



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

See also

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

Council Regulation (EC) No 1234/2007

and

Commission Regulation (EC) No 1580/2007

March 2009

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INTRODUCTION

In the face of ever-greater concentration of demand, the grouping of supply through producer organisations (hereinafter referred to as ‘POs’) is more than ever an economic necessity in order to strengthen the position of producers in the market. Furthermore, production and marketing of fruit and vegetables should take full account of environmental concerns, including cultivation practices, the management of waste materials and the destruction of products withdrawn from the market, in particular as regards the protection of water quality, the maintenance of biodiversity and the upkeep of the countryside. Accordingly, in its 2007 reform of the common organisation of the market for fruit and vegetables, the EU made further provision for financial assistance to producers grouping, on a voluntary basis, to form recognised producer organisations and implement approved operational programmes that improve the quality and efficiency of operations and achieve the following objectives: improving the competitiveness and market orientation of the sector so as to contribute to achieving sustainable production that is competitive both on the EU and external markets; reducing fluctuations in producers’ incomes resulting from crises on the market; increasing the consumption of fruit and vegetables in the Community and continuing the efforts made by the sector to maintain and protect the environment.

The following terms and conditions laid down by the Department of Agriculture, Fisheries and Food (hereinafter referred to as ‘the Department’) are in accordance with the provisions of Council Regulation (EC) No 1234/2007¹ (as amended by Council Regulation (EC) No 361/2008²) and Commission Regulation (EC) No 1580/2007³ (as amended by Commission Regulation (EC) No 292/2008⁴, Commission Regulation (EC) No 590/2008⁵ and Commission Regulation 1327/2008⁶). The terms and conditions do not purport to be a legal interpretation of the above Regulations.

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

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:121:0001:0031:EN:PDF>

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:350:0001:0098:EN:PDF>

⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:090:0003:0004:EN:PDF>

⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:163:0024:0027:EN:PDF>

⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:345:0024:0027:EN:PDF>

Transitional arrangements

POs already recognised under Council Regulation (EC) No 2200/96 shall continue to be recognised but shall adapt to the recognition conditions set out in Section 2 by 31 December 2010. An operational programme approved on or before 20 January 2008 may continue to run until its end provided there are no changes to its objectives, measures, actions or budget. Any such changes will only be approved on condition that the PO satisfies the terms and conditions of this new scheme.

A PO with an existing operational programme approved on or before 20 January 2008 may opt to submit a new operational programme under this scheme.

Enquiries and requests for application forms should be directed to

**Producer Organisation Scheme
Crop Production and Safety Division
Department of Agriculture, Fisheries and Food
Administration Building, Backweston Campus
Celbridge, Co Kildare**

Email POScheme@agriculture.gov.ie

This document is available on the Department's website www.agriculture.gov.ie

1. RECOGNITION OF POS

POs that wish to be recognised as eligible for EU financial assistance shall meet the criteria specified in Sections 1.1 to 1.7 below in terms of their objectives, rules of association, capabilities, main activity, membership and value of marketed production. Application for recognition as a PO shall be made to the Minister for Agriculture, Fisheries and Food (hereinafter referred to as ‘the Minister’) as set out in Section 1.9 below.

1.1 General recognition criteria

1.1.1. To obtain recognition under Council Regulation (EC) No 1234/2007, the PO shall have legal personality and shall be formed on the own initiative of **producers** of one or more of the products covered by the common organisation of the market in fruit and vegetables; those products fall within the CN codes set out in Annex I. The PO is advised to check with the Department if in doubt as to whether a particular product is covered. Potatoes and certain herbs are not covered.

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

1.2 Particular objectives of the PO

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

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

1.3 Rules of association of the PO

1.3.1. The rules of association of the PO shall require its producer members to:

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

- c) market their entire production concerned through the PO - see possible exceptions in Section 1.3.2;
- d) provide statistical information requested by the PO, in particular information on production areas, quantities cropped and yields;
- e) pay the financial contributions provided for in its rules of association for establishing and replenishing the operational fund (see Section 2).

1.3.2. While members are required to commit their entire production of the crops for which the PO is recognised to the PO, the following limited exceptions are permissible **when the PO specifically authorises and documents the arrangement**:

- 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 less than 10%, with the PO deciding on the upper limit;
- 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 marketable by their own PO;
- c) members may market themselves, or through another PO that is designated by their own PO, products which, because of their characteristics, are not normally marketed by their own PO.

The volumes marketed under any of these derogations shall be monitored and recorded by the PO and the records shall be available for inspection.

1.3.3. The production marketed in accordance with Section 1.3.2 shall be excluded from the calculation of the value of the PO's marketed production. The production of the members of the PO marketed by another PO designated by their own organisation shall be included in the value of the marketed production of the second PO.

1.3.4. The rules of association of the PO shall also provide for:

- a) voting rights on the management and operation of the PO to avoid any abuse of power and influence by one or more members;
- b) procedures for determining, adopting and amending its rules;
- c) the imposition on members of the financial contributions that are needed to finance the PO;
- d) rules enabling the producer members to scrutinise the PO and the decisions it takes;
- e) penalties for infringement of obligations under the rules of association, particularly non-payment of financial contributions, or of the rules laid down by the PO;
- f) rules on the admission of new members, particularly a minimum membership period (see Section 1.6);
- g) the accounting and budgetary rules necessary for operating the PO.

1.4 Competence of the PO

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

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

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

1.4.3. The PO may outsource any of its activities provided that it:

- a) provides sufficient evidence that outsourcing is an appropriate way to achieve its objectives;
- b) retains responsibility for ensuring that the outsourced activity is carried out as programmed;
- c) retains overall management control and supervision of the commercial arrangement for the outsourced activity and
- d) can provide the requisite level of documentation relating to the outsourced activity to support its claims for assistance.

1.5 Main Activity of the PO

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

1.5.2. The value of the marketed production of the PO's own members plus the value of the production of members of other recognised POs that it sells shall be more than the value of all the other marketed production that it sells. This shall be calculated only on the basis of the product(s) for which the PO is recognised.

1.6 Membership of the PO

1.6.1. The PO shall comprise at least five producer members. A producer member is an adult person who grows the product(s) for which the PO is seeking recognition. In exceptional circumstances, a PO with less than five producer members may be recognised if the Minister is satisfied that it can otherwise fulfil the recognition criteria, that it is capable of operating effectively as a PO and that, averaged over the previous three years, it accounted for at least 25% of the national output of the product(s) for which the PO is seeking recognition.

1.6.2. In order to ensure that a PO genuinely represents the minimum number of producers, each producer member, although having two or more legal personalities, may be taken into account just once in calculating the minimum number of producers.

1.6.3. The minimum period of membership for producers is one year. Members shall sign a membership agreement. The PO shall notify the Minister immediately if, at any stage, the membership falls below the minimum required.

1.6.4. Resignation from membership shall be notified to the PO in writing. The PO shall set in its rules of association the minimum notice period that it requires from members who are seeking to resign, but the period of notice required shall not be less than one month and shall not exceed six months.

1.6.5. Producers may belong to more than one PO at a time, but a producer may not be a member of more than one PO for the same product. There is no restriction on the percentage turnover contributed by an individual PO member. However, and unless otherwise approved by the Minister, voting rights shall be evenly distributed among producer members to ensure that there is no abuse of power or influence by one or more members over the management and operation of the PO.

1.6.6. Non-producers may also be members of the PO, but the PO shall be controlled by the producer members. Non-producing members shall not be considered for the minimum criteria for recognition, shall not benefit directly from the measures financed by the EU and shall not vote on decisions relating to the operational fund.

1.7. Minimum value of marketed production

The certified value of the marketed production of the PO seeking recognition shall be at least €500,000. This shall be calculated as the average value, taken over the three previous years, of the members' marketed production of the product(s) for which the PO is seeking recognition.

1.8. Transnational POs

A transnational PO's head office shall be established in the Member State where the organisation has significant holdings or a significant number of members and/or achieves an important level of marketed production. The Member State in which the head office of the transnational PO is located is responsible for recognising the PO, approving its operational programme and establishing the necessary administrative collaboration with other Member States in which members are located with respect to

ensuring compliance with the terms of recognition and the system of checks and penalties.

1.9. Applying for recognition

1.9.1. The PO shall make its application for recognition on form **Hort PO AP 1**, which is available from the Department. The required details will include:

- a) the product or products for which recognition is sought;
- b) the names and addresses of the members;
- c) the average annual turnover (supported by relevant evidence) and details of crop production (crop, production area and facilities, annual yield and value) for each member over the previous three years;
- d) the objectives of the PO;
- e) the rules of association of the PO and
- f) the resources of the PO.

1.9.2. If members were previously, or are currently (see Section 1.6.5), in another PO, full particulars of previous and/or current memberships shall be supplied.

1.9.3. An application for recognition may be made at any time. If an application for recognition is correctly submitted with the required supporting documentation, a decision will be made by the Minister and notified to the PO within three months.

1.10 Withdrawal or suspension of recognition

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

2 THE OPERATIONAL FUND

A PO wishing to avail of financial assistance from the EU for an operational programme (see Section 3) shall set up an operational fund. The operational fund shall be used only for transactions that are connected with the implementation of an operational programme that has been approved by the Department.

2.1 Management of the operational fund

2.1.1. A separate bank account, or bank accounts, shall be set up for the operational fund. The operational fund shall be managed in such a way that it is possible for external auditors to identify, check and certify its revenue and expenditure annually. Bank statements and explanatory notes will be required with each application for EU financial assistance.

2.1.2. The operational fund shall be separately identifiable within the PO's audited accounts. The audited accounts shall also identify turnover from non-members and from non-eligible activities.

2.2 Financing of the operational fund

2.2.1. The fund shall be maintained by

- a) financial contributions from the members or the PO itself and
- b) the financial assistance from the EU.

2.2.2. The financial contributions to the operational fund shall be determined by the PO. All producer members shall have the opportunity to participate democratically in the decisions concerning the use of the funds of the PO and the financial contributions to the operational fund. All producer members shall have the opportunity to benefit from the operational fund.

2.2.3. The financial assistance from the EU shall be equal to the amount of the financial contributions from the PO and its members, subject to the following:

- a) it shall not exceed 50% of the actual expenditure incurred on the operational programme, with the exceptions set out in Section 2.2.4. and
- b) it shall be capped at 4.1% of the value of the marketed production of the PO during a designated 12-month reference period, with the exceptions that are set out in Section 2.2.5.

2.2.4. The financial assistance from the EU may be increased to 60% of the actual expenditure on an operational programme or part of an operational programme that meets at least one of the following conditions:

- a) it is submitted by several POs that are operating in different Member States on transnational schemes;

- b) it covers solely specific support for the production of organic products;
- c) it is the first to be submitted by a recognised PO that has merged with another recognised PO;
- d) it covers solely specific support for actions to promote the consumption of fruit and vegetables that are targeted at children in educational establishments.

2.2.5. The cap on the EU financial assistance may be increased to 4.6% of the value of marketed production of the PO provided that the amount in excess of 4.1% of the value of the marketed production is used solely for crisis prevention and management measures.

2.3. Value of marketed production (VMP)

2.3.1. The value of marketed production of the PO is calculated on the basis of the members' production of the product(s) for which the PO is recognised. The VMP should include only the production of the members of the PO that is marketed by the PO itself. Production marketed by the members themselves or by another designated PO shall not be included.

2.3.2. The VMP may include the production of members who leave or join the PO. To avoid duplicate counting in the event of a producer member resigning from one PO and joining another PO, the value of that member's production up to the date of his/her resignation shall be retained for the reference VMP of the PO that the member leaves.

2.3.3. The marketed production shall be valued as invoiced at the 'ex-producer organisation' stage

- a) where applicable, as product which is packaged, prepared or has undergone first-stage processing⁷;
- b) excluding VAT;
- c) excluding internal transport costs where the distance between the centralised point of collection or packing point of the PO and the point of distribution of the PO is significant.

2.3.4. The marketed production may also be valued as invoiced at an ex-subsiary stage, provided that at least 90% of the capital of the subsidiary is owned by the PO. A subsidiary means a company in which the PO has taken shares and which contributes to the objectives of the PO.

2.4. Reference period for VMP

2.4.1. The ceiling on the financial assistance from the EU shall be calculated annually on the basis of the VMP during one of the following reference periods:

⁷ 'First-stage processing' means processing of a fruit or vegetable product into another product listed in Annex I of the EC Treaty. Cleaning, cutting, trimming, drying and packaging of fresh products are considered preparation for market.

- a) a 12-month period, starting no earlier than 1 January three years before the year in which the operational programme is implemented and ending no later than 31 December of the year before that in which the operational programme is implemented, or
- b) the average value of three consecutive 12-month periods starting no earlier than 1 January five years before the year in which the operational programme is implemented and ending no later than 31 December of the year before that in which the operational programme is implemented.

2.4.2. The 12-month period shall coincide with the accounting period of the PO. The reference period shall be determined by the Department for each PO in the context of the production history of the PO and its ability to provide satisfactory accounts for the reference period. The reference period shall not vary during an operational programme except in duly justified situations.

2.4.3. If a reduction in the value of a product has occurred during a programme due to reasons that are duly justified to the satisfaction of the Minister as falling outside the responsibility and control of the PO, the reference VMP shall be not less than 65% of the value of the product in the previous reference period.

2.5. Timing of EU financial assistance

EU financial assistance is usually paid retrospectively. Subject to a correct claim being made (see Section 4), payment is made in the year following the year of implementation of the programme. For this reason the PO shall find the resources to fully fund the implementation of the 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 expenditure that is incurred on the operational programme, not the size of the fund.

3. OPERATIONAL PROGRAMMES

The operational programme (hereinafter referred to as ‘the programme’) is a plan prepared by the PO with the overall objective of improving its performance in marketing, product quality and environmental issues. The programme shall be consistent with the National Strategy for Sustainable Operational Programmes. The programme shall be submitted to the Department for approval.

3.1. Mandatory elements of a programme

3.1.1. The programme shall have a minimum duration of three years and a maximum duration of five years. The programme shall be implemented in annual periods running from 1 January to 31 December. The PO should implement the programme as approved in its entirety, unless changes are approved in accordance with Section 3.6 below.

3.1.2. All programmes shall have two or more of the following objectives:

- planning of production;
- improvement of product quality;
- boosting the commercial value of products;
- promotion of products, whether in a fresh or processed form;
- environmental measures and methods of production respecting the environment, including organic farming;
- crisis prevention and management.

3.1.3. All programmes shall include at least two actions to develop the use of environmentally-sound techniques by the PO members in relation to cultivation practices and the management of waste materials, and/or the encouragement of biodiversity. For further details see the National Framework for Environmental Actions which is annexed to the National Strategy for Sustainable Operational Programmes.

3.2. Preparation of a programme

3.2.1. Any PO recognised under Regulation 2200/1996 or Regulation 1234/2007 may submit a programme for approval. The programme may be submitted at the same time as the PO applies for recognition, but approval of the programme will be subject to attainment of recognition no later than on the final date that is specified in Section 3.6.

3.2.2. The programme shall be prepared by the PO. The PO can seek the help of trade associations or external consultants if necessary. The application for approval of

the programme shall be made on form **HORT PO AP 2**, which is available from the Department. The application form will require the following information:

- a) a description of the situation at the start of the programme;
- b) the objectives of the programme;
- c) a detailed description of each of the measures, with its component actions, to be taken to achieve each of the objectives;
- d) the duration of the programme;
- e) the financial provisions for implementing the programme and
- f) performance indicators for each measure in the programme.

3.2.2.1. The description of the situation at the start of the programme shall detail at least 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 and/or cold-storage owned by the members and by the PO, and
- e) the current marketing arrangements and market outlets.

3.2.2.2. The PO shall clearly state all the objectives of its programme. **The objectives eligible for EU financial assistance are listed in Section 3 of the National Strategy for Sustainable Operational Programmes.** When determining the objectives for its programme, the PO shall take into account the outlook for production and outlets and the essential aims of the PO.

3.2.2.3. The programme shall give a detailed description of each measure, with its component actions, that will be taken to achieve all of the stated objectives in every year of the programme. **The measures and actions that are eligible for EU financial assistance are listed in Section 3.2 of the National Strategy for Sustainable Operational Programmes.**

3.2.2.4. The duration of the programme shall be specified. It shall last at least three and not longer than five years. Programmes shall be implemented in annual periods running from 1 January to 31 December.

3.2.2.5. The PO shall supply full details of its operational fund account and of the financial provisions for the programme, namely:

- a) the method of calculation and the level of financial contributions to the operational fund from the PO members and the PO itself;
- b) the procedure for financing the operational fund;
- c) the information necessary to justify different levels of contribution to the operational fund and
- d) the budget and timetable for undertaking operations to implement each year of the programme.

3.2.2.6. Targets and performance indicators shall be established for each measure so that progress towards the programme objectives can be monitored. The targets shall be specific, measurable, achievable, relevant and timed. The performance indicators for each eligible measure are set out in Section 3.2 of the National Strategy for Sustainable Operational Programmes. Other indicators may also be required as appropriate.

3.2.3. Programme proposals shall also be accompanied by a written undertaking from the PO to comply with Council Regulation (EC) No 1234/2007 and Commission Regulation (EC) No 1580/2007.

3.3 Ineligible operations and expenditure

3.3.1. Aid will not be paid for any action that a PO or its members are obliged to carry out under national or EU law.

3.3.2. Measures and actions that are not included in the National Strategy for Sustainable Operational Programmes are not eligible for financial assistance. The list of operations and expenditure that are not eligible for financial assistance as set out in Annex VIII to Commission Regulation (EC) No 1580/2007 includes the following:

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

Annex VIII to Regulation 1580/2007 is reproduced in Annex 2 to this scheme.

3.4. General principles and conditions regarding eligibility of operations and expenditure

3.4.1. Payment of aid is subject to evidence of progress towards meeting the objectives of the programme.

3.4.2. Records of the implementation of each action shall be kept by the PO or, in the case of an outsourced action, be readily available to the PO at all times.

3.4.3. Aid will not normally be paid for a producer's personal time spent on any aspect of production or marketing of the producer's crop(s), regardless of whether or not the task forms part of the programme. In some duly justified cases approval may be given for costs borne by the PO resulting from actions carried out by producer members.

3.4.4. Personnel costs, whether for personnel directly employed by the PO or for personnel carrying out outsourced actions, shall be documented with job descriptions, timesheets and/or diaries, and appropriate records of the work that has been done. Travel expenses shall be fully logged and documented.

Outsourced actions may alternatively be costed on a unit basis, taking into account the staff and facilities that are required for carrying out the actions. The unit cost shall be

justified before the start of the programme and it shall normally remain in force for the duration of the programme.

3.4.5. EU financial assistance for specific costs relating to environmental measures, organic or integrated production, and quality improvement measures is limited to the costs that are additional to conventional costs and income foregone resulting from the measures.

3.4.6. Crisis prevention and management measures shall not comprise more than one-third of the expenditure under the programme.

3.4.6.1. Loans that are taken out to finance crisis prevention and management measures whose repayment period exceeds the length of the programme may be carried over to a subsequent programme on duly justified economic grounds.

3.4.7. Capital investments may be placed on the premises of a producer member if this better meets the objectives of the PO provided that:

- a) decisions to make on-farm investments through the programme are taken democratically by the producer members in accordance with the PO rules; such decisions shall address the location, possible use by other members and maintenance, and shall be documented;
- b) ownership of the investment is retained by the PO;
- c) an agreement is documented between the PO and the member concerning the location, use and maintenance of the investment;
- d) the agreement includes appropriate provisions to recover the investment or its residual value if the member leaves the PO;
- e) the investments are paid for with monies from the operational fund and
- f) an asset register is maintained by the PO.

3.4.7.1. Investments whose repayment period exceeds the length of the programme may be carried over to a subsequent programme on duly justified economic grounds.

3.4.7.2. In general, investment in a replacement asset is not eligible for aid. Such an investment will be considered only if it is supported by evidence that the asset performs previously executed functions with greater output or increased automation or efficiency. The residual value of the old asset shall be either added to the operational fund or subtracted from the cost of the replacement asset.

3.5. Aid for administration of the programme

3.5.1. The costs of administering the programme are eligible for aid. The eligible costs will have an upper limit of €180,000. The administrative tasks are normally carried out by the PO's own staff or by consultants engaged directly by the PO. If other arrangements are put in place, they shall be submitted for consideration and the Department shall be satisfied that the costs can be verified. The cost of auditing the annual claim for financial assistance may also be claimed, but the cost of producing the PO's annual audited accounts is not eligible for aid.

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

- a) preparing proposals for the programme and engaging in consultations and correspondence with officers of the Minister for approval of the programme;
- b) managing the operational fund and execution of expenditure on the programme;
- c) compiling the annual claim for financial assistance and engaging in meetings and correspondence with officers of the Minister on the processing of the claim;
- d) compiling the annual and final reports on the programme;
- e) compiling statistical returns as required by the Minister and
- f) facilitating inspections carried out by the Minister.

The costs of reports and evaluation studies relating to the programme are also eligible for aid. All of the above costs shall be clearly documented.

Consultant fees shall be paid from the operational fund account. If it is not practicable to pay salaries of PO staff administering the operational programme directly from the operational fund account, evidence of their salaries shall be provided and the amount of time spent on administration of the programme shall be clearly documented.

General overhead costs such as telephones, heating or IT support should not be claimed, because of the difficulty of verifying the proportion of such costs that is directly related to the operational fund or programme. A case may be made for the inclusion of the costs of specialised IT installations and/or training that directly relate to the administration of the operational fund or programme.

3.5.3. The PO may opt to claim 2% of the approved expenditure on the programme instead of claiming on the basis of the real costs of administering the programme.

3.6. Dates for submission of programmes and changes to programmes

3.6.1. A new programme and the required supporting documents shall be submitted to the Department not later than 15 September for a programme that is due to start on the following 1 January. The Department may extend the deadline of 15 September for a duly justified reason. The Department may approve or reject the programme or request modifications. A decision on the application will normally be given by 15 December of the year in which it is submitted, and not later than 20 January following the date of application. The conditions for programmes that are approved between 15 December and 20 January may stipulate that

- a) expenditure on the programme shall be eligible from 1 January of the year following the application;
- b) the programme shall start not later than 31 January or
- c) the implementation of the programme shall be postponed for one year.

3.6.2. By 15 September of each subsequent year of its programme, the PO shall either confirm that the programme for the coming year will be implemented as approved or submit its proposed changes for approval. Applications for approval of amendments shall be made on form **HORT PO AP 3**, which is available from the Department. The applications shall be accompanied by supporting documents giving the reason, nature

and implications of the changes. The Minister may extend the deadline of 15 September for a duly justified reason. The Minister may approve or reject the amendments to the programme or request modifications. A decision on the application will normally be given by 15 December of the year in which it is submitted, and not later than 20 January following the date of application. The conditions for amended programmes approved between 15 December and 20 January may stipulate that

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

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

- a) implement its programme in part only;
- b) change the contents of the programme;
- c) extend the programme duration up to a total of five years;
- d) increase the amount of the operational fund up to a maximum of 25% of the amount initially approved, or reduce it by up to one-third, provided the overall objectives of the programme are maintained.

DAFF will not accept any applications for in-year amendments to operational programmes after 15th November.

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

- a) changes in personnel, provided the effectiveness of the programme is not affected;
- b) changes arising from variations in the volume of marketed production and/or
- c) a maximum increase of 5% in the cost of approved investments.

The amended actions will be eligible for aid only if the Minister is informed of the changes within two months of their implementation.

Unless requests are made to the Minister for changes to its programme, the PO will be expected to have implemented its approved programme in its entirety.

3.7. Financial assistance for the programme

The provisions for EU financial assistance for approved programmes are set out in Section 2.2. A written undertaking shall be given by the PO that it has not received, either directly or indirectly, duplicate EU or national funding for any measure and/or action qualifying for aid in the programme.

3.8 PO reports on its programme

3.8.1. Progress reporting is required in the form of an **annual report** giving full details of the implementation of the programme, the main amendments to the programme and any variances between the estimated aid and the aid claimed. An annual report shall:

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

The annual report shall be submitted with the claim for financial assistance by 15 February of the following year.

3.8.2. A **final report** shall be submitted by the PO when a programme has been completed. A final report shall:

- a) show the extent to which the objectives of the programme have been achieved;
- b) explain changes to any actions and/or methods and
- c) identify any factors that contributed to the success or failure of the programme's implementation which have been or will be considered when subsequent programmes are drawn up.

3.8.3. If a PO intends to submit a further programme for approval, it shall provide the final report when the penultimate year of the current programme is completed, so that its findings can be taken into consideration when assessing the new programme. The PO may opt to submit an annual report on the penultimate year of the programme by 15 February with the claim for assistance and to submit the final report with the proposed new programme later that year. A proposal for a second or subsequent programme will not be accepted without a final report on the previous programme.

3.9 Programmes of merged POs

When POs merge, they may:

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

4. CLAIMING FINANCIAL ASSISTANCE

The procedure for obtaining financial assistance begins by communicating to the Minister by 15 September the estimated amount of the operational fund for implementing the next annual cycle of the programme. The PO subsequently makes an application for financial assistance by 15 February at the latest following implementation of an annual cycle of the programme.

4.1. Making a claim for financial assistance

4.1.1. The PO shall submit an application for aid to the Minister by 15 February at the latest following completion of each annual cycle of the programme. The application shall be presented on form **HORT PO AP 4**, which is available from the Department.

4.1.2. Applications for financial assistance shall be accompanied by an annual or final report on the programme (see Section 3.8) and shall include:

- a) the audited volume and value of the marketed production of eligible products;
- b) the financial contributions that were levied on individual members and those paid by the PO itself into the operational fund and
- c) the expenditure from the operational fund on each measure and action of the programme.

4.1.3. The claim shall cover only approved and eligible expenditure. If the amount claimed by the PO exceeds by more than 3% the amount that is deemed eligible by the Minister after its examination of the claim, a reduction shall be applied to the amount actually payable. The amount of the reduction shall be the difference between the amount claimed and the amount deemed eligible.

4.1.4. Claims shall be supported by original invoices and documents that show that expenditure was incurred from the operational fund. Invoices shall be established in the name of the PO, unless the Minister has agreed that invoices may be established in the name of one or more of the members.

4.1.5. The PO shall give a written undertaking that it has not received, directly or indirectly, duplicate EU or national funding for measures and/or actions qualifying for aid in the programme.

4.1.6. Penalties shall apply to POs that make a fraudulent claim (see Section 6.3).

4.2. Making a claim for partial payment

4.2.1. The PO may submit applications for payment of part of the financial assistance for approved and eligible expenditure on investments.

4.2.2. Applications for partial payment may be submitted at any time between the start of the operational year of the programme and 15 February of the following year, but not more than two applications may be submitted in any given year.

4.2.3. The application shall be presented on form **HORT PO AP 5**, which is available from the Department and shall be accompanied by original invoices and documents that show the expenditure incurred from the operational fund.

4.2.4. Total payments in respect of applications for partial payment may not exceed 80% of the initially approved amount of aid for the operational programme or of the real expenditure, whichever is the less.

4.2.5. The conditions set out in paragraphs 4.1.3 to 4.1.6 inclusive apply also to claims for partial payments.

4.3. Key dates for financial assistance

4.3.1. The estimated amount of the operational fund for the coming year shall be submitted with the programme to the Minister (see Section 3.6). The estimated amount shall be calculated on the basis of the programme and the value of marketed production. Details shall be given of the estimated contributions to the operational fund from the members and from the PO itself. The Department shall take a decision and notify the PO of the approved amount of financial assistance not later than 20 January of the programme year.

4.3.2. The PO shall submit an application for financial assistance to the Department by 15 February of the year following completion of each annual cycle of the programme. See Section 6.2 for the penalty that applies to late applications.

4.3.3. Payment of aid shall be made by the Department by 15 October of the year after each completed annual cycle of the programme.

4.4. Publication of aid payments

In accordance with the provisions of Council Regulation (EC) No 1290/2005 on the financing of the common agricultural policy, the Minister is required to publish on a website, details of the names, municipality of residence, and amounts received by beneficiaries of schemes funded or co-funded by the European Agricultural Guarantee Fund (EAGF) or the European Agricultural Fund for Rural Development (EAFRD). These data may be used by national and EU auditing and investigating bodies for the purpose of safeguarding the financial interests of the EU.

The rights of data subjects and how they may be exercised, in this respect, are laid down in the Data Protection Acts, 1988 and 2003. The publication of the details referred to above is a requirement of EU law and the data therein may not be used for direct marketing or other purposes and this will be made clear on the website.

5. MONITORING AND EVALUATING

5.1. Monitoring and evaluating by the PO

5.1.1. The PO shall monitor and evaluate its programme to assess the progress made towards the specific targets that have been set for the programme. For this purpose it shall use the approved performance indicators and shall collect, record and maintain information for the compilation of those indicators. The PO shall include information on the results of its monitoring in its annual reports.

5.1.2. The PO shall also carry out a mid-term evaluation exercise to examine the efficiency and effectiveness of its programme and the progress made in relation to the overall objectives of the programme. This exercise shall be carried out in time to allow the results of the evaluation to be considered in the preparation of a subsequent programme. Where relevant, the mid-term evaluation exercise shall include a qualitative assessment of the results and the impact of environmental actions that are aimed at:

- a) the prevention of soil erosion;
- b) a reduction in the use of and/or better management of plant protection products;
- c) the protection of habitats and biodiversity and/or
- d) landscape conservation.

The evaluation report shall be annexed to the PO's annual or final report (see Section 3.8).

5.2. Monitoring by the Minister

5.2.1. The Minister is required to carry out on-the-spot checks:

- a) prior to granting recognition, to verify compliance with the conditions for recognition;
- b) prior to approving a programme, to verify
 - i. the accuracy of the information provided in the application for approval of the programme and
 - ii. compliance with EU Regulations, the National Strategy for Sustainable Operational Programmes and the National Framework for Environmental Actions;
- c) on a sample of applications for aid to ensure compliance with the recognition criteria and to verify the value of marketed production, the implementation of the actions in the programme and the use of the operational fund for the year in question. On-the-spot checks of member producers and /or third parties to whom actions are outsourced may also be carried out. Each PO will be checked on-the-spot at least once in every three years.

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

5.3. Stability of the PO

The purpose of the Scheme is to assist POs in their role of strengthening the position of producers in the market. The stability of the PO will be assessed before recognition is granted. If there are indications that a PO is liable to cease operations, it may be necessary to withdraw approval for an ongoing operational programme.

6. PENALTIES

The following penalties prescribed in Commission Regulation (EC) No 1580/2007 (as amended by Commission Regulations 292/2008 and 590/2008) will apply to POs that are in breach of the terms and conditions of the Producer Organisation Scheme. The relevant Articles of that Regulation are given in brackets after each penalty.

6.1. Failure to respect recognition criteria (Article 116)

6.1.1. Recognition shall be withdrawn if the PO fails substantially to respect the criteria for recognition deliberately or as a result of serious negligence (see Section 1).

6.1.2. Recognition shall be suspended rather than withdrawn if the failure to respect the criteria for recognition is substantial but temporary. No aid shall be paid during the period of suspension, which shall take effect from the day on which the check on recognition has taken place and shall end on the day of the subsequent check which shows that the criteria concerned have been met. The period of suspension shall not exceed 12 months. If the criteria concerned are not met within 12 months, recognition shall be withdrawn.

6.1.3. The aid that was due to be paid during the period of suspension may be paid when the suspension is lifted, but not later than 15 October of the second year following the relevant annual cycle of the programme.

6.2. Late application for aid (Article 70(4))

If applications for aid are submitted after 15 February, the aid shall be reduced by 1% for each day after that date.

6.3. Fraud in respect of aid (Article 117)

Without prejudice to any other penalties that are applicable under EU and national legislation, recognition shall be withdrawn if the PO is found to have committed fraud in respect of the aid. Recognition shall be suspended if the PO is reasonably suspected of having committed fraud in respect of the aid.

6.4. Aid unduly claimed (Article 119 and 149)

If the amount of aid claimed by the PO exceeds by more than 3% the amount that is deemed eligible by the Department after examination of the application, the payment shall be reduced by the difference between these two amounts. An aid application may be adjusted after its submission in cases of obvious errors that are accepted as such by the Minister.

6.5. Intentional false declaration (Article 119)

If the PO is found to have intentionally made a false declaration, the operation in question shall be excluded from aid and any amounts already paid for that operation shall be recovered. Moreover, the PO shall be excluded from receiving aid for that operation in the following year.

6.6. Artificially created situations (Article 147)

No payment shall be made to POs for whom it is established that they artificially created the conditions required for obtaining such payment with a view to obtaining an advantage contrary to the objectives of the scheme.

6.7. Recovery of aid (Article 125)

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

6.8. Failure to provide information as required (Article 98)

If the PO fails to comply with a request from the Minister for information as required under the EU Regulations or if the information appears incorrect in the light of objective facts in the Minister's possession, the Minister shall suspend approval for the programme for the following year until the correct information is provided.

Without prejudice to the penalties set out in paragraphs 6.1. to 6.8, POs suspected of making fraudulent claims shall be reported to An Garda Síochána.

ANNEX I

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

See Section 1.1. of the scheme.

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

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

ANNEX 2

List of operations and expenditure not eligible under operational programmes

Annex VIII to Commission Regulation (EC) No 1580/2007

See Section 3.3 of the scheme

1. General production costs and in particular plant protection products, including integrated control materials, fertilisers and other inputs; packing costs, storage costs, packaging costs, even as part of new process, costs of packages; costs of collection or transport (internal or external); operating costs (in particular electricity, fuel and maintenance), except:
 - Specific costs for quality improvement measures. In all cases costs for (even certified) mycelium, seeds and non-perennial plants shall not be eligible;
 - Specific costs for organic plant protection materials (such as pheromones and predators) whether used in organic, integrated or conventional production;
 - Specific cost for environmental measures, including costs generated by the environmental management of packaging. The environmental management of packaging shall be properly justified and follow the criteria of Annex II to Directive 94/62/EC of the European Parliament and of the Council on Packaging and Packaging Waste (O.J. L365, 31.12.1994, p.10);
 - Specific cost for organic, integrated or experimental production. The competent authority shall lay down the eligibility criteria for an experimental production taking account of the newness of the procedure or concept and the risk involved;
 - Specific costs to ensure the monitoring of compliance with the standards referred to in Title II of this regulation, with plant-health rules and with maximum level of residues.

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

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

2. Administrative and personnel costs with the exception of expenditure relating to the implementation of operational funds and operational programmes which shall include:

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

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

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

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

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

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

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

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

3. Income or price supplements outside crisis prevention and management.
4. Insurance costs outside crisis prevention and management.
5. Reimbursement of loans taken out for an operation carried out before the beginning of the operational programme other than those refer to in Article 75.
6. Purchase of land (costing more than 10% of all the eligible expenditure on the operation concerned. In exceptional and duly justified cases, a higher percentage can be fixed for operations concerning environmental conservation) not built on except where purchase is necessary to carry out an investment included in the operational programme.

7. Cost of meetings and training programmes except where they are related to the operational programme, including daily allowances, transport and accommodation costs (where appropriate on a flat rate basis).
8. Operations or costs relating to the quantities produced by the members of the producer organisation outside the Community.
9. Operations that could distort competition in the other economic activities of the producer organisation.
10. Second hand equipment which has been purchased with Community or national support within the seven previous years.
11. Investments in means of transport to be used for marketing or distribution by the producer organisation except additional on-the-truck facilities for cold-storage or controlled atmosphere transport.
12. Hire except where economically justified as an alternative to purchase at the satisfaction of the Member State.
13. Operating cost of goods hired.
14. Expenditure linked to leasing contracts (taxes, interest, insurance costs, etc.) and operating costs except the leasing itself within the limits of the net market value of the item and within the conditions laid down in point (b) of the first subparagraph of Article 55(1) of Commission Regulation (EC) No 1974/2006⁸.
15. Promotion of individual commercial labels or containing geographic references except:
 - producer organisation, associations of producer organisations and subsidiaries as foreseen in Article 52(7) brand/trade marks;
 - generic promotion and promotion of quality labels. Geographical names are allowed only:
 - (a) if they are a protected designation of origin or a protected geographical indication, covered by Council Regulation (EC) No 510/2006⁹, or
 - (b) if, in all cases where the provision of point (a) does not apply, these geographical names are secondary to the principal message.

Promotional material shall bear the emblem of the European Community (in the case of visual media only) and include the following legend: 'Campaign financed with the aid of the European Community'.
16. Subcontracting or outsourcing contracts relating to the operations or expenditure mentioned as not eligible in this list.
17. VAT except non-recoverable VAT as referred to in Article 71(3)(a) of regulation (EC) No 1698/2005.

⁸ OJ L 368, 23.12.2006, p. 15. Regulation as amended by Regulation (EC) No 434/2007 (OJ L 104, 21.4.2007, p. 8).

⁹ OJ L93, 31.3.2006, p.12

18. Interest on debt except where the contribution is made in a form other than a non-repayable direct assistance.
19. Real estate purchase which has been purchased with Community or national support within the 10 previous years
20. Investments in shares of companies if the investment represents a financial investment except investments contributing directly to the achievement of the goals of the operational programme.
21. Costs incurred by parties other than the producer organisation or its members.
22. Investments or similar types of actions not on the holdings of the producer organisation, association of producer organisations, subsidiary as referred to in Article 52(7) or its members.
23. Measures outsourced by the producer organisation outside the Community.

ANNEX 3

Correlation Table with
 Council Regulation (EC) No 1234/2007
 (as amended by Council Regulation 361/2008) and
 Commission Regulation (EC) No. 1580/2007
 (as amended by Commission Regulations 292/2008 and 590/2008)

Scheme Section	Council Regulation	Commission Regulation	Scheme Section	Council Regulation	Commission Regulation
1.1.1	122(a)(iii)		2.2.2		55
1.1.2		22(2)	2.2.3	103d(1) + (2)	
1.2	122(c) + 125b(1)(a)		2.2.4	103d(3)	
1.3.1	125a(1)		2.2.5	103d(2)	
1.3.2	125a(2)		2.3.1		52(1) + (5)
1.3.3		52(5)	2.3.2		52(2)
1.3.4	125a(3)		2.3.3		21(1)(i) + 52(6)
1.4.1	125b(1)(c)-(g)	25	2.3.4		21(1)(b) + 52(7)
1.4.2		27	2.4.1		53(2)
1.4.3	125d	29	2.4.2		53(3)
1.5.1		28(1)	2.4.3		53(4)
1.5.2		28(2)	3.1.1.	103g(6)	
1.6.1	125b(1)(b)		3.1.2	103c(3)	
1.6.3		24(1)	3.2.1		64
1.6.4		24(2)	3.2.2		61
1.6.5	125a(1)(b)	33	3.2.2.4	103g(6)	61(1)(d)
1.6.6		32	3.2.2.5		61(1)(e)
1.7	125b(1)(b)	26 + 53(5)	3.2.2.6		126
1.8		30+21(1)(c)	3.2.3		62(b)
1.9.1	125b(1)		3.3.2		61(4)+Annex VIII
1.9.3	125b(2)(a)		3.4.3		Annex VIII, point 2(b)
1.10	125b(2)(b)		3.4.5	103c(3)	
2	103b(2)		3.4.6	103c(2)	
2.1		54	3.4.6.1		75
2.2.1	103b(1)		3.4.7		61(3)

Scheme Section	Council Regulation	Commission Regulation	Scheme Section	Council Regulation	Commission regulation
3.4.7.1		61(3)	4.1.3		119(3)+(4)
3.4.7.2		61(3)	4.1.4		107(2)
3.5		Annex VIII, point 2(a)	4.1.5		70(2)(h)
3.6.1	103g(1)	64, 65, 68(2)	4.1.6.		117
3.6.2	103g(1)	66, 68(2)	4.2.1	103g(2)+(3)	56, 69
3.6.3		67	4.2.2		70(1)
3.6.4		67	4.2.3		71
3.7		62(c)	5.1.1		127(1)+(2)
3.8.1		98(1)+(2)	5.1.2		127(3)
3.8.2		98(3)	5.2.1(a)		105(1)
3.8.3		98(3)	5.2.1(b)		105(2)
3.9		31	5.2.1(c)	125b(2)(b)	106, 108, 109
4.1.1		70(1)	5.2.2		124
4.1.2		70(2)	Annex I	Part IX of Annex I	