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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1287/95

of 22 May 1995

amending Regulation (EEC) No 729/70 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 Article 43 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Court of Auditors (3),

Whereas the responsibility for checking EAGGF Guarantee Section expenditure lies, in the first place, with the Member States, which designate the authorities and bodies empowered to effect expenditure; whereas the Member States must carry out this task fully and effectively; whereas the Commission, being responsible for implementing the Community budget, must verify the conditions under which payments and checks have been made; whereas the Commission can only finance expenditure where those conditions offer all necessary guarantees regarding compliance with Community rules; whereas in a decentralized system of management of Community expenditure, it is essential that the Commission, as the institution responsible for funding, is entitled and enabled to carry out all checks on the management of expenditure it considers necessary and that there should be full and effective transparency and mutual assistance between the Member States and the Commission;

Whereas, during the clearance of accounts, the Commission is able to determine within a reasonable time the total expenditure to be entered against the Guarantee Section in the general account only if it has satisfactory assurance that the national controls are adequate and transparent and that the paying agencies verify the legality and regularity of the payment requests which they execute; whereas provision should therefore be made for the accreditation of paying agencies by Member States;

whereas in order to ensure consistency in the standards required for accreditation in the Member States, the Commission provides guidance on the criteria to be applied; whereas, for that purpose, it should be stipulated that only expenditure effected by paying agencies accredited by the Member States should be financed; whereas, moreover, in order to ensure the transparency of national controls, in particular as regards authorization, validation and payment procedures, the number of authorities and bodies to which these responsibilities are delegated should, where appropriate, be restricted taking account of the constitutional arrangements of each Member State;

Whereas decentralized management of Community funds, in particular following reform of the common agricultural policy, leads to the designation of several paying agencies; whereas, therefore, where a Member State accredits more than one paying agency, it must designate a single contact body to ensure consistency in the management of the funds, to provide liaison between the Commission and the various accredited paying agencies and to ensure that the information requested by the Commission concerning the operations of several paying agencies is made rapidly available;

Whereas the time limit for the clearance of accounts decision must be shortened; whereas, therefore, information technology must be used as fully as possible for producing the information to be sent to the Commission; whereas, when carrying out checks, the Commission must have full and immediate access to information on expenditure held in both documents and electronic files;

Whereas a single annual decision for the clearance of accounts creates numerous difficulties in that, for a given financial year, in respect of all measures covered by the Guarantee Section of the EAGGF and in all the Member States, it fulfils simultaneously an accounting objective and a recognition that expenditure has been effected in accordance with Community rules; whereas considerable time lags accompany the taking of this single decision, which is nevertheless subject to reservations and disjunctions; whereas it is accordingly necessary to separate the

(1) OJ No C 284, 12. 10. 1994, p. 1.
(2) OJ No C 89, 10. 4. 1995.
(3) OJ No C 383, 31. 12. 1994, p. 1.

procedure into two types of decision, one concerning the clearance of the accounts of the Guarantee Section of the Fund, the other determining the consequences, including financial corrections, to be drawn from the results of the checks on conformity;

Whereas the checks on conformity and the ensuing clearance decisions will therefore no longer be linked to the implementation of the budget in a particular financial year; whereas the maximum period to which the consequences to be drawn from the checks on conformity may be applied must be determined;

Whereas Regulation (EEC) No 729/70 [1] should be amended, in particular by deleting certain provisions which have ceased to have any purpose,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 729/70 is hereby amended as follows:

1. Article 4 shall be replaced by the following:

'Article 4

1. Each Member State shall communicate to the Commission:

(a) details of the authorities and bodies it accredits to pay the expenditure referred to in Articles 2 and 3, hereinafter referred to as "paying agencies".

Paying agencies shall be authorities and bodies of the Member States, which, as regards payments in the areas for which they are responsible, offer sufficient guarantees that:

— the admissibility of claims and compliance with Community rules are checked before payment is authorized,

— the payments effected are correctly and fully recorded in the accounts, and

— the necessary documents are submitted within the time and in the form laid down in Community rules.

The paying agencies must hold documents justifying the payments effected and documents concerning the carrying out of the prescribed administrative and physical controls. Where the relevant documents are kept by the bodies responsible for authorizing the expenditure, those bodies must transmit reports to the paying agency on the number of checks carried out, their content and the measures taken in the light of the results;

(b) where more than one paying agency is accredited, details of the authority or body it charges, first, with bringing together the information to be supplied to the Commission and sending it the same, and, second, with promoting the harmonized application of Community rules, hereinafter referred to as the "coordinating body".

Only expenditure effected by accredited paying agencies may be the subject of Community financing.

2. Each Member State shall, taking into account its constitutional and institutional structures, limit the number of accredited paying agencies to the minimum necessary in order to effect the expenditure referred to in Articles 2 and 3 under satisfactory administrative and accounting conditions.

3. Each Member State shall communicate to the Commission the following particulars concerning those paying agencies:

— their name and their statutes,

— the administrative, accounting and internal control conditions under which payments are made relating to the implementation of Community rules within the framework of the common agricultural policy,

— the act of accreditation.

The Commission shall be informed forthwith of any change in those particulars.

4. Where one or more of the conditions for accreditation are not, or are no longer, fulfilled by an accredited paying agency, accreditation shall be withdrawn unless the paying agency makes the necessary adjustments within a time limit to be fixed in relation to the seriousness of the problem. The Member State concerned shall inform the Commission.

5. The Commission shall make available to Member States, by means of advances on the provision for expenditure effected in a reference period, the financial resources required to cover the expenditure referred to in paragraph 1 (a). Until the advances are paid, the resources necessary to meet that expenditure shall be mobilized by the Member States in accordance with the needs of their accredited paying agencies.

6. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 13.';

2. Article 5 shall be replaced by the following:

'Article 5

1. Member States shall at regular intervals transmit to the Commission the following information concerning the accredited paying agencies and coordinating bodies referred to in Article 4 and relating to transactions financed by the Guarantee Section of the EAGGF:

(a) statements of expenditure and estimates of financial needs;

[1] OJ No L 94, 28. 4. 1970, p. 13. Regulation as last amended by Regulation (EEC) No 2048/88 (OJ No L 185, 15. 7. 1988, p. 1).

(b) annual accounts, accompanied by the information required for clearance and an attestation regarding the integrality, exactitude and veracity of the accounts transmitted.

2. The Commission, after consulting the Fund Committee :

(a) shall decide on monthly advances against the allocations of expenditure effected by the accredited paying agencies. Expenditure for October shall be attributed to October if it is effected from 1 to 15 October and to November if it is effected from 16 to 31 October. Advance payments shall be made to the Member State not later than the third working day of the second month following that in which the expenditure is effected.

Additional advances may be made, the Fund Committee being informed at the next consultation ;

(b) shall, before 30 April of the year following the financial year concerned, on the basis of the information referred to in point (b) of paragraph 1, clear the accounts of the paying agencies.

The accounts clearance decision shall cover the integrality, exactitude and veracity of the accounts submitted.

The decision shall not prejudice the adoption of a subsequent decision pursuant to point (c) ;

(c) shall decide on the expenditure to be excluded from the Community financing referred to in Articles 2 and 3 where it finds that expenditure has not been effected in compliance with Community rules.

Before a decision to refuse financing is taken, the results of the Commission's checks and the replies of the Member State concerned shall be notified in writing, after which the two parties shall endeavour to reach agreement on the action to be taken.

If no agreement is reached, the Member State may ask for a procedure to be initiated with a view to mediating between the respective positions within a period of four months, the results of which shall be set out in a report sent to and examined by the Commission, before a decision to refuse financing is taken.

The Commission shall evaluate the amounts to be excluded having regard in particular to the degree of non-compliance found. The Commission shall take into account the nature and gravity of the infringement and the financial loss suffered by the Community.

A refusal to finance may not involve expenditure effected prior to twenty-four months preceding the Commission's written communication of the results of those checks to the Member State concerned. However, this provision shall not apply to the financial consequences :

— of irregularities as referred to in Article 8 (2) ;

— concerning national aids, or infringements, for which the procedures referred to in Articles 93 and 169 of the Treaty have been initiated.

3. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 13. Those rules shall cover in particular the attestation of the accounts referred to in paragraph 1 and the procedures relating to the decisions referred to in paragraph 2.' ;

3. Article 5a shall be replaced by the following :

'Article 5a

To accommodate any difficulties which certain Member States might encounter in setting up the system provided for in Article 4 (5), appropriate measures enabling some or all of the interest to be charged to the Community may be adopted in accordance with the procedure laid down in Article 13.' ;

4. the second subparagraph of Article 8 (2) shall be replaced by the following :

'The sums recovered shall be paid to the accredited paying agencies and deducted by them from the expenditure financed by the Fund. The interest on sums recovered or paid late shall be paid into the Fund.' ;

5. the first sentence of Article 9 (2) shall be replaced by the following :

'2. Without prejudice to the supervision effected by Member States in accordance with national provisions laid down by law, regulation or administrative action and without prejudice to Article 188c of the Treaty, or to any inspection organized on the basis of point (c) of Article 209 of the Treaty, authorized representatives appointed by the Commission to carry out inspections on the spot shall have access to the books and all other documents, including information created or stored in electronic form, relating to expenditure financed by the Fund.'

Article 2

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

It shall apply from the financial year beginning on 16 October 1995.

2. Refusal to grant financing as referred to in Article 5 (2) (c) of Regulation (EEC) No 729/70 may not relate to expenditure claimed against a financial year prior to 16 October 1992, but without prejudice to decisions regarding the clearance of the financial years preceding the entry into force of this Regulation.

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

Done at Brussels, 22 May 1995.

For the Council

The President

A. MADELIN