

Horizontal Regulation

DRAFT

Regulation of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union and amending Regulation (EC) No 2012/2002, Regulations (EU) No 1296/2013, (EU) 1301/2013, (EU) No 1303/2013, EU No 1304/2013, (EU) No 1305/2013, (EU) No 1306/2013, (EU) No 1307/2013, (EU) No 1308/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, (EU) No 652/2014 of the European Parliament and of the Council and Decision No 541/2014/EU of the European Parliament and of the Council

Whereas:

- (222) Financial discipline is used to ensure that the budget for the European Agricultural Guarantee Fund complies with the respective annual ceilings and to establish the reserve for crises in the agricultural sector. Given the technical character of the determination of the adjustment rate and its inherent links with the Commission's estimates of expenditure set out in its annual Draft Budget, the procedure for setting the adjustment rate should be simplified by authorising the Commission to adopt it in accordance with the advisory procedure. ~~The new Financial Regulation does not define the population of beneficiaries eligible for reimbursement of financial discipline. The present regulation should be adapted to that, while maintaining the current definition of eligible beneficiaries.~~
- (223) In order to harmonise the rules on automatic decommitment of Article 87 of Regulation (EU) No 1303/2013 and Article 38 of Regulation (EU) No 1306/2013, the date by which Member States have to send to the Commission information on exceptions to the decommitment, referred to in Article 38(3), should be adapted.

(224) In order to provide for legal clarity as regards the treatment of the recoveries generated from the temporary reductions under Article 41(2) of Regulation (EU) No 1306/2013, the latter should be included in the list of sources of the assigned revenue under Article 43 of that Regulation.

~~(225) Experience has shown that the rule, first introduced with Regulation (EU) No 1290/2005, of equally sharing between the budget and the Member States the risk of the lack of recovery of sums due for irregularities when these sums had not been recovered within reasonable deadlines (so called 50/50 rule), has worked well for the safeguarding of the budget. However, such a system entails a heavy administrative and book-keeping burden for both the European Commission and the Member States.~~

~~It is therefore considered appropriate to further change this approach and charge the related sums entirely to the Member States concerned after the expiry of the related deadlines allowing them, on the other side, to keep in their national budgets the sums subsequently recovered at the end of the related recovery procedures.~~

(225) *In the interests of administrative simplification, it is appropriate to increase the threshold below which Member States may decide not to pursue recovery of undue payments from 150 to 250 EUR provided that the Member State applies an equal or higher threshold for not pursuing national debts.*

(226) *It is appropriate* to ensure that the refusal or recovery of payments affected by non-compliance with public procurement rules reflects the gravity of such non-compliance and respects the principle of proportionality, such *as, for example, expressed in the relevant guidelines established to the levels laid down* by the Commission for financial corrections to be made to expenditure *financed by the Union* under shared implementation for non-compliance with such rules. It is further appropriate to clarify that such non-compliance affects the legality and regularity of the transactions only by the same level.

- (226a) In order to reduce administrative burden for small farmers, a further derogation from point (a) of Article 72(1) should be introduced, exempting small farmers from declaring parcels on which a payment application is not made.*
- (226b) Having regard to practical and specific difficulties that the harmonisation of the payment deadlines for area-related payments between the EAGF and the EAFRD has given rise to, the transitional period should be extended by one more year. However, as regards area-related rural development measures, in order to maintain farmers' cash-flow, payments of advances before 16 October should remain possible.*

Article 268

Amendments to Regulation (EU) No 1306/2013

Regulation (EU) No 1306/2013 is amended as follows:

1. Article 26 is amended as follows:

(a) paragraph 2 is deleted.

(b) paragraphs 3, **and 4 and 5** are replaced by the following:

"3. The Commission shall, by 30 June of the calendar year in respect of which the adjustment rate applies, adopt implementing acts fixing the adjustment rate. Such implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 116(2).

4. Until 1 December of the calendar year in respect of which the adjustment rate applies, the Commission may, on the basis of new information, adopt implementing acts adapting the adjustment rate set in accordance with paragraph 3. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 116(2)."

~~5. Member States shall reimburse the appropriations carried over in accordance with Article 12(2)(d) of the Financial Regulation to the final recipients who are subject, in the financial year to which the appropriations are carried over, to the adjustment rate.~~

~~The reimbursement referred to in the first subparagraph shall only apply to final beneficiaries in those Member States where financial discipline applied in the preceding financial year."~~

2. In Article 38, paragraph 3 is replaced by the following:

"3. In the event of legal proceedings or of an administrative appeal having suspensory effect, the period for automatic decommitment referred to in paragraph 1 or paragraph 2 shall, in respect of the amount relating to the operations concerned, be interrupted for the duration of those proceedings or that administrative appeal, provided that the Commission receives a substantiated notification from the Member State by 31 January of year N + 4."

3. In Article 43, in paragraph 1, point (a) is replaced by the following:

"(a) sums which under Articles 40, ~~Article 41(2) and Article 51~~ **52 and 54** and, as regards expenditure under the EAGF, **under Articles 41(2) and 51** ~~Articles 52 and 54~~, must be paid to the Union's budget, including interest thereon;"

4. in Article 54 paragraph 2 is replaced by the following:

~~"2. If recovery has not taken place within four years from the date of the recovery request, or within eight years where recovery is taken in the national courts, the financial consequences of the non-recovery shall be borne by the Member State concerned, without prejudice to the requirement that the Member State concerned must pursue recovery procedures in compliance with Article 58.~~

~~Where, in the context of the recovery procedure, the absence of any irregularity is recorded by an administrative or legal instrument of a final nature, the Member State concerned shall declare as expenditure to the Funds the financial burden borne by it under the first subparagraph.~~

~~However, if for reasons not attributable to the Member State concerned, it is not possible for recovery to take place within the time limit specified in the first subparagraph, and the amount to be recovered exceeds EUR 1 million, the Commission may, at the request of the Member State, extend the time limit by a period of up to half of the original period."~~

5. In Article 54(3), point (a)(ii) is replaced by the following:

"(ii) the amount to be recovered from the beneficiary in the context of an individual payment for an aid scheme or support measure, not including interest, falls between EUR 100 and ~~EUR 150~~ EUR 250 and the Member State concerned applies a threshold equal to or higher than the amount to be recovered under its national law for not pursuing national debts.";

6. in Article 63, in paragraph 1, the following subparagraph is added:

"Where the non-compliance concerns national or Union rules on public procurement, the part of the aid not to be paid or to be withdrawn shall be determined on the basis of the gravity of the non-compliance and in accordance with the principle of proportionality, ~~taking into account the relevant guidelines established by the Commission on financial corrections to be made to expenditure financed by the Union under shared implementation for non-compliance with the rules on public procurement.~~ The legality and regularity of the transaction shall only be affected up to the level of the part of the aid not to be made or withdrawn."

- 6a. in Article 72, paragraph 2 is replaced by the following:

"2. By way of derogation from point (a) of paragraph 1, Member States may decide that:

(a) agricultural parcels of an area of up to 0,1 ha on which an application for payment is not made, do not need to be declared, provided that the sum of such parcels does not exceed 1 ha, and/or may decide that a farmer who does not apply for any area-based direct payment does not have to declare his agricultural parcels in the case where the total area does not exceed 1 ha. In all cases, the farmer shall indicate in his application that he has agricultural parcels at his disposal and, at the request of the competent authorities, shall indicate their location;

(b) farmers participating in the small farmer scheme do not need to declare the agricultural parcels on which an application for payment is not made, unless such a declaration is required for the purpose of other aid or support."

6b. Article 75 is replaced by the following¹:

1. The payments under the support schemes and the measures referred to in Article 67(2) shall be made within the period from 1 December to 30 June of the following calendar year.

Payments shall be made in a maximum of two instalments within that period.

Notwithstanding the first and second subparagraphs, Member States may:

(a) prior to 1 December but not before 16 October, pay advances of up to 50 % for direct payments;

(b) prior to 1 December, pay advances and of up to 75 % for the support granted under rural development as referred to in Article 67(2).

With regard to support granted under rural development, as referred to in Article 67(2), the first and second subparagraphs this paragraph shall apply in respect of the aid applications or payment claims submitted from claim year 2019, except as regards the payment of advances of up to 75% provided for in point (b) of the third subparagraph of this paragraph.

2. Payments referred to in the paragraph 1 shall not be made before the verification of eligibility conditions, to be carried out by the Member States pursuant to Article 74, has been finalised.

¹~~Implementing Regulation (EU) 908/2014 would subsequently be amended to provide that advances under rural development provided for in point (b) of the third subparagraph of Article 75(1) shall be declared by the paying agency to the Commission together with the expenditure paid in the period 16 October to 31 December~~

By way of derogation from the first subparagraph, advances for support granted under rural development as referred to in Article 67(2) may be paid after the administrative checks pursuant to Article 59(1) have been finalised.

3. In the event of an emergency, the Commission shall adopt implementing acts which are both necessary and justifiable, in order to resolve specific problems in relation to the application of this Article. Such implementing acts may derogate from paragraphs 1 and 2, but only to the extent that, and for such a period, as is strictly necessary.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 116(3)."
