



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.3.2007
COM(2007) 122 final

2007/0045 (CNS)

Proposal for a

COUNCIL REGULATION

**amending Regulation (EC) No 1290/2005
on the financing of the common agricultural policy**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Grounds for and objectives of the proposal

The requirement on the publication of information on beneficiaries of Community funds, as inserted into the Financial Regulation by Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006, provides that the necessary details shall be laid down in the relevant sector-specific rules. In order to implement this obligation, it is necessary to modify Council Regulation (EC) No 1290/2005 on the financing of the common agricultural policy. Furthermore, a number of outstanding problems regarding the effective application of the Regulation are addressed.

The following issues are therefore included in this proposal:

1. Publication of information on beneficiaries of EAGF and EAFRD funding

The principles included contain the following:

- as regards EAGF expenditure, a split between direct payments and other funding,
- as regards EAFRD expenditure, one single amount of total public funding,
- *ex-post* annual publication per budget year,
- publication to cover EAFRD expenditure effected as of 1 January 2007 and EAGF expenditure effected as of 16 October 2007,
- publication by Member States at national level.

The details should be laid down in implementing rules to be adopted by the Commission.

Annex VI to Commission Regulation (EC) No 1974/2006 of 15 December 2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)¹ requires Member States' managing authorities starting from 2008 to publish at least annually, electronically or otherwise the list of beneficiaries receiving support from the rural development programmes, the names of the operations and the amount of public contributions allocated to these operations. However, the starting date for the publication of these data is now superseded by Regulation (EC, Euratom) No 1605/2002, as amended by Regulation (EC) No 1995/2006, which requires *ex-post* publication of beneficiaries of this Fund as from 1 January 2007.

2. Reduction and suspension of monthly and intermediate payments to Member States

The present mechanism under Articles 17 and 27 is not well tailored to deal with the situation where key components of a national control system do not exist or are not

¹ OJ L 368, 23.12.2006, p. 15.

effective over a long period of time and where no remedy is available in the immediate future. It is therefore proposed to introduce a new mechanism under which the Commission would be empowered, but not obliged, to reduce or suspend payments. This mechanism could be triggered only if all below mentioned conditions are met:

- the Commission has already imposed two financial corrections in respect of the same measure and for the same reason;
- one or more of the key components of the control system in question do not exist or are not effective due to the gravity or persistence of the deficiencies found;
- the projection of the Commission is such that the Member State has failed to implement Commission's recommendation to remedy the situation and cannot or will not remedy the deficiencies in question in the immediate future.

The suspension or reduction would follow a "warning letter" sent to the Member State. The decision would be valid for a period to be determined by the Commission covering payments after the decision, without the need to repeat the procedure each month.

3. Modification of Article 31(5) of the Regulation (exceptions to the so-called 24-month rule)

Regulation (EEC) No 4045/89 requires Member States to carry out *ex-post* controls on certain CAP expenditure. A literal interpretation of the 24-month-rule laid down in Article 31(4) of the Regulation prevents the Commission from imposing financial corrections on the Member States in case they do not comply with their control obligations under the above-mentioned Regulation due to the lack of time left after controls made by the Member State. It is therefore proposed to amend Article 31(5) of the Regulation in order to allow for a reasonable period of time for the Commission to audit whether Member States have complied with their control obligations under Regulation (EEC) No 4045/89 and, if necessary, impose financial corrections.

4. Commissions implementing powers under Article 42

It is proposed to adapt this Article in order to enable the Commission adopting detailed rules for all provisions laid down in the Regulation. Additionally, with a new Article on transparency in the Regulation it is advisable to refer directly in the Article on implementing powers to the transparency provision in order to authorise the Commission to adopt detailed rules of application.

5. Technical adaptations

Finally, it is suggested to resolve a number of smaller technical problems that have been identified concerning mainly the coherence between the financial management of the EAFRD and the financial management of the Structural Funds and the financing of intervention measures if no sum per unit is determined.

- **General context**

Reduction of monthly and intermediate payments is already possible under current legislation. However, for the specific situation addressed by the proposal, there is reason for improvement. As far as transparency is concerned, new legislative developments require an adaptation of the Regulation.

- **Existing provisions in the area of the proposal**

Articles 17, 27, 42 of the Council Regulation (EC) No 1290/2005

Article 105(3) of Regulation (EC) No 1083/2006

Articles 30(3) and 53b of Council Regulation (EC) No 1605/2002

- **Consistency with the other policies and objectives of the Union**

Not applicable.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Not relevant as the proposal concerns basically the relation between the Member States and the Commission.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

For amending an existing Council Regulation, it is required to adopt a Council Regulation.

Other options, as described, cannot serve this purpose as they do not have the same legal effect.

3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

- Introduction of legal provision on transparency,
- new mechanism for reducing monthly and intermediate payment of CAP money to Member States in a specific situation,
- enhanced applicability of financial corrections for post-payment checks,
- technical adaptations.

- **Legal basis**

The third subparagraph of Article 37(2) of the Treaty establishing the European Community.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

The amendment in respect of reductions allows for a procedure which conforms largely to existing procedures. As far as transparency is concerned, the proposal is kept at a rather simple level and follows agreement by the Member States on this topic. For the rest, the amendments would allow for a better execution of Regulation (EC) No 1290/2005.

The administrative burden for regional and local authorities, economic operators and citizens is non-existent. Administrative burden for Member States and Community is minimal and financial burden is not higher than in the past. Transparency obliges an extra effort from the Member States and the Community.

- **Choice of instruments**

Proposed instruments: regulation.

Other means would not be adequate for the following reason(s).

A Council Regulation is needed as the amendments concern a Council Regulation.

4. **BUDGETARY IMPLICATION**

The proposal has no implication for the Community budget.

5. **ADDITIONAL INFORMATION**

- **Repeal of existing legislation**

No.

However, it should be noted that in its proposal for a Council Regulation laying down rules for voluntary modulation of direct payments provided for in Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers, and amending Regulation (EC) No 1290/2005², the Commission has proposed an amendment of Article 42 of Regulation (EC) No 1290/2005 which is similar to the one set out in Article 1(8) of the present proposal and, thus, is superseded by this new proposal.

² COM(2006) 241 final.

Proposal for a

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**amending Regulation (EC) No 1290/2005
on the financing of the common agricultural policy**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the third subparagraph of Article 37(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament³,

After consulting the European Data Protection Supervisor,

Whereas:

- (1) In the case of intervention measures in respect of which a sum per unit is not determined within the framework of a common organisation of the markets, implementing rules should be laid down, with regard in particular to the method for determining the amounts to be financed, the financing of expenditure resulting from the tying-up of the funds necessary for buying-in products and the financing of expenditure resulting from storage and, where appropriate, processing operations.
- (2) In view of the nature of the measures and programmes covered by Council Decision 90/424/EEC on expenditure in the veterinary field⁴, provision should be made that in duly justified exceptional cases the EAGF may finance administrative and personnel costs incurred in the execution of such measures and programmes.
- (3) Article 17 of Council Regulation (EC) No 1290/2005⁵ provides for the procedure to be followed by the Commission to decide to reduce or suspend monthly payments. Article 27 of that Regulation provides for the procedure to be followed to decide to suspend or reduce intermediate payments.
- (4) Pursuant to Article 31 of Regulation (EC) No 1290/2005, the Commission decides on amounts that are to be excluded from Community financing if it finds that this expenditure has been incurred in a way that has infringed Community rules. In the context of the procedure leading to the exclusion from Community financing, the

³ OJ C ..., ..., p.

⁴ OJ L 224, 18.8.1990, p. 19. Decision as last amended by Decision 2006/965/EC (OJ L 397, 30.12.2006, p. 22)

⁵ 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).

Commission, in order to remedy the situation, makes recommendations to the Member State concerned on the way to apply Community legislation. If the Member State fails to implement these recommendations, further decisions excluding expenditure will be taken by the Commission. In addition to this it can be established in certain cases that such recommendations will not or cannot be implemented in the immediate future.

- (5) Under such circumstances the possibility to suspend or reduce monthly or intermediate payments as it is currently provided for in Articles 17 and 27 of Regulation (EC) No 1290/2005 does not protect sufficiently the financial interest of the Community. In this respect, it is considered useful to provide for a new procedure permitting the Commission to suspend or reduce payments in specific situations in a more effective way.
- (6) An *ex-ante* suspension or reduction of payments in the agricultural field could have serious financial implications for the Member State concerned. In addition, in comparison with the procedure for the conformity clearance decision, the Member State has only limited possibilities to defend its position vis-à-vis the Commission. For these reasons the new procedure of suspension or reduction of payments should only be used in case one or more of the key components of the national control system in question do not exist or are not effective due to the gravity or persistence of the deficiencies found.
- (7) Provision should be made to clarify under which conditions an intermediate declaration of expenditure under the European Agricultural Fund for Rural Development (EAFRD) is inadmissible.
- (8) 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/EEC⁶ requires Member States to carry out *ex-post* controls on certain common agricultural policy expenditure of financial year "n" in the period from 1 July n+1 to 30 June n+2. The report to the Commission on the control activities in that period is only due by the end of the year n+2.
- (9) The limitation in time for the conformity clearance decisions laid down in Article 31(4) of Regulation (EC) No 1290/2005, makes it effectively impossible for the Commission to decide on an exclusion from Community financing in case a Member States does not comply with its control obligations under Regulation (EEC) No 4045/89. In order to deal with this problem, the limitation in time should not apply for infringements of the Member States' control obligations under Regulation (EEC) No 4045/89, provided that the Commission acts upon the Member States' report within a period of 12 months after receipt of that report.
- (10) Since there is no need for Member States to inform the Commission on the way they have decided or plan to reuse the cancelled funds and to amend the financing plan for the rural development programme concerned, the second subparagraph of Article 33(4) of Regulation (EC) No 1290/2005 should be deleted.
- (11) In order to align the transitional rules for the European Agricultural Guidance and Guarantee Fund (EAGGF) Guidance Section to the new provisions applicable for the

⁶ 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.)

next programming period of the Structural Funds, Article 40(1) of Regulation (EC) No 1290/2005 should be amended in line with Article 105(3) of Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999⁷.

- (12) It is necessary to clarify the legal basis for the adoption of detailed rules for the application of Regulation (EC) No 1290/2005. In particular, the Commission should be able to adopt detailed rules of application in respect of the publication of information on beneficiaries of the common agricultural policy, in respect of intervention measures where no fixed sum per item has been laid down in a common market organisation and in respect of appropriations which have been carried over to finance the expenditure referred to in Article 3(1)(c) of that Regulation.
- (13) In the context of the revision of Council Regulation (EC) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities⁸, Articles 30(3) and 53b(2)(d) on the annual *ex-post* publication of beneficiaries of funds deriving from the budget were inserted into that Regulation in order to implement the European Transparency Initiative. Sector-specific Regulations are to provide the means for such a publication. Both the European Agricultural Guarantee Fund (EAGF) and the EAFRD form part of the budget of the European Communities and finance expenditure in a context of shared management between the Member States and the Community. Rules should therefore be laid down for the publication of information on the beneficiaries of these Funds. To that end, Member States should ensure annual *ex-post* publication of the beneficiaries and the amounts received per beneficiary under each of these Funds.
- (14) Making this information accessible to the public enhances transparency regarding the use Community funds in the common agricultural policy and improves the sound financial management of these funds, in particular by reinforcing public control of the money used. Given the overriding weight of the objectives pursued it is justified with regard to the principle of proportionality and the requirement of the protection of personal data to provide for the general publication of the relevant information as it does not go beyond what is necessary in a democratic society and for the prevention of irregularities.
- (15) Regulation (EC) No 1290/2005 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1290/2005 is amended as follows:

- (1) In Article 3, the following paragraph is added:

"3. Where, within the framework of a common organisation of the markets, a sum per unit is not determined in respect of an intervention measure, the EAGF shall

⁷ OJ L 210, 31.7.2006, p. 25.

⁸ OJ L 248, 16.9.2002, p. 1. Regulation amended by Regulation (EC) No 1995/2006 (OJ L 390, 30.12.2006, p. 1).

finance the measure concerned on the basis of standard amounts uniform throughout the Community, in particular for funds originating in the Member States used for buying-in products, for material operations arising from storage and, where appropriate, for processing of intervention products.

The respective charges and costs shall be calculated in accordance with the procedure referred to in Article 41(3)."

(2) In Article 13, the following paragraph is added:

"In duly justified exceptional cases, the first paragraph shall not apply to measures and programmes covered by Council Decision 90/424/EEC."

(3) The following Article 17a is inserted:

"Article 17a

Reduction and suspension of monthly payments in specific cases

1. Without prejudice to Article 17, the Commission may decide, in accordance with paragraphs 2 and 3 of this Article, to reduce or suspend monthly payments referred to in Article 14 for a period to be determined in the decision.
2. The monthly payments may be reduced or suspended if the following conditions are met:
 - (a) the Commission has already decided, by means of at least two decisions pursuant to Article 31, to exclude from Community financing expenditure from the Member State concerned for the same measure and for the same reasons;
 - (b) the reason for the exclusion referred to in point (a) is that one or more of the key components of the national control system in question do not exist or are not effective due to the gravity or persistence of the deficiencies found;
 - (c) the Commission concludes that the Member State concerned has not implemented its recommendations to remedy the situation and is not in a position to do so in the immediate future.
3. Before taking the decision referred to in paragraph 1, the Commission shall inform the Member State concerned of its intention and shall ask it to react within a period determined by the Commission according to the severity of the problem and which generally may not be less than 30 days.

The percentage by which the monthly payments may be reduced or suspended shall be equal to the percentage decided by the Commission in its latest decision as referred to in paragraph 2(a)."

(4) In Article 26, paragraph 4 is replaced by the following:

- "4. If one of the requirements laid down in paragraph 3 is not met, the Commission shall forthwith inform the accredited paying agency and the coordinating body, where one has been appointed. If one of the requirements laid down in point (a)

or (c) of paragraph 3 is not respected, the declaration of expenditure shall be inadmissible."

- (5) The following Article 27a is inserted:

*"Article 27a
Suspension and reduction of intermediate payments in specific cases*

Article 17a shall apply *mutatis mutandis* to the suspension and reduction of intermediate payments referred to in Article 26."

- (6) In Article 31(5), the following point (c) is added:

"(c) infringements by Member States of their obligations under Council Regulation (EEC) No 4045/89*, provided that the Commission notifies the Member State in writing of its inspection findings within 12 months following receipt of the Member State's report on the results of its controls of the expenditure concerned.

* OJ L 388, 30.12.1989, p. 18."

- (7) In Article 33(4), the second subparagraph is deleted.

- (8) In Article 40, paragraph 1 is replaced by the following:

"1. By way of derogation from Articles 31(2), 32(4) and 37(1) of Council Regulation (EC) No 1260/1999*, partial sums committed for assistance co-financed by the EAGGF Guidance Section approved by the Commission between 1 January 2000 and 31 December 2006, for which the certified statement of expenditure actually paid, the final report on implementation and the statement referred to in Article 38(1)(f) of that Regulation have not been sent to the Commission within 15 months after the final date of eligibility of expenditure laid down in the decision granting a contribution from the Funds, shall be automatically de-committed by the Commission not later than 6 months after that deadline, giving rise to the repayment of amounts unduly paid.

* OJ L 161, 26.6.1999, p. 1."

- (9) Article 42 is amended as follows:

- (a) in the introductory part, the second sentence is replaced by the following:

"Those rules shall include in particular:"

- (b) point 1 is replaced by the following:

"1. the conditions applicable to the accreditation of paying agencies as well as the specific accreditation of coordinating bodies, their respective functions, the information required and the arrangements for it to be made available or transmitted to the Commission;"

(c) the following points 8a, 8b and 8c are inserted:

"8a. detailed rules on the financing and accounting of intervention measures in the form of public storage as well as on other expenditure financed by the EAGF and the EAFRD;

8b. the detailed rules as to the obligation of the Member States to publish information on beneficiaries laid down in Article 44a, including aspects related to the protection of individuals with regard to the processing of their personal data;

8c. the conditions and detailed rules applicable to appropriations which have been carried over to finance the expenditure referred to in Article 3(1)(c)."

(10) The following Article 44a is inserted:

*"Article 44a
Publication of the beneficiaries*

Pursuant to Article 53b(2)(d) of Regulation (EC) No 1605/2002, Member States shall ensure annual *ex-post* publication of the beneficiaries of the EAGF and the EAFRD and the amounts received per beneficiary under each of these Funds.

The publication shall contain at least:

- (a) for the EAGF, the amount subdivided in direct payments within the meaning of Article 2(d) of Regulation (EC) No 1782/2003 and other expenditure;
- (b) for the EAFRD, the total amount of public funding per beneficiary."

Article 2

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

Article 1(10) shall apply to EAGF expenditure incurred from 16 October 2007 and to EAFRD expenditure from 1 January 2007.

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

Done at Brussels, ...

*For the Council,
The President*