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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 10.8.2023 derogating from Delegated Regulation (EU) 2017/891 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council for the year 2023 as regards the value of marketed production, the national strategy and the recovery of Union financial assistance for multiannual commitments in the fruit and vegetables sector due to adverse meteorological events

Delegations will find attached document C(2023) 5369 final.

Encl.: C(2023) 5369 final



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

of 10.8.2023

derogating from Delegated Regulation (EU) 2017/891 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council for the year 2023 as regards the value of marketed production, the national strategy and the recovery of Union financial assistance for multiannual commitments in the fruit and vegetables sector due to adverse meteorological events

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

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 lays down rules regarding the producer organisations in the fruit and vegetables sector. That Regulation also empowers the Commission to adopt certain delegated and implementing acts.

Based on such an empowerment, the Commission has adopted, inter alia, Commission Delegated Regulation (EU) 2017/891¹.

Considering the severe adverse meteorological events that have taken place in several Member States' regions in the spring of 2023, the production of fruit and vegetables has been dramatically damaged. In Spain, the planned production in the regions of Catalonia is reduced of at least 50 % due to a drought situation, whereas the production in the region of Emilia-Romagna in Italy has been destroyed by a flood. Drought has also seriously impacted the level of production and its quality in some regions in France and in Portugal.

Due to severe adverse meteorological events of the spring of 2023, many recognised producer organisations and associations of producer organisations in the fruit and vegetables sector are facing difficulties in implementing their approved operational programmes. Some of the approved actions and measures will not be implemented in 2023 and therefore part of operational funds will not be spent. Other recognised producer organisations and associations of producer organisations are amending their operational programmes with a view to implementing actions and measures to address the impact of the severe adverse meteorological events in the fruit and vegetables sector, such as crisis management measures.

Considering the unprecedented nature of those events, it is necessary to alleviate those difficulties by derogating from certain provisions of Delegated Regulation (EU) 2017/891 applicable in the fruit and vegetables sector.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Consultations, involving experts from all the 27 Member States, have been carried out within the Expert Group for Agricultural Markets established under Regulation (EU) No 1308/2013, in particular during the meeting of 19/06/2023. This meeting allowed for a presentation of the Commission's ideas on the scope of the delegated act and on the necessary modifications of Commission Delegated Regulation (EU) 2017/891, as well as an exchange of views with the experts.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

This delegated act derogates from Commission Delegated Regulation (EU) 2017/891 as regards:

- the main activity of producer organisations;
- the 'value of marketed production' calculation method;

¹ 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.

- the good balance of measures / actions within operational programmes;
- the amendment's procedure;
- the suspension of operational programmes;
- the cessation of operational programmes; and,
- the multiannual commitments.

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

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derogating from Delegated Regulation (EU) 2017/891 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council for the year 2023 as regards the value of marketed production, the national strategy and the recovery of Union financial assistance for multiannual commitments in the fruit and vegetables sector due to adverse meteorological events

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 1234/2007², and in particular Articles 37 and 173 thereof,

Whereas:

- (1) Due to severe adverse meteorological events that have taken place in several Member States' regions in the spring of 2023, the production of fruit and vegetables has been dramatically damaged. In Spain, the planned production in the region of Catalonia is reduced by at least 50 % due to a drought situation, whereas the production in the region of Emilia-Romagna in Italy has been destroyed by a flood. Drought has also seriously impacted the level of production and its quality in some regions in France and in Portugal.
- (2) Given the severe adverse meteorological events of the spring of 2023, many recognised producer organisations and associations of producer organisations in the fruit and vegetables sector are facing difficulties in implementing their approved operational programmes. Some of the approved actions and measures will not be implemented in 2023 and therefore part of the operational funds will not be spent. Other recognised producer organisations and associations of producer organisations are amending their operational programmes with a view to implementing actions and measures to address the impact of the severe adverse meteorological events in the fruit and vegetables sector, such as crisis management measures.
- (3) In view of the unprecedented nature of severe adverse meteorological events of the spring of 2023, it is necessary to alleviate those difficulties by derogating from certain provisions of Delegated Regulation (EU) 2017/891³ applicable in the fruit and vegetables sector.

² OJ L 347, 20.12.2013, p. 671.

³ 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 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).

- (4) Temporary derogations should apply to operational programmes which continue to operate under the conditions applicable under Regulation (EU) No 1308/2013 in accordance with the transitional provisions laid down in Article 5(6), first subparagraph, point (c), of Regulation (EU) 2021/2117 and in Article 1, point (b), of Delegated Regulation (EU) 2022/2528⁴.
- (5) In addition, due to the severe adverse meteorological events, exceptional difficulties have been encountered in certain Member States with the planning, management and implementation of operational programmes of recognised producer organisations and associations of producer organisations in the fruit and vegetables sector. This may have the consequence of delaying the implementation of these operational programmes and therefore producer organisations and associations of producer organisations may fail to conform to Union requirements, laid down for those operational programmes in Delegated Regulation (EU) 2017/891. Producer organisations are also vulnerable to the disruption and disturbance caused by the adverse meteorological events and are experiencing financial difficulties and cash-flow problems caused by the reduction or destruction of their productions. This is having a direct impact on their financial stability and capacity to implement operational programmes not only in the year 2023 but also in the subsequent years, as the value of marketed production for the year 2023 impacts the calculation of the Union financial assistance for the subsequent years. This is further influencing the ability of producer organisations to introduce measures and actions targeting the effects of the adverse meteorological events. In addition, the reduction of the value of marketed production caused by the adverse meteorological events impairs the future continuity and viability of the producer organisations' operational programmes in the fruit and vegetables sector.
- (6) To address the consequences of the adverse meteorological events, and its impacts on the value of products sold, producer organisations should be exempted in the year 2023 from the provisions laid down in Article 11(2) of Delegated Regulation (EU) 2017/891, regarding the obligation that the economic value of products sold from producers that are not members of the producer organisation or of the association of producer organisation must be below the value of marketed production of the producer organisation or of the association of producer organisations.
- (7) Losses in the value of marketed production in the fruit and vegetables sector caused by the adverse meteorological events tend to have a major impact on the amount of Union aid received by producer organisations in the subsequent year, as the amount of Union aid is to be calculated as a percentage of the value of marketed production of each producer organisation. If substantial loss in the value of marketed production were to occur in 2023, producer organisations would risk losing their recognition as producer organisations, since one of the criteria for such recognition is reaching a certain minimum value of marketed production fixed at a national level. This would put the long-term stability of producer organisations at risk. Therefore, if a reduction of at least 35 % in the value of a product were to occur in the year 2023 due to the adverse meteorological events of the spring of 2023, and if this were to occur outside the responsibility and control of producer organisations, the value of marketed production

⁴ Commission Delegated Regulation (EU) 2022/2528 of 17 October 2022 amending Delegated Regulation (EU) 2017/891 and repealing Delegated Regulations (EU) No 611/2014, (EU) 2015/1366 and (EU) 2016/1149 applicable to aid schemes in certain agricultural sectors (OJ L 328, 22.12.2022, p. 70).

for 2023 should be established as 100 % of the value of marketed production for the average of the five previous 12-month reference periods, excluding the lowest and highest values to counteract those losses. The threshold of 65 % of the value of marketed production in the previous period, laid down in Article 23(4) of Delegated Regulation (EU) 2017/891, is insufficient to achieve economic and financial stability in the circumstances of the adverse meteorological events for the producer organisations concerned by such loss of value of marketed production.

- (8) Member States should also be exempted in the year 2023 from the provisions laid down in Article 27(5) of Delegated Regulation (EU) 2017/891, regarding their obligation to set in the national strategy the maximum percentages of the operational fund which may be spent on individual measures or types of action.
- (9) Subject to approval by Member States, producer organisations or associations of producer organisations may amend their operational programmes for subsequent years or even during the year of implementation, as laid down in Article 34(1) and Article 34(2), first subparagraph, of Delegated Regulation (EU) 2017/891. To address the consequences of the adverse meteorological events, they should also be able in the year 2023 to temporarily not apply those provisions.
- (10) With a view to adjusting the planning, management and implementation of the approved operational programmes due to the adverse meteorological events, Member States should be able, by way of derogation from Article 34(2), second subparagraph, point (a), of Delegated Regulation (EU) 2017/891, to authorise producer organisations to suspend their operational programmes in full or in part in the year 2023.
- (11) In accordance with Article 36(2), point (a), of Delegated Regulation (EU) 2017/891, 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 are to be made to that organisation or association for actions implemented after the date of cessation of that operational programme. In order to ensure the financial stability of producer organisations, aid received for eligible actions carried out before the cessation of the operational programme should not be recovered where the producer organisation or association of producer organisations demonstrates to the competent authority of the Member State that the cessation of that operational programme occurred in the year 2023 for reasons linked to the adverse meteorological events and was outside the control and responsibility of the producer organisation.
- (12) In order to ensure the financial stability of producer organisations, Union financial assistance received for multiannual commitments in the fruit and vegetables sector, such as environmental actions, should not be recovered and reimbursed to the European Agricultural Guarantee Fund (EAGF) as provided for in Article 36(3) of Delegated Regulation (EU) 2017/891, if their long-term objectives could not be realised because of their interruption in the year 2023 for reasons linked to the consequences of the adverse meteorological events of the spring of 2023.
- (13) In view of the necessity to take immediate action, this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

Temporary derogations from Delegated Regulation (EU) 2017/891

1. By way of derogation from Article 11(2) of Delegated Regulation (EU) 2017/891, in the year 2023, the limitation by which a producer organisation can only sell products from producers that are not members of a producer organisation or of an association of producer organisations provided that the economic value of that activity is below the value of its marketed production shall not apply to producer organisations which are affected by the adverse meteorological events of the spring of 2023.
2. By way of derogation from Article 23(4) of Delegated Regulation (EU) 2017/891, where a reduction of at least 35 % in the value of a product has occurred due to the adverse meteorological events of the spring of 2023 falling outside the responsibility and control of the producer organisation, the value of marketed production of that product in 2023 shall be deemed to represent 100 % of the value of marketed production for the average of the five previous 12-month reference periods, excluding the lowest and highest values.
3. By way of derogation from Article 27(5) of Delegated Regulation (EU) 2017/891, for the year 2023, the obligation on Member States to 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 shall not apply to producer organisations or associations of producer organisation which are affected by the adverse meteorological events of the spring of 2023.
4. For the year 2023, the obligations on Member States and producer organisations as regards amendments to operational programmes laid down in Article 34(1) and Article 34(2), first subparagraph, of Delegated Regulation (EU) 2017/891 shall not apply to producer organisations or associations of producer organisation which are affected by the adverse meteorological events of the spring of 2023.
5. By way of derogation from Article 34(2), second subparagraph, point (a), of Delegated Regulation (EU) 2017/891, for the year 2023, Member States may authorise producer organisations which are affected by the adverse meteorological events of the spring of 2023 to suspend their operational programmes in full or in part for the year 2023.
6. By way of derogation from Article 36(2), point (a), of Delegated Regulation (EU) 2017/891, for the year 2023, aid received for eligible actions carried out before the cessation of the operational programme shall not be recovered, provided that the cessation of the operational programme occurred due to the adverse meteorological conditions of the spring of 2023 falling outside the control and responsibility of the producer organisation concerned.
7. By way of derogation from Article 36(3) of Delegated Regulation (EU) 2017/891, Union financial assistance for multiannual commitments, such as environmental actions shall not be recovered and reimbursed to the EAGF where their long-term objectives and expected benefits cannot be realised in the year 2023 because those commitments were interrupted in the year 2023 due to the adverse meteorological events of the spring of 2023.
8. The producer organisation shall prove to the competent authority of the Member State concerned that the conditions provided for in the previous paragraphs are met.

Article 2

Entry into force

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

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

Done at Brussels, 10.8.2023

For the Commission
The President
Ursula VON DER LEYEN