

Commission Delegated Regulation (EU) No 907/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro

COMMISSION DELEGATED REGULATION (EU) No 907/2014

of 11 March 2014

supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008<sup>(1)</sup>, and in particular Articles 8(1), 40, 46(1), 46(2), 46(3), 46(4), 53(3), 57(1), 66(3), 79(2), 106(5) and (6) and 120 thereof,

Whereas:

- (1) Regulation (EU) No 1306/2013 has laid down the basic provisions concerning, inter alia, the accreditation of paying agencies and coordination bodies, the obligations of the paying agencies as regards public intervention, the financial management and the clearance procedures, securities and use of euro. In order to ensure the smooth functioning of the new legal framework, certain rules have to be adopted to supplement the provisions laid down by Regulation (EU) No 1306/2013 in the areas concerned. The new rules should replace the existing Commission Regulations (EC) No 883/2006<sup>(2)</sup>, (EC) No 884/2006<sup>(3)</sup>, (EC) No 885/2006<sup>(4)</sup>, (EC) No 1913/2006<sup>(5)</sup>, (EU) No 1106/2010<sup>(6)</sup>, (EU) No 282/2012<sup>(7)</sup>, which were based on Council Regulations already replaced by Regulation (EU) No 1306/2013. For the sake of clarity and legal certainty, Regulations (EC) No 883/2006, (EC) No 884/2006, (EC) No 885/2006, (EC) No 1913/2006, (EU) No 1106/2010 and Commission Implementing Regulation (EU) No 282/2012 should be repealed.
- (2) In accordance with Article 7 of Regulation (EU) No 1306/2013 paying agencies should only be accredited by Member States if they comply with certain minimum criteria established at Union level. Those criteria should cover four basic areas: internal environment, control activities, information and communication, and monitoring. Member States should be free to lay down additional accreditation criteria to take account of any specific features of a paying agency. Furthermore, rules should be laid down as regards the criteria for the accreditation of coordinating bodies referred to in Article 7(4) of Regulation (EU) No 1306/2013.

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- (3) Public intervention measures may be financed only if the concerned expenditure is incurred by the paying agencies designated by the Member States as being responsible for certain obligations with respect to public intervention. However, performance of tasks relating, in particular, to the administration and checking of intervention measures, with the exception of payment of aid, may be delegated in accordance with the second subparagraph of Article 7(1) of Regulation (EU) No 1306/2013. It should also be possible for several paying agencies to perform these tasks. It should also be laid down that the management of certain public storage measures may be entrusted to third parties, whether public or private bodies, under the responsibility of the paying agency. It is therefore appropriate to specify the scope of the responsibility of the paying agencies in this context, specify their obligations and determine under what conditions and according to which rules the management of certain public storage measures may be entrusted to third parties, whether public or private bodies. In this case, it should be provided that the bodies concerned must act under contract on the basis of general obligations and principles which should be laid down.
- (4) Union agricultural legislation includes, for the European Agricultural Guarantee Fund (EAGF), periods for payment of aids to beneficiaries which must be complied with by Member States. Payments effected outside those periods are to be regarded as ineligible for Union payments, and therefore cannot be the subject of reimbursement by the Commission, as provided for in Article 40 of Regulation (EU) No 1306/2013. The analysis of late payments of aid by Member States has shown that a number of these are due to additional checks by Member States related to contentious claims, appeals and other national legal disputes. In accordance with the principle of proportionality, a fixed margin related to expenditure should be laid down within which no reductions of the monthly payments are to be made for these cases. In addition, once this margin is exceeded, in order to modulate the financial impact in proportion to the delay incurred in payment, provision should be made for the Commission to proportionally reduce the Union payments according to the length of delay in payment recorded. Payments of aid before the earliest possible date of payment as provided for in the Union agricultural legislation cannot be justified by the same reasons as payments after the latest possible date of payment. Therefore, no proportional reduction should be foreseen for these early payments. However, an exception should be provided for cases where Union agricultural legislation foresees the payment of an advance up to a certain maximum amount.
- (5) The Commission is to make payments at monthly or other regular intervals to the Member States on the basis of declarations of expenditure sent by the latter. It should, however, take into account the revenue received by the paying agencies on behalf of the Union budget. The conditions under which certain types of expenditure and revenue effected under the EAGF and the EAFRD are to be offset should therefore be laid down.
- (6) If the Union budget has not been adopted by the beginning of the financial year, under the third subparagraph of Article 16(2) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council<sup>(8)</sup>, payments may be made monthly per chapter to a maximum of one twelfth of the allocated appropriations in the chapter in

question of the preceding financial year. To allocate the available appropriations fairly among the Member States, provision should be made for the monthly payments under the EAGF and the interim payments under the EAFRD to be made in this case as a percentage of the declarations of expenditure submitted by each Member State and for the balance not used in a given month to be reallocated in Commission decisions on subsequent monthly or interim payments.

- (7) The exchange rates applicable should be laid down according to whether or not an operative event has been defined in the sectoral agricultural legislation. 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 declaration of expenditure drawn up by the paying agency, on the other, the Member States concerned should apply the same exchange rate in their declarations of expenditure under the EAGF as that used when collecting that revenue or making those payments to beneficiaries. Moreover, to simplify the administrative formalities as regards recoveries for more than one operation, a single exchange rate should apply when entering these recoveries into the accounts.
- (8) In order to enable the Commission to verify that Member States respect their obligation to protect the financial interest of the Union and to ensure an efficient application of the conformity clearance procedure provided for in Article 52 of Regulation (EU) No 1306/2013 provisions should be laid down concerning the criteria and methodology to apply corrections. The different types of corrections referred to in Article 52 of Regulation (EU) No 1306/2013 should be defined and principles should be laid down on how the circumstances of each case will be taken into account to determine the amounts of correction. Moreover, rules should be established on how recoveries made by the Member States from the beneficiaries will be credited to the funds.
- (9) Regulation (EU) No 1306/2013 provides for 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, 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. It is appropriate to exclude from the application of that Regulation those measures which are by their nature unsuited to *ex post* control by way of scrutiny checks of commercial documents, as well as measures which are concerned with payments that are either area related or unrelated to commercial documents that can be subject to scrutiny.
- (10) Numerous provisions in agricultural regulations of the Union require that a security be given to ensure payment of a sum due if an obligation is not met. However, experience has shown that this requirement is in practice interpreted in widely differing ways. Therefore, in order to avoid unequal competitive conditions, the conditions applying to that requirement should be laid down.
- (11) The costs of lodging a security, incurred by both the party giving the security and the competent authority, may be out of proportion to the sum whose payment the security guarantees if that sum is below a certain limit. Competent authorities should therefore

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have the right to waive the requirement of a security for payment of a sum below that limit. Furthermore, the competent authority should be empowered to waive the requirement of a security where the nature of the person required to meet the obligations makes that requirement unnecessary.

- (12) A competent authority should have the right to refuse a security offered where it considers it to be unsatisfactory.
- (13) Regulation (EU) No 1306/2013 has strengthened the rules requiring that a security be lodged to ensure the payment of a sum due if an obligation is not met. That single horizontal legal framework should be supplemented with uniform rules on *force majeure*, on forfeiting or releasing the security. Commission Regulation (EC) No 376/2008<sup>(9)</sup> and Commission Regulation (EC) No 612/2009<sup>(10)</sup> contain rules on the releasing and forfeiture of securities in the field of import and export licences and of the system of export refunds. The new rules provided by this Regulation should also apply in those sectors. For reason of clarity and legal certainty, the relevant provisions in Regulations (EC) No 376/2008 and (EC) No 612/2009 should be deleted.
- (14) Under Regulation (EU) No 282/2012 a distinction was made between primary, secondary, and subordinate requirements, while a limited number of Commission Regulations refers to primary requirements only. Non-fulfilment of a requirement resulted in full or proportional forfeiture of security covering that requirement according to complicated calculation methods which were the basis for confusion. While respecting the principle of proportionality, a simplified approach on forfeiture should adhere to the practical situation in which an obligation was either not fulfilled, or not timely fulfilled, or the proof of fulfilment of the obligation was not submitted within the time-frame set.
- (15) Many provisions in agricultural legislation of the Union provide that the security given is forfeited if any obligation secured is breached, without making any distinction between the types of infringement. In the interests of equity, a distinction should be drawn between the consequences of breaching different obligations. In particular, provision should be made for forfeiture of only a part of the security in specific cases.
- (16) No distinction between the consequences of failure to meet an obligation should be made based on whether or not an advance payment has been received. Accordingly, securities given against advances should be covered by separate rules.
- (17) The operative events for the exchange rates applicable to the different situations which arise within the framework of sectoral agricultural legislation should be laid down, without prejudice to any specific definitions or exemptions provided for in the rules for the sectors concerned on the basis of the criteria mentioned in Article 106(5) of Regulation (EU) No 1306/2013.
- (18) For all the prices or amounts to be determined within the framework of trade with third countries, acceptance of the customs declaration is the operative event most suited to achieving the commercial objective concerned. The same applies to export refunds and to the determination of the entry price of fruit and vegetables into the Union, on the

basis of which products are classed in the Common Customs Tariff. This operative event should therefore be adopted.

- (19) For production refunds, the operative event for the exchange rate is, as a general rule, linked to the completion of certain specific formalities. In order to harmonise the rules, it should be laid down that the operative event is the date on which products are declared to have reached the required destination, where such a destination is required, and in all other cases the acceptance of the application for payment of the refund by the paying agency.
- (20) For aid granted by quantity of product marketed or to be used in a specific way, the obligation to be complied with for the purposes of granting the aid is an event that guarantees the appropriate use of the products in question. The taking over of the products by the operator concerned is a prerequisite allowing the competent authorities to carry out the required checks or inspections on the operator's accounts and guaranteeing uniform treatment of the files. The operative event for the exchange rate should therefore be established in relation to the taking over of the products.
- (21) For other aid granted in the agricultural sector, situations may differ widely. However, such aid is always granted on the basis of an application and within deadlines laid down by the legislation. The operative event for the exchange rate in this case should therefore be established as the deadline for the submission of applications.
- (22) Regarding supports, aids and premiums in the wine sector, the operative event for the exchange rate should be linked, depending on the situation, to the starting date of the wine year, the completion of certain operations or a specific date. The operative event to be taken into account should therefore be specified for each situation.
- (23) The situations to be taken into account for the purposes of determining the operative event are very different from sector to sector. The operative event should therefore be laid down in accordance with the specific nature of each of the situations and measures covered by those agricultural sectors, in particular for the aid in the milk and milk products sector, the School Fruit Scheme, the sugar sector, promotion measures, some measures under the fruit and vegetables sector.
- (24) Regarding amounts of a structural or environmental character as referred to in Regulation (EU) No 1305/2013 of the European Parliament and of the Council<sup>(11)</sup>, and amounts approved in accordance with Council Regulation (EC) No 1698/2005<sup>(12)</sup>, the payments of which are assured by the rural development programmes approved under Regulation (EU) No 1305/2013, the amounts are laid down for a marketing year or a calendar year. The commercial objective is therefore reached if the operative event for the exchange rate is established for the year concerned. Based on this, the operative event should be set at 1 January of the year in which the decision to grant aid is taken.
- (25) Regarding advances and securities, the amounts to be paid or the guaranteed amounts are fixed in euro in accordance with the sectoral agricultural legislation. The exchange rate applicable to these amounts must therefore be close to the date of payment of the advance or the date on which the securities are lodged. If the securities are used, the amount of those securities must also cover all the risks for which they were set up. The

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operative event for the exchange rate should in these circumstances be defined on the basis either of the day on which the amount of the advance is fixed or the security is lodged, or the date on which these are paid.

- (26) In accordance with Council Regulation (EC) No 1290/2005<sup>(13)</sup>, the automatic decommitment of a budget commitment for a rural development programme for the period 2007-2013 that has not been used is made by the Commission at the end of the second year following that of the budget commitment. Regulation (EU) No 1306/2013 has changed the rule by providing the automatic decommitment at the end of the third year following that of the budget commitment. For reason of consistency, for the rural development programmes for the period 2007-2013 the rule of N+2 should continue to apply and a transitional rule should be provided accordingly. In the same way, the interim payments for the rural development programmes for the period 2007-2013 should continue to be subject to the respect of the total EAFRD contribution to each priority for the entire period covered by the programme concerned. Moreover, in order to ensure continuity in the management of those programmes, these transitional rules should apply from 1 January 2014,

HAS ADOPTED THIS REGULATION:

## CHAPTER I

### PAYING AGENCIES AND OTHER BODIES

#### *Article 1*

#### **Conditions for the accreditation of paying agencies**

1. Paying agencies carrying out the management and control of expenditure as provided for in Article 7(1) of Regulation (EU) No 1306/2013 shall provide, in respect of payments made by them and as regards communicating and keeping information, sufficient guarantees that:
  - (a) the eligibility of requests and, in the framework of rural development, the procedure for allocating aid, as well as their compliance with Union rules are checked before payment is authorised;
  - (b) accurate and exhaustive accounts are kept of the payments made;
  - (c) the checks laid down by Union legislation are made;
  - (d) the requisite documents are presented within the time limits and in the form set out by Union rules;
  - (e) the documents are accessible and kept in a manner which ensures their completeness, validity and legibility over time, including with regard to electronic documents within the meaning of Union rules.
2. Member States shall accredit as paying agencies departments or bodies which fulfil the conditions laid down in paragraph 1. Furthermore, in order to be accredited, a paying agency shall have an administrative organisation and a system of internal control which comply with the criteria set out in Annex I ('accreditation criteria') regarding

- (a) internal environment;
- (b) control activities;
- (c) information and communication;
- (d) monitoring.

Member States may lay down further accreditation criteria to take account of the size, responsibilities and other specific features of the paying agency.

## Article 2

### Conditions for the accreditation of coordinating bodies

1. Where more than one paying agency is accredited, in accordance with Article 7(4) of Regulation (EU) No 1306/2013, the Member State concerned shall, by a formal act at ministerial level, decide on the accreditation of the coordinating body after it has satisfied itself that the administrative arrangements of that body offer sufficient assurance that it is capable of fulfilling the tasks referred to in that Article.
2. In order to be accredited, the coordinating body shall have procedures in place to ensure that:
  - (a) declarations to the Commission are based on information from properly authorised sources;
  - (b) declarations to the Commission are properly authorised before transmission;
  - (c) a proper audit trail exists to support the information transmitted to the Commission;
  - (d) a record of information received and transmitted is securely stored, either in paper or in computerised format.

## Article 3

### Obligations of the paying agency as regards public intervention

1. The paying agencies referred to in Article 7(1) of Regulation (EU) No 1306/2013 shall manage and ensure control of the operations linked to intervention measures relating to public storage for which they are responsible, under the terms laid down in Annex II to this Regulation and, where appropriate, in the sectoral agricultural legislation, in particular on the basis of the minimum checking rates fixed in that Annex.

The paying agencies may delegate their powers in this connection to intervention agencies which meet the conditions of approval laid down in point 1.C of Annex I to this Regulation or act through other paying agencies.

2. The paying agencies or intervention agencies may, without prejudice to their overall responsibility relating to public storage:
  - (a) entrust the management of certain public storage measures to natural or legal persons storing bought-in agricultural products ('storers');
  - (b) mandate natural or legal persons to carry out certain specific tasks laid down by the sectoral agricultural legislation.

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If the paying agencies entrust the management to storers as referred to in point (a) of the first subparagraph, such management shall be carried out under storage contracts on the basis of the obligations and general principles set out in Annex III.

3. The obligations of paying agencies with regard to public storage shall be, in particular, as follows:

- (a) to keep stock accounts and financial accounts for each product covered by an intervention measure involving public storage, based on the operations they carry out from 1 October of one year to 30 September of the following year, this period being referred to as an ‘accounting year’;
- (b) to keep an up-to-date list of the storers with whom they have concluded public storage contracts. This list shall contain references allowing the exact identification of all storage points, their capacity, the number of warehouses, cold stores and silos, and drawings and diagrams thereof;
- (c) to make available to the Commission the standard contracts used for public storage, the rules laid down for the taking-over of products, their storage and removal from the storehouses of the storers, and the rules applicable to the liability of storers;
- (d) to keep centralised, computerised stock accounts of all stocks, covering all storage places, all products and all the quantities and qualities of the different products, specifying in each case the weight (net and gross, where applicable) or the volume;
- (e) to perform all operations relating to the storage, conservation, transport or transfer of intervention products in accordance with Union and national legislation, without prejudice to the responsibility of the purchasers, of the other paying agencies involved in an operation and of any other persons acting on instruction in this regard;
- (f) to conduct checks on places where intervention stocks are held, throughout the year, at irregular intervals and without prior warning. However, provided that the purpose of the control is not jeopardised, advance notice may be given, strictly limited to the minimum time period necessary. Such notice shall not exceed 24 hours, except in duly justified cases;
- (g) to conduct an annual stocktaking in accordance with Article 4.

Where, in a Member State, management of the public storage accounts for one or more products is carried out by more than one paying agency, the stock accounts and financial accounts referred to in points (a) and (d) shall be consolidated at Member State level before the corresponding information is notified to the Commission.

4. The paying agencies shall take all the necessary steps to ensure:

- (a) that products covered by Union intervention measures are properly conserved by checking the quality of stored products at least once a year;
- (b) the integrity of intervention stocks.

5. The paying agencies shall inform the Commission immediately:

- (a) of cases where extending the storage period of a product is likely to result in its deterioration;
- (b) of quantitative losses or deterioration of the product due to natural disasters.

Where situations referred to in points (a) and (b) of the first subparagraph are applicable, the Commission shall adopt the appropriate decision:

- (a) as regards the situations referred to in point (a) of the first subparagraph, in accordance with the examination procedure referred to in Article 229(2) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council<sup>(14)</sup>;
- (b) as regards the situations referred to in point (b) of the first subparagraph, in accordance with the examination procedure referred to in Article 116(3) of Regulation (EU) No 1306/2013.

6. The paying agencies shall bear any financial consequences of poor conservation of products covered by Union intervention measures, in particular those resulting from unsuitable storage methods. Without prejudice to any recourse against storers, the paying agencies shall bear financial responsibility for failure to comply with their undertakings or obligations.

7. The paying agencies shall make the public storage accounts and all documents, contracts and files drawn up or received in the context of intervention operations permanently available to Commission agents or persons mandated by the Commission, either electronically or at the premises of the paying agencies.

#### *Article 4*

### **Inventory**

1. During each accounting year, the paying agencies shall draw up an inventory for each product which has been the subject of Union intervention.

They shall compare the results of the inventory with the accounting data. Any differences in quantities found, and the amounts resulting from differences in quality found during checks, shall be accounted for in accordance with the rules adopted pursuant to Article 46(6)(a) of Regulation (EU) No 1306/2013.

2. For the purposes of paragraph 1, missing quantities resulting from normal storage operations shall be equal to the difference between the theoretical stock shown by the accounts inventory, on the one hand, and the actual physical stock as established on the basis of the inventory provided for in paragraph 1 or the stock shown as remaining on the books after the physical stock of a store has been exhausted, on the other hand and shall be subject to the tolerance limits set out in Annex IV.

## CHAPTER II

### **FINANCIAL MANAGEMENT**

#### *Article 5*

### **Non-Compliance with the latest payment deadline**

1. As regards the European Agricultural Guarantee Fund (EAGF), pursuant to the exceptions referred to in the first paragraph of Article 40 of Regulation (EU) No 1306/2013 and in accordance with the principle of proportionality, expenditure effected after the payment deadlines shall be eligible for Union payments under the conditions laid down in paragraphs 2 to 6 of this Article.

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2. Where expenditure effected after the deadlines is equal to 5 % or less of the expenditure effected before the deadlines, no reduction of the monthly payments shall be made.

Where expenditure effected after the deadlines is above the threshold of 5 %, all further expenditure effected late shall be reduced in accordance with the following rules:

- (a) expenditure effected in the first month following the month in which the payment deadline expired, shall be reduced by 10 %,
- (b) expenditure effected in the second month following the month in which the payment deadline expired, shall be reduced by 25 %,
- (c) expenditure effected in the third month following the month in which the payment deadline expired, shall be reduced by 45 %,
- (d) expenditure effected in the fourth month following the month in which the payment deadline expired, shall be reduced by 70 %,
- (e) expenditure effected later than the fourth month following the month in which the payment deadline expired, shall be reduced by 100 %.

3. By way of derogation from paragraph 2, in the case of the direct payments falling under the ceiling referred to in Article 7 of Regulation (EU) No 1307/2013 of the European Parliament and of the Council<sup>(15)</sup> the following conditions shall apply:

- (a) where the threshold referred to in the first subparagraph of paragraph 2 has not been used in full for payments made in respect of calendar year N no later than 15 October of year N + 1 and the remainder of the threshold exceeds 2 %, that remainder shall be reduced to 2 %;
- (b) during a financial year N+1, direct payments, other than payments provided for in Regulation (EU) No 228/2013 of the European Parliament and of the Council<sup>(16)</sup> and in Regulation (EU) No 229/2013 of the European Parliament and of the Council<sup>(17)</sup>, in respect of calendar years N-1 or earlier made after the payment deadline will only be eligible for financing by EAGF if the total amount of direct payments made within financial year N+1, where applicable corrected to amounts before the adjustment provided for in Article 26 of Regulation (EU) No 1306/2013, does not exceed the ceiling laid down in Annex III of Regulation (EU) No 1307/2013 in respect of calendar year N, in accordance with Article 7 of that Regulation;
- (c) expenditure exceeding the limits referred to in point (a) or (b) shall be reduced by 100 %.

The amounts of the reimbursements referred to in Article 26(5) of Regulation (EU) No 1306/2013 shall not be taken into account to check whether the condition laid down in point (b) of the first subparagraph of this paragraph is fulfilled.

[<sup>F13a</sup> By way of derogation from paragraph 2, during financial year 2015, in the case of direct payments listed in Annex I to Council Regulation (EC) No 73/2009, the following conditions shall apply:

- (a) where the threshold referred to in the first subparagraph of paragraph 2 has not been used in full for payments made in respect of calendar year 2014 no later than 15 October 2015 and the remainder of the threshold exceeds 2 %, that remainder shall be reduced to 2 %;

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- (b) in the case of Member States applying the Single Payment Scheme in accordance with Chapter 3 of Title III of Regulation (EC) No 73/2009, direct payments, other than payments provided for in Regulation (EU) No 228/2013 of the European Parliament and of the Council<sup>(18)</sup> and in Regulation (EU) No 229/2013 of the European Parliament and of the Council<sup>(19)</sup>, in respect of calendar years 2013 or earlier made after the payment deadline will only be eligible for financing by the EAGF if the total amount of direct payments made within financial year 2015, where applicable corrected to amounts before the adjustment provided for in Article 11 of Regulation (EC) No 73/2009 or in Article 26 of Regulation (EU) No 1306/2013, does not exceed the ceiling set out in Annex VIII to Regulation (EC) No 73/2009 in respect of calendar year 2014 and taking into account the amounts resulting from the application of Article 136b of Regulation (EC) No 73/2009 for calendar year 2014 as set out in Annex VIIIa to that Regulation;
- (c) in the case of Member States applying the Single Area Payment Scheme as laid down by Article 122 of Regulation (EC) No 73/2009, direct payments in respect of calendar years 2013 or earlier made after the payment deadline will only be eligible for financing by the EAGF if the total amount of direct payments made within financial year 2015, where applicable corrected to amounts before the adjustment provided for in Article 11 of Regulation (EC) No 73/2009 or in Article 26 of Regulation (EU) No 1306/2013, does not exceed the sum of individual ceilings laid down for direct payments in respect of calendar year 2014 for the Member State concerned;
- (d) expenditure exceeding the limits referred to in point (a), (b) or (c) shall be reduced by 100 %.

The amounts of the reimbursements referred to in Article 26(5) of Regulation (EU) No 1306/2013 shall not be taken into account to check whether the condition laid down in point (b) or (c) of the first subparagraph of this paragraph is fulfilled.]

4. The Commission shall apply a different time scale from those laid down in paragraphs 2 and 3, and/or lower reductions or no reduction at all, if exceptional management conditions are encountered for certain measures or if justified reasons are advanced by the Member States.

However, the first subparagraph shall not apply for expenditure exceeding the limit referred to in point (b) of paragraph 3.

5. Checks on compliance with the payment deadlines, in the context of the monthly payments, shall be made twice each financial year:

- (a) on expenditure effected by 31 July,
- (b) on expenditure effected by 15 October.

Any overrun of deadlines in August, September and October shall be taken into account in the accounts clearance decision referred to in Article 51 of Regulation (EU) No 1306/2013.

6. The reductions referred to in this Article shall be applied without prejudice to the subsequent decision on conformity clearance, as referred to in Article 52 of Regulation (EU) No 1306/2013.

#### Textual Amendments

- F1** Inserted by [Commission Delegated Regulation \(EU\) 2015/160 of 28 November 2014 amending Delegated Regulation \(EU\) No 907/2014 supplementing Regulation \(EU\) No 1306/2013 of the](#)

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European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro.

#### *Article 6*

### **Non-Compliance with earliest date of payment**

As regards EAGF, if Member States are allowed to pay advances up to a certain maximum amount before the earliest payment date fixed in the agricultural sectorial legislation, any expenditure paid above this maximum amount shall be considered as expenditure made before the earliest payment date. However, in accordance with the exceptions referred to in the first paragraph of Article 40 of Regulation (EU) No 1306/2013, that expenditure shall be eligible for Union payments subject to a reduction of 10 %.

#### *Article 7*

### **Compensation by paying agencies**

1. In its decision on the monthly payments to be adopted pursuant to Article 18(3) of Regulation (EU) No 1306/2013, the Commission shall pay the balance of the expenditure declared by each Member State, less the assigned revenue which that Member State has included in the same declaration of expenditure. This set-off shall be regarded as equivalent to collection of the corresponding revenue.

Commitment appropriations and payment appropriations generated by assigned revenue shall be open once this revenue has been assigned to budget lines. Assignment shall take place when the assigned revenue is entered into the accounts, within two months after receipt of the statements sent by the Member States, in accordance with the rules referred to in Article 43(4) of Regulation (EU) No 1306/2013.

2. If the sums referred to in Article 43(1) point (c) of Regulation (EU) No 1306/2013 were withheld before the payment of the aid concerned by the irregularity or negligence, they shall be deducted from the corresponding expenditure.

3. The amounts of the European Agricultural Fund for Rural Development (EAFRD) contributions recovered from beneficiaries under the rural development programme concerned during each reference period shall be deducted from the amount to be paid by the EAFRD in the declaration of expenditure for that period.

4. The greater or lesser amounts resulting, where applicable, from the clearance of accounts referred to in Article 51 of Regulation (EU) No 1306/2013 that may be re-used for the rural development programme shall be added to or deducted from the amount of the EAFRD contribution when the first declaration after the clearance of accounts decision is drawn up.

5. Financing by the EAGF shall be equal to the expenditure, calculated on the basis of the information notified by the paying agency, after deduction of any revenue accruing from the intervention measures, validated by the computerised system set up by the Commission and included by the paying agency in its declaration of expenditure.

## Article 8

### Late adoption of Union budget

1. As regards EAGF, if the Union budget has not been adopted by the beginning of the budgetary year, the monthly payments referred to in Article 18 of Regulation (EU) No 1306/2013 shall be granted as a percentage of the declarations of expenditure received from each Member State, laid down for each chapter of expenditure and within the limits laid down in Article 16 of Regulation (EU, Euratom) No 966/2012. The Commission shall take into account the balance of amounts not reimbursed to the Member States in decisions on subsequent reimbursements.
2. As regards EAFRD, if the Union budget has not been adopted by the beginning of the budgetary year:
  - (a) the interim payments referred to in Article 36 of Regulation (EU) No 1306/2013 shall be granted proportionally to the credits available as a percentage of the declarations of expenditure received for each rural development program. The Commission shall take the balance of amounts not reimbursed to the Member States into account in the subsequent interim payments.
  - (b) as regards the budget commitments referred to in Article 33 of Regulation (EU) No 1306/2013, the first annual instalments following the adoption of the rural development programmes shall respect the order of adoption of those programmes. The budget commitments for the subsequent annual instalments shall be made in the order of the programmes having exhausted the respective commitments. The Commission may make partial annual commitments to the rural development programmes if the available commitment appropriations are limited. The remaining balance for those programmes shall be committed first once additional commitment appropriations become available.

## Article 9

### Deferral of monthly payments

The Commission, having informed the Member States concerned, may defer the monthly payments referred to in Article 18 of Regulation (EU) No 1306/2013 to the Member States where the communications as referred to in point (c) (i) and (ii) of Article 102(1) of that Regulation arrive late or contain discrepancies which necessitate further checks.

## Article 10

### Suspension of payment in case of late submission

1. The suspension of payments referred to in Article 42 of Regulation (EU) No 1306/2013 shall apply to the measures listed in Annex V to this Regulation.
2. As regards expenditure under EAGF, the following rates of suspension of payments shall apply:

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- (a) if the results of the controls have not been sent by 15 October, 1 % of the expenditure for which the relevant information has not been sent in time;
  - (b) if the results of the controls have not been sent by 1 December, 1,5 % of the expenditure for which the relevant information has not been sent in time.
3. As regards expenditure under EAFRD, the following rates of suspension of payments shall apply:
- (a) if the results of the controls have not been sent by 15 October, 1 % of the expenditure for which the relevant information has not been sent in time;
  - (b) if the results of the controls have not been sent by 15 January, 1,5 % of the expenditure for which the relevant information has not been sent in time.

### *Article 11*

#### **Applicable exchange rate for drawing up declarations of expenditure**

1. In accordance with Article 106(4) of Regulation (EU) No 1306/2013, as regards EAGF, for drawing up their declarations of expenditure, Member States 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 Chapter V and the sectoral agricultural legislation. For the clearance decisions referred in Articles 51 and 52 of Regulation (EU) No 1306/2013 Member States shall use the first exchange rate established by the European Central Bank after the date of adoption of those decisions.

In cases other than those referred to in the first subparagraph, in particular for promotion programmes approved under Council Regulation (EC) No 3/2008<sup>(20)</sup> and for promotion measures in the wine sector, as well as for operations for which an operative event has not been laid down by the sectoral agricultural legislation, the applicable exchange rate shall be the last-but-one exchange rate established by the European Central Bank before the month in respect of which the expenditure or assigned revenue is declared.

2. As regards the rural development programs, for drawing up their declarations of expenditure, Member States which do not form part of the euro zone shall apply, for each payment or recovery operation, the last-but-one exchange rate established by the European Central Bank prior to the month in which the operations are registered in the accounts of the paying agency.

## CHAPTER III

### **CLEARANCE OF ACCOUNTS AND OTHER CHECKS**

#### *Article 12*

##### **Criteria and methodology for applying corrections in the framework of conformity clearance**

1. For the purpose of adopting the decision pursuant to Article 52(1) of the Regulation (EU) No 1306/2013 on the amounts to be excluded from Union financing, the Commission shall distinguish between those amounts or parts of the amounts identified as amounts unduly spent and those determined by applying extrapolated or flat rate corrections.

In order to determine the amounts that may be excluded from Union financing, when finding that expenditure has not been incurred in conformity with Union law, and concerning EAFRD, in conformity with the applicable Union and national law, the Commission shall use its own findings and shall take into account the information made available by the Member States during the conformity clearance procedure carried out in accordance with Article 52 of Regulation (EU) No 1306/2013.

2. The Commission shall base the exclusion on the identification of the amounts unduly spent only if those amounts may be identified with proportionate effort. Where the Commission cannot identify the amounts unduly spent with proportionate effort, Member States may, within the time-periods set by the Commission during the conformity clearance procedure, submit data concerning the verification of those amounts on the basis of an examination of all individual cases potentially affected by the non-conformity. The verification shall cover the entire expenditure incurred in breach of applicable law and charged to the Union budget. The data submitted shall include all individual amounts which are ineligible due to that non-conformity.

3. Where the amounts unduly spent cannot be identified in accordance with paragraph 2, the Commission may determine the amounts to be excluded by applying extrapolated corrections. To enable the Commission to determine the relevant amounts, Member States may, within the time-periods set by the Commission during the conformity clearance procedure, submit a calculation of the amount to be excluded from Union financing by extrapolating through statistical means the results of checks carried out on a representative sample of those cases. The sample shall be drawn from the population for which the identified non-conformity is reasonably expected to occur.

4. In order to take into consideration the results submitted by Member States as referred to in paragraphs 2 and 3, the Commission shall be in a position to:

- (a) assess the methods retained for identifying or extrapolating, which shall be clearly described by the Member States;
- (b) check the representativeness of the sample referred to in paragraph 3;
- (c) check the content and results of the identification or extrapolation submitted to it;
- (d) obtain sufficient and relevant audit evidence regarding the underlying data.

5. When applying paragraph 3, the Member States may use the paying agencies' control statistics as confirmed by the certification body, or such body's assessment of the level of error in the context of its audit referred to in Article 9 of Regulation (EU) No 1306/2013, provided that:

- (a) the Commission is satisfied with the work carried out by the certification bodies, both in terms of audit strategy and concerning the content, extent and quality of the actual audit work;
- (b) the scope of the certification bodies' work is consistent with the scope of the conformity clearance enquiry in question, in particular with regard to the measures or schemes;
- (c) the amount of the penalties that should have been applied was taken into account in the assessments.

6. Where the conditions for determining the amounts to be excluded from Union financing as referred to in paragraphs 2 and 3 are not met or the nature of the case is such that the amounts to be excluded cannot be determined on the basis of those paragraphs, the Commission

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shall apply the appropriate flat-rate corrections, taking into account the nature and gravity of the infringement and its own estimation of the risk of financial damage caused to the Union.

The level of flat-rate correction shall be established by taking into consideration in particular the type of non-conformity identified. To this effect control deficiencies shall be divided between those relating to key and ancillary controls as follows:

- (a) Key controls shall be the administrative and on-the-spot checks necessary to determine the eligibility of the aid and the relevant application of reductions and penalties;
- (b) Ancillary controls shall be all other administrative operations required to correctly process claims.

If, in the framework of the same conformity clearance procedure, different non-conformities which would individually lead to distinct flat-rate corrections are established, then only the highest flat-rate correction shall apply.

7. When establishing the level of flat-rate corrections, the Commission shall specifically take into account the following circumstances demonstrating a higher gravity of the deficiencies revealing a greater risk of loss for the Union's budget:

- (a) one or more key controls are not applied or are applied so poorly or so infrequently that they are deemed ineffective in determining the eligibility of the claim or in preventing irregularities; or
- (b) three or more deficiencies are detected with respect to the same control system; or
- (c) the Member State's application of a control system is found to be absent or gravely deficient, and there is evidence of wide-spread irregularity and negligence in countering irregular or fraudulent practices; or
- (d) a correction has already been applied to that Member State for similar deficiencies in the same sector, account taken however of the corrective or compensating measures already taken by the Member State.

[<sup>F28</sup>8. Where a Member State submits objective elements, which do not fulfil the requirements laid down in paragraphs 2 and 3 of this Article, but which demonstrate that the maximum loss for the funds is lower than what would derive from the application of a flat rate lower than the one proposed, the Commission shall use that lower flat rate to decide on the amounts to be excluded from Union financing pursuant to Article 52 of Regulation (EU) No 1306/2013.]

9. Amounts effectively recovered from the beneficiaries and credited to the funds before a relevant date, to be established by the Commission in the course of the conformity clearance procedure, shall be deducted from the amount that the Commission decides to exclude from Union financing pursuant to Article 52 of Regulation (EU) No 1306/2013.

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#### **Textual Amendments**

- F2** Substituted by [Commission Delegated Regulation \(EU\) 2015/160 of 28 November 2014 amending Delegated Regulation \(EU\) No 907/2014 supplementing Regulation \(EU\) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro.](#)

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### *Article 13*

#### **Obligation following recovery procedures**

Following the completion of the recovery procedures referred to in the first subparagraph of Article 54(2) of Regulation (EU) No 1306/2013, the Member States shall:

- (a) credit to the EAGF fifty percent of the amounts recovered, after deduction of the recovery costs as provided for in the second paragraph of Article 55 of that Regulation;
- (b) credit to the EAFRD fifty percent of amounts either recovered after the closure of the rural development programme or recovered before the closure of the programme but which could not be reallocated in accordance with Article 56 of Regulation (EU) No 1306/2013.

### *Article 14*

#### **Scrutiny of transactions**

The system of scrutiny established by Chapter III of Title V of Regulation (EU) No 1306/2013 shall not apply to the measures listed in Annex VI to this Regulation.

## CHAPTER IV

## SECURITIES

### SECTION 1

#### ***Scope and Use of terms***

### *Article 15*

#### **Scope**

This Chapter shall apply in all cases where the sectoral agricultural legislation provides for a security whether or not the particular term 'security' is used.

This Chapter shall not apply to securities given to ensure payment of import and export duties referred to in Council Regulation (EEC) No 2913/92<sup>(21)</sup>.

### *Article 16*

#### **Terms used in this Chapter**

For the purposes of this Chapter:

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- (a) ‘competent authority’ means either a party authorised to accept a security or a party authorised to decide in accordance with the relevant regulation if a security is to be released or forfeited;
- (b) ‘block security’ means a security made available to the competent authority with the purpose of ensuring that more than one obligation is met;
- (c) ‘the relevant part of the sum secured’ means the part of the sum secured corresponding to the quantity for which a requirement has been breached.

## SECTION 2

### **Requirement of a Security**

#### *Article 17*

#### **Responsible party**

A security shall be given by or on behalf of the party responsible for paying the sum of money due if an obligation is not met.

#### *Article 18*

#### **Waiver of a security requirement**

1. The competent authority may waive the security requirement where the party responsible for meeting the obligation is either:

- (a) a public body responsible for executing the duties of a public authority; or
- (b) a private body executing duties referred to in point (a) under State supervision.

2. The competent authority may waive the security requirement where the value of the sum secured is less than EUR 500. In that case, the party concerned shall undertake in writing to pay a sum equal to the security waived if the corresponding obligation is not met.

In applying the first subparagraph, the value of the security shall be calculated as comprising all the relevant obligations linked with a same operation.

#### *Article 19*

#### **Conditions applying to securities**

1. The competent authority shall refuse to accept or shall require the replacement of any security which it considers inadequate or unsatisfactory or which does not provide cover for a sufficient period.

2. Where cash is deposited by transfer, it shall not be regarded as establishing a security until the competent authority is satisfied that it has the amount at its disposal.

3. A cheque for a sum whose payment is guaranteed by a financial institution recognised for that purpose by the Member State of the competent authority concerned shall be treated as a

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cash deposit. The competent authority need not to present such a cheque for payment until the period for which it is guaranteed is about to expire.

A cheque, other than as referred to in the first subparagraph, shall constitute a security only when the competent authority is satisfied that it has the amount at its disposal.

4. Any charges by a financial institution shall be borne by the party giving the security.
5. No interest shall be paid to the party giving a security in the form of a cash deposit.

#### Article 20

##### Use of euro

1. Securities shall be constituted in euro.
2. If the security is accepted in a Member State which has not adopted the euro, the amount of the security in euro shall be converted into the applicable national currency in accordance with the provisions of Chapter V. The undertaking corresponding to the security and any amount withheld in the event of irregularities or breaches shall remain fixed in euro.

#### Article 21

##### The guarantor

1. The guarantor shall have his officially registered residence or an establishment in the Union and, subject to the provisions of the Treaty concerning freedom to supply services, be approved by the competent authority of the Member State in which the security is given. The guarantor shall be bound by a written guarantee.
2. The written guarantee shall state at least:
  - (a) the obligation or, in the case of a block security, the type(s) of obligation against whose fulfilment it guarantees the payment of a sum of money;
  - (b) the maximum liability to pay that the guarantor accepts;
  - (c) that the guarantor undertakes jointly and severally with the party responsible for meeting the obligation to pay, within 30 days upon demand by the competent authority, any sum, within the limit of the guarantee, due once a security is declared forfeit.
3. Where a written block security has already been given, the competent authority shall determine the procedure to be followed by which all or part of the block security shall be allocated to a particular obligation.

#### Article 22

##### Application of force majeure

Any person responsible for an obligation covered by a security claiming that the non-respect of the obligation is due to *force majeure* shall prove to the satisfaction of the competent authorities that *force majeure* applies. If the competent authority recognises a case of *force majeure*, the obligation is cancelled for the sole purpose of releasing the security.

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### SECTION 3

#### ***Release and forfeiture of securities other than those referred to in Section 4***

##### *Article 23*

#### **Forfeiting of securities**

1. The obligation mentioned in Article 66(1) of Regulation (EU) No 1306/2013 is the requirement to perform or to refrain from performing an action, basic to the purposes of the Regulation imposing it.

2. If an obligation is not fulfilled and no time limit for fulfilment has been given, the security shall be forfeited when the competent authority establishes that it was not fulfilled.

3. If the fulfilment of an obligation is subject to a certain time limit, and the fulfilment took only place beyond that time limit, the security shall be forfeited.

In such case the security shall be forfeited for 10 % at once and further an additional percentage over the remaining balance shall be applied for:

- (a) 2 % per calendar day exceeding the time limit if the obligation concerns the importing of products into a third country;
- (b) 5 % per calendar day exceeding the time limit if the obligation concerns the leaving of products of the customs territory of the Union.

4. If an obligation is fulfilled timely, and the presentation of the proof of fulfilment is subject to a fixed time limit, the security covering that obligation shall be forfeited for each calendar day exceeding that time limit according to the formula  $0,2/\text{time limit in days}$  set and taking account of Article 25.

If the proof referred to in the first subparagraph consists of the submission of a used or expired import or export licence, or the submission of the proof of products having left the custom territory of the Union, the security to be forfeited shall be 15 % if that proof is submitted after the fixed time limit referred to in the first subparagraph but at the latest on the 730th calendar day after the expiry date of the licence. After those 730 calendar days, the remaining security shall be forfeited in whole.

If the proof referred to in the first subparagraph consists of the submission of a used or expired export licence with advance fixing of the refunds, the security to be forfeited shall be:

- (a) 10 % if the licence is submitted between the 61th and 90th calendar days after the date of expiry of the licence;
- (b) 50 % if the licence is submitted between the 91st and 120th calendar day after the date of expiry of the licence;
- (c) 70 % if the licence is submitted between the 121st and 150th calendar day after the date of expiry of the licence;
- (d) 80 % if the licence is submitted between the 151st and 180th calendar day after the date of expiry of the licence;
- (e) 100 % if the licence is submitted after the 180th calendar day after the date of expiry of the licence.

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5. The amount of security to be forfeited shall be rounded to the first lower amount in whole euro or the applicable national currency.

#### *Article 24*

### **Releasing of securities**

1. Once the proof as laid down by the specific Union rules that an obligation has been fulfilled, or the security has been partially forfeited in accordance with Article 66(2) of Regulation (EU) No 1306/2013 and Article 23 of this Regulation, the security, or where applicable, the remainder of the security shall be released without delay.

2. A security shall on request be released in part where the relevant evidence has been furnished in relation to part of a quantity of product, provided that that part is not less than any minimum quantity specified in the regulation requiring the security, or, in the absence, as specified by the Member State.

3. Where no time period is laid down for producing the evidence needed to release a sum secured, such period shall be 365 calendar days from the time limit specified for respecting the obligation for which the security was lodged. Where no such time limit is specified, the period shall be 365 calendar days from the date by which all obligations have been fulfilled.

The period laid down in the first subparagraph shall not exceed 1 095 calendar days from the time the security was assigned to a particular obligation.

#### *Article 25*

### **Thresholds**

1. The total sum forfeited shall not exceed 100 % of the relevant part of the sum secured.

2. The competent authority may waive the forfeiture of an amount less than EUR 100, provided that similar national provisions for comparable cases are laid down by law, regulation or administrative action.

## *SECTION 4*

### ***Securities with respect to advance payments***

#### *Article 26*

### **Scope**

The provisions of this Section shall apply in all cases where specific Union rules provide that a sum may be advanced before the obligation established to obtain any aid or advantage has been met.

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## Article 27

### Release of securities

1. The security shall be released:
  - (a) either when final entitlement to the sum granted as an advance has been established;
  - (b) or when the sum granted, plus any addition provided for in the specific Union rules, has been repaid.
2. Once the deadline for proving final entitlement to the sum granted has passed without production of evidence of entitlement, the competent authority shall immediately follow the procedure for forfeiting the security.

However, where specific Union rules so provide, evidence may still be produced after that date against partial repayment of the security.

## CHAPTER V

### USE OF EURO

## Article 28

### Export refunds and trade with third countries

1. For amounts relating to imports and for export taxes, fixed in euro by Union law relating to the common agricultural policy and applicable by the Member States in national currency, the conversion rate shall be specifically equal to the rate applicable pursuant to Article 18(1) of Regulation (EEC) No 2913/92.
2. For export refunds fixed in euro and for prices and amounts expressed in euro in Union agricultural legislation regarding trade with third countries, the operative event for the exchange rate shall be the acceptance of the customs declaration.
3. For the purpose of calculating the standard import value of fruit and vegetables referred to in Article 136(1) of Implementing Regulation (EU) No 543/2011<sup>(22)</sup>, in order to determine the entry price referred to in Article 137(1) of that Regulation, the operative event for the exchange rate for the representative prices used to calculate that standard value and the amount of the reduction referred to in Article 134(3) of that Regulation shall be the day to which the representative prices relate.

## Article 29

### Production refunds and specific types of aid

1. For production refunds fixed in euro by Union legislation, the operative event for the exchange rate shall be the date on which it is declared that the products have reached the destination required, as the case may be, by that legislation. In cases where no such destination is required, the operative event shall be the acceptance of the application for payment of the refund by the paying agency.

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2. For aid granted by quantity of marketed product or product to be used in a specific way, without prejudice to Articles 30 to 33, the operative event for the exchange rate shall be the first operation which guarantees, after the products are taken over by the operator concerned, the appropriate use of the products in question and entails grant of the aid.

3. For private storage aid the operative event for the exchange rate shall be the first day of the period in respect of which the aid relating to one and the same contract is granted.

4. For aid other than that referred to in paragraphs 2 and 3 of this Article and in Articles 30 and 31, the operative event for the exchange rate shall be the deadline for the submission of applications.

### *Article 30*

#### **Wine sector**

1. The operative event for the exchange rate shall be the first day of the wine year in which the support is granted for the following:

- (a) restructuring and conversion of vineyards referred to in Article 46 of Regulation (EU) No 1308/2013;
- (b) setting-up of mutual funds referred to in Article 48 of Regulation (EU) No 1308/2013;
- (c) harvest insurance referred to in Article 49 of Regulation (EU) No 1308/2013.

2. For the aids paid for the voluntary or obligatory distillation of by-products of wine-making, referred to in Article 52 of Regulation (EU) No 1308/2013, the operative event for the exchange rate shall be the first day of the wine year in which the by-product is delivered.

3. For investments referred to in Article 50 of Regulation (EU) No 1308/2013 and the innovation in the wine sector referred to in Article 51 of Regulation (EU) No 1308/2013, the operative event for the exchange rate shall be 1 January of the year in which the decision to grant the aid is taken.

4. For green harvesting operations referred to in Article 47 of Regulation (EU) No 1308/2013, the operative event for the exchange rate shall be the day on which the green harvesting operation takes place.

### *Article 31*

#### **Amounts and payments in the milk and milk products sector**

1. For aid granted for supplying certain milk products to pupils as referred to in Article 1 of Commission Regulation (EC) No 657/2008<sup>(23)</sup>, the operative event for the exchange rate shall be the first day of the period to which the payment application referred to in Article 11 of that Regulation relates.

2. For the payment of the levy referred to in Article 1 of Commission Regulation (EC) No 595/2004<sup>(24)</sup>, for a given twelve-month period within the meaning of Chapter III of Title I of Part II of Council Regulation (EU) No 1234/2007<sup>(25)</sup>, the operative event for the exchange rate shall be 1 April following the period concerned.

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3. For the transport costs referred to in Article 30(3) of Commission Regulation (EU) No 1272/2009<sup>(26)</sup>, the operative event for the exchange rate shall be the day on which the valid offer has been received by the competent authority.

### *Article 32*

#### **Amounts and payments of aid linked to the implementation of the School Fruit Scheme**

For aid granted for the supply of fruit and vegetable, processed fruit and vegetable and banana products to children as referred to in Article 1 of Commission Regulation (EC) No 288/2009<sup>(27)</sup>, the operative event for the exchange rate shall be 1 January preceding the period referred to in Article 4(1) of that Regulation.

### *F<sup>3</sup> Article 32a*

#### **Amounts and payments of aid linked to implementation of the School scheme**

For aid granted for the implementation of the school scheme referred to in Section I of Chapter II of Title I of Part II of Regulation (EU) No 1308/2013, the operative event for the exchange rate shall be 1 January preceding the school year concerned.]

#### **Textual Amendments**

- F3** Inserted by [Commission Delegated Regulation \(EU\) 2017/40 of 3 November 2016 supplementing Regulation \(EU\) No 1308/2013 of the European Parliament and of the Council with regard to Union aid for the supply of fruit and vegetables, bananas and milk in educational establishments and amending Commission Delegated Regulation \(EU\) No 907/2014.](#)

### *Article 33*

#### **Minimum price for beet, surplus levy and production charge in the sugar sector**

For the production charge on sugar, for the minimum beet price, and for the surplus levy referred to in Articles 128, 135 and 142 respectively of Regulation (EU) No 1308/2013, the operative event for the exchange rate shall be 1 October of the marketing year in respect of which the prices and amounts are applied or paid.

### *Article 34*

#### **Amounts of a structural or environmental character and overheads of operational programmes**

1. For the amounts referred to in Annex II to Regulation (EU) No 1305/2013, as well as for the amounts relating to measures approved under Regulation (EC) No 1698/2005, for which the payments to beneficiaries are assured by the rural development programmes approved under Regulation (EU) No 1305/2013, the operative event for the exchange rate shall be 1 January of the year in which the decision to grant the aid is taken.

However, where, under Union rules, payment of the amounts referred to in the first subparagraph is staggered over several years, the operative event for the exchange rate

for each of the annual instalments shall be 1 January of the year for which the instalment in question is paid.

2. For the sums referred to in point 2(a) of Annex IX to Implementing Regulation (EU) No 543/2011, intended to cover overheads specifically related to the operational funds or programmes referred to in Articles 32 and 33 of Regulation (EU) No 1308/2013, the operative event for the exchange rate shall be 1 January of the year to which these overheads relate.

#### *Article 35*

### **Amounts linked to the authorisation to grant national financial assistance to producer organisations in the fruit and vegetables sector and the partial reimbursement of this national financial assistance**

1. For the request of the authorisation to grant the national financial assistance referred to in Article 35 of Regulation (EU) No 1308/2013, the operative event shall be the deadline for the submission of the request to the Commission, as laid down in Article 92(1) of Implementing Regulation (EU) No 543/2011.

2. For the Union reimbursement of the national financial assistance according to Article 95 of Implementing Regulation (EU) No 543/2011, the operative event for the exchange rate shall be the deadline for the submission of aid applications by producer organisations to the competent authorities of the Member States according to Article 69(1) of Regulation (EU) No 543/2011.

#### *Article 36*

### **Other amounts and prices**

For prices or amounts other than those referred to in Articles 28 to 35, or amounts linked to those prices, expressed in euro in Union legislation, or expressed in euro by a tendering procedure, the operative event for the exchange rate shall be the day on which one of the following legal acts occurs:

- (a) for purchases, when the valid offer has been received;
- (b) for sales, when the valid offer has been received;
- (c) for withdrawals of products in the fruit and vegetables sector, the day on which the withdrawal takes place;
- (d) for non-harvesting and green harvesting operations in the fruit and vegetables sector, the day on which the non-harvesting and green harvesting operation takes place;
- (e) for costs of transport, processing or public storage and for amounts allocated to studies as part of a tendering procedure, the final day for the submission of tenders;
- (f) for the recording of prices, amounts or tenders on the market, the day in respect of which the price, amount or tender is recorded;
- (g) for penalties linked to non-compliance with agricultural legislation, the date of the act of the competent authority which establishes the facts;
- (h) for turnover or amounts relating to production volumes, the start of the reference period laid down by agricultural legislation.

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### Article 37

#### **Payment of advances**

For advances, the operative event for the exchange rate shall be the operative event applicable to the price or amount to which the advance relates, where this event has occurred by the time the advance is paid, or, in other cases, the date of setting in euro of the advance or, failing that, the date of payment of the advance. The operative event for the exchange rate shall be applied to advances without prejudice to the application to the entire price or amount in question of the operative event for that price or amount.

### Article 38

#### **Securities**

For securities, the operative event for the exchange rate shall be the date on which the security is lodged.

However, the following exceptions shall apply:

- (a) for securities relating to advances, the operative event for the exchange rate shall be the operative event as defined for the amount of the advance, where that event has occurred by the time the security is paid;
- (b) for securities relating to the submission of tenders, the operative event for the exchange rate shall be the day on which the tender is submitted;
- (c) for securities relating to the performance of tenders, the operative event for the exchange rate shall be the closing date of the invitation to tender.

### Article 39

#### **Scrutiny of transactions**

The amounts in euro appearing in Chapter III of Title V of Regulation (EU) No 1306/2013 shall be converted, where appropriate, into national currencies by applying the rate of exchange operating on the first working date of the year when the scrutiny period begins and published in the C series of the *Official Journal of the European Union*.

### Article 40

#### **Determination of the exchange rate**

When an operative event is fixed under Union legislation, the exchange rate to be used shall be the most recent rate set by the European Central Bank (ECB) prior to the first day of the month in which the operative event occurs.

However, in the following cases, the exchange rate to be used shall be:

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- (a) for the cases referred to in Article 28(2) of this Regulation in which the operative event for the exchange rate is the acceptance of the customs declaration, the rate referred to in Article 18(1) of Regulation (EEC) No 2913/92;
- (b) for intervention expenditure incurred in the context of public storage operations, the rate resulting from the application of Article 3(2) of Commission Delegated Regulation (EU) No 906/2014<sup>(28)</sup>;
- (c) for the minimum price for beet referred to in Article 33 of this Regulation, the average rate established by the European Central Bank (ECB) for the month prior to the operative event.

## CHAPTER VI

### FINAL PROVISION

#### *Article 41*

#### **Transitional provisions**

1. Where a paying agency, accredited in accordance with Regulation (EU) No 1290/2005, assumes responsibility for expenditure for which it was not previously responsible, it shall be accredited with the new responsibilities by 1 January 2015.
2. The measures listed in the Annex to Regulation (EC) No 1106/2010 shall not be subject to the system of scrutiny established by Chapter III of Title V of Regulation (EU) No 1306/2013 for the purpose of the scrutiny in respect of expenditure prior to financial year 2014.
3. Where in specific legislation reference is made to primary, secondary, or subordinate requirements as referred to in Regulation (EU) No 282/2012, Article 23(2), (3) and (4) of this Regulation shall apply.
4. For the rural development programmes referred to in Article 15 of Regulation (EC) No 1698/2005:
  - (a) the provisions of Article 38(1) of Regulation (EU) No 1306/2013 shall apply for the budget commitments not used by 31 December of the second year following that of the budget commitment. In Article 38 of that Regulation the references made to year N+3 shall be regarded as references to year N+2;
  - (b) the interim payments made by the Commission shall be subject, as referred to in point (b) of Article 36(3) of Regulation (EU) No 1306/2013, to no overrun of the total EAFRD contribution to each priority for the entire period covered by the programme concerned;
  - (c) for the purpose of applying Articles 37 and 38 of Regulation (EU) No 1306/2013, the final eligibility date of expenditure shall be the one laid down in Article 71(1) of Regulation (EC) No 1698/2005.
5. For the purpose of applying Article 54(1) and (2) of Regulation (EU) No 1306/2013, for the cases reported or to be reported to the Commission in respect of financial years 2013 and 2014, as referred to in point (h) of Article 6 of Regulation (EC) No 885/2006, the financial year of the primary finding of irregularity in the sense of Article 35 of Regulation (EC) No 1290/2005 shall continue to be taken into account. For the cases for which no primary administrative or

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judicial finding of irregularity was established before 16 October 2014, the provisions of Article 54(1) and (2) of Regulation (EU) No 1306/2013 shall apply.

As regards EAFRD, for the purpose of clearing the accounts in accordance with Article 51 of Regulation (EU) No 1306/2013, the provisions of Article 54(2) of that Regulation shall apply starting with the clearance of the accounts for financial year 2014.

#### *Article 42*

### **Amendment to Regulation (EC) No 376/2008**

Paragraphs 6 and 7 of Article 34 of Regulation (EC) No 376/2008 are deleted.

However, those provisions shall continue to apply for the securities validly lodged under that Regulation before the entry into force of this Regulation.

#### *Article 43*

### **Amendment to Regulation (EC) No 612/2009**

Article 47(3) of Commission Regulation (EC) No 612/2009 is deleted.

However, those provisions shall continue to apply for the securities validly lodged under that Regulation before the entry into force of this Regulation.

#### *Article 44*

### **Repeal**

Regulations (EC) No 883/2006, (EC) No 884/2006, (EC) No 885/2006, (EC) No 1913/2006, (EU) No 1106/2010 and (EU) No 282/2012 are repealed.

However, the following shall apply:

- (a) Regulation (EU) No 282/2012 shall continue to apply for the securities validly lodged under that Regulation before the entry into force of this Regulation;
- (b) Article 4 of Regulation (EC) No 883/2006 shall continue to apply to expenditure effected until 15 October 2014;
- (c) Article 11 and Chapter III of Regulation (EC) No 885/2006 shall continue to apply until 31 December 2014.

#### *Article 45*

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

This Regulation shall enter into force on the seventh day following that of its publication in the *Official Journal of the European Union*.

Article 41(4) shall apply from 1 January 2014.

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This Regulation shall be binding in its entirety and directly applicable in all Member States.

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## ANNEX I

### ACCREDITATION CRITERIA

(Article 1)

#### 1. INTERNAL ENVIRONMENT

##### (A) Organisational structure

The paying agency's organisational structure shall allow it to execute the following main functions in respect of EAGF and EAFRD expenditure:

- (i) Authorisation and control of payments to establish that the amount to be paid to a beneficiary is in conformity with Union rules, which shall include, in particular, administrative and on-the-spot controls;
- (ii) Execution of payments of the authorised amount to beneficiaries (or their assignees) or, in the case of rural development, the Union co-financing part;
- (iii) Accounting to record all payments in the paying agency's separate accounts for EAGF and EAFRD expenditure, in the form of an information system, and the preparation of periodic summaries of expenditure, including the monthly (for EAGF), quarterly (for EAFRD) and annual declarations to the Commission. The paying agency's accounts shall also record the assets financed by the Funds, in particular concerning intervention stocks, uncleared advances, securities and debtors.

The paying agency's organisational structure shall provide for clear assignment of authority and responsibility at all operational levels and for separation of the three functions referred to in the first paragraph, the responsibilities of which shall be defined in an organisational chart. It shall include the technical services and the internal audit service referred to under point 4.

##### (B) Human-resource standard

The agency shall ensure that:

- (i) Appropriate human resources are allocated to carry out operations and existence of appropriate technical skills as required at different operational levels.
- (ii) The division of duties is such that no official has responsibility for more than one of the responsibilities for authorising, paying or accounting of sums charged to the EAGF or to the EAFRD, and no official performs any of those tasks without the supervision of a second official.
- (iii) The responsibilities of each official are defined in a written job description, including the setting of financial limits to his/her authority.
- (iv) Staff training is appropriate at all operational levels, including fraud awareness, and there is a policy for rotating staff in sensitive positions, or alternatively for increased supervision.
- (v) Appropriate measures are taken to avoid a conflict of interests where a person occupying a position of responsibility or a sensitive position with regard to the verification, authorisation, payment and accounting of claims or payment request also fulfils other functions outside the paying agency.

##### (C) Delegation

- (C.1) If the paying agency delegates any of its tasks to another body under Article 7 of Regulation (EU) No 1306/2013, the following conditions have to be fulfilled:
- (i) A written agreement must be concluded between the paying agency and that body specifying, apart from the delegated tasks, the nature of the information and the supporting documents to be submitted to the paying agency and the time limit within which they must be submitted. The agreement must enable the paying agency to comply with the accreditation criteria.
  - (ii) The paying agency shall in all cases remain responsible for the efficient management of the Funds concerned. It remains fully responsible for the legality and regularity of the underlying transactions, including protecting the Union's financial interest, as well as for declaring the corresponding expenditure to the Commission and for preparing the accounts accordingly.
  - (iii) The responsibilities and obligations of the other body, notably concerning the control and verification of the compliance with Union rules, shall be clearly defined.
  - (iv) The paying agency shall ensure that the other body has effective systems for ensuring that it fulfils its tasks in a satisfactory manner.
  - (v) The other body shall explicitly confirm to the paying agency that it in fact fulfils its tasks and shall describe the means employed.
  - (vi) The paying agency shall regularly review the tasks delegated to confirm that the work performed is of satisfactory standard and that it is in compliance with Union rules.
- (C.2) The conditions set out in points (C.1) (i), (ii), (iii) and (v) above shall apply *mutatis mutandis* in the cases where paying agency functions are performed by another body as part of its regular tasks on the basis of national legislation.

## 2. CONTROL ACTIVITIES

### (A) Procedures for authorising claims

The paying agency shall adopt the following procedures:

- (i) The paying agency shall lay down detailed procedures for the receipt, recording and processing of claims, including a description of all documents to be used.
- (ii) Each official responsible for authorisation shall have at his/her disposal a detailed checklist of the verifications to be carried out, and shall attest in the supporting documents of the claim that those checks have been carried out. That attestation may be made by electronic means. There shall be evidence of systematic, such as sample, system or plan based review of the work by a senior staff member.
- (iii) A claim shall be authorised for payment only after sufficient checks have been carried out to ensure compliance with Union rules.

The checks shall include those required by the relevant Regulation governing the specific measure under which aid is claimed, and those required pursuant to Article 58 of Regulation (EU) No 1306/2013 to prevent and detect fraud and irregularity with particular regard to the risks incurred. For the EAFRD, there shall in addition be procedures for verifying that the conditions for the granting of aid, including contracting, have been respected and that all applicable Union and national rules, including those fixed in the rural development program, have been complied with.

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- (iv) The management of the paying agency shall, at an appropriate level, be informed on a regular and timely basis of the results of administrative and on-the-spot checks carried out, so that the sufficiency of those controls may always be taken into account before a claim is settled.
- (v) The work performed shall be detailed in a report accompanying each claim, batch of claims or, if appropriate, in a report covering one marketing year. The report shall be accompanied by an attestation of the eligibility of the approved claims and of the nature, scope and limits of the work done. In addition, for the EAFRD there shall be an assurance that the criteria for the granting of aid, including contracting, have been respected and that all applicable Union and national rules, including those fixed in the rural development program, have been complied with. If any physical or administrative checks are not exhaustive, but performed on a sample of claims, the claims selected shall be identified, the sampling method described, the results of all inspections and the measures taken in respect of discrepancies and irregularities reported upon. The supporting documents shall be sufficient to provide assurance that all the required checks on the eligibility of the authorised claims have been performed.
- (vi) Where documents (in paper or electronic form) relating to the claims authorised and controls made are retained by other bodies, both those bodies and the paying agency shall set up procedures to ensure that the location of all such documents relevant to specific payments is recorded.

**(B) Procedures for payment**

The paying agency shall adopt the necessary procedures to ensure that payments are made only to bank accounts belonging either to beneficiaries or to their assignees. The payment shall be made by the paying agency's bank, or, as appropriate, a governmental payments office, within five working days of the date of charge to the EAGF or to the EAFRD. Procedures shall be adopted to ensure that all payments for which transfers are not executed are not declared to the Funds for reimbursement. If such payments have already been declared to the Funds these should be re-credited to the Funds via the next monthly/quarterly declarations or in the annual accounts at the latest. No payments shall be made in cash. The approval of the authorising official and/or his/her supervisor may be made by electronic means, provided an appropriate level of security over those means is ensured, and the identity of the signatory is entered into the electronic records.

**(C) Procedures for accounting**

The paying agency shall adopt the following procedures:

- (i) Accounting procedures shall ensure that monthly (for EAGF), quarterly (for the EAFRD) and annual declarations are complete, accurate and timely, and that any errors or omissions are detected and corrected, in particular through checks and reconciliations performed at regular intervals.
- (ii) The accounting for intervention storage shall ensure that the quantities and associated costs are correctly and promptly processed and recorded per identifiable lot and in the correct account at each stage from the acceptance of an offer to the physical disposal of the product, in compliance with the applicable regulations, and ensure that the quantity and nature of stocks at every location may be determined at any time.

**(D) Procedures for advances and securities**

Procedures shall be adopted to ensure that:

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- (i) Payments of advances are separately identified in the accounting or subsidiary records.
- (ii) Guarantees are obtained only from financial institutions which fulfil the conditions of Chapter IV of this Regulation and which are approved by the appropriate authorities and which remain valid until cleared or called upon, on the simple request of the paying agency.
- (iii) The advances are cleared within the stipulated time limits and those overdue for clearing are promptly identified and the guarantees promptly called upon.

**(E) Procedures for debts**

All the criteria provided for in points (A) to (D) shall apply, *mutatis mutandis*, to levies, forfeited guarantees, reimbursed payments, assigned revenues etc. which the paying agency is required to collect on behalf of the EAGF and of the EAFRD.

The paying agency shall set up a system for the recognition of all amounts due and for the recording in a single debtor's ledger of all such debts prior to their receipt. The debtor's ledger shall be inspected at regular intervals and action shall be taken to collect debts that are overdue.

**(F) Audit trail**

The information regarding documentary evidence of the authorisation, accounting and payment of claims and handling of advances, securities and debts shall be available in the paying agency to ensure at all times a sufficiently detailed audit trail.

**3. INFORMATION AND COMMUNICATION**

**(A) Communication**

The paying agency shall adopt the necessary procedures to ensure that every change in the Union's regulations, and in particular the rates of aid applicable, are recorded and the instructions, databases and checklists updated in good time.

**(B) Information systems security**

- (i) Without prejudice to point (ii) below, information systems security shall be based on the criteria laid down in a version applicable in the financial year concerned of one of the following standards:
  - International Standards Organisation 27002: Code of practice for Information Security controls (ISO);
  - Bundesamt für Sicherheit in der Informationstechnik: IT-Grundschutzhandbuch/IT Baseline Protection Manual (BSI);
  - Information Systems Audit and Control Association: Control objectives for Information and related Technology (COBIT).
- (ii) Starting on 16 October 2016, information systems security shall be certified in accordance with International Standards Organisation 27001: Information Security management systems – Requirements (ISO).

The Commission may authorise Member States to certify their information systems security in accordance with other accepted standards if those standards guarantee a level of security at least equivalent to that provided by ISO 27001.

For paying agencies responsible for the management and control of a yearly expenditure not higher than EUR 400 million, the Member State may decide not to apply the provisions of the

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first subparagraph. Those Member States shall continue to apply the provisions of point (i). They shall inform the Commission of their decision.

#### 4. MONITORING

##### (A) Ongoing monitoring via internal control activities

The internal control activities shall cover at least the following areas:

- (i) Monitoring of the technical services and delegated bodies responsible for carrying out the controls and other functions to ensure a proper implementation of regulations, guidelines and procedures.
- (ii) Initiating of system changes in order to improve control systems in general.
- (iii) Reviewing claims and requests submitted to the paying agency as well as other information providing suspicion of irregularities.
- (iv) Monitoring procedures to prevent and detect fraud and irregularity with particular regard to those areas of CAP expenditure under the paying agency's competence which are exposed to a significant risk of fraud or other serious irregularities.

Ongoing monitoring is built into the normal, recurring operating activities of the paying agency. At all levels the daily operations and controls activities of the agency shall be monitored on an ongoing basis to ensure a sufficiently detailed audit trail.

##### (B) Separate evaluations via an internal audit service

The paying agency shall adopt in this respect the following procedures:

- (i) The internal audit service shall be independent of the paying agency's other departments and shall report directly to the paying agency's director.
- (ii) The internal audit service shall verify that procedures adopted by the agency are adequate to ensure that compliance with Union rules is verified and that the accounts are accurate, complete and timely. Verifications may be limited to selected measures and to samples of transactions provided that an audit plan ensures that all significant areas, including the departments responsible for authorisation, are covered over a period not exceeding five years.
- (iii) The internal audit service's work shall be performed in accordance with internationally accepted standards, shall be recorded in working papers and shall result in reports and recommendations addressed to the agency's top management.

## ANNEX II

### OBLIGATIONS OF THE PAYING AGENCIES AND PHYSICAL INSPECTION PROCEDURES

(Article 3)

#### A. OBLIGATIONS OF THE PAYING AGENCIES

##### I. Checks

###### 1. Frequency and representativeness

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Each storage point shall be inspected at least once every year in accordance with the rules set out in point B, to ascertain in particular:

- the procedure for collecting information on public storage;
- whether the accounting data held on the spot by the storer tallies with the information sent to the paying agency;
- the physical presence in the store of the quantities mentioned in the storer's accounting records and which served as a basis for the latest monthly statement provided by the storer, assessed visually or, in case of doubt or dispute, by weighing or measuring;
- the sound, fair and marketable quality of the products stored.

Physical presence shall be established by a sufficiently representative physical inspection, covering at least the percentages set out in point B and making it possible to conclude that the entire quantities listed in the stock accounts are actually present.

Checks on quality shall comprise visual, olfactory and/or organoleptic checks and, if there are any doubts, in-depth analyses.

## 2. *Additional checks*

If an anomaly is detected during the physical inspection, a further percentage of the quantities in intervention storage shall be inspected using the same method. If necessary, inspection may extend to weighing all the products in the lot or store being inspected.

## II. **Inspection reports**

1. The internal inspection body of the paying agency or the body authorised by the latter shall draw up a report on each of the checks or physical inspections carried out.
2. The report shall contain at least the following information:
  - (a) the name of the storer, the address of the store visited and the description of the lots inspected;
  - (b) the date and time when the inspection began and ended;
  - (c) the place where the inspection took place and a description of the conditions of storage, packaging and accessibility;
  - (d) the full identity of the persons conducting the inspection, their status and the terms of their authorisation;
  - (e) the inspection measures undertaken and procedures used to establish volume, such as measuring methods, calculations, interim and final results, and the conclusions drawn;
  - (f) for each lot or quality stored, the quantity in the paying agency's books, the quantity in the store's books and any discrepancies between the two sets of books;
  - (g) for each lot or quality physically inspected, the information referred to in point (f) and the quantity verified on the spot and any discrepancies, the lot or quality number, the pallets, boxes, silos, vats or other receptacles involved and the weight (both net and gross if appropriate) or volume;
  - (h) the statements made by the storer where there are discrepancies or differences;
  - (i) the place, date and signature of the person drawing up the report and of the storer or representative;

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- (j) any extended inspection conducted in the case of anomalies, specifying the percentage of the stored quantities covered by the extended inspection, discrepancies found and explanations given.
3. The reports shall be sent immediately to the head of the department responsible for keeping the accounts of the paying agency.

Immediately after receipt of the report, the paying agency's accounts shall be corrected in the light of the discrepancies and differences detected.

4. The reports shall be kept at the head office of the paying agency and be available to Commission staff and persons authorised by the Commission.
5. A summary document shall be drawn up by the paying agency listing:
- the checks carried out, clearly indicating which are physical inspections (inventory checks),
  - the quantities checked,
  - the anomalies detected in relation to the monthly and annual statements, and the reasons for those anomalies.

The quantities checked and the anomalies detected shall be indicated for each product concerned, in terms of weight or volume and as a percentage of the total quantities held.

This summary document shall list separately the checks to verify the quality of the products stored. It shall be sent to the Commission at the same time as the annual accounts referred to in Article 7(3)(a) of Regulation (EU) No 1306/2013.

**B. PHYSICAL INSPECTION PROCEDURE BY SECTOR OF THE COMMON AGRICULTURAL POLICY FOR THE CHECKS PROVIDED FOR IN POINT A**

**I. Butter**

1. The sample of the lots to be checked shall represent at least 5 % of the total quantity in public storage. The lots to be checked shall be selected prior to the visit to the store on the basis of the paying agency's accounting data, but the storer shall not be informed.
2. The presence of the lots selected and their composition shall be verified on the spot by:
- identifying the control numbers of the lots and boxes on the basis of purchase or entry notes,
  - weighing the pallets (one in 10) and the boxes (one per pallet),
  - visually checking the contents of a box (one in five pallets),
  - checking the condition of the packaging.
3. A description of the lots physically inspected and any shortcomings noted shall be included in the inspection report.

**II. Skimmed-milk powder**

1. The sample of the lots to be checked shall represent at least 5 % of the quantity in public storage. The lots to be checked shall be selected prior to the visit to the store on the basis of the paying agency's accounting data, but the storer shall not be informed.
2. The presence of the lots selected and their composition shall be verified on the spot by:
- identifying the control numbers of the lots and bags on the basis of purchase or entry notes,
  - weighing the pallets (one in 10) and bags (one in 10),

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- visually checking the contents of a bag (one in five pallets),
  - checking the condition of the packaging.
3. A description of the lots physically inspected and any shortcomings noted shall be included in the inspection report.

### III. Cereals and Rice

#### 1. *Physical inspection procedure*

- (a) Selection of bins or storerooms to be checked, representing at least 5 % of the total quantity of cereals or rice in public storage.

Selection shall be based on the paying agency's stock records, but the storer shall not be informed.

- (b) Physical inspection:

- verification of the presence of cereals or rice in the selected bins or storerooms,
- identification of the cereals or rice,
- inspection of storage conditions and check on the quality of the products stored in the conditions provided for in Regulation (EU) No 1272/2009<sup>(29)</sup>,
- comparison of the place of storage and identity of the cereals or rice with the store's records,
- evaluation of the quantities stored by a method previously approved by the paying agency, a description of which shall be lodged at its head office.

- (c) A plan of the warehouse and the measurements for each silo or storeroom shall be available at each storage point.

The cereals or rice shall be stored in such a way that their volume may be verified.

#### 2. *Procedure where discrepancies are found*

Some tolerance is permitted when verifying the volume.

The rules laid down in Annex III, point II shall thus apply where the weight of the products stored as recorded during the physical inspection differs from the book weight by 5 % or more for cereals and for rice in the case of storage in silos or on-floor storage.

Where cereals or rice are stored in a warehouse, the quantities weighed on entry into storage may be recorded instead of those resulting from a volume assessment if the latter does not provide an adequate degree of accuracy and provided the difference between the two figures is not excessive.

The paying agency shall make use of this option where justified by circumstances, on a case-by-case basis and on its own responsibility. It shall indicate that it has done so in its inspection report, based on the following model:

*(INDICATIVE MODEL)*

#### CEREALS — STOCK INSPECTION

<b>Product:</b>	<b>Storer: Store, silo:Cell number:</b>	<b>Date:</b>
Lot	Quantity stated in stock accounts	

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A.

### STOCKS IN SILO

Chamber No	Volume stated in specification m <sup>3</sup> (A)	Free volume recorded m <sup>3</sup> (B)	Volume of stored cereals m <sup>3</sup> (A-B)	Specific gravity recorded kg/hl = 100	Weight of cereals or rice

Total (A): ...

B.

### STOCKS IN ON-FLOOR STORAGE

	Storeroom No		Storeroom No		Storeroom No	
Area covered ...	...m <sup>2</sup>	...	...m <sup>2</sup>	...	...m <sup>2</sup>	...
Height ...	...	... m <sup>3</sup>	...	... m <sup>3</sup>	...	... m <sup>3</sup>
	...m	...	... m	...	... m	...
Corrections ...	... m <sup>3</sup>		... m <sup>3</sup>		... m <sup>3</sup>	
Volume ...	... m <sup>3</sup>		... m <sup>3</sup>		... m <sup>3</sup>	
Specific gravity ...	... kg/hl		... kg/hl		... kg/hl	
Total weight	... tonnes		... tonnes		... tonnes	

Total (B): ...

Total weight in the store: ...

Difference from book weight: ...

In %: ...

..., [date]

... (Stamp and signature)

Paying agency inspector:

#### IV. Beef And Veal

1. The sample of the lots to be checked shall represent at least 5 % of the total quantity in public storage. The lots to be checked shall be selected prior to the visit to the store on the basis of the paying agency's accounting data, but the storer shall not be informed.
2. In the case of boned meat, the presence of the lots selected and their composition shall be verified on the spot by:

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- identifying the lots and pallets and verifying the number of boxes,
- checking the weight of 10 % of the pallets or containers,
- checking the weight of 10 % of the boxes from each pallet weighed,
- visually checking the contents of the boxes and the condition of the packaging in each box.

The pallets shall be chosen having regard to the different cuts in store.

3. A description of the lots physically inspected and any shortcomings noted shall be included in the inspection report.

### ANNEX III

#### **OBLIGATIONS AND GENERAL PRINCIPLES RELATING TO STORERS' RESPONSIBILITIES, TO BE INCLUDED IN STORAGE CONTRACTS CONCLUDED BETWEEN PAYING AGENCIES AND STORERS (Article 3)**

Storers shall be responsible for ensuring that the products covered by Union intervention measures are properly conserved. They shall bear the financial consequences of any failure to do so.

#### I. QUALITY OF PRODUCTS

Where the quality of intervention products in storage deteriorates as a result of poor or inappropriate storage conditions, the losses shall be borne by the storer and entered in the public storage accounts as a loss resulting from deterioration of the product due to storage conditions.

#### II. MISSING QUANTITIES

1. The storer shall be responsible for all discrepancies between the quantities in store and the details given in the stock statements sent to the paying agency.
2. Where the missing quantities exceed those allowed under the relevant tolerance limit(s), in accordance with Article 4, Annex II point B. III(2) and Annex IV, or under sectoral agricultural legislation, the entire amount shall be charged to the storer as an unidentifiable loss. Storers contesting the missing quantities may require the product to be weighed or measured, in which case they shall bear the costs of the operation unless it is found that the quantities declared are actually present or the difference does not exceed the relevant tolerance limit(s), in which case the costs of weighing or measuring shall be charged to the paying agency.

The tolerance limits provided for in Annex II, points B. III(2) shall apply without prejudice to the other tolerances referred to in the first subparagraph.

#### III. SUPPORTING DOCUMENTS AND MONTHLY AND ANNUAL DECLARATIONS

##### 1. Supporting documents and monthly declarations

- (a) The documents relating to the entry, storage and removal of products used to draw up the annual accounts must be in the storer's possession and contain at least the following information:
  - place of storage (with identification of the bin or vat where relevant),

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- quantity carried over from the previous month,
- entries and removals by lot,
- stock at the end of the period.

These documents shall permit precise identification of the quantities in store at any time, and shall take account of purchases and sales that have been agreed but for which the corresponding entries or removals of stock have not yet occurred.

- (b) The documents relating to the entry, storage and removal of products shall be sent by the storer to the paying agency at least once a month, in support of a summary monthly stock statement. They shall must be in the paying agency's possession before the tenth day of the month following that to which the stock statement relates.
- (c) A specimen summary monthly stock statement (indicative model) is set out below. It shall be made available to storers in electronic form by the paying agencies.

#### MONTHLY STOCK STATEMENT

Products:		Storer:Store: No:Address:		Month:	
Lot	Description	Quantity (kg, tonnes, hl, boxes, items, etc.)		Date	Comments
		Entry	Exit		
	Quantity carried over				
	Quantity to be carried over				

(Stamp and signature)

Place and date:

Name:

#### 2. Annual declaration

- (a) The storer shall prepare an annual stock declaration on the basis of the monthly statements described in point 1. It shall be sent to the paying agency no later than the 15 October following the closure of the accounting year.
- (b) The annual stock declaration shall give a summary of the quantities in store, broken down by product and place of storage, and shall give for each product the quantities in store, the lot numbers (except in the case of cereals), the year of their entry into store and an explanation of any anomalies detected.
- (c) A specimen summary annual stock declaration (indicative model) is set out below.

It shall be made available to storers in electronic form by the paying agencies.

#### ANNUAL STOCK STATEMENT

Products:	Storer:Store: No:Address:	Year:
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Lot	Description	Quantity and/or weight booked	Comments

(Stamp and signature)

Place and date:

Name:

#### IV. COMPUTERISED STOCK ACCOUNTS AND AVAILABILITY OF INFORMATION

Public storage contracts concluded between the paying agency and the storer shall contain provisions which make it possible to guarantee compliance with Union legislation.

They shall require the following:

- the keeping of computerised intervention stock accounts;
- direct, immediate availability of a permanent inventory;
- availability at all times of all the documents relating to the entry, storage and removal of stock and the accounting documents and records drawn up under this Regulation and held by the storer;
- permanent access to those documents for staff of the paying agency and the Commission, and for any person duly authorised by them.

#### V. FORM AND CONTENT OF THE DOCUMENTS SENT TO THE PAYING AGENCY

The form and content of the documents referred to in points 1 and 2 of paragraph III shall be established in accordance with Article 104 of Regulation (EU) No 1306/2013.

#### VI. KEEPING OF DOCUMENTS

Supporting documents relating to all public storage operations shall be kept by the storer for the full period required under the rules adopted based on Article 104 of Regulation (EU) No 1306/2013 for the clearance of accounts procedures, without prejudice to the relevant national provisions.

### ANNEX IV

#### TOLERANCE LIMITS

(Article 4)

1. Tolerance limits for quantity losses resulting from normal storage operations carried out in accordance with the rules is hereby fixed for each agricultural product which is the subject of a public storage measure, as follows:
  - cereals 0,2 %
  - paddy rice, maize 0,4 %
  - skimmed-milk powder 0,0 %
  - butter 0,0 %
  - beef and veal 0,6 %

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2. The percentage for allowable losses during boning of beef shall be 32. This percentage shall apply to all quantities boned during the accounting year.
3. The tolerance limits referred to in paragraph 1 shall be fixed as a percentage of the actual weight, without packaging, of the quantities entering storage and taken over during the accounting year in question, plus the quantities in storage at the beginning of that year.

These tolerances shall apply during the physical stock inspections. They shall be calculated, for each product, on the basis of all the quantities stored by a paying agency.

The actual weight at entry and removal shall be the recorded weight minus the standard packaging weight, as laid down in the conditions of entry or, where no such conditions have been laid down, minus the average packaging weight used by the agency.

4. The tolerance shall not cover losses in terms of number of packages or number of registered pieces.
5. Losses arising from theft or other identifiable losses shall not be included in the calculation of tolerance limits provided for in paragraphs 1 and 2.

## ANNEX V

### Measures referred to in Article 10

1. Schemes listed in Annex I to Regulation (EC) No 73/2009 and, as from 2016, schemes listed in Annex I to Regulation (EU) No 1307/2013;
2. Rural development measures under Titles I and II of Part II of Commission Regulation (EU) No 65/2011<sup>(30)</sup> and the rural development measures referred to in Chapter I of Title III of Regulation (EU) No 1305/2013.

## ANNEX VI

### Measures referred to in Article 14

1. Restructuring and conversion of vineyards in accordance with Article 46 of Regulation (EU) No 1308/2013;
2. Green harvesting in accordance with Article 47 of Regulation (EU) No 1308/2013;

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- (1) [OJ L 347, 20.12.2013, p. 549.](#)
- (2) Commission Regulation (EC) No 883/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the keeping of accounts by the paying agencies, declarations of expenditure and revenue and the conditions for reimbursing expenditure under the EAGF and the EAFRD ([OJ L 171, 23.6.2006, p. 1.](#))
- (3) Commission Regulation (EC) No 884/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the financing by the European Agricultural Guarantee Fund (EAGF) of intervention measures in the form of public storage operations and the accounting of public storage operations by the paying agencies of the Member States ([OJ L 171, 23.6.2006, p. 35.](#))
- (4) Commission Regulation (EC) No 885/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the accreditation of paying agencies and other bodies and the clearance of the accounts of the EAGF and of the EAFRD ([OJ L 171, 23.6.2006, p. 90.](#))
- (5) Commission Regulation (EC) No 1913/2006 of 20 December 2006 laying down detailed rules for the application of the agrimonetary system for the euro in agriculture and amending certain regulations ([OJ L 365, 21.12.2006, p. 52.](#))
- (6) Commission Regulation (EU) No 1106/2010 of 30 November 2010 establishing the list of measures to be excluded from the application of Council Regulation (EC) No 485/2008 on scrutiny by Member States of transactions forming part of the system of financing by the European Agricultural Guarantee Fund ([OJ L 315, 1.12.2010, p. 16.](#))
- (7) Commission Implementing Regulation (EU) No 282/2012 of 28 March 2012 laying down common detailed rules for the application of the system of securities for agricultural products ([OJ L 92, 30.3.2012, p. 4.](#))
- (8) 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.](#))
- (9) Commission Regulation (EC) No 376/2008 of 23 April 2008 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products ([OJ L 114, 26.4.2008, p. 3.](#))
- (10) Commission Regulation (EC) No 612/2009 of 7 July 2009 on laying down common detailed rules for the application of the system of export refunds on agricultural products ([OJ L 186, 17.7.2009, p. 1.](#))
- (11) Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 ([OJ L 347, 20.12.2013, p. 487.](#))
- (12) Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) ([OJ L 277, 21.10.2005, p. 1.](#))
- (13) Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy ([OJ L 209, 11.8.2005, p. 1.](#))
- (14) Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ([OJ L 347, 20.12.2013, p. 671.](#))
- (15) Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 ([OJ L 347, 20.12.2013, p. 608.](#))
- (16) Regulation (EU) No 228/2013 of the European Parliament and of the Council of 13 March 2013 laying down specific measures for agriculture in the outermost regions of the Union and repealing Council Regulation (EC) No 247/2006 ([OJ L 78, 20.3.2013, p. 23.](#))
- (17) Regulation (EU) No 229/2013 of the European Parliament and of the Council of 13 March 2013 laying down specific measures for agriculture in favour of the smaller Aegean islands and repealing Council Regulation (EC) No 1405/2006 ([OJ L 78, 20.3.2013, p. 41.](#))

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- (18) <sup>F1</sup>Regulation (EU) No 228/2013 of the European Parliament and of the Council of 13 March 2013 laying down specific measures for agriculture in the outermost regions of the Union and repealing Council Regulation (EC) No 247/2006 (OJ L 78, 20.3.2013, p. 23).]
- (19) <sup>F1</sup>Regulation (EU) No 229/2013 of the European Parliament and of the Council of 13 March 2013 laying down specific measures for agriculture in favour of the smaller Aegean islands and repealing Council Regulation (EC) No 1405/2006 (OJ L 78, 20.3.2013, p. 41).]
- (20) Council Regulation (EC) No 3/2008 of 17 December 2007 on information provision and promotion measures for agricultural products on the internal market and in third countries (OJ L 3, 5.1.2008, p. 1).
- (21) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).
- (22) Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors (OJ L 157, 15.6.2011, p. 1).
- (23) Commission Regulation (EC) No 657/2008 of 10 July 2008 laying down detailed rules for applying Council Regulation (EC) No 1234/2007 as regards Community aid for supplying milk and certain milk products to pupils in educational establishments (OJ L 183, 11.7.2008, p. 17).
- (24) Commission Regulation (EC) No 595/2004 of 30 March 2004 laying down detailed rules for applying Council Regulation (EC) No 1788/2003 establishing a levy in the milk and milk products sector (OJ L 94, 31.3.2004, p. 22).
- (25) Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ L 299, 16.11.2007, p. 1).
- (26) Commission Regulation (EU) No 1272/2009 of 11 December 2009 laying down common detailed rules for the implementation of Council Regulation (EC) No 1234/2007 as regards buying-in and selling of agricultural products under public intervention (OJ L 349, 29.12.2009, p. 1).
- (27) Commission Regulation (EC) No 288/2009 of 7 April 2009 laying down detailed rules for applying Council Regulation (EC) No 1234/2007 as regards Community aid for supplying fruit and vegetables, processed fruit and vegetables and banana products to children in educational establishments, in the framework of a School Fruit Scheme (OJ L 94, 8.4.2009, p. 38).
- (28) Commission Delegated Regulation (EU) No 906/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to public intervention expenditure. (see page 1 of this Official Journal).
- (29) Commission Regulation (EU) No 1272/2009 of 11 December 2009 laying down common detailed rules for the implementation of Council Regulation (EC) No 1234/2007 as regards buying-in and selling of agricultural products under public intervention (OJ L 349, 29.12.2009, p. 1).
- (30) Commission Regulation (EU) No 65/2011 of 27 January 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures (OJ L 25, 28.1.2011, p. 8).

#### Textual Amendments

- F1** Inserted by [Commission Delegated Regulation \(EU\) 2015/160 of 28 November 2014 amending Delegated Regulation \(EU\) No 907/2014 supplementing Regulation \(EU\) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro.](#)

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