

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2018/1145

of 7 June 2018

amending Delegated Regulation (EU) 2017/891 as regards producer organisations in the fruit and vegetables sector

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 37 thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2017/891 ⁽²⁾ supplements Regulation (EU) No 1308/2013 with regard to the fruit and vegetables and processed fruit and vegetables sectors. Regulation (EU) 2017/2393 of the European Parliament and of the Council ⁽³⁾ has amended Regulation (EU) No 1308/2013 in particular as regards the aid to the producer organisations in the fruit and vegetables sector. Therefore, Delegated Regulation (EU) 2017/891 should reflect the amendments to the relevant provisions of Regulation (EU) No 1308/2013.
- (2) Provisions on national financial assistance in the fruit and vegetables sector should be updated.
- (3) Provisions concerning the cases in which producer members of a producer organisation should be allowed to sell a certain percentage of their products outside the producer organisation where the producer organisation so authorises in its statutes and where this is in compliance with the terms and conditions of the Member State need to be clarified. The threshold of the sales outside the producer organisation needs to be clarified.
- (4) New measures on coaching between producer organisations and on replenishment of mutual funds in operational programmes should be eligible for Union financial assistance.
- (5) Member States may continue to provide national financial assistance from national budget to producer organisations in regions of the Union where the organisation degree is particularly low. Consequently, conditions under which national financial assistance may be granted in the fruit and vegetables sector as well as the method of calculation of the degree of organisation referred to in Article 34(3) of Regulation (EU) No 1308/2013 should be laid down to avoid distortions of the internal market in the Union.

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ Commission Delegated Regulation (EU) 2017/891 of 13 March 2017 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the fruit and vegetables and processed fruit and vegetables sectors and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to penalties to be applied in those sectors and amending Commission Implementing Regulation (EU) No 543/2011 (OJ L 138, 25.5.2017, p. 4).

⁽³⁾ Regulation (EU) 2017/2393 of the European Parliament and of the Council of 13 December 2017 amending Regulations (EU) No 1305/2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), (EU) No 1306/2013 on the financing, management and monitoring of the common agricultural policy, (EU) No 1307/2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy, (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products and (EU) No 652/2014 laying down provisions for the management of expenditure relating to the food chain, animal health and animal welfare, and relating to plant health and plant reproductive material (OJ L 350, 29.12.2017, p. 15).

- (6) Provisions concerning eligibility of certain investments for Union financial assistance need to be clarified.
- (7) Eligible and non-eligible actions related to promotion and communication, including actions and activities aimed at diversification and consolidation on the fruit and vegetable markets, whether for prevention of a crisis or during a crisis period, need to be clarified as regards the eligibility of actions and activities for Union financial assistance.
- (8) Provisions relating to the annual reports on producer organisations, associations of producers organisations, including transnational associations of producer organisations, and producer groups, and on operational funds, operational programmes and recognition plans should be simplified. They need to enable the Commission to adequately monitor the sector.
- (9) Delegated Regulation (EU) 2017/891 should therefore be amended accordingly.
- (10) Transitional provisions should be laid down to ensure a smooth transition from the existing requirements, measures and actions laid down in Delegated Regulation (EU) 2017/891 to the new ones provided for in this Regulation.
- (11) This Regulation should apply from the same date as Regulation (EU) 2017/2393. However, the provisions concerning national financial assistance, indicators and monitoring should apply from 1 January 2019 to allow Member States and economic operators time to adapt to the new rules,
- (12) The conditions for the application of the new measures and actions eligible for Union financial assistance set out in Regulation (EU) No 1308/2013 should apply from the date of application of the amendments to that Regulation introduced by Regulation (EU) 2017/2393 to ensure market stability for producer organisations and their members, in particular given that those measures concern mainly crisis management and prevention and to enable them to fully benefit from the new measures. To safeguard legitimate expectations, producer organisations may choose to continue the ongoing operational programmes under the rules applicable at the time of the approval of the programmes or to modify their operational programmes to benefit from the new measures and actions eligible for Union financial assistance, as set out in Regulation (EU) No 1308/2013,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2017/891

Delegated Regulation (EU) 2017/891 is amended as follows:

- (1) Article 2(e) is replaced as follows:

‘(e) “transnational association of producer organisations” means any association of producer organisations in which at least one of the associated organisations or associations is located in a Member State other than where the association has its head office;’;

- (2) Article 12 is replaced as follows:

‘*Article 12*

Marketing of the production outside the producer organisation

1. Where the producer organisation so authorises in its statutes and where this is in compliance with the terms and conditions laid down by the Member State and the producer organisation, the producer members may:

- (a) sell products directly or outside their holdings to consumers for their personal needs;
- (b) market by themselves or through another producer organisation designated by their own producer organisation, quantities of products which, in terms of volume or value, are marginal compared to the volume or value of marketable production of their organisation of the products concerned;
- (c) market by themselves or through another producer organisation designated by their own producer organisation, products which because of their characteristics or because of the limited production in volume or in value of the producer members, are normally not covered by the commercial activities of the producer organisation.

2. The percentage of the production that the producer members market outside the producer organisation, as referred to in paragraph 1 shall not exceed 25 % in volume or in value of the marketable production of each producer member.

However, Member States may set a lower percentage of the production that the producer members may market outside the producer organisation than the one set out in the first subparagraph. Member States may increase that percentage up to 40 % in case of products covered by Council Regulation (EC) No 834/2007 (*) or where producer members market their production through another producer organisation designated by their own producer organisation.

(*) Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 (OJ L 189, 20.7.2007, p. 1).;

(3) in Article 22, paragraph 10 is replaced as follows:

'10. Where a reduction in production occurs due to a natural disaster, climatic event, animal or plant diseases or pest infestations, any insurance indemnification received in respect of harvest insurance actions covered by Section 7 of Chapter III, or equivalent actions managed by the producer organisation or its producer members, due to those causes may be included in the value of marketed production.;

(4) in Article 30, paragraph 2 is replaced by the following:

'2. Producer organisations or associations of producer organisations which have been granted the support provided in Article 27 of Regulation (EU) No 1305/2013 or Article 19 of Commission Regulation (EU) No 702/2014 (*) may implement an operational programme in the same period provided that the Member State concerned ensures that the beneficiaries receive support for any given action only under one scheme.

(*) Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 193, 1.7.2014, p. 1).;

(5) in the first subparagraph of Article 31(6), the first sentence is replaced by the following:

'Investments, including those under leasing contracts, may be financed through the operational fund in one amount or in instalments that were approved in the operational programme.;

(6) in Chapter III of Title II, Section 3 is replaced by the following:

'Section 3

Support related to mutual funds

Article 40

Support related to mutual funds

1. Member States shall adopt detailed provisions concerning support for the administrative cost of setting up mutual funds and the replenishment of mutual funds, as referred to in point (d) of the first subparagraph of Article 33(3) of Regulation (EU) No 1308/2013.

2. The support for the administrative cost of setting up mutual funds referred to in paragraph 1 shall comprise both the Union financial assistance and the contribution from the producer organisation. The total amount of that support shall not exceed 5 %, 4 % or 2 % of the contribution of the producer organisation to the mutual fund in the first, second and third year of its operation, respectively.

3. A producer organisation may receive the support for the administrative cost of setting up mutual funds referred to in paragraph 1, only once and only within the three first years of the operation of the mutual fund. Where a producer organisation only asks for that support in the second or the third year of operation of the mutual funds, the support shall be 4 % or 2 % of the contribution of the producer organisation to the mutual fund in the second and third year of its operation, respectively.

4. Member States may fix ceilings for the amounts that may be received by a producer organisation as a support related to mutual funds.;

(7) in Chapter III of Title II, the following Section 8 is added:

‘Section 8

Support related to coaching

Article 51a

Implementation of coaching measures

1. For the purposes of Article 33(3)(i) of Regulation (EU) No 1308/2013, the following coaching measures shall be eligible for support:

- (a) exchange of best practices related to crisis prevention and management measures referred to in Article 33(3) of Regulation (EU) No 1308/2013, helping recognised producer organisations, producer groups or individual producers to benefit from experience with implementation of crisis prevention and management measures;
- (b) promoting the setting-up of new producer organisations, merging existing ones or enabling individual producers to join an existing producer organisation;
- (c) creating networking opportunities for coaching providers and recipients, to strengthen in particular marketing channels as a means of crisis prevention and management.

2. The coaching provider shall be the association of producer organisations or the producer organisation. The coaching provider shall be the beneficiary of the support for coaching measures.

3. The coaching recipient shall be a recognised producer organisation or a producer group located in regions with an organisation rate lower than 20 %, for the three consecutive years preceding the implementation of the operational programme.

Individual producers, non-members of a producer organisation or their associations, may be coaching recipients even if they are located in regions with organisation rate above 20 %.

4. The expenditure related to coaching shall be part of the crisis prevention and management measures of the operational programme referred to in Article 33(3) of Regulation (EU) No 1308/2013.

Eligible costs related to coaching are listed in Annex III to this Regulation.

All costs identified in Annex III shall be paid to the coaching provider.

5. Coaching measures shall not be outsourced.’;

(8) Article 52 is replaced by the following:

‘Article 52

Conditions for the application of national financial assistance

1. For the purposes of Article 35(1) of Regulation (EU) No 1308/2013, the degree of organisation of producers in a region of a Member State shall be calculated on the basis of the value of fruit and vegetables produced in the region concerned and marketed by:

- (a) recognised producer organisations and associations of producer organisations; and
- (b) producer groups recognised in accordance with Article 125e of Regulation (EC) No 1234/2007 or producer organisations and producer groups recognised in accordance with Article 27 of Regulation (EU) No 1305/2013.

For the purpose of the calculation, the value established as referred to in the first subparagraph shall be divided by the total value of the fruit and vegetables produced in that region.

2. The value of fruit and vegetables produced in the region concerned and marketed by the organisations, associations and groups referred to in points (a) and (b) of the first subparagraph of paragraph 1 shall only include those products for which those organisations, associations and groups are recognised. Article 22 shall apply *mutatis mutandis*.

For the calculation of the total value of the fruit and vegetables produced in that region, the methodology set out in Annex I to Regulation (EC) No 138/2004 of the European Parliament and of the Council (*) shall apply *mutatis mutandis*.

3. Only fruit and vegetables produced in the region referred to in paragraph 4 shall benefit from national financial assistance.

4. Member States shall define the regions as a distinct part of their territory in accordance with objective and non-discriminatory criteria, such as their agronomic and economic characteristics and their regional agricultural/fruit and vegetable potential, or their institutional or administrative structure and for which data are available in order to calculate the degree of organisation referred to in paragraph 1.

The regions defined by a Member State shall not be amended at least for five years unless such amendment is objectively justified, in particular for reasons that are not related to the calculation of the degree of organisation of producers in the region or regions concerned.

5. Before granting national financial assistance, Member States shall notify the Commission of the list of the region(s) that meet the criteria referred to in paragraphs (1) and (2) of Article 35 of Regulation (EU) No 1308/2013, and of the amount of national financial assistance to be granted to the producer organisations in those regions.

Member States shall notify the Commission of any amendment of the region(s) that meet the criteria referred to in paragraphs (1) and (2) of Article 35 of Regulation (EU) No 1308/2013.

(*) Regulation (EC) No 138/2004 of the European Parliament and of the Council of 5 December 2003 on the economic accounts for agriculture in the Community (OJ L 33, 5.2.2004, p. 1).;

(9) Article 56 is replaced by the following:

'Article 56

Indicators

1. The operational programmes and the national strategies shall be subject to monitoring and evaluation aimed at assessing the progress made in achieving the objectives set in the operational programmes, as well as their efficiency and the effectiveness in relation to those objectives.

2. Progress, efficiency and effectiveness referred to in paragraph 1 shall be assessed throughout the implementation of the operational programme on the basis of indicators, set out in Section 4 of Annex II to Implementing Regulation (EU) 2017/892, relating to actions and measures implemented by recognised producer organisations, associations of producer organisations, transnational associations of producer organisations and producer groups during the operational programmes.;

(10) Article 57 is modified as follows:

(a) in paragraph (2), point (c) is replaced by the following:

'(c) provide information for reporting requirements.'

(b) paragraph (3) is amended as follows:

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

'The evaluation exercise shall examine the progress made in relation to the overall objectives of the programme, based on indicators set out in Section 4 of Annex II to Implementing Regulation (EU) 2017/892';

(ii) the last subparagraph is replaced by the following:

'The evaluation report shall be attached to the corresponding annual report referred to in Article 21 of the Implementing Regulation (EU) 2017/892.';

(11) Annex II, III and V are amended in accordance with the Annex to this Regulation.

Article 2

Transitional provisions

Without prejudice to Article 34 of Commission Implementing Regulation (EU) 2017/891, an operational programme approved under Commission Implementing Regulation (EU) No 543/2011 ⁽¹⁾ or Delegated Regulation (EU) 2017/891 before 20 January 2018 shall continue to operate until its end under the conditions applicable before 1 January 2018.

⁽¹⁾ Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors (OJ L 157, 15.6.2011, p. 1).

However, at the request of a producer organisation or association of producer organisations, Member States may approve amendments of operational programme approved under Implementing Regulation (EU) No 543/2011 or Delegated Regulation (EU) 2017/891 before 20 January 2018. Those amendments shall comply with the requirements of Regulation (EU) No 1308/2013 as amended by Regulation (EU) 2017/2393, of Delegated Regulation (EU) 2017/891 as amended by Article 1 of this Regulation and of Implementing Regulation (EU) 2017/892 as amended by Implementing Regulation (EU) 2018/1146 ⁽¹⁾.

Article 3

Entry into force and application

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

It shall apply from 1 January 2018.

However, points (8), (9) and (10) of Article 1 and point (3) of the Annex shall apply from 1 January 2019.

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

Done at Brussels, 7 June 2018.

For the Commission
The President
Jean-Claude JUNCKER

⁽¹⁾ Commission Implementing Regulation (EU) 2018/1146 of 7 June 2018 amending Implementing Regulation (EU) 2017/892 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the fruit and vegetables and processed fruit and vegetables sectors and Regulation (EC) No 606/2009 laying down certain detailed rules for implementing Council Regulation (EC) No 479/2008 as regards the categories of grapevine products, oenological practices and the applicable restrictions (see page 9 of this Official Journal).

ANNEX

The Annexes to Delegated Regulation (EU) 2017/891 are amended as follows:

(1) Annex II is amended as follows:

(a) point 20 is replaced as follows:

‘20. Measures outsourced by the producer organisation or their associations outside the Union, except where a promotion is implemented outside the Union according to Article 14 of Implementing Regulation (EU) 2017/892.’;

(b) the following new point 21 is added:

‘21. Export credit linked to actions and activities aimed at diversification and consolidation on the fruit and vegetable markets, whether for prevention or during a crisis period.’;

(2) in Annex III, the following new points 12, 13 and 14 are added:

‘12. Costs related to coaching as part of the crisis prevention and management measures of the operational programme.

Eligible costs under this measure shall be:

(a) costs of organising and delivering coaching; and

(b) costs of travel, accommodation and *per diem* expenses of coaching provider.

13. Costs related to the negotiation and to implementation and management of third country phytosanitary protocols in the territory of the Union if borne by the producer organisation or association of producer organisations as a part of crisis prevention and management measures referred to in Article 33(3)(a) and (c) of Regulation (EU) No 1308/2013, except for reimbursement of third country expenses.

14. Costs related to promotion and communication measures referred to in Article 14 of Implementing Regulation (EU) 2017/892. Eligible costs under these measures shall be costs related to the organisation and participation in promotion and information events, including public relations work, promotion and information campaigns and may take the form of participation in events, fairs and exhibitions of national, European and international importance. Costs related to technical advisory services are eligible if they are necessary for the organisation or participation of these events or for promotion and information campaigns.’;

(3) Annex V is replaced by the following:

‘ANNEX V

Information to be included in the annual report of Member States as referred to in Article 54(b)

All information shall relate to the calendar year being reported on. It shall cover information on checks executed and administrative penalties applied in respect of that. As regards the information that varies during the year the annual report should reflect the state of play on 31 December of the year reported on.

PART A — INFORMATION FOR MARKET MANAGEMENT

1. Administrative information:

(a) changes to national legislation adopted in order to implement Section 3 of Chapter II of Title I and Sections 1, 2 and 3 of Chapter III of Title II of Regulation (EU) No 1308/2013;

(b) changes relating to the national strategy for sustainable operational programmes applicable to operational programmes.

2. Information related to producer organisations, associations of producer organisations, transnational associations of producer organisations, and producer groups:

(a) total number of recognised/suspended producer organisations, associations of producer organisations, transnational associations of producer organisations, and producer groups. In addition:

(i) for associations of producer organisations: number of producer organisations members;

(ii) for transnational associations of producer organisations: number of producer organisations members and the Member States where these members have their head office;

- (b) total number of producer organisations, associations of producer organisations, transnational associations of producer organisations, and producer groups for which recognition was withdrawn. In addition for transnational associations of producer organisations: number of organisations members and the Member States where these members have their head office;
 - (c) total number of mergers between organisations (broken down between total, number of new organisation(s) and new ID number(s));
 - (d) number of members (total and broken down between legal entities, natural persons and fruit and vegetables producers);
 - (e) total number of organisations/groups with an operational programme/recognition plan (broken down between recognised, suspended and subject to a merger);
 - (f) part of the production of products intended for the fresh market (with the indication of their value and volume);
 - (g) part of the production of products intended for processing (with the indication of their value and volume);
 - (h) area under fruit and vegetable production.
3. Information related to expenditures:
- (a) expenditures related to producer organisations, associations of producer organisations and transnational associations of producer organisations (broken down between operational fund, final operational fund and national financial assistance);
 - (b) total actual expenditures of operational programmes for producer organisations, associations of producer organisations and transnational associations of producer organisations (broken down between actions and measures linked to their objectives);
 - (c) total actual expenditures for producer groups;
 - (d) withdrawals broken down between categories of products (volume, total expenditure, amount of EU financial assistance and destinations (free distribution, composting, processing industry and others)).
4. Information relating to monitoring of operational programmes and recognition plans:
- (a) indicators as regards producer organisations, associations of producer organisations and transnational associations of producer organisations (broken down between actions and measures linked to their objectives);
 - (b) indicators as regards producer groups.

PART B — INFORMATION FOR THE CLEARANCE OF ACCOUNTS

Information on checks and administrative penalties:

- (a) checks carried out by the Member State: details of bodies visited and dates of visiting;
 - (b) checking rates;
 - (c) results of checks;
 - (d) administrative penalties applied.
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