

EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Directorate J. Audit of agricultural expenditure
J.5. Financial audit

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CEB/2016/005/BG/LFLT
CEB/2015/096/BG/CLOLT

**By E-MAIL + REGISTERED
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Please state the following references in your reply:

**CEB/2016/005/BG/RL304
CEB/2016/005/BG/RLF
CEB/2015/096/BG/RCLO**

**Subject: Clearance of accounts decision for financial year 2015 – Paying Agency
BG01, State Fund Agriculture**

**Enquiry No CEB/2015/096/BG concerning certification audit of
financial year 2015 – Article 9 and 47.1 of Regulation (EU) No
1306/2013 of the European Parliament and the Council, Article 5-7 of
Commission Implementing Regulation (EU) No 908/2014**

**Articles 51 and 52 of Regulation (EU) No 1306/2013 of the European
Parliament and of the Council**

**Communication according to Articles 33 and 34(2) of Commission
Implementing Regulation (EU) No 908/2014 and
Communication according to Article 41(1. b) of Commission
Implementing Regulation (EU) No 908/2014**

**Permanent Representation of Bulgaria to the
European Union**

**Mrs Marina BRAKALOVA, First Secretary -
Agriculture and Rural Development
Square Marie-Louise, 49
B-1000 Bruxelles
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**Copy: Ministry of Agriculture and Food
Mr Dimitar SIMEONOV, Director
55 Hristo Botev blvd.
BG-1040 Sofia
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State Fund Agriculture

**Mr Rumen POROZHANOV, Executive Director
136, Tzar Boris II Blvd.
BG-1618 Sofia
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Dear Sir, Madam,

1. THE CLEARANCE OF ACCOUNTS DECISION FOR FINANCIAL YEAR (FY) 2015

The clearance of accounts decision for FY2015, pursuant to Article 51 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council, shall cover the completeness, accuracy and veracity of the annual accounts submitted and, by virtue of Article 33(1) of Commission Implementing Regulation (EU) No 908/2014, shall determine the amount of the expenditure effected in each Member State during the FY2015. The decision will be based on information in the possession of the Directorate-General for Agriculture and Rural Development (DG AGRI) at the date of drafting of this communication.

Pursuant to Article 33(3) of Commission Implementing Regulation (EU) No 908/2014, the results of the verifications by DG AGRI of the information supplied are notified in the Appendices.

This letter confirms that the accounts of Paying Agency BG01, State Fund Agriculture will not be proposed for clearance before 31 May 2016 for the EAGF for FY2015 for the reasons indicated in the Appendices.

The Paying Agency BG01, State Fund for Agriculture declared zero expenditure under the 2014-2020 EAFRD programme. Had it declared any expenditure under this programme, its accounts would be disjoined due to issues relating to EAFRD. These issues are outlined in the letter and will be taken into consideration when clearing expenditure incurred in the period from 16 October 2014 to 31 December 2015 related to the 2007-2013 EAFRD programme.

Expenditure related to the last execution year (16/10/2014-31/12/2015) of the EAFRD 2007-2013 programming period will, in line with article 37 of Regulation 1306/2013 of the European Parliament and of the Council, be subject to a clearance decision after 30 June 2016.

The financial clearance is without prejudice to decisions taken subsequently following any conformity audit regarding the accuracy of the information provided by the Member State.

2. ASSESSMENT OF CERTIFICATION BODY'S WORK ON LEGALITY AND REGULARITY

FY2015 was the first year when the Certification Bodies had to provide an opinion on the legality and regularity of the expenditure for which reimbursement had been requested from the Commission, in accordance with Article 9 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council. Any specific observations in this respect are included in Point 3 and Appendix 1 of this letter.

On the basis of the opinion of the Certification Body and/or the assessment of DG AGRI, any observations in this respect requiring the specific attention of the Member State authorities, are included in Point 4 and Appendix 2 of this letter.

Furthermore, Appendix 6 of this letter describes the reasons where DG AGRI considers it necessary to open the procedure foreseen by Article 34 of Commission Implementing

Regulation (EU) No 908/2014 and Article 52 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council.

The Certification Body for FY2015 was appointed only on 01/12/2015. This timing did not allow for the timely re-verification by the Certification Body of the on-the-spot controls performed by the Paying Agency and consequently reduces the assurance that DG AGRI can derive from its report. Although, according to the report, use was made of the results of the on-the-spot re-verifications performed by the previous Certification Body on claim year 2014, the previous Certification Body was also appointed too late to perform timely re-verification checks. Furthermore, the DG AGRI audit mission that took place in January 2016 (CEB/2015/096/BG) identified weaknesses in the audit approach of the Certification Body which do not appear to have been addressed by the time the audit report and opinion for FY2015 were issued. As a result, DG AGRI cannot, at this stage, take any assurance from the work of the Certification Body for the purposes of the FY2015 clearance exercise.

It is recalled that it is the responsibility of the Competent Authority to take the necessary steps to ensure that the Certification Body is appointed on time and to avoid that a similar situation arises in future clearance exercises.

3. OBSERVATIONS MADE WITH REGARD TO THE CERTIFICATION BODY

Appendix 1 lists the observations and recommendations arising from the above mentioned clearance exercise as regards the Certification Body.

4. OBSERVATIONS MADE WITH REGARD TO THE PAYING AGENCY

In general, DG AGRI supports the recommendations made by the Certification Body, and the Paying Agency is requested to undertake the necessary remedial action to implement the recommendations put forward by the Certification Body. Appendix 2 lists the observations that are considered to be of particular importance.

In accordance with Article 2 of Commission Implementing Regulation (EU) No 908/2014, it is recalled that it is the responsibility of the Competent Authority to maintain the Paying Agencies for which it is responsible under constant supervision and to follow-up on any identified deficiencies.

5. REDUCTIONS TO BE MADE IN THE CLEARANCE DECISION FOR FY2015 DUE TO NON-RESPECT OF PAYMENT DEADLINES, EXCEEDING THE CEILINGS AND LEVIES

Please refer to DG AGRI letters Ares(2015)3281000 of 05/08/2015 and Ares(2015)5010468 of 11/11/2015 and your reply Ref. No Пв 6.2-3281 of 04/09/2015. The final amount to be confirmed and corrected in the financial clearance decision under Article 51 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council is -6 590.91 EUR.

If your authorities do not agree with the amount to be confirmed in the financial clearance decision and would like to submit additional arguments not already presented in your reply above, you may request a conformity clearance procedure, under Article 52 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council, in

reply to this letter. DG AGRI will only launch a conformity clearance procedure on the explicit and justified request by the Member State.

6. COMMUNICATION WITH REGARD TO CERTIFICATION OF ERROR RATE FOR THE PURPOSE OF ARTICLE 41 OF COMMISSION IMPLEMENTING REGULATION (EU) NO 908/2014

According to Article 41 of Commission Implementing Regulation (EU) No 908/2014 the Member States may decide to reduce the minimum level of on-the-spot checks, in accordance with Article 59(5) of Regulation (EU) No 1306/2013 of the European Parliament and of the Council, if amongst other conditions, the Certification Body has, in accordance with Article 9 of Regulation (EU) No 1306/2013, delivered an opinion validating that both the internal control system is functioning properly and that the error rate for the population concerned was below the materiality threshold of 2%.

In accordance with Article 41 (1.b) your authorities are informed that the Certification Body's opinion in this respect cannot, at this stage, be accepted for any of the EAGF and EAFRD measures and schemes.

The reasons for not accepting the opinion and an assessment of the Certification Body's work are included in Appendix 4 in this respect.

7. CORRECTIVE MEASURES AND POTENTIAL FINANCIAL IMPACT

This letter is also written pursuant to Article 34 of Commission Implementing Regulation (EU) No 908/2014.

DG AGRI takes the view that, as regards BG01 State Fund Agriculture, your authorities have not fully complied with the requirements of the Regulations, and consider proposing the exclusion from EU funding of **an amount to be determined on the basis of the results of the additional work to be requested from the Certification Body**, as indicated in Appendix 6, in accordance with Article 52 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council. Please inform DG AGRI of the corrective measures already taken and those envisaged, together with a timetable for their implementation.


The shortcomings identified will continue to form the basis for financial corrections to be applied in respect of expenditure effected until suitable corrective measures are implemented.

Your reply to this letter should be sent to DG AGRI within two months of receipt of this communication in your national language. In justified cases, DG AGRI may, upon reasoned request, agree to extend this period. In order to discuss all aspects relating to this matter in detail and to try to reach agreement on the measures to be taken, on the evaluation of the gravity of the infringement and on the financial damage to the EU budget, you are invited to a bilateral meeting in **Brussels on 12/10/2016, at 09:00 to 13:00 in Rue de la Loi 102, room 01/020**. Should you consider that a bilateral meeting is not required, you are requested to notify DG AGRI accordingly.

Mr Aron CSATHO of Unit DG AGRI-J.5 (e-mail: Aron.Csatho@ec.europa.eu) is available for further information. Please send your official reply to this letter to the functional mailbox of the unit: AGRI-J5@ec.europa.eu.

The translation of this letter into your national language is under preparation.

Yours faithfully,



Christina BORCHMANN
Director

Enclosures: Appendix 1 – Observations made with regard to the Certification Body
Appendix 2 – Observations made with regard to the Paying Agency
Appendix 3 – Clearance of irregularity cases (not applicable)
Appendix 4 – Assessment of the work of the Certification Body with
regard to Article 41 (1.b) of Regulation (EU) 908/2014
Appendix 5 – Accreditation criteria no longer respected or seriously
deficient (not applicable)
Appendix 6 – Corrective measures and potential financial impact

Appendix 1

Observations made with regard to the Certification Body

Observations related to financial clearance

- DG AGRI considers that the results of the work of the Certification Body cannot, at this stage, be used as a basis for clearing the accounts of the Paying Agency (details in Appendix 6).
- The Certification Body should comment on the appropriateness of the actions taken by the Paying Agency in all cases where Annex II of the Management Declaration indicates an error rate greater than 2% of any population. In cases where the Paying Agency's management opted not to take any specific remedial action, the Certification Body should comment on the appropriateness of the justification given.
- The Certification Body should verify the existence of action plans aimed at correcting the deficiencies detected by its own audits, audits of the European Court of Auditors, the European Commission, the internal audit of the Paying Agency or any other auditor. Similarly, the deficiencies giving rise to reservations in the Annual Activity Report of DG AGRI should form a basis of action plans to be assessed by the Certification Body. The relevance and the implementation status of these plans should be assessed in the certification report. Previous audits for which the Certification Body should follow up action plans or remedial actions include DG AGRI enquiries: NAC/2015/007/BG, AA/2014/001/BG, VT/2015/001/BG, RD1/2013/810/BG, RD1/2014/809/BG, RD1/2014/854/BG, RD1/2015/807/BG, RD1/2015/832/BG and RD3/2014/010/BG.

Observations related to legality and regularity

- Due to the late nomination of the Certification Body, it was not possible to confirm the work of the Paying Agency concerning the on-the-spot verifications for FY2015 for Measure 214: *Agri-environment payments*. In its opinion, the Certification Body issued a scope limitation in this regard. However, DG AGRI is of the view that there should also have been a scope limitation for Measure 213: *Natura 2000* taking into account that the checks on the commitments could not be verified.
- In case the Certification Body detects errors in the substantive testing, the relevant errors should be reported in Sections 1.6 and 5 for the EAGF, or 8.6 and 12 for the EAFRD of the report. While more detailed information can be provided in the annexes of the report, it is important to describe and assess the errors in the main text. As an example, the reporting of public procurement errors detected in the substantive testing of the EAFRD non-IACS population (mainly for Measure 321: *Basic services for the economy and rural population*) is not correct and transparent. Considering that the net value of the public procurement errors detected in the substantive testing amounts to 2 783 081.89 EUR (as per Appendix 15 of the report), DG AGRI concludes that the Most Likely Error for the EAFRD non-IACS population as calculated by the Certification Body (49 494.04 EUR) is incorrect. DG AGRI is of the view that these errors have a direct financial consequence and should be extrapolated resulting in an MLE of 7 026 800.13 EUR.

- In order to assess the work of the Certification Body related to legality and regularity, a detailed description of the errors (financial and formal) should be provided in the report. Furthermore, the Certification Body should assess and confirm that the formal errors do not have any financial impact.
- During DG AGRI's audit mission in January 2016 (CEB/2015/096/BG) it was noted that the Certification Body had generic checklists that were to be used for all measures. It was mentioned during the mission that this is insufficient to provide reasonable assurance for the certification work. The Certification Body should develop checklists that are customized for each specific measure and that they cover all steps and verifications required by the regulations.
- DG AGRI takes note that the residual risk assessed by the Certification Body is less than 2% for all populations, although the Paying Agency has reported in Annex II of the Management Declaration error rates higher than 2% and which in the case of the EAFRD IACS and EAFRD non-IACS populations, had deteriorated from previous years. In addition, conformity audits by DG AGRI concluded that the weaknesses in the supervisory controls of the Paying Agency do not adequately protect the financial interests of the Union, and consequently there is a higher risk of error than that reported in the control statistics. The Certification Body should ensure coherence between its own conclusions and those presented in the Management Declaration, duly justifying any discrepancies.

Appendix 2

Observations made with regard to the Paying Agency

Observations related to financial clearance

- The Paying Agency should address the deficiencies detected by the audits of the European Court of Auditors, the European Commission, the Certification Body, the internal audit of the Paying Agency or any other auditor. If addressing these deficiencies requires the implementation of a set of coordinated remedial actions, the Paying Agency should establish detailed action plans including milestones and expected results for each step. Similarly, the deficiencies giving rise to reservations in the Annual Activity Report of DG AGRI should form a basis of actions plans. The implementation status of each action plan should be reported in Annex IV of the Management Declaration.
- The Paying Agency should provide a Management Declaration in compliance with Guideline 4, including Annex II: *Analysis of the control statistics* and Annex IV: *Reservations and the monitoring of progress in implementation of action plans* (if applicable).

Observations related to legality and regularity

- The Paying Agency should include in Annex III of the Management Declaration the deficiencies detected in all enquiries of DG AGRI for which the Bulgarian authorities received the Letter of Findings. In particular, the following enquiries should be taken into account: NAC/2015/007/BG, AA/2014/001/BG,

VT/2015/001/BG, RD1/2013/810/BG, RD1/2014/809/BG, RD1/2014/854/BG, RD1/2015/807/BG, RD1/2015/832/BG and RD3/2014/010/BG.

Appendix 4

Assessment of the work of the Certification Body with regard to Article 41 (1. b) of Regulation (EU) 908/2014

Concerned schemes/measures – claim year 2014: all EAGF and EAFRD schemes and measures.

Assessment:

DG AGRI cannot, at this stage, accept the conclusions of the audit opinion and the certification report. The Certification Body has confirmed that the residual risk is below the materiality threshold of 2%, while the Paying Agency has reported error rates above materiality. In addition, for most of the measures there is a significant deterioration in comparison with the previous year.

Appendix 6

Corrective measures and potential financial impact

Given the fact that:

- The Certification Body for FY2015 was appointed very late (as of 01/12/2015) which does not allow for adequate work to be performed for the certification of the accounts and especially for the verification of legality and regularity of expenditure for which reimbursement has been requested from the Commission;
- As regards the integrated sampling approach, it is not clear if the conditions as per Guideline 2 were respected by the Certification Body (e.g. if samples 1 and 2 were drawn with the same sampling method, if the representativeness of the Paying Agency's random on-the-spot control sample was correctly assessed);
- The re-verification of the on-the-spot controls for all non-IACS measures was performed late, after the nomination of the Certification Body;
- The on-the-spot re-verifications could not be performed for Measures 213 and 214 due to the time-sensitive nature of the commitments and the Certification Body issued a scope limitation only for Measure 214;
- Inconsistencies within the certification report and with the Management Declaration indicate a risk that the audit findings are not adequately reflected;

- The public procurement errors detected by the Certification Body in the substantive testing of the EAFRD non-IACS population were not correctly and transparently reported on and reflected in the calculation of the error;
- The Certification Body has not elaborated customized checklists for each specific measure;
- The Certification Body did not make any comments on the Management Declaration even though it was submitted incomplete, with essential parts missing (assessment of the quality of the control statistics and the calculation of the error rates in Annex II and the reservations and the progress in implementation of action plans in Annex IV);
- There is no evidence in the Certification Body report to suggest that the conclusions of the various conformity audits of DG AGRI have been duly considered by the Certification Body;

DG AGRI considers that the results of the work of the Certification Body cannot be used as a basis for clearing the accounts of the Paying Agency. DG AGRI could not obtain reasonable assurance that the expenditure of Paying Agency BG01, State Fund Agriculture was effected in compliance with the European Union rules.

The Bulgarian authorities should take action in order to correct the issues mentioned above and inform DG AGRI of the corrective measures to be implemented by the Bulgarian authorities and the additional work to be performed by the Certification Body.