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REGULATION (EEC) No 283/72 OF THE COUNCIL

of 7 February 1972

concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organization of an information system in this field

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to Council Regulation (EEC) No 729/70[1] of 21 April 1970 on the financing of the common agricultural policy, and in particular Article 8 (3) thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament;

Whereas Article 8 of Regulation (EEC) No 729/70 lays down the principles according to which the Community intends to intensify the campaign against irregularities and recover the sums lost and whereas, in accordance with paragraph 3 of that Article, the Council must adopt general rules for the application thereof;

Whereas in order that the Community may be better informed of the measures taken by Member States to combat irregularities, the national provisions to be communicated to the Commission should be specified;

Whereas with a view to learning the nature of fraudulent practices and the financial effects of irregularities and to recovering sums wrongly paid, provision should be made for irregularities to be communicated to the Commission every quarter; whereas such communication must be supplemented by information on the progress of judicial or administrative procedures undertaken with a view to recovery;

Whereas Member States and the Commission should cooperate more closely in order to prevent irregularities, although great discretion should be exercised in this respect;

Whereas the overall results should be communicated to the Committee of the European Agricultural Guidance and Guarantee Fund every quarter and to the Council and the European Parliament annually;

Whereas in this connection it is necessary, mainly by reason of the particular criteria used for calculating Community financing, to waive transfer to the Community of any sums recovered by Member States in respect of expenditure eligible for refund under the Guarantee Section and relating to accounting periods prior to 1 July 1967;

Whereas aid granted by the Commission under the Guidance Section of the Fund for projects within the meaning of Article 13 of Council Regulation No 17/64/EEC[2] of 5 February 1964 on the conditions for obtaining aid from the European Agricultural Guidance and Guarantee Fund, as last amended by Regulations (EEC) No 728/70[3] and (EEC) No 729/70,[4] is not covered by this Regulation by reason of the different nature of that expenditure;

HAS ADOPTED THIS REGULATION:

Article 1

The measures referred to in this Regulation relate to all expenditure by the European Agricultural Guidance and Guarantee Fund, hereinafter called the 'Fund'.

[1] OJ No L 94, 28.4.1970, p. 13.

[2] OJ No 34, 27.2.1964, p. 586/64.

[3] OJ No L 94, 28.4.1970, p. 9.

[4] OJ No L 94, 28.4.1970, p. 13.

However, this Regulation does not cover expenditure connected with projects within the meaning of Article 13 of Regulation No 17/64 EEC or with common measures provided for in Article 6 of Regulation (EEC) No 729/70, where the Council has adopted for such measures specific procedural provisions which differ from the provisions of Article 8 of Regulation (EEC) No 729/70.

Article 2

1. Member States shall communicate to the Commission within three months of the entry into force of this Regulation:

— the provisions laid down by law, regulation or administrative action for the application of the measures provided for in Article 8 (1) of Regulation (EEC) No 729/70, and

— the list of authorities and bodies responsible for the application of those measures and the main provisions relating to the role and functioning of those authorities and bodies and the procedures which they are responsible for applying.

2. Member States shall communicate to the Commission without delay any amendments to the information supplied in pursuance of the preceding paragraph.

3. The Commission shall study Member States' communications and shall inform the Fund Committee of the conclusions which it draws therefrom. It shall keep in contact with the Member States, where appropriate within the Fund Committee, to the extent necessary for the application of this Article.

Article 3

During the month following the end of each quarter, Member States shall communicate to the Commission a list of irregularities which have been the subject of the primary administrative or judicial findings of fact. To this end they shall as far as possible give detailed information concerning:

— the provision which has been infringed;

— the nature and amount of the expenditure;

— the common organization of the market and the product or products or measure concerned;

— the period during which or the moment at which the irregularity was committed;

— the practices adopted in committing the irregularity;

— the manner in which the irregularity was discovered;

— the national authorities or bodies which recorded the irregularity; and

— the financial consequences and possibilities of recovery.

Where some of this information, 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 mission information when forwarding subsequent quarterly lists of irregularities to the Commission.

Article 4

Each Member State shall communicate without delay to the other Member States concerned and to the Commission any irregularities which are liable to have effects outside its territory very quickly or which show that a new fraudulent practice has been adopted.

Article 5

1. During the month following the end of each quarter, Member States shall inform the Commission of all judicial or administrative procedures instituted with a view to recovering sums wrongly paid and shall supply the Commission with any information which is relevant in this respect.

2. At the same intervals the Commission shall be informed of the progress of the procedure referred to in the preceding paragraph and of the amounts which have been or are expected to be recovered and, where appropriate, of the reasons for abandoning legal proceedings.

3. Furthermore, as far as possible before a decision is given, the Commission shall be informed in detail of the reasons for partial or complete failure to recover sums due.

4. Where a judicial or administrative decision is given at the end of proceedings, Member States shall communicate that decision or the main points thereof to the Commission.

Article 6

1. Where the Commission considers that irregularities or negligence have taken place in one or more Member States, it shall inform the Member State or States concerned thereof, and that State or those States shall hold an administrative inquiry in which servants of the Commission may take part.

The Member State shall communicate to the Commission the report and the inquiry findings. If

the Commission does not take part in the inquiry, it shall be kept informed of its progress by means of the quarterly communications provided for in Article 5.

2. Where the inquiry does not show that there has been an irregularity or negligence, the Fund Committee shall be informed of the results of the inquiry and where appropriate shall study its implications for the Community. The Member State in question shall then have one month in which to make known its final reasoned position in the light of the study made by the Fund Committee.

3. Where the inquiry shows that there has been an irregularity or negligence, or where this is accepted by the Member State concerned following the procedure referred to in paragraph 2, the Member State shall institute as rapidly as possible an administrative or judicial procedure to establish formally that there has been an irregularity or negligence. It shall keep the Commission informed of the progress of the procedure in accordance with Articles 3, 4 and 5.

Article 7

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.

2. Without prejudice to such contact, the matter shall be put before the Fund Committee where the nature of the irregularity is such as to suggest that identical or similar practices could occur in other Member States.

3. Furthermore the Commission shall organize meetings 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 above, in particular with regard to the lessons to be learned from it in connection with irregularities, preventive measures and legal proceedings. As far as necessary it shall keep the Fund Committee informed of this work and shall consult that Committee regarding any proposals which it intends to submit to the Council 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 Fund Committee or any other competent body, for the purpose of closing any gaps which become apparent in the course of application of provisions in force and which prejudice Community interests.

Article 8

The Fund Committee shall be informed every quarter by the Commission 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. In a special chapter of the annual report on the administration of the Fund, provided for in Article 10 of Regulation (EEC) No 729/70, the Commission shall give the number of cases which have been notified and of those which have been closed, together with the sums recovered and the sums written off.

Article 9

Member States and the Commission shall take all necessary precautions to ensure that the information which they exchange remains confidential.

Article 10

Where the Guidance Section of the Fund has entered only partly into the financing of a project and in cases of partial recovery, the financial consequences of irregularities or negligence which cannot be charged to the administrative authorities or bodies of a Member State shall be shared by that Member State and the Fund in proportion to their financial participation.

Article 11

Where the irregularities relate to sums of less than 1000 u.a., Member States shall not forward the information provided for in Articles 3 and 5 to the Commission unless the latter has expressly requested it.

Article 12

1. Without prejudice to Member States' obligation to recover sums wrongly paid, irregularities and negligence relating to the accounting periods from 1962/63 to 1966/67 shall not entail repayment by Member States to the Community.

2. With regard to irregularities and negligence which relate to the period from 1 July 1967 to 31 December 1970, Member States shall declare the amounts concerned in their claims for reimbursement, the detailed rules for which are to be adopted pursuant to Articles 9 and 10 of Regulation No 17/64/EEC.

3. Irregularities and negligence relating to expenditure by the Guidance Section of the Fund

before the entry into force of this Regulation, with the exception of expenditure on projects under Article 13 of Regulation No 17/64/EEC, must be notified to the Commission. Member forward information to the Commission regarding the irregularity or negligence recorded.

Article 13

Before the end of 1972 the Commission shall report to the Council on the application of this Regulation.

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

Done at Brussels, 7 February 1972.

For the Council

The President

J. P. BUCHLER