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

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 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[(1)], and in particular Article 37(a)(i), (ii), (iii) and (vi), (b), (c), (d)(i), (iii) to (vi), (viii), (x), (xi) and (xii) and (e)(i), Article 173(1)(b), (c), (d) and (f) to (j), Article 181(2), Article 223(2)(a) and Article 231(1) thereof,

Having regard to Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008[(2)], and in particular Articles 62(1) and 64(6)(a) thereof,

Whereas:

(1) Regulation (EU) No 1308/2013 has replaced Council Regulation (EC) No 1234/2007[(3)] and lays down new rules concerning the fruit and vegetables and processed fruit and vegetables sectors. It also empowers the Commission to adopt delegated and implementing acts in that respect. Those acts should replace the corresponding provisions of Commission Implementing Regulation (EU) No 543/2011[(4)].

(2) In order to strengthen the bargaining power of fruit and vegetables producers and to foster a fairer distribution of added value along the supply chain, the recognition of producer organisations and their associations should be encouraged. This has to be achieved while respecting national legal and administrative structures.

(3) Provisions for the recognition of producer organisations in respect of the products they request should be laid down. Where the recognition is requested for products intended

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solely for processing, it should be ensured that they are indeed delivered for processing. Producer organisations should have at their disposal the structures necessary to ensure their functioning. Moreover, to implement an operational programme, producer organisations should be required to achieve a minimum value of marketed production, which should be laid down by the Member State in order to ensure efficiency of the support received and thereby help strengthen the bargaining power of the fruit and vegetable producers.

(4) In order to help achieve the goals of the fruit and vegetables regime and to ensure that producer organisations carry out their work in a sustainable and effective way, there needs to be stability within producer organisations. Membership of producer organisation should therefore be for a minimum period. It should be left to Member States to lay down the notice periods and the dates on which resignation from membership can take effect.

(5) Where a producer organisation is recognised for a product for which the provision of technical means is required, it should be allowed to provide those means through its members, through subsidiaries, through an association of producer organisations of which it is a member or by outsourcing.

(6) The main and essential activities of a producer organisation should relate to the concentration of supply and the placing on the market of their products so that the bargaining power of fruit and vegetables produces is strengthened and a fairer distribution of the resulting benefits along the supply chain is achieved. However, producer organisations should be allowed to engage in other activities, whether or not of a commercial nature. Cooperation between producer organisations should be encouraged and in that regard producer organisations should be allowed to market fruit and vegetables bought exclusively from another recognised producer organisation provided the value of this produce is left out of the calculations of value of the marketed production both for the purposes of the main activity and for other activities.

(7) Although the main activity of a producer organisation is the concentration of supply and the placing on the market of the products of its members for which it is recognised, in some cases the producer members should be allowed to sell a certain percentage of their production outside the producer organisation where the producer organisation so authorises and where this is in compliance with the terms and conditions of the Member State and the producer organisation. The total percentage of sales outside the producer organisation should not exceed a maximum threshold.

(8) Provisions regarding outsourcing where the activities are outsourced to entities closely related to the producer organisations should be further specified.

(9) In order to facilitate the concentration of supply, the merger of existing producer organisations to form new ones should be encouraged by providing rules for the merger of the operational programmes of the merged organisations.

(10) While respecting the principles whereby a producer organisation must be formed on the initiative of producers themselves and scrutinised by the producers, it should be left to Member States to lay down the conditions under which other natural or legal persons

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may be accepted as members of a producer organisation or an association of producer organisations.

(11) In order to ensure that producer organisations genuinely represent a minimum number of producers, Member States should take measures to ensure that a minority of members who may account for the bulk of production or the shares or capital in the producer organisation do not unduly dominate its management and operation. Democratic accountability is already ensured where entities have a legal form requiring it under national legislation before they are recognised as a producer organisation. In other cases, Member States should set a maximum percentage of voting rights or shareholdings and carry out relevant checks.

(12) Rules should be laid down on the recognition and functioning of associations of producer organisations, transnational producer organisations and transnational associations of producer organisations. For the sake of consistency, they should, as far as possible, reflect the rules laid down for producer organisations.

(13) To facilitate the use of the scheme of support to operational programmes, the value of marketed production of producer organisations should be clearly defined, including rules on which products may be taken into account and the marketing stage at which the value of production is to be calculated. For control purposes and for the sake of simplification, it is appropriate to use a flat rate for the purpose of calculating the value of fruit and vegetables intended for processing. This flat rate should be calculated on the basis of the value of the basic product, namely the fruit and vegetables intended for processing, to which is added the value of only those activities which are not genuine processing activities. Since the volumes of fruit and vegetables needed for the production of processed fruit and vegetables differ largely between groups of products, those differences should be reflected in the applicable flat rates. In the case of fruit and vegetables intended for processing that are transformed into processed aromatic herbs and paprika powder, it is also appropriate to introduce a flat rate for the purpose of calculating the value of fruit and vegetables intended for processing, which represents the value of the basic product only. The method of calculation of the value of marketed production should attenuate yearly fluctuations or insufficient data and avoid double counting, in particular in the case of transnational producer organisations and their associations. To prevent misuse of the scheme, producer organisations should not be permitted in general to change the methodology for fixing the reference period within the duration of a programme.

(14) Producer organisations may hold shares or capital in subsidiaries which help to increase the added value of the production of their members. Rules should be fixed for calculating the value of such marketed production. The main activities of such subsidiaries should be the same as those of the producer organisation.

(15) To ensure the correct use of aid, rules should be laid down for the management and bookkeeping of operational funds and members' financial contributions, allowing for as much flexibility as possible on condition that all producers may take advantage of the operational fund and may democratically participate in decisions on its use.

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(16) Provisions should be laid down establishing the scope and structure of the national strategy for sustainable operational programmes and the national framework for environmental actions. The aim should be to optimise the allocation of financial resources and to improve the quality of the strategy. Provisions should also be laid down to avoid double funding of the same action by other support schemes such as rural development or promotion programmes.

(17) For reasons of financial security and legal certainty, a list of operations and expenditure which may not be covered and a non-exhaustive list of operations which may be covered by operational programmes should be drawn up. Provisions regarding eligible expenditure, the use of flat-rates and scales of unit costs as well as investments should be laid down. Article 33 of Regulation (EU) No 1308/2013 establishes a number of objectives for operational programmes including objectives concerning the products produced both in fresh and in processed form. With a view to ensuring that those objectives are achieved, it is appropriate that the conditions under which actions related to the transformation of fruit and vegetables into processed fruit and vegetables may be eligible for support should be laid down. In respect of investments implemented on individual holdings, provisions for the recovery of the residual value should be laid down for cases where a member resigns from the producer organisation.

(18) Although operational programmes of associations of producer organisations are to be subject to the same rules as operational programmes of producer organisations, some requirements should be applied at the level of the member producer organisations.

(19) In order to allow appropriate evaluation of the information by the competent authorities and measures and actions to be included in, or excluded from, the programmes, procedures for the presentation and approval of operational programmes, including deadlines, should be laid down. Since the programmes are managed on an annual basis, it should be provided that programmes not approved before a given date are postponed for a year.

(20) There should be a procedure for the amendment of operational programmes for subsequent years, so that they can be adjusted to take account of any new conditions which could not have been foreseen when they were initially presented. In addition, it should be possible for measures and amounts of the operational fund to be changed during the year of execution of a programme. To ensure that the approved programmes maintain their overall objectives, all such changes should be subject to certain limits and conditions to be defined by Member States and to obligatory notification of changes to the competent authorities.

(21) To prevent cash-flow difficulties, a system of advance payments accompanied by appropriate securities should be available to producer organisations. In case of a cessation of an operational programme or of withdrawal of recognition, be it voluntary or compulsory, or of dissolution of a producer organisation, it has to be ensured that the aims for which aid has been paid have been attained, otherwise the aid paid should be reimbursed to the European Agricultural Guarantee Fund.

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(22) The production of fruit and vegetables is unpredictable and the products are perishable. Surplus on the market, even if it is not too large, can significantly disturb the market. Rules on the scope and application of crisis management and prevention measures in respect of the products referred to in Article 1(2)(i) of Regulation (EU) No 1308/2013 should therefore be laid down. As far as possible, those rules should provide for flexibility and for rapid application in crises and therefore should allow decisions to be taken by Member States and producer organisations themselves. Nevertheless, those rules should guard against abuse of Union financial assistance and should therefore provide for limits on the use of certain measures, including in financial terms. They should also ensure that phytosanitary and environmental requirements are duly respected.

(23) As regards withdrawals from the market, rules should be adopted taking into account the potential importance of that measure. In particular, rules should be laid down providing for a system of increased support for fruit and vegetables withdrawn from the market which are distributed free of charge as humanitarian aid by charitable organisations and certain other establishments and institutions. In order to facilitate free distribution, it is appropriate to provide for the possibility which allows charitable organisations and institutions to request a symbolic contribution from the final recipients of the withdrawn products. In addition, maximum levels of support for market withdrawals should be fixed in order to ensure that withdrawals do not become a permanent alternative outlet for products compared to placing them on the market. In this context, it is appropriate to continue using common levels of support for the main products. For other products, where experience has not yet shown any risk of excessive withdrawals, it is appropriate to fix maximum levels of support as a percentage of the average of recorded prices in each Member State. In all cases, however, for similar reasons, it is appropriate to set a quantitative limit of withdrawals per product per producer organisation.

(24) On the basis of past experience, the provisions on green harvesting and non-harvesting should be further elaborated. Similarly, the provisions on support for the administrative costs of setting up mutual funds and replanting of orchards following mandatory grubbing-up should be simplified.

(25) Rules should be adopted concerning the national financial assistance that Member States may grant in regions of the Union where the degree of organisation of producers is particularly low, including rules on how the degree of organisation is calculated and a low degree of organisation is confirmed. Those rules should reflect those currently applicable.

(26) Support to producer groups has become part of the rural development policy under Regulation (EU) No 1305/2013 of the European Parliament and of the Council[(5)], but rules on notifications regarding producer groups formed pursuant to Article 125e of Regulation (EC) No 1234/2007 that are necessary to implement the provisions of the aid scheme should be maintained in this Regulation.

(27) Provisions concerning the type, format and means of notifications necessary to implement this Regulation should be laid down. Those provisions should include notifications from producers and producer organisations to the Member States and from