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 organization of an information system in this field and repealing Regulation (EEC) No 283/72

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 of 21 April 1970 on the financing of the common agricultural policy [1], as last amended by Regulation (EEC) No 2048/88 [2], and in particular Article 8 (3) thereof,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy [3], as last amended by Regulation (EEC) No 2205/90 [4], and in particular Article 2 (4) thereof,

Having regard to the proposal from the Commission [5],

Having regard to the opinion of the European Parliament [6],

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 adoption thereof;

Whereas the provisions of Regulation (EEC) No 283/72 [7] need to be adjusted in order to harmonize its application in the Member States and intensify the campaign against irregularities in the light of experience; whereas, for reasons of clarity, it is appropriate to replace Regulation (EEC) No 283/72 in its entirety;

Whereas, in order for the Community to 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 ascertaining 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;

Whereas the Commission should be systematically informed of judicial and administrative procedures against persons who have committed irregularities; whereas it would also be advisable to ensure the systematic transmission of information concerning the measures taken by the Member States to safeguard the Community's financial interests;

Whereas the procedures to be followed by the Member States and the Commission in cases where the sums lost through an irregularity cannot be recovered should be specified;

Whereas, in cases where the Commission requests a Member State to institute an inquiry, the Commission must be informed of the preparation for the inquiry and its outcome; whereas the rights of Commission officials participating in such inquiries should be defined;

Whereas national rules relating to criminal proceedings or mutual assistance between Member States at judicial level in criminal matters must not be affected by the provisions of this Regulation;

Whereas provision should be made for a Community contribution to the inquiry and recovery costs based on the sums recovered; whereas it is also appropriate to provide for the possibility of the Community making a contribution to legal costs and to costs arising directly from legal proceedings;

Whereas, in order to prevent irregularities, cooperation between the Member States and the Commission should be reinforced while making sure that such action is conducted with a large measure of discretion;

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

Whereas the minimum threshold above which cases of irregularities must automatically be notified by the Member States should be raised; whereas that threshold is determined, Article 2 (1) of Regulation (EEC) No 1676/85 notwithstanding, in such a way as to obtain a uniform and comparable approach, which can readily be put into effect by the national administrations concerned on the basis of an exchange rate which reflects economic reality;

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[1] OJ No L 94, 28. 4. 1970, p. 13.
[2] OJ No L 185, 15. 7. 1988, p. 1.
[3] OJ No L 164, 24. 6. 1985, p. 1.
[4] OJ No L 201, 31. 7. 1990, p. 9.
[5] OJ No C 138, 7. 6. 1990, p. 6.
[6] OJ No C 324, 24. 12. 1990.
[7] OJ No L 36, 10. 2. 1972, p. 1.

Whereas it should be specified that the provisions of this Regulation also apply in cases where a payment which should have been made by an operator within the framework of the European Agricultural Guidance and Guarantee Fund, Guarantee Section, hereinafter referred to as 'the Fund', has not been made as a result of an irregularity,

HAS ADOPTED THIS REGULATION :

Article 1

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

This Regulation shall continue to apply in the case of irregularities which relate to European Agricultural Guidance and Guarantee Fund, Guidance Section, expenditure and which were notified before 1 January 1989.

This Regulation shall not affect the application, in the Member States, of rules relating to criminal proceedings or mutual assistance between Member States at judicial level in criminal matters.

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 to the procedures which they are responsible for applying.

2. Member States shall communicate forthwith to the Commission any amendments to the information supplied in pursuance of paragraph 1.

3. The Commission shall study Member States' communications and shall inform the Fund Committee of the conclusions which it intends to draw 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

1. During the two months 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 ; in cases where no payment has been made, the amounts which would have been wrongly paid had the irregularity not been discovered, except where the economic operator is guilty of error or negligence detected before payment and not resulting in any administrative or judicial penalty,

— 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,

— the financial consequences and possibilities of recovery,

— the date and source of the first information leading to suspicion that an irregularity existed,

— the date on which the irregularity was discovered,

— where appropriate, the Member States and third countries involved,

— the identity of the natural and legal persons involved, save in cases where such information is of no relevance in combating irregularities on account of the character of the irregularity concerned.

2. 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 missing information when forwarding subsequent quarterly lists of irregularities to the Commission.

3. If national provisions provide for the confidentiality of investigations, communication of this information shall be subject to the authorization of the competent court.

Article 4

Each Member State shall forthwith communicate to the other Member States concerned and to the Commission any irregularities that have been discovered or that are suspected which it is feared may have effects outside its territory very quickly or which show that a new fraudulent practice has been adopted.

Article 5

1. During the two months following the end of each quarter, Member States shall inform the Commission of the procedures instituted following the irregularities noti-

fied under Article 3 and of all important changes resulting therefrom, including:

— the amounts which have been, or are expected to be, recovered,

— the precautionary action taken by Member States to safeguard recovery of sums wrongly paid,

— the judicial and administrative procedures instituted with a view to recovering sums wrongly paid and applying sanctions,

— the reasons for any abandonment of recovery procedures; the Commission shall, as far as possible, be notified before a decision is taken,

— any abandonment of criminal prosecutions.

Member States shall notify the Commission of administrative or judicial decisions, or the main points thereof, concerning the termination of these procedures.

2. Where a Member State considers that an amount cannot be totally recovered, or cannot be expected to be totally recovered, it shall inform the Commission, in a special notification, of the amount not recovered and the reasons why the amount should, in its view, be borne by the Community or by the Member State.

This information must be sufficiently detailed to enable the Commission to decide who shall bear the financial consequences, in accordance with Article 8 (2) of Regulation (EEC) No 729/70. This decision shall be taken in accordance with the procedure laid down in Article 5 of that Regulation.

Article 6

1. Where the Commission considers that irregularities 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, at the earliest opportunity, hold an inquiry in which officials of the Commission may take part.

For the purposes of this Article, 'inquiry' shall be taken to mean any inspection, verification or action carried out by officials of the national administration with a view to establishing whether there has been an irregularity, with the exception of action carried out at the request or under the direct authority of a court.

2. The Member State shall, as soon as possible, communicate to the Commission the inquiry findings.

Where an inquiry shows that there has been an irregularity, the Member State shall inform the Commission thereof in accordance with Articles 3, 4 and 5 and, where appropriate, the other Member States concerned, in accordance with Article 4.

3. Where officials of the Commission take part in the inquiry, the Member State concerned shall be informed thereof. Except in urgent cases, the Member State shall communicate the basic facts of the inquiry to the Commission at least one week in advance.

4. Where Commission officials participate in an inquiry, that inquiry shall at all times be conducted by the officials of the Member State; Commission officials may not, on their own initiative, use the powers of inspection conferred on national officials; on the other hand, they shall have access to the same premises and to the same documents as those officials.

Insofar as national provisions on criminal proceedings reserve certain acts to officials specifically designated by national law, Commission officials shall not take part in such acts. In any event, they shall not participate in particular in any event in searches of premises or the formal questioning of persons under national criminal law. They shall, however, have access to the information thus obtained.

In order to participate in the inspections referred to in paragraph 1, Commission officials shall produce written instructions stating their identities and their functions.

Article 7

1. When the amounts recovered are placed at the Fund's disposal, the Member State may retain 20 % of those amounts where the rules laid down by this Regulation have not been significantly infringed.

2. Where the competent authorities of a Member State decide, at the express request of the Commission, to initiate or continue legal proceedings with a view to recovering amounts wrongly paid, the Commission may undertake to reimburse to the Member State all or part of the legal costs and costs arising directly from the legal proceedings, on presentation of documentary evidence, even if the proceedings are unsuccessful.

Article 8

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 of an informatory 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 above, in particular with regard to the lessons to be learned therefrom in connection with irregularities, preventive measures and legal proceedings. As far as necessary, the Commission shall keep the Fund Committee informed of this work

and shall consult the 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 9

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 10

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

2. The information referred to in paragraph 1 may not, in particular, be sent 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 agreed.

3. The names of natural or legal persons may be disclosed to another Member State of Community institution only insofar as this is necessary in order to prevent or prosecute an irregularity or to establish whether an alleged irregularity has taken place.

4. 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.

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.

5. Paragraphs 1 to 4 shall not impede the use, in any legal actions or proceedings subsequently instituted in respect of non-compliance with the law on agricultural matters, of information obtained pursuant to this Regulation. The competent authority of the Member State which supplied this information shall be informed forthwith of such use.

6. 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 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.

Article 11

In cases of co-financing by the Fund and a Member State, the amounts recovered shall be shared by that Member State and the Community in proportion to their respective expenditure.

Article 12

1. Where the irregularities relate to sums of less than ECU 4 000, Member States shall not forward the information provided for in Articles 3 and 5 to the Commission unless the latter expressly requests it.

2. The amount referred to in paragraph 1 shall be converted into national currency by applying the exchange rates published in the *Official Journal of the European Communities,* C series, which are valid on the first working day of the year in which the information on the irregularities is communicated.

Article 13

The provisions of this Regulation shall be applicable *mutatis mutandis* in cases where the payment of a sum to the fund has not been made in accordance with the provisions in question.

Article 14

1. Regulation (EEC) No 283/72 is hereby repealed.

2. References to Regulation (EEC) No 283/72 shall be deemed to be references to this Regulation.

Article 15

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

The last four indents of the second subparagraph of Article 3 (1) shall be applicable as from the date of the communication concerning the second quarter of 1991.

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

Done at Brussels, 4 March 1991.

For the Council

The President

R. STEICHEN