

Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance

TITLE IV

NON-AREA-RELATED AND NON-ANIMAL-RELATED RURAL DEVELOPMENT MEASURES

CHAPTER I

Introductory provision

Article 46

Scope

This Title shall apply to expenditure incurred under the measures provided for in Articles 14 to 20, Article 21(1) with the exception of the annual premium under points (a) and (b), Article 27, Article 28(9), Articles 35 and 36 and Article 51(2) of Regulation (EU) No 1305/2013, in Article 35(1) of Regulation (EU) No 1303/2013 and in Article 20, Article 36(a)(vi), (b)(ii), (vi) and (vii), Article 36(b)(i) and (iii) as far as the establishment cost is concerned, and Articles 52 and 63 of Regulation (EC) No 1698/2005.

CHAPTER II

Checks

Section 1

General provisions

Article 47

Applications for support, payment claims and other declarations

1. Member States shall provide for appropriate procedures for submitting applications for support, payment claims and other declarations relating to non-area-related or non-animal-related rural development measures.
2. For measures under Articles 15(1)(b), 16(1) and 19(1)(c), and Article 27 of Regulation (EU) No 1305/2013, the beneficiary shall submit an annual payment claim.

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Section 2

Provisions for checks

Article 48

Administrative checks

1. Administrative checks shall be carried out on all applications for support, payment claims or other declarations required to be submitted by a beneficiary or a third party, and shall cover all elements that can be checked and are appropriate to be checked by means of administrative checks. The procedures shall require recording of the control work undertaken, the results of the verification and the measures taken in the event of discrepancies.

2. Administrative checks on applications for support shall ensure the compliance of the operation with applicable obligations established by Union or national law or by the rural development programme, including those of public procurement, State aid and other obligatory standards and requirements. The checks shall in particular include verification of:

- (a) the eligibility of the beneficiary;
- (b) the eligibility criteria, commitments and other obligations of the operation for which support is requested;
- (c) compliance with the selection criteria;
- (d) the eligibility of the costs of the operation, including compliance with the category of costs or calculation method to be used when the operation or part of it falls under Article 67(1)(b), (c) and (d) of Regulation (EU) No 1303/2013;
- (e) for costs referred to in Article 67(1)(a) of Regulation (EU) No 1303/2013, excluding contributions in kind and depreciation, a verification of the reasonableness of the costs submitted. The costs shall be evaluated using a suitable evaluation system, such as reference costs, a comparison of different offers or an evaluation committee.

3. Administrative checks on payment claims shall include in particular, and where appropriate for the claim in question, verification of:

- (a) the completed operation compared with the operation for which the application for support was submitted and granted;
- (b) the costs incurred and the payments made.

4. Administrative checks shall include procedures to avoid irregular double financing with other Union or national schemes and with the previous programming period. Where financing from other sources exists, those checks shall ensure that the total support received does not breach the maximum permissible amounts or support rates.

5. Administrative checks on investment operations shall include at least one visit to the operation supported or the investment site to verify the realisation of the investment.

However, the competent authority may decide not to carry out such visits for duly justified reasons, such as the following:

- (a) the operation is included in the sample for an on-the-spot check to be carried out in accordance with Article 49;

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- (b) the competent authority considers that the operation in question is a small investment;
- (c) the competent authority considers that the risk that the conditions for receiving support are not met is low, or that the risk that the investment has not been realised is low.

The decision referred to in the second subparagraph and its justification shall be recorded.

Article 49

On-the-spot-checks

1. Member States shall organise on-the-spot checks on approved operations using an appropriate sampling basis. Those checks shall, to the extent possible, be carried out before the final payment is made for an operation.
2. The inspectors undertaking the on-the-spot check shall not have been involved in administrative checks of the same operation.

Article 50

Control rate and sampling of on-the-spot-checks

1. The expenditure covered by on-the-spot checks shall represent at least 5 % of the expenditure referred to in Article 46 which is co-financed by the European Agricultural Fund for Rural Development (EAFRD) and which is to be paid by the paying agency each calendar year.

Where an operation subject to on-the-spot check has received advance or interim payments, those payments shall be counted against the expenditure covered by on-the-spot checks as referred to in the first subparagraph.

2. Only checks carried out until the end of the calendar year in question shall be counted towards the achievement of the minimum level referred to in paragraph 1.

Payment claims found not to be eligible after administrative checks shall not be counted towards the achievement of the minimum level referred to in paragraph 1.

3. Only checks meeting all the requirements of Articles 49 and 51 may be counted towards achievement of the minimum level referred to in paragraph 1.
4. The sample of approved operations to be checked in accordance with paragraph 1 shall take into account in particular:
 - (a) the need to check an appropriate mix of types and sizes of operations;
 - (b) any risk factors identified following national or Union checks;
 - (c) the type of operation's contribution to the risk of error in implementation of the rural development programme;
 - (d) the need to maintain a balance between the measures and types of operations;
 - (e) the need to select randomly between 30 % and 40 % of expenditure.

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5. Where on-the-spot checks reveal any significant non-compliance in the context of a support measure or type of operation, the competent authority shall increase the control rate to an appropriate level in the following calendar year for the measure or type of operation concerned.

6. By way of derogation from paragraph 1, Member States may decide to reduce the minimum level of on-the-spot checks carried out each calendar year as referred to in paragraph 1 to 3 % of the amount co-financed by EAFRD.

Member States may apply the first subparagraph only if the general conditions for reducing the minimum level of on-the-spot checks laid down by the Commission in accordance with Article 62(2)(b) of Regulation (EU) No 1306/2013 are fulfilled.

Where any of the conditions referred to in the second subparagraph are no longer met, Member States shall immediately revoke their decision to reduce the minimum level of on-the-spot checks. They shall apply the minimum level of on-the-spot checks referred to in paragraph 1 as of the following calendar year.

Article 51

Content of the on-the-spot-checks

1. On-the-spot checks shall verify that the operation has been implemented in accordance with the applicable rules and shall cover all the eligibility criteria, commitments and other obligations relating to the conditions for the granting of support, which can be checked at the time of the visit. They shall ensure that the operation is eligible for an EAFRD support.

2. On-the-spot checks shall verify the accuracy of the data declared by the beneficiary against underlying documents.

This includes a verification that the payment claims submitted by the beneficiary are supported by accounting or other documents, including, where necessary, a check on the accuracy of the data in the payment claim on the basis of data or commercial documents held by third parties.

3. On-the-spot checks shall verify that the use or intended use of the operation is consistent with the use described in the application for support and for which the support was granted.

4. Except in exceptional circumstances, duly recorded and explained by the competent authorities, on-the-spot checks shall include a visit to the place where the operation is implemented or, if the operation is intangible, to the operation promoter.

Article 52

Ex-post checks

1. Ex-post checks shall be carried out on investment operations to verify the respect of commitments pursuant to Article 71 of Regulation (EU) No 1303/2013 or detailed in the rural development programme.

2. The *ex-post* checks shall cover in each calendar year at least 1 % of EAFRD expenditure for investment operations that are still subject to commitment as referred to in paragraph 1 and for which the final payment has been made from the EAFRD. Only checks carried out until the end of the calendar year in question shall be taken into account.

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3. The sample for operations to be checked in accordance with paragraph 1 shall be based on an analysis of the risks and financial impact of different operations, types of operations or measures. Between 20 % and 25 % of the sample shall be selected randomly.

Article 53

Control report

1. Every on-the-spot check under this Section shall be the subject of a control report which makes it possible to review the details of the checks carried out. The report shall indicate in particular:

- (a) the measures and applications or payment claims checked;
- (b) the persons present;
- (c) whether notice was given to the beneficiary of the visit and, if so, the period of prior notice;
- (d) the results of the checks and, where applicable, any particular observations;
- (e) any further control measures to be carried out.

2. Paragraph 1 shall apply *mutatis mutandis* to *ex-post* checks under this Section.

3. The beneficiary shall be given the opportunity to sign the report during the check, to attest the beneficiary's presence at the check and to add observations. Where Member States make use of a control report established by electronic means during the check, the competent authority shall provide for the possibility of an electronic signature by the beneficiary or the control report shall be sent without delay to the beneficiary giving him the opportunity to sign the report and to add any observations. Where any non-compliance is found, the beneficiary shall receive a copy of the control report.

Section 3

Provisions on checks for specific measures

Article 54

Knowledge transfer and information actions

The competent authority shall verify compliance with the requirement that the bodies providing knowledge transfer and information services have the appropriate capacities as required by Article 14(3) of Regulation (EU) No 1305/2013. The competent authority shall verify the content and duration of the farm and forest exchange schemes and visits according to Article 14(5) of that Regulation. Those verifications shall be carried out by administrative checks and, on a sample basis, by on-the-spot checks.

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Article 55

Advisory services, farm management and farm relief services

For the operations provided for in Article 15(1)(a) and (c) of Regulation (EU) No 1305/2013, the competent authority shall verify compliance with the requirement that the authorities or bodies selected to provide advice have the appropriate resources and the selection procedure has been conducted through public procurement as required by Article 15(3) of that Regulation. That verification shall be carried out by administrative checks and, on a sample basis, by on-the-spot checks.

Article 56

Quality schemes for agricultural products, and foodstuffs

For the measure provided for in Article 16 of Regulation (EU) No 1305/2013, the competent authority may, where appropriate, make use of evidence received from other services, bodies or organisations to verify compliance with obligations and eligibility criteria. However, the competent authority shall ensure that it is satisfied that the service, body or organisation is operating to a standard sufficient to control compliance with the obligations and eligibility criteria. To this end, the competent authority shall carry out administrative checks and, on a sample basis, on-the-spot checks.

Article 57

Farm and business development

For the operations provided for in Article 19(1)(a) of Regulation (EU) No 1305/2013, the competent authority shall, by administrative checks and, on a sample basis, by on-the-spot checks, verify compliance with:

- (a) the business plan in accordance with Article 19(4) and (5) of Regulation (EU) No 1305/2013 and Article 8 of Commission Implementing Regulation (EU) No 808/2014⁽¹⁾, including in the case of young farmers the requirement that they comply with the definition of active farmer as referred to in Article 19(4) of Regulation (EU) No 1305/2013;
- (b) the rule for the grace period for meeting the conditions relating to occupational skills as referred to in Article 2(3) of Commission Delegated Regulation (EU) No 807/2014⁽²⁾.

Article 58

Setting up of producer groups and organisations

For the measure provided for in Article 27 of Regulation (EU) No 1305/2013, Member States shall recognise the producer group after verifying compliance of the group with the criteria set out in paragraph 1 of that Article and with the national rules. After recognition, the competent authority shall verify the continuous compliance with the recognition criteria and with the business plan in accordance with Article 27(2) of

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that Regulation by administrative checks and at least once during the five-year period through an on-the-spot check.

Article 59

Risk management

As regards the specific support provided for in Article 36 of Regulation (EU) No 1305/2013, the competent authority shall, by administrative checks and, on a sample basis, by on-the-spot checks, verify in particular:

- (a) that farmers were eligible for the support in accordance with Article 36(2) of Regulation (EU) No 1305/2013;
- (b) when controlling applications for payments by mutual funds as provided for in Article 36(1)(b) and (c) of Regulation (EU) No 1305/2013, that the compensation was paid in full to affiliated farmers in accordance with Article 36(3) of that Regulation.

Article 60

LEADER

1. Member States shall implement an appropriate system for supervision of local action groups.
2. In respect of expenditure incurred under Article 35(1)(b) and (c) of Regulation (EU) No 1303/2013, Member States may delegate the carrying out of the administrative checks provided for in Article 48 of this Regulation to local action groups by a formal act. However, Member States shall remain responsible for verifying that those local action groups have the administrative and control capacity to undertake that work.

In case of delegation referred to in the first subparagraph, the competent authority shall carry out regular checks of the local action groups, including bookkeeping checks and repetition of administrative checks on a sample basis.

The competent authority shall also carry out on-the-spot checks as referred to in Article 49 of this Regulation. As regards the control sample for expenditure concerning LEADER, at least the same percentage as that referred to in Article 50 of this Regulation shall apply.

3. In respect of expenditure incurred under Article 35(1)(a), (d) and (e) of Regulation (EU) No 1303/2013 and Article 35(1)(b) and (c) of that Regulation where the local action group itself is the beneficiary of the support, administrative checks shall be carried out by persons independent of the local action group concerned.

Article 61

Interest rate and guarantee fee subsidies

1. In respect of expenditure incurred under Article 69(3)(a) of Regulation (EU) No 1303/2013, administrative checks and on-the-spot checks shall be carried out with reference to the beneficiary and depending on the realisation of the operation concerned. The risk analysis in

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accordance with Article 50 of this Regulation shall cover, at least once, the operation concerned on the basis of the discounted value of the subsidy.

2. The competent authority shall ensure, via administrative checks and, if necessary, via in-situ visits to the intermediate financial institutions and to the beneficiary, that the payments to the intermediate financial institutions are in conformity with Union law and with the agreement concluded between the paying agency and the intermediate financial institution.

3. If interest rate or guarantee fee subsidies are combined with financial instruments in a single operation targeting the same final recipients, the competent authority shall carry out checks at the level of final recipients only in those cases established in Article 40(3) of Regulation (EU) No 1303/2013.

Article 62

Technical assistance at the initiative of the Member States

In respect of expenditure incurred under Article 51(2) of Regulation (EU) No 1305/2013, Articles 48 to 51 and Article 53 of this Regulation shall apply *mutatis mutandis*.

Administrative checks referred to in Article 48 and on-the-spot checks referred to in Article 49 shall be carried out by an entity which is functionally independent from the entity authorising the payment of the technical assistance.

CHAPTER III

Undue payments and administrative penalties

Article 63

Partial or full withdrawal of the support and administrative penalties

1. Payments shall be calculated on the basis of amounts found to be eligible during the administrative checks referred to in Article 48.

The competent authority shall examine the payment claim received from the beneficiary, and establish the amounts that are eligible for support. It shall establish:

- (a) the amount that is payable to the beneficiary based on the payment claim and the grant decision;
- (b) the amount that is payable to the beneficiary after an examination of the eligibility of the expenditure in the payment claim.

If the amount established pursuant to point (a) of the second subparagraph exceeds the amount established pursuant to point (b) of that subparagraph by more than 10 %, an administrative penalty shall be applied to the amount established pursuant to that point (b). The amount of the penalty shall be the difference between those two amounts but shall not go beyond full withdrawal of the support.

However, no penalties shall be applied if the beneficiary can demonstrate to the satisfaction of the competent authority that he is not at fault for the inclusion of the

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ineligible amount or if the competent authority is otherwise satisfied that the beneficiary concerned is not at fault.

2. The administrative penalty referred to in paragraph 1 shall be applied *mutatis mutandis* to non-eligible expenditure identified during on-the-spot checks referred to in Article 49. In that case the expenditure examined shall be the cumulative expenditure incurred for the operation concerned. This is without prejudice to the results of the previous on-the-spot checks of the operations concerned.

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- (1) Commission Implementing Regulation (EU) No 808/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (see page 18 of this Official Journal).
- (2) Commission Delegated Regulation (EU) No 807/2014 of 11 March 2014 supplementing Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and introducing transitional provisions (see page 1 of this Official Journal).

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