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# COMMISSION DELEGATED REGULATION (EU) 2024/205

## of 18 December 2023

## supplementing Regulation (EU) 2021/2116 of the European Parliament and of the Council with specific provisions on the reporting of irregularities concerning the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development, and repealing Commission Delegated Regulation (EU) 2015/1971

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 1306/2013 ([1]), and in particular Article 52(1) thereof,

Whereas:

(1) The purpose of this Regulation is to supplement the provision set out in Article 50(3) of Regulation (EU) 2021/2116 on the obligations of Member States to make available to the Commission information about irregularities. To enable the Commission to perform its responsibilities concerning the protection of the Union's financial interests, in particular to perform risk analysis, develop systems for more effective risk identification and produce reports for the purpose of such tasks, it should also be established which data are to be provided.

(2) The financial interests of the Union should be protected in the same way irrespective of the funds concerned and the objectives for which such funds are established. To that end, Article 52(1) of Regulation (EU) 2021/2116 empowers the Commission to adopt rules to supplement the Member States' obligation to report irregularities relating to the financing of the common agricultural policy. Such rules should be equivalent to the detailed rules on the reporting of irregularities set out in Annex XII to Regulation (EU) 2021/1060 of the European Parliament and of the Council ([2]), and in line with the rules set out in Commission Delegated Regulation (EU) 2024/204 ([3]). To enable consistent application of the reporting requirements across Member States, it is necessary to define the term of 'suspected fraud', taking into account the definition of fraud and other criminal offences set out in Article 3(2), points (a) and (b), and Article 4(1), (2) and (3) of Directive (EU) 2017/1371 of the European Parliament and of the Council ([4]), and, for the Member States not bound by that Directive, in Article 1(1), point (a), of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests ([5]).

(3) Similarly, the expression 'primary administrative or judicial finding' should be defined to ensure effectiveness and consistency in the application of the reporting obligations.

([1]) OJ L 435, 6.12.2021, p. 187.

([2]) Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, p. 159).

([3]) Commission Delegated Regulation (EU) 2024/204 of 18 December 2023 supplementing Regulation (EU) 2021/691 of the European Parliament and of the Council with specific provisions on the reporting of irregularities concerning the European Globalisation Adjustment Fund for displaced workers (EGF) (OJ L, 2024/204, 29.2.2024, ELI: http://data.europa.eu/eli/reg_del/2024/204/oj).

([4]) Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

([5]) OJ C 316, 27.11.1995, p. 49.

(4) It is necessary to clarify that the expression 'economic operator' for the purposes of applying the notion of 'irregularity' within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95 ([6]) and of the other cases of non-compliance with the conditions set out by Member States in the common agriculture policy strategic plans in the context of Article 50(3) of Regulation (EU) 2021/2116, should mean any natural or legal person, or other entity taking part in the implementation of assistance from the funds, with the exception of a Member State authority exercising its prerogatives as a public authority, as provided for in Article 2, point (30), of Regulation (EU) 2021/1060, or paying assigned revenue within the meaning of Article 45 of Regulation (EU) 2021/2116.

(5) Regulation (EU) 2021/1060 specifies the reporting threshold below which irregularities do not need to be reported to the Commission and cases for which there is no need for reporting. To strike a balance between the administrative burden on Member States and the common interest in the provision of accurate data for analysis in the Union's fight against fraud, it is appropriate to align the reporting thresholds and derogations for the reporting of irregularities under this Delegated Regulation with those under Regulation (EU) 2021/1060.

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

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

(8) Where it is necessary for the purposes of this Regulation to process personal data, this should be carried out in accordance with Union law on the protection of personal data. In light of Regulation (EU) 2016/679 of the European Parliament and of the Council ([7]) and Regulation (EU) 2018/1725 of the European Parliament and of the Council ([8]), the Commission and the Member States should, in relation to the information provided pursuant to this Regulation, prevent any unauthorised disclosure of, or access to, personal data. In addition, this Regulation should specify the purposes for which the Commission and the Member States may process that data. Any further use thereof is without prejudice to Article 6(4) of Regulation (EU) 2016/679.

(9) The obligations of Member States to report irregularities to the Commission via the Irregularity Management System under Regulation (EU) 2021/2116 should be applied without prejudice to their obligations pursuant to Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council ([9]), and Council Regulation (EU) 2017/1939 ([10]).

(10) The European Data Protection Supervisor was consulted on this Regulation in accordance with Article 42(1) of Regulation (EU) 2018/1725.

([6]) Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1).

([7]) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

([8]) Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

([9]) Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

([10]) Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

(11) Commission Delegated Regulation (EU) 2015/1971 ([11]), laying down rules applicable in the programming period 2014-2020, should be repealed. For reasons of legal certainty, Commission Delegated Regulation (EU) 2015/1971 should continue to apply for the reporting of irregularities in respect of assistance granted under Regulation (EU) No 1306/2013 of the European Parliament and of the Council ([12]).

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

HAS ADOPTED THIS REGULATION:

*Article 1*

**Subject matter**

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

*Article 2*

**Definitions**

The definitions laid down in Regulation (EU) 2021/2116 shall apply. In addition, for the purposes of this Regulation, the following definitions apply:

(a) 'suspected fraud' means an irregularity that gives rise to the initiation of administrative or judicial proceedings at national level in order to establish the presence of intentional behaviour, in particular fraud or other criminal offences, as referred to, respectively, in Article 3(2), points (a) and (b), and Article 4(1), (2) and (3) of Directive (EU) 2017/1371 and, for the Member States not bound by that Directive, Article 1(1), point (a), of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests;

(b) 'primary administrative or judicial finding' means a first written assessment by a competent authority, either administrative or judicial, which has concluded on the basis of specific facts that an irregularity has been committed, regardless of the possibility that this conclusion may subsequently have to be revised or withdrawn as a result of developments in the course of the administrative or judicial procedure.

*Article 3*

**Reporting**

1. Member States shall report to the Commission irregularities that have been the subject of a primary administrative or judicial finding.

2. By way of derogation from paragraph 1, Member States shall not report to the Commission:

(a) irregularities involving a contribution from the funds of under EUR 10 000; this derogation shall not apply to irregularities which are interlinked and which involve a total contribution from the fund of over EUR 10 000, even when no individual irregularity exceeds that ceiling on its own;

([11]) Commission Delegated Regulation (EU) 2015/1971 of 8 July 2015 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with specific provisions on the reporting of irregularities concerning the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development and repealing Commission Regulation (EC) No 1848/2006 (OJ L 293, 10.11.2015, p. 6).

([12]) 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).

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

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

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

The derogations in points (c) and (d) of the preceding subparagraph shall not apply to the cases of irregularity as referred to in Article 2, point (a).

3. In the initial report of the irregularities, Member States shall provide the following information:

(a) the fund, support scheme, measure, operation concerned, and, where appropriate, the name and the common identification code (CCI) number of the operational programme, the common market organisations affected, the sectors and products concerned and the budget line;

(b) the identity of the natural or legal persons concerned, or both, or of any other entity having a role in the commission of the irregularity and their role, except where that information is irrelevant for the purpose of combating irregularities, given the nature of the irregularity concerned;

(c) the national ID number of the persons concerned;

(d) the VAT number of the persons concerned;

(e) the unique beneficiary ID number;

(f) the region or area where the operation has been carried out, identified using appropriate information such as the NUTS (nomenclature of territorial units for statistics) level;

(g) the provision or provisions at Union and national level which have been infringed;

(h) the date and source of the first information leading to the suspicion that an irregularity has been committed;

(i) the practices employed in committing the irregularity;

(j) where appropriate, whether the practice gives rise to suspected fraud;

(k) the manner in which the irregularity was discovered;

(l) the OLAF (European Anti-Fraud Office) case number, where applicable;

(m) the reference to pre-debtors or the debtors ledger;

(n) where appropriate, the Member States and third countries involved;

(o) the period during which, or the date on which, the irregularity was committed;

(p) the date on which the primary administrative or judicial finding on the irregularity was established;

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

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

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

(t) the nature of the irregular expenditure.

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

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

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

(a) whether the penalties are of an administrative or a criminal nature and details of the penalties;

(b) whether the penalties result from a breach of Union or national law;

(c) whether fraud was established.

7. At the Commission's written request Member States shall provide information in relation to a specific irregularity or group of irregularities.

*Article 4*

**Use and processing of information reported**

1. The Commission may use any information provided by Member States in accordance with this Regulation to perform risk analysis, using information technology support, and may, on the basis of the information obtained, produce reports and develop systems serving to identify risks more effectively.

2. Information provided under this Regulation shall be covered by professional secrecy and protected in the same way as it would be protected by the national legislation of the Member State that provided it and by the relevant provisions applicable to the Union's institutions. Member States and the Commission shall take all necessary precautions to ensure that the information remains confidential.

3. The information referred to in paragraph 2 shall not, in particular, be disclosed to persons other than those in the Member States or within the Union's institutions, agencies, offices and bodies whose duties require that they have access to it, unless the Member State providing it has given its express consent.

4. The information referred to in paragraph 2 shall not be used for any purposes other than the protection of the Union's financial interests unless the Member State providing it had given its express consent.

*Article 5*

**Repeal and transitional provisions**

Delegated Regulation (EU) 2015/1971 is repealed.

It shall, however, continue to apply to the reporting of irregularities in respect of assistance granted for the programming period 2014-2020 under Regulation (EU) No 1306/2013.

*Article 6*

**Entry into force**

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

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

Done at Brussels, 18 December 2023.

*For the Commission*
*The President*
Ursula VON DER LEYEN