

**COMMISSION REGULATION (EC) No 1974/2004
of 29 October 2004**

amending Regulation (EC) No 795/2004 laying down detailed rules for the implementation of the single payment scheme provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) N 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001⁽¹⁾, and in particular Articles 42(4) and (9), 145(c) and (d) and 155 thereof,

Whereas:

- (1) Commission Regulation (EC) No 795/2004 of 21 April 2004, laying down detailed rules for the implementation of the single payment scheme provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers⁽²⁾, introduces the implementing rules for the single payment scheme that will apply starting from 2005. The administrative and operational implementation of the scheme, which has started at national level on the basis of that Regulation, has shown the need for further detailed rules on some aspects of the scheme and to clarify certain aspects of the existing rules.
- (2) Further to the publication of Regulation (EC) No 795/2004, it appears that some references to Commission Regulation (EC) No 796/2004 have been wrongly published⁽³⁾. It is therefore appropriate to correct them.
- (3) The purpose of Article 46(2), second subparagraph, of Regulation (EC) No 1782/2003 is to allow the transfer of payment entitlement without land under specific conditions. Article 46(2), first subparagraph, of Regu-

lation (EC) No 1782/2003 clearly provides that only sale of payment entitlements is possible without land. In order to avoid that the second subparagraph may be misunderstood and result in making without object the provision of the first subparagraph of that Article, therefore it is appropriate for the sake of clarification to indicate that the transfer mentioned in the second subparagraph only refers to the sale of payment entitlements without land and not to the lease of payment entitlements which is not possible without land.

- (4) For administrative reasons, in order to limit the creation of fractions of payment entitlements to the extent that is necessary, it is appropriate to provide for a rule providing that, once all entire entitlements have been used, partially used entitlements should be considered as fully used whilst giving right to a payment proportionate to the land declared and, in case of transfer, before splitting an existing entitlement, all existing fractions should be used.
- (5) Article 2(e) of Regulation (EC) No 1782/2003 provides that the payments in the reference period are those granted or to be granted in that period. Annex VII adds that reductions resulting from the application of base areas, ceilings or other quantitative limitations should be taken into account. It is therefore appropriate, for the sake of clarification, to specify that the reductions and exclusions applied under Commission Regulation (EC) No 2419/2001⁽⁴⁾ should not be taken into consideration for all the direct payments referred to in Annex VI of Regulation (EC) No 1782/2003 in order not to perpetuate the reductions and exclusions applied in that period. Therefore the number of animals and hectares determined at the time of the establishment of the payment entitlements should be taken into consideration without prejudice to further controls and the application of Article 3(1) of Council Regulation (EC, Euratom) No 2988/95⁽⁵⁾.

⁽¹⁾ OJ L 270, 21.10.2003, p. 1. Regulation as amended by Regulation (EC) No 864/2004 (OJ L 161, 30.4.2004, p. 48).

⁽²⁾ OJ L 141, 30.4.2004, p. 1.

⁽³⁾ OJ L 141, 30.4.2004, p. 18.

⁽⁴⁾ OJ L 337, 20.12.2001, p. 9. Regulation as last modified by Regulation (EC) No 118/2004 (OJ L 17, 24.1.2004, p. 7).

⁽⁵⁾ OJ L 312, 23.12.1995, p. 1.

- (6) Farmers who leased or sold hectares should not benefit from the mechanism provided for in Article 7. Therefore it is necessary that land sold or transferred shall be included in the number of hectares which the farmer declares in order that those hectares do not benefit from the mechanism.
- (7) Article 40 of Regulation (EC) No 1782/2003 provides for the application of a different reference period in hardship cases affecting production. It is therefore appropriate to specify that the application of that Article should be done on the basis of each direct payment referred to in Annex VI of that Regulation which corresponds to the different productions.
- (8) Concerning the application of Article 42(9) of Regulation (EC) No 1782/2003, it is appropriate to specify its application in the case of transfer of premium rights and the consequences for the calculation of the remaining reference amount on the remaining hectares. Moreover, following the change of date from 29 September 2003 to 15 May 2004 introduced by Regulation (EC) No 864/2004, in order to avoid that that Article, where applied, could have an effect on the legitimate expectation of farmers who have already concluded contracts between 30 September 2003 and 15 May 2004 being aware of the application of that clause, it is appropriate to provide for the non application of that Article in such cases.
- (9) In order to take into account the possibility for Member States to provide for a further allocation of reference amounts in the first year of application of the single payment scheme according to Article 34(3), second subparagraph, of Regulation (EC) No 1782/2003, it is appropriate to fix the final date for the definitive establishment of payment entitlements at 15 August whilst at the same time taking into account the possibility for Member States to set up a later date where administrative reasons so warrant. It is appropriate to indicate the area to which the minimum size refers and when parcels should be declared.
- (10) Following the change of date from 29 September 2003 to 15 May 2004 introduced by Regulation (EC) No 864/2004, for consistency reasons, the same date should be introduced in the provisions relating to farmers in special situations.
- (11) Consideration should be taken of any eventual administrative act or court's ruling putting an end to a conflict between the administration and the farmer in case this results in the allocation or increase of payment entitlements. This situation should be considered a special situation in accordance with Article 42(2) of Regulation (EC) No 1782/2003 and treated consequently.
- (12) Without prejudice to the application of Article 43(2)(b) of Regulation (EC) No 1782/2003 which provides that all forage area in the reference period should be included in the calculation of the payment entitlements, in order to facilitate the task of the national administrations in establishing the provisional payment entitlements, it is appropriate to give them the possibility to take into account the number of forage areas declared in the area aid application before the introduction of the single payment scheme or in case of preliminary establishment of payment entitlements, whilst allowing the farmer the possibility to prove that his or her forage area in the reference period was lower.
- (13) The current implementing rules on the payment entitlements subject to special conditions need to be completed or specified as far as they concern certain aspects of the establishment and management of those entitlements.
- (14) Extensification payments and additional payments in the beef and veal and sheep and goat sectors referred to in Annex VI of Regulation (EC) No 1782/2003 were granted in the reference period according to eligibility conditions and amounts set up by Member States and may vary from one year to the other. Due to those changing elements, it is therefore appropriate to allow Member States concerned to take into account, according to objective criteria, those different eligibility conditions and amounts when calculating the reference amount relating to those payments whilst respecting the relative budgetary ceilings. Concerning the slaughter premium, in order to facilitate inclusion of the current regime of premiums into the single payment scheme, the current ceiling referred to in Article 11(4) of Regulation (EC) No 1254/12999 should be taken into account in the calculation of the reference amount.
- (15) In order to take into account any eventual hardship case in the application of the regional model, it is appropriate to provide for the application of the existing rules on hardship cases set up in Article 40 of Regulation (EC) No 1782/2003.
- (16) Farmers producing fruit and vegetables and table potatoes should be taken into account when applying the provisions on special situations.
- (17) According to Chapter 6 of Title III of Regulation (EC) No 1782/2003, new Member States shall apply the single payment scheme only in a regionalised way based on the provisions existing for the regionalised model provided for in Articles 58 to 63 of that Regulation. For the implementation of the single payment scheme in those Member States, it is therefore appropriate to provide for the same detailed rules, which are applicable, established in Regulation (EC) No 795/2004.

- (18) Where the Member State decides to make use of the option provided for in Article 71(1) of Regulation (EC) No 1782/2003, a deadline for the notification of the decisions it has taken in accordance with Articles 58, 59, 61 to 64 and 70 of Regulation (EC) No 1782/2003 should be fixed in order to allow the Commission to establish the ceilings referred to in those Articles.
- (19) According to Article 60(2), Annex VII (B) and (D), last subparagraph, of Regulation (EC) No 1782/2003, the Commission shall fix a maximum area for fruit and vegetables, dried fodder and starch potatoes on the basis of data communicated by Member States. It is therefore appropriate to provide for a deadline for those communications.
- (20) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Direct Payments,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 795/2004 is hereby amended as follows:

1. Article 2 shall be amended as follows:

- (a) in points (b) and (e), the reference to Regulation (EC) No 795/2004 shall be replaced by the reference to Regulation (EC) No 796/2004;
- (b) in point (l) the following subparagraph shall be added:

'The case of transfer of payment entitlements without land referred to in Article 46(2), second subparagraph, of Regulation (EC) No 1782/2003 shall be considered as a case of sale of payment entitlements without land';

2. Article 3(2) shall be replaced by the following paragraphs:

'2. Where a farmer, after having declared in accordance with Article 44(3) of Regulation (EC) No 1782/2003 all possible entire payment entitlements, needs to declare a payment entitlement accompanying a parcel which amounts to a fraction of a hectare, this last payment entitlement shall give right to a payment calculated pro rata to the size of the parcel and it shall be deemed as fully used for the purpose of Article 45 of that Regulation.

3. Where the size of a parcel which is transferred with an entitlement in accordance with Article 46(2) of that Regulation amounts to a fraction of a hectare, the farmer may transfer the part of the entitlement concerned with the land at a value calculated to the extent of the same fraction. The remaining part of the entitlement shall

remain at the disposal of the farmer at a value calculated correspondingly.

4. Paragraphs 2 and 3 shall apply only if the farmer still needs to declare or transfer a payment entitlement or a fraction of a payment entitlement with a fraction of a hectare after having declared or transferred existing payment entitlements or fractions of payment entitlements';

3. the following Article 3a shall be added:

'Article 3a

Determined hectares and animals

Without prejudice to the application of Annex VII of Regulation (EC) No 1782/2003, the number of hectares or animals for which a direct payment has been or should have been granted in the reference period to be taken into consideration for the purpose of establishing the reference amount referred to in Article 37(1) of that Regulation shall be the number of hectares or animals determined within the meaning of Article 2 points (r) and (s) of Regulation (EC) No 2419/2001 for each of the direct payments referred to in Annex VI of Regulation (EC) No 1782/2003';

4. Article 7 shall be modified as follows:

- (a) in paragraph 1 the following subparagraph shall be added:

'For the purpose of this Article, "payment entitlements" shall mean only the payment entitlements allocated by the Member State in the first year of application of the single payment scheme';

- (b) paragraph 6 shall be replaced by the following:

'For the purpose of paragraphs 1, 2, 3 and 4, hectares transferred by sale or lease shall be included in the number of hectares which the farmer declares';

5. in Article 8(1), second subparagraph, the reference to Regulation (EC) No 795/2004 shall be replaced by a reference to Regulation (EC) No 796/2004;

6. Article 10 shall be amended as follows:

- (a) in paragraph 1(a), (b) and (c), the following words are added at the end of each indent:

'or premium rights transferred';

- (b) in paragraph 2, the word 'hectares' shall be replaced by the following words:

'hectares of the reference period corresponding to that remaining reference amount.'

- (c) in paragraph 3, the date of 30 April 2004 shall be replaced by the date of 15 May 2004.

(d) the following paragraph shall be added:

'5. Without prejudice to the application of paragraph 4, paragraph 1 shall not apply in cases where the contractual clause referred to in Article 17 and, where the case may be, Article 27 has been introduced in a contract before 15 May 2004.'

7. Article 12 shall be amended as follows:

(a) in paragraph 4 the second subparagraph shall be replaced by the following:

'No definitive transfer of payment entitlements shall be possible before the definitive establishment of payment entitlements.

In any case, definitive payment entitlements shall be established by at the latest 15 August of the first year of application of the single payment scheme. Where specific administrative conditions so warrant, a Member State may decide that date for the definitive establishment may be at the same time as the date for the notification of the payment for the first year of application of the single payment scheme but in any case not later than 31 December of the first year of application.

Farmers may introduce, under reserve of the definitive establishment, applications under the single payment on the basis of provisional payment entitlements established by the Member States or acquired via the contractual clause referred to in Articles 17 or 27';

(b) in paragraph 6, after 'per holding', the following words shall be added:

'in terms of agricultural area';

(c) the following paragraph 8 shall be added:

'8. Except for the purpose of establishing payment entitlements from the national reserve referred to in Articles 6, 7 and 18 to 23a, and without prejudice to paragraph 5 and 6 of this Article, no parcel needs to be declared for the purpose of the establishment of the payment entitlements. The declaration of parcels referred to in Article 44(3) of Regulation (EC) No 1782/2003 shall apply for the purpose of the application for payment of the payment entitlements under the single payment scheme';

8. in Article 16, the following paragraph shall be added:

'3. Article 40 of Regulation (EC) No 1782/2003 shall apply on the basis of each direct payment referred to in Annex VI of that Regulation';

9. in Article 18(1) and (2), '23' shall be replaced by '23a';

10. Article 20 shall be amended as follows:

(a) in paragraph 1, the words 'by transfer free of charge or by lease for six or more years' shall be replaced by the following:

'by transfer, either by sale or by lease for six or more years, free of charge or at a symbolic price';

(b) in Article 20(1), after 'retired' the following words shall be added:

'from agricultural activity';

11. in Articles 21, 22 and 23, the date of 29 September 2003 shall be replaced by the date of 15 May 2004;

12. The following Article 23a shall be added:

'Article 23a

Administrative acts and court's rulings

Where a farmer should be entitled to receive payment entitlements or increase the value of the existing ones by virtue of a definitive court's ruling or by virtue of a definitive administrative act of the competent authority of a Member State, the farmer shall receive the number and value of payment entitlements established in that ruling or act at a date to be fixed by the Member State but not later than the latest date for lodging an application under the single payment scheme following the date of the ruling or the act and taking into account the application of Article 44(3) of Regulation (EC) No 1782/2003';

13. Article 28 shall be replaced by the following:

'1. For the purposes of Article 34(1)(b) of Regulation (EC) No 1782/2003, a Member State may decide, where the case may be, to use:

(a) the forage area declared by the farmer in the area aid application for 2004 or in the year preceding the first year of application of the single payment scheme, or

(b) the forage area declared in application of Article 12(1) or (2) of this Regulation.

2. For the purpose of the establishment of the definitive payment entitlements the farmer may prove, at the satisfaction of the competent authority, that his forage area in the reference period was lower or, in case the area used by Member States is lower, he shall, in accordance with Article 43(2)(b) of Regulation (EC) No 1782/2003, declare all the forage area he held in the reference period';

14. in Article 29, the reference to Regulation (EC) No 795/2004 shall be replaced by the reference to Regulation (EC) No 796/2004;

15. Article 30 shall be modified as follows:

(a) paragraph 1 shall be replaced by the following:

'1. For the purposes of calculating the agricultural activity expressed in livestock units (LU) referred to in Article 49(2) of Regulation (EC) No 1782/2003, the conversion table provided for in Article 131(2)(a) of that Regulation shall apply to the three-year average number of animals for which a direct payment referred to in Article 47 of that Regulation was granted in the reference period';

(b) in paragraph 2, the following subparagraph shall be added:

'In case of dairy premium and additional payments, the LU shall be calculated by dividing the reference quantity used for the calculation of the amount of dairy premium and additional payment when included in the single payment scheme by the average milk yield provided for in Annex XVI of Regulation (EC) No 1973/2004 (*) applicable at that time or by the individual milk yield, in case the individual yield was higher than the average. Where a Member State makes use of the option provided for in Article 62 of Regulation (EC) No 1782/2003, the number of LU shall be modified accordingly.

In case of slaughter premium, where the necessary data regarding the age of the animals are not available, a Member State may convert bulls, steers, cows and heifers in LU by using the coefficient 0,7 and calves by using the coefficient 0,25.

Where the same animal benefitted from several premiums, the coefficient applicable shall be the average of the coefficient applicable to the different premiums

(*) See page 1 of this Official Journal.;

(c) the following paragraph 3a shall be added:

'3a. The number of LU shall be calculated pro rata to the payment entitlements for which he did not have hectares in the reference period and for which the farmer requests the application of the special conditions. It shall apply starting from the payment entitlements at the lowest value.

The request shall be made only in the first year of application of the single payment scheme. Member States shall fix the date for the request. It may be renewed in the following years for the same number of payment entitlements subject to special conditions in the previous year or, in case of transfer of some of those payment entitlements, or in case of declaration of some of those payment entitlements with a corresponding number of hectares, for the remaining of those payment entitlements.

In these cases, the number of LU shall be recalculated pro rata to the remaining payment entitlements for which the farmer requests the application of the special conditions.

No request to re-establish the special condition may be introduced for those payment entitlements once they have been declared with an equivalent number of hectares or they have been transferred, without prejudice to Article 49(2) second subparagraph of Regulation (EC) No 1782/2003';

16. the following Article 31a shall be added:

'Article 31a

Beef and veal and sheep and goat payments

1. In order to calculate the reference amount relating to extensification payments and additional payments in the beef and veal and sheep and goat sectors referred to in Annex VI of Regulation (EC) No 1782/2003, Member States shall take into account, according to objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion, the eligibility conditions and amounts set up by the Member State concerned when granting such payments in the reference period provided that the component of such payments in the ceiling referred to in Annex VIII of that Regulation is not exceeded.

2. In order to calculate the reference amount relating to the slaughter premium in the beef and veal sector referred to in Annex VI of Regulation (EC) No 1782/2003, Member State shall take into account the application of Article 11(4) of Regulation (EC) No 1254/1999';

17. in Article 32, the following paragraph shall be added:

'4. For the purposes of Articles 54(2) and 61 of Regulation (EC) No 1782/2003, land under permanent pasture in 2003 shall be:

- (a) land declared by a farmer in his aid application for 2003 as being under permanent pasture, and
- (b) land not declared by a farmer in his aid application for 2003, unless it can be shown that that land was not under permanent pasture in 2003.

However, Member States may provide that land under permanent pasture in 2003 shall be land declared in the aid application for 2003 and in the aid applications for at least the five consecutive years prior to 2003 as land used to grow grasses or other herbaceous forage';

18. Article 38 shall be modified as follows:

- (a) in paragraph 3, the reference to Regulation (EC) No 795/2004 shall be replaced by the reference to Regulation (EC) No 796/2004.

(b) the following paragraphs shall be added:

'4. Article 40 of Regulation (EC) No 1782/2003 and Article 16 of this Regulation shall apply *mutatis mutandis*.

5. For the purpose of this Article, the reference to "agricultural area" in Article 12(6) shall be construed as a reference to "eligible area within the meaning of Article 44(2) of Regulation (EC) No 1782/2003";

19. the following paragraph 4 shall be added in Article 41:

'4. For the purpose of Article 60(3)(b) of Regulation (EC) No 1782/2003, Article 20 to 23a of this Regulation shall apply *mutatis mutandis* to the farmers producing the products referred to in Article 60(1) of Regulation (EC) No 1782/2003';

20. The following Chapter is inserted after Chapter 6:

'CHAPTER 6a

NEW MEMBER STATES

Article 48a

Implementation in the new Member States

1. Save as otherwise provided for in this Chapter, the provisions of this Regulation shall apply to the new Member States.
2. Any reference to Article 42 of Regulation (EC) No 1782/2003 in this Regulation shall be construed as a reference to Article 71d of Regulation (EC) No 1782/2003.
3. Any reference to the regional average in Articles 6(3) and (4) of this Regulation shall be construed as a reference to the limit of EUR 5 000 referred to in Article 71d(4) of Regulation (EC) No 1782/2003.
4. Any reference to Articles 58 and 59 or 58(1) and 59(1) of Regulation (EC) No 1782/2003 in Chapters 6 and 7 of this Regulation shall be construed as a reference to Article 71e of Regulation (EC) No 1782/2003.
5. Any reference to Article 59(2) and (3) of Regulation (EC) No 1782/2003 in Article 38 of this Regulation

shall be construed as a reference to Article 71f of Regulation (EC) No 1782/2003.

6. Any reference to Article 60 of Regulation (EC) No 1782/2003 in Article 8(2), Article 9(1) (e), Article 41 and Article 50a of this Regulation shall be construed as a reference to Article 71g of Regulation (EC) No 1782/2003.
7. Any reference to Article 63(2), third subparagraph, of Regulation (EC) No 1782/2003 in Articles 39, 43 and 48b of this Regulation shall be construed as a reference to Article 71j(2) of Regulation (EC) No 1782/2003.
8. Articles 3a, 7, 10, 12 to 17, 27, 28, 30, 31, 31a, 40, 42, 45 to 46 and 49 shall not apply.
9. Article 5, 19, 23, 31 and 42 shall not apply in case of application of the single area payment scheme referred to in Article 143b of Regulation (EC) No 1782/2003';

21. the following Article 48b shall be added:

'Article 48b

Notification of decisions

Where the Member State decides to make use of the option provided for in Article 71(1) of Regulation (EC) No 1782/2003, it shall notify by 1 August of the year preceding the first year of application of the single payment scheme the decisions it has taken in accordance with Articles 58, 59, 61 to 64 and 70 of Regulation (EC) No 1782/2003';

22. the following Article 50a shall be added:

'Article 50a

Dried fodder, starch potatoes and fruit and vegetables

For the purpose of Article 60(2), Annex VII (B) and (D) last subparagraph of Regulation (EC) No 1782/2003, Member States shall communicate to the Commission by at the latest 31 October of the year preceding the first year of application of the single payment scheme the number of hectares referred to in those provisions'.

Article 2

This Regulation shall enter into force on the seventh day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2005 except Article 1(21) which shall apply from 31 October 2004.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 29 October 2004.

For the Commission
Franz FISCHLER
Member of the Commission
