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COMMISSION REGULATION (EC) No 885/2006

of 21 June 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 of the EAFRD

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COMMISSION REGULATION (EC) No 885/2006

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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 of the EAFRD

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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) Following the adoption of Regulation (EC) No 1 290/2005, new detailed rules should be laid down as regards the accreditation of paying agencies and other bodies as well as the clearance of the accounts of the European Agricultural Guarantee Fund (EAGF) and of the European Agricultural Fund for Rural Development (EAFRD). Commission Regulation (EC) No 1663/95 of 7 July 1995 laying down detailed rules for the application of Council Regulation (EEC) No 729/70 regarding the procedure for the clearance of the accounts of the EAGGF Guarantee Section ([2]) should therefore be repealed and replaced by a new Regulation.

(2) Paying agencies should only be accredited by Member States if they comply with certain minimum criteria established at Community level. Those criteria should cover four basic areas: internal environment, control activities, information and communication, and monitoring. Member States should be free to lay down additional accreditation criteria to take account of any specific features of a paying agency.

(3) Member States should be obliged to keep their paying agencies under constant supervision and to establish a system for the exchange of information on possible cases of non-compliance. A procedure should be put in place to deal with such cases, including the obligation to draw up a plan to remedy any identified deficiencies within a time limit to be determined. Expenditure effected by paying agencies whose accreditation is maintained by their Member State even though they have failed to implement such a remedial plan within the determined time limit should be subject to the conformity clearance procedure provided for in Article 31 of Regulation (EC) No 1290/2005.

(4) Detailed rules should be laid down as regards the content and format of the statement of assurance referred to in Article 8(1)(c)(iii) of Regulation (EC) No 1290/2005.

(5) The role of the coordinating body referred to in Article 6(3) of Regulation (EC) No 1290/2005 should be clarified and the criteria for its accreditation laid down.

(6) In order to ensure that the certificates and reports to be drawn up by the certification bodies referred to in Article 7 of Regulation (EC) No 1290/2005 are of assistance to the Commission in the clearance of accounts procedure, their content should be specified.

(7) In order to allow the Commission to clear the accounts pursuant to Article 30 of Regulation (EC) No 1290/2005, it is necessary to

([1]) OJ L 209, 11.8.2005, p. 1. Regulation as amended by Regulation (EC) No 320/2006 (OJ L 58, 28.2.2006, p. 42).

([2]) OJ L 158, 8.7.1995, p. 6. Regulation as last amended by Regulation (EC) No 465/2005 (OJ L 77, 23.3.2005, p. 6).

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specify the content of the paying agencies' annual accounts and to establish a date for the transmission of those accounts and other relevant documents to the Commission. The period during which the paying agencies must keep the supporting documents regarding all expenditure and assigned revenues at the disposal of the Commission should also be clarified.

(8) Moreover, it should be specified that the Commission establishes the form and content of the accounting information which the paying agencies must forward to it. In this context, it is also appropriate to include in this Regulation the rules regarding the use of such accounting information presently set out in Commission Regulation (EC) No 2390/1999 of 25 October 1999 laying down form and content of the accounting information to be submitted to the Commission for the purpose of the clearance of the EAGGF Guarantee Section accounts as well as for monitoring and forecasting purposes ([1]). Regulation (EC) No 2390/1999 should therefore be repealed.

(9) Detailed provisions should be laid down for both the procedure for the clearance of accounts provided for in Article 30 of Regulation (EC) No 1290/2005 and the conformity clearance procedure provided for in Article 31 of that Regulation, including a mechanism whereby the resulting amounts are, as the case may be, deducted from or added to one of the subsequent payments made to the Member States.

(10) For the purpose of the conformity clearance procedure, Commission Decision 94/442/EC of 1 July 1994 setting up a conciliation procedure in the context of the clearance of the accounts of the European Agricultural Guidance and Guarantee Fund (EAGGF) Guarantee Section ([2]) set up a Conciliation Body and laid down rules for its composition and operation. For reasons of simplification, those rules should be included in this Regulation and, where necessary, adapted. Decision 94/442/EC should therefore be repealed.

(11) If a paying agency accredited under Regulation (EC) No 1663/95 assumes responsibilities after 16 October 2006 for which it was not responsible before that date, a new accreditation according to the criteria laid down in this Regulation covering these new responsibilities is necessary. As a transitional measure it should be possible for the adaptation of the accreditation to take place before 16 October 2007.

(12) The measures provided for in this Regulation are in accordance with the opinion of the Committee on the Agricultural Funds,

HAS ADOPTED THIS REGULATION:

CHAPTER 1

PAYING AGENCIES AND OTHER BODIES

Article 1

Accreditation of paying agencies

1. In order to be accredited, a paying agency as defined in Article 6 (1) of Regulation (EC) No 1290/2005 shall have an administrative organisation and a system of internal control which comply with the

([1]) OJ L 295, 16.11.1999, p. 1. Regulation as last amended by Regulation (EC) No 1359/2005 (OJ L 214, 19.8.2005, p. 11).

([2]) OJ L 182, 16.7.1994, p. 45. Decision as last amended by Decision 2001/535/EC (OJ L 193, 17.7.2001, p. 25).

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criteria set out in Annex I to this Regulation (hereinafter accreditation criteria) regarding:

(a) internal environment,

(b) control activities,

(c) information and communication,

(d) monitoring.

Member States may lay down further accreditation criteria to take account of the size, responsibilities and other specific features of the paying agency.

2. For each paying agency, the Member State shall designate an authority at ministerial level which is competent for issuing and withdrawing the agency's accreditation and for carrying out the tasks assigned to it by this Regulation (hereinafter the competent authority). It shall inform the Commission thereof.

3. The competent authority shall, by way of a formal act, decide on the accreditation of the paying agency on the basis of an examination of the accreditation criteria.

The examination shall be carried out by a body which is independent from the paying agency to be accredited and shall include, in particular, the arrangements regarding the authorisation and execution of payments, the safeguarding of the Community budget, the security of information-systems, the maintenance of accounting records, the division of duties and the adequacy of internal and external controls, in respect of transactions financed by the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD).

4. If the competent authority is not satisfied that the paying agency complies with the accreditation criteria, it shall address instructions to the agency specifying the conditions it is required to fulfil before accreditation may be granted.

Pending the implementation of any requisite changes, accreditation may be granted provisionally for a period to be determined taking into account the severity of the problems identified, which shall not exceed 12 months. In duly justified cases, the Commission may, upon request of the Member State concerned, grant an extension of that period.

5. The communications provided for in Article 8(1)(a) of Regulation (EC) No 1290/2005 shall be made immediately after the paying agency is first accredited and in any case before any expenditure effected by it is charged to the EAGF or the EAFRD. They shall be accompanied by declarations and documents concerning:

(a) the responsibilities vested in the paying agency;

(b) the allocation of responsibilities between its departments;

(c) its relationship with other bodies, public or private, which are responsible for implementing any measures under which the agency charges expenditure to the EAGF and the EAFRD;

(d) the procedures by which claims by beneficiaries are received, verified, and validated, and by which expenditure is authorised, paid and accounted for;

(e) the provisions concerning the security of information systems.

6. The Commission shall inform the Committee on the Agricultural Funds of the paying agencies accredited in each Member State.

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Article 2

Review of accreditation

1. The competent authority shall keep the paying agencies for which it is responsible under constant supervision, notably on the basis of the certificates and reports drawn up by the certification body under Articles 5(3) and (4), and shall follow-up on any deficiencies identified. Every three years, the competent authority shall inform the Commission in writing of the results of its supervision and indicate whether the paying agencies continue to comply with the accreditation criteria.

2. Member States shall establish a system that ensures that any information suggesting that a paying agency does not comply with the accreditation criteria is communicated to the competent authority without delay.

3. Where, as regards an accredited paying agency, one or more of the accreditation criteria are no longer respected or so seriously deficient as to affect the agency's ability to fulfil the tasks set out in Article 6(1) of Regulation (EC) No 1290/2005, the competent authority shall put the agency's accreditation under probation and draw up a plan to remedy the deficiencies found within a period to be determined according to the severity of the problem, which shall not exceed 12 months from the date on which the accreditation is put under probation. In duly justified cases, the Commission may, upon request of the Member State concerned, grant an extension of that period.

4. The competent authority shall inform the Commission of any plan drawn up pursuant to paragraph 3 and of the implementation of such plans.

5. If accreditation is withdrawn, the competent authority shall without delay accredit another paying agency in accordance with Article 6(2) of Regulation (EC) No 1290/2005 and Article 1 of this Regulation to ensure that payments to beneficiaries are not interrupted.

6. Where the Commission finds that the competent authority has not complied with its obligation to draw up a remedial plan pursuant to paragraph 3 or that the paying agency continues to be accredited without having fully implemented such a plan within the determined period, it shall pursue any remaining deficiencies through the conformity clearance provided for in Article 31 of Regulation (EC) No 1290/2005.

Article 3

Statement of assurance

1. The statement of assurance referred to in Article 8(1)(c)(iii) of Regulation (EC) No 1290/2005 shall be drawn up in due time for the certification body to issue the opinion referred to in point (b) of the second subparagraph of Article 5(4) of this Regulation.

The statement of assurance shall be as set out in Annex II and may be qualified by reservations quantifying the potential financial impact. In that case, it shall include a remedial action plan and a precise timetable for its implementation.

2. The statement of assurance shall be based on an effective supervision of the management and control system in place throughout the year.

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Article 4

Coordinating body

1. The coordinating body referred to in Article 6(3) of Regulation (EC) No 1290/2005 shall act as the Commission's sole interlocutor for the Member State concerned for all questions relating to the EAGF and the EAFRD as regards:

(a) the distribution of Community texts and guidelines relating thereto to the paying agencies and to bodies responsible for the implementation of those texts and guidelines, as well as the promotion of their harmonised application;

(b) the communication to the Commission of the information referred to in Articles 6 and 8 of Regulation (EC) No 1290/2005;

(c) the availability to the Commission of a full record of all accounting information required for statistical and control purposes.

2. A paying agency may act as a coordinating body provided that the two functions are kept separate.

3. In performing its tasks, the coordinating body may, in accordance with national procedures, call on other administrative bodies or departments, particularly on those with accounting or technical expertise.

4. The Member State concerned shall, by a formal act at ministerial level, decide on the accreditation of the coordinating body after it has satisfied itself that the administrative arrangements of the body offer sufficient assurance that the body is capable of fulfilling the tasks referred to in the second subparagraph of Article 6(3) of Regulation (EC) No 1290/2005.

In order to be accredited, the coordinating body shall have procedures in place to ensure that:

(a) all declarations to the Commission are based on information from properly authorised sources;

(b) declarations to the Commission are properly authorised before transmission;

(c) a proper audit trail exists to support the information transmitted to the Commission;

(d) a record of information received and transmitted is securely stored, either in paper or in computerised format.

5. The confidentiality, integrity and availability of all computer data held by the coordinating body shall be assured by measures adapted to the administrative structure, staffing and technological environment of each individual coordinating body. The financial and technological effort shall be in proportion to the actual risks incurred.

6. The communications provided for in the first subparagraph of Article 6(3) and in Article 8(1)(a) of Regulation (EC) No 1290/2005 shall be made immediately after the coordinating body is first accredited and, in any case, before any expenditure for which it is responsible is charged to the EAGF or the EAFRD. It shall be accompanied by the accreditation document of the body as well as information on the administrative, accounting and internal control conditions relating to its operation.

Article 5

Certification

1. The certification body referred to in Article 7 of Regulation (EC) No 1290/2005 shall be designated by the competent authority. It shall

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be operationally independent of the paying agency and coordinating body concerned and shall have the necessary technical expertise.

2. The certification body shall conduct its examination of the paying agency concerned according to internationally accepted auditing standards taking into account any guidelines on the application of these standards established by the Commission.

The certification body shall carry out its checks both during and after the end of each financial year.

3. The certification body shall draw up a certificate stating whether it has gained reasonable assurance that the accounts to be transmitted to the Commission are true, complete and accurate and that the internal control procedures have operated satisfactorily.

The certificate shall be based on an examination of procedures and a sample of transactions. This examination shall cover the paying agency's administrative structure only as regards the question whether that structure is capable of ensuring that compliance with Community rules is checked before payments are made.

4. The certification body shall draw up a report of its findings. The report shall cover functions delegated, or exercised by the national customs authorities. The report shall state whether:

(a) the paying agency complies with the accreditation criteria;

(b) the paying agency's procedures are such as to give reasonable assurance that the expenditure charged to the EAGF and the EAFRD was effected in compliance with Community rules and which recommendations for improvements, if any, have been made and followed-up;

(c) the annual accounts referred to in Article 6(1) are in accordance with the books and records of the paying agency;

(d) the statements of expenditure and of intervention operations are a materially true, complete and accurate record of the operations charged to the EAGF and the EAFRD;

(e) the financial interests of the Community are properly protected as regards advances paid, guarantees obtained, intervention stocks and amounts to be collected.

The report shall be accompanied by:

(a) information on the number and qualifications of staff undertaking the audit, the work done, the number of transactions examined, the level of materiality and confidence obtained, any weaknesses found and recommendations made for improvement and the operations of both the certification body and other audit bodies, internal and external to the paying agency, from which all or part of the certification body's assurance on the matters reported was gained;

(b) an opinion on the statement of assurance referred to in Article 8(1)(c)(iii) of Regulation (EC) No 1290/2005.

CHAPTER 2

CLEARANCE OF ACCOUNTS

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Article 6

Content of the annual accounts

The annual accounts referred to in Article 8(1)(c)(iii) of Regulation (EC) No 1290/2005 shall include:

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(a) the assigned revenues referred to in Article 34 of Regulation (EC) No 1290/2005;

(b) the expenditure of the EAGF after deduction of any undue payments not recovered at the end of the financial year other than those referred to under point (h), including any interests thereon, summarised by item and sub-item of the Community budget;

(c) the expenditure of the EAFRD, by programme and measure. At the closure of the programme, any undue payments not recovered other than those referred to under point (h), including any interests thereon, shall be deducted from the expenditure of the financial year in question;

(d) information regarding expenditure and assigned revenues or confirmation that the detail of each transaction is held on computer file at the disposal of the Commission;

(e) a table of differences by item and sub-item or, in the case of the EAFRD, by programme and measure, between the expenditure and the assigned revenues declared in the annual accounts and that declared for the same period in the documents referred to in Article 4(1)(c) of Commission Regulation (EC) No 883/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the keeping of accounts by the paying agencies, declarations of expenditure and revenue and the conditions for reimbursing expenditure under the EAGF and the EAFRD ([1]), as far as the EAGF is concerned and Article 16(2) of that Regulation as far as the EAFRD is concerned, accompanied by an explanation for every difference;

(f) separately, the amounts to be borne by, respectively, the Member State concerned and the Community in accordance with the first subparagraph of Article 32(5) and Article 32(6) of Regulation (EC) No 1290/2005;

(g) separately, the amounts to be borne by, respectively, the Member State concerned and the Community in accordance with the first subparagraph of Article 33(8) and Article 33(7) of Regulation (EC) No 1290/2005;

(h) the table of the undue payments to be recovered at the end of the financial year as a consequence of irregularities within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95 ([2]), including any sanctions and interests thereon, following the model set out in Annex III to this Regulation;

(i) an extract from the debtors ledger of the amounts to be recovered and credited to either the EAGF or the EAFRD other than those referred to in points (b), (c) and (h), including any sanctions and interests thereon, following the model set out in Annex IIIa;

(j) a summary of intervention operations and a statement of the quantity and location of stocks at the end of the financial year;

(k) confirmation that the details of each movement of intervention storage is held on the paying agency's files;

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Article 7

Transmission of information

1. For the purpose of the clearance of accounts pursuant to Article 30 of Regulation (EC) No 1290/2005, each Member State shall send to the Commission:

([1]) OJ L 171, 23.6.1996, p. 1.
([2]) OJ L 312, 23.12.1995, p. 1.

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(a) the items included in the annual accounts, as referred to in Article 6 of this Regulation;

(b) the certificates and reports established by the certification body or bodies, as referred to in Article 5(3) and (4) of this Regulation;

(c) complete records of all the accounting information required for statistical and control purposes;

(d) the statement or statements of assurance as referred to in Article 3 of this Regulation.

2. The documents and the accounting information referred to in paragraph 1 shall be sent to the Commission by 1 February at the latest of the year following the end of the financial year which it concerns. The documents referred to in points (a), (b) and (d) of that paragraph shall be sent in one copy together with an electronic copy in accordance with the format and under the conditions established by the Commission pursuant to Article 18 of Regulation (EC) No 883/2006.

3. At the request of the Commission or on the initiative of the Member State, further information concerning the clearance of accounts may be addressed to the Commission within a time period determined by the Commission, taking into account the amount of work required for providing that information. In the absence of such information, the Commission may clear the accounts on the basis of the information in its possession.

4. In duly justified cases, the Commission may accept a request for late submission of information, if that request is addressed to it before the deadline for submission concerned.

5. If a Member State has accredited more than one paying agency, it shall also send to the Commission, by 15 February of the year following the end of the financial year which it concerns, a synthesis drawn up by the coordinating body which provides an overview of the statements of assurance referred to in Article 3 and the certificates referred to in Article 5(3).

Article 8

Form and content of the accounting information

1. The form and content of the accounting information referred to in Article 7(1)(c) and the way it is to be forwarded to the Commission shall be established in accordance with the procedure referred to in Article 41(2) of Regulation (EC) No 1290/2005.

2. The accounting information shall be used by the Commission for the sole purposes of:

(a) carrying out its functions in the context of the clearance of accounts pursuant to Regulation (EC) No 1290/2005;

(b) monitoring developments and providing forecasts in the agricultural sector.

The European Court of Auditors and the European Anti-fraud Office (OLAF) shall have access to that information for the purpose of carrying out their functions.

3. Any personal data included in the accounting information collected shall only be processed for the purposes specified in paragraph 2. In particular, if accounting information is used by the Commission for the purpose referred to in paragraph 2(b), the Commission shall make such data anonymous and process it in aggregated form only.

4. Any queries concerning the processing of their personal data shall be addressed by the persons concerned to the Commission as set out in Annex IV.

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5. The Commission shall ensure that the accounting information is kept confidential and secure.

Article 9

Conservation of accounting information

1. The supporting documents regarding the expenditure financed and the assigned revenues to be collected by the EAGF shall be kept at the disposal of the Commission for at least three years following the year in which the Commission clears the accounts of the financial year concerned under Article 30 of Regulation (EC) No 1290/2005.

2. The supporting documents regarding the expenditure financed and the assigned revenues to be collected by the EAFRD shall be kept at the disposal of the Commission for at least three years following the year in which the final payment by the paying agency has taken place.

3. In the case of irregularities or negligence, the supporting documents referred to in paragraphs 1 and 2 shall be kept at the disposal of the Commission for at least three years following the year in which the sums are entirely recovered from the beneficiary and credited to the EAGF or the EAFRD or in which the financial consequences of non-recovery are determined under Article 32(5) or Article 33(8) of Regulation (EC) No 1290/2005.

4. In the case of a conformity clearance procedure provided for in Article 31 of Regulation (EC) No 1290/2005, the supporting documents referred to in paragraphs 1 and 2 of this Article shall be kept at the disposal of the Commission for at least one year following the year in which that procedure has been concluded or, if a conformity decision is the subject of legal proceedings before the Court of Justice of the European Communities, for at least one year following the year in which those proceedings are concluded.

Article 10

Financial clearance

1. The clearance of accounts decision referred to in Article 30 of Regulation (EC) No 1290/2005 shall determine the amounts of expenditure effected in each Member State during the financial year in question which shall be recognised as being chargeable to the EAGF and the EAFRD on the basis of the accounts referred to in Article 6 of this Regulation and any reductions and suspensions under Articles 17 and 27 of Regulation (EC) No 1290/2005.

For the EAGF, it shall also determine the amounts to be charged to the Community and to the Member State concerned pursuant to Article 32 (5) of Regulation (EC) No 1290/2005.

For the EAFRD, the amount determined by the clearance of accounts decision shall include the funds which may be re-used by the Member State concerned pursuant to Article 33(3)(c) of Regulation (EC) No 1290/2005.

2. As regards the EAGF, the amount which, as a result of the clearance of accounts decision, is recoverable from or payable to each Member State shall be established by deducting the monthly payments in respect of the financial year concerned from the expenditure recognised for the same year in accordance with paragraph 1. The Commission shall deduct that amount from or add it to the. monthly payment relating to the expenditure effected in the second month following the clearance of accounts decision

As regards the EAFRD, the amount which, as a result of the clearance of accounts decision, is recoverable from or payable to each Member State shall be established by deducting the intermediate payments in

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respect of the financial year concerned from the expenditure recognised for the same year in accordance with paragraph 1. The Commission shall deduct that amount from or add it to the following intermediate payment or the final payment.

3. The Commission shall communicate to the Member State concerned the results of its verification of the information supplied, together with any amendments it proposes, by 31 March following the end of the financial year at the latest.

4. If, for reasons attributable to the Member State concerned, the Commission is unable to clear the accounts of a Member State before 30 April of the following year, the Commission shall notify the Member State of those additional inquiries it proposes to undertake pursuant to Article 37 of Regulation (EC) No 1290/2005.

5. This Article shall apply, *mutatis mutandis*, to assigned revenues within the meaning of Article 34 of Regulation (EC) No 1290/2005.

Article 11

Conformity clearance

1. When, as a result of any inquiry, the Commission considers that expenditure was not effected in compliance with Community rules, it shall communicate its findings to the Member State concerned and indicate the corrective measures needed to ensure future compliance with those rules.

The communication shall make reference to this Article. The Member State shall reply within two months of receipt of the communication and the Commission may modify its position in consequence. In justified cases, the Commission may agree to extend the period for reply.

After expiry of the period for reply, the Commission shall convene a bilateral meeting and both parties shall endeavour to come to an agreement as to the measures to be taken as well as to the evaluation of the gravity of the infringement and of the financial damage caused to the Community budget.

2. Within two months from the date of the reception of the minutes of the bilateral meeting referred to in the third subparagraph of paragraph 1, the Member State shall communicate any information requested during that meeting or any other information which it considers useful for the ongoing examination.

In justified cases, the Commission may, upon reasoned request of the Member State, authorise an extension of the period referred to in the first subparagraph. The request shall be addressed to the Commission before the expiry of that period.

After the expiry of the period referred to in the first subparagraph, the Commission shall formally communicate its conclusions to the Member State on the basis of the information received in the framework of the conformity clearance procedure. The communication shall evaluate the expenditure which the Commission envisages to exclude from Community financing under Article 31 of Regulation (EC) No 1290/2005 and shall make reference to Article 16(1) of this Regulation.

3. The Member State shall inform the Commission of the corrective measures it has undertaken to ensure compliance with Community rules and the effective date of their implementation.

The Commission, after having examined any report drawn up by the Conciliation Body in accordance with Chapter 3 of this Regulation, shall adopt, if necessary, one or more decisions under Article 31 of Regulation (EC) No 1290/2005 in order to exclude from Community financing expenditure affected by the non-compliance with Community

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rules until the Member State has effectively implemented the corrective measures.

When evaluating the expenditure to be excluded from Community financing, the Commission may take into account any information communicated by the Member State after the expiry of the period referred to in paragraph 2 if this is necessary for a better estimate of the financial damage caused to the Community budget, provided that the late transmission of the information is justified by exceptional circumstances.

4. As regards the EAGF, the deductions from the Community financing shall be made by the Commission from the monthly payments relating to the expenditure effected in the second month following the decision pursuant to Article 31 of Regulation (EC) No 1290/2005.

As regards the EAFRD, the deductions from the Community financing shall be made by the Commission from the following intermediate payment or the final payment.

However, at the Member State's request and where warranted by the materiality of the deductions, and after consultation of the Committee on the Agricultural Funds, the Commission may set a different date for the deductions.

5. This Article shall apply, mutatis mutandis, to assigned revenues within the meaning of Article 34 of Regulation (EC) No 1290/2005.

CHAPTER 3

CONCILIATION PROCEDURE

Article 12

Conciliation Body

For the purpose of the conformity clearance procedure provided for in Article 31 of Regulation (EC) No 1290/2005, a Conciliation Body shall be set up with the Commission. Its tasks shall be:

(a) to examine any matter referred to it by a Member State which has received a formal communication from the Commission pursuant to the third subparagraph of Article 11(2) of this Regulation, including an evaluation of expenditure which the Commission intends to exclude from Community financing;

(b) to try to reconcile the divergent positions of the Commission and the Member State concerned;

(c) at the end of its examination, to draw up a report on the results of its reconciliation efforts, making any remarks it deems useful should all or some of the points of dispute remain unresolved.

Article 13

Composition of the Conciliation Body

1. The Conciliation Body shall be composed of five members selected among eminent persons offering every guarantee of independence and who are highly qualified in matters regarding the financing of the common agricultural policy, including rural development, or in the practice of financial audit.

They must be nationals of different Member States.

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2. The chairman, the members and the substitute members shall be appointed by the Commission for an initial term of office of three years after consultation of the Committee on the Agricultural Funds.

The terms of office may be renewed for a year at a time only, the Committee on the Agricultural Funds being informed. However, if the chairman to be appointed is already a member of the Conciliation Body, his initial term of office as chairman shall be three years.

The names of the chairman, the members and the substitute members shall be published in the 'C' series of the *Official Journal of the European Union*.

3. The members of the Conciliation Body shall be remunerated having regard to the time which they are required to dedicate to the task. Communication and transport costs shall be compensated in accordance with the rules in force.

4. After expiry of the term of office, the chairman and the members shall remain in office until they are replaced or their term of office is renewed.

5. The term of office of a member who no longer meets the conditions required for the accomplishment of his duties with the Conciliation Body or who, for whatever reason, is unavailable for an indeterminate period may be terminated by the Commission after consultation of the Committee on the Agricultural Funds.

In that case, the member shall be replaced for the remainder of the period for which he was appointed by a substitute member, the Committee on the Agricultural Funds being informed.

If the chairman's term of office is terminated, the member who is to perform the chairman's duties for the remainder of the period for which the chairman was appointed shall be appointed by the Commission after consultation of the Committee on the Agricultural Funds.

Article 14

Independence of the Conciliation Body

1. The members of the Conciliation Body shall carry out their duties independently, neither seeking nor accepting instructions from any government or body.

No member shall take part in the work of the Conciliation Body or sign a report if, in a previous office, he has been personally involved in the matter at issue.

2. Without prejudice to Article 287 of the Treaty, the members shall not disclose any information acquired by them in the course of their work for the Conciliation Body. Such information shall be confidential and covered by the obligation of professional secrecy.

Article 15

Working arrangements

1. The Conciliation Body shall meet at the headquarters of the Commission. The chairman shall prepare and organise the work. In his absence, and without prejudice to the first subparagraph of Article 13(5), the most senior member shall take the chair.

The secretariat of the Conciliation Body shall be provided by the Commission.

2. Without prejudice to the second subparagraph of Article 14(1), reports shall be adopted by an absolute majority of members present, the quorum being three.

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The reports shall be signed by the chairman and members who have taken part in the deliberations. They shall be co-signed by the secretariat.

Article 16

Conciliation procedure

1. A Member State may refer a matter to the Conciliation Body within thirty working days of receipt of the Commission's formal communication referred to in the third subparagraph of Article 11(2) by sending a reasoned request for conciliation to the secretariat of the Conciliation Body.

The procedure to be followed and the address of the secretariat shall be notified to the Member States through the Committee on the Agricultural Funds.

2. A request for conciliation shall only be admissible where the amount envisaged to be excluded from the Community financing according to the Commission's communication either:

(a) exceeds EUR 1 million;

or

(b) represents at least 25 % of the Member State's total annual expenditure under the budget headings concerned.

In addition, if, during the preceding discussions the Member State claimed and demonstrated that the matter is one of principle relating to the application of Community rules, the chairman of the Conciliation Body may declare a request for conciliation to be admissible. However, such a request shall not be admissible if it relates solely to a matter of legal interpretation.

3. The Conciliation Body shall conduct its investigations as informally and promptly as possible, basing itself on the evidence in the file and on a fair hearing of the Commission and of the national authorities concerned.

4. Where, within four months of a case being referred to it, the Conciliation Body is not able to reconcile the positions of the Commission and the Member State, the conciliation procedure shall be deemed to have failed. The report referred to in Article 12(c) shall state the reasons why the positions could not be reconciled. It shall indicate whether any partial agreement has been reached in the course of the proceedings.

The report shall be sent to:

(a) the Member State concerned;

(b) the Commission;

(c) the other Member States in the framework of the Committee on the Agricultural Funds.

CHAPTER 4

TRANSITIONAL AND FINAL PROVISIONS

Article 17

Transitional provisions

1. Where a paying agency which has been accredited in accordance with Regulation (EC) No 1663/95 assumes responsibility for expenditure for which it was not previously responsible, the examination

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provided for in Article 1(3) of this Regulation and the new accreditation required as a result of the new responsibilities shall be completed by 16 October 2007 at the latest.

2. For the financial year 2007, the certification body report referred to in Article 5(4) shall, as far as information systems security is concerned, only include comments and provisional conclusions, using a scoring mechanism, as to the measures put in place by the paying agency. Those comments shall be based on the applicable internationally accepted security standards as referred to in point 3.B) of Annex I and shall indicate the extent to which effective security measures were in place.

Article 18

Repeal

1. Regulation (EC) No 1663/95, Regulation (EC) No 2390/1999 and Decision 94/442/EC are repealed from 16 October 2006. However, Regulation (EC) No 1663/95 shall continue to apply to the clearance of the accounts under Article 7(3) of Council Regulation (EC) No 1258/1999 ([1]) for the financial year 2006.

The chairman, the members and the substitute members of the Conciliation Body appointed under Decision 94/442/EC shall remain in office until the expiry of their term or until they are replaced.

2. The references to the repealed acts in paragraph 1 shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex V.

Article 19

Entry into force and application

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

It shall apply from 16 October 2006. However, Articles 3 and 5, Article 6, points (a) to (e), (g) and (h), Article 7 and Article 10 shall apply only in relation to expenditure and assigned revenues coming under the financial year 2007 and following.

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

([1]) OJ L 160, 26.6.1999, p. 103.

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ANNEX I

ACCREDITATION CRITERIA

1. **Internal environment**

(A) *Organisational structure*

The agency shall dispose of an organisational structure allowing it to execute the following main functions in respect of EAGF and EAFRD expenditure:

(i) Authorisation and control of payments to establish that the amount to be paid to a claimant is in conformity with Community rules, which shall include, in particular, the administrative and on-the-spot controls.

(ii) Execution of payments to pay the authorised amount to the claimant (or his assignee) or, in the case of rural development, the Community co-financing part.

(iii) Accounting for payment to record all payments in the agency's separate accounts for EAGF and EAFRD expenditure, in the form of an information system, and the preparation of periodic summaries of expenditure, including the monthly, quarterly (for the EAFRD) and annual declarations to the Commission. The accounts shall also record the assets financed by the Funds, in particular concerning intervention stocks, uncleared advances, securities and debtors.

The agency's organisational structure shall provide for clear assignment of authority and responsibility at all operational levels and for separation of the three functions referred to in the first paragraph, the responsibilities of which shall be defined in an organisational chart. It shall include the technical services and the internal audit service referred to under point 4.

(B) *Human-resource standard*

The agency shall ensure the following:

(i) Appropriate human resources are allocated to carry out the operations and the technical skills required at different levels of operations are present.

(ii) The division of duties is such that no official has responsibility for more than one of the responsibilities for authorising, paying or accounting of sums charged to the EAGF or to the EAFRD, and no official performs one of those tasks without his work coming under the supervision of a second official.

(iii) The responsibilities of each official is defined in writing, including the setting of financial limits to his authority.

(iv) Staff training is appropriate at all levels of operation, and there is a policy for rotating staff in sensitive positions, or alternatively for increased supervision.

(v) Appropriate measures are taken to avoid a conflict of interests where a person occupying a position of responsibility or a sensitive position with regard to the verification, authorisation, payment and accounting of claims also fulfils other functions outside the agency.

(C) *Delegation*

If any of the paying agency's tasks are delegated to another body under Article 6(1) of Regulation (EC) No 1290/2005, the following conditions have to be fulfilled:

(i) A written agreement must be concluded between the agency and that body specifying the nature of the information and the supporting documents to be submitted to the agency and the time limit within which they must be submitted. The agreement must permit the agency to comply with the accreditation criteria.

(ii) The agency shall in all cases remain responsible for the efficient management of the Funds concerned.

(iii) The responsibilities and obligations of the other body, notably concerning the control and verification of the compliance with Community rules, shall be clearly defined.

(iv) The agency shall ensure that the body disposes of effective systems for ensuring that it fulfils its responsibilities in a satisfactory manner.

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(v) The body shall explicitly confirm to the agency that it in fact fulfils its responsibilities and shall describe the means employed.

(vi) The agency shall review on a regular basis the functions delegated to confirm that the work performed is of satisfactory standard and that it is in compliance with Community rules.

The conditions set out above shall apply mutatis mutandis to the tasks relating to agricultural expenditure carried out by national customs authorities.

2. **Control activities**

(A) *Procedures for authorising claims*

The agency shall adopt the following procedures:

(i) The agency shall lay down detailed procedures for the receipt, recording and processing of claims, including a description of all documents to be used.

(ii) Each official responsible for authorisation shall have at his disposal a detailed checklist of the verifications he is required to undertake, and shall include in the supporting documents of the claim his attestation that those checks have been performed. That attestation may be made by electronic means. There shall be evidence of review of the work by a senior staff member.

(iii) A claim shall be authorised for payment only after sufficient checks have been made to verify that it complies with Community rules. Those checks shall include those required by the Regulation governing the specific measure under which aid is claimed, and those required pursuant to Article 9 of Regulation (EC) No 1290/2005 to prevent and detect fraud and irregularity with particular regard to the risks incurred. For the EAFRD there shall in addition be procedures for verifying that the criteria for the granting of aid have been respected and that all applicable Community rules have been complied with, particularly the rules on public procurement and respect of the environment.

(iv) The management of the agency shall, at an appropriate level, be informed on a regular and timely basis of the results of controls carried out, so that the sufficiency of those controls may always be taken into account before a claim is settled.

(v) The work performed shall be described in detail in a report accompanying each claim, batch of claims or, when appropriate, in a report covering one marketing year. The report shall be accompanied by an attestation of the eligibility of the approved claims and of the nature, scope and limits of the work done. For the EAFRD there shall in addition be an assurance that the criteria for the granting of aid have been respected and that all applicable Community rules have been complied with, particularly the rules on public procurement and respect of the environment. If any physical or administrative checks are not exhaustive, but performed on a sample of claims, the claims selected shall be identified, the sampling method described, the results of all inspections and the measures taken in respect of discrepancies and irregularities reported upon. The supporting documents shall be sufficient to provide assurance that all the required checks on the eligibility of the authorised claims have been performed.

(vi) Where documents (in paper or electronic form) relating to the claims authorised and controls effected are retained by other bodies, both those bodies and the agency shall set up procedures to ensure that the location of all such documents that are relevant to specific payments made by the agency is recorded.

(B) *Procedures for payment*

The agency shall adopt the necessary procedures to ensure that payments are made only to bank accounts belonging to either the claimant or to his assignee. The payment shall be executed by the agency's banker, or, as appropriate, a governmental payments office, within five working days of the date of charge to the EAGF or to the EAFRD. However, for the financial years 2007 and 2008 payments may also be made by payable order. Procedures shall be adopted to ensure that all payments for which transfers are not executed are re-credited to the Funds. No payments shall be made in cash. The approval of the authorising official and/or his supervisor may be made by electronic means, provided an appropriate level of security over those means is ensured, and the identity of the signatory is entered into the electronic records.

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(C) *Procedures for accounting*

The agency shall adopt the following procedures:

(i) Accounting procedures shall ensure that monthly, quarterly (for the EAFRD) and annual declarations are complete, accurate and timely, and that any errors or omissions are detected and corrected, in particular through checks and reconciliations performed at intervals.

(ii) The accounting for intervention storage shall ensure that the quantities and associated costs are correctly and promptly processed and recorded per identifiable lot and in the correct account at each stage from the acceptance of an offer to the physical disposal of the product, in compliance with the applicable regulations, and ensure that the quantity and nature of stocks at every location may be determined at any time.

(D) *Procedures for advances and securities*

Payments of advances shall be separately identified in the accounting or subsidiary records. Procedures shall be adopted to ensure that:

(i) Guarantees are obtained only from financial institutions which fulfil the conditions of Commission Regulation (EEC) No 2220/85 ([1]) and which are approved by the appropriate authorities and which remain valid until cleared or called upon, and are met on the simple request of the agency.

(ii) The advances are cleared within the stipulated time limits and those overdue for clearing are promptly identified and the guarantees promptly called upon.

(E) *Procedures for debts*

All the criteria provided for in points A) to D) shall apply, *mutatis mutandis*, to levies, forfeited guarantees, reimbursed payments, assigned revenues etc. which the agency is required to collect on behalf of the EAGF and of the EAFRD.

The agency shall set up a system for the recognition of all amounts due and for the recording in a debtor's ledger of all such debts prior to their receipt. The debtor's ledger shall be inspected at regular intervals and action shall be taken to collect debts that are overdue.

(F) *Audit trail*

The information regarding documentary evidence of the authorisation, accounting and payment of claims and handling of advances, securities and debts shall be available in the agency to ensure at all times a sufficiently detailed audit trail.

3. **Information and communication**

(A) *Communication*

The agency shall adopt the necessary procedures to ensure that every change in the Community's regulations, and in particular the rates of aid applicable, are recorded and the instructions, databases and checklists updated in good time.

(B) *Information systems security*

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Information systems security shall be based on the criteria laid down in a version applicable in the financial year concerned of one of the following internationally accepted standards:

(i) International Standards Organisation 27002: Code of practice for Information Security management (ISO),

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(ii) Bundesamt für Sicherheit in der Infomationstechnik: IT-Grundschutzhandbuch/IT Baseline Protection Manual (BSI),

(iii) Information Systems Audit and Control Foundation: Control objectives for Information and related Technology (COBIT).

The agency shall choose one of those international standards as the basis for its information systems security.

Security measures should be adapted to the administrative structure, staffing and technological environments of each individual paying agency. The financial and technological effort should be in proportion to the actual risks incurred.

([1]) OJ L 205, 3.8.1985, p. 5.

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4. **Monitoring**

(A) *Ongoing monitoring via internal control activities*

The internal control activities shall cover at least the following areas:

(i) Monitoring of the technical services and delegated bodies responsible for carrying out the controls and other functions to ensure a proper implementation of regulations, guidelines and procedures.

(ii) Initiating of system changes in order to improve control systems in general.

(iii) Reviewing claims and requests submitted to the agency as well as other information providing suspicion of irregularities.

Ongoing monitoring is built into the normal, recurring operating activities of the paying agency. At all levels the daily operations and controls activities of the agency shall be monitored on an ongoing basis to ensure a sufficiently detailed audit trail.

(B) *Separate evaluations via an internal audit service*

The agency shall adopt in this respect the following procedures:

(i) The internal audit service shall be independent of the agency's other departments and shall report to the agency's director.

(ii) The internal audit service shall verify that procedures adopted by the agency are adequate to ensure that compliance with Community rules is verified and that the accounts are accurate, complete and timely. Verifications may be limited to selected measures and to samples of transactions provided that an audit plan ensures that all significant areas, including the departments responsible for authorisation, are covered over a period not exceeding five years.

(iii) The service's work shall be performed in accordance with internationally accepted standards, shall be recorded in working papers and shall result in reports and recommendations addressed to the agency's top management.

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ANNEX II

STATEMENT OF ASSURANCE

I, …, Director of the … Paying Agency, present the accounts for this Paying Agency for the financial year 16/10/xx to 15/10/xx+1.

I declare, based on my own judgement and on the information at my disposal, including, *inter alia*, the results of work of the internal audit service, that:

— The accounts presented give, to the best of my knowledge, a true, complete and accurate view of the expenditure and receipts for the financial year mentioned above. In particular, all debts, advances, guarantees and stocks known to me have been recorded in the accounts, and all receipts collected relating to the EAGF and the EAFRD have been properly credited to the appropriate funds.

— I have put in place a system which provides reasonable assurance on the legality and regularity of the underlying transactions, including that the eligibility of demands and, for rural development, the procedure for attributing aid, are managed, controlled and documented in conformity with Community rules.

This assurance is, however, subject to the following reservations:

Furthermore, I confirm that I am not aware of any undisclosed matter which could be damaging to the financial interest of the Community.

Signature

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ANNEX III

Model table referred to in Article 6(h)

Member States shall provide per paying agency the information referred to in Article 6(h) by using the following table:

a	b	c	d	e	f	g	h	i	j	k	l	m	n	o	p	q	r	s	t (l + m + n + o)	u
Paying Agency	Fund (reference to Regulation (EC) No 1290/2005, Article 3 or 4)	Financial year n	Currency unit	Case identification number	ECR identification if applicable (1)	Case included in the debtors' ledger?	Beneficiary identification	Programme closed? (only for EAFRD)	Financial year of primary finding of irregularity	Subject to judicial procedures	Original amount to be recovered	Total corrected amount (entire recovery period)	Total recovered amount (entire recovery period)	Amount declared irrecoverable	Financial year of establishment of irrecoverability	Reasons for irrecoverability	Corrected amount (in financial year n)	Recovered amount (in financial year n)	Amount for which recovery is ongoing	Amount to be credited to the Community budget
	3/4					y/n				y/n										
	3/4					y/n				y/n										
	3/4					y/n				y/n										
	3/4					y/n				y/n										
Total																				

(1) This concerns the unique identification of the cases notified under Commission Regulation (EC) No 1848/2006 (OJ L 355, 15.12.2006, p. 56).

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ANNEX IIIA

Model table referred to in Article 6(i)

Other outstanding amounts in the debtors' ledger to be credited to the EAGF and the EAFRD

Member States shall provide per paying agency the information referred to in Article 6(i) by using the following table:

a	b	c	d	e	f	g	h
Paying Agency	Fund	Currency unit	Balance 15 October N-1	New cases (year N)	Total recoveries (year N)	Total corrections including irrecoverable amounts (year N)	Amount to be recovered 15 October N

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ANNEX IV

TRANSMISSION OF QUERIES REFERRED TO IN ARTICLE 8(4)

Queries referred to in Article 8(4) shall be sent to:

— European Commission, DG AGRI-J1, Rue de la Loi 200, B-1049 Brussels,

or

— AGRI-J1@cec.eu.int.

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ANNEX V

CORRELATION TABLE

Regulation (EC) No 1663/95	This Regulation
Article 1(2)	Article 1(2)
Article 1(3), second subparagraph	Article 1(3), second subparagraph
Article 1(4)	Article 1(4)
Article 1(5)	Article 2(5)
Article 1(7)	Article 1(5)
Article 2(1)	Article 4(1)
Article 2(2)	Article 4(6)
Article 2(3)	Article 8(1)
Article 3(1), first subparagraph	Article 5(1), second sentence
Article 3(1), second subparagraph	Article 5(3), second subparagraph
Article 3(1), third subparagraph	Article 5(2)
Article 3(3)	Article 5(4)
Article 4(1) (a), (b), (c)	Article 7(1) (a), (b), (c)
Article 4(2)	Article 7(2)
Article 4(3)	Article 7(3)
Article 4(4)	Article 7(4)
Article 5(1)(a)	Article 6(b) and (c)
Article 5(1)(b)	Article 6(e)
Article 5(1)(c)	Article 6(f)
Article 5(1)(d)	Article 6(g)
Article 5(1)(e)	Article 6(h)
Article 6	Article 9(1) and (2)
Article 7(1), second subparagraph	Article 10(2)
Article 7(2)	Article 10(3)
Article 7(3)	Article 10(4)
Article 8	Article 11

Regulation (EC) No 2390/1999	This Regulation
Article 2(1)	Article 8(2)
Article 2(2)	Article 8(3)

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Regulation (EC) No 2390/1999	This Regulation
Article 2(3)	Article 8(5)

Decision 94/442/EC	This Regulation
Article 1(1)	Article 12
Article 2(1)	Article 16(1)
Article 2(2)	Article 16(2)
Article 2(4)	Article 16(3)
Article 2(5)	Article 16(4), first subparagraph
Article 2(6)	Article 16(4), second subparagraph
Article 3(1), first subparagraph	Article 13(1)
Article 3(1), second, third and fourth subparagraph	Article 13(2)
Article 3(2)	Article 13(3)
Article 3(3)	Article 13(4)
Article 3(4), second subparagraph	Article 13(5)
Article 3(5)	Article 13(5)
Article 4(1)	Article 15(1)
Article 4(2)	Article 14(1), second subparagraph
Article 4(3)	Article 15(2)
Article 5(1)	Article 14(1), first subparagraph
Article 5(2)	Article 14(2)