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(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COUNCIL REGULATION (EC) No 1437/2007**of 26 November 2007****amending Regulation (EC) No 1290/2005 on the financing of the common agricultural policy**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the third subparagraph of Article 37(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament ⁽¹⁾,

Whereas:

(1) In the case of intervention measures in respect of which a sum per unit is not determined within the framework of a common organisation of the markets, implementing rules should be laid down, with regard in particular to the method for determining the amounts to be financed, the financing of expenditure resulting from the tying-up of the funds necessary for buying-in products and the financing of expenditure resulting from storage and, where appropriate, processing operations.

(2) In view of the nature of the measures and programmes covered by Council Decision 90/424/EEC of 26 June 1990 on expenditure in the veterinary field ⁽²⁾,

provision should be made that in duly justified exceptional cases the European Agricultural Guarantee Fund (EAGF) may finance administrative and personnel costs incurred in the execution of such measures and programmes.

(3) Council Regulation (EC) No 1290/2005 ⁽³⁾ sets out the procedure to be followed by the Commission to decide to reduce or suspend monthly payments as well as the procedure to be followed to decide to suspend or reduce intermediate payments.

(4) Pursuant to Regulation (EC) No 1290/2005, the Commission decides on amounts that are to be excluded from Community financing if it finds that this expenditure has been incurred in a way that has infringed Community rules. In the context of the procedure leading to the exclusion from Community financing, the Commission, in order to remedy the situation, makes recommendations to the Member State concerned as to how to apply Community legislation. If the Member State fails to implement these recommendations, further decisions excluding the expenditure will be taken by the Commission. In addition to this it can be established in certain cases that such recommendations will not or cannot be implemented in the immediate future.

(5) Under such circumstances the possibility to suspend or reduce monthly or intermediate payments as it is currently provided for in Regulation (EC) No 1290/2005 does not protect sufficiently the financial interest of the Community. In this respect, it is considered useful to provide for a new procedure permitting the Commission to suspend or reduce payments in specific situations in a more effective way.

⁽¹⁾ Opinion of 11 October 2007 (not yet published in the Official Journal).

⁽²⁾ OJ L 224, 18.8.1990, p. 19. Decision as last amended by Decision 2006/965/EC (OJ L 397, 30.12.2006, p. 22).

⁽³⁾ OJ L 209, 11.8.2005, p. 1. Regulation as last amended by Regulation (EC) No 378/2007 (OJ L 95, 5.4.2007, p. 1).

- (6) An *ex-ante* suspension or reduction of payments in the agricultural field could have serious financial implications for the Member State concerned. In addition, in comparison with the procedure for the conformity clearance decision, the Member State has only limited possibilities to defend its position vis-à-vis the Commission. For these reasons the new procedure of suspension or reduction of payments should only be used where one or more of the key components of the national control system in question do not exist or are not effective due to the gravity or persistence of the deficiencies found.
- (7) Provision should be made to clarify the conditions under which an intermediate declaration of expenditure under the European Agricultural Fund for Rural Development (EAFRD) is inadmissible.
- (8) Council Regulation (EEC) No 4045/89 of 21 December 1989 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund⁽¹⁾ requires Member States to carry out *ex-post* controls on certain common agricultural policy expenditure of financial year 'n' in the period from 1 July n + 1 to 30 June n + 2. The report to the Commission on the control activities in that period is only due by the end of the year n + 2.
- (9) The limitation in time for the conformity clearance decisions laid down in Regulation (EC) No 1290/2005 makes it effectively impossible for the Commission to decide on an exclusion from Community financing where a Member State does not comply with its control obligations under Regulation (EEC) No 4045/89. In order to deal with this problem, the limitation in time should not apply for infringements of the Member States' control obligations under Regulation (EEC) No 4045/89, provided that the Commission acts upon the Member States' report within a period of 12 months after receipt of that report.
- (10) Since there is no need for Member States to inform the Commission on the way they have decided or plan to reuse the cancelled funds and to amend the financing plan for the rural development programme concerned, the relevant provision of Regulation (EC) No 1290/2005 should be deleted.
- (11) In order to align the transitional rules for the European Agricultural Guidance and Guarantee Fund (EAGGF) Guidance Section to the new provisions applicable for the next programming period of the Structural Funds,
- Regulation (EC) No 1290/2005 should be amended in line with Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund⁽²⁾.
- (12) It is necessary to clarify the legal basis for the adoption of detailed rules for the application of Regulation (EC) No 1290/2005. In particular, the Commission should be able to adopt detailed rules of application in respect of the publication of information on beneficiaries of the common agricultural policy, in respect of intervention measures where no fixed sum per item has been laid down in a common market organisation and in respect of appropriations which have been carried over to finance direct payments to farmers under the common agricultural policy.
- (13) In the context of the revision of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities⁽³⁾, the provisions on the annual *ex-post* publication of beneficiaries of funds deriving from the budget were inserted into that Regulation in order to implement the European Transparency Initiative. Sector-specific Regulations are to provide the means for such a publication. Both the EAGF and the EAFRD form part of the general budget of the European Communities and finance expenditure in a context of shared management between the Member States and the Community. Rules should therefore be laid down for the publication of information on the beneficiaries of these Funds. To that end, Member States should ensure annual *ex-post* publication of the beneficiaries and the amounts received per beneficiary under each of these Funds.
- (14) Making this information accessible to the public enhances transparency regarding the use of Community funds in the common agricultural policy and improves the sound financial management of these funds, in particular by reinforcing public control of the money used. Given the overriding weight of the objectives pursued, it is justified with regard to the principle of proportionality and the requirement of the protection of personal data to provide for the general publication of the relevant information as it does not go beyond what is necessary in a democratic society and for the prevention of irregularities. Taking into account the opinion of the European Data Protection Supervisor of 10 April 2007⁽⁴⁾, it is appropriate to make provision for the beneficiaries of funds to be informed that those data may be made public and that they may be processed by auditing and investigating bodies.

⁽¹⁾ OJ L 388, 30.12.1989, p. 18. Regulation as last amended by Regulation (EC) No 2154/2002 (OJ L 328, 5.12.2002, p. 4).

⁽²⁾ OJ L 210, 31.7.2006, p. 25. Regulation as amended by Regulation (EC) No 1989/2006 (OJ L 411, 30.12.2006, p. 6).

⁽³⁾ OJ L 248, 16.9.2002, p. 1. Regulation as amended by Regulation (EC) No 1995/2006 (OJ L 390, 30.12.2006, p. 1).

⁽⁴⁾ OJ C 134, 16.6.2007, p. 1.

(15) Regulation (EC) No 1290/2005 should therefore be amended accordingly,

2. The monthly payments may be reduced or suspended if all of the following conditions are met:

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1290/2005 is hereby amended as follows:

1. In Article 3, the following paragraph shall be added:

'3. Where, within the framework of a common organisation of the markets, a sum per unit is not determined in respect of an intervention measure, the EAGF shall finance the measure concerned on the basis of standard amounts uniform throughout the Community, in particular for funds originating in the Member States used for buying-in products, for material operations arising from storage and, where appropriate, for processing of intervention products.

The respective charges and costs shall be calculated in accordance with the procedure referred to in Article 41(3).'

2. In Article 13, the following subparagraph shall be added:

'In duly justified exceptional cases, the first subparagraph shall not apply to measures and programmes covered by Council Decision 90/424/EEC of 26 June 1990 on expenditure in the veterinary field (*).

(* OJ L 224, 18.8.1990, p. 19. Decision as last amended by Decision 2006/965/EC (OJ L 397, 30.12.2006, p. 22).'

3. The following article shall be inserted:

'Article 17a

Reduction and suspension of monthly payments in specific cases

1. Without prejudice to Article 17, the Commission may take a decision, in accordance with paragraphs 2 and 3 of this Article, to reduce or suspend monthly payments referred to in Article 14 for a period to be determined in the decision, which shall not exceed twelve months but which may be prolonged for further periods not exceeding twelve months if the conditions set out in paragraph 2 of this Article continue to be met.

(a) one or more of the key components of the national control system in question do not exist or are not effective due to the gravity or persistence of the deficiencies found;

(b) the deficiencies referred to in point (a) are of a continuous nature and have been the reason for at least two decisions pursuant to Article 31, excluding from Community financing expenditure from the Member State concerned, and

(c) the Commission concludes that the Member State concerned has not implemented its recommendations to remedy the situation and is not in a position to do so in the immediate future.

3. Before taking the decision referred to in paragraph 1, the Commission shall inform the Member State concerned of its intention and shall ask it to react within a period determined by the Commission according to the severity of the problem and which generally may not be less than 30 days.

The percentage by which the monthly payments may be reduced or suspended shall be equal to the percentage decided by the Commission in its latest decision as referred to in paragraph 2(b). It shall be applied to the relevant expenditure effected by the paying agency where the deficiencies referred to in paragraph 2(a) exist.

4. The reduction or suspension shall not be continued if the conditions laid down in paragraph 2 are no longer met. It shall be without prejudice to the conformity clearance pursuant to Article 31.'

4. In Article 26, paragraph 4 shall be replaced by the following:

'4. If one of the requirements laid down in paragraph 3 is not met, the Commission shall forthwith inform the accredited paying agency and the coordinating body, where one has been appointed. If one of the requirements laid down in point (a) or (c) of paragraph 3 is not respected, the declaration of expenditure shall be inadmissible.'

5. The following article shall be inserted:

‘Article 27a

Suspension and reduction of intermediate payments in specific cases

Article 17a shall apply *mutatis mutandis* to the suspension and reduction of intermediate payments referred to in Article 26.’

6. In Article 31(5), the following point shall be added:

‘(c) infringements by Member States of their obligations under Council Regulation (EEC) No 4045/89 of 21 December 1989 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (*), provided that the Commission notifies the Member State in writing of its inspection findings within 12 months following receipt of the Member State’s report on the results of its controls of the expenditure concerned.

(*) OJ L 388, 30.12.1989, p. 18. Regulation as last amended by Regulation (EC) No 2154/2002 (OJ L 328, 5.12.2002, p. 4).’

7. In Article 33(4), the second subparagraph shall be deleted;

8. In Article 40, paragraph 1 shall be replaced by the following:

‘1. By way of derogation from Articles 31(2), 32(4) and 37(1) of Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural funds (*), partial sums committed for assistance co-financed by the EAGGF Guidance Section approved by the Commission between 1 January 2000 and 31 December 2006, for which the certified statement of expenditure actually paid, the final report on implementation and the statement referred to in Article 38(1)(f) of that Regulation have not been sent to the Commission within 15 months after the final date of eligibility of expenditure laid down in the decision granting a contribution from the Funds, shall be automatically de-committed by the Commission not later than 6 months after that deadline, giving rise to the repayment of amounts unduly paid.

(*) OJ L 161, 26.6.1999, p. 1. Regulation as last amended by Regulation (EC) No 1198/2006 (OJ L 223, 15.8.2006, p. 1).’

9. Article 42 is hereby amended as follows:

(a) point 1 shall be replaced by the following:

‘1. the conditions applicable to the accreditation of paying agencies as well as the specific accreditation of coordinating bodies, their respective functions, the information required and the arrangements for it to be made available or transmitted to the Commission;’;

(b) the following points shall be inserted:

‘8a. detailed rules on the financing and accounting of intervention measures in the form of public storage as well as on other expenditure financed by the EAGF and the EAFRD;

8b. the detailed rules on the publication of information concerning beneficiaries referred to in Article 44a and on the practical aspects related to the protection of individuals with regard to the processing of their personal data in accordance with the principles laid down in Community legislation on data protection. These rules shall ensure, in particular, that the beneficiaries of funds are informed that these data may be made public and may be processed by auditing and investigating bodies for the purpose of safeguarding the financial interests of the Communities, including the time that this information shall take place;

8c. the conditions and detailed rules applicable to appropriations which have been carried over in accordance with Article 149(3) of Regulation (EC, Euratom) No 1605/2002 to finance the expenditure referred to in Article 3(1)(c) of this Regulation.’

10. The following article shall be inserted:

‘Article 44a

Publication of the beneficiaries

Pursuant to Article 53b(2)(d) of Regulation (EC, Euratom) No 1605/2002, Member States shall ensure annual *ex-post* publication of the beneficiaries of the EAGF and the EAFRD and the amounts received per beneficiary under each of these Funds.

The publication shall contain at least:

(a) for the EAGF, the amount subdivided in direct payments within the meaning of Article 2(d) of Regulation (EC) No 1782/2003 and other expenditure;

(b) for the EAFRD, the total amount of public funding per beneficiary.'

Article 2

This Regulation shall enter into force on the seventh day following its publication in the *Official Journal of the European Union*.

Point (3) and Article 1(5) shall apply as from 1 July 2008.

Article 1(6) shall apply with respect to the Member States' reports received by the Commission after 1 January 2008, excluding any expenditure effected by Member States before the financial year 2006.

Article 1(10) shall apply to EAGF expenditure incurred from 16 October 2007 and to EAFRD expenditure from 1 January 2007.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 26 November 2007.

For the Council

The President

J. SILVA
