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**COUNCIL REGULATION (EC) No 1290/2005**  
**of 21 June 2005**  
**on the financing of the common agricultural policy**  
(OJ L 209, 11.8.2005, p. 1)

Amended by:

		Official Journal		
		No	page	date
► <b><u>M1</u></b>	Council Regulation (EC) No 320/2006 of 20 February 2006	L 58	42	28.2.2006
► <b><u>M2</u></b>	Council Regulation (EC) No 378/2007 of 27 March 2007	L 95	1	5.4.2007
► <b><u>M3</u></b>	Council Regulation (EC) No 1437/2007 of 26 November 2007	L 322	1	7.12.2007
► <b><u>M4</u></b>	Council Regulation (EC) No 479/2008 of 29 April 2008	L 148	1	6.6.2008
► <b><u>M5</u></b>	Council Regulation (EC) No 13/2009 of 18 December 2008	L 5	1	9.1.2009
► <b><u>M6</u></b>	Council Regulation (EC) No 73/2009 of 19 January 2009	L 30	16	31.1.2009
► <b><u>M7</u></b>	Council Regulation (EC) No 473/2009 of 25 May 2009	L 144	3	9.6.2009

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► **C1** Corrigendum, OJ L 329, 16.12.2005, p. 40 (1290/2005)

**COUNCIL REGULATION (EC) No 1290/2005****of 21 June 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 Parliament <sup>(1)</sup>,

Whereas:

- (1) The common agricultural policy consists of a series of measures, some of which relate to rural development. It is important that financing be provided for those measures in order to contribute to the attainment of the objectives of the common agricultural policy. Since the measures have certain elements in common but also differ in a number of respects, their financing should be combined under one regulatory framework which allows for different treatment where necessary. In order to take account of those differences, two European agricultural funds should be created, namely the European Agricultural Guarantee Fund (hereinafter 'EAGF'), for the financing of market measures, and the European Agricultural Fund for Rural Development (hereinafter 'EAFRD'), for the financing of rural development programmes.
- (2) The Community budget should finance common agricultural policy expenditure, including that on rural development, through the abovementioned Funds. In line with Article 53 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities <sup>(2)</sup>, this is done either centrally or in the context of shared management with the Member States. All the types of measure that can be financed using the said Funds should be specified.
- (3) During the clearance of accounts, if the Commission does not have satisfactory assurance that the national controls are adequate and transparent and that the paying agencies verify the legality and correctness of the declarations of expenditure which they execute, it cannot determine within a reasonable period of time the total expenditure to be entered against the European Agricultural Funds. Provision should therefore be made for the accreditation of paying agencies by Member States, the establishment by them of procedures for obtaining the requisite declarations of assurance, and the certification of management and control systems, as well as the certification of annual accounts by independent bodies.
- (4) In order to ensure consistency in the standards required for accreditation in the Member States, the Commission should provide guidance on the criteria to be applied. Moreover, in order to ensure the transparency of national controls, in particular as regards authorisation, validation and payment procedures, the number of authorities and bodies to which these responsibilities are delegated should, where appropriate, be restricted taking account of the constitutional arrangements of each Member State.
- (5) Where a Member State accredits more than one paying agency, it is important that it designate a single coordinating body to ensure consistency in the management of the funds, to provide liaison

<sup>(1)</sup> Opinion delivered on 26 May 2005 (not yet published in the Official Journal).

<sup>(2)</sup> OJ L 248, 16.9.2002, p. 1.

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between the Commission and the various accredited paying agencies and to ensure that the information requested by the Commission concerning the operations of several paying agencies is made rapidly available.

- (6) To ensure harmonious cooperation between the Commission and the Member States regarding the financing of common agricultural policy expenditure and, more particularly, to allow the Commission to monitor closely financial management by the Member States and clear the accounts of the accredited paying agencies, certain information has to be communicated by the Member States to the Commission or has to be kept available to the Commission. Information technology must be used as fully as possible to that end.
- (7) For the purposes of compiling the data to be sent to the Commission, and so that the Commission has full immediate access to expenditure data in both paper and electronic form, suitable rules on the presentation and transmission of data, and also on time limits to be observed, need to be laid down.
- (8) The financing of measures and operations under the common agricultural policy will in part involve shared management. To ensure that Community funds are soundly managed, the Commission should perform checks on the management of the Funds by the Member State authorities responsible for making payments. It is appropriate to define the nature of the checks to be made by the Commission, to specify the terms of its responsibilities for implementing the budget and to clarify the Member States' cooperation obligations.
- (9) Only paying agencies accredited by the Member States offer reasonable assurance that the necessary controls have been carried out before granting Community aid to beneficiaries. It should therefore be stipulated that only expenditure effected by accredited paying agencies should be liable for reimbursement by the Community budget.
- (10) The financial resources required to cover the expenditure effected by the accredited paying agencies, in respect of the EAGF, are to be made available to the Member States by the Commission in the form of reimbursements against the booking of the expenditure effected by these agencies. Until these reimbursements, in the form of monthly payments, have been paid, financial resources must be mobilised by the Member States in accordance with the needs of their accredited paying agencies. The personnel costs and the administrative costs of the Member States and the beneficiaries involved in the execution of the common agricultural policy should be borne by themselves.
- (11) Community aid should be paid to beneficiaries in good time so that they may use it efficiently. A failure by the Member States to comply with the payment deadlines laid down in Community legislation could create serious difficulties for the beneficiaries and could jeopardise the Community's yearly budgeting. Therefore, expenditure made without respecting deadlines for payments should be excluded from Community financing. In order to respect the principle of proportionality, the Commission should be able to provide for exceptions to this general rule.
- (12) Provision should be made for an administrative procedure allowing the Commission to take a decision to reduce or temporarily suspend monthly payments where the information communicated by the Member States does not enable it to confirm that the Community rules applicable have been observed and indicates a clear misuse of Community funds. In clearly defined cases, a reduction or a suspension should also be possible without such a procedure. In both cases, the Commission should inform the Member State, indicating that any decision to

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reduce or suspend the monthly payments will be without prejudice to the decisions taken in the context of the clearance of accounts.

- (13) In the context of respecting budget discipline, it is necessary to define the annual ceiling for the expenditure financed by the EAGF by taking into account the maximum amounts laid down for this Fund in the Financial Perspective and the sums fixed by the Commission under Article 10(2) of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers <sup>(1)</sup> and the sums laid down in Articles 143d and 143e of that Regulation.
- (14) Budget discipline also requires that the annual ceiling for expenditure financed by the EAGF be respected under all circumstances and at all stages of the budget procedure and the execution of the budget. This requires that the national ceiling for the direct payments per Member State, after correction in accordance with Article 10 of Regulation (EC) No 1782/2003, be regarded as a financial ceiling for such direct payments for the Member State concerned and that the reimbursement of these payments remain within this financial ceiling. Furthermore, budget discipline demands that all the legislative measures proposed by the Commission or adopted by the Council or by the Commission under the common agricultural policy and financed by the EAGF comply with the annual ceiling for the expenditure financed by this Fund. In the same context, it is necessary to authorise the Commission to set the adjustments referred to in Article 11(1) of Regulation (EC) No 1782/2003 where the Council does not fix these before 30 June of the calendar year in respect of which the adjustments apply.
- (15) The measures taken to determine the financial contribution from the EAGF and the EAFRD in respect of the calculation of financial ceilings do not affect the powers of the budgetary authority designated by the Treaty. These measures must therefore be based on the reference amounts fixed in accordance with the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure <sup>(2)</sup> (hereinafter referred to as ‘the Interinstitutional Agreement’) and the Financial Perspective set out in Annex I to that Agreement.
- (16) Budget discipline also demands a continuous examination of the medium-term budget situation. The Commission, when submitting the preliminary draft budget for a given year, must therefore present its forecasts and analyses to the European Parliament and the Council and propose, if necessary, appropriate measures to the Council. Furthermore, the Commission should make full use of its management powers at all times to ensure compliance with the annual ceiling and, if necessary, propose appropriate measures to the Council to redress the budget situation. If, at the end of a budget year, the annual ceiling cannot be complied with as a result of the reimbursements requested by the Member States, the Commission should be able to take measures allowing, on the one hand, provisional distribution of the available budget among the Member States in proportion to their requests for reimbursement not yet paid and, on the other hand, compliance with the ceiling fixed for the year concerned. Payments for that year should be charged

<sup>(1)</sup> OJ L 270, 21.10.2003, p. 1. Regulation as last amended by Commission Regulation (EC) No 118/2005 (OJ L 24, 27.1.2005, p. 15).

<sup>(2)</sup> OJ C 172, 18.6.1999, p. 1. Interinstitutional Agreement as last amended by Decision 2003/429/EC of the European Parliament and of the Council (OJ L 147, 14.6.2003, p. 25).

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to the following budget year and the total amount of Community financing per Member State should be definitively established, as should compensation between Member States in order to comply with the established amount.

- (17) When implementing the budget, the Commission should operate a monthly early-warning and monitoring system for agricultural expenditure, so that, if there is a risk of the annual ceiling being exceeded, the Commission may at the earliest opportunity take the appropriate measures under the management powers at its disposal, and then, if these measures prove insufficient, propose other measures to the Council, which should act as soon as possible. In order to have a smoothly functioning system, it should allow for the comparison of actual expenditure with profiles of expenditure established on the basis of expenditure in preceding years. A monthly report by the Commission to the European Parliament and the Council should compare the evolution of the expenditure effected so far with the profiles and give an assessment of the foreseeable implementation for the remainder of the budget year.
- (18) The exchange rate used by the Commission in drawing up the budget documents which it submits to the Council should, while making allowances for the time lag between drafting and submission, reflect the most recent information available.
- (19) The rural development programmes are financed from the Community budget on the basis of commitments in annual instalments. Member States must be able to draw on the Community funds provided for as soon as they begin the programmes. A suitably restricted prefinancing system ensuring a steady flow of funds so that payments to beneficiaries under the programmes are made at the appropriate time is therefore needed.
- (20) Prefinancing apart, a distinction should be drawn between payments by the Commission to the accredited paying agencies, intermediate payments and payment of balances, and rules on their payment should be set.
- (21) To protect the Community's financial interests the Commission must be able to suspend or reduce intermediate payments in cases where expenditure has been unduly incurred. A procedure for Member States to show that their expenditure has been correct should be set up.
- (22) The automatic decommitment rule should help speed up execution of programmes and contribute to sound financial management.
- (23) In order to establish the financial relationship between the accredited paying agencies and the Community budget, the Commission should clear the accounts of these paying agencies annually. The clearance of accounts decision should cover the completeness, accuracy and veracity of the accounts but not the conformity of the expenditure with Community legislation.
- (24) The Commission, which is responsible for the proper application of Community law under Article 211 of the Treaty, should decide whether the expenditure incurred by the Member States complies with Community legislation. Member States should be given the right to justify their decisions to make payments and should have recourse to conciliation where there is no common agreement between them and the Commission. In order to give Member States legal and financial assurances as to expenditure effected in the past, a maximum period should be set for the Commission to decide which financial consequences should follow from non-compliance.
- (25) In order to protect the financial interests of the Community budget, measures should be taken by Member States to satisfy

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themselves that transactions financed by the Funds are actually carried out and are executed correctly. Member States should also prevent and deal effectively with any irregularities committed by beneficiaries.

- (26) As regards the EAGF, sums recovered should be paid back to this Fund where the expenditure is not in conformity with Community legislation and no entitlement existed. Provision should be made for a system of financial responsibility for irregularities in the absence of total recovery. In this respect a procedure should be established permitting the Commission to safeguard the interests of the Community budget by deciding on a partial charging to the Member State concerned of sums lost as a result of irregularities and not recovered within reasonable deadlines. In certain cases of negligence on the part of the Member State, it is justified to charge the full sum to the Member State concerned. However, subject to Member States complying with obligations under their internal procedures, the financial burden should be divided fairly between the Community and the Member State.
- (27) The recovery procedures used by the Member States may have the effect of delaying recovery for a number of years, with no guarantee that the outcome will actually be successful. The cost of implementing these procedures may also be out of proportion to the amounts which are or may be collected. Consequently, Member States should be permitted to halt recovery procedures in certain cases.
- (28) As regards the EAFRD, sums recovered or cancelled following irregularities should remain available to the approved rural development programmes of the Member State concerned as these sums have been allocated to that Member State. In order to protect the financial interests of the Community budget, provision should be made for cases where the required measures are not taken by Member States following the detection of irregularities.
- (29) In order to permit reuse of EAGF and EAFRD funds, rules are needed on assignment of the sums recovered by Member States when conformity clearance is carried out or following proceedings in the event of discovery of irregularity or negligence and for additional levies in the milk and milk products sector.
- (30) So that the Commission can fulfil its obligation to check on the existence and proper functioning of management and inspection systems for Community expenditure in the Member States, provision should be made, irrespective of the inspection carried out by Member States themselves, for checks by persons delegated by the Commission who will be able to request assistance from the Member States in their work.
- (31) Information technology needs to be used as fully as possible for producing the information to be sent to the Commission. When carrying out checks, the Commission should have full and immediate access to expenditure information recorded both in paper form and in electronic files.
- (32) A date should be set for the last payments for the approved rural development programmes for the period 2000 to 2006 financed by the European Agricultural Guidance and Guarantee Fund (EAGGF) Guarantee Section. In order to allow Member States to receive reimbursements for payments made after this date, specific transitional measures should be envisaged. These measures should also include provisions for the recovery of the advances paid by the Commission on the basis of the second

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subparagraph of Article 5(1) of Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy <sup>(1)</sup> and for the amounts subjected to the voluntary modulation arrangements referred to in Articles 4 and 5 of Council Regulation (EC) No 1259/1999 of 17 May 1999 establishing common rules for direct support schemes under the common agricultural policy <sup>(2)</sup>.

- (33) A date should be set at which the Commission can automatically decommit the sums committed but not spent under the approved rural development programmes financed by the EAGGF Guidance Section where the necessary documents relating to the closure of the operations have not reached the Commission by that date. The documents which are necessary for the Commission to establish whether the measures are closed should be defined.
- (34) The Commission is responsible for managing the Funds and close cooperation between it and the Member States is provided for through a Committee on the agricultural funds.
- (35) The extent of Community financing makes it necessary for the European Parliament and the Council to be kept regularly informed by means of financial reports.
- (36) As personal data or business secrets might be involved in the application of the national control systems and the conformity clearance, the Member States and the Commission should guarantee the confidentiality of the information received in the context of these operations.
- (37) In the interests of sound financial management of the Community budget and impartiality of treatment at both Member State and farmer level, rules on the use of the euro should be specified.
- (38) Council Regulation No 25 on the financing of the common agricultural policy <sup>(3)</sup>, Council Regulation (EC) No 723/97 of 22 April 1997 on the implementation of Member States' action programmes on control of EAGGF Guarantee Section expenditure <sup>(4)</sup> and Council Regulation (EC) No 1258/1999 should be repealed. Certain Articles in 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 organisation of an information system in this field and repealing Regulation (EEC) No 283/72 <sup>(5)</sup> should also be deleted as this Regulation provides for their arrangements.
- (39) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(6)</sup>, with a distinction being made between those measures which are subject to the management committee procedure and those which are subject to the advisory committee procedure, the advisory committee procedure being, in certain cases and with a view to increased efficiency, the most appropriate.
- (40) The switch-over from the arrangements in the Regulations repealed to those in this Regulation could give rise to practical

<sup>(1)</sup> OJ L 160, 26.6.1999, p. 103.

<sup>(2)</sup> OJ L 160, 26.6.1999, p. 113.

<sup>(3)</sup> OJ 30, 20.4.1962, p. 991. Regulation as last amended by Regulation (EEC) No 728/70 (OJ L 94, 28.4.1970, p. 9).

<sup>(4)</sup> OJ L 108, 25.4.1997, p. 6. Regulation amended by Regulation (EC) No 2136/2001 (OJ L 288, 1.11.2001, p. 1).

<sup>(5)</sup> OJ L 67, 14.3.1991, p. 11.

<sup>(6)</sup> OJ L 184, 17.7.1999, p. 23.

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and specific difficulties, particularly in connection with the transition to the new arrangements, which are not dealt with in this Regulation. In order to deal with that eventuality, provision should be made for the Commission to adopt the necessary and duly justified measures. Those measures should be able to derogate from the provisions of this Regulation but only to the extent necessary and for a limited period.

- (41) As the programming period for the rural development programmes financed on the basis of this Regulation runs from 1 January 2007, this Regulation should be applicable as from that date. However, certain provisions should apply as from an earlier date.
- (42) The Court of Auditors has delivered an Opinion <sup>(1)</sup>.
- (43) The Economic and Social Committee has delivered an Opinion <sup>(2)</sup>,

HAS ADOPTED THIS REGULATION:

## TITLE I

## GENERAL PROVISIONS

*Article 1***Purpose and scope**

This Regulation sets specific requirements and rules on the financing of expenditure falling under the common agricultural policy, including expenditure on rural development.

*Article 2***Funds financing agricultural expenditure**

1. In order to attain the objectives of the common agricultural policy defined by the Treaty and finance the various measures falling under it, including rural development, the following are hereby set up:

- (a) a European Agricultural Guarantee Fund, hereinafter referred to as the 'EAGF';
- (b) a European Agricultural Fund for Rural Development, hereinafter referred to as the 'EAFRD'.

2. The EAGF and the EAFRD shall come under the general budget of the European Communities.

*Article 3***EAGF expenditure**

1. The EAGF shall finance in a context of shared management between the Member States and the Community the following expenditure, which shall be effected in accordance with Community law:

- (a) refunds for the exportation of agricultural products to third countries;
- (b) intervention measures to regulate agricultural markets;
- (c) direct payments to farmers under the common agricultural policy;

<sup>(1)</sup> OJ C 121, 20.5.2005, p. 1.

<sup>(2)</sup> Opinion of 9 February 2005 (not yet published in the Official Journal).



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- (d) the Community's financial contribution to information and promotion measures for agricultural products on the internal market of the Community and in third countries, undertaken by Member States on the basis of programmes other than those referred to in Article 4 and selected by the Commission;

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- (e) restructuring aid, aid for diversification, additional aid for diversification and transitional aid provided for in Articles 3, 6, 7, 8 and 9 of Council Regulation (EC) No 320/2006 of 20 February 2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community <sup>(1)</sup>;

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- (f) the Community's financial contribution to the School Fruit Scheme referred to in Article 103ga(1) of Council Regulation (EC) No 1234/2007 <sup>(2)</sup>.

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2. The EAGF shall finance the following expenditure in a centralised manner and in accordance with Community legislation:

- (a) the Community's financial contribution to specific veterinary measures, veterinary inspection measures, inspection measures for foodstuffs and animal feed, animal disease eradication and control programmes (veterinary measures) and plant-health measures;
- (b) promotion of agricultural products, undertaken either directly by the Commission or via international organisations;
- (c) measures, undertaken in accordance with Community legislation, to ensure the conservation, characterisation, collection and utilisation of genetic resources in agriculture;
- (d) establishment and maintenance of agricultural accounting information systems;
- (e) agricultural survey systems, including surveys on the structure of agricultural holdings;
- (f) expenditure relating to fisheries markets.

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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 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).

**▼ B***Article 4***EAFRD expenditure**

The EAFRD shall finance, in a context of shared management between the Member States and the Community, the Community's financial contribution to rural development programmes implemented in accordance with the Community legislation on support for rural development by the EAFRD.

<sup>(1)</sup> OJ L 58, 28.2.2006, p. 42.

<sup>(2)</sup> OJ L 299, 16.11.2007, p. 1.



*Article 5*

**Other financing, including technical assistance**

The EAGF and the EAFRD may each respectively finance on a centralised basis, on the initiative of the Commission and/or on its behalf, the preparatory, monitoring, administrative and technical support, evaluation, audit and inspection measures required to implement the common agricultural policy, including rural development. Those measures shall include in particular:

- (a) measures required for the analysis, management, monitoring, information exchange and implementation of the common agricultural policy, as well as measures relating to the implementation of control systems and technical and administrative assistance;
- (b) measures required to maintain and develop methods and technical means for information, interconnection, monitoring and control of the financial management of the funds used to finance the common agricultural policy;
- (c) provision of information on the common agricultural policy, undertaken on the Commission's initiative;
- (d) studies on the common agricultural policy and evaluation of measures financed by the EAGF and the EAFRD, including improvement of evaluation methods and exchange of information on practices;
- (e) where relevant, executive agencies set up in accordance with Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes <sup>(1)</sup>, acting in connection with the common agricultural policy;
- (f) measures relating to dissemination, raising awareness, promoting cooperation and exchanging experience at Community level, undertaken in the context of rural development, including networking of the parties concerned.

*Article 6*

**Accreditation and withdrawal of accreditation of paying agencies and coordinating bodies**

1. Paying agencies shall be the departments or bodies of the Member States which, in respect of payments made by them and as regards communicating and keeping information, provide sufficient guarantees that:

- (a) the eligibility of requests and, in the framework of rural development, the procedure for allocating aid, as well as their compliance with Community rules are checked before payment is authorised;
- (b) accurate and exhaustive accounts are kept of the payments made;
- (c) the checks laid down by Community legislation are made;
- (d) the requisite documents are presented within the time-limits and in the form stipulated by Community rules;
- (e) the documents are accessible and kept in a manner which ensures their completeness, validity and legibility over time, including with regard to electronic documents within the meaning of Community rules.

With the exception of the payment of Community aid, the execution of these tasks may be delegated.

<sup>(1)</sup> OJ L 11, 16.1.2003, p. 1.

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2. Member States shall accredit as paying agencies departments or bodies which fulfil the conditions laid down in paragraph 1.

Each Member State shall, taking into account its constitutional provisions and institutional structure, restrict the number of its accredited paying agencies to the minimum necessary to ensure that the expenditure referred to in Article 3(1) and Article 4 is effected under sound administrative and accounting conditions.

3. Where more than one paying agency is accredited, the Member State shall communicate to the Commission the particulars of the department or body to which it assigns the following tasks:

- (a) collecting the information to be made available to the Commission and sending that information to the Commission;
- (b) promoting harmonised application of the Community rules.

This department or body, hereinafter referred to as the 'coordinating body', shall be subject to specific accreditation by the Member States as regards the processing of the financial information referred to in point (a).

4. Where an accredited paying agency does not meet or no longer meets one or more of the conditions laid down in paragraph 1, the Member State shall withdraw accreditation unless the paying agency makes the necessary changes within a period to be determined according to the severity of the problem.

*Article 7***Certification bodies**

The certification body shall be a public or private legal entity designated by the Member State with a view to certifying the truthfulness, completeness and accuracy of the accounts of the accredited paying agency, taking account of the management and control systems set up.

*Article 8***Communication of information and access to documents**

1. In addition to the provisions laid down in the sectoral Regulations, Member States shall send to the Commission the following information, declarations and documents:

- (a) for accredited paying agencies and accredited coordinating bodies:
  - (i) their accreditation document;
  - (ii) their function (accredited paying agency or accredited coordinating body);
  - (iii) where relevant, the withdrawal of their accreditation,
- (b) for certification bodies:
  - (i) their name;
  - (ii) their address details,
- (c) for measures relating to operations financed by the EAGF and the EAFRD:
  - (i) declarations of expenditure, which also act as payment requests, signed by the accredited paying agency or the accredited coordinating body and accompanied by the requisite information;
  - (ii) estimates of their financial requirements, with regard to the EAGF and, with regard to the EAFRD, an update of estimated declarations of expenditure which will be submitted

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during the year and estimated declarations of expenditure in respect of the following financial year;

- (iii) the annual accounts of the accredited paying agencies with a statement of assurance signed by the person in charge of the accredited paying agency, accompanied by the requisite information for their clearance, and a certification report drawn up by the certification body referred to in Article 7.

The annual accounts of accredited paying agencies relating to EAFRD expenditure shall be submitted at the level of each programme.

2. The accredited paying agencies shall keep supporting documents relating to payments made and documents relating to the performance of the administrative and physical checks required by Community legislation, and shall make the documents and information available to the Commission.

Where those documents are kept by an authority acting under delegation from a paying agency and responsible for authorising expenditure, that authority shall send reports to the accredited paying agency on the number of checks made, their content and the measures taken in the light of their results.

*Article 9*

**Protection of the financial interests of the Community and assurances regarding the management of Community funds**

1. Member States shall:

- (a) within the framework of the common agricultural policy, adopt all legislative, regulatory and administrative provisions and take any other measures necessary to ensure effective protection of the financial interests of the Community, and particularly in order to:
  - (i) check the genuineness and compliance of operations financed by the EAGF and the EAFRD;
  - (ii) prevent and pursue irregularities;
  - (iii) recover sums lost as a result of irregularities or negligence,
- (b) set up an efficient management and control system comprising the certification of accounts and a declaration of assurance based on the signature of the person in charge of the accredited paying agency.

2. The Commission shall ensure that Member States check the legality and compliance of the expenditure referred to in Articles 3(1) and 4, and that they observe the principles of sound financial management; it shall carry out the following measures and checks in this connection:

- (a) it shall check that management and control systems exist and function properly in the Member States;
- (b) it shall reduce or suspend intermediate payments in full or in part and apply the requisite financial corrections, particularly where the management and control systems fail;
- (c) it shall check that prefinancing is reimbursed and shall, if necessary, automatically decommit budget commitments.

3. Member States shall inform the Commission of the provisions adopted and measures taken under paragraph 1 and, with regard to rural development programmes, the measures taken for management and control in compliance with Community legislation concerning support for rural development by the EAFRD in order to protect the financial interests of the Community.

**▼B***Article 10***Admissibility of payments made by the paying agencies**

The expenditure referred to in Articles 3(1) and 4 may be covered by Community financing only if it has been effected by accredited paying agencies designated by Member States.

*Article 11***Payment in full to beneficiaries**

Save provision to the contrary under Community legislation, payments relating to the financing provided for under this Regulation or to amounts corresponding to the public financial contribution under the rural development programmes shall be disbursed in full to the beneficiaries.

## TITLE II

## EAGF

## CHAPTER I

*Community financing**Article 12***Budget ceiling****▼M7**

1. The annual ceiling for EAGF expenditure shall be constituted by the maximum amounts set for it under the multiannual financial framework provided for in the Interinstitutional Agreement, less the amounts referred to in paragraph 2, and:

- (a) less the amount added for Rural Development Support by Council Decision 2009/434/EC of 25 May 2009 amending Decision 2006/493/EC laying down the amount of Community support for rural development for the period from 1 January 2007 to 31 December 2013, its annual breakdown and the minimum amount to be concentrated in regions eligible under the Convergence Objective<sup>(1)</sup> that is not covered by the margin under Heading 2 of the financial framework of the Interinstitutional Agreement existing outside the sub-ceiling for EAGF expenditure;
- (b) less any possible reduction of the ceiling of Heading 2 in relation to the financing of projects in the field of energy, which could be decided in accordance with the procedure set out in the Declaration of the European Parliament, the Council and the Commission on the financing of projects in the field of energy and broadband Internet as well as the CAP Health Check in the framework of the European Economic Recovery Plan<sup>(2)</sup>.

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2. The Commission shall set the amounts which, pursuant to Articles 9, 10(4), 134, 135 and 136 of Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers<sup>(3)</sup>, Article 4(1) of Council Regulation (EC) No 378/2007 of 27 March 2007 laying down rules for voluntary modulation of direct payments provided for in Regulation (EC) No 1782/2003<sup>(4)</sup> and Article 23(2) of Council

<sup>(1)</sup> OJ L 144, 9.6.2009, p. 25.

<sup>(2)</sup> OJ C 108, 12.5.2009, p. 1.

<sup>(3)</sup> OJ L 30, 31.1.2009, p. 16.

<sup>(4)</sup> OJ L 95, 5.4.2007, p. 1.

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Regulation (EC) No 479/2008 of 29 April 2008 on the common organisation of the market in wine <sup>(1)</sup>, are made available to the EAFRD.

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3. The Commission shall set, on the basis of the data referred to in paragraphs 1 and 2, the net balance available for EAGF expenditure.

*Article 13***Administrative and personnel costs**

Expenditure relating to administrative and personnel costs incurred by Member States and beneficiaries of aid from the EAGF shall not be borne by the Fund.

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In duly justified exceptional cases, the first subparagraph shall not apply to measures and programmes covered by Council Decision 90/424/EEC of 26 June 1990 on expenditure in the veterinary field <sup>(2)</sup>.

**▼B***Article 14***Monthly payments**

1. The appropriations necessary to finance the expenditure referred to in Article 3(1) shall be made available to Member States by the Commission in the form of monthly reimbursements, hereinafter referred to as 'monthly payments', on the basis of the expenditure effected by the accredited paying agencies during a reference period.

2. Until transfer of the monthly payments by the Commission, the resources required to undertake expenditure shall be mobilised by the Member States according to the needs of their accredited paying agencies.

*Article 15***Procedure for making monthly payments**

1. Monthly payments shall be made by the Commission, without prejudice to the decisions referred to in Articles 30 and 31, for expenditure effected by Member States' accredited paying agencies during the reference month.

2. The Commission shall decide, in accordance with the procedure referred to in Article 41(3), the monthly payments which it makes, on the basis of a declaration of expenditure from the Member States and the information supplied in accordance with Article 8(1), taking into account reductions or suspensions applied under Article 17.

3. Monthly payments shall be made to each Member State at the latest on the third working day of the second month following that in which the expenditure is effected.

4. Expenditure effected by Member States between 1 and 15 October shall count as being made in the month of October. Expenditure effected between 16 and 31 October shall count as being made in the month of November.

5. The Commission may decide to make supplementary payments or deductions. In such cases, the Committee on the agricultural funds shall be informed at its next meeting.

<sup>(1)</sup> OJ L 148, 6.6.2008, p. 1.

<sup>(2)</sup> 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).

**▼B***Article 16***Compliance with payment deadlines**

Where payment deadlines are laid down by Community legislation, any overrun of those deadlines by the paying agencies shall make the payments ineligible for Community financing, except in the cases, conditions and limits determined, according to the principle of proportionality.

*Article 17***Reduction and suspension of monthly payments**

1. Where the declarations of expenditure or the information referred to in Article 15(2) do not enable the Commission to establish that the commitment of funds is in accordance with the applicable Community rules, the Commission shall ask the Member State concerned to supply further information within a period which the Commission shall determine according to the severity of the problem and which generally may not be less than 30 days.

If the Member State fails to respond to the Commission request referred to in the first subparagraph, or if the response is considered unsatisfactory or demonstrates that the Community rules applicable have not been complied with or that Community funds have been improperly used, the Commission may reduce or temporarily suspend monthly payments to the Member State. It shall inform the Member State accordingly, pointing out that reduction or suspension has taken place.

2. Where the declarations of expenditure or the information referred to in Article 15(2) enable the Commission to establish that a financial ceiling set by Community legislation has been exceeded or that the Community rules applicable have clearly not been complied with, the Commission may apply the reductions or suspensions referred to in the second subparagraph of paragraph 1 of this Article, after giving the Member State an opportunity to submit its comments.

3. Reductions and suspensions shall be applied according to the principle of proportionality, under the decision on monthly payments referred to in Article 15(2), without prejudice to the decisions referred to in Articles 30 and 31.

**▼M3***Article 17a***Reduction and suspension of monthly payments in specific cases**

1. Without prejudice to Article 17, the Commission may take a decision, 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, which shall not exceed twelve months but which may be prolonged for further periods not exceeding twelve months if the conditions set out in paragraph 2 of this Article continue to be met.

2. The monthly payments may be reduced or suspended if all of the following conditions are met:

- (a) 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;
- (b) the deficiencies referred to in point (a) are of a continuous nature and have been the reason for at least two decisions pursuant to Article 31, excluding from Community financing expenditure from the Member State concerned, and

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(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(b). It shall be applied to the relevant expenditure effected by the paying agency where the deficiencies referred to in paragraph 2(a) exist.

4. The reduction or suspension shall not be continued if the conditions laid down in paragraph 2 are no longer met. It shall be without prejudice to the conformity clearance pursuant to Article 31.

**▼B***CHAPTER 2****Budget discipline****Article 18***Compliance with the ceiling**

1. Throughout the budget procedure and the implementation of the budget, appropriations relating to EAGF expenditure shall not exceed the net balance referred to in Article 12(3).

All legislative instruments proposed by the Commission or adopted by the Council or the Commission and having an influence on the EAGF budget shall comply with the net balance referred to in Article 12(3).

2. Where Community legislation stipulates a financial ceiling in euro for agricultural expenditure in respect of a Member State, such expenditure shall be reimbursed subject to that limit set in euro, with any necessary adjustments being made if Article 11 of Regulation (EC) No 1782/2003 applies.

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3. National ceilings for direct payments referred to in Article 8(2) of Regulation (EC) No 73/2009, corrected by the adjustments laid down in Article 11(1) of that Regulation, shall be deemed to be financial ceilings in euro.

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4. If by 30 June in any year the Council has not set the adjustments referred to in Article 11(1) of Regulation (EC) No 1782/2003, the Commission shall set those adjustments in accordance with the procedure laid down in Article 41(3) of this Regulation and shall inform the Council of them immediately.

5. Until 1 December, on a proposal by the Commission, on the basis of new information in its possession, the Council may adapt the adjustment rate for direct payments set in accordance with Article 11(1) of Regulation (EC) No 1782/2003.

*Article 19***Budget discipline procedure**

1. The Commission shall present to the European Parliament and to the Council, at the same time as the preliminary draft budget for financial year N, its forecasts for financial years N — 1, N and N + 1. It shall simultaneously present an analysis of the differences



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observed between the initial forecasts and actual expenditure for financial years  $N - 2$  and  $N - 3$ .

2. If, on drawing up the preliminary draft budget for financial year  $N$ , there appears to be a risk that the net balance referred to in Article 12(3) for financial year  $N$  will be exceeded, taking account of the margin laid down in Article 11 of Regulation (EC) No 1782/2003, the Commission shall propose to the Council the measures necessary, including those required under Article 11(2) of Regulation (EC) No 1782/2003.

3. At any time, if the Commission considers that there is a risk of the net balance referred to in Article 12(3) being exceeded and that it cannot take adequate measures to remedy the situation under its management powers, it shall propose other measures to the Council to ensure compliance with that balance.

The Council shall decide on those measures, in accordance with the procedure laid down in Article 37 of the Treaty, within two months following receipt of the proposal from the Commission. The European Parliament shall give its opinion in time for the Council to take note of it and decide within the period stated.

4. If, at the end of financial year  $N$ , reimbursement requests from the Member States exceed or are likely to exceed the net balance set in accordance with Article 12(3), the Commission shall:

- (a) consider the requests presented by Member States pro rata and within the limit of the available budget, and shall provisionally set the amount of the payments for the month concerned;
- (b) determine, for all Member States, at the latest by 28 February of the following year, their situation with regard to Community financing for the previous financial year;
- (c) set, in accordance with the procedure laid down in Article 41(3), the total amount of Community financing broken down by Member State, on the basis of a single rate of Community financing, within the limit of the budget which was available for the monthly payments;
- (d) effect, at the latest when the monthly payments are made for March of year  $N + 1$ , any compensations to be carried out between Member States.

*Article 20***Early-warning system**

In order to ensure that the budget ceiling will not be exceeded, the Commission shall implement a monthly early-warning and monitoring system in respect of EAGF expenditure.

Before the beginning of each financial year, the Commission shall determine for that purpose monthly expenditure profiles based, if necessary, on average monthly expenditure during the previous three years.

The Commission shall present to the European Parliament and to the Council a monthly report examining the development of expenditure effected in relation to the profiles and containing an assessment of the foreseeable implementation for the current financial year.

*Article 21***Reference exchange rates**

1. When adopting the preliminary draft budget, or a letter of amendment to the preliminary draft budget which concerns agricultural expenditure, the Commission shall use for EAGF budget estimates the

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average euro/US dollar exchange rate recorded on the market during the latest quarter ending at least 20 days before adoption of the budget document by the Commission.

2. When adopting a preliminary draft amending and supplementary budget or a letter of amendment thereto, in so far as those documents concern appropriations relating to the measures referred to in Article 3 (1)(a) and (b), the Commission shall use:

- (a) firstly, the average euro/US dollar exchange rate actually recorded on the market from 1 August of the previous financial year until the end of the latest quarter ending at least 20 days before adoption of the budget document by the Commission and at the latest on 31 July of the current financial year, and
- (b) secondly, as a forecast for the remainder of the financial year, the average exchange rate actually recorded during the latest quarter ending at least 20 days before adoption of the budget document by the Commission.

## TITLE III

**EAFRD**

## CHAPTER I

***Method of financing****Article 22***Financial contribution from the EAFRD**

The financial contribution from the EAFRD towards expenditure under rural development programmes shall be determined for each programme, within the ceilings established by Community legislation concerning support for rural development by the EAFRD, plus the amounts set by the Commission under Article 12(2) of this Regulation.

Expenditure financed under this Regulation shall not be the subject of any other financing under the Community budget.

*Article 23***Budget commitments**

The Community's budget commitments for rural development programmes (hereinafter referred to as 'budget commitments') shall be made in annual instalments over the period from 1 January 2007 to 31 December 2013.

The Commission decision adopting each rural development programme submitted by a Member State shall constitute a financing decision within the meaning of Article 75(2) of Regulation (EC) No 1605/2002 and, once notified to the Member State concerned, a legal commitment within the meaning of that Regulation.

For each programme, the budget commitment for the first instalment shall follow the adoption of the programme by the Commission. The budget commitments for subsequent instalments shall be made by the Commission, before 1 May of each year, on the basis of the decision referred to in the second paragraph of this Article.

*CHAPTER 2***Financial management***Article 24***Provisions applying to all payments**

1. Payment by the Commission of the EAFRD contribution shall be in line with the budget commitments.
2. The Commission shall make the appropriations needed to cover expenditure as indicated in Article 4 available to the Member States through prefinancing, intermediate payments and the payment of a balance. Articles 25, 26, 27 and 28 shall apply to these appropriations.
3. Payments shall be assigned to the oldest open budget commitment.
4. The combined total of prefinancing and intermediate payments shall not exceed 95 % of the EAFRD's contribution to each rural development programme.

*Article 25***Prefinancing arrangements**

1. After adopting a rural development programme, the Commission shall pay a single prefinancing amount for that programme to the Member State. This shall represent 7 % of the EAFRD contribution to the programme concerned. It may be split between two financial years depending on resource availability.
2. The total amount paid as prefinancing shall be reimbursed to the Commission if no declaration of expenditure for the rural development programme is sent within 24 months of the date on which the Commission pays the first instalment of the prefinancing amount.
3. Interest generated on the prefinancing shall be posted to the rural development programme concerned and deducted from the amount of public expenditure indicated on the final declaration of expenditure.
4. The total prefinancing amount shall be cleared when the rural development programme is closed.

*Article 26***Intermediate payments**

1. Intermediate payments shall be made for each rural development programme. They shall be calculated by applying the part-financing rate for each priority to the certified public expenditure pertaining to it.
2. Subject to resource availability, the Commission shall make intermediate payments in order to reimburse the expenditure incurred by accredited paying agencies in implementing the programmes.
3. Each intermediate payment shall be made subject to compliance with the following requirements:
  - (a) transmission to the Commission of a declaration of expenditure signed by the accredited paying agency, in accordance with Article 8(1)(c);
  - (b) no overrun of the total EAFRD contribution to each priority for the entire period covered by the programme concerned;
  - (c) transmission to the Commission of the last annual execution report on the implementation of the rural development programme.

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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.

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5. The Commission shall make intermediate payments within 45 days of registering a declaration of expenditure for which the requirements set out in paragraph 3 of this Article are met, without prejudice to the decisions referred to in Articles 30 and 31.

6. Accredited paying agencies shall establish and forward, via the intermediary of the coordinating body or directly, where one has not been appointed, intermediate declarations of expenditure relating to rural development programmes to the Commission, at intervals set by the Commission. Declarations of expenditure shall cover expenditure that the agency has incurred during each of the periods concerned.

Intermediate declarations of expenditure in respect of expenditure incurred from 16 October onwards shall be booked to the following year's budget.

*Article 27***Suspension and reduction of intermediate payments**

1. Intermediate payments shall be made on the basis of the declarations of expenditure and financial information provided by Member States. Article 81 of the Regulation (EC) No 1605/2002 shall apply.

2. If the declarations of expenditure or financial information communicated by a Member State do not make it possible to find that the declaration of expenditure satisfies the relevant Community rules, the Member State shall be asked to provide additional information within a period set according to the seriousness of the problem but which may not normally be less than 30 days.

3. If the Member State fails to respond to the request referred to in paragraph 2, or if the response is considered unsatisfactory or demonstrates that the rules applicable have not been complied with or that Community funds have been improperly used, the Commission may reduce or temporarily suspend intermediate payments to the Member State. It shall inform the Member State accordingly.

4. The suspension or reduction of intermediate payments as indicated in Article 26 shall comply with the principle of proportionality and shall be without prejudice to the decisions referred to in Articles 30 and 31.

**▼M3***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.

**▼B***Article 28***Payment of the balance and closure of the programme**

1. After receiving the last annual execution report on the implementation of a rural development programme, the Commission shall pay the balance, subject to resource availability, on the basis of the part-financing rate per priority, the annual accounts for the last execution year for the relevant rural development programme and of the corresponding clearance decision. These accounts shall be presented

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to the Commission by 30 June 2016 and shall cover the expenditure incurred by the paying agency up to 31 December 2015.

2. The balance shall be paid not later than six months after the information and documents mentioned in paragraph 1 of this Article are received. The amounts still committed after the balance is paid shall be decommitted by the Commission within a period of six months, without prejudice to Article 29(6).

3. If by 30 June 2016 the Commission has not been sent the last annual execution report and the documents needed for clearance of the accounts of the last execution year for the programme the balance shall be automatically decommitted in accordance with Article 29.

*Article 29***Automatic decommitment**

1. The Commission shall automatically decommit any portion of a budget commitment for a rural development programme that has not been used for the purpose of prefinancing or making intermediate payments or for which no declaration of expenditure meeting the conditions laid down in Article 26(3) has been presented to it in relation to expenditure incurred by 31 December of the second year following that of the budget commitment.

2. That part of budget commitments still open on 31 December 2015 for which a declaration of expenditure has not been made by 30 June 2016 shall be automatically decommitted.

3. If a Commission decision subsequent to the decision approving the rural development programme is needed for authorisation of assistance or of an aid scheme, the period leading to automatic decommitment shall run from the date of that subsequent decision. The amount in question shall be established using a schedule provided by the Member State.

4. In the event of any legal proceedings or an administrative appeal having suspensory effect, the period for automatic decommitment referred to in paragraph 1 or paragraph 2 shall be interrupted, in respect of the amount relating to the operations concerned, for the duration of those proceedings or that administrative appeal, provided that the Commission receives substantiated notification from the Member State by 31 December of year N + 2.

5. The following shall be disregarded in calculating the automatic decommitment:

- (a) that part of the budget commitments for which a declaration of expenditure has been made but reimbursement of which has been reduced or suspended by the Commission at 31 December of year N + 2;
- (b) that part of the budget commitments which a paying agency has been unable to disburse for reasons of *force majeure* seriously affecting implementation of the rural development programme. National authorities claiming *force majeure* must demonstrate the direct consequences on the implementation of all or part of the programme.

6. The Commission shall inform Member States and the authorities concerned in good time if there is a risk of automatic decommitment. It shall inform them of the amount involved as indicated by the information in its possession. The Member States shall have two months from receiving this information to agree to the amount in question or present observations. The Commission shall carry out the automatic decommitment not later than nine months after the time-limit laid down in paragraphs 1 to 4.

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7. In the event of automatic decommitment, the EAFRD contribution to the rural development programme concerned shall be reduced, for the year in question, by the amount automatically decommitted. The Member State shall produce a revised financing plan splitting the reduction of the aid between the priorities. If it does not do so, the Commission shall reduce the amounts allocated to each priority pro rata.

8. If this Regulation enters into force after 1 January 2007, the periods on expiry of which the first automatic decommitment referred to in paragraph 1 is liable to occur shall be extended for the first commitment by the number of months between 1 January 2007 and the date of adoption by the Commission of the corresponding rural development programme.

## TITLE IV

**CLEARANCE OF ACCOUNTS AND COMMISSION MONITORING**

## CHAPTER 1

**Clearance***Article 30***Clearance of accounts**

1. Prior to 30 April of the year following the budget year in question, the Commission shall take a decision concerning the clearance of the accounts of the accredited paying agencies under the procedure laid down in Article 41(3), on the basis of the information transmitted in accordance with Article 8(1)(c)(iii).

2. The clearance decision shall cover the completeness, accuracy and veracity of the annual accounts submitted. The decision shall be without prejudice to decisions taken subsequently under Article 31.

*Article 31***Conformity clearance**

1. If the Commission finds that expenditure as indicated in Article 3(1) and Article 4 has been incurred in a way that has infringed Community rules, it shall decide what amounts are to be excluded from Community financing in accordance with the procedure referred to in Article 41(3).

2. The Commission shall assess the amounts to be excluded on the basis of the gravity of the non-conformity recorded. It shall take due account of the nature and gravity of the infringement and of the financial damage caused to the Community.

3. Before any decision to refuse financing is taken, the findings from the Commission's inspection and the Member State's replies shall be notified in writing, following which the two parties shall attempt to reach agreement on the action to be taken.

If agreement is not reached, the Member State may request opening of a procedure aimed at reconciling each party's position within four months. A report of the outcome of the procedure shall be given to the Commission, which shall examine it before deciding on any refusal of financing.

4. Financing may not be refused for:

- (a) expenditure as indicated in Article 3(1) which is incurred more than 24 months before the Commission notifies the Member State in writing of its inspection findings;

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- (b) expenditure on multiannual measures falling within the scope of Article 3(1) or within the scope of the programmes as indicated in Article 4, where the final obligation on the recipient occurs more than 24 months before the Commission notifies the Member State in writing of its inspection findings;
  - (c) expenditure on measures in programmes, as indicated in Article 4, other than those referred to in point (b), for which the payment or, as the case may be, the payment of the balance, by the paying agency, is made more than 24 months before the Commission notifies the Member State in writing of its inspection findings.
5. Paragraph 4 shall not apply in the case of:
- (a) irregularities covered by Articles 32 and 33;
  - (b) national aids or infringements for which the procedure indicated in Article 88 or Article 226 of the Treaty has begun;

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- (c) infringements by Member States of their obligations under 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 <sup>(1)</sup>, 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.

**▼B***CHAPTER 2**Irregularities**Article 32***Provisions specific to the EAGF**

1. Sums recovered following the occurrence of irregularity or negligence and the interest on these shall be made over to the paying agency and booked by it as revenue assigned to the EAGF in the month in which the money is actually received.
  2. When the Community budget is credited, the Member State may retain 20 % of the corresponding amounts as flat-rate recovery costs, except in cases of irregularity or negligence attributable to its administrative authorities or other official bodies.
  3. When the annual accounts are sent, as provided for in Article 8(1) (c)(iii), Member States shall provide the Commission with a summary report on the recovery procedures undertaken in response to irregularities. This shall give a breakdown of the amounts not yet recovered, by administrative and/or judicial procedure and by year of the primary administrative or judicial finding of the irregularity.
- Member States shall make available to the Commission detailed particulars of the individual recovery procedures and of the individual sums not yet recovered.
4. After the procedure laid down in Article 31(3) has been followed, the Commission may decide to charge the sums to be recovered to the Member State in the following cases:
    - (a) if the Member State has not for recovery purposes initiated all the appropriate administrative or judicial procedures laid down in national and Community legislation within one year of the primary administrative or judicial finding;

<sup>(1)</sup> 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).

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- (b) if there has been no administrative or judicial finding, or the delay in making it is such as to jeopardise recovery, or the irregularity has not been included in the summary report provided for in the first subparagraph of paragraph 3 of this Article for the year in which the primary administrative or judicial finding is made.

5. If recovery has not taken place within four years of the primary administrative or judicial finding, or within eight years where recovery action is taken in the national courts, 50 % of the financial consequences of non-recovery shall be borne by the Member State concerned and 50 % by the Community budget.

Member States shall indicate separately in the summary report referred to in the first subparagraph of paragraph 3 the amounts not recovered within the time-limits specified in the first subparagraph of this paragraph.

The distribution of the financial burden of non-recovery in line with the first subparagraph shall be without prejudice to the requirement that the Member State concerned must pursue recovery procedures in compliance with Article 9(1) of this Regulation. Fifty percent of the amounts recovered in this way shall be credited to the EAGF, after application of the deduction provided for in paragraph 2 of this Article.

Where, in the context of the recovery procedure, the absence of any irregularity is recorded by an administrative or legal instrument of a definitive nature, the Member State concerned shall declare as expenditure to the EAGF the financial burden borne by it under the first subparagraph.

However, if for reasons not attributable to the Member State concerned, recovery could not take place within the time-limits specified in the first subparagraph, and the amount to be recovered exceeds EUR 1 million, the Commission may, at the request of the Member State, extend the time-limits by a maximum of 50 % of the initial time-limits.

6. If there is justification for doing so, Member States may decide not to pursue recovery. A decision to this effect may be taken only in the following cases:

- (a) if the costs already and likely to be incurred total more than the amount to be recovered, or
- (b) if recovery proves impossible owing to the insolvency, recorded and recognised under national law, of the debtor or the persons legally responsible for the irregularity.

The Member State shall show separately in the summary report referred to in the first subparagraph of paragraph 3 the amounts for which it has been decided not to pursue recovery and the grounds for its decision.

7. Member States shall enter in the annual accounts to be sent to the Commission under Article 8(1)(c)(iii) the amounts to be borne by them under paragraph 5. The Commission shall check that this has been done and make any adjustments needed as part of the decision specified in Article 30(1).

8. Following completion of the procedure laid down in Article 31(3), the Commission may decide to exclude from financing sums charged to the Community budget in the following cases:

- (a) under paragraphs 5 and 6 of this Article, if it finds that the irregularity or lack of recovery is the outcome of irregularity or negligence attributable to the administrative authorities or another official body of the Member State;
- (b) under paragraph 6 of this Article, if it considers that the grounds stated by the Member State do not justify its decision to halt the recovery procedure.



**▼B***Article 33***Provisions specific to the EAFRD**

1. Member States shall make financial adjustments where irregularities or negligence are detected in rural development operations or programmes by totally or partially cancelling the Community financing concerned. Member States shall take into consideration the nature and gravity of the irregularities detected and the level of the financial loss to the EAFRD.

2. Where the Community funds have already been paid to the beneficiary, they shall be recovered by the accredited paying agency in accordance with its own recovery procedures and reused in accordance with paragraph 3(c).

3. The financial adjustments and reuse of funds shall be undertaken by Member States subject to the following conditions:

- (a) where irregularities are detected, Member States shall extend their inquiries to cover all operations liable to be affected by such irregularities;
- (b) Member States shall notify the corresponding adjustments to the Commission;

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(c) amounts of Community financing which are cancelled and amounts recovered, as well as the interest thereon, shall be reallocated to the programme concerned. However, the cancelled or recovered Community funds may be reused by Member States only for an operation under the same rural development programme and provided the funds are not reallocated to operations which have been the subject of a financial adjustment.

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4. When the annual accounts are sent, as provided for in Article 8(1)(c)(iii), Member States shall provide the Commission with a summary report on the recovery procedures undertaken in response to irregularities. This shall give a breakdown of the amounts not yet recovered, by administrative and/or judicial procedure and by year of the primary administrative or judicial finding of the irregularity.

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5. After the procedure laid down in Article 31(3) has been followed, the Commission may decide to charge the sums to be recovered to the Member State in the following cases:

- (a) where the Member State has not initiated all the administrative or judicial procedures laid down in national and Community legislation for the recovery of the funds paid to the beneficiaries within the year which follows the first administrative or judicial finding;
- (b) where the Member State has failed to comply with its obligations under paragraph 3(a) and (c) of this Article.

6. Where it has been possible to effect the recovery referred to in paragraph 2 after closure of a rural development programme, the Member State shall refund the sums recovered to the Community budget.

7. After closure of a rural development programme a Member State may decide to halt the recovery procedure, subject to the conditions laid down in Article 32(6).

8. If recovery has not taken place prior to the closure of a rural development programme, 50 % of the financial consequences of non-recovery shall be borne by the Member State concerned and 50 % by the Community budget and shall be taken into account

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either at the end of the period of four years following the first administrative or judicial finding or eight years where recovery action is taken in the national courts, or on the closure of the programme if those deadlines expire prior to such closure.

However, if for reasons not attributable to the Member State concerned, recovery could not take place within the time-limits specified in the first subparagraph, and the amount to be recovered exceeds EUR 1 million, the Commission may, at the request of the Member State, extend the time-limits by a maximum of 50 % of the initial time-limits.

9. In cases as referred to in paragraph 8, the amounts corresponding to the 50 % borne by the Member State shall be paid by the Member State to the Community budget.

10. Where the Commission makes a financial adjustment, this shall not affect the obligations of the Member State to recover the sums paid as part of its own financial contribution under Article 14 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty <sup>(1)</sup>

*Article 34***Assignment of revenue from the Member States**

1. The following shall be regarded as assigned revenue within the meaning of Article 18 of Regulation (EC) No 1605/2002:

- (a) sums which, under Articles 31, 32 and 33 of this Regulation, must be paid to the Community budget, including interest thereon;
- (b) sums which are collected or recovered under Council Regulation (EC) No 1788/2003 of 29 September 2003 establishing a levy in the milk and milk products sector <sup>(2)</sup>;

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- (c) temporary restructuring amounts collected under Regulation (EC) No 320/2006.

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2. ►**M1** The sums referred to in paragraphs 1(a), (b) and (c) ◀ shall be paid to the Community budget and, in the event of reuse, shall be used exclusively to finance EAGF or EAFRD expenditure.

**▼M1**

3. The provisions of this Regulation shall apply *mutatis mutandis* to assigned revenue referred to in paragraph 1 of this Article.

**▼B***Article 35***Definition of administrative or judicial finding**

For the purposes of this Chapter the primary administrative or judicial finding means the first written assessment of a competent authority, either administrative or judicial, concluding on the basis of actual facts that an irregularity has been committed, without prejudice to the possibility that this conclusion may subsequently have to be adjusted or withdrawn as a result of developments in the course of the administrative or judicial procedure.

<sup>(1)</sup> OJ L 83, 27.3.1999, p. 1. Regulation as amended by the 2003 Act of Accession.

<sup>(2)</sup> OJ L 270, 21.10.2003, p. 123. Regulation as amended by Regulation (EC) No 2217/2004 (OJ L 375, 23.12.2004, p. 1).



## CHAPTER 3

**Commission monitoring**

## Article 36

**Access to information**

1. Member States shall make available to the Commission all information necessary for the smooth operation of the EAGF and the EAFRD and shall take all appropriate measures to facilitate the checks which the Commission deems appropriate in connection with the management of Community financing, including on-the-spot checks.
2. Member States shall communicate to the Commission on request the laws, regulations and administrative provisions which they have adopted for implementing the Community instruments relating to the common agricultural policy, where those acts have a financial impact on the EAGF or the EAFRD.
3. Member States shall make available to the Commission all information about irregularities detected, in accordance with Articles 32 and 33, and about the steps taken to recover undue payments in connection with those irregularities.

## Article 37

**On-the-spot checks**

1. Without prejudice to the checks carried out by Member States under national laws, regulations and administrative provisions or Article 248 of the Treaty, and any check organised under Article 279 of the Treaty, the Commission may organise on-the-spot checks with a view to verifying in particular:
  - (a) compliance of administrative practices with Community rules;
  - (b) the existence of the requisite supporting documents and their correlation with the operations financed by the EAGF or the EAFRD;
  - (c) the terms on which the operations financed by the EAGF or the EAFRD have been undertaken and checked.

Persons delegated by the Commission to carry out on-the-spot inspections or Commission agents acting within the scope of the powers conferred upon them shall have access to the books and all other documents, including documents and metadata drawn up or received and recorded on an electronic medium, relating to expenditure financed by the EAGF or the EAFRD.

The aforementioned powers of inspection shall not affect the application of national provisions which reserve certain acts for agents specifically designated by national legislation. Persons delegated by the Commission shall not take part, *inter alia*, in home visits or the formal questioning of persons within the framework of the national legislation of the Member State concerned. However, they shall have access to information thus obtained.

2. The Commission shall give sufficient prior notice of an inspection to the Member State concerned or the Member State within whose territory the inspection is to take place. Personnel from the Member State concerned may take part in such checks.

At the request of the Commission and with the agreement of the Member State, additional checks or inquiries into the operations covered by this Regulation shall be undertaken by the competent bodies of that Member State. Commission agents or persons delegated by the Commission may take part in such checks.

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In order to improve checks, the Commission may, with the agreement of the Member States concerned, enlist the assistance of the authorities of those Member States for certain inspections or inquiries.

## TITLE V

## TRANSITIONAL AND FINAL PROVISIONS

*Article 38***Expenditure under the EAGGF Guarantee Section other than on rural development**

1. The Guarantee Section of the EAGGF shall finance the expenditure incurred by Member States in accordance with Article 2 and Article 3(2) and (3) of Regulation (EC) No 1258/1999 until 15 October 2006.
2. Expenditure by Member States from 16 October 2006 shall follow the rules laid down in this Regulation.

*Article 39***Expenditure on rural development under the EAGGF Guarantee Section**

1. For Member States belonging to the European Union before 1 May 2004, the following rules shall apply to rural development programmes for the period 2000 to 2006, which are financed by the EAGGF Guarantee Section in accordance with Article 3(1) of Regulation (EC) No 1258/1999.
  - (a) Payments to beneficiaries shall cease no later than 15 October 2006 and related expenditure by the Member States shall be reimbursed to them by the Commission no later than under the declaration concerning expenditure for October 2006. However, the Commission may in justified cases and in accordance with the procedure referred to in Article 41(2) authorise payments until 31 December 2006, subject to reimbursement of identical amounts to the EAGF of the advances made to the Member States for the period of implementation of these programmes under the second subparagraph of Article 5(1) of Regulation (EC) No 1258/1999.
  - (b) Advances made to the Member States for the period of implementation of these programmes under the second subparagraph of Article 5(1) of Regulation (EC) No 1258/1999 shall be deducted by them from expenditure financed by the EAGF at the latest with the declaration of expenditure for December 2006.
  - (c) At the request of the Member States, expenditure incurred by accredited paying agencies between 16 October and 31 December 2006 with the exception of expenditure authorised in accordance with the second sentence of point (a) of this Article shall be taken over by the EAFRD budget under the programming of rural development for 2007 to 2013.
  - (d) The financial resources available in a Member State on 1 January 2007 following reductions in or cancellations of the amounts of payments which that State has made voluntarily or by way of a penalty, under Articles 3, 4 and 5 of Regulation (EC) No 1259/1999, shall be used by that Member State to finance the rural development measures referred to in Article 4 of this Regulation.
  - (e) If Member States do not use the financial resources referred to in paragraph (d) within a period to be determined in accordance with

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the procedure laid down in Article 41(2), the corresponding amounts shall be repaid to the EAGF budget.

2. For Member States joining the European Union on 1 May 2004, amounts committed to finance rural development measures in accordance with Article 3(1) under a Commission decision taken between 1 January 2004 and 31 December 2006, in respect of which the documents required for closure of the assistance have not been sent to the Commission by the end of the time allowed for transmission of the final report, shall be automatically decommitted by the Commission no later than 31 December 2010 and shall result in the reimbursement by the Member States of amounts wrongly received.

3. Amounts relating to operations or programmes which are the subject of legal proceedings or an administrative appeal which, under the legislation of the Member State, has a suspensory effect shall be excluded from the calculation of the amount to be automatically decommitted, as provided for in paragraphs 1 and 2.

*Article 40***Expenditure under the EAGGF Guidance Section****▼M3**

1. By way of derogation from Articles 31(2), 32(4) and 37(1) of Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural funds <sup>(1)</sup>, 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.

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2. Amounts relating to operations or programmes which are the subject of legal proceedings or an administrative appeal which, under the legislation of the Member State, has a suspensory effect shall be excluded from the calculation of the amount to be automatically decommitted, as provided for in paragraph 1.

*Article 41***Committee on the Funds**

1. The Commission shall be assisted by a Committee on the Agricultural Funds (hereinafter referred to as the 'Committee').

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at one month.

3. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.

4. The Committee shall adopt its Rules of Procedure.

<sup>(1)</sup> OJ L 161, 26.6.1999, p. 1. Regulation as last amended by Regulation (EC) No 1198/2006 (OJ L 223, 15.8.2006, p. 1).

**▼B***Article 42***Scope**

Detailed rules for the application of this Regulation shall be adopted by the Commission in accordance with the procedure provided for in Article 41(2). ►**M2** Those rules shall include in particular: ◀

**▼M3**

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;

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2. the conditions under which the tasks of the paying agencies may be delegated;
3. the admissible standards for certification, the nature of certification, its scope, and the time-limits in which certification must take place;
4. the implementing rules for the procedures for automatic decommitment, conformity clearance and the clearance of accounts;
5. arrangements for receiving and assigning revenue from the Member States;
6. the general rules applicable to on-the-spot checks;
7. the form, content, timing, deadlines and arrangements for transmitting or making available to the Commission:
  - declarations of expenditure and estimates of expenditure and their updates,
  - the statement of assurance and annual accounts of the paying agencies,
  - the account certification reports,
  - the names and particulars of accredited paying agencies, accredited coordinating bodies and certification bodies,
  - arrangements for taking account of and paying expenditure financed by the EAGF and the EAFRD,
  - notifications of financial adjustments made by Member States in connection with rural development operations or programmes, and summary reports on the recovery procedures undertaken by the Member States in response to irregularities,
  - information on the measures taken pursuant to Article 9;
8. rules on the conservation of documents and information;

**▼M3**

- 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 on the publication of information concerning beneficiaries referred to in Article 44a and on the practical aspects related to the protection of individuals with regard to the processing of their personal data in accordance with the principles laid down in Community legislation on data protection. These rules shall ensure, in particular, that the beneficiaries of funds are informed that these data may be made public and may be processed by auditing and investigating bodies for the purpose of safeguarding the financial interests of the Communities, including the time that this information shall take place;
- 8c. the conditions and detailed rules applicable to appropriations which have been carried over in accordance with Article 149(3) of Regu-

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lation (EC, Euratom) No 1605/2002 to finance the expenditure referred to in Article 3(1)(c) of this Regulation;

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9. the transitional measures necessary for this Regulation to be implemented.

*Article 43***Annual financial report**

By 1 September of each year following the budget year, the Commission shall draw up a financial report on the administration of the EAGF and the EAFRD during the previous financial year and shall submit it to the European Parliament and the Council.

*Article 44***Confidentiality**

Member States and the Commission shall take all necessary steps to ensure the confidentiality of the information communicated or obtained under inspection and clearance of accounts measures implemented under this Regulation.

The principles mentioned in Article 8 of Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities <sup>(1)</sup> shall apply to that information.

**▼M3***Article 44a***Publication of the beneficiaries**

Pursuant to Article 53b(2)(d) of Regulation (EC, Euratom) 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.

**▼B***Article 45***Use of the euro**

1. The amounts given in the Commission decisions adopting rural development programmes, the amounts of commitments and payments by the Commission and the amounts of expenditure attested or certified and amounts in declarations of expenditure by the Member States shall be expressed and paid in euro.

2. Where a direct payment as provided for in Regulation (EC) No 1782/2003 is made to a beneficiary in a currency other than the euro, Member States shall convert the amount of aid expressed in euro into the national currency on the basis of the most recent exchange rate set by the European Central Bank prior to 1 October of the year for which the aid is granted.

<sup>(1)</sup> OJ L 292, 15.11.1996, p. 2.

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3. Where paragraph 2 applies, reimbursements to Member States of the amounts paid to beneficiaries shall be made by the Commission on the basis of declarations of expenditure by the Member States. When drawing up those declarations of expenditure, Member States shall use the same conversion rate as that used for payment to the beneficiary.

*Article 46***Amendment to Regulation (EEC) No 595/91**

Regulation (EEC) No 595/91 is hereby amended as follows:

1. Article 5(2) shall be deleted;
2. Article 7(1) shall be deleted.

*Article 47***Repeal**

1. Regulation No 25, Regulation (EC) No 723/97 and Regulation (EC) No 1258/1999 are hereby repealed.

However, Regulation (EC) No 1258/1999 shall continue to apply until 15 October 2006 to expenditure incurred by Member States and until 31 December 2006 for expenditure incurred by the Commission.

2. References to the Regulations repealed shall be construed as references to this Regulation and shall be read in accordance with the correlation table in the Annex.

*Article 48***Transitional measures**

For the implementation of this Regulation, the Commission shall adopt the measures which are both necessary and duly justified to resolve, in cases of urgency, practical and specific problems, in particular those relating to the transition between the provisions of Regulations No 25, (EC) No 723/97 and (EC) No 1258/1999 and this Regulation. These measures may derogate from certain parts of this Regulation, but only to the extent and for the time strictly necessary.

*Article 49***Entry into force**

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

It shall apply from 1 January 2007, except for Article 18(4), which shall apply as soon as it enters into force, without prejudice to the provisions of Article 47.

However, the following provisions shall apply from 16 October 2006:

- Articles 30 and 31, as regards expenditure incurred from 16 October 2006,
- Article 32, as regards cases notified under Article 3 of Regulation (EEC) No 595/91 and for which full recovery has not yet taken place by 16 October 2006,
- Articles 38, 39, 41, 44 and 45 for expenditure declared in 2006 under the 2007 budget year.

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





## ANNEX

## Correlation table

Regulation (EEC) No 25	This Regulation
Article 1	Article 2(2)
Articles 2 to 8	—

Regulation (EEC) No 595/91	This Regulation
Article 5(2)	Article 32(3) Article 8
Article 7(1)	Article 32(2)

Regulation (EC) No 723/97	This Regulation
Articles 1 to 3	—
Article 4(1) and (2)	—
Article 4(3)	Article 5(1)(b)
Articles 5 to 9	—

Regulation (EC) No 1258/1999	This Regulation
Article 1(1), first subparagraph	Article 2(2)
Article 1(2)(a)	Article 3(1)(a)
Article 1(2)(b)	Article 3(1)(b)
Article 1(2)(c)	Article 4
Article 1(2)(d)	Article 3(2)(a)
Article 1(2)(e)	Article 3(1)(d) Article 5(1)(c) Article 5(1)(d)
Article 1(3)	Article 4
Article 1(4)	Article 13
Article 2(1) and (2)	Article 3
Article 2(3)	Article 42
Article 3(1)	Article 4
Article 3(2)	Article 3(2)(a)
Article 3(3)	Article 5
Article 3(4)	Article 42
Article 4(1)(a)	Article 8(1)(a) Article 8(1)(b)
Article 4(2)	Article 6(1)
Article 4(3)	Article 8(2)
Article 4(4)	Article 10
Article 4(5)	Article 6(2)
Article 4(6)	Article 8(1)(a)

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Regulation (EC) No 1258/1999	This Regulation
Article 4(7)	Article 6(3)
Article 4(8)	Article 42
Article 5(1), first subparagraph	Article 14(1)
Article 5(1), second subparagraph	Article 25(1)
Article 5(2)	Article 14(2)
Article 5(3)	Article 42
Article 6(1)	Article 8(1)(c)
Article 6(2)	Article 42
Article 7(1)	Article 15(2)
Article 7(2), first subparagraph	Article 15(2)
Article 7(2), second subparagraph	Article 15(3) and (4)
Article 7(2), third subparagraph	Article 15(5)
Article 7(3), first subparagraph	Article 30(1)
Article 7(3), second subparagraph	Article 30(2)
Article 7(4), first subparagraph	Article 31(1)
Article 7(4), second subparagraph	Article 31(3), first subparagraph
Article 7(4), third subparagraph	Article 31(3), second subparagraph
Article 7(4), fourth subparagraph	Article 31(2)
Article 7(4), fifth subparagraph	Article 31(4)
Article 7(4), sixth subparagraph	Article 31(5)
Article 7(5)	Article 42
Article 8(1), first subparagraph	Article 9(1)
Article 8(1), second subparagraph	Article 9(3)
Article 8(2)	Article 32(1) and (8)
Article 8(3)	Article 42
Article 9(1), first subparagraph	Article 36(1)
Article 9(1), second subparagraph	Article 36(2)
Article 9(2)	Article 37(1)
Article 9(3)	Article 42
Article 10	Article 43
Articles 11 to 15	Article 41
Article 16	Article 41
Article 17	—
Article 18	Article 48
Article 19	—
Article 20	Article 49