

COMMISSION IMPLEMENTING REGULATION (EU) No 375/2012

of 2 May 2012

amending Regulation (EC) No 885/2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the accreditation of paying agencies and other bodies and the clearance of the accounts of the EAGF and EAFRD

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy ⁽¹⁾, and in particular Article 42 thereof,

Whereas:

(1) Pursuant to Article 6(1)(e) of Regulation (EC) No 1290/2005 Member States' accredited paying agencies are to ensure that documents in respect to payments made by them are accessible and kept in a manner which ensures their completeness, validity and legibility over time. In order to reflect the evolution in information and communication technology which makes it possible to store aid claim supporting documents in electronic form, in a secure and cost-effective way, Member States should be allowed to store aid claim support documents electronically rather than in paper form. Member State should be able to use that option where national law permits the use of electronic documents as evidence of the underlying transactions in national court proceedings. Electronic documents should be protected in line with international information security standards in the same way as other information held by the paying agency in accordance with Commission Regulation (EC) No 885/2006 ⁽²⁾, in order to ensure that they are available to Commission scrutiny as required, in a form which exactly reflects the original paper documents.

(2) According to Article 31(1) of Regulation (EC) No 1290/2005 if expenditure has been incurred in a way that has infringed Union rules, the Commission is to decide what amounts are to be excluded from Union financing. In the interest of the effectiveness and efficiency of the conformity clearance procedure, it should be possible for the Commission not to pursue cases where the findings of its inquiry lead to conclude that the presumed maximum amounts concerned would not exceed EUR 50 000 and 10 % of the relevant expenditure.

(3) In order to ensure that the procedure for executing decisions taken pursuant to Articles 30 and 31 of Regulation (EC) No 1290/2005, in the area of EAFRD, is effective and transparent, it is necessary to ensure that

the Member State concerned is in a position to take the financial effects of such decisions into account when submitting its declaration of expenditure referred to in Article 27 of that Regulation.

(4) Having regard to the possibility that a Member State may experience severe financial difficulties caused by a serious deterioration in the international economic environment, the Commission should have the possibility to defer deductions from Union financing of expenditure which have been incurred in a way that has infringed Union rules, if the Member State concerned so requests. Deferral of deductions for a period not exceeding 18 months should also be granted to those Member States which so request while being subject to financial assistance in accordance with Council Regulation (EC) No 332/2002 of 18 February 2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments ⁽³⁾, Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism ⁽⁴⁾, the European Financial Stability Facility Framework Agreement signed on 7 June 2010 and the Treaty establishing the European Stability Mechanism signed on 11 July 2011. The Member State benefiting from a deferral decision shall ensure that the deficiencies which have been the reasons for the deductions and which still persist at the time of the decision are being remedied on the basis of an action plan, established in consultation with the Commission, with clear progress indicators. If a Member State benefiting from such a deferral fails to remedy the deficiencies in accordance with the action plan and, thus, exposes the Union budget to additional financial risks, the Commission should revoke its decision deferring the date for the execution of the deductions while respecting the principle of proportionality.

(5) Regulation (EC) No 885/2006 should therefore be amended accordingly.

(6) The Committee on the Agricultural Funds has not given an opinion within the time limit set by its President,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 885/2006 is amended as follows:

⁽¹⁾ OJ L 209, 11.8.2005, p. 1.

⁽²⁾ OJ L 171, 23.6.2006, p. 90.

⁽³⁾ OJ L 53, 23.2.2002, p. 1.

⁽⁴⁾ OJ L 118, 12.5.2010, p. 1.

(1) in Article 9, the following paragraph 5 is added:

‘5. The supporting documents referred to in paragraphs 1 to 4 shall be kept at the disposal of the Commission either in paper form, in electronic form and/or in both forms.

Documents may only be kept exclusively in electronic form if the national law of the Member State concerned permits the use of electronic documents as evidence of the underlying transactions in national court proceedings.

If the documents are kept in electronic form only, the system for doing so shall comply with point 3(B) of Annex I;

(2) in Article 10(2), the second sentence of the second subparagraph is replaced by the following:

‘The Commission shall deduct that amount from or add it to the first payment for which the declaration of expenditure is submitted by the Member State after the decision pursuant to Article 30 of Regulation (EC) No 1290/2005 has been adopted.’;

(3) Article 11 is amended as follows:

(a) in paragraph 3, the following fourth subparagraph is added:

‘The Commission may, at any stage, terminate the procedure, without financial consequences for the Member State concerned, if it expects that the possible financial effects of non-compliance identified as a result of an inquiry referred to in paragraph 1 would not exceed EUR 50 000 and 10 % of the relevant expenditure or the amounts to be recovered.’;

(b) in paragraph 4, the second and the third subparagraphs are replaced by the following:

‘As regards the EAFRD, the deductions from Union financing shall be made by the Commission from the payment for which the declaration of expenditure is submitted by the Member State after the decision pursuant to Article 31 of Regulation (EC) No 1290/2005 has been adopted.

However, at the Member State’s request and after consultation of the Committee on the Agricultural Funds, the Commission may adopt a decision:

(a) setting a different date for the deductions or authorising their reimbursement in one or more instalments where this is warranted by the materiality of the deductions included in an implementing act adopted on the basis of Article 31 of Regulation (EC) No 1290/2005; or

(b) deferring, until the end of a period of maximum 18 months from the date of its adoption, the execution of all deductions to be executed during this period and at the same time authorising their execution after the end of the deferral in a maximum of three equal annual instalments, for those Member States which are subject to financial assistance under Council Regulation (EC) No 332/2002 (*), Council Regulation (EU) No 407/2010 (**), the European Financial Stability Facility Framework Agreement signed on 7 June 2010 or the Treaty establishing the European Stability Mechanism.

The time period of deferral referred to in point (b) of the third subparagraph cannot be prolonged and no further decision authorising a deferral can be adopted in relation to the same Member State. The Member State benefiting from a deferral decision shall ensure that the deficiencies which have been the reasons for the deductions and which still persist at the time of the adoption of the deferral decision are being remedied on the basis of an action plan, established in consultation with the Commission, with clear progress indicators. If the Member State fails to take the necessary actions to remedy those deficiencies as foreseen in the action plan, if the progress of the remedial actions is not sufficient according to the progress indicators or if the outcome of the action is not satisfactory the Commission shall revoke its decision deferring the date for the execution of the deductions while respecting the principle of proportionality.

(*) OJ L 53, 23.2.2002, p. 1.

(**) OJ L 118, 12.5.2010, p. 1.’.

Article 2

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

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

Done at Brussels, 2 May 2012.

For the Commission

The President

José Manuel BARROSO