

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

## CHAPTER I

### GENERAL RULES ON THE SCHOOL SCHEME

#### *Article 1*

##### **Scope and definitions**

1 This Regulation lays down rules supplementing Regulation (EU) No 1308/2013 as regards Union aid for the supply and distribution of fruit and vegetables, processed fruit and vegetable products and fresh products of the banana sector ('school fruit and vegetables'), and for the supply and distribution of milk and milk products ('school milk') to children in educational establishments, for accompanying educational measures and for certain related costs in the framework of the scheme referred to under Article 23 of that Regulation ('the school scheme').

2 For the purposes of this Regulation, the definition of the school year laid down in Article 1(2) of Commission Implementing Regulation (EU) 2017/39<sup>(1)</sup> shall apply.

#### *Article 2*

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

1 When drawing up the strategy referred to in Article 23(8) of Regulation (EU) No 1308/2013, Member States may choose the administrative level at which they wish to implement the school scheme. If a Member State decides to implement the school scheme at a regional level, it shall draw up a strategy for each region and an accompanying coordination framework at Member State level. The Member State shall establish a single contact point for the exchange of information with the Commission.

2 If a Member State does not make products under the school scheme available free of charge, it shall explain in its strategy the arrangements it has put in place to ensure that Union aid under the school scheme is reflected in the price at which those products are made available.

3 Member States wishing to participate in the school scheme shall notify the Commission of their strategy by 30 April preceding the first school year covered by the strategy. However, Member States shall notify the Commission of their strategy covering the 6-year period starting with the 2017/2018 school year by 1 August 2017.

4 A Member State may amend its strategy. The Member State shall notify the Commission of its amended strategy within 2 months of the amendment.

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### Article 3

#### Accompanying educational measures

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.

2 Accompanying educational measures shall support the distribution of school fruit and vegetables and school milk and, in the event that they 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.

3 Accompanying educational measures may involve also parents and teachers.

### Article 4

#### Eligible costs

1 The following costs are eligible for Union aid:

- a the costs of the products supplied under the school scheme and distributed to children in educational establishments referred to in Article 22 of Regulation (EU) No 1308/2013, which may include the costs of purchasing, renting, hiring and leasing of equipment used in the supply and distribution of products, as provided for in the strategy of the Member State;
- b the costs of accompanying educational measures, including:
  - (i) costs of organising tasting classes, setting up and maintaining school gardens, organising visits to farms and similar activities aimed at reconnecting children with agriculture;
  - (ii) costs of measures aimed at educating children about agriculture, healthy eating habits, local food chains, organic production, sustainable production, and combating food waste;
- c the costs of publicity for the school scheme, which shall be directly aimed at informing the wider public about the school scheme, including:
  - (i) the cost of the poster referred to in Article 12 of this Regulation;
  - (ii) the cost of information campaigns by means of broadcasting, electronic communications, newspapers and similar means of communication;
  - (iii) the cost of information sessions, conferences, seminars and workshops dedicated to informing the wider public about the school scheme and similar events;
  - (iv) the cost of information and promotion material such as letters, leaflets, brochures, gadgets and similar;
- d the costs of networking measures to exchange experiences and best practices on implementation of the school scheme;
- e the costs relating to the obligation for Member States to monitor and evaluate the effectiveness of their school scheme;

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- f the costs of transport and distribution of the products supplied under the school scheme, insofar as they are not covered by point (a) of this paragraph.
- 2 The costs referred to in paragraph 1 shall not be financed under any other Union aid scheme, programme, measure or operation.
- 3 Value added tax (VAT) is not eligible for Union aid.
- 4 Expenditure relating to personnel costs is not eligible for Union aid if those personnel costs are financed from public funds of the Member State.

### Article 5

#### General conditions for the granting of aid and selection of aid applicants

- 1 Aid granted to a Member State under the school scheme shall be distributed to those applicants for aid that have been approved by the competent authority of the Member State in accordance with Article 6 and whose application relates to the implementation of one or more of the following:
- a the supply or distribution of products to children in educational establishments under the school scheme;
  - b accompanying educational measures;
  - c monitoring or evaluation actions;
  - d publicity.
- 2 Member States shall select aid applicants from among the following bodies:
- a educational establishments;
  - b educational authorities;
  - c suppliers or distributors of products;
  - d organisations acting on behalf of one or more educational establishments or educational authorities that are specifically established for the purpose of management and provision of any of the activities referred to in paragraph 1;
  - e any other public or private body which is engaged in the management and provision of any of the activities referred to in paragraph 1.

### 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, in accordance with the objectives of the school scheme;
  - 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;

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- d to reimburse any aid unduly paid for accompanying educational measures, monitoring, evaluation, 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.

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

2 In the case of aid applications relating to the supply and/or distribution of products only, points (b) and (d) of paragraph 1 shall not apply. Applicants shall make an additional written commitment 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.

3 In the case of aid applications relating to accompanying educational measures only, points (a) and (c) of paragraph 1 shall not apply. Competent authorities may specify any additional written commitments to be undertaken by applicants, in particular as regards:

- a accompanying educational measures carried out in schools, when those schools are not aid applicants;
- b accompanying educational measures that include the distribution of products.

4 In the case of aid applications relating to monitoring, evaluation and publicity only, points (a) and (c) of paragraph 1 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 7*

### **Suspension and withdrawal of approval**

1 If an approved aid applicant fails to comply with the obligations laid down under the school scheme, the competent authority shall suspend the approval of the applicant for a period of between 1 and 12 months or withdraw it, depending on the seriousness of the non-compliance and according to the principle of proportionality.

2 Suspension and withdrawal shall not be imposed in cases referred to in points (a) to (d) of Article 64(2) of Regulation (EU) No 1306/2013 or if the non-compliance was of a minor nature.

3 At the applicant's request and if the reasons for withdrawal have been remedied, the competent authority may restore the approval of the applicant for aid after a minimum period of 12 months from the date on which the reasons for withdrawal have been remedied.

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## Article 8

### Administrative penalties

In cases of non-compliance with the obligations laid down under the school scheme, except those referred to in points (a) to (d) of Article 64(2) of Regulation (EU) No 1306/2013, the applicant shall, in addition to the recovery of unduly paid amounts, pay an administrative penalty equal to the difference between the amount initially claimed and the amount the applicant is entitled to.

## Article 9

### Monitoring and evaluation

1 Member States shall provide for appropriate structures and forms to ensure an annual monitoring of the implementation of the school scheme.

[<sup>F12</sup> Member States shall evaluate the implementation of the school scheme in order to assess its effectiveness against its objectives of increasing the consumption of fruit, vegetables, milk and milk products by children and educating them about healthy eating habits. The results of that evaluation shall be submitted to the Commission by way of an evaluation report. A Member State that implements the school scheme at regional level may choose to submit a corresponding number of evaluation reports.]

3 The annual monitoring reports by Member States shall include information about the funds used for the supply and distribution of each of the product groups listed in Article 23(3), (4) and (5) of Regulation (EU) No 1308/2013 and for the accompanying educational measures, the number of educational establishments and children participating in the school scheme, the average portion size and the average price per portion, the frequency of delivery of products, the quantities of products supplied broken down by product groups and, if applicable, of products other than those listed in Article 23(3), (4) and (5) of Regulation (EU) No 1308/2013 that are included under the accompanying educational measures according to Article 23(7) of that Regulation, the types of communication and accompanying measures implemented, and the authorities and stakeholders involved in the design and implementation of the school scheme.

4 The annual control reports by Member States on the on-the-spot checks carried out and the related findings shall include information on the amount of aid claimed, paid and subject to on-the-spot checks, the reduction of aid after administrative checks, the reduction of aid due to late submission of applications, the amount of aid recovered following on-the-spot checks, and the administrative penalties applied.

5 [<sup>F1</sup>Where a Member State does not submit its evaluation report or evaluation reports containing the results of the evaluation provided for in paragraph 2 of this Article to the Commission by the time limits referred to in Article 8(2) of Implementing Regulation (EU) 2017/39, the amount of the next definitive allocation shall be 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 definitive allocation shall be reduced by 1 % per additional day, calculated over the remaining balance.

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#### Textual Amendments

- F1** Substituted by [Commission Delegated Regulation \(EU\) 2020/1238 of 17 June 2020 amending Delegated Regulation \(EU\) 2017/40 as regards the evaluation of the implementation of the school scheme.](#)

### Article 10

#### Maximum levels of added ingredients

- 1 The maximum level of added sugar which may be allowed by Member States under the second subparagraph of Article 23(6) in products referred to in Article 23(4) of Regulation (EU) No 1308/2013 is zero.
- 2 The maximum level of added sugar and/or honey which may be allowed by Member States pursuant to the second subparagraph of Article 23(6) of Regulation (EU) No 1308/2013 in products listed in Annex V to Regulation (EU) No 1308/2013 is 7 %. For the purpose of this paragraph, sugar shall mean the items listed under CN codes 1701 and 1702. The sugar added to the fruit shall be included in the maximum level of 7 % of added sugar.
- 3 Cheese may contain maximum 10 % of non-lactic ingredients.

### Article 11

#### Distribution of products in conjunction with regular school meals

In duly justified cases where Member States consider it more effective for the achievement of the objectives of their strategy, they may allow schools to distribute products receiving Union aid under the school scheme in conjunction with regular school meals.

In such cases, Member States shall ensure that those products:

- (a) are not used in the preparation of the regular school meals;
- (b) are not used to replace products that are part of the regular school meals through the financial contribution from public and/or private entities;
- (c) remain at all times clearly recognisable as part of the school scheme, through suitable communication and publicity measures.

Paragraph (b) shall not apply where educational establishments distribute regular school meals free of charge.

### Article 12

#### Publicity

For the purposes of Article 23a(8) of Regulation (EU) No 1308/2013, Member States may use a poster fulfilling the minimum requirements laid down in the Annex to this Regulation, which shall be permanently situated at a clearly visible place at the main entrance of the participating educational establishment.

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- (1) 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 (see page 1 of this Official Journal).



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**Changes and effects yet to be applied to the whole legislation item and associated provisions**

- Signature words omitted by [S.I. 2019/1422 reg. 12\(13\)](#)
- Art. 1(3) inserted by [S.I. 2019/1422 reg. 12\(2\)\(b\)](#)
- Art. 4(1)(a) words omitted by [S.I. 2019/1422 reg. 12\(4\)\(a\)\(ii\)](#)
- Art. 4(1)(e) word substituted by [S.I. 2019/1422 reg. 12\(4\)\(a\)\(iii\)\(bb\)](#)
- Art. 4(1)(e) words substituted by [S.I. 2019/1422 reg. 12\(4\)\(a\)\(iii\)\(aa\)](#)
- Art. 6(1)(a) words substituted by [S.I. 2019/1422 reg. 12\(6\)\(a\)\(i\)\(bb\)](#)
- Art. 6(1)(c) words substituted by [S.I. 2019/1422 reg. 12\(6\)\(a\)\(i\)\(cc\)](#)
- Art. 6(1)(e) word substituted by [S.I. 2019/1422 reg. 12\(6\)\(a\)\(i\)\(dd\)](#)
- Art. 6(1)(f) word substituted by [S.I. 2019/1422 reg. 12\(6\)\(a\)\(i\)\(dd\)](#)