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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 7.12.2021 supplementing Regulation (EU) 2021/2116 of the European Parliament and of the Council with rules on paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro

Delegations will find attached document C(2021) 9119 final.

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EUROPEAN
COMMISSION

Brussels, 7.12.2021
C(2021) 9119 final

COMMISSION DELEGATED REGULATION (EU) .../...

of 7.12.2021

**supplementing Regulation (EU) 2021/2116 of the European Parliament and of the
Council with rules on 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) 2021/2116 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013 empowers the Commission to adopt delegated acts. In accordance with 11(1), and Articles 23(2), 37(2), 40(3), 41(3), 47(1), 52(1), 54(4), 55(6), 64(3), 76(2), 94(5) and (6), 95(2) and 103(1) of Regulation (EU) 2021/2116, the purpose of this delegated act is to lay down rules concerning the rules, derogations and transitional measures with regard to paying agencies and other bodies, financial management of the agricultural funds, clearance of accounts, securities and use of euro. This delegated act replaces the delegated rules of Regulation (EU) No 907/2014. The adoption of this delegated act does not entail financial implications.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Consultations, involving experts from all the 27 Member States took place within the Experts Group for Horizontal Questions concerning the CAP. Two meetings were organised for the specific purpose of exchanging expert views on this act. These meetings 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 and hearing experts' views. The draft was then refined taking into account the observations and comments made orally in the meeting and/or sent in writing to the Commission after that meeting. The draft progressive versions of this act were transmitted to the European Parliament and to the Council when calling the Experts Group meetings.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The act contains the provisions supplementing certain non-essential parts of Regulation (EU) 2021/2116 that are necessary to ensure its correct and efficient functioning and to ensure a smooth transition to the new rules, where necessary.

Chapter I provides for specific rules on paying agencies and other bodies.

Chapter II establishes the rules on the financial management for both the EAGF and EAFRD.

Chapter III fixes rules on clearance of accounts and other checks.

Chapter IV provides for general rules on securities and Chapter V on the use of euro.

Regulation (EU) No 907/2014 is repealed.

COMMISSION DELEGATED REGULATION (EU) .../...

of 7.12.2021

supplementing Regulation (EU) 2021/2116 of the European Parliament and of the Council with rules on 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) 2021/2116 of the European Parliament and of the Council of 2 December 2021 on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013¹, and in particular Articles 11(1), 23(2), 38(2), 40(3), 41(3), 47(1), 52(1), 54(4), 55(6), 64(3), 76(2), 94(5) and (6) thereof,

Whereas:

- (1) Regulation (EU) 2021/2116 lays down the basic provisions concerning, *inter alia*, the accreditation of paying agencies and coordination bodies, the obligations of the paying agencies as regards public intervention, the financial management and the clearance procedures, securities and use of euro. In order to ensure the smooth functioning of the new legal framework, certain rules have to be adopted to supplement the provisions laid down by that Regulation in the areas concerned. The new rules should replace the relevant provisions of Commission Delegated Regulation (EU) No 907/2014².
- (2) In accordance with Article 9(2) of Regulation (EU) 2021/2116, paying agencies may only be accredited by Member States if they comply with certain minimum criteria established at Union level. Those criteria are to cover four basic areas: internal environment, control activities, information and communication, and monitoring. Member States should be free to lay down additional accreditation criteria to take account of any specific features of a paying agency.
- (3) In accordance with Article 8(1), point (b), of Regulation (EU) 2021/2116, a competent authority at ministerial level is to be responsible for the issuing, reviewing and withdrawing of the accreditation of the coordinating body referred to in Article 10 of that Regulation. Coordinating bodies should only be accredited by Member States if they comply with certain minimum criteria established at Union level and by the competent authority. Those criteria should cover the specific tasks of the coordinating body as regards the processing of the information of a financial character as referred to in Article 10(1), point (a), and (2) of Regulation (EU) 2021/2116.
- (4) Public intervention measures may be financed only if the expenditure concerned is incurred by the paying agencies designated by the Member States as being responsible for certain obligations with respect to public intervention. However, the performance

¹ OJ L 435, 6.12.2021, p. 187.

² 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).

of tasks relating, in particular, to the administration and checking of intervention measures, with the exception of payment of aid, may be delegated in accordance with Article 9(1), second subparagraph, of Regulation (EU) 2021/2116. It should also be possible for several paying agencies to perform these tasks. It should also be laid down that the management of certain public storage measures may be entrusted to third parties, whether public or private bodies, under the responsibility of the paying agency. It is therefore appropriate to specify the scope of the responsibility of the paying agencies in this context, specify their obligations and determine under what conditions and according to which rules the management of certain public storage measures may be entrusted to third parties, whether public or private bodies. In this case, it should be provided that the bodies concerned have to act under contract on the basis of general obligations and principles which should be laid down.

- (5) Union agricultural legislation includes, for the European Agricultural Guarantee Fund (EAGF) and interventions financed by the European Agricultural Fund for Rural Development (EAFRD) and governed under the integrated administration and control system (IACS), periods for payment of aids to beneficiaries, which have to be complied with by Member States. Payments effected outside those periods are to be regarded as ineligible for Union financing. However, analysis has shown that in a number of cases late payments of aid are made by Member States due to additional checks by Member States related to contentious claims, appeals and other national legal disputes. Therefore and in accordance with the principle of proportionality, a fixed margin related to expenditure should be laid down within which no reductions of payments are to be made for these cases. In addition, once this margin is exceeded, in order to modulate the financial impact in proportion to the delay incurred in payment, provision should be made for the Commission to proportionally reduce the Union payments according to the length of delay in payment recorded.
- (6) Payments of aid before the earliest possible date of payment as laid down by Union law cannot be justified by the same reasons as payments after the latest possible date of payment. Therefore, no proportional reduction should be provided for those early payments. However, an exception should be provided for cases where Union agricultural legislation provides the payment of an advance up to a certain maximum amount.
- (7) The Commission is to make payments to the Member States on the basis of declarations of expenditure sent by the Member States, in accordance with Articles 21 and 32 of Regulation (EU) 2021/2116. The Commission should, however, take into account the revenue received by the paying agencies on behalf of the Union budget. The conditions under which certain types of expenditure and revenue effected under the EAGF and the EAFRD are to be offset should therefore be laid down.
- (8) Pursuant to Article 16(2), third subparagraph, of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council³, if the Union budget has not been adopted by the beginning of the financial year, payments may be made monthly per chapter to a maximum of one twelfth of the allocated appropriations in the relevant chapter of the budget for the preceding financial year. To allocate the available

³ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

appropriations fairly among the Member States, provision should be made for the monthly payments under the EAGF and the interim payments under the EAFRD to be made in this case as a percentage of the declarations of expenditure submitted by each Member State and for the balance not used in a given month to be reallocated in the subsequent monthly or interim payments.

- (9) It should be provided that the Commission, after having informed the Member States concerned, may defer the compensation of the expenditure and the assigned revenue for the next monthly payments in case there is late submission of the required information or there are discrepancies that needs to be further clarified with the Member State.
- (10) To avoid the application, by the Member States which have not adopted the euro, of different exchange rates in accounts of revenue received or aid paid to beneficiaries and registered in the account of the paying agencies, in a currency other than the euro, on the one hand, and in the declaration of expenditure drawn up by the paying agency, or the accredited coordinating body, on the other, additional requirements need to be laid down.
- (11) For cases where the exchange rate for the operative event have not been established by the Union law it needs be established requirements for the exchange rate that Member States which have not adopted the euro, have to use in their declaration of expenditure and for the purpose of the financial and performance clearance for the assigned revenue resulting from financial consequences of non-recovery.
- (12) In the context of the performance clearance, it is appropriate to lay down rules on the criteria for justifications to be provided by the Member State concerned and the methodology and criteria for applying reductions.
- (13) In order to enable the Commission to verify that Member States respect their obligation to protect the financial interests of the Union and to ensure an efficient application of the conformity clearance procedure provided for in Article 55 of Regulation (EU) 2021/2116, provisions should be laid down concerning the criteria and methodology to apply corrections. The different types of corrections referred to in that Article 55 should be defined and principles should be laid down on how the circumstances of each case will be taken into account to determine the amounts of correction. Moreover, rules should be established on how recoveries made by the Member States from the beneficiaries will be credited to the EAGF and the EAFRD.
- (14) In respect of the specific eligibility rules for the crop-specific payment for cotton set out in Title III, Chapter II, Section 3, Subsection 2, of Regulation (EU) 2021/2115 of the European Parliament and of the Council⁴ and support for early retirement as referred to in Article 155(2) of that Regulation, cases of non-compliance need to be assessed under a conformity procedure, which would assess the compliance with legality and regularity at beneficiary level.
- (15) Under the new delivery model, the compliance of the Member States' systems with the Union rules will be assessed and in cases of serious deficiencies with the governance

⁴ Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 (OJ L 435, 06.12.2021, p. 1).

systems, the Commission will propose to exclude certain expenditure from Union financing in a conformity procedure. The assessment should not extend to cases of non-compliance with the eligibility conditions for individual beneficiaries laid down in the national CAP Strategic Plans and national rules. As the assessment is at systems level, the proposal for exclusion from Union financing should be based on flat-rate corrections. However, where the specific circumstances allow, Member States could provide a detailed calculation or an extrapolated calculation of the risk for the EAGF or the EAFRD, to be assessed by the Commission in the conformity procedure.

- (16) Numerous provisions in agricultural regulations of the Union require that a security be given to ensure payment of a sum due if an obligation is not met. Therefore, in order to avoid unequal competitive conditions, the conditions applying to that requirement should be laid down.
- (17) In the interest of clarity and legal certainty, Delegated Regulation (EU) No 907/2014 should be repealed. However, Article 5a, Article 7(3) and (4), Article 11(1), second subparagraph, and (2) and Article 13 of that Regulation should continue to apply to the implementation of rural development programmes pursuant to Regulation (EU) No 1305/2013 of the European Parliament and of the Council⁵ and to the operational programmes approved under Regulation (EU) No 1308/2013 of the European Parliament and of the Council⁶, while Article 13 of that Regulation should continue to apply for ongoing recoveries launched under Article 54 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council⁷.
- (18) In the interest of the correct implementation of Regulation (EU) 2021/2116, it is appropriate to specify that where a paying agency, accredited in accordance with Regulation (EU) No 1306/2013, assumes responsibility for expenditure for which it was not previously responsible, it should be accredited with the new responsibilities before 1 January 2023.
- (19) Finally, in view of Point 31 of the Inter-institutional Agreement of 13 April 2016 on Better Law-Making, the Commission considers that there is a substantive link between the empowerments in Regulation (EU) 2021/2116 regarding the rules on paying agencies' accreditation, financial management, clearance and securities, and there is an interconnection between them in the day-to-day management of the CAP expenditure. It is, therefore, appropriate to lay down those rules in the same delegated act,

HAS ADOPTED THIS REGULATION:

⁵ Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (OJ L 347, 20.12.2013, p. 487).

⁶ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671).

⁷ 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 (OJ L 347, 20.12.2013, p. 549).

CHAPTER I

PAYING AGENCIES AND OTHER BODIES

Article 1

Conditions for the accreditation of paying agencies

1. Member States shall accredit as paying agencies departments or bodies, which fulfil the conditions laid down in this paragraph and meet the criteria referred to in paragraphs 2 and 3. Paying agencies carrying out the management and control of expenditure as provided for in Article 9(1) of Regulation (EU) 2021/2116 shall provide, in respect of payments made by them and as regards communicating and keeping information, sufficient guarantees that:
 - (a) as regards types of intervention referred to in Regulation (EU) 2021/2115, the expenditure matches the corresponding reported output and that it has been effected in accordance with the applicable governance systems;
 - (b) payments are legal and regular as regards the measures laid down in Regulations (EU) No 228/2013⁸, (EU) No 229/2013⁹, (EU) No 1308/2013 and (EU) No 1144/2014 of the European Parliament and of the Council¹⁰;
 - (c) accurate and exhaustive accounts are kept of the payments made;
 - (d) the checks laid down by Union legislation are made;
 - (e) the requisite documents are presented within the time limits and in the form set out by Union rules;
 - (f) the documents are accessible and kept in a manner which ensures their completeness, validity and legibility over time, including with regard to electronic documents within the meaning of Union rules.
2. In order to be accredited, a paying agency shall have an administrative organisation and a system of internal control which comply with the criteria set out in Annex I regarding:
 - (a) internal environment;
 - (b) control activities;
 - (c) information and communication;
 - (d) monitoring.
3. Member States may lay down further accreditation criteria to take account of the size, responsibilities and other specific features of the paying agency.

⁸ 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).

⁹ 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).

¹⁰ Regulation (EU) No 1144/2014 of the European Parliament and of the Council of 22 October 2014 on information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries and repealing Council Regulation (EC) No 3/2008 (OJ L 317, 4.11.2014, p. 56).

Article 2

Conditions for the accreditation of coordinating bodies

1. Where more than one paying agency is accredited, in accordance with Article 10(1) of Regulation (EU) 2021/2116, the Member State concerned shall accredit as coordinating bodies departments or bodies, which fulfil the conditions laid down in paragraph 2 and meet the criteria referred to in paragraphs 3 and 4. That Member State shall, by a formal act at ministerial level, decide on the accreditation of the coordinating body after it has satisfied itself that the administrative arrangements of that body guarantee that it is capable of fulfilling the tasks referred to in that Article.
2. In order to be accredited, the coordinating body shall ensure that:
 - (a) declarations to the Commission are based on information from properly authorised sources;
 - (b) the annual performance report referred to in Article 54(1) of Regulation (EU) 2021/2116 and Article 134 of Regulation (EU) 2021/2115 is covered by the scope of the opinion referred to in Article 12(2) of Regulation (EU) 2021/2116 and its transmission is accompanied by a management declaration covering the compilation of the entire report;
 - (c) declarations to the Commission are properly authorised before transmission;
 - (d) a proper audit trail exists to support the information transmitted to the Commission;
 - (e) a record of information received and transmitted is securely stored in computerised format.
3. In order to be accredited, a coordinating body shall have an administrative organisation and a system of internal control as regards the compilation of the annual performance report, which complies with requirements set by the competent authority as regards the procedures involved, and especially the criteria on information and communication as set out in Annex II.
4. Member States may lay down further accreditation criteria to take account of the size, responsibilities and other specific features of the coordinating body.

Article 3

Obligations of the paying agency as regards public intervention

1. The paying agencies referred to in Article 9(1) of Regulation (EU) 2021/2116 shall manage and ensure control of the operations linked to intervention measures relating to public storage for which they are responsible, under the terms laid down in Annex III to this Regulation and, where appropriate, in the sectoral agricultural legislation, in particular on the basis of the minimum checking rates fixed in that Annex.

The paying agencies may delegate their powers in relation to public intervention measures to intervention agencies which meet the conditions of approval laid down in point 1.D of Annex I to this Regulation or act through other paying agencies.
2. The paying agencies or intervention agencies may, without prejudice to their overall responsibility relating to public storage:
 - (a) entrust the management of certain public storage measures to natural or legal persons storing bought-in agricultural products ('storers');

- (b) mandate natural or legal persons to carry out certain specific tasks laid down by the sectoral agricultural legislation.

If the paying agencies entrust the management to storers as referred to in the first subparagraph, point (a), such management shall be carried out under storage contracts on the basis of the obligations and general principles set out in Annex IV.

- 3. The obligations of paying agencies with regard to public storage shall be, in particular, as follows:

- (a) to keep stock accounts and financial accounts for each product covered by an intervention measure involving public storage, based on the operations they carry out from 1 October of one year to 30 September of the following year, this period being referred to as an 'accounting year';
- (b) to keep an up-to-date list of the storers with whom they have concluded public storage contracts. This list shall contain references allowing the exact identification of all storage points, their capacity, the number of warehouses, cold stores and silos, and drawings and diagrams thereof;
- (c) to make available to the Commission the standard contracts used for public storage, the rules laid down for the taking-over of products, their storage and removal from the storehouses of the storers, and the rules applicable to the liability of storers;
- (d) to keep centralised, computerised stock accounts of all stocks, covering all storage places, all products and all the quantities and qualities of the different products, specifying in each case the weight (net and gross, where applicable) or the volume;
- (e) to perform all operations relating to the storage, conservation, transport or transfer of intervention products in accordance with Union and national legislation, without prejudice to the responsibility of the purchasers, of the other paying agencies involved in an operation and of any other persons acting on instruction in this regard;
- (f) to conduct checks on places where intervention stocks are held, throughout the year, at irregular intervals and without prior warning. However, provided that the purpose of the control is not jeopardised, advance notice may be given, but shall be strictly limited to the minimum time-period necessary. Such notice shall not exceed 24 hours, except in duly justified cases;
- (g) to conduct an annual stocktaking in accordance with Article 4.

Where, in a Member State, management of the public storage accounts for one or more products is carried out by more than one paying agency, the stock accounts and financial accounts referred to in the first subparagraph, points (a) and (d), shall be consolidated at Member State level before the corresponding information is notified to the Commission.

- 4. The paying agencies shall ensure:

- (a) that products covered by Union intervention measures are properly conserved by checking the quality of stored products at least once a year;
- (b) the integrity of intervention stocks.

- 5. The paying agencies shall inform the Commission immediately:

- (a) of cases where extending the storage period of a product is likely to result in its deterioration;
- (b) of quantitative losses or deterioration of the product due to natural disasters.

Where situations referred to in the first subparagraph are applicable, the Commission shall adopt the appropriate decision:

- (a) as regards the situations referred to in the first subparagraph, point (a), in accordance with the examination procedure referred to in Article 229(2) of Regulation (EU) No 1308/2013;
 - (b) as regards the situations referred to in the first subparagraph, point (b), in accordance with the examination procedure referred to in Article 102(3) of Regulation (EU) 2021/2116.
6. The paying agencies shall bear any financial consequences of poor conservation of products covered by Union intervention measures, in particular those resulting from unsuitable storage methods. Without prejudice to any recourse against storers, the paying agencies shall bear financial responsibility for failure to comply with their undertakings or obligations.
 7. The paying agencies shall make the public storage accounts and all documents, contracts and files drawn up or received in the context of intervention operations permanently available to Commission agents or persons mandated by the Commission, either electronically or at the premises of the paying agencies.

Article 4

Inventory

1. During each accounting year, the paying agencies shall draw up an inventory for each product, which has been the subject of Union intervention.

They shall compare the results of the inventory with the accounting data. Any differences in quantities found, and the amounts resulting from differences in quality found during checks, shall be accounted for in accordance with the rules adopted pursuant to Article 47(3), point (a) of Regulation (EU) 2021/2116.
2. For the purposes of paragraph 1, missing quantities resulting from normal storage operations shall be equal to the difference between the theoretical stock shown by the accounts inventory, on the one hand, and the actual physical stock as established on the basis of the inventory provided for in paragraph 1 or the stock shown as remaining on the books after the physical stock of a store has been exhausted, on the other hand and shall be subject to the tolerance limits set out in Annex V.

CHAPTER II

FINANCIAL MANAGEMENT

Article 5

Non-compliance with the latest payment deadline

1. Payments to a beneficiary made after the latest possible payment date may be considered eligible under the circumstances and conditions laid down in paragraphs 2 to 6.
2. Where European Agricultural Guarantee Fund (EAGF) expenditure under Article 5(2) or European Agricultural Fund for Rural Development (EAFRD) expenditure under Article 6 for interventions referred to in Article 65(2) of Regulation (EU) 2021/2116 effected after the deadline laid down by Union law is equal to the threshold of 5 % or less of the expenditure effected before the deadlines for the EAGF and the EAFRD respectively, no reduction of the monthly or interim payments shall be made.

Where EAGF or EAFRD expenditure effected after the deadlines laid down by Union law is above the threshold of 5 % for the EAGF and the EAFRD respectively, all further expenditure effected late shall be reduced in accordance with the following rules:

(a) for EAGF expenditure:

- (i) expenditure effected in the first month following the month in which the payment deadline expired shall be reduced by 10 %;
- (ii) expenditure effected in the second month following the month in which the payment deadline expired shall be reduced by 25 %;
- (iii) expenditure effected in the third month following the month in which the payment deadline expired shall be reduced by 45 %;
- (iv) expenditure effected in the fourth month following the month in which the payment deadline expired shall be reduced by 70 %;
- (v) expenditure effected later than the fourth month following the month in which the payment deadline expired shall be reduced by 100 %;

(b) for EAFRD expenditure:

- (i) expenditure effected between 1 July and 15 October of the year in which the payment deadline expired shall be reduced by 25 %;
- (ii) expenditure effected between 16 October and 31 December of the year in which the payment deadline expired shall be reduced by 60 %;
- (iii) expenditure effected later than 31 December of the year in which the payment deadline expired shall be reduced by 100%.

3. By way of derogation from paragraph 2, the following conditions shall apply:

- (a) where for expenditure for interventions in the form of direct payments or EAFRD expenditure the threshold referred to in paragraph 2, first subparagraph, has not been used in full for payments made in respect of calendar year N no later than 15 October of year N + 1 for the EAGF and no later than 31 December of year N + 1 for the EAFRD and the remainder of the threshold exceeds 2 %, that remainder shall be reduced to 2 %;
- (b) during a financial year N+1, payments for interventions in the form of direct payments, other than payments provided for in Regulations (EU) No 228/2013 and (EU) No 229/2013, in respect of calendar years N-1 or earlier made after the payment deadline shall only be eligible for financing by the EAGF if the

total amount of interventions in the form of direct payments made within financial year N+1, where applicable corrected to amounts before the adjustment provided for in Article 17 of Regulation (EU) 2021/2116, does not exceed the ceiling laid down in Annex V to Regulation (EU) 2021/2115 in respect of calendar year N, in accordance with Article 87(1) of that Regulation;

- (c) expenditure exceeding the limits referred to in point (a) or (b) shall be reduced by 100 %.

The amounts of the reimbursements referred to in Article 17(3), second subparagraph, of Regulation (EU) 2021/2116 shall not be taken into account to check whether the condition laid down in the first subparagraph, point (b), of this paragraph is fulfilled.

- 4. Where exceptional management conditions are encountered for certain interventions and measures or where justified reasons are advanced by the Member States, the Commission shall apply either different time scales from those laid down in paragraphs 2 and 3, and/or lower reductions or apply no reduction at all.

However, the first subparagraph shall not apply for expenditure exceeding the ceiling referred to in paragraph 3, first subparagraph, point (b).

- 5. Checks on compliance with the payment deadline shall be made once each financial year on expenditure made by 15 October.

Any overrun of payment deadline shall be taken into account in the accounts clearance decision referred to in Article 53 of Regulation (EU) 2021/2116, at the latest.

- 6. The reductions referred to in this Article shall be applied without prejudice to the subsequent decision on annual performance clearance, referred to in Article 54 of Regulation (EU) 2021/2116 and the conformity procedure, referred to in Article 55 of that Regulation.

Article 6

Non-compliance with the earliest date of payment

As regards EAGF expenditure, if Member States are allowed to pay advances up to a certain maximum amount before the earliest payment date laid down by Union law, this expenditure shall be considered as expenditure eligible for Union financing. Any expenditure paid above this maximum amount shall be ineligible for Union financing except in duly justified cases where exceptional management conditions are encountered for certain interventions or measures or where justified reasons are provided by the Member States. In such cases, the expenditure paid above the maximum amount shall be eligible for Union financing subject to a reduction of 10 %.

The corresponding reduction shall be taken into account in the accounts clearance decision referred to in Article 53 of Regulation (EU) 2021/2116, at the latest.

Article 7

Compensation by paying agencies

- 1. In its decision on the monthly payments to be adopted pursuant to Article 21(3) of Regulation (EU) 2021/2116, the Commission shall establish the balance of the expenditure declared by each Member State in its monthly declarations, less the

assigned revenue which that Member State has included in its declarations of expenditure. This set-off shall be regarded as equivalent to collection of the corresponding revenue.

Commitment appropriations and payment appropriations generated by assigned revenue shall be open once this revenue has been assigned to budget lines.

2. If the amounts referred to in Article 45(1), point (b), of Regulation (EU) 2021/2116 were withheld before the payment of the aid concerned by the irregularity or negligence, they shall be deducted from the corresponding expenditure.
3. The amounts of the EAFRD contributions recovered from beneficiaries under the Member State's CAP Strategic Plan concerned during each reference period shall be deducted from the amount to be paid by the EAFRD in the declaration of expenditure for that period.
4. The greater or lesser amounts resulting, where applicable, from the annual financial clearance may be re-used under the EAFRD and shall be added to or deducted from the amount of the EAFRD contribution when the first declaration after the clearance of accounts decision is drawn up.
5. Financing from the EAGF shall be equal to the expenditure, calculated on the basis of the information notified by the paying agency, after deduction of any revenue accruing from the intervention measures, validated by the computerised system set up by the Commission and included by the paying agency in its declaration of expenditure.

Article 8

Late adoption of Union budget

1. If the Union budget has not been adopted by the beginning of the budgetary year, the monthly payments referred to in Article 21 of Regulation (EU) 2021/2116 and the interim payments referred to in Article 32 of that Regulation shall be made proportionally to the authorised appropriations per chapter as a percentage of the declarations of expenditure received from each Member State, for the EAGF and the EAFRD respectively, and within the limits laid down in Article 16 of Regulation (EU, Euratom) 2018/1046.

The Commission shall take into account the balance of amounts not reimbursed to the Member States in subsequent payments.

2. As regards the EAFRD, if the Union budget has not been adopted by the beginning of the budgetary year as regards the budgetary commitments referred to in Article 29 of Regulation (EU) 2021/2116, the first annual instalments following the adoption of the Member States' CAP Strategic Plans shall respect the order of adoption of those plans. The budget commitments for the subsequent annual instalments shall be made in the order of the Member States' CAP Strategic Plans having exhausted the respective commitments. The Commission may make partial annual commitments to the Member States' CAP Strategic Plans if the available commitment appropriations are limited. The remaining balance for those plans shall be committed only once additional commitment appropriations become available.

Article 9

Deferral of monthly payments

The monthly payments referred to in Article 21 of Regulation (EU) 2021/2116 to the Member States may be deferred where the communications as referred to in Article 90(1), point (c)(i) and (ii), of that Regulation arrive late or contain discrepancies, which necessitate further checks. The Commission shall inform the Member States concerned in due time of its intention to defer payments.

Article 10

Suspension of payments in relation to the annual clearance

1. Where the Commission suspends the monthly payments referred to in Article 21(3) of Regulation (EU) 2021/2116 pursuant to Article 40(1), first subparagraph, of that Regulation, the following rates of suspension of payments shall apply:
 - (a) if the Member State does not submit the documents referred to in Articles 9(3) and 12(2) of Regulation (EU) 2021/2116 by 1 March, 1 % of the total amount of the monthly payments referred to in Article 21(3) of that Regulation;
 - (b) if the Member State does not submit the documents referred to in Articles 9(3) and 12(2) of Regulation (EU) 2021/2116 by 1 April, 1,5 % of the total amount of the monthly payments referred to in Article 21(3) of that Regulation.
2. The suspension shall be lifted after the submission of all the relevant documents referred to in Articles 9(3) and 12(2) of Regulation (EU) 2021/2116.

Article 11

Suspension of payments in relation to the performance clearance

1. Where the Commission suspends the monthly payments referred to in Article 21(3) of Regulation (EU) 2021/2116 or the interim payments referred to in Article 32 of that Regulation pursuant to Article 40(2) of that Regulation following the performance clearance as referred to in Article 54 of Regulation (EU) 2021/2116, the rate of suspension shall correspond to the difference between the reduction rate applied pursuant to Article 54(1) of Regulation (EU) 2021/2116 and 50 percentage points, multiplied by 2. The rate of suspension to be applied shall not be less than 10 %.
2. The suspensions referred to in paragraph 1 shall be without prejudice to Articles 53 and 55 of Regulation (EU) 2021/2116.

Article 12

Applicable exchange rate for drawing up declarations of expenditure

1. In accordance with Article 94(4) of Regulation (EU) 2021/2116, as regards the EAGF, for drawing up their declarations of expenditure, Member States which have not adopted the euro shall apply the same exchange rate as that which they used to make payments to beneficiaries or receive revenue, in accordance with Chapter V of this Regulation and the sectoral agricultural legislation.

2. As regards the EAFRD, for drawing up their declarations of expenditure, Member States which have not adopted the euro shall apply, for each payment or recovery operation, the last-but-one exchange rate established by the European Central Bank prior to the month in which the operations are registered in the accounts of the paying agency.
3. As regards the clearance decisions referred to in Articles 53 and 54 of Regulation (EU) 2021/2116 and the conformity procedure referred to in Article 55 of that Regulation, the first exchange rate established by the European Central Bank after the date of adoption of the clearance implementing acts shall be used.
4. In cases other than those referred to in paragraphs 1, 2 and 3, as well as for operations for which an operative event has not been laid down by Union law, the applicable exchange rate for Member States which have not adopted the euro shall be the last-but-one exchange rate established by the European Central Bank before the month in respect of which the expenditure or assigned revenue is declared.

CHAPTER III

CLEARANCE OF ACCOUNTS AND OTHER CHECKS

Article 13

Criteria and methodology for applying reductions in the framework of the performance clearance

1. For the purpose of adopting the decision pursuant to Article 54(1) of Regulation (EU) 2021/2116 on the amounts to be reduced from Union financing, the Commission shall assess the annual expenditure declared by the Member State for the intervention against its corresponding output as reported in the annual performance report referred to in Article 54(1) of Regulation (EU) 2021/2116, submitted pursuant to Article 9(3), first subparagraph, point (b), and Article 10(1), point (b), of that Regulation, and Article 134 of Regulation (EU) 2021/2115.
2. Where the declared expenditure does not have a corresponding output for the relevant financial year and where such deviations as regards the outputs and the realised unit amounts have not been previously explained by the Member State in accordance with Article 134(5) to (9) of Regulation (EU) 2021/2115 in the annual performance report or where the justifications for the deviations are insufficient, the Member State shall provide further justifications within the time-periods set by the Commission. The justifications shall cover the expenditure declared that does not have a corresponding output in the relevant budgetary year.
3. The justifications to be provided by the Member State shall contain relevant information explaining the deviation at unit amount level and the period concerned. It shall contain quantitative information, as well as, qualitative explanations, where necessary.

The Member State shall also provide explanations regarding the extent and effect of the corrective actions already taken to remedy the deviation and to prevent it from reoccurring.

Where the Member State cannot provide justifications for the deviations in accordance with paragraph 2, it may provide justifications for a part of the deviations.

4. Where the Member State fails to provide duly justified reasons for the deviations or where those are considered insufficient by the Commission in accordance with paragraphs 2 and 3, or cover only part of the deviations, the Commission shall reduce the relevant amounts from Union financing. The Commission shall notify the Member State of its opinion in a separate communication
5. The reductions referred to in this Article shall be applied without prejudice to the subsequent decision on conformity clearance referred to in Article 55 of Regulation (EU) 2021/2116.

Article 14

Criteria and methodology for applying corrections in the framework of the conformity procedure for the expenditure outside the scope of Regulation (EU) 2021/2115 or for the crop-specific payment for cotton and support for early retirement

1. For the purpose of adopting the decision on the amounts to be excluded from Union financing pursuant to Article 55(1) of Regulation (EU) 2021/2116, 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 outside the scope of Regulation (EU) 2021/2115, for the crop-specific payment for cotton or support for early retirement under Title III, Chapter II, Section 3, Subsection 2, and Article 155(2) of that Regulation, respectively, has not been incurred in conformity with Union 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 55 of Regulation (EU) 2021/2116.

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 amounts unduly spent cannot be identified by the Commission 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 used 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;
 - (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 extrapolated corrections as foreseen in 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 12 of Regulation (EU) 2021/2116, 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 budget.

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 one or more of the following circumstances demonstrating a higher gravity of the deficiencies revealing a greater risk of loss for the Union 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;

- (b) three or more deficiencies are detected with respect to the same control system;
 - (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;
 - (d) similar deficiencies in the same sector are detected in a Member State in an enquiry that follows an enquiry in which they have been first detected and communicated to the Member State, account taken however of the corrective or compensating measures already taken by the Member State.
8. Where a Member State submits certain 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 EAGF and the EAFRD is limited to a sum lower than what would derive from the application of the flat-rate proposed, the Commission shall use that lower flat rate to decide on the amounts to be excluded from Union financing pursuant to Article 55 of Regulation (EU) 2021/2116.
 9. Amounts effectively recovered from the beneficiaries and credited to the EAGF and the EAFRD 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 55 of Regulation (EU) 2021/2116.

Article 15

Criteria and methodology for applying corrections in the framework of the conformity procedure for expenditure within the scope of Regulation (EU) 2021/2115

1. For the purpose of adopting the decision on the amounts to be excluded from Union financing pursuant to Article 55(1) of Regulation (EU) 2021/2116, the Commission shall use its own findings and shall take into account the information made available by the Member States during the conformity procedure carried out in accordance with Article 55(3) of that Regulation. The amount to be excluded from Union financing shall as much as possible correspond to the actual financial loss or risk for the Union budget.
2. Where the Commission finds that the expenditure has not been effected in conformity with Union law, the Commission may determine the amounts to be excluded by applying 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 serious deficiency identified. To this effect, account shall be taken of the elements of the governance systems affected by the serious deficiencies.

If, in the framework of the same conformity procedure, different serious deficiencies which would individually lead to distinct flat-rate corrections are established, then only the highest flat-rate correction shall apply.
3. When establishing the level of flat-rate corrections, the Commission shall specifically take into account one or more of the following circumstances demonstrating a higher gravity of the deficiencies, revealing a greater risk of loss for the Union budget:

- (a) serious deficiencies in one or more elements of the governance systems;
 - (b) the Member State's application of an element of the governance system is found to be absent, and there is evidence of wide-spread irregularity and negligence in countering irregular or fraudulent practices;
 - (c) similar deficiencies in the same sector are detected in a Member State in an enquiry that follows an enquiry in which they have been first detected and communicated to the Member State, account taken however of the corrective or compensating measures already taken by the Member State.
4. Where a Member State demonstrates that the maximum loss for the EAGF and the EAFRD is limited to a sum lower than what would derive from the application of the flat-rate proposed, the lower flat-rate may be applied or the certification body's assessment of the governance systems in the context of its audit referred to in Article 12 of Regulation (EU) 2021/2116 may be used by the Commission in order to determine the amounts to be excluded from Union financing during the conformity procedure referred to in Article 55 of that Regulation.
 5. Where appropriate, Member States may, within the time-periods set by the Commission during the conformity procedure, submit data concerning the verification of those amounts on the basis of an examination of all individual cases potentially affected by the deficiency. The verification shall cover the entire expenditure incurred in breach of Union law and charged to the Union budget. The data submitted shall include all amounts, which are ineligible due to that non-conformity with Union law. Alternatively, Member States may provide an assessment of the risk, based on a statistically valid and representative sample of the population affected by the deficiency, provided the Member States cannot calculate the amounts unduly spent with proportionate effort. The certification body shall confirm the Member State's assessment of the deficiency.
 6. In order to take into consideration the results submitted by Member States as referred to in paragraph 5, the Commission shall assess the method, content and results of the verification or extrapolation submitted. Where the Commission is satisfied with the method, content and results of the verification or extrapolation submitted, it shall use the results submitted by Member States pursuant to paragraph 5, in order to determine the amounts to be excluded from Union financing pursuant to Article 55 of Regulation (EU) 2021/2116.
 7. Amounts effectively recovered from the beneficiaries and credited to the EAGF and the EAFRD before a relevant date, to be established by the Commission in the course of the conformity procedure, shall be deducted from the amount that the Commission decides to exclude from Union financing pursuant to Article 55 of Regulation (EU) 2021/2116.

CHAPTER IV

Securities

SECTION 1

Scope and use of terms

Article 16

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 Regulation (EU) No 952/2013 of the European Parliament and of the Council¹¹.

Article 17

Terms used in this Chapter

For the purposes of this Chapter:

- (a) ‘competent authority’ means either a party authorised to accept a security or a party authorised to decide in accordance with the relevant regulation if a security is to be released or forfeited;
- (b) ‘block security’ means a security made available to the competent authority with the purpose of ensuring that more than one obligation is met;
- (c) ‘the relevant part of the sum secured’ means the part of the sum secured corresponding to the quantity for which a requirement has been breached.

SECTION 2

Requirement of a security

Article 18

Responsible party

A security shall be given by or on behalf of the party responsible for paying the sum of money due if an obligation is not met.

Article 19

Waiver of a security requirement

1. The competent authority may waive the security requirement where the party responsible for meeting the obligation is either:

¹¹ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

- (a) a public body responsible for executing the duties of a public authority; or
 - (b) a private body executing duties referred to in point (a) under State supervision.
2. The competent authority may waive the security requirement where the value of the sum secured is less than EUR 500. In that case, the party concerned shall undertake in writing to pay a sum equal to the security waived if the corresponding obligation is not met.

In applying the first subparagraph, the value of the security shall be calculated as comprising all the relevant obligations linked with a same operation.

Article 20

Conditions applying to securities

1. The competent authority shall refuse to accept or shall require the replacement of any security which it considers inadequate or unsatisfactory or which does not provide cover for a sufficient period.
2. Where cash is deposited by transfer, it shall not be regarded as establishing a security until the competent authority is satisfied that it has the amount at its disposal.
3. A cheque for a sum whose payment is guaranteed by a financial institution recognised for that purpose by the Member State of the competent authority concerned shall be treated as a cash deposit. The competent authority need not to present such a cheque for payment until the period for which it is guaranteed is about to expire.

A cheque, other than as referred to in the first subparagraph, shall constitute a security only when the competent authority is satisfied that it has the amount at its disposal.
4. Any charges by a financial institution shall be borne by the party giving the security.
5. No interest shall be paid to the party giving a security in the form of a cash deposit.

Article 21

Use of euro

1. Securities shall be constituted in euro.
2. If the security is accepted in a Member State which has not adopted the euro, the amount of the security in euro shall be converted into the applicable national currency in accordance with Chapter V. The undertaking corresponding to the security and any amount withheld in the event of irregularities or breaches shall remain fixed in euro.

Article 22

The guarantor

1. The guarantor shall have his officially registered residence or an establishment in the Union and, subject to the provisions of the Treaty concerning freedom to supply services, be approved by the competent authority of the Member State in which the security is given. The guarantor shall be bound by a written guarantee.
2. The written guarantee shall state at least:

- (a) the obligation or, in the case of a block security, the type(s) of obligation against whose fulfilment it guarantees the payment of a sum of money;
 - (b) the maximum liability to pay that the guarantor accepts;
 - (c) that the guarantor undertakes jointly and severally with the party responsible for meeting the obligation to pay, within 30 days upon demand by the competent authority, any sum, within the limit of the guarantee, due once a security is declared forfeit.
3. Where a written block security has already been given, the competent authority shall determine the procedure to be followed by which all or part of the block security shall be allocated to a particular obligation.

Article 23

Application of *force majeure*

Any person responsible for an obligation covered by a security claiming that the non-respect of the obligation is due to *force majeure* shall prove to the satisfaction of the competent authorities that *force majeure* applies. If the competent authority recognises a case of *force majeure*, the obligation is cancelled for the sole purpose of releasing the security.

SECTION 3

Release and forfeiture of securities other than those referred to in Section 4

Article 24

Forfeiting of securities

1. The obligation referred to in Article 64(1) of Regulation (EU) 2021/2116 is the requirement to perform or to refrain from performing an action, basic to the purposes of the Regulation imposing it.
2. If an obligation is not fulfilled and no time limit for fulfilment has been given, the security shall be forfeited when the competent authority establishes that it was not fulfilled.
3. If the fulfilment of an obligation is subject to a certain time limit, and the fulfilment took only place beyond that time limit, the security shall be forfeited.
In such case the security shall be forfeited for 10 % at once and further an additional percentage over the remaining balance shall be applied for:
 - (a) 2 % per calendar day exceeding the time limit if the obligation concerns the importing of products into a third country;
 - (b) 5 % per calendar day exceeding the time limit if the obligation concerns the leaving of products of the customs territory of the Union.
4. If an obligation is fulfilled timely, and the presentation of the proof of fulfilment is subject to a fixed time limit, the security covering that obligation shall be forfeited for each calendar day exceeding that time limit according to the formula 0,2/time limit in days set and taking account of Article 27.

If the proof referred to in the first subparagraph consists of the submission of a used or expired import or export licence, the security to be forfeited shall be 15 % if that proof is submitted after the fixed time limit referred to in the first subparagraph but at the latest on the 730th calendar day after the expiry date of the licence. After those 730 calendar days, the remaining security shall be forfeited in whole.

5. The amount of security to be forfeited shall be rounded to the first lower amount in whole euro or the applicable national currency.

Article 25

Releasing of securities

1. Once the proof as laid down by the specific Union rules that an obligation has been fulfilled, or the security has been partially forfeited in accordance with Article 64(2) of Regulation (EU) 2021/2116 and Article 24 of this Regulation, the security, or where applicable, the remainder of the security shall be released without delay.
2. A security shall on request be released in part where the relevant evidence has been furnished in relation to part of a quantity of product, provided that that part is not less than any minimum quantity specified in the regulation requiring the security, or, in the absence, as specified by the Member State.
3. Where no time-period is laid down for producing the evidence needed to release a sum secured, such period shall be 365 calendar days from the time limit specified for respecting the obligation for which the security was lodged. Where no time limit is specified for respecting the obligation for which the security was lodged, the period for producing the evidence needed to release a sum secured shall be 365 calendar days from the date by which all obligations have been fulfilled.

The period laid down in the first subparagraph shall not exceed 1 095 calendar days from the time the security was assigned to a particular obligation.

Article 26

Thresholds

1. The total sum forfeited shall not exceed 100 % of the relevant part of the sum secured.
2. The competent authority may waive the forfeiture of an amount less than EUR 100, provided that similar national provisions for comparable cases are laid down by law, regulation or administrative action.

SECTION 4

Securities with respect to advance payments

Article 27

Scope

This Section shall apply in cases where specific Union rules, other than rules on sectoral interventions, provide that a sum may be advanced before the obligation established to obtain any aid or advantage has been met.

Article 28

Release of securities

1. The security shall be released:
 - (a) either when final entitlement to the sum granted as an advance has been established;
 - (b) or when the sum granted, plus any addition provided for in the specific Union rules, has been repaid.
2. Once the deadline for proving final entitlement to the sum granted has passed without production of evidence of entitlement, the competent authority shall immediately follow the procedure for forfeiting the security.

However, where specific Union rules so provide, evidence may still be produced after that date against partial repayment of the security.

CHAPTER V

Use of euro

Article 29

Trade with third countries

1. For amounts relating to imports and for export taxes, fixed in euro by Union law relating to the common agricultural policy and applicable by the Member States in national currency, the conversion rate shall be specifically equal to the rate applicable pursuant to Article 53(1) of Regulation (EU) No 952/2013.
2. For prices and amounts expressed in euro in Union agricultural legislation regarding trade with third countries, the operative event for the exchange rate shall be the acceptance of the customs declaration.
3. For the purpose of calculating the standard import value of fruit and vegetables, in order to determine the entry price, the operative event for the exchange rate for the representative prices used to calculate that standard value and the amount of the reduction shall be the day to which the representative prices relate.

Article 30

Specific types of aid

1. For aid granted by quantity of marketed product or product to be used in a specific way, without prejudice to Articles 32 and 33, the operative event for the exchange rate shall be the first operation which guarantees, after the products are taken over by the operator concerned, the appropriate use of the products in question and entails grant of the aid.

2. For private storage aid the operative event for the exchange rate shall be the first day of the period in respect of which the aid relating to one and the same contract is granted.
3. For aid other than that referred to in paragraphs 1 and 2 of this Article, and in Articles 32 and 33, the operative event for the exchange rate shall be the deadline for the submission of applications.

Article 31

Wine sector

1. The operative event for the exchange rate shall be the first day of the financial year in which the support is granted for the following:
 - (a) restructuring and conversion of vineyards referred to in Article 58(1), first subparagraph, point (a), of Regulation (EU) 2021/2115;
 - (b) temporary and degressive assistance to cover administrative costs of setting-up of mutual funds referred to in Article 58(1), first subparagraph, point (l), of Regulation (EU) 2021/2115;
 - (c) harvest insurance against income losses resulting from adverse climatic events assimilated to natural disasters, adverse climatic events, damages caused by animals, plant diseases or pest infestations referred to in Article 58(1), first subparagraph, point (d), of Regulation (EU) 2021/2115.
2. For the green harvesting operations referred to in Article 58(1), first subparagraph, point (c), of Regulation (EU) 2021/2115, the operative event for the exchange rate shall be the day on which the green harvesting operation takes place
3. For the distillation of by-products of wine-making carried out in accordance with the restrictions laid down in Part II, Section D, of Annex VIII to Regulation (EU) No 1308/2013, referred to in Article 58(1), first subparagraph, point (g), of Regulation (EU) 2021/2115, the operative event for the exchange rate shall be the first day of the financial year in which the by-product is delivered.
4. For the investments referred to in Article 58(1), first subparagraph, points (b), (e) and (m), of Regulation (EU) 2021/2115, the operative event for the exchange rate shall be 1 January of the year in which the decision to grant the aid is taken.
5. For the types of intervention referred to in Article 58(1), first subparagraph, points (f), (h), (i), (j) and (k), of Regulation (EU) 2021/2115 the operative event for the exchange rate shall be the last-but-one exchange rate established by the European Central Bank before the month in respect of which the expenditure or assigned revenue is declared.

Article 32

Amounts and payments of aid linked to the implementation of the school scheme

For aid granted for the implementation of the school scheme referred to in Part II, Title I, Chapter II, Section I, of Regulation (EU) No 1308/2013, the operative event for the exchange rate shall be 1 January preceding the school year concerned.

Article 33

Support of structural or environmental character

For rural development support paid in accordance with Title III, Chapter IV, of Regulation 2021/2115, as well as for payments relating to measures approved under Regulation (EU) No 1305/2013, the operative event for the exchange rate shall be 1 January of the year in which the decision to grant the aid is taken.

However, where, under Union rules, payment of the amounts referred to in the first subparagraph is staggered over several years, the operative event for the exchange rate for each of the annual instalments shall be 1 January of the year for which the instalment in question is paid.

Article 34

Other amounts and prices

For prices or amounts other than those referred to in Articles 30 to 33, or amounts linked to those prices, expressed in euro in Union legislation, or expressed in euro by a tendering procedure, the operative event for the exchange rate shall be the day on which one of the following legal acts occurs:

- (a) for purchases, when the valid offer has been received;
- (b) for sales, when the valid offer has been received;
- (c) for withdrawals of products the day on which the withdrawal takes place;
- (d) for non-harvesting and green harvesting operations the day on which the non-harvesting and green harvesting operation takes place;
- (e) for costs of transport, processing or public storage and for amounts allocated to studies as part of a tendering procedure, the final day for the submission of tenders;
- (f) for the recording of prices, amounts or tenders on the market, the day in respect of which the price, amount or tender is recorded;
- (g) for penalties linked to non-compliance with agricultural legislation, the date of the act of the competent authority which establishes the facts.

Article 35

Payment of advances

For advances, the operative event for the exchange rate shall be the operative event applicable to the price or amount to which the advance relates, where this event has occurred by the time the advance is paid, or, in other cases, the date of setting in euro of the advance or, failing that, the date of payment of the advance. The operative event for the exchange rate shall be applied to advances without prejudice to the application to the entire price or amount in question of the operative event for that price or amount.

Article 36

Securities

For securities, the operative event for the exchange rate shall be the date on which the security is lodged.

However, the following exceptions shall apply:

- (a) for securities relating to advances, the operative event for the exchange rate shall be the operative event as defined for the amount of the advance, where that event has occurred by the time the security is paid;
- (b) for securities relating to the submission of tenders, the operative event for the exchange rate shall be the day on which the tender is submitted;
- (c) for securities relating to the performance of tenders, the operative event for the exchange rate shall be the closing date of the invitation to tender.

Article 37

Determination of the exchange rate

When an operative event is fixed under Union legislation, the exchange rate to be used shall be the most recent rate set by the European Central Bank prior to the first day of the month in which the operative event occurs.

However, the exchange rate to be used shall be:

- (a) for the cases referred to in Article 29(2) of this Regulation in which the operative event for the exchange rate is the acceptance of the customs declaration, the rate referred to in Article 53(1) of Regulation (EU) No 952/2013;
- (b) for intervention expenditure incurred in the context of public storage operations, the rate resulting from the application of Article 3(2) of Commission Delegated Regulation (EU) No 906/2014¹².

Article 38

Scrutiny of transactions

The amounts in euro resulting from the application of Title IV, Chapter III, of Regulation (EU) 2021/2116 shall be converted, where appropriate, into national currencies by applying the rate of exchange operating on the first working date of the year when the scrutiny period begins and as published in the C series of the *Official Journal of the European Union*.

CHAPTER VI

Transitional and final provisions

Article 39

Transitional provisions

Where a paying agency, accredited in accordance with Regulation (EU) No 1306/2013, assumes responsibility for expenditure for which it was not previously responsible, it shall be accredited with the new responsibilities before 1 January 2023.

¹² Commission Delegated Regulation (EU) No 906/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to public intervention expenditure (OJ L 255, 28.8.2014, p. 1).

Article 40

Repeal

Delegated Regulation (EU) No 907/2014 is repealed with effect from 1 January 2023.

However:

- (a) Article 5a, Article 7(3) and (4), Article 11(1), second subparagraph, and (2) and Article 13 of that Regulation shall continue to apply as regards the EAFRD in relation to expenditure incurred by the beneficiaries and payments effected by the paying agency in the framework of the implementation of rural development programmes pursuant to Regulation (EU) No 1305/2013 and as regards the EAGF to the operational programmes approved under Regulation (EU) No 1308/2013;
- (b) Article 13 of that Regulation shall continue to apply for ongoing recoveries launched under Article 54 of Regulation (EU) No 1306/2013.

Article 41

Entry into force and application

This Regulation shall enter into force on the 7th day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2023.

However, Article 39 shall apply from the date of entry into force of this Regulation.

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

Done at Brussels, 7.12.2021

For the Commission
The President
Ursula VON DER LEYEN