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Commission Regulation (EU) No 65/2011 of 27 January 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures (repealed)

## PART II

### ADMINISTRATION AND CONTROL RULES

#### TITLE II

#### RURAL DEVELOPMENT SUPPORT UNDER AXIS 1 AND AXIS 3 AND CERTAIN MEASURES UNDER AXIS 2 AND AXIS 4

##### CHAPTER I

##### *Introductory provisions*

##### *Article 23*

##### **Scope**

This Title shall apply to expenditure pursuant to Regulation (EC) No 1698/2005 not covered by Title I of this Regulation.

##### CHAPTER II

##### *Control, reductions and exclusions*

##### *Section I*

##### **Control**

##### *Subsection I*

##### **General provisions**

##### *Article 24*

##### **Administrative checks**

1 Administrative checks shall be carried out on all applications for support, payment claims or other declarations required to be submitted by a beneficiary or a third party, and shall cover all elements that it is possible and appropriate to control by administrative means. The

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procedures shall require recording of the control work undertaken, the results of the verification and the measures taken in the event of discrepancies.

2 Administrative checks on applications for support shall in particular include verification of:

- a the eligibility of the operation for which support is requested;
- b compliance with the selection criteria set out in the rural development programme;
- c compliance of the operation for which support is requested with applicable national and Union rules on, in particular, and where relevant, public procurement, State aid and other appropriate obligatory standards established by national legislation or established in the rural development programme;
- d the reasonableness of the costs submitted, which shall be evaluated using a suitable evaluation system, such as reference costs, a comparison of different offers or an evaluation committee;
- e the reliability of the applicant, with reference to any previous co-financed operations undertaken since 2000.

3 Administrative checks on payment claims shall include in particular, and where appropriate for the claim in question, verification of:

- a the delivery of the products and services co-financed;
- b the reality of expenditure claimed;
- c the completed operation compared with the operation for which the application for support was submitted and granted.

4 Administrative checks on investment operations shall include at least one visit to the operation supported or the investment site to verify the realisation of the investment.

However, Member States may decide not to carry out such visits for duly justified reasons, such as the following:

- a the operation is included in the sample for an on-the-spot check to be carried out in accordance with Article 25;
- b the operation in question is a small investment;
- c the Member State considers that the risk that the conditions for receiving aid are not met is low, or that the risk that the investment has not been realised is low.

The decision referred to in the second subparagraph and its justification shall be recorded.

5 Administrative checks shall include procedures to avoid irregular double financing with other Union or national schemes and with other programming periods. Where financing from other sources exists, those checks shall ensure that the total aid received does not breach the maximum permissible aid ceilings.

6 Payments by beneficiaries shall be supported by invoices and documents proving payment. Where this cannot be done, payments shall be supported by documents of equivalent probative value.

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## Article 25

### On-the-spot checks

1 Member States shall organise on-the-spot checks on approved operations using an appropriate sampling basis. These checks shall, as far as is possible, be carried out before the final payment is made for an operation.

2 The expenditure covered by on-the-spot checks shall represent at least 4 % of the expenditure referred to in Article 23 which is financed by the European Agricultural Fund for Rural Development (EAFRD) and which is to be paid by the paying agency each calendar year. Only checks carried out until the end of the year in question shall be taken into consideration.

Over the whole programming period, the expenditure covered shall represent at least 5 % of the expenditure financed by the EAFRD.

3 The sample of approved operations to be checked in accordance with paragraph 1 shall take into account in particular:

- a the need to check an appropriate mix of types and sizes of operations;
- b any risk factors identified following national or Union checks;
- c the need to maintain a balance between the axes and measures;
- d the need to select randomly between 20 % and 25 % of expenditure.

4 The inspectors undertaking the on-the-spot check shall not have been involved in administrative checks of the same operation.

## Article 26

### Content of on-the-spot checks

1 Through the on-the-spot checks, the Member States shall endeavour to verify:

- a that the payment claims submitted by the beneficiary are supported by accounting or other documents, including, where necessary, a check on the accuracy of the data in the payment claim on the basis of data or commercial documents held by third parties;
- b for an adequate number of expenditure items, that the nature and the timing of the relevant expenditure comply with Union provisions and correspond to the approved specifications of the operation and the works actually executed or services actually delivered;
- c that the use or intended use of the operation is consistent with the use described in the application for support;
- d that the publicly funded operations have been implemented in accordance with Union rules and policies, especially the rules on public tendering and relevant mandatory standards established by national legislation or established in the rural development programme.

2 On-the-spot checks of payment claims selected for the check as referred to in Article 25(3) of this Regulation shall cover all the commitments and obligations of a beneficiary which can be checked at the time of the visit.

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3 Except in exceptional circumstances, duly recorded and explained by the national authorities, on-the-spot checks shall include a visit to the operation or, if the operation is intangible, to the operation promoter.

4 Only checks meeting the full requirements of this Article may be counted towards achievement of the control rate set out in Article 25(2).

#### *Article 27*

### **Control report**

1 Every on-the-spot check and *ex-post* check under this Section shall be the subject of a control report which makes it possible to review the details of the checks carried out. The report shall indicate in particular:

- a the measures and applications checked;
- b the persons present;
- c whether notice was given to the beneficiary of the visit and, if so, the period of advance notification;
- d the results of the checks and, where applicable, any particular observations;
- e any further control measures to be carried out.

2 The beneficiary shall be given the opportunity to sign the report to attest the beneficiary's presence at the check and to add observations. Where irregularities are found, the beneficiary shall receive a copy of the control report.

#### *Subsection II*

### ***Supplementary control provisions for specific measures***

#### *Article 28*

### **Young farmers**

For the measure provided for in Article 22(1) of Regulation (EC) No 1698/2005, the Member States shall verify compliance with the business plan according to Article 13(3) of Regulation (EC) No 1974/2006 by administrative checks and, on a sample basis, by on-the-spot checks.

#### *Article 28a*

### **Early retirement**

For the measure provided for in Article 23 of Regulation (EC) No 1698/2005, Member States shall verify compliance with the requirements in Article 23(2)(b) and in Article 23(3) of that Regulation after transfer of the farm. Member States may dispense with on-the-spot checks after the first payment of support, provided that administrative checks, including appropriate cross-checks, in particular with the information contained in the electronic database referred to in Article 16 of Regulation (EC) No 73/2009, provide the necessary assurance of the legality and regularity of payments.

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#### *Article 28b*

### **Support for food quality schemes recognised by Member States**

For the measure provided for in Article 32 of Regulation (EC) No 1698/2005, paying agencies may, where appropriate, make use of evidence received from other services, bodies or organisations to verify compliance with eligibility criteria. However, they shall ensure that they have assurance that the service, body or organisation is operating to a standard sufficient to control compliance with the eligibility criteria.

#### *Article 28c*

### **Semi-subsistence farming**

For the measure provided for in Article 34 of Regulation (EC) No 1698/2005, the Member States shall verify progress in respect of the business plan according to paragraph 2 of that Article by administrative checks and, on a sample basis, by on-the-spot checks.

#### *Article 28d*

### **Producer groups**

For the measure provided for in Article 35 of Regulation (EC) No 1698/2005, the Member States shall recognise the producer group after verifying compliance of the group with the criteria set out in paragraph 1 of that Article and with the national rules. After recognition, continuous compliance with the recognition criteria shall be verified at least once during the five-year period through an on-the-spot check.

#### *Article 28e*

### **Holdings undergoing restructuring**

For the measure provided for in Article 35a of Regulation (EC) No 1698/2005, the Member States shall assess progress in respect of the business plan according to paragraph 2 of that Article by administrative checks and, on a sample basis, by on-the-spot checks.

#### *Article 28f*

### **Leader**

1 The Member States shall implement an appropriate system for supervision of local action groups.

2 In the case of expenditure incurred under Article 63(a) and (b) of Regulation (EC) No 1698/2005, Member States may delegate the carrying out of the administrative checks referred to in Article 24 of this Regulation to local action groups by a formal act. However, the Member States shall remain responsible for verifying that those local action groups have the administrative and control capacity to undertake that work.

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In case of delegation referred to in the first subparagraph, the Member States shall carry out regular controls of the operations of the local action groups, including bookkeeping checks and repetition of administrative checks on a sample basis.

The Member States shall also carry out on-the-spot checks as referred to in Article 26 of this Regulation. In the sample of approved operations to be checked on-the-spot in accordance with Article 25(1) of this Regulation, expenditure concerning Leader shall at least have the same percentage it has in the expenditure referred to in Article 23 of this Regulation.

3 In the case of expenditure incurred under Article 63(c) of Regulation (EC) No 1698/2005, the checks shall be carried out by persons independent of the local action group concerned.

#### *Article 28g*

##### **Subsidies on interest rates**

In the case of expenditure incurred under Article 49 of Regulation (EC) No 1974/2006, administrative checks and on-the-spot checks shall be carried out with reference to the beneficiary and depending on the realisation of the operation concerned. The risk analysis in accordance with Article 25(3)(b) of this Regulation shall cover, at least once, the operation concerned on the basis of the discounted value of the subsidy.

Furthermore, the Member States shall ensure, via administrative checks and, if necessary, via *in-situ* visits to the intermediate financial institutions and at the beneficiary, that the payments to the intermediate financial institutions are in conformity with Union legislation and with the agreement concluded between the Member State's paying agency and the intermediate financial institution as laid down in Article 49 of Regulation (EC) No 1974/2006.

#### *Article 28h*

##### **Other financial engineering actions**

In the case of expenditure incurred under Article 50 of Regulation (EC) No 1974/2006, the Member States shall ensure, via administrative checks and, if necessary, via *in-situ* visits to the funds or their sponsors, that the conditions laid down in Articles 51 and 52 of that Regulation are complied with. They shall especially verify the correct usage of the funds and the closure at the end of the programming period.

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### *Subsection III*

#### ***Ex-post checks***

##### *Article 29*

#### ***Ex-post checks***

1 *Ex-post* checks shall be carried out on investment operations to verify the respect of commitments pursuant to Article 72(1) of Regulation (EC) No 1698/2005 or detailed in the rural development programme.

2 The *ex-post* checks shall cover in each calendar year at least 1 % of EAFRD expenditure for investment operations that are still subject to commitment as referred to in paragraph 1 and for which the final payment has been made from the EAFRD. Only checks carried out until the end of the year in question shall be taken into consideration.

3 The sample for operations to be checked in accordance with paragraph 1 shall be based on an analysis of the risks and financial impact of different operations, groups of operations or measures. Part of the sample shall be selected randomly.

### *Section II*

#### ***Reductions and exclusions***

##### *Article 30*

#### **Reductions and exclusions**

1 Payments shall be calculated on the basis of what is found to be eligible during the administrative checks.

The Member State shall examine the payment claim received from the beneficiary, and establish the amounts that are eligible for support. It shall establish:

- a the amount that is payable to the beneficiary based solely on the payment claim;
- b the amount that is payable to the beneficiary after an examination of the eligibility of the payment claim.

If the amount established pursuant to point (a) exceeds the amount established pursuant to point (b) by more than 3 %, a reduction shall be applied to the amount established pursuant to point (b). The amount of the reduction shall be the difference between those two amounts.

However, no reduction shall be applied if the beneficiary can demonstrate that he/she is not at fault for the inclusion of the ineligible amount.

2 Where a beneficiary is found to have intentionally made a false declaration, the operation in question shall be excluded from support from the EAFRD and any amounts already paid for that operation shall be recovered. Moreover, the beneficiary shall be excluded from receiving support under the same measure for the calendar year of finding and for the following calendar year.

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3 The reductions and exclusions referred to in paragraphs 1 and 2 shall be applied *mutatis mutandis* to non-eligible expenditure identified during checks under Articles 25 and 29.



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