COMMISSION DELEGATED REGULATION (EU) 2015/160

of 28 November 2014

amending Delegated Regulation (EU) No 907/2014 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

THE EUROPEAN COMMISSION,

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

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

Whereas:

(1) Article 5 of Commission Delegated Regulation (EU) No 907/2014 ([2]) lays down the conditions under which, in accordance with the principle of proportionality, expenditure effected after the payment deadlines is considered eligible for Union payments.

(2) For reasons of legal certainty and clarity, it is necessary to add to the provisions already laid down in Article 5 of Delegated Regulation (EU) No 907/2014 the conditions which should apply to direct payments made in financial year 2015 as provided for in Council Regulation (EC) No 73/2009 ([3]). For that purpose, it is necessary to refer in particular to the appropriate ceilings fixed for Member States in respect of calendar year 2014 in Regulation (EC) No 73/2009, distinguishing between those Member States which apply the Single Payment Scheme and those which apply the Single Area Payment Scheme. Moreover to address the specific situation with regard to the application of financial discipline, reference should be made to the provisions of Article 11 of Regulation (EC) No 73/2009 as regards the payments in respect of calendar year 2013 and to the provisions of Article 26 of Regulation (EU) No 1306/2013 as regards the payments in respect of calendar year 2014.

(3) It is necessary to clarify paragraph 8 of Article 12 of Delegated Regulation (EU) No 907/2014 as its wording could inadvertently lead the Commission to apply a level of flat rate correction which is lower than the risk to the Union budget. Paragraph 8 of Article 12 of that Regulation should therefore be reworded so as to indicate clearly that, where objective elements demonstrate that the maximum loss for the funds is lower than the loss which would derive from the application of a flat rate lower than that proposed by the Commission, the Commission is to apply that lower flat rate in deciding on the amounts to be excluded from Union financing.

(4) Delegated Regulation (EU) No 907/2014 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 907/2014 is amended as follows:

(1) In Article 5, the following paragraph 3a is added:

'3a. By way of derogation from paragraph 2, during financial year 2015, in the case of direct payments listed in Annex I to Council Regulation (EC) No 73/2009, the following conditions shall apply:

(a) where the threshold referred to in the first subparagraph of paragraph 2 has not been used in full for payments made in respect of calendar year 2014 no later than 15 October 2015 and the remainder of the threshold exceeds 2 %, that remainder shall be reduced to 2 %;

([1]) OJ L 347, 20.12.2013, p. 549.

([2]) 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).

([3]) Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (OJ L 30, 31.1.2009, p. 16).

(b) in the case of Member States applying the Single Payment Scheme in accordance with Chapter 3 of Title III of Regulation (EC) No 73/2009, direct payments, other than payments provided for in Regulation (EU) No 228/2013 of the European Parliament and of the Council (*) and in Regulation (EU) No 229/2013 of the European Parliament and of the Council (**), in respect of calendar years 2013 or earlier made after the payment deadline will only be eligible for financing by the EAGF if the total amount of direct payments made within financial year 2015, where applicable corrected to amounts before the adjustment provided for in Article 11 of Regulation (EC) No 73/2009 or in Article 26 of Regulation (EU) No 1306/2013, does not exceed the ceiling set out in Annex VIII to Regulation (EC) No 73/2009 in respect of calendar year 2014 and taking into account the amounts resulting from the application of Article 136b of Regulation (EC) No 73/2009 for calendar year 2014 as set out in Annex VIIIa to that Regulation;

(c) in the case of Member States applying the Single Area Payment Scheme as laid down by Article 122 of Regulation (EC) No 73/2009, direct payments in respect of calendar years 2013 or earlier made after the payment deadline will only be eligible for financing by the EAGF if the total amount of direct payments made within financial year 2015, where applicable corrected to amounts before the adjustment provided for in Article 11 of Regulation (EC) No 73/2009 or in Article 26 of Regulation (EU) No 1306/2013, does not exceed the sum of individual ceilings laid down for direct payments in respect of calendar year 2014 for the Member State concerned;

(d) expenditure exceeding the limits referred to in point (a), (b) or (c) shall be reduced by 100 %.

The amounts of the reimbursements referred to in Article 26(5) of Regulation (EU) No 1306/2013 shall not be taken into account to check whether the condition laid down in point (b) or (c) of the first subparagraph of this paragraph is fulfilled.

(*) 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).

(**) 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).'

(2) In Article 12, paragraph 8 is replaced by the following:

'8. Where a Member State submits objective elements, which do not fulfil the requirements laid down in paragraphs 2 and 3 of this Article, but which demonstrate that the maximum loss for the funds is lower than what would derive from the application of a flat rate lower than the one proposed, the Commission shall use that lower flat rate to decide on the amounts to be excluded from Union financing pursuant to Article 52 of Regulation (EU) No 1306/2013.'

Article 2

This Regulation shall enter into force on the seventh 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, 28 November 2014.

For the Commission

The President

Jean-Claude JUNCKER