

**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**

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 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 (EEC) 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 Articles 62(2)(a) to (d) and 64(7)(a) thereof,Having regard to 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 <sup>(3)</sup>, and in particular the second subparagraph of Article 5(2) thereof,

Whereas:

- (1) Regulation (EU) No 1308/2013 replaced Council Regulation (EC) No 1234/2007 <sup>(4)</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>(5)</sup>, which is repealed by Delegated Regulation (EU) 2016/247 <sup>(6)</sup>.
- (2) In accordance with Article 23(2) of Regulation (EU) No 1308/2013, Member States wishing to participate in the Scheme are to draw up a prior strategy for its implementation. In order to be able to evaluate the implementation of the Scheme, the elements of the strategy should be defined.
- (3) In the interest of sound administration and budget management, Member States implementing the Scheme should apply for Union aid on an annual basis and the content of such application should be defined.
- (4) The content and frequency of aid applications submitted by aid applicants should be determined as well as the rules on the lodging of applications. In addition the evidence required to support the aid applications needs to be specified. Penalties to be applied by the competent authority where an application for aid is lodged late should also be laid down.

<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> OJ L 346, 20.12.2013, p. 12.

<sup>(4)</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>(5)</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>(6)</sup> 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 (see page 1 of this Official Journal).

- (5) The conditions for payment of the aid should be further clarified to take account of the distinction between aid for the supply and distribution of products and aid for carrying out monitoring, evaluation, publicity and accompanying measures. The content of the documentary evidence required in support of each application for the payment of the aid should be specified.
- (6) In order to assess the effectiveness of the Scheme, Member States should notify the Commission of the results and findings of their monitoring and evaluation of the Scheme. For the sake of clarity, it is appropriate to fix a date for the notification of the evaluation report and of the results of the monitoring exercise to the Commission. The Commission should publish those documents.
- (7) To protect Union's financial interests, adequate control measures should be adopted to combat irregularities and fraud. These control measures should involve full administrative checking supplemented by on-the-spot checks. The scope, content, timing and reporting of such control measures should be specified so as to ensure an equitable and uniform approach between Member States, taking account of their different implementation of the Scheme.
- (8) Amounts unduly paid should be recovered in accordance with Commission Implementing Regulation (EU) No 809/2014 <sup>(1)</sup>.
- (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. Further to the provisions concerning the poster provided for in Delegated Regulation (EU) 2016/247 it is appropriate to lay down rules on publicising the Scheme and on the use of the Union emblem. It is also appropriate to allow for the transitional use of the currently used posters and other tools of publicity for a limited period of time.
- (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*

##### **Scope and definition**

1. This Regulation lays down rules for the application of Regulations (EU) No 1308/2013 and (EU) No 1370/2013 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 Regulation (EU) No 1308/2013 ('the Scheme').
2. For the purposes of the Scheme, 'school year' means a period running from 1 August until 31 July of the following year.

#### *Article 2*

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

1. A Member State's strategy as referred to in Article 23(2) of Regulation (EU) No 1308/2013 and in Article 2 of Delegated Regulation (EU) 2016/247 shall include at least the following elements:
  - (a) the geographical and administrative level at which the Scheme will be implemented;
  - (b) the duration of the strategy;
  - (c) if available, information on the level of consumption of the products concerned;

<sup>(1)</sup> Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance (OJ L 227, 31.7.2014, p. 69).

- (d) its operational objectives within the Scheme and the targets to be attained;
  - (e) if an existing national school scheme is being extended or is being made more effective through the use of Union funds, the arrangements put in place to ensure the added value of the Scheme;
  - (f) the estimated budget or budget percentage for the main elements of the Scheme;
  - (g) the target group;
  - (h) the list of products that will be supplied under the Scheme;
  - (i) the objectives and the content of accompanying measures;
  - (j) a description of how relevant stakeholders will be involved;
  - (k) information on the arrangements for the distribution of products and selection procedures of suppliers;
  - (l) the arrangements put in place for publicising the provision of Union aid, including where the strategy allows the consumption of regular school meals at the same time as products financed under the Scheme;
  - (m) the structures and forms put in place for the monitoring and evaluation of the Scheme in accordance with Article 8 of Delegated Regulation (EU) 2016/247 and for checks provided for in Articles 7 and 8 of this Regulation.
2. The Commission shall publish the Member States' strategies.

### *Article 3*

#### **Aid application submitted by Member States**

Member States shall submit aid applications relating to the next school year by 31 January each year. Aid applications shall contain the following information:

- (a) the indicative allocation of aid set out in the Annex;
- (b) the amount requested if there is no willingness to use the entire amount of the indicative allocation;
- (c) the willingness to use more than the indicative allocation and the maximum additional amount requested should an additional allocation be available;
- (d) the total amount requested.

The amounts referred to in this Article shall be expressed in EUR.

### *Article 4*

#### **Aid applications submitted by aid applicants**

1. The Member States shall determine the form, content and frequency of aid applications in accordance with their strategy and the rules laid down in paragraphs 2 to 7.
2. Aid applications relating to the supply and distribution of products shall include at least the following information:
  - (a) the quantities of products distributed;
  - (b) the name and address or identification number of the educational establishments or educational authorities to which those quantities were distributed;
  - (c) the number of children in regular attendance in the respective educational establishments entitled to receive the products covered by the Scheme during the period covered by the aid application.

3. Aid applications relating to the supply and distribution of products shall cover periods of no more than five months.

4. Aid applications shall be lodged within three months of the end of the period they cover.

5. Aid applications relating to the evaluation report provided for in Article 6(2) shall be lodged within one month of the date on which that report was submitted as referred to in that paragraph.

6. If the time limit referred to in paragraphs 4 and 5 is exceeded by less than 60 days, the aid shall be paid but 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 aid shall be further reduced by 1 % per each additional day, calculated over the remaining balance.

7. The amounts claimed in the aid applications shall be supported by documentary evidence showing the price of the products, material or services delivered together with a receipt or proof of payment or equivalent. Member States shall specify the documents that shall be submitted in support of aid applications.

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

#### *Article 5*

#### **Payment of the aid**

1. Aid relating to the supply and distribution of products shall only be paid:

(a) on presentation of a receipt for the quantities actually supplied and distributed; or

(b) on the basis of the report of an inspection made by the competent authority before final payment of the aid, establishing that the payment requirements have been met; or

(c) if the Member State so authorises, on presentation of alternative proof that the quantities supplied and distributed for the purposes of the Scheme have been paid for.

2. Aid relating to monitoring, evaluation, publicity and to accompanying measures shall only be paid upon delivery of the material or services concerned and upon submission of the related documentary evidence as required by the competent authorities of the Member States.

3. The competent authority shall pay the aid within three months of the date of submission of the aid application.

#### *Article 6*

#### **Monitoring and evaluation**

1. Monitoring as referred to in Article 8(1) of Delegated Regulation (EU) 2016/247 shall draw upon the data originating from management and control obligations, including those set out in Articles 4 and 5 of this Regulation

Member States shall notify the Commission of the results of the monitoring exercise by 30 November following the end of the school year concerned.

2. Member States shall submit to the Commission an evaluation report containing the results of the evaluation provided for in Article 8(2) of Delegated Regulation (EU) 2016/247 for the previous 5-school-year implementation period by 1 March in the year following the end of that period.

The first evaluation report shall be submitted on or before 1 March 2017.

3. The Commission shall publish the results of the Member States monitoring exercise and the evaluation reports.

#### *Article 7*

### **Administrative checks**

1. Member States shall take all necessary measures to comply with this Regulation. Those measures shall include administrative checking of all aid applications.

2. Administrative checks conducted with respect to aid granted for the supply and distribution of products shall include reviewing the supporting documents, as defined by Member States, relating to product supply and distribution.

Administrative checks conducted with respect to aid granted for monitoring, evaluation, publicity and for accompanying measures shall include verifying the delivery of the material and services and the veracity of the claimed expenditure.

3. In case of aid relating to the supply and distribution of products and to accompanying measures, the administrative checks shall be supplemented by on-the-spot checks in accordance with Article 8.

#### *Article 8*

### **On-the-spot checks**

1. In case of aid relating to the supply and distribution of products, on-the-spot checks shall be carried out and shall in particular include verification of:

- (a) the records referred to in Article 6(2) of Delegated Regulation (EU) 2016/247, including financial records such as purchase and sales invoices, delivery notes or bank extracts;
- (b) the use of the products in accordance with this Regulation.

2. On-the-spot checks shall be carried out in respect of each school year. They shall cover the activities undertaken during the previous 12 months.

On-the-spot checks may take place during the implementation of the accompanying measures.

3. The total number of on-the-spot checks shall cover at least 5 % of the aid distributed at national level and at least 5 % of all aid applicants dealing with the supply and distribution of products and with accompanying measures.

When the number of aid applicants in a Member State is less than one hundred, on-the-spot checks shall be carried out on the premises of not less than five applicants.

When the number of aid applicants in a Member State is less than five, on-the-spot checks shall be carried out on the premises of all the applicants.

Where the applicant, not being an educational establishment, applies for aid relating to the supply and distribution of products, the on-the-spot check carried out on the premises of that applicant shall be supplemented by on-the-spot checks on the premises of at least two educational establishments or at least 1 % of the educational establishments recorded by the applicant in accordance with Article 6(2) of Delegated Regulation (EU) 2016/247, whichever is the greater.

Where the applicant applies for aid relating to accompanying measures, on-the-spot checks on the premises of the applicant may be replaced, based on a risk analysis, by on-the-spot checks at the places where accompanying measures are carried out. Based on a risk analysis, Member States shall fix the level of such on-the-spot checks.

4. On the basis of a risk analysis the competent authority shall select those applicants to be subjected to on-the-spot checks.

For that purpose, the competent authority shall take in particular due account of:

- (a) the different geographical areas;
- (b) the recurrent nature of errors and the findings of checks carried out in past years;
- (c) the amount of aid involved;
- (d) the type of applicants;
- (e) the type of accompanying measure, if any.

5. Provided that the purpose of the checks is not jeopardised, advance notice, strictly limited to the minimum time period necessary, may be given.

6. The competent control authority shall draw up a control report on each on-the-spot check. The report shall describe precisely the different items controlled.

The control report shall be divided into the following parts:

- (a) a general part containing the following information, if relevant:
  - (i) the Scheme strategy that applies, the period covered, the aid applications checked, the quantities of products, the participating educational establishments, an estimate based on the available data of the number of children for which aid was paid and the financial amount involved;
  - (ii) the responsible persons present;
- (b) a part describing separately the checks carried out and containing, in particular, the following information:
  - (i) the documents checked;
  - (ii) the nature and extent of checks carried out;
  - (iii) remarks and findings.

7. Member States shall notify the Commission, by 30 November following the end of the school year, of the on-the-spot checks carried out and the related findings.

#### Article 9

### Recovery of undue payments

For recovery of unduly paid amounts, Article 7 of Implementing Regulation (EU) No 809/2014 shall apply *mutatis mutandis*.

#### Article 10

### Publicity of the Union's financial contribution to the Scheme

1. Where Member States decide not to make use of the poster referred to in Article 10 of Delegated Regulation (EU) 2016/247, they shall clearly explain in their strategy how they will inform the public about the Union's financial contribution to their school scheme.

2. Means of communication and publicity measures referred to in point (b)(ii) of Article 4(1) of Delegated Regulation (EU) 2016/247 shall, to the extent practicable, exhibit the European flag and mention the Union 'School Fruit and Vegetables Scheme' or its acronym and the financial support of the Union.
3. Tools and educational materials to be used within the framework of accompanying measures referred to in point (b)(iii) of Article 4(1) of Delegated Regulation (EU) 2016/247 shall, to the extent practicable, exhibit the European flag and mention the Union 'School Fruit and Vegetables Scheme' or its acronym and the financial support of the Union.
4. References to the financial contribution of the Union shall receive at least the same visibility as contributions from other private or public entities supporting a Member State's school scheme.
5. Member States may continue to use existing stocks of posters and other tools of publicity printed prior to 26 February 2016 in accordance with Regulation (EC) No 288/2009.

#### Article 11

#### Notifications

The notifications from the Member States to the Commission provided for in this Regulation shall be made in accordance with Commission Regulation (EC) No 792/2009 <sup>(1)</sup>.

#### 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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<sup>(1)</sup> Commission Regulation (EC) No 792/2009 of 31 August 2009 laying down detailed rules for the Member States' notification to the Commission of information and documents in implementation of the common organisation of the markets, the direct payments' regime, the promotion of agricultural products and the regimes applicable to the outermost regions and the smaller Aegean islands (OJ L 228, 1.9.2009, p. 3).

## ANNEX

**Indicative allocation of Union aid per Member State**

Member State	Co-financing rate (in %)	Children 6-10 abs. numbers	EUR
Austria	75	406 322	2 239 273
Belgium	75	611 450	3 369 750
Bulgaria	90	316 744	2 094 722
Croatia	90	205 774	1 360 845
Cyprus	75	44 823	290 000
Czech Republic	88	480 495	3 124 660
Denmark	75	328 182	1 808 638
Estonia	90	66 436	439 361
Finland	75	290 308	1 599 911
France	76	4 051 279	22 500 145
Germany	75	3 575 991	19 707 575
Greece	81	529 648	3 143 600
Hungary	86	482 160	3 031 022
Ireland	75	319 126	1 758 729
Italy	80	2 853 098	16 719 794
Latvia	90	95 861	633 957
Lithuania	90	136 285	901 293
Luxembourg	75	29 473	290 000
Malta	75	19 511	290 000
Netherlands	75	986 118	5 434 576
Poland	88	1 802 733	11 645 350
Portugal	85	527 379	3 284 967
Romania	89	1 054 185	6 869 985
Slovakia	89	262 703	1 709 502
Slovenia	83	91 095	554 291
Spain	75	2 337 457	12 939 604
Sweden	75	518 322	2 856 514
United Kingdom	76	3 494 635	19 401 935
<b>EU 28</b>	<b>79</b>	<b>25 917 593</b>	<b>150 000 000</b>