Commission Delegated Regulation (EU) 2015/1971 of 8 July 2015 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with specific provisions on the reporting of irregularities concerning the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development and repealing Commission Regulation (EC) No 1848/2006

COMMISSION DELEGATED REGULATION (EU) 2015/1971

of 8 July 2015

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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 Article 50(1) thereof,

Whereas:

(1) The purpose of this Regulation is to determine which irregularities Member States should report to the Commission. In order to allow the Commission to perform its tasks concerning the protection of the financial interests of the Union, in particular, to allow the Commission to perform risk analysis, it should also be established which data are to be provided.

(2) Financial interests of the Union should be protected in the same way irrespective of the fund used to deliver the objectives for which it was established. To that end Regulation (EU) No 1306/2013, as well as Regulations (EU) No 1303/2013[(2)], (EU) No 223/2014[(3)] and (EU) No 514/2014[(4)] of the European Parliament and of the Council, empower the Commission to adopt rules on the reporting of irregularities. To ensure that identical rules apply in respect of all the funds governed by those Regulations, it is necessary that this Regulation contains provisions identical to those in Commission Delegated Regulations (EU) 2015/1970[(5)], (EU) 2015/1972[(6)] and (EU) 2015/1973[(7)].

(3) To enable a coherent application of the reporting requirements across the Member States it is necessary to define the term ‘suspected fraud’, taking into account the definition of fraud contained in the Convention drawn up on the basis of Article K.3 of the Treaty on European Union on the protection of the European Communities' financial interests[(8)], and the term ‘primary administrative or judicial finding’. For the European Agricultural Guarantee Fund ‘economic operator’ should mean any natural or legal person or other entity taking part in the implementation of assistance from the fund or having to pay

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an assigned revenue within the meaning of Article 43(1) point (b) of Regulation (EU) No 1306/2013, with the exception of a Member State exercising its prerogatives as a public authority.

(4) Regulations (EU) No 1303/2013 and (EU) No 223/2014 determine the reporting threshold below which irregularities do not need to be reported to the Commission and cases for which there is no need for reporting. In order to simplify and to align the provisions, and to strike a balance between the administrative burden on Member States and the common interest in the provision of accurate data for the purpose of analysis in the Union's fight against fraud, it is necessary to apply the same reporting threshold and the same derogations for the reporting of irregularities under Regulations (EU) No 1306/2013 and (EU) No 514/2014.

(5) In order to ensure consistency of reporting it is necessary to establish criteria for determining when irregularities are to be initially reported and the data to be provided in such initial reports.

(6) In order for the data provided to the Commission to be accurate, follow-up reporting is necessary. Member States should, therefore, provide the Commission with up-to-date-information on any significant progress in the administrative and legal procedures or proceedings related to each initial report.

(7) In light of Directive 95/46/EC of the European Parliament and of the Council[(9)] and Regulation (EC) No 45/2001 of the European Parliament and of the Council[(10)], the Commission and the Member States should, in relation to the information provided pursuant to this Regulation, prevent any unauthorised disclosure of, or access to, personal data. In addition, this Regulation should specify the purposes for which the Commission and the Member States may process that data.

(8) Commission Regulation (EC) No 1848/2006[(11)], which laid down rules applicable in the programming period 2007-2013 under Council Regulation (EC) No 1290/2005[(12)] should be repealed. However, it should continue to apply for the reporting of irregularities in respect of assistance granted under Regulation (EC) No 1290/2005.

(9) As payments have already been made for the funds concerned and irregularities could occur, the provisions of this Regulation should apply immediately. This Regulation should therefore enter into force on the day following that of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation determines which irregularities are to be reported and establishes which data are to be provided by Member States to the Commission.

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Article 2

Definitions

The definitions in Regulations (EU) No 1306/2013 and (EU) No 1303/2013 shall apply. In addition, for the purposes of this Regulation:

(a) 'suspected fraud' means an irregularity that gives rise to the initiation of administrative or judicial proceedings at national level in order to establish the presence of intentional behaviour, in particular fraud, as referred to in Article 1(1)(a) of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests;

(b) 'primary administrative or judicial finding' means a first written assessment by a competent authority, either administrative or judicial, concluding on the basis of specific facts that an irregularity has been committed, without prejudice to the possibility that this conclusion may subsequently have to be revised or withdrawn as a result of developments in the course of the administrative or judicial procedure.

Article 3

Initial reporting

1 Member States shall report irregularities to the Commission which:
- a affect an amount that exceeds EUR 10 000 in contribution from the funds;
- b have been the subject of a primary administrative or judicial finding.

2 In the initial report Member States shall provide the following information:
- a the fund, support scheme, measure, operation concerned and where appropriate, the name and the Common Identification Code (CCI) number of the operational programme, common market organisations affected, the sectors and products concerned and the budget line;
- b the identity of the natural or legal persons concerned, or both, or of any other entity having a role in the commission of the irregularity and their role, except where that information is irrelevant for the purposes of combating irregularities, given the nature of the irregularity concerned;
- c the region or area where the operation has been carried out, identified using appropriate information such as the NUTS level;
- d the provision or provisions which have been infringed;
- e the date and source of the first information leading to the suspicion that an irregularity has been committed;
- f the practices employed in committing the irregularity;
- g where appropriate, whether the practice gives rise to suspected fraud;
- h the manner in which the irregularity was discovered;
- i where appropriate, the Member States and third countries involved;
- j the period during which, or the date on which, the irregularity was committed;
- k the date on which the primary administrative or judicial finding on the irregularity was established;

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l the total amount of expenditure, expressed in terms of the Union's contribution, the national contribution and the private contribution;

m the amount affected by the irregularity expressed in terms of the Union's contribution and the national contribution;

n in the case of suspected fraud, and where no payment of the public contribution has been made to the beneficiary, the amount which would have been unduly paid had the irregularity not been identified, expressed in terms of the Union's contribution and the national contribution;

o the nature of the irregular expenditure;

p the suspension of payments, where applicable, and the possibility of recovery of amounts paid.

3 By way of derogation from paragraph 1, the Member States shall not report to the Commission irregularities in relation to the following:

a cases where the irregularity consists solely of the failure to execute, in whole or in part, an operation included in the co-financed programme or direct payment owing to the bankruptcy of the beneficiary;

b cases brought to the attention of the managing authority, paying agency or other competent authority by the beneficiary voluntarily and before detection by either authority, whether before or after the payment of the public contribution;

c cases which are detected and corrected by the managing authority, paying agency or other competent authority, before inclusion of the expenditure concerned in a statement of expenditure submitted to the Commission.

In all other cases, in particular those preceding a bankruptcy or in cases of suspected fraud, the detected irregularities and the associated preventive and corrective measures shall be reported to the Commission.

4 Where national provisions provide for the confidentiality of investigations, communication of the information shall be subject to the authorisation of the competent tribunal, court or other body in accordance with national rules.

Article 4

Follow-up reporting

1 Where some of the information referred to in Article 3(2), in particular information concerning the practices employed in committing the irregularity and the manner in which it was discovered, is not available or needs to be rectified, Member States shall provide the missing or correct information in follow-up reports of irregularities to the Commission.

2 Member States shall keep the Commission informed on the initiation, conclusion or abandonment of any procedures or proceedings for imposing administrative measures, administrative penalties or criminal penalties, with regard to the reported irregularities, as well as the outcome of those procedures or proceedings. With regard to irregularities for which penalties have been imposed, Member States shall also indicate:

a whether the penalties are of an administrative or a criminal nature;

b whether the penalties result from a breach of Union or national law and details of the penalties;

c whether fraud was established.