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DISCLAIMER

This working document has been prepared by DG AGRI in order to present the modalities as regards reimbursement of appropriations carried over in relation to financial discipline.

These interpretations do not prejudice any decision by the European Court of Justice. In the event of a dispute involving Union law it is, under the Treaty on the Functioning of the European Union, ultimately for the European Court of Justice to provide a definitive interpretation of the applicable Union law.

Subject: Reimbursement of appropriations carried over in relation to financial discipline

In accordance with the articles 169(3) of the Financial Regulation (EU) No 966/2012 (hereafter FR) and 26(5) of Regulation (EU) No 1306/2013 (hereafter HZR), if non-committed appropriations remain in the EAGF budget at the end of a financial year, they shall be carried forward to the following financial year and shall finance the reimbursement for the beneficiaries subject to financial discipline reduction.

This working document describes the modalities of the reimbursement of appropriations carried over (hereinafter 'reimbursement of financial discipline') to be applied by the Commission and by the Member States.

LEGAL BASIS

REGULATION (EU, EURATOM) No 966/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 25 October 2012

on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (hereafter FR)

Art 169(3)

Non-committed appropriations relating to the actions referred to in Article 3(1) of Regulation (EC) No 1290/2005 may be carried over to the following financial year only.

Such carryover shall not exceed, within a limit of 2 % of the initial appropriations, the amount of the adjustment of direct payments as referred to in Article 11 of Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, and which was applied during the preceding financial year.

Appropriations which are carried over shall be returned exclusively to the budgetary lines which cover the actions referred to in point (c) of Article 3(1) of Regulation (EC) No 1290/2005.

Such carryover may lead to an additional payment only to the final recipients who were subject, in the preceding financial year, to the adjustment of direct payments as referred to in Article 11 of Regulation (EC) No 73/2009.

The carryover decision shall be taken, by 15 February of the year to which the carryover is being made, by the Commission, which shall inform the European Parliament and the Council thereof.

REGULATION (EU) No 1306/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 17 December 2013

on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (hereafter HZR)

Art 26(5)(6)(7)

5. By way of derogation from the fourth subparagraph of Article 169(3) of Regulation (EU, Euratom) No 966/2012, Member States shall reimburse the appropriations carried over in accordance with Article 169(3) of Regulation (EU, Euratom) No 966/2012 to the final recipients who are subject, in the financial year to which the appropriations are carried over, to the adjustment rate.

The reimbursement referred to in the first subparagraph shall only apply to final beneficiaries in those Member States where financial discipline applied in the preceding financial year.

6. The Commission may adopt implementing acts, laying down the terms and conditions applicable to appropriations carried over in accordance with Article 169(3) of Regulation (EU, Euratom) No 966/2012 in order to finance the expenditure referred to in Article 4(1)(b) of this Regulation. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 116(2).

7. When applying this Article, the amount of the reserve for crises in the agricultural sector referred to in Article 25 shall be included in the determination of the adjustment rate. Any amount not made available for crisis measures by the end of the financial year shall be disbursed in accordance with paragraph 5 of this Article.

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1. INTRODUCTION

Under the terms of Article 26(1) HZR, in the context of the annual budgetary procedure, the financial discipline mechanism shall be applied when the budgetary forecast for market related expenditure and direct payments financed under the sub-ceiling of Heading 2 set out in the MFF Regulation (EU, Euratom) No 1311/2013 indicates that the applicable annual ceiling will be exceeded.

Moreover, in accordance with Article 25 HZR for the period 2014-2020 the reserve for crises in the agricultural sector shall be established annually by applying, at the beginning of each year, a reduction to direct payments with the financial discipline mechanism.

In the event the crisis reserve does not need to be activated in the financial year, or it is not fully utilised, or in any other case when at the end of the financial year there are non-committed appropriations remaining in the EAGF budget for shared management, the amount of financial discipline applied shall be reimbursed to the extent of available remaining appropriations.

In accordance with Article 169(3) FR and Article 26(5) of HZR, Member States shall reimburse the appropriations carried over from the budget of one financial year to the following to the final recipients who are subject, in the financial year to which the appropriations are carried over, to the adjustment rate. The above mechanism implies that at the end of a financial year in which financial discipline is applied to direct payments, i.e. in the context of MFF 2014-2020 on an annual basis, the reimbursement of remaining appropriations to the final recipients must be effected by the Member States.

Article 26(6) HZR determines that the Commission may adopt implementing acts, laying down the terms and conditions applicable to these appropriations carried over. These acts shall be adopted in accordance with the advisory committee procedure¹.

2. THE LEGAL FRAMEWORK

In view of the empowerment in Article 26(6) HZR as regards the carry-over of the appropriations in relation to financial discipline, the Commission adopts a Commission Implementing Regulation setting:

- the amounts available to each Member State for the payments to beneficiaries in respect of reimbursement of financial discipline in accordance with art 26(5) HZR;
- the final eligibility date for this expenditure.

¹ For financial discipline applied in financial year 2014, Regulation (EU) No 1259/2014 defined the reimbursement in financial year 2015

3. THE PROCEDURE APPLIED TO ESTABLISH THE AMOUNTS TO BE REIMBURSED

The provisions in the basic acts (FR and HZR) enable the Commission to adopt implementing acts that would allow for the reimbursement of financial discipline. The total amount of the reimbursement is limited to the lowest of the following amounts:

- 1) the amount of financial discipline applied (i.e. actually deducted from direct payments) in relation to the preceding financial year (year N-1); or
- 2) the amount of non-committed appropriations in the EAGF budget in the lines financing actions under shared management, that is available for carry-over at the end of financial year N-1; or
- 3) 2% of the initial EAGF budget appropriations for actions under shared management in year N-1.

3.1. Estimated amount of the carry-over

The final amount of the carry-over of non-committed appropriations in the EAGF budget will only be decided with a Commission Implementing Decision by 15 February of the year to which the carry-over is made².

In order to limit the administrative burden for Member States, the intention is to provide Member States with the amounts available for reimbursement of financial discipline before 1 December of the preceding year, so that the payment of reimbursement to farmers can be consolidated with the payment of the direct payments starting from 1 December. For that, the Implementing Regulation setting the maximum amounts for this expenditure will precede the Commission Implementing Decision on the carry-over.

The amounts of non-committed appropriations, which will be taken into account for the calculation of the amount available for reimbursement, will be thus provisional. In particular this is due to some remaining uncertainties on the final execution at that time. The calculation will be based on the cumulative amounts of EAGF shared management expenditure communicated by all Member States' in their monthly T104 declarations for the month of October, and it will include estimates of DG AGRI direct expenditure, the feasibility to transfer credits and the possible corrections by DG AGRI until the end of the budgetary year.

Nonetheless the amounts fixed in the Regulation for reimbursement based on the procedure outlined in the previous paragraph will be final and will not be subject to any modifications following information regarding the final execution of the financial year from which a carry-over is made or any reduction effected in the framework of the financial clearance procedure.

3.2. Distribution ratio

The provisional amount of carry-over available for payments will be divided among the Member States using an objective key. This will be based on the actual amount of reduction in respect of financial discipline produced by each Member State as

² In accordance with fifth subparagraph of Article 169(3) of FR

compared to the entire amount of financial discipline collected in the EU in the given financial year. The application of this distribution ratio is necessary to ensure a fair division of the remaining appropriations, as the effective rate of financial discipline generated in the course of a financial year varies between the Member States.

The actual amounts of financial discipline reduction will be derived from all Member States' T104 declarations up to and including the October declaration of the year from which the carry-over takes place. The accuracy of the declarations is a factor contributing to the accuracy of Commission's calculation (see Annex 1 for detailed methodology for the calculation).

3.3. Importance of the October EAGF declaration

It is of the utmost importance that all Member States (including MS not subject to financial discipline) respect the deadline for submitting the October T104 declarations. As from 2015 this deadline is 27 October³. The respect of the deadline and accuracy of the declarations is imperative to ensure a timely adoption and publication of the Commission Implementing Regulation.

4. FINAL ELIGIBILITY DATE FOR PAYING AGENCIES' EXPENDITURE

Article 169(3) of FR determines that "*Non-committed appropriations relating to the actions referred to in Article 3(1) of Regulation (EC) No 1290/2005 may be carried over to the following financial year only*". It is therefore appropriate for the Commission to determine the final eligibility date for the expenditure of the Member States' paying agencies in relation to the reimbursement to beneficiaries subject to financial discipline, taking into account the specific provisions on the agricultural financial year as defined in Article 39 of HZR.

Therefore, it is envisaged to specify in the draft Commission regulation that paying agencies' expenditure in relation to the reimbursement of the appropriations carried over shall only be eligible for Union financing if it has been paid to the beneficiaries before 16 October of the year to which the appropriations are carried over.

In other words, any amounts of reimbursement declared after 16 October of the year to which the appropriations are carried over will be subject to a 100% reduction.

5. REIMBURSEMENT TO THE FARMERS

In accordance with the provisions of the FR and HZR, the management and execution of the reimbursement of the financial discipline to the final beneficiaries is the responsibility of Member States. However, the reimbursement should respect the criteria of equal treatment and should remain proportional to the amount of financial discipline adjustment (see Annex 3 for a calculation example which provides guidelines to Member States in this respect).

³ Article 10 of Regulation (EU) No 908/2014.

Article 26(5) of HZR determines the population of MS and population of beneficiaries that are entitled to receive reimbursement.

5.1. Member States where reimbursement applies

In accordance with Article 26(5) HZR, the reimbursement shall only apply to final beneficiaries in those Member States where financial discipline applied in the preceding financial year.

5.2. Beneficiaries entitled to reimbursement

In accordance with Article 26(5) HZR, the reimbursement in a given financial year is applicable to the final recipients who are subject to financial discipline in that financial year.

This allows the paying agencies to combine in a single payment transaction: (1) the direct payments for calendar year N reduced by the financial discipline rate applicable for the calendar year N and (2) the reimbursement of financial discipline reduced from direct payments for calendar year N-1.

To summarise – all beneficiaries receiving direct payments in calendar year N exceeding the 2 000 EUR threshold will be subject to financial discipline reduction as well as to reimbursement of financial discipline for financial year N-1 subject to availabilities of appropriations carried-over. Please refer to Annex 2 for analysis of examples of the application of reimbursement to various beneficiaries.

6. DECLARATION OF THE REIMBURSEMENTS MADE BY THE MEMBER STATES

The amounts of the actual reimbursements of financial discipline which Member States' Paying Agencies will make to the final beneficiaries during a given financial year should be declared on the specific EAGF budget sub-item under budget article 05 03 09.

ANNEX 1 CALCULATION OF THE KEY FOR DISTRIBUTION OF THE AMOUNT TO BE REIMBURSED

	MS 1					MS 2					.....	MS XX	Total EU
Sub-items subject to FD (over 2000 EUR)	Net Expenditure FY N	% FD	% Red	% LR	Gross DP granted FY N	Net Expenditure FY N	% FD	% Red	% LR	Gross DP granted FY N	.....	.....
05 03 01 XXX ₁	N ₁	Fd	A _x	Lr	$G_1=N_1/(1-Fd-A_x-Lr)$	N ₁	Fd	A _x	Lr	$G_1=N_1/(1-Fd-A_x-Lr)$	.....	.....
05 03 01 XXX ₂	N ₂	Fd	A _y	Lr	$G_2=N_2/(1-Fd-A_y-Lr)$	N ₂	Fd	A _y	Lr	$G_2=N_2/(1-Fd-A_y-Lr)$	.....	.....
05 03 01 XXX ₃	N ₃	Fd	A _z	Lr	$G_3=N_3/(1-Fd-A_z-Lr)$	N ₃	Fd	A _z	Lr	$G_3=N_3/(1-Fd-A_z-Lr)$	.....	.....
.....	
05 03 02 XXX _i	N _i	.....	A _i	.....	G _i	N _i	.....	.....	.....	G _i	.....	.....
.....	
05 03 XX XXX _n	N _n	.....	A _n	.....	G _n	N _n	.....	.....	.....	G _n	.....	.....
Total gross DP granted per MS	Total G MS₁=Σ(G1...Gn)					Total G MS₂=Σ(G1...Gn)					.....	.....
rate of FD in % (Fd)	X%					X%					.....	.....
FD reduced from DP per MS	Total G MS₁*Fd					Total G MS₂*Fd					.....	.....	Total FD EU
Share in the total FD	(Total G MS₁*Fd)/Total FD EU					(Total G MS₂*Fd)/Total FD EU					.....	.....

"Red" = "reduction" based on MS choices under Art 11 of R 1307/2013. LR = "linear reduction" under Art 7 of R 1307/2013.

Gross DP = the amount before reduction, before financial discipline (FD) and before linear reduction (LR)

ANNEX 2 EXAMPLES OF REIMBURSEMENT TO BENEFICIARIES

Scenario	Member States subject to FD in financial year N	Financial discipline applicable to direct support exceeding EUR 2000/farmer		Reimbursement of FD in budget year N+1
		Budget year N = Claim year N-1	Budget year N+1= Claim year N	
Farmer A	Y	Y	Y	Y
Farmer B	Y	Y	N	N
Farmer C	Y	N	Y	Y
Farmer D	Y	N	N	N
Farmer E	N	-	-	N

ANNEX 3 EXAMPLES OF CALCULATION OF THE RATE OF REIMBURSEMENT

The calculations presented below are illustrative examples that provide guidance to the Member States on the distribution among the eligible farmers of the appropriations carried over in relation to reimbursement of financial discipline.

1. Theoretical calculation for the rate of reimbursement at the level of the MS

For the simplification of the process, the rate of reimbursement and the rate of financial discipline (FD) could be applied to the same basis.

		TOTAL DP MS X	Detailed DP structure in Member State X									
A	Number of beneficiaries	55	10	9	8	7	6	5	4	3	2	1
B	Value of DP per beneficiary EUR (after penalties, before LR art 7 of R 1307/2013)		2.000	4.000	5.000	10.000	12.000	15.000	20.000	50.000	100.000	200.000
C=A*B	Value of DP in each bracket EUR	943.000	20.000	36.000	40.000	70.000	72.000	75.000	80.000	150.000	200.000	200.000
D	Annex III	935.000										
E=(D-C)/C	Rate of LR art 7 of R 1307/2013	-0,85%										
F=C*(1+E)	Payments corrected by LR	935.000	19.830	35.695	39.661	69.406	71.389	74.364	79.321	148.727	198.303	198.303
G	Amount of reimbursement	18.000										
H	DP not entitled to reimbursement (<2000)		20.000	18.000	16.000	14.000	12.000	10.000	8.000	6.000	4.000	2.000
I=C-H	DP entitled to reimbursement (>2000) before LR	833.000	0	18.000	24.000	56.000	60.000	65.000	72.000	144.000	196.000	198.000
J= G/I	Rate of reimbursement	2,16%										
K	New FD rate year N	-1,30%										
L=J*I	FD reimbursement	18.000	0	389	519	1.210	1.297	1.405	1.556	3.112	4.235	4.279
M=K*I	New FD	-10.829	0	-234	-312	-728	-780	-845	-936	-1.872	-2.548	-2.574
N= F+L+M	Net payment	942.171	19.830	35.850	39.867	69.888	71.906	74.923	79.941	149.967	199.991	200.008

	Farmer Y	Farmer Z	Farmer W
Gross payment	1.500	3.000	7.000
Exempt from FD	1.500	2.000	2.000
Subject to FD	0	1.000	5.000
LR	-13	-25	-59
FD year N	0	-13	-65
Reimbursement FD	0	22	108
	1.487	2.983	6.984

DP - direct payments
 LR - linear reduction
 FD - financial discipline
 XC - cross compliance

2. Treatment of the late payments

Article 26(5) HZR defines the population of the farmers eligible for reimbursement as "final recipients who are subject, in the financial year to which the appropriations are carried over, to the adjustment rate".

In view of the above, farmers who are paid their direct payments late in the next financial year also have a right to the reimbursement in that financial year. For example if a farmer received late direct payments in respect of claim year 2014 in financial year 2016,

he would be subject to financial discipline in financial year 2016. Therefore, during financial year 2016, he should also be reimbursed from the appropriations carried over from financial year 2015 to financial year 2016.

In order to use the amounts carried over in the most effective way, Member States should estimate the amounts of late payments in a financial year (e.g. based on historical patterns) and adjust the calculation of the financial discipline reimbursement rate taking into account this information.

		TOTAL DP MS X	Detailed DP structure in Member State X										
A	Number of beneficiaries	54	10	9	(Late payment for year n+1)	7	7	6	5	4	3	2	1
B	Value of DP per beneficiary EUR (after penalties before LR art 7 of R 1307/2013)		2.000	4.000	5.000	5.000	10.000	12.000	15.000	20.000	50.000	100.000	200.000
C=A*B	Value of DP in each bracket EUR	943.000	20.000	36.000	5.000	35.000	70.000	72.000	75.000	80.000	150.000	200.000	200.000
C1=C - late payment		938.000	20.000	36.000		35.000	70.000	72.000	75.000	80.000	150.000	200.000	200.000
D	Annex III	935.000											
E=(D-C1)/C1	Rate of LR art 7 of R 1307/2013	-0,32%											
F=C1*(1+E)	Payments corrected by LR	935.000	19.936	35.885		34.888	69.776	71.770	74.760	79.744	149.520	199.360	199.360
G	Amount of reimbursement	18.000											
H	DP not entitled to reimbursement (<2000)		20.000	18.000		14.000	14.000	12.000	10.000	8.000	6.000	4.000	2.000
I= C1-H	DP entitled to reimbursement (>2000) before LR	830.000	0	18.000		21.000	56.000	60.000	65.000	72.000	144.000	196.000	198.000
J= G/I	Rate of reimbursement	2,17%											
L=J*I	FD reimbursement	18.000	0	390		455	1.214	1.301	1.410	1.561	3.123	4.251	4.294
M= K*I	FD	-10.829	0	-235		-274	-731	-783	-848	-939	-1.879	-2.557	-2.583
N = F+L+M	Net payment	942.171	19.936	36.040		35.069	70.260	72.288	75.322	80.366	150.764	201.054	201.071

	Farmer Y	Farmer Z	Farmer W
Gross payment	1.500	3.000	7.000
Exempt from FD	1.500	2.000	2.000
Subject to FD	0	1.000	5.000
LR	-5	-10	-22
FD	0	-13	-65
Reimbursement FD	0	22	108
	1.495	2.999	7.021

DP - direct payments
LR - linear reduction
FD - financial discipline

3. Treatment of the penalties resulting from non-respect of cross-compliance rules

In accordance with Article 6(3) of Regulation (EU) No 809/2014, reductions due to the "reduction", financial discipline and the linear reduction coefficient shall be applied to the amount resulting from application of paragraph (2) of the same article.

In accordance with Article 6(4) of the same regulation, the penalties for cross-compliance shall be applied subsequently, thus using as a basis the "net direct payment" – after reductions for "reduction", linear reduction and financial discipline.

It is proposed to apply the rate for reimbursement of financial discipline at the same moment as the financial discipline adjustment, and before application of any reductions resulting from a cross-compliance penalty. Thus to stay in line with the provisions on cross-compliance, the cross-compliance reduction would be applied to the total direct payments to be received by the farmer, including the amount of financial discipline

reimbursement. This notably serves avoiding overcompensation. The amounts of the penalties, in accordance with Article 43(1)(d) HZR shall become assigned revenue.

A	Rate of LR art 7 of R 1307/2013	-0,85%
B	Rate of reimbursement	2,16%
C	FD rate	-1,30%
D	Cross-compliance reduction	-3,00%

	Farmer W	
E	Gross payment	7.000,0
F	<i>Exempt from FD</i>	<i>2.000,0</i>
G=E-F	<i>Subject to FD</i>	<i>5.000,0</i>
H=E*A	LR	-59,4
I=G*C	FD	-65,0
J=G*B	Reimbursement FD	108,0
K=E+H+I+J		6.983,7
L=K*D	Cross-compliance reduction	-209,5
N=K+M	Final DP	6.774,1