

Reorientation of EAFRD funding after 2020 (EAFRD – RESET)



21.06.2016

Editor:

SAXON STATE MINISTRY OF THE ENVIRONMENT AND AGRICULTURE
Archivstraße 1, 01097 Dresden
E-Mail: info@smul.sachsen.de
www.smul.sachsen.de

Editorial staff:

SAXON STATE MINISTRY OF THE ENVIRONMENT AND AGRICULTURE
Department 2
Archivstraße 1, D-01097 Dresden

Contact:

eler@smul.sachsen.de

Redaktionsschluss:

21. June 2016

Summarised political statement

The second pillar of the Common Agricultural Policy has run into a bureaucratic dead-end. Over many funding periods, it has developed into such a complex and complicated system that it has become the symbol of an European funding bureaucracy remote from reality for many applicants and the administrative authorities in Europe.

The problems of the past funding periods have regularly been answered with more rules, more controls, more administrative bodies. This was an attempt to create a perfect, infallible, bureaucratic system capable of preventing all errors.

The utopia of a perfect set of rules and regulations that is enforced by means of surcharges and sanctions is doomed to failure. Furthermore, an increasing degree of regulation ties up a disproportionately large amount of resources for understanding and interpreting this set of rules and regulations correctly in order to prevent imminent negative effects for the applicants and the regions managing the programmes. This excessive fixation on procedures and the resultant climate of legal uncertainty lead to more disenchantment with Europe while the actual objectives of the substantial financial grants increasingly fade into the background.

It is thus time for a new start, a "reset" of the regulations of the second pillar. Therefore, the current preparations for the funding period 2021 – 2027 should be used for a real new beginning.

The key objectives of this restart must be:

- legal certainty for applicants and administrative authorities
- focus on the key objectives of rural development
- prevention of fraud and misuse involving EU funds
- drastic reduction of the number of European regulations
- strengthening of the principles of subsidiarity and proportionality

It is possible and sensible to consolidate all regulations required for planning and implementing the second pillar in a maximum of 10 percent of the relevant EU standards currently in force.

The detailed preliminary definition of eligible investments in the programming documents impedes innovation and creativity. Instead, exhaustive EU requirements and instructions relating to measures, forms of funding, eligibility criteria, etc. ought to be largely dispensable by concentrating on selecting the best.

The programme-based portfolio of measures for area-related funding also requires fewer detailed descriptions of how certain measures are to be implemented and instead goal-oriented sub-budgets and frameworks that allow targeted funding on the basis of a reliable area identification system.

Funding should be based on the valid national and/or regional procedural rules. This would be one way of clearly reducing the volume of detailed requirements and instructions for administrative procedures needing to be issued by the commission in the future. The commission defines binding minimum standards. Once the European institutions have convinced themselves completely that the system in a member state or a region managing the programme is fully functional, no further controls are necessary. This so-called single-audit principle ought to replace the current complex, multi-level audit and monitoring system.

The so-called materiality threshold for a tolerable risk of error should be at around four percent to readjust the balance between monitoring costs and benefit. Subsidy fraud and misappropriation of funds are not tolerable.

An independent arbitration body can take a final decision in the event that member states and the European Commission have different opinions concerning the interpretation and use of the EU legal standards.

Guidelines and interpretation notes for EU regulations that in fact complicate the legal position at the moment ought to be scrapped or kept to an absolute minimum.

A distinction has to be made between administrative and monitoring systems for area-related and investment measures. In particular, sanction payments for incorrect area identification data may not be transferred to the account for investment measures.

Sanction regulations ought to be reduced to an appropriate and reasonable level. Fraud has to be penalised but negligent formal or procedural errors should only require sanctions in exceptional cases.

The second pillar is not an instrument for implementing and monitoring all community policies of the European Union. Therefore, the programming and implementation of second-pillar measures have to be focused on a few objectives of rural development. Although the objectives from other policy areas may not be obstructed as a result, they nevertheless have to be pursued with specific instruments and may not impose an additional burden on the second-pillar funding procedures.

Reorientation of EAFRD funding (EAFRD RESET)

**Back to subsidiarity and proportionality by
markedly simplifying implementation**

TABLE OF CONTENTS

I. GUIDING PRINCIPLES		1
II. INITIAL SITUATION		2
III. NEED FOR ACTION AND SPECIFIC PROPOSALS		11
ANNEX 1	CONVOLUTED REGULATORY FRAMEWORK 2014-2020	
ANNEX 2	CONTROL BODIES TO ORBIT THE BENEFICIARY	
ANNEX 3	COMPARISON OF OLD/NEW GENERAL EAFRD PROCEDURES	
ANNEX 4	COMPARISON OF OLD/NEW INVESTMENT/AREA EAFRD PROCEDURES	
ANNEX 5	NEW REGULATORY FRAMEWORK	
ANNEX 6	DRAFT REGULATION	

I. Guiding principles

The financial resources of the European Agricultural Fund for Rural Development (EAFRD) are implemented under shared management with the Member States based on article 59 of the EU financial regulation. The primary and absolute duty of the European Union and its Member States is to ensure that the financial resources are used in accordance with the principles of economy, efficiency and effectiveness. These principles are beyond debate. However, compliance with the principles of subsidiarity and proportionality as set forth in article 5 of the Treaty on European Union is no longer guaranteed when it comes to implementation.

The EU regulations stipulate a multitude of rules and provisions to ensure the proper and effective use of financial resources in the interest of EAFRD objectives. However, the volume of rules and provisions, in particular in the EAFRD, has now reached such a significant and disproportionate level that their implementation by the Member States threatens to collapse under the bureaucratic burden while the positive technical objectives increasingly fade into the background.

The EAFRD requires a complete new beginning in keeping with the motto "less is more" to refill the common principles with life. Outcome-based funding is the European Union's declared aim. As such, the European Court of Auditors (ECA) states in its Special Report No. 25/2015: "Member States should ensure that clear, specific objectives are set for the projects to which funds are committed."

II. Initial situation

Rural development programmes (RDP)

Both framework conditions (multi-annual financial framework, strategic orientation) and implementing rules are redefined in Brussels every seven-years. This is the basis on which the so-called rural development programmes (RDP) are drawn up at Member State level – or inasmuch as federal states such as Germany, Spain and Italy are concerned – at a regional level.

Increase of the bureaucratic burden

Since the 1990s, a strong trend towards a growing bureaucratic burden placed on both the beneficiaries of funds and the fund managers in the Member States and the services of the European Union (COM) has become apparent. This is mainly attributable to

1. a tremendous rise in the number of instructions and requirements that are accompanied by increased complexity and excessive regulation at a European level,
2. a considerable density of controls via the various monitoring and audit authorities and inflexible control instructions and requirements.

The relationship between administrative and control costs on the one hand and the benefit achieved on the other hand is increasingly shifting toward bureaucratic costs and can in some cases reach a ratio of up to 1:3. This means that every single euro of funding incurs implementing costs amounting to up to 30 cents. As such, European funding instruments and, as a result, European institutions too are brought into discredit.

Extracts from the Advisory Statement of the Baden-Württemberg Court of Auditors dated June 2015 relating to the administration and control system for agricultural funds 2007-2013:

- *"If the system is not changed, the administrative costs and bureaucratic pressure on the applicant will continue to rise."*
- *With 32 percent, the ratio of administrative expenditure to funding expenditure is particularly unfavourable in the case of the EAFRD area funding." [A ratio of administrative expenditure to funding expenditure of 25 percent was determined in the area of EAFRD investment funding. Cf. table "Analysis criteria according to areas" on page 11 of the report]*
- *"To a large extent, analysis of the sequences has shown that the high administrative costs are determined by the specific requirements of the EU. The EU regulates the administration and checks funding in detail. The EU also specifies which organisation is to be provided with, how it is to be guided and monitored and how the administration should work. We have calculated that the EU-related additional expenditure, compared to national procedures with such conditions, comprising approx. 45 percent of staffing costs."*

Example from an ECA audit in Bavaria:

- *In absence of sensible de minimis rules and/or tolerance limits, the balance between costs and benefit is not guaranteed in many areas. The permissible area measurement tolerances show this best. Unacceptable high administrative costs result, for example, if a timber store (non-agricultural area) covering an area of 100 m² has to be excluded at the time of the on-site check to correct this area (area measurement, correction of database, etc.) for both the farmer and the administration for a value of aid in question amounting to approx. EUR 3.50. Furthermore, there are errors that do not result in any financial errors such as the geometric location of a plot or any existing documentation deficiencies in the area of investment.*

Impenetrable jungle of regulations

The instructions and requirements for the funding period 2014-2020 mark the climax of this development so far. The number and volume of the regulations, delegated legal acts, implementation regulations and so-called guidelines in which the COM interprets its own statutory requirements and supplements these by recommendations for action have reached an extent that make it almost impossible for all those involved to maintain a full overview (cf. annex 1 "Convoluting regulatory framework").

The integration of the EAFRD into the rules and regulations for the European structural and investment funds and the multitude of regulations, delegated regulations and implementation regulations is proving to be a particularly difficult implementation obstacle for all those involved. When examining the facts of a particular case, several regulations have to be taken into account at the same time. This is cumbersome and confusing and increases the error vulnerability. Even if the provisions of a regulation allow for a certain amount of flexibility, this is often restricted by guidelines, interpretations of the COM or ECA auditors or also by the requirements of the data transfer portal SFC2014.

Especially the narrower interpretations that are associated with the COM's "non-binding" internal working documents (e.g. guidelines) become a de facto mandatory and retroactive standard of review in practice. The total volume of the instructions and requirements leads to a situation in which the effects of individual modifications on the overall process are no longer comprehensible. It is seen again and again that the COM's interpretations, instructions and requirements restrict or even modify provisions of regulations. As a result, the legislation stipulated by the EU Parliament and Council is partly undermined.

Examples:

- *In derogation of the relevant implementing regulation (IR) (EU) no. 808/2014 adopted for this purpose and instead of the planned "Description of the steps taken by the managing authority and the monitoring committee to ensure the quality and effectiveness of programme implementation....", the COM working paper on the annual implementation report now provides three new tables for the collection of additional data (e.g. period from application until payment of the funds to the beneficiary) in the SFC2014 data transfer portal. This requires considerable adjustments to the data processing systems which in turn lead to further delays.*
- *Inconsistent regulations are even produced within the EU itself. Article 65 paragraph 6 of the ESIF regulation contains provisions that deviate from article 60 paragraph 2 of the EAFRD regulation with regard to the provisions governing the non-prejudicial beginning of a operation and/or the associated eligibility of expenditure. The periods for the conservation of accounting information (evidence) in the EAFRD area ensue from article 32 of regulation (EU) no. 908/2014 and are three years following the year in which the final payment by the paying agency has taken place. The conservation period is ten years if the case is at the same time subject to aid provisions, e.g. the exemption regulation.*
- *The reclaim and penalty rules in the form of definitions, facts, authorisations and grounds of justification are spread over at least nine articles in four EU regulations (cf. articles 4, 7 and 63 of the regulation (EU) no. 809/2014, articles 4 and 35 of the regulation (EU) no. 640/2014, article 59 paragraphs 7, 60 and 64 of the regulation (EU) no. 1306/2013 and article 71 of the regulation (EU) No. 1303/2013). It is hard to maintain an overview here.*
- *Rules for implementing publicity according to annex III of the regulation (R) (EU) no. 808/2014 (EAFRD IR) are partly impracticable, ambiguous and inappropriate (obligation to hang up A3 posters outdoors although these are susceptible to weathering; transfer of the obligation to hang up posters to area-related measures; responsibility of the beneficiary to inform the public about the support obtained on the former's websites used for commercial purposes leaves a wide scope for interpretation and increases the risk of penalties and/or surcharges).*

The relevant set of rules and regulations for the EAGGL, guidance section (1994-1999), i.e. for investment measures, comprised six regulations with 125 articles. There are 24 regulations with 669 articles and 60 guidelines (around 1,900 pages) that are relevant to the EAFRD 2014-2020.

The EAFRD as the "servant of two masters"

The fact that the EAFRD is integrated into both the ESI framework and the CAP horizontal regulation leads to a multiplication of provisions and a high risk of inconsistencies and problems in the management of the legal changes in the course of the funding period (cf. annex 1 "Convoluting regulatory framework").

Furthermore, the same issues are neither really regulated conclusively in the same way nor are they harmonised, such as:

- participation in the funds: for EAFRD still based on eligible public expenditure only, for ERDF and ESF also under consideration of private expenditure,
- evaluation framework and terms,
- penalty rules.

Instead, different issues – such as area and investment funding – are treated in the same way (such as publicity rules, see below).

Lack of legal certainty / De facto retroactive effect

Programme planning and implementation are hampered by the fact that the various audit bodies interpret the legal texts differently in the course of a funding period and there is a lack of legal certainty due to the **retroactive application** of new legal opinions partly even on issues from the previous funding period. As a result, errors often occur that do not derive from the text of the regulation. In a form of pre-emptive obedience, the programme managers are thus forced to tighten procedural rules as a precaution in order to avoid financial damage via imminent surcharges.

Examples:

- *Selection criteria: Article 71 paragraph 2 of Council Regulation (EC) No. 1698/2005 regulates that "Expenditure shall be eligible for a EAFRD contribution only where incurred for operations decided on by the Managing Authority of the programme in question or under its responsibility, in accordance with the selection criteria fixed by the competent body." According to Annex IV no. 1.1 letter c) the managing authority provides "the potential beneficiaries with clear and detailed, updated information" on "the eligibility conditions and/or criteria for selecting and evaluating the projects to be financed, ...".*

On the occasion of the 1st meeting of the Monitoring Committee relating to the Saxon RDP 2007 - 2013 in November 2007, the COM announced that it is not sufficient to perform the selection according to the eligibility conditions pursuant to the directive but that four to eight additional selection criteria have to be provided per measure. These selection criteria should not only be used in times of tight resources but also generally to achieve the objectives in the best possible way.

In the course of the funding period 2007 – 2013, the COM specified numerous further requirements for the selection criteria: transparent points system, minimum thresholds, no "first come, first served" principle but selection according to the quality of the project. At the beginning of the funding period 2014 – 2020, a separate project selection guideline was prepared that goes beyond the requirements of the relevant regulations.

(Use of threshold values). Furthermore, the COM specified concrete requirements for

the minimum thresholds (at least 30 %) in the first meetings of the Monitoring Committee dealing with the new funding period.

- *Penalty regulation: in the funding period 2007 - 2013, the penalty regulation was changed with retroactive effect to ongoing funding procedures too via regulation (EU) no. 809/2014 (old: penalty relative to the selected part payment, new: penalty relative to all previous part payments).*

Overloading with strategic management instruments

The EU continues to develop and supplement the management instruments. There are now seven indicator categories (context, input, output, result, effect, target and performance framework indicators) that can only be differentiated with great difficulty and do not provide any additional benefit / new insights. The attempt to map these indicators in an over-complex system of priorities, key areas, cross-cutting objectives, primary and secondary special objectives makes planning, implementation and reporting ever more complicated.

New elements (e.g. performance reserve) in the second pillar of CAP require more support and monitoring. The performance reserve provides an incentive in favour of measures that can be implemented easily and thus counteracts the COM's demand for measures that should be as innovative as possible.

State aid legislation versus specialist funding legislation

Irrespective of the EU funding provisions of the EAFRD, the system of competition and state aid rules (cf. article 81 of the regulation (EU) no. 1305/2013) is applied to all measures not covered by article 42 TFEU. As a result, a state aid check is required, i.e. two parallel regulation systems apply. The regulations under state aid legislation contain their own provisions relating to the beginning of the project, the application for aid with minimum information, eligible expenditure and the periods of conservation. These provisions partly deviate from those of the EAFRD. The use of two complex sets of rules and regulations with partly differing provisions increases the risk of errors.

Unnecessary guidelines with detailed requirements, for example, in the area of the audit authority

The certifying body as the authority being responsible for the audit of accounts performs its activities, taking account of internationally accepted auditing standards. This obligation was laid down in article 59 paragraph 5 letter b of the EU financial regulation. The international auditing standards such as notably the International Standards on Auditing (ISA) are comprehensive enough to allow the audit authority to audit the accounts. As a result, the procedure should not require any further rules. In addition to ISA, very detailed auditing requirements have nevertheless been imposed on the audit authority restricting its discretion via guidelines. Over the past years, this has led to a significant increase in the density and depth of control, including the issue of resurveying the areas instead of verifying the area data using various potential methods as before.

Example:

According to article 9 paragraph 2 letter b) of the regulation (EU) no. 1306/2013, the COM adopts legal implementing acts which stipulate the auditing procedures to be used by the certifying authorities, taking account of international auditing standards for the preparation of their statements. In article 6 paragraph 4 of the implementing regulation (EU) no. 908/2014 adopted on this basis, the COM, however, also declares guidelines to be binding legal bases that in part contradict international auditing standards.

Partnership agreement according to the ESIF regulation

A partnership agreement is an effective programme planning and implementation instrument only in cases in which it provides the framework for a single programme area. It is connected with additional costs without any added value in Member States that work with several regional programmes. Because of the large differences between the different regions, a partnership agreement is not specific enough. The approaches to development chosen by the regions are often different and cannot be brought together in a single strategy under the umbrella of a universal document.

Delayed start of the funding period

Due to increasing delays in the legislative process for a new funding period, programme planning and consequently also the time when funding can start are postponed. During the preparation of the funding period 2014–2020, constantly changing drafts of regulations and guidelines had mostly to be used to prepare the programmes and subsequently implement the funding procedures. Additional transitional regulations became necessary to manage the resultant temporary funding gap. Furthermore, the redesign of the SFC2014 parallel to the legislative process was an additional challenge for programme planning and implementation. De facto law-making via programme-related technical procedures should not set a precedent in this respect.

System of excessive control (control of control over control, verification at all costs)

The ECA regularly points out that there is a constantly high error rate in the area of "rural development, environment, fishery and health". It is indisputable that the proper use of the European funds in compliance with the principles of efficiency and economy is an issue of common concern and must also be controlled and documented adequately. However, the system that is almost exclusively intended for procedural control has meanwhile gone beyond the limits of proportionality. Up to eleven audit bodies acting mostly independent of each other regularly review the proper spending of EU funds and their control (annex 2). The resultant audit findings (irregularities), however, rarely relate to the improper use of funds / enrichment but are mostly due to errors in using the countless procedure requirements. A suitable error rating instrument is missing here as well as the courage to tolerate minor errors (without or with minimal monetary damage) on the grounds of proportionality.

The occurrence of irregularities is largely due to this complex regulatory framework. The risk of errors increases with complexity.

Examples from checks in Saxony:

- *It is no longer sufficient to use the average stock data according to the accepted HIT database as a basis for verifying the animal stock; in addition, the stock has to be counted on site according to the COM audit in 2014.*
- *If on-site checks have not revealed any infringements or errors, it is not sufficient to document this result by making a checkmark in a checklist but a description has to be added that explains how the auditor came to this result (COM audit in 2014).*
- *Article 72 regulation (EC) no. 1698/2005 (EAFRD regulation) provides for a durability of the investment-related operations for five years while this period is only to be considered as the minimum pursuant to the ECA audit in 2015 and a significantly longer durability of the investment-related operations is called for.*
- *Saxony's certifying body found a random error amounting to EUR 15,490.71 EUR in an audit which was extrapolated to a probable error amounting to EUR 860,327.53. It was just a minor infringement of provisions relating to the premature start of an operation [purchase of a small item (pasta cooker) two days before the entire project (establishment of a country bakery) was approved].*

Extracts from the Advisory Statement of the Baden-Württemberg court of auditors dated June 2015 relating to the control system of agricultural funds 2007-2013:

- *"The EU relies on an administrative system that is characterised by constant cyclic checks and checks for checks. It also sees a discrepancy from the guidelines for administrative procedures and organisational provisions as an error when, in individual aid cases, the right decisions have been made and there are no errors beyond the materiality threshold. At the same time, even small discrepancies must be established, documented and recorded. De minimis rules are not consistent. Where they exist, they do not work to simplify administration. The administrative authorities cannot deviate from the regulations in any way, even if the reasonable correctness of the expenditure does not depend on it. This hinders independent, targeted and efficient administrative work unnecessary."*

Spiral of audit findings

It is in the nature of this approach that more and deeper checks as well as stricter definitions of errors result in higher error rates. This is both the cause and the effect of the high pressure exerted on the COM to reduce the error rates and as a result be certified as far as possible with unlimited reliability by the ECA. For this purpose, the COM often converts the audit bodies' findings into new, additional administrative requirements and instructions for the current and next funding period immediately. This approach, however, has had no positive effect on the error rate so far. The errors found may lead to financial corrections (imposition of surcharges) through extrapolation, where appropriate, and an expansion of the audit activities which in turn will increase the probability of more errors being found. This spiral of audit findings increasingly challenges the control system's economic viability and does not lead to the better results envisaged by EU strategies.

Extracts from the Advisory Statement of the Baden-Württemberg court of auditors dated June 2015 relating to the control system of agricultural funds 2007-2013:

- *"The EU rules allow a different check intensity, depending on error rates. The administrative burden is, however, inadequate in terms of the result of checks, i.e. for correcting expenditure."*
- *"Overall, the administration and checking costs amounted to 21 times the financial error which they corrected."*
- *"These findings are illustrated by a typical example from our survey. The inspectors checked a farm with 70 fields and an applied for area of 88 ha. In 50 fields there were small discrepancies in terms of the area or landscape-related elements. After netting,*

the funding was cut by 23 euros. The time spent on all the work in connection with the on-the-spot check generated administrative costs of approx. 8,900 euros."

Standardisation of investment measures and area-related measures

Since 2007, the "standardisation" of investment measures and area-related measures has been a fundamental problem. Up until then, investment measures were governed by the provisions applicable to structural funds. This has led to a variety of new error sources and implementation problems. The same yardstick is used to check completely different issues.

Example:

The strict penalty rules (cuts in the event of discrepancies between the area applied for and that determined + penalty payment) that are in force for area-related measures are also applied to investment measures (discrepancies between the eligible expenditures applied for and those determined). Both EAFRD eligible expenditures and numerous other proper expenditures are often made for the project (under an investment measure (quite often in a craftsman's invoice, for example). It is much more difficult for the applicant to recognise the in some cases very subtle differences. As a general rule, sanctions (additional administrative penalties) in addition to the rejection of the non-eligible expenditures are not justified. Incidentally, the structural funds still do not have such a sanction rule to this day.

Disproportionate sanction regulations

Compared to other funding programmes under direct and indirect management, the EAFRD has a very comprehensive sanction system for both negligent and intentional active acts and omissions. Sanctions relating to fraudulent intentions (e.g. exclusion from funding) are not called into question.

But the proportionality of sanctions for unintentional, often minor errors in the funding procedure also for area-related measures should be challenged. It is counterproductive to penalise negligent errors by an additional sanction especially in view of the fact that action on the part of the beneficiary is desired as the objective of individual funding measures. The beneficiaries must be given the possibility having their expenditures' eligibility examined and determined by the administrative authorities in connection with complex investment measures without running the risk of being sanctioned. The examination may not be shifted to the beneficiary level but must stay where the relevant expertise exists, i.e. with the granting authority.

Example:

Pursuant to article 63 of the implementing regulation (EU) no. 809/2014, a penalty amounting to the difference between the amount that is payable to the beneficiary based on the payment claim and the amount that is established after an examination of the eligibility of the expenditure in the payment claim is imposed if the ineligible expenditure exceeds the amount applied for by more than 10 %. The punitive reduction is also applied if the ineligible amount was claimed merely due to an error in terms of eligibility, i.e. not with fraudulent intent.

Frustration among the applicants and (in the) administrative authorities

The administrative staff finds it increasingly difficult to explain and justify vis-à-vis the beneficiary all the mandatory administrative processes including the sanction rules and support the European idea at the same time. In view of the bureaucratic burden or due to a negative experience with supervisory bodies in the area of EU funding, more and more potential applicants are frustrated and refrain from applying for funds to implement their projects. The sanctions that also affect applicants who do not act with the intent to defraud have a particularly deterring effect in this respect.

It takes several years to train new staff to create and manage programmes at all levels. Administrative authorities involved in EU funding procedures, such as a granting authority, require highly qualified administration experts. These experts cannot primarily devote themselves to the projects' technical quality but must invest their entire working capacity in error-free administrative and control procedures.

Examples:

- Thünen-Institut (TI): *Faktencheck ELER-Förderung – Forstliche Förderung (2013) (EAFRD funding fact check – Forestry funding), page 5: "The results of the evaluation of seven German federal states obtained so far (...) show that in particular the high bureaucratic burden in connection with the application for and administration of funds hinder the implementation of measures as far as both forest owners and district foresters are concerned. If this burden is further increased by more requirements, this may lead to an even higher loss in public acceptance and a reduction in the use of forestry funding."*

- Paper "Verwaltungslasten der Verwaltung – eine unterschätzte steuerungs- und erfolgskritische Größe von Förderprogrammen" (administrative burdens of the administration – an underestimated factor that is critical for the control and success of funding programmes" of the TI: "decreasing acceptance of EU funding in both the administration and among certain applicants (associations, small enterprises, etc....)"

- Extracts from the Advisory Statement of the Baden-Württemberg court of auditors dated June 2015 relating to the control system for agricultural funds 2007-2013: "...When designing funding programmes, the administrative expenses should be taken into account. EU funds should not be used if the additional costs exceed the EU share of payments."

- Extract from the Second Draft of the Council's Conclusions on the Priorities and expectations of Member States for the High-Level Group on Simplification dated 27.10.2015: "(9) Considers nevertheless that the addition of rules, for the period 2014-2020, at the EU, national and sometimes regional levels, always guided by good intentions, to improve the management of Funds, poses new challenges for Member States' administrations, resulting in the need for adapting administrative systems, **with a potentially deterring effect on beneficiaries;**"

Avoidance of charges and outflow of funds versus quality focus

Rigid administrative requirements have finally made their way into the technical core area of project development in the funding period 2014-2020. The control rules actually meant to prevent the misuse of funds lead to the fact that compliance with formal requirements and documentations meanwhile seems to be more important than the funding success itself. Charges imposed on Member States are often not due to any lack of success in funding (funding purpose) but rather due to the infringement of formal rules and criteria.

Examples:

- Extract from „Ländliche Entwicklungspolitik ab 2014 - Eine Bewertung der Verordnungsvorschläge der Europäischen Kommission vom Oktober 2011“ (Rural development policy from 2014 – An evaluation of the European Commission's regulation suggestions dated October 2011) of the Thünen-Instituts: „...The mid-term evaluation of the funding period 2000 - 2006 on the appropriateness of the performance reserve was critical (GEFRA et al., 2003). It was neither an instrument to increase the efficient use of funds nor were the selected indicators able to measure the programmes' performance. In 2004, even the COM had a rather critical view of the performance reserve: **"While some concerns have been expressed about the actual mechanisms introduced, particularly its rigidity and complexity, the reserve has focused attention on important issues such as financial absorption and the quality of data**

used for monitoring. At the same time, concern has also been raised that focus on financial absorption might shift attention away from quality on to spend" (EU COM, 2004). The current requirements that show a lack of ambition give reason to fear that this will also be true for the funding period to come. Priority is given to financial and output indicators to measure performance. This means the focus is on the outflow of funds so that this cannot be considered/we cannot speak of a change in programme control from an expenditure-driven approach to a results-based one."

- Extract from *Ex-ante Bewertung von PFEIL 2014-2020 (Ex-ante evaluation of PFEIL (a rural development programme for Lower Saxony and Bremen))*, Thünen-Institut and entera-Ingenieurgesellschaft für Planung und Informationstechnologie, August 2015: "We believe it is fundamentally wrong to focus on the outflow of funds because this sends the signal that measures should be chosen that can be easily implemented. The performance reserve instrument strengthens this focus still further. The fact that the funds provided for a measure do not flow out may have different causes that should not necessarily be rated negatively from an evaluation point of view. A reduced outflow of funds could be rated positively if the framework conditions, for example, develop in such a way that no further intervention is required."

III. Need for action and specific proposals

1. New start

A fundamental revision of all EAFRD regulations but in particular administrative and control procedures is absolutely necessary in preparation of the funding period starting from 2021. The focus has to be shifted back to solely ensuring the success of the European strategies and the objectives to be achieved. The volume of procedural rules has to be limited to a reasonable level. The procedural rules ought to support the European objectives rather than obstruct them. Building up more administrative capacities to manage EU funding would be a mistake. ("The moment we finally lost sight of our goal, we doubled our efforts." Mark Twain)

→ Principle of trust

It is time for a paradigm shift, i.e. a fundamental shift away from mistrust as the current underlying principle (more and deeper controls) towards trust.

→ Legal certainty about the approved programme / Protection of legitimate expectations

Compliance with the principles of legal certainty and protection of legitimate expectations as general legal principles of the European Union must be given due consideration. There is a comprehensive body of judicial decisions handed down by the European Court of Justice concerning non-retroactivity that has to be taken into account. For this reason, amendments and modifications of regulations, guidelines, work tools or interpretations of valid provisions by the bodies and institutions of the European Union as well as audit bodies may only take future effect. This particularly refers to their applicability to issues already completed. Retroactivity ought only be permissible in an absolutely exceptional case where there is a strong public interest in retroactivity. The confidence of those concerned in the certainty of law has to be taken into due account. The possibility of transitional arrangements without penalties should be taken urgently into consideration. Furthermore, the binding effect of the COM's programme approval for all programme components is an important basis of common action and mutual trust.

→ Self-determination and individual responsibility

According to the principles of subsidiarity and proportionality, only framework requirements as well as regulations indispensable to achieving the objectives of the European treaties are subject to central regulation. This approach contributes to preventing distortions of competition or regional advantages and disadvantages for the individuals involved, for example. The "how" of implementation and on-site checks are largely regulated in a subsidiary manner. Instead of setting up central requirements down to the smallest detail, the focus should be on strengthening individual responsibility for the use of funds and chances of initiating innovative developments on site.

→ Successful implementation of European objectives

The EU programme requirements would be limited to offering areas of action that leave the administrative authorities the necessary room for manoeuvre. Regional SWOT analysis would be used as a basis for deriving the top-priority objectives and measures for the respective region in the programmes. An important feature that has to be given due consideration and controlled in this respect is the use of concerted project selection procedures (investment) or concerted adapted regional approaches (areas). This creates the widest possible scope for innovative, situation-based or locally-adapted projects and frees up the administrative resources required for them.

→ Streamlining

Overloading the regulation and in turn the programmes with irrelevant "secondary subjects" (e.g. cross compliance, gender mainstreaming) must be avoided. The programme is not in-

tended as an instrument to implement / control all community policies. There must be a content-related connection between the funding project and the standards to be complied with in the specific funding case.

2. Strategic and programmatic framework

a) Focusing on a few core objectives

Concentration on a few core objectives simplifies programme planning and management.

In the EAFRD funding periods hitherto, the LEADER system has proven to be a successful instrument of customised funding policy in rural development. A local action group here draws up a LEADER development strategy on the basis of the local circumstances and requirements as well as the overall framework specified by the administrative authority and determines independently the amount of funds that should be allocated to the prioritised projects. This model should be used *mutatis mutandis* in RDP programming in the future.

The competent regional authority (administrative authority), in conjunction with other stakeholders (administrative authorities, business and social partners, NGO's...), should define regional technical objectives on the basis of an in-depth analysis of the current state in the programme area (socio-economic analysis, SWOT). These objectives are to be pursued until the end of the programme period by making use of the available EU funds. At the same time, the RDP should show how interventions should be targeted best to achieve the desired results and effects in terms of the area concerned and investment.

Up to this point, the new system and the one hitherto do not show any principle differences. In its future programme approval procedures, the COM would *primarily* concentrate on checking that regional objectives are in line with EU requirements and the procedures are properly targeted to the objectives. The EU funds thus assume the character of a lump sum support for the target budgets concerned. Once the programme has been approved, the member states are responsible for ensuring that the EAFRD funds are used in accordance with the approved programme.

During the funding period, adjustment of the programme to circumstances having changed over time should only be subject to approval if the effects expected are dramatic. All formal and/or simple content-related changes should only be subject to notification with, if necessary, COM being given the right to raise objections promptly.

Programme control and/or causal performance indication via indicator measurement has proven to be unrealistic in the previous funding periods. Depending on the scope of the respective programme and the strength of the relevant national economy, numerous overlapping factors may influence the funding results and effects significantly. Evaluation by independent experts is to contribute to an improvement of the programmes' quality instead. In addition to a few meaningful indicators, notably expert interviews and case studies are to be used in the future.

b) Investment programme components with project selection as a central element

Regional development objectives should be determined on the basis of SWOT analysis. The EU funds that are required to support the desired objectives would be allocated according to the programme objectives (budgets). Along the same lines, the planned measures and selection procedures should be described with the intention of guaranteeing due alignment to regional programme objectives. As such, the prerequisites would be met for selecting the most efficient and effective funding projects in terms of the regional objectives defined in the programme document on the basis of specific project selection criteria. For LEADER, the

framework requirements would be described in the programme and the selection procedures and criteria approved together with the local development strategies.

Thanks to the strict concentration on selecting the best, detailed EU requirements and instructions specifying how the objective is to be achieved (e.g. portfolio of measures, types of financing, detailed funding prerequisites) ought to be largely dispensable in the future. When implementing the programmes, the member states are bound by EU frameworks but otherwise they are free to find and choose the optimum path for their purposes. What is ultimately important is that the COM-approved selection procedure with the relevant project selection criteria is used over the entire funding period.

c) Non-investment programme components with regional area-related portfolio of measures

After analysing the initial situation in terms of European challenges (such as biodiversity, water quality, soil protection), regional objectives and approaches as well as the measures to be supported would be determined (such as erosion control measures, measures to reduce nutrient emissions in rivers, environmentally sound management and care) and corresponding budgets and frameworks or area details allocated on the basis of an area identification system.

Target-oriented alignment would be here accompanied here by a rough description of possible measure options in the RDP. It would have to be shown that, when implementing these measures, a positive effect on the respective challenge could be expected. Highly detailed requirements for aspects such as periods/times, management and control would be dispensable. Insofar a detailed presentation and justification of area-related lump-sum payments were not needed either. The programme sets out the essential elements of the measures and describes how the future area-related lump-sum payments are to be calculated.

Reference is herewith made to the summarising diagrams in annexes 3 and 4.

3. Implementation with a sense of proportion / Legal framework

Since the use of valid national or regional procedural rules would be reinforced and compliance with them monitored by national or regional control bodies, the volume of detailed requirements and controls for administrative procedures to be issued by the COM could be reduced in the future. This would also include ensuring the fund's proper, economical and efficient use. Once the COM and/or ECA have convinced themselves completely that this system is functional, no further control of the controls would be necessary (single-audit principle).

The following fundamental key elements should be integrated into the implementation of RDP funds:

a) Shared management, article 59 of the European financial regulation

→ Stronger focus on the principle of proportionality

In the area of the implementation of financial resources under shared management, the EU is authorised to adopt legal provisions including requirements for the administrative and control system in the member states. This authorisation of the EU is, however, not unrestricted and unlimited. Pursuant to the principle of proportionality laid down in article 5 paragraph 4 of the Treaty on European Union, the content and form of EU action shall not exceed what is necessary to achieve the objectives of the European Treaties. The principle of proportionality is, however, not only applicable to EU legislation but also to the COM's audit activity as expressly stipulated in article 59 paragraph 2 of the European financial regulation. The proven systems and administrative procedures that exist in the member states and are used in connection with national grant procedures in the area of investment funding, for example, must

again be given more recognition. In the future, the principle of proportionality should (again) be given greater consideration by laying down minimum requirements and strengthening flexibility via the exercise of discretion and individual responsibility on site.

→ Mandatory introduction of the "single-audit" principle as an expression of the principle of trust and for reduction of the control bodies to "orbit" the beneficiary

The "single-audit" principle pursuant to article 148 of the regulation (EU) no. 1303/2013 applies in the area of the structural, fishery and cohesion funds and proved successful in the funding period 2007 - 2013. The principle involves having an adequate control density. On the one hand, projects up to a certain total amount of eligible expenditure are not subject to more than one audit by either the audit authority (agricultural fund: certifying authority) or the COM's audit department or the ECA while giving consideration to certain prerequisites. On the other hand, the COM can use audit results obtained by the audit authority if it is convinced that the authority works reliably. As a result, the COM refrains from performing their own on-site audits and/or audits of projects. The control (e.g. COM) of control (e.g. paying agency or audit authority) over control (e.g. administrative control of the granting authority) becomes the exception and not the rule. Proportionality is retained while taking the competences of the agencies into due account. The "single-audit" principle should be transferred to agricultural funds.

→ Balance between control costs and error risk

The materiality threshold for a tolerable risk of error for both the certifying authority and the COM should be fixed to between two and five percent depending on the type of error concerned. The ECA should agree with the stipulated materiality threshold. The materiality threshold should be around four percent (cf. the Communication from the COM to the European Parliament, the Council and the Court of Auditors "More or less controls? Striking the right balance between the administrative costs of control and the risk of error" dated 26.05.2010 [COM(2010) 261 final]).

→ Arbitration procedure

An arbitration body should be established for the event that financial corrections become necessary. This body should be composed of independent representatives from different member states and have the objective to bring about a compromise between the member state concerned and the COM while all sides of the argument are given due consideration. The arbitration proposal should be binding for both parties (comparable to the protest procedure under German administrative law, § 68 VwGO).

b) Harmonisation of competition rules with EU funding provisions under the RDP

It is necessary to harmonise the RDP and state aid provisions in terms of the beginning of the project, the application for state aid including minimum information disclosure and/or the application for support, eligible expenditure and conservation periods, among other issues.

c) Harmonisation of EU financial year and agricultural financial year as well as programme period

The overlapping of the agricultural financial year (16.10. – 15.10.) and EU financial year or programme reporting year (01.01. – 31.12.) has proven to be disadvantageous. Harmonisation should be conducted in this respect to avoid the unnecessary duplication of activities).

d) Permission and binding nature of COM guidelines

Inasmuch as COM guidelines with external effect are needed and sensible to ensure consistent action on the part of COM staff, their number should be limited to a minimum to make the regulations' implementation not unnecessarily difficult. Under no circumstances should the instrument of internal guidelines or technical instructions for the SFC data transfer

portal be misused as a way of quasi law-making and lead to a restriction of regulations adopted by the Council and Parliament.

e) Mandatory differentiation between administrative and control systems for area-related and investment measures

While, due to the large number and easier assignment of requirements, stricter standards can be applied to area-related measures, investment measures require more differentiation. Risk choice, selection, time and scope of on-site checks to be performed per year are listed here as examples. Investment measures require more room for manoeuvre in implementing administrative and control requirements. Flexible annual scope for on-site checks, for example, would be no risk at all for the fund.

f) Legal certainty via the principle of non-retroactivity and binding effect of the programme approval

The principle of non-retroactivity has to be laid down in the regulation. Amendments and modifications of COM regulations, guidelines, working tools or other documents with direct or indirect external effect but also interpretations of valid provisions by the bodies and institutions of the European Union as well certifying authorities and audit bodies of the COM and the paying agency can only become effective in the future. In addition, it has to be laid down in the regulation that the COM's approval of the programme is binding for all programme components.

g) Appropriate and reasonable sanction regulations

The exhaustive and complex RDP sanction regulations used so far ought to be reduced to an appropriate and reasonable level. De minimis limits ought to be fixed for reclaim and interest amounts by striking a balance between costs and benefits.

h) Sector-specific regulations (reliability, continuity, comprehensibility)

→ Objective: clear reduction of the relevant legal acts

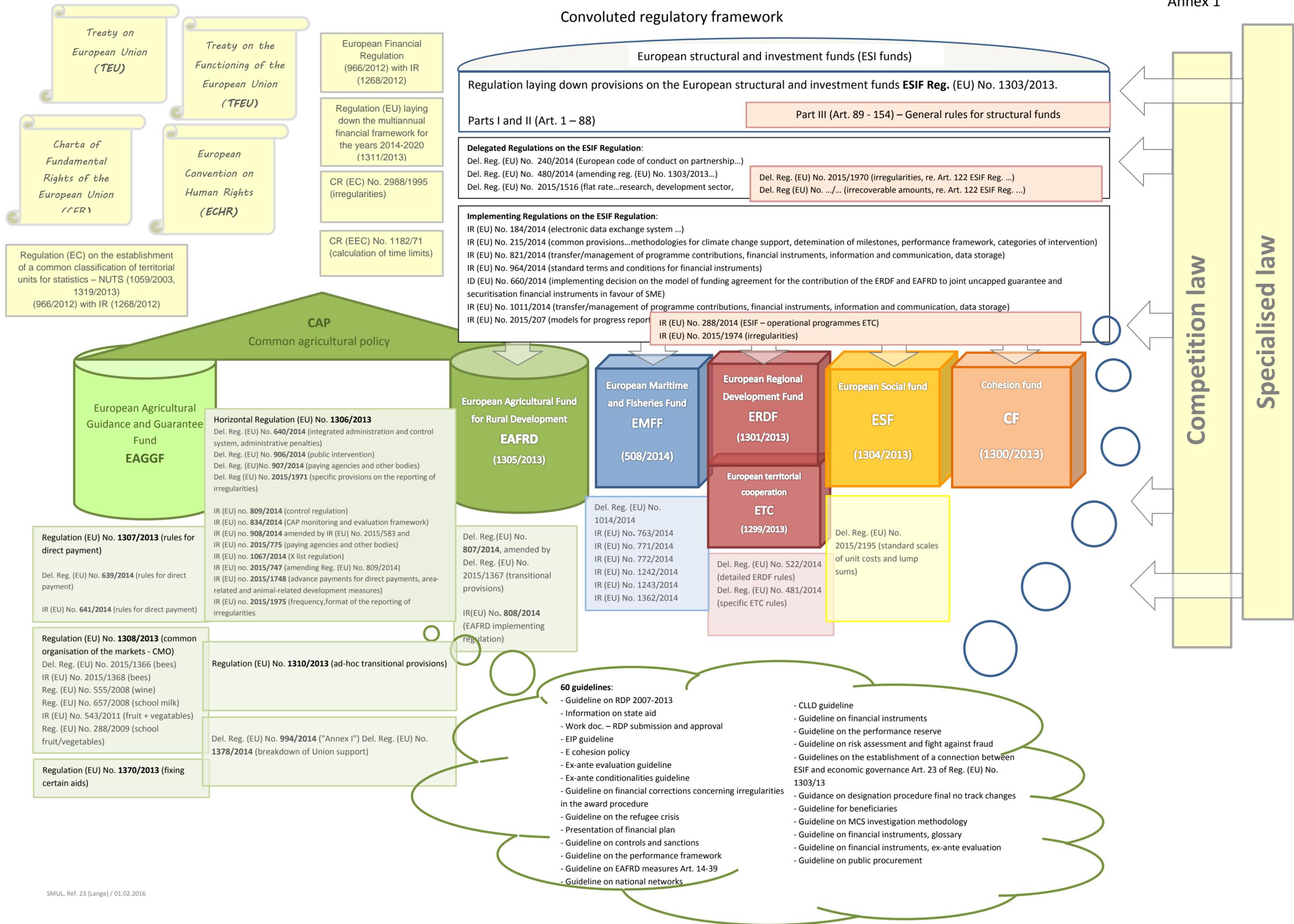
The funds will continue to be subject to a European strategy with global goals in the future. An umbrella regulation for several funds is dispensable. It would be sufficient to treat the same issues in the same way and different issues in different ways in the legislative process (separation of the 1st and 2nd pillar of CAP). This does not necessarily require an additional regulation.

In the future, there should only be a single regulation per fund governing the fund's provisions and its programme (cf. annex 5), which deals with issues such as:

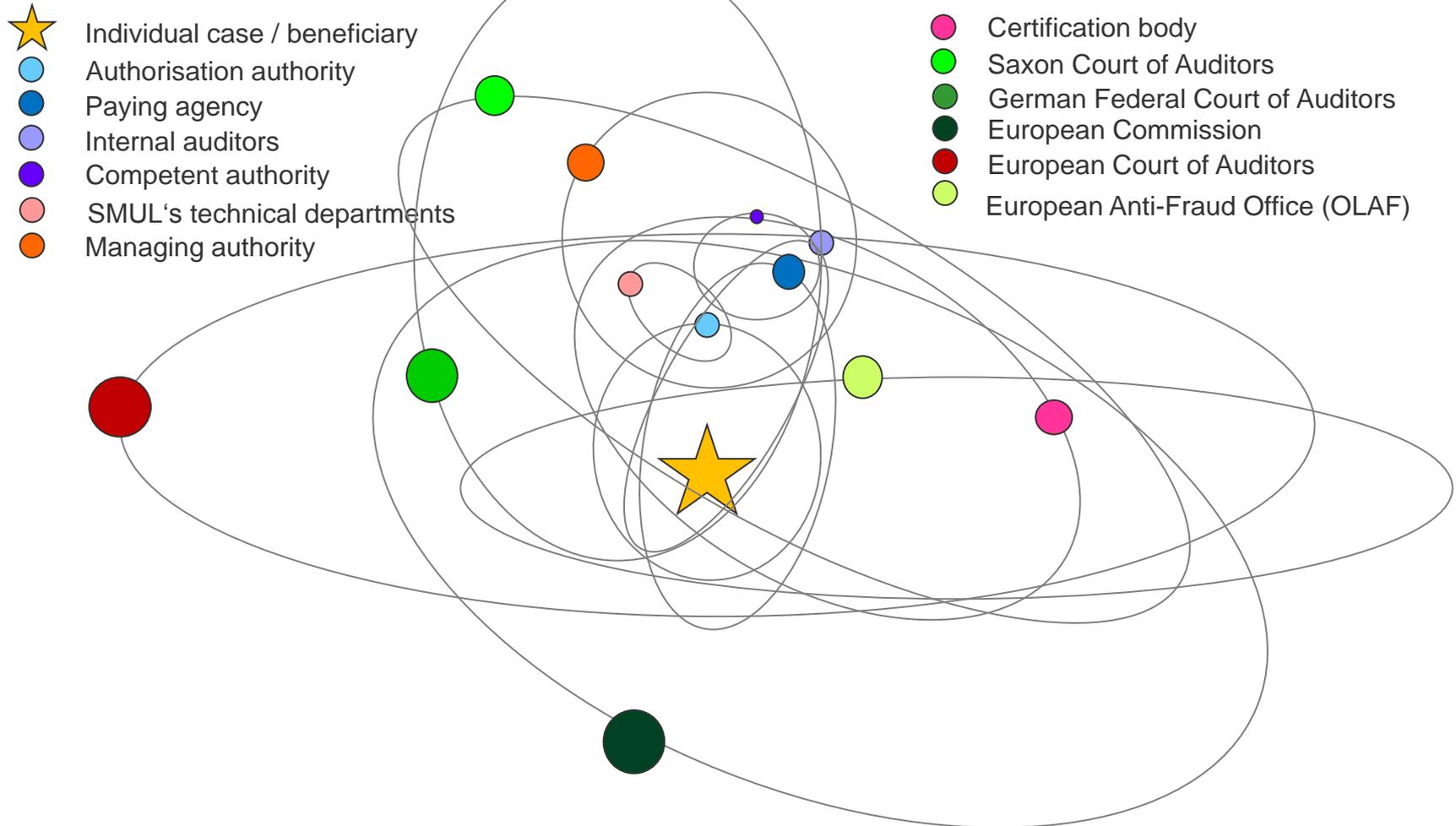
- funding objectives,
- tasks of the institutions involved,
- requirements on programme content and programme approval procedures (socio-economic analysis, definition of the programme's objectives, planned use of financial resources,...),
- payment procedures (advance payment, modalities of payment),
- monitoring / reporting system (monitoring committee, indicators, reporting system),
- legal state-aid provisions,
- administrative and control system,
- accounting and conformity procedures,
- de minimis limits
- and technical support.

This regulation should be announced at least one year before the beginning of the new funding period. Annex 6 contains a draft model regulation.

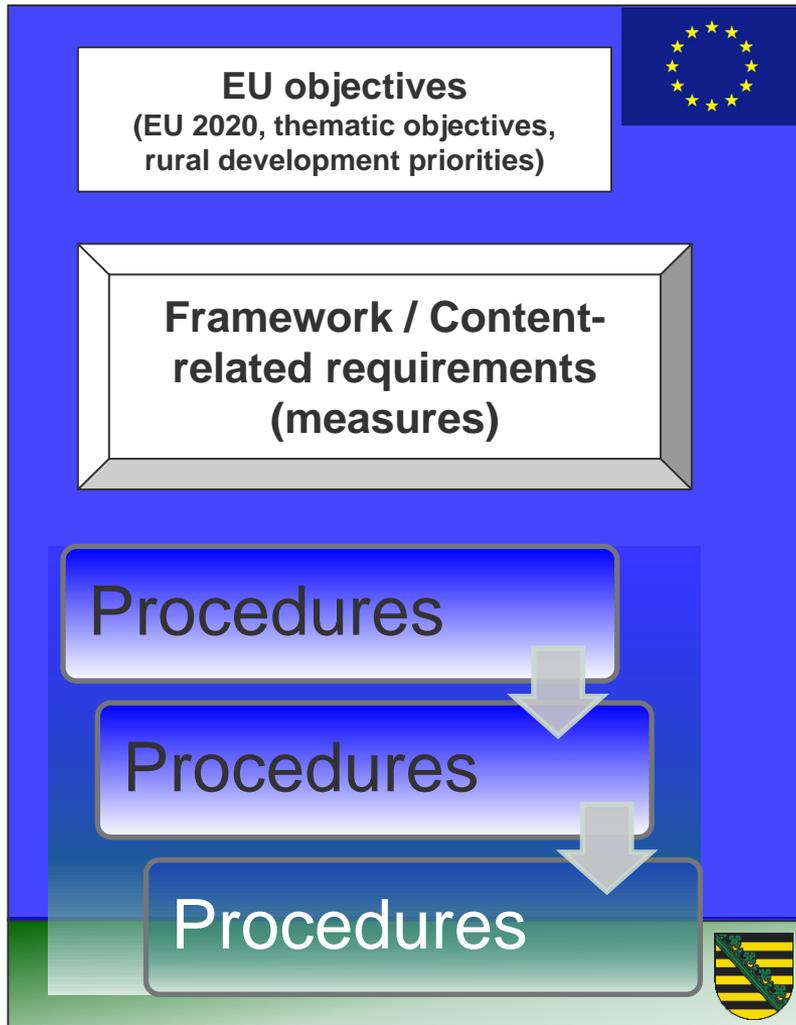
Convolutd regulatory framework



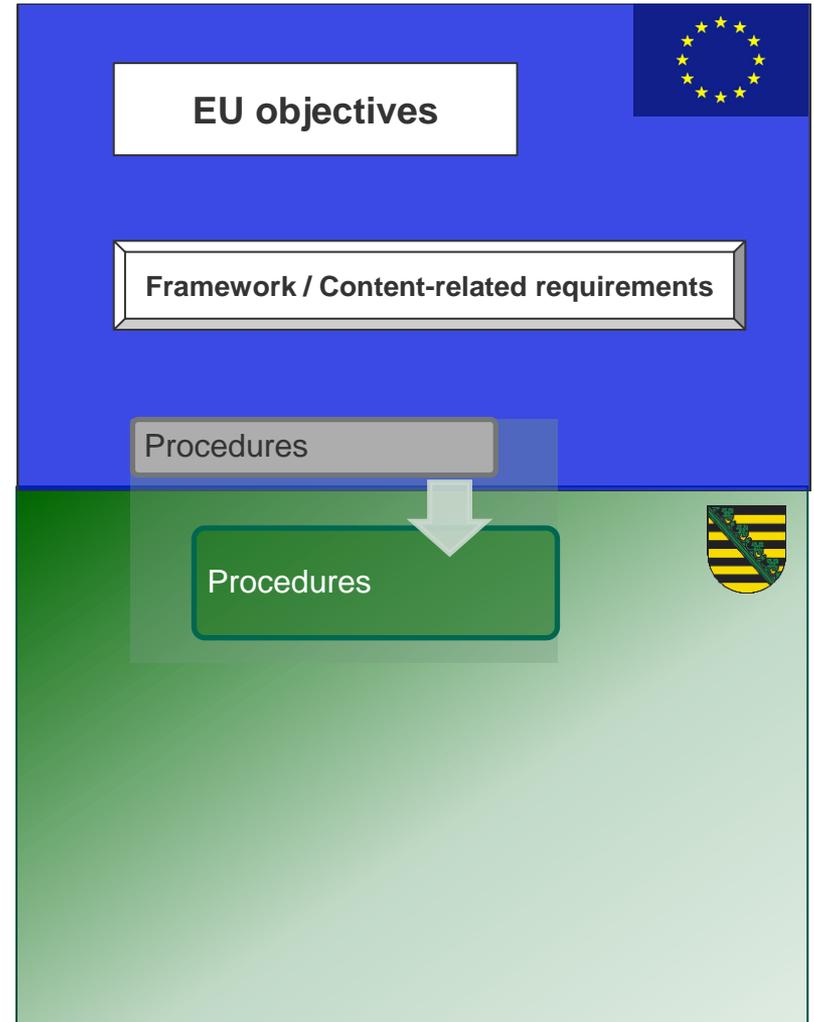
Financial project control using the 2014 – 2020 RDP as an example



EAFRD 2014 - 2020



Proposal: EAFRD 2021 - 2027



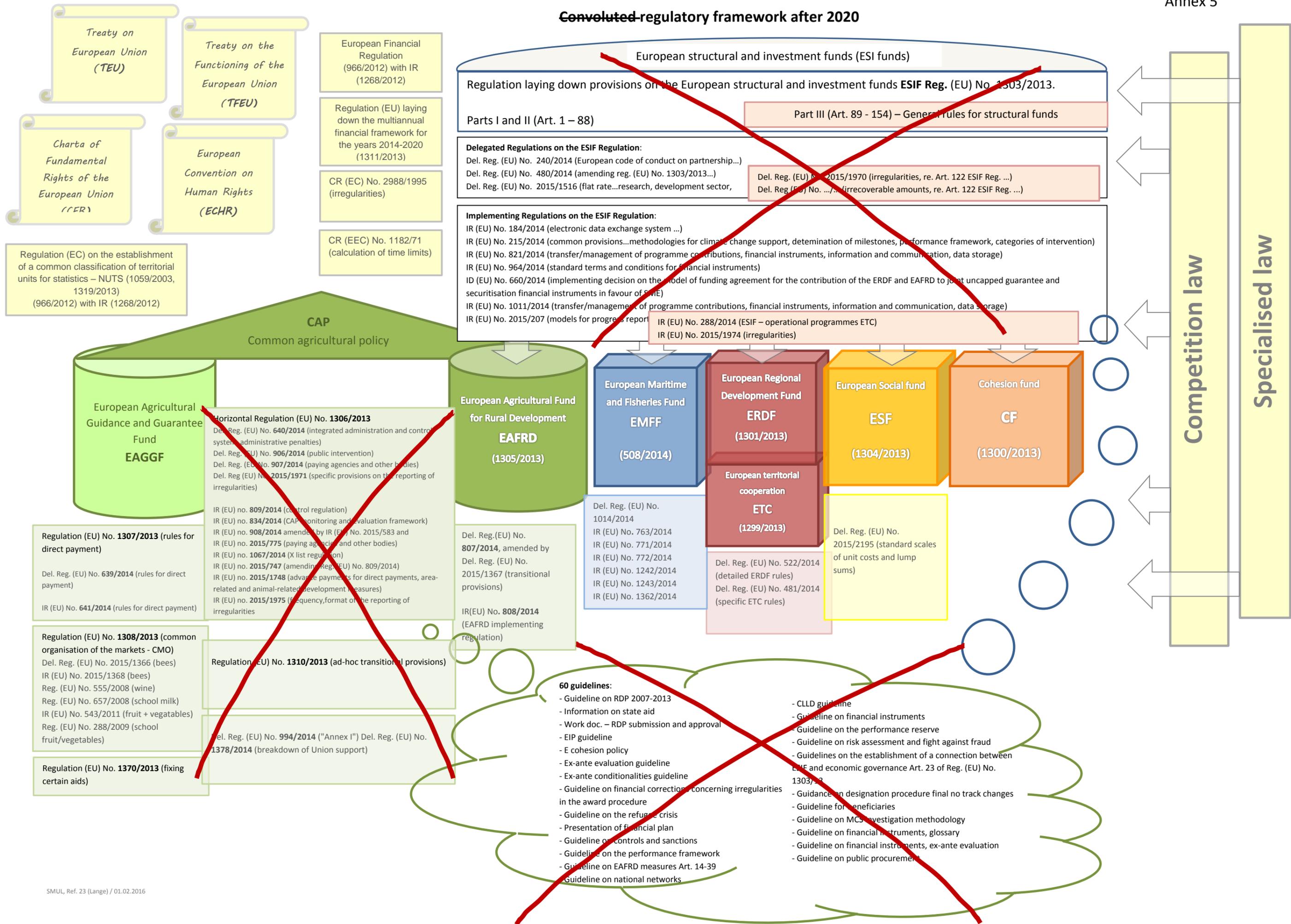
COMPARISON OF PROCEDURES

INVESTMENT

AREA



Convoluting regulatory framework after 2020



REGULATION (EU) 2019/XXXX
dated xx. XXXXXXXX 2019
on support for rural development under the
European Agricultural Fund for Rural Development (EAFRD)

.....

WHEREAS:

- (1) *In line with the principle of shared management, the Member States and the Commission are responsible for managing and controlling the programmes in accordance with the competences as defined in this regulation.*
- (2) *The funds are to be used in accordance with the budgetary principles of economy, efficiency and effectiveness. Hence it follows that over-financing is to be avoided and double-financing is prohibited.*
- (3) *The Member States ensure the correctness and regularity of the expenditure declared, the effective protection of the Union's financial interests against irregularities and fraud and the recovery of amounts unduly paid by adopting appropriate and reasonable national procedures and measures.*
- (4) *In accordance with the common intent of better regulation while respecting the principles of subsidiarity and proportionality, this regulation provides the framework for EAFRD funding. The Member States are responsible for designing the funding procedures in accordance with the relevant framework provisions as defined in this Regulation. National procedural legislation applies with due regard to the right to good administration pursuant to article 41 of the Charter of Fundamental Rights of the European Union.*
- (5) *The European Union's authorisation to adopt official requirements under shared management is not unrestricted and unlimited. Pursuant to the principle of proportionality laid down in article 5 paragraph 4 of the Treaty on European Union, the content and form of EU action may not exceed what is necessary to achieve the objectives of the European Treaties. The principle of proportionality applies to both the Commission's legislative bodies and its audit activity. The principle of proportionality is to be especially taken into account by way of a minimum of requirements and the strengthening of flexibility via the due use of discretion and individual responsibility on the part of the Member States. The focus here is on ensuring that the EAFRD funds are used to achieve the European objectives.*
- (6) *There is an urgent need to significantly streamline the entire EAFRD system and cut the surrounding red tape to improve the programmes' acceptance and innovative approach. The programme requirements are thus limited to the key European objectives and offering areas of action without exhaustive and detailed procedural requirements. The programmes use regional SWOT analyses to derive top-priority objectives for the respective region. The measures offered for this purpose are to be described in the programmes. Furthermore, the programmes contain the project selection procedure for investment projects coordinated with the Monitoring Committee and the coordinated regional approaches for area-related measures. Once the Commission has approved the programme, this becomes effective also with regard to the Commission's audit activity. This provides the widest possible scope for innovative, individual and locally-adapted projects and frees up the management resources required for them.*
- (7) *A target-oriented approach offering a high degree of freedom has good prospects of success for the vast majority of European regions. The heterogeneity existing between the regions, however, may not be disregarded and may require a differentiated approach. Management and control systems that show serious deficiencies may be subjected to additional safeguarding and control mechanisms such as an increase in the*

minimum control rate if the positive effects for the better achievement of the objectives that are connected therewith outweigh the aforementioned negative effects.

- (8) Furthermore, the EAFRD's highly exhaustive and complex penalty rules used so far are to be reduced to an appropriate and reasonable level. De minimis limits are to be fixed for amounts recoverable and interest amounts taking account of the costs and benefits.*
- (9) Compliance with the principles of legal certainty and protection of legitimate expectations as general legal principles of the European Union is to be given due consideration. The comprehensive body of judicial decisions handed down by the European Court of Justice concerning non-retroactivity is to be taken into account. For this reason, amendments and modifications of regulations, guidelines, work tools or interpretations of valid provisions by the bodies and institutions of the European Union as well as audit agencies may only take future effect. This particularly refers to their applicability to issues already completed. Retroactivity may only be permissible in an absolutely exceptional case where there is a strong public interest in retroactivity. The legitimate expectations of those concerned in respect of the certainty of law has to be taken into due account. The possibility of transitional arrangements without penalties has to be taken urgently into consideration.*
- (10) Furthermore, uniform error definitions concerning the rating of deficiencies and errors are required for the audit bodies of the Commission and Member States for the reasons of legal certainty and the protection of legitimate expectations. The independence and individual responsibility of the audit bodies are not to be affected.*
- (11) The audit work of the certification body as the authority auditing the paying agency's annual accounts is based exclusively on internationally accepted auditing (e.g. International Standards on Auditing (ISA) as internationally accepted standards for auditing the accounts). This Regulation defines a uniform materiality threshold for a tolerable risk of error.*
- (12) The "single-audit principle" having proven successful in the area of the structural, fishery and cohesion funds is transferred to the EAFRD. The Commission may rely on the certification body's audits if it is convinced of its reliable work. Thereafter, the Commission refrains from performing their own project audits.*
- (13) For the reasons of legal clarity and legal certainty, the number and extent of the Commission's guidelines, work tools and other documents with external effect is to be limited to a minimum. The documents are primarily intended to ensure uniform action and have to take account of the requirements specified in this Regulation.*

HAVE ADOPTED THIS REGULATION:

Table of contents

Table of contents.....	3
Part I GENERAL PROVISIONS	5
Article 1 Scope	5
Article 2 Definitions	5
PART II COMPETENT AUTHORITIES	7
Article 3 Responsibilities of the Member States	7
Article 4 Managing authority	7
Article 5 Paying agency	7
Article 6 Accrediting body	9
Article 7 Certification body	10
Part III OBJECTIVES AND PROGRAMME PLANNING	11
Article 8 Objectives of rural development	11
Article 9 Programme territory	11
Article 10 Preparation of programmes, approval procedure and amendment of programmes 12	
Article 11 Structure of programmes	12
Article 12 LEADER	13
Article 13 Monitoring Committee	13
Article 14 Evaluation	13
Part IV FUNDING PROCEDURE	14
Article 15 Undiminished payment	14
Article 16 Applications for support, applications for payment and other declarations	14
Article 17 Selection of projects	15
Article 18 Eligible expenditure and payments	15
Article 19 Earmarking period	15
Article 20 Restriction of payment	16
Article 21 No double funding	16
Article 22 Checks	16
Article 23 Administrative checks	16
Article 24 On-the-spot checks	17
Article 25 Earmarking checks	18
Article 26 Recovery of undue payments	19
Article 27 Force majeure and exceptional circumstances	19
Article 28 Suspension of support	20
Article 29 Exclusion from support	20
Article 30 Additional penalties	20
Article 31 Action without fault	20
Part V Financial Management	20

Article 32 Financial contribution from EAFRD	20
Article 33 Eligibility	21
Article 34 Financial management (budget commitments, advance, payment procedure)	21
Article 35 Conservation periods	22
Article 36 Control statistics	22
Article 37 Accounts, forecasts and declarations of expenditure	23
Article 38 Clearance of accounts	24
Article 39 Conformity clearance	25
Article 40 Conciliation body	26
Article 41 Single-audit principle	28
Part VI Effectiveness of Assistance.....	28
Article 42 Annual report, final report	28
Article 43 Coherence and complementarity between the funds	28
Article 44 State aid provisions	28
Article 45 Publicity	29
Article 46 Transparency	29
Article 47 Electronic information system	30
Article 48 Technical assistance	30
Part VII Final Provisions	30
Article 49 Guidelines of the Commission	30
Article 50 Non-retroactivity	30
Article 51 Transitional provisions	31
Article 52 Entry into force and application	31
Annex I: Paying agency accreditation criteria	32
Annex II: Statement of management	34
Annex III: Sample table indicating irregularities and the status of recoveries.....	35
Annex IV: Extract from the debtors' ledger	35
Annex V: Annual accounts (accounting records; X list).....	35
Annex VI: Content and structure of annual reports.....	36

PART I GENERAL PROVISIONS

Article 1

Scope

This regulation lays down general rules governing Union support for rural development financed by the European Agricultural Fund for Rural Development ("EAFRD"). It sets out the objectives to which EAFRD support is to contribute and outlines the framework requirements for the management of EAFRD funds and their payment to the beneficiaries.

Article 2

Definitions

For the purposes of this regulation, the following definitions shall apply:

(1) **European objectives:**

- a) Objectives of the "EUROPA 2030 – smart, sustainable and inclusive growth" strategy,
- b) Objectives of the Common Agricultural Policy (CAP): to increase agricultural productivity by promoting technical progress, by ensuring the rational development of agricultural production and optimum utilisation of the factors of production, in particular labour, to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture, to stabilise markets, to assure availability of supplies, to ensure that supplies reach consumers at reasonable prices and
- c) Objectives of rural development (article 8).

(2) **Regional¹ objective:** political objective resulting from an analysis of the current situation and a prioritisation of the specific development needs of a region aligned to European objectives;

(3) **Region:** territorial unit corresponding to level 1 or 2 of the Nomenclature of Territorial Units for Statistics (NUTS level 1 or 2) within the meaning of Regulation (EC) no. 1059/2003 of the European Parliament and of the Council;

(4) **Programme:** document which describes the regional objectives and fundamental issues for implementing EAFRD funding;

(5) **Programme planning:** process of preparing a programme;

(6) **Project:** action of a beneficiary to implement the regional objectives defined in the programme;

(7) **Measure:** group of projects to implement regional objectives defined in the programme;

(8) **Area-related measure:** a measure aimed at rural development where the support is based on the size and location of the areas indicated;

(9) **Programme territory:** geographical territory covered by a specific programme;

(10) **LEADER:** acronym standing for "Liaison Entre Actions de Développement de l'Economie Rurale" which means "Links between the rural economy and development actions";

(11) **Local action group (LAG):** a group of representatives of local public and private socio-economic interests that designs and implements community-led rural development measures in a LEADER area;

¹ If a Member State opts for a national programme, the rules for regional objectives and programmes shall apply mutatis mutandis.

- (12) **Local development strategy (LES):** a community-led local development strategy arising from a bottom-up process taking local needs and potentials into account;
- (13) **LEADER territory:** part of the programme territory defined by the local community in a local development strategy;
- (14) **Beneficiary:** legal person under public or private law or a natural person who implements a programme project and receives support to do so from EAFRD funds;
- (15) **Completed project:** a project that has been physically completed or fully implemented and in respect of which all related payments have been made by the beneficiaries and the corresponding public contribution has been paid to the beneficiaries;
- (16) **Application for support:** an application of a beneficiary for the granting of support to participate in a measure;
- (17) **Application for payment:** an application of a beneficiary for payment from the national authorities;
- (18) **Other declaration:** any declaration and/or any document except applications for support and applications for payment that a beneficiary or a third person has to submit or keep with regard to compliance with special rules within the scope of certain rural development measures;
- (19) **Request for payment:** a declaration of expenditure including request for payment submitted by the Member State to the Commission;
- (20) **Irregularity:** any breach of Union law or of national law resulting from an action or omission by an economic operator involved in the implementation of the EAFRD funds, which has or would have the effect of prejudicing the budget of the Union by charging an unjustified item of expenditure to the budget of the Union;
- (21) **Economic operator:** any natural or legal person or other entity taking part in the implementation of assistance from the EAFRD funds with the exception of a Member State exercising its prerogatives as a public authority.
- (22) **Adverse climatic event:** weather conditions such as frost, storm, hail, ice, heavy rain or severe drought which can be deemed equivalent to a natural disaster;
- (23) **Natural disaster:** a naturally occurring event of a biotic or abiotic nature that leads to important disturbances in agricultural production systems or forest structures, eventually causing important economic damage to the farming or forestry sectors;
- (24) **Serious deficiency in the management and control system:** deficiency which requires substantial improvements in the systems, which exposes the EAFRD to a significant risk of irregularities and the existence of which is incompatible with an unqualified audit opinion on the functioning of the management and control system;
- (25) **Formal deficiency:** deficiency which has no financial effect on the payment to the beneficiary; such as missing documentation of a control performed or failure to comply with publicity rules;
- (26) **Quantifiable deficiency:** deficiency which has a financial effect on the payment to the beneficiary; such as missing supporting documents required for the recognition of eligible expenditures or inappropriate evaluation of offers which affects the outcome;
- (27) **Public procurement error:** formal or quantifiable deficiency on the basis of the Commission Decision of 19.12.2013 on the setting out and approval of guidelines for determining financial corrections to be made by the Commission to expenditure financed by the Union under shared management for non-compliance with the rules on public procurement [C(2013) 9527 final].

PART II COMPETENT AUTHORITIES

Article 3

Responsibilities of the Member States

- (1) Member States shall adopt all the legislative, statutory and administrative provisions in order to ensure that the Union's financial interests are protected effectively.
- (2) Member States shall designate, for each rural development programme, the following authorities:
 - a) the managing authority, which may be either a public or private body acting at national or regional level, or the Member State itself when it carries out that task, to be in charge of the management of the programme concerned;
 - b) the accredited paying agency;
 - c) the certification body.
- (3) Member States shall ensure for each programme that the relevant management and control system has been set up in such a way that ensures a clear allocation and separation of functions between the Managing Authority and other bodies. Member States shall be responsible for ensuring that the systems function effectively throughout the programme period.

Article 4

Managing authority

The managing authority shall in particular be responsible for

- (1) drawing up the programme and submitting this to the Commission for approval;
- (2) ensuring that there is an appropriate secure electronic system to record, maintain, manage and report statistical information on the programme and its implementation required for the purpose of monitoring and evaluation and, in particular, information required to monitor progress towards the defined objectives;
- (3) providing the Monitoring Committee with the information and documents needed to monitor implementation of the programme in the light of its specific objectives;
- (4) drawing up the annual report and, after approval by the Monitoring Committee, submitting it to the Commission;
- (5) ensuring publicity for the programme.

Article 5

Paying agency

- (1) Paying agencies shall be departments or bodies of the Member States responsible for the management and control of expenditure.
- (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 and regular, and properly accounted for. To this end, paying agencies shall comply with minimum conditions for the accreditation with regard to internal environment, control activities, information and communication as well as monitoring as laid down in Annex I.
- (3) Paying agencies shall provide sufficient guarantee for the payments effected by them as well for the information transferred and kept by them that
 - a) the beneficiaries are provided with documents setting out the conditions for support for the individual projects, including the specific requirements concerning the prod-

- ucts or services to be delivered under the project, the financing plan and the time limits for execution;
- b) the beneficiary has the administrative, financial and operational capacity to fulfil the stated conditions for support before approval of a project;
 - c) the co-financed products and services have been delivered and that expenditure declared by the beneficiaries has been paid and that it complies with applicable law, the programme and conditions for support of the project;
 - d) the beneficiaries involved in the implementation of the projects are reimbursed on the basis of eligible expenditure actually incurred, unless standard costs or flat rates are granted,
 - e) effective and proportionate anti-fraud measures are put in place, taking into account the risks identified;
 - f) all applications submitted by the beneficiaries are subjected to management control;
 - g) on-the-spot checks are carried out the frequency and coverage of which is proportionate to the amount of public support to the project and to the level of risk identified;
 - h) the payments made are correct and are recorded completely in the accounts;
 - i) the required documents are submitted in due time and form as stipulated by the Union rules;
 - j) the documents are accessible and are kept in such a manner so as to ensure their longterm integrity, validity and legibility; this also applies to electronic documents in accordance with the Union rules.
- (4) The paying agency is responsible for
- a) drawing up and submitting requests for payment to the Commission and certifying that they result from reliable accounting systems, are based on verifiable supporting documents and have been subject to verifications by the competent authorities;
 - b) ensuring that there is a system which records and stores accounting records for each project in computerised form and which holds all the data required for drawing up requests for payment and accounts, including records of amounts recoverable, amounts recovered and amounts withheld following cancellation of all or part of the contribution to a project or programme;
 - c) maintaining, in computerised form, accounting records of expenditure declared to the Commission and of the corresponding public contribution paid to the beneficiaries;
 - d) keeping an account of amounts recoverable and of amounts withheld following cancellation of all or part of the contribution for a project.
- (5) By 15 February of the year following the financial year concerned, the person in charge of the accredited paying agency shall submit the following documents to the Commission:
- a) the annual accounts for the expenditure effected in carrying out the tasks entrusted to their accredited paying agencies, accompanied by the requisite information for their clearance;
 - b) a management declaration in accordance with Annex II as to the completeness, accuracy and veracity of the accounts and the proper functioning of the internal control systems, based on objective criteria, as well as to the legality and regularity of the underlying transactions;

- c) an annual summary of the final audit reports and of controls carried out, including an analysis of the nature and extent of the deficiencies and of weaknesses in systems identified, as well as corrective action to be taken or planned.
- (6) The deadline of 15 February may be exceptionally extended by the Commission to 1 March at the latest, upon request of the Member State concerned.
- (7) Where more than one paying agency is accredited, the Member State shall designate a public body ("the coordinating body"), to which it shall assign the following tasks:
- a) to collect the information to be made available to the Commission and to send that information to the Commission;
 - b) to take or coordinate, as the case may be, measures with a view to resolving any deficiencies of a common nature and keep the Commission informed of any follow-up action;
 - c) to promote and, where possible, ensure harmonised application of the Union rules.

Article 6

Accrediting body

- (1) Member States shall designate an authority at ministerial level responsible for issuing, reviewing and withdrawing accreditation of paying agencies.
- (2) The accrediting body shall decide on the issuing or, after review, the withdrawal of the accreditation of the paying agency after examination of the accreditation criteria pursuant to Annex I (letter of accreditation). The accrediting body shall inform the Commission of accreditations and withdrawals of accreditations without delay.
- (3) The pre-accreditation review shall cover in particular
- a) the procedures in place for the authorisation and execution of payments;
 - b) the division of duties and the adequacy of internal and external control in respect of measures financed by EAFRD funds;
 - c) the extent to which the procedures and systems in place, including risk-based anti-fraud measures, are capable of safeguarding the Union budget;
 - d) the security of information systems;
 - e) the keeping of accounts and records.
- (4) Where the accrediting body considers that the paying agency does not comply with the accreditation criteria, it shall inform the paying agency of the specific conditions it is required to fulfil before accreditation may be granted. Pending the implementation of any necessary changes in order to fulfil such specific conditions, accreditation may be granted provisionally for a period to be determined taking into account the severity of the problems identified, which shall not exceed 12 months. In duly justified cases, the Commission may, upon request of the Member State concerned, grant an extension of that period.
- (5) Where the accrediting body has determined that an accredited paying agency no longer meets one or more of the accreditation criteria or only meets them in a manner that is liable to hinder the fulfilment of its tasks, the accrediting body shall put the paying agency's accreditation under probation without delay. It shall draw up a plan including actions and deadlines to remedy the deficiencies found within a period to be determined according to the severity of the problems, which shall not exceed 12 months from the date on which the accreditation is put under probation. In duly justified cases, the Commission may, upon request of the Member State concerned, grant an extension of that period.

- (6) The accrediting body shall inform the Commission of its decision to place a paying agency's accreditation under probation, of the plan drawn up and subsequently of the progress in the implementation of such plans.
- (7) If the accreditation is withdrawn, the accrediting body shall without delay accredit another paying agency which fulfils the conditions laid down in Annex I to ensure that payments to beneficiaries are not interrupted.
- (8) Where the Commission finds that the accrediting authority has not complied with its obligations to draw up a corrective action plan or that the paying agency continues to be accredited without having fully implemented such a plan within the determined period, it shall request the accrediting body to withdraw the accreditation of that paying agency unless the necessary changes are made within a period to be determined by the Commission according to the severity of the problems. In such a situation, the Commission may decide to pursue the deficiencies through the conformity clearance procedure.
- (9) The accrediting body shall keep the paying agencies for which it is responsible under constant supervision, on the basis of, in particular, the certificates and reports drawn up by the certification body and shall ensure the follow-up on any deficiencies identified.

Article 7 **Certification body**

- (1) The certification body shall be a public or private audit body designated by the Member State. Where it is a private audit body, and the applicable Union or national law so requires, it shall be selected by the Member State by means of a public tendering process.
- (2) It shall provide an opinion, drawn up in accordance with internationally accepted audit standards, on the completeness, accuracy and veracity of the annual accounts of the paying agency, on the proper functioning of its internal control systems and on the legality and regularity of the expenditure for which reimbursement has been requested from the Commission. That opinion shall also state whether the examination puts in doubt the assertions made in the management declaration.
- (3) Any deficiencies found shall be evaluated as formal or quantifiable deficiencies and/or public procurement errors. By way of this evaluation, discretionary decisions made by the paying agency can only be reviewed with regard to discretionary errors.
- (4) 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.
- (5) The certification body shall organise its work in an effective and efficient manner and conducts its audits within an appropriate time frame whereby it shall take account of the type and time of the transactions for the relevant financial year. The declared expenditure shall be audited based on a representative sample and, as a general rule, on statistical sampling methods. A non-statistical sampling method may be used on the basis of due discretion of the audit authority, in duly justified cases, in accordance with internationally accepted audit standards and in any case where the number of projects for the relevant financial year is insufficient to allow the use of a statistical method. In such cases, the size of the sample shall be sufficient to enable the certification body to draw up a valid audit opinion in accordance with the second subparagraph of article 59 paragraph 5 of the Financial Regulation.
- (6) The materiality threshold for a tolerable error risk shall be four percent.
- (7) The certification body shall draw up:
 - a) an audit opinion in accordance with the second subparagraph of article 59 paragraph 5 of the Financial Regulation;

- b) a control report setting out the main findings of the audits carried out, including findings with regard to deficiencies found in the management and control system, and the proposed and implemented corrective actions.

PART III OBJECTIVES AND PROGRAMME PLANNING

Article 8

Objectives of rural development

- (1) Support for rural development shall contribute to achieving the following objectives:
 - a) improving the quality of life in rural areas / local development / LEADER;
 - b) improving the competitiveness of agriculture;
 - c) sustainable management of natural resources.
- (2) The programmes shall set out how the use of EAFRD funds in accordance with the regional requirements contributes to the pursuit of at least one of these objectives.

Article 9

Programme territory

Each programme shall define the programme territory. Furthermore, the programme may describe other specific regional scenarios within the programme territory for certain purposes.

Article 10

Preparation of programmes, approval procedure and amendment of programmes

- (1) The EAFRD shall be implemented by means of one programme per region. The term of this programme is limited to the period from 01.01.2021 to 31.12.2027. Applications for payment of the EU portion can be submitted to the Commission by 31.03.2030 for all funds applied for and paid to the applicants in this period.
- (2) In a first step, each region shall analyse the current situation, evaluate strengths, weaknesses, opportunities and threats (SWOT) and determine regional objectives on this basis. The number of these objectives should not exceed ten to achieve noticeable effects. The regional objectives shall be provided with a financial budget.
- (3) For the purpose of pursuing the regional objectives,
 - a) measures shall be selected and described;
 - b) procedures for selecting the most appropriate projects, including selection criteria, shall be described in terms of investment measures except LEADER;
 - c) principles for calculating flat rates shall be described in terms of investment measures to be supported by flat-rate funding;
 - d) framework requirements for LEADER territories, the organisation, strategy as well as the selection and implementation of the projects shall be described in terms of LEADER,
 - e) principles for calculating the future area-related flat rates shall be described in terms of area-related measures.
- (4) Representatives from civil society such as economic and social partners, non-governmental organisations and competent authorities shall be involved in the process of programme preparation in order to achieve the best possible effect when using the EAFRD funds.
- (5) The Commission should receive the draft programme by 31.12.2020 to make maximum use of the period available for implementing the programme. The Commission shall check the programme for compliance with the minimum requirements in accordance with this regulation and grants its approval after the Member State has made any adjustments that may have become necessary. The approval shall cover all programme components.
- (6) Requests to amend a programme in terms of the components listed in paragraph 3 may be submitted once a year and for the last time by 30.09.2028. All other adjustments shall not be subject to the Commission's approval. The approval shall be deemed granted three months after receipt of the request to amend the programme by the Commission.

Article 11

Structure of programmes

The programme shall contain all information required for its implementation:

- a) competent bodies with contact persons (managing authority, paying agency, certification body, authorisation authorities);
- b) definition of specific terms (e.g. rural area) unless already defined in this regulation;
- c) socio-economic analysis / consideration of strengths, weaknesses, opportunities and threats (SWOT);
- d) regional objectives, if necessary, with prioritisation;
- e) description of the measures selected;

- f) description of the support effects to be expected and, insofar as possible, their corroboration by meaningful target indicators which are to be limited to a reasonable number;
- g) description of the project selection procedures including selection criteria for investment measures except LEADER. Apart from the operational procedure, this description shall contain at least selection criteria with a points rating allowing the ranking of the applications as well as adequate thresholds;
- h) description of possible area-related measure options and calculation of area-related flat rates;
- i) description of investment measures with flat-rate support and the calculation used for the flat rates;
- j) description of LEADER procedure;
- k) amount of EAFRD contribution to the programme (rate of assistance);
- l) information about the allocation of the available budget of EAFRD funds to the regional objectives with a brief justification (e.g. prioritisation, empirical values from previous funding periods);
- m) information about the involvement of partners in the preparation of the programme;
- n) description of public relation measures.

Article 12

LEADER

- (1) At least five percent of a programme's total EAFRD budget shall be provided for LEADER.
- (2) Neither national authorities nor any single interest group may represent more than 49 percent of the voting rights in the project selection committee.

Article 13

Monitoring Committee

- (1) Within three months of the Commission's approval of the programme, the managing authority shall set up a Monitoring Committee. The Monitoring Committee shall draw up and adopt its rules of procedure.
- (2) The managing authority shall decide on the composition of the Monitoring Committee in accordance with article 10 paragraph 4.
- (3) The list of the members of the Monitoring Committee shall be published.
- (4) The Monitoring Committee shall be chaired by a representative of the managing authority.
- (5) The Commission shall participate in the work of the Monitoring Committee in an advisory capacity.
- (6) The Monitoring Committee shall meet at least once a year. It shall review and approve
 - a) annual reports;
 - b) progress evaluation;
 - c) programme amendments.

Article 14

Evaluation

A progress evaluation shall be submitted for each programme in 2025 on the basis of which regional objectives and measures can be adjusted.

PART IV FUNDING PROCEDURE

Article 15

Undiminished payment

The payments shall be granted to the beneficiaries in full.

Article 16

Applications for support, applications for payment and other declarations

- (1) The Member States shall provide for appropriate procedures for the submission of applications for support and payment under rural development measures.
- (2) The application for support or payment shall contain all information necessary to establish eligibility for support, in particular:
 - a) the identity of the beneficiary;
 - b) details of the payments and/or rural development measures concerned;
 - c) in the case of area-related measures, all particulars permitting the unambiguous identification of the areas expressed in hectares to two decimal places, their location and, where required, further specifications on the use of the area;
 - d) where appropriate, any supporting documents needed to establish the eligibility for the scheme and/or measure concerned;
 - e) a statement by the beneficiary that he is aware of the conditions pertaining to the project in question.
- (3) For the purpose of the identification of all agricultural parcels on the holding and/or non-agricultural land, the land parcel identification system used for direct payments under the European Agricultural Guarantee Fund (EAGF) can be used in the case of area-related measures.
- (4) An application for support or an application for payment or any other declaration may be corrected or totally or partially withdrawn in writing at any time. The correction must be verifiable in time terms. Such withdrawal shall be recorded by the competent authority.
- (5) Where the competent authority has already informed the beneficiary of any cases of non-compliance in the documents submitted or where the competent authority has given notice to the beneficiary of its intention to carry out an on-the-spot check or where an on-the-spot check reveals any non-compliance, withdrawals or corrections shall not be authorised in respect of the parts of those documents affected by the non-compliance.
- (6) Withdrawals shall put beneficiaries into the position they were in before the submission of the documents in question or part thereof.
- (7) Applications for support or applications for payment and any supporting documents provided by the beneficiary may be corrected and adjusted at any time after their submission in cases of obvious errors recognised by the competent authority on the basis of an overall assessment of the particular case and provided that the beneficiary acted in good faith.
- (8) The competent authority may recognise obvious errors only if they can be easily identified via a clerical check of the information given in the documents referred to in the first paragraph.

Article 17

Selection of projects

- (1) For investment measures, except LEADER, projects shall be selected in accordance with the selection procedures and selection criteria described in the programme. Selection criteria shall aim to ensure the targeting of measures in accordance with regional objectives, better use of financial resources and equal treatment of applicants. In defining and applying selection criteria the principle of proportionality shall be taken into account in relation to the size of the project.
- (2) For LEADER, the Local Action Group (LAG) shall define the selection criteria for projects on the basis of the framework requirements described in the programme in the respective LEADER development strategy (LDS). They are approved by the managing authority in connection with LDS approval.
- (3) The Member State authority or LAG responsible for the selection of projects shall ensure that projects are selected in accordance with the selection criteria and a transparent and well documented procedure. Upon publication of the call for applications, the relevant applicable selection criteria, thresholds, financial budget and deadline by which applications to be allocated to a selection of common projects have to be submitted are published too.
- (4) Where appropriate, the beneficiaries may be selected on the basis of calls for proposals, applying economic and environmental efficiency criteria.

Article 18

Eligible expenditure and payments

- (1) The eligibility of expenditure shall be determined on the basis of national rules, taking the budgetary principles into due account. Where a payment is granted on the basis of standard costs and/or flat rates or additional costs and income losses, Member States shall ensure that the relevant calculations are adequate and accurate and established in advance on the basis of a fair, equitable and verifiable calculation.
- (2) Expenditure shall be eligible for an EAFRD contribution only where incurred for projects decided upon by the managing authority of the programme in question or under its responsibility in accordance with the selection criteria.
- (3) With the exception of general costs such as feasibility studies and planning costs, only expenditure incurred after submission of an application to the competent authority shall be considered eligible for investment projects. Alternatively, in cases of emergency measures due to natural disasters, the eligibility of expenditure may start from the date when the natural disaster occurred.
- (4) Payments by beneficiaries shall be supported by invoices and documents proving payment. Where this cannot be done, payments shall be supported by documents of equivalent probative value, except for standard costs and flat rates.

Article 19

Earmarking period

- (1) A project comprising investment shall repay the contribution from the EAFRD fund if within five years of the final payment to the beneficiary, it is subject to any of the following:
 - a) a cessation or relocation of a productive activity outside the programme area;
 - b) a change in ownership which gives to a beneficiary an undue advantage, or
 - c) a substantial change affecting the project's nature, objectives or implementation conditions which would result in undermining its original objectives.

- (2) Sums unduly paid in respect of the project shall be recovered by the Member State in proportion to the period for which the requirements have not been fulfilled.
- (3) This shall not apply to contributions to a project which undergoes cessation of a business activity due to a non-fraudulent bankruptcy.

Article 20
Restriction of payment

Without prejudice to any specific provisions, no payment shall be made in favour of beneficiaries for whom it is established that they artificially created the conditions required for obtaining such payments with a view to obtaining an advantage contrary to the objectives of the measure concerned.

Article 21
No double funding

Expenditure financed from the EAFRD shall not be the object of any other funding.

Article 22
Checks

- (1) Member States shall set up efficient management and control systems in order to ensure compliance with the legislation aimed at minimising the risk of financial damage to the Union.
- (2) Member States shall carry out checks to verify that the conditions for granting Union financing are met. Those checks shall consist of both administrative and on-the-spot checks.

Article 23
Administrative checks

- (1) Administrative checks on applications for support shall ensure the compliance of the project with applicable obligations established by Union or national law or by the rural development programme, including those of public procurement, state aid or other obligatory standards and requirements. The checks shall in particular include verification of:
 - a) the eligibility of the beneficiary;
 - b) the eligibility criteria, commitments and other obligations of the project for which support is requested;
 - c) compliance with the selection criteria;
 - d) the eligibility of the costs of the project, including compliance with the category of costs or calculation method to be used if the project or part thereof is granted standard costs or flat rates;
 - e) the plausibility of the costs declared unless these are standard costs or flat rates. The costs shall be evaluated using a suitable evaluation system such as reference costs, a comparison of different offers or an evaluation committee;
 - f) the identification and plausibility of the area's size in accordance with the conditions of the measures for area-related measures.
- (2) Administrative checks on applications for payment shall include in particular, and where appropriate for the application in question, verification of:
 - a) the completed project compared with the project for which the application for support was submitted and approved;
 - b) the costs incurred and the payments made unless standard costs or flat rates are concerned.

- (3) Administrative checks on investment projects shall include at least one visit to the project or the investment site to verify the realisation of the investment. However, the competent authority may decide not to carry out such visits for duly justified reasons. This applies in particular to small investments or in the case of the selection of the project for an on-the-spot check.
- (4) For the purpose of the identification of all agricultural parcels on the holding and/or non-agricultural land, the land parcel identification system used for direct payments under the European Agricultural Guarantee Fund (EAGF) can be used in the case of area-related measures. The competent authority may make use of remote sensing and Global Navigation Satellite System (GNSS) techniques where possible. The competent authority shall carry out physical inspections in the field in the event that photo-interpretation of ortho-images (satellite or aerial) do not provide results that would permit definitive conclusions to be drawn to the satisfaction of the competent authority concerning the eligibility or the correct size of the area that is subject of administrative or on-the-spot checks.

Article 24

On-the-spot checks

- (1) Member States shall ensure a minimum level of on-the-spot checks carried out for three percent of the projects per measure. They may increase this minimum level if this is considered necessary from an efficient risk management point of view.
- (2) The minimum level shall be increased for at least one year to five percent of the projects per measure if serious deficiencies exist in the management and control system of the measure affected. The Commission shall be informed about the specific increase and the time schedule by means of the corrective action plan drawn up by the Commission's accrediting body. After expiry of the fixed deadline, Member States may reduce the minimum level to at least three percent again if the management and control systems function properly and the error rates remain at an acceptable level.
- (3) The samples for checks shall be drawn from the entire population of applicants and shall include:
 - a) a number of applicants randomly selected in order to obtain a representative error rate;
 - b) a number of applicants selected on the basis of a risk analysis carried out according to defined criteria.
- (4) On-the-spot checks may be announced provided that it does not interfere with their purpose or effectiveness. Any announcement shall be strictly limited to the minimum time period necessary and shall not exceed 14 days. The duration of on-the-spot checks shall be strictly limited to the minimum time period necessary.
- (5) On-the-spot checks shall verify that the use or intended use of the project is consistent with the use described in the application for support and for which the support was granted. On-the-spot checks shall verify compliance with all eligibility criteria, commitments and other obligations of the measure for which a beneficiary has been selected. Where certain eligibility criteria, commitments and other obligations can only be checked during a specific time period, the on-the-spot checks may require additional visits at a later date. In such case, the on-the-spot checks shall be coordinated in such a way as to limit the number and the duration of such visits to one beneficiary to the minimum required. For the purposes of area-related measures, remote sensing may be used as an alternative.
- (6) The competent authority shall draw up a report for each on-the-spot check carried out. The report shall indicate in particular:
 - a) the projects and applications for support and/or payment checked;
 - b) the persons present;

- c) whether notice was given to the beneficiary of the visit and, if so, the period of prior notice;
 - d) the results of the checks and, where applicable, any particular observations.
- (7) The beneficiary shall be given the opportunity to sign the report during the check, to attest the beneficiary's presence at the check and to add observations. Where Member States make use of a control report established by electronic means during the check, the competent authority shall provide for the possibility of an electronic signature by the beneficiary or the control report shall be sent without delay to the beneficiary giving him the opportunity to sign the report and to add any observations. Where any non-compliance is found, the beneficiary shall receive a copy of the control report.
- (8) Where appropriate, all on-the-spot checks provided for agricultural payments and rural development funding under European Union law applying to the same beneficiary shall be carried out at the same time.
- (9) An application for support or payment shall be rejected if the beneficiary or his representative prevents an on-the-spot check from being carried out, except in cases of force majeure or in exceptional circumstances.

Article 25

Earmarking checks

- (1) Earmarking checks shall be carried out on investment projects to verify the compliance with the obligations applicable during the earmarking period or detailed in the rural development programme.
- (2) The earmarking checks shall cover in each calendar year at least one percent of EAFRD projects for investment projects that are still subject to obligations as referred to in paragraph 1 and for which the final payment has been made from the EAFRD. Only checks carried out by the end of the calendar year in question shall be taken into consideration.
- (3) The sample of projects to be checked in accordance with paragraph 1 shall be based on an analysis of the risks and financial impact of different projects. Between 25 and 50 percent of the sample shall be selected randomly.
- (4) The competent authority shall draw up a control report. The details of the control report on the on-the-spot checks set out above shall apply mutatis mutandis.

Article 26

Recovery of undue payments

- (1) If undue payment is made, the beneficiary shall repay the amount in question plus interest calculated in accordance with paragraph 2 where appropriate.
- (2) Interest shall be calculated for the period elapsing between the end of the period for the payment indicated for the beneficiary in the recovery order that should not exceed 60 days and the time of the effective repayment or deduction of the amount in question.
- (3) The rate of interest applicable shall be calculated in accordance with national law but shall not be lower than the interest rate applicable for the recovery of amounts under national provisions.
- (4) The repayment obligation referred to in paragraph 1 shall not apply if the payment was made by error of the competent authority or of another authority and if the error could not reasonably have been detected by the beneficiary.
- (5) However, where the error relates to factual elements relevant to the calculation of the payment concerned, paragraph 4 shall only apply if the recovery order was not communicated within 12 months of the payment.
- (6) On duly justified grounds, Member States may decide not to pursue recovery. A decision to this effect may be taken only in the following cases:
 - a) where the costs already incurred and the likely costs of the recovery total more than the amount to be recovered, which condition shall be considered to have been met if
 - i. the amount to be recovered from the beneficiary in the context of an individual payment for a measure does not exceed EUR 150,
 - ii. the amount of interest to be recovered from the beneficiary in the context of an individual payment for a measure does not exceed EUR 50, or
 - b) where recovery proves impossible owing to the insolvency, recorded and recognised under national law, of the debtor or the persons legally responsible for the irregularity.

Article 27

Force majeure and exceptional circumstances

- (1) If a beneficiary has been unable to fulfill his obligation and/or commitment or comply with the eligibility criteria as a result of force majeure or exceptional circumstances, the Member States shall waive the repayment of the support. In the case of multiannual commitments or payments, reimbursement of the support received in previous years shall not be required and the commitment or payment shall be continued in the subsequent years in accordance with its original duration.
- (2) Cases of force majeure and exceptional circumstances shall be notified in writing to the competent authority, with relevant evidence to the satisfaction of the competent authority, within twenty working days from the date on which the beneficiary or the person entitled through him, is in a position to do so.
- (3) In particular the following cases and circumstances shall be recognised as cases of "force majeure" and "exceptional circumstances":
 - a) death of the beneficiary;
 - b) long-term occupational disability of the beneficiary;
 - c) a severe natural disaster seriously affecting the holding;

- d) the accidental destruction of buildings on the holding that are relevant to the project supported with EAFRD funds;
- e) an epizootic disease or plant disease affecting at least a substantial part of the beneficiary's livestock or plants;
- f) expropriation of the total holding or a large part thereof if this could not have been anticipated on the day on which the commitment was given.

Article 28

Suspension of support

- (1) The paying agency may suspend the support relating to certain expenditure where a non-compliance is detected. The suspension shall be lifted by the paying agency as soon as the beneficiary proves to the satisfaction of the competent authority that the situation has been remedied. The maximum period of suspension shall not exceed three months. The Member States may also set shorter maximum periods depending on the type of project and the effects of the non compliance in question.
- (2) The paying agency may only suspend support where the non-compliance does not prejudice the overall funding purpose of the project and if it can be expected that the beneficiary is able to remedy the situation during the maximum period defined.

Article 29

Exclusion from support

- (1) If it is found that incorrect supporting documents have been provided intentionally, the Member State concerned shall apply appropriate penalties in conformity with its national law. Where such irregularities are found a second time, the beneficiary shall be excluded from funding for a period of at least one year.
- (2) In cases of other intentional non-compliance of considerable scope, severity or duration, the beneficiary shall be excluded from all EAFRD payments in the following calendar year.

Article 30

Additional penalties

Member States may provide additional national penalties with due regard to the principles of deterrence and proportionality to ensure the compliance with control requirements including the respect of notification obligations.

Article 31

Action without fault

However, no penalties shall be applied if the beneficiary can demonstrate to the satisfaction of the competent authority that he is not at fault for the inclusion of the ineligible amount or if the competent authority is otherwise satisfied that the beneficiary concerned is not at fault.

PART V FINANCIAL MANAGEMENT

Article 32

Financial contribution from EAFRD

- (1) The maximum financial contribution from the EAFRD to the programme is laid down in the decision to approve the programme.
- (2) For a given period, a measure may not receive a financial contribution from more than one EU fund at a time.

- (3) When implementing measures, the financial contribution from the EAFRD shall take the form of a non-repayable grant and shall be calculated on the basis of the eligible public expenditure.
- (4) The amounts repaid to the paying agency shall be reallocated to new projects for programme implementation purposes.
- (5) The rate of assistance shall be determined by the region and shall be no more than 75 percent of the eligible public expenditure. Technical assistance shall be financed 100 percent from EAFRD funds.
- (6) In the case of investment in firms, the contribution of the funds shall comply with the ceilings on the rate of aid and on combinations of aid set for state aid.

Article 33

Eligibility

- (1) Expenditure in respect of projects shall be eligible for a contribution from the EAFRD only if these projects form part of the assistance concerned.
- (2) Expenditure may not be considered eligible for a contribution from the EAFRD if it has actually been paid by the beneficiary before the date on which the application for the assistance concerned reaches the Commission. That date shall constitute the starting point for the eligibility of expenditure.
- (3) The final date for the eligibility of expenditure shall be laid down in the decision to grant a contribution from the EAFRD. It shall relate to payments made to the beneficiaries. This deadline may be extended by the Commission at the duly justified request of the Member State.

Article 34

Financial management

(budget commitments, advance, payment procedure)

- (1) Payments may take the form of advance payments, intermediate payments or payments of the final balance. Intermediate payments and payments of the final balance shall relate to expenditure actually paid out by the paying agency to the beneficiaries. These payments shall be based on documents proving payment by the beneficiaries or, in the case of flat rate payments, on the proof that the supported project was realised according to the authorisation.
- (2) When the first commitment is made, the Commission shall make an advance payment to the paying agency. This advance payment shall be seven percent of the contribution from the EAFRD to the programme. In principle, it may be subdivided over no more than two budget years depending on the availability of budget funds. Interest generated on the advance payment shall be posted to the rural development programme concerned and deducted from the amount of public expenditure indicated on the final declaration of expenditure. The total amount of the advance payment shall be cleared before the rural development programme is closed by way of the clearance of accounts.
- (3) The Commission shall pay any contribution from the EAFRD to the paying agency in accordance with the corresponding budget commitments.
- (4) The Commission shall automatically decommit any portion of a budget commitment for a programme that has not been used for the purpose of making advance payments or intermediate payments or for which no proper declaration of expenditure has been presented to it in relation to expenditure incurred by 31 December of the second year following that of the budget commitment. The period for automatic decommitment shall be interrupted for the portion of the commitment for projects which, at the specified date of decommitment, are the subject of legal proceedings or an administrative appeal having suspensory effect, provided that the Commission receives a substantiated notification

from the Member State concerned. The Commission shall in good time inform the Member State and the paying agency whenever there is a risk of the application of automatic decommitment.

- (5) Subject to resource availability, the Commission shall make intermediate payments if the following requirements are complied with:
 - a) transmission of a declaration of expenditure signed by the paying agency and
 - b) transmission of the annual report.
- (6) The combined total of the advance payment and intermediate payments shall not exceed 95 percent of the contribution from the EAFRD to each programme. When the budget ceiling of 95 percent is reached, the Member States shall continue transmitting requests for payments to the Commission.
- (7) Subject to resource availability, the Commission shall pay the final balance if:
 - a) the final report has been presented in due time;
 - b) the last annual account for the last execution year has been cleared and
 - c) the decision of the last clearance of accounts has been taken for the programme.
- (8) The documents needed for this purpose shall be presented to the Commission no later than six months after the final eligibility date of expenditure. The final balance shall be paid no later than six months after the documents have been submitted in due time. Where the documents are not available in full by the end of the given period, the commitment for the final balance shall be automatically decommitted.

Article 35

Conservation periods

- (1) The paying agency shall ensure that all supporting documents regarding expenditure supported by the fund are made available to the Commission and the European Court of Auditors upon request for a period of three years from 31 December following the submission of the accounts in which the expenditure of the project is included, however, at least for the duration of any existing earmarking periods.
- (2) The time period referred to shall be interrupted either in the case of legal proceedings or by duly justified request of the Commission.
- (3) The beneficiary shall be informed of the start date and end date of the time period.
- (4) The documents shall be kept either in the form of the originals, or certified true copies of the originals, or on commonly accepted data carriers (including electronic versions of original documents and documents existing in electronic version only).
- (5) The documents shall be kept in a form which permits the identification of data subjects for as long as is necessary for the purposes for which the data were collected or for which they are further processed.
- (6) The procedure for certification of conformity of documents held on commonly accepted data carriers with the original documents shall be laid down by the national authorities and shall ensure that the versions held comply with national legal requirements and can be relied on for audit purposes.
- (7) Where documents exist in computerised form only, the computer systems used shall meet accepted security standards that ensure that the documents held comply with national legal requirements and can be relied on for audit purposes.

Article 36

Control statistics

- (1) Each year by 15 July, Member States shall notify the Commission of the control data and control statistics covering the previous calendar year and, in particular, data relating to individual beneficiaries for all payments, i.e. applications for support and applications for payment, the results of administrative, on-the-spot and earmarking checks; including the relevant reductions and exclusions.
- (2) Such notification shall take place by electronic means using the technical specifications for the transfer of the control data and control statistics made available to them by the Commission.

Article 37

Accounts, forecasts and declarations of expenditure

- (1) Each paying agency shall keep a set of accounts covering only the expenditure and revenue and the use of the funds made available to it to pay the corresponding expenditure.
- (2) The Member States shall send to the Commission, once per year, by 31 July at the latest, their forecasts of the amounts to be funded by the EAFRD for the financial year. In addition, Member States shall send an updated estimate of their funding requests for the following financial year. Those forecasts shall be sent by means of structured data using SFC2021 information system.
- (3) For each rural development measure, paying agencies shall specify in a declaration of expenditure:
 - a) the amount of eligible public expenditure the paying agency has actually paid during each reference period;
 - b) the additional information on advances paid to beneficiaries;
 - c) the amount recovered during the current period.
- (4) Once the Commission has approved a programme, Member States shall send to the Commission their declarations of expenditure at the following intervals and by the following deadlines:
 - a) by 30 April at the latest in the case of expenditure in the period 1 January to 31 March;
 - b) by 31 July at the latest in the case of expenditure in the period 1 April to 30 June;
 - c) by 31 October at the latest in the case of expenditure in the period 1 July to 30 September;
 - d) by 31 January at the latest in the case of expenditure in the period 1 October to 31 December.
- (5) However, all expenditure paid by paying agencies to the beneficiaries prior to the approval of a programme is made under the Member State's responsibility and shall be declared to the Commission in the first declaration of expenditure following the adoption of the programme concerned. The same rule shall apply mutatis mutandis in case of amendment of a programme.
- (6) Declarations of expenditure shall be entered in the form of structured data by paying agencies in SFC2021 information system.
- (7) Where the Member State concerned fails to respond to the request for additional information within the period set in that request or if 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. Expenditure declared in respect of a period may contain corrections to data declared in respect of the preceding declaration periods of the same financial year.

- (8) Correction of expenditure and earmarked revenue to be charged to the financial year not introduced in the declarations may be corrected only in the annual accounts to be sent to the Commission.
- (9) The Union contribution to be paid in respect of the eligible public expenditure shall be calculated on the basis of the financing plan in force on the first day of the reference period. The calculation shall take account of the corrections to the Union contribution as declared in the declaration of expenditure for that period.
- (10) Where the combined total of the Union contribution paid to the programme exceeds the total programmed for a rural development measure, the amount to be paid shall be reduced to the amount programmed for that measure without prejudice to the ceiling provided. Any Union contribution excluded as a result may be paid later provided that an adjusted financing plan has been submitted by the Member State and accepted by the Commission.
- (11) The Union contribution shall be paid by the Commission, subject to resource availability, into the accounts opened by each Member State.
- (12) Each Member State shall notify the Commission of the account name and numbers in accordance with the format made available to it by the Commission.

Article 38

Clearance of accounts

- (1) The annual accounts shall include:
 - a) the earmarked revenues;
 - b) the expenditure of the EAFRD, by measure and specific contribution rate. The annual statement of expenditure shall also include information on the amounts recovered. Once a programme is closed, any undue payments not recovered, including any interests thereon, shall be deducted from the expenditure of the financial year in question;
 - c) a table of differences by measure, specific contribution rate and focus area, between the expenditure and the earmarked revenues declared in the annual accounts and that declared for the same period in the documents, accompanied by an explanation for every difference;
 - d) a table of the undue payments yet to be recovered by the end of the financial year as a consequence of irregularities, including any penalties provided for by the applicable sectoral Union rules and the interest thereon, following the model set out in Annex III to this Regulation;
 - e) an extract from the debtors ledger of the amounts to be recovered and credited to the EAFRD fund, other than those aforementioned, including any penalties and interest thereon, following the model set out in Annex IV to this Regulation;
 - f) the closing balance at the end of the financial year of unused/uncleared cumulated advances paid by the Member States to the beneficiaries, detailed for the EAFRD by measure.
- (2) Form and content of the accounting information shall be those laid down in Annex V. The accounting information shall be used by the Commission for the sole purpose of:
 - a) carrying out its functions in the context of the clearance of accounts;
 - b) monitoring development and providing forecasts in the agricultural sector.
- (3) The European Court of Auditors and the European Anti-Fraud Office (OLAF) shall have access to that information for the purpose of carrying out their duties.

- (4) Any personal data included in the accounting information collected shall only be processed for the purposes specified. In particular, if accounting information is used by the Commission for the purpose of monitoring developments and providing forecasts in the agricultural sector, the Commission shall make such data anonymous and process it in aggregated form only. The Commission shall ensure that the accounting information is kept confidential and secure.

Article 39

Conformity clearance

- (1) In order to determine what amounts are to be excluded from Union financing, when finding that expenditure has not been incurred in conformity with the programme provisions approved, the Commission shall use its own findings and shall take into account the information made available by the Member States, provided that the latter information is provided within the time limits set by the Commission in the framework of the conformity clearance procedure carried out in conformity with this article.
- (2) Any deficiencies found shall be evaluated as formal or quantifiable deficiencies and/or public procurement errors. By way of this evaluation, discretionary decisions made by the paying agency can only be reviewed with regard to discretionary errors.
- (3) When, as a result of any inquiry, the Commission considers that expenditure was not effected in compliance with the programme provisions approved, it shall communicate its findings to the Member State concerned, specifying the corrective measures needed to ensure future compliance with those rules, and indicating the provisional level of financial correction which at that stage of the procedure it considers corresponds to its findings. That communication shall also schedule a bilateral meeting within four months after expiry of the period for reply by the Member State. The communication shall make reference to this Article.
- (4) The Member State shall reply within two months of receipt of the communication. In its reply the Member State shall have the opportunity, in particular, to:
 - a) demonstrate to the Commission that the actual extent of the non-compliance or the risk for the fund is less than that indicated by the Commission;
 - b) inform the Commission of the corrective measures it has undertaken to ensure compliance with Union rules and the effective date of their implementation.
- (5) In exceptional cases, the Commission may, upon reasoned request of the Member State, authorise an extension of the two month period by a maximum of two months. The request shall be sent to the Commission before the expiry of that period.
- (6) If the Member State considers that a bilateral meeting is not required, it shall inform the Commission accordingly in its reply to the communication mentioned above.
- (7) In the bilateral meeting both parties shall endeavour to come to an agreement as to the measures to be taken as well as to the evaluation of the gravity of the infringement and of the financial damage caused to the Union budget.
- (8) The Commission shall within 30 working days of the bilateral meeting draw up the minutes and send them to the Member State. The Member State may send its observations to the Commission within 15 working days of receipt of the minutes.
- (9) The Commission shall within six months of sending the minutes of the bilateral meeting formally communicate its conclusions to the Member State on the basis of the information received in the framework of the conformity clearance procedure. That communication shall evaluate the expenditure to be excluded from Union financing.
- (10) Where the Member State has made use of the conciliation procedure, the Commission shall communicate its conclusions to the Member State no later than six months after:
 - a) the receipt of the Conciliation Body report or

- b) the receipt of additional information from the Member State within the deadline set.
- (11) When evaluating the expenditure to be excluded from Union financing, the information communicated by the Member State after the Commission's formal communication, may only be taken into account:
- a) where it is necessary to avoid the gross overestimation of the financial damage caused to the Union budget and
 - b) if the late transmission of the information is duly justified by external factors.
- (12) The Commission, after having communicated its conclusions to the Member States, shall adopt, where appropriate, one or more decisions in order to exclude from Union financing such expenditure as is affected by the non-compliance with Union rules. The Commission may pursue consecutive conformity clearance procedures until the Member State has actually implemented the corrective measures.
- (13) As regards the EAFRD, the deduction of the amounts excluded from Union financing shall be made by the Commission from the payment for which the declaration of expenditure is submitted by the Member State after the decision has been adopted. However, at the Member State's request and after consultation of the Committee on the Agricultural Funds, the Commission may adopt a decision setting a different date for the deductions or authorising their reimbursement in instalments where this is warranted by the materiality of the deductions included.
- (14) In duly justified cases to be notified to the Member States concerned, the Commission may extend the time periods.
- (15) The Commission may decide not to start or pursue a conformity clearance inquiry where it expects that the possible financial correction, for the non-compliance identified as a result of an inquiry, would not exceed EUR 100,000 and two percent of the relevant expenditure or the amounts to be recovered.

Article 40

Conciliation body

- (1) A conciliation body shall be established to perform the following tasks:
- a) to examine any matter referred to it by a Member State which has received a formal communication from the Commission, including an evaluation of expenditure which the Commission intends to exclude from Union financing;
 - b) to evaluate the divergent positions of the Commission and the Member State concerned;
 - c) at the end of examination, to draw up a report on the result of its evaluation as the decision of the conciliation body.
- (2) The Conciliation Body shall be composed of five members from different Member States selected among eminent persons offering every guarantee of independence and who are highly qualified in matters regarding the financing of the common agricultural policy, including rural development, or in the practice of financial audit.
- (3) The chairperson, the members and the substitute members shall be appointed by the Commission for an initial term of office of three years after consultation of the Committee on the Agricultural Funds. The term of office may be renewed for a year at a time only, with the Committee on the Agricultural Funds being informed. However, if the chairperson to be appointed is already a member of the Conciliation Body, the initial term of office as chairperson shall be three years.
- (4) The names of the chairperson, the members and the substitute members shall be published in the "C" series of the Official Journal of the European Union. After expiry of the

- term of office, the chairperson and the members shall remain in office until they are replaced or their term is renewed.
- (5) The term of office of a member who no longer meets the conditions required for the accomplishment of that member's duties with the Conciliation Body or who, for whatever reason, is unavailable for an indeterminate period may be terminated by the Commission after consultation of the Committee on the Agricultural Funds.
 - (6) In that case, the member concerned shall be replaced for the remainder of the period for which that member was appointed by a substitute member, with the committee of the Agricultural Funds being informed.
 - (7) If the chairperson's term of office is terminated, the member who is to perform the chairperson's duties for the remainder of the period for which the chairperson was appointed shall be appointed by the Commission after consultation of the Committee on the Agricultural Funds.
 - (8) The members of the Conciliation Body shall carry out their duties independently, neither seeking nor accepting instructions from any government or organisation. The members shall not take part in the work of the Conciliation Body or sign a report if, in a previous office, they have been personally involved in the matter at issue.
 - (9) The Conciliation Body shall meet at the headquarters of the Commission. The chairperson shall prepare and organise the work. In the chairperson's absence, the most senior member shall take the chair. The secretariat of the Conciliation Body shall be provided by the Commission. Reports shall be adopted by an absolute majority of members present, the quorum for deliberations being three. The reports shall be signed by the chairperson and members who have taken part in the deliberations and shall be co-signed by the secretariat.
 - (10) A Member State may refer a matter to the Conciliation Body within 30 working days of receipt of the Commission's formal communication by sending a reasoned request for conciliation to the secretariat of the Conciliation Body. The procedure to be followed and the address of the secretariat shall be notified to the Member States through the Committee on the Agricultural Funds.
 - (11) A request for conciliation shall only be admissible where the amount envisaged to be excluded from the Union financing according to the Commission's communication either:
 - a) exceeds EUR one million or
 - b) represents at least 25 percent of the Member State's total annual expenditure under the budget items concerned.
 - (12) In addition, if during the preceding discussions, the respective Member State claimed and demonstrated that the matter is one of principle relating to the application of Union rules, the chairperson of the Conciliation Body may declare a request for conciliation to be admissible. However, such a request shall not be admissible if it relates solely to a matter of legal interpretation.
 - (13) The Conciliation Body shall conduct its investigations as informally and promptly as possible, basing itself solely on the evidence in the given file and giving the Commission and the national authorities concerned a fair hearing.
 - (14) The Conciliation Body shall justify its decision within four months of a case being referred to it (report). The decision shall be binding for the Commission.
 - (15) The report shall be sent to the following bodies:
 - a) the Member State concerned;
 - b) the Commission;

- c) the other Member States within the framework of the Committee on the Agricultural Funds.

Article 41

Single-audit principle

- (1) For programmes for which the Commission concludes that the opinion of the certification body is reliable, it shall agree with the certification body to limit the Commission's own on-the-spot checks to audit the work of the certification body, unless there is evidence of deficiencies in the work of the certification body for a budgetary year for which the accounts have been accepted by the Commission.
- (2) The Commission may, for the purpose of assessing the work of the certification body, review the audit trail of the certification body or take part in the on-the-spot checks of the certification body, and, where, in accordance with internationally accepted audit standards, it is necessary for the purpose of obtaining assurance as to the effective functioning of the certification body, the Commission may carry out audits of projects.

PART VI EFFECTIVENESS OF ASSISTANCE

Article 42

Annual report, final report

- (1) By 30 June 2023 and by 30 June of each subsequent year until and including 2029, the Member State shall submit to the Commission an annual report on implementation of the programme in the previous calendar year. The report submitted in 2023 shall cover the calendar years 2021 and 2022.
- (2) The annual report to be submitted in 2030 shall contain a summary of the total funding period.
- (3) The reports shall be drawn up according to the layout shown in Annex IV and shall be approved by the Monitoring Committee before being sent to the Commission.
- (4) Within two months of receipt of an annual report, the Commission shall inform the Member State of any necessary adjustments to be made. If no such information is sent, the report shall be considered accepted. In the case of a final report, the Commission shall answer within five months of receipt of the report.

Article 43

Coherence and complementarity between the funds

EAFRD funding shall supplement measures taken on the regional and local level (complementarity) and thus integrate the European objectives into these measures (coherence). The programmes shall explain what is done to prevent one and the same project from being supported by different EU funds, exclude double financing in general and avoid overcompensation. Furthermore, the programme shall describe what is done to ensure that support from EU funds and from national public funds complement each other in a sensible way and thus contribute to synergies.

Article 44

State aid provisions

- (1) Articles 107, 108 und 109 TFEU shall not apply to payments within the scope of Article 42 TFEU. Articles 107, 108 and 109 TFEU shall apply to other measures of the Member States in terms of rural development.
- (2) Payments made by Member States in relation to measures falling within the scope of Article 42 TFEU and intended to provide additional financing for rural development for which Union support is granted at any time during the programme planning period, shall

be included by Member States in the rural development programmes and, where they comply with the criteria under this regulation, shall be approved by the Commission.

Article 45 **Publicity**

The Managing Authority shall take appropriate measures to inform potential beneficiaries about funding opportunities provided by the EAFRD. The EU emblem and EAFRD logo should at least be used to make potential beneficiaries aware of the programme.

Article 46 **Transparency**

- (1) By 31 May of each year for the previous year, Member States shall ensure publication of the beneficiaries of the EAFRD on a special website after payment has been made by providing the following information:
 - a) the first name and the surname where the beneficiary is a natural person;
 - b) the full legal name as registered where the beneficiary is a legal person with an autonomous legal personality pursuant to the legislation of the Member State concerned;
 - c) the full name of the association as registered or otherwise officially recognised where the beneficiary is an association of legal persons without an own legal personality;
 - d) the municipality where the beneficiary is resident or is registered and, where available, the postal code or the part thereof identifying the municipality;
 - e) the amounts of payment corresponding to each measure financed by the funds received by each beneficiary in the financial year concerned in Euro or in the national currency (total amount of public payments and broken down into EAFRD funds and national co-financing);
 - f) the nature and the description of the measures financed by either of the funds and under which the payment referred to in point e) is awarded.
- (2) The information shall remain available for two years from the date of the initial publication.
- (3) Member States shall inform the beneficiaries concerned in the application forms that their data will be made public and that the data may be processed by the competent authorities of the EU and the Member States for auditing purposes. In accordance with the requirements of Directive 95/46/EC, where personal data is concerned, the Member States shall inform the beneficiaries of their rights under data protection rules and of the procedures applicable for exercising those rights.
- (4) The information to be published shall be made accessible through a search tool allowing the users to search for beneficiaries by either name or municipality or amount received or by measure or by a combination thereof and to extract all the corresponding information as a single set of data. That information shall be provided in the official language or languages of the Member State and/or in one of the three working languages of the Commission.
- (5) The Commission shall set up and maintain a Union website under its central internet address which includes links to the websites of the individual Member States. The Commission shall provide updated internet links according to information sent by the Member States. Member States shall provide the Commission with their websites' Internet addresses as soon as they have been set up as well as any subsequent changes thereof having an influence on the accessibility of their websites from the Union website.

Member States shall nominate a body, by providing its name and address, to be in charge of setting up and maintaining the special website.

- (6) Where the information to be published would, due to the limited number of beneficiaries residing or registered in a given municipality, allow for the identification of a natural person as a beneficiary, the Member State concerned shall publish the next larger administrative entity of which the municipality in question is part of.

Article 47

Electronic information system

- (1) Key information on the projects financed from EAFRD funds and on the beneficiaries shall be recorded and stored electronically.
- (2) The Commission shall make available an appropriate secure electronic information system to enable the secure exchange of data of common interest between the Commission and the Member State.

Article 48

Technical assistance

- (1) At the initiative of the Commission, the EAFRD funds may support the preparatory, monitoring, administrative and technical assistance, evaluation, audit and control measures necessary for implementing this regulation. Up to 0.25 percent of the EAFRD funds may be used for this purpose. 100 percent of the financing shall be from EAFRD funds.
- (2) At the initiative of a Member State, the EAFRD funds may support actions for preparation, management, monitoring, evaluation, information and communication, networking, and complaint resolution as well as control and audit. The EAFRD funds may be used by the Member States to support actions for the reduction of the administrative burden for beneficiaries, including electronic data exchange systems, and actions to reinforce the capacity of Member State authorities and beneficiaries to administer and use the EAFRD funds. The actions in accordance with this paragraph may also relate to preceding and subsequent programming periods.
- (3) Up to five percent of the funds available for a programme may be used for payments in accordance with paragraph 2.

PART VII FINAL PROVISIONS

Article 49

Guidelines of the Commission

Guidelines, work tools or other documents of the Commission having a direct or indirect external effect shall be limited to a minimum in terms of both their number and extent. The documents shall primarily ensure uniform action and take account of this regulation's provisions.

Article 50

Non-retroactivity

- (1) Amendments to the regulations as well as the Commission's guidelines, work tools and other documents with a direct or indirect external effect as well as interpretations of valid provisions by bodies and institutions of the European Union as well as the Commission's certification body and audit bodies and the paying agency may only become effective in the future.
- (2) Retroactivity shall only be permissible in an absolutely exceptional case where there is a strong public interest in retroactivity. The legitimate expectations of those concerned in respect of the certainty of law shall be taken into due account. The possibility of transitional arrangements without penalties shall be taken urgently into consideration.

Article 51
Transitional provisions

- (1) Expenditure relating to legal commitments to beneficiaries undertaken under area-related measures with multi-annual commitment periods in previous programme planning periods shall be eligible for an EAFRD contribution in the 2021-2027 programme planning period for payments to be made:
 - a) between 1 January 2021 and 31 December 2023 if the financial allocation for the measure concerned of the respective programme adopted pursuant to Regulation (EC) No. 1305/2013 has already been used up;
 - b) after 31 December 2023.
- (2) The expenditure referred to in paragraph 1 shall be eligible for an EAFRD contribution in the 2021-2027 programme planning period subject to the following conditions:
 - a) such expenditure is provided for in the rural development programme for the 2014-2020 programme planning period;
 - b) the EAFRD contribution rate to the corresponding measure under this Regulation applies;
 - c) the Member States ensure that the relevant transitional measures are clearly identified through its management and control systems.

Article 52
Entry into force and application

- (1) This Regulation shall enter into force on the day of its publication in the Official Journal of the European Union. It shall apply to applications for support and applications for payment relating to application years or commitment periods starting as from 1 January 2021.
- (2) This Regulation shall be binding in its entirety and directly applicable in all Member States.

Annex I: Paying agency accreditation criteria

1. INTERNAL CONTROL ENVIRONMENT

- i. Existence of an organisational structure covering the functions of a paying agency and the allocation of functions within each of those authorities, ensuring that the principle of separation of functions, where appropriate, is respected;
- ii. Framework for ensuring, in the event of delegation of tasks to other bodies, the definition of their respective responsibilities and obligations, the verification of their capacities to carry out delegated tasks and the existence of reporting procedures;
- iii. Reporting and monitoring procedures for irregularities and for the recovery of amounts unduly paid;
- iv. Plan for allocation of appropriate human resources with necessary technical skills, at different levels and for different functions in the organisation.

2. RISK MANAGEMENT

Taking into account the principle of proportionality, a framework for ensuring that an appropriate risk management exercise is conducted when necessary and in particular, in the event of major modifications to the activities.

3. MANAGEMENT AND CONTROL ACTIVITIES

A. Projects

- i. Procedures regarding applications for payments, appraisal of applications, selection for funding, including instructions and guidance ensuring the contribution of projects to achieving the specific objectives and results of the relevant priority;
- ii. Procedures for management verifications including administrative checks in respect of each application by beneficiaries and on-the-spot checks of projects on the basis of a representative sample;
- iii. Procedures for treatment of applications for reimbursement by beneficiaries and authorisation of payments;
- iv. Procedures for a system to collect, record and store in computerised form data on each project, including, where appropriate, data on individual participants and to ensure that the system's security is in line with internationally accepted standards;
- v. Procedures for putting in place effective and proportionate anti-fraud measures;
- vi. Procedures to ensure an adequate audit trail and archiving system;
- vii. Procedures to draw up the management declaration of assurance, report on the controls carried out and weaknesses identified and the annual summary of final audits and controls;
- viii. Procedures to ensure the provision to the beneficiary of documents setting out the conditions of support for each project.

B. Certification

- i. Procedures for certifying intermediate payment applications to the Commission;
- ii. Procedures for drawing up the accounts and certifying that they are true, complete and accurate and that the expenditure complies with applicable law taking into account the results of all audits;
- iii. Procedures for ensuring an adequate audit trail by maintaining accounting records including amounts recoverable, recovered and withdrawn for each project, in computerised form;
- iv. Procedures, where appropriate, to ensure that the paying agency receives adequate information on the verifications carried out and the results of the audits carried out.

4. Monitoring

- i. Procedures on the fulfilment of the responsibilities of the paying agency for monitoring the results of the administrative checks and on-the-spot checks before submitting requests for payment to the Commission.

- ii. Procedures for separate evaluations via an internal audit service of the paying agency. The internal audit service shall be independent of the paying agency's other departments and shall report to the paying agency's director. The internal audit service's work shall be performed in accordance with internationally accepted standards, shall be recorded in working papers and shall result in reports and recommendations addressed to the paying agency's top management. Verifications may be limited to selected measures and to samples of transactions provided that an audit plan ensures that all significant areas, including the departments responsible for authorisation, are covered over a period not exceeding five years.

Annex II: Statement of management

I the undersigned, ..., Director of the Paying Agency ..., herewith present the accounts for this Paying Agency for the financial year 01/01/xx to 31/12/xx+1.

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

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

— The system that I use provides reasonable assurance on the legality and regularity of the underlying transactions and ensures that the eligibility of applications and, for rural development, the payment procedure, are managed, controlled and documented in conformity with Union rules.

Furthermore, I confirm that effective and reasonable anti-fraud measures are in place that take account of the risks identified.

This 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

Annex III: Sample table indicating irregularities and the status of recoveries

...

Annex IV: Extract from the debtors' ledger

...

Annex V: Annual accounts (accounting records; X list)

Annex VI: Content and structure of annual reports

All annual and final implementation reports shall include the following information:

- a) any change in general conditions which is of relevance to the implementation of the assistance, in particular the main socio-economic trends, changes in national, regional or sectoral policies and, where applicable, their implications for the mutual consistency of assistance from the different funds and consistency between fund assistance and that from other financial instruments;
- b) the progress in the implementation of measures in relation to their specific targets, with a quantification, wherever and whenever they lend themselves to quantification, of the indicators at the appropriate level;
- c) the financial implementation of the assistance, summarising for each measure the total expenditure actually paid out by the paying agency and a record of the total payments received from the Commission and quantifying the financial indicators; financial implementation in the areas receiving transitional support shall be presented separately in respect of each priority;
- d) the steps taken by the managing authority and the Monitoring Committee to ensure the quality and effectiveness of implementation, in particular:
 - i) monitoring, financial control and evaluation measures, including data collection arrangements;
 - ii) a summary of any significant problems encountered in managing the assistance and any measures taken, including action on recommendations for adjustments or requests for corrective measures;
 - iii) the use made of technical assistance;
 - iv) the measures taken to ensure publicity for the assistance;
- e) the steps taken to ensure compatibility with Union policies and to ensure coordination of all EU structural assistance;