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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 7.6.2018 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

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Delegations will find attached document C(2018) 3308 final.

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EUROPEAN  
COMMISSION

Brussels, 7.6.2018  
C(2018) 3308 final

**COMMISSION DELEGATED REGULATION (EU) .../...**

**of 7.6.2018**

**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**

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE DELEGATED ACT**

Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products laid down new rules regarding the producer organisations in the fruit and vegetables sector. This Regulation also empowers the Commission to adopt delegated and implementing acts.

The purpose of this delegated act is to amend Commission Delegated Regulation (EU) 2017/891 as regards:

- the annual reports on producer organisations, associations of producers organisations, including transnational organisations, and producer groups, and on operational funds, operational programmes and recognition plans in operation during the previous year of its submission by Member States to the Commission services;
- the modifications introduced in Regulation (EU) No 1308/2013 as regards the fruit and vegetables sector by Regulation (EU) 2017/2393;
- technical clarifications of specific provisions to improve their clarity.

### **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

Consultations, involving experts from all the 28 Member States have been carried out within the Expert Group meetings established under Regulation (EU) No 1308/2013, in particular of 27 November and 12 December 2017. These meetings allowed for a presentation of the Commission's ideas on the scope of this act and on the necessary modifications of the Commission delegated Regulation as well as an exchange of views with the experts. The draft was then refined taking into account the observations and comments of the experts.

The draft delegated regulation was posted in the Better Regulation portal from 28 February 2018 to 28 March 2018 and received feedback from 16 organisations (8 related to the draft implementing regulation). Feedback was positive in general and consisted in particular of suggestions for clarification, which were discussed already with Member States and have not been taken into account in the legal text but will be explained by way of legal interpretations. However two of the issues raised in several contributions have been taken on board. First one relates to Article 9(6) and (7) of the draft implementing act on aid applications submitted by transnational associations of producer organisations and their producer organisations' members. The aim is to implement the provisions in a logical and consistent way which also respects the added value of the (transnational) association for its producer organisations' members. Besides, in order to avoid double funding the Member States have to collaborate and compile the respective information of each eligible action part of the operational programmes (of the transnational association and its members) to ensure that no action is common and double funded.

Second one relates to Annex II "Annual Report Part A" to the draft implementing regulation. These are mainly fine tuning of some of the aspects of the report.

### **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

This delegated act supplements certain provisions of Regulations (EU) No 1308/2013 and Regulation (EU) No 1306/2013 that are necessary to ensure proper functioning of producer organisations in the fruit and vegetables sector. As the rules applicable to the fruit and vegetables sector are affected by Regulation (EU) No 2017/2393, an amendment of these provisions is necessary. The delegated act also clarifies and simplifies certain other provisions.

The delegated act amends Commission Delegated Regulation (EU) 2017/891 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.

To allow for a smooth implementation of the amendments, transitional rules are included.

# COMMISSION DELEGATED REGULATION (EU) .../...

of 7.6.2018

## 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

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 37 thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2017/891<sup>2</sup> supplements Regulation (EU) No 1308/2013 with regard to the fruit and vegetables and processed fruit and vegetables sectors. Regulation (EU) 2017/2393 of the European Parliament and of the Council<sup>3</sup> has amended Regulation (EU) No 1308/2013 in particular as regards the aid to the producer organisations in the fruit and vegetables sector. Therefore, Delegated Regulation (EU) 2017/891 should reflect the amendments to the relevant provisions of Regulation (EU) No 1308/2013.
- (2) Provisions on national financial assistance in the fruit and vegetables sector should be updated.
- (3) Provisions concerning the cases in which producer members of a producer organisation should be allowed to sell a certain percentage of their products outside the producer organisation where the producer organisation so authorises in its statutes

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

<sup>2</sup> 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 (OJ L 138, 25.5.2017, p.4).

<sup>3</sup> Regulation (EU) 2017/2393 of the European Parliament and of the Council of 13 December 2017 amending Regulations (EU) No 1305/2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), (EU) No 1306/2013 on the financing, management and monitoring of the common agricultural policy, (EU) No 1307/2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy, (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products and (EU) No 652/2014 laying down provisions for the management of expenditure relating to the food chain, animal health and animal welfare, and relating to plant health and plant reproductive material (OJ L 350, 29.12.2017, p. 15).

and where this is in compliance with the terms and conditions of the Member State need to be clarified. The threshold of the sales outside the producer organisation needs to be clarified.

- (4) New measures on coaching between producer organisations and on replenishment of mutual funds in operational programmes should be eligible for Union financial assistance.
- (5) Member States may continue to provide national financial assistance from national budget to producer organisations in regions of the Union where the organisation degree is particularly low. Consequently, conditions under which national financial assistance may be granted in the fruit and vegetables sector as well as the method of calculation of the degree of organisation referred to in Article 34(3) of Regulation (EU) 1308/2013 should be laid down to avoid distortions of the internal market in the Union.
- (6) Provisions concerning eligibility of certain investments for Union financial assistance need to be clarified.
- (7) Eligible and non-eligible actions related to promotion and communication, including actions and activities aimed at diversification and consolidation on the fruit and vegetable markets, whether for prevention of a crisis or during a crisis period, need to be clarified as regards the eligibility of actions and activities for Union financial assistance.
- (8) Provisions relating to the annual reports on producer organisations, associations of producers organisations, including transnational associations of producer organisations, and producer groups, and on operational funds, operational programmes and recognition plans should be simplified. They need to enable the Commission to adequately monitor the sector.
- (9) Delegated Regulation (EU) 2017/891 should therefore be amended accordingly.
- (10) Transitional provisions should be laid down to ensure a smooth transition from the existing requirements, measures and actions laid down in Delegated Regulation (EU) 2017/891 to the new ones provided for in this Regulation.
- (11) This Regulation should apply from the same date as Regulation (EU) 2017/2393. However, the provisions concerning national financial assistance, indicators and monitoring should apply from 1 January 2019 to allow Member States and economic operators time to adapt to the new rules,
- (12) The conditions for the application of the new measures and actions eligible for Union financial assistance set out in Regulation (EU) No 1308/2013 should apply from the date of application of the amendments to that Regulation introduced by Regulation (EU) 2017/2393 to ensure market stability for producer organisations and their members, in particular given that those measures concern mainly crisis management and prevention and to enable them to fully benefit from the new measures. To safeguard legitimate expectations, producer organisations may choose to continue the ongoing operational programmes under the rules applicable at the time of the approval of the programmes or to modify their operational programmes to benefit from the new

measures and actions eligible for Union financial assistance, as set out in Regulation (EU) No 1308/2013.

HAS ADOPTED THIS REGULATION:

### *Article 1*

#### **Amendments to Delegated Regulation (EU) 2017/891**

Delegated Regulation (EU) 2017/891 is amended as follows:

(1) Article 2(e) is replaced as follows

"(e) 'transnational association of producer organisations' means any association of producer organisations in which at least one of the associated organisations or associations is located in a Member State other than where the association has its head office;"

(2) Article 12 is replaced as follows:

### *"Article 12*

#### **Marketing of the production outside the producer organisation**

1. Where the producer organisation so authorises in its statutes and where this is in compliance with the terms and conditions laid down by the Member State and the producer organisation, the producer members may:
  - (a) sell products directly or outside their holdings to consumers for their personal needs;
  - (b) market by themselves or through another producer organisation designated by their own producer organisation, quantities of products which, in terms of volume or value, are marginal compared to the volume or value of marketable production of their organisation of the products concerned;
  - (c) market by themselves or through another producer organisation designated by their own producer organisation, products which because of their characteristics or because of the limited production in volume or in value of the producer members, are normally not covered by the commercial activities of the producer organisation.
2. The percentage of the production that the producer members market outside the producer organisation, as referred to in paragraph 1 shall not exceed 25 % in volume or in value of the marketable production of each producer member.

However, Member States may set a lower percentage of the production that the producer members may market outside the producer organisation than the one set out in the first subparagraph. Member States may increase that percentage up to 40 % in case of products covered by Council Regulation (EC) No 834/2007\* or where

producer members market their production through another producer organisation designated by their own producer organisation.

\* Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 (OJ L 189, 20.7.2007, p. 1).";

- (3) In Article 22, paragraph 10 is replaced as follows:

"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 or its producer members, due to those causes may be included in the value of marketed production.";

- (4) In Article 30, paragraph 2 is replaced by the following:

"2. Producer organisations or associations of producer organisations which have been granted the support provided in Article 27 of Regulation (EU) No 1305/2013 or Article 19 of Commission Regulation (EU) No 702/2014(\*) may implement an operational programme in the same period provided that the Member State concerned ensures that the beneficiaries receive support for any given action only under one scheme.

\* 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).";

- (5) In the first subparagraph of Article 31(6), the first sentence is replaced by the following:

"Investments, including those under leasing contracts, may be financed through the operational fund in one amount or in instalments that were approved in the operational programme.";

- (6) In Chapter III of Title II, Section 3 is replaced by the following:

### **"SECTION 3**

#### **SUPPORT RELATED TO MUTUAL FUNDS**

##### *Article 40*

##### **Support related to mutual funds**

1. Member States shall adopt detailed provisions concerning support for the administrative cost of setting up mutual funds and the replenishment of mutual funds, as referred to in point (d) of the first subparagraph of Article 33(3) of Regulation (EU) No 1308/2013.



2. The support for the administrative cost of setting up mutual funds referred to in paragraph 1 shall comprise both the Union financial assistance and the contribution from the producer organisation. The total amount of that support shall not exceed 5 %, 4 % or 2 % of the contribution of the producer organisation to the mutual fund in the first, second and third year of its operation, respectively.
  3. A producer organisation may receive the support for the administrative cost of setting up mutual funds referred to in paragraph 1, only once and only within the three first years of the operation of the mutual fund. Where a producer organisation only asks for that support in the second or the third year of operation of the mutual funds, the support shall be 4 % or 2 % of the contribution of the producer organisation to the mutual fund in the second and third year of its operation, respectively.
  4. Member States may fix ceilings for the amounts that may be received by a producer organisation as a support related to mutual funds.";
- (7) In Chapter III of Title II, the following Section 8 is added:

## **"SECTION 8**

### **SUPPORT RELATED TO COACHING**

#### *Article 51a*

#### **Implementation of coaching measures**

1. For the purposes of Article 33(3)(i) of Regulation (EU) No 1308/2013, the following coaching measures shall be eligible for support:
  - (a) exchange of best practices related to crisis prevention and management measures referred to in Article 33(3) of Regulation (EU) No 1308/2013, helping recognised producer organisations, producer groups or individual producers to benefit from experience with implementation of crisis prevention and management measures;
  - (b) promoting the setting-up of new producer organisations, merging existing ones or enabling individual producers to join an existing producer organisation;
  - (c) creating networking opportunities for coaching providers and recipients, to strengthen in particular marketing channels as a means of crisis prevention and management.
2. The coaching provider shall be the association of producer organisations or the producer organisation. The coaching provider shall be the beneficiary of the support for coaching measures.
3. The coaching recipient shall be a recognised producer organisation or a producer group located in regions with an organisation rate lower than 20%, for the three consecutive years preceding the implementation of the operational programme.

Individual producers, non-members of a producer organisation or their associations, may be coaching recipients even if they are located in regions with organisation rate above 20%.

4. The expenditure related to coaching shall be part of the crisis prevention and management measures of the operational programme referred to in Article 33(3) of Regulation (EU) No 1308/2013.

Eligible costs related to coaching are listed in Annex III to this Regulation.

All costs identified in Annex III shall be paid to the coaching provider.

5. Coaching measures shall not be outsourced.";

- (8) Article 52 is replaced by the following:

#### *"Article 52*

#### **Conditions for the application of national financial assistance**

1. For the purposes of Article 35(1) of Regulation (EU) No 1308/2013, the degree of organisation of producers in a region of a Member State shall be calculated on the basis of the value of fruit and vegetables produced in the region concerned and marketed by:
  - (a) recognised producer organisations and associations of producer organisations; and
  - (b) producer groups recognised in accordance with Article 125e of Regulation (EC) No 1234/2007 or producer organisations and producer groups recognised in accordance with Article 27 of Regulation (EU) No 1305/2013.

For the purpose of the calculation, the value established as referred to in the first subparagraph shall be divided by the total value of the fruit and vegetables produced in that region.

2. The value of fruit and vegetables produced in the region concerned and marketed by the organisations, associations and groups referred to in points (a) and (b) of the first subparagraph of paragraph 1 shall only include those products for which those organisations, associations and groups are recognised. Article 22 shall apply *mutatis mutandis*.

For the calculation of the total value of the fruit and vegetables produced in that region, the methodology set out in Annex I to Regulation (EC) No 138/2004 of the European Parliament and of the Council(\*) shall apply *mutatis mutandis*.

3. Only fruit and vegetables produced in the region referred to in paragraph 4 shall benefit from national financial assistance.
4. Member States shall define the regions as a distinct part of their territory in accordance with objective and non-discriminatory criteria, such as their agronomic

and economic characteristics and their regional agricultural/fruit and vegetable potential, or their institutional or administrative structure and for which data are available in order to calculate the degree of organisation referred to in paragraph 1.

The regions defined by a Member State shall not be amended at least for five years unless such amendment is objectively justified, in particular for reasons that are not related to the calculation of the degree of organisation of producers in the region or regions concerned.

5. Before granting national financial assistance, Member States shall notify the Commission of the list of the region(s) that meet the criteria referred to in paragraphs (1) and (2) of Article 35 of Regulation (EU) No 1308/2013, and of the amount of national financial assistance to be granted to the producer organisations in those regions.

Member States shall notify the Commission of any amendment of the region(s) that meet the criteria referred to in paragraphs (1) and (2) of Article 35 of Regulation (EU) No 1308/2013.

\* Regulation (EC) No 138/2004 of the European Parliament and of the Council of 5 December 2003 on the economic accounts for agriculture in the Community (OJ L 33, 5.2.2004, p. 1).";

- (9) Article 56 is replaced by the following:

#### *"Article 56*

#### **Indicators**

1. The operational programmes and the national strategies shall be subject to monitoring and evaluation aimed at assessing the progress made in achieving the objectives set in the operational programmes, as well as their efficiency and the effectiveness in relation to those objectives.
2. Progress, efficiency and effectiveness referred to in paragraph 1 shall be assessed throughout the implementation of the operational programme on the basis of indicators, set out in Section 4 of Annex II to Implementing Regulation (EU) 2017/892, relating to actions and measures implemented by recognised producer organisations, associations of producer organisations, transnational associations of producer organisations and producer groups during the operational programmes.";

- (10) Article 57 is modified as follows:

- (a) In paragraph (2), point (c) is replaced by the following:

“(c) provide information for reporting requirements.”

- (b) Paragraph (3) is amended as follows:

- (i) the second subparagraph is replaced by the following:

"The evaluation exercise shall examine the progress made in relation to the overall objectives of the programme, based on indicators set out in Section 4 of Annex II to Implementing Regulation (EU) 2017/892";

(ii) the last subparagraph is replaced by the following:

"The evaluation report shall be attached to the corresponding annual report referred to in Article 21 of the Implementing Regulation (EU) 2017/892.";

(11) Annex II, III and V are amended in accordance with the Annex to this Regulation.

## *Article 2*

### **Transitional provisions**

Without prejudice to Article 34 of Delegated Regulation (EU) 2017/892, an operational programme approved under Implementing Regulation (EU) No 543/2011 or Delegated Regulation (EU) 2017/891 before 20 January 2018 shall continue to operate until its end under the conditions applicable before 1 January 2018.

However, at the request of a producer organisation or association of producer organisations, Member States may approve amendments of operational programme approved under Implementing Regulation (EU) No 543/2011 or Delegated Regulation (EU) 2017/891 before 20 January 2018. Those amendments shall comply with the requirements of Regulation (EU) No 1308/2013 as amended by Regulation (EU) 2017/2393, of Delegated Regulation (EU) 2017/891 as amended by Article 1 of this Regulation and of Implementing Regulation (EU) 2017/892 as amended by Implementing Regulation (EU) 2018/XXX<sup>4</sup>.

## *Article 3*

### **Entry into force and application**

This Regulation shall enter into force the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2018.

However, points (8), (9) and (10) of Article 1 and point (3) of the Annex shall apply from 1 January 2019.

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

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C(2018) 3316

Done at Brussels, 7.6.2018

*For the Commission*  
*The President*  
*Jean-Claude JUNCKER*