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For the attention of

Subject: Audit in respect of the Single Payment Scheme (SPS) and the establishment of entitlements and their management under the integrated administration and control system in Ireland.

Dear

Thank you for the reply of 20 April 2007 to my letter containing the initial audit findings concerning the above mentioned audit in Ireland forwarded to you on 22 December 2006, reference PF 2231.

The main comments on the replies which you forwarded are enclosed as an annex. Where no comments have been received on the audit observations, it is assumed that they have been accepted.

I would like to take this opportunity to thank all staff involved for their kind cooperation and assistance extended to the Court's auditors during the audit.

Yours sincerely,

ANNEX

Analysis of the Irish Authorities' reply

1. The comments on the preliminary audit findings contained in Annex E (hardship extended to aid and premia not affected) , Annex H (systematic calculation errors) and Annex I (amalgamation of entitlements) confirm the audit observations and describe action taken or planned.
2. The comments on Annex A (absence of national implementation provisions) of the statement of preliminary audit findings provide justification for the matter described and the observation is no longer maintained. As regards the observation in Annex G (windfall profit clause not applied) the Irish authorities provide justification for the non application of the windfall profit clause. The Court's services share the opinion of the Irish authorities that the case in question is an example of "windfall profits" outside the scope of article 42(9) of Regulation (EC) N° 1782/2004.
3. The comments on Annex B (deadline for establishment of entitlements), Annex C (consolidation applied without the legal conditions being met and applied incorrectly), Annex D (incorrect treatment of entitlements subject to special condition), Annex F (rejected animals deemed eligible), and Annex J (normal entitlements activated without activating set aside entitlements) do not contain any new information and, therefore, the audit findings are maintained:

Annex B: deadline for establishment of entitlements

4. The Court's services have found that at the end of 2005 entitlements and top-ups from the National Reserve were still not allocated. The total amount still not allocated was approximately Euro 17 Million.
5. The Irish authorities refer to the complexity of the new SPS scheme, changing legislation and huge number of applicants that caused the delay in the establishment of entitlements. Furthermore the implementation of the SPS scheme had to be introduced in parallel with the application of the direct payment schemes.

6. The Court's services acknowledge the complexity and volume of work involved in the establishment of entitlements in the first year of SPS. The Court's services maintain however their audit finding that according to the legislation all entitlements had to be established and allocated by 31st December 2005.

Annex C - Consolidation applied without the legal conditions being met and incorrect calculation

7. The Court's services had noted that Consolidation was granted without the legal conditions being met and that the calculation of number of entitlements after consolidation was incorrect.

8. As regards the first audit finding the Irish authorities put forward several arguments to explain why it is reasonable for consolidation to be applied in Ireland in cases other than referred to in article 42(5) of Regulation 1782/2003. They refer in particular to problems that farmers faced because rental agreements were not renewed for reasons beyond the farmers control.

9. Article 42 Paragraph 5 of Council Regulation (EC) No1782/2003 which is the primary article defining where and under which conditions consolidation can be applied specifically states that it only applies in 'areas subject to restructuring and/or development programs relating to one or the other form of public intervention in order to avoid abandoning of land and/or in order to compensate for specific disadvantages for farmers in those areas'. Land that a farmer has no longer available because rental agreements have not been renewed does not come under the above category.

10. Article 7 of Commission Regulation (EC) No 795/2004 is directly related to Article 42 Paragraph 5 of Council Regulation (EC) No1782/2003 by stating "Where a Member State makes use of the option provided for in Article 42(5)of Regulation (EC) No 1782/2003..." Consequently the same restrictive interpretation must be given to this Article.

11. The Court's services maintain their audit finding.

12. As regards the second audit finding, the Irish authorities put forward that if consolidation would be done on the basis of declared area a farmer who is found with

less area than claimed would immediately lose some of the (National reserve) entitlements allocated to him after consolidation. The number of entitlements lost would be equal to the number of overclaimed hectares.

13. The Court's services do not share the interpretation of article 6 (2) and (3) of Regulation 795/2004 made by the Irish authorities. The provisions of article 7 of the same Regulation are "lex specialis" as regards consolidation. The provision of paragraph 2 of that article overrides the provisions of article 6. Whilst the provisions of article 6 apply to actual allocations from the national reserve article 7 applies to cases where there is no actual allocation but a transformation of entitlements, i.e. the farmer renders all payment entitlements he owns to the national reserve and is allocated in return a lower number of entitlements with a proportionally higher value.

14. The Court's services maintain their audit finding.

ANNEX D: Incorrect treatment of entitlements subject to special conditions

15. The Court's services had noted that approximately 6,000 farmers did not apply for entitlements subject to special conditions totaling approximately Euro 3,5 Million because the farmers in question were not properly informed of their right to obtain such entitlements even if they still do not dispose of any land. The Court's services had also noted that the Irish authorities automatically transformed special entitlements into standard entitlements in all cases where the farmer had declared land in 2005, without any application for such a transformation by the farmer.

16. The Irish authorities refer to the discretionary provisions of article 28 of Commission Regulation (EC) No 795/2004 which Ireland opted to apply. The Irish authorities read this article to allow to alternatively use the eligible hectares declared during the reference period or area declared in 2004 or even 2005. They consequently converted the special condition entitlements into standard entitlements in all cases of SPS applicants, who declared eligible hectares in their 2004 Area Aid form or their 2005 Single Payment application form.

17. The Court's services accept that the provisions of paragraph 1 of article 28 of Reg. 795/2004 allow the Member State to alternatively use the reference period average forage area or the forage area declared by the farmer in his area application of the year before introduction of SPS, i.e. 2004 in Ireland.

18. The provisions of paragraph 2 of the same article however provide that the farmer is entitled to have his entitlements calculated on the basis of the forage area in the reference period if he can prove that it was lower than in 2004.

19. The Court's services accept that cases where a farmer had not declared forage area in the reference period but did so in his 2004 application no longer generate special entitlements but standard entitlements, unless the farmer can prove that he actually did not dispose of any forage area in the reference period.

20. The Irish authorities explain that they extended the scope of article 28. They even use forage area declared in 2005 to replace the "zero" forage area in the reference period and in year 2004. The use of the 2005 forage area for the calculation and allocation of entitlements is contrary to EU regulations.

21. Furthermore, EU legislation does not provide a legal basis for obliging farmers to declare forage area retroactively for any previous claim year. In fact Article 12 paragraph 8 of Regulation (EC) No 795/2004 states that " ...no parcel needs to be declared for the purpose of the establishment of the payment entitlements..." This means that if a farmer had no area declared neither in the reference period nor in 2004 he is entitled to get a special entitlement.

22. As regards annual declaration for payment of special entitlements a farmer who holds a special entitlement has two options: he can declare the entitlement by either committing himself to maintain 50% of the agricultural activity exercised in the reference period expressed in LU or by declaring it with one hectare of eligible land. In the latter case the special entitlement is automatically transformed into a standard entitlement.

23. However conversion of special entitlements into standard entitlements can only occur when the farmer has opted to declare his special entitlement with one hectare of eligible

land. The mere fact that the farmer declares land in his 2005 SPS application is not enough to proceed to such a transformation.

24. The Court's services accept that , where a farmer who holds a special entitlement lodges an application in 2005 in which he ommits to declare the land that he holds, he is liable to a penalty under the provisions of article 14 of regulation 796/2004. Such a failure however effects the payment but not the nature and validity of the special payment entitlement to be allocated to the farmer.

The Court's services maintain their audit findings.

ANNEX F: Disallowed animals used in calculating the reference amount

25. The Court's services had noted that the Irish authorities when calculating the reference amount had , contary to Community ledgislation, taken account of animals found without eartags during inspections carried out during the reference period.

26. The Irish authorities argue that it is reasonable to allow an animal that exists and does not fulfill all the conditions of being determined to be included in the calculation of the reference amount.

27. The Regulations in Point C of Annex VII of Council Regulation (EC) N° 1782/2003 and in Article 3a of Commission Regulation (EC) No 795/2004 clearly state that only "determined" animals should be included in the calculation of the reference amount. Determined animals in the sence of article 2 (s) of Regulation (EC) 2419/2004 are those which fulfill all the conditions laid down for being eligible for premium, i. e. including the existence of ear tags. An animal that has lost both ear tags is not determined (see article 36(4) of Regulation (EC) 2419/2001).

28. The Court's services maintain their audit finding.

ANNEX J: Normal entitlements activated without activating set aside entitlements

29. The Court's services had noted that the Irish authorities had incorrectly calculated the payment amount in cases where the applicant had not declared all his set aside entitlements.

30. The Irish authorities point out in their reply that they calculated the area for payment according to Commission document AGR/D1/ANP D 2006. The Irish authorities provide two additional examples which illustrate their method of calculation of the aid amount before modulation.

31. The Court's services accept that the area deductions operated by the Irish authorities are in conformity with the Regulation and the Commission document referred to above.

32. However the Court's services do not agree with the way the payment amount (before modulation) is calculated by the Irish authorities. The Irish authorities do not apply the provision of article 49(1) of Regulation 796/2004, i.e. they do not use the weighted average value of all entitlements declared after any correction that might need to be made under article 50(4) of that regulation.

Herd N° [REDACTED]

33. In this case the area for payment was correctly calculated by the Irish authorities at 239,21 ha. The correct payment calculation would have been as follows:

239,21 (determined number of hectares after penalty) multiplied by the average value of all entitlements declared (including the 0,74 set aside entitlements for which a correction was made according article 50(4). The average value of this farmers entitlements was 976,07 € (total value of standard entitlements plus total value of set aside entitlements divided by 239,95 (total number of all entitlements declared after correction)).

The Court's services consider that the correct amount before modulation should have been 233 485,70€ instead of 233 933€.

34. Analysis of the two additional cases (herd N° [REDACTED] and [REDACTED]) presented by the Irish authorities in their reply lead to the following comments:

Herd N° [REDACTED]:

The area for payment (17,09 ha) has been correctly calculated. However the Irish authorities did again not apply the provision of article 49(1) of Regulation 796/2004, i.e. they did not use the weighted average value of all entitlements declared (including set aside entitlements held but not declared).

Instead the Irish authorities used the value of the standard entitlements for the calculation of the payment amount (before modulation).

The correct amount before modulation should have been 6054.13€ instead of 6 041,83€

Herd N° [REDACTED]

The area for payment (128.64 ha) has been correctly calculated. However the Irish authorities did again not apply the provision of article 49(1) of Regulation 796/2004, i.e. they did not use the weighted average value of all entitlements declared (including set aside entitlements held but not declared).

Instead the Irish authorities used the value of the standard entitlements for the calculation of the payment amount before modulation.

The correct amount before modulation should have been 25 746€ instead of 25 244.31€

35. These three examples show that the Irish authorities did not apply the provisions of article 49(1) of Regulation 796/2004, i.e. they did not use the weighted average value of all entitlements declared (after correction according to the provisions of article 50(4) of the said Regulation) for the calculation of the payment.

36. Depending on the values of the various types entitlements declared after any possible correction under article 50(4) this error can lead to overpayments (see herd [REDACTED]) or underpayments (see herds [REDACTED] and [REDACTED]).

37. This is a systematic error that has financial implications in all cases where either a farmer had not declared all of his set aside entitlements or where a farmer is found with insufficient set aside land or insufficient overall land.

38. The Court's services maintain their audit finding that in the cases referred to in the previous paragraph the Irish authorities systematically calculated the SPS payment incorrectly.