

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

TITLE II

PRODUCER ORGANISATIONS

CHAPTER II

Operational funds and operational programmes

Section 1

Value of marketed production

Article 22

Basis for calculation

1 The value of marketed production for a producer organisation shall be calculated on the basis of the production of the producer organisation itself and its producer members, and shall only include the production of those fruit and vegetables for which the producer organisation is recognised. The value of marketed production may include fruit and vegetables that are not required to conform to the marketing standards, where those standards do not apply.

The value of marketed production for an association of producer organisations shall be calculated on the basis of the production marketed by the association of producer organisations itself and by its member producer organisations, and shall only include the production of those fruit and vegetables for which the association of producer organisations is recognised. In making this calculation duplicate counting shall be avoided.

2 The value of the marketed production shall not include the value of processed fruit and vegetables or any other product that is not a product of the fruit and vegetables sector.

However, the value of the marketed production of fruit and vegetables intended for processing, which have been transformed into one of the processed fruit and vegetable products listed in Part X of Annex I to Regulation (EU) No 1308/2013 or any other processed product referred to in this Article and described further in Annex I to this Regulation, by either a producer organisation, an association of producer organisations or their producer members or subsidiaries complying with the 90 % requirement referred to in paragraph 8 of this Article, either by themselves or through outsourcing, shall be calculated as a flat rate in percentage applied to the invoiced value of those processed products. That flat rate shall be:

Status: This is the original version (as it was originally adopted).

- a 53 % for fruit juices;
 - b 73 % for concentrated juices;
 - c 77 % for tomato concentrate;
 - d 62 % for frozen fruit and vegetables;
 - e 48 % for canned fruit and vegetables;
 - f 70 % for canned mushrooms of the genus *Agaricus*;
 - g 81 % for fruits provisionally preserved in brine;
 - h 81 % for dried fruits;
 - i 27 % for processed fruit and vegetables other than those referred to in points (a) to (h);
 - j 12 % for processed aromatic herbs;
 - k 41 % for paprika powder.
- 3 Member States may allow producer organisations to include the value of the by-products in the value of marketed production.
- 4 The value of marketed production shall include the value of market withdrawals disposed of as provided for in Article 34(4) of Regulation (EU) No 1308/2013. The value shall be calculated on the basis of the average price of those products marketed by the producer organisation in the concerned period.
- 5 Only the production of the producer organisation and its producer members which is marketed by that producer organisation shall be counted in the value of marketed production. The production of the producer members of the producer organisation marketed by another producer organisation designated by their own organisation shall be counted in the value of marketed production of the second producer organisation. Duplicate counting shall be avoided.
- 6 Except where paragraph 8 applies, the marketed production of fruit and vegetables shall be invoiced at the ‘ex-producer organisation’ stage as a product listed in Part IX of Annex I to Regulation (EU) No 1308/2013 that is prepared and packaged, excluding:
- a VAT;
 - b costs of transport internal to the producer organisation, for the distance between the centralised collection or packing points of the producer organisation and the point of distribution of the producer organisation which exceeds 300 km.
- 7 The value of marketed production may also be calculated at the ‘ex-association of producer organisation’ stage and on the same basis as set out in paragraph 6.
- 8 The value of marketed production may also be calculated at the ‘ex-subsidary’ stage, on the same basis as set out in paragraph 6, provided that at least 90 % of the shares or capital of the subsidiary is owned:
- a by one or more producer organisations or associations of producer organisations; or
 - b subject to Member State approval, by producer members of the producer organisations or associations of producer organisations, if doing so contributes to the objectives listed in Article 152(1)(c) of Regulation (EU) No 1308/2013.
- 9 In case of outsourcing, the value of marketed production shall be calculated at the ‘ex-producer organisation’ stage and shall include the added economic value of the activity that has been outsourced by the producer organisation to its members, third parties or to another subsidiary than the one referred to in paragraph 8.
- 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, due to those causes may be included in the value of marketed production.

Article 23

Reference period and ceiling on Union financial assistance

1 Member States shall determine for each producer organisation a 12-month reference period, starting no earlier than 1 January of the year that is three years prior to the year for which the aid is requested and ending no later than 31 December of the year preceding the year for which the aid is requested.

The 12-month reference period shall be the accounting period of the producer organisation concerned.

The methodology for fixing the reference period shall not vary during an operational programme except in duly justified situations.

2 The ceiling on Union financial assistance referred to in Article 34(2) of Regulation (EU) No 1308/2013 shall be calculated each year on the basis of the value of the marketed production during the reference period of the producers who are members of the producer organisation or association of producer organisations on 1 January of the year for which the aid is requested.

3 As an alternative to the method set out in paragraph 2, for non-transnational producer organisations or associations of producer organisations, Member States may decide to use the actual value of the marketed production in the reference period concerned of the producer organisation or association of producer organisations in question. In that case, the rule shall apply to all non-transnational producer organisations and associations of producer organisations in that Member State.

4 Where a reduction of at least 35 % in the value of a product has occurred due to reasons falling outside the responsibility and control of the producer organisation, the value of marketed production of that product shall be deemed to represent 65 % of its value in the previous reference period.

The producer organisation shall justify the reasons referred to in the first subparagraph to the competent authority of the Member State concerned.

This paragraph shall also apply for the purpose of determining compliance with the minimum value of marketed production as provided for in Article 9.

5 Where historical data on marketed production for newly recognised producer organisations is insufficient for the purpose of the application of paragraph 1, the value of marketed production shall be the value of marketable production provided by the producer organisation for the purposes of recognition.

Article 24

Accounting

Member States shall ensure that producer organisations comply with the national standards of cost-based accounting that allow independent auditors to promptly identify, check and certify their expenditure and revenue.

Section 2

Operational funds

Article 25

Financing of operational funds

1 The financial contributions to the operational fund referred to in Article 32(1)(a) of Regulation (EU) No 1308/2013 shall be determined by the producer organisation or association of producer organisations.

2 All producer members or member organisations shall have the opportunity to benefit from the operational fund and to participate democratically in decisions concerning the use of the operational fund of the producer organisation or association of producer organisations and of the financial contributions to the operational fund.

3 The statutes of a producer organisation or rules of association of an association of producer organisations shall require its producer members or member organisations to pay the financial contributions in accordance with its statutes or rules of association for the establishment and replenishment of the operational fund provided for in Article 32 of Regulation (EU) No 1308/2013.

Article 26

Notification of estimated amount

1 Producer organisations and associations of producer organisations shall notify the Member State, which has granted the recognition, of the estimated amounts of Union financial assistance and of the contribution, of its members and of the producer organisation or association itself, to the operational funds for the following year, by 15 September at the latest, together with the operational programmes or any request for approval of amendments to an existing operational programme.

However, Member States may set a later date than 15 September.

2 The calculation of the estimated amount of operational funds shall be based on the operational programmes and the value of marketed production. The calculation shall be split between expenditure for crisis prevention and management measures and other measures.

Section 3

Operational programmes

Article 27

National strategy

1 The national strategy referred to in Article 36(2) of Regulation (EU) No 1308/2013, including the national framework referred to in Article 36(1) of that Regulation shall be established prior to the annual submission of the draft operational programmes. The national framework shall be integrated into the national strategy after having been submitted to the

Commission and, where applicable, after having been amended in accordance with the second subparagraph of Article 36(1) of Regulation (EU) No 1308/2013.

The national strategy may be subdivided into regional elements.

2 In addition to the elements referred to in Article 36(2) of Regulation (EU) No 1308/2013, the national strategy shall integrate all the decisions taken and provisions adopted by the Member State for the purposes of Articles 152 to 165 of Regulation (EU) No 1308/2013.

3 An analysis of the initial situation shall form part of the process of drawing up the national strategy and be carried out under responsibility of the Member State.

It shall identify and assess the priority needs, the objectives, the results expected and the quantified targets against the initial situation.

It shall also lay down the instruments and actions to attain those objectives.

4 Member States shall monitor and evaluate the national strategy and its implementation through operational programmes.

The national strategy may be amended prior to the annual submission of the draft operational programmes.

5 Member States shall set out in the national strategy the maximum percentages of the operational fund which may be spent on any individual measure or type of action in order to ensure a balance between different measures.

Article 28

National framework for environmental actions

In addition to the submission of the proposed framework referred to in the second subparagraph of Article 36(1) of Regulation (EU) No 1308/2013, Member States shall notify the Commission of any amendments to the national framework, which shall be subject to the procedure set out in that subparagraph.

The Commission shall make the national framework available to other Member States by the means that it considers appropriate.

Article 29

Complementary Member State rules

Member States may adopt rules complementing Regulation (EU) No 1308/2013, this Regulation and Implementing Regulation (EU) 2017/892 concerning the eligibility of measures, actions or expenditure under operational programmes.

Article 30

Relationship with rural development, State aid and promotion programmes

1 Where support under the Member State's rural development programme or programmes has been granted to operations which are identical to actions that would be

potentially eligible under Regulation (EU) No 1308/2013, that Member State shall ensure that a beneficiary may receive support for a given action only under one scheme.

Where a Member State includes such operations in its rural development programme or programmes, it shall ensure that the national strategy indicates the safeguards, provisions and checks put in place to avoid double funding of the same action or operation.

2 Producer organisations which have been granted the support provided for in Article 27 of Regulation (EU) No 1305/2013 or Article 19 of Commission Regulation (EU) No 702/2014⁽¹⁾ shall not implement an operational programme in the same period.

3 Where applicable, and without prejudice to Article 34(1) and (3) and Article 35 of Regulation (EU) No 1308/2013, the level of support for measures covered by that Regulation shall not exceed the level applicable for the measures under the rural development programme.

4 Support for environmental actions that are identical to agri-environment-climate or organic farming commitments as referred to in Articles 28 and 29 of Regulation (EU) No 1305/2013 respectively, shall be limited to the maximum amounts laid down in Annex II to that Regulation for agri-environment-climate payments or for organic farming payments. Those amounts may be increased in duly substantiated cases taking account of specific circumstances to be justified in the national strategy and in the operational programmes of the producer organisations.

5 Paragraph 4 shall not apply to environmental actions which do not relate directly or indirectly to a particular parcel.

6 Where producer organisations, associations of producer organisations or interbranch organisations benefit from promotion programmes approved under Regulation (EU) No 1144/2014 of the European Parliament and of the Council⁽²⁾, Member States shall ensure that a beneficiary may receive support for a given action only under one scheme.

Article 31

Eligibility of actions under operational programmes

1 Operational programmes shall not include actions or expenditure listed in Annex II. A non-exhaustive list of eligible actions is set out in Annex III.

2 Expenditure under operational programmes eligible for aid shall be restricted to the actual costs incurred. However, Member States may fix standard flat rates or scales of unit costs in the following cases:

- a where such standard flat rates or scales of unit costs are referred to in Annex III;
- b for additional per-kilometre external transport costs, compared to road haulage costs, incurred when using rail or ship transport as part of a measure to respect the environment.

In addition, Member States may decide to use differentiated scales of unit costs to take into account regional or local specificities.

Member States shall review the standard flat rates or scales of unit costs at least every five years.

3 Member States shall ensure that the relevant calculations are adequate and accurate and established in advance on the basis of a fair, equitable and verifiable calculation. To that end Member States shall:

- a ensure that a body, that is functionally independent from the authorities responsible for the programme implementation and possesses the appropriate expertise, performs the calculations or confirms the adequacy and accuracy of the calculations;
- b keep all the documentary evidence concerning the establishment of standard flat rates or scales of unit costs and their review.

4 In order for an action to be eligible, products for which the producer organisation is recognised shall account for more than 50 % of the value of the products covered by that action. In addition, the products concerned shall come from the producer organisation's members or producer members of another producer organisation or association of producer organisations. Articles 22 and 23 shall apply *mutatis mutandis* to the calculation of the value.

5 Investments in physical assets shall entail the following commitments:

- a without prejudice to paragraph 4, the physical assets acquired shall be used in accordance with their intended use, as described in the approved operational programme concerned;
- b without prejudice to the third and fourth subparagraphs of paragraph 6, the physical assets acquired shall remain both in the property and possession of the beneficiary until either the end of the fiscal depreciation period of the physical asset or for 10 years, whichever period is shorter. The beneficiary shall also ensure the maintenance of the physical asset during that period. However, where the investment is made on ground rented under particular national property rules, the requirement of being in the property of the beneficiary may not apply provided that the investments have been in the possession of the beneficiary at least for the period required in the first sentence of this point;
- c where the producer organisation is the owner and the member of the producer organisation is the holder of the physical asset to which the investment relates, the producer organisation shall have access rights to that asset for the duration of the fiscal depreciation period.

However, for the purposes of point (b) of the first subparagraph, Member States may provide that a period different to that of the fiscal depreciation period shall apply. Such period shall be indicated and duly justified in their national strategy and cover at least the period referred to in Article 71(1) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council⁽³⁾.

6 Investments, including those under leasing contracts, may be financed through the operational fund in one amount or in identical instalments as approved in the operational programme. Member States may approve amendments to the operational programme providing for a new distribution of the instalments in duly justified cases.

If the fiscal depreciation period of an investment exceeds the length of the operational programme, it may be carried over to a subsequent operational programme.

Where investments are replaced, the residual value of the investments replaced shall be:

- a added to the operational fund of the producer organisation; or
- b subtracted from the cost of the replacement.

If the investment is sold before the end of the period referred to in paragraph 5 but it is not replaced, the Union aid paid to finance the investment shall be recovered and reimbursed to the European Agricultural Guarantee Fund (EAGF) in proportion to the

number of full years that remain until the end of the depreciation period referred to in point (b) of the first subparagraph of paragraph 5.

7 Actions, including investments, may be implemented on individual holdings or premises of producer members of the producer organisation, association of producer organisations or their subsidiaries complying with the 90 % requirement as referred to in Article 22(8), including where the actions are outsourced to members of the producer organisation or association of producer organisations, provided that they contribute to the objectives of the operational programme.

If the producer member leaves the producer organisation, Member States shall ensure that the investment or its residual value is recovered by the producer organisation and in the latter case, added to the operational fund.

However, in duly justified circumstances, Member States may provide that the producer organisation shall not be required to recover the investment or its residual value.

8 Actions, including investments, related to the transformation of fruit and vegetables into processed fruit and vegetables may be eligible for support where such actions and investments pursue the objectives set out in Article 33(1) of Regulation (EU) No 1308/2013, including those referred to in Article 160 of that Regulation, and provided that they are identified in the national strategy referred to in Article 36 of Regulation (EU) No 1308/2013.

9 Investments in intangible assets may be eligible for support where such investments pursue the objectives set out in Article 33(1) of Regulation (EU) No 1308/2013, including those referred to in Article 160 of that Regulation, and provided that they are identified in the national strategy referred to in Article 36 of Regulation (EU) No 1308/2013.

Article 32

Operational programmes of associations of producer organisations

1 Member States may authorise that producer members of associations of producer organisations which are not producer organisations, but which are members of such associations pursuant to Article 20, finance the measures implemented by the association of producer organisations in proportion to the contribution of member producer organisations.

2 Articles 30, 31, 33 and 34 of this Regulation and Articles 4 to 7 of Implementing Regulation (EU) 2017/892 shall apply *mutatis mutandis* to operational programmes of associations of producer organisations. However, a balance between the activities referred to in Article 4(1)(b) of Implementing Regulation (EU) 2017/892 shall not be required in respect of partial operational programmes of associations of producer organisations.

3 The ceiling for the crisis management and prevention expenditure, referred to in the fourth subparagraph of Article 33(3) of Regulation (EU) No 1308/2013, under the operational programmes of associations of producer organisations shall be calculated at the level of each member producer organisation.

Article 33

Decision

1 Member States shall:

- a approve amounts of operational funds and operational programmes which meet the requirements of Regulation (EU) No 1308/2013 and those of this Chapter;
- b approve the operational programmes, on condition that certain amendments are accepted by the producer organisation; or
- c reject the operational programmes or parts thereof.

2 Member States shall take decisions on operational programmes and operational funds by 15 December of the year in which they are submitted.

Member States shall notify the producer organisations of those decisions by 15 December.

However, for duly justified reasons, such decisions may be taken after that date, but no later than 20 January following the date of submission. The approval decision may provide that expenditure is eligible from 1 January of the year following the submission.

Article 34

Amendments to operational programmes

1 Producer organisations may request amendments to operational programmes, including their duration, for subsequent years. Member States shall set deadlines for the submission and approval of such requests so that the approved amendments apply as from 1 January of the following year.

For duly justified reasons, such requests may be approved after the deadlines set by Member States, but no later than 20 January following the year of the request. The approval decision may provide that expenditure is eligible from 1 January following the year of the request.

2 Member States may authorise amendments to operational programmes during the year, under conditions to be determined by them. The decisions on those amendments shall be taken by 20 January of the year following the year on which amendments are requested.

Producer organisations may be authorised by Member States, during the year to:

- a implement their operational programmes in part only;
- b change the content of the operational programmes;
- c increase the amount of the operational fund by a maximum of 25 %, and decrease it by a percentage to be fixed by Member States, of the amount initially approved, provided that the overall objectives of the operational programme are maintained;
- d add national financial assistance to the operational fund in case of application of Article 53.

Member States shall determine the conditions under which operational programmes may be amended during the year without prior approval by the competent authority of the Member State. Those amendments shall only be eligible for aid if they are notified by the producer organisation to the competent authority without delay.

Member States may modify the percentages referred to in point (c) of the second subparagraph in case of mergers of producer organisations as referred to in Article 15(1).

3 Requests for amendments shall be accompanied by supporting documents giving the reason, nature and implications of the changes.

Section 4

Aid

Article 35

Advance payments

1 Member States may permit producer organisations to apply for an advance payment of a part of the aid. That advance payment shall correspond to the forecast expenditure resulting from the operational programme during the three or four-month period starting in the month in which the application for an advance payment is submitted.

Member States shall provide for conditions to ensure that financial contributions to the operational fund have been levied in accordance with Articles 24 and 25 and previous advance payments and the corresponding producer organisation contribution have actually been spent.

2 Applications for the release of securities may be submitted during the current programme year and shall be accompanied by supporting documents, such as invoices and documents proving that payment has been made.

Securities shall be released in respect of up to 80 % of advances paid.

3 In the event of failure to comply with the operational programmes or of serious failure to meet the obligations provided for in Article 5(b) and (c) of Implementing Regulation (EU) 2017/892 the security shall be forfeited, without prejudice to other administrative penalties to be applied in accordance with Section 3 of Chapter V of this Title.

In the event of failure to comply with other requirements, the security shall be forfeited in proportion to the gravity of the irregularity that has been established.

Article 36

Cessation of an operational programme and discontinuity of recognition

1 If a producer organisation or association of producer organisations ceases to implement its operational programme before the end of its scheduled duration, no further payments shall be made to that organisation or association for actions implemented after the date of cessation.

2 Aid received for eligible actions carried out before the cessation of the operational programme shall not be recovered, provided that:

- a the producer organisation or association of producer organisations complied with the recognition criteria and the objectives of the actions laid down in the operational programme have been fulfilled at the moment of cessation; and
- b the investments financed with support from the operational fund are maintained in the possession of and used by the producer organisation, association of producer organisations or its subsidiaries complying with the 90 % requirement referred to in Article 22(8) or its members at least until the end of their depreciation period as referred to in Article 31(5). Otherwise, the Union financial assistance paid to finance those investments shall be recovered and reimbursed to the EAGF.

3 Union financial assistance for multiannual commitments, such as environmental actions, where their long term objectives and expected benefits cannot be realised because of the interruption of the measure shall be recovered and reimbursed to the EAGF.

4 This Article shall apply *mutatis mutandis* in case of voluntary discontinuity of recognition, withdrawal of recognition or dissolution of the producer organisation or association of producer organisations.

5 Unduly paid aid shall be recovered in accordance with Article 67.

- (1) 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](#)).
- (2) Regulation (EU) No 1144/2014 of the European Parliament and of the Council of 22 October 2014 on information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries and repealing Council Regulation (EC) No 3/2008 ([OJ L 317, 4.11.2014, p. 56](#)).
- (3) Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 ([OJ L 347, 20.12.2013, p. 320](#)).