Commission Implementing Regulation (EU) 2018/916 of 27 June 2018 amending Implementing Regulation (EU) No 181/2014 as regards certain provisions on checks, notifications and annual reporting and on amendments to the programme for the smaller Aegean islands

COMMISSION IMPLEMENTING REGULATION (EU) 2018/916

of 27 June 2018

amending Implementing Regulation (EU) No 181/2014 as regards certain provisions on checks, notifications and annual reporting and on amendments to the programme for the smaller Aegean islands

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 229/2013 of the European Parliament and of the Council of 13 March 2013 laying down specific measures for agriculture in favour of the smaller Aegean islands and repealing Council Regulation (EC) No 1405/2006[(1)], and in particular Article 6(2) and the second paragraph of Article 7 and Articles 11(3) and 13(1) thereof,

Whereas:

(1) Experience gained with the application of Commission Implementing Regulation (EU) No 181/2014[(2)] has shown that certain provisions relating to checks, notifications and annual reporting need to be clarified and simplified.

(2) Article 3 of Implementing Regulation (EU) No 181/2014 lays down the provisions for aid certificates and payment relating to products 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 aid certificates covered by Article 3 of Implementing Regulation (EU) No 181/2014.

(3) Article 13 of Implementing Regulation (EU) No 181/2014 lays down the rules for the administrative and physical checks on the entry, export and dispatch of agricultural products. It is appropriate to separate the type of physical checks for 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 3 of that Regulation.

(4) Article 20 of Implementing Regulation (EU) No 181/2014 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.

(5) Article 22 of Implementing Regulation (EU) No 181/2014 provides the rules for the selection of aid applicants to be subject to on-the-spot checks. As in the smaller Aegean islands there might be a small number of applicants, Greece should have the possibility to select only one applicant.

(6) Article 30(1) of Implementing Regulation (EU) No 181/2014 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.

(7) Article 31 of Implementing Regulation (EU) No 181/2014 sets out the elements to be included in the annual report on the implementation of the measures. In its report of 15 December 2016[(4)] the Commission concluded that the content of the annual report should be clarified and simplified in order to facilitate the reporting process. As it is therefore opportune to amend the reporting obligations and provide a new structure of the annual report, the relevant details should be specified in a new Annex to Implementing Regulation (EU) No 181/2014.

(8) Article 32 of Implementing Regulation (EU) No 181/2014 sets out the procedures for amending the programme. 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 32(1) and (2) of that Regulation be presented at the same time by 31 July.

(9) In general, amendments to the programme do not need formal approval by the Commission. It is appropriate to revise the wording of Article 32(1) of Implementing Regulation (EU) No 181/2014 in order to express that principle in a more explicit way.

(10) However, ‘major’ amendments to the programme covered by Article 32(2) of Implementing Regulation (EU) No 181/2014 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 case currently covered by that provision.

(11) Article 32(3) of Implementing Regulation (EU) No 181/2014 concerns ‘minor’ amendments. To ease the financial adjustment procedure within the Member State, the deadline for the notification of adjustments up to 20 % of the financial allocation should be extended to 31 May.

(12) Finally, the definition of ‘measure’ in Article 32(5)(a) of Implementing Regulation (EU) No 181/2014 should be simplified.

(13) 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.

(14) 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)].

(15) 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)].

(16) Implementing Regulation (EU) No 181/2014 should therefore be amended accordingly.

(17) 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 181/2014 is amended as follows:

(1) in Article 3, 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 Commission Implementing Regulation (EU) 2016/1239[(14)].

Article 4 of Commission Delegated Regulation (EU) 2016/1237[(15)] 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.;*

(2) in Article 10, 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[(16)] and Commission Implementing Regulation (EU) 2017/1185[(17)].;

(3) in Article 13, paragraph 2 is replaced by the following:

2. The physical checks carried out in the smaller Aegean islands on the entry of agricultural products shall involve a representative sample amounting to at least 5 % of the certificates presented in accordance with Article 7.

The physical checks carried out in the smaller Aegean islands on the export or dispatch provided for in Section 3 shall involve a representative sample of at least 5 % of the operations, based on the risk profiles established by Greece.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2018/916. (See end of Document for details)*

Commission Regulation (EC) No 1276/2008[18] shall apply *mutatis mutandis* to those physical checks.

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

(4) in Article 20, the third paragraph is replaced by the following:

On the basis of a risk analysis in accordance with Article 22(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.;

(5) in the second subparagraph of Article 22(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, Greece shall randomly select at least one applicant.;

(6) Articles 26 and 27 are replaced by the following:

Article 26

Recovery of undue payments and penalties

1 In the event of undue payment, Article 7 of Commission Implementing Regulation (EU) No 809/2014[19] shall apply *mutatis mutandis*.

2 Where the undue payment has been made as a result of a false declaration, false documents or serious negligence on the part of the aid applicant, a penalty shall be imposed equal to the amount unduly paid, with interest calculated in accordance with Article 7(2) of Implementing Regulation (EU) No 809/2014.

Article 27

Force majeure and exceptional circumstances

In cases of *force majeure* or exceptional circumstances within the meaning of Article 2(2) of Regulation (EU) No 1306/2013, Article 4 of Commission Delegated Regulation (EU) No 640/2014[20] shall apply *mutatis mutandis*.;

(7) Article 30 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) in the first subparagraph, the introductory sentence is replaced by the following:

1. As regards the specific supply arrangements, the competent authorities shall notify the Commission, no later than 31 May each year, of the following data relating to the operations carried out in the previous year with respect to the supply balance of the reference calendar year, broken down by product and CN code and, where applicable, by individual destination:;

(ii) in the second subparagraph, the second sentence is deleted;

(b) paragraphs 3 and 4 are replaced by the following:

3. The notifications referred to in this Article shall be made in accordance with Delegated Regulation (EU) 2017/1183 and Implementing Regulation (EU) 2017/1185.

4 The notifications referred to in Article 20(1) of Regulation (EU) No 229/2013 shall also be made in accordance with Delegated Regulation (EU) 2017/1183 and Implementing Regulation (EU) 2017/1185.;

(8) Article 31 is replaced by the following:

Article 31

Annual report

1 The structure and content of the annual report referred to in Article 20(2) of Regulation (EU) No 229/2013 shall be as set out in Annex III to this Regulation.

2 The report referred to in paragraph 1 shall be submitted to the Commission in accordance with Delegated Regulation (EU) 2017/1183 and Implementing Regulation (EU) 2017/1185.;

(9) Article 32 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

1. Amendments made to the support programme referred to in Chapter II of Regulation (EU) No 229/2013 shall be submitted to the Commission once per calendar year, except in cases of *force majeure* or exceptional circumstances. They shall be sent to the Commission no later than 31 July of the year prior to their application. The amendments shall be duly substantiated, in particular by giving the following information:

a the reasons for any implementation problems justifying the amendment of the programme;

b the expected effects of the amendment;

c the implications for financing and eligibility conditions.

The Commission shall inform Greece if it considers that the amendments do not comply with Union legislation, in particular with Article 4 of Regulation (EU) No 229/2013, without prejudice to the Articles 51 and 52 of Regulation (EU) No 1306/2013.

The amendments shall apply from 1 January of the year following that in which they were notified. In case an earlier application is deemed necessary, such amendments may apply earlier, unless the Commission objects.

2 By way of derogation from paragraph 1, the Commission shall evaluate separately the amendments proposed by Greece consisting in the introduction into the general programme of new groups of products to be supported under the specific supply arrangements or of new measures to assist the local agricultural production. The Commission shall decide on their approval within five months of their submission at the latest in accordance