

**COMMISSION REGULATION (EC) No 1848/2006****of 14 December 2006****concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organisation of an information system in this field and repealing Council Regulation (EEC) No 595/91**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Article 34(1) points (b) and (c) of Regulation (EC) No 1290/2005.

Having regard to the Treaty establishing the European Community,

(4) It is necessary to specify that the definition of 'irregularity' used for the purposes of this Regulation is taken from Article 1(2) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests <sup>(3)</sup>.Having regard to Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy <sup>(1)</sup>, and in particular to Article 42 thereof,(5) It is necessary to define the term 'suspected fraud', taking account of the definition of fraud contained in the Convention on the protection of the European Communities' financial interests drawn up on the basis of Article K.3 of the Treaty on European Union <sup>(4)</sup>.

After consulting the European Data Protection Supervisor,

Whereas:

- (1) Article 2 of Regulation (EC) No 1290/2005 sets up two funds to attain the objectives of the common agriculture policy: a European Agricultural Guarantee Fund hereinafter referred to as the 'EAGF' and a European Agricultural Fund for Rural Development, hereinafter referred to as the 'EAFRD'.
- (2) Article 9 of Regulation (EC) No 1290/2005 lays down principles governing the protection of the financial interests of the Community and assurances regarding the management of Community funds.
- (3) In the light of the experience gained by the Commission and by the Member States, the system provided for in Council Regulation (EEC) No 595/91 of 4 March 1991 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organisation of an information system in this field and repealing Regulation (EEC) No 283/72 <sup>(2)</sup> should be adjusted in order to harmonize its application in the Member States, to intensify the campaign against irregularities, to enhance the effectiveness of the system of reporting irregularities, to take into account that individual irregularity cases will henceforth be cleared according to the provisions of Articles 32 and 33 of Regulation (EC) No 1290/2005 and to cover both the EAGF and the EAFRD from 1 January 2007 onwards. To that end, provision should also be made in order to include in that system irregularities concerning assigned revenues as referred to in
- (6) It is necessary to specify that the definition of 'first administrative or judicial finding' is taken from Article 35 of Regulation (EC) No 1290/2005.
- (7) It is also necessary to define the terms 'bankruptcy' and 'economic operator'.
- (8) In order to enhance the added value of the reporting system, the obligation to report cases of suspected fraud for the purposes of risk analysis should be more clearly determined and for this purpose the quality of the information to be supplied should be more closely defined.
- (9) With a view to ascertaining the nature of fraudulent practices and the financial effects of irregularities and to monitoring the recovery of sums wrongly paid, provision should be made for irregularities to be communicated to the Commission at least every quarter; such communication should be supplemented by information on the progress of judicial or administrative procedures.
- (10) The overall results of the reporting exercise each year are brought to the notice of the Committee referred to in Article 2(1) of Commission Decision 94/140/EC of 23 February 1994 setting up an advisory committee for the coordination of fraud prevention <sup>(5)</sup>.

<sup>(1)</sup> OJ L 209, 11.8.2005, p. 1. Regulation as amended by Regulation (EC) No 320/2006 (OJ L 58, 28.2.2006, p. 42).<sup>(2)</sup> OJ L 67, 14.3.1991, p. 11.<sup>(3)</sup> OJ L 312, 23.12.1995, p. 1.<sup>(4)</sup> OJ C 316, 27.11.1995, p. 49.<sup>(5)</sup> OJ L 61, 4.3.1994, p. 27. Decision as amended by Decision 2005/223/EC (OJ L 71, 17.3.2005, p. 67).

(11) In order to facilitate the reporting exercise which the Member States are required to carry out and to improve efficiency, it is necessary to increase the minimum threshold, defined in terms of the sum affected by the irregularity, above which irregularities have to be reported by Member States, and to determine those cases in which no reporting obligation arises.

(12) Conversion rates should be established for Member States outside the euro zone.

(13) Account must be taken of the obligations arising out of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data <sup>(6)</sup> and Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data <sup>(7)</sup>.

(14) The measures provided for in this Regulation are in accordance with the opinion of the Committee of the Agricultural Funds,

This Regulation shall not affect the obligations that arise directly from the application of Articles 32, 33 and 36 of Regulation (EC) No 1290/2005 and of Commission Regulation (EC) No 885/2006 <sup>(8)</sup>.

## Article 2

### Definitions

For the purposes of this Regulation:

1. 'irregularity' has the meaning assigned to it by Article 1(2) of Regulation (EC, Euratom) No 2988/95, that is any infringement of a provision of Community law resulting from an act or omission by an economic operator which has, or would have, the effect of prejudicing the general budget of the Communities either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by charging an unjustified item of expenditure to the Community budget;
2. 'economic operator' has the meaning assigned to it by Article 1a point (2) of Commission Regulation (EC) No 1681/94 <sup>(9)</sup>, that is any natural or legal person or other entity benefiting from a financing from the EAGF or the EAFRD, with the exception of Member States exercising their prerogatives as a public authority, or receiving such assistance, or having to pay an assigned revenue within the meaning of Article 34(1) points (b) and (c) of Regulation (EC) No 1290/2005;
3. 'primary administrative or judicial finding' has the meaning assigned to it by Article 35 of Regulation (EC) No 1290/2005, that the first written assessment of a competent authority, either administrative or judicial, concluding on the basis of actual facts that an irregularity has been committed, without prejudice to the possibility that this conclusion may subsequently have to be adjusted or withdrawn as a result of developments in the course of the administrative or judicial procedure;
4. 'suspected fraud' has the meaning assigned to it by Article 1a point (4) of Regulation (EC) No 1681/94, that is an irregularity which has been subject of a primary administrative or judicial finding giving rise to the initiation of proceedings at national level in order to establish the presence of intentional behaviour, in particular fraud as is referred to in Article 1(1) point (a) of the Convention of 26 July 1995 on the protection of the European Communities' financial interests drawn up on the basis of Article K.3 of the Treaty on European Union;

HAS ADOPTED THIS REGULATION:

## CHAPTER I

### GENERAL PROVISIONS

#### Article 1

##### Scope

This Regulation shall apply to expenditure under the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD), in accordance, respectively, with Articles 3(1) and 4 of Regulation (EC) No 1290/2005.

It shall also apply in cases where the payment of assigned revenue within the meaning of Article 34(1) points (b) and (c) of Regulation (EC) No 1290/2005 has not been made in accordance with those provisions.

<sup>(6)</sup> OJ L 8, 12.1.2001, p. 1.

<sup>(7)</sup> OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

<sup>(8)</sup> OJ L 171, 23.6.2006, p. 90.

<sup>(9)</sup> OJ L 178, 12.7.1994, p. 43.

5. 'bankruptcy' means insolvency proceedings within the meaning of Article 2 point (a) of Council Regulation (EC) No 1346/2000 <sup>(10)</sup>.

## CHAPTER II

### REPORTING OBLIGATIONS

#### Article 3

#### Quarterly report

1. At the latest within two months following the end of each quarter, Member States shall report to the Commission all the irregularities which have been the subject of a primary administrative or judicial finding. For each irregularity, Member States shall give details of:

- (a) the common market organizations affected, the sectors and products concerned;
- (b) the nature of the irregular expenditure;
- (c) the Community provision which has been infringed;
- (d) the date and the source of the first written information leading to suspicion that an irregularity had been committed;
- (e) the practices employed in committing the irregularity;
- (f) where appropriate, whether the practice amounts to a suspected fraud;
- (g) the manner in which the irregularity was discovered;
- (h) where appropriate, the Member States and third countries involved;
- (i) the period during which, or the moment at which, the irregularity was committed;
- (j) the national authorities or bodies which drew up the official report on the irregularity and the authorities responsible for administrative and/or judicial follow-up;

- (k) the date on which the primary administrative or judicial finding on the irregularity was established;
- (l) the identities of the natural and/or legal persons involved or of other entities which have taken part in the commission of the irregularity, except where this information is irrelevant for the purposes of combating irregularities, given the nature of the irregularity in question;
- (m) the total amount of expenditure on the operation at issue, and, where appropriate, the distribution of its co-financing between Community, national, private and other contributions;
- (n) the amount affected by the irregularity and, where appropriate, its distribution between Community, national, private and other contributions; where no payment has been made to the persons and/or other entities identified under point (l), the amounts which would have been wrongly paid had the irregularity not been identified;
- (o) the suspension of payments, where applicable, and the possibilities of recovery;
- (p) Only in the case of irregularities relating to the EAFRD, the ARINCO or CCI (Common Identification Code) number of the programme affected.

2. By way of derogation from paragraph 1, the following cases need not be reported:

- cases where the irregularity consists solely of the failure to partially or totally execute an operation co-financed by the EAFRD or subsidised under the EAGF owing to the bankruptcy of the final beneficiary or the final recipient; however, irregularities preceding a bankruptcy and cases of suspected fraud must be reported,
- cases brought to the attention of the administrative authority by the final beneficiary or the final recipient voluntarily and before detection by the relevant authority, whether before or after the payment of the public contribution,
- cases where the administrative authority finds a mistake regarding the eligibility of the financed expenditure and corrects the mistake prior to payment of the public contribution.

<sup>(10)</sup> OJ L 160, 30.6.2000, p. 1.

3. Where some of the information referred to in paragraph 1 of this Article, and in particular that concerning the practices adopted in committing the irregularity and the manner in which this was discovered, is not available, Member States shall as far as possible supply the missing information when forwarding subsequent communications of irregularities to the Commission.

4. If national provisions provide for the confidentiality of investigations, communication of the information shall be subject to the authorisation of the competent court.

#### Article 4

##### Special cases

Each Member State shall forthwith report to the Commission and, where necessary, to the other Member States concerned, any irregularities discovered or supposed to have occurred, where it is feared that:

- (a) they may very quickly have repercussions outside its territory; or
- (b) they show that a new malpractice has been employed.

This communication gives in particular detailed information of the malpractice and of the other Member States or third countries concerned.

#### Article 5

##### Follow-up report

1. In addition to the information referred to in Article 3(1), Member States shall inform the Commission as soon as possible, but at the latest within two months following the end of each quarter, with reference to any previous report made under Article 3, on details concerning the initiation or abandonment of any procedures for imposing administrative or criminal sanctions related to the notified irregularities as well as of the main results of such procedures. This information shall also indicate the character of the sanctions applied and/or whether the sanctions in question relate to the application of Community and/or national legislation, including a reference to the Community and/or national rules in which the sanctions are laid down.

2. Upon explicit request of the Commission, the Member States shall, within two months following receipt of that request, provide the Commission with all relevant information regarding the progress made — notably on initiation, abandonment and termination — in the procedures related to the

recovery of any sums wrongly paid in a specific case or group of cases.

#### Article 6

##### De minimis rule

1. Where the irregularities relate to sums of less than EUR 10 000 in Community funding, Member States shall not forward the information provided for in Articles 3 and 5 to the Commission unless the latter expressly requests it.

2. For applying the threshold set out in paragraph 1:

- Member States which do not form part of the euro zone shall apply the same exchange rate as that which they used to make payments to beneficiaries or receive revenue in accordance with Commission Regulation (EC) No 2808/98<sup>(1)</sup> and the sectoral agricultural legislation,
- in cases other than those referred to in sub-paragraph 1, in particular for operations for which an operative event has not been laid down by the sectoral agricultural legislation, the applicable exchange rate shall be the last-but-one exchange rate established by the European Central Bank before the month in respect of which the expenditure or assigned revenue has been declared to the Commission in accordance with Commission Regulation (EC) No 883/2006<sup>(12)</sup>.

#### Article 7

##### Form of the communication

The information required under Articles 3, 4 and 5(1) shall be sent, whenever it is possible, by electronic means, via a secure connection using the module provided by the Commission for the purpose and on the form provided by the Commission.

#### CHAPTER III

##### CO-OPERATION

#### Article 8

##### Co-operation with the Member States

1. The Commission shall maintain appropriate contacts with the Member States concerned for the purpose of supplementing the information supplied on the irregularities referred to in Article 3, on the procedures referred to in Article 5, and, in particular, on the possibility of recovery.

<sup>(11)</sup> OJ L 349, 24.12.1998, p. 36.

<sup>(12)</sup> OJ L 171, 23.6.2006, p. 1.

2. Without prejudice to such contacts, when the nature of the irregularity is such as to suggest that identical or similar practices could occur in more than one Member State, the matter shall be put before the Committee referred to in Article 2(1) of Decision 94/140/EC (hereinafter referred to as the Cocolaf) or its working parties as referred to in Article 3(3) thereof.

3. Furthermore, the Commission shall organise meetings of an informative nature at Community level for the appropriate representatives of the Member States in order to examine with them the information obtained under Articles 3, 4 and 5 and paragraph 1 of this Article, in particular with regard to the lessons to be learned therefrom in connection with irregularities, preventive measures and legal proceedings. The Commission shall keep the Cocolaf informed of this work and shall consult it regarding any proposals which it intends to submit for the prevention of irregularities.

4. At the request of a Member State or, under the arrangements laid down in paragraph 3, of the Commission, the Member States shall consult each other, where appropriate, within the Cocolaf or any other competent body, for the purpose of closing any loopholes which become apparent in the course of application of current provisions of the common agricultural policy and which prejudice the Community's financial interests.

#### Article 9

##### Summary report

The Commission shall every year inform the Cocolaf, of the order of magnitude of the sums involved in the irregularities which have been discovered and of the various categories of irregularity, broken down by type and with a statement of the number of irregularities in each category.

#### CHAPTER IV

##### USE AND TREATMENT OF THE INFORMATION

#### Article 10

##### Use of the information

Without prejudice to Article 11, the Commission may use any information of a general or operational nature communicated by Member States in accordance with this Regulation to perform risk analyses, using information technology support, and may, on the basis of the information obtained, produce reports and develop systems serving to identify risks more effectively.

#### Article 11

##### Treatment of the information

1. Information communicated or acquired in any form under this Regulation shall be covered by professional confidentiality

and be protected in the same way as similar information is protected by the national legislation of the Member State that received it and by the corresponding provisions applicable to the Community institutions. Member States and the Commission shall take all necessary precautions to ensure that that information remains confidential.

2. The information referred to in paragraph 1 may not, in particular, be disclosed to persons other than those in the Member States or within the Community institutions whose duties require that they have access to it, unless the Member State supplying it has expressly so agreed.

In addition, that information may not be used for any purposes other than those provided for in this Regulation unless the authorities that have provided it have given their express consent and provided that the provisions in force in the Member State in which the authority that has received it is located do not prohibit such communication or use.

3. The Commission and the Member States shall ensure, when processing personal data pursuant to this Regulation, that the Community and national provisions on the protection of personal data, in particular those laid down by Directive 95/46/EC and, where applicable, by Regulation (EC) No 45/2001, are complied with.

Paragraphs 1 and 2 shall not affect the rights of access of the data subject as provide for in Directive 95/46/EC and Regulation (EC) No 45/2001 under the conditions provided for in that directive and regulation.

4. Paragraphs 1 to 3 shall not impede the use, in any legal actions or proceedings subsequently instituted by the Community or by the Member States in respect of the recovery of the sums subject to the irregularity, the performance of checks following alleged irregularities or the imposition of administrative measures, administrative penalties or criminal sanctions for irregularities, of information obtained pursuant to this Regulation. The competent authority of the Member State which supplied this information shall be informed of such use.

5. Where a Member State notifies the Commission that a natural or legal person whose name has been communicated to the Commission under this Regulation proves on further inquiry not to be involved in any irregularity, the Commission shall forthwith inform all those to whom it disclosed that name under this Regulation of that fact. Such person shall thereupon cease to be treated, on account of the earlier notification, as a person involved in the irregularity in question.

## CHAPTER V

**FINAL PROVISIONS***Article 12***Repeal**

1. Regulation (EEC) No 595/91 is repealed with effect from 1 January 2007.
2. References to Regulation (EEC) No 595/91 shall be construed as references to this Regulation and be read in accordance with the correlation table set out in the Annex.

*Article 13***Transitional provision**

1. Member States shall provide the Commission with the information referred to in Article 5 of the present Regulation

or irregularities communicated before 1 January 2007 under Regulation (EEC) No 595/91 that are still under follow-up by their authorities.

2. For those cases with a financial impact less than EUR 10 000, Member States may submit one single final communication.

*Article 14***Entry into force**

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

It shall apply from 1 January 2007.

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

Done at Brussels, 14 December 2006.

*For the Commission*

Siim KALLAS

*Vice-President*

## ANNEX

## Correlation Table

Regulation (EEC) No 595/91	This Regulation
Article 1	Article 1
Article 2 (deleted)	
	Article 2 (new)
Article 3(1)	Article 3(1)
	Article 3(2) (new)
Article 3(2)	Article 3(3)
Article 3(3)	Article 3(4)
Article 4	Article 4
Article 5(1)	Article 5(1)
Article 5(2) (deleted by Regulation (EC) No 1290/2005)	
Article 6 (deleted)	
Article 7(1) (deleted by Regulation (EC) No 1290/2005)	
Article 7(2) (deleted)	
Article 8	Article 8
Article 9	Article 9
Article 10	Article 11
Article 11	No longer of relevance
Article 12	Article 6
Article 13	Article 1
Article 14(1)	Article 12(1)
Article 14(2)	Article 12(1)
Article 15	Article 14
	Article 7 (new)
	Article 10 (new)
	Article 13 (new)