COMMISSION OF THE EUROPEAN COMMUNITIES

COM(94) 122 final
Brussels, 26.04.1994

94/0015 (CNS)

Proposal for a

COUNCIL REGULATION (EC)

on measures to be taken in dealing with certain beneficiaries of operations financed by the Guarantee Section of the EAGGF

(presented by the Commission)

Explanatory Memorandum

1. With a view to combatting fraud affecting the Guarantee Section of the EAGGF effectively, a Community system has to be established which will enable the competent national authorities to identify, in particular in connection with tendering procedures, the grant of export refunds and sales at reduced prices of intervention products, those operators who have deliberately or as a result of serious negligence committed an irregularity prejudicial to Community funds or who are suspected on solid grounds of having done so. On this basis, the competent national authorities must, in the light of the seriousness of the offence and depending on whether it has been established or suspected, proceed to draw up a series of varied measures ranging from reinforcing controls to excluding the operators concerned from taking part in the relevant operations where it is established that they have acted fraudulently.

2. What is involved is in fact the implementation of one of the specific measures contained in:

   - the action programme of the UCLAF report for 1993, point 8.5 of which provided that entitlement to Community aid is to be made conditional on certain criteria relating to the beneficiaries,

   - the conclusions of the ECOFIN Council of 7 June 1993 on that report which encourage the Commission to carry out the said programme,

   - the conclusions of the European Council in Copenhagen on 21 and 22 June 1993 which stress the importance of pursuing the campaign against fraud and irregularities prejudicial to the Community budget.

3. The system proposed must, of course, have built into it a maximum of guarantees and precautions to ensure that its practical application does not lead to unjustifiably or disproportionately harmful effects for the operators concerned.

   Article 3 of the proposed Regulation hence refers explicitly to the basic rights and general principles to be observed.

   By virtue of the principle of subsidiarity and in order to enable the Council to confine itself to drawing up the necessary regulatory framework, it is envisaged that the detailed rules of application to be adopted by the Commission give concrete expression to the principles in question in relation to the multitude of situations which may arise in reality.

4. It should be noted that where, despite the existence of the preventive measures laid down in the proposed Regulation, the competent national authority does not apply them in dealing with an operator reported as presenting a risk of non-reliability, the Commission must bear such an attitude in mind in the course of the clearance of accounts in respect of the expenditure which could have been avoided had this Regulation been effectively applied.

5. This proposal does not generate any expenditure for the Community budget.

Proposal for a

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on measures to be taken in dealing with certain beneficiaries of operations financed by the Guarantee Section of the EAGGF

The Council of the European Union,

Having regard to the Treaty establishing the European Community, and in particular Article 43 thereof,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Having regard to the proposal from the Commission,

Whereas, at its meeting on 21 and 22 June 1993 in Copenhagen, the European Council stressed the importance of pursuing the campaign against fraud and irregularities affecting the Community budget; whereas there should be a reinforcement of those measures designed to ensure that the Community funds intended for the implementation of the CAP are not granted to persons or companies which do not offer all the guarantees of reliability as to the proper execution of the operations concerned;

Whereas Article 8 of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy(1), as last amended by Regulation (EEC) No 2048/88(2), lays down, in particular, that Member States are under an obligation to take the measures necessary to ensure that transactions financed by the Fund are actually carried out and are properly executed, and to prevent and deal with irregularities;

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(1) OJ No L 94, 28.4.1970, p. 13.

(2) OJ No L 185, 15.7.1988, p. 1.

Whereas Council Regulation (EEC) No 595/91 of 4 March 1991 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organization of an information system in this field, and repealing Regulation (EEC) No 283/72[3], lays down, among other things, that with a view to systematically ascertaining the nature of fraudulent practices and to recovering sums wrongly paid, cases of irregularity and the judicial or administrative procedures against persons who have committed irregularities are to be communicated at regular intervals to the Commission by the Member States;

Whereas these provisions need to be supplemented by a Community system allowing the national authorities to identify, in particular in connection with tendering procedures, the grant of export refunds or sales at reduced prices of intervention products, operators who have deliberately or as a result of serious negligence committed an irregularity prejudicial to Community funds or who are suspected on solid grounds of having done so; whereas, on that basis, there must be determined, in the light of the seriousness of the offence and depending on whether it has been established or suspected, a series of varied measures ranging from reinforced controls to the exclusion of the operators concerned from taking part in operations to be determined when their fraudulent actions are established;

Whereas, while providing operators with a maximum of guarantees, it is necessary to lay down that Member States take the necessary measures to ensure that their provisions relating to the confidentiality of judicial investigations are adapted, if necessary, so as not to prevent this Regulation from being effectively applied;

Whereas the present system must be a supplement to the specific provisions already existing or to be adopted in the future under the common agricultural policy with a view to preventing irregularities, in particular those provisions relating to controls and sanctions established by the Commission as part of its powers confirmed by the Court of Justice,

HAS ADOPTED THIS REGULATION:

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(3) OJ No L 67, 14.3.1991, p. 11.

Article 1

1. A Community system is hereby established designed to identify and make known to the competent authorities of the Member States, as rapidly as possible, operators presenting, on the grounds of experience acquired with them as to the proper execution of their previous obligations, a risk of non-reliability in connection with operations financed by the Guidance Section of the EAGGF and in particular with tendering procedures, export refunds and sales at reduced prices of intervention products.

2. For the purposes of this Regulation, "operators presenting a risk of non-reliability" means:

   (a) operators, whether natural or legal persons, who have deliberately or through serious negligence committed an irregularity in respect of relevant Community provisions and who have unjustly benefited from a financial advantage or who have attempted to benefit therefrom, and

   (b) those who are the subject of well-founded suspicions in this respect.

Article 2

The identification procedures and the rules relating to notification shall be implemented at the initiative of the Member State in which the risk of the operator's non-reliability was identified or, where appropriate, at the Commission's initiative.

Article 3

1. Member States shall take the following measures to deal with the operators referred to in Article 1(2)(a):

   (a) intensified checking of the operations pursued by the operator

   or

(b) suspension of the payment of the amounts in respect of operations in progress to be determined and, where appropriate, of the release of the security relating thereto, until an irregularity within the meaning of Article 1(2)(a) has been determined,

or

(c) their exclusion for a period and from operations to be determined.

2. In the case of operators as referred to in Article 1(2)(b), only the measures set out in the previous paragraph under (a) and (b) shall apply.

3. Where, within a tendering procedure, the Commission itself awards a contract, it shall, as appropriate, take one or other of the measures set out in paragraph 1.

Article 4

1. The measures referred to in Article 3 must comply with the following principles:

(a) the prior hearing and the right of appeal of the operator concerned;

(b) proportionality between the irregularity, whether committed or suspected, and one or other of the measures referred to in Article 3(1), subject to the provisions to be established in accordance with the procedure laid down in Article 5;

(c) non-discrimination among operators.

2. The provisions of Article 10(1), (2) and (4) of Regulation (EEC) No 595/91 on the observance of the principle of confidentiality and professional secrecy shall be applicable under this Regulation.

3. In the case of operators as referred to in Article 1(2)(b), Member States shall take the necessary measures to ensure that national provisions providing for the confidentiality of judicial investigations are adapted, if necessary, so as not to prevent this Regulation from being applied effectively.

Article 5

The detailed rules for the application of this Regulation shall be adopted in accordance with the procedure laid down in Article 13 of Regulation (EEC) No 729/70. They shall include provisions on notifications to be made by the Member State.

Article 6

This Regulation shall be supplementary to the specific provisions under the common agricultural policy.

Article 7

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

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

Done at

For the Council

The President

ISSN 0254-1475

COM(94) 122 final

DOCUMENTS

EN **03**

Catalogue number : CB-CO-94-157-EN-C

ISBN 92-77-67720-1

Office for Official Publications of the European Communities
L-2985 Luxembourg