



Brussels, **XXX**  
[...](2018) **XXX** draft

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the financing, management and monitoring of the common agricultural policy and  
repealing Regulation (EU) No 1306/2013 of the European Parliament and of the Council**

## EXPLANATORY MEMORANDUM

[The standard content of an Explanatory Memorandum should be as follows. In principle it should not exceed 15 pages (in particularly complex cases a longer text may be justified). The language should be clear and simple, ensuring reader-friendliness for non-experts. All of the following elements are mandatory unless otherwise stated].

### **1. CONTEXT OF THE PROPOSAL**

- **Reasons for and objectives of the proposal**

[...]

[Describe the reasons behind the proposal and the problem(s) it is expected to tackle. State if this is an initiative within the Regulatory Fitness Programme (REFIT). State any relevant institutional background of the proposal.]

- **Consistency with existing policy provisions in the policy area**

[...]

[Mention relevant existing policy provisions in the policy area and clarify how the proposal relates to them (e.g. differences, complementarity).]

- **Consistency with other Union policies**

[...]

[Mention links with other key Union policies.]

### **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

[...]

[Explain the choice of legal basis of the proposal. Where several feasible options seem to exist, justify the choice on the basis of objective criteria.]

- **Subsidiarity (for non-exclusive competence)**

[...]

[Explain the Union dimension of the problem. Describe why the objectives cannot be adequately achieved by the Member States (necessity test). Explain why action at Union level would be more effective than action at national level and outline the added value of action at Union level (effectiveness test).]

- **Proportionality**

[...]

[Explain the policy choices of the proposal and why they are considered proportionate (i.e. not going beyond what is necessary to achieve the objectives). Explain why it is considered the most suitable measure for achieving the objective. Where an Impact Assessment

accompanies the proposal, reference should be made to the appropriate parts which discuss proportionality.]

- **Choice of the instrument**

[...]

[Where appropriate, explain the choice of the instrument.]

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

[...]

[If applicable, summarise results of any ex-post evaluations/fitness checks of existing legislation. Clarify the link to the problems identified in the proposal.]

- **Stakeholder consultations**

[...]

[Describe the consultations carried out, summarise the input received, as well as how this was taken into account in the proposal. Where appropriate, explain where the Commission's views diverge and why.]

- **Collection and use of expertise**

[...]

[Where relevant, a short summary on the external expertise on which the Commission has relied (approach, range, advice received and used, publicly available information).]

- **Impact assessment**

[...]

[For proposals not supported by an Impact Assessment, please explain the reasons why no Impact Assessment was carried out with reference to the accompanying roadmap and the Guidelines on Better Regulation.]

[For proposals supported by an Impact Assessment, please provide links to the summary sheet and to the positive opinion of the Regulatory Scrutiny Board. In the absence of a positive opinion from the Board, please provide justification for proceeding with the initiative.]

[Explain which policy alternatives were examined, compare them and explain why the final proposal was considered to be the best policy choice.]

[Describe the main economic, social and environmental impacts of the preferred option, who would be affected and how. Include quantitative estimates of benefits and costs wherever possible and, if not available, explain why.]

[If the final policy proposal deviates from the options assessed in the impact assessment, clarify the differences in approach and their likely impact.]

- **Regulatory fitness and simplification**

[...]

[For proposals linked to REFIT and aimed at reducing regulatory burdens, provide, wherever possible, quantified estimates of the intended burden reduction.]

[Outline whether the proposal exempts micro-enterprises and the reasons why if it does not do so.]

[Explain how the proposal minimizes compliance costs for SMEs (via lighter regimes, mitigating measures, etc.) and other stakeholders, as well as any positive or negative impact on sectoral EU competitiveness or international trade.]

[Explain how the proposal is consistent with the "Digital Check" and is internet ready and appropriate for both the physical and digital environment (please see Better Regulation guideline and tool on ICT impacts in the Better Regulation Toolbox for more information).]

- **Fundamental rights**

[...]

[If the proposal has consequences for the protection of fundamental rights, explain how fundamental rights obligations have been met.]

#### **4. BUDGETARY IMPLICATIONS**

[...]

[Outline the budgetary implications of the initiative (if any) and, where appropriate, refer to the "financial statement" showing the budgetary implications and the human and administrative resources required.]

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

[...]

[Refer to the implementation planning associated with the measure, including the monitoring, evaluation and reporting framework set up to assist with its implementation and application and to report on its performance.]

- **Explanatory documents (for directives)**

[...]

[Explain if the proposal requires Explanatory Documents on the transposition and why.]

- **Detailed explanation of the specific provisions of the proposal**

[...]

[Provide more information on the specific provisions, for instance by adding a commentary for each chapter or provision. This may be useful for explaining how the proposed text relates

to existing texts and for indicating any new ideas. The explanation will be useful for the interpretation of the act once adopted.]

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013 of the European Parliament and of the Council**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the Court of Auditors,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions entitled "The Future of Food and Farming" ....**TO BE ELABORATED.**
- (2) In order to supplement or amend certain non-essential elements of this Regulation, the power to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of the accreditation of the paying agencies and coordinating bodies, the obligations of the paying agencies in relation to public intervention, as well as the rules on the content of the management and control responsibilities of those agencies, the measures to be financed by the general budget of the European Union (the Union's budget) under public intervention and the valuation of the operations in connection with public intervention. That empowerment should also cover derogations from the ineligibility of payments made by the paying agencies to the beneficiaries before the earliest or the latest possible date of payment and the compensation between expenditure and revenues under the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD). In addition, that empowerment should cover the methods applicable to the commitments and the payment of the amounts if the Union's budget has not been adopted by the beginning of the financial year or if the total amount of the commitments scheduled exceeds the threshold laid down in Article 170(3) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (3).

Furthermore, that empowerment should cover the deferral of monthly payments by the Commission to Member States with regard to expenditure under the EAGF and the conditions governing the reduction or suspension by the Commission of interim payments to Member States under the EAFRD. That empowerment should additionally cover the suspension of monthly payments or interim payments for which

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<sup>1</sup> OJ C [...], [...], p. [...].

the relevant statistical information has not been sent in time, the specific obligations to be complied with by Member States with regard to checks, the criteria and methodology for applying corrections in the context of the conformity clearance procedure and the recovery of debts. Moreover, that empowerment should cover requirements with respect to customs procedures, the withdrawals of aid and penalties in the case of non-compliance with the eligibility conditions and commitments or other obligations resulting from the application of sectoral agricultural legislation. Likewise, that empowerment should cover market measures for which the Commission may suspend monthly payments, rules on securities, on the functioning of the integrated administration and control system as well as the measures excluded from the scrutiny of transactions. Similarly, that empowerment should cover the modification of the sum of the receipts or payments below which the commercial document of undertakings should normally not be scrutinised pursuant to this Regulation, the penalties applied under cross-compliance, the control requirements in the wine sector and the rules on maintenance of permanent pasture. Lastly, that empowerment should cover the rules on the operative event and the exchange rate to be used by the Member States not using the euro, measures to safeguard the application of Union law if exceptional monetary practices related to national currency are likely to jeopardise it, in respect of the content of the common monitoring and evaluation framework of the measures adopted under the CAP and in respect of transitional measures.

It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

- (3) The CAP consists of various interventions, some of which relate to CAP Plan interventions under Chapter...of the CAP Plan Regulation. It is important to provide financing for those interventions in order to contribute to the achievement of the objectives of the CAP. Since those interventions have certain elements in common, but do also differ in a number of respects, the provisions on their financing should be dealt with in the same set of provisions. Where necessary those provisions should allow for different treatment. Regulation (EU) No 1306/2013 provided for two European agricultural funds, namely the EAGF, and the EAFRD (the "Funds"). Those Funds should be maintained.
- (4) Regulation (EU, Euratom) No 966/2012 and the provisions adopted pursuant to it should apply to the measures set out in this Regulation. In particular, this Regulation lays down provisions related to the shared management with Member States based on the principles of sound financial management, transparency and non-discrimination, as well as provisions on the function of accredited bodies, the budgetary principles, provisions which should be respected in the framework of this Regulation.
- (5) In order to ensure consistency between the practices of Member States and harmonised application of the force majeure clause by Member States, this Regulation should provide, where appropriate, for exemptions in cases of force majeure and exceptional circumstances, as well as for a non-exhaustive list of possible cases of force majeure and exceptional circumstances to be recognised by the national competent authorities. Those authorities should take decisions on force majeure or exceptional circumstances on a case by case basis, on the basis of relevant evidence and applying the concept of force majeure in the light of Union agricultural law including the case law of the Court of Justice.

- (6) The Union's budget should finance CAP expenditure, including expenditure on CAP Plan interventions under Chapter...of the CAP Plan Regulation, through the Funds either directly or in the context of shared management with the Member States. The types of measures that can be financed using the Funds should be specified.
- (7) In order to achieve the objectives of the CAP as laid down in Article 39 of the Treaty on the Functioning of the European Union and to comply with the principle of shared management governing the CAP, as provided for in Article 59 of Regulation (EU, EURATOM) No 966/2012<sup>2</sup>, Member States should have in place the relevant structure able to implement the CAP. Provision should therefore be made on the competent authority, paying agency, coordinating body and certification body.
- (8) Provision should be made for the accreditation of paying agencies by Member States and for the establishment of the procedures for obtaining management declarations, and for obtaining the certification of management and monitoring systems and the certification of annual accounts by independent bodies. Moreover, in order to ensure the transparency of national checks, in particular as regards procedures for authorisation, validation and payment and to reduce the administrative and audit burden for the Commission and for the Member States where accreditation of each individual paying agency is required, the number of authorities and bodies to which those responsibilities are delegated should be restricted while respecting the constitutional arrangements of each Member State. In order to avoid unnecessary reorganisation costs, Member States should be allowed to maintain the number of paying agencies which have been accredited before the entry into force of this Regulation.
- (9) Where a Member State accredits more than one paying agency, it is important that it designates a single public coordinating body in order to ensure consistency in the management of funds, to provide liaison between the Commission and the various accredited paying agencies and to ensure that the information requested by the Commission concerning the operations of several paying agencies is made rapidly available. The public coordinating body should also take and coordinate actions with a view to resolving any deficiencies of a common nature and should keep the Commission informed of any follow-up. In addition, that body should promote and, where possible, ensure homogeneous application of common rules and standards.
- (10) Only when using paying agencies that have been accredited by the Member States is there reasonable assurance that the necessary checks have been carried out before granting Union aid to beneficiaries. It should, therefore, be explicitly laid down in this Regulation that only expenditure effected by accredited paying agencies can be reimbursed from the Union's budget.
- (11) In respect of the EAGF, the financial resources required to cover the expenditure effected by the accredited paying agencies, should be made available to the Member States by the Commission in the form of reimbursements against the booking of the expenditure effected by those agencies. Until such reimbursements have been paid, in the form of monthly payments, financial resources are to be mobilised by the Member States depending on the needs of their accredited paying agencies. The administrative and personnel costs of the Member States and the beneficiaries involved in the implementation of the CAP should be borne by themselves.

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<sup>2</sup> Regulation (EU, EURATOM) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, EURATOM) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).



- (12) The use of the agro-meteorological system and the acquisition and improvement of satellite data should provide the Commission with, in particular, the means to manage agricultural markets, to facilitate the monitoring of agricultural expenditure and to monitor agricultural resources in the medium and long term. .
- (13) In the context of respecting budget discipline, it is necessary to define the annual ceiling for the expenditure financed by the EAGF by taking into account the maximum amounts laid down for that Fund under the multiannual financial framework provided for in Council Regulation (EU, Euratom) No (9).
- (14) Budget discipline also requires the annual ceiling for expenditure financed by the EAGF to be respected in all circumstances and at every stage of the budget procedure and of the execution of the budget. Consequently, it is necessary for the national ceiling for the direct payments per Member State set out in Regulation (EU) No 1307/2013 to be regarded as a financial ceiling for such direct payments for the Member State concerned and for the reimbursement of those payments remain within this financial ceiling. Furthermore, budget discipline requires that all Union legal acts in the CAP field that are proposed by the Commission or adopted by the Union or by the Commission and that are financed by the EAGF comply with the annual ceiling for the expenditure financed by that Fund.
- (15) With a view to ensuring that the amounts for the financing of the CAP comply with the annual ceilings, the financial mechanism referred to in Council Regulation (EC) No 73/2009 (10) by which the level of direct support is adjusted, should be maintained however, the threshold of 2000 euros should be abolished. In order to support the agricultural sector in case of major crises affecting the agricultural production or distribution, a reserve for crises should be established in the 2020 budget at a constant yearly level of 400 million euros. A roll-over mechanism will be used in later years however without applying financial discipline thus providing an important simplification for farmers and national administrations. .
- (16) Article 169(3) of Regulation (EU, Euratom) No 966/2012 provides that non-committed appropriations relating to the actions referred to in Article 4(1) of this Regulation may be carried over only to the following financial year and that such carryover may lead to an additional payment only to the final recipients who were subject, in the preceding financial year, to the adjustment of direct payments as referred to in Article 25 of this Regulation. . In order to avoid an excessive administrative burden for national administrations and farmers it should be provided that reimbursement should not take place where either financial discipline is applied for a second subsequent year, in year N+1 or the overall amount of non-committed appropriations represents less than 0,2% of the EAGF net ceiling.
- (17) The measures taken to determine the financial contribution from the Funds in respect of the calculation of financial ceilings do not affect the powers of the budgetary authority designated by the TFEU. Those measures should therefore be based on the reference amounts fixed in accordance with the Interinstitutional Agreement of 19 November 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management and Regulation (EU, Euratom) No 1311/2013.
- (18) Budget discipline also requires a continuous examination of the medium-term budget situation. The Commission should propose, if necessary, appropriate measures to the legislator. Furthermore, the Commission should make full use of its management powers at all times to ensure compliance with the annual ceiling and, if necessary,

should propose appropriate measures to the European Parliament and to the Council or to the Council to redress the budget situation. If, at the end of a budget year, the annual ceiling cannot be complied with as a result of the reimbursements requested by the Member States, the Commission should be able to take measures allowing the provisional distribution of the available budget among the Member States in proportion to their as yet unpaid requests for reimbursement, as well as measures ensuring compliance with the ceiling fixed for the year concerned. Payments for that year should be charged to the following budget year and the total amount of Union financing per Member State should be definitively established, as should compensation between Member States in order to ensure that the established amount is complied with.

- (19) When implementing the budget, the Commission should operate a monthly early-warning and monitoring system for agricultural expenditure so that, if there is a risk of the annual ceiling being exceeded, the Commission may at the earliest opportunity take the appropriate measures under the management powers at its disposal and propose other measures if those measures appear to be insufficient. A periodic report by the Commission to the European Parliament and to the Council should compare the evolution of the expenditure effected to date in relation to the profiles and should give an assessment of the foreseeable implementation for the remainder of the budget year.
- (20) The exchange rate used by the Commission when drawing up the budget documents should reflect the most recent information available, making allowances for the time lag between drafting and submission.
- (21) Regulation (EU) No 1303/2013 of the European Parliament and of the Council (11) lays down rules which apply to the financial support from the funds covered by that Regulation, including the EAFRD. Those rules also cover eligibility of expenditure, on financial management and the management and control systems. As regards the financial management of the EAFRD, for the sake of legal clarity and coherence between the Funds covered by this Regulation, reference should be made to the relevant provisions on the budget commitments, payment deadlines and decommitment of Regulation (EU) No 1303/2013.
- (22) EAFRD financed interventions are financed from the Union budget on the basis of commitments made in annual instalments. Member States should be able to draw on the Union funds provided for as soon as they begin the programmes. A suitably restricted prefinancing system is therefore needed, to ensure a steady flow of funds so that payments to beneficiaries under the interventions are made at the appropriate time.
- (23) Prefinancing apart, it is necessary to make a distinction between the payments by the Commission to the accredited paying agencies interim payments and the payment of balances, and to lay down detailed rules on their payment. The automatic decommitment rule should help speed up execution of interventions and contribute to sound financial management. The rules on the national frameworks of Member States with regional interventions as set out in Regulation (EU) No 1305/2013 of the European Parliament and of the Council (12) also provide a tool for Member States to ensure execution and sound financial management.
- (24) Union aid should be paid to beneficiaries in good time so that they may use it efficiently. A failure by the Member States to comply with the payment deadlines laid down in Union law might create serious difficulties for the beneficiaries and could jeopardise the Union's yearly budgeting. Therefore, expenditure made without respecting deadlines for payments should be excluded from Union financing. The

principle of proportionality laid down in Regulation (EU) No 1306/2013 should be maintained and should apply to both Funds. In order to respect the principle of proportionality, the Commission should be able to provide for exceptions to this general rule. Moreover the Commission should be able to lay down further rules on the procedure and other practical arrangements necessary for the proper functioning of the mechanism.

- (25) Regulation (EU) No 1306/2013 provides for reductions and suspensions of monthly or interim payments for the Funds however these are tailored to support the control for legality and regularity. With the new delivery model these tools should be used to support performance based delivery. The difference between reductions and suspension should also be clarified.
- (26) A new type of reduction in the framework of the annual performance clearance should be introduced. A mechanism of reduction in payments should be put in place if the outputs declared do not correspond to the annual expenditure declared and Member States cannot provide a duly justified reason for this deviation. The reduction will be decided in the framework of the annual performance clearance exercise. A contradictory procedure, should be provided for.
- (27) The procedure for reducing EAGF payments for non-compliance with financial ceilings set by Union law should be streamlined and aligned with the one used for EAFRD payments in this context.
- (28) A new type of suspension will be applied for future expenses in case of abnormally low outputs. Where, the outputs reported are at an abnormal low level compared to the declared expenditure and Member States cannot provide duly justified reasons for this, in addition to the reduction of the expenditure for the financial year n-1 mentioned above, the suspension of the future expenditure related to the intervention for which the output was abnormally low may be considered. The suspension should be confirmed in the annual performance clearance decision.
- (29) Member States should send to the Commission by 15 February N+1 inter alia the annual accounts and the annual performance report. In case these documents are not sent, preventing thus the Commission to clear the accounts for the concerned PA or checking the eligibility of the expenditure against reported outputs, the Commission should have the possibility to suspend the monthly payments or the quarterly reimbursement until the reception of the missing documents. Coherence with Article 83(1)(c) of Regulation 1303/2013, on interruption of payment deadline for EAFRD in cases of non-submission of annual accounts, would also need to be ensured.
- (30) The Commission should have the possibility to apply suspensions in case of deficiencies in the governance structures, including non-compliance with EU basic requirements and unreliability of reporting, similarly to the suspensions applied under Article 41(2) of Regulation 1306/2013. The conditions for suspension in current Article 41(2) would need to be reviewed in order to make the mechanism more efficient. The financial consequences of this suspension should be decided in an (ad-hoc) conformity procedure.
- (31) Competent national authorities should make the payments provided for in Union interventions covered by the management and monitoring system to beneficiaries in full and within the prescribed periods.
- (32) In order to allow funds from the Funds to be reused, rules are needed on the assignment of specific sums. The list contained in Regulation (EU) No 1306/2013

should be amended (...). Those provisions should be harmonised and merged with the existing provisions on assigned revenue.

- (33) Council Regulation (EC) No 814/2000 (14) and its implementing rules define the information measures relating to the CAP which may be financed under point (c) of Article 5 of Regulation (EC) No 1290/2005. Regulation (EC) No 814/2000 contains a list of those measures and their objectives and fixes the rules on their financing and on the implementation of the corresponding projects. Since the adoption of that Regulation, rules have been adopted by Regulation (EU, Euratom) No 966/2012 on grants and procurement. Those rules should apply also to the information measures under the CAP. For reasons of simplification and coherence, Regulation (EC) No 814/2000 should be repealed while maintaining the specific provisions relating to the objectives and types of measures to be financed. Those measures should also take into account the need to ensure more efficiency in communication to the public at large and stronger synergies between the communication activities undertaken on the initiative of the Commission as well as of the need to ensure that the Union's political priorities are communicated effectively. Therefore, they should also cover information measures relevant to the CAP in the framework of the corporate communication as referred to in the Communication from the Commission: A Budget for Europe 2020 ("the Commission Communication on a Budget for Europe 2020") - Part II: Policy fiches.
- (34) The financing of measures and interventions under the CAP in part involves shared management. To ensure that Union funds are soundly managed, the Commission should perform checks on the management of the Funds by the Member State authorities responsible for making payments. It is appropriate to define the nature of the checks to be performed by the Commission, to specify the terms of its responsibilities for implementing the budget and to clarify the Member States' cooperation obligations.
- (35) In order to allow the Commission to fulfil its obligation to check the existence and proper functioning of management and inspection systems for Union expenditure in the Member States, provision should be made, irrespective of the inspections carried out by Member States themselves, for checks by persons authorised by the Commission to act on its behalf who should be able to request assistance from the Member States in their work.
- (36) Information technology needs to be used as extensively as possible in order to produce the information to be sent to the Commission. When carrying out checks, the Commission should have full and immediate access to expenditure information recorded in both paper and electronic form.
- (37) In order to establish the financial relationship between the accredited paying agencies and the Union budget, the Commission should clear the accounts of those paying agencies annually (financial clearance of accounts). The decision of the clearance of accounts should cover the completeness, accuracy and veracity of the accounts but not the conformity of the expenditure with Union law.
- (38) The Commission is responsible for the implementation of the budget of the European Union in cooperation with Member States in accordance with Article 317 TFEU. The Commission is empowered to decide, by means of implementing acts, whether the expenditure effected by the Member States complies with Union law. Member States should be given the right to justify their decisions to make payments and should have recourse to conciliation where there is no common agreement between them and the Commission. In order to give Member States legal and financial assurances as to

expenditure effected in the past, a maximum period should be set for the Commission to decide which financial consequences should follow from non-compliance. As regards the EAFRD, the conformity clearance procedure should be in line with the provisions on the financial corrections by the Commission as laid down in Part 2 of Regulation (EU) No 1303/2013.

- (39) In order to protect the financial interests of the Union's budget, measures should be taken by Member States to satisfy themselves that transactions financed by the Funds are actually carried out and are executed correctly. Member States should also prevent, detect and deal effectively with any irregularities or non-compliance with obligations committed by beneficiaries. To this end, Council Regulation (EC, Euratom) No 2988/95 should apply. In cases of infringement of the sectoral agricultural legislation, Member States should impose penalties which should be effective, dissuasive and proportionate. Where undue payments for the CAP interventions have been made, Member States should recover the aid.
- (40) Various provisions of the sectoral agricultural legislation require that a security be lodged to ensure the payment of a sum due if an obligation is not met. In order to strengthen the framework for securities, a single horizontal rule should apply to all those provisions.
- (41) Member States should set up and operate an integrated administration and control system (the "integrated system") for certain interventions provided for in the CAP Plan Regulation. In order to improve the effectiveness and monitoring of Union support, Member States should be authorised to make use of the integrated system for other Union interventions.
- (42) The main elements of the integrated system and, in particular, the provisions concerning an identification system for agricultural parcels, a geo-spatial and an animal-based application system, a system for the identification and registration of payment entitlements, a system to record the identity of beneficiaries and a control and penalties system should be maintained. With a view to ensuring the availability of EU-wide comprehensive and comparable data for agri-environment-climate policy monitoring purposes and boosting the use of full, free and open data captured by Copernicus Sentinels satellites, data provided by Copernicus services and information and other new technologies such as GALILEO and EGNOS, Member States should continue to make appropriate use of these technologies. To this end, the integrated system should include also an area monitoring system.
- (43) The integrated system, as part of the governance structures which should be in place in order to implement the CAP, should ensure the reliability and verifiability of aggregate data provided in the annual performance reporting. Given the essential role of a properly functioning integrated system, quality requirements should be ensured. It should be provided for the Member States' obligation to carry out an annual quality assessment of the identification system for agricultural parcels, for the geo-spatial application system and for the area monitoring system, including the obligation to address deficiencies revealed or to set up an action plan where requested by the Commission.
- (44) Bolstering environmental care and climate action and contributing to the achievement of EU environmental and climate objectives was set out as strategic orientation of the future CAP in the Communication from the Commission on 'The future of food and farming'. Furthermore, sharing LPIS/IACS data has become necessary for environmental and climate purposes at national and Union level. Provision should

therefore be made for sharing the data collected through the integrated system and which is relevant for environmental and climate purposes between Member States' public authorities and with the Union institutions and bodies.

- (45) Scrutiny of the commercial documents of undertakings that are receiving or making payments can be a very effective means of surveillance of transactions forming part of the system of financing by the EAGF. That scrutiny supplements other checks already carried out by the Member States. Furthermore, where national provisions relating to scrutiny are more extensive than those provided for in that Regulation, they are not affected by it.
- (46) The documents used as a basis for such scrutiny should be determined in such a way as to enable a full scrutiny to be carried out. The undertakings to be scrutinised should be selected on the basis of the nature of the transactions carried out under their responsibility and the breakdown per sector of the undertakings receiving or making payments should be selected according to their financial importance in the system of financing by the EAGF.
- (47) The powers of the officials responsible for scrutiny and the obligations on undertakings to make commercial documents available to such officials for a specified period, as well as to supply such information as may be requested by them, should be defined. It should be possible for commercial documents to be seized in certain cases.
- (48) Having regard to the international structure of agricultural trade and in the interest of the functioning of the internal market, it is necessary to organise cooperation among the Member States. It is also necessary to set up a centralised documentation system at Union level concerning undertakings receiving or making payments established in third countries.
- (49) While it is the responsibility of the Member States to adopt their scrutiny programmes, it is necessary for those programmes to be communicated to the Commission so that it can assume its supervisory and coordinating role, in order to ensure that the programmes are adopted on the basis of appropriate criteria and to guarantee that the scrutiny is concentrated on sectors or undertakings where the risk of fraud is high. It is essential that each Member State has a special department responsible for monitoring the scrutiny of commercial documents provided for in this Regulation or for coordinating that scrutiny. Those special departments should be organised independently of the departments carrying out scrutiny prior to payment. Information collected during that scrutiny should be protected by professional confidentiality.
- (50) The conditionality implies certain administrative constraints for both beneficiaries and national administrations since record keeping has to be ensured, checks have to be carried out and where necessary penalties have to be applied. Those penalties should be proportionate, effective and dissuasive. Such penalties should be without prejudice to other penalties laid down under Union or national law. To ensure a coherent approach by Member States, it is necessary to provide for a minimum penalty rate at EU level, while repetition should lead to a higher percentage.
- (51) To ensure proportionality of the penalties, in case of minor non-compliances occurring for the first time, Member States should be allowed to introduce an early warning system.
- (52) To ensure harmonious cooperation between the Commission and the Member States regarding the financing of CAP expenditure and, more particularly, to allow the Commission to monitor the financial management by the Member States and to clear

the accounts of the accredited paying agencies, it is necessary for certain information to be communicated by the Member States or to be kept available to the Commission.

- (53) For the purposes of compiling the data to be sent to the Commission, and to allow the Commission to have full immediate access to expenditure data in both paper and electronic form, suitable rules on the presentation and transmission of data, including rules on time limits, need to be laid down.
- (54) As personal data or business secrets might be involved in the application of the national control systems and the conformity clearance, the Member States and the Commission should guarantee the confidentiality of the information received in that context.
- (55) In the interests of sound financial management of the Union's budget and impartiality of treatment at both Member State and beneficiary level, rules on the use of the euro should be laid down.
- (56) The rate of exchange of the euro into national currencies may vary in the course of the period during which an operation is carried out. Therefore, the rate applicable to the amounts concerned should be determined taking into account the event through which the economic objective of the operation is achieved. The rate of exchange applied should be that applicable for the date on which that event occurs. It is necessary to specify this operative event or to waive its application, whilst complying with certain criteria and in particular those concerning the rapidity with which currency movements are passed on. Special rules should be laid down for dealing with exceptional monetary situations arising either within the Union or on the world market and requiring immediate action to ensure that the arrangements established under the CAP operate effectively.
- (57) Member States that have not adopted the euro should have the option of making payments for expenditure resulting from the CAP legislation in euro rather than in national currency. Specific rules are needed to ensure that this option does not lead to any unjustified advantage for parties making or receiving payment.
- (58) Union law concerning the protection of individuals with regard to the processing of personal data and on the free movement of such data is applicable, in particular Regulations (EC) No 45/2001 and (EU) 2016/679 of the European Parliament and of the Council.
- (59) In its judgment of 9 November 2010 in Joined Cases C-92/09 and 93/09 *Volker und Markus Schecke GbR and Hartmut Eifert v Land Hessen* the Court of Justice of the European Union declared point (8b) of Article 42 and Article 44a of Regulation (EC) No 1290/2005 and Commission Regulation (EC) No 259/2008 to be invalid in so far as, with regard to natural persons benefiting from the European agricultural funds, those provisions imposed an obligation to publish personal data relating to each beneficiary without drawing a distinction based on relevant criteria such as the periods during which those persons have received such aid, the frequency of such aid or the nature and amount thereof.
- (60) Following that judgment, Regulation (EC) No 259/2008 was amended by Commission Implementing Regulation (EU) No 410/2011 in order to expressly lay down that the obligation to publish the information is not to apply to natural persons.
- (61) In September 2011, the Commission organised a consultation of stakeholders that brought together representatives of professional agricultural and trade organisations, representatives of the food industry and workers, as well as representatives of civil

society and Union institutions. In the course of that consultation different options were put forward concerning the publication of data of natural persons benefiting from Union agricultural funds and concerning respect for the principle of proportionality when making relevant information available to the public. That conference discussed the need to publish the names of natural persons in order to respond to the objective of better protection of the Union's financial interests, to enhance transparency and to highlight the achievements of beneficiaries in providing public goods while ensuring that that publication does not go beyond what is necessary for achieving these legitimate aims.

- (62) In its judgment in *Volker und Markus Schecke GbR and Hartmut Eifert v Land Hessen*, the Court did not contest the legitimacy of the objective of reinforcing public control of the use of the money from the Funds. However, the Court did emphasise the need to consider methods of publishing information relating to the beneficiaries concerned which are consistent with the objective of such publication while at the same time causing less interference with those beneficiaries' right to respect for their private life in general and to protection of their personal data in particular.
- (63) The publication of the name of the beneficiaries of the Funds provides a means of reinforcing the public control of the use of the Funds and is necessary to ensure an adequate level of protection of the Union's financial interest. That is achieved partly by the preventive and deterrent effect of such publication, partly by discouraging individual beneficiaries from irregular behaviour and also partly by reinforcing the personal accountability of the farmers for use of public funds received.
- (64) In this context the role played by civil society, including by the media and non-governmental organisations and their contribution to reinforcing the administrations' control framework against fraud and any misuse of public funds, should be properly recognised.
- (65) The publication of the relevant information is also consistent with the approach as set out in Regulation (EU, Euratom) No 966/2012.
- (66) Alternatively, the objective of reinforcing public control in respect of individual beneficiaries could be served by providing for an obligation on Member States to ensure public access to the relevant information upon request, without publication. This would however be less effective and run the risk of creating unwanted divergencies in implementation. Consequently, national authorities should be enabled to rely on the public control in respect of individual beneficiaries through the publication of their names and other relevant data.
- (67) If the objective of the public control of the use of the money from the Funds is to be achieved, a certain level of information about beneficiaries needs to be brought to the attention of the public. That information should include data on the identity of the beneficiary, the amount awarded and the fund from which it comes and the purpose and the nature of the measure concerned. The publication of that information should be made in such a way as to cause less interference with the beneficiaries' right to respect for their private life, in general, and to their right to protection of their personal data, in particular, both rights which are recognised in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union.
- (68) Publishing details about the measure or type of intervention entitling the farmer to receive aid and about the nature and the purpose of the aid provides the public with concrete information on the subsidised activity and the purpose for which the aid was



granted. This would also contribute to the preventive and deterrent effect of the public control in the protection of the financial interest.

- (69) In order to strike a balance between the objective of the public control of the use of the money from the Funds, on the one hand, and the beneficiaries' right to respect for their private life, in general, and to protection of their personal data, in particular, on the other hand, the importance of the aid should be taken into account. Following extensive analysis and consultation with the stakeholders it appears that, in order to reinforce the effectiveness of such publication and to limit the interference with the beneficiaries' rights, it is necessary to set a threshold expressed in terms of the amount of aid received, below which the name of the beneficiary should not be published.
- (70) That threshold should be de-minimis and should reflect and be based on the level of the support schemes set up within the framework of the CAP. As the structures of the Member States' agricultural economies vary considerably and may differ significantly from the average Union farm structure, the application of different minimum thresholds that reflect the particular situation of the Member States has been allowed. Regulation (EU) No 1307/2013 has set out a simple and specific scheme for small farms. Article 63 of that Regulation laid down criteria for calculating the amount of aid. For reasons of consistency, in the case of Member States applying the scheme, the threshold to be taken into account has been set at the same level as the amounts fixed by the Member State as referred to in the second subparagraph of Article 63(1) or the second subparagraph of Article 63(2) of that Regulation. In the case of Member States who have decided not to apply that scheme, the threshold to be taken into account has been set at the same level as the maximum amount of aid possible under the scheme, as provided for in Article 63 of Regulation (EU) No 1307/2013. Below that specific threshold, the publication contained all the relevant information, except for the name, in order to allow the taxpayers to have an accurate image of the CAP. It is therefore appropriate to maintain that threshold.
- (71) Making that information accessible to the public, in combination with the general information to the public provided for in this Regulation, enhances transparency regarding the use of Union funds in the CAP, thus contributing to the visibility and better understanding of that policy. It enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy, and is more effective and is more accountable to the citizen. It also brings concrete examples of the provision of "public goods" by farming to the attention of citizens, thereby underpinning the legitimacy of state support for the agricultural sector.
- (72) Therefore it must be considered that providing for the general publication of the relevant information does not go beyond what is necessary in a democratic society in view of the need to protect the Union's financial interests as well as, the overriding weight of the objective of the public control of the use of the money from the Funds.
- (73) In order to comply with the data protection requirements, beneficiaries of the Funds should be informed of the publication of their data before that publication takes place. They should also be informed that that data may be processed by auditing and investigating bodies of the Union and Member States for the purpose of safeguarding the Union's financial interests. Furthermore, the beneficiaries should be informed about their rights under Regulation (EU) 2016/679 and the procedures applicable for exercising these rights. Therefore, rules on the publication of information on all beneficiaries of the Funds should be provided for.

- (74) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. These implementing powers should relate to: ADD.
- (75) Since the transition from the system under the Regulations repealed by this Regulation to the system in this Regulation could give rise to practical and specific difficulties, provision should be made for the Commission to adopt the necessary and duly justified measures.
- (76) The European Data Protection Supervisor was consulted and adopted an opinion.
- (77) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States given the links between it and the other instruments of the CAP and the limits on the financial resources of the Member States in an enlarged Union, but can rather, by reason of the multiannual guarantee of Union finance and by concentrating on its priorities, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS REGULATION:

## **TITLE I**

**[comment: in the text, references to numbers of Articles are from the current numbering of the Articles of Regulation (EU) No 1306/2013; they will be adapted later on]**

# SCOPE AND DEFINITIONS

## *Article 1*

### *Scope*

This Regulation lays down rules on:

- (a) the financing of expenditure under the Common Agricultural Policy (CAP), including expenditure on rural development;
- (b) the management and control systems to be put in place by the Member States;
- (c) clearance processes and conformity procedure;

## *Article 2*

### *Terms used in this Regulation*

1. For the purposes of this Regulation:
  - (a) "irregularity" means an irregularity within the meaning of Article 1(2) of Regulation (EC, Euratom) No 2988/95;
  - (b) "governance structures" means the governance bodies referred to in Chapter 2, the ex-ante conditionalities referred to in [CPR Regulation], the EU basic requirements laid down in this Regulation, the [CAP Plan Regulation], including the reporting system put in place for the purpose of the annual performance report referred to in Article ... of [CAP Plan reg].
2. For the purposes of financing, management and monitoring of the CAP, "force majeure" and "exceptional circumstances" may, in particular, be recognised in the following cases:
  - (a) a severe natural disaster gravely affecting the holding;
  - (b) the accidental destruction of livestock buildings on the holding;
  - (c) an epizootic or a plant disease affecting part or all of the beneficiary's livestock or crops respectively;
  - (d) expropriation of all or a large part of the holding if that expropriation could not have been anticipated on the day of lodging the application.

# **TITLE II**

## **GENERAL PROVISIONS ON AGRICULTURAL FUNDS**

### **CHAPTER I**

#### **Agricultural Funds**

##### *Article 3*

##### *Funds financing agricultural expenditure*

1. In order to achieve the objectives of the CAP as set out in the TFEU, the financing of the various interventions and measures falling under that policy shall be made by:
  - (a) the European Agricultural Guarantee Fund (EAGF);
  - (b) the European Agricultural Fund for Rural Development (EAFRD).
2. The EAGF and the EAFRD (the "Funds") shall come under the general budget of the European Union (the Union's budget).

##### *Article 4*

##### *EAGF expenditure*

The EAGF shall be implemented in shared management between the Member States and the Union. It shall finance the following expenditure, which shall be effected in accordance with Union law:

- (a) measures regulating or supporting agricultural markets;
  - (b) sectoral interventions under the CAP Plan;
  - (c) direct payments to farmers under the CAP Plan;
  - (d) the Union's financial contribution to information and promotion measures for agricultural products on the internal market of the Union and in third countries, undertaken by Member States on the basis of programmes other than those referred to in Article 5 and which are selected by the Commission;
  - (e) the Union's financial contribution to the measures related to animal diseases and loss of consumer confidence as referred to in Article 220 of Regulation (EU) No 1308/2013.
  - (f) the Union's financial contribution to the specific measures for agriculture in the outermost regions of the Union and to the specific measures for agriculture in favour of the smaller Aegean islands.
2. The EAGF shall finance the following expenditure in a direct manner and in accordance with Union law:
  - (a) promotion of agricultural products, undertaken either directly by the Commission or through international organisations;
  - (b) measures, taken in accordance with Union law, to ensure the conservation, characterisation, collection and utilisation of genetic resources in agriculture;

- (c) the establishment and maintenance of agricultural accounting information systems;
- (d) agricultural survey systems, including surveys on the structure of agricultural holdings.

#### *Article 5*

#### ***EAFRD expenditure***

The EAFRD shall be implemented in shared management between the Member States and the Union. It shall finance the Union's financial contribution to the CAP Plan interventions referred to in the [CAP Plan Regulation].

#### *Article 6*

#### ***Other expenditure, including technical assistance***

The Funds may each, finance, in a direct manner, on the initiative of the Commission and/or on its behalf, the preparatory, monitoring, administrative and technical support activities, including corporate information technology systems, as well as evaluation, audit and inspection measures, required to implement the CAP. Those measures shall include, in particular:

- (a) measures required for the analysis, management, monitoring, information exchange and implementation of the CAP, as well as measures relating to the implementation of control systems and technical and administrative assistance;
- (b) the acquisition by the Commission of satellite data required for the area monitoring system in accordance with Article 21;
- (c) the measures taken by the Commission through remote-sensing applications used for the monitoring of agricultural resources in accordance with Article 22;
- (d) measures required to maintain and develop methods and technical means for information, interconnection, monitoring and control of the financial management of the funds used to finance the CAP;
- (e) provision of information on the CAP in accordance with Article 45;
- (f) studies on the CAP and evaluations of measures financed by the Funds, including improvement of evaluation methods and exchange of information on practices under the CAP, including studies carried out with the EIB;
- (g) where relevant, executive agencies that are set up in accordance with Council Regulation (EC) No 58/2003 acting in connection with the CAP;
- (h) measures relating to dissemination of information, raising awareness, promoting cooperation and exchanging experience at Union level, taken in the context of EAFRD financed interventions, including the networking of the parties concerned and including measures implemented with the EIB;
- (i) information technology networks focusing on information processing and exchange, including corporate information technology tools needed in connection with the management of the CAP;
- (j) measures required for the development, registration and protection of logos within the framework of the Union quality policies and for the protection of

intellectual property rights linked to it, as well as the necessary information technology (IT) developments;

## **CHAPTER II**

### **Governance bodies**

#### *Article 7*

#### ***Accreditation and withdrawal of accreditation of paying agencies and coordinating bodies***

1. Paying agencies shall be departments or bodies of the Member States responsible for the management and control of expenditure referred in Articles....

With the exception of payment, the carrying out of those tasks may be delegated.

2. Member States shall accredit as paying agencies departments or bodies which have an administrative organisation and a system of internal control which provide sufficient guarantees that payments are legal and regular, and properly accounted for. To this end, paying agencies shall comply with minimum conditions for the accreditation with regard to internal environment, control activities, information and communication and monitoring laid down by the Commission pursuant to point (a) of Article....

Each Member State shall, taking into account its constitutional provisions, restrict the number of its accredited paying agencies to no more than one at national level or, where applicable, to one per region and to no more than one for the management of both EAGF and EAFRD expenditure. However, where paying agencies are established at regional level, Member States shall, in addition, either accredit a paying agency at national level for aid schemes which, by their nature, have to be managed at national level or shall confer the management of these schemes on their regional paying agencies. The paying agencies which did not manage EAGF or EAFRD expenditure for 3 years shall not be maintained as accredited paying agencies as referred to in this Article.

Member States shall not appoint any new paying agency after the entry into force of this Regulation.

3. For the purpose of Article 62(5) and (5a) of the Financial Regulation, by 15 February of the year following the financial year concerned, the person in charge of the accredited paying agency shall draw up and provide the Commission with:

- (a) the annual accounts for the expenditure effected in carrying out the tasks entrusted to their accredited paying agency, accompanied by the requisite information for their clearance in accordance with Article [*annual financial clearance*]...;
- (b) an annual performance report showing that the expenditure was made in accordance with Article [*Eligibility of expenditure incurred by PA*].
- (c) a management declaration as to:
  - the completeness, accuracy and veracity of the accounts;
  - the proper functioning of the governance structures put in place, which give the necessary guarantees concerning the outputs reported in the annual performance report;
  - an analysis of the nature and extent of errors and weaknesses identified in systems by audit and controls, as well as corrective action taken or planned.

The deadline of 15 February may be exceptionally extended by the Commission to 1 March at the latest, upon request by the Member State concerned.

4. Where more than one paying agency is accredited, the Member States shall designate a public body ("the coordinating body"), to which it shall assign the following tasks:

- (a) to collect the information to be made available to the Commission and to send that information to the Commission;
- (b) to provide the annual performance report referred to in Article xxx
- (c) to take or coordinate, as the case may be, actions with a view to resolving any deficiencies of a common nature and keep the Commission informed of any follow-up;
- (d) to promote and, where possible, ensure harmonised application of the Union rules.

As regards the processing of the financial information referred to in point (a) of the first subparagraph, the coordinating body shall be subject to specific accreditation by the Member States.

The annual performance report provided by the coordinating body shall be covered by the scope of the opinion referred to in Article [*Certification body*] and its transmission shall be accompanied by a management declaration covering the entirety of that report.

5. Where an accredited paying agency does not meet or no longer meets one or more of the accreditation criteria referred to in paragraph 2, the Member State, acting on its own initiative or at the request of the Commission, shall withdraw that accreditation unless the paying agency makes the necessary changes within a period to be determined depending on the severity of the problem.

6. The paying agencies shall manage and ensure the control of the operations linked to public intervention for which they are responsible and they shall retain overall responsibility in that field.

#### *Article 8*

#### ***Competent authority***

1. Member States shall designate an authority at ministerial level responsible for:

- (a) the issuing, reviewing and withdrawing of accreditation of paying agencies referred to in Article [**I1 comment: above**];
- (b) the accreditation of the coordinating body;
- (c) the designation of the certification body referred to in Article [*certification body*]
- (d) carrying out the tasks assigned to the competent authority under this Chapter.

2. The competent authority shall, by way of a formal act, decide on the issuing or, after review, the withdrawal of the accreditation of the paying agency on the basis of an examination of the accreditation criteria to be adopted by the Commission in accordance with point (a) of the first paragraph of Article [**I1 comment: Article below on the Commission powers**] ('the accreditation criteria'). The competent authority shall inform the Commission of accreditations and withdrawals of accreditations without delay.



*Article 9*  
**Commission powers**

2. 1. To ensure the sound operation of the system provided for in Article ..., the Commission
3. shall be empowered to adopt delegated acts in accordance with Article ...concerning:
  - (a) the minimum conditions for the accreditation of paying agencies and of the coordinating bodies referred to in Article ...and in Article ..., respectively;
  - (b) the obligations of the paying agencies as regards public intervention, as well as the rules on the content of their management and control responsibilities.
4. 2. The Commission shall adopt implementing acts laying down rules on:
  - (a) the procedures for issuing, withdrawing and reviewing accreditation of paying agencies and coordinating bodies, as well as the procedures for the supervision of the accreditation of paying agencies;
  - (b) the work and checks underlying the management declaration of the paying agencies;
  - (c) the functioning of the coordinating body and the notification of information to the Commission as referred to in Article ...
5. Those implementing acts shall be adopted in accordance with the examination procedure
6. referred to in Article...

*Article 10*  
**Certification bodies**

1. The certification body shall be a public or private audit body designated by the Member State for a period which, without prejudice to national law, shall not be shorter than 3 years. Where it is a private audit body, and the applicable Union or national law requires, it shall be selected by the Member State by means of a public tendering procedure.

For the purpose of Article 62(5b) of the Financial Regulation, the certification body shall provide an opinion, drawn up in accordance with internationally accepted audit standards, on:

- the completeness, accuracy and veracity of the annual accounts of the paying agency;
- the proper functioning of the governance structures;
- the correctness of the performance reporting on output indicators for the purpose of the annual performance clearance referred to in Article xxx and the performance reporting on result indicators for the multiannual performance monitoring referred to in **[CAP Plan Regulation]**, ensuring the respect of Article *[Eligibility of expenditure incurred by PA]*;
- on the legality and regularity of the expenditure for the measures laid down in Regulation ... **[I1 comment: the market measures concerned]** for which reimbursement has been requested from the Commission.

That opinion shall also state whether the examination puts into doubt the assertions made in the management declaration.

Where support is provided through a financial instrument which is implemented by the EIB or other international financial institution, the certification body shall rely on the audit report drawn up by the external auditors of these bodies.

2. The certification body shall have the necessary technical expertise. It shall be operationally independent from the paying agency and the coordinating body concerned as well as from the authority which has accredited that agency and the bodies responsible for the implementation and the monitoring of the CAP **[DC: to use the same wording as in CAP Plan Reg]**.

3. The Commission shall adopt implementing acts laying down rules on the tasks of the certification bodies, including the checks and bodies subject to those checks, and on the certificates and the reports, together with the documents accompanying them, to be drawn up by those bodies. In view of the need for maximum efficiency, including for professional audit judgement, the implementing acts shall also lay down:

- (a) the audit principles on which the opinions of the certification bodies are based, including an assessment of the risks, internal controls and the level of audit evidence required;
- (b) the audit methods to be used, by the certification bodies, having regard to international standards on auditing, to deliver their opinions.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article ...

#### *Article 11*

#### ***Payment in full to beneficiaries***

Except where otherwise explicitly provided for in Union law, Member States shall ensure that payments relating to the financing provided for in this Regulation shall be disbursed in full to the beneficiaries.

# **TITLE III**

## **Financial management of the funds**

### **CHAPTER I**

#### **EAGF**

#### **SECTION 1**

##### **BUDGET DISCIPLINE**

##### *Article 12*

##### ***Budget ceiling***

1. The annual ceiling for EAGF expenditure shall be constituted by the maximum amounts set for it under Regulation (EU, Euratom) No 1311/2013.
2. In the event that Union law provides for sums to be deducted from or added to the amounts referred to in paragraph 1, the Commission shall adopt implementing acts without applying the procedure referred to in Article 116, setting the net balance available for EAGF expenditure on the basis of the data referred to in Union law.

##### *Article 13*

##### ***Compliance with the ceiling***

1. Throughout the budget procedure and the implementation of the budget, appropriations relating to EAGF expenditure shall not exceed the amount referred to in Article 16.

All legislative instruments proposed by the Commission and adopted by the European Parliament and the Council, the Council or the Commission and that have an influence on the EAGF budget shall comply with the amount referred to in Article 16.

2. Where Union law provides for a financial ceiling in euro for agricultural expenditure in respect of a Member State, such expenditure shall be reimbursed subject to that limit set in euro, and, where Article 41 applies, with any necessary adjustments.
3. National ceilings for direct payments referred to in Article 7 of Regulation (EU) No 1307/2013, corrected by the adjustments laid down in Article 26 of this Regulation, shall be deemed to be financial ceilings in euro.

##### *Article 14*

##### ***Reserve for crisis in the agricultural sector***

A reserve intended to provide additional support for the agricultural sector in the case of crises affecting the agricultural production or distribution ("the reserve for crises in the agricultural sector") shall be established at the beginning of each year in the EAGF and finance measures as referred to in [art 226 CMO] .

The amount of the reserve shall be EUR 400 million in each year of the period 2021-2027. Transfers from the reserve to the budget lines financing the measures shall be made in

accordance with the Financial Regulation. Any transfers from the reserve shall be preceded by an examination of the scope for reallocating appropriations.

By way of derogation from Article 169(3) second sub-paragraph of Regulation (EU, Euratom) No 966/2012 non-committed appropriations of the reserve shall not be cancelled and shall be carried over without time limitation to finance the reserve in the following financial year.

#### *Article 15*

#### ***Financial discipline***

1. In order to ensure that the annual ceilings set out in Regulation (EU, Euratom) No 1311/2013 for the financing of the market related expenditure and direct payments including the reserve for crisis are respected, an adjustment rate for direct payments referred to in Article [EAGF expenditure (c) of this regulation] ("the adjustment rate") shall be determined when the forecasts for the financing of the measures financed under that sub-ceiling for a given financial year indicate that the applicable annual ceilings will be exceeded.

2. The Commission shall, by 30 June of the calendar year in respect of which the adjustment rate applies, adopt implementing acts fixing the adjustment rate. Such implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 116(2).

3. Until 1 December of the calendar year in respect of which the adjustment rate applies, the Commission may, on the basis of new information, adopt implementing acts adapting the adjustment rate set in accordance with paragraph 3. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 116(2).

4. Where financial discipline has been applied, the appropriations carried over in accordance with Article 169(3) fourth sub-paragraph of Regulation (EU, Euratom) No 966/2012 shall be used to finance expenditure under EAGF to the extent necessary to avoid the repeated application of financial discipline.

Where, after application of the first subparagraph, appropriations to be carried-over remain available, the Commission may in accordance with Article 169(3) fourth sub-paragraph of Regulation (EU, Euratom) No 966/2012, adopt implementing acts setting out per Member State the amounts of non-committed appropriations to be reimbursed unless the overall amount of non-committed appropriations available for reimbursement represents less than 0,2% of the EAGF net ceiling.

Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 116(2).

5. The amounts set by the Commission in accordance with the previous paragraph shall be reimbursed to beneficiaries by Member States in accordance with objective and non-discriminatory criteria. A minimum threshold of amounts of reimbursement per beneficiary may be applied.

5. By way of derogation from the fourth subparagraph of Article 169(3) of Regulation (EU, Euratom) No 966/2012, Member States shall reimburse the appropriations carried over in accordance with Article 169(3) of Regulation (EU, Euratom) No 966/2012 to the final recipients who are subject, in the financial year to which the appropriations are carried over, to the adjustment rate.

The reimbursement referred to in the first subparagraph shall only apply to final beneficiaries in those Member States where financial discipline applied in the preceding financial year.

*Article 16*  
***Budget discipline procedure***

1. The Commission shall present to the European Parliament and to the Council, at the same time as the draft budget for financial year N, its forecasts for financial years N - 1, N and N +
2. If, on drawing up the draft budget for financial year N, there appears to be a risk that the amount referred to in Article 16 for financial year N will be exceeded, the Commission shall propose to the European Parliament and to the Council or to the Council, the measures necessary to ensure compliance with that amount.
3. At any time, if the Commission considers that there is a risk that the amount referred to in Article 16 will be exceeded and that it cannot take adequate measures to remedy the situation under its powers, it shall propose other measures to ensure compliance with that amount. Those measures are adopted by the Council where the legal basis of the relevant measure is Article 43(3) TFEU or by the European Parliament and the Council where the legal basis of the relevant measure is Article 43(2) TFEU.
4. If, at the end of financial year N, reimbursement requests from the Member States exceed or are likely to exceed the amount referred to in Article 16, the Commission shall:
  - (a) consider the requests presented by Member States pro rata and within the limit of the available budget, and shall, adopt implementing acts, setting provisionally the amount of the payments for the month concerned;
  - (b) determine, for all Member States, at the latest by 28 February of financial year N + 1, their situation with regard to Union financing for the financial year N;
  - (c) adopt implementing acts setting the total amount of Union financing broken down by Member State, on the basis of a single rate of Union financing, within the limit of the budget which was available for the monthly payments;
  - (d) effect, at the latest when the monthly payments are made for March of year N+1, any compensation to be carried out with respect to Member States.

The implementing acts provided for in points (a) and (c) of the first subparagraph shall be adopted in accordance with the advisory procedure referred to in Article 116(2).

*Article 17*  
***Early-warning and monitoring system***

In order to ensure that the budget ceiling referred to in Article 16 is not exceeded, the Commission shall implement a monthly early-warning and monitoring system in respect of EAGF expenditure.

To that end, at the beginning of each financial year, the Commission shall determine monthly expenditure profiles based, where appropriate, on average monthly expenditure during the previous three years.

The Commission shall periodically present to the European Parliament and to the Council a report examining the development of expenditure effected in relation to the profiles and containing an assessment of the forecasted implementation for the current financial year.

## **SECTION 2**

### **FINANCING OF EXPENDITURE**

#### *Article 18*

##### ***Monthly payments***

1. The appropriations necessary to finance the expenditure referred to in Article 4(1) shall be made available to Member States by the Commission in the form of monthly payments, on the basis of the expenditure effected by the accredited paying agencies during a reference period.
2. Until transfer of the monthly payments by the Commission, the resources required to undertake expenditure shall be mobilised by the Member States according to the needs of their accredited paying agencies.

#### *Article 19*

##### ***Procedure for monthly payments***

1. Without prejudice to the application of Articles 51 and 52, monthly payments shall be made by the Commission for expenditure effected by accredited paying agencies during the reference month.
2. Monthly payments shall be made to each Member State at the latest on the third working day of the second month following that in which the expenditure is effected. Expenditure effected by Member States between 1 and 15 October shall count as having been made in the month of October. Expenditure effected between 16 and 31 October shall count as having been made in the month of November.
3. The Commission shall adopt implementing acts determining the monthly payments which it makes on the basis of a declaration of expenditure from the Member States and the information supplied in accordance with Article 102(1).
4. Where an overrun of financial ceilings has been found, the Commission shall inform the Member State forthwith.
5. The determination of the monthly payments under paragraph 3, will take into account the reductions or suspensions applied under Article 40 and 41, the reductions following an overrun of financial ceilings set by Union law or any other corrections.
6. The Commission shall adopt the implementing acts determining the monthly payments without applying the procedure referred to in Article 116.
7. The Commission may adopt implementing acts determining supplementary payments or deductions, without applying the procedure referred to in Article 116.

#### *Article 20*

##### ***Administrative and personnel costs***

Expenditure relating to administrative and personnel costs effected by Member States and by beneficiaries of aid from the EAGF shall not be borne by the Fund.

#### *Article 21*

##### ***Public intervention expenditure***

1. Where, within the framework of the common organisation of the markets, a sum per unit is not determined in respect of a public intervention, the EAGF shall finance the measure

concerned on the basis of standard amounts uniform throughout the Union, in particular as regards funds originating in the Member States used for buying-in products, for material operations arising from storage and, where appropriate, for the processing of intervention products.

2. In order to ensure the funding by the EAGF of the public intervention expenditure the Commission shall be empowered to adopt delegated acts in accordance with Article 115 concerning:

- (a) the type of measures eligible for Union financing and the reimbursement conditions;
- (b) the eligibility conditions and calculation methods based on the information actually observed by the paying agencies or based on flat-rates determined by the Commission, or based on flat-rate or non-flat-rate amounts provided for by the sectoral agricultural legislation.

3. In order to ensure the proper management of the appropriations entered in the Union's budget for the EAGF, the Commission shall be empowered to adopt delegated acts in accordance with Article 115, laying down rules on the valuation of operations in connection with public intervention, the measures to be taken in the case of loss or deterioration of products under the public intervention, and on the determination of the amounts to be financed.

4. The Commission shall adopt implementing acts, fixing the amounts referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 116(2).

#### *Article 22* ***Acquisition of satellite data***

The list of the satellite data required for the area monitoring system as referred to in Article ... shall be agreed by the Commission and the Member States in accordance with the specification prepared by each Member State.

In accordance with point (b) of Article 6 the Commission shall supply those satellite data free of charge to the authorities competent for the area monitoring system or to suppliers of services authorised by those bodies to represent them.

The Commission shall remain the owner of the satellite data and shall recover them on completion of the work.

The Commission may provide that work be carried out on techniques or working methods in connection with the area monitoring system as referred to in Article ... .

#### *Article 23* ***Monitoring of agricultural resources***

The measures financed pursuant to point (c) of Article 6 shall aim to give the Commission the means to:

- (a) manage Union agricultural markets in a global context;

- (b) ensure agri-economic and agri-environmental monitoring of agricultural land, including agro-forestry, and monitoring of the condition of crops so as to enable estimates to be made, in particular as regards yields and agricultural production;
- (c) share the access to such estimates in an international context, such as those initiatives coordinated by United Nations organisations or other international agencies;
- (d) contribute to transparency of world markets; and
- (e) ensure technological follow-up of the agri-meteorological system.

The measures financed pursuant to point (c) of Article 6 concern the collection or purchase of data needed to implement and monitor the CAP, including satellite data and meteorological data, the creation of a spatial data infrastructure and a website, the carrying out of specific studies on climatic conditions, remote sensing used to assist in the monitoring of soil health and the updating of agri-meteorological and econometric models. Where necessary, those measures shall be carried out in collaboration with national laboratories and bodies.

*Article 24*  
**Implementing powers**

The Commission may adopt implementing acts, laying down:

- (a) rules relating to the financing pursuant to points (b) and (c) of Article 6,
- (b) the procedure under which the measures referred to in Articles 21 and 22 shall be carried out in order to meet the objectives assigned,
- (c) the framework governing the acquisition, enhancing and utilisation of satellite images and meteorological data, and the applicable deadlines.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 116(3).

## **Chapter II** **EAFRD**

### **SECTION 1** **GENERAL PROVISIONS FOR EAFRD**

*Article 25*  
**Provisions applying to all payments**

1. In accordance with Article 77(1) of Regulation (EU) No 1303/2013 payments by the Commission of the EAFRD contribution as referred to in Article 5 of this Regulation shall not exceed the budget commitments.

Without prejudice to Article 38(1), those payments shall be assigned to the earliest open budget commitment

2. Article 84 of Regulation (EU, Euratom) No 966/2012 shall apply.



## SECTION 2 EAFRD FINANCING UNDER THE CAP PLAN

### *Article 26*

#### ***Financial contribution from the EAFRD***

The financial contribution from the EAFRD towards expenditure under CAP Plans shall be determined for each plan, within the ceilings established by Union law concerning support for CAP Plan interventions by the EAFRD.

### *Article 27*

#### ***Budget commitments***

As regards the Union's budget commitments for EAFRD financed interventions, Article 76 of Regulation (EU) No 1303/2013 shall apply.

## SECTION 3 FINANCIAL CONTRIBUTION TO EAFRD FINANCED INTERVENTIONS

### *Article 28*

#### ***Provisions applying to payments for EAFRD financed interventions***

1. The appropriations necessary to finance the expenditure referred to in Article 5 shall be made available to Member States in the form of prefinancing, interim payments and the payment of a balance, as described in this Section.
2. The combined total of prefinancing and interim payments shall not exceed 95 % of the EAFRD's contribution to each CAP Plan.

When the ceiling of 95 % is reached, the Member States shall continue transmitting requests for payments to the Commission.

### *Article 29*

#### ***Prefinancing arrangements***

1. Following its decision to approve the CAP Plan, the Commission shall pay an initial prefinancing amount to the Member State for the whole programming period. This initial prefinancing amount shall be paid in instalments as follows:
  - (a) in 2014: 1 % of the amount of support from the EAFRD for the entire period to the Plan and 1,5 % of the amount of support from the EAFRD for the entire period to the Plan, where a Member State has been receiving financial assistance since 2010, either in accordance with Articles 122 and 143 TFEU, or from the European Financial Stability Facility (EFSF), or is receiving financial assistance on 31 December 2013 in accordance with Articles 136 and 143 TFEU;
  - (b) in 2015: 1 % of the amount of support from the EAFRD for the entire period to the Plan and 1,5 % of the amount of support from the EAFRD for the entire period to the Plan where a Member State has been receiving financial assistance since 2010, either in accordance with Articles 122 and 143 TFEU, or from the EFSF, or is receiving financial assistance on 31 December 2014 in accordance with Articles 136 and 143 TFEU;

(c) in 2016: 1 % of the amount of support from the EAFRD for the entire period to the Plan.

If a CAP Plan is adopted in 2015 or later, the earlier instalments shall be paid without delay following such adoption.

2. The total amount paid as prefinancing shall be reimbursed to the Commission if no expenditure is effected and no declaration of expenditure for the CAP Plan is sent within 24 months of the date on which the Commission pays the first instalment of the prefinancing amount. This prefinancing shall be cleared against the earliest expenditure declared for the CAP Plan until the total amount of prefinancing is cleared.

3. No additional prefinancing shall be paid where a transfer in favour of EAFRD has taken place in accordance with Article (flexibility between pillars and other transfers)...

4. Interest generated on the prefinancing shall be posted to the CAP Plan concerned and deducted from the amount of public expenditure indicated on the final declaration of expenditure.

5. The total prefinancing amount shall be cleared in accordance with the procedure referred to in Article 51 of this Regulation before the CAP Plan is closed.

#### *Article 30*

#### ***Interim payments***

1. Interim payments shall be made for each CAP Plan. They shall be calculated by applying the co-financing rate for each intervention to the public expenditure effected pertaining to it as referred to in Article 59 of Regulation (EU) No 1305/2013.

2. Subject to the availability of resources, the Commission shall, taking account of reductions or suspensions applied under Article 41, make interim payments in order to reimburse the expenditure effected by accredited paying agencies in implementing the CAP Plans.

3. Each interim payment shall be made by the Commission, subject to compliance with the following requirements:

(a) transmission to the Commission of a declaration of expenditure signed by the accredited paying agency, in accordance with Article 102(1)(c);

(b) no overrun of the total EAFRD contribution to each intervention for the entire period covered by the CAP Plan concerned;

(c) transmission to the Commission of the last annual performance report on the implementation of the CAP Plan.

4. If one of the requirements laid down in paragraph 3 is not met, the Commission shall forthwith inform the accredited paying agency or the coordinating body, where one has been appointed. If one of the requirements laid down in point (a) or in point (c) of paragraph 3 is not respected, the declaration of expenditure shall be inadmissible.

5. Without prejudice to the application of Articles 51 and 52, the Commission shall make interim payments within 45 days of registering a declaration of expenditure which meets the requirements set out in paragraph 3 of this Article.

6. Accredited paying agencies shall establish and forward to the Commission, either directly or via the intermediary of the coordinating body, where one has been appointed, intermediate

declarations of expenditure relating to CAP Plans, within periods to be set by the Commission.

The Commission shall adopt implementing acts laying down the periods for accredited paying agencies to forward those intermediate declarations of expenditure. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 116(3).

Declarations of expenditure shall cover expenditure that the paying agencies have effected during each of the periods concerned. However, in cases in which expenditure referred to in Article 65(9) of Regulation (EU) No 1303/2013 cannot be declared to the Commission in the period concerned due to pending approval by the Commission of an amendment to the CAP Plan, it may be declared in subsequent periods.

Intermediate declarations of expenditure in respect of expenditure effected from 16 October onwards shall be booked to the following year's budget.

7. Without prejudice to Article 83 of Regulation (EU) No 1303/2013, where the authorising officer by sub-delegation requires further verifications, due to incomplete or unclear information provided or disagreements, differences of interpretation or any other inconsistency relating to a declaration of expenditure for a reference period, resulting in particular from the failure to communicate the information required under Regulation (EU) No 1305/2013 and Commission acts adopted under that Regulation, the Member State concerned shall, upon request by the authorising officer by sub-delegation, provide additional information within a period set in that request according to the seriousness of the problem.

The time limit for interim payments laid down in Article 36(5) of Regulation (EU) No 1306/2013 may be interrupted for all or part of the amount for which payment is claimed, from the date on which the request for information is sent until receipt of the information requested, but no later than the maximum period laid down in Article 83(1) of Regulation (EU) No 1303/2013.

Where the Member State concerned fails to respond to the request for additional information within the period set in that request or if the response is considered unsatisfactory or indicates that the applicable rules have not been complied with or that Union funds have been improperly used, the Commission may suspend or reduce payments in accordance with Article 41 of Regulation (EU) No 1306/2013.

#### *Article 31*

##### ***Payment of the balance and closure of the EAFRD interventions in the CAP Plan***

1. After receiving the last annual performance report on the implementation of a CAP Plan, the Commission shall pay the balance, subject to the availability of resources, on the basis of the financial plan in force at the level of interventions, the annual accounts for the last execution year for the relevant CAP Plan and of the corresponding clearance decisions. Those accounts shall be presented to the Commission no later than six months after the final eligibility date of expenditure as referred to in Article 65(2) of Regulation (EU) No 1303/2013 and shall cover the expenditure effected by the paying agency up to the last eligibility date of expenditure.

2. The balance shall be paid no later than six months after the information and documents referred to in paragraph 1 of this Article are considered to be receivable by the Commission and the last annual account has been cleared. Without prejudice to Article 38(5) the amounts still committed after the balance is paid shall be decommitted by the Commission within a period of six months.

3. If, by the time limit set out in paragraph 1, the Commission has not been sent the last annual performance report and the documents needed for clearance of the accounts of the last execution year for the Plan the balance shall be automatically decommitted in accordance with Article 38.

#### *Article 32*

#### *Automatic decommitment for CAP Plans*

1. The Commission shall automatically decommit any portion of a budget commitment for a CAP Plan that has not been used for the purpose of prefinancing or for making interim payments or for which no declaration of expenditure fulfilling the requirements laid down in Article 36(3) has been presented to it in relation to expenditure effected by 31 December of the third year following that of the budget commitment.

2. The part of budget commitments that is still open on the last eligibility date for expenditure as referred to in Article 65(2) of Regulation (EU) No 1303/2013 for which no declaration of expenditure has been made within six months of that date shall be automatically decommitted.

3. In the event of legal proceedings or of an administrative appeal having suspensory effect, the period for automatic decommitment referred to in paragraph 1 or paragraph 2 shall, in respect of the amount relating to the operations concerned, be interrupted for the duration of those proceedings or that administrative appeal, provided that the Commission receives a substantiated notification from the Member State by 31 January of year N + 4.

4. The following shall be disregarded in calculating the automatic decommitment:

- (a) that part of the budget commitments for which a declaration of expenditure has been made but for which reimbursement has been reduced or suspended by the Commission at 31 December of year N + 3;
- (b) that part of the budget commitments which a paying agency has been unable to disburse for reasons of force majeure seriously affecting the implementation of the CAP Plan. National authorities claiming force majeure shall demonstrate the direct consequences on the implementation of all or part of the Plan.

By 31 January, the Member State shall send to the Commission information on the exceptions referred to in the first subparagraph concerning the amounts declared by the end of the preceding year.

5. The Commission shall inform Member States in good time if there is a risk of automatic decommitment. It shall inform them of the amount involved as indicated by the information in its possession. The Member States shall have two months from receiving this information to agree to the amount in question or present observations. The Commission shall carry out the automatic decommitment not later than nine months after the last time-limit resulting from the application of paragraphs 1 to 3.

6. In the event of automatic decommitment, the EAFRD contribution to the CAP Plan concerned shall be reduced, for the year in question, by the amount automatically decommitted. The Member State shall produce a revised financing plan splitting the reduction of the aid between the measures for approval by the Commission. If it does not do so, the Commission shall reduce the amounts allocated to each intervention pro rata.

## **CHAPTER III**

### **Common Provisions**

#### *Article 33*

#### ***Agricultural financial year***

Without prejudice to special provisions on declarations of expenditure and revenue relating to public intervention laid down by the Commission pursuant to point (a) of Article 46(6), the agricultural financial year shall cover expenditure paid and revenue received and entered in the accounts of the Funds' budget by the paying agencies in respect of financial year "N" beginning on 16 October of year "N-1" and ending on 15 October of year "N".

#### *Article 34*

#### ***No double funding***

Member States shall ensure that expenditure financed under the EAGF or the EAFRD shall not be the subject of any other financing under the Union's budget.

An expenditure may receive different forms of support under EAFRD only if the total cumulated aid amount granted under the different forms of support does not result in exceeding the highest aid intensity or aid amount applicable to that type of intervention.

#### *Article 35*

#### ***Eligibility of expenditure incurred by the paying agencies***

The expenditure referred to in Articles [4] and [5] may be financed by the Union only if it has a corresponding output, as regards interventions referred to in the Regulation (EU) No [CAP Plan Reg], and if it has been effected by accredited paying agencies in accordance with the applicable EU basic requirements and in compliance with the governance structures.

#### *Article 36*

#### ***Compliance with payment deadlines***

Where payment deadlines are laid down by Union law, any payment made by the paying agencies to the beneficiaries before the earliest possible date of payment and after the latest possible date of payment shall make the payments ineligible for Union financing, except in the cases, conditions and limits to be determined taking into account the principle of proportionality.

In order to make expenditure effected before the earliest possible date of payment or after the latest possible date of payment eligible for Union financing, while limiting the financial impact of doing so, the Commission shall be empowered to adopt delegated acts in accordance with Article 115, derogating from the rule contained in the first paragraph.

The Commission may adopt implementing acts laying down further rules on the procedure and other practical arrangements for the proper functioning of the mechanism provided for in this Article. These implementing acts shall be adopted in accordance with the examination procedure referred to in Article 116(2).

### Article 37

#### ***Reduction of monthly and interim payments***

1. Where the declarations of expenditure or the information referred to in Article 102 enable the Commission to establish that financial ceilings set by Union law have not been respected, the Commission shall reduce the monthly or interim payments to the Member State concerned in the framework of the implementing acts concerning the monthly payments referred to in Article 18(3) or in the framework of the interim payments referred to in Article 36.
2. Where the declarations of expenditure or the information referred to in Article 102 enable the Commission to establish that payment periods have not been respected as referred to in Article... **(II comment: Compliance with payment deadlines)** the Member State shall be given the opportunity to submit its comments within a period which shall not be less than 30 days. If the Member State fails to submit its comments within the period set or if the response is considered unsatisfactory then the Commission may reduce the monthly or interim payments to the Member States concerned in the framework of the implementing acts concerning the monthly payments referred to in Article 18(3) or in the framework of the interim payments referred to in Article 36,
3. Reductions under this Article shall be applied without prejudice to the application of Article X (Annual Financial Clearance).

### Article 38

#### ***Suspension of payments in relation to the annual clearances***

1. Where the Member States do not submit the annual accounts or the annual performance report by the deadlines, as provided for in Article [...on PAs], the Commission may adopt implementing acts suspending the total amount of the monthly payments referred to in Article [...]. The Commission shall reimburse the suspended amounts when it receives the annual accounts and/or the annual performance report from the Member State concerned, provided that the date of receipt is not later than than 6 months after the deadline.

As regards the interim payments referred to in Article [...], paragraph on interruption ....**[II comment: to be drafted taking into account Art 83 CPR and current 36(4) HZ]**

2. Where, in the framework of the annual performance clearance referred to in Article X, the Commission establishes that the difference between the expenditure declared and the relevant output indicators reported is more than 50% and the Member State cannot provide duly justified reasons, the Commission may adopt implementing acts suspending the monthly payments referred to in Article [...] or the interim payments referred to in Article [...].

The suspension shall be applied to the relevant expenditure in respect of the interventions which are subject to the reduction referred to in Article (*Annual Performance Clearance*) and the amount to be suspended shall not exceed the difference as referred to in the first subparagraph. The amounts suspended shall be reimbursed or permanently reduced in the framework of the following implementing act referred to in Article (*Annual Performance Clearance*).

In order to ensure that the principle of proportionality is respected, the Commission shall be empowered to adopt delegated acts in accordance with Article xxx on the rate of suspension of payments.

3. The implementing acts provided for in this Article shall be adopted in accordance with the advisory procedure referred to in Article [...].

Before adopting those implementing acts, the Commission shall inform the Member State concerned of its intention and shall ask it to react within a period which shall not be less than 30 days.

The implementing acts determining the monthly payments referred to in Article xxx or the interim payments referred to in Article xxx shall take account of the implementing acts adopted under this paragraph.

#### *Article 39*

##### ***Suspension of payments in relation to the multi-annual performance monitoring***

1. In case of delayed or insufficient progress towards targets, as set out in the national CAP Plan and monitored in accordance with Articles...*[the ones on the annual performance review]* of CAP Plan Regulation, the Commission may ask the Member State concerned to implement the necessary remedial measures in accordance with an action plan with clear progress indicators, to be established in consultation with the Commission.

The Commission may adopt implementing acts laying down further rules on the elements of action plans and the procedure for setting up. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article xxx.

2. Where the Member States fails to submit or to implement the action plan referred to in paragraph (1) or if that action plan is manifestly insufficient to remedy the situation, the Commission may adopt implementing acts suspending the monthly payments referred to in Article [...] or the interim payments referred to in Article [...].

The suspension shall be applied in accordance with the principle of proportionality to the relevant expenditure related to the interventions which were to be covered by that action plan. The Commission shall reimburse the suspended amounts when, on the basis of the performance review referred to in *[CAP PLAN Reg]* satisfactory progress towards targets is achieved. If the situation is not remedied by the closure of the national CAP Plan, the amount suspended shall be lost for the Member State concerned.

In order to ensure that the principle of proportionality is respected, the Commission shall be empowered to adopt delegated acts in accordance with Article xxx on the rate and duration of suspension of payments and the condition for reimbursing or definitively reducing those amounts.

3. The implementing acts provided for in this Article shall be adopted in accordance with the advisory procedure referred to in Article [...].

Before adopting those implementing acts, the Commission shall inform the Member State concerned of its intention and shall ask it to react within a period which shall not be less than 30 days.

#### *Article 40*

##### ***Suspension of payments in relation to deficiencies in the governance structures***

1. In case of [serious] deficiencies in the governance structures as defined in Article 2(1) point (b), the Commission may ask the Member State concerned to implement the necessary remedial measures in accordance with an action plan with clear progress indicators, to be established in consultation with the Commission.

The Commission may adopt implementing acts laying down further rules on the elements of the action plans and the procedure for setting up. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article xxx.

2. Where the Member State fail to submit or to implement the action plan referred to in paragraph (1) or if that action plan is manifestly insufficient to remedy the situation, the Commission may adopt implementing acts suspending the monthly payments referred to in Article [...] or the interim payments referred to in Article [...].

The suspension shall be applied in accordance with the principle of proportionality to the relevant expenditure effected by the Member State where the deficiencies exist, for a period to be determined in the implementing acts referred to in this paragraph, which shall not exceed twelve months. If the conditions for the suspension continue to be met, the Commission may adopt implementing acts prolonging that period for further periods not exceeding twelve months in total. The amounts suspended shall be taken into account when adopting the implementing acts referred to in Article (Conformity procedure).

3. The implementing acts provided for in this Article shall be adopted in accordance with the advisory procedure referred to in Article [...].

Before adopting the implementing acts referred to in paragraphs (2) and (3), the Commission shall inform the Member State concerned of its intention and shall ask it to react within a period which shall not be less than 30 days.

The implementing acts determining the monthly payments referred to in Article xxx or the interim payments referred to in Article xxx shall take account of the implementing acts adopted under this paragraph.

#### *Article 41*

#### ***Keeping separate accounts***

Each paying agency shall keep a set of separate accounts for the appropriations entered in the Union's budget for the Funds.

#### *Article 42*

#### ***Payment to beneficiaries***

1. The payments under the interventions referred to in Article ...**[I1 comment: scope of the management and monitoring system]** shall be made within the period from 1 December to 30 June of the following calendar year.

Notwithstanding the first subparagraph of this paragraph, Member States may:

- (a) prior to 1 December but not before 16 October, pay advances of up to 50 % for direct payments;
- (b) prior to 1 December pay advances of up to 75 % for the support granted under rural development as referred to in Article .....**[I1 comment: scope of the management and monitoring system]**.

2. In the event of an emergency, the Commission may adopt implementing acts which are both necessary and justifiable, in order to resolve specific problems in relation to the application of this Article. Such implementing acts may derogate from paragraphs 1 and 2, but only to the extent that, and for such a period, as is strictly necessary.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article ....



*Article 43*  
**Assignment of revenue**

1. The following shall be "assigned revenue" within the meaning of Article 21 of Regulation (EU, Euratom) No 966/2012:

- (a) as regards both EAGF and EAFRD, sums under Articles (payment deadlines), X (conformity procedure) X (annual performance clearance) and irregularities, and, as regards expenditure under the EAGF, (irregularities) and Article X (financial clearance) which must be paid to the Union's budget, including interest thereon;
- (b) sums which are collected or recovered under Section III of Chapter III of Title I of Part II of Regulation (EC) No 1234/2007;
- (c) amounts corresponding to penalties applied in accordance with the rules on conditionality laid down in CAP Plan Regulation, as regards expenditure under EAGF;
- (d) any security, deposit or guarantee furnished pursuant to Union law adopted within the framework of the CAP, excluding EAFRD financed interventions, and subsequently forfeited. However, forfeited securities lodged when issuing export or import licences or under a tendering procedure for the sole purpose of ensuring that tenderers submit genuine tenders shall be retained by the Member States.

**[(e) sums under suspension for performance – final cut]**

- 2. The sums referred to in paragraph 1 shall be paid to the Union's budget and, in the event of reuse, shall be used exclusively to finance EAGF or EAFRD expenditure.
- 3. This Regulation shall apply *mutatis mutandis* to assigned revenue referred to in paragraph 1.
- 4. As regards the EAGF, Articles 170 and 171 of Regulation (EU, Euratom) No 966/2012 shall apply *mutatis mutandis* to the keeping of accounts on assigned revenue referred to in this Regulation.

*Article 44*  
**Information measures**

1. The provision of information financed pursuant to point (e) of Article 6 shall aim, in particular, to help explain, implement and develop the CAP and to raise public awareness of its content and objectives to reinstate consumer confidence following crises through information campaigns, to inform farmers and other parties active in rural areas and to promote the European model of agriculture, as well as to help citizens understand it.

It shall supply coherent, objective and comprehensive information, both inside and outside the Union, in order to give an accurate overall picture of the CAP.

2. The measures referred to in paragraph 1 may consist of:

- (a) annual work programmes or other specific measures presented by third parties;
- (b) activities implemented on the initiative of the Commission.

Those measures which are required by law or those measures already receiving financing under another Union action shall be excluded.

In order to implement activities as referred to in point (b) the Commission may be assisted by external experts.

The measures referred to in the first subparagraph shall also contribute to the corporate communication of the Union's political priorities in so far as those priorities are related to the general objectives of this Regulation.

3. By 31 October of each year, the Commission shall publish a call of proposal respecting the conditions set out in Regulation (EU, Euratom) No 966/2012.
4. The Committee referred to in Article 116(1) shall be notified of measures envisaged and taken pursuant to this Article.
5. The Commission shall present a report on the implementation of this Article to the European Parliament and the Council every two years.

#### *Article 45*

#### ***Commission powers***

1. In order to take account of revenue collected by paying agencies for the Union's budget when making payments on the basis of the expenditure declarations submitted by Member States, the Commission shall be empowered to adopt delegated acts in accordance with Article 115 concerning the conditions under which certain types of expenditure and revenue under the Funds are to be compensated.

2. In order to enable the equitable distribution of the appropriations available between the Member States, if the Union's budget has not been adopted by the beginning of the financial year or if the total amount of the commitments scheduled exceeds the threshold laid down in Article 170(3) of Regulation (EU, Euratom) No 966/2012, the Commission shall be empowered to adopt delegated acts in accordance with Article 115 of this Regulation concerning the method applicable to the commitments and the payment of the amounts.

3. The Commission may adopt implementing acts laying down further rules on the obligation laid down in Article 44 as well as the specific conditions applying to the information to be booked in the accounts kept by the paying agencies. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 116(3).

4. The Commission may adopt implementing acts laying down rules on:

(a) the financing and accounting of intervention measures in the form of public storage, and other expenditure financed by the Funds;

(b) the terms and conditions governing the implementation of the automatic decommitment procedure;

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 116(3).

## Chapter IV

### *Clearance of accounts*

#### SECTION I

##### GENERAL PROVISIONS

##### Article 46

###### ***Single audit approach***

[See new provision in the FR]

##### Article 47

###### ***Checks by the Commission***

1. 1. Without prejudice to the checks carried out by Member States under national law, regulations and administrative provisions or Article 287 TFEU or to any check organised under Article 322 TFEU or based on Council Regulation (Euratom, EC) No 2185/96, the Commission may organise checks in Member States with a view to verifying in particular:
  - (a) compliance of administrative practices with Union rules;
  - (b) whether the work of the certification body referred to in Article **[I1 comment: the certification body]** is carried out in accordance with Union rules and for the purpose of applying the provisions of Chapter xxx **[the one on the Clearance and conformity procedures]**;
  - (c) whether a paying agency complies with the accreditation criteria laid down in Article ... **[I1 comment : the provision on the accreditation of the paying agencies]** and whether the Member State correctly applies the provisions of Article ....**[I1 comment: the provision on the withdrawal of the accreditation]**.

Persons authorised by the Commission to carry out checks on its behalf, or Commission agents acting within the scope of the powers conferred on them, shall have access to the books and all other documents, including documents and metadata drawn up or received and recorded on an electronic medium, relating to expenditure financed by the EAGF or the EAFRD.

The powers to carry out checks shall not affect the application of national provisions which reserve certain acts for agents specifically designated by national law. Without prejudice to the specific provisions of Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council and Regulation (Euratom, EC) No 2185/96, persons authorised by the Commission to act on its behalf shall not take part, inter alia, in home visits or the formal questioning of persons on the basis of law of the Member State concerned. However, they shall have access to information thus obtained.

2. The Commission shall give sufficient prior notice of a check to the Member State concerned or to the Member State within whose territory the check is to take place, taking into account the administrative impact on paying agencies when organising checks. Agents from the Member State concerned may take part in such checks.

At the request of the Commission and with the agreement of the Member State, additional checks or inquiries into the operations covered by this Regulation shall be undertaken by the

competent bodies of that Member State. Commission agents or persons authorised by the Commission to act on its behalf may take part in such checks.

In order to improve checks, the Commission may, with the agreement of the Member States concerned, request the assistance of the authorities of those Member States for certain checks or inquiries.

#### *Article 48*

##### *Access to information*

1. Member States shall make available to the Commission all information necessary for the smooth operation of the Funds and shall take all appropriate measures to facilitate the checks which the Commission deems appropriate in connection with the management of Union financing, including checks.
2. Member States shall communicate to the Commission at its request the laws, regulations and administrative provisions which they have adopted in order to implement the Union legal acts relating to the CAP, where those acts have a financial impact on the EAGF or the EAFRD.
3. Member States shall make available to the Commission information about irregularities and suspected fraud cases detected, as well as information about the steps taken pursuant to Section III of this Chapter to recover undue payments in connection with those irregularities and frauds.

#### *Article 49*

##### *Access to documents*

The accredited paying agencies shall keep supporting documents relating to payments made and documents relating to the performance of the checks required by Union law, and shall make the documents and information available to the Commission.

Those supporting documents may be kept in electronic form under the conditions laid down by the Commission on the basis of Article ...**[II comment: Article on the Commission powers]**.

Where those documents are kept by an authority acting under delegation from a paying agency and responsible for authorising expenditure, that authority shall send reports to the accredited paying agency on the number of checks made, their content and the measures taken in the light of their results.

These provisions shall apply *mutatis mutandis* to the certification bodies.

#### *Article 50*

##### *Commission powers*

1. In order to ensure the correct and efficient application of the provisions relating to checks and access to documents and information set out in this Chapter, the Commission shall be empowered to adopt delegated acts in accordance with Article ... supplementing specific obligations to be complied with by the Member States under this Chapter.
2. The Commission may adopt implementing acts laying down rules on:

- (a) the procedures relating to the cooperation obligations to be complied with by the Member States for the implementation of Articles ... and ...**[I1 comment: Articles above on checks by the Commission and access to information];**
- (b) the conditions under which the supporting documents referred to in Article ...**[I1 comment: Article above on access to documents]** are to be kept, including their form and the time period of their storage.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article ....

## *SECTION II* *CLEARANCE*

### *Article 51* *Annual Financial Clearance*

1. Prior to 31 May of the year following the budget year in question and on the basis of the information referred to in Article [... *the one on PAs*], **the Commission shall adopt implementing acts, containing its decision on the clearance of the accounts of the accredited paying agencies.** Those implementing acts shall cover the completeness, accuracy and veracity of the annual accounts submitted and shall be without prejudice to the content of decisions subsequently adopted pursuant to Articles x2 and x3.

Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article [...].

2. The Commission shall adopt implementing acts laying down rules on the clearance of accounts provided for in paragraph 1 with regard to the measures to be taken in connection with the adoption of the decision and its implementation, including the information exchange between the Commission and the Member States and the deadlines to be respected.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 116(3).

### *Article 52* *Annual Performance Clearance*

1. Where the expenditure falling within the scope of Articles [... *EAGF, EAFRD*] and corresponding to the interventions referred to in Regulation (EU) No [*CAP Plan Reg*] does not have a corresponding output as reported in the annual performance report, the Commission shall adopt implementing acts prior to 15 October of the year following the budget year in question determining the amounts to be reduced from Union financing. Those implementing acts shall be without prejudice to the content of decisions subsequently adopted pursuant to Article x3.

Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article [...].

2. The Commission shall assess the amounts to be reduced on the basis of the difference between the annual expenditure declared for a measure and the relevant output indicators reported, in accordance with the national CAP Plan and taking account of justifications provided by the Member State.

3. Before the adoption of the implementing act referred to in paragraph (1), the Commission shall give the Member State an opportunity to submit its comments and justify any differences.

4. In order to enable the Commission to protect the financial interest of the Union and to ensure the provisions of this Article are applied efficiently, the Commission shall be empowered to adopt delegated acts in accordance with Article [...], concerning the criteria for justifications from the concerned Member State and the methodology for applying reductions.

5. The Commission shall adopt implementing acts laying down rules on the measures to be taken in connection with the adoption of the implementing act referred to in paragraph (1) and its implementation, including the information exchange between the Commission and the Member States, the procedure and the deadlines to be respected.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article [...].

### *Article 53* **Conformity procedure**

1. Where it finds that expenditure falling within the scope of Articles [... *EAGF, EAFRD*] has not been effected in conformity with Union law, the Commission shall adopt implementing acts determining the amounts to be excluded from Union financing.

As regards interventions referred to in the Regulation (EU) No [CAP Plan Reg] the exclusion referred to in the first subparagraph shall apply in case of serious deficiencies in the governance structures and shall not extend to the eligibility conditions for individual beneficiaries laid down in the national CAP Plans.

Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article [...].

2. The Commission shall assess the amounts to be excluded on the basis of the gravity of the deficiencies in the governance structures and non-compliance with the EU basic requirements, including unreliability of reporting as referred to in Article [...*article on the governance structures*].

3. Before the adoption of the implementing act referred to in paragraph (1), the Commission findings and the Member State's replies shall be notified in writing, following which the two parties shall attempt to reach agreement on the action to be taken. At that point in the procedure the Member States shall be given the opportunity to demonstrate that the actual extent of the non-compliance is less than in the Commission's assessment.

If agreement is not reached, the Member State may request the opening of a procedure aimed at reconciling, within a period of four months, each party's position. A report of the outcome of the procedure shall be submitted to the Commission. The Commission shall take into account the recommendations in the report before deciding on any refusal of financing and shall give reasons if it decides not to follow those recommendations.

4. Financing may not be refused for:

- (a) expenditure as indicated in Article 4~~(1)~~ which is effected more than 24 months before the Commission notifies the Member State in writing of its inspection findings;
- (b) expenditure on multiannual measures falling within the scope of Article 4~~(1)~~ or within the scope of the programmes as indicated in Article 5, where the final

obligation on the recipient occurs more than 24 months before the Commission notifies the Member State in writing of its findings;

- (c) expenditure on measures in programmes, as indicated in Article 5, other than those referred to in point (b) of this paragraph, for which the payment or, as the case may be, the final payment, by the paying agency, is made more than 24 months before the Commission notifies the Member State in writing of its findings.

5. Paragraph 4 shall not apply in the case of:

- (a) national aids for which the Commission has initiated the procedure laid down in Article 108(2) TFEU or infringements which the Commission has notified to the Member State concerned by a letter of formal notice in accordance with Article 258 TFEU;
- (b) infringements by Member States of their obligations under Chapter [...*ex-post scrutiny*] of this Regulation, provided that the Commission notifies the Member State in writing of its findings within 12 months following receipt of the Member State's report on the results of its checks on the expenditure concerned.

6. In order to enable the Commission to protect the financial interest of the Union and to ensure the provisions of this Article are applied efficiently, the Commission shall be empowered to adopt delegated acts in accordance with Article [...], concerning the criteria and methodology for applying financial corrections.

7. The Commission shall adopt implementing acts laying down rules on the measures to be taken in connection with the adoption of the implementing act referred to in paragraph (1) and its implementation, including the information exchange between the Commission and the Member States and the deadlines to be respected as well as the conciliation procedure provided for in paragraph (3), including the establishment, tasks, composition and working arrangements of the conciliation body.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article [...].

### *SECTION III* *IRREGULARITIES*

#### *Article 54* *Provisions specific to the EAGF*

Sums recovered by the Member States following the occurrence of irregularity and the interest thereon shall be made over to the paying agency and booked by it as revenue assigned to the EAGF in the month in which the money is actually received.

When the Union's budget is credited as referred to in the first paragraph, the Member State may retain 20 % of the corresponding amounts as flat rate recovery costs, except in cases of irregularity attributable to its administrative authorities or other official bodies.

#### *Article 55* *Provisions specific to the EAFRD*

Where irregularities are detected in EAFRD financed interventions, Member States shall make financial adjustments by totally or partially cancelling the Union financing concerned.

Member States shall take into consideration the nature and gravity of the irregularities detected and the level of the financial loss to the EAFRD.

Amounts of the Union financing under the EAFRD which are cancelled and amounts recovered, as well as the interest thereon, shall be reallocated to other EAFRD financed interventions. However, the cancelled or recovered Union funds may be reused by Member States only for an intervention under the same national CAP Plan and provided the funds are not reallocated to interventions which have been the subject of a financial adjustment.

#### *Article 56*

#### ***Commission powers***

The Commission shall adopt implementing acts laying down rules on the forms of notification and communication to be made by the Member States to the Commission in relation to the obligations set out in this Section.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 116(3).

### **TITLE IV**

### **CONTROL SYSTEMS AND PENALTIES**

#### *Chapter I*

#### *General rules*

#### *Article 57*

#### ***Protection of the financial interests of the Union***

1. Member States shall, within the framework of the CAP, adopt all legislative, regulatory and administrative provisions and take any other measures necessary to ensure effective protection of the financial interests of the Union, in particular to:

- (a) check the legality and regularity of operations financed by the Funds;
- (b) ensure effective prevention against fraud, especially in areas with a higher level of risk, and which will act as a deterrent, having regard to the costs and benefits as well as the proportionality of the measures;
- (c) prevent, detect and correct irregularities and fraud;
- (d) impose penalties which are effective, dissuasive and proportionate in accordance with Union law, or failing this, national law, and bring legal proceedings to that effect, as necessary;
- (e) recover undue payments plus interest, and bring legal proceedings to that effect as necessary.

Where the non-compliance with the conditions for the granting of the aid is due to force majeure, the beneficiary shall keep the right to aid.

2. Member States shall set up efficient management and control systems in order to ensure compliance with the legislation governing Union interventions aimed at minimising the risk



of financial damage to the Union.

3. The penalties applied as referred to in point d) of paragraph (1) shall be proportionate and graduated according to the severity, extent, duration and reoccurrence of the non-compliance found.

No penalties shall be imposed:

- (a) where the non-compliance is due to force majeure;
- (b) where the non-compliance is due to an error of the competent authority or another authority, and where the error could not reasonably have been detected by the person concerned by the administrative penalty;
- (c) where the person concerned can demonstrate to the satisfaction of the competent authority that he or she is not at fault for the non-compliance with the obligations referred to in paragraph 1 or if the competent authority is otherwise satisfied that the person concerned is not at fault.

4. Member States shall inform the Commission of the provisions adopted and measures taken under paragraphs 1 and 2.

Any conditions established by Member States to supplement the conditions laid down by Union rules for receiving support financed by the EAGF or the EAFRD shall be verifiable.

5. The Commission may adopt implementing acts, laying down rules necessary for the uniform application of this Article relating to the following:

- (a) the procedures, deadlines, exchange of information in relation to the obligations as set out in paragraphs 1 and 2;
- (b) the notification and communication to be made by the Member States to the Commission in relation to the obligation set out in paragraph 3.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article ....

#### *Article 58*

#### ***General rules on checks***

1. The system set up by the Member States in accordance with Article xxx(2) shall include systematic checks which should also target the areas where the risk of errors is the highest.

Member States shall ensure a level of checks needed for an effective management of the risks.

2. In order to ensure that the checks are carried out correctly and efficiently, the Commission shall be empowered to adopt delegated acts in accordance with Article xxx, laying down, where the proper management of the system so requires, additional requirements with respect to customs procedures, and in particular to those laid down in Regulation (EC) No 952/2013 of the European Parliament and of the Council.

3. As regards measures referred to in the sectoral agricultural legislation other than the CAP Plan Regulation, the Commission shall adopt implementing acts, laying down rules necessary for the uniform application of this Article, and in particular:

- (a) with regard to hemp as referred to in Article xxx of Regulation (EU) No 1307/2013, rules on the specific control measures and methods for determining tetrahydrocannabinol levels;

(b) with regard to cotton as referred to in Article 56 of Regulation (EU) No 1307/2013, a system for checks of the approved interbranch organisations;

[(c) with regard to wine as referred to in Regulation (EU) No 1308/2013, rules on the measurement of areas, on checks and on rules governing the specific financial procedures for the improvement of checks;]

(d) the tests and methods to be applied in order to establish the eligibility of products for public intervention and private storage, as well as the use of tendering procedures, both for public intervention and for private storage;

(e) other rules on checks to be conducted by the Member States.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article xxx.

#### *Article 59*

##### ***Non-compliance with public procurement rules***

Where the non-compliance concerns national or Union rules on public procurement, Member States shall ensure that the part of the aid not to be paid or to be withdrawn shall be determined on the basis of the gravity of the non-compliance and in accordance with the principle of proportionality.

Member States shall ensure that the legality and regularity of the transaction shall only be affected up to the level of the part of the aid not to be paid or to be withdrawn.

#### *Article 60*

##### ***Circumvention clause***

Without prejudice to specific provisions, Member States shall ensure that no advantage provided for under sectoral agricultural legislation shall be granted in favour of a natural or legal person in respect of whom it is established that the conditions required for obtaining such advantages were created artificially, contrary to the objectives of that legislation.

#### *Article 61*

##### ***Compatibility of interventions for the purposes of checks in the wine sector***

For the purposes of applying the interventions in the wine sector as referred to in the CAP Plan Regulation, Member States shall ensure that the administration and control procedures applied to those interventions are compatible with the management and monitoring system referred to in Chapter II of this Title as regards the following elements:

(a) the identification systems for agricultural parcels;

(b) the checks.

#### *Article 62*

##### ***Securities***

1. The Member States shall, when the sectoral agricultural legislation so provides, request the lodging of a security giving the assurance that a sum of money will be paid or forfeited to a competent authority if a particular obligation under sectoral agricultural legislation is not fulfilled.

2. Except in cases of force majeure, the security shall be forfeited in whole or in part where the execution of a particular obligation is not carried out, or is carried out only partially.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 115 laying down rules which ensure a non discriminatory treatment, equity and the respect of proportionality when lodging a security, and:

- (a) specifying the responsible party in the event that an obligation is not met;
- (b) laying down the specific situations in which the competent authority may waive the requirement of a security;
- (c) laying down the conditions applying to the security to be lodged and the guarantor and the conditions for lodging and releasing that security;
- (d) laying down the specific conditions related to the security lodged in connection with advance payments;
- (e) setting out the consequences of breaching the obligations for which a security has been lodged, as provided for in paragraph 1, including the forfeiting of securities, the rate of reduction to be applied on release of securities for refunds, licences, offers, tenders or specific applications and when an obligation covered by that security has not been met either wholly or in part, taking into account the nature of the obligation, the quantity for which the obligation has been breached, the period exceeding the time limit by which the obligation should have been met and the time by which evidence that the obligation has been met is produced.

4. The Commission may adopt implementing acts laying down rules on:

- (a) the form of the security to be lodged and the procedure for lodging the security, for accepting it, and for replacing the original security;
- (b) the procedures for the release of a security;
- (c) the notifications to be made by Member States and by the Commission.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article....

## **Chapter II**

### **Integrated administration and control system**

#### *Article 63*

#### *Scope and terms used*

1. Each Member State shall set up and operate an integrated administration and control system (the 'integrated system').

2. The integrated system shall apply to the area- and animal-based interventions listed in Title ... and Title ...of the CAP Plan Regulation [**II comment: wording to be aligned with the wording and structure used in the CAP Plan Regulation, as regards the schemes of both pillars**].

3. To the extent necessary, the integrated system shall also apply to the management and control of conditionality and measures in the wine sectors as laid down in Title ... and Title ...respectively of the CAP Plan Regulation.

4. For the purpose of this Chapter:

- (a) "geo-spatial application" means an electronic application form that includes an IT application based on a Geographic Information System (GIS) that allows beneficiaries to spatially declare the agricultural parcels of the holding as well as non-agricultural areas claimed for payment;
- (b) "area monitoring system" means a procedure of regular and systematic observation, tracking and assessment of agricultural activities and practices on agricultural areas by Copernicus Sentinels satellite data or other data with at least equivalent value;
- (c) "system for the identification and registration of animals" means the system for the identification and registration of bovine animals established by Regulation (EC) No 1760/2000 of the European Parliament and of the Council<sup>3</sup> or the system for the identification and registration of ovine and caprine animals established by Council Regulation (EC) No 21/2004<sup>4</sup> respectively;
- (d) "agricultural parcel" means a unit of land representing agricultural area as defined in **[ref. to the article defining the types of agricultural area]**;
- (e) "geographic information system" means a computer system capable of capturing, storing, analysing, and displaying geographically referenced information;
- (f) "claimless system" means an application system for area- or animal-based interventions in which necessary data required by the administration on at least individual areas or animals claimed for aid is available in official computerised databases managed by the Member State.
- (g) "digital database" means a computerised database used to record and store data.

#### *Article 64*

#### ***Elements of the integrated system***

1. The integrated system shall comprise the following elements:

- (a) an identification system for agricultural parcels;
- (b) a geo-spatial and an animal-based application system;
- (c) an area monitoring system;
- (d) a system for the identification of beneficiaries of the support referred to in Article ...**[I1 comment: under the scope of the management and monitoring system]**;
- (e) a control and penalties system

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<sup>3</sup> Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97 (OJ L 204, 11.8.2000, p. 1).

<sup>4</sup> Council Regulation (EC) No 21/2004 of 17 December 2003 establishing a system for the identification and registration of ovine and caprine animals and amending Regulation (EC) No 1782/2003 and Directives 92/102/EEC and 64/432/EEC (OJ L 5, 9.1.2004, p. 8).

- (f) where applicable, a system for the identification and registration of payment entitlements;
- (g) where applicable, a system for the identification and registration of animals, set up in accordance with Regulation (EC) No 1760/2000 of the European Parliament and of the Council and Council Regulation (EC) No 21/2004.

2. The integrated system shall operate on the basis of electronic databases and shall enable the exchange or integration of data between the databases.

3. Without prejudice to the responsibilities of the Member States for the implementation and application of the integrated system, the Commission may seek the assistance of specialised bodies or persons in order to facilitate the establishment, monitoring and operation of the integrated system, in particular, with a view to providing the competent authorities of the Member States with technical advice.

4. Member States shall take all measures required for the proper establishment and operation of the integrated system and shall give one another the mutual assistance needed for the purposes of this chapter.

#### *Article 65*

#### ***Data keeping and sharing***

1. Member States shall record and keep any data and documentation relevant for the purpose of assurance and performance on the achieved outputs, and targets, respectively.

The data and documentation referred to in paragraph 1 relating to the current calendar or marketing years and to the previous ten such years shall be accessible for consultation through the digital databases of the authority competent in the Member State.

By way of derogation from the second subparagraph, the Member States which acceded to the Union after 2013, shall only be required to ensure consultation of the data as from the year of their accession.

By way of derogation from the second subparagraph, Member States shall only be required to ensure consultation of the data and documentation related to the area monitoring system referred to in point c) of paragraph 1 of Article... **[I1 comment: article on the elements of the integrated system]** as of the date of the implementation of the area monitoring system.

2. Member States may apply the requirements laid down in paragraph 1 at regional level on condition that these, and the administrative procedures for recording and accessing data, are designed to be homogeneous throughout the territory of the Member State and allow the aggregation of data at national level.

3. Member States shall ensure that data sets collected through the integrated system, and which are relevant for the purposes of Directive 2007/2/EC of the European Parliament and of the Council<sup>5</sup> or monitoring of Union policies, are shared between its public authorities and made publicly available at national level. Member States shall also provide the institutions and bodies of the Union with access to these data sets.

Member States shall limit public access to data sets referred to in the first subparagraph where such access would adversely affect the confidentiality of personal data.

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<sup>5</sup> Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) (OJ L 108, 25.4.2007, p. 1).

## Article 66

### *Identification system for agricultural parcels*

1. The identification system for agricultural parcels shall be a geographic information system established and regularly updated on the basis of aerial or spatial ortho-imagery, with a homogenous standard that guarantees a level of accuracy that is at least equivalent to that of cartography at a scale of 1:5 000.
2. Member States shall ensure that the identification system for agricultural parcels:
  - (a) uniquely identifies each agricultural parcel as well as units of land containing non-agricultural areas considered eligible by the Member States for receiving the aid for the interventions referred to in Title ... of the CAP Plan Regulation **[D3 comment: reference to possible measures where MS can pay for non-agricultural areas]**;
  - (b) contains up-to-date values on the areas considered eligible by the Member States for receiving the aid for the interventions referred to in Article... **[I1 comment: under the scope of the management and monitoring system]**;
  - (c) enables the correct localisation of agricultural parcels and non-agricultural areas claimed for payment;
  - (d) contains any information relevant for the reporting on the achieved outputs.
3. Member States shall annually assess the quality of the identification system for agricultural parcels in accordance with the methodology set up at Union level.

Where the assessment reveals deficiencies in the system, Member States shall adopt appropriate remedial actions or shall be requested to set up an action plan in accordance with Article xx

An assessment report and, where appropriate, the remedial actions and the timetable for their implementation shall be submitted to the Commission by 15 February following the calendar year in question.

## Article 67

### *Geo-spatial and animal-based application system*

1. Member States shall ensure that beneficiaries of the aid for the area-based interventions referred to in Article... **[I1 comment: scope of the management and monitoring system]** and implemented under the national CAP Plans use the geo-spatial application provided by the competent authority to submit an application.
2. Beneficiaries of the aid for the animal-based interventions referred to in Article... **[I1 comment: scope of the management and monitoring system]** and implemented under the national CAP Plans shall submit an application.
3. Member States shall pre-fill the applications referred to in paragraphs 1 and 2 with information from the systems referred to in Articles **[I1 comment: Articles on LPIS, monitoring system, system for the identification of beneficiaries, system for the, identification and registration of payment entitlements and the system for the identification and registration of animals]**, or from any other relevant public database.
4. Member States may decide that a claimless system shall cover one or more applications referred to in paragraphs 1 and 2.

5. Member States shall annually assess the quality of the geo-spatial application system in accordance with the methodology set up at Union level.

Where the assessment reveals deficiencies in the system, Member States shall adopt appropriate remedial actions or shall be requested to set up an action plan in accordance with Article xx.

An assessment report and, where appropriate, the remedial actions and the timetable for their implementation shall be submitted to the Commission by 15 February following the calendar year in question.

#### *Article 68*

##### *Area monitoring system*

1. Member States shall set up and operate an area monitoring system.

2. Member States shall annually assess the quality of the area monitoring system in accordance with the methodology set up at Union level.

Where the assessment reveals deficiencies in the system, Member States shall adopt appropriate remedial actions or shall be requested to set up an action plan in accordance with Article xx.

An assessment report and, where appropriate, the remedial actions and the timetable for their implementation shall be submitted to the Commission by 15 February following the calendar year in question.

#### *Article 69*

##### *System for the identification of beneficiaries*

The system for recording the identity of each beneficiary of the aid as referred to in Article ... [ **I1 comment: scope of the IACS** ] shall guarantee that all applications submitted by the same beneficiary can be identified as such.

#### *Article 70*

##### *Control and penalties system*

Member States shall set up a control and penalties system for the aid as referred to in Article... [ **I1 comment: scope of the IACS** ]

Paragraphs 1-4 of Article [ **I1 comment: future Article on the protection of financial interests of the Union** ] shall apply *mutatis mutandis*.

#### *Article 71*

##### *System for the identification and registration of payment entitlements*

The system for the identification and registration of payment entitlements shall allow for verification of the entitlements with the applications and the identification system for agricultural parcels.

#### *Article 72*

##### *Delegated powers*

In order to ensure that the integrated system provided for in this Chapter is implemented in an efficient, coherent and non-discriminatory way which protects the financial interests of the

Union, the Commission shall be empowered to adopt delegated acts in accordance with Article ...concerning:

- (a) further rules on the quality assessment referred to in Articles...**[I1 comment: LPIS, GSAA and monitoring]**;
- (b) further definitions, basic features and rules on the land parcel identification system, the system for the identification of the beneficiaries and the system for the identification and registration of payment entitlements referred to in Articles ... **[reference to the relevant articles]**.

*Article 73*  
**Implementing powers**

The Commission may adopt implementing acts laying down rules on:

- (a) the form, content and arrangements for transmitting or making available to the Commission:
  - (i) the assessment reports on the quality of the identification system for agricultural parcels, of the geo-spatial application system and of the area monitoring system;
  - (ii) the remedial actions to be implemented by the Member States as referred to in Article xx, xx, xx **[D3 comment: add Articles on LPIS, GSAA and area monitoring]**.
- (b) basic features and rules on the geo-spatial application system and the area monitoring system referred to in Articles ... **[reference to the relevant articles]**

*Chapter III*  
**Scrutiny of transactions**

*Article 74*  
**Scope and definitions**

1. This Chapter lays down specific rules on the scrutiny of the commercial documents of those entities receiving or making payments relating directly or indirectly to the system of financing by the EAGF, or their representatives ('undertakings') in order to ascertain whether transactions forming part of the system of financing by the EAGF have actually been carried out and have been executed correctly.

2. This Chapter shall not apply to interventions covered by the management and monitoring system referred to in Chapter ... of this Title and by Chapter ...of Title ...of the CAP Plan Regulation **[I1 comment: fruits and vegetables, wine and apiculture sectors which will be laid down in the CAP Plan Regulation]**. In order to respond to changes in sectoral agricultural legislation and to ensure the efficiency of the system of ex-post controls established by this Chapter, the Commission shall be empowered to adopt delegated acts in accordance with Article 115 establishing a list of interventions which, due to their design and control requirements, are unsuited for additional ex-post controls by way of scrutiny of commercial documents and, therefore, are not to be subject to such scrutiny under this Chapter.

3. For the purposes of this Chapter the following definitions shall apply:

- (a) "commercial document" means all books, registers, vouchers and supporting documents, accounts, production and quality records, and correspondence



relating to the undertaking's business activity, as well as commercial data, in whatever form they may take, including electronically stored data, in so far as these documents or data relate directly or indirectly to the transactions referred to in paragraph 1;

- (b) "third party" means any natural or legal person directly or indirectly connected with transactions carried out within the financing system by the EAGF.

#### *Article 75*

#### ***Scrutiny by Member States***

1. Member States shall carry out systematic scrutiny of the commercial documents of undertakings taking account of the nature of the transactions to be scrutinised. Member States shall ensure that the selection of undertakings for scrutiny gives the best possible assurance of the effectiveness of the measures for preventing and detecting irregularities. The selection shall take account, inter alia, of the financial importance of the undertakings in that system and of other risk factors.
2. In appropriate cases, the scrutiny provided for in paragraph 1 shall be extended to natural and legal persons with whom undertakings are associated and to such other natural or legal persons as may be relevant for the pursuit of the objectives set out in Article 81.
3. The scrutiny carried out pursuant to this Chapter shall not prejudice the checks undertaken pursuant to Articles 47 and 48.

#### *Article 76*

#### ***Objectives of the scrutiny***

1. The accuracy of primary data under scrutiny shall be verified by a number of cross-checks, including, where necessary, the commercial documents of third parties, appropriate to the degree of risk presented, including:
  - (a) comparisons with the commercial documents of suppliers, customers, carriers and other third parties;
  - (b) physical checks, where appropriate, upon the quantity and nature of stocks;
  - (c) comparison with the records of financial flows leading to or consequent upon the transactions carried out within the financing system by the EAGF; and
  - (d) checks, in relation to bookkeeping, or records of financial movements showing, at the time of the scrutiny, that the documents held by the paying agency by way of justification for the payment of aid to the beneficiary are accurate.
2. In particular, where undertakings are required to keep particular book records of stock in accordance with Union or national provisions, scrutiny of those records shall, in appropriate cases, include a comparison with the commercial documents and, where appropriate, with the actual quantities in stock.
3. In the selection of transactions to be checked, full account shall be taken of the degree of risk presented.

*Article 77*  
***Access to commercial documents***

1. The persons responsible for the undertaking, or a third party, shall ensure that all commercial documents and additional information are supplied to the officials responsible for the scrutiny or to the persons authorised to carry it out on their behalf. Electronically stored data shall be provided on an appropriate data support medium.
2. The officials responsible for the scrutiny or the persons authorised to carry it out on their behalf may require that extracts or copies of the documents referred to in paragraph 1 be supplied to them.
3. Where, during scrutiny carried out pursuant to this Chapter, the commercial documents maintained by the undertaking are considered inadequate for scrutiny purposes, the undertaking shall be directed to maintain in future such records as are required by the Member State responsible for the scrutiny, without prejudice to obligations laid down in other Regulations relating to the sector concerned.

Member States shall determine the date from which such records are to be established.

Where some or all of the commercial documents required to be scrutinised pursuant to this Chapter are located with an undertaking in the same commercial group, partnership or association of undertakings managed on a unified basis as the undertaking scrutinised, whether located inside or outside the territory of the Union, the undertaking shall make those commercial documents available to officials responsible for the scrutiny, at a place and time to be determined by the Member States responsible for carrying out the scrutiny.

4. Member States shall ensure that officials responsible for scrutiny are entitled to seize commercial documents, or have them seized. This right shall be exercised with due regard to the relevant national provisions and shall be without prejudice to the application of rules governing proceedings in criminal matters concerning the seizure of documents.

*Article 78*  
***Mutual assistance***

1. Member States shall assist each other for the purposes of carrying out the scrutiny provided for in this Chapter in the following cases:
  - (a) where an undertaking or third party is established in a Member State other than that in which payment of the amount in question has or should have been made or received;
  - (b) where an undertaking or third party is established in a Member State other than that in which the documents and information required for scrutiny are to be found.

The Commission may coordinate joint actions involving mutual assistance between two or more Member States.

2. Member States shall send the Commission a list of undertakings established in a third country for which payment of the amount in question has or should have been made or received in that Member State.
3. If additional information is required in another Member State as part of the scrutiny of an undertaking in accordance with Article 80, and in particular cross-checks in accordance with Article 81, specific scrutiny requests may be made indicating the reasons for the request.

The scrutiny request shall be fulfilled not later than six months after its receipt; the results of the scrutiny shall be communicated without delay to the requesting Member State.

*Article 79*  
**Programming**

1. Member States shall draw up programmes for scrutiny to be carried out pursuant to Article 80 during the subsequent scrutiny period.
2. Each year, before 15 April, Member States shall send the Commission their programme as referred to in paragraph 1 and shall specify:
  - (a) the number of undertakings to be scrutinised and their breakdown by sector on the basis of the amounts relating to them;
  - (b) the criteria adopted for drawing up the programme.
3. The programmes established by the Member States and forwarded to the Commission shall be implemented by the Member States, if, within eight weeks, the Commission has not made known its comments.
4. Paragraph 3 shall apply *mutatis mutandis* to the amendments to the programme made by the Member States.
5. At any stage, the Commission may request the inclusion of a particular category of undertaking in the programme of a Member States.
6. Undertakings for which the sum of the receipts or payments amounted to less than EUR 40 000 shall be scrutinised in accordance with this Chapter only for specific reasons to be indicated by the Member States in their annual programme referred to in paragraph 1 or by the Commission in any proposed amendment to that programme. In order to take account of economic developments, the Commission shall be empowered to adopt delegated acts in accordance with Article 115 modifying the threshold of EUR 40 000.

*Article 80*  
**Special departments**

1. In each Member State, a special department shall be responsible for monitoring the application of this Chapter. Those departments shall, in particular, be responsible for:
  - (a) the performance of the scrutiny provided for in this Chapter by officials employed directly by that special department; or
  - (b) the coordination and general surveillance of the scrutiny carried out by officials belonging to other departments.

Member States may also provide that scrutiny to be carried out pursuant to this Chapter is allocated between the special departments and other national departments, provided that the former is responsible for its coordination.

2. The department or departments responsible for the application of this Chapter shall be organised in such a way as to be independent of the departments or branches of departments responsible for the payments and the scrutiny checks carried out prior to payment.
3. In order to ensure that this Chapter is properly applied, the special department referred to in paragraph 1 shall take all the measures necessary, and it shall be entrusted by the Member State concerned with all the powers necessary, to perform the tasks referred to in this Chapter.

4. Member States shall adopt appropriate measures to penalise natural or legal persons who fail to fulfil their obligations under this Chapter.

#### *Article 81*

##### ***Reports***

1. Before 1 January, following the scrutiny period, Member States shall send the Commission a detailed report on the application of this Chapter.

The report referred to in the first subparagraph shall also contain an overview of the specific scrutiny requests referred to in paragraph 3 of Article... **[II comment: Article on mutual assistance]** and the results of the scrutiny following those requests.

2. The Member States and the Commission shall have regular exchanges of views on the application of this Chapter.

#### *Article 82*

##### ***Access to information and scrutiny by the Commission***

1. In accordance with the relevant national laws, Commission officials shall have access to all documents prepared either with a view to or following the scrutiny organised under this Chapter and to the data held, including those stored in the data-processing systems. That data shall be provided upon request on an appropriate data support medium.

2. The scrutiny referred to in Article 80 shall be carried out by the officials of the Member States. Officials of the Commission may participate in that scrutiny. They may not themselves exercise the powers of scrutiny accorded to national officials. However, they shall have access to the same premises and to the same documents as the officials of the Member States.

3. In the case of scrutiny taking place under Article 83, officials of the requesting Member State may be present, with the agreement of the requested Member State, at the scrutiny in the requested Member State and have access to the same premises and the same documents as the officials of that Member State.

Officials of the requesting Member State present at scrutiny in the requested Member State shall at all time be able to furnish proof of their official capacity. The scrutiny shall at all times be carried out by officials of the requested Member State.

4. Without prejudice to the provisions of Regulations (EU, Euratom) 883/2013 and (Euratom, EC) No 2185/96, where national provisions concerning criminal procedure reserve certain acts for officials specifically designated by the national law, neither the officials of the Commission, nor the officials of the Member State referred to in paragraph 3, shall take part in these acts. In any event, they shall, in particular not take part in home visits or the formal interrogation of persons in the context of the criminal law of the Member State concerned. They shall, however, have access to information thus obtained.

#### *Article 83*

##### ***Commission powers***

The Commission shall, where necessary, adopt implementing acts laying down rules for the uniform application of this Chapter and in particular relating to the following:

- (a) the performance of the scrutiny referred to in Article 80 as regards the selection of undertakings, rate and the calendar for the scrutiny;

- (b) the conservation of commercial documents and the types of documents to maintain or data to record;
- (c) the performance and coordination of joint actions referred to in Article 83(1);
- (d) the details and specifications regarding the content, form and means of submission of requests, the content, form and means of notification, submission and exchange of information required in the framework of this Chapter;
- (e) conditions and means of publication or specific rules and conditions for the diffusion or making available by the Commission to the competent authorities of the Member States of the information needed in the framework of this Regulation;
- (f) the responsibilities of the special department referred to in Article 85;
- (g) the content of reports referred to in Article 86 and any other notification needed in the framework of this Chapter.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article ...

## ***Chapter IV***

### ***Control system and penalties in relation to conditionality***

#### *Article 84*

##### ***Checks of conditionality***

1. Member States shall set up a control system to ensure that beneficiaries of the aid referred to in Chapter...of Title...of the CAP Plan Regulation [I1 comment: conditionality] comply with the respective rules.

Member States may make use of their existing administration and control systems to ensure compliance with the rules on conditionality.

Those systems shall be compatible with the control system referred to in the first subparagraph of this paragraph.

Member States shall yearly review the control system referred to in the first subparagraph in light of the results achieved.

2. Member States shall carry out on-the-spot checks to verify whether a beneficiary complies with the obligations laid down in Chapter...of Title...of the CAP Plan Regulation.

Depending on the requirements, standards, acts or areas of conditionality in question, Member States may decide to use the checks carried out under the control systems applicable to the respective requirement, standard, act or area of conditionality, provided the effectiveness of these checks is, at least, equal to the on-the-spot checks referred to in the first subparagraph of this paragraph.

Where appropriate, Member States may make use of remote sensing or the area monitoring system to carry out the on-the-spot checks referred to in this paragraph.

3. The control sample for the checks referred to in the second paragraph of this Article and to be carried out each year shall cover at least 1% of beneficiaries receiving the aid provided for in Chapter...of Title...of the CAP Plan Regulation. The control sample shall be established on the basis of a risk analysis and shall include a random component.

*Article 85*  
*Application of penalties*

1. Member States shall ensure that, where a beneficiary referred to in **[I1 comment: the article on beneficiaries of conditionality, laid down in the CAP Plan Regulation]** does not comply, at any time in a given calendar year ('the calendar year concerned'), with the rules on conditionality as laid down in the CAP Plan Regulation, a penalty shall be imposed on that beneficiary.

The penalty referred to in the first subparagraph shall only apply where the non-compliance is the result of an act or omission directly attributable to the beneficiary concerned; and where one or both of the following additional conditions are met:

- (a) the non-compliance is related to the agricultural activity of the beneficiary;
- (b) the area of the holding of the beneficiary is concerned.

With regard to forest areas, however, this penalty shall not apply in so far as no support is claimed for the area concerned in accordance with [ex- point (a) of Article 21(1), and Articles 30 and 34 of Regulation (EU) No 1305/2013 – to be coordinated with the CAP Plan regulation].

For the purpose of this Title the following definition shall apply:

- (a) "requirement" means each individual statutory management requirement under Union law referred to in Annex II within a given act, differing in substance from any other requirements of the same act.

The first and second subparagraphs shall apply *mutatis mutandis* to beneficiaries who are found not to have complied with the rules on conditionality, at any time during three years from 1 January of the year following the calendar year in which the first payment was granted under the support programmes for restructuring and conversion or, at any time, during one year from 1 January of the year following the calendar year in which the payment was granted under the support programmes for green harvesting referred to in the CAP Plan Regulation ('the years concerned').

2. In cases in which the land is transferred during the calendar year concerned or the years concerned, paragraph 1 shall also apply where the non-compliance in question is the result of an act or omission directly attributable to the person to whom or from whom the agricultural land was transferred. By way of derogation from the first sentence, where the person to whom the act or omission is directly attributable has submitted an aid application in the calendar year concerned or the years concerned, the penalty shall be imposed on the basis of the total amounts of the payments referred to in Article ...of the CAP Plan Regulation granted or to be granted to that person.

For the purpose of this paragraph, 'transfer' means any type of transaction whereby the agricultural land ceases to be at the disposal of the transferor.

3. Notwithstanding paragraph 1, and subject to the rules to be adopted pursuant to Article 101, Member States may decide not to apply a penalty per beneficiary and per calendar year when the amount of the penalty is EUR 100 or less. The finding and the obligation to take remedial action shall be notified to the beneficiary.

4. No penalty shall be imposed where the non-compliance is due to force majeure.

*Article 86*  
***Calculation of the penalty***

1. The penalty provided for in Article ...of the CAP Plan Regulation shall be applied by means of reduction or exclusion of the total amount of the payments listed in Article ...of that Regulation granted or to be granted to the beneficiary concerned in respect of aid applications he has submitted or will submit in the course of the calendar year of the finding.

For the calculation of those reductions and exclusions, account shall be taken of the severity, extent, permanence, reoccurrence or intentionality of the non-compliance determined. In any case, the penalties imposed shall be deterrent and proportionate, as well as compliant with the criteria set out in paragraphs 2, 3 and 4.

2. In the case of non-compliance due to negligence, in general, the percentage of reduction shall be 3% of the total amount of the payments referred to in the first paragraph.

Member States may set up an early warning system that applies to cases of non-compliance occurring for the first time and which, given their minor severity, extent and duration, shall not, in duly justified cases, lead to a reduction or exclusion. In case a subsequent check within three consecutive calendar years establishes that the non-compliance has not been remedied, the reduction pursuant to the first subparagraph shall be applied retroactively.

However, cases of non-compliance which constitute a direct risk to public or animal health shall always lead to a reduction or exclusion.

Member States may provide mandatory training under the farm advisory system provided for in Chapter... of Title ... of the CAP Plan Regulation to the beneficiaries who have received an early warning.

3. In case of reoccurrence, in order to have a deterrent effect, the percentage reduction shall be substantially higher than the one to be applied in case of non-compliance due to negligence and sanctioned for the first time.

*Article 87*  
***Amounts resulting from conditionality***

Member States may retain 20 % of the amounts resulting from the application of the reductions and exclusions referred to in Article 99.

**TITLE V**  
**COMMON PROVISIONS**

**CHAPTER I**  
**Communication**

*Article 88*  
***Communication of information***

1. In addition to the provisions laid down in the CAP Plan Regulation, Member States shall send to the Commission the following information, declarations and documents:

- (a) for accredited paying agencies and accredited coordinating bodies:
  - (i) their accreditation document;

- (ii) their function (accredited paying agency or accredited coordinating body);
  - (iii) where relevant, the withdrawal of their accreditation,
- (b) for certification bodies:
- (i) their name;
  - (their address),
- (c) for measures relating to operations financed by the Funds:
- (i) declarations of expenditure, which also act as payment requests, signed by the accredited paying agency or the accredited coordinating body and accompanied by the requisite information;
  - (ii) estimates of their financial requirements, with regard to the EAGF and, with regard to the EAFRD, an update of estimated declarations of expenditure which will be submitted during the year and estimated declarations of expenditure in respect of following financial year;
  - (iii) the management declaration and the annual accounts of the accredited paying agencies;

The annual accounts of accredited paying agencies relating to EAFRD expenditure shall be submitted at the level of each programme.

2. Member States shall inform the Commission regularly of the application of the integrated system referred to in Chapter... The Commission shall organise exchanges of views on this subject with the Member States.

#### *Article 89* **Confidentiality**

1. Member States and the Commission shall take all necessary steps to ensure the confidentiality of the information communicated or obtained under inspection and clearance of accounts measures implemented under this Regulation.

The rules laid down in Article 8 of Regulation (Euratom, EC) No 2185/96 shall apply to that information.

2. Without prejudice to national provisions relating to legal proceedings, information collected in the course of scrutiny as provided for in Chapter ... of Title ... shall be protected by professional secrecy. It shall not be communicated to any persons other than those who, by reason of their duties in the Member States or in the institutions of the Union, are required to have knowledge thereof for the purposes of performing those duties.

#### *Article 90* **Commission powers**

1. The Commission may adopt implementing acts laying down rules on:

- (a) the form, content, intervals, deadlines and arrangements for transmitting or making available to the Commission:
  - (i) declarations of expenditure and estimates of expenditure and their updates, including assigned revenue;
  - (ii) management declaration and annual accounts of the paying agencies;



- (iii) the account certification reports;
  - (iv) the names and particulars of accredited paying agencies, accredited coordinating bodies and certification bodies;
  - (v) arrangements for taking account of and paying expenditure financed by the Funds;
  - (vi) notifications of financial adjustments made by Member States in connection with rural development operations or programmes;
  - (vii) information on the measures taken pursuant to Article ... **[II comment: it refers to current Article 58 of Regulation (EU) No 1306/2013 on the protection of the financial interests of the Union]**.
- (b) the arrangements governing exchanges of information and documents between the Commission and the Member States, and the implementation of information systems, including the type, format and content of data to be processed by these systems and the corresponding data storage rules;
  - (c) the notifications to the Commission by Member States of information, documents, statistics and reports, as well as the deadlines and methods for their notification.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article...

## **Chapter II**

### **Use of the euro**

#### *Article 91*

##### ***General principles***

1. The amounts given in the Commission decisions adopting rural development programmes, the amounts of commitments and payments by the Commission and the amounts of expenditure attested or certified and amounts in declarations of expenditure by the Member States shall be expressed and paid in euro.

2. The prices and amounts fixed in the sectoral agricultural legislation shall be expressed in euro.

They shall be granted or collected in euro in the Member States which have adopted the euro and in the national currency in the Member States which have not.

#### *Article 92*

##### ***Exchange rate and operative event***

1. The prices and amounts referred to in Article 105(2) shall be converted in the Member States which have not adopted the euro into the national currency by means of an exchange rate.

2. The operative event for the exchange rate shall be:

- (a) the completion of customs import or export formalities in the case of amounts collected or granted in trade with third countries;

- (b) the event whereby the economic objective of the operation is attained in all other cases.

3. Where a direct payment as provided for in the CAP Plan Regulation is made to a beneficiary in a currency other than the euro, Member States shall convert the amount of aid expressed in euro into the national currency on the basis of the most recent exchange rate set by the European Central Bank prior to 1 October of the year for which the aid is granted.

By way of derogation from the first subparagraph, Member States may decide, in duly justified cases, to carry out the conversion on the basis of the average of the exchange rates set by the European Central Bank during the month prior to 1 October of the year for which the aid is granted. Member States that choose that option shall set and publish that average rate before 1 December of that year.

4. As regards EAGF, when drawing up their declarations of expenditure, Member State which have not adopted the euro shall apply the same exchange rate as that which they used to make payments to beneficiaries or receive revenue, in accordance with the provisions of this Chapter.

5. In order to specify the operative event referred to in paragraph 2 or to fix it for reasons peculiar to the market organisation or the amount in question, the Commission shall be empowered to adopt delegated acts in accordance with Article 115, containing rules on those operative events and the exchange rate to be used. The specific operative event shall be determined taking account of the following criteria:

- (a) actual applicability as soon as possible of adjustments to the exchange rate;
- (b) similarity of the operative events for analogous operations carried out under the market organisation;
- (c) coherence in the operative events for the various prices and amounts relating to the market organisation;
- (d) practicability and effectiveness of checks on the application of suitable exchange rates.

6. In order to avoid the application by the Member States which have not adopted the euro of different exchange rates in accounts of revenue received or aid paid to beneficiaries in a currency other than the euro, on the one hand, and in the establishment of the declaration of expenditure drawn up by the paying agency, on the other, the Commission shall be empowered to adopt delegated acts in accordance with Article 115 laying down rules on the exchange rate applicable when declarations of expenditure are drawn up and when public storage operations are recorded in the accounts of the paying agency.

### *Article 93*

#### *Safeguard measures and derogations*

1. The Commission may adopt implementing acts safeguarding the application of Union law if exceptional monetary practices related to national currency are likely to jeopardise it. Those implementing acts may only derogate from the existing rules for a period of time which is strictly necessary.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article...

The European Parliament, the Council and the Member States shall be notified forthwith of the measures referred to in the first subparagraph.

2. Where exceptional monetary practices concerning a national currency are liable to jeopardise the application of Union law, the Commission shall be empowered to adopt delegated acts in accordance with Article 115 derogating from this Section, in particular in the following cases:

- (a) where a country uses abnormal exchange techniques such as multiple exchange rates or operates barter agreements;
- (b) where countries have currencies which are not quoted on official foreign exchange markets or where the trend in such currencies is likely to create distortion in trade.

#### *Article 94*

#### *Use of the euro by non-euro Member States*

1. If a Member State which has not adopted the euro decides to pay the expenditure resulting from sectoral agricultural legislation in euro rather than in its national currency, the Member State shall take measures to ensure that the use of the euro does not provide a systematic advantage compared with the use of national currency.

2. The Member State shall notify the Commission of the measures planned before they come into effect. The measures may not take effect until the Commission has notified its agreement thereto.

### **Chapter III**

#### *Report and evaluation*

#### *Article 95*

By end September of each year following the budget year, the Commission shall draw up a financial report on the administration of the Funds during the previous financial year, which it shall submit to the European Parliament and the Council.

### **Chapter IV**

#### *Transparency*

#### *Article 96*

#### *Publication of beneficiaries*

1. Member States shall ensure annual ex-post publication of the beneficiaries of the Funds. The publication shall contain:

- (a) without prejudice to the first paragraph of Article ...**[II comment: Article below on threshold]** of this Regulation, the name of the beneficiary, as follows:

- (i) the first name and the surname where the beneficiary is a natural person;
- (ii) the full legal name as registered where the beneficiary is a legal person with the autonomous legal personality pursuant to the legislation of the Member State concerned;
- (iii) the full name of the association as registered or otherwise officially recognised where the beneficiary is an association without an own legal personality;
- (b) the municipality where the beneficiary is resident or is registered and, where available, the postal code or the part thereof identifying the municipality;
- (c) the amounts of payment corresponding to each measure or type of intervention financed by the Funds received by each beneficiary in the financial year concerned;
- (d) the nature and the description of the intervention financed by either of the Funds and under which the payment referred to in point (c) is awarded.

The information referred to in the first subparagraph shall be made available on a single website per Member State. It shall remain available for two years from the date of the initial publication.

2. As regards the payments corresponding to the interventions financed by the EAFRD as referred to in point (c) of the first subparagraph of paragraph 1, the amounts to be published shall correspond to the total public funding, including both the Union and the national contribution.

#### *Article 97* **Threshold**

1. Member States shall not publish the name of a beneficiary as provided for in point (a) of the first subparagraph of Article [above] (1) of this Regulation where the amount of aid received in one year by a beneficiary is equal to or less than EUR 1 250.

2. Where the first paragraph of this Article applies the Member States shall publish the information referred to in points (b), (c) and (d) of the first subparagraph of Article [above] (1) and the beneficiary shall be identified by a code. Member States shall decide on the form of that code.

#### *Article 98* **Information of the beneficiaries**

Member States shall inform the beneficiaries that their data will be made public in accordance with Article [I1 comment: Article above on the publication of beneficiaries] and that the data may be processed by auditing and investigating bodies of the Union and the Member States for the purpose of safeguarding the Union's financial interests.

In accordance with the requirements of Regulation (EU) 2016/679, where personal data is concerned, the Member States shall inform the beneficiaries of their rights under the data protection rules and of the procedures applicable for exercising those rights.

*Article 99*  
**Commission powers**

The Commission shall adopt implementing acts laying down rules on:

- (a) the form, including the way of presentation by measure, and the calendar of the publication foreseen in Articles ... and...;
- (b) the uniform application of Article ...;
- (c) the cooperation between the Commission and Member States.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article ....

**TITLE VI**  
**FINAL PROVISIONS**

*Article 100*  
**Exercise of the delegation**

1. The power to adopt delegated acts referred to in Articles 8, 20, 40, 46, 50, 53, 57, 62, 63, 64, 65, 66, 72, 76, 77, 79, 84, 89, 93, 101, 106, 107, 110 and 120 is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 8, 20, 40, 46, 50, 53, 57, 62, 63, 64, 65, 66, 72, 76, 77, 79, 84, 89, 93, 101, 106, 107, 110 and 120 shall be conferred on the Commission for a period of seven years from the date of entry into force of this Regulation. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the seven-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of powers referred to in Articles 8, 20, 40, 46, 50, 53, 57, 62, 63, 64, 65, 66, 72, 76, 77, 79, 84, 89, 93, 101, 106, 107, 110 and 120 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to in Articles 8, 20, 40, 46, 50, 53, 57, 62, 63, 64, 65, 66, 72, 76, 77, 79, 84, 89, 93, 101, 106, 107, 110 and 120 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both

informed the Commission that they will not object. That period shall be extended by two months on the initiative of the European Parliament or the Council.

*Article 101*  
***Committee procedure***

1. The Commission shall be assisted by a committee named the Committee on the Agricultural Funds. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

For the purposes of Articles 15, 58, 62, 63, 64, 65, 66, 75, 77, 78, 89, 90, 96, 101 and 104, as regards matters relating to direct payments, rural development and/or the common organisation of markets, the Commission shall be assisted by the Committee on the Agricultural Funds, the CAP Plan Committee and/or the Committee for the Common Organisation of the Agricultural Markets established by this Regulation, the CAP Plan Regulation and Regulation (EU) No 1308/2013, respectively. Those committees shall be committees within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

In the case of acts referred to in Article 8, where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

*Article 102*  
***Processing and protection of personal data***

1. Member States and the Commission shall collect personal data for the purpose of carrying out their respective management, control, audit as well as monitoring and evaluation obligations under this Regulation and, in particular, those laid down in Chapter II of Title II, Title III, Chapters III and IV of Title IV, Titles V and VI and Chapter III of Title VII, as well as for statistical purposes, and shall not process this data in a way that is incompatible with that purpose.

2. Where personal data are processed for monitoring and evaluation purposes under Chapter III of Title VII, as well as for statistical purposes, they shall be made anonymous and processed in aggregated form only.

3. Personal data shall be processed in accordance with the rules of Regulations (EC) No 45/2001 and (EU) 2016/679. In particular, such data shall not be stored in a form which enables data subjects to be identified for longer than is necessary for the purposes for which those data were collected or for which they are further processed, taking into account the minimum retention periods laid down in the applicable national and Union law.

4. Member States shall inform the data subjects that their personal data may be

processed by national and Union bodies in accordance with paragraph 1 and that in this respect they enjoy the rights set out in the respective data protection rules of Regulations (EC) No 45/2001 and (EU) 2016/679.

5. This Article shall be subject to Articles 111 to 114 [**II comment: Articles on transparency**].

#### *Article 103*

##### ***Repeal***

1. Regulation (EU) No 1306/2013 is repealed.

However, Articles [management, control, clearance] and the relevant implementing and delegated rules shall continue to apply in relation to expenditure incurred and payments made for operations implemented pursuant to Regulation (EU) No 1307/2013 and rural development programmes approved by the Commission under Regulation (EU) No 1305/2013 and other CAP measures as laid down in Chapter I of Title II of Regulation (EU) No 1306/2013 implemented before the date of application of [this Regulation][the Cap-Plan Regulation][the amended CMO-Regulation].

2. References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex...

#### *Article 104*

##### ***Transitional measures***

In order to ensure the smooth transition from the arrangements provided for in the repealed Regulations referred to in Article [**II comment: on repeal**] to those laid down in this Regulation, the Commission shall be empowered to adopt delegated acts in accordance with Article 115 concerning the cases in which derogations from, and additions to, the rules provided for in this Regulation may apply.

#### *Article 105*

##### ***Entry into force and application***

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,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*