

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 V

### SECURITIES

#### SECTION 1

#### *Scope, information technology, force majeure*

##### *Article 48*

##### **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>(1)</sup>.

##### *Article 49*

##### **e-Administration**

Communications, documents and securities may be produced, processed, and managed by using information technology (IT) on condition that the systems applicable are managed under the officially approved quality and security protocols fit for those systems.

If competent authorities cannot access required documents for verification because of differences in IT systems, those documents shall be printed out and certified as genuine by the authority competent for the management of those IT systems (‘the issuing authority’) or by an authority competent for certifying documents as true copy.

Such print-outs may be replaced by an electronic message between the issuing authority and the beneficiary or the competent authority, on condition that the issuing authority provides in an officially approved certification protocol ensuring the genuineness of the message.

##### *Article 50*

##### **Force majeure time limits**

1 This Article shall apply when a specific Regulation refers to it.

2 A request for recognition of a case of *force majeure* shall not be admissible if it is received by the competent authority more than 30 calendar days after:

- a the date on which the operator was informed by the competent authority of the established non-fulfilment of the relevant obligation within the meaning of Article 23(2) of Delegated Regulation (EU) No 907/2014, the expiry of the time limit for the fulfilment of the relevant obligation as referred to in Article 23(3) of that Regulation or the expiry of the time limit for the presentation of the proof for the fulfilment of the relevant obligation as referred to in Article 23(4) of that Regulation;
- b the closing date for submission of tenders in a third country where the tender is linked to an advanced fixing certificate for export refunds;

3 Operators shall, to the competent authority's satisfaction, provide proof of the circumstances which they consider to constitute *force majeure* within 181 calendar days of the expiry of the period in which the obligation had to be fulfilled completely. Operators may be granted further time if they are unable to produce proof within that time limit despite having acted with all due diligence to obtain and forward it.

4 Member States shall notify the Commission of the cases of *force majeure* they have recognised, providing the relevant information of each case.

## SECTION 2

### *Form of securities*

#### *Article 51*

##### **Form**

1 A security may be given:

- a as a cash deposit as referred to in Article 19(2) and (3) of Delegated Regulation (EU) No 907/2014; and/or
- b by providing a guarantor in accordance with Article 21 of Delegated Regulation (EU) No 907/2014.

2 At the discretion of the competent authority, a security may be given by:

- a pledging cash deposits in a bank;
- b pledging recognised claims against a public body or public funds, which are due and payable and against which no other claim has precedence; and/or
- c pledging collateral negotiable in the Member State concerned provided they are issued or guaranteed by that Member State.

3 The competent authority may impose additional terms for accepting securities of the type listed in paragraph 2.

#### *Article 52*

##### **Negotiable collateral**

1 Collateral pledged in accordance with point (c) of Article 51(2) shall, at the time the security is given, have a disposable value of at least 115 % of the value of the security required.

2 A competent authority may accept a security as referred to in point (c) of Article 51(2) only if the party offering it undertakes, in writing, either to give an additional security or to replace the original security should the disposable value of the security in question have been for a period of three months below 105 % of the value of the security required. That written undertaking shall not be necessary where national law already so provides. The competent authority shall regularly review the value of such security.

3 The disposable value of a security as referred to in point (c) of Article 51(2) shall be assessed by the competent authority, taking into account any costs of disposal.

4 The disposable value of securities shall be assessed using the last available quotation.

5 The party giving the security shall, at the request of the competent authority, provide proof of its disposable value.

### *Article 53*

#### **Replacement and assignment**

1 Any form of security may be replaced by another.

However, the agreement of the competent authority shall be required in the following cases:

- a where the original security has been forfeited but not yet realised; or
- b where the replacement security is of a type listed in Article 51(2).

2 A block security may be replaced by another block security on condition that the new block security covers at least that part of the original block security assigned at the time of replacement to ensure fulfilment of one or more obligations still outstanding.

3 As soon as part of a block security is assigned to a particular obligation, the balance of the block security remaining shall be noted.

### *SECTION 3*

#### ***Release and forfeiture***

### *Article 54*

#### **Partial release**

Where specific Union rules do not specify a minimum quantity, the competent authority may itself restrict the number of partial releases of any one security and may specify a minimum sum for any such release.

Before releasing all or part of a security the competent authority may require that a written request for release be provided.

In the case of securities covering more than 100 % of the sum required to be secured, that part of the security exceeding 100 % shall be released when the remainder of the sum secured is finally released or forfeited.

## Article 55

### Forfeiture

1 Once the competent authority is aware of circumstances giving rise to forfeiture of the security, in whole or in part, it shall without delay demand the party required to meet the obligation to pay the sum forfeited, allowing up to 30 days from the day of receipt of demand for payment.

Where payment has not been made at the end of that period, the competent authority shall:

- a without delay clear any security of the type described in Article 51(1)(a) to the appropriate account;
- b without delay require the guarantor referred to in Article 51(1)(b) to pay, allowing up to 30 days from the day of receipt of demand for payment;
- c without delay take steps to:
  - (i) convert the securities described in Article 51(2)(b) and (c) into money sufficient to recover the sum due;
  - (ii) clear pledged cash deposits referred to in Article 51(2)(a) to its own account.

The competent authority may without delay clear any security of the type described in Article 51(1)(a) to the appropriate account without first requiring the person concerned to effect payment.

2 Without prejudice to paragraph 1,

- a where the decision to forfeit a security is taken but on appeal is subsequently postponed in accordance with national law, the party concerned shall pay interest on the sum actually forfeited over the period starting 30 days from the day of receipt of the demand for payment as referred to in paragraph 1 and ending on the day prior to the payment of the sum actually forfeited;
- b where following the outcome of the appeal procedure the party concerned is asked to pay within 30 days the sum forfeited, for the purposes of calculating interest the Member State may consider payment to be made on the 20th day following the date of such request;
- c the rate of interest applicable is calculated in accordance with national law, but shall in no case be lower than the interest rate applicable in case of recovery of national amounts;
- d paying agencies shall deduct the interest paid from EAGF or EAFRD expenditure in accordance with Regulation (EU) No 1306/2013;
- e Member States may claim periodically an increase of the security in respect of the interest involved.

3 Where a security has been forfeited and the amount already credited to the Funds and, following the outcome of an appeal procedure, the sum forfeited in whole or in part, including interest at a rate in accordance with national law, is to be repaid, the sum to be repaid shall be borne by the Funds, unless the repayment of the security is attributable to the negligence or serious mistake of administrative authorities or other bodies of the Member State.

## SECTION 4

### **Information**

#### *Article 56*

#### **Information on securities forfeiture, types of securities and guarantors**

1 Member States shall keep available for the Commission, for each year, the total number and sum of securities forfeited, whatever stage of the procedure set out in Article 55 has been reached, distinguishing in either case between those credited to the national budgets and those credited to the budget of the Union. That information shall be kept in relation to all securities forfeited for an amount greater than EUR 1 000 and each Union provision requiring that a security be given. The information shall cover both sums paid directly by the interested party and sums recovered by realising a security.

- 2 Member States shall keep at the Commission's disposal a list of:
- a the types of institutions authorised to act as guarantors and the requirements laid down in that respect;
  - b the types of security accepted pursuant to Article 51(2) and the requirements laid down in that respect.

- (1) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ([OJ L 302, 19.10.1992, p. 1](#)).