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REPORT TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

ON THE APPLICATION OF REGULATION No 1469/95 (BLACK LIST)

(presented by the Commission)

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1. Council Regulation No 1469/95 on measures to be taken with regard to certain beneficiaries of operations financed by the Guarantee Section of the EAGGF[1] introduced a system of identification and notification. Member States adopt the appropriate preventive measures with regard to operators presenting a risk of non-reliability (tighter controls, suspension of payments, exclusion), place the names of these operators on a black list and notify the Commission. The Commission then forwards this information to the other Member States so that they can check the activities and reliability of the operators on their respective territories.
Article 7 requires the Commission to report on the implementation of the Regulation two years after its entry into force and to propose any amendments that may be needed in the light of experience.

2. Regulation No 1469/95 came into force on 6 July 1995. Detailed rules for its application were laid down by Commission Regulation No 745/96 on 24 April 1996.[2] The latter Regulation came into force on 28 April 1996 and was applicable from 1 July 1996. It specifies the scope of the identification and notification system by introducing a threshold of ECU 100 000. The result was that the identification and notification system could be put into practice for only one year.

3. Certain practical arrangements had to be made for the application of the system:

   - Under Article 5 (1) of Regulation No 745/96, each Member State has to designate a single competent authority to make and receive notifications within the system. On 1 August 1996 all the Member States had designated the competent authority participating in the notification system.

   - Article 5(2) of the Regulation defines the information to be communicated to the Commission and provides that the Commission shall agree with the Member States a standard form for these notifications to be used by the competent authorities. On the basis of an agreement with the Member States reached at a meeting of the Irregularities and Mutual Assistance Group on 26 June 1996, the content of the standard form (Form A for the

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1 OJ L 145, 29.6.1995, p.1.

2 OJ L 102. 25.4.1996, p.15.

initial communication by a Member State and Form B for the reaction of the other Member States) was adopted by Commission Decision on 4 December 1996.[3]

- Article 10(2) of Regulation No 745/96 requires the Member States to notify the Commission of the additional steps they have taken before 1 October 1996. On 30 June 1997, despite several invitations by the Commission, only six Member States[4] had notified the Commission of the additional national measures.

- Article 11(4) of Regulation No 745/96 provides that the Commission shall publish in the Official Journal a notice concerning the introduction of the identification and notification system. This notice, which includes a list of the competent authorities of the Member States participating in the system, was published on 5 December 1996.[5]

4. On 30 June 1997, only four notifications black-listing an economic operator had been received by the Commission from three Member States.[6] Three of the notifications concerned beef export refunds and one concerned pigmeat export refunds. In each case, stricter controls were applied, and payment was suspended in one case. Only a minority of Member States reacted to these notifications and noted that there was no need to adopt measures with respect to these operators in their territory.

5. The low number of notifications may be accounted for partly by the fact that the conditions for implementing the system (implementing measures defining certain essential aspects, designation of competent authorities and measures for incorporation into national law, agreement on the forms to be used) were not all in place until well after the entry into force of the basic regulation. In addition, discussions with Member States' representatives in the Irregularities and Mutual Assistance Group revealed that Member States had encountered a number of difficulties in becoming familiar with the system. In the relatively near future, once a fully computerised notification system is in place (using the AFIS[7] network), it should facilitate notifications in technical terms.

Nonetheless the Member States had had sufficient time to communicate the cases and measures adopted to implement Regulation No 1469/95. It should be recalled that each notification should be made "as soon as possible" after the "preliminary administrative or judicial report by the competent authorities" (Article 1 (1) of Regulation No 1469/95 and Article 5(3) of Regulation No 745/96). If the preliminary provisional assessment proves to be unfounded in the light of developments in the administrative or judicial procedure, it can be revised (Article 1(2) of Regulation N° 745/96).

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3 Doc. C(96)3593.

4 Germany, Austria, Finland, Italy, United Kingdom, Sweden.

5 OJ C 366, 5.12.1996, p.11.

6 France, Netherlands, United Kingdom.

7 Antifraud Information System.

From the information available to the Commission based on Member States' notifications in accordance with Article 3 of Regulation No 595/91[8] for 1996 and the findings of surveys by the Commission (UCLAF[9]) in cooperation with Member States, many more operators should have been placed on the black list. For 1996 alone, and solely in the area of export refunds (one of the three areas covered by Regulation No 1469/95), under Article 3 of Regulation No 595/91, the Member States notified 72 irregularities, each of which exceeds the threshold of ECU 100 000.[10]

The Commission (UCLAF) will examine with the Member States the reasons why they did not notify more cases under Regulation No 1469/95. It will also examine the procedure followed in cases under investigation by SG/UCLAF which could meet the conditions of Regulation No 1469/95.

Conclusion

An in-depth evaluation of the identification and notification system cannot be carried out on the basis of the few notifications sent to the Commission. Since the teething problems of the system should have been overcome by now, the Commission will carefully monitor the application of Regulation No 1469/95 in the Member States, both with respect to the measures taken against the non-reliable operators and with respect to notifications in the next 12 months. It will then present another report to Parliament and the Council, in which it will consider whether the Regulation needs to be amended.

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8 OJ L 67, 14.3.1991, p.11.

9 Unit for the Coordination of Fraud Prevention.

10 Article 2(1) of Regulation No 745/96 provides for the combination of irregularities committed by the same operator over a period of one year.

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