EUROPEAN
COURT
OF AUDITORS

Opinion No 1/2020

(pursuant to Article 322(1)(a), TFEU)

concerning the Commission's proposal for a regulation on transitional provisions relating to the common agricultural policy in the year 2021

(COM(2019) 581 final)

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THE COURT OF AUDITORS OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 287(4) and 322 thereof,

Having regard to the Commission's proposal for a Regulation laying down certain transitional provisions for the Common Agricultural Policy in the year 2021[1] ('the proposed transitional regulation'),

Having regard to Regulation (EU) 2020/127 of the European Parliament and of the Council of 29 January 2020 amending Regulation (EU) No 1306/2013 as regards financial discipline as from financial year 2021 and Regulation (EU) No 1307/2013 as regards flexibility between pillars in respect of calendar year 2020[2] ('the amending regulation'),

Having regard to the Commission's proposal for a Regulation on support for strategic plans to be drawn up by Member States under the Common agricultural policy[3] ('the CAP strategic plan regulation'),

Having regard to the Commission's proposal for a Regulation on the financing, management and monitoring of the common agricultural policy[4] ('the horizontal regulation'),

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[1] COM(2019) 581 final: Proposal for a Regulation of the European Parliament and of the Council laying down certain transitional provisions for the support by the European Agricultural Fund for Rural Development (EAFRD) and by the European Agricultural Guarantee Fund (EAGF) in the year 2021 and amending Regulations (EU) No 228/2013, (EU) No 229/2013 and (EU) No 1308/2013 as regards resources and their distribution in respect of the year 2021 and amending Regulations (EU) No 1305/2013, (EU) No 1306/2013 and (EU) No 1307/2013 as regards their resources and application in the year 2021.

[2] OJ L 27, 31.1.2020, p. 1.

[3] COM(2018) 392: Proposal for a Regulation of the European Parliament and of the Council establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No 1305/2013 of the European Parliament and of the Council and Regulation (EU) No 1307/2013 of the European Parliament and of the Council.

[4] COM(2018) 393: Proposal for a Regulation of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013.

Having regard to the Commission proposal for a Regulation amending Regulations (EU) No 1308/2013, (EU) No 1151/2012, (EU) No 251/2014, (EU) No 228/2013 and (EU) No 229/2013[5],

Having regard to the Court of Auditor's annual and special reports and opinion No 7/2018 concerning the Commission's proposals on the common agricultural policy for the post-2020 period[6],

Having regard to the European Parliament's request of 27 November 2019 for an opinion on the abovementioned proposal for a transitional regulation[7],

HAS ADOPTED THE FOLLOWING OPINION:

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[5] COM(2018) 394: Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products, (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs, (EU) No 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products, (EU) No 228/2013 laying down specific measures for agriculture in the outermost regions of the Union and (EU) No 229/2013 laying down specific measures for agriculture in favour of the smaller Aegean islands.

[6] Opinion No 7/2018 concerning Commission proposals for regulations relating to the common agricultural policy for the post-2020 period. (OJ C 41, 1. 2. 2019, p. 1).

[7] Letter ref. A/114858 (D 202112 27.11.2019) from the Deputy Secretary-General of the European Parliament.

Introduction

01 The Commission’s legislative proposals[8] on the post-2020 Common Agricultural Policy (CAP), published in June 2018, included a new delivery model for the policy, intended to take effect from 1 January 2021. The Commission aims to move from a compliance-based towards a performance-based delivery model for the CAP, based on strategic plans to be drawn up by the Member States.

02 In November 2018, we published an opinion[9] on the Commission’s post-2020 CAP legislative proposals. In the opinion, we analysed how well the proposals addressed and linked policy needs, objectives, inputs and outcomes. We concluded that the policy objectives are not clearly linked to the interventions or to their outputs, results and impacts. We found that the allocation of funds does not reflect the expected EU added value. Overall, the proposed reform of the CAP falls short of the EU’s ambitions for a greener and more robust performance-based approach. The proposed reform includes tools to address environment and climate objectives, but these objectives are neither clearly defined, nor translated into quantified targets. We noted that the Commission would no longer be able to quantify the extent to which the payments to final beneficiaries breached the rules. We also concluded that the proposal makes it harder to apply a single audit approach, notably because of the changed role of certification bodies, mainly in checking compliance, and thus to reduce control burdens.

03 According to the post-2020 CAP legislative proposals, Member States would have to submit their CAP strategic plans to the Commission by 1 January 2020 at the latest. The Commission would then assess and approve the plans. As of February 2020, the legislators have not agreed these legislative proposals.

04 Given the delay in the adoption of the rules for the post-2020 CAP, on 31 October 2019, the Commission published two legislative proposals in relation to the CAP in 2021. The Parliament and the Council approved one of these proposed

[8] COM(2018) 392 final - 2018/0216 (COD); COM(2018) 393 final - 2018/0217 (COD); COM(2018) 394 final/2. https://ec.europa.eu/commission/publications/natural-resources-and-environment.

[9] Opinion No 7/2018 concerning Commission proposals for regulations relating to the common agricultural policy for the post-2020 period. (OJ C 41, 1. 2. 2019, p. 1).

regulations in January 2020[10]. The second proposal, for a transitional regulation, is the subject of this opinion. It sets out transitional provisions for support by the European Agricultural Fund for Rural Development (EAFRD) and by the European Agricultural Guarantee Fund (EAGF) in the year 2021.

05 The Commission's proposed transitional regulation is based on an assumption that the introduction of the new CAP will be delayed by one year. The proposed regulation includes transitional provisions (Title I), amendments to the current legislation (Title II), provisions on its entry into force (Title III), and annexes showing the amount of Union support in 2021.

06 This document includes general observations (Part I), specific comments (Part II) and a list of drafting suggestions (Annex). Our main criteria for analysing the proposed transitional regulation were clarity of the legal framework and budgetary prudence. In our analysis, we also assess implications for the post-2020 CAP.

[10] Regulation (EU) No 2020/127 of the European Parliament and of the Council of 29 January 2020 amending Regulation (EU) No 1306/2013 as regards financial discipline as from financial year 2021 and Regulation (EU) No 1307/2013 as regards flexibility between pillars in respect of calendar year 2020, OJ L 27, 31.1.2020, p. 1.

Part I: General observations

Duration of the transition period

07 We note that the proposed transitional regulation aims to provide certainty and continuity in the granting of support to EU farmers, and for rural development in the transitional period for those Member States likely to use all funds before the end of 2021, by extending the current legal framework until the new CAP comes into force. The proposed transitional regulation also includes provisions covering the transition from the current CAP period to the next one.

08 The transitional provisions laid down in Title I of the Commission's proposed transitional regulation refer to its legislative proposals on the post-2020 CAP[11], which are closely linked to the multiannual financial framework (MFF) of the Union for the years 2021 to 2027[12]. However, at the end of February 2020, the legislators have not yet adopted the 2021-2027 MFF, nor the legislative proposals on the post-2020 CAP. We consider that transitional provisions, in principle, should not be based on the assumption that future regulations will be approved as they were proposed[13].

09 We draw attention to the proposed transition period of one year. Considering the state of play of the discussions between the Council and the European Parliament for the 2021-2027 MFF and the post-2020 CAP, setting up the revised management and control systems in order to apply the new legal framework and the CAP strategic plans as of 1 January 2022 could be challenging. On the other hand, it is important to start delivering improvements to the CAP quickly.

Allocation of funding

10 According to the explanatory memorandum of the proposed transitional regulation, the financial allocations contained in the proposal 'are equal to those in the CAP Plan proposal and they are coherent with the Commission's proposal on the MFF 2021-2027'. As such, the financial allocations are within the limits of the 2014-2020

[11] COM(2018) 392 final - 2018/0216 (COD); COM(2018) 393 final - 2018/0217 (COD); COM(2018) 394 final/2.

[12] COM(2018) 322, COM(2018) 375.

[13] This concerns Articles 1, 4 and 6-8 of the proposed transitional regulation.

MFF, but will be subject to further amendment if the legislators agree a MFF 2021-2027 with different amounts than those currently proposed.

11 In accordance with Article 312(4) of the Treaty on the Functioning of the European Union, if agreement on the 2021-2027 MFF is not reached by the end of 2020, the 2020 ceilings would be applicable in 2021. The ceilings for the CAP allocations for 2020 are higher than those proposed for 2021 in the 2021-2027 MFF and the CAP strategic plan regulation[14]. At the same time, the amending regulation[15] adopted in January 2020 contains financial discipline for EAGF, which ensures that the annual ceiling for EAGF expenditure in 2021 will not be higher than the one in MFF 2021-2027 once the MFF is agreed.

[14] Opinion No 7/2018: concerning Commission proposals for regulations relating to the Common Agricultural Policy for the post-2020 period, paragraph 24.

[15] Regulation (EU) No 2020/127 of the European Parliament and of the Council of 29 January 2020 amending Regulation (EU) No 1306/2013 as regards financial discipline as from financial year 2021 and Regulation (EU) No 1307/2013 as regards flexibility between pillars in respect of calendar year 2020, OJ L 27, 31.1.2020, p. 1.

Part II: Specific comments

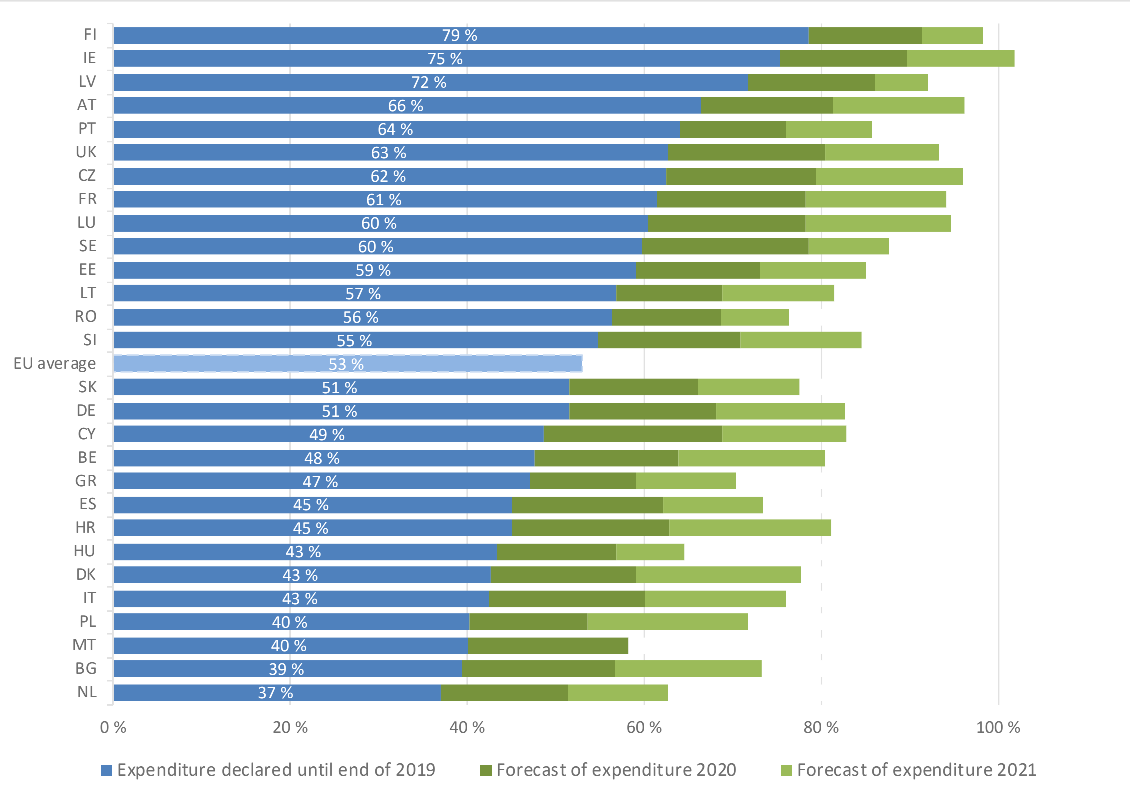
Extension of rural development programmes

12 In Article 1 of its proposed transitional regulation, the Commission gives Member States a choice:

- to extend their EAFRD co-financed rural development programmes, or certain of their regional rural development programmes, to 31 December 2021, and to finance those extended programmes from the corresponding budget allocation for the year 2021, with certain restrictions (see paragraph ***15***); or
- to make use of Article 8 of the draft MFF Regulation to transfer the EAFRD budget allocation for 2021 or the part of the EAFRD budget allocation corresponding to the regional rural development programmes that have not been extended, to the financial allocations for the years 2022 to 2025.

13 The implications of the transitional rules on EAFRD spending depend on the Member States’ decisions on whether to extend their programmes, and are therefore uncertain at this stage. Based on Member States’ use of EAFRD support until the end of 2019 (see ***Figure 1***), it can be expected that only a small share of Member States would make use of Article 1(1) of the proposed transitional regulation and use their budget allocation for the year 2021. At the end of 2020, unspent funds for the current programming period are expected to range from less than 10 % for Finland and Ireland to almost 50 % for the Netherlands.

Figure 1 – Member States' use of EAFRD funds for 2014-2020



Source: ECA, based on the Commission data.

14 Article 1(1) of the proposed transitional regulation provides that the Commission may consider that the extension of a programme by a Member State is not justified. However, the proposed transitional regulation does not explain on what basis the Commission would consider an extension unjustified.

15 According to Article 1(1) of the proposed transitional regulation, where a Member State chooses to extend its rural development programme or some of its regional rural development programmes by one year, the extended programmes 'shall aim at' maintaining at least the same overall level of environment and climate ambition as contained in the current rules[16]. The proposed transitional regulation uses less strict wording than the current framework, which requires that 'at least 30 % of the total EAFRD contribution (…) shall be reserved for' such measures. This may be taken to mean that the programmes, which have spent above 30 % on the listed climate-environment measures, could pursue lower environment and climate

[16] Article 1(1), fourth subparagraph: 'Such an amendment shall aim at maintaining at least the same overall level of the EAFRD expenditure for the measures referred to in Article 59(6) of that Regulation [1305/2013]'.

ambitions for the 2021 allocation. Any 'new money' used under old rules should address environmental and climate concerns with at least at the same or higher ambition than until now. Furthermore, any impact on the extent to which CAP spending is relevant to climate change issues should be reflected in the Commission's climate reporting[17].

16 Article 1(1), fourth subparagraph, of the proposed transitional regulation refers to the amendment of a rural development programme under Article 11(a) of Regulation (EU) No 1305/2013. The deadlines for such amendments are specified in Article 4(3) of Commission Implementing Regulation (EU) No 808/2014. If the amendment concerns 'a change of the entire Union contribution or its annual distribution at programme level'[18], the amendment should be submitted to the Commission at the latest by 30 September 2020 according to Regulation (EU) No 808/2014. Depending on when the proposed transitional regulation comes into force, there might be a need for the Commission to amend the deadline for the amendments in the implementing act.

Multiannual commitments

17 According to Article 8 of the proposed transitional regulation, in order to limit a significant carry-over of commitments from the current programming period for rural development to the CAP strategic plans, the duration of new multiannual commitments would be limited to a period of maximum three years instead of five. Member States would be able to offer these shorter commitments for three measures: agri-environment-climate, organic farming and animal welfare. For forest-environmental measures (Article 34 of Regulation (EU) No 1305/2013) the length of new commitments would still be five years or longer. Extension of existing commitments would be limited to one year. Limiting the duration of the multiannual commitments can help to constrain the level of the commitments carried forward, so that these would not strain future budgets, though one to three year agri-environmental-climate commitments may have lower impact than five to seven year commitments.

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[17] See also ECA special report 31/2016: 'Spending at least one euro in every five from the EU budget on climate action: ambitious work underway, but at serious risk of falling short', recommendations 1, 2 and 6.

[18] Article 11(a)(iii) of Regulation (EU) No 1305/2013.

Proposed delay of the 2014-2020 evaluation

18 Article 2(4) of the proposed transitional regulation extends the final date by which the Commission should prepare a synthesis report on EAFRD ex-post evaluations to 31 December 2026. This is at odds with our previous recommendations[19] on the alignment of the MFF with the actual expenditure cycle and on conducting a comprehensive spending review before a new long-term budget is set. Indeed, delays in implementing programmes under the MFFs are general and recurrent problems, increasing the risks of excessive focus on absorption of funds and of planning a new MFF before knowing the results of EU spending under the preceding period.

19 An illustration of this phenomenon is the absorption rate of EAFRD support for the period 2014-2020. ***Figure 1*** (see paragraph ***13***) shows that, at the end of the penultimate year of the current programming period, the EU average absorption rate of EAFRD support is 53 %. This means that, as in previous programming periods, a significant portion of the expenditure will take place in the n+3 period. According to the proposal for the 2021-2027 MFF regulation[20], the Commission should propose a new MFF in 2025. However, in 2025 the evaluation cycle regarding 2014-2020 is not yet finalised, further widening the gap between the MFF planning and the evaluation of expenditure made in previous programming periods. It means that the Commission would prepare its proposal for the post-2027 CAP without having fully assessed the 2014-2020 CAP performance.

20 In our 2018 annual report[21], we recommended that, for the post-2020 period, the Commission should take into account the weaknesses we identified in the current performance framework, ‘in order to ensure that result indicators properly measure the effects of actions and that they have a clear link to the related interventions and policy objectives’. In our opinion No 7/2018 on the post-2020 CAP proposal, we found that the proposed indicators were not yet fully developed and made specific comments on the proposed indicators[22]. The additional time before the

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[19] Special report 16/2017: ‘Rural Development Programming: less complexity and more focus on results needed’, recommendation 6; special report 36/2016: ‘An assessment of the arrangements for closure of the 2007-2013 cohesion and rural development programmes’, recommendation 4.

[20] COM(2018) 322, COM(2018) 375.

[21] Annual report of the Court of Auditors on the implementation of the budget concerning the financial year 2018 (OJ C 340, 8.10.2019, p. 1).

[22] Opinion No 7/2018, paragraph 70 and Annex I.

implementation of the new CAP period could be used to improve the future performance framework.

Payment entitlements

21 Article 19(2) of the proposed CAP strategic plan regulation offers Member States the possibility to stop granting the basic income support based on payment entitlements and to let payment entitlements expire on 31 December 2020. In the Impact Assessment on its post-2020 CAP proposals[23], the Commission stated that the disappearance of payment entitlements would enable a reduction in the administrative burden. In our opinion[24], we considered it as a significant simplification. The proposed transitional regulation postpones this possibility, but its Article 10(4) proposes a linear reduction or increase of the value of all payment entitlements and/or of the reserve to adjust to the new ceiling for the basic payment scheme.

22 Since publication of the post-2020 CAP proposals, there has been an increasing attention on payments to non-genuine farmers acquiring agricultural land to receive CAP payments. The Commission and the legislators could use the extra year to assess whether the requirements for the definitions of 'genuine farmer', 'eligible hectare' and minimum 'agricultural activity' in the post-2020 CAP proposals need to be revised to address this risk, including by clarifying the meaning of 'land at the farmer's disposal', without disproportionately increasing the administrative burden for farmers.

Crisis reserve

23 Article 9 of the proposed transitional regulation would extend the current crisis reserve and the associated financial discipline mechanism by a year. In the light of the post-2020 CAP proposals, that implies that any amount not used for crisis measures by the end of the 2020 financial year will be returned to the farmers who had a reduction in their direct payment under the financial discipline mechanism. Any amount not used for crisis measures by the end of the 2021 financial year will not be returned to the

[23] Impact assessment, SWD(2018) 301 final, part 3, p. 131.

[24] Opinion No 7/2018, paragraph 63.

farmers, given that the horizontal regulation[25] would establish an agricultural reserve with annual rollover of the unused reserve.

Sectoral aid schemes

24 Regulation (EU) No 1308/2013 lays down rules for the common organisation of agricultural markets. Article 7 of the proposed transitional regulation modifies the duration of certain aid schemes that should be integrated in the future CAP strategic plans of the Member States as sectoral interventions referred to in points (a) to (e) of Article 39 of the proposed CAP strategic plan regulation.

25 We note that there are different rules for the extensions of the sectoral aid schemes. For the olive oil and table olives, the work programmes running until 31 March 2021, would continue until 31 December 2021.The producer organisations would have to modify their work programmes to take account of this extension and to notify the Commission by 31 December 2020 of their modified work programmes. For the wine and apiculture sectors the current support programmes will run until their end, 15 October 2023 and 31 July 2022 respectively. Therefore, the operators do not need to take any special action. For an operational programme in the fruit and vegetables sectors approved for a duration beyond 31 December 2021, the producer organisation would have to, by 15 September 2021, submit a request to the Member State to modify or to replace their operational programme. Otherwise, the operational programme would end on 31 December 2021.

[25] Article 14(2), third subparagraph, of the proposal for horizontal regulation (COM(2018) 393) states: ‘Moreover, by derogation from point (d) of Article 12(2) of the Financial Regulation, the total unused amount of the crisis reserve available at the end of year 2020 shall be carried over to the year 2021 without being returned to the budgetary lines which cover the actions referred to in point (c) of Article 5(2) and made available for the financing of the agricultural reserve’.

Conclusion

26 The Commission's proposed transitional regulation meets the aim to continue financing the CAP during the transitional period, on the basis of the amounts laid down in the post-2020 CAP proposals. We note that the proposed transitional regulation affects several aspects of the CAP. The extension of rural development programmes affects, in particular, the related multiannual commitments, the environmental and climate ambition, the evaluation arrangements and the timing of the payment appropriations.

27 The delayed adoption of the post-2020 legislative framework puts back the implementation of a potentially more ambitious CAP by at least a year. The Commission and the legislators could use the additional time to address the issues we have raised in this opinion and elsewhere, especially in relation to the climate and environment challenges set out in the Green Deal, as well as the need to ensure robust governance systems for the future CAP and to improve performance measurement.

This Opinion was adopted by Chamber I, headed by Mr Nikolaos Milionis, Member of the Court of Auditors, in Luxembourg at its meeting of 26 February 2020.

For the Court of Auditors

Klaus-Heiner Lehne

President

Annex

Text in the proposal	ECA's suggestions
Article 1 *Extension of the period for programmes supported by the EAFRD* 2. […] Where a Member State decides to make use of the possibility provided in paragraph 1 only with regard to certain regional programmes, the allocation referred to in the first subparagraph of this paragraph shall be the amount set out for that Member State for 2021in Annex I to Regulation (EU) No 1305/2013 minus the budgetary allocations notified in accordance with the first subparagraph of paragraph 2 for the regional programmes that are extended.	*Article 1* *Extension of the period for programmes supported by the EAFRD* 2. […] Where a Member State decides to make use of the possibility provided in paragraph 1 only with regard to certain regional programmes, the allocation referred to in the first subparagraph of this paragraph shall be the amount set out for that Member State for 2021 in Annex I to Regulation (EU) No 1305/2013 minus the budgetary allocations notified in accordance with the second ~~first~~ subparagraph of paragraph 1 ~~2~~ for the regional programmes that are extended.
Article 3 *Eligibility of certain types of expenditure in 2021* (c) the system referred to in Article 67(2) of Regulation (EU) No 1306/2013 applies to the legal commitments undertaken under measures that correspond to support granted in accordance with points (a) and (b) of Article 21(1) and Articles 28 to 31, 33, 34 and 40 of that Regulation and the relevant operations are clearly identified; and	*Article 3* *Eligibility of certain types of expenditure in 2021* (c) the system referred to in Article 67(2) of Regulation (EU) No 1306/2013 applies to the legal commitments undertaken under measures that correspond to support granted in accordance with points (a) and (b) of Article 21(1) and Articles 28 to 31, 33, 34 and 40 of ~~that~~ Regulation (EU) No 1305/2013 and the relevant operations are clearly identified; and
Article 8 *Amendments to Regulation (EU) No 1305/2013* (8) in Article 75 (1), the following second subparagraph is added: 'For programmes for which a Member State decides to extend the 2014–2020 period in accordance with Article 1(1) of Regulation (EU) [XXXX/XXXX] [This	*Article 8* *Amendments to Regulation (EU) No 1305/2013* (8) in Article 75 (1), the following second subparagraph is added: 'For programmes for which a Member State decides to extend the 2014–2020 period in accordance with Article 1(1) of Regulation (EU) [XXXX/XXXX] [This

Text in the proposal	ECA's suggestions
Regulation], that Member State shall submit to the Commission the annual implementation report pursuant to the first subparagraph of this paragraph until 31 December 2025.';	Regulation], that Member State shall submit to the Commission the annual implementation report pursuant to the first subparagraph of this paragraph until ~~31 December~~ 30 June 2025.';
Article 10 *Amendments to Regulation (EU) No 1307/2013* (10) in Article 36(1), the following second subparagraph is inserted: 'Member States applying in 2020 the single area payment scheme shall continue to do so after 31 December 2020.'	*Article 10* *Amendments to Regulation (EU) No 1307/2013* (10) in Article 36(1), the following ~~second~~ third subparagraph is inserted: 'Member States applying in 2020 the single area payment scheme shall continue to do so after 31 December 2020.'