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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

II

(Non-legislative acts)

RECOMMENDATIONS

COMMISSION RECOMMENDATION (EU) 2019/1665

of 30 September 2019

on crisis prevention and management measures pursuant to point (d) of the first subparagraph of Article 33(3) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council — (mutual funds)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) This Recommendation concerns the application of point (d) of the first subparagraph of Article 33(3) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council ⁽¹⁾ ('CMO Regulation') and Article 40 of Commission Delegated Regulation (EU) 2017/891 ⁽²⁾.
- (2) Promoting crisis prevention and management in agriculture is one of the six objectives of the Union's fruit and vegetables policy since its beginning in 1996. In view of this, mutual funds are an important crisis prevention tool for producer organisations under their operational programmes.
- (3) In that context, point (d) of the first subparagraph of Article 33(3) of the CMO Regulation, as amended by Regulation (EU) 2017/2393 of the European Parliament and of the Council ⁽³⁾, allows for the possibility to obtain financial contributions via the operational programmes of producer organisations in the fruit and vegetables sector to replenish mutual funds, following the compensation paid to producer members of such producer organisations who experience a severe drop in their income as a result of adverse market conditions.
- (4) Pursuant to Article 40 of Delegated Regulation (EU) 2017/891, Member States are to provide for specific conditions to grant support under that measure. When doing so, they need to ensure equal treatment among farmers across the Union, as well as compliance with Union competition rules and with Union international commitments (such as the WTO Agreements).
- (5) This Recommendation intends to provide clarity for Member States and economic operators on the application of the mutual funds measure by producer organisations, with the view to increasing the uptake of this crisis prevention tool among producer organisations across the Union.

⁽¹⁾ 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 (OJ L 347 20.12.2013, p. 671).

⁽²⁾ 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).

⁽³⁾ 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).

- (6) When preparing this Recommendation, consideration has also been given to the rules on mutual funds laid down in Articles 36 to 39a of Regulation (EU) No 1305/2013 of the European Parliament and of the Council ⁽⁴⁾ to the extent those rules are compatible with the CMO Regulation and with Delegated Regulation (EU) 2017/891,

HAS ADOPTED THIS RECOMMENDATION:

RATIONALE OF THE MUTUAL FUNDS MEASURE

1. Farmers are exposed to economic (e.g. volatility of the prices of the input costs), environmental, sanitary (e.g. animal and plant health) or climatic (e.g. extreme weather events, climate change) risks, which may have a strong impact on farmers' income stifling long-term planning and investments. Consequently, high uncertainty about the future implies that farmers' competitiveness may be compromised. This may in turn generate high fluctuation of income, meaning that even farmers who are competitive in normal years may be forced out of business due to one disastrous event.
2. Even though the impact on farmer's income ultimately depends on the interplay of many factors, including the global market and policy support, the risks of failure in production may lead to increasing instability in the economic situation of farmers.
3. Against this background, effective management of risks needs to be holistic — involving prevention, response, planning — but still tailored to farmers' individual situations. The heterogeneity of risks and agricultural structures throughout the Union favours a more decentralised approach to using instruments, such as mutual funds, that is best suited to address specific needs of particular regions and sectors. Rather than applying a 'one size fits all' approach, it is preferable to ensure that Member States have flexibility in addressing risks faced by farmers, so that the most appropriate solution can be found.
4. For that reason, the current wording of point (d) of the first subparagraph of Article 33(3) of the CMO Regulation provides for better possibilities to support mutual funds via the operational programmes of producer organisations.

SCOPE, TYPE AND LEVEL OF SUPPORT

5. Although the rules on mutual funds set out in Regulation (EU) No 1305/2013 are not binding for the mutual funds measure under the CMO Regulation, they provide a useful basis on which Member States can develop rules on mutual funds in the context of the CMO Regulation, to the extent these rules are in line with that Regulation.
6. Member States need to define what constitutes mutual funds and specify some other conditions set out in point (d) of the first subparagraph of Article 33(3) of the CMO Regulation:
 - (a) 'mutual fund' is included in the provisions of both Regulation (EU) No 1305/2013 and in the CMO Regulation. In Article 36(3) of Regulation (EU) No 1305/2013, it is defined as a scheme that may be accredited by the Member State for affiliated farmers to insure themselves, whereby compensation payments are made to affiliated farmers for economic losses caused by an outbreak of adverse climatic events or an animal or plant disease or pest infestation or an environmental incident or for a severe drop in their income.

Compared to mutual funds under Regulation (EU) No 1305/2013, the CMO Regulation does not require accreditation of mutual funds. Accreditation may be beneficial also for mutual funds under the CMO Regulation because it may help, among others, to reduce the risk of double funding;

⁽⁴⁾ Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (OJ L 347, 20.12.2013, p. 487).

- (b) 'severe drop of income' — Member States could use as a proxy for income the value of marketed production (VMP) of the producer organisation or association of producer organisations where part or all producer members or members of an association of producer organisation suffer a severe drop in income. For that purpose, the VMP could be calculated based on ex-producer organisation prices and for each product. However, this does not mean that the drop of income of a producer should be disregarded when establishing detailed rules on support of mutual funds.

Attention needs to be paid in particular to cases where only a part of the producer members of the producer organisation or members of an association of producer organisations have suffered a severe drop of income, for instance because the adverse market conditions concern only part of the products for which the producer organisation or association of producer organisations is recognised. In these circumstances, payments from the mutual fund to those who have not suffered a severe drop of income as a result of adverse market conditions would not be eligible for Union financial assistance based on point (d) of the first subparagraph of Article 33(3) of the CMO Regulation.

On the contrary, eligibility of payments from mutual funds to those that have suffered a severe drop of income as a result of adverse market conditions should not be refused merely on the ground that the overall VMP of the producer organisation/association of producer organisations has not decreased or has not decreased sufficiently. Assessment needs to be made on a case-by-case basis, taking into account the individual circumstances of the producer organisations, associations of producer organisations and their members as well as the market conditions that have caused the severe drop of income.

Regulation (EU) No 1305/2013 provides that compensation to farmers of a specific sector for a severe drop in their income is to be granted only in duly justified cases, and where the drop in income exceeds a threshold of at least 20 % of the average annual income of the individual farmer in the preceding three-year period or a three-year average based on the preceding five-year period excluding the highest and lowest entry. The CMO Regulation does not contain any such thresholds.

In order to ensure a uniform and non-discriminatory application of the measures, Member States could take a similar approach to that laid down in Regulation (EU) No 1305/2013, and grant support to replenish mutual funds where the drop of income of the producer organisation (i.e. its VMP per product) exceeds 20 % of the income established by the Member States, depending on the situation at stake (e.g. drop of income of all producer members or other situations), over the preceding three-year period or a three-year average based on the preceding five-year period excluding the highest and lowest entry;

- (c) 'adverse market conditions' — this should refer to an objectively existing situation in the market for a given product that leads to a drop of income of producer members. A drop exceeding 20 % of the average price of the affected product in the preceding three-year period or a three-year average based on the preceding five-year period excluding the highest and lowest entry could be one indicator of adverse market conditions. The adverse market conditions could also be established on the basis of a change in the representative market price of the products concerned or taking the amounts of support for market withdrawals (see point (7)(b) below).

7. The following examples of relevant factors and situations could also be used to establish whether payments from mutual funds are eligible for Union financial assistance in the form of contributions to the replenishment of the mutual fund.

- (a) Input costs increase resulting in severe drop of income

Increase in input costs (e.g. price increase of fertiliser that may cause an increase in costs of the affected producers) may result in a loss of income where this increase in costs of inputs cannot be passed on to customers in the form of an increase of price due to adverse market conditions.

Member States could establish a standard methodology to estimate the weight of the inputs in the final price of the product by productive orientation, evidencing the price increase.

The payments from mutual funds could, for instance be made to producers, if all other conditions are met, where it would be proven that the weight of the input cost as a proportion of the price ex producer organisation of the affected product increased by at least 20 %.

The evidence supporting the income decrease caused by the input costs increase should be based on market and accounting data certified by a public or private independent qualified body or expert in the field concerned and its accuracy and reliability needs to be checked by the Member State, to ensure that the conditions for eligibility to Union financial assistance for mutual funds under the CMO Regulation are met.

- (b) Maximum amounts of support for market withdrawals as baseline for determining whether drop of price in the market

The maximum amounts of support for market withdrawals as defined in Article 45(1) of Delegated Regulation (EU) 2017/891 and Annex IV to that Regulation could be used as the baseline to establish the drop of the price in the market. The 'trigger threshold' for the mutual funds could then be established taking the representative price of each product concerned and comparing it with the market price. Where the actual market price would be lower by at least 20 % than the maximum support laid down in Annex IV to Delegated Regulation (EU) 2017/891 the trigger threshold would be reached. Member States should check that the impact of the price drop is sufficiently significant in terms of its duration to trigger a severe drop in income.

ELIGIBLE COSTS — TYPES OF EXPENDITURES COVERED BY THE MUTUAL FUNDS MEASURE

8. In order to be eligible for Union financial assistance, it is recommended that the mutual fund concerned:
- (a) has a transparent policy as regards payments into and compensations paid from the mutual fund;
 - (b) has clear rules attributing responsibilities for any debts incurred;
 - (c) be accredited by the competent authority in accordance with national law.
9. Types of expenditure covered by the mutual funds measure:
- (a) administrative costs linked to the setting-up of the mutual fund should include among other costs for managing the fund (same as the fund length i.e. 5 years maximum), registration fees, personnel costs and overheads; and
 - (b) financial contributions referred to in Article 32(1)(a) of CMO Regulation to replenish mutual funds, following the compensation paid to producer members who experience a severe drop in their net income ⁽⁷⁾ as a result of adverse market conditions. The replenishment should be done through the operational fund. The financial contributions to replenish the mutual fund would become a dedicated part of the operational fund.
10. Pursuant to Article 40(4) of Delegated Regulation (EU) 2017/891, 'Member States may fix ceilings for the amounts that may be received by a producer organisation as a support related to mutual funds.'
11. Member States should ensure that overcompensation as a result of the combination of the mutual funds measure with other national or Union support instruments or private insurance schemes is avoided by carrying out the checks and measures referred to in Article 34 of Commission Implementing Regulation (EU) No 2017/892 ⁽⁸⁾. Re-insurance of mutual funds is not eligible for support under the European Agricultural Guarantee Fund.
12. The support to administrative costs of setting up the mutual fund is to be spread over a maximum of three years in a decreasing manner. The total amount of support including both the Union financial assistance and the contribution from the producer organisation, is not to 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. A producer organisation may receive support for the administrative cost of setting up mutual funds only once and only within the three first years of the operation of the mutual fund. Where a producer organisation only requests support in the second or the third year of operation of the mutual fund, the support is to 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.

⁽⁷⁾ For instance, when input costs rise, the income may also increase. However, the net income could be affected.

⁽⁸⁾ Commission Implementing Regulation (EU) 2017/892 of 13 March 2017 laying down rules for the application of 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 (OJ L 138 25.5.2017, p. 57).

13. Financial contributions to replenish mutual funds would cover the following items:

- (a) amounts paid by the mutual fund as financial compensation to producer members who experience a severe drop in their income as a result of adverse market conditions. For this purpose Member States should not distinguish whether the amounts paid to the producer members as a compensation originated from the operational capital, basic capital or other funds of the mutual fund including commercial loans taken out by the mutual fund to compensate producer members, where the conditions of the CMO Regulation are met and where other resources in the mutual fund are insufficient to provide the necessary compensation (see the last subparagraph of Article 33 (3) of the CMO Regulation);
- (b) interest on commercial loans taken out by the mutual fund for the purpose of paying the financial compensation to farmers from the mutual fund where the funds available in the mutual fund would be insufficient to meet the compensation requests (see the last subparagraph of Article 33(3) of the CMO Regulation).

14. Starting capital stock of the mutual fund that will feed the compensations in case the conditions are met could be financed through the rural development programme (Article 39 of Regulation (EU) No 1305/2013). In such cases, Member States should ensure that double financing is avoided.

15. To ensure transparency and legal certainty, Member States should define the rules for the constitution and management of the mutual fund, in particular for the granting of compensation payments and the eligibility of the producer organisation or the association of producer organisations ⁽⁷⁾, as well as for the administration and monitoring of compliance with these rules in accordance with Articles 26 and 27 of Implementing Regulation (EU) 2017/892. Member States may also require that the mutual fund arrangements provide for penalties in case of negligence by producer members of the producer organisation or members of association of producer organisations itself as part of the statutes of the producer organisation or of their associations.

BENEFICIARIES OF UNION FINANCIAL ASSISTANCE

16. The beneficiaries of the Union financial assistance should be producer organisations and associations of producer organisations, as applicable in the Member State concerned ⁽⁸⁾.

17. A producer organisations or association of producer organisations may decide to compensate only one of their members (or if recognised for multiple products, only the producer producing the affected product) or part of the producer members of producer organisations or members of associations of producer organisations.

AID INTENSITY - AMOUNT OF UNION FINANCIAL ASSISTANCE

18. Union financial assistance covers administrative costs as explained in point (9)(a) and 50 % ⁽⁹⁾ of the eligible costs (actual expenditure incurred), pursuant to Article 34(1) of the CMO Regulation.

19. It is recommended that Member States limit the costs that are eligible for support by applying:

- (a) ceilings per mutual fund;
- (b) appropriate per unit ⁽¹⁰⁾ ceilings.

⁽⁷⁾ For instance, minimum size of the producer organisation or association to be eligible.

⁽⁸⁾ E.g. additional conditions set out in the national strategy.

⁽⁹⁾ Union financial assistance to the operational funds.

⁽¹⁰⁾ Producer organisation, its members, products, etc.

ADMINISTRATIVE AND FINANCIAL MANAGEMENT

20. Pursuant to Article 36(2) of the CMO Regulation and Article 27 of the Delegated Regulation (EU) 2017/891, a Member State is to establish a national strategy of sustainable operational programmes including, among others, priorities chosen for the sector and a balance of the measures/actions as maximum percentages of the operational fund, which may be spent on any measure/action.

A balance is particularly relevant in the case of risk management. There should be a minimum critical mass (e.g. producer organisations with a minimum number of members) to trigger the risk management tool, to compensate the producers and to keep producers' contributions reasonable ⁽¹¹⁾.

At the same time, the necessary coherence between the different schemes under the common agricultural policy should be ensured and double funding between different crisis measures should be excluded. For instance, a producer organisation or association of producer organisations should not compensate its producer members for market withdrawals of the products for which compensation for severe drop of income has been paid from mutual fund. The products benefitting from mutual fund compensations may however be sold on the market or processed.

21. Member States should limit the duration of commercial loans to the duration of the operational programme concerned.
22. Specific rules on the contribution that any producer member of producer organisation or member of the association of producer organisation or the producer organisation or association of producer organisations itself should pay into the fund, and the payment intervals, could be established by the Member State. For instance, the amount that a producer members of producer organisation or member of the association of producer organisations or the producer organisation or association of producer organisations itself is required to pay could be modulated based on among others an ex-ante risk assessment, the average income, the size of the producer organisation or association. Such requirements should, where established, be included in the statutes of the producer organisation or association of producer organisations. It is the responsibility of the Member State to ensure proper targeting and tailoring of the measure according to its strategic approach based on SWOT analysis/identification of needs in the national strategy.
23. A mutual fund that is eligible for support under point (d) of the first subparagraph of Article 33(3) of the CMO Regulation may take on other functions, such as credit provision for producer members. Since producers make contributions to a collective stock of resources that are available for dealing with crises, there could be an incentive for producer members to contribute with a top-up from which an additional pool of collective assets could be constituted that could be used to provide credit to them. Where the mutual fund is used also for other purposes than payment of compensations to producer members as referred to in point (d) of the first subparagraph of Article 33(3) of the CMO Regulation, the resources allocated to the mutual fund for other purposes should be clearly distinguished (e.g. held in separate accounts) from the capital stock/resources of the mutual fund, which would be used in case of crisis (similarly to the principles set out in Article 16 of Delegated Regulation (EU) 2017/891 as regards non-producer members). Only the amounts specifically dedicated to ensuring compensation for severe loss of income due to adverse market conditions should be ring fenced and should be considered as the basis to calculate public aid intensity.
24. Contributions to the mutual fund's capital stock from private actors other than producer members (e.g. non-producer members of the producer organisations) could be allowed. While being contributors, non-producer members of the producer organisation would not be entitled to receive any compensation or repayment from the mutual fund. In any case, compensation from the mutual fund could only be paid to producer members, as ultimate beneficiaries of the Union aid scheme in the fruit and vegetables sector, where, as far as the inputs into the stock of capital are concerned, no restrictions appear to be necessary ⁽¹²⁾.

⁽¹¹⁾ By carrying out the checks and measures referred to in Articles 26 and 27 of Implementing Regulation (EU) 2017/892.

⁽¹²⁾ See Article 16 of Delegated Regulation (EU) 2017/891.

25. Member States may provide for the possibility that producer members of producer organisations or members of associations of producer organisations recover parts of their contributions to the mutual fund after a certain number of years if the mutual fund was not used to compensate producer members in accordance with point (d) of the first subparagraph of Article 33(3) of the CMO Regulation, and the amounts collected were not used. It is the responsibility of the Member States and the producer organisations to establish appropriate and transparent rules in this respect.

CONTROL AND MONITORING

26. Member States should ensure that the mutual funds measure is subjected to the same checks as the other measures and actions included in the operational programmes.
27. Producer organisations should pay special attention to the documentation to be kept in connection with the implementation of the mutual funds measure, in particular to:
- (a) the inclusion of this measure in the operational programme or its amendment;
 - (b) the assessment that led to the payment of a compensation from the mutual fund (for example, how the severe drop of income was calculated and established, for which products, how is it ensured that the price ex-producer organisation is aligned with the market price, etc.);
 - (c) members, produce, final destination of the production and time period covered by this measure;
 - (d) the contribution of the producer organisation to the replenishment of the mutual fund and regular contributions of its members to the mutual fund.
28. That documentation should be checked by the Member State at the moment of the approval of the amendment of the operational programme and at the moment of the payment claim.
29. On top of these checks, the Member State should pay special attention to the risk of overcompensation and double funding.

ANNUAL REPORT FROM PRODUCER GROUPS, PRODUCER ORGANISATIONS AND ASSOCIATIONS OF PRODUCER ORGANISATIONS

30. The information related to mutual funds should be filled in in Tables 3.2 and 4.1 set out in Annex II to Implementing Regulation (EU) 2017/892.

Done at Brussels, 30 September 2019.

For the Commission
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Member of the Commission

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