COMMISSION IMPLEMENTING REGULATION (EU) No 1208/2011

of 22 November 2011

amending and correcting Regulation (EC) No 288/2009 laying down detailed rules for applying Council Regulation (EC) No 1234/2007 as regards the 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

THE EUROPEAN COMMISSION,

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

Having regard to 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) [1], and in particular Article 103*h*(f) in conjunction with Article 4 thereof,

Whereas:

(1) In the light of the experience acquired in the management of the School Fruit Scheme established by Article 103*ga* of Regulation (EC) No 1234/2007 and in order to facilitate its implementation, it is necessary to clarify and simplify a number of provisions of Commission Regulation (EC) No 288/2009 [2].

(2) Article 103ga(2) of Regulation (EC) No 1234/2007 requires Member States to adopt the accompanying measures necessary to make their scheme effective. Accompanying measures do not benefit from Union aid for the School Fruit Scheme. It is therefore necessary to distinguish such measures with more precision from the communication measures which are eligible for Union aid.

(3) Article 5(1) of Regulation (EC) No 288/2009 provides for a list of costs which are eligible for Union aid. In order to ensure proper financial management and control of expenditure, it is necessary to set out more clearly which costs are eligible for Union aid. To ensure the effectiveness of the scheme, it is appropriate to provide that personnel costs should not benefit from Union aid, with the exception of certain personnel costs which are directly linked to the implementation of the scheme.

(4) Experience has shown that the detailed rules on aid applications and the payment of aid provided in Regulation (EC) No 288/2009 are difficult to apply in respect of entities that could execute monitoring, evaluation and communication tasks in the framework of the School Fruit Scheme when such entities are not involved in the delivery of products. Therefore, it is necessary to clarify the conditions under which aid should be granted in respect of monitoring, evaluation and communication activities.

(5) In order to limit the control requirements in respect of aid applicants that are solely responsible for dealing with monitoring, evaluation and communication tasks, rules on controls and checks should be simplified. By reason of the specific nature of those tasks, it is appropriate to exempt them from on-the-spot checks and to subject them only to full administrative checks.

(6) In the second sentence of Article 3(5) of Regulation (EC) No 288/2009, there is an inconsistency in the language versions as regards the implementation of the School Fruit Scheme by Member States. It should be clarified in some language versions that if Member States choose to implement more than one scheme, they have to draw up a strategy for each scheme.

(7) Regulation (EC) No 288/2009 should therefore be amended and corrected accordingly.

(8) For programming purposes and in order to ensure that the rules do not change during the applicable period, it is necessary to apply the amendments introduced by this Regulation from the beginning of the current implementation period of the School Fruit Scheme, i.e. 1 August 2011.

(9) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

Amendment of Regulation (EC) No 288/2009

Regulation (EC) No 288/2009 is amended as follows:

(1) In Article 3, paragraph 4 is replaced by the following:

'4. Member States shall describe in their strategy which accompanying measures they adopt in order to ensure the successful implementation of their scheme. Those

[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 94, 8.4.2009, p. 38.

measures shall be educational and shall focus on improving the target group's knowledge of the fruit and vegetable sector or healthy eating habits and may involve teachers and parents.'.

(2) Article 5 is amended as follows:

(a) Paragraph 1 is amended as follows:

(i) the first subparagraph is replaced by the following:

'The following costs are eligible for the Union aid provided for in Article 103ga of Regulation (EC) No 1234/2007:

(a) costs for fruits and vegetables, processed fruit and vegetables and banana products covered by the School Fruit Scheme and delivered to an educational establishment;

(b) related costs, which are costs that are directly linked to the implementation of a School Fruit Scheme and shall only include:

(i) costs for purchasing, renting, hiring and leasing of equipment, if provided for in the strategy;

(ii) costs for the monitoring and evaluation activities referred to in Article 12, which shall be directly linked to the School Fruit Scheme;

(iii) costs for communication, which shall be directly linked to informing the wider public about the School Fruit Scheme and which shall include the poster referred to in Article 14(1); those costs may also include one or more of the following communication measures and activities:

— information campaigns by means of broadcasting, electronic communications, newspapers and similar communication means;

— information sessions, conferences, seminars and workshops dedicated to informing the wider public about the scheme and similar events;

— information and promotion material such as letters, leaflets, brochures, gadgets and similar.';

(ii) the following new subparagraph is added:

'Value added tax (VAT) and expenditure relating to personnel costs are not eligible for the Union aid provided for in Article 103ga of Regulation (EC) No 1234/2007, with the exception of personnel costs that form part of the costs related to the activities referred to in the first subparagraph of this paragraph, where those activities have been outsourced.'

(b) Paragraph 2 is replaced by the following:

'2. The total amount for costs under point (b)(iii) of the first subparagraph of paragraph 1 shall represent a fixed amount and be subject to a ceiling not exceeding 5% of the annual amount of the Union aid allocated to the Member State concerned, following the definitive allocation referred to in Article 4(4).

The total amount for costs under points (b)(i) and (ii) of the first subparagraph of paragraph 1 shall not exceed 10% of the annual amount of the Union aid allocated to the Member State concerned, following the definitive allocation referred to in Article 4(4).'.

(3) Article 7 is replaced by the following:

'*Article 7*

Conditions for approval of aid applicants

1. The competent authority shall make the approval of aid applicants conditional on the following written commitments by the applicant:

(a) to use products financed under a School Fruit Scheme complying with this Regulation for consumption by the children of its educational establishment or of the establishments in respect of which it will apply for aid;

(b) to use the aid for monitoring and evaluation of the School Fruit Scheme or for communication in accordance with purpose of the Scheme;

(c) to reimburse any aid unduly paid for the quantities concerned, if it has been found that these products have not been distributed to the children referred to in Article 2 or have been paid for products that are not eligible under this Regulation;

(d) in case of fraud or serious negligence, to pay an amount equal to the difference between the amount initially paid and the amount to which the applicant is entitled;

(e) to make supporting documents available to the competent authorities at their request;

(f) to undergo any check decided on by the competent authority of the Member State, in particular the scrutiny of records and physical inspection.

2. In the case of aid applicants referred to in point (e)(ii) of Article 6(2), only points (b), (d) and (e) of paragraph 1 of this Article shall apply.

3. Aid applicants referred to in points (c), (d) and (e)(i) of Article 6(2) shall make an additional written commitment to keep records of the names and addresses of the educational establishments or, where appropriate, educational authorities and the products and quantities sold or supplied to these establishments or authorities.

4. Member States may require additional written commitments by the applicant.'.

(4) Article 8 is deleted.

(5) Article 10 is amended as follows:

(a) Paragraph 1 is replaced by the following:

'1. Aid applications shall be made in a manner which shall be specified by the competent authority of the Member State.

Aid applications lodged by the applicants referred to in points (a) to (d) and in point (e)(i) of Article 6(2) shall include at least the following information:

(a) the quantities distributed;

(b) the name and address or identification number of the educational establishment or educational authority to which the information referred to in point (a) of this paragraph relates;

(c) the number of children in the respective educational establishment of the target group as identified in the strategy of the Member State;

(d) the supporting documents to be defined by the Member States.';

(b) In paragraph 3, the following sentence is added:

'In the case of aid applications for the evaluation report carried out in accordance with Article 12, the deadline shall be the last day of the first month following the end of the evaluation deadline referred to in Article 12(2).'

(c) In paragraph 4, the first sentence is replaced by the following:

'The amounts claimed in the application shall be supported by documentary evidence held available to the competent authorities.'.

(6) Article 11 is amended as follows:

(a) In paragraph 1, the introductory phrase is replaced by the following:

'As regards aid applicants referred to in points (a) to (d) and in point (e)(i) of Article 6(2), aid shall only be paid:';

(b) The following new paragraph 1a is inserted:

'1a. As regards aid applicants referred to in point (e)(ii) of Article 6(2), aid shall only be paid upon the delivery of the goods or services concerned and upon submission of related documentary evidence as required by the competent authorities of the Member States.';

(c) In paragraph 3, the second subparagraph is replaced by following:

'Once the time limit referred to in Article 10(3) is overrun by two months, the aid shall be further reduced by 1% per additional day.'.

(7) In Article 12, paragraph 2 is replaced by the following:

'2. Member States shall evaluate the implementation of their School Fruit Scheme and assess its effectiveness. For the implementation period running from 1 August 2010 to 31 July 2011, Member States shall notify the Commission of the results of their evaluation exercise by 29 February 2012. For subsequent implementation periods, Member States shall, by the end of February of every fifth year following 29 February 2012, submit to the Commission an evaluation report covering the preceding five-year implementation period.'.

(8) Article 13 is amended as follows:

(a) Paragraphs 1 and 2 are replaced by the following:

'1. Member States shall take all necessary measures to ensure compliance with this Regulation. These measures shall include full administrative checking of all aid applications.

2. In cases where an aid applicant referred to in points (a) to (d) and in point (e)(i) of Article 6(2) applies for the aid, the administrative checks shall include checking of supporting documents as defined by Member States, relating to product delivery. The administrative checks shall be supplemented by on-the-spot checks carried out in particular on:

(a) the records referred to in Article 7, including financial records such as purchase and sales invoices and bank extracts;

(b) use of the subsidised products in accordance with this Regulation, particularly if there are grounds for suspecting any irregularity.';

(b) The following new paragraph 2a is inserted:

'2a. In cases where an applicant referred to in point (e)(ii) of Article 6(2) applies for the aid, the administrative checks shall include checking of the delivery of the goods and services and the veracity of the claimed expenditure.';

(c) In paragraph 3, the first subparagraph is replaced by following:

'The total number of on-the-spot checks carried out in respect of each period running from 1 August to 31 July shall cover at least 5% of the aid distributed at national level and at least 5% of all the applicants referred to in points (a) to (d) and in point (e)(i) of Article 6(2).';

(d) In the first sentence of paragraph 6, the reference to point (e) is replaced by the reference to point (e)(i) of Article 6(2).

(9) Article 14 is amended as follows:

(a) Paragraph 2 is replaced by the following:

'2. Where Member States decide not to make use of the poster referred to in paragraph 1, they shall clearly explain in their strategy how they will inform the public about the European Union's financial contribution to their scheme.';

(b) The following new paragraph 2a is inserted:

'2a. Websites or any other instrument of communication referred to in point (b)(iii) of Article 5(1) on a Member State's School Fruit Scheme shall in any event exhibit the European flag and mention the European 'School Fruit Scheme' and the financial support of the European Union.'.

(10) In the second subparagraph of Article 15(1), points (a) and (b) are replaced by the following:

'(a) the results of the monitoring exercise, as provided for in Article 12(1) to e-mail AGRI-HORT-SCHOOLFRUIT@ec.europa.eu;

(b) the details and findings of the on-the-spot checks carried out pursuant to Articles 13 and 16 to e-mail AGRI-J2@ec.europa.eu.'.

Article 2

Correction of Regulation (EC) No 288/2009

In Article 3(5) the second sentence is replaced by the following:

"If they choose to implement more than one scheme, they shall draw up a strategy for each scheme."

Article 3

Entry into force and application

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

It shall apply from 1 August 2011.

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

Done at Brussels, 22 November 2011.

For the Commission
The President
José Manuel BARROSO