

COMMISSION DELEGATED REGULATION (EU) 2022/245**of 13 December 2021****amending Delegated Regulation (EU) 2017/40 as regards the accompanying educational measures and the selection and approval of aid applicants**

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(1), points (b) and (c), thereof,

Whereas:

- (1) Article 3 of Commission Delegated Regulation (EU) 2017/40 ⁽²⁾ establishes conditions for the design and application of the accompanying educational measures that Member States are to provide for pursuant to Article 23(10) of Regulation (EU) No 1308/2013. In the interest of legal certainty, it is appropriate to lay down a non-exhaustive list of activities that may be carried out as part of the accompanying educational measures under the school scheme, including where no Union aid is requested. It is also appropriate to clarify that, in order to make the school scheme effective, Member States should ensure that the accompanying educational measures that are provided for to support the distribution of school fruit and vegetables and school milk reach all children participating in the school scheme. Such requirement is without prejudice to the autonomy granted to the educational establishments within the Member States, according to the repartition of the competences and the strategy for implementation of the school scheme in the Member States concerned.
- (2) Article 5(2) of Delegated Regulation (EU) 2017/40 establishes the general conditions for the selection of aid applicants. When selecting aid applicants, Member States, acting at national, regional or local level, may be subject to Union or national public procurement rules. In the interest of legal certainty, it is appropriate to clarify that Member States should ensure compliance with applicable rules on public procurement.
- (3) Article 6 of Delegated Regulation (EU) 2017/40 specifies the conditions for the approval of aid applicants, laying down the written commitments that the applicants have to make. Paragraph 2 of that Article lays down an additional written commitment to be made in the case of aid applications relating only to the supply and/or distribution of products. However, such commitment is also pertinent if the aid applications combine the supply and/or distribution of products and the provision of educational measures. Paragraph 3 of that Article refers to aid applications relating to accompanying educational measures only. It indicates that competent authorities may specify any additional written commitments to be undertaken by aid applicants. However, this should be possible for all aid applicants. Therefore, Article 6 of that Regulation should be amended accordingly. In order to allow Member States sufficient time to adapt the procedures for the approval of aid applicants, it is appropriate to provide that the amendment to the conditions for the approval of aid applicants only applies from the 2022/2023 school year.
- (4) Delegated Regulation (EU) 2017/40 should therefore be amended accordingly,

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ 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 (OJ L 5, 10.1.2017, p. 11).

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) 2017/40 is amended as follows:

(1) in Article 3, paragraphs 1 and 2 are replaced by the following:

‘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 of increasing the consumption of selected agricultural products and shaping healthier diets.

They shall be aimed at reconnecting children with agriculture and the variety of Union agricultural products, particularly those produced in their region, and educating children about related issues, such as healthy eating habits and their implications for public health, national dietary recommendations, local food chains, organic farming, sustainable food production and consumption and combating food waste, and they may include activities such as:

- (a) visits to farms, network of orchards, producers’ organisations, dairy processing units, farmers’ markets, warehouse sorting and packaging of fruit and vegetables, agricultural museums and other similar activities;
- (b) setting up and maintenance of school gardens and orchards;
- (c) food preparation, cooking and tasting classes, workshops, laboratories and other similar activities;
- (d) lessons, seminars, conferences, workshops and other similar activities;
- (e) teaching materials, competitions, games, educational quizzes, themed days or weeks and other similar activities.

In the event that the accompanying educational measures 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.

2. Member States shall ensure that all children participating in the school scheme can take part in accompanying educational measures.

Where educational measures directly linked to the objectives of the school scheme are provided for in educational establishments as part of the regular school curriculum or other policies or programmes, Member States may decide to take them into account for the purpose of subparagraph 1.

The accompanying educational measures may be designed and implemented at national, regional, local or educational establishment level, according to the Member States’ repartition of competences and strategy for the implementation of the school scheme. Member States shall ensure that the educational establishments participating in the scheme are duly informed about the system in place for the accompanying educational measures and the available materials and tools.’

(2) in Article 5(2), the following subparagraph is added:

‘When selecting aid applicants, Member States shall ensure compliance with applicable law, including rules on public procurement.’;

(3) Article 6 is replaced by the following:

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 measures, in accordance with the objectives of the school scheme and, where accompanying educational measures concern health and nutrition topics, in accordance with national health advice and dietary recommendations for the age group concerned;
- (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, and 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;
- (g) 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, where the applicant is not an educational establishment.

Competent authorities may specify any additional written commitments to be undertaken by applicants.

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

2. In the case of applicants for aid relating to the supply and/or distribution of products only, paragraph 1, points (b) and (d) shall not apply.
3. In the case of applicants for aid relating to accompanying educational measures only, paragraph 1, points (a), (c) and (g) shall not apply.
4. In the case of applicants for aid relating to monitoring, evaluation and publicity measures only, paragraph 1, points (a), (c) and (g) 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 2

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

Article 1, point (3) shall apply to aid as from the 2022/2023 school year.

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

Done at Brussels, 13 December 2021.

For the Commission
The President
Ursula VON DER LEYEN