



Brussels, XXX
[...] (2022) XXX draft

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

of XXX

**laying down detailed rules for the fruit and vegetables and processed fruit and
vegetables , processed and banana sectors**

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

of **XXX**

laying down detailed rules for the fruit and vegetables, and banana sectors

THE EUROPEAN COMMISSION,

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

Having regard to [...]¹, and in particular Article [...] thereof,

After consulting the [...] Committee, [for acts adopted after consultation of a committee under the advisory procedure]

Whereas:

- (1) Regulation (EU) No 1308/2013 establishes a common organisation of agricultural markets, which includes the fruit and vegetables, processed fruit and vegetables products, and bananas.
- (2) Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011² lays down detailed rules in respect of the fruit and vegetables and processed fruit and vegetables sectors, providing for a general marketing standard for all fresh fruit and vegetables and ten specific marketing standards. Commission Implementing Regulation (EU) No 1333/2011 of 19 December 2011³ lays down the marketing standards applicable for bananas, rules on the verification of compliance with those marketing standards and requirements for notifications in the banana sector. In the interests of clarity, it is appropriate to incorporate all the implementing rules in a new Regulation, together with the amendments necessary in the light of experience, and to repeal Regulation (EU) No 543/2011 and Regulation (EU) No 1333/2011.
- (3) In view of a harmonisation and a simplification of the rules for the marketing standards for the sectors of fruit and vegetables, processed fruit and vegetables, and banana; and with the aim to align them with the Lisbon Treaty, it seems appropriate to merge them in a single set of delegated and implemented regulations.
- (4) In view of the evolution of the market of dried grapes, Commission Regulation (EC) No 1666/1999⁴ should be abrogated while the rules of control should be aligned to the rules applicable to the other dried fruits
- (5) In order to ensure that checks may be properly and effectively carried out, invoices and accompanying documents, other than those for consumers, should contain certain basic information included in the marketing standards.
- (6) For the purposes of the selective checks, based on risk analysis, as provided for in Articles 75 and 76 of Regulation (EU) No 1308/2013 it is necessary to lay down

¹ OJ L [...], [...], p. [...].

² OJ L 299, 16.11.2007, p. 1

³ OJ L 336, 20.12.2011, p. 23–34

⁴ OJ L 197, 29.7.1999, p. 32–35

detailed rules on such checks and possible administrative penalties as appropriate in application of Article 90a(3) of the same regulation. In particular, the role of the risk assessment when selecting products for checks should be underlined.

- (7) Each Member State should designate the inspection bodies responsible for carrying out conformity checks at each stage of marketing. One of those bodies should be responsible for contacts with and coordination between all other designated bodies.
- (8) Since knowledge of traders and their main characteristics is an indispensable tool in Member States' analysis, it is essential to set up a database on traders of fruit and vegetables in each Member State. In order to ensure that all actors in the marketing chain are covered and for the sake of legal certainty, a detailed definition of 'trader' should be adopted.
- (9) Conformity checks should be carried out by sampling and should concentrate on traders most likely to have goods which do not comply with the standards. Taking into account the characteristics of their national markets, Member States should lay down rules prioritising checks on particular categories of traders. For the sake of transparency, those rules should be notified to the Commission.
- (10) Member States should ensure that exports of fruits and vegetables to third countries conform to the marketing standards. Member States should certify conformity with the Geneva Protocol on standardisation of fresh fruit and vegetables and dry and dried fruit, concluded within the United Nations Economic Commission for Europe (UNECE), and with the Scheme for the application of international standards for fruit and vegetables of the Organisation for Economic Co-operation and Development (OECD).
- (11) Imports of fruit and vegetables from third countries should conform to the marketing standards or to standards equivalent to them. Conformity checks must therefore be carried out before those goods enter the customs territory of the Union, except in the case of small lots which the inspection bodies consider to be low risk. In certain third countries which provide satisfactory guarantees of conformity, pre-export checks may be carried out by the inspection bodies of those third countries. Where this option is applied, Member States should regularly verify the effectiveness and quality of the pre-export checks carried out by third country inspection bodies.
- (12) Fruit and vegetables intended for processing are not required to conform to marketing standards, so it should be ensured that they are not sold on the market for fresh products. Such products should be appropriately labelled.
- (13) Fruit and vegetables checked for conformity with the marketing standards should be subject to the same type of check at all stages of marketing. To this end, the inspection guidelines recommended by the UNECE, in line with the relevant OECD recommendations, should be applied. Specific arrangements should, however, be laid down for checks at the retail sale stage.
- (14) The measures provided for in this Regulation are in accordance with the opinion of the [...] Committee, [for acts adopted after consultation of a committee under the examination procedure]

HAS ADOPTED THIS REGULATION:

Chapter I

INTRODUCTORY PROVISIONS

Article 1

Scope

This Regulation lays down implementing rules of Regulation (EU) No 1308/2013⁵ as regards conformity checks for marketing standards for sectors referred to in Article 1 Commission Delegated Regulation (EU) No xxx/2023 at all marketing stages, except as otherwise provided in the same Regulation, in order to verify that they conform to the marketing standards and other provisions of this Regulation, of Commission Delegated Regulation (EU) No xxx/2023 and of Articles 75 and 76 of Regulation (EU) No 1308/2013.

Article 2

Use of terms

Terms used in Regulation (EU) No 1308/2013 shall have the same meaning when used in this Regulation unless this Regulation provides otherwise.

Chapter II

CONTROLS OF MARKETING STANDARDS

SECTION 1

GENERAL RULES

Article 3

Coordinating authorities and inspection bodies

1. Each Member State shall designate:
 - (a) a single competent authority responsible for coordination and contacts in the areas covered by this Regulation, hereinafter called ‘the coordinating authority’; and
 - (b) an inspection body or bodies responsible for the application of this Regulation, hereinafter called ‘the inspection bodies’.

⁵ OJ L 347, 20.12.2013, p. 671–854

2. The coordinating authorities and inspection bodies referred to in the first paragraph may be public or private. However, the Member States shall be responsible for them in either case.

The Member States shall notify the Commission of:

- (a) the name, postal and e-mail addresses of the coordinating authority they have designated pursuant to paragraph 1(a);
 - (b) the name, postal and e-mail addresses of the inspection bodies they have designated pursuant to paragraph 1(b); and
 - (c) the exact description of the respective spheres of activity of the inspection bodies they have designated.
3. The coordinating authority may be the inspection body or one of the inspection bodies or any other body designated pursuant to paragraph 1.
 4. The Commission shall make publicly available the list of coordinating authorities designated by the Member States on the Europa website.

Article 4

Trader database

1. Member States shall set up a database on traders involved in the marketing of the products listed in Article 1 of Commission Delegated Regulation (EU) No xxx/2023, under the conditions established in this Article.
2. For this purpose, Member States may use any other database or databases already established for other purposes. For the purpose of this Regulation, ‘trader’ means any natural or legal person who:
 - (a) holds the products referred in paragraph 1 subject to marketing standards, and at the marketing stage to which such standards apply, with a view to:
 - (i) displaying or offering them for sale,
 - (ii) selling them, or
 - (iii) marketing them in any other manner, or
 - (b) actually carries out any of the activities referred to in point (a) as regards those products subject to marketing standards.

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

- (a) distance selling whether by internet or otherwise,
 - (b) such activities carried out by the natural or legal person for itself or on behalf of a third party, and
 - (c) such activities carried out in the Union and/or by export to third countries and/or import from third countries.
3. Member States shall determine the conditions under which the following traders are to be included or not in the database:

- (a) traders whose activities are exempt from the obligation to comply with the marketing standards pursuant to Article 5 of Commission Delegated Regulation (EU) No xxx/2023 ; and
 - (b) natural or legal persons whose activities are limited to the transport of goods;
 - (c) traders whose activities are limited to the sale at the retail stage.
4. Where the trader database is composed of several distinct elements, the coordinating authority shall ensure that the database, its elements and their updating are uniform.
5. The database shall contain for each trader:
- (a) the registration number, name and address and the indication of the relevant sector or sectors in which it operates among the ones referred to in paragraph (1);
 - (b) information needed for its classification in one of the risk categories mentioned in Article 6(2), in particular, position in the marketing chain and information concerning the importance of the firm;
 - (c) information concerning findings made during previous checks of each trader;
 - (d) any other information considered necessary for checks such as information concerning the existence of a quality assurance system or self-check system related to the conformity to the marketing standards;
 - (e) the indication whether or not the trader has been approved according to Article 5.

The updating of the database shall be carried out in particular using the information collected during conformity checks.

6. Traders shall provide the information that Member States consider necessary to set up and update the database. Member States shall determine the conditions under which traders not established in their territory but trading on it shall be listed in their database.

Article 5

Approved traders

1. Member States may, on request, authorise traders classified in the lowest risk category and providing special guarantees on conformity to marketing standards, to use the specimen in Annex I in the labelling of each package at the stage of dispatch and/or to sign the conformity certificate as referred to in Article 8.
2. The authorisation shall be granted for a period of at least one year.
3. Traders benefiting from this possibility shall:
 - (a) have inspection staff who have received training or have relevant experience;
 - (b) have suitable equipment for preparing, packing and checking produce;
 - (c) commit themselves to carry out a conformity check on the goods they dispatch and have a register recording all checks carried out;
 - (d) allow controls by coordinating authorities.

4. Where an approved trader no longer complies with the requirements for its authorisation the Member State shall withdraw the authorisation.

SECTION 2

CONFORMITY CHECKS CARRIED OUT BY THE MEMBER STATES

Article 6

Conformity checks

1. Member States shall ensure that conformity checks are carried out based on a risk analysis, selectively and with appropriate frequency, so as to ensure compliance with the marketing standards and other provisions of this Regulation, of Commission Delegated Regulation (EU) No xxx/2023 and of Articles 75 and 76 of Regulation (EU) No 1308/2013 and shall apply administrative penalties as appropriate in application of Article 90a(3) of Regulation (EU) No 1308/2013.

The criteria to assess the risk shall include the existence of a conformity certificate referred to in Article 8 issued by a competent authority of a third country where the conformity checks have been approved pursuant to Article 9. The existence of such certificate shall be considered as a factor reducing the risk of non-conformity.

The criteria to assess the risk may also include:

- (a) the nature of the product, the period of production, the price of the product, the weather, the packing and handling operations, the storage conditions, the country of origin, the means of transport or the volume of the lot;
 - (b) the size of the traders, their position in the marketing chain, the volume or value marketed by them, their product range, the delivery area or the type of business carried out such as storage, sorting, packing or sale;
 - (c) findings made during previous checks including the number and type of defects found, the usual quality of products marketed, the level of technical equipment used;
 - (d) the reliability of traders' quality assurance systems or self-checking systems related to the conformity to marketing standards;
 - (e) the place where the check is carried out, in particular if it is the point of first entry into the Union, or the place where the products are being packed or loaded;
 - (f) any other information that might indicate a risk of non-compliance.
2. The risk analysis shall be based on the information contained in the trader database referred to in Article 4 and shall classify traders in risk categories.

Member States shall lay down in advance:

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

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

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

Article 7

Acceptance of declarations by customs

1. Customs may only accept export declarations and/or declarations for the release for free circulation for the products subject to specific marketing standards if:
 - (a) the goods are accompanied by a conformity certificate, or
 - (b) the competent inspection body has informed the customs authority that the lots concerned have been issued a conformity certificate, or
 - (c) the competent inspection body has informed the customs authority that it has not issued a conformity certificate for the lots concerned because they do not need to be checked in the light of the risk assessment referred to in Article 6(1).

This shall be without prejudice to any conformity checks the Member State may carry out pursuant to Article 6.

2. Paragraph 1 shall also apply to products subject to the general marketing standard set out in Part A of Annex I to Commission delegated regulation (EU) No xxx/2023 and products referred to in Article 5(1)(a)(i) of the same regulation if the Member State concerned considers it necessary in the light of the risk analysis referred to in Article 6(1).

Article 8

Certificate of conformity

1. Certificates of conformity (hereinafter referred to as ‘certificate’) may be issued by a competent authority to confirm that the products concerned conform to the relevant marketing standard. The certificate for use by competent authorities in the Union is set out in Annex II.

Instead of certificates issued by competent authorities in the Union, the third countries referred to in Article 9(4) may use their own certificates provided that they contain at least equivalent information to the Union certificate. The Commission shall make available specimens of such third country certificates on the Europa website.

2. The certificates may be issued either in paper format with original signature and stamp or in verified electronic format with electronic signature.
3. Each certificate shall be stamped and signed by the competent authority or electronically signed.

4. The certificate shall be issued in at least one of the official languages of the Union.
5. Each certificate shall bear a serial number, by which it can be identified. The competent authority shall retain a copy of each issued certificate..

SECTION 3

CONFORMITY CHECKS CARRIED OUT BY THIRD COUNTRIES

Article 9

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

1. At the request of a third country, the Commission may, in accordance with the procedure referred to in Article 223(2),(3) of Regulation (EU) No 1308/2013, approve checks on conformity to marketing standards carried out by that third country prior to import into the Union.
2. The approval referred to in paragraph 1 may be granted to third countries where the Union marketing standards, or at least equivalent standards, are met for products exported to the Union.

The approval shall specify the official authority in the third country under the responsibility of which checks referred to in paragraph 1 are carried out. That authority shall be responsible for contacts with the Union. The approval shall also specify the third country inspection bodies in charge of the proper checks.

The approval may only apply to products originating in the third country concerned and may be limited to certain products.

3. The third country inspection bodies shall be official bodies or bodies officially recognised by the authority referred to in paragraph 2 which provide satisfactory guarantees and dispose of the necessary personnel, equipment and facilities to carry out checks according to the methods referred to in Article 11(1) or equivalent methods.
4. The third countries where the conformity checks have been approved under this Article, and the products concerned, shall be set out in Annex III.

The Commission shall make available details of the official authorities and inspection bodies concerned on the Europa website.

Article 10

Suspension of approval of the conformity checks

The Commission may suspend approval of the conformity checks carried out by third countries if it is found that, in a significant number of lots and/or quantities, the goods do not correspond to the information in the certificates of conformity issued by the third country inspection bodies.

SECTION 4

METHODS OF INSPECTION

Article 11

Methods of inspection and rules on findings of non-conformity

1. The conformity checks provided for in this regulation, with the exception of those at the point of retail sale to the end consumer, shall be carried out in accordance with the methods of inspection laid down in Annex IV, save as otherwise provided in this Regulation.

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

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

Traders may decide to bring all or some of the goods into conformity.

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

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

Where the goods can neither be brought into conformity nor sent to animal feed, industrial processing or any other non-food use, the inspection body may, if necessary, request traders to take adequate measures in order to ensure that the products concerned are not marketed. Traders shall supply all information deemed necessary by Member States for the application of this paragraph.

Article 12

Notifications

1. A Member State where a consignment from another Member State is found not to conform with the marketing standards because of defects or deterioration which could have been detected at the time of packaging shall notify forthwith the Member States likely to be concerned where the goods were packaged.
2. A Member State where a lot of goods from a third country has been rejected from release into free circulation because of non-compliance with the marketing standards shall notify forthwith the Member States likely to be concerned and the third country concerned if listed in Annex III.
3. Member States shall notify the Commission and the other Member States of the summarised results of the inspections at all marketing stages in a given year by 30 June of the following year.
4. The notifications to the Commission provided for in paragraph 3 shall be made in accordance with Commission Delegated Regulation (EU) 2017/1183⁶.

TITLE III

GENERAL, TRANSITIONAL AND FINAL PROVISIONS

Article 13

Repeal

Commission Regulation (EU) No 543/2011, Commission Implementing Regulation (EU) No 1333/2011 and Commission Regulation (EC) No 1666/1999 are repealed.

Article 14

Transitional provisions

If appropriate

⁶ Commission Delegated Regulation (EU) 2017/1183 of 20 April 2017 on supplementing Regulations (EU) No 1307/2013 and (EU) No 1308/2013 of the European Parliament and the Council with regard to the notifications to the Commission of information and documents (OJ L 171, 4.7.2017, p. 100).

Article 15

Entry into force

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


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

Done at Brussels,

For the Commission
The President
[\[...\]](#)

ANNEX I

SPECIMEN MENTIONED IN ARTICLE 5

 The image shows the flag of the European Union, which consists of twelve five-pointed stars arranged in a circle.	<p>European Union marketing standard for fresh fruit and vegetables No (of the approved trader) (Member State)</p>
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ANNEX II

CERTIFICATE OF CONFORMITY WITH THE EUROPEAN UNION MARKETING STANDARDS FOR FRESH FRUIT AND VEGETABLES REFERRED TO IN ARTICLES 8 AND 11

1. Trader		Certificat of conformity with the European Union marketing standards applicable to fresh fruit and vegetables No (This certificate is exclusively for the use of inspection bodies)	
2. Packer identified on packaging (if other than trader)		3. Inspection body	
		4. Place of inspection/ country of origin ⁽⁷⁾	5. Region or country of destination
6. Identifier of means of transport		7. (Check at destination where appropriate for bananas) <input type="checkbox"/> internal <input type="checkbox"/> import <input type="checkbox"/> export	
8. Packages (number and type) - -	9. type of product (variety if the standard specifies)	10. Quality class	11. Total net weight in kg
12. The consignment referred to above conforms, at the issue time, with the European Union marketing standards in force. Custom office foreseen..... Place and date of issue Valid until (date):.....			

⁷ Where the goods are re-exported, indicate the origin in box 9.

Signatory (name in block letters): Signature Seal of the competent authority
13. Observations

ANNEX III

Third countries where the conformity checks have been approved under Article 15 and the products concerned referred in Article 9

Country	Products
Switzerland	Fresh fruit and vegetables
Morocco	Fresh fruit and vegetables
South Africa	Fresh fruit and vegetables
Israel (1)	Fresh fruit and vegetables
India	Fresh fruit and vegetables
New Zealand	Apples, pears and kiwi fruit
Senegal	Fresh fruit and vegetables
Kenya	Fresh fruit and vegetables
Türkiye	Fresh fruit and vegetables
United Kingdom: — Great Britain	Fresh fruit and vegetables

— Northern Ireland ⁽²⁾

⁽¹⁾ The Commission's approval under **Article 9** is given to fruit and vegetables originating within the State of Israel, excluding the territories under Israeli administration since June 1967, namely the Golan Heights, the Gaza Strip, East Jerusalem and the rest of the West Bank.

⁽²⁾ In accordance with Articles 6(3) and 7(1) of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community and Articles 5(4) and 13(1) of the Protocol on Ireland/Northern Ireland to that Agreement in conjunction with Annex 2 to that Protocol, for the purposes of this Regulation references to Member States include the United Kingdom in respect of Northern Ireland. However, in accordance with Article 7(3) of that Protocol, in respect of the recognition in one Member State of technical regulations, assessments, registrations, certificates, approvals and authorisations issued or carried out by the authorities of another Member State, or by a body established in another Member State, references to Member States in provisions of Union law made applicable by that Protocol are not to be read as including the United Kingdom in respect of Northern Ireland as regards technical regulations, assessments, registrations, certificates, approvals and authorisations issued or carried out by the authorities of the United Kingdom or by bodies established in the United Kingdom.

ANNEX IV

METHODS OF INSPECTION REFERRED TO IN ARTICLE 11(1)

The following methods of inspection are based on the provisions of the guide for the implementation of quality control of fresh fruit and vegetables adopted by the OECD Scheme for the Application of International Standards for Fruit and Vegetables.

1. DEFINITIONS

1.1. Package

Individually packaged part of a lot, including contents. The packaging is conceived so as to facilitate handling and transport of a number of sales packages or of products loose or arranged, in order to prevent damage by physical handling and transport. The package may constitute a sales package. Road, rail, ship and air containers are not considered as packages.

1.2. Sales package

Individually packaged part of a lot, including contents. The packaging of sales packages is conceived so as to constitute a sales unit to the final user or consumer at the point of purchase.

1.3. Pre-packages

Pre-packages are sales packages such as the packaging enclosing the foodstuff completely or only partially, but in such a way that the contents cannot be altered without opening or changing the packaging. Protective films covering single produce are not considered as a pre-package.

1.4. Consignment

Quantity of produce to be sold by a given trader found at the time of inspection and defined by a document. A consignment may consist of one or several types of produce; it may contain one or several lots of fresh, dry or dried fruit and vegetables.

1.5. Lot

Quantity of produce which, at the time of inspection at one place, has similar characteristics with regard to:

- packer and/or dispatcher,
- country of origin,
- nature of produce,
- class of produce,
- size (if the produce is graded according to size),
- variety or commercial type (according to the relevant provisions of the standard),
- type of packaging and presentation.

However, if during the conformity check of consignments as defined in point 1.4 it is difficult to distinguish between different lots and/or presentation of individual lots is not possible, all lots of a specific consignment may be treated as one lot if they are similar in regard to type of produce, dispatcher, country of origin, class and variety or commercial type, if this is provided for in the relevant marketing standard.

1.6. Sampling

Collective samples taken temporarily from a lot during conformity check.

1.7. Primary sample

Package taken at random from the lot, in case of packed produce or, in case of bulk produce (direct loading into a transport vehicle or compartment thereof), a quantity taken at random from a point in the lot.

1.8. Bulk sample

Several primary samples supposed to be representative for the lot so that the total quantity is sufficient to allow the assessment of the lot with regard to all criteria.

1.9. Secondary sample

An equal quantity of produce taken at random from the primary sample.

In the case of packed nuts, the secondary sample shall weigh between 300 g and 1 kg. If the primary sample is made up of packages containing sales packages, the secondary sample shall be one or more sales packages that in aggregate are at least 300 g.

In the case of other packed produce, the secondary sample shall comprise of 30 units, in case the net weight of the package is 25 kg or less and the package does not contain any sales packages. In certain cases this means that the whole content of the package has to be checked, if the primary sample contains not more than 30 units.

1.10. Composite sample (dry and dried produce only)

A composite sample is a mix, weighing at least 3 kg, of all the secondary samples taken from the bulk sample. Produce in the composite sample shall be evenly mixed.

1.11. Reduced sample

Quantity of produce taken at random from the bulk or composite sample having a size which is restricted to the minimum quantity necessary but sufficient to allow the assessment of certain individual criteria.

If the inspection method would destroy the produce, the size of the reduced sample shall not exceed 10 % of the bulk sample or, in the case of nuts in shell, 100 nuts taken from the composite sample. In the case of small dry or dried products (i.e. 100 g include more than 100 units) the reduced sample shall not exceed 300 g.

For the assessment of criteria on the degree of the development and/or ripeness, the constitution of the sampling shall be done according to the objective methods described in the Guidance on Objective Tests to Determine Quality of Fruit and Vegetables and Dry and Dried Produce.

Several reduced samples may be taken from a bulk or composite sample in order to check the conformity of the lot against different criteria.

2. IMPLEMENTATION OF CONFORMITY CHECK

2.1. General remark

A conformity check shall be made by assessing samples taken at random from different points in the lot to be controlled. It is based on the principle of presumption that the quality of the samples is representative of the quality of the lot.

2.2. Place of control

A conformity check may be carried out during packing operation, at the point of dispatch, during transport, at the point of reception, at whole sale and retail level.

In cases where the inspection body does not carry out the conformity check in their own premises, the holder shall provide facilities enabling the conduct of a conformity check.

2.3. Identification of lots and/or getting a general impression of the consignment

The identification of lots shall be carried out on the basis of their marking or other criteria, such as the indications laid down under Directive 2011/91/EU of the European Parliament and of the Council⁸. In the case of consignments which are made up of several lots it is necessary for the inspector to get a general impression of the consignment with the aid of accompanying documents or declarations concerning the consignments. The inspector shall then determine how far the lots presented comply with the information in these documents.

If the produce is to be or has been loaded onto a means of transport, the registration number of the latter shall be used for identification of the consignment.

2.4. Presentation of produce

The inspector shall decide which packages are to be checked. The presentation shall be made by the operator and shall include the presentation of the bulk sample as well as the supply of all information necessary for the identification of the consignment or lot.

If reduced or secondary samples are required, these shall be identified by the inspector from the bulk sample.

2.5. Physical check

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Assessment of packaging and presentation:

The packaging, including the material used within the package, shall be tested for suitability and cleanness according to the provisions of the relevant marketing standard. This shall be done on the basis of primary samples, in case of packed produce and in all other cases on the basis of the transport vehicle. If only certain types of packaging or presentation are permitted, the inspector shall check whether these are being used.

—

Verification of marking:

The inspector shall check whether the produce is marked according to the relevant marketing standard. This shall include a check on the accuracy of marking and/or the extent of any amendments required.

In case of packed produce, this check shall be carried out on the basis of the primary samples, in all other cases on the basis of the documents attached to the pallet or the transport vehicle.

Fruit and vegetables individually wrapped in plastic shall not be considered as pre-packed foodstuff in the meaning of European Parliament and Council Directive 2000/13/EC and shall not necessarily need to be marked in accordance with the marketing standards. In such cases, the plastic wrapping may be considered as a simple protection for fragile products.

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Verification of conformity of the produce:

The inspector shall determine the size of the bulk sample in such way as to be able to assess the lot. The inspector selects at random the packages to be inspected or in the case of bulk produce the points of the lot from which individual samples shall be taken.

Care shall be taken to ensure that the removal of samples does not adversely affect the quality of the produce.

Damaged packages shall not be used as part of the bulk sample. They shall be set aside and may, if necessary, be subject to a separate examination and report.

⁸ OJ L 334, 16.12.2011, p. 1–5

The bulk sample shall comprise the following minimum quantities whenever a lot is declared unsatisfactory or the risk of a produce not conforming to the marketing standard has to be examined:

Packed produce	
Number of packages in the lot	Number of packages to be taken (primary samples)
Up to 100	5
From 101 to 300	7
From 301 to 500	9
From 501 to 1 000	10
More than 1 000	15 (minimum)

Produce in bulk (direct loading into a transport vehicle or compartment thereof)	
Quantity of lot in kg or number of bundles in the lot	Quantity of primary samples in kg or number of bundles
Up to 200	10
From 201 to 500	20
From 501 to 1 000	30
From 1 001 to 5 000	60
More than 5 000	100 (minimum)

In the case of bulky fruit and vegetables (over 2 kg per unit), the primary samples shall be made up of at least five units. In the case of lots comprising fewer than 5 packages or weighing less than 10 kg, the check shall cover the entire lot.

If the inspector discovers, after an inspection, that a decision cannot be reached, another physical check shall be undertaken and the overall result reported as an average of the two checks.

2.6. Control of produce

In case of packed produce, the primary samples shall be used to check the general appearance of the produce, the presentation, the cleanliness of the packages and the labelling. In all other cases, these checks shall be done on basis of the lot or transport vehicle.

The produce shall be removed entirely from its packaging for the conformity check. The inspector may only dispense with this where the sampling is based on composite samples.

The inspection of uniformity, minimum requirements, quality classes and size shall be carried out on the basis of the bulk sample, or on the basis of the composite sample taking into account the explanatory brochures published by the OECD Scheme for the Application of International Standards for Fruit and Vegetables.

When defects are detected, the inspector shall ascertain the respective percentage of the produce not in conformity with the standard by number or weight.

External defects shall be checked on the basis of the bulk or composite sample. Certain criteria on the degree of development and/or ripeness or on the presence or absence of internal defects may be checked on the basis of reduced samples. The check based on the reduced sample applies in particular to checks which destroy the trade value of the produce.

The criteria on the degree of development and/or ripeness shall be checked using the instruments and methods laid down to this end in the relevant marketing standard or in accordance with the Guidance on Objective Tests to Determine Quality of Fruit and Vegetables and Dry and Dried Produce.

2.7. Report of control results

Documents mentioned in Article 14 shall be issued, where appropriate.

If defects are found leading to non-conformity, the trader or his representative shall be informed in writing about these defects and the percentage found as well as the reasons for non-conformity. If the compliance of produce with the standard is possible by a change in marking, the trader or his representative shall be informed.

If defects are found in a product, the percentage found not to be in conformity with the standard shall be indicated.

2.8. Decline in value by conformity check

After the conformity check, the bulk or composite sample is put at the disposal of the operator or his representative.

The inspection body shall not be bound to hand back the elements of the bulk or composite sample destroyed during the conformity check.