

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

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;

Status: Point in time view as at 13/01/2017.

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- (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 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.

Status: Point in time view as at 13/01/2017.

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[^{F18}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.

Textual Amendments

- F1** 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.

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.

Status:

Point in time view as at 13/01/2017.

Changes to legislation:

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