Commission Implementing Regulation (EU) 2018/56 of 12 January 2018 amending Implementing Regulation (EU) No 908/2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, rules on checks, securities and transparency

COMMISSION IMPLEMENTING REGULATION (EU) 2018/56

of 12 January 2018

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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[(1)], and in particular Articles 9(2), 36(6), 53(1) and 57(2) and Articles 104 and 114 thereof,

Whereas:

(1) In accordance with Article 7(3) of Commission Implementing Regulation (EU) No 908/2014[(2)], the certification body may use an integrated sampling approach when performing substantive testing of expenditure. Following the experience with the application of that Article in the first two years, it is appropriate to clarify what it is meant by an integrated sampling approach when pursuing the different audit objectives as referred to in Article 9 of Regulation (EU) No 1306/2013.

(2) Article 41 of Regulation (EU) No 1303/2013 of the European Parliament and of the Council[(3)] sets the limit for each declaration of expenditure of the paying agencies containing payment requests related to financial instruments at maximum of 25 % of the total amount of programme contributions committed to the financial instrument. Article 22(1)(a) of Implementing Regulation (EU) No 908/2014 provides that the quarterly declaration is to specify the amount of eligible public expenditure actually paid by the paying agency during each quarter in accordance with paragraph 2 of that Article. The amounts paid by the paying agency in the framework of financial instruments should be declared to the Commission respecting the limit of 25 % and provided that the corresponding implementation milestone has been achieved. The first declaration to the Commission within the 25 % limit is to be initiated by the signature of the funding agreement and the subsequent payment to the financial instrument. Subsequent tranches are to be declared to the Commission upon achievement of the corresponding disbursement rate, in accordance with Article 41 of Regulation (EU) No 1303/2013.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2018/56. (See end of Document for details)*

In the case of the European Agricultural Fund for Rural Development ('EAFRD') that means that the paying agency can only declare 25 % of the total planned contribution per quarter. It therefore appears that the rules laid down in Article 22(1) and (2) of Implementing Regulation (EU) No 908/2014 are not suitable for the way the financial instruments are to be managed between the Member States and the Commission in accordance with Regulation (EU) No 1303/2013 and need to be amended accordingly.

(3) In order to alleviate the administrative burden of the Member States when pursuing recoveries, experience shows that a threshold for not recovering interest should be established.

(4) Article 30(2) of Implementing Regulation (EU) No 908/2014 provides that the documents and accounting information used for the purpose of the clearance of accounts are to be sent to the Commission both in hard copy together with an electronic copy. In order to ease the administrative burden for the Member States and the Commission, to streamline the analysis of the documents and to mitigate the risk of inconsistencies in the data used, Member States should be required to submit electronic documents only, with the use of the electronic signature. That requirement should be also reflected in the text of the management declaration set out in Annex I to that Implementing Regulation. In order to avoid any delays in the transmission of the documents in case of technical difficulties related to the implementation of the electronic signature, it should be possible, for the first year of application of the new requirement, to allow the possibility to submit signed documents transmitted in electronic form.

(5) In accordance with Article 31(1) of Implementing Regulation (EU) No 908/2014, the form and content of the accounting information referred to in Article 30(1)(c) of that Implementing Regulation and the way it is to be forwarded to the Commission are to be those provided in accordance with Commission Implementing Regulation (EU) 2017/1758[(4)]. Experience shows that the form and content of the accounting information need to be amended every year with the related administrative burden and risk of delays. For reasons of simplification and in order to allow for the timely fixing of the related technical specifications, it is therefore appropriate to allow that, as of financial year 2019, the models and related technical specifications for the accounting information should be made available, and updated by the Commission, after having informed the Committee on the Agricultural Funds prior to the beginning of each financial year. It is also appropriate to lay down the general requirements for those technical specifications.

(6) Article 34(2) of Implementing Regulation (EU) No 908/2014 provides that, when the Commission considers that expenditure was not effected in accordance with the Union rules, it is to communicate the findings to the Member State concerned and the communication schedules also a bilateral meeting within four months after expiry of the period for reply by the Member State. During this time period certain administrative steps are necessary, such as translation of the reply from the Member State, Commission analysis of the elements put forward by the Member State, preparation of the invitation to the bilateral meeting in the national language of the Member State and preparation of the meeting. Experience of the last two years shows that the four-month period is

in most cases insufficient to lead to effective meetings. In order to allow for a better preparation of the bilateral meeting, the time period within which the meeting should be held should be prolonged to five months. Such prolongation will be applicable only to enquiries for which the communication pursuant to that Article 34(2) has not yet been sent at the moment of entry into force of this Regulation to avoid any disruption to on-going enquiries.

(7) The third subparagraph of Article 34(3) of Implementing Regulation (EU) No 908/2014 requires the Commission to communicate its conclusions to the Member State within six months after sending the minutes of the bilateral meeting. The deadline is specified only in relation to the minutes of the bilateral meeting meaning that a bilateral meeting has taken place. That Implementing Regulation does not explicitly define a deadline for sending the communication in case a Member State considered that a bilateral meeting is not required. That provision should therefore be clarified in this regard and fix a starting point for the six-month period when no bilateral meeting was required.

(8) Article 34(9) of Implementing Regulation (EU) No 908/2014 provides that in duly justified cases the time period referred to in paragraphs 3, 4 and 5 of that Article may be extended. Article 34(2) of that Implementing Regulation provides for a time period for the bilateral meeting to take place and it may happen that in duly justified cases, a need exists to extend that time period. Article 34(9) of that Implementing Regulation should therefore be amended accordingly.

(9) Pursuant to Article 111(1) of Regulation (EU) No 1306/2013, Member States are to publish information on the beneficiaries of the European Agricultural Guarantee Fund ('EAGF') and EAFRD, including, inter alia, the amount of the payment received for each measure financed by those funds in the financial year concerned and the nature and the description of each measure. Article 57 of Implementing Regulation (EU) No 908/2014 specifies the details that are to be published in relation to those measures and refers to Annex XIII to that Implementing Regulation, which contains a list of the measures concerned.

(10) Annex XIII to Implementing Regulation (EU) No 908/2014 should be amended in order to take into consideration that also the exceptional measures necessary to address the market situation on the basis of Articles 220(1) and 221(1) and (2) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council[(5)] should be included among the measures listed in that Annex. Those exceptional measures are considered as measures supporting agricultural markets in accordance with Article 4(1)(a) of Regulation (EU) No 1306/2013. Therefore, it is appropriate to amend point 10 of Annex XIII to Implementing Regulation (EU) No 908/2014. Moreover, the aid to the silkworm sector mentioned in point 3 in the list of that Annex is no longer applicable taking into consideration that Article 111 of Council Regulation (EC) No 1234/2007[(6)] has been repealed by Regulation (EU) No 1308/2013 with effect from 1 January 2014 and that all related financial commitments and payments to beneficiaries have now ended. The reference to the aid to the silkworm sector should be therefore deleted from that list.

(11) Implementing Regulation (EU) No 908/2014 should therefore be amended accordingly.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2018/56. (See end of Document for details)*

(12) The measures provided for in this Regulation are in accordance with the opinion of the Committee on the Agricultural Funds,

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) No 908/2014 is amended as follows:

(1) in Article 7(3), the fourth sentence is replaced by the following:

'As regards substantive testing, including the sampling methods, the certification bodies may apply dual-purpose testing between audit objectives.';

(2) in Article 22(2), the following third subparagraph is added:

As regards financial instruments set up in accordance with Article 38(1)(b) of Regulation (EU) No 1303/2013, the expenditure shall be declared in respect of the reference periods referred to in the first subparagraph once the conditions for each subsequent application for interim payment as laid down in Article 41(1) of that Regulation are met.;

(3) in Article 27(1), the following sentence is added:

'Member States may decide not to recover the interest when the amount of interest does not exceed EUR 5.';

(4) in Article 30, paragraph 2 is replaced by the following:

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

Those documents shall bear a compulsory electronic signature within the meaning of Regulation (EU) No 910/2014 of the European Parliament and of the Council[7]. For the documents related to financial year 2017, the Commission may accept signed documents transmitted in electronic form.;

(5) in Article 31, paragraph 1 is replaced by the following:

1. The form and content of the accounting information referred to in Article 30(1)(c) shall be made available by the Commission to Member States by way of models through information systems.

The models and the related technical specifications for the accounting information shall be made available, and updated by the Commission, after having informed the Committee on the Agricultural Funds, prior to the beginning of each financial year.

The technical specifications shall include:

a the yearly data requirements for the individual accounting information (X Table);

b the specification for the transfer of the computer files concerning EAGF and EAFRD expenditure;

c the data field descriptions (aide-memoire);