COMMISSION REGULATION (EC) No 40/2006

of 10 January 2006

amending Regulation (EC) No 4/2004 laying down detailed rules for the application of Council Regulation (EEC) No 4045/89 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 4045/89 of 21 December 1989 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund and repealing Directive 77/435/EEC [1], and in particular Article 19 thereof,

Whereas:

(1) Regulation (EEC) No 4045/89 requires Member States to communicate to the Commission certain information. Commission Regulation (EC) No 4/2004 [2] provides for the standardisation of the form and content of such communications. As standardisation makes it easier to use the information submitted and ensures uniformity of approach, further detailed rules should be adopted on the form and content of the communications.

(2) Regulation (EC) No 4/2004 should therefore be amended accordingly.

(3) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the European Agricultural Guidance and Guarantee Fund,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 4/2004 is amended as follows:

1. Article 5 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The annual report referred to in Article 9(1) of Regulation (EEC) No 4045/89 shall include detailed information on each of the aspects of the application of that Regulation as set out in part I of Annex II to this Regulation and shall include detailed information in accordance with the specimen forms set out in part II of that Annex.';

(b) paragraph 3 is replaced by the following:

'3. The list of undertakings referred to in Article 7(2) of Regulation (EEC) No 4045/89 shall be drawn up in accordance with the specimen form set out in Annex IV to this Regulation and shall include transaction data in a format specified under Article 6(3).';

(c) the following paragraph 8 is added:

'8. The risk analysis referred to in Article 2(2) of Regulation (EEC) No 4045/89 shall be drawn up in accordance with the specimen form set out in Annex IX to this Regulation.';

2. Article 6 is replaced by the following:

'*Article 6*

1. The information to be submitted pursuant to Article 5(1) to (4) and (7) and (8) shall be communicated in electronic form in the format to be specified by the Commission.

2. The information to be submitted pursuant to Article 5(5) and (6) shall be communicated on paper or in electronic form, in a format to be agreed between the sender and the recipient. Confirmation of receipt of each request/reply received pursuant to Article 5(5) and (6) should be sent to the sender.

3. Transaction data pursuant to Article 7 of Regulation (EEC) No 4045/89 shall be communicated in electronic form in the format specified in Annex I, Annex II, point 2 and in Annex III to Commission Regulation (EC) No 2390/1999 (*).

(*) OJ L 295, 16.11.1999, p.1.';

[1] OJ L 388, 30.12.1989, p. 18. Regulation as last amended by Regulation (EC) No 2154/2002 (OJ L 328, 5.12.2002, p. 4).
[2] OJ L 2, 6.1.2004, p. 3.

3. Annex II is replaced by the text in Annex I to this Regulation;

4. Annex III is replaced by the text in Annex II to this Regulation;

5. Annex VIII is replaced by the text in Annex III to this Regulation;

6. A new Annex IX, the text of which is set out in Annex IV to this Regulation, is added.

Article 2

This Regulation shall enter into force on the on the third day following 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, 10 January 2006.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

ANNEX I

'ANNEX II

PART I

Information to be contained in the annual report provided for in Article 9(1) of Regulation (EEC) No 4045/89

1. **Administration of Regulation (EEC) No 4045/89**

Information shall be provided concerning the administration of Regulation (EEC) No 4045/89, including changes to the organisations responsible for controls and to the special department responsible for monitoring the application of that Regulation, as referred to in Article 11 thereof, and to the competences of those organisations.

2. **Legislative changes**

Information shall be provided regarding any national legislative changes relevant to the application of Regulation (EEC) No 4045/89 that have intervened since the previous annual report.

3. **Amendments to the scrutiny programme**

A description shall be provided of any amendments or modifications that were made to the scrutiny programme submitted to the Commission under Article 10(2) of Regulation (EEC) No 4045/89 since the date of submission of that programme.

4. **Execution of the scrutiny programme covered by the present report**

Information shall be provided on the execution of the programme of scrutinies for the period ending on 30 June preceding the closing date for submission of the report, as referred to in Article 9(1) of Regulation (EEC) No 4045/89, including the following points, both in total and broken down by control body (where more than one carries out controls pursuant to that Regulation):

(a) the number of undertakings scrutinised during the scrutiny period, in accordance with the specimen form shown in sheet A of this Annex;

(b) the number of undertakings still in the course of being scrutinised, in accordance with specimen form shown in sheet A of this Annex;

(c) the number of undertakings that were not subject to scrutiny during the period in question as a result of the non-execution of some scrutinies, in accordance with the specimen form shown in sheet A of this Annex;

(d) the reasons why the scrutinies referred to in point (c) were not carried out;

(e) the breakdown, by amounts received by or paid to, and by measure, of the scrutinies referred to in points (a), (b) and (c), in accordance with the specimen form shown in sheet B of this Annex;

(f) the results of the scrutinies referred to in point (a), in accordance with the specimen form shown in sheet C of this Annex, including:

(i) the number of scrutinies for which irregularities were discovered, and the number of undertakings involved;

(ii) the nature of these irregularities;

(iii) the measure concerned where an irregularity was discovered;

(iv) the estimated financial consequence of each irregularity;

(g) an indication of the average duration of scrutinies in person/days, indicating, where practicable, the time spent on planning, preparation, execution of controls, and reporting.

5. **Execution of the scrutiny programmes preceding the one covered by the present programme**

The report shall contain the results of the scrutinies carried out in respect of previous scrutiny periods, for which the results were not available at the time of the submission of the reports for those scrutiny periods, including for each previous scrutiny period:

(a) the status of scrutinies communicated pursuant to point 4(b) and (c) in previous annual scrutiny reports, in accordance with the specimen form shown in sheet D of this Annex;

(b) the number of scrutinies through which irregularities were discovered, and the number of undertakings involved, in accordance with the specimen form shown in sheet C of this Annex;

(c) the nature of these irregularities, in accordance with the specimen form shown in sheet C of this Annex;

(d) the measure concerned where an irregularity was discovered, in accordance with the specimen form shown in sheet C of this Annex;

(e) the estimated financial consequence of each irregularity, in accordance with the specimen form shown in sheet C of this Annex.

The results of the scrutinies pursuant to the third subparagraph of Article 7(1) of Regulation (EEC) No 4045/89 shall be presented as such.

6. **Mutual assistance**

Mutual assistance requests made and received pursuant to Article 7 of Regulation (EEC) No 4045/89 shall be communicated, including the results of scrutinies carried out as a matter of priority pursuant to Article 7(2) and (4) of that Regulation, and a summary of the lists both sent and received pursuant to Article 7(2) and (3) of that Regulation.

7. **Resources**

Details on the resources available for the carrying out of the scrutinies under Regulation (EEC) No 4045/89 shall be transmitted, including:

(a) the number of staff, expressed in person/years, allocated to scrutinies pursuant to Regulation (EEC) No 4045/89, by control body and, where appropriate, region;

(b) training received by staff working on scrutinies pursuant to Regulation (EEC) No 4045/89, with an indication of the proportion of the staff referred to in point (a) who have received such training, and the nature of the training itself; and

(c) computer equipment and tools at the disposal of staff working on scrutinies pursuant to Regulation (EEC) No 4045/89.

8. **Difficulties in applying Regulation (EEC) No 4045/89**

Information shall be provided on any difficulties encountered in the application of the Regulation, and the measures taken to overcome them or proposals to this end.

9. **Suggestions for improvement**

Where appropriate, suggestions shall be made for the improvement, either of the application of Regulation (EEC) No 4045/89 or, of that Regulation itself.

PART II

SHEET A

SCRUTINY REPORT FOR THE PERIOD ...

(Article 9 of Regulation (EEC) No 4045/89)

Total:

1. (A) The total number of undertakings to be controlled:

2. (A) The total number of undertakings controlled:

3. (A) The total number of undertakings in the course of control:

4. (A) The total number of undertakings not yet controlled:

Control body:

1. (B) The number of undertakings to be controlled:

2. (B) The number of undertakings controlled:

3. (B) The number of undertakings in the course of control:

4. (B) The number of undertakings not yet controlled:

Control body:

1. (C) The number of undertakings to be controlled:

2. (C) The number of undertakings controlled:

3. (C) The number of undertakings in the course of control:

4. (C) The number of undertakings not yet controlled:

Control body:

1. (D) The number of undertakings to be controlled:

2. (D) The number of undertakings controlled:

3. (D) The number of undertakings in the course of control:

4. (D) The number of undertakings not yet controlled:

Notes on boxes:

Where applicable additional boxes are to be added and further explanations are to be provided.

SHEET B

SCRUTINY REPORT FOR THE PERIOD …

(Article 9 of Regulation (EEC) No 4045/89)

Report of control in relation to EAGGF Guarantee Fund budget headings in respect of the EAGGF financial year …

Scrutiny programme …

B(1) EAGGF Budget Article or Item No	B(2) Total value of expenditure relating to undertakings selected for scrutiny… (EUR)	B(3) Controlled undertakings		B(4) Undertakings in the course of control	B(5) Undertakings not controlled
		(i) expenditure actually controlled (EUR)	(ii) total expenditure relating to those undertakings (EUR)	(i) total expenditure relating to those undertakings (EUR)	(i) total expenditure relating to those undertakings (EUR)
Totals:					

SHEET C

SCRUTINY REPORT FOR THE PERIOD …

(Article 9 of Regulation (EEC) No 4045/89)

Potential irregularities discovered in relation to EAGGF Guarantee Fund budget headings in respect of the EAGGF financial year …

Scrutiny programme …

C(1) EAGGF Budget Article or Item No	C(2) Number of potential irregularities discovered	C(3) Number of payments concerned	C(4) Number of undertakings concerned	C(5) Estimated value of potential irregularities	C(6) Description and nature of each potential irregularity discovered, the reference number(s) of the undertaking(s) concerned and the OLAF reference number(s) where communication in accordance with Article 3 of Regulation (EEC) No 595/91 has been sent
Totals:					

SHEET D

SCRUTINY REPORT FOR THE PERIOD ...

(Article 9 of Regulation (EEC) No 4045/89)

Execution of scrutinies relating to preceding control programmes

Scrutiny programme ...

D(1) Number of undertakings declared in previous report as in the course of control:	D(2) Number of undertakings in D(1) for which controls have been completed:	D(3) Number of undertakings in D(1) for which controls are still in course:	
D(4) Value of expenditure relating to undertakings in D(1):	D(5) Value of expenditure relating to undertakings in D(2):	D(6) Value expenditure relating to undertakings in D(3):	
	D(7) Value of expenditure actually controlled relating to undertakings in D(2):		
D(8) Number of undertakings for which controls in previous report were declared as not started:	D(9) Number of undertakings in D(8) for which controls have been completed:	D(10) Number of undertakings in D(8) for which controls are still in course:	D(11) Number of undertakings in D(8) for which controls have not been started:
D(12) Value of expenditure relating to undertakings in D(8):	D(13) Value of expenditure relating to undertakings in D(9):	D(14) Value of expenditure relating to undertakings in D(10):	D(15) Value of expenditure relating to undertakings in D(11):
	D(16) Value of expenditure actually controlled relating to undertakings in D(9):		

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ANNEX II

'ANNEX III

SHEET A

PROPOSED SCRUTINY PROGRAMME FOR THE PERIOD ...

(Article 10 of Regulation (EEC) No 4045/89)

1. **Calculation of the minimum number of undertakings**

	A(1) The number of undertakings whose receipts or payments, or the sum thereof amounted to more than EUR 150 000 for the EAGGF financial year ...		A(2) The minimum number
i.e.		× 1/2 =	

2. **Population from which the selection is made**

The total number of undertakings having received or made payments subject to Regulation (EEC) No 4045/89 scrutiny during the financial year ... was as follows:

A(3) Total number

Total number whose receipts or payments, or the sum thereof, were in the following categories:

A(4) Exceeding EUR 350 000	A(5) EUR 350 000 or less, but not less than EUR 40 000	A(6) Less than 40 000

3. **Undertakings proposed for scrutiny:**

A(7) Total number	A(8) Total based upon risk analysis

Total number whose receipts or payments, or the sum thereof, were in the following categories:

A(9) Exceeding EUR 350 000	A(10) EUR 350 000 or less, but not less than EUR 40 000	A(11) Less than EUR 40 000

Notes on boxes:

A(4): It is compulsory to scrutinise undertakings in this category which were not scrutinised in accordance with this Regulation during the two scrutiny periods preceding this scrutiny period ,unless the payments that they received were under a measure or measures for which risk analysis techniques of selection have been adopted.

A(9): Undertakings in this category are to be scrutinised only for specific reasons which are to be indicated in sheet D of this Annex.

SHEET B

PROPOSED SCRUTINY PROGRAMME FOR THE PERIOD …

(Article 10 of Regulation (EEC) No 4045/89)

Scheme of control in relations to EAGGF Guarantee Fund budget headings

EAGGF financial year …

B(1) EAGGF Budget Article or Item No	B(2) Total expenditure by EAGGF budget heading … (EUR)	B(3) Total expenditure by EAGGF budget heading relating to undertakings whose receipts or payments, or the sum thereof, were above EUR 40 000 … (EUR)	B(4) Total expenditure by EAGGF budget heading relating to undertakings included in the scrutiny programme … (EUR)	B(5) Number of undertakings by EAGGF budget heading included in the scrutiny programme
Totals:				

SHEET C

PROPOSED SCRUTINY PROGRAMME FOR THE PERIOD ...

(Article 10 of Regulation (EEC) No 4045/89)

Criteria adopted in drawing up the programme in the area of export refunds and other sectors where risk analysis selection techniques have been adopted where these differ from those included in the proposals for risk analysis sent to the Commission pursuant to Article 2(2) of Regulation (EEC) No 4045/89.

Sector where scrutiny is proposed (show EAGGF budget heading as set out in sheet B, column B(1) of this Annex)	Comments on risk and selection criteria adopted (give brief details, e.g. detected irregularities or exceptional increase in expenditure)

SHEET D

PROPOSED SCRUTINY PROGRAMME FOR THE PERIOD …

(Article 10 of Regulation (EEC) No 4045/89)

Proposed scrutinies, if any, of undertakings whose receipts or payments, or the sum thereof, were less than EUR 40 000 during the EAGGF financial year …

EAGGF budget heading (as set out in sheet B, column B(1))	Number of undertakings that it is proposed to scrutinise	Specific reason for scrutiny

SHEET E

PROPOSED SCRUTINY PROGRAMME FOR THE PERIOD …

(Article 10 of Regulation (EEC) No 4045/89)

Total:

E(1) The total number of undertakings to be controlled:

Control body:

E(2) The number of undertakings to be controlled:

Control body:

E(3) The number of undertakings to be controlled:

Control body:

E(4) The number of undertakings to be controlled:

Notes on boxes:

Where applicable additional boxes are to be added and further explanations are to be provided.'

ANNEX III

'ANNEX VIII

QUARTERLY REPORT

(as provided for in the first subparagraph of Article 7(4) of Regulation (EEC) No 4045/89)

of … (Member State)

on requests for inspection and on the results of inspection for the first [ ], second [ ], third [ ], fourth [ ] quarter 20…

QUARTERLY OVERVIEW TABLE:

REQUESTS sent to:

Member State	Total number per Member State	**REQUEST**	
		Date sent	Reference No
Total:			

REPLIES sent to:

Member State	Total number per Member State	**REPLY**	
		Date sent	Reference No
Total:			

Notes on boxes:

Each request/reply sent during the quarter is to be included in the overview table.

Where applicable additional rows are to be added.

The reference number for replies sent is to be the same as the reference number on the corresponding request for inspection.

SHEET A

REQUEST FORM

(For each request issued)

Identification

A.1. Requesting Member State:

2. Name of special department:

8. Name of control organisation responsible:

14. Enquiry number/report reference:

B.1. Requested Member State

2. Organisation:

C.1. Date of request and reference number:

2. Scrutiny programme:

3. Date of reply and reference number:

D.1. Beneficiary data in requesting Member State

— Name:

— Address:

— Reference number:

2. Beneficiary data in requested Member State

— Nom:

— Address:

— Reference number:

G. Risk Analysis

1. Rating: high, medium or low

2. Narrative justification for rating:

H. Scope and objective of control:

SHEET B

REPLY FORM

(For each reply issued)

Identification

B.1. Requested Member State:

2. Organisation:

3. Regional Office:

4. Name of the controller:

A.1. Requesting Member State:

2. Name of special department:

8. Name of control organisation responsible:

14. Enquiry number/report reference:

C.1. Date of request and reference number:

2. Scrutiny programme:

3. Date of reply and reference number:

D.1. Beneficiary data in requesting Member State

— Name:

— Address:

— Reference number:

2. Beneficiary data in requested Member State

— Name:

— Address:

— Reference number:

3. Other undertakings scrutinised:

— Name:

— Address:

H. Scope and objective of control:

I. List of supporting documents supplied:

J. Results:'

ANNEX IV

'ANNEX IX

Information to be contained in the annual risk analysis referred to in Article 2(2) of Regulation (EEC) No 4045/89

1. **Assessment of previous year's risk analysis**

Information shall be provided concerning the assessment of effectiveness of the previous year's risk analysis, including the evaluation of its strengths and weaknesses. Any possibilities for improvement shall be clearly identified and implementation thereof shall be considered.

2. **Library of information**

Information shall be provided on all sources of information taken into account in order to prepare and conduct the risk analysis. Particular reference shall be made to Regulation (EEC) No 386/90.

3. **Selection procedure**

A description shall be provided of the procedure to be applied in order to select the undertakings to be scrutinised. A clear indication shall be made of the number/percentage of undertakings and sectors/measures to which risk analysis, random, automatic and/or manual selection shall be applied. Sectors/measures to be excluded shall be clearly identified and the reasons for exclusion shall be described.

4. **Risk factors and risk values to be applied**

Where risk analysis shall be applied, information shall be provided on all risk factors taken into consideration and the subsequent possible values assigned to those risk factors. This information shall be provided in accordance with the specimen tables provided below.

Risk factors and risk values applicable to all measures subject to risk analysis		
Risk factors	Risk values	
	Description	Values

Specific risk factors and risk values applicable to export refunds		
Risk factors	Risk values	
	Description	Values

Specific risk factors and risk values applicable to… (sector/measure)		
Risk factors	Risk values	
	Description	Values

5. **Weighting of risk factors**

Where appropriate, a description shall be provided of the procedure to be applied to weight the risk factors.

6. **Results of risk analysis**

Information shall be provided on how the results of risk analysis and the establishment of a "scoring list" (for each specific sector/measure, where appropriate) will be reflected in the selection of undertakings into the final scrutiny plan.

Particular attention shall be given to the possibility of joint actions as provided pursuant to Article 7(1) of Regulation (EEC) No 4045/89.

7. **Difficulties encountered and suggestions for improvement**

Information shall be provided on any difficulties encountered and the measures taken to overcome them or proposals to this end. Where appropriate, suggestions shall be made for improvement.'