

COMMISSION REGULATION (EC) No 1550/2007

of 20 December 2007

amending Regulation (EC) No 796/2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system 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) No 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 of Article 145 (c), (da), (l), (m) (n) and (p) thereof,

Whereas:

(1) In the report to the Council ⁽²⁾ on the implementation of cross-compliance, the Commission has identified a number of possible improvements in terms of efficiency and simplification of the rules governing this implementation. To put those improvements into force, Commission Regulation (EC) No 796/2004 ⁽³⁾ needs to be amended in several respects.

(2) Article 143bb of Regulation (EC) No 1782/2003 provides for a separate fruit and vegetables payment in Member States applying the single area payment scheme provided for in Article 143b of that Regulation. This payment is, due to its nature, not related to agricultural area, which is why the provisions concerning the single application pursuant to Regulation (EC) No 796/2004 do not apply to that payment scheme. Hence, the definition of area-related aid schemes should be amended accordingly and provision should be made for an appropriate application procedure.

⁽¹⁾ OJ L 270, 21.10.2003, p. 1. Regulation as last amended by Commission Regulation (EC) No 1276/2007 (OJ L 284, 30.10.2007, p. 11).

⁽²⁾ COM(2007) 147 final, 29.3.2007.

⁽³⁾ OJ L 141, 30.4.2004, p. 18. Regulation as last amended by Regulation (EC) No 972/2007 (OJ L 216, 21.8.2007, p. 3).

(3) The provisions concerning the sugar payment provided for in Chapter 10e of Regulation (EC) No 1782/2003 have become obsolete and should be deleted.

(4) The date for the establishment of the ratio of permanent pasture to be maintained at Member State level needs to be established for Bulgaria and Romania. The latest date for which information about this ratio shall be communicated to the Commission should also be provided.

(5) Following the introduction of the transitional fruit and vegetables payment provided for in Chapter 10g of Regulation (EC) No 1782/2003 and the transitional soft fruit payment provided for in Chapter 10h of that Regulation, Regulation (EC) No 796/2004 needs to be amended in respect of the application procedure.

(6) Following the introduction of the single payment scheme and the decoupling of area related payment it is no more necessary for on-the-spot checks for those payments to be unannounced in all cases. It should also be clarified when on-the-spot checks concerning cross-compliance need to be unannounced, in particular with a view to avoid a concealment of a non-compliance or irregularity.

(7) Experience has shown that more flexibility when reaching the minimum control rate for checks of cross-compliance is needed. The Member State should have the option to fulfil the minimum rate not only at the level of the competent control authority but also at the level of the paying agency or at the level of an act or standard, or group of acts or standards. Furthermore, when a sample has to be extended beyond the minimum control rate following a high number of non-compliances found, that extension should be targeting the acts or standards concerned and not the whole area subject to cross-compliance. Therefore the relevant provisions in Regulation (EC) No 796/2004 should be amended accordingly.

(8) Furthermore, experience has shown that the selection of control sample for on-the-spot checks can be improved by allowing such sample not only to be selected at the level of the competent control authority but also at the level of the paying agency, or per act and standard.

- (9) The existence of differing control rates provided for in specific legislation concerning the control of cross-compliance makes it more difficult for the Member States to organise the controls. Therefore a single control rate for on-the-spot checks regarding cross-compliance should be introduced. Nevertheless, any instance of non-compliance detected in the course of on-the-spot checks under the sectoral legislation should be reported and followed-up under cross-compliance.
- (10) The sampling of on-the-spot checks for cross-compliance can be improved by allowing to take into account into the risk analysis the farmers participation in the farm advisory system provided for in Articles 13 and 14 of Regulation (EC) No 1782/2003 as well as farmers participation in relevant certifications systems. It should however be demonstrated when taking that participation into account that the farmers participating in those schemes represent a lesser risk than farmers not participating in those schemes.
- (11) To assure an element of representativeness in the sample to be selected for on-the-spot checks for cross-compliance, a certain part of the sample should be selected randomly. In the case when the number of on-the-spot checks for cross-compliance is increased, it should also be possible to increase the percentage of farmers randomly selected for those checks.
- (12) In order to make it possible to start the on-the-spot checks for cross-compliance as early as possible in the year, also before all information on the application forms is available, it should be possible to make a partial selection of the control sample based on the already available information.
- (13) On-the-spot checks for cross-compliance would in general require several visits on the same farm. In order to reduce the burden of the checks for both farmers and administrations, the checks may be limited to one control visit. The timing of that visit should be clarified. Nevertheless, the Member States should ensure that a representative and effective check of the requirements and standards remaining to be checked shall be carried out within the same calendar year.
- (14) Concerning on-the-spot checks of eligibility criteria, the possibility to limit actual inspections to a sample of the area to be checked has proven efficient. Therefore it is appropriate to extend this possibility, where applicable, to the on-the-spot checks for cross-compliance. However, when the sample check reveals non-compliances, the sample actually inspected should be extended. This principle should also apply where the legislation applicable to the act and standard provides for such a check.
- (15) To simplify the on-the-spot checks and to make better use of existing control capacities, it should be provided, when the effectiveness of the controls is at least equal to the one achieved when the checks are carried out by on-the-spot checks, to replace controls at farm level by administrative checks or checks at the level of undertakings.
- (16) It should furthermore be possible for the Member States to make use of objective indicators specific to certain requirements or standards when performing the on-the-spot checks. Those indicators should however be directly linked to the requirements or standards they represent and cover all elements to be checked.
- (17) Article 66 of Regulation (EC) No 796/2004 provides that a possible reduction following a determined non-compliance shall be applied the same calendar year as the application is submitted. Logically, the on-the-spot check has to be carried out the same year where the application is lodged. This should be clarified in Regulation (EC) No 796/2004.
- (18) The farmers should be informed about any possible non-compliance determined following an on-the-spot check. It is appropriate to provide for a certain time limit within which the farmers should receive this information. However, exceeding such time limit should not entitle the farmers concerned to avoid the consequences that the determined non-compliance would otherwise trigger.
- (19) The current provisions concerning reductions to be applied in case of repeated non-compliances do not take into account any improvement or worsening of the repeated non-compliance. In order to encourage improvement and discourage worsening of the situation, the percentage to be fixed and multiplied by the factor three, for the first repetition should take such changes into account.
- (20) The introduction of new aid schemes for direct payments requires an updating of the references to the budgetary ceilings referred to in Article 71a of Regulation (EC) No 796/2004.

- (21) In certain cases, unduly allocated entitlements correspond to very small amounts and a substantial administrative burden is required to recover those entitlements. In light of simplification and the balance between the administrative burden and the amount to be recovered, the introduction of a minimum amount that may trigger a recovery is justified.
- (22) The amendments provided for in this Regulation concern aid applications relating to years or premium periods starting as of 1 January 2008. This Regulation should therefore apply as of 1 January 2008.
- (23) Regulation (EC) No 796/2004 should therefore be amended accordingly.
- (24) 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 796/2004 is amended as follows:

1. Article 2 is amended as follows:

- (a) point 12 is replaced by the following:

'12. "Area-related aid schemes": shall mean the single payment scheme, the hops payment to recognised producer groups referred to in the second paragraph of Article 68a of Regulation (EC) No 1782/2003 and all aid schemes established under Titles IV and IVa of that Regulation, except those established under Chapters 7, 10f, 11 and 12 of that Title IV, except the separate sugar payment established in Article 143b(a) of that Regulation and except the separate fruit and vegetable payment established in Article 143bb of that Regulation.'

- (b) point 32 is replaced by the following:

'32. "Act": shall mean each of the individual Directives and Regulations listed in Annex III to Regulation (EC) No 1782/2003; however, the Directive and the Regulations listed in points 7 and 8 of Annex III to that Regulation shall establish one single act.'

2. in Article 3, the following paragraph is added:

'7. For Bulgaria and Romania, the reference ratio shall be established as follows:

- (a) the land under permanent pasture shall be the land under permanent pasture declared by the farmers in

2007 in accordance with Article 14(1) of this Regulation;

- (b) the total agricultural area shall be the total agricultural area declared by the farmers in 2007.;

3. in Article 13, the following paragraph is inserted before paragraph 14:

'13a. In case of application for transitional fruit and vegetables payments provided for in Chapter 10g of Title IV of Regulation (EC) No 1782/2003 or application for transitional soft fruit payments provided for in Chapter 10h of that Title, the single application shall contain a copy of the contract for processing or the commitment to supply pursuant to Article 171db of Regulation (EC) No 1973/2004.

Member States may provide that the information in the first subparagraph may be submitted separately by a later date which shall not be later than 1 December the year of the application.;

4. in Title II of Part II, the heading of Chapter IIIa is replaced by the following:

'AID FOR SUGAR BEET AND CANE PRODUCERS, SEPARATE SUGAR PAYMENT AND SEPARATE FRUIT AND VEGETABLES PAYMENT';

5. Article 17a is amended as follows:

- (a) the heading is replaced by the following:

'Requirements pertaining to aid applications for the aid for sugar beet and cane producers, the separate sugar payment and the separate fruit and vegetables payment';

- (b) in paragraph 1, the introductory words are replaced by the following:

'Farmers applying for the aid for sugar beet and cane producers provided for in Chapter 10f of Title IV of Regulation (EC) No 1782/2003, farmers applying for the separate sugar payment provided for in Article 143ba of that Regulation and farmers applying for the separate fruit and vegetables payment provided for in Article 143bb of that Regulation shall submit an aid application containing all information necessary to establish eligibility for the aid, and in particular:'

(c) paragraph 2 is replaced by the following:

'2. The aid application for the aid for sugar beet and cane producers, the separate sugar payment or the separate fruit and vegetables payment respectively shall be submitted by a date to be determined by the Member States which shall not be later than 15 May and, in the case of Estonia, Latvia and Lithuania, not later than 15 June.'

6. in Chapter I of Title III of Part II, the following Article 23a is added:

'Article 23a

1. Provided that the purpose of the control is not jeopardised, on-the-spot checks may be announced. The announcement shall be strictly limited to the minimum time period necessary and shall not exceed 14 days.

However, for on-the-spot checks concerning livestock aid applications, the notice mentioned in the first subparagraph shall, except in duly justified cases, not exceed 48 hours. Furthermore, where the legislation applicable to the acts and standards relevant to cross-compliance requires the on-the-spot check to be unannounced, those rules shall also apply in the case of on-the-spot checks related to cross-compliance.

2. Where appropriate, on-the-spot checks provided for in this Regulation and any other checks provided for in Community rules shall be carried out at the same time.;

7. Article 25 is deleted;

8. Articles 44 and 45 are replaced by the following:

'Article 44

Minimum control rate

1. The competent control authority shall, with regard to the requirements and standards for which it is responsible, carry out checks on at least 1 % of all farmers submitting aid applications under support schemes for direct payments within the meaning of Article 2(d) of Regulation (EC) No 1782/2003 and for which the competent control authority in question is responsible.

The minimum control rate referred to in the first subparagraph may be reached at the level of each competent control authority or at the level of each act or standard or group of acts or standards. In the cases where the controls are not carried out by the Paying Agencies as

provided for in Article 42, this minimum control rate may however be reached at the level of each Paying Agency.

Where the legislation applicable to the act and standards already fix minimum control rates, that rate shall insofar be applied instead of the minimum rate mentioned in the first subparagraph. Alternatively, Member States may decide that any instances of non-compliance detected in the course of any on-the-spot checks under the legislation applicable to the acts and standards which are performed outside the sample mentioned in the first subparagraph, shall be reported to, and followed up by, the competent control authority in charge of the act or standard concerned. The provisions under this Title shall apply.

2. Should on-the-spot checks reveal a significant degree of non-compliance with a given act or standard, the number of on-the-spot checks to be carried out for this act or standard in the following control period shall be increased.

Article 45

Selection of the control sample

1. Without prejudice to checks carried out as a follow-up of non-compliances brought to the attention of the competent control authority in any other way, the selection of each of the samples of farms to be checked in accordance with Article 44 shall be based, where applicable, on a risk analysis according to the applicable legislation, or on a risk analysis appropriate to the requirements or standards. That risk analysis may be based on the level of an individual farm or on the level of categories of farms or geographical zones or, in the case of point (b) of the second subparagraph of paragraph 3 of this Article, on the level of undertakings.

The risk analysis may take into account one or both of following:

- (a) a farmer's participation in the farm advisory system provided for in Articles 13 and 14 of Regulation (EC) No 1782/2003;
- (b) a farmer's participation in a certification system if the scheme in question is relevant for the requirements and standards concerned.

1a. To provide the element of representativeness, between 20 % and 25 % of the minimum number of farmers to be subject to on-the-spot checks as provided for in the first subparagraph of Article 44(1), shall be selected randomly.

However, if the number of farmers to be subject to on-the-spot checks exceeds the minimum number of farmers to be subject to on-the-spot checks as provided for in the first subparagraph of Article 44(1), the percentage of randomly selected farmers in the additional sample should not exceed 25 %.

1b. A partial selection of the control sample may, where appropriate, be made before the end of the application period in question, on the basis of available information. The provisional sample shall be completed when all relevant applications are available.

2. The samples of farmers to be checked in accordance with Article 44 shall be selected from the samples of farmers which were already selected pursuant to Articles 26 and 27 and to whom the relevant requirements or standards apply.

3. By way of derogation from paragraph 2, the samples of farmers to be checked in accordance with Article 44 may be selected amongst the population of farmers submitting aid applications under support schemes for direct payments within the meaning of Article 2(d) of Regulation (EC) No 1782/2003 and who are under the obligation to respect the relevant requirements or standards.

In that case:

(a) where it is concluded, on the basis of the risk analysis applied at farm level, that non-beneficiaries of direct aid represent a higher risk than the farmers who applied for aid, farmers who applied for aid may be replaced by non-beneficiaries; in that case, the overall number of farmers checked shall, nevertheless, attain the control rate provided for in Article 44(1); the reasons for such replacements shall be properly justified and documented;

(b) if more effective, the risk analysis may be performed at the level of undertakings, in particular slaughterhouses, traders or suppliers rather than at farm level; in that case, the farmers thus checked may be counted towards the control rate provided for in Article 44(1).

4. It may be decided to proceed by a combination of the procedures set out in paragraphs 2 and 3 in the case where such a combination increases the effectiveness of the control system.;

9. Article 47 is amended as follows:

(a) in paragraph 1, the following subparagraphs are added:

'Notwithstanding the first subparagraph, where the minimum control rate is reached at the level of each act or standard or group of acts or standards as provided for in the second subparagraph of Article 44(1), the farmers selected shall be checked with regard to their compliance with the act or standard or group of acts and standards in question.

In general, each farmer selected for an on-the-spot check shall be controlled at a time when most requirements and standards for which he was selected may be checked. However, Member States shall ensure that an appropriate level of control for all requirements and standards is achieved during the year.;

(b) the following paragraph is inserted after paragraph 1:

'1a. On-the-spot checks shall, where applicable, cover all the agricultural land of the holding. Nevertheless, the actual inspection in the field as part of an on-the-spot check may be limited to a sample of at least half of the agricultural parcels concerned by the requirement or standard on the holding provided that such sample guarantees a reliable and representative level of control in respect of requirements and standards. When this sample check reveals non-compliances, the sample of agricultural parcels actually inspected shall be increased.

Furthermore, where the legislation applicable to the act or standards provides so, the actual inspection of the compliance with the requirements and standards as part of an on-the-spot check may be limited to a representative sample of the objects to check. However, the Member States shall assure that the checks are carried out on all requirements and standards for which the compliance may be checked at the time of the visit.;

(c) the following paragraphs are added:

'3. Provided that the Member State ensures that the effectiveness of the controls is at least equal to the one achieved in the case where the controls are carried out by on-the-spot checks, controls at farm level may be replaced by administrative checks or checks at the level of undertakings as referred to in point (b) of the second subparagraph of Article 45(3).

4. In performing the on-the-spot checks, Member States may make use of objective control indicators specific to certain requirements and standards provided they ensure that the effectiveness of the control of the requirements and standards concerned is at least equal to on-the-spot checks performed without the use of indicators.

The indicators shall have a direct link to the requirements or standards they represent and cover all elements to be checked when controlling that or those requirements or standards.

5. On-the-spot checks related to the sample provided for in Article 44(1) shall be carried out within the same calendar year where the aid applications are submitted.;

10. Article 48(2) is replaced by the following:

'2. The farmer shall be informed of any determined non-compliance within three months after the date of the on-the-spot check.;

11. in Article 66(4), the first subparagraph is replaced by the following:

'4. Without prejudice to cases of intentional non-compliance in accordance with Article 67, where repeated non-compliances have been determined, a percentage fixed in accordance with paragraph 1 with regard to the repeated non-compliance shall, in respect of the first repetition, be multiplied by the factor three. For this purpose, the Paying Agency shall, in the case where that percentage was fixed in accordance with paragraph 2, determine the percentage that would have been applied to the repeated non-compliance with the requirement or standard concerned.;

12. in Article 71a(2), the first subparagraph of point (d) is replaced by the following:

'With regard to aid schemes listed in Annex I to Regulation (EC) No 1782/2003 for which a budgetary ceiling is fixed in accordance with Articles 64(2), 70(2), 71(2), 110p(1), 143b(7), 143ba(2) and 143bc of that Regulation, the Member State shall sum up the amounts resulting from the application of points (a), (b) and (c).;

13. in Article 73a, the following paragraph is inserted after paragraph 2a:

'2b. Member States may decide not to recover unduly allocated entitlements where the total amount unduly allocated to the farmer is EUR 50 or less. Furthermore, when the total value referred to in paragraph 2a concerns EUR 50 or less, Member States may decide not to carry out the recalculation.;

14. in Article 76(2), the following subparagraph is added:

'However, Bulgaria and Romania shall send to the Commission a communication about that proportion of land under permanent pasture in the reference year 2007 referred to in Article 3(7) by 31 March 2008 at the latest.'

Article 2

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

It shall apply to aid applications relating to years or premium periods starting from 1 January 2008.

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

Done at Brussels, 20 December 2007.

For the Commission
Mariann FISCHER BOEL
Member of the Commission