



Council of the  
European Union

Brussels, 2 December 2014  
(OR. en)

16354/14

AGRI 756  
AGRISTR 66  
AGRIORG 161  
AGRIFIN 154  
DELECT 233

#### COVER NOTE

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	28 November 2014
To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union

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No. Cion doc.:	C(2014) 8937 final
Subject:	COMMISSION DELEGATED REGULATION (EU) No .../.. of 28.11.2014 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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Delegations will find attached document C(2014) 8937 final.

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Encl.: C(2014) 8937 final



Brussels, 28.11.2014  
C(2014) 8937 final

**COMMISSION DELEGATED REGULATION (EU) No .../..**

**of 28.11.2014**

**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**

## EXPLANATORY MEMORANDUM

### **1. CONTEXT OF THE DELEGATED ACT**

Regulation (EU) No 1306/2013 of the European Parliament and of the Council 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> empowers the Commission to adopt delegated acts.

In accordance with Articles 8(1) and 40 of Regulation (EU) No 1306/2013, the purpose of this delegated act is to lay down rules for direct payments made after the payment deadline during financial year 2015 by supplementing Article 5 of Commission Delegated Regulation (EU) No 907/2014<sup>2</sup>.

In accordance with Article 53 of Regulation (EU) No 1306/2013, this delegated act also intends to complement the criteria and methodology for applying net financial corrections to ensure that the amount of the corrections will protect the financial interest of the Union.

### **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

Consultation, involving experts from all the 28 Member States, has been carried within an Expert Group for Horizontal questions concerning the CAP. A meeting held on 23 October 2014 was organised for the specific purpose of exchanging expert views on the present act. The meeting allowed for a full presentation of the Commission's draft provisions and a thorough exchange of views on all aspects of the draft. The exercise consisted in clarifying the Commission's approach, hearing experts' views and further refining the draft text accordingly.

### **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

The act amends Article 5 of Regulation (EU) No 907/2014, to ensure the correct and efficient protection of the EAGF budget for financial year 2015 and to ensure a smooth transition to the new rules, where necessary for the following reasons.

In accordance with point b) of Article 5(3) of the Commission Delegated Regulation (EU) No 907/2014 late payments in respect of calendar year N-1 or earlier can only be made during

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<sup>1</sup> OJ L, 347, 20.12.2013, p. 549.

<sup>2</sup> 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 (OJ L 255, 28.8.2014, p. 18).

financial year N+1 if the total amount of direct aids paid within financial year N+1 respects the ceiling laid down in Annex III to Regulation (EU) No 1307/2013<sup>3</sup> for calendar year N.

However, the ceilings determined in Annex III to Regulation (EU) No 1307/2013 only apply from calendar year 2015 (financial year 2016).

For reasons of legal continuity, certainty and clarity, it is necessary to add in Article 5 of Commission Delegated Regulation (EU) No 907/2014 references to the provisions in force for direct payments in respect of calendar year 2014 which set out the maximum amount referred to above.

The act also amends Article 12(8) of Regulation (EU) No 907/2014, to ensure that the net financial corrections applied by the Commission will protect the EU budget also in the specific situation where a precise calculation of the risk is not available but the Member State concerned submits objective elements that demonstrate that the risk is lower than the initial estimate notified by the Commission in accordance with Article 34(2) of the same Regulation.

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<sup>3</sup> Regulation (EU) No 1307/2013 of the European Parliament and the Council of 17 December 2013 establishing rules for direct payment 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).

# COMMISSION DELEGATED REGULATION (EU) No .../..

of 28.11.2014

**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**

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>4</sup>, and in particular Articles 40 and 53(3) thereof,

Whereas:

- (1) Article 5 of Commission Delegated Regulation (EU) No 907/2014<sup>5</sup> lays down the conditions under which, in accordance with the principle of proportionality, expenditure effected after the payment deadlines is considered eligible for Union payments.
- (2) For reasons of legal certainty and clarity, it is necessary to add to the provisions already laid down in Article 5 of Delegated Regulation (EU) No 907/2014 the conditions which should apply to direct payments made in financial year 2015 as provided for in Council Regulation (EC) No 73/2009<sup>6</sup>. For that purpose, it is necessary to refer in particular to the appropriate ceilings fixed for Member States in respect of calendar year 2014 in Regulation (EC) No 73/2009, distinguishing between those Member States which apply the Single Payment Scheme and those which apply the Single Area Payment Scheme. Moreover to address the specific situation with regard to the application of financial discipline, reference should be made to the provisions of Article 11 of Regulation (EC) No 73/2009 as regards the payments in respect of calendar year 2013 and to the provisions of Article 26 of Regulation (EU) No 1306/2013 as regards the payments in respect of calendar year 2014.

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<sup>4</sup> OJ L 347, 20.12.2013, p. 549.

<sup>5</sup> 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 (OJ L 255, 28.8.2014, p. 18).

<sup>6</sup> Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (OJ L 30, 31.1.2009, p. 16).

- (3) It is necessary to clarify paragraph 8 of Article 12 of Delegated Regulation (EU) No 907/2014 as its wording could inadvertently lead the Commission to apply a level of flat rate correction which is lower than the risk to the Union budget. Paragraph 8 of Article 12 of that Regulation should therefore be reworded so as to indicate clearly that, where objective elements demonstrate that the maximum loss for the funds is lower than the loss which would derive from the application of a flat rate lower than that proposed by the Commission, the Commission is to apply that lower flat rate in deciding on the amounts to be excluded from Union financing.
- (4) Delegated Regulation (EU) No 907/2014 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

### *Article 1*

Regulation (EU) No 907/2014 is amended as follows:

- (1) In Article 5, the following paragraph 3a is added:

"3a. 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 of year 2015 and the remainder of the threshold exceeds 2 %, that remainder shall be reduced to 2 %;
- (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>7</sup> and in Regulation (EU) No 229/2013 of the European Parliament and of the Council<sup>8</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;

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<sup>7</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).

<sup>8</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).

- (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."

- (2) In Article 12, paragraph 8 is replaced by the following:

"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."

#### *Article 2*

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

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

Done at Brussels, 28.11.2014

*For the Commission*  
*The President*  
*Jean-Claude JUNCKER*