted.

In accordance with Article 64(1) of Commission Implementing Regulation (EU) No 543/2011, the Department shall, as appropriate;

- a) approve amounts of operational funds and operational programmes which meet the requirements of Regulation (EC) No 1234/2007 or 1308/2013 and those of this Chapter (Chapter II of Commission Implementing Regulation (EU) No 543/2011);*
- b) approve the operational programmes, on condition that certain amendments are accepted by the producer organisation; or*
- c) reject the operational programmes or parts thereof”*

To comply with Article 64(1)(b), the PO will be required to confirm their acceptance in writing of the Operational Programme as amended by the Department, including any conditions attached to the approval.

- 3.6.4. Only 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 subject to the approved service providers remaining unchanged; 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 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 15th October.
  - (d) Section 3.6.4(c) does not apply to On Farm Investment items or actions, where the total PO budget for capital investment actions is equal to or exceeds €250,000 in that calendar year.

In accordance with Article 96 (2) (b), the annual report accompanying the aid claim must include justification for all variations between estimated aid and the aid applied for.

- 3.6.5. A request for any change to an existing action in an operational programme, not provided for in 3.6.4 above, must be submitted to, and approved by, the Department before it is implemented.
- 3.6.6. A request for inclusion of a new action in an Operational Programme, or the inclusion of a previously unclaimed item within an action, must be submitted to, and approved by, the Department before it is implemented.
- 3.6.7. Any expenditure by the PO on an action before the new or amended action is approved by the Department will be deemed ineligible for EU aid.
- 3.6.8. Changes to existing actions must be approved by the Department in advance so that the Department can ensure the overall objectives are maintained. Programmes should be robust and well planned (without being speculative) thereby reducing the need for submitting an in-year amendment, which should only arise exceptionally.
- 3.6.9. POs must also use the in-year amendment facility to offset reductions in costs against increases in other actions, i.e., any savings on one action cannot be used to fund another action or another item/service provider within the same action, unless the proposed changes are within the maximum budgetary changes provided for at 3.6.4 (c) above.
- 3.6.10. **Verifiability and Controllability of actions** – Member States shall ensure that all the actions included in the national strategy, the approved operational programmes and in the national framework are verifiable and controllable. To this end, the Department shall undertake an ex ante assessment of the verifiability and controllability of the actions proposed by the producer organisations for inclusion in their operational programme, based solely on the information supplied by the PO in their application. The Department shall also undertake the assessment of the verifiability and controllability of the actions during the implementation of the operational programmes. Ex ante assessment and assessment during the implementation shall take account of the results of controls carried out in relation to the previous and the current national strategy and national framework, respectively. Where the assessment reveals that the requirements of verifiability and controllability are not met, the actions concerned shall be adjusted accordingly or deleted from the operational programme.

### **3.7 Compliance with public procurement, State aid rules and Tax legislation**

- 3.7.1 In accordance with Article 104 (2)(e) of Commission Regulation (EU) No 543/2011, checks on operational programmes 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. Similar checks will be carried out on claims for assistance before payment is made.
- 3.7.2. Each PO must draft and implement appropriate procurement procedures which must be clearly documented and must take cognisance of national procurement guidelines. 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.

- 3.7.3. In conformity with general practice, the approval of an application for payment of aid, as provided for in this scheme, is subject to the condition that, where a contractor is employed to carry out construction work, that contractor must have a current tax clearance certificate from the Revenue Commissioners. To ensure compliance with this condition, each contractor's tax clearance certificate must be submitted to the PO, which must retain all such records for inspection for a period of at least 6 years after the year of investment.
- 3.7.4. In the case of a non-resident contractor, a general tax clearance certificate will be required. This provision applies whether or not the non-resident contractor has a registered office in this country.
- 3.7.5. Any PO member receiving more than €10,000 from the PO in respect of capital investments must submit a current tax clearance certificate to the PO, which must be retained by the PO for examination by the Department and/or auditors of the Scheme.

## 4. Claiming Financial Assistance

### 4.1 Making a claim for EU financial assistance

4.1.1. (a) 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. This application shall be submitted to the Department on Form **HORT PO AP 4** (available from the Department).

(b) The PO may apply for **one partial payment** of the aid corresponding to expenditure incurred under the outsourced actions for the period 1 January to 30 June for the operational year. Applications shall be submitted to the Department on **Hort PO AP 4** by **31 July** of the year in question. Payment of aid will be restricted to a maximum of 80% of the aid due on amounts spent on outsourced actions in the period covered by the claim. The balance of the aid due for that period will issue when the PO's claim for the rest of the year has been processed. If a PO wishes to apply for a partial payment the aid due on the remainder of the expenditure incurred within the year must be claimed by 15 February of the following year in line with Condition 4.1.1(a).

4.1.2. Applications for EU financial assistance shall be accompanied by an Annual or Final Report on the programme (see also Section 3.7). These reports, in addition to the reporting requirements laid down in the Regulation, 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) 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;

An application will not be accepted unless accompanied by an Annual/Final Report. If the claim is submitted without the Annual/Final Report, the claim shall be treated as a late application and the aid payable shall be reduced by 1% for each day between the 15<sup>th</sup> February and the date of receipt by the Department of the Annual/Final Report, as required.

**Incomplete applications cannot be accepted and will be returned to the PO. If the fully completed application form is not submitted until after 15<sup>th</sup> February, the payment will be reduced by 1% for every day between the deadline and the eventual date of receipt.**

4.1.3. Claims must be substantiated by certified copies of invoices [authorised for payment and stamped paid] or originals, and these should be cross-referenced to bank statement details. Original bank statements must show that all such expenditure was paid from the operational fund. Invoices shall be established in the name of the PO.

Statements of account must be submitted, on request by the Department, to confirm that payment has been received by the service provider for items and/or services included in the claim for EU aid.

4.1.4. Costs should not be paid by the PO until a service has been provided to the satisfaction of the PO and, if applicable, the goods have been received, commissioned and are capable of being fully operational.

4.1.5. In the case of on-farm investments, the PO must undertake a site inspection to confirm that the capital investment is fully commissioned and operational and that

the equipment fully matches the specification, quotation and the detailed description of the equipment on the invoice. Written reports of these inspections must be retained at the HQ of the PO.

4.1.6. 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.

4.1.7. Where a PO is invoiced in any currency other than Euros for goods, services or the provision of an outsourced action from the operational fund it must use, when claiming EU aid, the Revenue rate on the date the operational account is debited. However, if conversion of the transaction using the Revenue rate on the date the account was debited would increase the amount actually included in the PO's audited accounts and/or on their accounting system for that transaction, then the lower amount only should be claimed

In the case of conversion, to Euros, of quotations for capital investment items purchased, the date of the quotation determines the Revenue rate which should apply when submitting the ACIP or the MCIP.

The Revenue exchange rate for converting **all** non-Euro transactions must be applied in accordance with the guidelines issued by the Revenue Commissioners relating to the exchange rates to be used in determining customs values.

4.1.8. Where a PO operates two or more operational funds (a maximum of one operational fund for each currency is permitted), the invoiced currency shall dictate which operational fund the transaction should be channelled through. The Department will disallow in full all invoices issued in the currency of an operational fund operated by the PO but paid through an operational fund in a different currency.

4.1.9. The claim for any item must not exceed the budget for that item or the rate contracted and approved by the Department for that service, action or measure and the claim must also not exceed the actual cost of providing that service if the actual cost is lower than the approved budget and/or the approved or contracted rate.

4.1.10. The unit of measurement of the volume of marketed production must be stated in kilograms. To convert from pounds to kilograms, the following conversion rates must be used:

– **Lbs to Kgs:** Divide lbs by 2.20462262

4.1.11. Before paying an invoice, POs must check that invoices are calculated correctly, and the sum of all items invoiced adds to the total on the invoice. Invoices not calculated correctly will be disallowed in full. Failure to perform this basic check before paying an invoice would demonstrate a lack of commercial and budgetary management by the PO, which is a criterion for recognition.

4.1.12. Payment of EU aid cannot be made until such time that a signed certified copy of the audited accounts for the operational year being claimed are submitted to the Department.

## **4.2. 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 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 involved, together with penalties, if applicable, will be deducted before payment issues.

## **4.3. Publication of aid payments**

In accordance with the provisions of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing of the Common Agricultural Policy (CAP), the Minister is obliged to ensure annual ex-post

publication of all of the beneficiaries of CAP funding, both legal and non-legal persons 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 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 must be required to:

- (a) provide facilities to allow on-site access to, and examination of, all installations and records considered relevant by the Department;
- (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 tenders, 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.

## 5.2 Right of Entry

Whilst the PO or the PO member will usually receive notice of when the inspection is due to take place, on occasion a visit may be carried out on an unannounced basis. Access must be granted to authorised officers of the Member State undertaking the inspection at all reasonable times whether or not prior notification has been given. If a PO staff member, an officer of the PO or a PO member or a representative of the PO prevents an authorised officer of the Member State undertaking the inspection from making a check, the application for aid will be rejected.

## 5.3 Technical Assessments

All programmes will be subject to a technical assessment prior to initial approval of the programme and in the final year of the programme to validate the reports submitted by the PO. This is to ensure the PO has adhered to the agreed programme and to observe the benefits obtained by the members.

In addition to a review and understanding of the measures proposed, the economic and commercial viability of the proposals are considered.

## **5.4 Relationship with Rural Development Programme**

### **Demarcation role with other EU financial instruments**

The Department will carry out checks to ensure that a PO, which has certified that neither the PO nor its members have applied for, or received any other State or EU aid, has not included in its claim for EU aid costs for any action for which the PO or its member(s) have applied for, or received, State or EU funding. If having made a declaration that no duplicate public funding was applied for, or received, the PO (or a PO member) is subsequently found to have included such items in the claim for EU aid, the Department will take appropriate action against the PO where the amount involved is considered significant by the Department.

## **6. CHECKS ON EU AID CLAIMS AND APPLICATIONS**

### **6.1. On-the-spot checks**

- 6.1.1. The Department will carry out on-the-spot checks in accordance with the Commission Regulation and the Council Regulation.
- 6.1.2 Where, during an on-the-spot check, the PO fails to provide verifiable evidence to support that the action was implemented as approved, in full or in part, payment for that action will be disallowed in full or in part.

### **6.2 Administrative checks carried out under Articles 101, 102 and 105 of the Commission Regulation**

- 6.2.1 The Department will carry out administrative checks in accordance with the above-mentioned Articles of the Commission Regulation.
- 6.2.2 Where, during an administrative check, the PO fails to provide verifiable documentary evidence to fully support the implementation of an action or part of an action, payment for that action will be disallowed in full or in part.
- 6.2.3. Where, during an administrative check, a randomly selected number of transactions relating to a particular action is selected for detailed examination and where part of the selected documentation is deemed ineligible for whatever reason, payment for that entire action will be reduced by an amount equal to the percentage of the sample deemed ineligible.

#### **6.2.4 EU aid claimed on items sourced, or supplied, via companies or suppliers, associated with one or more PO members or a PO employee**

In order to substantiate the costs claimed by the PO, the Department reserves the right to examine the third party invoices issued to those associated companies. Failure to provide the supporting invoices shall result in full disallowance for payment purposes.

The PO must implement robust checks and controls to eliminate the potential for inflated costs being claimed from the PO and to ensure that the EU aid claimed is fully supported by the documentation the PO retains at their Headquarters.

### **6.3 Fraud in respect of aid**

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.

## **7. Review of these Terms and Conditions**

The Department reserves the right to revise and/or amend, 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 1

## TERMS AND CONDITIONS FOR

### THE SCHEME OF EU AID FOR PRODUCER ORGANISATIONS IN THE FRUIT AND VEGETABLES SECTOR – 2016 CAPITAL INVESTMENTS

#### Summary

- The PO, if intending to spend €250,000 in a calendar year on capital investment items, must submit a detailed **Annual Capital Investment Plan (ACIP)** as part of its Operational Programme application the previous year. In this scenario:
  - The PO must invite its members to apply to have capital investments by the PO placed on the member's holding
  - The PO must draw up, in advance, procedures by which it shall invite its members to make an application to participate in its ACIP and procedures to make decisions on those applications
  - The PO must draw up, in advance, procedures by which it shall invite suppliers to submit quotations for its ACIP and make decisions between quotations
  - The PO must retain documentary evidence that it has used its procedures referred to above.
- **The Multi-Annual Capital Investment Plan (MCIP) for the remaining years of the programme should include PO priorities, objectives and budgets based on proposed investments and the numbers of each type of investment included in the MCIP.**

#### Definitions

For the purpose of this Annex to the Terms and Conditions of the PO scheme:-

The definitions in the Terms and Conditions of the Scheme of EU aid for producer organisations in the fruit and vegetables sector apply also to this Annex.

“**Multi-Annual Capital investment Plan**” means a costed plan relating to capital investments proposed by the PO as part of their Operational Programme for the duration of their operational programme, including priorities, objectives and budgets based on the numbers and types of proposed investments.

“**Annual Capital Investment Plan**” means a detailed fully costed ACIP for the Operational Programme for the year commencing the following 1 January.

“**Investment**” means a capital investment purchased and/or leased, or proposed by a PO.

“**Written evidence**” shall mean a hard copy of any document, letter, quotation, email etc.

#### Terms and conditions specific to on-farm investments and capital investment items purchased by the PO

Article 57 of the Commission Regulation makes provision for the Department to adopt complementary rules concerning the eligibility of measures, actions or expenditure under operational programmes. These complementary rules will be adopted by inclusion in these Terms and Conditions and include the following conditions:

## **1) Multi-Annual Capital Investment Plan**

- a) The PO is responsible for proposing a MCIP which sets out its objectives and priorities for the number and types of investments it proposes to make over the period of its Operational Programme.
- b) As provided for in Article 53.2 of the Commission Regulation, all PO member producers shall have the opportunity to benefit from the operational fund, and shall have the opportunity to participate democratically in decisions concerning the use of the operational fund and the financial contributions to the operational fund. However the PO can only place capital investments on the holdings of active producer members.
- c) The viability of, and potential of, the investments proposed should be assessed by the PO or a technical advisor engaged by the PO. The proposed investments must advance the objectives of the actions under which they are proposed.
- d) The MCIP must set out written objectives and priorities for deciding which types of investment are proposed, the number of each type of investment and the cost involved in each calendar year of the programme. The MCIP shall include the indicators against which it will monitor performance against pre-defined targets and setting those targets. The MCIP shall include a description of the process the PO intends to use in seeking and selecting quotations for each year.
- e) The PO must provide details of measures in place to protect the environment from any possible increased pressure resulting from the proposed investments. An environmental impact statement may be requested where the Department is of the opinion that the works proposed to be carried out would increase pressure on the environment – in particular to environmentally sensitive areas or to a structure or area of historical or archaeological importance.
- f) The PO must submit its MCIP to the Department as part of its Operational Programme application. The closing date for submission of Operational Programmes is the 15<sup>th</sup> September of the year prior to the commencement of the operational programme as provided for in 3.6 of the Terms & Conditions of the PO Scheme.

## **2. PO Process for seeking quotations for detailed ACIP**

- a) The PO must advertise a list of planned capital investments and invite quotations from suppliers through a national newspaper and/or a trade/sector publication. The advertisement must be placed in a publication, which is likely to attract a good representative sample of all potential service providers in the market concerned. A copy of the advertisement must be available for inspection by the Department. The advertisement must include the closing date for submission of tenders to the PO.
- b) The process used for seeking and deciding between quotations shall be based on the principles of non-discrimination, equal treatment, transparency, proportionality, freedom to provide service and freedom of establishment. The tendering process must be competitive and carried out in an open, objective and transparent manner to achieve best value for money. The PO must set out a clear specification for each investment and must seek written quotations, based on the specification, from at least three different suppliers, at least one of which should be from a supplier that is not associated with either the PO, or a PO member or a PO official. Where the PO cannot obtain three quotations, the PO must explain, to the satisfaction of the Department, why this is the case.

Each quotation must be fully descriptive, include the detailed specification of the item (which the PO must ensure is consistent with the specification the PO issued to intending suppliers), must clearly show the cost of each item (net of VAT), must separately detail the installation and commissioning costs and should be in printed format and on the headed paper of the company supplying the quotation. The PO must obtain current quotations for all capital investments items being sought. When submitting the ACIP, the PO must convert non-Euro quotations into Euro using the Revenue rate on the date the quotation was issued.

- c) The PO must retain verifiable documentary evidence of the process used and the criteria on which all quotations were judged. The judgement criteria for each particular investment item must be the same for all quotations. The written evidence retained must also document the PO's justification for the decisions reached in relation to the capital investment applications received.
- d) The written evidence of the process used shall demonstrate that all relevant information was made available to the decision makers.
- e) The Department reserves the right to disallow payment where the appropriate process as outlined above was not followed or the written rationale for the decision taken is deemed not to be justified by the evidence presented.
- f) Suppliers of goods and services must be invited to submit quotations exclusive of VAT. VAT law provides for equal treatment in the supply of goods and services. Therefore no competitive advantage or disadvantage should arise from the correct application of VAT rules.
- g) All **quotations** and **invoices** must be addressed to the **PO** since it is the PO that should have initially sought the quotation and/or invoice. Investments made on foot of quotations and/or invoices addressed to any entity, other than the PO, will not be accepted as eligible for EU aid by the Department.
- h) Each tender must be date-stamped received by the PO. No tenders should be considered by the PO if received by them after the closing date stipulated in the advertisement at 2 a) above.
- i) Quotations received should not be examined until after the closing date for receipt of tenders. If the PO has not received three quotations for an item before the closing date advertised, the PO should approach at least three suppliers, in writing, and should assess all quotations received by them using this process.
- j) The PO must not enter into price negotiations after the tenders have all been received. Post-tender negotiation is prohibited as it diminishes transparency and can give rise to abuses in the tendering process. The PO's tendering system must be designed to operate on the basis that tenderers submit their most competitive bid in response to the specifications set out by the PO for the items the PO intends to purchase.

### **3. PO Process for drawing up its ACIP**

- a) Before submitting its ACIP the PO must notify all of its members in writing of the objectives and priorities with regard to the types of capital investments it intends prioritising for funding during the following year, in line with the approved operational programme. The PO must invite its members to apply to have a PO investment placed on their holding. The PO must decide in advance the process by which decisions will be made between applications.
- b) Members must complete an application form to have capital investments placed on their holdings and submit a site map to the PO, where appropriate. Each application must include a signed declaration by the PO member confirming his or her acceptance of these Terms and Conditions and stating that s/he has not received, and will not receive, directly or indirectly, any other European Union or national public funding in respect of capital investment items aided under the PO Scheme. Each application form must also include a signed declaration stating that all of the

information contained therein is factually correct. Members must be made aware that a decision by the PO to place an investment on a member's holding is subject to the Department approving the detailed ACIP.

- c) The PO must set a closing date for receipt of applications from members. Each application must be date stamped when received by the PO.
- d) The PO must reject any incomplete or unsigned application form, or any application which is submitted without all of the required supporting documentation or is received after the closing date set by the PO for receipt of applications.
- e) The PO must record receipt of each application, the decision made, the factors taken into account in approving the application in principle or rejecting the application.
- f) The scoring system used in deciding which members are successful in their application must be identical for all applications received by the PO. If an application for capital investments made by a member is refused, the PO must advise the member of the reasons why the application was rejected and must, if requested, provide the member with the completed marking sheet.
- g) The PO must have a procedure for dealing with appeals by PO members against decisions to disallow their application for capital investments.
- h) All stages, including each stage of the decision-making process, in relation to the purchase/acquisition of capital investments must be evidenced in writing by the PO.
- i) All of the above documentation, including unsuccessful applications for capital investments, must be retained by the PO for at least six years after the end date of the Operational Programme and be available for inspection by the Department and/or auditors.

#### **4. Approval of Operational Programmes (including the annual/multi-annual Capital Investment Plan)**

- a) In accordance with Article 64(1) of Commission Implementing Regulation (EU) No 543/2011, the Department shall, as appropriate;
  - (a) *approve amounts of operational funds and operational programmes which meet the requirements of Regulation (EC) No 1234/2007 or 1308/2013 and those of this Chapter (Chapter II of Commission Implementing Regulation (EU) No 543/2011);*
  - (b) *approve the operational programmes, on condition that certain amendments are accepted by the producer organisation; or*
  - (c) *reject the operational programmes or parts thereof*
- b) To comply with Article 64(1)(b), the PO will be required to confirm their acceptance in writing of the Operational Programme as amended by the Department, including any conditions attached to the ACIP/MCIP.
- c) The PO is responsible for, and must carry out all stages of its ACIP/MCIP as part of the Operational Programme approved by the Department. Each stage shall be evidenced in writing and this documentation must be available for inspection by the Department. Only items approved in the ACIP/MCIP will be eligible for funding under this scheme.
- d) The PO is also responsible for ensuring that all members are treated equally in terms of the opportunity to benefit from capital investments. In the event that the Department considers there is a risk that all members of a PO have not been given equal opportunity, or in the event that a PO is seeking to draw down the maximum level of aid possible with regard to capital investments, the Department reserves the right to impose a limit on the proportion of budgeted and/or payable aid on expenditure relating to capital investment(s) being placed on the holding(s) of any one individual member of the PO.

## 5. Detailed Annual Capital Investment Plan

- a) The PO must submit its detailed ACIP in the form of an application to revise its Operational Programme under Article 65 of the Commission Regulation. The closing date for submission is 15<sup>th</sup> of September.
- b) The ACIP shall be fully costed. The PO must submit, at the same time as submitting its ACIP, 3 quotations to support the costing of each proposed investment in its ACIP unless the PO cannot obtain 3 quotations, in which case, the PO must include an explanation as to why this was not possible. The specifications issued by the PO to prospective suppliers must also be submitted to the Department. The PO must use the process laid down in Section 2 for seeking quotations. All quotations shall be in printed format and on the headed paper of the company supplying the quotation.
- c) Before submitting its ACIP for approval, the PO must have undertaken a process of seeking and deciding between quotations. The PO must retain documentary evidence of the process it undertook in arriving at the decision on a particular supplier and quotation.
- d) The Department shall, as appropriate;
  - (i). approve amounts included in the ACIP;
  - (ii). approve amounts included in the ACIP, on condition that certain amendments are accepted by the PO; or
  - (iii). reject the ACIP or parts thereof?
- e) The PO must accept in writing the ACIP as amended by the Department, including any conditions attached, before any investments can be ordered.
- f) The PO is responsible for, and must carry out all stages of ACIP as part of the Operational Programme approved by the Department. Each stage will be evidenced in writing and this documentation must be available for inspection by the Department and/or auditors. The PO must undertake the ACIP directly and shall not outsource any actions under it.
- g) Only items approved in the ACIP will be eligible for funding under this scheme. **The approved budget for any capital investment action cannot be increased by the PO without prior approval of the Department.**
- h) The PO must notify the Department **no later than 15 November** of the year of the proposed capital investment if it decides not to proceed with any investment included in their detailed ACIP and must explain their decision.
- i) The budget for any approved item in the detailed ACIP cannot be re-assigned to acquire any other item (even a similar item with a different specification) without the prior written approval of the Department.
- j) A PO which does not submit a detailed ACIP to the **Department by 15<sup>th</sup> September of the preceding year, or such later date as the Department may set** for receipt of such applications, will be restricted to a total budget not exceeding €250,000 for capital investments in the subsequent year (i.e. a maximum of €125,000 in EU aid).

## 6. Placing of capital investments on a member's holding

- a) As provided for under Article 60(6) of the Commission Regulation, capital investments may be placed on the premises of a producer member if this advances the

objectives of the PO. The conditions for making such investments are laid down hereunder:

- (i). all producers shall have the opportunity to benefit from the operational fund, and all producers shall have the opportunity to participate democratically in decisions concerning the use of the operational fund of the producer organisation and of the financial contributions to the operational fund (Article 53.2 of the Commission Regulation). All decisions in relation to on farm investments shall be documented with details of the location of each on-farm investment, its possible use by another member(s) and maintenance arrangements;
  - (ii). ownership of the capital investment is retained by the PO
  - (iii). the written agreement between the PO and the member shall include appropriate provisions to allow the PO to recover the cost of the investment or its residual value if the member leaves the PO, its possible use by another member(s) and maintenance arrangements;
  - (iv). the investment(s) shall be financed from the operational fund;
  - (v). investments by the PO must be placed only on the holdings of active producer members;
  - (vi). the production of the producer member concerned is included in the VMP for the operational year in which the investment is sought; and
  - (vii). the PO maintains an up-to-date assets register in a format acceptable to the Department, which includes details of the investment item(s) and the location of each investment item.
- b) Investments aided should be used for the purposes intended for a period of at least 5 years after purchase, or for a longer period if this is notified to the PO in respect of any particular item. The Department reserves the right to recover any amounts paid to the PO if any capital investment item is not used by the PO or its members for at least 5 years from the date of purchase (or such longer period as was notified to the PO), or to recover the residual value. The Department's decision in determining the amount to be recovered shall be final.

## **7. Limitations regarding capital investment items**

- a) With the exception of investments on PO premises, only equipment which is capable of being removed from the holding of a PO member and operated elsewhere can be considered for funding.
- b) 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 or machinery, subject to any upper rate and/or limit determined by the Department and notified to the PO, will be considered eligible under this Scheme.
- c) Where capital investments are proposed as environmental actions the investment must conform to the requirements of the Framework for Environmental Actions attached to the National Strategy, including the requirement to submit information in advance on the reduction in energy or water use expected. The PO must also retain records of the actual reductions in energy or water achieved.
- d) Aid will not be paid for any second-hand or reconditioned equipment, materials or machinery.

- e) Aid will not be paid for repair and maintenance of equipment or machinery.
- f) In the case of investments relating to buildings/fixed structures owned by the PO, the PO must show details of ownership of the site or its long-term lease for a period of at least 5 years from 1<sup>st</sup> January of the year the investment is being undertaken.
- g) Where the PO considers it impractical to remove the items from the holding of a member whose production no longer contributes to the VMP of the PO, the Department will either recover the amount paid in respect of that investment from the PO's next claim for EU aid under the Scheme, or recover the amount paid directly from the PO, or the residual value as determined by the Department on a case-by-case basis. Interest may be applied to the recovered amount in accordance with EU legislation.
- h) The PO must notify the Department immediately if a capital investment is not being retained by a PO member at any stage during the 5-year period following its purchase.
- i) **Limitation regarding investment in Photovoltaic (PV) Panels**
  - (i) Aid for investment in PV panels will be limited to the ex-ante annual capacity of the PV panels to generate electricity (i.e. capacity based on technical specifications) up to the average amount of electricity used on a yearly basis for actions related to the PO's production on the holding benefiting from the investment.
  - (ii) In the absence of a change in a holding's fruit/vegetable production and/or storage capacity, the amount of electricity used on a yearly basis will be assessed based on the holding's average annual invoiced electricity purchases over the previous three calendar years prior to the investment in PV panels in relation to energy required for the PO's recognised production.
  - (iii) To determine the capacity of PV panels for a particular holding, the PO must receive, from the member, documentation to verify the holding's invoiced electrical purchases. This documentation must be retained by the PO and be available for inspection, on request, by the Department. If there are other actions not related to the PO's recognised production also taking place on the holding, the electricity purchased over the reference period will have to be apportioned appropriately to determine the amount of electricity used on a yearly basis for actions related to the PO's recognised production on the holding.
  - (iv) If the holding's average annual electricity demand has changed since the three-year reference period, an energy audit along with a detailed explanation outlining these changes will have to be submitted to the Department at time of application for an amended/new Operational Programme.
  - (v) **PV panels which have the capacity to produce in excess of a holding's annual requirement**

If PV panels are installed with an ex-ante capacity to produce electricity in excess of the holding's average annual electricity requirement for actions related to the PO's recognised production, the total investment cost will be reduced pro-rata to limit aid solely to PV panels with an ex-ante annual capacity to generate the average annual electricity used on the holding for actions related to the PO's recognised production. In this scenario the invoice(s) can be paid in full from the Operational Fund, provided the ineligible percentage was credited to the Operational Fund in advance of the payment issuing from the Operational Fund so that there is no negative impact on the Operational Fund. The value submitted in the PO's claim for EU aid must only include the value eligible for aid based on the average energy required for the PO's recognised production

- (vi) If the PO, or a member of the PO, wishes to install a system with the capacity to meet their holding's peak electrical demand rather than the capacity to meet its average demand, surplus electricity must be returned to the national grid without any financial benefit accruing, to the PO or its member. If the Department subsequently finds that a financial benefit did accrue, no EU aid will be payable on the investment.

## 8. Replacement items

- a) 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 or offers greater environmental benefit. Item(s) being replaced must not have been previously funded under the Scheme of Investment Aid for the Development of the Commercial Horticulture Sector or PO Schemes or any other publicly funded scheme within the last 5 years, and in the case of replacement Dutch shelving within the last 10 years.
- b) If aid is sought to replace existing equipment, details of the additional functionality including evidence that the assets perform previously executed functions with greater output or increased automation or efficiency or offer greater environmental benefit must be provided to the Department in the detailed ACIP and must be accepted by the Department. Where investments are replaced, the PO must state in their detailed ACIP whether it intends to comply with the provisions of Article 60(5) of Commission Implementing Regulation (EU) No 543/2011 by either:
  - (i) subtracting the residual cost of the equipment to be replaced from the eligible costs incurred in purchasing the new capital investment item(s) or by
  - (ii) adding the residual cost of the item being replaced to the Operational Fund.
- c) The PO must be in a position to demonstrate that the residual value included in the detailed ACIP is appropriate and reflects the true residual value of the asset being replaced. The residual value of the items being replaced must be agreed by the Department.
- d) **Additional specific conditions relating to replacement dutch shelving:**
  - (i) Dutch shelving being replaced must be at least 10 years old.
  - (ii) If required by the Department, the PO must submit an independent Engineer's report detailing the condition of all shelving to be replaced and quantifying the area of replacement shelving required per house/tunnel, including all dimensions (rows, tiers, length and width).
  - (iii) The report at (ii) will be provided to an inspector to facilitate an on-site pre-approval inspection to verify the condition of current shelving, and the shelving requirements of the site per tunnel/site, is as stated in the Engineer's Report. The inspector will also assess whether replacement Dutch Shelving is justified. No shelving being replaced is to be dismantled prior to this pre-approval inspection.
  - (iv) PO member must sign a declaration to the effect that the shelving being replaced was not funded publicly within the last 10 years.
  - (v) For the purposes of recovery of EU aid, the depreciation period for Dutch shelving is set as 10 calendar years.

- (vi) EU aid will be capped at a fixed amount per metre squared shelf area, to include installation.
- (vii) A post-investment inspection verifying purchase and installation will be undertaken by the Department, or in the case of the UK, by the relevant Inspectorate.

**e) Additional specific conditions relating to replacement boilers**

The replacement boiler must comply fully with the *agreement reached in 2015 on the ecodesign requirements for solid fuel boilers under the Regulation Implementing Directive 2009/125/EC* and must result in a reduction of polluting agents, in particular particles pollution.

No replacement boiler can be ordered until the Department has assessed the information supplied by the PO in relation to the proposed investment and the Department has confirmed, in writing, that the proposed boiler fully complies with the ecodesign requirements stipulated in the agreement.

**9. Conflict of Interest**

- a) Where a relationship exists between a PO member, a PO employee or any other person adjudicating on quotations and a supplier of equipment and/or services submitting a quotation to the PO or the supplier submitting the quotation is an associated company or under the control of a PO member or PO employee, a declaration of interests form shall be completed by all parties. Where a conflict arises the PO must have a procedure for evaluating quotations that addresses the potential conflict.

**10. Budgetary restrictions**

- a) Aid will be paid net of VAT.
- b) Where the cost of a capital investment item is less than the amount originally approved for the item, only the actual cost incurred will be deemed eligible.
- c) Detailed annual CIPs should be robust and well planned (without being speculative) thereby reducing the need for an in-year amendment, which should only arise exceptionally, i.e. situations which were entirely outside the control of the producer organisation and which are accepted by the Department as such. No alterations will be permitted to the detailed ACIP outside of an in-year amendment application (as per section 3, subsection 6.3 above).

**11. Conditions specific to timeframe for commencement and completion of capital investments**

- a) Work on any proposed investment must not commence until after the issue of a written approval by the Department of the Producer Organisation's ACIP. No item should be ordered, or proposed investment started, until the PO has accepted, in writing, any conditions attached to the approval.
- b) No aid will be paid for projects which commence before the date of issue of written approval by the Department, or where the written approval contained conditions which must be accepted by the PO, the date of the written acceptance by the PO of those conditions.
- c) No aid will be paid for capital investment items other than as approved unless revised proposals and/or specifications and/or changes to the machinery/equipment

originally approved in the ACIP, have been submitted to, and approved by, the Department prior to ordering and purchasing the revised capital investment items.

- d) Items ordered and/or invoiced and/or delivered and/or purchased, and/or if payments are made before issue of the written approval by the Department/acceptance in writing by the PO of any conditions attaching to the approval, will be deemed ineligible for funding under this scheme.
- e) Each investment must be completed, commissioned, installed and capable of being fully operational by 31<sup>st</sup> December in the operational programme year for which the Capital Investment is approved.
- f) In accordance with Article 60 (5) of Commission Implementing Regulation (EU) No 543 of 2011, investments, including those under leasing contracts, the repayment period of which exceeds the length of the operational programme, may be carried over to a subsequent programme on duly justified economic grounds and, in particular, in cases where the fiscal depreciation period is longer than five years.
- g) Where investments for environmental actions are carried over into a subsequent programme, the investment may not be counted as one of the two mandatory environmental actions in the latter programme.

## **12. Right of Entry**

- a) The Department reserves the right to arrange for an inspection, at all reasonable times, of any land, premises, plant, equipment and records of POs or their members participating in this scheme.
- b) Where an investment has been placed on a member's holding the member, or a person nominated by the member, must make himself or herself available to the Inspector in order to carry out the necessary inspections.
- c) The Department reserves the right to impose a charge for visits made, and services provided, by its officials in connection with the scheme.
- d) Whilst the PO, or the PO member, will usually receive notice of when the inspection is due to take place, on occasion a visit may be carried out on an unannounced basis. Access must be granted to officers of the competent authority of the Member State undertaking the inspection at all reasonable times whether or not prior notification has been given.

If a PO staff member, an officer of the PO or a PO member or a representative of the PO prevents an officer of the competent authority of the Member State undertaking the inspection or carrying out a check, the application for aid will be rejected.

## **13. Inspection of capital investments**

### **(i) By the PO:**

- a) Before the PO claims EU aid on an investment, the PO must undertake an on-site visit to inspect the capital investment item purchased by the PO to ensure that the investment complies with the approved specification and with the invoice provided by the supplier and that the item is fully commissioned and capable of being operated. Records of these on-site visits must be available for inspection by the Department and must include details of the grower number, site number, persons present during the inspection, the date of the inspection, details of the equipment examined, whether the equipment matches the specification issued by CMP and the quotation received (and if not the differences must be documented), the action under which the equipment was purchased, how the equipment contributed towards the

objectives of the action .the asset register unique ID number for each item of equipment and confirmation that the tag number is affixed to the item, confirmation that the item is installed, commissioned and capable of being fully operational on the date of inspection, including any comments and/or recommendations brought to the attention of the PO member. If it is found that the item purchased is ineligible for EU for whatever reason, the PO should record this on the inspection form. The inspection report must be signed by the PO staff member carrying out the inspection. Before the PO claims EU aid for an investment, the PO must examine all invoices to ensure that they contain sufficient detail so as to accurately reflect the items supplied, the approved specification, the quotation submitted, the capital investment item inspected, and the agreed costs.

**(ii) By the Department/Inspectorate of the EU Member State**

- a) If, on inspection, the capital investment item does not comply with the approval for that investment, payment for the item (including any ancillary equipment or items associated with that capital investment item) will be disallowed in full.
- b) If, on inspection, an approved capital investment item(s) either
  - (i). has not been completed and/or
  - (ii). is incapable of being operated and/or
  - (iii). does not fulfil the purpose for which it was approved and/or
  - (iv). does not meet the approved specificationthe Department will deem the item and any ancillary items ineligible for payment.

**14. Proof of Payment of relevant invoices**

- a) It will be a requirement for the PO to submit proofs of payment that are acceptable to the Department. These proofs will consist of original operational fund bank statements and, if requested, copies of encashed cheques. Alternatively, on-line operational fund bank statements (only high quality colour printouts with bank logo) [with copies of encashed cheques where requested] will be acceptable, or if payment is made by electronic fund transfers an original bank statement listing payments to the supplier must be submitted.
- b) Amounts listed on bank statements must clearly match the relevant item and invoice on which aid is claimed.
- c) Invoices must be submitted with the claim for aid. Before submitting the invoices the PO must ensure that each invoice:
  - (i). is marked by the PO to show which investment in the capital investment approved by the Department it relates to;
  - (ii). includes sufficient detail to enable a cross-check against the item approved, the quotation and the PO specification and contains the serial number of the equipment, if appropriate,
  - (iii). is addressed to the PO,
  - (iv). includes the address to which the investment was delivered;
  - (v). includes an invoice number and date of issue;
  - (vi). shows the cost of each item, excluding VAT
  - (vii). shows the total VAT paid, and
  - (viii). shows the amount of discount applied, if any.

- (d) **Invoices which do not include the details at (c) above will not be accepted by the Department and will result in disallowance, for EU aid purposes, of the item/investment in question.**

**15. Aid from Other Sources**

- a) Investments which were eligible for consideration for aid under the most recent round of the Scheme of Investment Aid for the Development of the Commercial Horticulture Sector, or that are eligible for consideration under any other nationally or EU-funded Scheme, will be excluded under this Scheme. In the case of investments placed on the holding of members outside of the State, the applicant must sign a declaration stating that no aid has been, or will be, sought from schemes funded by the EU or from any other publicly-funded scheme operating in the Member State of the EU where the holding is situated.
- b) Failure to disclose to the Department any publicly funded contribution towards the approved investments will result in recovery of any amount paid, with interest or the total disallowance of any amount claimed but not paid.

**16. Legal Provisions, Consents, etc.**

- a) The PO must undertake to comply with all National and EU Community standards in respect of the investments approved under the scheme.
- b) It is the PO's responsibility to ensure that all works shall be carried out in accordance with the provisions of all relevant statutes, regulations, byelaws and duty of care.
- c) Payment of EU aid by the Department should not be taken as evidence of compliance with the above legal provisions, consents, etc.

**17. Information**

Applicants, and the PO itself, must provide any information required by the Department for the control, monitoring and evaluation of the scheme and any other information requested in support of their claim.

**18. Disclaimer**

The approval for, or payment of aid, does not imply any endorsement by the Department of a project's safety, technical feasibility and/or economic viability; nor does it imply the acceptance by the Department of any responsibility as regards the stability of any structure, or the soundness of any materials.

**19. Decision of the Department**

The decision of the Department on any matter relating to this scheme or to any works thereunder shall be final.

**20. Additional Conditions**

The Department reserves the right to amend, from time to time, these conditions, and the procedures to be followed by POs acquiring capital investments under the PO Scheme.

All such amendments shall be notified in writing to all POs recognised by the Department and shall include the date from which the change will take effect.

**21. Identification of capital investment items**

The PO must ensure that all equipment, machinery and capital investment items funded under this scheme bear permanent, indelible and unique serial numbers. The use of permanent markers, etc, shall not be acceptable for this purpose. All relevant serial numbers must be shown in the Assets register of capital investments retained by the PO. The Department reserves the right to disallow any items which do not bear permanent, indelible and unique serial numbers.

**22. Failure to comply with Terms and Conditions**

Failure to comply with any of the above conditions may result in total disallowance, for EU aid purposes, of the capital investment cost.

**23. False statements**

Without prejudice to penalties applicable under national law, if when applying for aid under this Scheme, a PO member or a PO official makes a false statement or withholds essential information, all or such portion of the aid paid, or claimed, as the Department may determine shall be recovered or withheld. In addition, the Department reserves the right to exclude such a person from further participation in the scheme for such a period as it shall determine.

**24. Date of entry into force**

These Terms and Conditions will apply to all capital investments acquired during the 2016 calendar year and will continue to apply until such time as they are amended by the Department.