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Commission Decision of 28 March 2011 excluding from EU financing certain expenditure incurred by Hungary under the programme for the support for pre-accession measures for agriculture and rural development (Sapard) in 2004 (notified under document C(2011) 1738) (Only the Hungarian text is authentic) (2011/192/EU)

COMMISSION DECISION

of 28 March 2011

excluding from EU financing certain expenditure incurred by Hungary under the programme for the support for pre-accession measures for agriculture and rural development (Sapard) in 2004

(notified under document C(2011) 1738)

(Only the Hungarian text is authentic)

(2011/192/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1268/1999 of 21 June 1999 on Community support for pre-accession measures for agriculture and rural development in the applicant countries of central and eastern Europe in the pre-accession period⁽¹⁾,

Having regard to Commission Regulation (EC) No 2222/2000 of 7 June 2000 laying down financial rules for the application of Council Regulation (EC) No 1268/1999 on Community support for pre-accession measures for agriculture and rural development in the applicant countries of central and eastern Europe in the pre-accession period⁽²⁾, and in particular Article 14 thereof,

Having regard to the Multi-Annual Financing Agreement between the Commission of the European Communities, acting on behalf of the European Community, and Hungary which was concluded on 15 June 2001, and in particular Article 12, Section A of the Annex thereto,

After consulting the Committee on the Agricultural Funds,

Whereas:

- (1) Commission Regulation (EC) No 1419/2004⁽³⁾ provides for the continuation of the application of the Multiannual Financing Agreements and the Annual Financing Agreement concluded between the European Commission, representing the European Union on the one hand, and the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia on the other, and for certain derogations from the Multiannual Financing Agreements (hereinafter referred to as 'MAFAs') and from Council Regulation (EC) No 1266/1999⁽⁴⁾ and Regulation (EC) No 2222/2000.

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- (2) Commission Regulation (EC) No 447/2004⁽⁵⁾ lays down rules to facilitate the transition from support under Regulation (EC) No 1268/1999 to that provided for by Council Regulations (EC) No 1257/1999⁽⁶⁾ and (EC) No 1260/1999⁽⁷⁾ for the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia, in conjunction with the MAFAs as referred to in Annex I, point 1 of Regulation (EC) No 1419/2004, and, in Article 12 of Section A of the Annex to the MAFAs.
- (3) Commission Regulation (EC) No 248/2007⁽⁸⁾ provides for measures concerning the MAFAs and the Annual Financing Agreements concluded under the Sapard programme and the transition from Sapard to rural development, in conjunction with the MAFAs as referred to in Annex III to that Regulation.
- (4) Article 12(1) of Section A of the Annex to the MAFAs, which remains in force after the accession of Hungary to the European Union by virtue of Regulation (EC) No 248/2007, requires the Commission to take a Decision (hereinafter referred to as ‘the conformity clearance Decision’) on the expenditure to be excluded from EU co-financing where it finds that expenditure has not been effected in compliance with this Agreement.
- (5) The findings of the annual certification report for the Sapard accounts for the financial year 2004 indicated that the Sapard Agency might have breached certain provisions of the MAFAs. In this respect, the Commission launched an enquiry in accordance with the Article 12 of Section A of the Annex to the MAFAs.
- (6) In accordance with Article 12(3) of Section A of the Annex to the MAFAs, the Hungarian authorities were invited to a bilateral discussion on 8 November 2005, at which both parties endeavoured to reach an agreement as to the action to be taken and on an evaluation of the gravity of the infringement.
- (7) Following the bilateral discussion, the Commission still considered that certain items of expenditure had not been carried out in conformity with the rules governing the Sapard programme. For some of the payments made in the financial years 2003 and 2004, Hungary breached the 3-month deadline for payments to beneficiaries provided in Article 8(6), Section A of the MAFAs. According to this provision, the interval between receipt of the supporting documents needed to make the payment and issuing of the payment order should not have exceeded 3 months.
- (8) By letter of 16 October 2009, the Hungarian authorities initiated a conciliation procedure in accordance with the third subparagraph of Article 12(3) of Section A and Item 9 of Section F of the Annex to the MAFAs. The Conciliation Body supported the arguments presented by the Hungarian authorities and considered them as exceptional circumstances to derogate from the deadline for the payments to beneficiaries given by provision of Article 8(6), Section A of the MAFAs.
- (9) The Commission could not consider the arguments given by the Hungarian authorities as exceptional circumstances, justifying some derogation from Article 8(6), Section A of the MAFAs, and proposed the amount of EUR 2 535 286 for financial reduction.
- (10) In accordance with Article 12(7) of Section A of the Annex to the MAFAs, the amount to be recovered shall be communicated to the National Authorising Officer who should,

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on behalf of Hungary, ensure that the amount is credited to the Sapard euro account within 2 months of the date that the Decision is taken. However, due to the fact that the implementation of the Sapard programme is finalised, the recovery of the sum excluded shall be executed in a form of a recovery order,

HAS ADOPTED THIS DECISION:

Article 1

The amount of EUR 2 535 286 paid by the Hungarian Sapard Agency is hereby excluded from EU financing as the underlying transactions do not comply with the rules governing the Sapard programme.

The calculation of the correction is indicated in the Annex.

Article 2

This Decision is addressed to the Republic of Hungary.

Done at Brussels, 28 March 2011.

For the Commission

Dacian CIOLOȘ

Member of the Commission

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ANNEX

TABLE OF REDUCTIONS

Delay	Total expenditure in FY2004(EUR)	Use of 4 % reserve	Amount subject to reduction(EUR)	Red. Rate(%)	Reduction computation(EUR)
0 months	32 367 673,72	n.a.	n.a.	0	0,0
Up to 1 month	7 283 177,62	-1 294 706,95	5 988 470,67	10	598 847,07
Up to 2 months	1 601 753,18	0,0	1 601 753,18	25	400 438,29
Up to 3 months	601 262,42	0,0	601 262,42	45	270 568,09
Up to 4 months	484 224,09	0,0	484 224,09	70	338 956,86
5 and more months	926 475,69	0,0	926 475,69	100	926 475,69
Grand Total	43 264 566,71	-1 294 706,95	9 602 186,04		2 535 286,0

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- (1) OJ L 161, 26.6.1999, p. 87.
- (2) OJ L 253, 7.10.2000, p. 5.
- (3) OJ L 258, 5.8.2004, p. 11.
- (4) OJ L 161, 26.6.1999, p. 68.
- (5) OJ L 72, 11.3.2004, p. 64.
- (6) OJ L 160, 26.6.1999, p. 80.
- (7) OJ L 161, 26.6.1999, p. 1.
- (8) OJ L 69, 9.3.2007, p. 5.

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