

**COMMISSION IMPLEMENTING REGULATION (EU) 2023/1449****of 12 June 2023****amending Implementing Regulation (EU) 2017/39 as regards payment of the aid, transfers between allocations and administrative checks**

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 25, first paragraph, points (a), (b) and (e), thereof,

Having regard to Regulation (EU) 2021/2116 of the European Parliament and of the Council of 2 December 2021 on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013 <sup>(2)</sup>, and in particular Article 60(4) thereof,

Whereas:

- (1) Article 44(3b) of Regulation (EU) 2021/2116 introduced the possibility for Member States to pay advances under the aid scheme laid down in Part II, Title I, Chapter II, of Regulation (EU) No 1308/2013 ('the school scheme') in respect of aid for school year 2023/2024 and subsequent school years. Commission Delegated Regulation (EU) 2022/127 <sup>(3)</sup> supplements Regulation (EU) 2021/2116 by laying down rules, inter alia, on securities, including specific conditions for the payment of advances of aid under the school scheme in the form of a maximum percentage of aid to the applicants and the requirement for aid applicants to lodge a security.
- (2) Commission Implementing Regulation (EU) 2017/39 <sup>(4)</sup> lays down rules for the application of the school scheme, including on the content of the Member States' strategies, and on the application for and payment of the aid after the implementation of the school scheme activities has taken place. Implementing rules under which Member States may pay advances under the school scheme should be laid down.
- (3) The rules on the content, frequency and the evidence to support the applications for advances of aid under the school scheme to be submitted by aid applicants should be laid down.
- (4) Article 4 of Implementing Regulation (EU) 2017/39 lays down the minimum requirements that aid applications must fulfil in order for aid applicants to submit them to the competent authorities, after the activities their aid applications relate to have been implemented, in order to claim the reimbursement of the expenditure incurred. It also specifies the documentary evidence required to support those applications. The obligation to submit an aid application should also apply where the aid applicant has received an advance payment of aid. However, it is appropriate to lay down specific requirements with regard to the aid applications where advances have been paid.

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

<sup>(2)</sup> OJ L 435, 6.12.2021, p. 187.

<sup>(3)</sup> Commission Delegated Regulation (EU) 2022/127 of 7 December 2021 supplementing Regulation (EU) 2021/2116 of the European Parliament and of the Council with rules on paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro (OJ L 20, 31.1.2022, p. 95).

<sup>(4)</sup> 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 (OJ L 5, 10.1.2017, p. 1).

- (5) Article 5 of Implementing Regulation (EU) 2017/39 lays down the conditions for the payment of the aid by the competent authorities to aid applicants for the reimbursement of the expenses incurred in the implementation of the school scheme activities. It is appropriate to lay down the rules for the payment of advances of aid by the competent authorities to aid applicants and to provide for conditions for the payment of the aid where an advance of aid has been paid. Moreover, the conditions on the documentary evidence laid down in paragraphs 1 and 2 of that Article should be set out in Article 4 as they support the aid applications.
- (6) Article 6 of Implementing Regulation (EU) 2017/39 lays down the deadlines for transfers between the financial allocations for school fruit and vegetables and for school milk, and the submission of those transfer notifications to the Commission in the requests for Union aid referred to in Article 3 of that Regulation. In accordance with Article 23a(4) of Regulation (EU) No 1308/2013, the transfers may be made once per school year, either prior to the fixing of definitive allocations for the following school year, between the Member State's indicative allocations, or after the start of school year, between the Member State's definitive allocations, where such allocations have been set for the Member State in question. Pursuant to Articles 3 and 6 of Implementing Regulation (EU) 2017/39, Member States are to notify to the Commission the amount of any such transfers between definitive allocations by 31 January of the school year in which they are made. In view of providing Member States with more flexibility in the management of their allocations and in order to maximise their absorption, it is appropriate to allow Member States to make transfers between the Member State's definitive allocations after that date and notify them to the Commission by 31 August following the school year concerned.
- (7) Article 9 of Implementing Regulation (EU) 2017/39 sets out specific rules on the checks to be carried out by the Member States to ensure compliance with the school scheme legislation. They include systematic administrative checking of all aid applications and requirements on the checks of the supporting documents submitted with the aid applications. It is appropriate to provide that the same rules apply to the applications for advances of aid. Moreover, based on experience gained with implementation of the school scheme, and in the interest of sound financial management, it is also appropriate to specify that administrative checks should be carried out before payment of the aid.
- (8) Implementing Regulation (EU) 2017/39 should therefore be amended accordingly.
- (9) Given that Member States may only grant advances in respect of aid for school year 2023/2024 and subsequent school years, and to allow them sufficient time to adapt their control system, it is appropriate to provide that the amendments to the provisions on advance payments and checks only apply in respect of aid for school year 2023/2024 and subsequent school years.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the Common Organisation of the Agricultural Markets,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

Implementing Regulation (EU) 2017/39 is amended as follows:

- (1) in Article 2, paragraph 2, the following point is inserted:

(ea) where Member States decide to pay advances of aid in accordance with Article 44(3b) of Regulation (EU) 2021/2116 of the European Parliament and of the Council (\*), the maximum amount of the advance expressed in a percentage of the aid which the aid applicants are entitled to, and the arrangements for granting the advance;

(\*) Regulation (EU) 2021/2116 of the European Parliament and of the Council of 2 December 2021 on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013 (OJ L 435, 6.12.2021, p. 187).;

(2) the following Article 3a is inserted after Article 3:

*Article 3a*

#### **Applications for advances of aid submitted by aid applicants**

1. Member States that decide to pay advances of aid, in accordance with Article 44(3b) of Regulation (EU) 2021/2116, shall determine the form, content, frequency and deadline of applications for advances of aid submitted by aid applicants.

2. Member States shall specify the documents that shall be submitted in support of applications for advances of aid, including the documents necessary to calculate the amount that the applicants are entitled to.;

(3) Article 4 is amended as follows:

(a) the following paragraph is inserted:

‘1a. Aid applicants shall submit an aid application, including where an advance has been paid, to claim the reimbursement of the expenses incurred in the implementation of the school scheme activities. The aid application may only be submitted after full implementation of the activities the aid application relates to.;

(b) the following paragraph 2a is inserted:

‘2a. Where an advance has been paid, the aid application shall include information on the amount of that advance.;

(c) paragraph 6 is replaced by the following:

‘6. Member States shall specify the documents to be submitted in support of aid applications. As a minimum requirement, the amounts claimed in the aid applications shall be supported by documentary evidence showing:

- (a) that the quantities have been supplied or distributed and/or the materials or services have been delivered for the purpose of the school scheme; and
- (b) where the Member State uses a cost-based system, the price of the products, materials or services supplied, distributed or delivered, together with a receipt or proof of payment or equivalent.

In the case of aid applications relating to accompanying educational measures, monitoring, evaluation and publicity, the documentary evidence shall also contain the financial breakdown by activity and details of related costs.;

(4) Article 5 is replaced by the following:

*Article 5*

#### **Payment of the aid, including advance payments of aid**

1. Advances of aid shall only be paid by the competent authority upon presentation of an application in accordance with Article 3a of this Regulation and, where the lodging of the security referred to in Article 15b of Commission Delegated Regulation (EU) 2022/127 (\*) is required, of the documentary evidence of the lodging of the security, unless the competent authority already has proof that the security has been lodged.

2. Aid for the reimbursement of the expenses incurred in the implementation of the school scheme shall only be paid by the competent authority upon presentation of an application together with the required supporting evidence in accordance with Article 4. Aid shall be paid within 3 months of the date of submission of the aid application unless administrative inquiries have been initiated.

Where an advance has been paid, the payment of the aid equals the difference between the amount of the aid to be paid and the amount of the advance paid.

(\*) Commission Delegated Regulation (EU) 2022/127 of 7 December 2021 supplementing Regulation (EU) 2021/2116 of the European Parliament and of the Council with rules on paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro (OJ L 20, 31.1.2022, p. 95).;

(5) in Article 6, paragraph 2, is replaced by the following:

'2. Transfers between definitive allocations, according to Article 23a(4), third subparagraph, point (b), of Regulation (EU) No 1308/2013, where no transfers between indicative allocations have been made, shall be notified either in the request for Union aid referred to in Article 3 of this Regulation or in the notification referred to in the second subparagraph of this paragraph.

Where Member States make transfers of definitive allocations after 31 January in accordance with the first subparagraph of this paragraph, they shall notify them to the Commission by 31 August following the school year concerned.;

(6) Article 9 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Member States shall take all necessary measures to comply with this Regulation. Those measures shall include systematic administrative checking of all applications for advances of aid referred to in Article 3a and applications for aid referred to in Article 4, prior to the payment. Member States shall check, for each application, a representative sample of the supporting documents submitted with the application.;

(b) paragraph 2 is deleted

(c) paragraph 4 is replaced by the following:

'4. In case of aid applied for relating to the supply and distribution of products and accompanying educational measures, the administrative checks conducted with respect to aid applications referred to in Article 4 shall be supplemented by on-the-spot checks in accordance with Article 10.'

#### 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(2) to (4) and (6) shall apply to aid as from school year 2023/2024.

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

Done at Brussels, 12 June 2023.

For the Commission  
The President  
Ursula VON DER LEYEN