EAGGF Guarantee section: measures in respect of certains beneficiaries of operations financed by the fund

1994/0015(CNS) - 20/10/2005 - Follow-up document

The European Commission presents a report on the application of Regulation 1469/95/EC (black list). Council Regulation 1469/95/EC established a system for identifying economic operators representing a serious risk for the Community budget in the field of the EAGGF Guarantee Section and a notification system between the Member States via the Commission. Implementing provisions were adopted by Regulation 745/96/EC. In accordance with the terms of the Regulation, the Commission submitted a report on the application of this Regulation in July 1997. This second report is intended to evaluate the applicability and actual application of the Regulation by the Member States and to identify the difficulties in applying it.

Overall, the report shows that there is still a need for the Community to set up effective means of fraud prevention. The European Parliament and the Council, like the Commission, rightly stress the need to start with prevention. An identification and notification system such as that established by Regulation 1469/95 /EC is used primarily for prevention. None of the Member States disputes its objectives. Nevertheless, there is no denying that the current rules and regulations in force do not ensure that it can apply effectively and efficiently.

To remedy this, the Commission sees several avenues to be explored. These avenues include:

-**improve the functioning of the existing instruments,** by means of new legislation replacing the current regulation and clarifying the concepts covered; clarification of the concept of “serious negligence"; possible amendment of the quantitative threshold of EUR 100 000; revision of the definition of the economic operators concerned in order to include consortia, always in compliance with the general principles of law; adaptation of the rules and regulations in relation to the provisions concerning the access to information and data protection (Regulations 45/2001/EC and 1049/2001/EC); distinction between the prevention mechanism and the penalty mechanism: Regulations 1469/95/EC and 745/96/EC do not distinguish these two concepts, which are separate but complementary objectives. Since in many Member States the imposition of penalties demands compliance with substantial legal formalities that are more complex than those that might apply to a warning and prevention mechanism, it will be necessary to consider whether they should be dissociated from the mechanism by making a reference, if necessary, to separate regulations; introduction in Community law, without prejudice to national procedural provisions, of the legal possibility of taking precautionary measures pending the completion of administrative and judicial procedures (guarantees);

-**introduce a new legislation for a new system with a different scope:** once the legal questions relating to Community law and national legislations have been settled, possible extension of the scope of the warning and prevention mechanism to the Structural Funds, and to own resources where and to the extent it could appear necessary.

-**repeal the current legislation,** once the discussion on the two other avenues of reform is completed.

The Commission wishes to consult all the Member States, in line with the recommendations made recently by the Court of Auditors, and the European Parliament, in order to prompt a wide-ranging debate on the question.