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From:	Presidency
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Subject:	Proposal for a REGULATION 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 - <i>Draft Presidency text</i>

I. STATE OF PLAY

1. For the Agricultural and Fisheries Council of 18 June 2019, the Romanian Presidency prepared a text of the proposed Horizontal Regulation (HZR) (doc. 10135/19), reflecting various Presidency drafting suggestions done under the Austrian and Romanian Presidencies. Explanations for these drafting suggestions can be found in WK 13742/2018 and WK 6442/2019 REV 1.

2. Discussions in the WP AGRIFIN on the proposed HZR continued under the Finnish Presidency in the same constructive manner as under the two previous Presidencies. In the Finnish Presidency's assessment, delegations broadly agree to transfer the relevant provisions of the current HZR (Regulation 1306/2013) to the new CAP programming period as evidence shows that the financing, management and monitoring of the CAP in accordance with the current HZR is generally done in a satisfactory manner.
3. Discussions in the WP AGRIFIN therefore mainly focussed on clarifying the implications of the New Delivery Model in the proposed new provisions in the HZR. AGRIFIN also reviewed the extent of application of the single audit approach (Article 46) in relation to checks carried out by the Commission (Article 47) and continued the discussion on the appropriateness of carrying over and maintaining, or rather simplifying, the current provisions for the scrutiny of transactions (Articles 74-83).
4. As far as the New Delivery Model (NDM) in the proposed HZR is concerned and on the basis of Commission non-papers (WK 10172/2019 and WK 10731/2019), further discussions took place on the content of the annual clearance package and the procedure for annual performance clearance. Pending further discussions in the Working Party on Horizontal Agricultural Questions (WP HAQ) on the relevant NDM-related Articles in the CAP Strategic Plan Regulation (CAP SPR), such as Article 121 on Annual performance reports and Article 121a on Biennial performance review, it remains to be seen if further consequential changes are needed in the proposed HZR, i.e. in Articles 38 & 39 on the Suspension of payments and Article 52 on the Annual performance clearance. From the point of view of ensuring legal consistency between the proposed CAP SPR and the HZR and to avoid overlapping legal obligations in the two texts, e.g. between Article 121 of the CAP SPR and Article 8 in the HZR, some further adjustments might be necessary as well.

5. As far as the single audit approach (Article 46) is concerned, some delegations would like to see a further increase of the Commission's reliance on the work carried out by the Certification Bodies and, as a consequence of this, a limitation of the possibilities of the Commission to carry out checks (Article 47). However, further to the additional explanations given by the Commission in relation to the single audit approach (see WK 5888/2019) and in view of the Commission's obligations in regard of the implementation of the budget (see WK 9669/2019), no further changes to the text of Articles 46 and 47 have been introduced. However, the Presidency acknowledges that the single audit approach is a politically important objective for a number of Member States, which is something that could be underlined at a later point in time in the Recitals of the Regulation.
6. As far as the scrutiny of transactions (Articles 74-83) is concerned and in a spirit of compromise (see WK 9846/2019 and WK 10481/2019), the Presidency has made a number of drafting suggestions, which, at the meeting of the WP AGRIFIN of 2 October, appeared to be acceptable to a majority of delegations. The aim of the proposed changes is to achieve further simplification in the area of scrutiny by deleting or amending a number of provisions while maintaining an appropriate control environment.
7. The proposed provisions on the Integrated Administration and Control System (Articles 63-73) and the Control system and penalties in relation to conditionality (Articles 84-87) are still being examined in the WP HAQ. It should be noted that the text on these Articles in ANNEX is therefore identical to the previous consolidated text of the proposed HZR (doc. 10135/2019) and no further changes have been introduced by the Finnish Presidency in this version of the HZR. As soon as the WP HAQ agreed on a final text of these provisions, the Presidency will insert that text in a revision of the consolidated text of the proposed HZR.

8. It should also be noted that the following MFF-related issues (so-called bracketed text) are being examined in the Ad Hoc WP on the MFF and will therefore not be redrafted by the WP AGRIFIN or the SCA: Article 14 on the Agricultural reserve; Article 15 on Financial discipline (including the EUR 2000 threshold added to Art. 15(1)); Article 29 on Pre-financing arrangements; and Article 32 on Automatic de-commitment for CAP Strategic Plans.

II. PRESIDENCY DRAFTING SUGGESTIONS

9. Taking the above mentioned into account, the Presidency has put together a consolidated text of the proposed HZR in the ANNEX, which it considers to reflect the Council's position at this stage of the examination of the proposal. Unless otherwise indicated below, this text proposes to incorporate all drafting suggestions done by the Austrian and Romanian Presidencies.¹ Furthermore, and as explained below, the Finnish Presidency proposes a number of substantial as well as editorial changes to the text.² Finally, a number of other issues are identified where further discussions and/or (legal) redrafting might be needed.

10. Substantial drafting suggestions:

- Article 1 (*Scope*): the words "in particular" have been removed for legal reasons;
- Article 10 (*Commission powers*): for the sake of clarity, the wording in Art. 10(1)(b) has been fully aligned with the corresponding wording in Art. 8(1)(b) of the current HZR (Regulation 1306/2013);

¹ The AT and RO Presidency drafting suggestions deemed acceptable are indicated in the consolidated version of the text in ANNEX in **bold** or ~~strikethrough~~.

² The FI Presidency drafting suggestions are indicated in the consolidated version of the text in ANNEX in **bold/underlined** or **bold/strikethrough/underlined**.

- Article 34 (*No double funding*): at the request of the Commission, the wording of Article 34 has been aligned with the corresponding wording in the Common Provisions Regulation (CPR);
- Article 52 (*Annual performance clearance*): in Art. 52(1) for legal reasons, a reference has been inserted to Article 121 of the proposed CAP SPR;
- Article 58 (*Rules regarding checks to be carried out*): at the request of the Commission, Art. 58(2) has been amended so as to provide for an appropriate legal basis to require checks at the level of the bodies providing loans to farmers in case of guarantee financial instruments;
- Articles 74-83 (*Scrutiny of transactions*)³:
 - ✓ in Art. 74(2) (*Scope and definitions*), the last sentence has been deleted;
 - ✓ in Art. 75(4) (*Scrutiny by the Member States*), the word "programme" has been replaced by "control plan" (see WK 10481/2019); similar amendments were made in Art. 79(1) and (3) (*Programming and reporting*);
 - ✓ in Art. 79(2) (*Planning and reporting*), subparagraphs (a) and i. have been merged and subparagraph ii. has been deleted;
 - ✓ in Art. 82(3) (*Access to information and scrutiny by the Commission*), the word "requesting" has been inserted;
- Article 100 (*Exercise of the delegation*): as a consequence of the deletion of the second sentence of Article 74(2), the references to Art. 74 in paragraphs (2), (3) and (6) have been deleted.

³ Explanations for the changes to Articles 74-83 can be found in WK 9846/2019 and WK 10481/2019.

11. **Editorial drafting suggestions:**

- Article 14, last paragraph (*Agricultural reserve*): a closing bracket (i.e. "]") has been added;
- Article 15 (*Financial Discipline*):
 - ✓ the 2nd subparagraph of Art. 15(1) has been put in brackets as this paragraph appears in the MFF "nego-box"; as such, it will be subject to further consideration in the Ad Hoc WP on the MFF;
 - ✓ in Art. 15(3), 2nd subparagraph, a comma in the second line has been deleted;
- Article 35 (*Eligibility of expenditure*): the numbering of the subparagraphs has been corrected;
- Article 40 (*Suspension of payments in relation to deficiencies in the governance system*): the brackets around this Article, which had already been deleted under the Romanian Presidency, have been removed as this Article is no longer subject to the MFF negotiations;
- Article 52(2) (*Annual performance clearance*): "annual performance reports" are now written with small letters and the reference to the proposed CAP SPR has been corrected;
- Article 57(6)(a) (*Protection of the financial interests of the Union*): the word "and" has been inserted and the comma before this word has been deleted;
- Article 83 (*Implementing powers*): the numbering of the subparagraphs in this Article will be adjusted at a later stage.

12. **Issues requiring further consideration:**

- Article 8 (*Paying agencies and coordination bodies*):
 - ✓ the 3rd subparagraph of Art. 8(2) has been put in brackets and a footnote has been inserted to indicate that the current wording needs to be redrafted in order to make it legally acceptable;
 - ✓ in Art. 8(3), a footnote has been inserted to indicate that, according to the Council's Legal Service, Article 121 of the CAP SPR needs to be legally consistent with this paragraph in the HZR;
 - ✓ in Art. 8(4)(b), the word "furnish" has been put in brackets with an accompanying footnote, which explains that this word is legally not satisfactory and that alternative wording needs to be considered;
- Article 14 (*Agricultural reserve*): as announced by the Council Legal Service in the Ad Hoc Working Party on the MFF, a reference shall be added here to Article 322 TFEU;
- Article 45 (*Commission powers*) and Article 50 (*Commission powers*): footnotes have been inserted in these Articles to indicate that there might be a need to better frame the empowerment of the Commission;
- Cross-references: throughout the text of this Regulation, further consideration shall be given to the need for appropriate cross-referencing to relevant articles, both within the HZR itself as well as between the HZR and the CAP SPR.

III. NEXT STEPS

13. At the meeting of the WP AGRIFIN of 6 November, delegations will be invited to indicate whether the proposed drafting suggestions listed in points 10 and 11 above are acceptable. Delegations may also comment on the issues requiring further consideration, as listed in point 12 above. Delegations are also welcome to give their views on the consolidated text in ANNEX as a whole.
 14. After the AGRIFIN meeting on 6 November, the Presidency intends to finalise the consolidated text of the proposed HZR and in particular find solutions for the outstanding issues listed in point 12 above. A revised consolidated version of the HZR will be send to delegations with a view to the WP AGRIFIN meeting of 21 November.
 15. As soon as the WP HAQ has finalised its deliberations on Articles 63-73 (*Integrated Administration and Control System*) and Articles 84-87 (*Control system and penalties in relation to conditionality*), the resulting text will be incorporated, without further discussion in the WP AGRIFIN, in a revision of the consolidated text of the HZR.
 16. After the WP AGRIFIN meeting of 21 November, towards the end of November or beginning of December, the Presidency intends to present the consolidated texts of the HZR and of the CAP SPR, accompanied with a progress report covering the three CAP proposals, to the SCA with a view to present them for discussion at the December Agricultural and Fisheries Council.
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DRAFT PRESIDENCY TEXT⁴

Proposal for a

REGULATION 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

Title I
Scope and definitions

Article 1

Scope

This Regulation lays down rules, ~~in particular,~~ on:

- (a) the financing of expenditure under the Common Agricultural Policy (CAP), ~~including expenditure on rural development;~~
- (b) the management and control systems to be put in place by the Member States;
- (c) clearance and conformity procedures.

⁴ All drafting suggestions deemed acceptable in principle are indicated in **bold** or ~~strikethrough~~. Any additional Presidency drafting suggestions or comments in footnotes are indicated in **bold/underlined** or **~~bold/strikethrough/underlined~~**.

Article 2
Definitions

For the purposes of this Regulation, the following definitions apply:

- (a) "irregularity" means an irregularity within the meaning of Article 1(2) of Regulation (EC, Euratom) No 2988/95;
- (b) "governance systems" means the governance bodies referred to in Chapter II of Title II of this Regulation and the basic Union requirements laid down in this Regulation and Regulation (EU) .../... [CAP Strategic Plan Regulation], including the reporting system put in place for the purposes of the annual performance report referred to in Article 121 of Regulation (EU) .../... [CAP Strategic Plan Regulation];
- (c) "basic Union requirements" means the requirements laid down in Regulation (EU) .../... [CAP Strategic Plan Regulation] and in this Regulation.

Article 3
Exemptions in cases of force majeure and exceptional circumstances

For the purposes of the financing, management and monitoring of the CAP, "force majeure" and "exceptional circumstances" may, in particular, be recognised in the following cases:

- (a) a severe natural disaster gravely affecting the holding;
- (b) the accidental destruction of livestock buildings on the holding;

- (c) an epizootic or a plant disease affecting part or all of the beneficiary's livestock or crops respectively;
- (d) expropriation of all or a large part of the holding if that expropriation could not have been anticipated on the day of lodging the application;
- (e) **the death of the beneficiary;**
- (f) **long-term professional incapacity of the beneficiary.**

Title II

General provisions on agricultural Funds

CHAPTER I

Agricultural Funds

Article 4

Funds financing agricultural expenditure

The financing of the various interventions and measures falling under the CAP from the general budget of the Union (the Union's budget) shall be made by:

- (a) the European Agricultural Guarantee Fund ('EAGF');
- (b) the European Agricultural Fund for Rural Development ('EAFRD').

Article 5

EAGF expenditure

- 1. The EAGF shall be implemented either through shared management between the Member States and the Union or directly, as laid down in paragraphs 2 and 3.
- 2. In the context of shared management, the EAGF shall finance the following expenditure:
 - (a) measures regulating or supporting agricultural markets, as laid down in Regulation (EU) No 1308/2013⁵;

⁵ 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).

- (b) sectoral interventions as referred to in Chapter 3 of Title III of Regulation (EU).../[CAP Strategic Plan Regulation];
- (c) direct payments interventions to farmers under the CAP Strategic Plan referred to under Article 14 of Regulation (EU).../[CAP Strategic Plan Regulation];
- (d) the Union's financial contribution to information and promotion measures for agricultural products on the internal market of the Union and in third countries, undertaken by Member States, and which are selected by the Commission;
- (e) the Union's financial contribution to the specific measures for agriculture in the outermost regions of the Union as referred to in Regulation (EU) No 228/2013 and to the specific measures for agriculture in favour of the smaller Aegean islands as referred to in Regulation (EU) No 229/2013.

3. The EAGF shall finance the following expenditure in direct management:

- (a) the promotion of agricultural products, either directly by the Commission or through international organisations;
- (b) measures taken in accordance with Union law to ensure the conservation, characterisation, collection and utilisation of genetic resources in agriculture;
- (c) the establishment and maintenance of agricultural accounting information systems;
- (d) agricultural survey systems, including surveys on the structure of agricultural holdings.

Article 6
EAFRD expenditure

The EAFRD shall be implemented in shared management between the Member States and the Union. It shall finance the Union's financial contribution to the CAP Strategic Plan rural development interventions referred to in Chapter 4 of Title III of Regulation (EU) .../...[CAP Strategic Plan Regulation] **and technical assistance at the initiative of the Member States referred to in Article 112 of that Regulation.**

Article 7
Other expenditure, including technical assistance

The Funds may, either on the initiative of the Commission or on its behalf, each directly finance the preparatory, monitoring, administrative and technical support activities, and the evaluation, audit and inspection, required to implement the CAP. In particular, they shall include:

- (a) measures required for the analysis, management, monitoring, information exchange and implementation of the CAP, as well as measures relating to the implementation of control systems and technical and administrative assistance;
- (b) the acquisition by the Commission of satellite data required for the area monitoring system in accordance with Article 22;
- (c) the actions taken by the Commission through remote-sensing applications used for the monitoring of agricultural resources in accordance with Article 23;
- (d) measures required to maintain and develop methods and technical means for information, interconnection, monitoring and control of the financial management of the Funds used to finance the CAP;

- (e) provision of information on the CAP in accordance with Article 44;
- (f) studies on the CAP and evaluations of measures financed by the Funds, including improvement of evaluation methods and exchange of information on practices under the CAP, as well as studies carried out with the European Investment Bank (EIB);
- (g) where relevant, contribution to executive agencies that are set up in accordance with Council Regulation (EC) No 58/2003⁶ acting in connection with the CAP;
- (h) contribution to measures relating to the dissemination of information, raising awareness, promoting cooperation and exchanging experiences at Union level, and taken in the context of rural development interventions, including the networking of the parties concerned;
- (i) information technology networks focusing on information processing and exchange, including corporate information technology systems needed in connection with the management of the CAP;
- (j) measures required for the development, registration and protection of logos within the framework of the Union quality policies as laid down in Article 44(2) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council⁷ and for the protection of intellectual property rights linked to it, and the necessary information technology (IT) developments.

⁶ Council Regulation (EC).No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes (OJ L11, 16.1.2003, p. 1).

⁷ Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ L 343, 14.12.2012, p. 1).

CHAPTER II

Governance bodies

Article 8

Paying agencies and coordinating bodies

1. Paying agencies shall be departments or bodies of the Member States responsible for the management and control of expenditure referred in Article 5(2) and Article 6.

With the exception of making payment, the carrying out of those tasks may be delegated.

2. Member States shall accredit, as paying agencies, departments or bodies which have an administrative organisation and a system of internal control which provide sufficient guarantees that payments are legal, regular and properly accounted for. To this end, paying agencies shall comply with minimum conditions for the accreditation with regard to the internal environment, control activities, information and communication and monitoring laid down by the Commission pursuant to point (a) of Article 10(1).

Each Member State shall, **taking into account its constitutional provisions**, restrict the number of its accredited paying agencies as follows:

- (a) to a single agency at national level or, where applicable, one per region; and
- (b) to a single agency for the management of both EAGF and EAFRD expenditure, **where only national paying agencies exist**.

[By way of derogation from point (b), Member States may decide to maintain the paying agencies accredited before 1 June 2018 provided that the additional administrative burden implied by the new reorganization hinders the proper implementation of the new CAP Strategic Plan.]⁸

⁸ **The text of this paragraph has been taken over from doc. 10135/19. However, for legal reasons, the wording of this paragraph needs to be reconsidered.**

However, where paying agencies are established at regional level, Member States shall, in addition, either accredit a paying agency at national level for aid schemes which, by their nature, have to be managed at national level or Member States shall confer the management of these schemes on their regional paying agencies.

Paying agencies which did not manage EAGF or EAFRD expenditure for at least three years shall have their accreditation withdrawn.

Member States shall not appoint any new additional paying agency after the date of entry into force of this Regulation, **except for cases referred to in point (a) of the second subparagraph where constitutional provisions would require regional paying agencies.**

3. For the purposes of Article 63(5) and (6) of Regulation (EU, Euratom) 2018/... [the new Financial Regulation] ('the Financial Regulation'), the person in charge of the accredited paying agency⁹ shall, by 15 February of the year following the financial year concerned, draw up and provide the Commission with the following:
 - (a) the annual accounts for the expenditure incurred in carrying out the tasks entrusted to their accredited paying agency, as provided for in point (a) of Article 63(5) of the Financial Regulation, accompanied by the requisite information for their clearance in accordance with Article 51;
 - (b) the annual performance report referred to in Article 52(1) **of this Regulation and Article 121 of Regulation (EU) .../...[CAP Strategic Plan Regulation]** showing that the expenditure was made in accordance with Article 35;

⁹ **The Council's Legal Service notes that the wording of Article 8 needs to be legally consistent with the wording of Article 121 of the CAP SPR, e.g. in order to avoid the duplication of the same legal obligation.**

- (c) a management declaration as provided for in Article 63(6) of the Financial Regulation, as to:
 - (i) the fact that the information is properly presented, complete and accurate, as provided for in point (a) of Article 63(6) of the Financial Regulation,
 - (ii) the proper functioning of the governance systems put in place, which give the necessary guarantees concerning the outputs reported in the annual performance report, as provided for in points (b) and (c) of Article 63(6) of the Financial Regulation,
 - (iii) an analysis of the nature and extent of errors and weaknesses identified in systems by audit and controls, as well as corrective action taken or planned, as provided for in point (b) of Article 63(5) of the Financial Regulation.

The deadline of 15 February referred to in the first subparagraph may be exceptionally extended by the Commission to 1 March, upon request by the Member State concerned, as provided for in the second subparagraph Article 63(7) of the Financial Regulation.

4. Where more than one paying agency is accredited, Member States shall appoint a public coordinating body, to which it shall assign the following tasks:
 - (a) to collect the information to be provided to the Commission and to send that information to the Commission;
 - (b) to [furnish]¹⁰ the annual performance report referred to in **Article 52(1) of this Regulation and Article 121 of Regulation (EU) .../... [CAP Strategic Plan Regulation]**;
 - (c) to take or coordinate actions with a view to resolving any deficiencies of a common nature and to keep the Commission informed of any follow-up;

¹⁰ **The word "furnish" in the Commission's original proposal, which was maintained in doc. 10135/19, has been put in brackets here as this word is not satisfactory from a legal/linguistic point of view. Further efforts will be undertaken to find alternative wording for "furnish", which would reflect the Commission's intention appropriately from a legal/linguistic point of view.**

(d) to promote and, **where possible**, ensure harmonised application of Union rules.

As regards the processing of the financial information referred to in point (a) of the first subparagraph, the coordinating body shall be subject to specific accreditation by the Member States.

The annual performance report provided by the coordinating body shall be covered by the scope of the opinion referred to in Article 11(1) and its transmission shall be accompanied by a management declaration covering the **compilation** ~~entirety~~ of ~~the~~ **that entire** report.

5. Where an accredited paying agency does not meet or no longer meets one or more of the accreditation criteria referred to in paragraph 2, the Member State, acting on its own initiative or at the request of the Commission, shall withdraw that accreditation unless the paying agency makes the necessary changes within a period to be determined by the competent authority depending on the severity of the problem.
6. The paying agencies shall manage and ensure the control of the operations linked to public intervention for which they are responsible and they shall retain overall responsibility in that field.

Where support is provided through a financial instrument which is implemented by the EIB or another international financial institution in which a Member State is a shareholder, the paying agency shall rely on ~~a the~~ control report, **which the EIB or other international institution shall provide** supporting the payment applications submitted ~~by the EIB or another international institution.~~

Article 9

Competent authority

1. Member States shall designate an authority at ministerial level responsible for:
 - (a) the issuing, reviewing and withdrawing of accreditation of paying agencies referred to in Article 8(2);
 - (b) the accreditation of the coordinating body referred to in Article 8(4);
 - (c) the appointing of the certification body referred to in Article 11;
 - (d) carrying out the tasks assigned to the competent authority under this Chapter.
2. The competent authority shall, by way of a formal act, decide on the issuing or, following a review, the withdrawal of the accreditation of the paying agency and the coordinating body on the basis of an examination of the accreditation criteria to be adopted by the Commission in accordance with point (a) of Article 10(1). The competent authority shall inform the Commission of accreditations and withdrawals of accreditations without delay.

Article 10

Commission powers

1. The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with rules on:
 - (a) the minimum conditions for the accreditation of the paying agencies referred to in Article 8(2) and of the coordinating bodies referred to in Article 8(4);

- (b) the obligations of the paying agencies as regards public intervention, ~~as well as and~~ the rules ~~on concerning~~ the content of their management and control responsibilities.

2. The Commission shall adopt implementing acts laying down rules on:

- (a) the procedures for issuing, withdrawing and reviewing accreditation of paying agencies and coordinating bodies, as well as the procedures for the supervision of the accreditation of paying agencies;
- (b) the work and checks underlying the management declaration of the paying agencies, referred to in point (c) of Article 8(3);
- (c) the functioning of the coordinating body and the notification of information to the Commission as referred to in Article 8(4).

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).

Article 11

Certification bodies

- 1. The certification body shall be a public or private audit body designated by the Member State for a minimum three year period, without prejudice to national law. Where it is a private audit body, and where the applicable Union or national law so requires, it shall be selected by the Member State by means of a public tendering procedure.

For the purposes of the first subparagraph of Article 63(7) of the Financial Regulation, the certification body shall provide an opinion, drawn up in accordance with internationally accepted audit standards, which shall establish whether:

- (a) the accounts give a true and fair view;
- (b) the Member States' governance systems put in place function properly;
- (c) the performance reporting on output indicators for the purposes of the annual performance clearance referred to in Article 52 and the performance reporting on result indicators for the multiannual performance monitoring referred to in Article 115 of Regulation (EU) .../... [CAP Strategic Plan Regulation], demonstrating that Article 35 of this Regulation is complied with, is correct;
- (d) the expenditure for the measures laid down in Regulation (EU) No 1308/2013, **Regulation (EU) No 228/2013, Regulation (EU) No 229/2013 and Regulation (EU) 1144/2014** for which reimbursement has been requested from the Commission is legal and regular.

That opinion shall also state whether the examination calls into question the assertions made in the management declaration referred to in point(c) of Article 8(3).

Where support is provided through a financial instrument which is implemented by the EIB or another international financial institution in which a Member State is a shareholder, the certification body shall rely on the annual audit report drawn up by the external auditors of those institutions. **Those institutions shall provide the annual audit report to the Member States.**

2. The certification body shall have the necessary technical expertise. It shall be operationally independent from the paying agency and the coordinating body concerned as well as from the authority which has accredited that agency and the bodies responsible for the implementation and the monitoring of the CAP.
3. The Commission shall adopt implementing acts laying down rules on the tasks of the certification bodies, including the checks to be carried out and the bodies subject to those checks, and on the certificates and the reports, together with the documents accompanying them, to be drawn up by those bodies.

The implementing acts shall also set out:

- (a) the audit principles on which the opinions of the certification bodies are based, including an assessment of the risks, internal controls and the level of audit evidence required;
- (b) the audit methods to be used, by the certification bodies, having regard to international standards on auditing, to deliver their opinions.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).

TITLE III

Financial management of the Funds

CHAPTER I

EAGF

SECTION 1

BUDGET DISCIPLINE

Article 12

Budget ceiling

1. The annual ceiling for EAGF expenditure shall be constituted by the maximum amounts set for it under Regulation (EU, Euratom)[COM(2018) 322 final].
2. In the event that Union law provides for sums to be deducted from or added to the amounts referred to in paragraph 1, the Commission shall adopt implementing acts without applying the procedure referred to in Article 101, setting the net balance available for EAGF expenditure on the basis of the data referred to in Union law.

Article 13

Compliance with the ceiling

1. Where Union law provides for a financial ceiling in euro for agricultural expenditure in respect of a Member State, such expenditure shall be reimbursed subject to that limit set in euro, and, where Articles 37 to 40 apply, with any necessary adjustments.

2. Member States' allocations for direct payments interventions referred to in Article 81 of Regulation (EU).../[CAP Strategic Plan Regulation], corrected by the adjustments laid down in Article 15 of this Regulation, shall be deemed to be financial ceilings in euro.

*Article 14*¹¹

Agricultural reserve

1. A reserve intended to provide additional support for the agricultural sector for the purpose of market management or stabilisation or in the case of crises affecting the agricultural production or distribution ("the agricultural reserve") shall be established at the beginning of each year in the EAGF.

Appropriations for the agricultural reserve shall be entered directly in the Union's budget.

Funds from the agricultural reserve shall be made available for measures under Articles 8 to 21 and 219, 220, and 221 of Regulation (EU) No 1308/2013 for the year or years for which the additional support is required.

2. The amount of the agricultural reserve shall be at least EUR *[400]*¹² million in *[current]*¹³ prices at the beginning of each year of the period 2021-2027. The Commission may adjust the amount of the agricultural reserve during the year when appropriate in view of market developments or perspectives in the current or following year and taking into account available appropriations under the EAGF.

¹¹ **Following CLS comments in the Ad-hoc WP on the MFF, a reference to Art 322 of TFEU will be added as a legal basis for this Article.**

¹² [Bracketed] as MFF-related.

¹³ [Bracketed] as MFF-related.

By way of derogation from point (d) of Article 12(2) of the Financial Regulation, non-committed appropriations of the agricultural reserve shall be carried over *[without]*¹⁴ time limitation to finance the agricultural reserve in the following financial years.

Moreover, by derogation from point (d) of Article 12(2) of the Financial Regulation, the total unused amount of the crisis reserve available at the end of year 2020 *[shall be carried over to the year 2021 without being returned to the budgetary lines]*¹⁵ which cover the actions referred to in point (c) of Article 5(2) and made available for the financing of the agricultural reserve.

Article 15

Financial discipline¹⁶

1. An adjustment rate for direct payments interventions referred to in point (c) of Article 5(2) of this Regulation and Union financial contribution to the specific measures referred to in point (ef) of Article 5(2) of this Regulation and granted under Chapter IV of Regulation (EU) No 228/2013 and Chapter IV of Regulation (EU) No 229/2013, ("the adjustment rate") shall be determined by the Commission when the forecasts for the financing of the interventions and measures financed under that sub-ceiling for a given financial year indicate that the applicable annual ceilings will be exceeded.

[The adjustment rate shall apply to payments to be granted to farmers for the interventions and specific measures referred to in the first subparagraph exceeding EUR 2,000 for the corresponding calendar year.]¹⁷

¹⁴ [Bracketed] as MFF-related.

¹⁵ [Bracketed] as MFF-related.

¹⁶ **A recital to be introduced to clearly state that financial discipline as referred in article 15 will be used as the last resort.**

¹⁷ [Bracketed] as MFF-related.

The Commission shall, by 30 June of the calendar year in respect of which the adjustment rate applies, adopt implementing acts fixing the adjustment rate. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 101(2).

2. Until 1 December of the calendar year in respect of which the adjustment rate applies, the Commission may, on the basis of new information, adopt implementing acts adapting the adjustment rate set in accordance with paragraph 1. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 101(2).
3. Where financial discipline has been applied, the appropriations carried over in accordance with point (d) of Article 12(2) of the Financial Regulation shall be used to finance expenditure under point (c) of Article 5(2) of this Regulation, to the extent necessary to avoid the repeated application of financial discipline.

Where appropriations to be carried-over as referred to in the first subparagraph remain available, the Commission may² adopt implementing acts setting out per Member State the amounts of non-committed appropriations to be reimbursed to final beneficiaries unless the overall amount of non-committed appropriations available for reimbursement represents less than 0,2% of the annual ceiling for EAGF expenditure.

Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 101(2).

4. The amounts set by the Commission in accordance with the second subparagraph of paragraph 3 shall be reimbursed to final beneficiaries by Member States in accordance with objective and non-discriminatory criteria. Member States *[may]*¹⁸ apply a minimum threshold of amounts of reimbursement per final beneficiary.

The reimbursement referred to in the first subparagraph shall only apply to final beneficiaries in those Member States where financial discipline applied in the preceding financial year.

5. As a result of the gradual introduction of direct payments interventions provided for in Article **17 of Regulation (EU) No 1307/2013** ~~140(2) of Regulation...~~ *[phasing in CAP Strategic Plan]*, financial discipline shall apply to Croatia from 1 January 2022.
6. The Commission is empowered to adopt delegated acts in accordance with Article 100, supplementing this Regulation with rules for calculating the financial discipline to be applied by Member States to farmers.

Article 16

Budget discipline procedure

1. Where, on drawing up the draft budget for financial year N, there appears to be a risk that the amount referred to in Article 12 for financial year N will be exceeded, the Commission shall propose to the European Parliament and to the Council or to the Council, the measures necessary to ensure compliance with that amount.

¹⁸ *[Bracketed]* as MFF-related.

2. If at any time the Commission considers that there is a risk that the amount referred to in Article 12 will be exceeded and that it cannot take adequate measures to remedy the situation, it shall propose other measures to ensure compliance with that amount. Those measures are adopted by the Council where the legal basis of the relevant measure is Article 43(3) of the Treaty or by the European Parliament and the Council where the legal basis of the relevant measure is Article 43(2) of the Treaty.
3. Where, at the end of financial year N, reimbursement requests from the Member States exceed or are likely to exceed the amount referred to in Article 12, the Commission shall:
 - (a) consider the requests presented by Member States pro rata subject to the budget available, and adopt implementing acts setting provisionally the amount of the payments for the month concerned;
 - (b) determine, for all Member States, on or before 28 February of financial year N + 1, their situation with regard to Union financing for the financial year N;
 - (c) adopt implementing acts setting the total amount of Union financing broken down by Member State, on the basis of a single rate of Union financing, subject to the budget which was available for the monthly payments;
 - (d) effect, at the latest when the monthly payments are made for March of year N+1, any compensation to be carried out with respect to Member States.

The implementing acts provided for in points (a) and (c) of the first subparagraph shall be adopted in accordance with the advisory procedure referred to in Article 101(2).

Article 17

Early-warning and monitoring system

In order to ensure that the budget ceiling referred to in Article 12 is not exceeded, the Commission shall implement a monthly early-warning and monitoring system in respect of EAGF expenditure.

To that end, at the beginning of each financial year, the Commission shall determine monthly expenditure profiles based, where appropriate, on average monthly expenditure during the previous three years.

The Commission shall periodically present a report to the European Parliament and to the Council in which the development of expenditure effected in relation to the profiles is examined and which contains an assessment of the forecasted implementation for the current financial year.

SECTION 2

FINANCING OF EXPENDITURE

Article 18

Monthly payments

1. The appropriations necessary to finance the expenditure referred to in Article 5(2) shall be made available to Member States by the Commission in the form of monthly payments, on the basis of the expenditure effected by the accredited paying agencies during a reference period.
2. Until the Commission transfers the monthly payments, the resources required to undertake expenditure shall be mobilised by the Member States according to the needs of their accredited paying agencies.

Article 19

Procedure for monthly payments

1. Without prejudice to Articles 51, 52 and 53, monthly payments shall be made by the Commission for expenditure effected by accredited paying agencies during the reference month.
2. Monthly payments shall be made to each Member State on or before the third working day of the second month following that in which the expenditure is effected, taking account of the reductions or suspensions applied under Articles 37 to 40 or any other corrections.
Expenditure effected by Member States between 1 and 15 October shall count as having been made in the month of October. Expenditure effected between 16 and 31 October shall count as having been made in the month of November.
3. The Commission shall adopt implementing acts determining the monthly payments which it makes on the basis of a declaration of expenditure from the Member States and the information supplied in accordance with Article 88(1).
4. The Commission shall inform the Member State forthwith of any overrun of financial ceilings by the Member State.
5. The Commission shall adopt the implementing acts determining the monthly payments referred to in paragraph 3 without applying the procedure referred to in Article 101.
6. The Commission may adopt implementing acts determining supplementary payments or deductions adjusting the payments made in accordance with paragraph 3, without applying the procedure referred to in Article 101.

Article 20

Administrative and personnel costs

Expenditure relating to administrative and personnel costs effected by Member States and by beneficiaries of aid from the EAGF shall not be borne by the Fund.

Article 21

Public intervention expenditure

1. Where, within the framework of the common organisation of the markets, a sum per unit is not determined in respect of a public intervention, the EAGF shall finance the measure concerned on the basis of uniform standard amounts, in particular as regards funds originating in the Member States used for buying-in products, for material operations arising from storage and, where appropriate, for the processing of products eligible for intervention, as referred to in Article 11 of Regulation (EU) No 1308/2013.
2. The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with rules on:
 - (a) the type of measures eligible for Union financing and the reimbursement conditions;
 - (b) the eligibility conditions and calculation methods based on the information actually observed by the paying agencies or based on flat-rates determined by the Commission, or based on flat-rate or non-flat-rate amounts provided for by the sectoral agricultural legislation.

3. The Commission is empowered to adopt delegated acts in accordance with Article 100, supplementing this Regulation with rules on the valuation of operations in connection with public intervention, the measures to be taken in the case of loss or deterioration of products under the public intervention, and the determination of the amounts to be financed.
4. The Commission shall adopt implementing acts, fixing the amounts referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 101(2).

Article 22

Acquisition of satellite data

The list of satellite data required for the area monitoring system referred to in point (c) of Article 64(1) shall be agreed by the Commission and the Member States in accordance with the specification prepared by each Member State.

In accordance with point (b) of Article 7, the Commission shall supply that satellite data free of charge to the authorities competent for the area monitoring system or to suppliers of services authorised by those bodies to represent them.

The Commission shall remain the owner of the satellite data ~~and shall recover it on completion of the work.~~

The Commission may entrust specialised entities to carry out tasks relating to techniques or working methods in connection with the area monitoring system referred to in point (c) of Article 64(1).

Article 23

Monitoring of agricultural resources

The actions financed pursuant to point (c) of Article 7 shall aim to give the Commission the means to:

- (a) manage Union agricultural markets in a global context;
- (b) ensure agri-economic and agri-environmental-climate monitoring of agricultural land use and agricultural land use change, including agro-forestry, and monitoring of the condition of crops so as to enable estimates to be made, in particular as regards yields and agricultural production and agricultural impacts associated with exceptional circumstances;
- (c) share the access to such estimates in an international context, such as the initiatives coordinated by United Nations organisations, including the constitution of greenhouse gas inventories under the UNFCCC, or other international agencies;
- (d) contribute to transparency of world markets;
- (e) ensure technological follow-up of the agri-meteorological system.

Pursuant to point (c) of Article 7 the Commission shall finance the actions concerning the collection or purchase of data needed to implement and monitor the CAP, including satellite data, geo-spatial data and meteorological data, the creation of a spatial data infrastructure and a website, the carrying out of specific studies on climatic conditions, remote sensing used to assist in the monitoring of agricultural land use change and soil health and the updating of agri-meteorological and econometric models. Where necessary, those actions shall be carried out in collaboration with EEA, JRC, national laboratories and bodies or with the involvement of the private sector.

Article 24
Implementing powers

The Commission may adopt implementing acts laying down:

- (a) rules relating to the financing pursuant to points (b) and (c) of Article 7;
- (b) the procedure under which the measures referred to in Articles 22 and 23 shall be carried out in order to meet the objectives assigned;
- (c) the framework governing the acquisition, enhancing and utilisation of satellite data and meteorological data, and the applicable deadlines.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).

Chapter II
EAFRD
SECTION 1
GENERAL PROVISIONS FOR EAFRD

Article 25
Provisions applying to all payments

1. Payments by the Commission of the EAFRD contribution referred to in Article 6 shall not exceed the budget commitments.

Without prejudice to Article 32(1), those payments shall be assigned to the earliest open budget commitment.

2. Article 110 of the Financial Regulation shall apply.

SECTION 2

EAFRD FINANCING UNDER THE CAP STRATEGIC PLAN

Article 26

Financial contribution from the EAFRD

The financial contribution from the EAFRD towards expenditure under CAP Strategic Plans shall be determined for each CAP Strategic Plan, within the ceilings established by Union law concerning support for CAP Strategic Plan interventions by the EAFRD.

Article 27

Budget commitments

1. The Commission decision adopting a CAP Strategic Plan shall constitute a financing decision within the meaning of Article 110(1) of the Financial Regulation and, once notified to the Member State concerned, a legal commitment within the meaning of that Regulation. This decision shall specify the contribution per year.
2. The Union's budget commitments in respect of each CAP Strategic Plan shall be made in annual instalments between 1 January 2021 and 31 December 2027.

For each CAP Strategic Plan, the budget commitments for the first instalment shall follow the adoption of the CAP Strategic Plan by the Commission.

The budget commitments for subsequent instalments shall be made by the Commission before 1 May of each year, on the basis of the decision referred to in the first paragraph of this Article, except where Article 16 of the Financial Regulation applies.

SECTION 3

FINANCIAL CONTRIBUTION TO RURAL DEVELOPMENT INTERVENTIONS

Article 28

Provisions applying to payments for rural development interventions

1. The appropriations necessary to finance the expenditure referred to in Article 6 shall be made available to Member States in the form of prefinancing, interim payments and the payment of a balance, as described in this Section.
2. The combined total of prefinancing and interim payments shall not exceed 95 % of the EAFRD's contribution to each CAP Strategic Plan.

When the ceiling of 95 % is reached, the Member States shall continue transmitting requests for payments to the Commission.

Article 29

Prefinancing arrangements

1. Following its decision to approve the CAP Strategic Plan, the Commission shall pay an initial prefinancing amount to the Member State for the entire duration of the CAP Strategic Plan. This initial pre-financing amount shall be paid in instalments as follows:
 - (a) in 2021: *[1]*¹⁹ % of the amount of support from the EAFRD for the entire duration of the CAP Strategic Plan;

¹⁹ [Bracketed] as MFF-related.

(b) in 2022: *[1]*²⁰ % of the amount of support from the EAFRD for the entire duration of the CAP Strategic Plan;

(c) in 2023: *[1]*²¹ % of the amount of support from the EAFRD for the entire duration of the CAP Strategic Plan.

If a CAP Strategic Plan is adopted in 2022 or later, the earlier instalments shall be paid without delay following such adoption.

2. The total amount paid as prefinancing shall be reimbursed to the Commission if no expenditure is effected and no declaration of expenditure for the CAP Strategic Plan is sent within 24 months of the date on which the Commission pays the first instalment of the prefinancing amount. This prefinancing shall be offset against the earliest expenditure declared for the CAP Strategic Plan.
3. No additional prefinancing shall be paid or recovered where a transfer to or from the EAFRD has taken place in accordance with Article 90 of Regulation (EU) .../... [CAP Strategic Plan Regulation].
4. Interest generated on the prefinancing shall be used for the CAP Strategic Plan concerned and deducted from the amount of public expenditure indicated on the final declaration of expenditure.
5. The total prefinancing amount shall be cleared in accordance with the procedure referred to in Article 51 before the CAP Strategic Plan is closed.

²⁰ [Bracketed] as MFF-related.

²¹ [Bracketed] as MFF-related.

Article 30

Interim payments

1. Interim payments shall be made for each CAP Strategic Plan. They shall be calculated by applying the contribution rate for each type of intervention to the public expenditure effected pertaining to it as referred to in Article 85 of Regulation (EU) .../...[CAP Strategic Plan Regulation].

Interim payments shall also include the amounts referred to in the third subparagraph of Article 86(3) of Regulation (EU) No.../... [CAP Strategic Plan Regulation].

2. Subject to the availability of resources, the Commission shall, taking account of reductions or suspensions applied under Articles 37 to 40, make interim payments in order to reimburse the expenditure effected by accredited paying agencies in implementing the CAP Strategic Plans.
3. Where financial instruments are implemented in accordance with Article **53(1)**~~52~~ of Regulation (EU).../... [CPR], the declaration of expenditure shall include the total amounts disbursed or, in the case of guarantees, the amounts set aside as agreed in guarantee contracts, by the managing authority, to final recipients as referred to in points (a), (b) and (c) of [Article 74(5) of Regulation (EU) .../... CAP Strategic Plan – eligibility rules or financial instruments].
4. Where financial instruments are implemented in accordance with Article **53(2)**~~52~~ of Regulation (EU).../... [CPR], declarations of expenditures that include expenditure for financial instruments shall be submitted in accordance with the following conditions:

- (a) the amount included in the first declaration of expenditure shall need to have been previously paid to the financial instrument and may be up to 25% of the total amount of the CAP Strategic Plan contribution committed to the financial instruments under the relevant funding agreement;
- (b) the amount included in subsequent declarations of expenditures submitted during the eligibility period as defined in Article 80(3) of Regulation (EU) .../... [CAP Strategic Plan Regulation] shall include the eligible expenditure as referred to in [Article 74(5) CAP plan – eligibility rules or financial instruments].

5. **Amounts paid in accordance with point (a) of paragraph 4 shall be considered advances for the purpose of the last paragraph of Article 35.** The amount included in the first declaration of expenditure, referred to in point (a) of paragraph 4, shall be cleared from Commission accounts no later than in the annual accounts for the last execution year for the relevant CAP Strategic Plan.
6. Each interim payment shall be made by the Commission, subject to compliance with the following requirements:
 - (a) transmission to the Commission of a declaration of expenditure signed by the accredited paying agency, in accordance with Article 88(1)(c);
 - (b) no overrun of the total EAFRD contribution to each type of intervention for the entire period covered by the CAP Strategic Plan concerned;

(c) transmission to the Commission of the documents to be submitted, as referred to in Articles 8(3) and 11(1) ;

(d) transmission of annual accounts.

7. If one of the requirements laid down in paragraph 6 is not met, the Commission shall forthwith inform the accredited paying agency or the coordinating body, where one has been appointed. If one of the requirements laid down in point (a), (c) or (d) of paragraph 6 is not fulfilled, the declaration of expenditure shall be deemed inadmissible.
8. Without prejudice to Articles 51, 52 and 53, the Commission shall make interim payments within 45 days of registering a declaration of expenditure which meets the requirements laid down in paragraph 6 of this Article.
9. Accredited paying agencies shall establish interim declarations of expenditure relating to CAP Strategic Plans and forward these to the Commission, either directly or via the intermediary of the coordinating body, where one has been appointed, within periods to be set by the Commission.

The Commission shall adopt implementing acts laying down the periods for accredited paying agencies to establish and forward those intermediate declarations of expenditure. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).

Declarations of expenditure shall cover expenditure that the paying agencies have effected during each of the periods concerned. **They shall also cover the amounts referred to in the third subparagraph of Article 86(3) of Regulation (EU) No.../... [CAP Strategic Plan Regulation].** However, in cases in which expenditure ~~referred to in Article 107(8) of Regulation (EU) No.../... [CAP Strategic Plan Regulation]~~ **Article 80(2) of Regulation (EU) No.../... [CAP Strategic Plan Regulation]** cannot be declared to the Commission in the period concerned, due to ~~the~~ pending approval by the Commission of an amendment to the CAP Strategic Plan **as referred to in Article 107(9) of Regulation (EU) No.../... [CAP Strategic Plan Regulation]**, ~~if~~ **this expenditure** may be declared in subsequent periods.

Interim declarations of expenditure in respect of expenditure effected from 16 October onwards shall be booked to the following year's budget.

10. Where the authorising officer by sub-delegation requires further verification, owing to incomplete or unclear information provided or arising from disagreement, differences of interpretation or any other inconsistency relating to a declaration of expenditure for a reference period, arising in particular from a failure to communicate the information required under Regulation (EU) .../... [CAP Strategic Plan Regulation] and Commission acts adopted under that Regulation, the Member State concerned shall, upon request by the authorising officer by sub-delegation, provide additional information within a period set in that request according to the seriousness of the problem.

The time limit for interim payments laid down in paragraph 8 may be interrupted for all or part of the amount for which payment is claimed, for a maximum period of six months, from the date on which the request for information is sent and until receipt of the information requested which is deemed satisfactory. The Member State may agree to extend the interruption period for a further three months.

Where the Member State concerned fails to respond to the request for additional information within the period set in that request or where the response is considered unsatisfactory or indicates that the applicable rules have not been complied with or that Union Funds have been improperly used, the Commission may suspend or reduce payments in accordance with Articles 37 to 40 of this Regulation.

Article 31

Payment of the balance and closure of the rural development interventions in the CAP Strategic Plan

1. After receiving the last annual performance report on the implementation of a CAP Strategic Plan, the Commission shall pay the balance, subject to the availability of resources, on the basis of the financial plan in force at the level of the types of EAFRD interventions, the annual accounts for the last execution year for the relevant CAP Strategic Plan and of the corresponding clearance decisions. Those accounts shall be presented to the Commission no later than six months after the final eligibility date of expenditure provided for in Article 80(3) of Regulation (EU) No.../[CAP Strategic Plan Regulation] and shall cover the expenditure effected by the paying agency up to the last eligibility date of expenditure.
2. The balance shall be paid no later than six months from the date on which the information and documents referred to in paragraph 1 are considered to be admissible by the Commission and the last annual account has been cleared. Without prejudice to Article 32(5), the amounts still committed after the balance is paid shall be decommitted by the Commission within a period of six months.
3. If, by the time limit set out in paragraph 1, the Commission has not received the last annual performance report and the documents needed for clearance of the accounts of the last execution year of the Plan, the balance shall be automatically decommitted in accordance with Article 32.

Article 32

Automatic decommitment for CAP Strategic Plans

1. The Commission shall automatically decommit any portion of a budget commitment for rural development interventions in a CAP Strategic Plan that has not been used for the purposes of prefinancing or for making interim payments or for which no declaration of expenditure fulfilling the requirements laid down in Article 30(6)(a) and (c)(3) has been presented to it in relation to expenditure effected by 31 December of the [second]²² year following that of the budget commitment.
2. The part of budget commitments that is still open on the last eligibility date for expenditure as referred to in Article 80(3) of Regulation (EU) .../...[CAP Strategic Plan Regulation] for which no declaration of expenditure has been made within six months of that date shall be automatically decommitted.
3. In the event of legal proceedings or of an administrative appeal having suspensory effect, the period for automatic decommitment referred to in paragraph 1 or 2 shall, in respect of the amount relating to the operations concerned, be interrupted for the duration of those proceedings or that administrative appeal, provided that the Commission receives a substantiated notification from the Member State by 31 January of year N + 3.
4. The following shall be disregarded in calculating the automatic decommitment:
 - (a) that part of the budget commitments for which a declaration of expenditure has been made but for which reimbursement has been reduced or suspended by the Commission at 31 December of year N + [2]²³;

²² [Bracketed] as MFF-related.

²³ [Bracketed] as MFF-related.

- (b) that part of the budget commitments which a paying agency has been unable to disburse for reasons of force majeure seriously affecting the implementation of the CAP Strategic Plan. National authorities claiming force majeure shall demonstrate the direct consequences on the implementation of all or part of the **rural development interventions in the CAP Strategic Plan**.

By 31 January, the Member State shall send to the Commission information on the exceptions referred to in the first subparagraph concerning the amounts declared by the end of the preceding year.

5. The Commission shall inform Member States in good time if there is a risk of automatic decommitment. It shall inform them of the amount involved as indicated by the information in its possession. The Member States shall have two months from receiving this information to agree to the amount in question or present observations. The Commission shall carry out the automatic decommitment not later than nine months after the last time-limit resulting from the application of paragraphs 1, 2 and 3.
6. In the event of automatic decommitment, the EAFRD contribution to the CAP Strategic Plan concerned shall be reduced, for the year in question, by the amount automatically decommitted. The Member State shall produce a revised financing plan splitting the reduction of the aid between the types of interventions for approval by the Commission. If it does not do so, the Commission shall reduce the amounts allocated to each type of intervention pro rata.

CHAPTER III

Common provisions

Article 33

Agricultural financial year

Without prejudice to special provisions on declarations of expenditure and revenue relating to public intervention laid down by the Commission pursuant to point (a) of the first subparagraph of Article 45(3), the agricultural financial year shall cover expenditure paid and revenue received and entered in the accounts of the Funds' budget by the paying agencies in respect of financial year "N" beginning on 16 October of year "N-1" and ending on 15 October of year "N".

Article 34

No double funding

Member States shall ensure that expenditure financed under the EAGF or the EAFRD shall not be the subject of any other financing under the Union's budget.

Under EAFRD, an operation may receive different forms of support from the CAP Strategic Plan and from other ~~European Structural and Investments Funds (ESI) Funds~~ **or Union instruments** as referred to in Article 1(1) of Regulation (EU) .../... [CPR] **or Union instruments** only if the total cumulated aid amount granted under the different forms of support does not exceed the highest aid intensity or aid amount applicable to that type of intervention as referred to in Title III of Regulation (EU) No.../... (CAP Strategic Plan Regulation). In such cases Member States shall not declare **the same** expenditure to the Commission for:

(a) support from another ~~ESI Fund~~ **or Union instrument** as referred to in Article 1(1) of Regulation (EU) .../... [CPR] **or Union instrument**; or

(b) support from the same CAP Strategic Plan.

The amount of expenditure to be entered into a declaration of expenditure may be calculated on a pro rata basis, in accordance with the document setting out the conditions for support.

Article 35

Eligibility of expenditure incurred by the paying agencies

The expenditure referred to in Article 5(2) and Article 6 may be financed by the Union only if **it has been effected by accredited paying agencies and:**

~~(a) — it has been effected by accredited paying agencies,~~

(ab) it has been effected in accordance with the applicable Union rules, or

(be) as regards types of interventions referred to in Regulation (EU) .../... [CAP Strategic Plan Regulation],

(i) it is matched by a corresponding reported output, and

(ii) it has been effected in accordance with the applicable governance systems, not extending to the eligibility conditions for individual beneficiaries laid down in the national CAP Strategic Plans.

Point **(be)**(i) of the first paragraph shall not apply to advances paid to beneficiaries under types of interventions referred to in Regulation (EU) No.../...[CAP Strategic Plan Regulation].

Article 36

Compliance with payment deadlines

Where payment deadlines are laid down by Union law, any payment made to the beneficiaries by the paying agencies before the earliest possible date of payment and after the latest possible date of payment shall render those payments ineligible for Union financing.

The Commission is empowered to adopt delegated acts in accordance with Article 100, supplementing this Regulation with rules on the circumstances and conditions in which the payments referred to in the first paragraph of this Article may be deemed eligible, taking into account the principle of proportionality.

Article 37

Reduction of monthly and interim payments

1. Where the Commission establishes from declarations of expenditure or the information referred to in Article 88 that financial ceilings set by Union law have been exceeded, the Commission shall reduce the monthly or interim payments to the Member State in question in the framework of the implementing acts concerning the monthly payments referred to in Article 19(3) or in the framework of the interim payments referred to in Article 30.
2. Where the Commission establishes from declarations of expenditure or the information referred to in Article 88 that the payment deadlines referred to in Article 36 have not been complied with, the Member State shall be afforded the opportunity to submit its comments within a period which shall not be less than 30 days. Where the Member State fails to submit its comments within the said period or where the Commission considers the response to be unsatisfactory, the Commission may reduce the monthly or interim payments to the Member State concerned in the framework of the implementing acts concerning the monthly payments referred to in Article 19(3) or in the framework of the interim payments referred to in Article 30.

3. Reductions under this Article shall be without prejudice to Article 51.
4. The Commission may adopt implementing acts laying down further rules on the procedure and other practical arrangements for the proper functioning of the mechanism provided for in Article 36. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).

Article 38

Suspension of payments in relation to the annual clearance

1. Where Member States do not submit the documents referred to in Articles 8(3) and 11(1) by the deadlines, as provided for in Article 8(3), the Commission may adopt implementing acts suspending the total amount of the monthly payments referred to in Article 19(3). The Commission shall reimburse the suspended amounts when it receives the missing documents from the Member State concerned, provided that the date of receipt is not later than six months after the deadline. **Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 101(2).**

As regards the interim payments referred to in Article 30, declarations of expenditure shall be deemed inadmissible in accordance with paragraph 6 of that Article.

2. Where, in the framework of the annual performance clearance referred to in Article 52, the Commission establishes that the difference between the expenditure declared and the amount corresponding to the relevant reported output is more than 50% and the Member State cannot provide duly justified reasons, the Commission may adopt implementing acts suspending the monthly payments referred to in Article 19(3) or the interim payments referred to in Article 30. **Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 101(2).**

The suspension shall be applied to the relevant expenditure in respect of the interventions which have been subject to the reduction referred to in Article 52(2) and the amount to be suspended shall not exceed the percentage corresponding to the reduction applied in accordance with Article 52(2). The amounts suspended shall be reimbursed by the Commission to the Member States or permanently reduced by means of the implementing act referred to in Article 52.

The Commission ~~is empowered to~~ **shall** adopt ~~delegated~~ **implementing** acts in accordance with Article 101~~0~~ **supplementing this Regulation with laying down detailed** rules on the rate of suspension of payments. **Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).**

3. ~~The implementing acts provided for in this Article shall be adopted in accordance with the advisory procedure referred to in Article 101(2).~~

Before adopting ~~these~~ implementing acts **referred to in paragraph (1) and the first subparagraph of paragraph (2)**, the Commission shall inform the Member State concerned of its intention and shall give the Member State the opportunity to submit its comments within a period which shall not be less than 30 days.

The implementing acts determining the monthly payments referred to in Article 19(3) or the interim payments referred to in Article 30 shall take account of the implementing acts adopted under this paragraph.

Suspension of payments in relation to the multi-annual performance monitoring

1. ~~In case of delayed or insufficient progress towards targets, as set out in the national CAP Strategic Plan and monitored~~ **Where** in accordance with Articles **121a(2)** ~~115 and 116~~ of Regulation (EU) .../...[CAP Strategic Plan Regulation], the Commission ~~may~~ **asks** the Member State concerned to **submit** ~~implement the necessary remedial actions in accordance with~~ an action plan, **the Member State shall establish, in consultation with the Commission, the intended remedial actions, including with clear progress indicators and the timeframe during which the progress has to be achieved, ~~to be established in consultation with the Commission.~~**

The Commission ~~may~~ **shall** adopt implementing acts laying down further rules on the elements of action plans and the procedure for setting up the action plans. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).

2. Where the Member States fails to submit or to implement the action plan referred to in paragraph 1 or if that action plan is manifestly insufficient to remedy the situation, the Commission may adopt implementing acts suspending the monthly payments referred to in Article 19(3) or the interim payments referred to in Article 30.

The suspension shall be applied in accordance with the principle of proportionality to the relevant expenditure related to the interventions which were to be covered by that action plan. The Commission shall reimburse the suspended amounts when, on the basis of the performance review referred to in Article 121a of Regulation (EU) .../... [CAP Strategic Plan Regulation] satisfactory progress towards targets is achieved. If the situation is not remedied by the closure of the national CAP Strategic Plan, the Commission may adopt an implementing act definitively reducing the amount suspended for the Member State concerned. **Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 101(2).**

The Commission ~~is empowered to~~ **shall** adopt ~~delegated~~ **implementing** acts in accordance with Article 101 ~~supplementing this Regulation with~~ **laying down detailed** rules on the rate and duration of suspension of payments and the conditions s for reimbursing or reducing those amounts with regard to the multi-annual performance monitoring. **Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).**

3. ~~The implementing acts provided for in paragraphs 1 and 2 shall be adopted in accordance with the advisory procedure referred to in Article 101(2).~~

Before adopting these implementing acts **referred to in the first and second subparagraph of paragraph 2**, the Commission shall inform the Member State concerned of its intention and shall ask it to respond within a period which shall not be less than 30 days.

Article 40

Suspension of payments in relation to deficiencies in the governance systems

1. In case of serious deficiencies in the functioning of the governance systems, the Commission may ask the Member State concerned to implement the necessary remedial actions in accordance with an action plan with clear progress indicators, to be established in consultation with the Commission.

The Commission ~~may~~ **shall** adopt implementing acts laying down further rules on the elements of the action plans and the procedure for setting up the action plans. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).

2. Where the Member State fails to submit or to implement the action plan referred to in paragraph 1 or if that action plan is manifestly insufficient to remedy the situation, the Commission may adopt implementing acts suspending the monthly payments referred to in Article 19(3) or the interim payments referred to in Article 30.

The suspension shall be applied in accordance with the principle of proportionality to the relevant expenditure effected by the Member State where the deficiencies exist, for a period to be determined in the implementing acts referred to in the first subparagraph, which shall not exceed 12 months. If the conditions for the suspension continue to be met, the Commission may adopt implementing acts prolonging that period for further periods not exceeding 12 months in total. The amounts suspended shall be taken into account when adopting the implementing acts referred to in Article 53.

3. The implementing acts provided for in ~~this paragraph (2) Article~~ shall be adopted in accordance with the advisory procedure referred to in Article 101(2).

Before adopting ~~these~~ implementing acts ~~referred to in paragraph 2~~, the Commission shall inform the Member State concerned of its intention and shall ask it to respond within a period which shall not be less than 30 days.

The implementing acts determining the monthly payments referred to in Article 19(3) or the interim payments referred to in Article 30 shall take account of the implementing acts adopted under the first subparagraph of this paragraph.

Article 41

Keeping separate accounts

Each paying agency shall keep a set of separate accounts for the appropriations entered in the Union's budget for the Funds.

Article 42

Payment to beneficiaries

1. Except where otherwise explicitly provided for in Union law, Member States shall ensure that payments relating to the financing provided for in this Regulation shall be disbursed in full to the beneficiaries.
2. Member States shall ensure that the payments under the interventions and measures referred to in Article 63(2) shall be made within the period from 1 December to 30 June of the following calendar year.

Notwithstanding the first subparagraph, Member States may:

- (a) prior to 1 December but not before 16 October, pay advances of up to 50 % for direct payments interventions;
 - (b) prior to 1 December pay advances of up to 75 % for the support granted under rural development interventions as referred to in Article 63(2).
3. Member States may decide to pay advances of up to 50% under the interventions referred to in Articles 68 and 71 of Regulation (EU) No.../...[CAP Strategic Plan Regulation].
4. The Commission is empowered to adopt delegated acts in accordance with Article 100 **amending this Article by adding** ~~supplementing this Regulation with~~ rules **allowing Member States to pay advances as regards** ~~on the interventions or measures referred to in Chapter III of Title III of Regulation [CAP Strategic Plan Regulation] and as regards measures regulating or supporting agricultural markets as laid down in Regulation (EU) No 1308/2013 for which the Member States may pay advances.~~

The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Article by setting up specific conditions for the payment of advances.

5. **Upon the request of a Member State, in the event of an emergency, and within the limits of point b) of Article 11 (2) of Regulation (EU, Euratom) 2018/1046,** the Commission ~~may~~**shall** adopt, **where appropriate,** implementing acts ~~to resolve specific problems~~ in relation to the application of this Article. Those implementing acts may derogate from paragraph 2, but only to the extent that, and for such a period, as is strictly necessary.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).

Article 43

Assignment of revenue

1. The following shall be "assigned revenue" within the meaning of Article 21 of the Financial Regulation:
 - (a) as regards expenditure under both EAGF and EAFRD, sums under Articles 36, 52 and 53 of this Regulation and Article 54 of Regulation (EU) No 1306/2013 applicable in accordance with Article 102 of this Regulation and, as regards expenditure under the EAGF, sums under Article 54 and Article 51 of this Regulation, which must be paid to the Union's budget, including interest thereon;
 - (b) amounts corresponding to penalties applied in accordance with the rules on conditionality as referred to in Article 11 of Regulation (EU) .../... [CAP Strategic Plan Regulation], as regards expenditure under EAGF;
 - (c) any security, deposit or guarantee furnished pursuant to Union law adopted within the framework of the CAP, excluding rural development interventions, and subsequently forfeited. However, forfeited securities lodged when issuing export or import licences or under a tendering procedure for the sole purpose of ensuring that tenderers submit genuine tenders shall be retained by the Member States;
 - (d) sums definitively reduced in accordance with Article 39(2);
2. The sums referred to in paragraph 1 shall be paid to the Union's budget and, in the event of reuse, shall be used exclusively to finance EAGF or EAFRD expenditure.
3. This Regulation shall apply *mutatis mutandis* to assigned revenue referred to in paragraph 1.

4. As regards the EAGF, Articles 113 of the Financial Regulation shall apply *mutatis mutandis* to the keeping of accounts on assigned revenue referred to in this Regulation.

Article 44

Information measures

1. The provision of information financed pursuant to point (e) of Article 7 shall aim, in particular, to help explain, implement and develop the CAP and to raise public awareness of its content and objectives to reinstate consumer confidence following crises through information campaigns, to inform farmers and other parties active in rural areas and to promote the European model of agriculture, as well as to help citizens understand it.

It shall supply coherent, objective and comprehensive information, both inside and outside the Union.

2. The measures referred to in paragraph 1 may consist of:
 - (a) annual work programmes or other specific measures presented by third parties;
 - (b) activities implemented on the initiative of the Commission.

Those measures which are required by law or those measures already receiving financing under another Union action shall be excluded.

In order to implement activities as referred to in point (b) of the first subparagraph, the Commission may be assisted by external experts.

The measures referred to in the first subparagraph shall also contribute to the corporate communication of the Union's political priorities in so far as those priorities are related to the general objectives of this Regulation.

3. The Commission shall publish once a year a call for proposals respecting the conditions set out in the Financial Regulation.
4. The Committee referred to in Article 101(1) shall be notified of measures envisaged and taken pursuant to this Article.
5. The Commission shall present a report on the implementation of this Article to the European Parliament and to the Council every two years.

Article 45

Commission powers ²⁴

1. The Commission is empowered to adopt delegated acts in accordance with Article 100 in order to supplement this Regulation concerning the conditions under which certain types of expenditure and revenue under the Funds are to be compensated.

If the Union's budget has not been adopted by the beginning of the financial year or if the total amount of the commitments scheduled exceeds the threshold laid down in Article 11(2) of the Financial Regulation, the Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with rules on the method applicable to the commitments and the payment of the amounts.

2. The Commission may adopt implementing acts laying down further rules on the obligation laid down in Article 41 and the specific conditions applying to the information to be booked in the accounts kept by the paying agencies. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).

²⁴ **The wording of this Article might need to be revisited with a view to better frame the empowerment of the Commission.**

3. The Commission may adopt implementing acts laying down rules on:
- (a) the financing and accounting of intervention measures in the form of public storage, and other expenditure financed by the Funds;
 - (b) the terms and conditions governing the implementation of the automatic decommitment procedure.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).

Chapter IV

Clearance of accounts

SECTION 1

GENERAL PROVISIONS

Article 46

Single audit approach

~~For the purposes of~~ **In accordance with** Article 127 of the Financial Regulation, the Commission shall take assurance from the work of the certification bodies referred to in Article 11 of this Regulation, unless it has informed the Member State that it cannot rely on the work of the certification body for a given financial year, and it shall take it into account in its risk assessment of the need for Commission audits in the Member State concerned. **The Commission shall inform the Member State of the reasons why it cannot rely on the work of the certification body concerned.**

Checks by the Commission

1. Without prejudice to the checks carried out by Member States under national law, regulations and administrative provisions or Article 287 of the Treaty or to any check organised under Article 322 of the Treaty or based on Council Regulation (Euratom, EC) No 2185/96, **or to Article 127 of the Financial Regulation**, the Commission may organise checks in Member States with a view to verifying in particular:
 - (a) compliance of administrative practices with Union rules;
 - (b) whether the expenditure falling within the scope of Articles 5(2) and 6 and corresponding to the interventions referred to in Regulation (EU) .../...[CAP Strategic Plan Regulation] have a corresponding output as reported in the annual performance report;
 - (c) whether the work of the certification body is carried out in accordance with Article 11 and for the purposes of Section 2 of this Chapter;
 - (d) whether a paying agency complies with the accreditation criteria laid down in Article 8(2) and whether the Member State correctly applies Article 8(5).

Persons authorised by the Commission to carry out checks on its behalf, or Commission agents acting within the scope of the powers conferred on them, shall have access to the books and all other documents, including documents and metadata drawn up or received and recorded on an electronic medium, relating to expenditure financed by the EAGF or the EAFRD.

The powers to carry out checks shall not affect the application of national provisions which reserve certain acts for agents specifically designated by national law. Without prejudice to the specific provisions of Regulation (EU, Euratom) No 883/2013 and Regulation (Euratom, EC) No 2185/96, persons authorised by the Commission to act on its behalf shall not take part, inter alia, in home visits or the formal questioning of persons on the basis of law of the Member State concerned. However, they shall have access to information thus obtained.

2. The Commission shall give sufficient prior notice of a check to the Member State concerned or to the Member State within whose territory the check is to take place, taking into account the administrative impact on paying agencies when organising checks. Agents from the Member State concerned may take part in such checks.

At the request of the Commission and with the agreement of the Member State, additional checks or inquiries into the operations covered by this Regulation shall be undertaken by the competent bodies of that Member State. Commission agents or persons authorised by the Commission to act on its behalf may take part in such checks.

In order to improve checks, the Commission may, with the agreement of the Member States concerned, request the assistance of the authorities of those Member States for certain checks or inquiries.

Article 48

Access to information

1. Member States shall make available to the Commission all information necessary for the smooth operation of the Funds and shall take all appropriate measures to facilitate the checks which the Commission deems appropriate in connection with the management of Union financing.
2. Member States shall communicate to the Commission at its request the laws, regulations and administrative provisions which they have adopted in order to implement the Union legal acts relating to the CAP, where those acts have a financial impact on the EAGF or the EAFRD.
3. Member States shall make available to the Commission information about irregularities within the meaning of Regulation (EU, Euratom) No 2988/95 and other cases of non-compliance with the conditions established by Member States in the CAP Strategic Plan, suspected fraud cases detected, and information about the steps taken pursuant to Section 3 of this Chapter to recover undue payments in connection with those irregularities and frauds.

Article 49

Access to documents

The accredited paying agencies shall keep supporting documents relating to payments made and documents relating to the performance of the checks required by Union law, and shall make the documents and information available to the Commission.

Those supporting documents may be kept in electronic form under the conditions laid down by the Commission on the basis of Article 50(2).

Where those documents are kept by an authority acting under delegation from a paying agency and responsible for authorising expenditure, that authority shall send reports to the accredited paying agency on the number of checks made, their content and the measures taken in the light of their results.

This Article shall apply *mutatis mutandis* to the certification bodies.

Article 50

Commission powers ²⁵

1. The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with specific obligations to be complied with by the Member States under this Chapter and with rules ~~in particular~~ on the criteria for determining the cases of irregularity within the meaning of Regulation (EU, Euratom) No 2988/95 and other cases of non-compliance with the conditions established by Member States in the CAP Strategic Plan, to be reported and the data to be provided.
2. The Commission may adopt implementing acts laying down rules on:
 - (a) the procedures relating to the cooperation obligations to be complied with by the Member States for the implementation of Articles 47 and 48;
 - (b) the conditions under which the supporting documents referred to in Article 49 are to be kept, including their form and the time period of their storage.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).

²⁵ **The wording of this Article might need to be revisited with a view to better frame the empowerment of the Commission.**

SECTION 2

CLEARANCE

Article 51

Annual financial clearance

1. Prior to 31 May of the year following the budget year in question and on the basis of the information referred to in points (a) and (c) of Article 8(3), the Commission shall adopt implementing acts, containing its decision on the clearance of the accounts of the accredited paying agencies, for the expenditure referred to in Article 5(2) and Article 6.

Those implementing acts shall cover the completeness, accuracy and veracity of the annual accounts submitted and shall be without prejudice to the content of the implementing acts subsequently adopted pursuant to Articles 52 and 53.

Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 101(2).

2. The Commission shall adopt implementing acts laying down rules on the clearance of accounts provided for in paragraph 1 with regard to the measures to be taken in connection with the adoption of the implementing acts referred to in the second subparagraph of paragraph 1 and their implementation, including the information exchange between the Commission and the Member States and the deadlines to be respected.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).

Article 52

Annual performance clearance

1. Where the expenditure referred to in Articles 5(2) and 6 and corresponding to the interventions referred to in Title III of Regulation (EU) .../... [CAP Strategic Plan Regulation] does not have a corresponding output as reported in the annual performance report **referred to in Article 121 of Regulation (EU) .../... [CAP Strategic Plan Regulation]**, the Commission shall adopt implementing acts prior to 15 October of the year following the budget year in question determining the amounts to be reduced from Union financing. Those implementing acts shall be without prejudice to the content of the implementing acts subsequently adopted pursuant to Article 53 of this Regulation.

Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 101(2).

2. The Commission shall assess the amounts to be reduced on the basis of the difference between the annual expenditure declared for an intervention and the amount corresponding to the relevant reported output in accordance with the national CAP Strategic Plan and taking account of justifications provided by the Member State **in the aAnnual pPerformance rReports in accordance with Article 121(54) of Regulation (EU) No.../... [CAP Strategic Plan Regulation]**.
3. Before the adoption of the implementing act referred to in paragraph 1, the Commission shall give the Member State an opportunity to submit its comments and justify any differences **within a period which, where the documents in accordance with Articles 8(3), 8(4) and 11(1) have been submitted by the deadline, shall not be less than 30 days.**

4. ~~The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with rules on the criteria for justifications from the concerned Member State and the methodology and criteria for applying reductions.~~
54. The Commission shall adopt implementing acts laying down rules on:
- (a) the criteria for justifications;**
 - (b) the methodology and criteria for applying reductions;**
 - (c)** the measures to be taken in connection with the adoption of the implementing act referred to in paragraph 1 and its implementation, including the information exchange between the Commission and the Member States, the procedure and the deadlines to be respected.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).

Article 53

Conformity procedure

1. Where the Commission finds that the expenditure referred to in Article 5(2) and Article 6 has not been effected in conformity with Union law, the Commission shall adopt implementing acts determining the amounts to be excluded from Union financing.

However, as regards the types of interventions referred to in Regulation (EU) .../... [CAP Strategic Plan Regulation] the exclusions from Union financing as referred to in the first subparagraph shall only apply in the case of serious deficiencies in the functioning of the Member States' governance systems.

The first subparagraph shall not apply to cases of non-compliance with the eligibility conditions for individual beneficiaries laid down in the national CAP Strategic Plans and national rules.

The implementing acts referred to in the first subparagraph shall be adopted in accordance with the advisory procedure referred to in Article 101(2).

2. The Commission shall assess the amounts to be excluded on the basis of the gravity of the deficiencies found.
3. Before the adoption of the implementing act referred to in paragraph 1, the Commission findings and the Member State's replies shall be notified in writing following which the two parties shall attempt to reach agreement on the action to be taken. Following this, the Member States shall be given the opportunity to demonstrate that the actual extent of the non-compliance is lower than the Commission's assessment.

If agreement is not reached, the Member State may request the opening of a procedure aimed at reconciling, within a period of four months, each party's position. A report on the outcome of the procedure shall be submitted to the Commission. The Commission shall take into account the recommendations in the report before making a decision to refuse financing and shall provide justification where it decides not to follow those recommendations.

4. Financing shall not be refused for:
 - (a) expenditure as indicated in Article 5(2) which is effected more than 24 months before the Commission notifies the Member State in writing of its findings;

- (b) expenditure on multiannual interventions falling within the scope of Article 5(2) or within the scope of the rural development interventions as referred to in Article 6, where the final obligation on the beneficiary occurs more than 24 months before the Commission notifies the Member State in writing of its findings;
- (c) expenditure on rural development interventions, as referred to in Article 6, other than those referred to in point (b) of this paragraph, for which the payment or, as the case may be, the final payment, by the paying agency, is made more than 24 months before the Commission notifies the Member State in writing of its findings.

5. Paragraph 4 shall not apply in the case of:

- (a) aids granted by a Member State for which the Commission has initiated the procedure laid down in Article 108(2) of the Treaty or infringements which the Commission has notified to the Member State concerned by a reasoned opinion in accordance with Article 258 of the Treaty;
- (b) infringements by Member States of their obligations under Chapter III of Title IV of this Regulation, provided that the Commission notifies the Member State in writing of its findings within 12 months following receipt of the Member State's report on the results of its checks on the expenditure concerned.

6. ~~The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with rules on the criteria and methodology for applying financial corrections.~~

76. The Commission shall adopt implementing acts laying down rules on:

- (a) the measures to be taken in connection with the adoption of the implementing act referred to in paragraph 1 and its implementation;⁵
- (b) the criteria and methodology for applying financial corrections with a view to enabling the Commission to protect the financial interest of the Union;**
- (c) the information exchange between the Commission and the Member States, the deadlines to be respected; ~~and~~
- (d) the conciliation procedure provided for in paragraph 3, including the establishment, tasks, composition and working arrangements of the conciliation body.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).

SECTION 3

RECOVERIES FOR NON-COMPLIANCE

Article 54

Provisions specific to the EAGF

Sums recovered by the Member States following the occurrence of irregularities and other cases of non-compliance by beneficiaries with the conditions of the interventions referred to in the CAP Strategic Plan and the interest thereon shall be made over to the paying agency and booked by it as revenue assigned to the EAGF in the month in which the sums are actually received.

When the Union's budget is credited as referred to in the first paragraph, the Member State may retain 20 % of the corresponding amounts as flat rate recovery costs, except in cases of non-compliance attributable to its administrative authorities or other official bodies.

Article 55

Provisions specific to the EAFRD

1. Where irregularities and other cases of non-compliance by beneficiaries, **and as regards financial instruments also by specific funds under holding funds or final recipients**, with the conditions of the rural development interventions referred to in the CAP Strategic Plan are detected, Member States shall make financial adjustments by totally or partially cancelling the Union financing concerned. Member States shall take into consideration the nature and gravity of the non-compliance detected and the level of the financial loss to the EAFRD.

Amounts of the Union financing under the EAFRD which are cancelled and amounts recovered, and the interest thereon, shall be reallocated to other rural development **operations interventions** in the CAP Strategic Plan. However, the cancelled or recovered Union Funds may be reused by Member States only for a rural development operation under the national CAP Strategic Plan and provided the funds are not reallocated to rural development operations which have been the subject of a financial adjustment.

2. **By way of derogation from the second subparagraph of paragraph 1,** ~~For rural~~ development interventions receiving aid from financial instruments as referred to in Regulation (EU) .../...[CPR Article 52], a contribution cancelled ~~in accordance with paragraph 1 of this Article~~ as a result of an individual non-compliance, may be reused within the same financial instrument as follows:
- (a) where the non-compliance that gives rise to the cancellation of the contribution is detected at the level of the final recipient referred to in [CPR Article 2(17)] of Regulation (EU) .../..., only for other final recipients within the same financial instrument;
 - (b) where the non-compliance that gives rise to the cancellation of the contribution is detected at the level of the specific ~~f~~Fund as referred to in [CPR Article 2(21)] of Regulation (EU) .../... within a holding ~~of f~~Funds as referred to in [CPR Article 2(20)] of Regulation (EU) .../..., only for other specific ~~f~~Funds.

Article 56

Implementing powers

The Commission shall adopt implementing acts laying down rules on **the possible off-setting of the amounts resulting from recovery of undue payments and** the forms of notification and communication to be made by the Member States to the Commission in relation to the obligations set out in this Section.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).

TITLE IV

Control systems and penalties

Chapter I

General rules

Article 57

Protection of the financial interests of the Union

1. Member States shall, within the framework of the CAP, adopt all legislative, regulatory and administrative provisions and take any other measures necessary to ensure effective protection of the financial interests of the Union. Those provisions and measures shall relate in particular to:
 - (a) checking the legality and regularity of operations financed by the Funds;
 - (b) ensuring effective prevention against fraud, especially in areas with a higher level of risk, and which will act as a deterrent, having regard to the costs and benefits and the proportionality of the measures;
 - (c) preventing, detecting and correcting irregularities and fraud;
 - (d) imposing penalties which are effective, dissuasive and proportionate in accordance with Union law, or failing this, national law, and bring legal proceedings to that effect, as necessary;
 - (e) recovering undue payments plus interest, and bring legal proceedings to that effect as necessary.

2. Member States shall set up efficient management and control systems in order to ensure compliance with the Union legislation governing Union interventions.
3. Member States shall take appropriate precautions ensuring ~~that~~ the penalties applied as referred to in point (d) of paragraph 1 are proportionate and graduated according to the severity, extent, duration and reoccurrence of the non-compliance found.

The arrangements set out by Member States shall ensure ~~in particular~~, that no penalties shall be imposed in **particular in cases**:

- (a) where the non-compliance is due to force majeure **or exceptional circumstances as referred to in Article 3**;
- (b) where the non-compliance is due to an error of the competent authority or another authority, and where the error could not reasonably have been detected by the person concerned by the administrative penalty;
- (c) where the person concerned can demonstrate to the satisfaction of the competent authority that he or she is not at fault for the non-compliance with the obligations referred to in paragraph 1 or if the competent authority is otherwise satisfied that the person concerned is not at fault.

Where the non-compliance with the conditions for the granting of the aid is due to force majeure **or exceptional circumstances as referred to in Article 3**, the beneficiary shall retain the right to receive aid.

4. Member States shall introduce arrangements for ensuring the effective examination of complaints concerning the Funds and shall, upon request by the Commission, examine complaints submitted to the Commission falling within the scope of their CAP Strategic Plan. Member States shall inform the Commission of the results of those examinations.

5. Member States shall inform the Commission of the provisions adopted and measures taken under paragraphs 1 and 2.

Any conditions established by Member States to supplement the conditions laid down by Union rules for receiving support financed by the EAGF or the EAFRD shall be verifiable.

6. The Commission may adopt implementing acts, laying down rules necessary for the uniform application of this Article relating to the following:
- (a) the procedures, deadlines, and exchange of information in relation to the obligations as set out in paragraphs 1 and 2;
 - (b) the notification and communication to be made by the Member States to the Commission in relation to the obligations set out in paragraphs 3 and 4.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).

Article 58

Rules regarding checks to be carried out

1. The system set up by the Member States in accordance with Article 57(2) shall include systematic checks which shall also target the areas where the risk of errors is the highest.

Member States shall ensure a level of checks needed for an effective management of the risks.

2. Checks of operations receiving aid from financial instruments as referred to in [CPR Article 52] of Regulation (EU) .../... shall be carried out only at the level of the **bodies implementing financial instruments holding fund and specific funds, and, in the context of guarantee funds, at the level of bodies delivering the underlying new loans.**

Checks shall not be carried out at the level of the EIB or other international financial institutions in which a Member State is a shareholder.

3. The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with rules, where the proper management of that system so requires, on additional requirements with respect to customs procedures, and in particular to those laid down in Regulation (EU) No 952/2013 of the European Parliament and of the Council.
4. As regards measures referred to in the sectoral agricultural legislation other than Regulation (EU) .../... [CAP Strategic Plan Regulation], the Commission shall adopt implementing acts, laying down rules necessary for the uniform application of this Article, and in particular:
- (a) with regard to hemp as referred to in point c) of Article 4 of Regulation (EU) .../... [CAP Strategic Plan Regulation], rules on the specific control measures and methods for determining tetrahydrocannabinol levels;
 - (b) with regard to cotton as referred to in subsection 2 of Section 2 of Chapter 2 of Title III of Regulation (EU) .../... [CAP Strategic Plan Regulation], a system for checks of the approved interbranch organisations;

- (c) with regard to wine as referred to in Regulation (EU) No 1308/2013, rules on the measurement of areas, on checks and on rules governing the specific financial procedures for the improvement of checks;
- (d) the tests and methods to be applied in order to establish the eligibility of products for public intervention and private storage, and the use of tendering procedures, both for public intervention and for private storage;
- (e) other rules on the checks to be conducted by the Member States, as regards the measures laid down in Chapter IV of Regulation (EU) No 228/2013 and in Chapter IV of Regulation (EU) No 229/2013 respectively.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).

Article 59

Non-compliance with public procurement rules

Where the non-compliance concerns national or Union rules on public procurement, Member States shall ensure that the part of the aid not to be paid or to be withdrawn shall be determined on the basis of the gravity of the non-compliance and in accordance with the principle of proportionality.

Member States shall ensure that the legality and regularity of the transaction shall only be affected up to the level of the part of the aid not to be paid or to be withdrawn.

Article 60

Circumvention clause

Without prejudice to specific provisions, Member States shall take effective and proportionate measures to avoid provisions of Union law to be circumvented and ensure, in particular, that no advantage provided for under sectoral agricultural legislation shall be granted in favour of a natural or legal person in respect of whom it is established that the conditions required for obtaining such advantages were created artificially, contrary to the objectives of that legislation.

Article 61

Compatibility of interventions for the purposes of checks in the wine sector

For the purposes of applying the interventions in the wine sector as referred to in Regulation (EU) .../... [CAP Strategic Plan Regulation], Member States shall ensure that the administration and control procedures applied to those interventions are compatible with the integrated system referred to in Chapter II of this Title as regards the following elements:

- (a) the identification systems for agricultural parcels;
- (b) the checks.

Article 62

Securities

1. The Member States shall, when the sectoral agricultural legislation so provides, request the lodging of a security giving the assurance that a sum of money will be paid or forfeited to a competent authority if a particular obligation under sectoral agricultural legislation is not fulfilled.
2. Except in cases of force majeure, the security shall be forfeited in whole or in part where the execution of a particular obligation is not carried out, or is carried out only partially.
3. The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with rules on:
 - (a) which ensure a non-discriminatory treatment, equity and the respect of proportionality when lodging a security;
 - (b) specifying the responsible party in the event that an obligation is not met;
 - (c) laying down the specific situations in which the competent authority may waive the requirement of a security;
 - (d) laying down the conditions applying to the security to be lodged and the guarantor and the conditions for lodging and releasing that security;
 - (e) laying down the specific conditions related to the security lodged in connection with advance payments;

- (f) setting out the consequences of breaching the obligations for which a security has been lodged, as provided for in paragraph 1, including the forfeiting of securities, the rate of reduction to be applied on release of securities for refunds, licences, offers, tenders or specific applications and when an obligation covered by that security has not been met either wholly or in part, taking into account the nature of the obligation, the quantity for which the obligation has been breached, the period exceeding the time limit by which the obligation should have been met and the time by which evidence that the obligation has been met is produced.

4. The Commission may adopt implementing acts laying down rules on:

- (a) the form of the security to be lodged and the procedure for lodging the security, for accepting it, and for replacing the original security;
- (b) the procedures for the release of a security;
- (c) the notifications to be made by Member States and by the Commission.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).

Chapter II

Integrated administration and control system

Article 63

Scope and definitions

1. Each Member State shall set up and operate an integrated administration and control system (the 'integrated system').
2. The integrated system shall apply to the area- and animal-based interventions listed in Chapters II and IV of Title III of Regulation (EU) .../... [CAP Strategic Plan Regulation] and to the measures referred to in Chapter IV of Regulation (EU) No 228/2013²⁶ and in Chapter IV of Regulation (EU) 229/2013²⁷ respectively.
3. To the extent necessary, the integrated system shall also be used for the ~~management and~~ control of conditionality and **area-related** measures in the wine sector as laid down in Title III of Regulation (EU) .../... [CAP Strategic Plan Regulation].
4. For the purposes of this Chapter:
 - (a) "geo-spatial application" means an electronic application form that includes an IT application based on a geographic information system that allows beneficiaries to spatially declare the agricultural parcels of the holding **as defined in Article 3(b) of Regulation (EU) .../... [CAP Strategic Plan Regulation]** and non-agricultural areas claimed for payment;

²⁶ 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) 247/2006 (OJ L 78, 20.3.2013, p. 23).

²⁷ 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).

- (b) "area monitoring system" means a procedure of regular and systematic observation, tracking and assessment of agricultural activities and practices on agricultural areas by Copernicus Sentinels satellite data or other data with at least equivalent value;
- (c) "system for the identification and registration of animals" means the system for the identification and registration of bovine animals laid down by Regulation (EC) No 1760/2000 of the European Parliament and of the Council²⁸ or the system for the identification and registration of ovine and caprine animals laid down by Council Regulation (EC) No 21/2004²⁹ **or, where Member States so decide, the system for the identification and registration of pigs laid down by Council Directive 2008/71/EC;**
- (d) "agricultural parcel" means a unit, **as defined by Member States,** of ~~land representing an~~ agricultural area as defined in **accordance with point (b) of** Article 4(1) of Regulation (EU) .../... [CAP Strategic Plan Regulation];
- (e) "geographic information system" means a computer system capable of capturing, storing, analysing, and displaying geographically referenced information;
- (f) **"automatic claimless system"** means an application system for area- or animal-based interventions in which ~~the necessary~~ data required by the administration on ~~at least~~ individual areas or animals claimed for aid is available in official computerised databases managed by the Member State.

²⁸ Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97 (OJ L 204, 11.8.2000, p. 1).

²⁹ Council Regulation (EC) No 21/2004 of 17 December 2003 establishing a system for the identification and registration of ovine and caprine animals and amending Regulation (EC) No 1782/2003 and Directives 92/102/EEC and 64/432/EEC (OJ L 5, 9.1.2004, p. 8).

Article 64

Elements of the integrated system

1. The integrated system shall comprise the following elements:
 - (a) an identification system for agricultural parcels;
 - (b) a geo-spatial **application system** and, **where applicable**, an animal-based application system;
 - (c) **as from 1 January 202{4} at the latest** an area monitoring system;
 - (d) a system for the identification of beneficiaries of the interventions and measures referred to in Article 63(2);
 - (e) a control and penalties system;
 - (f) where applicable, a system for the identification and registration of payment entitlements;
 - (g) where applicable, a system for the identification and registration of animals.
2. The integrated system shall operate on the basis of electronic databases and geographic information systems and shall enable the exchange and integration of data between the electronic databases and the geographic information systems.

3. ~~Without prejudice to the responsibilities of the Member States for the implementation and application of the integrated system, the Commission may seek the assistance of specialised bodies or persons in order to facilitate the establishment, monitoring and operation of the integrated system, in particular, with a view to providing the competent authorities of the Member States with technical advice.~~
4. Member States shall take ~~the all~~ measures required for the proper establishment and operation of the integrated system and, **where necessary**, shall give one another the mutual assistance needed for the purposes of this Chapter.

Article 65

Data keeping and sharing

1. Member States shall record and keep any data and documentation on the annual outputs reported in the context of the annual performance clearance as referred to in Article 52, and the reported progress towards targets as set out in the CAP Strategic Plan and monitored in accordance with Article 115 of Regulation (EU) .../...[CAP Strategic Plan Regulation].

The data and documentation referred to in the first subparagraph relating to the current calendar year or marketing year and to the previous ~~ten~~**seven** calendar years or marketing years shall be accessible for consultation through the digital databases of the competent authority of the Member State.

Data used for the area monitoring system may be stored as raw data on a server external to the competent authorities. This data shall be kept on the server for at least three years.

By way of derogation from the second subparagraph, Member States which acceded to the Union in or after 2013 shall only be required to ensure that the data is available for consultation from the year of their accession.

By way of derogation from the second subparagraph, Member States shall only be required to ensure that the data and documentation related to the area monitoring system referred to in point (c) of Article 64(1) is available for consultation as of the date of the implementation of the area monitoring system.

2. Member States may apply the requirements laid down in paragraph 1 at regional level on condition that those requirements and the administrative procedures for recording and accessing data are designed to be uniform throughout the territory of the Member State and enable data to be aggregated at national level.
3. Member States shall ensure that data sets collected through the integrated system which are relevant for the purposes of Directive 2007/2/EC of the European Parliament and of the Council³⁰ ~~or relevant for monitoring Union policies~~, are shared free of charge between its public authorities and made publicly available at national level. Member States shall also provide the institutions and bodies of the Union with access to these data sets.

³⁰ Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) (OJ L 108, 25.4.2007, p. 1).

4. Member States shall ensure that data sets collected through the integrated system, and which are relevant for the production of European statistics as referred to in Regulation (EC) No 223/2009³¹, are shared free of charge with the Community statistical authority, the national statistical institutes and, where necessary, with other national authorities responsible for the production of European statistics.
5. Member States shall limit public access to data sets referred to in paragraphs 3 and 4 where such access would adversely affect the confidentiality of personal data, in accordance with Regulation (EU) 2016/679.

Article 66

Identification system for agricultural parcels

1. The identification system for agricultural parcels shall be a geographic information system established and regularly updated by the Member States on the basis of aerial or spatial orthoimagery, with a uniform standard that guarantees a level of accuracy that is at least equivalent to that of cartography at a scale of 1:5 000.
2. Member States shall ensure that the identification system for agricultural parcels:
 - (a) uniquely identifies each agricultural parcel and units of land containing non-agricultural areas considered eligible by the Member States for receiving the aid for the interventions referred to in Title III of Regulation (EU) .../... [CAP Strategic Plan Regulation];

³¹ Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities (OJ L 87, 31.3.2009, p. 164).

- (b) contains up-to-date values on the areas considered eligible by the Member States for receiving the aid for the interventions referred to in Article 63(2);
 - (c) enables the correct localisation of agricultural parcels and non-agricultural areas claimed for payment;
 - (d) **provides** ~~contains any~~ information relevant for the reporting on the indicators referred to in Article 7 of Regulation (EU) .../[CAP Strategic Plan Regulation].
3. Member States shall annually assess the quality of the identification system for agricultural parcels in accordance with the methodology set up at Union level.

Where the assessment reveals deficiencies in the system, Member States shall adopt appropriate remedial actions or shall be requested **by the Commission** to set up an action plan in accordance with Article 40.

An assessment report and, where appropriate, the remedial actions and the timetable for their implementation shall be submitted to the Commission by 15 ~~February~~ **March** following the calendar year concerned.

Article 67

Geo-spatial and animal-based application system

1. As regards the aid for the area-based interventions referred to in Article 63(2) and implemented under the national CAP Strategic Plans, Member States shall require the submission of an application by means of using the geo-spatial application provided by the competent authority to submit an application.

2. As regards the aid for the animal-based interventions referred to in Article 63(2) and implemented under the national CAP Strategic Plans, Member States shall require the submission of an application.
3. Member States shall pre-fill the applications referred to in paragraphs 1 and 2 with information from the systems referred to in point (g) of Article 64(1) and in Articles 66, 68, 69 and 71 or from any other relevant public database.
4. Member States may ~~set up~~ ~~decide that an automatic~~ ~~claimless~~ system **and decide which shall cover one or more** applications referred to in paragraphs 1 and 2 **it shall cover**.
5. Member States shall annually assess the quality of the geo-spatial application system in accordance with the methodology set up at Union level.

Where the assessment reveals deficiencies in the system, Member States shall adopt appropriate remedial actions or shall be requested by the Commission to set up an action plan in accordance with Article 40.

An assessment report and, where appropriate, the remedial actions and the timetable for their implementation shall be submitted to the Commission by 15 ~~February~~ **March** following the calendar year concerned.

Article 68

Area monitoring system

1. Member States shall set up and operate an area monitoring system.

2. Member States shall annually assess the quality of the area monitoring system in accordance with the methodology set up at Union level.

Where the assessment reveals deficiencies in the system, Member States shall adopt appropriate remedial actions or shall be requested **by the Commission** to set up an action plan in accordance with Article 40.

An assessment report and, where appropriate, the remedial actions and the timetable for their implementation shall be submitted to the Commission by 15 ~~February~~ **April** following the calendar year concerned.

Article 69

System for the identification of beneficiaries

The system for recording the identity of each beneficiary of the interventions and measures as referred to in Article 63(2) shall guarantee that all applications submitted by the same beneficiary can be identified as such.

Article 70

Control and penalties system

Member States shall set up a control and penalties system for the **interventions and measures** ~~aid~~ as referred to in Article 63.

Paragraphs 1 to 5 of Article 57 shall apply *mutatis mutandis*.

Article 71

System for the identification and registration of payment entitlements

The system for the identification and registration of payment entitlements shall allow for verification of the entitlements with the applications and the identification system for agricultural parcels.

Article 72

Delegated powers

The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation concerning:

- (a) further rules on the quality assessment referred to in Articles 66, 67 and 68;
- (b) further definitions, basic features and rules on the identification system for agricultural parcels, the system for the identification of beneficiaries and the system for the identification and registration of payment entitlements referred to in Articles 66, 69 and 71.

Article 73

Implementing powers

The Commission may adopt implementing acts laying down rules on:

- (a) the form, content and arrangements for transmitting or making available to the Commission of:
 - (i) the assessment reports on the quality of the identification system for agricultural parcels, of the geo-spatial application system and of the area monitoring system;

- (ii) the remedial actions to be implemented by the Member States as referred to in Articles 66, 67 and 68;
- (b) basic features and rules on the geo-spatial application system and the area monitoring system referred to in Articles 67 and 68.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).

Chapter III

Scrutiny of transactions

Article 74

Scope and definitions

1. This Chapter lays down specific rules on 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, or representatives of those entities (hereinafter 'undertakings') 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.
2. This Chapter shall not apply to interventions covered by the integrated system referred to in Chapter II of this Title and by Chapter III of Title III of Regulation (EU) .../... [CAP Strategic Plan Regulation]. ~~The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with the establishment of a list of interventions which, due to their design and control requirements, are unsuited for additional ex post controls by way of scrutiny of commercial documents and, therefore, are not to be subject to such scrutiny under this Chapter.~~

3. For the purposes of this Chapter the following definitions shall apply:
- (a) "commercial document" means all books, registers, vouchers and supporting documents, accounts, production and quality records, correspondence relating to the undertaking's business activity, and commercial data, in whatever form they may take, including electronically stored data, in so far as these documents or data relate directly or indirectly to the transactions referred to in paragraph 1;
 - (b) "third party" means any natural or legal person directly or indirectly connected with transactions carried out within the financing system by the EAGF.

Article 75

Scrutiny by Member States

1. Member States shall carry out systematic scrutiny of the commercial documents of undertakings taking account of the nature of the transactions to be scrutinised. Member States shall ensure that the selection of undertakings for scrutiny gives the best possible assurance of the effectiveness of the measures for preventing and detecting irregularities. The selection shall take account, inter alia, of the financial importance of the undertakings in that system and of other risk factors.
2. In appropriate cases, the scrutiny provided for in paragraph 1 shall be extended to natural and legal persons with whom undertakings are associated and to such other natural or legal persons as may be relevant for the pursuit of the objectives set out in Article 76.

3. The body or bodies responsible for the application of this Chapter shall be organised in such a way as to be independent of the departments or branches of departments responsible for the payments and the checks carried out prior to payment.
4. Undertakings for which the sum of the receipts or payments amounted to less than EUR 40 000 shall be scrutinised in accordance with this Chapter only for specific reasons to be indicated by the Member States in their annual control plan programme referred to in article 79(1).
54. The scrutiny carried out pursuant to this Chapter shall not prejudice the checks undertaken pursuant to Articles 47 and 48.
6. The Commission is empowered to adopt delegated acts in accordance with Article [100] amending the threshold set out in the paragraph 4.

Article 76

Cross-checks

1. The accuracy of primary data under scrutiny shall be verified by a number of cross-checks, including, where necessary, the commercial documents of third parties, appropriate to the degree of risk presented, including:
 - (a) comparisons with the commercial documents of suppliers, customers, carriers and other third parties;
 - (b) physical checks, where appropriate, upon the quantity and nature of stocks;
 - (c) comparison with the records of financial flows leading to or consequent upon the transactions carried out within the financing system by the EAGF;

- (d) checks, in relation to bookkeeping, or records of financial movements showing, at the time of the scrutiny, that the documents held by the paying agency by way of justification for the payment of aid to the beneficiary are accurate.
2. Where undertakings are required to keep particular book records of stock in accordance with Union or national provisions, scrutiny of those records shall, in appropriate cases, include a comparison with the commercial documents and, where appropriate, with the actual quantities in stock.
 3. In the selection of transactions to be checked, full account shall be taken of the degree of risk presented.
 4. **The persons responsible for the undertaking, or a third party, shall ensure that all commercial documents and additional information are supplied to the officials responsible for the scrutiny or to the persons authorised to carry it out on their behalf. Electronically stored data shall be provided on an appropriate data support medium.**
 5. **The officials responsible for the scrutiny or the persons authorised to carry it out on their behalf may require that extracts or copies of the documents referred to in paragraph 1 be supplied to them.**

Article 77

Access to commercial documents

- ~~1. The persons responsible for the undertaking, or a third party, shall ensure that all commercial documents and additional information are supplied to the officials responsible for the scrutiny or to the persons authorised to carry it out on their behalf. Electronically stored data shall be provided on an appropriate data support medium.~~

~~2. The officials responsible for the scrutiny or the persons authorised to carry it out on their behalf may require that extracts or copies of the documents referred to in paragraph 1 be supplied to them.~~

~~3. Where, during scrutiny carried out pursuant to this Chapter, the commercial documents maintained by the undertaking are considered inadequate for scrutiny purposes, the undertaking shall be directed to maintain in future such records as are required by the Member State responsible for the scrutiny, without prejudice to obligations laid down in other Regulations relating to the sector concerned.~~

~~Member States shall determine the date from which such records are to be established.~~

~~Where some or all of the commercial documents required to be scrutinised pursuant to this Chapter are located with an undertaking in the same commercial group, partnership or association of undertakings managed on a unified basis as the undertaking scrutinised, whether located inside or outside the territory of the Union, the undertaking shall make those commercial documents available to officials responsible for the scrutiny, at a place and time to be determined by the Member States responsible for carrying out the scrutiny.~~

~~4. Member States shall ensure that officials responsible for scrutiny are entitled to seize commercial documents, or have them seized. This right shall be exercised with due regard to the relevant national provisions and shall be without prejudice to the application of rules governing proceedings in criminal matters concerning the seizure of documents.~~

Article 78

Mutual assistance

1. Member States shall assist each other **on their requests** for the purposes of carrying out the scrutiny provided for in this Chapter in the following cases:

- (a) where an undertaking or third party is established in a Member State other than that in which payment of the amount in question has or should have been made or received;
- (b) where an undertaking or third party is established in a Member State other than that in which the documents and information required for scrutiny are to be found.

~~The Commission may coordinate joint actions involving mutual assistance between two or more Member States.~~

~~2. Member States shall send the Commission a list of undertakings established in a third country for which payment of the amount in question has or should have been made or received in that Member State.~~

~~3. If additional information is required in another Member State as part of the scrutiny of an undertaking in accordance with Article 75, and in particular cross-checks in accordance with Article 76, specific scrutiny requests may be made indicating the reasons for the request.~~

~~The scrutiny request shall be fulfilled not later than six months after its receipt; the results of the scrutiny shall be communicated without delay to the requesting Member State.~~

Programming Planning and reporting

1. Member States shall draw up programmes for scrutiny to be carried out pursuant to Article 75 during the subsequent scrutiny period.
2. Each year, before 15 April, Member States shall send the Commission:
 - (a) their **control plan programme** as referred to in paragraph 1 and shall specify **the number of undertakings to be scrutinised and their breakdown by sector on the basis of the amounts relating to them**;
 - i. ~~the number of undertakings to be scrutinised and their breakdown by sector on the basis of the amounts relating to them;~~
 - ii. ~~the criteria adopted for drawing up the programme;~~
 - (b) a detailed report on the application of this Chapter for the previous scrutiny period, including the results of the scrutiny carried out under Article 78.
3. The **control plans programmes** and their amendments established by the Member States and forwarded to the Commission shall be implemented by the Member States, if, within eight weeks, the Commission has not made known its comments.
4. ~~Paragraph 3 shall apply mutatis mutandis to the amendments to the programme made by the Member States.~~
5. ~~At any stage, the Commission may request the inclusion of a particular category of undertaking in the programme of a Member States.~~

~~6. Undertakings for which the sum of the receipts or payments amounted to less than EUR 40 000 shall be scrutinised in accordance with this Chapter only for specific reasons to be indicated by the Member States in their annual programme referred to in paragraph 1 or by the Commission in any proposed amendment to that programme.~~

~~The Commission is empowered to adopt delegated acts in accordance with Article 101-100 amending the threshold set out in the first subparagraph.~~

Article 80

Special departments

~~1. In each Member State, a special department shall be responsible for monitoring the application of this Chapter. Those departments shall, in particular, be responsible for:~~

~~(a) the performance of the scrutiny provided for in this Chapter by officials employed directly by that special department; or~~

~~(b) the coordination and general surveillance of the scrutiny carried out by officials belonging to other departments.~~

~~Member States may also provide that scrutiny to be carried out pursuant to this Chapter is allocated between the special departments and other national departments, provided that the former is responsible for its coordination.~~

~~2. The department or departments responsible for the application of this Chapter shall be organised in such a way as to be independent of the departments or branches of departments responsible for the payments and the scrutiny checks carried out prior to payment.~~

~~3. The special department referred to in paragraph 1 shall take all the measures necessary, and it shall be entrusted by the Member State concerned with all the powers necessary, to perform the tasks referred to in this Chapter.~~

~~4. Member States shall adopt appropriate measures to penalise natural or legal persons who fail to fulfil their obligations under this Chapter.~~

Article 81

Reports

~~1. Before 1 January, following the scrutiny period, Member States shall send the Commission a detailed report on the application of this Chapter.~~

~~The report referred to in the first subparagraph shall also contain an overview of the specific scrutiny requests referred to in Article 78(3) and the results of the scrutiny following those requests.~~

~~2. The Member States and the Commission shall have regular exchanges of views on the application of this Chapter.~~

Article 82

Access to information and scrutiny by the Commission

1. In accordance with the relevant national laws, Commission officials shall have access to all documents prepared either with a view to or following the scrutiny organised under this Chapter and to the data held, including those stored in the data-processing systems. That data shall be provided upon request on an appropriate data support medium.

2. The scrutiny referred to in Article 75 shall be carried out by the officials of the Member States. Officials of the Commission may participate in that scrutiny. **Officials of the Member State requesting mutual assistance in accordance with Article 78 may participate with the agreement of the requested Member State. Officials of the Commission and of the requesting Member State** They may not themselves exercise the powers of scrutiny accorded to national officials. However, they shall have access to the same premises and to the same documents as the officials of the Member States.

~~3. In the case of scrutiny taking place under Article 78, officials of the requesting Member State may be present, with the agreement of the requested Member State, at the scrutiny in the requested Member State and have access to the same premises and the same documents as the officials of that Member State.~~

~~Officials of the requesting Member State present at scrutiny in the requested Member State shall at all time be able to furnish proof of their official capacity. The scrutiny shall at all times be carried out by officials of the requested Member State.~~

4.3. Without prejudice to the provisions of Regulations (EU, Euratom) No 883/2013, (Euratom, EC) No 2988/95 (Euratom, EC) No 2185/96 and (EU) 2017/1939, where national provisions concerning criminal procedure reserve certain acts for officials specifically designated by the national law, neither the officials of the Commission, nor the officials of the **requesting** Member State referred to in paragraph 32, shall take part in these acts. In any event, they shall, in particular not take part in home visits or the formal interrogation of persons in the context of the criminal law of the Member State concerned. They shall, however, have access to information thus obtained.

Article 83

Implementing powers

The Commission shall adopt implementing acts laying down rules necessary for the uniform application of this Chapter and in particular relating to the following:

- (a) the performance of the scrutiny referred to in Article 75 as regards the selection of undertakings, rate and the timescale for the scrutiny;
- ~~(b) the conservation of commercial documents and the types of documents to maintain or data to record;~~
- (c) the performance ~~and coordination of joint actions~~ **the mutual assistance** referred to in Article 78(1);
- ~~(d) the details and specifications regarding the content, form and means of submission of requests, the content, form and means of notification, submission and exchange of information required under this Chapter;~~
- ~~(e) conditions and means of publication or specific rules and conditions for the diffusion or making available by the Commission to the competent authorities of the Member States of the information needed under this Regulation;~~
- ~~(f) the responsibilities of the body or bodies special department referred to in Article 80;~~
- (g) the content of reports referred to in Article **79(2)(b)**~~81~~ and any other notification needed under this Chapter.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).

Chapter IV

Control system and penalties in relation to conditionality

Article 84

Control system for conditionality

1. Member States shall set up a control system to **control compliance with obligations referred to in Section 2 of Chapter I of Title III of Regulation (EU) .../...[CAP Strategic Plan Regulation]** ~~by ensure that beneficiaries of the aid referred to in Article 11 of Regulation (EU) .../... [CAP Strategic Plan Regulation] and in Chapter IV of Regulation (EU) No 228/2013 and in Chapter IV of Regulation (EU) No 229/2013 respectively, comply with the obligations referred to in Section 2 of Chapter I of Title III of Regulation (EU) .../...[CAP Strategic Plan Regulation].~~

Member States may set up a simplified control system for the beneficiaries receiving payments under Article 25 of Regulation (EU)..../....[CAP Strategic Plan Regulation].

Member States may make use of their existing control systems and administration to ensure compliance with the rules on conditionality.

Those systems shall be compatible with the control system referred to in the first subparagraph of this paragraph.

Member States shall conduct a yearly review of the control system referred to in the first subparagraph in light of the results achieved.

2. For the purposes of this Chapter, the following definitions shall apply:
 - (a) "requirement" means each individual statutory management requirement under Union law referred to in Article 11 of Regulation (EU) .../...[CAP Strategic Plan Regulation] within a given **legal** act, differing in substance from any other requirements of the same **legal** act;

- (b) "legal act" means each of the individual Directives and Regulations referred to in Article 11 of Regulation (EU) .../...[CAP Strategic Plan Regulation].

3. In their control system referred to in paragraph 1 Member States:

- (a) shall include on-the-spot checks to verify compliance by beneficiaries with the obligations laid down in Section 2 of Chapter 4I of Title III of Regulation (EU) .../... [CAP Strategic Plan Regulation]; **by way of derogation, on-the-spot checks shall not be necessary if the obligation referred to in the first sentence of this point may be efficiently controlled administratively by use of data from computerised databases or by other technologies;**
- (b) may decide, depending on the requirements, standards, legal acts or areas of conditionality in question, to use the checks, **including administrative checks**, carried out under the control systems applicable to the respective requirement, standard, legal act or area of conditionality, provided the effectiveness of these checks is, at least, equal to the on-the-spot checks referred to in point (a);
- (c) may, where appropriate, make use of remote sensing or the area monitoring system **or other technologies** to carry out the on-the-spot checks referred to in point (a);
- (d) **shall** establish the control sample for the checks referred to in point (a) to be carried out each year on the basis of a risk analysis, **taking into account farm structure and the inherent risk of non-compliance**, ~~and~~ shall include a random component and shall provide the control sample to cover at least 1% of beneficiaries receiving the **support referred to** ~~aid provided for~~ in Section 2 of Chapter 4I of Title III of Regulation (EU) .../... [CAP Strategic Plan Regulation];

- (e) as regards the obligations of conditionality in relation to Directive 96/22/EC, the application of a specific sampling level of monitoring plans shall be considered to fulfil the requirement of the minimum rate mentioned in point (d).

Article 85

System of administrative penalties for conditionality

1. Member States shall set up a system providing for the application of administrative penalties to beneficiaries referred to in Article 11 of Regulation (EU) .../... [CAP Strategic Plan Regulation] who do not comply, at any time in the calendar year concerned, with the rules on conditionality as laid down in Section 2 of Chapter ~~4~~I of Title III of that Regulation ("penalty system"). Where checks by monitoring as referred to in point (c) of Article 84(3) of this Regulation reveal findings relevant for interventions, requirements and/or standards, the competent authorities may decide to apply sanctions only to beneficiaries selected for on-the-spot checks in accordance with point (d) of Article 84 (3).

Under that system, the administrative penalties referred to in the first subparagraph shall only apply where the non-compliance is the result of an act or omission directly attributable to the beneficiary concerned~~;~~₂ and where one or both of the following conditions are met:

- (a) the non-compliance is related to the agricultural activity of the beneficiary~~;~~In case of non-compliance due to negligence, the administrative penalty referred to in paragraph 1 shall not apply to beneficiaries receiving payments under Article 25 of Regulation (EU).../...[CAP Strategic Plan Regulation] or with an agricultural area of less than or equal to [x ha].
- (b) the ~~non-compliance concerns area of the holding of the beneficiary is concerned as defined in point (b) of Article 3(1) of Regulation (EU) .../... [CAP Strategic Plan Regulation] or other areas managed by the beneficiary situated within the territory of the same Member State.~~

With regard to forest areas, however, the administrative penalty referred to in the first subparagraph shall not apply where no support is claimed for the area concerned in accordance with Articles 65 and 66 of Regulation (EU) .../...[CAP Strategic Plan Regulation].

~~**1a. The administrative penalty referred to in paragraph 1 for statutory management requirements shall not apply to beneficiaries receiving payments under Article 25 of Regulation (EU) .../...[CAP Strategic Plan Regulation] or with an agriculture area of less than or equal to [x ha].**~~

2. In their penalty systems referred to in paragraph 1, Member States:

- (a) shall include rules on the application of administrative penalties in cases where the land is transferred during the calendar year concerned or the years concerned. These rules shall be based on a fair and equitable attribution of the liability for non-compliances among transferors and transferees;

For the purpose of this point, 'transfer' means any type of transaction whereby the agricultural land ceases to be at the disposal of the transferor.

- (b) may decide, notwithstanding paragraph 1, not to apply a penalty per beneficiary and per calendar year when the amount of the penalty is EUR {~~100~~**250**} or less. The **beneficiary shall be informed about the** finding and the obligation to take remedial action ~~shall be notified to the beneficiary for the future~~;
- (c) shall provide that no administrative penalty be imposed where the non-compliance is due to force majeure **or exceptional circumstances as set out in Article 3**.

3. The application of an administrative penalty shall not affect the legality and regularity of the expenditure to which it applies.

Article 86

Calculation of the penalty

1. The administrative penalties provided for in Section 2 of Chapter 4I of Title III of Regulation (EU) .../...[CAP Strategic Plan Regulation] shall be applied by means of reduction from or exclusion of the total amount of the payments listed in that Section of that Regulation granted or to be granted to the beneficiary concerned in respect of aid applications **that have been or will be** ~~he has submitted or will submit~~ in the course of the calendar year of the finding.

For the calculation of those reductions and exclusions, account shall be taken of the severity, extent, permanence, or reoccurrence or intentionality of the non-compliance determined.

The penalties imposed shall be dissuasive and proportionate. Where the area monitoring system is not used as an alternative to the on-the-spot-checks on a control sample as referred to in 84(3)(d), the penalties shall comply, and compliant with the criteria set out in paragraphs 2 and 3 of this Article. The administrative penalties referred to in the first subparagraph of this paragraph shall be based on the control carried out according to Article 84(3).

2. In the case of non-compliance due to negligence, the percentage of reduction shall be **1%, 3% or 5%** ~~as a general rule~~ of the total amount of the payments referred to in paragraph 1 of this Article.

Member States may set up an early warning system that applies to individual cases of non-compliance occurring for the first time and which, given their minor severity, extent and permanence, shall not lead to a reduction or exclusion. Where a subsequent check within three consecutive calendar years establishes that the non-compliance has not been remedied, the reduction pursuant to the first subparagraph shall be applied **to amounts resulting from aid applications of the current year** ~~retroactively~~.

However, cases of non-compliance which constitute a direct risk to public or animal health shall always lead to a reduction or exclusion.

Member States may provide mandatory training under the farm advisory system provided for in Section 3 of Chapter ~~H~~I of Title III of Regulation (EU) .../...[CAP Strategic Plan Regulation] to the beneficiaries who have received an early warning.

3. In case of reoccurrence, the percentage reduction shall be higher than the one to be applied in case of non-compliance due to negligence and sanctioned for the first time.
- ~~4.~~ **In case of intentional non-compliance, the percentage shall be higher than the one applied in case of reoccurrence pursuant to paragraph 3 and may go as far as total exclusion from payments and may apply for one or more calendar years.**
- ~~54.~~ In order to ensure a level-playing field between Member States and the effectiveness and dissuasive effect of the penalty system, the Commission shall be empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with further rules on the application and calculation of penalties.~~1~~

Article 87

Amounts resulting from the administrative penalties on conditionality

Member States may retain ~~25~~20 % of the amounts resulting from the application of the reductions and exclusions referred to in Article 86.

Title V

Common provisions

CHAPTER I

Transmission of information

Article 88

Communication of information

1. In addition to the provisions laid down in Regulation (EU) .../... [CAP Strategic Plan Regulation], Member States shall send to the Commission the following information, declarations and documents:
 - (a) for accredited paying agencies and accredited coordinating bodies:
 - (i) their accreditation document,
 - (ii) their function (accredited paying agency or accredited coordinating body),
 - (iii) where relevant, the withdrawal of their accreditation;
 - (b) for certification bodies:
 - (i) their name,
 - (ii) their address

- (c) for measures relating to operations financed by the Funds:
- (i) declarations of expenditure, which also act as payment requests, signed by the accredited paying agency or the accredited coordinating body and accompanied by the requisite information,
 - (ii) estimates of their financial requirements, with regard to the EAGF and, with regard to the EAFRD, an update of estimated declarations of expenditure which will be submitted during the year and estimated declarations of expenditure in respect of following financial year,
 - (iii) the management declaration and the annual accounts of the accredited paying agencies.

~~The annual accounts of accredited paying agencies relating to EAFRD expenditure shall be submitted at the level of each CAP Strategic Plan.~~

2. Member States shall inform the Commission regularly of the application of the integrated system referred to in Chapter II of Title IV. The Commission shall organise exchanges of views on this subject with the Member States.

Article 89

Confidentiality

1. Member States and the Commission shall take all necessary steps to ensure the confidentiality of the information communicated or obtained under inspection and clearance of accounts measures implemented under this Regulation.

The rules laid down in Article 8 of Regulation (Euratom, EC) No 2185/96 shall apply to that information.

2. Without prejudice to national provisions relating to legal proceedings, information collected in the course of scrutiny as provided for in Chapter III of Title IV shall be protected by professional secrecy. It shall not be communicated to any persons other than those who, by reason of their duties in the Member States or in the institutions of the Union, are required to have knowledge thereof for the purposes of performing those duties.

Article 90

Implementing powers

The Commission may adopt implementing acts laying down rules on:

- (a) the form, content, intervals, deadlines and arrangements for transmitting or making available to the Commission:
 - (i) declarations of expenditure and estimates of expenditure and their updates, including assigned revenue,
 - (ii) management declaration and annual accounts of the paying agencies,

- (iii) the account certification reports,
 - (iv) the names and particulars of accredited paying agencies, accredited coordinating bodies and certification bodies,
 - (v) arrangements for taking account of and paying expenditure financed by the Funds,
 - (vi) notifications of financial adjustments made by Member States in connection with rural development interventions,
 - (vii) information on the measures taken pursuant to Article 57;
- (b) the arrangements governing exchanges of information and documents between the Commission and the Member States, and the implementation of information systems, including the type, format and content of data to be processed by these systems and the corresponding data storage rules;
- (c) the notifications to the Commission by Member States of information, documents, statistics and reports, and the deadlines and methods for their notification.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).

Chapter II

Use of the euro

Article 91

General principles

1. The amounts given in the Commission decisions adopting the CAP Strategic Plans, the amounts of commitments and payments by the Commission and the amounts of expenditure attested or certified and amounts in declarations of expenditure by the Member States shall be expressed and paid in euro.
2. The prices and amounts fixed in the sectoral agricultural legislation shall be expressed in euro.

They shall be granted or collected in euro in the Member States which have adopted the euro and in the national currency in the Member States which have not.

Article 92

Exchange rate and operative event

1. The prices and amounts referred to in Article 91(2) shall be converted in the Member States which have not adopted the euro into the national currency by means of an exchange rate.
2. The operative event for the exchange rate shall be:
 - (a) the completion of customs import or export formalities in the case of amounts collected or granted in trade with third countries;
 - (b) the event whereby the economic objective of the operation is attained in all other cases.

3. Where a direct payment as provided for in Regulation (EU) .../... [CAP Strategic Plan Regulation] is made to a beneficiary in a currency other than the euro, Member States shall convert the amount of aid expressed in euro into the national currency on the basis of the most recent exchange rate set by the European Central Bank prior to 1 October of the year for which the aid is granted.

By way of derogation from the first subparagraph, Member States may decide, in duly justified cases, to carry out the conversion on the basis of the average of the exchange rates set by the European Central Bank during the month prior to 1 October of the year for which the aid is granted. Member States that choose that option shall set and publish that average rate before 1 December of that year.

4. As regards EAGF, when drawing up their declarations of expenditure, Member State 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 the provisions of this Chapter.
5. The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with rules on those operative events and the exchange rate to be used. The specific operative event shall be determined taking account of the following criteria:
- (a) actual applicability as soon as possible of adjustments to the exchange rate;
 - (b) similarity of the operative events for analogous operations carried out under the market organisation;
 - (c) coherence in the operative events for the various prices and amounts relating to the market organisation;

- (d) practicability and effectiveness of checks on the application of suitable exchange rates.
6. The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with rules on the exchange rate applicable when declarations of expenditure are drawn up and when public storage operations are recorded in the accounts of the paying agency.

Article 93

Safeguard measures and derogations

1. The Commission may adopt implementing acts safeguarding the application of Union law if exceptional monetary practices related to national currency are likely to jeopardise it. Those implementing acts may only derogate from the existing rules for a period of time which is strictly necessary.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).

The European Parliament, the Council and the Member States shall be notified forthwith of the measures referred to in the first subparagraph.

2. Where exceptional monetary practices concerning a national currency are liable to jeopardise the application of Union law, the Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with derogations from this Chapter, in the following cases:
- (a) where a country uses abnormal exchange techniques such as multiple exchange rates or operates barter agreements;

- (b) where countries have currencies which are not quoted on official foreign exchange markets or where the trend in such currencies is likely to create distortion in trade.

Article 94

Use of the euro by non-euro Member States

1. If a Member State which has not adopted the euro decides to pay the expenditure resulting from sectoral agricultural legislation in euro rather than in its national currency, the Member State shall take measures to ensure that the use of the euro does not provide a systematic advantage compared with the use of national currency.
2. The Member State shall notify the Commission of the measures planned before they come into effect. The measures may not take effect until the Commission has notified its agreement thereto.

Chapter III

Reporting

Article 95

Annual financial report

By end September of each year following the budget year, the Commission shall draw up a financial report on the administration of the Funds during the previous financial year, which it shall submit to the European Parliament and to the Council.

Chapter IV

Transparency

Article 96

Publication of information relating to beneficiaries

1. Member States shall ensure annual ex-post publication of the beneficiaries of the Funds **for the purposes of in accordance with** [Article 44(3)-(45) of Regulation (EU) .../...CPR Regulation] and **in accordance with** paragraphs 2, 3 and 4 of this Article.
2. [Article 44(3) **points (a), (b), (d), (e), (h), (i), (l) and Article 44(45)** of Regulation (EU) .../...CPR Regulation] shall apply in respect of beneficiaries of EAFRD and EAGF. **Article 44 (3) point (k) of Regulation (EU) .../...CPR Regulation shall apply to EAFRD,** ~~where relevant; however, the amounts corresponding to the national contribution and the Union co-financing rate, as provided for in points (h) and (ki) of Article 44(3) of that Regulation shall not apply to EAGF.~~
3. For the purposes of this Article:

"operation" means measure or **type of** interventions;

“total cost of the operation” means the amounts of payment corresponding to each measure or type of interventions financed by the EAGF or the EAFRD received by each beneficiary in the financial year concerned. As regards the payments corresponding to the types of interventions financed by the EAFRD, the amounts to be published shall correspond to the total public funding, including both the Union and the national contribution;

"location **indicator or geolocation for the operation**" means the municipality where the beneficiary is resident or is registered and, where available, the postal code or the part thereof identifying the municipality".

4. The information referred to in Article 44(3)-~~(45)~~ of that Regulation shall be made available on a single website per Member State. It shall remain available for two years from the date of the initial publication.

Member States shall not publish the information referred to in points (a) and (b) of Article 44(3) of the Regulation (EU) .../...[CPR Regulation] if the amount of aid received in one year by a beneficiary is equal to or less than EUR 1 250.

Article 97

Informing beneficiaries of the publication of data concerning them

Member States shall inform the beneficiaries that their data will be made public in accordance with Article 96 and that the data may be processed by auditing and investigating bodies of the Union and the Member States for the purposes of safeguarding the Union's financial interests.

In accordance with the requirements of Regulation (EU) 2016/679, where personal data is concerned, the Member States shall inform the beneficiaries of their rights under that Regulation and of the procedures applicable for exercising those rights.

Article 98

Implementing powers

The Commission shall adopt implementing acts laying down rules on:

- (a) the form, including the way of presentation by measure or **type of** intervention, and the timescale of the publication provided for in Articles 96 and 97;
- (b) the uniform application of Article 97;
- (c) the cooperation between the Commission and Member States.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).

Chapter V

Protection of personal data

Article 99

Processing and protection of personal data

1. Without prejudice to Articles 96 to 98, Member States and the Commission shall collect personal data for the purposes of carrying out their respective management, control, audit and monitoring and evaluation obligations under this Regulation and, in particular, those laid down in Chapter II of Title II, Chapters III and IV of Title III, Title IV and Chapter III of Title V and for statistical purposes, and shall not process this data in a way that is incompatible with that purpose.

2. Where personal data are processed for monitoring and evaluation purposes under Regulation (EU) .../... [CAP Strategic Plan Regulation], and for statistical purposes, they shall be made anonymous and processed in aggregated form only.
3. Personal data shall be processed in accordance with Regulations (EC) No 45/2001 and (EU) 2016/679. In particular, such data shall not be stored in a form which enables data subjects to be identified for longer than is necessary for the purposes for which those data were collected or for which they are further processed, taking into account the minimum retention periods laid down in the applicable national and Union law.
4. Member States shall inform the data subjects that their personal data may be processed by national and Union bodies in accordance with paragraph 1 and that in this respect they enjoy the data protection rights provided by Regulations (EC) No 45/2001 and (EU) 2016/679.

Title VI

Delegated acts and implementing acts

Article 100

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 10, 15, 21, 36, ~~38, 39~~, 42, 45, 50, ~~52, 53~~, 58, 62, 72, 74, 79, 86, 92, 93 and 103 shall be conferred on the Commission for a period of seven years from the date of entry into force of this Regulation. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the seven-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of powers referred to in Articles 10, 15, 21, 36, ~~38, 39~~, 42, 45, 50, ~~52, 53~~, 58, 62, 72, 74, 79, 86, 92, 93 and 103 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Articles 10, 15, 21, 36, ~~38, 39~~, 42, 45, 50, ~~52, 53~~, 58, 62, 72, ~~74~~, 79, 86, 92, 93 and 103 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months on the initiative of the European Parliament or of the Council.

Article 101

Committee procedure

1. The Commission shall be assisted by a committee, called the Committee on the Agricultural Funds. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

For the purposes of Articles 10, 11, 15, 16, 19, 21, 24, 30, 37, 38, 39, 40, 42, 45, 50, 51, 52, 53, 56, 57, 58, 62, 73, 83, 90, 93 and 98, as regards matters relating to direct payments interventions, rural development interventions and the common organisation of markets, the Commission shall be assisted by the Committee on the Agricultural Funds, the Common Agricultural Policy Committee established by Regulation (EU) .../... [CAP Strategic Plan Regulation] and the Committee for the Common Organisation of the Agricultural Markets established by Regulation (EU) No 1308/2013, respectively.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Title VII

Final provisions

Article 102

Repeal

1. Regulation (EU) No 1306/2013 is repealed.

However:

- (a) Article 5, Article 7(3), Articles 9, **21**, 34, Article 35(4), Articles 36, 37, 38, 43, 51, 52, 54, **59, 67, 68, 70, 71, 72, 73, 74, 75, 77, 91, 92, 93, 94, 95, 96, 97, 99, 100, 102(2)**, 110 and 111 of Regulation (EU) No 1306/2013 and the relevant implementing and delegated rules shall continue to apply in relation to expenditure incurred and payments made for **operations implemented pursuant to Regulation (EU) No 1307/2013 in calendar year 2020 and before and for the remaining measures financed under the agricultural financial year 2020 and before as regards the EAGF until the entry into application of this Regulation**, and as regards the EAFRD in relation to expenditure incurred and payments made for rural development programmes approved by the Commission under Regulation (EU) No 1305/2013,
- (b) Article 69 of Regulation (EU) No 1306/2013 shall continue to apply in relation to expenditure incurred and payments made for operations implemented pursuant to Regulation (EU) No 1307/2013 and rural development programmes approved by the Commission under Regulation (EU) No 1305/2013 and other CAP measures as laid down in Chapter I of Title II of Regulation (EU) No 1306/2013 implemented before the date of entry into force of this Regulation, Regulation (EU) .../...[CAP Strategic Plan Regulation] and Regulation (EU) No 1308/2013 as amended by Regulation (EU) .../...of the European Parliament and of the Council³².

³² Regulation (EU) .../... of the European Parliament and of the Council of [...] [...] (OJ L [...], [...], p. [...]).

(c) **Article 54(2) of Regulation (EU) No 1306/2013 shall continue to apply in relation to revenue declared for rural development programmes approved by the Commission under Regulation (EU) No 1305/2013, Regulation (EC) 1698/2005 and Regulation 27/2004 (Transitional Rural Development Instrument).**

2. References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in the Annex.

Article 103

Transitional measures

The Commission is empowered to adopt delegated acts in accordance with Article 101 supplementing this Regulation with derogations from, and additions to, the rules provided for in this Regulation, where necessary.

Article 104

Entry into force and application

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

It shall apply from 1 January 2021.

- ~~2. However, Articles 7, 10, 18, 19, 35, 36, 37, 38, 39, 40, 43, 51, 52, 53 and 54 shall apply to expenditure effected from 16 October 2020 as regards the EAGF, and as regards the EAFRD to expenditure effected under Regulation (EU) No.../... [CAP Strategic Plan Regulation].~~

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

Done at Brussels,

For the European Parliament

The President

For the Council

The President