



STATUTORY INSTRUMENTS.

S.I. No. 422 of 2010:



EUROPEAN COMMUNITIES (COMMON AGRICULTURAL POLICY)
(SCRUTINY OF TRANSACTIONS) REGULATIONS 2010.

(Prn. A10/1303)

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I, BRENDAN SMITH, Minister for Agriculture, Fisheries and Food in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving full effect to Council Regulation (EC) No. 485/2008 of 26 May 2008¹, hereby make the following regulations:

1. These Regulations may be cited as the European Communities (Common Agricultural Policy) (Scrutiny of Transactions) Regulations 2010.

2. (1) In these Regulations—

"authorised officer" means—

(a) an authorised officer within the meaning of section 858 of the Taxes Consolidation Act 1997 (No. 39 of 1997), or

(b) a person appointed under Regulation 4;

"Council Regulation" means Council Regulation (EC) No. 485/2008 of 26 May 2008;

"Minister" means Minister for Agriculture, Fisheries and Food;

"records" means commercial documents within the meaning of Article 1.3(a) of the Council Regulation and the commercial documents referred to in Article 3.1(a) and the first subparagraph of Article 5.3 of the Council Regulation.

(2) A word or expression that is used in these Regulations and is also used in the Council Regulation has the same meaning in these Regulations that it has in the Council Regulation.

3. (1) A person who conducts a transaction in the State to which the Council Regulation relates shall keep all the records relating to that transaction in the State.

(2) The Internal Audit Unit of the Department of Agriculture, Fisheries and Food is designated to be the special department for the purposes of Article 11 of the Council Regulation.

4. (1) The Minister may by instrument in writing appoint persons or a class of persons as he or she thinks fit to be authorised officers for the purposes of

¹(1)O.J. No. L143, 3/6/2008, p1.

*Notice of the making of this Statutory Instrument was published in
"Iris Oifigiúil" of 10th September, 2010.*

some or all of the functions of an authorised officer as may be specified in the instrument.

(2) The Minister may terminate the appointment of an authorised officer whether or not the appointment was for a fixed period.

(3) An appointment as an authorised officer ceases-

- (a) if it is terminated under paragraph (2),
- (b) if it is for a fixed period, on the expiry of that period, or
- (c) if the person appointed is an officer of the Minister upon the person ceasing to be such an officer.

(4) Nothing in paragraph (3) is to be construed so as to prevent the Minister from reappointing as an authorised officer a person to whom paragraph (3) relates.

(5) (a) An officer of the Minister shall furnish an authorised officer appointed by the Minister with a warrant of his or her appointment as an authorised officer.

(b) When exercising a power conferred, an authorised officer shall, if requested by a person affected, produce the warrant or evidence that he or she is such an officer to the person.

5. (1) If an authorised officer has reasonable cause to suspect that a record relating to the Council Regulation or these Regulations is, was or may be present the authorised officer may—

- (a) enter and search the premises,
- (b) require the production of a record (including a document in non-legible form in a legible form),
- (c) retain a record or thing (for so long as is necessary),
- (d) record information using any means including writing, photography or video,
- (e) give a direction to, or request information of, a person regarding an agricultural product, vessel, vehicle, container, machinery, equipment, premises or other thing as he or she considers necessary,
- (f) require the name and address of a person and the name and address of any other person including the owner of, or person to whom an agricultural product or other thing is being delivered or who is causing it to be delivered,

- (g) require of a person the ownership, identity and origin of an agricultural product, vessel, vehicle, container, equipment, machinery or other thing,
- (h) carry out surveys or programmes as may be required by an act of the institutions of the European Union, or
- (i) direct a person to maintain records in a manner suitable for scrutiny in accordance with the Council Regulation.

(2) An authorised officer shall not enter, except with the consent of the occupier, a private dwelling, unless he or she has obtained a search warrant under Regulation 6.

(3) An authorised officer may use reasonable force, if necessary, in exercise of his or her powers under this Regulation.

(4) An authorised officer, when exercising a power under this Regulation may be accompanied by other persons and may take with him or her, or those persons may take with them, any equipment or materials to assist the officer in the exercise of the power.

(5) An authorised officer is not liable in any proceedings for anything done in the purported exercise of his or her powers under this Regulation if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

(6) If in the course of exercising any powers under these Regulations an authorised officer finds or comes into possession of any thing that the officer or member believes to be evidence of an offence or suspected offence under these Regulations, it may be seized and retained for use in evidence in criminal proceedings.

(7) Nothing in these Regulations operates to prejudice a power conferred by another enactment to search, or to seize or detain property, which may be exercised by an authorised officer within the meaning of section 858 of the Taxes Consolidation Act 1997.

(8) Nothing in section 17 of the Industrial and Provident Societies Act 1893 (56 & 57 Vict. c39) prevents an authorised officer from exercising a power conferred on him or her by these Regulations.

6. (1) If a judge of the District Court is satisfied by information on oath of an authorised officer that there are reasonable grounds for suspecting—

- (a) an offence is being or has been committed under these Regulations or the Council Regulation, or
- (b) evidence of an offence or contravention or intended contravention to which subparagraph (a) relates may be, is or has been on a premises,

the judge may issue a search warrant.

(2) A search warrant under this Regulation shall be expressed and operate to authorise a named authorised officer, accompanied by such authorised officers or other persons as the named authorised officer thinks necessary, at any time, within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter (if necessary by use of reasonable force) the premises, vehicle, vessel or aircraft named in the warrant.

(3) If a premises is entered under a warrant issued under this Regulation, an authorised officer so entering may exercise all or any of the powers conferred on an authorised officer under these Regulations.

7. (1) A person shall not forge or utter knowing it to be forged—

(a) a record or other document,

(b) a direction or requirement of an authorised officer under Regulation 5 if the direction or requirement is in documentary form.

(2) A person shall not alter with intent to defraud or deceive, or to utter knowing it to be so altered—

(a) a record or other document,

(b) a direction or requirement of an authorised officer under Regulation 5 where the requirement or direction is in documentary form.

(3) A person shall not have, without lawful authority (the proof of which lies on him or her), in his or her possession or under his or her control a forged or altered record or other document.

8. A person who—

(a) obstructs or impedes an authorised officer in the exercise of his or her powers under Regulation 5 or Regulation 6,

(b) fails, without reasonable cause, to comply with a requirement or direction of an authorised officer under Regulation 5 or Regulation 6, or

(c) in purporting to give information to an authorised officer for the performance of the officer's powers under Regulation 5 or Regulation 6—

(i) makes a statement that he or she knows to be false in a material particular or recklessly makes a statement which is false in a material particular, or

(ii) fails to disclose a material particular,

commits an offence.

9. (1) A person who contravenes—

- (a) Article 4, which requires that commercial documents are kept for three years,
- (b) Article 5(1), which requires that commercial documents and additional information be made available,
- (c) Article 5(2), which requires that extracts or copies of commercial documents and additional information be supplied, or
- (d) Article 5(3), which provides that a person be directed to maintain such records as may be required,

of the Council Regulation commits an offence.

(2) A person who contravenes Regulation 3(1), 7 or 8 of these Regulations commits an offence.

(3) A person found guilty of an offence under paragraphs (1) or (2) is liable on summary conviction to a fine not exceeding €5,000 or to a term of imprisonment not exceeding 6 months or to both.

(4) An offence under these Regulations may be prosecuted by the Minister.

(5) If an offence under these Regulations is committed by a body corporate and is proven to have been so committed with the consent, connivance or approval of or to have been attributable to the wilful neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate or a person who was purported to act in any such capacity, that person, as well as the body corporate, commits an offence and is liable to be proceeded against and punished as if he or she was guilty of the offence.

(6) If the affairs of a body corporate are managed by its members, paragraph (5) applies in relation to the acts and defaults of a member in connection with the functions of management as if the member were a director or manager of the body corporate.

10. (1) The European Communities (Common Agricultural Policy) (Scrutiny of Transactions) Regulations 1994 (S.I. No. 274 of 1994) and the European Communities (Common Agriculture Policy)(Scrutiny of Transactions) (Amendment) Regulations 1995 (S.I. No. 218 of 1995) are revoked.

(2) An officer appointed under Regulation 9 of the European Communities (Common Agricultural Policy) (Scrutiny of Transactions) Regulations 1994 shall continue to be an authorised officer as though appointed under Regulation 4 of these Regulations.

(3) Any document or other thing created for the purposes of Article 11 of the Council Regulation are deemed to be property of the Minister.



GIVEN under my Official Seal,
3 September 2010.

BRENDAN SMITH,
Minister for Agriculture, Fisheries and Food.

EXPLANATORY NOTE.

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations deal with the scrutiny of transactions forming part of the system of financing by the European Agricultural Guarantee Fund as required by Council Regulation (EEC) No. 485/2008. They provide authorised officers with the powers to examine the commercial documents of undertakings receiving from or making payment to the Fund so as to ensure the effective protection of the financial interests of the Community.

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