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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	C(2023) 2686 final
Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 26.4.2023 amending Delegated Regulation (EU) 2022/127 as regards transitional rules and correcting that Regulation as regards certain provisions for the EAGF and the EAFRD

Delegations will find attached document C(2023) 2686 final.

Encl.: C(2023) 2686 final



Brussels, 26.4.2023
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COMMISSION DELEGATED REGULATION (EU) .../...

of 26.4.2023

**amending Delegated Regulation (EU) 2022/127 as regards transitional rules and
correcting that Regulation as regards certain provisions for the EAGF and the EAFRD**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Commission Delegated Regulation (EU) 2022/127 supplements Regulation (EU) 2021/2116 of the European Parliament and of the Council with rules on paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro.

Article 39 of Delegated Regulation (EU) 2022/127 did not take into account that the scrutiny of transactions laid down in Title IV, Chapter III, of Regulation (EU) 2021/2116 covers transactions from before the entry into force of Regulation (EU) 2021/2116 that were previously excluded from its scope by Commission Delegated Regulation (EU) No 907/2014. Those measures should continue to be excluded.

The formulation of the repeal provision in Article 40 of Delegated Regulation (EU) 2022/127 did not take into account that certain other provisions need to continue to apply in relation to expenditure incurred and payments for support schemes under the previous legislation.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Consultations, involving experts from all the 27 Member States, have been carried out within the Expert Group established under Regulation (EU) 2021/2116, in particular during the meeting of 27 March 2022. The meeting allowed for a presentation of the Commission's ideas on the scope of the delegated act and on the planned amendment to Delegated Regulation (EU) 2022/127, as well as an exchange of views with the experts.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

This delegated act amends and corrects Delegated Regulation (EU) 2022/127, modifying Article 39, by excluding from the scope of scrutiny of transactions those measures previously exempted by Delegated Regulation (EU) No 907/2014 and Article 40, first paragraph by spelling out explicitly which provisions from Delegated Regulation (EU) No 907/2014 shall continue to apply with regard to which expenditure, for the sake of legal clarity and certainty.

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

of 26.4.2023

amending Delegated Regulation (EU) 2022/127 as regards transitional rules and correcting that Regulation as regards certain provisions for the EAGF and the EAFRD

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2021/2116 of the European Parliament and of the Council of 2 December 2021 on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013¹, and in particular Article 38(2), Article 47(1), Article 55(6), Article 76(2), Article 94(5) and (6) and Article 105 thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2022/127² supplements Regulation (EU) 2021/2116 with rules on paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro.
- (2) Title IV, Chapter III, of Regulation (EU) 2021/2116 provides for the scrutiny of the transactions of those entities receiving or making payments relating directly or indirectly to the system of financing by the European Agricultural Guarantee Fund (EAGF), in order to ascertain whether transactions forming part of the system of financing by the EAGF have actually been carried out and have been executed correctly. Measures that are by their nature unsuited to ex-post control by way of scrutiny checks of commercial documents, as well as measures that are concerned with payments that are either area-related or unrelated to commercial documents that can be subject to scrutiny should be excluded from the scope of scrutiny of transactions. Pursuant to Article 46 of Commission Implementing Regulation (EU) 2022/128³, which lays down that the scrutiny of transactions covers the EAGF financial year preceding the beginning of the period of scrutiny, which runs each year from 1 July to 30 June of the following year, the scrutiny of transactions covers transactions from before the entry into application of Regulation (EU) 2021/2116. In order to ensure a smooth transition from the arrangements provided for in Regulation (EU) No

¹ OJ L 435, 6.12.2021, p. 187.

² Commission Delegated Regulation (EU) 2022/127 of 7 December 2021 supplementing Regulation (EU) 2021/2116 of the European Parliament and of the Council with rules on paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro (OJ L 20, 31.1.2022, p. 95).

³ Commission Implementing Regulation (EU) 2022/128 of 21 December 2021 laying down rules for the application of Regulation (EU) 2021/2116 of the European Parliament and of the Council on paying agencies and other bodies, financial management, clearance of accounts, checks, securities and transparency (OJ L 20, 31.1.2022, p. 131).

1306/2013 of the European Parliament and of the Council⁴, it is appropriate to provide for transitional rules excluding from the scope of scrutiny of transactions those measures previously exempted by Commission Delegated Regulation (EU) No 907/2014⁵. Since those measures have never been suited for scrutiny of transactions control, this amendment should apply retroactively from 1 January 2023, the date of application of Delegated Regulation (EU) 2022/127.

- (3) Delegated Regulation (EU) 2022/127 repealed Delegated Regulation (EU) No 907/2014 with effect from 1 January 2023. However, Article 40, second paragraph, of Delegated Regulation (EU) 2022/127 which lists the provisions of Delegated Regulation (EU) No 907/2014 which continue to apply, did not take into account that certain provisions need to continue to apply in relation to the expenditure incurred and payments made for support schemes under Regulation (EU) No 1307/2013 of the European Parliament and of the Council⁶ up to and including the calendar year 2022, to measures implemented under Regulations of the European Parliament and of the Council (EU) No 228/2013⁷, (EU) No 229/2013⁸, (EU) No 1308/2013⁹ and (EU) No 1144/2014¹⁰ until 31 December 2022, in relation to expenditure incurred and payments made for operations implemented pursuant to Regulation (EU) No 1308/2013 after 31 December 2022 and until the end of those aid schemes, and as regards the implementation of rural development programmes pursuant to Regulation (EU) No 1305/2013 of the European Parliament and of the Council¹¹. This created a legal gap. Article 40, second paragraph, of Delegated Regulation (EU) 2022/127 should therefore be corrected by adding the provisions concerned to the list. This correction should apply retroactively from 1 January 2023, the date of application of Delegated Regulation (EU) 2022/127.

⁴ Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ L 347, 20.12.2013, p. 549).

⁵ Commission Delegated Regulation (EU) No 907/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro (OJ L 255, 28.8.2014, p. 18).

⁶ Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ L 347, 20.12.2013, p. 608).

⁷ Regulation (EU) No 228/2013 of the European Parliament and of the Council of 13 March 2013 laying down specific measures for agriculture in the outermost regions of the Union and repealing Council Regulation (EC) No 247/2006 (OJ L 78, 20.3.2013, p. 23).

⁸ 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).

⁹ 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).

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

¹¹ Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (OJ L 347, 20.12.2013, p. 487).

- (4) Delegated Regulation (EU) 2022/127 should therefore be amended and corrected accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendment to Delegated Regulation (EU) 2022/127

Article 39 of Delegated Regulation (EU) 2022/127 is replaced by the following:

‘Article 39

Transitional provisions

1. Where a paying agency, accredited in accordance with Regulation (EU) No 1306/2013, assumes responsibility for expenditure for which it was not previously responsible, it shall be accredited with the new responsibilities before 1 January 2023.
2. The measures listed in Annex VI to Delegated Regulation (EU) No 907/2014 shall not be subject to the system of scrutiny established by Title IV, Chapter III, of Regulation (EU) 2021/2116.’.

Article 2

Correction to Delegated Regulation (EU) 2022/127

In Article 40, second paragraph, of Delegated Regulation (EU) 2022/127, point (a) is replaced by the following:

- ‘(a) Article 5, 5a, Article 7(3) and (4), Article 10, Article 11(1), second subparagraph, Article 11(2), Article 12, Article 13 and Article 41(5) of that Delegated Regulation shall continue to apply:
- (i) in relation to expenditure incurred and payments made for support schemes under Regulation (EU) No 1307/2013 of the European Parliament and of the Council* in respect of the calendar year 2022 and before;
 - (ii) for measures implemented until 31 December 2022 under Regulations (EU) No 228/2013, (EU) No 229/2013, (EU) No 1308/2013 and (EU) No 1144/2014;
 - (iii) for the aid schemes referred to in Article 5(6), first subparagraph, point (c), and Article 5(7) of Regulation (EU) 2021/2117 of the European Parliament and of the Council** in relation to expenditure incurred and payments made for operations implemented pursuant to Regulation (EU) No 1308/2013 after 31 December 2022 and until the end of those aid schemes; and

- (iv) as regards the EAFRD, in relation to expenditure incurred by the beneficiaries and payments made by the paying agency in the framework of the implementation of rural development programmes pursuant to Regulation (EU) No 1305/2013.

* Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ L 347, 20.12.2013, p. 608).

** Regulation (EU) 2021/2117 of the European Parliament and of the Council of 2 December 2021 amending Regulations (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products, (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs, (EU) No 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and (EU) No 228/2013 laying down specific measures for agriculture in the outermost regions of the Union (OJ L 435, 6.12.2021, p. 262).⁷.

Article 3

Entry into force and application

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

It shall apply from 1 January 2023.

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

Done at Brussels, 26.4.2023

For the Commission
The President
Ursula VON DER LEYEN