

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

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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<sup>(1)</sup>, and in particular Articles 9(2) and 12(2) thereof,

Whereas:

- (1) Article 11(1) of Council Regulation (EC) No 1266/1999<sup>(2)</sup> on co-ordinating aid to the applicant countries in the framework of the pre-accession strategy stipulates that the Commission shall implement the Community aid in accordance with the rules of the Financial Regulation applicable to the general budget of the European Communities<sup>(3)</sup>, and in particular Article 114 thereof, Article 9(1) of Council Regulation (EC) No 1268/1999 stipulates that the financial support shall comply with the principles laid down in Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy<sup>(4)</sup>. That Regulation concerns both the Guarantee and Guidance sections of the European Agriculture Guarantee and Guidance Fund but sets out, in particular specific provisions relating to the Guarantee section which falls under Title VIII of the Financial Regulation,
- (2) It is envisaged that implementation of Sapard should have an institution building effect in the countries concerned. The Special Accession Programme for Agriculture and Rural Development (Sapard) will require, for each of the 10 applicant countries referred to in Article 1(1) of Regulation (EC) No 1268/1999, the follow up of numerous projects, each of which is generally of limited financial dimension. Delegation of management tasks to the applicant country is desirable and Article 12(2) of Regulation (EC) No 1266/1999 provides for the possibility to confer such management to the applicant country. Sapard management should therefore be organised through agencies in the applicant countries in accordance with that decentralised approach.
- (3) The minimum criteria and conditions for the application of decentralised management under Article 12(2) of Regulation (EC) No 1266/1999 are laid down in the Annex to

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**Changes to legislation:** There are currently no known outstanding effects for the Commission Regulation (EC) No 2222/2000. (See end of Document for details)

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that Regulation. Those criteria and conditions reflect those that paying agencies must fulfil to be in conformity with the EAGGF Guarantee rules laid down in the Annex to Commission Regulation (EC) No 1663/95<sup>(5)</sup>, as last amended by Regulation (EC) No 2245/1999<sup>(6)</sup>, in the light of the above, the agency established by each applicant country should be organised in conformity with EAGGF-Guarantee provisions.

- (4) EAGGF Guarantee provisions laid down in Regulation (EC) No 1663/95 concern mainly the payment function. The agencies in the applicant countries however will need to dispose of both that function plus an implementation function, appropriate criteria necessary also for that function therefore need to be laid down.
- (5) It is appropriate that accreditation may also be provisionally granted subject to the respect of essential/minimum criteria.
- (6) For the Commission to waive the *ex ante* approval stipulated in Article 12(1) of Regulation (EC) No 1266/1999 and to confer management of the aid on an applicant country, the national accreditation of the Sapard agency in the applicant country needs to be approved.
- (7) It is appropriate, where possible, to use existing structures in applicant countries for certain financial operations in each of these countries there is already a national fund through which PHARE monies are transferred and paragraph 2(v) of the Annex to Regulation (EC) No 1266/1999 provides that the national authorising officer shall bear the full financial responsibility and liability for the funds. It is therefore appropriate for Sapard purposes that the national fund in each applicant country be the competent authority which accredits the Sapard agency and supervises subsequent compliance with the accreditation criteria. The national authorising officer shall be the contact point for financial information between the Commission and the applicant country.
- (8) Council Regulation No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds<sup>(7)</sup> provides in its Article 31(2) that the first commitment shall be made when the Commission lays down its decision approving the assistance. That model may, under these circumstances and with respect to the triggering of the Community budget commitment, be considered as an appropriate model to be applied *mutatis mutandis* to Sapard.
- (9) Article 12(2) of Regulation (EC) No 1266/1999 foresees execution of *ex post* controls by the Commission. The EAGGF clearance of accounts procedure is an efficient system to audit payments of the decentralised agencies and, if necessary, to recover irregular or undue payments from the applicant countries.
- (10) Sapard implementing rules should be fixed in bilateral agreements to be concluded between the Commission and each applicant country. The Commission and each applicant country should therefore draw up a multiannual financing agreement in which the conditions determining the use of the Sapard contribution will be set out. Annual financing agreements should set out the financial contribution of the Community.
- (11) To protect the financial interests of the Community, applicant countries should have similar obligations as Member States with regard to controls carried out by Community agents on the Sapard monies.

- (12) The measures provided for in this Regulation are in accordance with the opinion of the Committee of the European Agriculture Guarantee and Guidance Fund (EAGGF),

HAS ADOPTED THIS REGULATION:

## CHAPTER 1

### GENERAL PROVISIONS

#### *Article 1*

#### **Scope of the present Regulation**

1 This Regulation lays down the conditions under which management of the aid provided under Regulation (EC) No 1268/1999 is conferred to agencies in the 10 applicant countries referred to in Article 1(1) of that Regulation as provided for under Article 12(2) of Regulation (EC) No 1266/1999.

2 The Commission intends to require the applicant countries to respect these conditions by including them in financing agreements negotiated with each country.

#### *Article 2*

#### **Definitions**

For the purposes of this Regulation:

- (a) ‘applicant countries’ means the countries listed in Article 1(1) of Regulation (EC) No 1268/1999;
- (b) ‘national fund’ means the body appointed by the applicant country and placed under the responsibility of the national authorising officer bearing the full financial responsibility and liability for the funds, which acts as the competent authority. The national authorising officer is the contact point for financial information sent between the Commission and the applicant country;
- (c) ‘competent authority’ means the body, in the applicant country,
  - (i) issuing, monitoring and withdrawing accreditation of the Sapard agency for the purposes of Article 1(2) of Regulation (EC) No 1663/95; and
  - (ii) appointing a certifying body;
- (d) ‘Sapard agency’ means the body established by the applicant country and operating under its responsibility which discharges two functions: an implementing function and a paying function. Only one Sapard agency may be accredited at any time in each applicant country;
- (e) ‘certifying Body’ means the body which is operationally independent of the Sapard agency and establishes the attestation of the accounts, reports on the management and control systems and verifies the co-financing elements;

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- (f) ‘multiannual financing agreement’ means the agreement setting out the relevant provisions to be respected for Sapard co-financing;
- (g) [<sup>F1</sup>‘annual financing agreement’ means the agreement setting out the financial allocation for the year in question on the basis of the appropriations entered in the Community budget and supplementing and amending, as appropriate, provisions laid down either in the multiannual financing agreement or in a prior annual financing agreement;]
- (h) ‘Sapard euro account’ means the account opened by the national authorising officer under their responsibility in a financial or treasury institution bearing interest under normal commercial conditions to receive payments referred to in Article 8 and used exclusively for Sapard transactions and maintained in euro;
- (i) ‘financial year’ means the calendar year 1 January to 31 December<sup>[F2];</sup>
- (j) [<sup>F3</sup>‘exceptional natural disaster’ means a natural disaster on an unusually large scale and causing intense damage and destruction.]

#### Textual Amendments

- F1** Substituted by Commission Regulation (EC) No 2252/2001 of 20 November 2001 amending Regulation (EC) No 2222/2000 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 (Text with EEA relevance).
- F2** Substituted by Commission Regulation (EC) No 188/2003 of 31 January 2003 amending Regulation (EC) No 2222/2000 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 (Text with EEA relevance).
- F3** Inserted by Commission Regulation (EC) No 188/2003 of 31 January 2003 amending Regulation (EC) No 2222/2000 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 (Text with EEA relevance).

## CHAPTER 2

### CONFERRAL OF MANAGEMENT

#### Article 3

#### Conferral of management of aid

1 The Commission shall verify compliance with the conditions of Article 12(2) of Regulation (EC) No 1266/1999, hereinafter referred to as ‘the conditions’, and the provisions of Articles 4 to 6 of and the Annex to this Regulation prior to deciding on conferral of management of aid to the applicant countries.

For the establishment of compliance with the conditions and with the provisions mentioned in the first subparagraph, the Commission shall:

- examine the national fund procedures and structures related to the implementation of the Sapard programme and Sapard agency procedures and structures and, where appropriate, procedures and structures of other bodies to which tasks may have been delegated in accordance with Articles 4(4), 5(3) and 6(2),
  - carry out verifications on-the-spot.
- 2 The decision to confer management on an agency may be made on a provisional basis, provided there is compliance with the conditions and with the functions and criteria of the Annex to this Regulation and the provisions of Articles 4 to 6.
- 3 The Commission shall monitor continued compliance with the conditions and provisions of this Regulation including the Annex. If, at any stage, they are found to be no longer fulfilled, the Commission shall immediately revoke the decision and shall:
- cease to undertake any new financial obligations on the part of the Community,
  - cease to transfer monies to the applicant country and
  - if appropriate, make financial corrections against the applicant country.

#### Article 4

##### Tasks of the competent authority

- 1 The tasks of the competent authority shall include those set out in Article 1(3), (4), (6) and (7) of Regulation (EC) No 1663/95 *mutatis mutandis*. Accreditation may be provisionally granted for a period to be fixed in relation to the seriousness of the problem pending the implementation of any requisite changes to the administrative and accounting arrangements.
- 2 The decision of the competent authority to accredit the Sapard agency shall be taken on the basis of an examination covering the administrative, payment, control and accounting procedures and structures, which includes the arrangements regarding the selection of projects, tendering, contracting and the respect of procurement rules taking account of the criteria set out in the Annex. The examination shall be conducted according to internationally accepted auditing standards. In instances where a provisional accreditation is envisaged, there must be satisfactory compliance with the provisions of the Annex, in particular with the obligations for written procedures, segregation of duties, pre-project approval and pre-payment checks, payment procedures, accounting procedures, computer security, internal audit and where appropriate public procurement provisions.
- 3 The competent authority shall monitor accreditation and withdraw it, without delay, if the accreditation criteria are no longer fulfilled and shall inform immediately the Commission.
- 4 The competent authority may delegate the examination task referred to in paragraph 2 to other bodies. In all cases the national authorising officer retains overall responsibility.

#### Article 5

##### Tasks of the Sapard agency

- 1 The implementation task of the Sapard agency shall comprise:
- call for applications,
  - [F<sup>2</sup>project selection, except where for the measure in question in the approved Sapard agriculture and rural development programme (hereinafter referred to as the

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- programme), there is only one designated beneficiary or the task of project selection has been granted to a designated body or bodies,
- checking of applications for approval of projects against terms and conditions, eligibility and against the content of the programme, including, where appropriate, public procurement provisions,]
  - laying down contractual obligations between the agency and potential beneficiaries and the issue of approval to commence work,
  - execution of on-the-spot checks both prior to and following project approval,
  - follow-up action to ensure progress of projects being implemented,
  - reporting of progress of measures being implemented against indicators.
- 2 The payment task of the Sapard agency shall comprise:
- checking of payment claims,
  - execution of on-the-spot checks to establish eligibility for payment,
  - authorisation of payment,
  - execution of payment,
  - accounting of commitment and payment,
  - where applicable, controls on beneficiaries after payment of aid to establish whether the terms and conditions of the grants continue to be respected.
- 3 Where functions of implementation and payment are not discharged within a single administrative structure, they may be carried out by other parties provided the provisions of paragraph 2.3 of the Annex are respected. However, in no case may the execution of payment and of accounting of commitment and payment be delegated. The project approval, on-the-spot controls and payment processes must be based on an appropriate segregation of duties.
- 4 Any proposed changes in the implementing and/or paying arrangements of the Sapard agency after its accreditation shall be submitted by the competent authority to the Commission.
- 5 Where the Sapard agency does not also discharge the functions of the managing authority provided for in Article 9 of Commission Regulation (EC) No 2759/1999<sup>(8)</sup>, it shall communicate to that authority the information necessary to perform its functions.

#### **Textual Amendments**

- F2** Substituted by [Commission Regulation \(EC\) No 188/2003 of 31 January 2003 amending Regulation \(EC\) No 2222/2000 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 \(Text with EEA relevance\)](#).

### *Article 6*

#### **Tasks of the certifying body**

- 1 The tasks of the certifying body shall include
- delivery of an attestation on the annual account of the Sapard agency as well as the Sapard euro account,
  - reporting on an annual basis on the adequacy of management and control systems of the Sapard agency as regards their capability to ensure conformity of expenditure with the provisions of Article 8(1),

— verification of the existence and correctness of the national co-financing element referred to in Article 9(1).

2 In performing those tasks, the certifying body shall act in accordance with the provisions of Article 3 of Regulation (EC) No 1663/95 and guidelines set by the Commission. Where the body appointed is the national audit office or equivalent, it may delegate some or all of the examination tasks referred to in Article 3(1) of Regulation (EC) No 1663/95 to other bodies, provided the tasks are discharged effectively. The certifying body in all cases retains overall responsibility.

3 The attestation on the annual accounts and the audit report referred to in Article 3(1) of Regulation (EC) No 1663/95 and Article 13(1) shall be drawn up before 15 April of the following year and communicated to the Commission by 30 April at the latest.

## CHAPTER 3

### PAYMENT AND CONTROL

#### *Article 7*

#### **Budget commitments**

1 The Commission decision authorising signature of each annual financing agreement shall give rise to commitment of the appropriations in the Community budget.

2 The first annual financing agreement may only be signed on behalf of the Commission when the following conditions have been met:

- the programme has been approved by the Commission, and,
- the multiannual financing agreement has been signed by both parties.

[<sup>F4</sup> Taking account of the requirements of Article 10, the Commission shall de-commit any part of a commitment which has not been settled by the payment on account or for which it has not received an acceptable payment application by the following dates:

- a for appropriations corresponding to the 2000 annual allocation: 31 December 2004;
- b for appropriations corresponding to the annual allocation for 2001: 31 December 2005;
- c for appropriations corresponding to the annual allocation for 2002: 31 December 2006;
- d for appropriations corresponding to the annual allocation for 2003: 31 December 2006;
- e for appropriations corresponding to the annual allocation for 2004: 31 December 2007;
- f for appropriations corresponding to the annual allocation for 2005: 31 December 2008;
- g for appropriations corresponding to the annual allocation for 2006: 31 December 2008.]

#### **Textual Amendments**

- F4** Substituted by Commission Regulation (EC) No 1052/2006 of 11 July 2006 amending Regulation (EC) No 2222/2000 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 (Sapard) (Text with EEA relevance).

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## Article 8

### Payments from the Commission

1 Only Sapard assistance granted in accordance with the provisions of the Programme approved by the Commission, of the multiannual and annual financing agreements and in accordance with the Commission decision referred to Article 3(1), shall be subject to co-financing by the Community.

2 Payments shall be made in euro to the Sapard euro account, and in accordance with the provisions of Article 32(1), the second subparagraph of Article 32(2), Article 32(3) with the exception of subparagraphs (a), (d) and the second and third last subparagraphs, and in accordance with Article 32(4)(a) and (b) of Regulation (EC) No. 1260/1999.

3 The Commission shall make an initial payment, on account, to the Sapard euro account. This payment, which may be made in more than one instalment, shall not exceed 49 % of the first annual allocation to the applicant country concerned, set out in the Annex to Commission Decision (EC) No 1999/595/EC<sup>(9)</sup>. The payment shall be made on condition that the Sapard agency accreditation has been subject to the decision referred to in Article 3(1), and after conclusion of the multiannual financing agreement and first annual financing agreement. The payment shall be repaid if no payment application in accordance with Article 10 is received by the Commission within 18 months of the date of that payment.

4 Subsequent payments shall be made in accordance with the rules provided for in Article 10.

5 Conversion costs, bank charges and exchange losses shall not be subject to Community co-financing.

## Article 9

### Payments from the Sapard agency

1 Payments from the Sapard agency to the beneficiary shall:

— be made in national currency and debited as appropriate against the Sapard euro account. The payable order(s) to the beneficiary(ies) shall as a general rule be issued within five days of this debit,

— [F<sup>2</sup>be based on declarations of expenditure incurred by the beneficiary. Such declarations shall include only projects selected and expenditure paid from the date of the Commission decision referred to in Article 3(1), except for feasibility and related studies concerning the selected projects and for technical assistance. However, where the Commission determines that an exceptional natural disaster has occurred, payments to beneficiaries for projects related to that disaster may benefit from a derogation replacing the requirement concerning declarations of expenditure by the possibility of payment of advances.]

The Community contribution shall be made simultaneously with the national contribution. However, in the case of beneficiaries in the public sector, the national contribution may precede that of the Community.

2 The total public contribution to the individual measures and to the grants at project level shall be readily identifiable at the level of the Sapard agency.



3 The Sapard agency shall maintain records of each payment which shall include at least the following information:

- amount in national currency,
- the corresponding amount in euro.

4 Any overpayment, namely amounts in excess of the sum due, noted by the Sapard agency, shall be recorded without delay in the Sapard euro account and subtracted from the applications for payment to the Commission referred to in Article 10.

5 The final balance of the assistance shall be paid in accordance with Article 32(4)(a) and (b) of Regulation (EC) No 1260/1999 and after the decisions referred to in Articles 13 and 14 have been adopted.

6 The Sapard agency shall ensure timely treatment of payment requests by beneficiaries. In cases where the interval between receipt of the complete supporting documents and issuing of the payment order exceeds three months, Community co-financing may be reduced in accordance with the provisions of Article 4(2) of Regulation (EC) No 296/96<sup>(10)</sup>.

#### **Textual Amendments**

- F2** Substituted by [Commission Regulation \(EC\) No 188/2003 of 31 January 2003 amending Regulation \(EC\) No 2222/2000 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 \(Text with EEA relevance\)](#).

### *Article 10*

#### **Application for payment from the Community**

[<sup>F21</sup> The Commission shall take into consideration only payment applications drawn up by the Sapard agency on a quarterly basis, presented in accordance with a form established by the Commission and transmitted by the national authorizing officer to the Commission within one month of the end of each quarter. However, supplementary applications may be submitted if justified on the basis of the risk of:

- the net balance in the Sapard euro account being exhausted before the next quarterly application has been processed, or
- decommitment being invoked as set out in Article 7(3).]

2 The applications shall include at least the following information:

- the amount of expenditure paid by the Sapard agency to beneficiaries in the previous quarter, broken down in both national currency and euro by measure and the national and Community contribution,
- the balance of Community funds in the Sapard euro account following the most recent debit,
- details of debts to be collected.

3 The Commission shall verify the payment applications taking account of the conditions set out in Article 32(3)(b), (c), (e) and (f) of Regulation (EC) No 1260/1999.

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4 Expenditure declared in the payment applications shall be reimbursed by the Commission within, in principle, two months of an acceptable payment application being received by it, subject to the verifications referred to in paragraph (3).

**Textual Amendments**

- F2** Substituted by [Commission Regulation \(EC\) No 188/2003 of 31 January 2003 amending Regulation \(EC\) No 2222/2000 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 \(Text with EEA relevance\)](#).

*Article 11*

**Exchange rate and interest**

1 The conversion rate between euro and national currency shall be the exchange rate published by the European Central Bank:

- for payments by the Sapard agency, on the last but one working day at the Commission in the month preceding the month during which the expenditure was recorded in the accounts of the Sapard agency. The date the payment order is issued to the beneficiary shall be the date shown in the accounts,
- for overpayments by the Sapard agency, on the last but one working day at the Commission in the month preceding the month during which the overpayment was first noted,
- for amounts fixed by the clearance of accounts and conformity clearance decisions, on the last but one working day at the Commission in the month preceding the month during which the decision was taken.

2 Where the timelimits in Article 13(5) and 14(4) are not respected, any outstanding amount shall generate interest at a rate equal to the Euribor rate for three month deposits published by the European Central Bank plus 1,5 % points. That rate shall be the monthly average of the month in which the decision referred to in these articles was notified.

[<sup>F13</sup> Interest earned on the Sapard euro account shall be used exclusively for the programme. Such interest shall not be subject to reduction due to any charges.]

**Textual Amendments**

- F1** Substituted by [Commission Regulation \(EC\) No 2252/2001 of 20 November 2001 amending Regulation \(EC\) No 2222/2000 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 \(Text with EEA relevance\)](#).

## Article 12

### Commission initiative measures

In cases where the Commission does not allocate all the annual allocation provided for in Article 7(4) of Regulation (EC) No 1268/1999 to the applicant country, use of the amount not so allocated shall be decided by the Commission on the basis of ad-hoc decisions.

## Article 13

### Clearance of accounts decision

1 Without prejudice to decisions referred to in Article 14, for each financial year an annual declaration presented in accordance with a form established by the Commission together with a certificate and an audit report as required by Article 6(1)(b) of Regulation (EC) No 1258/1999, Article 4 and Article 5(1)(a), (c) and (e), and Article 5(2) of Regulation (EC) No 1663/95 shall be drawn up by the applicant country and transmitted to the Commission by the national authorising officer.

2 The Commission shall receive the documents referred to in paragraph 1 by 30 April of the year following the financial year concerned.

The provisions fixed in the first and second last sentence of Article 7(1), Article 7(2)(c), and Article 7(3) and (4) of Regulation (EC) No 296/96 are applicable. For the financial year 'n', all transactions recorded in the accounts of the Sapard agency in the financial year 'n' are taken into consideration.

3 The Commission shall, before the 30 September of the year following the financial year concerned, clear the account of the Sapard agency in accordance with the provisions of Article 7(3) of Regulation (EC) No 1258/1999 and Article 7 of Regulation (EC) No 1663/95 hereinafter referred to as 'the clearance of accounts decision'. The clearance of accounts decision shall also cover the clearance of the Sapard euro account. It shall also clear the amounts to be credited to the Sapard euro account in accordance with Article 9(4) and Article 11(3).

4 The Commission shall communicate to the applicant country concerned the results of its verifications of the information supplied, before 31 July following the end of the financial year. If, for reasons attributable to the applicant country concerned, the Commission is unable to clear the accounts of an applicant country before 30 September, the Commission shall notify the applicant country of further enquiries it proposes to undertake.

5 The amount fixed by the clearance of accounts decision shall normally be added to or deducted from one of the subsequent payments from the Commission to the applicant country. However in cases where the amount to be deducted, fixed by this decision, exceeds the level of possible subsequent payments, the amount not covered by the balance shall be credited to the Commission in euro within two months of notification of the decision. The Commission may however, on a case by case basis, decide that any amount to be credited to it shall be offset against payments due to be made by the Commission to the applicant country under any Community instrument.

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#### Article 14

##### **Conformity clearance decision**

1 The Commission shall decide on the expenditure to be excluded from Community cofinancing where it finds that expenditure has not been effected in compliance with the rules referred to in Article 8(1) hereinafter referred to as the ‘conformity clearance decision’.

2 The conformity clearance procedures shall be executed in accordance with the mechanisms and procedures in force for the application of Article 7(4) of Regulation (EC) No 1258/1999 and Article 8 of Regulation (EC) No 1663/95.

3 A financial correction may include application of flat rate corrections in cases where controls have not correctly been established or executed by the Sapard agency and refusal of compensation of the foreseen financial correction with expenditure for other projects.

4 The amount to be recovered in accordance with the conformity clearance decision under paragraph 1, shall be communicated to the national authorising officer who ensures that the amount is credited to the Commission in euro within two months of notification of the decision. The amount in the decision shall not be reallocated to the Sapard programme. The Commission may however, on a case-by-case basis, decide that any amount to be credited to it shall be offset against payments due to be made by the Commission to the applicant country under any Community instrument.

#### Article 15

##### **Recording and control provision**

1 Documents shall be kept by the Sapard agency and the national fund at the disposal of the Commission for a period of five years after the date of final payment to the beneficiary has been made.

2 When controls are carried out under Article 9 of Regulation (EC) No 1268/1999, the provisions of Regulation (Euratom, EC) No 2185/96<sup>(11)</sup> and of Article 8(1) and (2), and Article 9(1) and (2) of Regulation (EC) No 1258/1999, shall apply *mutatis mutandis* for the execution of the Sapard programme.

3 Applicant countries will be required to apply the rules contained in Commission Regulation (EC) No 1681/94<sup>(12)</sup> concerning irregularities and the organisation of an information system in this field.

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

## ANNEX

### FUNCTIONS AND CRITERIA FOR ACCREDITATION AS A SAPARD AGENCY

#### 1. FUNCTIONS

The Sapard agency shall execute the following principal functions in respect of Sapard expenditure:

- 1.1. authorisation of commitments and payments: the objective of this function is the establishment of the amount that shall be paid to a claimant or supplier in conformity with the financing agreement rules, in particular those concerning the eligibility of applications for approval and claims for payment, compliance with commitments entered into concerning project approvals, tendering and contracting procedures, and verification of the work carried out or services supplied;
- 1.2. execution of payments: the objective of this function is the issuing of an instruction to the agency's bankers, or, in appropriate cases, a governmental payments office, to pay the authorised amount to the claimant or supplier (or their assignee);
- 1.3. accounting for commitments and payments: the objective of this function is the recording of the commitment and payment in the agency's separate books of accounts of Sapard expenditure, which will normally be in the form of an electronic data processing system, and the preparation of periodic summaries of expenditure, including the periodic and annual declarations to the Commission. The books of account shall also record details of debts to be recovered;
- 1.4. control: the objective of this function is to verify the facts on which applications and claims are based in order to review their compliance with the financing agreement rules and the terms and conditions of the commitment. this control shall, where appropriate, include pre-project selection checks, remeasurement, checks on quantity and quality of goods or services delivered, an analysis or a sample control, pre-payment checks and any special provisions mentioned in the financing agreement rules as to the eligibility of the expenditure etc. In order to establish eligibility, these controls shall require, where appropriate, examinations of a technical nature, which can involve economic financial assessments and checks of a specific agricultural, technical or scientific nature;
- 1.5. reporting: the objective of this function is to ensure that progress of the individual projects and measures is reported in a way which ensure the effective and efficient implementation of the measure.

#### 2. CRITERIA

- 2.1. The Sapard agency's administrative structure shall provide for the separation of the three functions of authorisation, execution and accounting, each of which shall be the responsibility of a separate administrative sub-unit, the responsibilities of which are defined in an organisation chart.
- 2.2. The Sapard agency shall adopt the following procedures or those offering equivalent guarantees:
  - 2.2.1. the Sapard agency shall lay down detailed written procedures for the receipt, recording and processing of applications for project approval, claims, invoices and supporting documents and control reports inclusive of a description of all documents to be used.

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These procedures should ensure that only claims for payment or projects selected which comply with the criteria are processed;

2.2.2. the division of duties shall be such that no official has responsibility at any time, for any project, for more than one of the responsibilities for approving projects, authorising payment, paying or accounting for sums, and that no official performs one of those tasks without their work coming under the supervision of a second official. The responsibilities of each official shall be defined in writing, including the setting of financial limits to his authority. Staff training shall be appropriate, and there shall be a policy for rotating staff in sensitive positions, or alternatively for increased supervision;

2.2.3. each official responsible for authorisation shall have at their disposal a detailed checklist of the verifications required to be undertaken, and shall include in the supporting documents of the claim their attestation that these checks have been performed. This attestation may be made by electronic means subject to the conditions referred to in subparagraph 2.2.6.

There shall be evidence of review of the work by a more senior member of staff. The analysis, the appraisal and approval of the projects is to be evidenced in writing. The analysis of the project should be guided by the principles of sound efficient management;

2.2.4. an application/claim shall be authorised only after sufficient checks have been made to verify that it complies with financing agreement rules and the content of the Sapard programme. These checks shall include those required by the rules governing the specific measure under which aid is claimed, and those required to prevent and detect fraud and irregularity with particular regard to the risks presented.

As part of the authorisation function, applications shall be subject to checks which establish adherence to terms and conditions, eligibility, completeness of documents, correctness of supporting documents, date of receipt, etc.

All checks to be undertaken shall be specified in a checklist, and their performance shall be attested for each application/claim, or for each batch of applications/claims.

As regards the services/the goods delivered the control should consist of:

- documentary control: to ensure that data on quantity, quality and price of the goods or services on the invoice reconcile with those ordered,
- physical control: to ensure that the quantity and quality of the goods or services match those mentioned in the invoice/claim form.

This control can also be performed on a continuous basis during the delivery of the services, i.e. when initial or interim payments are made;

2.2.5. procedures should ensure that payment is made only to the claimant, to their bank account or to their assignee. The payment shall be executed by the agency's banker, or, as appropriate, a governmental payments office, or the cheque mailed, within five working days of the date of charge to the Sapard bank account. Procedures shall be adopted to ensure that all payments for which transfers are not executed, or cheques not cashed, are credited to Sapard euro account. No payments shall be made in cash. The approval of the authorising official and/or their supervisor may be made by electronic means, provided an appropriate level of security over these means is ensured, and the identity of the signatory is entered in the electronic records;

- 2.2.6. where applications, claims or invoices are processed using a computer system, access to the computer system shall be protected and controlled in such a way that:
- all information entered, modified, or validated, except by authorised officials to whom individual passwords are attributed,
  - no data may be entered, modified, or validated, except by authorised officials to whom individual passwords are attributed,
  - the identity of each official entering, or modifying, data or programmes is recorded in an operations log. Passwords shall be changed regularly to avoid misuse. Computer systems shall be protected from unauthorised access by physical controls, and the data shall be backed up by copies stored in a separate, safeguarded location. Data entry shall be checked by logical checks aimed at detecting inconsistent or extraordinary data;
- 2.2.7. procedures should ensure that changes in rates of aid or terms and conditions for the grant of aid are recorded and the instructions, databases and checklists updated in good time.
- 2.3. part or all of the authorisation and the control function may be delegated to other bodies provided that the following conditions are fulfilled:
- 2.3.1. the responsibilities and obligations of these other bodies, notably concerning the control and verification of the compliance with financing agreement rules, are clearly defined;
- 2.3.2. the bodies dispose of effective systems for ensuring that they fulfil their responsibilities in a satisfactory manner;
- 2.3.3. the bodies explicitly confirm to the agency that they in fact fulfil their responsibilities and describe the means employed;
- 2.3.4. the Sapard agency is informed on a regular and timely basis of the results of controls effected, so that the sufficiency of these controls may always be taken into account before a claim is authorised, settled or an invoice is paid. The work performed shall be described in detail in a report accompanying each application and claim, batch of applications and claims or, when appropriate, in a report covering one year. The report shall be accompanied by an attestation of the eligibility of the approved applications and claims and of the nature, scope and limits of the work done. Physical and/or administrative checks performed shall be identified, the method described, the results of all inspections and the measures taken in respect of discrepancies and irregularities reported upon. The supporting documents submitted to the agency shall be sufficient to provide assurance that all the required checks on the eligibility of the claims or invoices authorised for payment have been performed;
- 2.3.5. the Sapard agency should be satisfied before the project approval and before the payment of the expenditure, that the other bodies have followed procedures which comply with the criteria set out in this Annex;
- 2.3.6. criteria for assessing applications and their order of priority shall be clearly defined and documented;
- 2.3.7. where documents relating to the claims authorised, expenditure committed and controls effected are retained by the other bodies, both these 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, and that these documents may be made available for inspection at the agency's offices at the

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*Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 2222/2000. (See end of Document for details)*

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request of the persons and bodies who would normally have the right to inspect such documents, which include:

- the agency's staff who deal with the claim,
- the agency's internal audit service,
- the certifying body that attests the agency's annual declaration,
- mandated officials of the European Union;

- 2.3.8. written agreements must be concluded between the Sapard agency and bodies to which functions of the Sapard agency have been delegated. Such agreements should clearly identify the functions to be performed by the delegated body and the type of supporting documents and reports to be sent to the Sapard agency within specified time limits. The overall system including the delegated functions performed by other bodies should be set out in an organisation chart.

The agreement should provide for access by officials of the Commission and the Court of Auditors to information held by these delegated bodies and for the investigation by such officials of applications including the carrying out of checks on projects and recipients of aid.

- 2.4. Accounting procedures shall ensure that declarations of expenditure to the Commission are complete, accurate (correct project or account heading) and timely, and that any errors or omissions are detected and corrected, in particular through checks and reconciliation performed at intervals not exceeding three months.

The Sapard agency's accounting procedure shall ensure that the accounting system can produce, in euro and national currency, for each regional office, per project, contract or measure/sub-measure, the total cost, the committed expenditure, part payments and balance payments. Deadlines shall be set for the cancellation of commitments where work has not been completed within an agreed timetable. These cancellations shall be appropriately recorded in the accounting system.

- 2.5. The Sapard agency shall dispose of an internal audit service. The objective of this service or equivalent procedure is to ensure that the agency's system of internal control operates effectively; the internal audit service shall be independent of the agency's other departments and shall report directly to the agency's top management. The internal audit service shall verify that procedures adopted by the agency are adequate to ensure that compliance with the programme and financing agreement is verified, and that accounts are accurate, complete and timely. Verifications may be limited to selected measures/sub-measures and to samples of transactions provided that an audit plan ensures that all significant areas, including the departments/bodies responsible for authorisation and those departments to which functions have been delegated, are covered over a period not exceeding three years. The service's work shall be performed according to internationally accepted auditing standards, shall be recorded in working papers and shall result in reports and recommendations addressed to the agency's top management. The audit plans and reports shall be made available to the certifying body and to officials of the European Union mandated to undertake financial audits and for the sole purpose of appraising the effectiveness of the internal audit function.
- 2.6. The rules for the procurement by public bodies of services, works and supplies in the applicant country shall be in accordance with the rules set out in the Commission annual<sup>(13)</sup> entitled 'Service, supply and work contracts concluded within the framework of Community cooperation for the third countries' with the exception of the requirement for *ex ante* approval by the Commission.



- 2.7. Services, works, machinery and supplies procured by private undertakings must originate in the Community or in the countries referred to in Article 1(1) of Regulation (EC) No 1268/1999. The same goes for supplies and equipment purchased by a contractor for works or service contracts if the supplies and equipment are destined to become the property of the project once the contract has been completed.
- 2.8. As regards in particular forfeited guarantees, reimbursed payments, etc., the agency shall set up a system for the recognition of all amounts due to the Sapard euro account and for the recording in a debtors ledger of all such debts prior to their receipt. The debtors ledger shall be inspected at regular intervals with the aim of taking action to collect debts that are overdue.
- 2.9. The Sapard agency shall publicise the availability of support to all potential project managers/operators so that they obtain as wide as possible selection of potential project managers/operators. Standard application forms with clear guidelines for completion and conditions for eligibility shall be drawn up in advance of the launch of the scheme.
- 2.10. Timely processing of applications from beneficiaries.
- 2.11. The Sapard agency will install an appropriate system to report progress of each project and measure towards pre-defined indicators. Where appropriate these indicators shall, with the approval of the monitoring committee, be revised.

Action is to be taken in instances where delays in meeting pre-defined targets arise. Proper records shall be kept of all action taken.

An appropriate management information system shall be used for the speedy generation of appropriate reports on the projects and measures. These reports shall be made available to the managing authority, the monitoring committee and the Commission on request.

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**Changes to legislation:** There are currently no known outstanding effects for the Commission Regulation (EC) No 2222/2000. (See end of Document for details)

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- (1) OJ L 161, 26.6.1999, p. 87.
- (2) OJ L 161, 26.6.1999, p. 68.
- (3) OJ L 356, 31.12.1977, p. 1.
- (4) OJ L 160, 26.6.1999, p. 103.
- (5) OJ L 158, 8.7.1995, p. 6.
- (6) OJ L 273, 23.10.1999, p. 5.
- (7) OJ L 161, 26.6.1999, p. 1.
- (8) OJ L 331, 23.12.1999, p. 51.
- (9) OJ L 226, 27.8.1999, p. 23.
- (10) OJ L 39, 17.2.1996, p. 5.
- (11) OJ L 292, 15.11.1996, p. 2.
- (12) OJ L 178, 12.7.1994, p. 43.
- (13) SEC (1999) 1801 final 'Service, supply and work contracts concluded within the framework of Community cooperation for the third countries'.

**Changes to legislation:**

There are currently no known outstanding effects for the Commission Regulation (EC) No 2222/2000.