

COMMISSION DELEGATED REGULATION (EU) 2017/40**of 3 November 2016****supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to Union aid for the supply of fruit and vegetables, bananas and milk in educational establishments and amending Commission Delegated Regulation (EU) No 907/2014**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular Article 24 and Article 223(2) thereof,

Having regard to Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 ⁽²⁾, and in particular Articles 64(6)(a) and 106(5) thereof,

Whereas:

- (1) Section I of Chapter II of Title I of Part II of Regulation (EU) No 1308/2013 provides for two aid schemes intended to improve the distribution of agricultural products to children in educational establishments. The first scheme concerns the supply of fruit and vegetables, processed fruit and vegetables and banana products (school fruit and vegetables scheme) and the second concerns the supply of milk and milk products (school milk scheme). Those two schemes are replaced by one single scheme introduced by Regulation (EU) 2016/791 of the European Parliament and of the Council ⁽³⁾ with effect from the 2017/2018 school year. This single scheme provides for a new common framework for the Union aid for the supply of fruit and vegetables, processed fruit and vegetable products, fresh products of the banana sector ('school fruit and vegetables') and for the supply of milk and milk products ('school milk') to children in educational establishments (the 'school scheme'). Regulation (EU) No 1308/2013 as amended by Regulation (EU) 2016/791 also empowers the Commission to adopt delegated and implementing acts. In order to ensure the smooth functioning of the school scheme in accordance with the new framework, certain rules are to be adopted by means of such acts. Those acts should replace Commission Delegated Regulations (EU) No 1047/2014 ⁽⁴⁾ and (EU) 2016/247 ⁽⁵⁾, Commission Implementing Regulation (EU) 2016/248 ⁽⁶⁾ and Commission Regulation (EC) No 657/2008 ⁽⁷⁾. Those acts should therefore be repealed but they should continue to apply until the current school fruit and vegetables scheme and school milk scheme come to an end.
- (2) In accordance with Article 23(8) of Regulation (EU) No 1308/2013, as a condition for participating in the school scheme, Member States are to draw up a strategy at national or regional level for the implementation of the

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ OJ L 347, 20.12.2013, p. 549.

⁽³⁾ Regulation (EU) 2016/791 of the European Parliament and of the Council of 11 May 2016 amending Regulations (EU) No 1308/2013 and (EU) No 1306/2013 as regards the aid scheme for the supply of fruit and vegetables, bananas and milk in educational establishments (OJ L 135, 24.5.2016, p. 1).

⁽⁴⁾ Commission Delegated Regulation (EU) No 1047/2014 of 29 July 2014 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the national or regional strategy to be drawn up by Member States for the purpose of the school milk scheme (OJ L 291, 7.10.2014, p. 4).

⁽⁵⁾ Commission Delegated Regulation (EU) 2016/247 of 17 December 2015 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to Union aid for the supply and distribution of fruit and vegetables, processed fruit and vegetables and banana products within the framework of the school fruit and vegetables scheme (OJ L 46, 23.2.2016, p. 1).

⁽⁶⁾ Commission Implementing Regulation (EU) 2016/248 of 17 December 2015 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to Union aid for the supply and distribution of fruit and vegetables, processed fruit and vegetables and banana products within the framework of the school fruit and vegetables scheme and fixing the indicative allocation for that aid (OJ L 46, 23.2.2016, p. 8).

⁽⁷⁾ Commission Regulation (EC) No 657/2008 of 10 July 2008 laying down detailed rules for applying Council Regulation (EC) No 1234/2007 as regards Community aid for supplying milk and certain milk products to pupils in educational establishments (OJ L 183, 11.7.2008, p. 17).

school scheme prior to participation in the school scheme. A new strategy is to be drawn up every 6 years. Where Member States decide to implement the school scheme at regional level, they are to draw up a strategy for each region and provide for a coordination framework, according to their provisions or procedures. They are to establish a single contact point for the exchange of information with the Commission in order to facilitate the Commission in assessing the strategies and in monitoring and evaluating the implementation in the Member State concerned. It is also appropriate to establish provisions defining the deadlines by which the strategy and any consequent amendments are to be submitted to the Commission.

- (3) Specific conditions should be established for the design and application of the accompanying educational measures, in particular as regards the need to support distribution of products. The possibility that those measures could also involve teachers and parents should be allowed, with a view to enhancing the effectiveness of those measures and the overall effectiveness of the school scheme.
- (4) In the interest of legal certainty, it is appropriate to specify the costs incurred for the implementation of the school scheme that are eligible for Union aid.
- (5) In the interest of sound administration, budget management and supervision, the conditions for granting aid and for the selection and approval of aid applicants should be specified.
- (6) Specific conditions should be established for the suspension and withdrawal of approval and for the administrative penalties to be imposed on aid applicants that fail to comply with the obligations laid down under the school scheme.
- (7) In order to assess the effectiveness of the school scheme, to allow peer review and the exchange of good practices, Member States should monitor and evaluate the implementation of the school scheme on a regular basis and send their results to the Commission. For that purpose, the nature and the type of information in the monitoring reports should be specified. Furthermore, a failure by the Member States to comply with the monitoring and evaluation requirements may jeopardise the assessment of the effectiveness of the school scheme and the assurance on the correct management of Union aid. Provisions should therefore be established for a dissuasive reduction in aid to be applied by the Commission where a Member State is late in submitting the evaluation report.
- (8) With a view to an effective monitoring and evaluation of the school scheme, the nature and type of information to be notified to the Commission by the Member States should be specified.
- (9) In order to ensure that products distributed under the school scheme meet the objectives of promoting healthy eating habits and ensuring children become accustomed to the natural taste of those products, it is appropriate to specify that the maximum level of added sugar in products referred to in Article 23(4) of Regulation (EU) No 1308/2013, for which the addition of sugar is not technically necessary to prepare or manufacture them, should be zero.
- (10) In order to ensure that products distributed under the school scheme meet the objectives of promoting healthy eating habits, it is appropriate to specify the maximum level of added sugar and/or honey in products listed in Annex V to Regulation (EU) No 1308/2013 that Member States may allow. Member States may provide for lower limits.
- (11) Specific conditions should be established to ensure there is added value and visibility of the Union school scheme when products receiving Union aid under the school scheme are distributed with regular school meals in educational establishments.
- (12) In accordance with Article 23a(8) of Regulation (EU) No 1308/2013, Member States are to publicise their involvement in the school scheme and the fact that it is subsidised by the Union. For that purpose, Member States should be able to use a poster to be exhibited in participating educational establishments. The poster should be produced in compliance with certain minimum requirements.

- (13) Chapter V of Commission Delegated Regulation (EU) No 907/2014 ⁽¹⁾ lays down rules concerning the operative event for the exchange rate applicable for the amounts and payments of Union aid. It is therefore necessary to include rules as regards the aid linked to the implementation of the school scheme. Delegated Regulation (EU) No 907/2014 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL RULES ON THE SCHOOL SCHEME

Article 1

Scope and definitions

1. This Regulation lays down rules supplementing Regulation (EU) No 1308/2013 as regards Union aid for the supply and distribution of fruit and vegetables, processed fruit and vegetable products and fresh products of the banana sector ('school fruit and vegetables'), and for the supply and distribution of milk and milk products ('school milk') to children in educational establishments, for accompanying educational measures and for certain related costs in the framework of the scheme referred to under Article 23 of that Regulation ('the school scheme').
2. For the purposes of this Regulation, the definition of the school year laid down in Article 1(2) of Commission Implementing Regulation (EU) 2017/39 ⁽²⁾ shall apply.

Article 2

Member States' strategy

1. When drawing up the strategy referred to in Article 23(8) of Regulation (EU) No 1308/2013, Member States may choose the administrative level at which they wish to implement the school scheme. If a Member State decides to implement the school scheme at a regional level, it shall draw up a strategy for each region and an accompanying coordination framework at Member State level. The Member State shall establish a single contact point for the exchange of information with the Commission.
2. If a Member State does not make products under the school scheme available free of charge, it shall explain in its strategy the arrangements it has put in place to ensure that Union aid under the school scheme is reflected in the price at which those products are made available.
3. Member States wishing to participate in the school scheme shall notify the Commission of their strategy by 30 April preceding the first school year covered by the strategy. However, Member States shall notify the Commission of their strategy covering the 6-year period starting with the 2017/2018 school year by 1 August 2017.
4. A Member State may amend its strategy. The Member State shall notify the Commission of its amended strategy within 2 months of the amendment.

Article 3

Accompanying educational measures

1. The accompanying educational measures referred to in Article 23(10) of Regulation (EU) No 1308/2013 shall be directly linked to the objectives of the school scheme.

⁽¹⁾ Commission Delegated Regulation (EU) No 907/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro (OJ L 255, 28.8.2014, p. 18).

⁽²⁾ Commission Implementing Regulation (EU) 2017/39 of 3 November 2016 on rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to Union aid for the supply of fruit and vegetables, bananas and milk in educational establishments (see page 1 of this Official Journal).

2. Accompanying educational measures shall support the distribution of school fruit and vegetables and school milk and, in the event that they include agricultural products other than those referred to in Article 23(3), (4) and (5) of Regulation (EU) No 1308/2013, the measures shall provide for the tasting of those other products.
3. Accompanying educational measures may involve also parents and teachers.

Article 4

Eligible costs

1. The following costs are eligible for Union aid:
 - (a) the costs of the products supplied under the school scheme and distributed to children in educational establishments referred to in Article 22 of Regulation (EU) No 1308/2013, which may include the costs of purchasing, renting, hiring and leasing of equipment used in the supply and distribution of products, as provided for in the strategy of the Member State;
 - (b) the costs of accompanying educational measures, including:
 - (i) costs of organising tasting classes, setting up and maintaining school gardens, organising visits to farms and similar activities aimed at reconnecting children with agriculture;
 - (ii) costs of measures aimed at educating children about agriculture, healthy eating habits, local food chains, organic production, sustainable production, and combating food waste;
 - (c) the costs of publicity for the school scheme, which shall be directly aimed at informing the wider public about the school scheme, including:
 - (i) the cost of the poster referred to in Article 12 of this Regulation;
 - (ii) the cost of information campaigns by means of broadcasting, electronic communications, newspapers and similar means of communication;
 - (iii) the cost of information sessions, conferences, seminars and workshops dedicated to informing the wider public about the school scheme and similar events;
 - (iv) the cost of information and promotion material such as letters, leaflets, brochures, gadgets and similar;
 - (d) the costs of networking measures to exchange experiences and best practices on implementation of the school scheme;
 - (e) the costs relating to the obligation for Member States to monitor and evaluate the effectiveness of their school scheme;
 - (f) the costs of transport and distribution of the products supplied under the school scheme, insofar as they are not covered by point (a) of this paragraph.
2. The costs referred to in paragraph 1 shall not be financed under any other Union aid scheme, programme, measure or operation.
3. Value added tax (VAT) is not eligible for Union aid.
4. Expenditure relating to personnel costs is not eligible for Union aid if those personnel costs are financed from public funds of the Member State.

*Article 5***General conditions for the granting of aid and selection of aid applicants**

1. Aid granted to a Member State under the school scheme shall be distributed to those applicants for aid that have been approved by the competent authority of the Member State in accordance with Article 6 and whose application relates to the implementation of one or more of the following:
 - (a) the supply or distribution of products to children in educational establishments under the school scheme;
 - (b) accompanying educational measures;
 - (c) monitoring or evaluation actions;
 - (d) publicity.
2. Member States shall select aid applicants from among the following bodies:
 - (a) educational establishments;
 - (b) educational authorities;
 - (c) suppliers or distributors of products;
 - (d) organisations acting on behalf of one or more educational establishments or educational authorities that are specifically established for the purpose of management and provision of any of the activities referred to in paragraph 1;
 - (e) any other public or private body which is engaged in the management and provision of any of the activities referred to in paragraph 1.

*Article 6***Conditions for approval of aid applicants**

1. Aid applicants shall be approved by the competent authority of the Member State in which the educational establishment to which the products are supplied and/or distributed is located. Approval shall be subject to the following written commitments made by the applicants:
 - (a) to ensure the products financed by the Union under the school scheme are made available for consumption by the children in educational establishment or establishments in respect of which they will apply for aid;
 - (b) to use the aid allocated for accompanying educational measures, monitoring, evaluation, and publicity, in accordance with the objectives of the school scheme;
 - (c) to reimburse any aid unduly paid for the quantities concerned, if it has been found that the products have not been distributed to the children or are not eligible for Union aid;
 - (d) to reimburse any aid unduly paid for accompanying educational measures, monitoring, evaluation, publicity measures, if it has been found that those measures or activities have not been properly carried out;
 - (e) to make supporting documents available to the competent authority on request;
 - (f) to permit the competent authority to conduct any necessary checks, in particular the scrutiny of records and physical inspection.

Where applications for aid concern activities subject to public procurement procedures, Member States may consider approval as granted where the commitments set out at the first subparagraph are included in the conditions for participating in the public procurement procedures.

2. In the case of aid applications relating to the supply and/or distribution of products only, points (b) and (d) of paragraph 1 shall not apply. Applicants shall make an additional written commitment to keep a record of the names and addresses of the educational establishments or educational authorities in receipt of their products and a record of the quantities of the specific products sold or supplied.

3. In the case of aid applications relating to accompanying educational measures only, points (a) and (c) of paragraph 1 shall not apply. Competent authorities may specify any additional written commitments to be undertaken by applicants, in particular as regards:

(a) accompanying educational measures carried out in schools, when those schools are not aid applicants;

(b) accompanying educational measures that include the distribution of products.

4. In the case of aid applications relating to monitoring, evaluation and publicity only, points (a) and (c) of paragraph 1 shall not apply.

5. Member States may consider the approvals granted under the school fruit and vegetables scheme according to Delegated Regulation (EU) 2016/247 and/or under the school milk scheme according to Regulation (EC) No 657/2008 valid if the criteria and the conditions are not changed.

Article 7

Suspension and withdrawal of approval

1. If an approved aid applicant fails to comply with the obligations laid down under the school scheme, the competent authority shall suspend the approval of the applicant for a period of between 1 and 12 months or withdraw it, depending on the seriousness of the non-compliance and according to the principle of proportionality.

2. Suspension and withdrawal shall not be imposed in cases referred to in points (a) to (d) of Article 64(2) of Regulation (EU) No 1306/2013 or if the non-compliance was of a minor nature.

3. At the applicant's request and if the reasons for withdrawal have been remedied, the competent authority may restore the approval of the applicant for aid after a minimum period of 12 months from the date on which the reasons for withdrawal have been remedied.

Article 8

Administrative penalties

In cases of non-compliance with the obligations laid down under the school scheme, except those referred to in points (a) to (d) of Article 64(2) of Regulation (EU) No 1306/2013, the applicant shall, in addition to the recovery of unduly paid amounts, pay an administrative penalty equal to the difference between the amount initially claimed and the amount the applicant is entitled to.

Article 9

Monitoring and evaluation

1. Member States shall provide for appropriate structures and forms to ensure an annual monitoring of the implementation of the school scheme.

2. Member States shall evaluate the implementation of the school scheme in order to assess its effectiveness against its objectives.

3. The annual monitoring reports by Member States shall include information about the funds used for the supply and distribution of each of the product groups listed in Article 23(3), (4) and (5) of Regulation (EU) No 1308/2013 and for the accompanying educational measures, the number of educational establishments and children participating in the school scheme, the average portion size and the average price per portion, the frequency of delivery of products, the quantities of products supplied broken down by product groups and, if applicable, of products other than those listed in Article 23(3), (4) and (5) of Regulation (EU) No 1308/2013 that are included under the accompanying educational measures according to Article 23(7) of that Regulation, the types of communication and accompanying measures implemented, and the authorities and stakeholders involved in the design and implementation of the school scheme.

4. The annual control reports by Member States on the on-the-spot checks carried out and the related findings shall include information on the amount of aid claimed, paid and subject to on-the-spot checks, the reduction of aid after administrative checks, the reduction of aid due to late submission of applications, the amount of aid recovered following on-the-spot checks, and the administrative penalties applied.

5. Where a Member State does not submit to the Commission an evaluation report containing the results of the evaluation provided for in paragraph 2 of this Article by the time limits referred to in Article 8(2) of Implementing Regulation (EU) 2017/39, the amount of the next definitive allocation shall be reduced as follows:

- (a) by 5 % if the time limit is exceeded by 1 to 30 days;
- (b) by 10 % if the time limit is exceeded by 31 to 60 days.

Once the time limit is exceeded by more than 60 days, the definitive allocation shall be reduced by 1 % per additional day, calculated over the remaining balance.

Article 10

Maximum levels of added ingredients

1. The maximum level of added sugar which may be allowed by Member States under the second subparagraph of Article 23(6) in products referred to in Article 23(4) of Regulation (EU) No 1308/2013 is zero.
2. The maximum level of added sugar and/or honey which may be allowed by Member States pursuant to the second subparagraph of Article 23(6) of Regulation (EU) No 1308/2013 in products listed in Annex V to Regulation (EU) No 1308/2013 is 7 %. For the purpose of this paragraph, sugar shall mean the items listed under CN codes 1701 and 1702. The sugar added to the fruit shall be included in the maximum level of 7 % of added sugar.
3. Cheese may contain maximum 10 % of non-lactic ingredients.

Article 11

Distribution of products in conjunction with regular school meals

In duly justified cases where Member States consider it more effective for the achievement of the objectives of their strategy, they may allow schools to distribute products receiving Union aid under the school scheme in conjunction with regular school meals.

In such cases, Member States shall ensure that those products:

- (a) are not used in the preparation of the regular school meals;
- (b) are not used to replace products that are part of the regular school meals through the financial contribution from public and/or private entities;
- (c) remain at all times clearly recognisable as part of the school scheme, through suitable communication and publicity measures.

Paragraph (b) shall not apply where educational establishments distribute regular school meals free of charge.

*Article 12***Publicity**

For the purposes of Article 23a(8) of Regulation (EU) No 1308/2013, Member States may use a poster fulfilling the minimum requirements laid down in the Annex to this Regulation, which shall be permanently situated at a clearly visible place at the main entrance of the participating educational establishment.

CHAPTER II

AMENDMENTS, REPEALS AND FINAL PROVISIONS*Article 13***Amendments to Delegated Regulation (EU) No 907/2014**

In Delegated Regulation (EU) No 907/2014, the following Article is inserted:

'Article 32a

Amounts and payments of aid linked to implementation of the School scheme

For aid granted for the implementation of the school scheme referred to in Section I of Chapter II of Title I of Part II of Regulation (EU) No 1308/2013, the operative event for the exchange rate shall be 1 January preceding the school year concerned.'

*Article 14***Repeals**

Regulation (EC) No 657/2008, Delegated Regulations (EU) No 1047/2014 and (EU) 2016/247 and Implementing Regulation (EU) 2016/248 are repealed. However, those Regulations continue to apply to the school milk scheme and the school fruit and vegetables scheme for the school years prior to the 2017/2018 school year until those schemes come to an end.

*Article 15***Entry into force and application**

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

It shall apply to aid for the 2017/2018 school year and subsequent school years.

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

Done at Brussels, 3 November 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Minimum requirements for the poster referred to in Article 12

Poster size: A3 or bigger

Letters: 1 cm or bigger

Title: European Union 'School Scheme'

Content: At least the following wording:

Our [specify the type of educational establishment (e.g. nursery/pre-school/primary or secondary-level school)] participates in the European Union 'School Scheme' with the financial support of the European Union.

The poster shall bear the emblem of the Union.
