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COMMISSION IMPLEMENTING REGULATION (EU) 2023/2773

of 13 December 2023

correcting Implementing Regulation (EU) 2022/128 as regards certain provisions for EAGF and EAFRD for audit methods, the scrutiny of transactions and the management declaration

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 12(4), Article 82 and Article 92 thereof,

Whereas:

(1) Commission Implementing Regulation (EU) 2022/128 ([2]) lays down rules for the application of Regulation (EU) 2021/2116, including rules for the audit methods to be applied by certification bodies, the scrutiny of transactions and the management declaration.

(2) In particular, Article 7 of Implementing Regulation (EU) 2022/128 lays down rules concerning audit methods. In the English language version of the last sentence of Article 7(4) of that Implementing Regulation, the modal auxiliary verb 'may' is used for laying down a rule, instead of the modal auxiliary 'shall', which is generally used for laying down binding rules in Commission implementing regulations. In the interests of legal clarity and to avoid any legal uncertainty, it is appropriate to replace 'may' with 'shall' and that provision should be corrected accordingly.

(3) In addition, Article 64, first paragraph, of Implementing Regulation (EU) 2022/128 repealed Commission Implementing Regulation (EU) No 908/2014 ([3]) with effect from 1 January 2023. However, Article 64, second paragraph, of Implementing Regulation (EU) 2022/128, as corrected by Implementing Regulation (EU) 2023/860 ([4]), provides that certain provisions of Implementing Regulation (EU) No 908/2014 are to continue to apply in relation to certain expenditure incurred and payments made under Regulation (EU) No 1307/2013 of the European Parliament and of the Council ([5]) in respect of the calendar year 2022 and before; for measures implemented until 31 December 2022 under Regulations (EU) No 228/2013 ([6]), (EU) No 229/2013 ([7]), (EU)

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

([2]) 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).

([3]) Commission Implementing Regulation (EU) No 908/2014 of 6 August 2014 laying down rules for the application of 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, rules on checks, securities and transparency (OJ L 255, 28.8.2014, p. 59).

([4]) Commission Implementing Regulation (EU) 2023/860 of 25 April 2023 amending and correcting Implementing Regulation (EU) 2022/128 as regards transparency, the management declaration, the coordinating body, the certification body, and certain provisions for EAGF and EAFRD (OJ L 111, 26.4.2023, p. 23).

([5]) 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).

([6]) 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).

([7]) 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).

No 1308/2013 [8] and (EU) No 1144/2014 of the European Parliament and of the Council [9]; 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 [10] 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; in the framework of the implementation of rural development programmes pursuant to Regulation (EU) No 1305/2013 of the European Parliament and of the Council [11]. In particular, with regard to the scrutiny of transactions in accordance with Article 77 of Regulation (EU) 2021/2116, Article 64 of Implementing Regulation (EU) 2022/128 provides for the continued application of Articles 42 to 47 of Implementing Regulation (EU) No 908/2014. However, Chapter IV, Section 2, of Implementing Regulation (EU) 2022/128 already lays down comprehensive revised rules concerning the performance by Member States of the scrutiny of transactions and, therefore, Articles 42 to 47 of Implementing Regulation (EU) No 908/2014 should not continue to apply. Article 64, second paragraph, point (a), of Implementing Regulation (EU) 2022/128 should therefore be corrected accordingly.

(4) To take into account the need for coherence in the application of certain provisions in relation to the expenditure incurred and payments made for support schemes under Regulation (EU) No 1306/2013 of the European Parliament and of the Council [12], Regulation (EU) No 228/2013 and Regulation (EU) No 229/2013, the text of the management declaration needs to be modified. Therefore, Annex I to Implementing Regulation (EU) 2022/128 needs to be corrected.

(5) Implementing Regulation (EU) 2022/128 should, therefore, be corrected accordingly.

(6) Article 2 of Implementing Regulation (EU) 2023/860 provides that the corrections made by it to Implementing Regulation (EU) 2022/128 are to apply from 1 January 2023. Accordingly, the corrections made by this Regulation should also apply retroactively from that date.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Committee on the Agricultural Funds,

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) 2022/128 is corrected as follows:

(1) Article 7(4) is replaced by the following:

([8]) 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).

([9]) 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).

([10]) 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).

([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).

([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).

‘4. Substantive testing of expenditure shall cover the verification of legality and regularity of the underlying transactions at the level of the final beneficiaries as regards the measures laid down in Regulations (EU) No 228/2013, (EU) No 229/2013, (EU) No 1308/2013 and (EU) No 1144/2014, as well as for the crop-specific payment for cotton and support for early retirement under Title III, Chapter II, Section 3, Subsection 2, and Article 155(2), respectively, of Regulation (EU) 2021/2115. For those purposes, the certification body may accompany the paying agency when it carries out secondary level on-the-spot checks. The certification body shall not accompany the paying agency when it carries out initial on-the-spot checks, with the exception of those situations where it would be physically impossible to re-verify the initial check carried out by the paying agency.’;

(2) in Article 64, second paragraph, in point (a), the introductory sentence is replaced by the following:

‘Article 2, Article 3(1), first subparagraph, Article 3(2), Article 4(1), point (b), Articles 5, 6 and 7, Articles 21 to 25, Articles 27, 28 and 29, Article 30(1), points (a), (b) and (c), Article 30(2), (3) and (4), and Articles 31 to 40 of that Implementing Regulation shall continue to apply:’;

(3) Annex I is replaced by the text in the Annex to this Regulation.

Article 2

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, 13 December 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

'ANNEX I

Management declaration – Paying Agency as referred to in Article 4

I, …, Director of the … Paying Agency, present the accounts for this Paying Agency for the financial year 16/10/xx to 15/10/xx+1.

I declare, based on my own judgement and on the information at my disposal, including, inter alia, the results of work of the internal audit service, that:

— the accounts presented give, to the best of my knowledge, a true, complete and accurate view of the expenditure and receipts for the financial year referred to above. In particular, all debts, advances, guarantees and stocks known to me have been recorded in the accounts, and all receipts collected relating to the EAGF and the EAFRD have been properly credited to the appropriate funds;

— I have put in place a system which provides reasonable assurance:

(i) that payments are legal and regular in relation to expenditure incurred and payments made for support schemes under Regulation (EU) No 1307/2013 in respect of the calendar year 2022 and before; as regards the measures laid down in Regulations (EU) No 228/2013, (EU) No 229/2013, (EU) No 1308/2013 and (EU) No 1144/2014; for 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 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;

(ii) that the governance systems as referred to in Article 9(3), first subparagraph, point (d)(ii), of Regulation (EU) 2021/2116 are functioning properly and ensure that the expenditure was made in accordance with Article 37 of that Regulation;

(iii) on the quality and reliability of the reporting system and of data on indicator as regards types of interventions referred to in Regulation (EU) 2021/2115 and that the expenditure matches the corresponding reported output and that it has been effected in accordance with the applicable governance systems.

The expenditure entered in the accounts was used for its intended purpose, as defined in Regulation (EU) 2021/2116.

Furthermore, I confirm that effective and proportionate anti-fraud measures under Article 59 of Regulation (EU) 2021/2116 are in place and take account of the risks identified.

That assurance is, however, subject to the following reservations:

Finally, I confirm that I am not aware of any undisclosed matter which could be damaging to the financial interest of the Union.

Signature'