Commission Implementing Regulation (EU) 2018/920 of 28 June 2018 amending Implementing Regulation (EU) No 180/2014 as regards certain provisions on checks, notifications and annual reporting and on amendments to the POSEI programmes

COMMISSION IMPLEMENTING REGULATION (EU) 2018/920

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amending Implementing Regulation (EU) No 180/2014 as regards certain provisions on checks, notifications and annual reporting and on amendments to the POSEI programmes

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 228/2013 of the European Parliament and of the Council of 13 March 2013 laying down specific measures for agriculture in the outermost regions of the Union and repealing Council Regulation (EC) No 247/2006[(1)], and in particular Article 6(2), the second paragraph of Article 8 and Articles 12(3) and 14(1) thereof,

Whereas:

(1) Experience gained with the application of Commission Implementing Regulation (EU) No 180/2014[(2)] has shown that certain provisions relating to checks, notifications and annual reporting need to be clarified and simplified.

(2) Articles 2, 3 and 5 of Implementing Regulation (EU) No 180/2014 lay down the provisions for the import licences, exemption certificates, aid certificates and payment relating to products imported from third countries or supplied from the Union. Article 4(1) of Commission Implementing Regulation (EU) 2016/1239[(3)] makes the use of the Economic Operators Registration and Identification number ('EORI number') mandatory for import licences. It is appropriate to provide the same requirement for the import licences, exemption certificates and aid certificates covered by Articles 2, 3 and 5 of Implementing Regulation (EU) No 180/2014 respectively.

(3) Article 8 of Implementing Regulation (EU) No 180/2014 contains the rules on the documents to be presented by operators and the validity of licences and certificates. It is appropriate to ease the electronic transmission of the accompanying documents of the licences and certificates.

(4) Article 16 of Implementing Regulation (EU) No 180/2014 lays down the rules for the administrative and physical checks on the import, entry, export and dispatch of agricultural products. It is appropriate to separate the type of physical checks for import and entry from the type of physical checks for export and dispatch. The wording of that Article should make explicit the obligation of applying a representative sample when performing checks on export and dispatch operations provided for in Section 5 of that Regulation.

(5) Article 22 of Implementing Regulation (EU) No 180/2014 provides the general principles for the checks in respect of aid applications for the measures to support local agricultural products. Taking into account the heterogeneity and different level of complexity of actions within the measures and to further ensure that all areas of expenditure are covered and represented in the sampling, it is necessary to specify that the competent authorities are to perform on-the-spot checks at the level of each action by sampling at least 5 % of the aid applications. The sample should also represent at least 5 % of the amounts covered by the aid for each action.

(6) Article 24 of Implementing Regulation (EU) No 180/2014 provides the rules for the selection of aid applicants to be subject to on-the-spot checks. As in the outermost regions there might be a small number of applicants, Member States should have the possibility to select only one applicant.

(7) Article 38(1) of Implementing Regulation (EU) No 180/2014 requires certain data relating to the specific supply arrangements balance to be notified at the end of each quarter of the year. That periodicity is burdensome and a notification only once per year is deemed sufficient.

(8) Article 39 of Implementing Regulation (EU) No 180/2014 sets out the elements to be included in the annual reports on the implementation of the measures. In its report of 15 December 2016[(4)] the Commission concluded that the reporting on the implementation of the POSEI programmes should be improved, particularly to better assess compliance with the objectives, including for specific supply arrangements, and to better describe the situation of the agricultural sector and its development, including price monitoring and the competitive position of local production with regard to imports. As it is also opportune to clarify the reporting obligations and provide a new structure of the annual reports, the relevant details should be specified in a new Annex to Implementing Regulation (EU) No 180/2014.

(9) Article 40 of Implementing Regulation (EU) No 180/2014 sets out the procedures for amending the POSEI programmes. Taking into account the experience gained with its application, those procedures need to be simplified in order to ensure a more flexible and smoother adaptation to the actual conditions relating to the supply arrangements and the local agricultural conditions. Therefore, it is appropriate to require that amendments covered by Article 40(1) and (2) of that Regulation be presented at the same time by 31 July.

(10) In general, amendments to POSEI programmes do not need formal approval by the Commission. It is appropriate to revise the wording of Article 40(1) of Implementing Regulation (EU) No 180/2014 in order to express that principle in a more explicit way.

(11) However, ‘major’ amendments to the programmes covered by Article 40(2) of Implementing Regulation (EU) No 180/2014 do need formal approval by the Commission. On the basis of the experience with that procedure, it is necessary to extend the deadline for approval to five months after the notification of the amendment. In addition, in order to simplify the procedure, the formal approval by the Commission should be limited to the first two cases currently covered by that provision.

(12) Article 40(3) of Implementing Regulation (EU) No 180/2014 concerns 'minor' amendments. To ease the financial adjustment procedure within the Member States, the deadline for the notification of adjustments up to 20 % of the financial allocation should be extended to 31 May.

(13) Finally, the definition of 'measure' in Article 40(5)(a) of Implementing Regulation (EU) No 180/2014 should be simplified.

(14) Several Commission regulations have been repealed and replaced by delegated and implementing regulations. For reasons of clarity and legal certainty, it is appropriate to update the references to those regulations. In particular, as regards the system of import and export licences, references to Commission Regulation (EC) No 376/2008[(5)] should be replaced by references to Commission Delegated Regulation (EU) 2016/1237[(6)] and Implementing Regulation (EU) 2016/1239.

(15) As regards the notifications to the Commission, references to Commission Regulation (EC) No 792/2009[(7)] should be replaced by references to Commission Delegated Regulation (EU) 2017/1183[(8)] and Commission Implementing Regulation (EU) 2017/1185[(9)].

(16) As regards the rules based on Regulation (EU) No 1306/2013 of the European Parliament and of the Council[(10)] references to Commission Regulation (EC) No 1122/2009[(11)] should be replaced by references to Commission Delegated Regulation (EU) No 640/2014[(12)] and Commission Implementing Regulation (EU) No 809/2014[(13)].

(17) As regards provisions relating to the Union Customs Code, references to Commission Regulation (EEC) No 2454/93[(14)] should be replaced by references to Regulation (EU) No 952/2013 of the European Parliament and of the Council[(15)] to Commission Delegated Regulation (EU) 2015/2446[(16)] or to Commission Implementing Regulation (EU) 2015/2447[(17)].

(18) Implementing Regulation (EU) No 180/2014 should therefore be amended accordingly.

(19) The measures provided for in this Regulation are in accordance with the opinion of the Committee for Direct Payments,

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) No 180/2014 is amended as follows:

(1) Article 2 is amended as follows:

(a) paragraph 2 is replaced by the following:

2. Import licences shall be drawn up in accordance with the specimen set out in Annex I to Commission Implementing Regulation (EU) 2016/1239[(18)].

Article 4 of Commission Delegated Regulation (EU) 2016/1237[(19)] and Articles 2 and 3, Article 4(1), Article 5 and 7 and 13 to 16 of Implementing

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2018/920. (See end of Document for details)*

Regulation (EU) 2016/1239 shall apply *mutatis mutandis*, without prejudice to this Regulation.

The negative tolerance provided for in Article 5(4) of Delegated Regulation (EU) 2016/1237 and Article 8(1) of Implementing Regulation (EU) 2016/1239 shall apply *mutatis mutandis*.;

(b) paragraph 6 is replaced by the following:

6. Import duties shall be levied on quantities which exceed those stated on the import licence. The positive tolerance of 5 % provided for in Article 5(4) of Delegated Regulation (EU) 2016/1237 and Article 8(1) of Implementing Regulation (EU) 2016/1239 shall apply, provided that the import duties relating thereto are paid.;

(2) in Article 3, paragraph 2 is replaced by the following:

2. Exemption certificates shall be drawn up on the basis of the specimen import licence set out in Annex I to Implementing Regulation (EU) 2016/1239.

Article 4 of Delegated Regulation (EU) 2016/1237 and Articles 2 and 3, Article 4(1), Articles 5 and 7 and 13 to 16 of Implementing Regulation (EU) 2016/1239 shall apply *mutatis mutandis*, without prejudice to this Regulation.

The negative tolerance provided for in Article 5(4) of Delegated Regulation (EU) 2016/1237 and Article 8(1) of Implementing Regulation (EU) 2016/1239 shall apply *mutatis mutandis*.;

(3) in Article 5, paragraph 2 is replaced by the following:

2. Aid certificates shall be drawn up on the basis of the specimen import licence set out in Annex I to Implementing Regulation (EU) 2016/1239.

Article 4 of Delegated Regulation (EU) 2016/1237 and Articles 2 and 3, Article 4(1), Articles 5 and 7 and 13 to 16 of Implementing Regulation (EU) 2016/1239 shall apply *mutatis mutandis*, without prejudice to this Regulation.

The negative tolerance provided for in Article 5(4) of Delegated Regulation (EU) 2016/1237 and Article 8(1) of Implementing Regulation (EU) 2016/1239 shall apply *mutatis mutandis*.;

(4) Article 8(1) is amended as follows:

(a) the first subparagraph is amended as follows:

(i) the introductory sentence is replaced by the following:

Subject to Articles 2(5), 3(6), 5(7) and Articles 11 and 12, the competent authorities shall accept the import licence, exemption certificate or aid certificate application presented by operators for each consignment. Those applications shall be accompanied by the original or a certified copy of the purchase invoice and the original, a certified copy or an authenticated electronic equivalent of the following documents:;

(ii) point (b) is replaced by the following:

(b) regarding the aid certificate:

(i) the means of proof of the customs status of Union goods referred to in Article 199(1)(b) of Commission Implementing Regulation (EU) 2015/2447[(20)]; or

(ii) a declaration type CO pursuant to Chapters 2 and 3 of Title VIII of Commission Delegated Regulation (EU) 2015/2446[(21)] in accordance with data elements No 1/1, 1/2 and 1/3 referred to in the data requirements table set out in Section 1 of Chapter 3 of Title I of Annex B to that Regulation.;

(b) the second subparagraph is replaced by the following:

Those accompanying documents may take the form of an electronic message. In case the verifying competent authority has no access to the IT system managing and producing such electronic document, it shall be replaced by a duly certified true copy or its authenticated electronic equivalent print-out.;

(5) in Article 12, the third paragraph is replaced by the following:

The notification referred to in this Article shall be made in accordance with Commission Delegated Regulation (EU) 2017/1183[(22)] and Commission Implementing Regulation (EU) 2017/1185[(23)].;

(6) in Article 16, paragraph 2 is replaced by the following:

2. The physical checks carried out in the outermost region concerned on the import or entry of agricultural products shall involve a representative sample amounting to at least 5 % of the licences and certificates presented in accordance with Article 9.

The physical checks carried out in the outermost region concerned on the export or dispatch provided for in Section 5 shall involve a representative sample of at least 5 % of the operations, based on the risk profiles established by the Member States.

Commission Regulation (EC) No 1276/2008[(24)] shall apply *mutatis mutandis* to those physical checks.

In addition, in special cases the Commission may request that physical checks cover different percentages.;

(7) in Article 22, the third paragraph is replaced by the following:

On the basis of a risk analysis in accordance with Article 24(1) of this Regulation, the competent authorities shall perform on-the-spot checks by sampling, for each action, at least 5 % of aid applications. The sample shall also represent at least 5 % of the amounts covered by the aid for each action.;

(8) in the second subparagraph of Article 24(1), the following sentence is added:

When the minimum number of aid applicants to be subjected to on-the-spot checks is lower than 12, Member States shall randomly select at least one applicant.;

(9) Articles 28 and 29 are replaced by the following: