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

COMMISSION DELEGATED REGULATION (EU) No 907/2014

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supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008[(1)], and in particular Articles 8(1), 40, 46(1), 46(2), 46(3), 46(4), 53(3), 57(1), 66(3), 79(2), 106(5) and (6) and 120 thereof,

Whereas:

(1) Regulation (EU) No 1306/2013 has laid 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 Regulation (EU) No 1306/2013 in the areas concerned. The new rules should replace the existing Commission Regulations (EC) No 883/2006[(2)], (EC) No 884/2006[(3)], (EC) No 885/2006[(4)], (EC) No 1913/2006[(5)], (EU) No 1106/2010[(6)], (EU) No 282/2012[(7)], which were based on Council Regulations already replaced by Regulation (EU) No 1306/2013. For the sake of clarity and legal certainty, Regulations (EC) No 883/2006, (EC) No 884/2006, (EC) No 885/2006, (EC) No 1913/2006, (EU) No 1106/2010 and Commission Implementing Regulation (EU) No 282/2012 should be repealed.

(2) In accordance with Article 7 of Regulation (EU) No 1306/2013 paying agencies should only be accredited by Member States if they comply with certain minimum criteria established at Union level. Those criteria should 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. Furthermore, rules should be laid down as regards the criteria for the accreditation of coordinating bodies referred to in Article 7(4) of Regulation (EU) No 1306/2013.

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(3) Public intervention measures may be financed only if the concerned expenditure is incurred by the paying agencies designated by the Member States as being responsible for certain obligations with respect to public intervention. However, performance 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 the second subparagraph of Article 7(1) of Regulation (EU) No 1306/2013. 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 must act under contract on the basis of general obligations and principles which should be laid down.

(4) Union agricultural legislation includes, for the European Agricultural Guarantee Fund (EAGF), periods for payment of aids to beneficiaries which must be complied with by Member States. Payments effected outside those periods are to be regarded as ineligible for Union payments, and therefore cannot be the subject of reimbursement by the Commission, as provided for in Article 40 of Regulation (EU) No 1306/2013. The analysis of late payments of aid by Member States has shown that a number of these are due to additional checks by Member States related to contentious claims, appeals and other national legal disputes. In accordance with the principle of proportionality, a fixed margin related to expenditure should be laid down within which no reductions of the monthly 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 to proportionally reduce the Union payments according to the length of delay in payment recorded. Payments of aid before the earliest possible date of payment as provided for in the Union agricultural legislation cannot be justified by the same reasons as payments after the latest possible date of payment. Therefore, no proportional reduction should be foreseen for these early payments. However, an exception should be provided for cases where Union agricultural legislation foresees the payment of an advance up to a certain maximum amount.

(5) The Commission is to make payments at monthly or other regular intervals to the Member States on the basis of declarations of expenditure sent by the latter. It 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.

(6) If the Union budget has not been adopted by the beginning of the financial year, under the third subparagraph of Article 16(2) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council[8], payments may be made monthly per chapter to a maximum of one twelfth of the allocated appropriations in the chapter in

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question of the preceding financial year. To allocate the available 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 Commission decisions on subsequent monthly or interim payments.

(7) The exchange rates applicable should be laid down according to whether or not an operative event has been defined in the sectoral agricultural legislation. 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 in a currency other than the euro, on the one hand, and in the declaration of expenditure drawn up by the paying agency, on the other, the Member States concerned should apply the same exchange rate in their declarations of expenditure under the EAGF as that used when collecting that revenue or making those payments to beneficiaries. Moreover, to simplify the administrative formalities as regards recoveries for more than one operation, a single exchange rate should apply when entering these recoveries into the accounts.

(8) In order to enable the Commission to verify that Member States respect their obligation to protect the financial interest of the Union and to ensure an efficient application of the conformity clearance procedure provided for in Article 52 of Regulation (EU) No 1306/2013 provisions should be laid down concerning the criteria and methodology to apply corrections. The different types of corrections referred to in Article 52 of Regulation (EU) No 1306/2013 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 funds.

(9) Regulation (EU) No 1306/2013 provides for the scrutiny of the commercial documents of those entities receiving or making payments relating directly or indirectly to the system of financing by the EAGF, in order to ascertain whether transactions forming part of the system of financing by the EAGF have actually been carried out and have been executed correctly. It is appropriate to exclude from the application of that Regulation those measures which are by their nature unsuited to *ex post* control by way of scrutiny checks of commercial documents, as well as measures which are concerned with payments that are either area related or unrelated to commercial documents that can be subject to scrutiny.

(10) 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. However, experience has shown that this requirement is in practice interpreted in widely differing ways. Therefore, in order to avoid unequal competitive conditions, the conditions applying to that requirement should be laid down.

(11) The costs of lodging a security, incurred by both the party giving the security and the competent authority, may be out of proportion to the sum whose payment the security guarantees if that sum is below a certain limit. Competent authorities should therefore

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have the right to waive the requirement of a security for payment of a sum below that limit. Furthermore, the competent authority should be empowered to waive the requirement of a security where the nature of the person required to meet the obligations makes that requirement unnecessary.

(12) A competent authority should have the right to refuse a security offered where it considers it to be unsatisfactory.

(13) Regulation (EU) No 1306/2013 has strengthened the rules requiring that a security be lodged to ensure the payment of a sum due if an obligation is not met. That single horizontal legal framework should be supplemented with uniform rules on *force majeure*, on forfeiting or releasing the security. Commission Regulation (EC) No 376/2008[(9)] and Commission Regulation (EC) No 612/2009[(10)] contain rules on the releasing and forfeiture of securities in the field of import and export licences and of the system of export refunds. The new rules provided by this Regulation should also apply in those sectors. For reason of clarity and legal certainty, the relevant provisions in Regulations (EC) No 376/2008 and (EC) No 612/2009 should be deleted.

(14) Under Regulation (EU) No 282/2012 a distinction was made between primary, secondary, and subordinate requirements, while a limited number of Commission Regulations refers to primary requirements only. Non-fulfilment of a requirement resulted in full or proportional forfeiture of security covering that requirement according to complicated calculation methods which were the basis for confusion. While respecting the principle of proportionality, a simplified approach on forfeiture should adhere to the practical situation in which an obligation was either not fulfilled, or not timely fulfilled, or the proof of fulfilment of the obligation was not submitted within the time-frame set.

(15) Many provisions in agricultural legislation of the Union provide that the security given is forfeited if any obligation secured is breached, without making any distinction between the types of infringement. In the interests of equity, a distinction should be drawn between the consequences of breaching different obligations. In particular, provision should be made for forfeiture of only a part of the security in specific cases.

(16) No distinction between the consequences of failure to meet an obligation should be made based on whether or not an advance payment has been received. Accordingly, securities given against advances should be covered by separate rules.

(17) The operative events for the exchange rates applicable to the different situations which arise within the framework of sectoral agricultural legislation should be laid down, without prejudice to any specific definitions or exemptions provided for in the rules for the sectors concerned on the basis of the criteria mentioned in Article 106(5) of Regulation (EU) No 1306/2013.

(18) For all the prices or amounts to be determined within the framework of trade with third countries, acceptance of the customs declaration is the operative event most suited to achieving the commercial objective concerned. The same applies to export refunds and to the determination of the entry price of fruit and vegetables into the Union, on the

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basis of which products are classed in the Common Customs Tariff. This operative event should therefore be adopted.

(19) For production refunds, the operative event for the exchange rate is, as a general rule, linked to the completion of certain specific formalities. In order to harmonise the rules, it should be laid down that the operative event is the date on which products are declared to have reached the required destination, where such a destination is required, and in all other cases the acceptance of the application for payment of the refund by the paying agency.

(20) For aid granted by quantity of product marketed or to be used in a specific way, the obligation to be complied with for the purposes of granting the aid is an event that guarantees the appropriate use of the products in question. The taking over of the products by the operator concerned is a prerequisite allowing the competent authorities to carry out the required checks or inspections on the operator's accounts and guaranteeing uniform treatment of the files. The operative event for the exchange rate should therefore be established in relation to the taking over of the products.

(21) For other aid granted in the agricultural sector, situations may differ widely. However, such aid is always granted on the basis of an application and within deadlines laid down by the legislation. The operative event for the exchange rate in this case should therefore be established as the deadline for the submission of applications.

(22) Regarding supports, aids and premiums in the wine sector, the operative event for the exchange rate should be linked, depending on the situation, to the starting date of the wine year, the completion of certain operations or a specific date. The operative event to be taken into account should therefore be specified for each situation.

(23) The situations to be taken into account for the purposes of determining the operative event are very different from sector to sector. The operative event should therefore be laid down in accordance with the specific nature of each of the situations and measures covered by those agricultural sectors, in particular for the aid in the milk and milk products sector, the School Fruit Scheme, the sugar sector, promotion measures, some measures under the fruit and vegetables sector.

(24) Regarding amounts of a structural or environmental character as referred to in Regulation (EU) No 1305/2013 of the European Parliament and of the Council[(11)], and amounts approved in accordance with Council Regulation (EC) No 1698/2005[(12)], the payments of which are assured by the rural development programmes approved under Regulation (EU) No 1305/2013, the amounts are laid down for a marketing year or a calendar year. The commercial objective is therefore reached if the operative event for the exchange rate is established for the year concerned. Based on this, the operative event should be set at 1 January of the year in which the decision to grant aid is taken.

(25) Regarding advances and securities, the amounts to be paid or the guaranteed amounts are fixed in euro in accordance with the sectoral agricultural legislation. The exchange rate applicable to these amounts must therefore be close to the date of payment of the advance or the date on which the securities are lodged. If the securities are used, the amount of those securities must also cover all the risks for which they were set up. The