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ON THE CONCEPT OF OBVIOUS ERROR ACCORDING TO ART 12 OF COMMISSION REGULATION (EC) NO 2419/2001

Experience in recent years shows unsatisfactory variations between the treatment of errors committed by applicants for aids in both the animal premium and crops sectors. This situation has led to frequent discussion in the clearance of accounts context, and financial consequences have sometimes ensued. More recently, and in view of initiatives taken in the re-cast IACS Regulation (EC) No 2419/2001, Member States have requested more clarity with regard to the concept of obvious error, especially as concerns errors detected by means of computerised cross-checks, which are not dealt with in previous Commission documents on the subject.

With the above-outlined situation in mind, the Commission services have reviewed the situation with the intention of securing a more harmonised approach in the Member States, and thereby a reduction in the volume of financial consequences under the clearance of accounts procedure.

This document constitutes an opinion given by the Commission services, and is intended for purposes of general guidance only and is not legally binding. It can in no way replace regulatory provisions, nor prejudice any ruling by the Court of Justice, which alone is competent to hand down legally binding rulings on the validity and interpretation of acts adopted by the Community institutions. Furthermore, it is emphasised that Member States have a responsibility to properly apply agricultural legislation.

According to Article 12 of Regulation (EC) No 2419/2001 an aid application may be adjusted at any time after its submission in cases of obvious errors recognised by the competent authority. Hence the competent authority takes the decision whether or not an error is “obvious”, and whether or not it should lead to any reductions or exclusions as provided for in Title IV of the Regulation.

Notwithstanding this provision, the Commission services would emphasise several underlying conditions that, in their view, are pertinent:

- Firstly, decisions to apply or not the “obvious error” concept depend on the overall facts and circumstances of each individual case, and the competent authority must be satisfied with the obvious nature of the error involved. Consequently the concept of obvious error may not be applied in a systematic manner but should involve an examination of each and every case individually.
- Secondly, considering the complexity of procedures relating to the lodging and processing of aid applications, and particularly the differing procedures applied in the Member States, this document does not and cannot classify every kind of potential error.
- Thirdly, Regulation (EC) No 2419/2001 provides for a series of procedural rights for the farmer, and particular mention is made of Articles 44 and 45 of Regulation (EC) No 2419/2001, effectively negating the need for sanctions in certain cases.
- Lastly, payments may not be made for a greater number of animals or a larger surface than that being claimed for (Articles 31(1) and 36(2) of Regulation (EC) No 2419/2001).

In line with these underlying conditions, the Commission services provides the following guidance:

1. As a general rule, an obvious error has to be detected from information given in the aid application form submitted i.e. where an administrative check on the coherence of the documents and the information submitted to support the claim (especially the application form, supporting documents, declarations etc.) reveals such errors. Furthermore, acceptance of such an obvious error is independent of the means by which these checks are carried out, which may be visually, manually or electronically.

Where Member States have installed computerised procedures to check aid applications, cross-checks with the standing database(s) could also constitute a coherence check if the data contained in such computerised database(s) complement, or are an integral part of, the aid application procedure. However, in this instance, the obvious error concept may usually be applied only if the farmer himself has furnished the conflicting information, or if it has been furnished on his behalf. Furthermore, significant delays in execution of the computerised cross-checks would limit the potential for applying the concept of obvious error unless such checks are based on data providing an evaluation of the precise situation at the time of lodging of the aid application.

The following examples indicate some categories of irregularities that may usually be considered as obvious errors:

- a) Errors of a purely clerical nature that are obvious during a basic examination of the claim:
 - Boxes not filled in or information lacking;
 - Erroneous statistical or bank code.
 - b) Errors detected as a result of a coherence check (contradictory information):
 - Arithmetical mistakes;
 - Inconsistencies between the information provided in the same aid application form (e.g. a parcel or an animal declared twice in a single claim);
 - Inconsistencies between the information supporting the aid application and the application itself (e.g. maps or passports not in agreement with details in the application);
 - Parcels declared for two types of use (e.g. dried fodder/forage, arable crops/set-aside/forage).
2. Errors detected as a result of cross-checks of aid applications with independent databases (e.g. land registers) may not be considered automatically or systematically as obvious errors. An error cannot be judged as obvious on the grounds that a Member State has set up an effective system for detecting irregularities.

Nevertheless, one cannot exclude the possibility of an error being obvious, even if the source of the information used to detect the error does not come from the farmer himself. Furthermore, those errors caused by incorrect transcription of identification numbers or references, which are detected during a cross-check of the application with databases, might normally be classified as obvious errors. For example:

- a) Reversed figures (e.g. parcel or animal No. 169 instead of 196);
- b) Errors in the folio number or commune reference in the land register;
- c) Number of a neighbouring parcel, resulting from a map reading error.

It is also possible that these types of error could be classified as obvious even when established as a result of an on-the-spot check. However, in such cases and in order to re-check the veracity of all data held for the farmer involved, a re-performance of cross-checks on the details in the respective databases would probably have to be carried out.

3. An error may also be classified as obvious, even where a higher payment has resulted or would have resulted. However, it is stressed that while, in principle, whether or not an error is obvious does not depend on the financial implications, increasing caution would be required where a higher payment has resulted or would have resulted from the error had it not been detected. It is especially stressed in this respect that the competent authority must decide the matter on the basis of all available facts and circumstances for the individual case concerned.

4. The competent authority has to be convinced that the error is genuine i.e. that the farmer acted in good faith. There should be no possibility that fraud or dishonesty is involved, and the onus is on the farmer in the first instance to show that there has been an obvious error. If a farmer makes the same or a similar mistake on more than one occasion, the scope for consideration as an obvious error becomes more restricted.
5. In any event, given the recognition of obvious errors provided in Article 12 of Regulation (EC) No 2419/2001, the Unit for the audit of agricultural expenditure would expect the competent authority to provide an adequate audit trail for each adjustment of an aid application by stating precisely the reason(s), including the absence of the risk of fraud, the date when the adjustment was made, and the person responsible. The competent authority should keep a summary record of those cases for which it has recognised obvious errors.

This document replaces the guidelines distributed previously in working documents PDW/em/200, VI/1316/Rev.2, VI/646/96 and VI/7103.