Commission Regulation (EC) No 2168/2005 of 23 December 2005 amending Regulation (EC) No 1831/94 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the Cohesion Fund and the organisation of an information system in this field

COMMISSION REGULATION (EC) No 2168/2005

of 23 December 2005

amending Regulation (EC) No 1831/94 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the Cohesion Fund and the organisation of an information system in this field

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1164/94 of 16 May 1994 establishing the Cohesion Fund[(1)], and in particular Article 12(4) thereof,

Whereas:

(1) Commission Regulation (EC) No 1831/94[(2)] applies to all eligible measures provided for in Article 3 of Regulation (EC) No 1164/94.

(2) Regulation (EC) No 1831/94 should be updated in order to enhance the effectiveness of the system for reporting irregularities.

(3) It is necessary to specify that the definition of 'irregularity' used for the purposes of Regulation (EC) No 1831/94 is taken from Article 1(2) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests[(3)].

(4) It is necessary to define the term 'suspected fraud', taking account of the definition of fraud contained in the Convention of 26 July 1995 on the protection of the European Communities' financial interests[(4)].

(5) It is necessary to align the definition of 'first administrative or judicial finding of fact' to the one included in Commission Regulation (EC) No 1681/94 of 11 July 1994 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the structural policies and the organisation of an information system in this field[(5)].

(6) It is also necessary to define the terms 'bankruptcy' and 'economic operator'.

(7) In order to enhance the added value of the reporting system, the obligation to report cases of suspected fraud for the purposes of risk analysis should be more closely determined, and for this purpose the quality of the information supplied should be ensured.

(8) It should be clearly stated that Regulation (EC) No 1831/94 will remain applicable to cases of irregularities of less than EUR 10 000 already reported.

(9) It is necessary to specify the information needed for dealing with the cases for which an amount cannot be recovered or is not expected to be recovered.

(10) In order to reduce the burden imposed by reporting on the Member States and to improve efficiency, it is necessary to increase the minimum threshold above which irregularities have to be reported by Member States and to determine those cases in which no reporting obligation arises.

(11) Regulation (EC) No 1831/94 should apply without prejudice to Article 7 of Commission Regulation (EC) No 1386/2002 of 29 July 2002 laying down detailed rules for the implementation of Council Regulation (EC) No 1164/94 as regards the management and control systems for assistance granted from the Cohesion Fund and the procedure for making financial corrections[(6)].

(12) Account must be taken of the obligations arising out of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data[(7)] and Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[(8)].

(13) Conversion rates should be established for Member States outside the euro zone.

(14) Regulation (EC) No 1831/94 should be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1831/94 is amended as follows:

1. the following Article 1a is inserted:

Article 1a

For the purposes of this Regulation the following definitions shall apply:

1. "irregularity" means any infringement of a provision of Community law resulting from an act or omission by an economic operator which has, or would have, the effect of prejudicing the general budget of the Communities by charging an unjustified item of expenditure to the Community budget;

2. "economic operator" means any natural or legal person or other entity taking part in the administration of assistance from the Funds, with the exception of Member States exercising their prerogatives as a public authority;

3. "primary administrative or judicial finding" means a first written assessment by a competent authority, either administrative or judicial, concluding on the basis of specific facts that an irregularity has been committed, without prejudice to the possibility that this conclusion may subsequently have to

be revised or withdrawn as a result of developments in the course of the administrative or judicial procedure;

4. "suspected fraud" means an irregularity giving rise to the initiation of administrative and/or judicial proceedings at national level in order to establish the presence of intentional behaviour, in particular fraud, such as is referred to in Article 1(1), point (a), of the Convention on the protection of the European Communities' financial interests;

5. "bankruptcy" means insolvency proceedings within the meaning of Article 2, point (a), of Council Regulation (EC) No 1346/2000[(9)].;

2. Article 2 is deleted.

3. Article 3(1) is replaced by the following:

1. During the two months following the end of each quarter, beneficiary Member States shall report to the Commission any irregularities which have been the subject of a primary administrative and/or judicial finding. To this end Member States shall in all cases give details of:

a the identification of the project or measure in question and the project or CCI (common identification code) number;

b the provision which has been infringed;

c the date and source of the first information leading to suspicion that an irregularity had been committed;

d the practices employed in committing the irregularity;

e where appropriate, whether the practice gives rise to a suspicion of fraud;

f the manner in which the irregularity was discovered;

g where appropriate, the Member States and third countries involved;

h the period during which, or the moment at which, the irregularity was committed;

i the national authorities or bodies which drew up the official report on the irregularity and the authorities responsible for administrative and/or judicial follow-up;

j the date on which the primary administrative or judicial finding on the irregularity was established;

k the identity of the natural and/or legal persons involved or of any other participating entities, except where this information is irrelevant for the purposes of combating irregularities, given the nature of the irregularity in question;

l the total budget approved for the operation and the distribution of its co-financing between Community, national, private and other contributions;

m the amount affected by the irregularity and its distribution between Community, national, private and other contributions; where no payment of the public contribution has been made to the persons and/or other entities identified under point (k), the amounts which would have been wrongly paid had the irregularity not been identified;

n the suspension of payments, where applicable, and the possibilities of recovery;

o the nature of the irregular expenditure.

By way of derogation from the first subparagraph, the following cases need not be reported:

— cases where the irregularity consists solely of the failure to partially or totally execute a measure co-financed by the Community budget owing to the bankruptcy of the bodies responsible for the implementation of the project or the final recipient. However, irregularities preceding a bankruptcy and cases of suspected fraud must be reported,

— cases brought to the attention of the administrative authority by the bodies responsible for the implementation of the project and/or the final recipient voluntarily or before detection by the relevant authority, whether before or after the granting of the public contribution,

— cases where the administrative authority finds a mistake regarding the eligibility of the financed project and corrects the mistake prior to payment of the public contribution.;

4. Article 5 is amended as follows:

(a) the second subparagraph of Article 5(1) is replaced by the following:

> Beneficiary Member States shall report to the Commission administrative or judicial decisions, or the main points thereof, concerning the termination of such procedures and shall state in particular whether or not the findings are such that fraud is suspected.;

(b) paragraph 2 is replaced by the following:

> 2. Where a beneficiary Member State considers that an amount cannot be recovered or is not expected to be recovered, it shall inform the Commission, in a special report, of the amount not recovered and the reasons why the amount should, in its view, be borne by the Community or by the beneficiary Member State.
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> This information must be sufficiently detailed to allow the Commission to decide as soon as possible, after consulting the authorities of the Member States concerned, on the apportionment of: the financial consequences referred to in the third indent of Article 12(1) of Regulation (EC) No 1164/94.
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> This information shall include at least the following:
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> a the date of the last payment made to the bodies responsible for the implementation of projects and/or the final recipient;
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> b a copy of the recovery order;
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> c where applicable, a copy of the document attesting the insolvency of the bodies responsible for the implementation of projects or the final recipient;
>
> d an outline description of the measures taken by the Member State, with indication of their dates, to recover the relevant amount.;

5. the following Article 6a is inserted:

Article 6a

The information required under Articles 3, 4 and 5(1) shall be sent, whenever it is possible to do so, by electronic means, using the module provided by the Commission for the purpose via a secure connection.;