



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL REGULATION

on the financing of the common agricultural policy

(presented by the Commission)

EXPLANATORY MEMORANDUM

The purpose of this proposal is to establish a single legal framework for financing the common agricultural policy.

To that end, this proposal sets up two Funds:

- a European Agricultural Guarantee Fund (EAGF)
- a European Agricultural Fund for Rural Development (EAFRD)

This draft Regulation creates the legal bases for financing the different measures covered by those two Funds, including the technical assistance necessary for the establishment and monitoring of the CAP.

The financing of some measures under the CAP involves shared management. It seemed appropriate, therefore, to specify the terms of the Commission's responsibilities for implementing the general budget of the European Communities and to clarify the Member States' cooperation obligations.

In so far as possible, a similar operating system for the two Funds should provide the necessary streamlining for both the Member States and the Commission.

In this context, there is provision for the Member States to accredit the paying agencies and, where necessary, the coordinating bodies.

The submission of annual accounts must be accompanied by a statement of assurance from the person in charge of the paying agency and a document certifying that the accounts submitted are complete, accurate and true. Checks by the Commission will be conducted according to a two-stage clearance of accounts procedure (accounting and conformity).

However, each of the two Funds will also maintain specific features, including the fact that the EAGF has non-differentiated appropriations while the EAFRD has differentiated appropriations, regarding which the N+2 rule followed by automatic decommitment is maintained. The rate of payment is also different for the two Funds (monthly and quarterly respectively), as is the treatment of amounts recovered following irregularities. Under the EAFRD, these amounts may in fact be reused by the Member States in the context of the same rural development programme.

This draft Regulation also includes rules on budget discipline and takes account of the reform of the CAP as provided for by Regulation (EC) No 1782/2003. Those rules cover in particular the fixing of the amounts available annually for EAGF expenditure, forecasts relating to the payment deadlines imposed on the Member States, any reductions and suspensions of monthly or quarterly amounts and specifications regarding the dollar exchange rate to be used in drawing up the budget.

It should be specified that, in cases where financial ceilings have been set in euros in Community legislation, reimbursement to the Member States will be limited to that ceiling, subject to any reductions decided in the context of financial discipline as provided for in Article 11 of Regulation (EC) No 1782/2003.

In this same context, it is laid down that, if the Council does not succeed in fixing the adjustments provided for in that Article within the deadlines set, the Commission will be responsible for doing so.

The principle of compliance with the budget ceiling must be observed at all stages of the budget procedure. If, however, there is a risk at the end of the budget year that payment applications from the Member States will overrun the ceiling available, a specific procedure guaranteeing compliance with this ceiling will be set in motion.

Taking account of Article 180 of the Financial Regulation, this draft Regulation defines the revenue allocated to the EAGF and EAFRD. Finally, the draft Regulation lays down the indispensable provisional rules on the transition between rural development financed by the EAGGF Guarantee Section, the measures financed by the EAGGF Guidance Section and the operation of the EAFRD from 2007.

It is also specified that, during the meeting (AGRI-BUDG) held on 24 June 2004, DG Agriculture and DG Budget adopted the principle that the draft Interinstitutional Agreement will contain a commitment by Parliament and the Council to respect the allocation of commitment appropriations as provided for in the financial envelopes for the Structural Funds, rural development fund and fisheries fund.

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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,

Having regard to the opinion of the Court of Auditors,

Having regard to the opinion of the European Economic and Social Committee,

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, for the financing of market measures, and the European Agricultural Fund for Rural Development, for the financing of rural development programmes.
- (2) The Community budget is to finance common agricultural policy expenditure, including that on rural development, through the abovementioned Funds. In line with Article 53 of Council Regulation (EC) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities¹, 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 two 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 payment requests which they execute, it cannot determine within a reasonable period of time the total expenditure to be entered against the European Agricultural Fund. Provision should therefore be made

¹ OJ L 248, 16.9.2002, p. 1.

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, monitoring 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 is to 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 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 performs checks on the management of the Funds by the Member State authorities responsible for making payments. It would be 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 European Agricultural Guarantee Fund, 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 jeopardize the Community's yearly budgeting. It is therefore justified to exclude expenditure made without respecting deadlines for payments 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 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 European Agricultural Guarantee Fund 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 and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001² 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 European Agricultural Guarantee Fund 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, it 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 European Agricultural Guarantee Fund 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.

² OJ L 270, 21.10.2003, p. 1. Regulation as last amended by Regulation (EC) No 864/2004 (OJ L 161, 30.4.2004, p. 18).

- (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 [...] and the Financial Perspective set out in Annex I to this 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 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 execution of 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. The Member States must be able to draw on the funds provided 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 intermediate payments by the Commission to the accredited paying agencies 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 needs to be set up.
- (22) The automatic decommitment rule must 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 law.
- (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 law. 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 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 European Agricultural Guarantee Fund, sums recovered should be paid back to this Fund where the expenditure is not in conformity with Community law 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 of sums lost as a result of irregularities and not recovered within reasonable deadlines to the Member State concerned. 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, it should be possible to divide the financial burden fairly between the Community and the Member State.
- (27) The recovery procedures used by the Member States may have the effect of delaying recoveries 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 European Agricultural Fund for Rural Development, 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) 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. For the same reason these rules should also cover additional levies on milk production.
- (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 2000–06 financed by the EAGGF Guarantee Section. In order to allow Member States to receive reimbursements for payments made after this date, specific transitional measures have to be envisaged. These measures should also include provisions for the recovery of the advances paid by the Commission on the basis of the second subparagraph of Article 5(1) of Regulation (EC) No 1258/1999 and for the amounts subjected to the voluntary modulation arrangements referred to in Articles 4 and 5 of Regulation (EC) No 1259/1999.
- (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) As a result of the provisions of this Regulation, Council Regulation No 25 on the financing of the common agricultural policy³, Council Regulation (EC) No 723/97 of 22 April 1997 on the implementation of Member States' action programmes on control of EAGGF Guarantee Section expenditure⁴ and Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy⁵ should be repealed. Certain Articles in Regulation (EEC) No 595/91 should be deleted as the present 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 Commission⁶.
- (40) The switch-over from the arrangements in the Regulations repealed to those in this Regulation could give rise to practical 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 may 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 the present Regulation runs from 1 January 2007, the present Regulation should be applicable as from that date. However, certain provisions should apply as from an earlier date,

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 but excluding that on fishery products.

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:

³ 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).

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

⁵ OJ L 160, 26.6.1999, p. 103.

⁶ OJ L 184, 17.7.1999, p. 23.

- (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;
 - (d) 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.
2. The EAGF shall finance the following expenditure in a centralised manner and in accordance with Community law:
- (a) the Community 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 law, 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.

Article 4
EAFRD expenditure

The EAFRD shall finance, in a context of shared management between the Member States and the Community, rural development programmes implemented in accordance with Council Regulation (EC) No [...] of [...]⁷.

Article 5
Financing 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 resources used to finance the common agricultural policy;
- (c) provision of information on the common agricultural policy, undertaken by the Commission;
- (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 58/2003⁸, 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 to be made under their jurisdiction and as regards communicating and keeping information, provide sufficient guarantees that:
 - (a) the eligibility of requests and their compliance with Community rules are checked before payment is authorised;
 - (b) accurate and exhaustive accounts are kept of the payments made;

⁷ OJ L [...], [...], p. [...].

⁸ OJ L 11, 16.1.2003, p. 1.

- (c) the requisite documents are presented within the time limits and in the form stipulated by Community rules;
 - (d) 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.
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) centralising 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.

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, responsible for certification of the management, monitoring and control systems set up by the accredited paying agencies, as well as of those agencies' annual accounts.

The certification referred to in the first subparagraph shall be carried out according to the standards and within the period defined in compliance with the procedure referred to in Article 41(2).

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, within the time limits set in compliance with the procedure referred to in Article 41(2), 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, certified 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 requests for payment which will be submitted during the year and estimated requests for payment in respect of the following financial year;
 - (iii) the annual accounts of the accredited paying agencies, accompanied by the requisite information for their clearance, a statement of assurance signed by the person in charge of the accredited paying agency, and a document certifying that the accounts submitted are complete, accurate and true.

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 the bodies responsible for authorising expenditure, those bodies 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.

3. The Commission shall establish, in accordance with the procedure referred to in Article 41(2):
 - (a) the arrangements for submission of the names and particulars of accredited paying agencies, accredited coordinating bodies and certification bodies;
 - (b) the nature of the information which must be communicated;
 - (c) the rules on the submission and certification of the accounts referred to in paragraph 1(c)(iii);
 - (d) the arrangements and time limits for communicating that information.

Article 9

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

1. The 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, monitoring 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 the 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, monitoring 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 in compliance with **Article 75** of Regulation (EC) No .../.. [**rural development**] to that end, subject to the conditions adopted in accordance with the procedure laid down in Article 41(2).

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 is effected by accredited paying agencies designated by Member States.

Article 11
Payment in full to beneficiaries

Except where provision is made 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

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 of [...], less the amounts referred to in paragraph 2.
2. The Commission shall set the amounts which, pursuant to Articles 10(2), 143d and 143e of Regulation (EC) No 1782/2003, are made available to the EAFRD.
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, except where provided for under the procedure referred to in Article 41(2).

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 made in the month of October. Expenditure effected between 16 and 31 October shall count as 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.

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, on the basis of the procedure referred to in Article 41(2).

However, direct payments shall under no circumstances be made after 15 October of the budget year concerned.

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 thirty 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, pointing out that reduction or suspension is without prejudice to the decisions referred to in Articles 30 and 31.

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, 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).

Chapter II **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 rules stipulate a financial ceiling in euros for agricultural expenditure in respect of a Member State, such expenditure shall be reimbursed subject to that limit set in euros, with any necessary adjustments being made if Article 11 of Regulation (EC) No 1782/2003 applies.

National ceilings for direct payments set by Community legislation, including those set by Article 41(1) of Regulation (EC) No 1782/2003, corrected by the percentages laid down in Article 10(1) of that Regulation, shall be deemed to be financial ceilings in euros.

4. Where the Council has not set by 30 June of the year in question 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) and inform the Council of them immediately.

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 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, 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 average euro/United States 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/United States 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 1
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 laid down in **Article 70(1)** of Regulation (EC) No [**rural development**], 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 taken in accordance with **Article 17(4)** of Regulation (EC) No [**rural development**] approving each rural development 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 subparagraph.

Chapter II **Financial management**

Article 24

Provisions applying to all payments

1. Payment of the EAFRD contribution shall be in line with the budget commitments. Payment shall be made to the approved paying agency designated by the Member State for the relevant rural development programme.
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 to 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, in accordance with Article 17(4) of Regulation (EC) No ... [rural development], pay a single prefinancing amount for that programme to the approved paying agency designated by 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 by the accredited paying agency if no payment application for the rural development programme is sent within twenty-four 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 and a payment application, both certified 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 by the managing authority of the last annual execution report required, within the time limits laid down in **Article 86** of Regulation (EC) No ... [**rural development**].
4. If one of the requirements laid down in paragraph 3 is not met and the payment application cannot therefore be accepted, the Commission shall inform the accredited paying agency forthwith.
5. The Commission shall make intermediate payments within two months of registering payment applications for which the requirements set out in paragraph 3 are met.
6. Accredited paying agencies shall see to it that intermediate payment applications are grouped for presentation to the Commission, wherever possible three times a year. Applications shall cover expenditure not covered by previous applications that the agency has incurred up to the end of the month preceding that in which the application is made.

Intermediate payment applications in respect of expenditure incurred from 16 October onwards shall be booked to the following year's budget.
7. The Commission shall make intermediate payments, without prejudice to the decisions referred to in Articles 30 and 31, for expenditure incurred by accredited paying agencies during the reference period.
8. The deadlines for lodging payment applications shall be set in accordance with the procedure referred to in Article 41(2).

Article 27

Suspension and reduction of intermediate payments

1. The Commission shall make intermediate payments on the basis of the expenditure declarations and financial information provided by Member States. Article 81 of the Regulation (EC) No 1605/2002 shall apply.
2. If the expenditure declarations or financial information do not enable the Commission to find that the Fund expenditure declaration itself satisfies the relevant Community rules, it shall ask the Member State to provide additional information within a period that it shall set according to the seriousness of the problem but that may not normally be less than thirty days.
3. If the Member State fails to respond to the Commission 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, pointing out that reduction or suspension is without prejudice to the decisions referred to in Articles 30 and 31.
4. The Commission shall in suspending or reducing intermediate payments as indicated in Article 26 observe the principle of proportionality.

Article 28

Payment of the balance and closure of the programme

1. After receiving the final implementing report referred to in **Article 86** of the Regulation [**rural development**], 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 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 no later than six months after the information and documents mentioned in paragraph 1 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 line 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 payment application meeting the conditions laid down in Article 26(3) has been presented to it 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 payment application 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 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 payment application 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 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.
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, in accordance with Article 17(4) of Regulation (EC) No... [rural development].

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 line with the third indent of 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 Articles 3(1) and (4) has been incurred in a way that has infringed Community rules, it shall decide what amounts are to be excluded from Community financing.
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) that is incurred more than thirty-six months before the Commission notifies the Member State in writing of its inspection findings;
 - (b) expenditure on multiannual measures falling within the scope of Article 3(1) where the final obligation on the recipient occurs more than thirty-six months before the Commission notifies the Member State in writing of its inspection findings;
 - (c) expenditure on programmes, as indicated in Article 4, payment of the balance of which is made more than thirty-six 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.

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 amounts recovered, as referred to in paragraph 1, 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 initiated 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;
 - (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 above 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 six 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, after application of the deduction provided for in paragraph 2.

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. 50% of the amounts recovered in this way shall be credited to the EAGF.

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.

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.

Article 33

Provisions specific to the EAFRD

1. Member States shall make financial corrections 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 corrections 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) the Member States shall notify the relevant programme management of the corrections;
 - (c) amounts of Community financing which are cancelled and amounts recovered, as well as the interest thereon, shall be reused by the accredited paying agency. However, the cancelled or recovered Community funds may be reused by the Member States only for an operation under the same rural development programme and provided the funds are reallocated to operations which have been the subject of a financial correction.
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 initiated 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.

They shall inform the Commission how they have decided or plan to reuse the cancelled funds and, where appropriate, to amend the financing plan for the rural development programme concerned.
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 the administrative or judicial procedures laid down in national and Community legislation for the recovery of the funds paid to the beneficiaries;
 - (b) where the Member State has failed to comply with its obligations under paragraph 2(a) and (c).
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 the 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 within four years of the closure of a rural development programme, or within six 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.
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 correction, 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 659/1999⁹.

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, must be paid to the Community budget, including interest thereon;
 - (b) sums which are collected or recovered under Council Regulation (EC) No 1788/2003¹⁰.
2. The sums referred to in paragraph 1(a) and (b) shall be paid to the Community budget and, in the event of reuse, shall be used exclusively to finance EAGF or EAFRD expenditure.

Article 35

Definition of administrative finding

For the purposes of this Chapter the primary administrative or judicial finding means the first written assessment, whether or not internal, of a competent authority, either administrative or judicial, concluding on the basis of actual facts that an irregularity has been committed, without prejudice however 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.

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 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.

⁹ OJ L 83, 27.3.1999, p. 1.

¹⁰ OJ L 270, 21.10.2003, p. 123.

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 the 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 checking 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 electronic data drawn up or recorded on a data processing medium, relating to expenditure financed by the EAGF or the EAFRD.

2. The Commission shall give sufficient prior notice of an inspection to the Member State concerned or the Member State on 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.

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 VI

Transitional and final provisions

Article 38

Expenditure under the EAGGF Guarantee Section other than on rural development

1. The Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) shall finance the expenditure incurred by the 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 the 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 2000–06, which are financed by the EAGGF Guarantee Section in accordance with Article 3(1):
 - (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.
 - (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 recovered by the Commission no later than 15 October 2006.
 - (c) By way of derogation from **Article 72(1)** of Regulation (EC) No No [**rural development**] and at the request of the Member States, expenditure incurred by accredited paying agencies between 16 October and 31 December 2006 in respect of rural development measures shall be taken over by the EAFRD budget under the programming of rural development for 2007–13.
 - (d) The financial resources available in a Member State on 1 January 2007 following reductions in the amounts of payments which that State has made voluntarily, under Articles 4 and 5 of Regulation (EC) No 1259/1999, and measures taken to facilitate the transition from that Regulation to Regulation (EC) No 1782/2003, in accordance with Article 155 thereof, may be used by that Member State to finance the rural development measures referred to in Article 4 of this Regulation.
 - (e) If the Member States do not use the financial resources referred to in paragraph 4 within a period to be determined in accordance with the procedure laid down in Article 41(2), the corresponding amounts shall be repaid to the EAGF budget no later than 31 December 2009.
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.

Article 40

Expenditure under the EAGGF Guidance Section

1. Amounts committed to finance rural development measures from the EAGGF Guidance Section under a Commission decision adopted between 1 January 2000 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. The documents required for closure of the assistance shall be the application for payment of the balance, the final implementing report and the declaration by a person or department operationally independent of the managing authority.
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 time referred to in Article 4(3) of Decision 1999/468/EC shall be 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 own rules of procedure.

Article 42

Scope

Detailed rules for the application of this Regulation shall be adopted through the procedure provided for in Article 41(2).

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.

Article 44
Confidentiality

The 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 2185/96¹¹ shall apply to that information.

Article 45
Use of the euro

The amounts given in the Commission decisions adopting rural development programmes in accordance with Article 17(4) of Regulation (EC) No .../.. [rural development], the amounts of commitments and payments by the Commission and the amounts of expenditure attested or certified and amounts in applications for payment by the Member States shall be expressed and paid in euros, in accordance with arrangements adopted by the Commission in accordance with the procedure laid down in Article 41(2).

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

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

- (a) Article 5(2) is deleted;
- (b) Article 7(1) is 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 to expenditure incurred up to 15 October 2006.

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

1. 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

¹¹ OJ L 292, 15.11.1996, p. 2.

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.

2. The measures taken under this Article shall be adopted in accordance with the procedure referred to in Article 41(2).

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.

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

- Articles 30 and 31, as regards expenditure incurred from 16 October 2006;
- Article 31, 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 to 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.

Done at Brussels, [...].

For the Council

The President

[...]

ANNEX
Correlation Table

Regulation 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 4(1) and (3)	–
Articles 5 to 9	–
Article 4(3)	Article 5(1)(b)

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	–
Article 3	–
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)
Article 4(7)	Article 6(3)
Article 4(8)	Article 5(7)
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 14(3)
Article 6(1)	Article 8(1)(c)
Article 6(2)	Article 8(3)
Article 7(1)	–
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 31(6)
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 32(9)
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 37(3)
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