

## II

(Non-legislative acts)

## REGULATIONS

## 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**

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 <sup>(1)</sup>, and in particular Article 24 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 (EC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 <sup>(2)</sup>, and in particular Article 64(6)(a) thereof,

Whereas:

- (1) Regulation (EU) No 1308/2013 replaced Council Regulation (EC) No 1234/2007 <sup>(3)</sup> and lays down new rules regarding the school fruit and vegetables scheme ('the Scheme'). It also empowers the Commission to adopt delegated and implementing acts in that respect. In order to ensure the smooth functioning of the Scheme in the new legal framework, certain rules have to be adopted by means of such acts. Those acts should replace Commission Regulation (EC) No 288/2009 <sup>(4)</sup>, which should therefore be repealed.
- (2) The objective of the Scheme is to increase short and long-term fruit and vegetables consumption and to promote healthy eating habits.
- (3) In accordance with Article 23(2) of Regulation (EU) No 1308/2013, Member States wishing to participate in the Scheme, at national or regional level, are to draw up a prior strategy for its implementation and provide for the necessary accompanying measures. Where Member States decide to implement the Scheme at regional level, they should draw up a strategy for each region.
- (4) Pursuant to Article 5(2) of Council Regulation (EU) No 1370/2013 <sup>(5)</sup>, the Commission is to fix the indicative allocation of Union aid for the supply of fruit and vegetables, processed fruit and vegetables and banana products covered by the Scheme ('the products'). In order to maximise the full potential of available funds, it is appropriate

<sup>(1)</sup> OJ L 347, 20.12.2013, p. 671.

<sup>(2)</sup> OJ L 347, 20.12.2013, p. 549.

<sup>(3)</sup> Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ L 299, 16.11.2007, p. 1).

<sup>(4)</sup> Commission Regulation (EC) No 288/2009 of 7 April 2009 laying down detailed rules for applying Council Regulation (EC) No 1234/2007 as regards Community aid for supplying fruit and vegetables, processed fruit and vegetables and banana products to children in educational establishments, in the framework of a School Fruit Scheme (OJ L 94, 8.4.2009, p. 38).

<sup>(5)</sup> Council Regulation (EU) No 1370/2013 of 16 December 2013 determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products (OJ L 346, 20.12.2013, p. 12).

to provide for the reallocation of the unrequested Union aid between the participating Member States that have notified the Commission of their willingness to use more than their indicative allocation of Union aid.

- (5) Costs incurred for purchasing the products, as well as some related costs that are directly linked to the implementation of the Scheme, should be eligible for Union aid, if provided for in the Member State's strategy. However, in order to preserve the effectiveness of the Scheme, only a small percentage of aid should be allocated to those related costs. For financial management and control purposes, those costs should not exceed certain thresholds.
- (6) 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.
- (7) In order to assess the effectiveness of the Scheme, and to allow peer review and the exchange of best practices, Member States should monitor and evaluate the implementation of the Scheme on a regular basis and send their results and findings to the Commission.
- (8) Penalties should be determined in order to deter applicants from fraudulent behaviour and serious negligence.
- (9) In accordance with Article 23(10) of Regulation (EU) No 1308/2013, the public is to be sufficiently aware of the Union's financial contribution to the Scheme. For that purpose, the Member States should be able to use a poster that may be exhibited in participating educational establishments. That poster should be produced in compliance with certain minimum requirements,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

##### **Scope**

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 vegetables and banana products ('the products') to children and for certain related costs, in the framework of the school fruit and vegetables scheme referred to in Article 23 of that Regulation ('the Scheme').

#### *Article 2*

##### **Member States' strategy**

1. When drawing up their strategy as referred to in Article 23(2) of Regulation (EU) No 1308/2013, Member States may choose the geographical and administrative level at which they wish to implement the Scheme. If they decide to implement the Scheme at regional level, they shall draw up a strategy for each region.

A Member State which implements the Scheme at regional level shall establish a single contact point for information and notifications to the Commission.

The strategy may cover more than 1 school year within the meaning of Article 1(2) of Commission Implementing Regulation (EU) 2016/248 <sup>(1)</sup>.

2. The accompanying measures as referred to in Article 23(2) of Regulation (EU) No 1308/2013 shall support the distribution of the products and be directly linked to the objectives of the Scheme. Those measures may involve also parents and teachers.

3. Member States wishing to participate in the Scheme shall notify the Commission of their strategy by 31 January which precedes the start of the first school year covered by the strategy.

4. Where a Member State amends its strategy, it shall notify the Commission of its amended strategy by 31 January of the year following the amendment.

<sup>(1)</sup> 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 (see page 8 of this Official Journal).

*Article 3***Reallocation of Union aid**

1. Where Member States have not applied for Union aid by the deadline referred to in Article 3 of Implementing Regulation (EU) 2016/248, or have requested only part of their indicative allocation of aid as referred to in Article 23(5) of Regulation (EU) No 1308/2013 and fixed in the Annex to Implementing Regulation (EU) 2016/248, their indicative allocation or the unrequested part thereof shall be reallocated to those Member States which notified the Commission, by the same deadline, of their willingness to use more than their indicative allocation.
2. The reallocation shall be limited according to the level of use of the definitive allocation of Union aid by the Member State concerned for the school year that ended prior to the aid application. That level of use shall be established on the basis of the declarations of expenditure sent to the Commission by 15 October of the following school year in accordance with Article 10 of Commission Implementing Regulation (EU) No 908/2014 <sup>(1)</sup>.

The limits for reallocation shall be as follows:

- (a) when the use of the definitive allocation is below or equal to 50 %, no additional allocation shall be granted;
- (b) when the use of the definitive allocation is higher than 50 % but lower or equal to 75 %, the maximum additional allocation shall be capped at 50 % of the indicative allocation;
- (c) when the use of the definitive allocation is higher than 75 %, the maximum additional allocation shall not be capped.

Those limits shall not apply during the first 2 school years of implementation of the Scheme by a Member State.

*Article 4***Eligible costs**

1. The following costs are eligible for Union aid:
  - (a) the cost of the products supplied under the Scheme and distributed to children in educational establishments referred to in Article 22 of Regulation (EU) No 1308/2013, including 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 following related costs, which shall be directly linked to the implementation of the Scheme:
    - (i) costs relating to the monitoring and evaluation obligation of the Member State as referred to in Article 8 of this Regulation;
    - (ii) costs for publicity of the Scheme, which shall directly aim at informing the wider public about the Scheme, including:
      - the cost of the poster referred to in Article 10 of this Regulation,
      - the cost of information campaigns by means of broadcasting, electronic communications, newspapers and similar means of communication,
      - the cost of information sessions, conferences, seminars and workshops dedicated to informing the wider public about the Scheme and similar events,
      - the cost of information and promotion material such as letters, leaflets, brochures, gadgets and similar;
    - (iii) costs for accompanying measures referred to in Article 2(2) of this Regulation, including:
      - costs for organising tasting classes, setting up and maintenance of gardening sessions, organisation of farm visits and similar activities aimed at connecting children with agriculture,
      - costs for measures aimed at educating children about agriculture, healthy eating habits and environmental matters related to the production, distribution and consumption of the products.

<sup>(1)</sup> Commission Implementing Regulation (EU) No 908/2014 of 6 August 2014 laying down rules for the application of 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, rules on checks, securities and transparency (OJ L 255, 28.8.2014, p. 59).

2. Where the transport and distribution of the products are invoiced separately, such costs are only eligible for Union aid if they do not exceed 3 % of the costs of the products.

Where products are supplied free of charge to educational establishments, the costs of transport and distribution of those products may be eligible for Union aid, on the basis of invoices, subject to a ceiling to be set in the strategy of the Member State.

3. The costs for publicity and accompanying measures shall not be financed under other Union aid schemes.

4. Value added tax (VAT) and expenditure relating to personnel costs are not eligible for Union aid if those personnel costs are financed from public funds of the Member State.

5. The total amount of the eligible costs for publicity shall not exceed 5 % of the annual definitive allocation referred to in Article 23(5) of Regulation (EU) No 1308/2013 for each Member State concerned.

The total amount of the eligible costs for purchasing, renting, hiring and leasing of equipment and for monitoring and evaluation shall not exceed 10 % of the annual definitive allocation for each Member State concerned.

The total amount of the eligible costs for accompanying measures shall not exceed 15 % of the annual definitive allocation for each Member State concerned.

#### *Article 5*

##### **General conditions for granting the aid and selection of aid applicants**

1. Aid granted to a Member State under the Scheme shall be distributed to applicants which have submitted to the competent authority an aid application which relates to the implementation of one or more of the following:

- (a) the supply and/or distribution of products to children in educational establishments within the Scheme;
- (b) monitoring and evaluation actions;
- (c) publicity;
- (d) the accompanying measures.

Aid applications shall be lodged only by applicants which have been approved in accordance with Article 6.

2. Member States shall select aid applicants from among the following bodies:

- (a) educational establishments;
- (b) educational authorities;
- (c) suppliers and/or distributors of the products;
- (d) organisations acting on behalf of one or more educational establishments or educational authorities and specifically established for that purpose;
- (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 applicant:

- (a) to ensure the products financed by the Union under the Scheme are made available for consumption by the children in the educational establishments in respect of which they will apply for aid;

- (b) to use the aid allocated for monitoring and evaluation, publicity or accompanying measures in accordance with the objectives of the 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 measures, if it has been found that those measures have not been properly carried out;
  - (e) to make supporting documents available to the competent authority on request;
  - (f) to permit any check decided on by the competent authority, in particular the scrutiny of records and physical inspection.
2. In the case of aid applications relating to the supply and distribution of products, aid applicants shall make an additional written commitment to keep records of the names and addresses of the educational establishments or, where appropriate, educational authorities and of the products and quantities sold or supplied to those establishments or authorities.
3. In the case of aid applications relating to monitoring, evaluation or publicity, only points (b) and (e) of paragraph 1 shall apply.
4. In the case of aid applications relating to accompanying measures, only points (b), (d), (e) and (f) of paragraph 1 shall apply. In addition, the competent authority may specify any written commitments to be undertaken by the applicant, in particular as regards:
- (a) accompanying measures carried out in schools, when those schools are not aid applicants;
  - (b) accompanying measures that include the distribution of products.

#### *Article 7*

### **Suspension and withdrawal of approval**

If an approved aid applicant fails to comply with the obligations provided for in this Regulation, 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.

Such action shall not be taken 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.

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

#### *Article 8*

### **Monitoring and evaluation**

1. Member States shall provide for adequate structures and forms to ensure an annual monitoring of the implementation of the Scheme.
2. Member States shall evaluate the implementation of the Scheme in order to assess its effectiveness against its objectives.
3. 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 6(2) of Implementing Regulation (EU) 2016/248, 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 9*

#### **Penalties**

In case of irregular payments that are not due to obvious errors and in case of fraud or serious negligence for which the applicant is responsible, the applicant shall, in addition to the recovery of unduly paid amounts, pay an amount equal to the difference between the amount initially paid and the amount the applicant is entitled to.

*Article 10*

#### **Union ‘School Fruit and Vegetables Scheme’ poster**

For the purposes of Article 23(10) 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 and legible place at the main entrance of the participating educational establishments.

*Article 11*

#### **Repeal**

Regulation (EC) No 288/2009 is repealed.

*Article 12*

#### **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 school year 2016/2017 and subsequent school years.

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

Done at Brussels, 17 December 2015.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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## ANNEX

**Minimum requirements for the poster referred to in Article 10**

Poster size: A3 or bigger

Letters: 1 cm or bigger

Title: European Union 'School Fruit and Vegetables Scheme'

Content: At least the following wording:

'Our [specify the type of educational establishment (e.g. nursery/pre-school/school)] participates in the European Union "School Fruit and Vegetables Scheme" with the financial support of the European Union.'

The poster shall bear the emblem of the Union.

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