

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 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.

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*Status: Point in time view as at 13/03/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2017/891, Section 3. (See end of Document for details)*

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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<sup>(1)</sup> 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.

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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<sup>(2)</sup>, 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

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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<sup>(3)</sup>.

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.

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## 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

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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.

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- (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](#)).

**Status:**

Point in time view as at 13/03/2017.

**Changes to legislation:**

There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2017/891, Section 3.