

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

### CHAPTER III

## CLEARANCE OF ACCOUNTS

### SECTION 1

#### ***Recovery of Debts***

##### *Article 27*

#### **Interest applicable to recovery of undue payments**

1 Unless otherwise provided in sectoral agricultural legislation, the interest on undue payments to be recovered as a consequence of irregularity or negligence, shall be calculated for the period elapsing between the expiry of the payment deadline for the beneficiary indicated in the recovery order and the date of the repayment or deduction. The payment deadline shall not be set at more than 60 days after the recovery order.

2 The interest rate to be applied shall in any case not be lower than the interest rate provided for by national law for the recovery of comparable undue expenditures or for the collection of receivables due.

##### *Article 28*

#### **Recovery by offsetting**

Without prejudice to any other enforcement action provided for by national law, Member States shall off-set any outstanding debt of a beneficiary established in accordance with national law against any future payments to be made by the paying agency responsible for the recovery of the debt to that beneficiary.

### SECTION 2

#### ***Clearance***

##### *Article 29*

#### **Content of the annual accounts**

The annual accounts referred to in point (c)(iii) of the first subparagraph of Article 102(1) of Regulation (EU) No 1306/2013 shall include:

- (a) the assigned revenues referred to in Article 43 of that Regulation;
- (b) the expenditure of the EAGF after deduction of any undue payments not recovered at the end of the financial year other than those referred to in point (f) of this Article, including any interests thereon, summarised by item and sub-item of the Union budget;
- (c) the expenditure of the EAFRD, by programme, measure and specific contribution rate. The annual statement of expenditure shall also include information on the amounts recovered. Once a programme is closed, any undue payments not recovered other than those referred to in point (f) of this Article, including any interests thereon, shall be deducted from the expenditure of the financial year in question;
- (d) a table of differences by item and sub-item or, in the case of the EAFRD, by programme, measure, specific contribution rate and focus area, between the expenditure and the assigned revenues declared in the annual accounts and that declared for the same period in the documents referred to in point (b) of Article 10(1) of this Regulation, as far as the EAGF is concerned, and Article 22(2) of this Regulation, as far as the EAFRD is concerned, accompanied by an explanation for every difference;
- (e) separately, the amounts to be borne by, respectively, the Member State concerned and the Union in accordance with the first subparagraph of Article 54(2) and Article 54(3) of Regulation (EU) No 1306/2013;
- (f) the table of the undue payments yet to be recovered at the end of the financial year as a consequence of irregularities within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95<sup>(1)</sup>, including any penalties provided for by the applicable sectoral Union rules and the interest thereon, following the model set out in Annex II to this Regulation;
- (g) an extract from the debtors ledger of the amounts to be recovered and credited to either the EAGF or the EAFRD other than those referred to in points (b), (c) and (f) of this Article, including any penalties and interest thereon, following the model set out in Annex III to this Regulation;
- (h) a summary of intervention operations and a statement of the quantity and location of stocks at the end of the financial year;
- (i) confirmation that expenditure, assigned revenues and the details of each movement of intervention storage is held on the paying agency's files and accounting records;
- (j) the closing balance at the end of the financial year of unused/un-cleared cumulated advances paid by Member States to beneficiaries, detailed for the EAGF by measure and for the EAFRD by programme, and for the latter, including the financial instruments. For the financial instruments, the closing balance concerns amounts paid by the Commission that have neither been used by Member States for payments to final recipients nor have been committed for guarantee contracts according to Article 42(1) of Regulation (EU) No 1303/2013.

### *Article 30*

#### **Transmission of information**

<sup>1</sup> For the purpose of the clearance of accounts pursuant to Article 51 of Regulation (EU) No 1306/2013, each Member State shall send to the Commission:

- a the items included in the annual accounts, as referred to in Article 29 of this Regulation;
- b the opinion and reports established by the certification body or bodies, as referred to in Article 5(3) and (4) of this Regulation;
- c complete records of all the accounting information required for statistical and control purposes;
- d the management declaration as referred to in Article 3 of this Regulation;

2 The documents and the accounting information referred to in paragraph 1 shall be sent to the Commission by 15 February at the latest of the year following the end of the financial year to which they relate. The documents referred to in points (a), (b) and (d) of that paragraph shall be sent in one copy together with an electronic copy in accordance with the format and under the conditions established by the Commission pursuant to Article 24.

3 At the request of the Commission or on the initiative of a Member State, further information concerning the clearance of accounts may be addressed to the Commission within a time period determined by the Commission, taking into account the amount of work required for providing that information. In the absence of such information, the Commission may clear the accounts on the basis of the information in its possession.

4 In duly justified cases, the Commission may accept a request for late submission of information, if that request is addressed to it before the submission deadline.

### *Article 31*

#### **Form and content of the accounting information**

1 The form and content of the accounting information referred to in point (c) of Article 30(1) and the way it is to be forwarded to the Commission shall be those provided in accordance with Commission Implementing Regulation (EU) No 991/2013<sup>(2)</sup>.

- 2 The accounting information shall be used by the Commission for the sole purposes of:
- a carrying out its functions in the context of the clearance of accounts pursuant to Regulation (EU) No 1306/2013;
  - b monitoring developments and providing forecasts in the agricultural sector.

The European Court of Auditors and the European Anti-fraud Office (OLAF) shall have access to that information for the purpose of carrying out their duties.

3 Any personal data included in the accounting information collected shall only be processed for the purposes specified in paragraph 2. In particular, if accounting information is used by the Commission for the purpose referred to in point (b) of the first subparagraph of paragraph 2, the Commission shall make such data anonymous and process it in aggregated form only.

4 Any queries concerning the processing of their personal data shall be addressed by the persons concerned to the Commission as set out in Annex IV.

5 The Commission shall ensure that the accounting information is kept confidential and secure.

### Article 32

#### **Conservation of accounting information**

1 The supporting documents regarding the expenditure financed and the assigned revenues to be collected by the EAGF shall be kept at the Commission's disposal for at least three years following the year in which the Commission clears the accounts of the financial year concerned under Article 51 of Regulation (EU) No 1306/2013.

2 The supporting documents regarding the expenditure financed and the assigned revenues to be collected by the EAFRD shall be kept at the Commission's disposal for at least three years following the year in which the final payment by the paying agency has taken place.

3 In the case of irregularities or negligence, the supporting documents referred to in paragraphs 1 and 2 shall be kept at the Commission's disposal for at least three years following the year in which the sums are entirely recovered from the beneficiary and credited to the Funds or in which the financial consequences of non-recovery are determined under Article 54(2) of Regulation (EU) No 1306/2013.

4 In the case of a conformity clearance procedure provided for in Article 52 of Regulation (EU) No 1306/2013, the supporting documents referred to in paragraphs 1 and 2 of this Article shall be kept at the Commission's disposal for at least one year following the year in which that procedure has been concluded or, if a conformity decision is the subject of legal proceedings before the Court of Justice of the European Union, for at least one year following the year in which those proceedings are concluded.

5 The supporting documents referred to in paragraphs 1 to 4 shall be kept at the Commission's disposal either in paper form, in electronic form and/or in both forms.

Documents may only be kept exclusively in electronic form if the national law of the Member State concerned permits the use of electronic documents as evidence of the underlying transactions in national court proceedings.

If the documents are kept in electronic form only, the system for doing so shall comply with Section 3(B) of Annex I to Delegated Regulation (EU) No 907/2014.

### Article 33

#### **Financial clearance**

1 The Commission's decision on the clearance of accounts referred to in Article 51 of Regulation (EU) No 1306/2013 shall determine the amounts of expenditure effected in each Member State during the financial year concerned which shall be recognised as being chargeable to the Funds on the basis of the accounts referred to in Article 29 of this Regulation and any reductions and suspensions under Articles 41 of Regulation (EU) No 1306/2013.

The decision shall also determine the amounts to be charged to the Union and to the Member State concerned pursuant to Article 54(2) of Regulation (EU) No 1306/2013.

For the EAFRD, the amount determined by the clearance of accounts decision shall include the funds which are re-usable by reallocation by the Member State concerned pursuant to the second paragraph of Article 56 of Regulation (EU) No 1306/2013.

2 As regards the EAGF, the amount which, as a result of the clearance of accounts decision, is recoverable from or payable to each Member State shall be established by deducting the monthly payments in respect of the financial year concerned from the expenditure recognised for the same year in accordance with paragraph 1. The Commission shall deduct that amount from or add it to the monthly payment relating to the expenditure effected in the second month following the clearance of accounts decision.

As regards the EAFRD, the amount which, as a result of the clearance of accounts decision, is recoverable from or payable to each Member State shall be established by deducting the intermediate payments in respect of the financial year concerned from the expenditure recognised for the same year in accordance with paragraph 1.

The Commission shall deduct that amount from or add it to the first payment for which the declaration of expenditure is submitted by the Member State after the decision pursuant to Article 51 of Regulation (EU) No 1306/2013 has been adopted.

3 The Commission shall communicate to the Member State concerned the results of its verification of the information supplied, together with any amendments it proposes, by 30 April following the end of the financial year at the latest.

4 If, for reasons attributable to the Member State concerned, the Commission is unable to clear the accounts of a Member State before 31 May of the following year, the Commission shall notify that Member State of the additional inquiries it proposes to undertake pursuant to Article 47 of Regulation (EU) No 1306/2013.

5 Paragraphs 1 to 4 shall apply, *mutatis mutandis*, to assigned revenues within the meaning of Article 43 of Regulation (EU) No 1306/2013.

#### *Article 34*

### **Conformity clearance**

1 In order to determine what amounts are to be excluded from Union financing, when finding that expenditure has not been incurred in conformity with Union rules, the Commission shall use its own findings and shall take into account the information made available by Member States, provided that the latter information is provided within the time limits set by the Commission in the framework of the conformity clearance procedure carried out in accordance Article 52 of Regulation (EU) No 1306/2013 and in conformity with this Article.

2 When, as a result of any inquiry, the Commission considers that expenditure was not effected in compliance with Union rules, it shall communicate its findings to the Member State concerned, specifying the corrective measures needed to ensure future compliance with those rules, and indicating the provisional level of financial correction which at that stage of the procedure it considers corresponds to its findings. That communication shall also schedule a bilateral meeting within four months after expiry of the period for reply by the Member State. The communication shall make reference to this Article.

The Member State shall reply within two months of receipt of the communication. In its reply the Member State shall have the opportunity, in particular, to:

- a demonstrate to the Commission that the actual extent of the non-compliance or the risk for the Funds is less than what was indicated by the Commission;
- b inform the Commission of the corrective measures it has undertaken to ensure compliance with Union rules and the effective date of their implementation.

In justified cases, the Commission may, upon reasoned request of the Member State, authorise an extension of the two month period by a maximum of two months. The request shall be addressed to the Commission before the expiry of that period.

If the Member State considers that a bilateral meeting is not required, it shall inform the Commission accordingly in its reply to the communication mentioned above.

3 In the bilateral meeting both parties shall endeavour to come to an agreement as to the measures to be taken as well as to the evaluation of the gravity of the infringement and of the financial damage caused to the Union budget.

The Commission shall within 30 working days of the bilateral meeting draw up the minutes and send them to the Member State. The Member State may send its observations to the Commission within 15 working days after receipt of the minutes.

The Commission shall within six months after sending the minutes of the bilateral meeting formally communicate its conclusions to the Member State on the basis of the information received in the framework of the conformity clearance procedure. That communication shall evaluate the expenditure to be excluded from Union financing under Article 52 of Regulation (EU) No 1306/2013 and Article 12 of Delegated Regulation (EU) No 907/2014. The communication shall make reference to Article 40(1) of this Regulation.

4 Where the Member State has made use of the conciliation procedure referred to in Article 40, the Commission shall communicate its conclusions to the Member State no later than six months after:

- a the receipt of the Conciliation Body report; or
- b the receipt of additional information from the Member State within the deadline referred to in the second subparagraph of Article 40(3), provided that the conditions set out in paragraph 6 of this Article are met.

5 In order to apply paragraphs 3 and 4 within the respective time periods, the Commission shall have available all information relevant at that particular step of the procedure. Where the Commission deems it lacks information, it may at any time within the time periods set out in paragraphs 3 and 4:

- a ask for additional information from the Member State, to which the Member State shall reply within two months of receipt of the communication; and/or
- b inform the Member State of its intention to carry out an additional audit mission to conduct the necessary verifications.

In that case, the time periods referred to in paragraphs 3 and 4 shall start again either on the receipt by the Commission of the requested additional information or from the last day of the additional audit mission.

6 When evaluating the expenditure to be excluded from Union financing, the information communicated by the Member State after the Commission's formal communication referred to in the second subparagraph of paragraph 3 may only be taken into account:

- a where it is necessary to avoid the gross overestimation of the financial damage caused to the Union budget; and
- b if the late transmission of the information is duly justified by external factors and does not jeopardise the timely adoption by the Commission of the decision pursuant to Article 52 of Regulation (EU) No 1306/2013.

7 The Commission, after having communicated its conclusions to the Member States in accordance with Article 34 paragraph 3 or 4 of this Regulation, shall adopt, where appropriate,

one or more decisions under Article 52 of Regulation (EU) No 1306/2013 in order to exclude from Union financing expenditure affected by the non-compliance with Union rules. The Commission may pursue consecutive conformity clearance procedures until the Member State has actually implemented the corrective measures.

8 As regards the EAGF, the deductions from the Union financing shall be made by the Commission from the monthly payments relating to the expenditure effected in the second month following the decision pursuant to Article 52 of Regulation (EU) No 1306/2013.

As regards the EAFRD, the deductions from Union financing shall be made by the Commission from the payment for which the declaration of expenditure is submitted by the Member State after the decision pursuant to Article 52 of Regulation (EU) No 1306/2013 has been adopted.

However, at the Member State's request and after consultation of the Committee on the Agricultural Funds, the Commission may adopt a decision setting a different date for the deductions or authorising their reimbursement in instalments where this is warranted by the materiality of the deductions included in an implementing act adopted on the basis of Article 52 of Regulation (EU) No 1306/2013.

9 In duly justified cases to be notified to the Member State concerned, the Commission may extend the time periods set out in paragraphs 3 and 4.

10 Paragraphs 1 to 9 shall apply, *mutatis mutandis*, to assigned revenues within the meaning of Article 43 of Regulation (EU) No 1306/2013.

#### *Article 35*

#### **Decision not to start or pursue a conformity clearance inquiry**

1 The Commission may decide not to start or pursue a conformity clearance inquiry in accordance with Article 52 of Regulation (EU) No 1306/2013 where it expects that the possible financial correction, for the non-compliance identified as a result of an inquiry referred to in paragraph 2 of Article 34, would not exceed EUR 50 000 and 2 % of the relevant expenditure or the amounts to be recovered.

2 Where the Commission reduces the monthly payments in accordance with Article 41(1) of Regulation (EU) No 1306/2013, it may decide not to start or pursue a conformity clearance inquiry in accordance with Article 52 of that Regulation, provided that the Member State concerned has not expressed its objection to the application of this paragraph in the framework of the procedure provided for in Article 41(1) of that Regulation.

#### *Article 36*

#### **Conciliation Body**

For the purpose of the conformity clearance procedure provided for in Article 52 of Regulation (EU) No 1306/2013, a Conciliation Body shall be established. It shall perform the following tasks:

- (a) to examine any matter referred to it by a Member State which has received a formal communication from the Commission pursuant to the second subparagraph of Article 34(3) of this Regulation, including an evaluation of expenditure which the Commission intends to exclude from Union financing;

- (b) to try to reconcile the divergent positions of the Commission and the Member State concerned;
- (c) at the end of its examination, to draw up a report on the results of its reconciliation efforts, making any remarks it deems useful should all or some of the points of dispute remain unresolved.

### Article 37

#### **Composition of the Conciliation Body**

1 The Conciliation Body shall be composed of at least five members selected among eminent persons offering every guarantee of independence and who are highly qualified in matters regarding the financing of the common agricultural policy, including rural development, or in the practice of financial audit.

They must be nationals of different Member States.

2 The chairperson, the members and the substitute members shall be appointed by the Commission for an initial term of office of three years after consultation of the Committee on the Agricultural Funds.

The terms of office may be renewed for a year at a time only, the Committee on the Agricultural Funds having been informed. However, if the chairperson to be appointed is already a member of the Conciliation Body, the initial term of office as chairperson shall be three years.

The names of the chairperson, the members and the substitute members shall be published in the 'C' series of the *Official Journal of the European Union*.

3 The members of the Conciliation Body shall be remunerated having regard to the time which they are required to dedicate to the task. Costs shall be compensated in accordance with the rules in force for Commission staff.

4 After expiry of the term of office, the chairperson and the members shall remain in office until they are replaced or their term of office is renewed.

5 The term of office of members who no longer meet the conditions required for the accomplishment of their duties with the Conciliation Body or who, for whatever reason, are unavailable for an indeterminate period may be terminated by the Commission after consultation of the Committee on the Agricultural Funds.

In that case, the member concerned shall be replaced for the remainder of the period for which that member was appointed by a substitute member, the Committee on the Agricultural Funds being informed.

If the chairperson's term of office is terminated, the member who is to perform the chairperson's duties for the remainder of the period for which the chairperson was appointed shall be appointed by the Commission after consultation of the Committee on the Agricultural Funds.



### *Article 38*

#### **Independence of the Conciliation Body**

1 The members of the Conciliation Body shall carry out their duties independently, neither seeking nor accepting instructions from the Commission, any government or body.

The members shall not take part in the work of the Conciliation Body or sign a report if, in a previous office, they have been personally involved in the matter at issue.

2 Without prejudice to Article 287 of the Treaty, the members shall not disclose any information acquired by them in the course of their work for the Conciliation Body. Such information shall be confidential and covered by the obligation of professional secrecy.

### *Article 39*

#### **Working arrangements**

1 The Conciliation Body shall meet at the headquarters of the Commission. The chairperson shall prepare and organise the work. In the chairperson's absence, and without prejudice to the first subparagraph of Article 37(5), the most senior member shall take the chair.

The secretariat of the Conciliation Body shall be provided by the Commission.

2 Without prejudice to the second subparagraph of Article 38(1), reports shall be adopted by an absolute majority of members present, the quorum for deliberations being three.

The reports shall be signed by the chairperson and members who have taken part in the deliberations. They shall be co-signed by the secretariat.

### *Article 40*

#### **Conciliation procedure**

1 A Member State may refer a matter to the Conciliation Body within 30 working days of receipt of the Commission's formal communication referred to in the second subparagraph of Article 34(3) by sending a reasoned request for conciliation to the secretariat of the Conciliation Body.

The procedure to be followed and the address of the secretariat shall be notified to the Member States through the Committee on the Agricultural Funds.

2 A request for conciliation shall only be admissible where the amount envisaged to be excluded from the Union financing according to the Commission's communication either:

a exceeds EUR 1 million;

or

b represents at least 25 % of the Member State's total annual expenditure under the budget items concerned.

In addition, if during the preceding discussions the Member State claimed and demonstrated that the matter is one of principle relating to the application of Union rules, the chairperson of the Conciliation Body may declare a request for conciliation

to be admissible. However, such a request shall not be admissible if it relates solely to a matter of legal interpretation.

3 The Conciliation Body shall conduct its investigations as informally and promptly as possible, basing itself solely on the evidence available to the Commission at the time when formal conclusions are communicated in accordance with Article 34(3) and giving the Commission and the national authorities concerned a fair hearing.

However, if the Member State considers it necessary to present in its request for conciliation information which has not yet been communicated to the Commission, the Conciliation Body may invite the Commission to assess that new information only if the conditions set out in Article 34(6) are met. The information shall be communicated to the Commission at the latest two months after the report referred to in point (c) of Article 36 has been sent.

4 Where, within four months of a case being referred to it, the Conciliation Body is not able to reconcile the positions of the Commission and the Member State, the conciliation procedure shall be deemed to have failed.

The report referred to in point (c) of Article 36 shall state the reasons why the positions could not be reconciled. It shall indicate whether any partial agreement was reached during the proceedings and whether the Conciliation Body invites the Commission to assess new information in accordance with the second subparagraph of paragraph 3.

The report shall be sent to:

- a the Member State concerned;
- b the Commission, for examination before communicating its conclusions to the Member State;
- c the other Member States in the framework of the Committee on the Agricultural Funds.

- (1) Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests ([OJ L 312, 23.12.1995, p. 1](#)).
- (2) Commission Implementing Regulation (EU) No 991/2013 of 15 October 2013 laying down form and content of the accounting information to be submitted to the Commission for the purpose of the clearance of the accounts of the EAGF and EAFRD as well as for monitoring and forecasting purposes ([OJ L 275, 16.10.2013, p. 7](#)).