

COMMISSION IMPLEMENTING REGULATION (EU) 2022/861**of 1 June 2022****laying down exceptional rules for the Member States' second requests for Union aid for school fruit and vegetables and for school milk and derogating from Implementing Regulation (EU) 2017/39 as regards the reallocation of Union aid, for the period from 1 August 2022 to 31 July 2023**

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 25, first paragraph, point (d), thereof,

Having regard to Council Regulation (EU) No 1370/2013 of 16 December 2013 determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products ⁽²⁾, and in particular Article 5(5) thereof,

Whereas:

- (1) The military aggression by Russia against Ukraine on 24 February 2022 has led to a mass inflow of displaced persons from Ukraine to the Union, most of whom are women and children. Several Member States are meeting unprecedented challenges in order to integrate quickly displaced children from Ukraine into their education system.
- (2) The aid scheme for the supply of fruit and vegetables and of milk and milk products in educational establishments ('the school scheme'), set out by Regulation (EU) No 1308/2013 is aimed at children who regularly attend nurseries, pre-schools or primary or secondary-level educational establishments in the Member States. Displaced children from Ukraine integrated in the Member States' education systems are therefore eligible for participation in the school scheme. Due to the increase in number of eligible children, in absolute terms or in percentage of the population, several Member States in the frontline for action in response to the Russia's invasion of Ukraine may encounter difficulties in implementing the school scheme as planned if their allocation of Union aid is not increased.
- (3) In accordance with Article 3, first paragraph, point (a), of Commission Implementing Regulation (EU) 2017/39 ⁽³⁾, Member States submitted their requests for Union aid for school fruit and vegetables and for school milk relating to the school year 2022/2023, which runs from 1 August 2022 to 31 July 2023, to the Commission by 31 January 2022. Based on those requests, submitted before Russia's invasion of Ukraine, the Commission fixed the definitive allocations of Union aid by Member State in Commission Implementing Decision (EU) 2022/493 ⁽⁴⁾. Available information on the level of use of the definitive allocations of Union aid in past school years by some Member States indicates the risk that some Member States may not be able to use their definitive allocation in full.
- (4) In the light of the newly arisen needs and as a token of solidarity by the Union and the Member States with Ukraine, it is appropriate to set out exceptional rules allowing Member States to submit a second request for Union aid for school fruit and vegetables and for school milk regarding the period from 1 August 2022 to 31 July 2023 by 15 June 2022. This possibility should be linked to the need to cater for the displaced children from Ukraine enrolled in the Member States' educational establishments in that period. Member States should be able to indicate either their

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ OJ L 346, 20.12.2013, p. 12.

⁽³⁾ Commission Implementing Regulation (EU) 2017/39 of 3 November 2016 on rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to Union aid for the supply of fruit and vegetables, bananas and milk in educational establishments (OJ L 5, 10.1.2017, p. 1).

⁽⁴⁾ Commission Implementing Decision (EU) 2022/493 of 21 March 2022 fixing the definitive allocation of Union aid to Member States for school fruit and vegetables and for school milk for the period from 1 August 2022 to 31 July 2023 and amending Implementing Decision (EU) 2021/462 (OJ L 100, 28.3.2022, p. 55).

willingness to use more than their definitive allocation of Union aid set out in Annex I to Implementing Decision (EU) 2022/493 or the amount of the definitive allocation that is not requested, in case there is no willingness to use the entire amount of that allocation. The former possibility should be limited to the Member States having demonstrated a suitable absorption of their definitive allocation of Union aid, based on the financial execution in school year 2018/2019, which was the last school year before the COVID-19 pandemic. Their requests should be based solely on the number of displaced children from Ukraine falling within the target group defined in the Member States' strategy according to Article 2(1), point (f), of Implementing Regulation (EU) 2017/39, duly justified on the grounds of available data. Member States not submitting a second request should be regarded as having confirmed the definitive allocations set out in Annex I to Implementing Decision (EU) 2022/493.

- (5) Article 7(1) of Implementing Regulation (EU) 2017/39 lays down the rules for the reallocation of Union aid. The Commission is to fix the definitive amount of aid by reallocating unrequested indicative allocations or unrequested parts thereof. It is appropriate to derogate from those rules to allow the Commission to also take into account new requests linked to Russia's invasion of Ukraine in order to fix a revised definitive allocation of Union aid for the period from 1 August 2022 to 31 July 2023. The reallocation of any unrequested amount of definitive allocations of Union aid is to be based on the number of six- to ten-year old children in the Member States, in accordance with Article 5(5), second subparagraph, of Regulation (EU) No 1370/2013.
- (6) As the fixing of the definitive allocations of Union aid for school fruit and vegetables and for school milk for the period from 1 August 2022 to 31 July 2023 taking into account the second request for Union aid would need to take place as soon as possible to allow Member States to plan and carry out the necessary preparatory activities in due time for the implementation of the school scheme, this Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the Common Organisation of the Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

For the period from 1 August 2022 to 31 July 2023, Member States may submit by 15 June 2022 a second request for Union aid, indicating:

- (a) the willingness to use more than the definitive allocation of Union aid for school fruit and vegetables and/or for school milk set out in Annex I to Implementing Decision (EU) 2022/493 and the additional amount requested, in the case an additional allocation be available; or
- (b) the amount of the definitive allocation of Union aid for school fruit and vegetables and/or for school milk set out in Annex I to Implementing Decision (EU) 2022/493 that is not requested, in the case there is no willingness to use the entire amount of that allocation.

Member States may only request an additional amount of Union aid pursuant to first paragraph, point (a), where the use of the definitive allocation of Union aid for school year 2018/2019 running during the period from 1 August 2018 to 31 July 2019 is equal or above 75 %, taking into account the declarations of expenditure sent to the Commission concerning expenditure effected up to 31 December 2021 in accordance with Article 10 of Commission Implementing Regulation (EU) No 908/2014 ⁽⁵⁾. Their request shall be linked to the number of displaced children from Ukraine falling within the target group defined in the Member States' strategy in accordance with Article 2(1), point (f), of Implementing Regulation (EU) 2017/39, at the time of the submission of that request and shall be duly justified on the grounds of available data.

⁽⁵⁾ Commission Implementing Regulation (EU) No 908/2014 of 6 August 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, rules on checks, securities and transparency (OJ L 255, 28.8.2014, p. 59).

Where a Member State does not submit a request for Union aid pursuant to the first paragraph, it shall be regarded as having confirmed the definitive allocations set out in Annex I to Implementing Decision (EU) 2022/493.

Article 2

By way of derogation from Article 7(1) of Implementing Regulation (EU) 2017/39, the Commission may decide, by 15 July 2022, to also take into account the second requests for Union aid submitted pursuant to Article 1 of this Regulation to fix the definitive allocations of Union aid for the period from 1 August 2022 to 31 July 2023.

Article 3

This Regulation shall enter into force on the day following that 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, 1 June 2022.

For the Commission
The President
Ursula VON DER LEYEN
