

Commission Regulation (EC) No 370/2009 of 6 May 2009 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

COMMISSION REGULATION (EC) No 370/2009

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003⁽¹⁾, and in particular Article 34(2), second subparagraph and Article 142(c), (d) and (g) thereof,

Whereas:

- (1) Regulation (EC) No 73/2009 has established new rules for the single payment scheme, which apply as from 1 January 2009. As a consequence, the implementing rules laid down in Commission Regulation (EC) No 795/2004⁽²⁾ need to be adapted.
- (2) The definitions as set out in Article 2 of Regulation (EC) No 795/2004 should reflect the extended eligibility of areas under the single payment scheme.
- (3) The provisions on eligibility as set out in Article 3b of Regulation (EC) No 795/2004 are obsolete and should therefore be removed. However, Article 34(2)(a) of Regulation (EC) No 73/2009 includes the use of eligible hectares for non-agricultural activities. A framework of criteria should be set for all Member States.
- (4) Regulation (EC) No 73/2009 puts an end to the set aside obligation and abolishes some of the limitations attached to payment entitlements issued from the national reserve, rendering obsolete the provisions on those matters.
- (5) Article 7 of Regulation (EC) No 795/2004 should be clarified as regards the references to Council Regulation (EC) No 1782/2003⁽³⁾ and Regulation (EC) No 73/2009.
- (6) Regulation (EC) No 73/2009 does not provide any more for special rules on the application procedure to the single payment scheme in its first year of application. Consequently the relevant rules in Regulation (EC) No 795/2004 should be adapted.
- (7) In cases of expiry of the lease referred to in Articles 20 and 22 or the programmes referred to in Article 23 of Regulation (EC) No 795/2004 after the last date for lodging an application under the single payment scheme in its first year of application, the deadline for application for the establishment of payment entitlements should be

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extended in order to provide farmers with sufficient time to lodge an application that reflects the actual situation of the holding.

- (8) The regional limitation as fixed in Article 26 of Regulation (EC) No 795/2004 should be adapted to Article 43(1) of Regulation (EC) No 73/2009.
- (9) Whereas provisions on compulsory set-aside become obsolete, conditions should be kept in 2009 for voluntary set aside as provided for in Article 107 of Regulation (EC) No 1782/2003.
- (10) Where Member States decide to apply Article 72(4) of Regulation (EC) No 73/2009, deadline and content of the communication of this application to the Commission should be fixed.
- (11) Provision should be made for rules for new Member States moving from the single area payment scheme to the single payment scheme. These rules should cover in particular the initial allocation of payment entitlements and special entitlements as well as the notification of the decision.
- (12) Regulation (EC) No 73/2009 provides for the granting of direct support under the single payment scheme for wine producers in particular by transfer from the support programmes for wine into the single payment scheme. The related detailed rules for allocation of entitlements should therefore be adopted. Those detailed rules should follow the same lines as those already laid down in Regulation (EC) No 795/2004 with regard to the fruit and vegetables sector.
- (13) For farmers who have already been allocated, or who bought or received payment entitlements by the last date for applying for the establishment of payment entitlements fixed in accordance with Regulation (EC) No 795/2004, the value and number of their payment entitlements should be recalculated. Payment entitlements subject to special conditions should not be taken into account in this calculation.
- (14) Member States that apply the regional model established in Article 59(1) and (3) or Article 71f of Regulation (EC) No 1782/2003, should be empowered to fix the number of payment entitlements per farmer resulting from the transfer of support programmes for wine in accordance with Part C of Annex IX to Regulation (EC) No 73/2009.
- (15) Provision should be made as regards the regional average in the framework of the determination of the value of payment entitlements in application of Part B of Annex IX (grubbing up) to Regulation (EC) No 73/2009.
- (16) Annex I to Regulation (EC) No 795/2004 fixes the date from which the growing of secondary crops may be temporarily allowed in regions where cereals are usually harvested sooner for climatic reasons as referred to in Article 38, second paragraph of Regulation (EC) No 73/2009. At the request of Spain, different dates should be fixed for the different regions of that Member State to take into account the different agronomic and climatic conditions. The Annex should also be updated to take into account the eligibility of fruit and vegetables in those Member States that do not apply its deferred integration.
- (17) Regulation (EC) No 795/2004 should therefore be amended accordingly.

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- (18) The proposed amendments should apply as from the date of application of Regulation (EC) No 73/2009.
- (19) 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 amended as follows:

1. Article 2 is amended as follows:
 - (a) point (a) is deleted;
 - (b) point (c) is replaced by the following:
 - (c) “permanent crops” shall mean non-rotational crops other than permanent pasture that occupy the land for five years or longer and yield repeated harvests, including nurseries, and short rotation coppice (CN code ex 0602 90 41);;
 - (c) point (d) is deleted;
 - (d) point (f) is replaced by the following:
 - (f) “grassland” shall mean arable land used for grass production (sown or natural); for the purposes of Article 49 of Council Regulation (EC) No 73/2009⁽⁴⁾ grassland shall include permanent pasture;;
2. Article 3b is deleted;
3. the following Article 3c is added in Chapter 1:

Article 3c

Predominantly agricultural use

For the purposes of the application of Article 34(2)(a) of Regulation (EC) No 73/2009, where an agricultural area of a holding is used as well for non-agricultural activities that area shall be considered as being used predominantly for agricultural activities, if the agricultural activity can be exercised without being significantly hampered by the intensity, nature, duration and timing of the non-agricultural activity.

Member States shall establish criteria for the implementation of the first subparagraph on their territory.;

4. Article 6 is amended as follows:
 - (a) paragraph 3 is amended as follows:
 - (i) the second subparagraph is replaced by the following:

The unit value of each payment entitlement he already owns may be increased.;

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- (ii) the third subparagraph is deleted;
 - (b) paragraph 4 is deleted;
- 5. Article 7 is amended as follows:
 - (a) in paragraph 1 the first and the second subparagraphs are replaced by the following:

Where a Member State makes use of the option provided for in Article 42(5) of Regulation (EC) No 1782/2003, it may in particular allocate, upon request, in accordance with this Article, payment entitlements to farmers, in the areas concerned, who declare fewer hectares than the number corresponding to payment entitlements they would be or would have been allocated in accordance with Article 43 of that Regulation and Article 59 of Regulation (EC) No 73/2009.

In that case, the farmer shall give up to the national reserve all the payment entitlement he owns or should have been allocated, except payment entitlements subject to special conditions referred to in Article 49 of Regulation (EC) No 1782/2003.;
 - (b) paragraph 3 is deleted;
 - (c) paragraph 4 is replaced by the following:

4. The unit value of the payment entitlements allocated from the national reserve shall be calculated by dividing the farmer's reference amount by the number of hectares he declares.;
- 6. Article 8 is amended as follows:
 - (a) in paragraph 1, the first subparagraph is replaced by:

Unused payment entitlements shall be deemed to have reverted to the national reserve on the day following the last day for modifying the application under the single payment scheme in the calendar year in which the period referred to in Articles 28(3) and 42 of Regulation (EC) No 73/2009 expires.;
 - (b) paragraph 2 is deleted;
- 7. in Article 9(1), point (c) is deleted;
- 8. in Article 12(4), the first subparagraph is replaced by the following:

The definitive establishment of payment entitlements to be allocated in the first year of the single payment scheme shall be subject to an application for entitlements submitted by the deadline set in accordance with Article 21a(3) of Regulation (EC) No 796/2004.;
- 9. Article 18 is amended as follows:
 - (a) paragraph 3 is deleted;
 - (b) paragraph 4 is replaced by the following:

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4. In cases where the lease referred to in Articles 20 and 22 or the programmes referred to in Article 23 expire after the last date for lodging an application under the single payment scheme in its first year of application, the farmer concerned may apply for the establishment of his payment entitlements, after the expiry of the lease or programme, by a date to be fixed by the Member State but not later than the latest date fixed for amending the aid application in the following year.;
10. in Article 23a the second paragraph is deleted;
11. in Article 24, paragraph 3 is replaced by the following:
3. Farmers may give up voluntarily payment entitlements to the national reserve.;
12. Article 26 is amended as follows:
- (a) paragraph 1 is replaced by the following:
1. Without prejudice to Articles 50(1) and 62(1) of Regulation (EC) No 73/2009 where a Member State makes use of the option provided for in the third subparagraph of Article 43(1) of that Regulation, Member States shall define the region at the appropriate territorial level in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion.;
- (b) paragraph 4 is deleted;
13. Article 32 is replaced by the following:

Article 32

Conditions for voluntary set aside provided for in Article 107 of Regulation (EC) No 1782/2003

- 1 Areas set aside must so remain for a period commencing on 15 January at the latest and ending on 31 August at the earliest. However, Member States shall lay down the conditions under which producers may be authorised to sow seed from 15 July for harvesting in the following year and the conditions to be met for grazing to be authorised from 15 July or, in case of exceptional climatic condition, from 15 June in Member States where transhumance is practised traditionally.
- 2 Member States shall apply suitable measures compatible with the specific situation of areas set aside in order to ensure they are maintained in good agricultural and environmental condition and that the environment is protected.
- Such measures may involve green cover. In that case, the measures shall ensure that the green cover cannot be used for seed production and that it cannot be used for agricultural purposes before 31 August or, before 15 January thereafter, to produce crops for marketing.
- 3 In cases as referred to in Article 31(c) of Regulation (EC) No 73/2009, Member States may authorise all producers affected to use land declared as set aside for animal feed purposes for the year of the single application. Member States shall take all necessary measures to ensure that the set-aside area subject to the authorisation

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is not used for lucrative purposes, and in particular that no fodder produced on that set-aside land is sold. Member States shall notify to the Commission their decision on the authorisation and its justification.;

14. Articles 33, 34, 39, 41 and 43 are deleted;
15. in Article 48, paragraph 6 is replaced by the following:
 6. Member States applying Article 72(4) of Regulation (EC) No 73/2009 shall communicate, at the latest by 7 June 2009, the details of the payments they intend to grant and, in particular the description of the eligibility conditions and the sectors for the measures applied and the financial resources raised.;
16. Chapter 6a is replaced by the following:

CHAPTER 6a

NEW MEMBER STATES

Implementation of single payment scheme in the new Member States having applied single area payment scheme

Article 48a

General provisions

- 1 Save as otherwise provided for in this Chapter, the provisions of this Regulation shall apply to the new Member States having applied the single area payment scheme.
- 2 Any reference in this Regulation to Article 42 of Regulation (EC) No 1782/2003 or to Article 41 of Regulation (EC) No 73/2009 shall be construed as a reference to Article 57 of Regulation (EC) No 73/2009.
- 3 For the purposes of the application of Article 57(3) of Regulation (EC) No 73/2009 the new Member State may set a representative period which is preceding the first year of application of the single payment scheme.
- 4 Any references in this Regulation to the “reference period” shall be construed as a reference to the first year of application of the single payment scheme or to the reference period set under Article 59(3) of Regulation (EC) No 73/2009.

Article 48b

Initial allocation of payment entitlements

- 1 Without prejudice to Article 59(3) of Regulation (EC) No 73/2009, for the purposes of Article 59(2) of Regulation (EC) No 73/2009, new Member States shall establish the number of eligible hectares referred to in that paragraph by using the number of hectares declared for the establishment of the payment entitlements in the first year of application of the single payment scheme.

2 Despite paragraph 1 of this Article, new Member States may establish the number of eligible hectares referred to in Article 59(2) of Regulation (EC) No 73/2009 by using the number of hectares declared for the year preceding the first year of application of the single payment scheme.

In cases where the number of eligible hectares declared by farmers in the first year of application of the single payment scheme is lower than the number of eligible hectares established in accordance with the first subparagraph, a new Member State may re-allocate, in part or in full, the amounts corresponding to the hectares which have not been declared as a supplement to each payment entitlement allocated in the first year of application of the single payment scheme. The supplement shall be calculated by dividing the amount concerned by the number of payment entitlements allocated.

3 The value and number of the payment entitlements allocated on the basis of the farmers' declarations for the establishment of the payment entitlements in the first year of application of the single payment scheme shall be provisional. The definitive value and number shall be established, by 1 April of the year following the first year of application of the single payment scheme at the latest, after the checks made pursuant to Regulation (EC) No 796/2004 are carried out.

4 Where a Member State makes use of the option provided for in Article 59(3) of Regulation (EC) No 73/2009 it may, starting from the calendar year preceding the first year of application of the single payment scheme proceed to the identification of the eligible farmers and the provisional establishment of the number of hectares referred to in that paragraph and to a preliminary verification of the conditions referred to in paragraph 6.

Without prejudice to Article 61 of Regulation (EC) No 73/2009, the value of the entitlements shall be calculated by dividing the amount referred to in Article 59(1) of Regulation (EC) No 73/2009 with the total number of entitlements allocated under this paragraph.

5 The farmer shall be informed about the provisional entitlements at least one month before the deadline for application determined in accordance with Article 56(1) of Regulation (EC) No 73/2009.

6 The applicant shall prove to the satisfaction of the Member State that, at the date of application for the payment entitlements, he is a farmer within the meaning of Article 2(a) of Regulation (EC) No 73/2009.

7 A Member State may decide to set up a minimum size per holding in terms of agricultural area for which the establishment of payment entitlements may be requested. However, the minimum size shall not be higher than the limits set under Article 28(1)(b) of Regulation (EC) No 73/2009.

No minimum size shall be set up for the establishment of the payment entitlements subject to special conditions referred to in Article 60 of Regulation (EC) No 73/2009 as provided for by Article 28(1) of that Regulation.

8 A Member State may decide that the application for the definitive establishment of payment entitlements referred to in paragraph 5 may be lodged at the same time as the application for payment under the single payment scheme.

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Article 48ba

Allocation of special entitlements

Despite paragraphs 1 and 2 of Article 30 of this Regulation, for the purpose of calculating the agricultural activity expressed in livestock units (LU) referred to in Article 44(2) of Regulation (EC) No 73/2009, the number of animals held by the farmer in a period set by the Member State shall be converted to LU by reference to the following conversion table:

Male bovine animals and heifers older than 24 months, suckler cows, dairy cows	1,0 LU
Male bovine animals and heifers from six months to 24 months	0,6 LU
Male, female bovine animals of less than six months	0,2 LU
Sheep	0,15 LU
Goat	0,15 LU

For the purpose of checking the minimum agricultural activity in new Member States paragraphs 3 to 5 of Article 30 of this Regulation apply.

Article 48bb

Notification of the decision

Where a new Member State intends to terminate the application of the single area payment scheme in accordance with Article 122(3) of Regulation (EC) No 73/2009, it shall communicate to the Commission by 1 August of the year preceding the first year of application of the single payment scheme at the latest, the details of the implementation of the single payment scheme, including the options according to Articles 55(3), 57, 59 and 61 of that Regulation as well as the objective criteria on the basis of which the decisions have been taken.;

17. the following Chapter 6d is inserted:

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CHAPTER 6d

WINE

Section 1

Transfer from wine support programmes into the single payment scheme

Article 48i

General rules

1 For the purposes of the establishment of the amount and the determination of payment entitlements in the framework of the transfer from the wine support programmes into the single payment scheme, Part C of Annex IX to Regulation (EC) No 73/2009 shall apply subject to the specific rules established in Article 48j of this Regulation and, in case the Member State has made use of the option provided for in Articles 59 or 71f of Regulation (EC) No 1782/2003, in Article 48k of this Regulation.

2 Member States may proceed to the identification of the eligible farmers as from 1 January 2009 for allocating payment entitlements deriving from the transfer from wine support programmes into the single payment scheme.

3 For the purpose of the application of Articles 7(1) and 12 of this Regulation in relation to the wine sector, the first year of application of the single payment scheme shall be the year of the determination by the Member State of the amounts and eligible hectares as referred to in Part C of Annex IX to Regulation (EC) No 73/2009.

Article 48j

Specific rules

1 If the farmer does not own payment entitlements or only entitlements subject to special conditions by the last date for applying for the establishment of payment entitlements fixed in accordance with this Regulation, he shall receive payment entitlements for wine calculated in accordance with Part C of Annex IX to Regulation (EC) No 73/2009.

The first subparagraph shall also apply when the farmer has leased in payment entitlements between the first year of the application of the single payment scheme and the year of the transfer from support programmes.

2 If the farmer has been allocated or has bought or received payment entitlements by the last date for applying for the establishment of payment entitlements fixed in accordance with this Regulation, the value and number of the payment entitlements he owns shall be recalculated as follows:

- a the number of payment entitlements shall be equal to the number of payment entitlements he owns, increased by the number of hectares established in accordance with Part C of Annex IX to Regulation (EC) No 73/2009;

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- b the value shall be obtained by dividing the sum of the value of the payment entitlements he owns and the reference amount calculated in accordance with Part C of Annex IX to Regulation (EC) No 73/2009 by the number established in accordance with point (a) of this paragraph.

Payment entitlements subject to special conditions shall not be taken into account in the calculation referred to in this paragraph.

- 3 Payment entitlements leased out before the date for lodging an application under the single payment scheme fixed in accordance with this Regulation shall be taken into account in the calculation referred to in paragraph 2.

Article 48k

Regional implementation

- 1 Where a Member State has made use of the option provided for in Article 59 or Article 71f of Regulation (EC) No 1782/2003, farmers shall receive a number of payment entitlements equal to the number of new eligible hectares under vineyards.

The value of the payment entitlement is calculated on the basis of objective and non-discriminatory criteria.

The first year of application for the wine sector pursuant to Article 59(4) or Article 71f of Regulation (EC) No 1782/2003 shall be 2009.

- 2 By way of derogation from paragraph 1, Member States may establish the number of entitlements per farmer on the basis of objective criteria in accordance with Part C of Annex IX to Regulation (EC) No 73/2009.

Section 2

Grubbing up

Article 48l

Regional average

For the purposes of determining the value of payment entitlements in application of Part B of Annex IX (grubbing up) to Regulation (EC) No 73/2009, the regional average shall be established by Member States at the appropriate territorial level. It shall be established at a date to be fixed by the Member State. It may be reviewed annually. It shall be based on the value of the payment entitlements allocated to the farmers in the region concerned. It shall not be differentiated per sector of production.;

18. Annex I is replaced by the text set out in the Annex to this Regulation.

Article 2

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

It shall apply from 1 January 2009.

Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 370/2009. (See end of Document for details)

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

Done at Brussels, 6 May 2009.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

Changes to legislation: There are currently no known outstanding effects for the
Commission Regulation (EC) No 370/2009. (See end of Document for details)

ANNEX

ANNEX I	Member State	Date	Denmark	15 July	Germany	15 July	Spain: Castilla-La Mancha	15 July
							Spain: Aragón, Asturias, Baleares, Cantabria, Castilla y León, Cataluña, Galicia, Madrid, Murcia, País Vasco, La Rioja, Comunidad Valenciana	15 July
							Spain: Andalucía	1 September
							Spain: Extremadura	15 September
							Spain: Navarra	15 August
							France: Aquitaine, Midi-Pyrénées and Languedoc-Roussillon	1 July
							France: Alsace, Auvergne, Burgundy, Brittany, Centre, Champagne-Ardenne, Corsica, Franche-Comté, Île-de-France, Limousin, Lorraine, Nord-Pas-de-Calais, Lower Normandy, Upper Normandy, Loire Region (except the departments of Loire-Atlantique and Vendée), Picardy, Poitou-Charentes, Provence-Alpes-Côte-d'Azur and Rhône-Alpes	15 July
							France: departments of Loire-Atlantique and Vendée	15 October
							Italy	11 June
							Austria	30 June

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- (1) OJ L 30, 31.1.2009, p. 16.
- (2) OJ L 141, 30.4.2004, p. 1.
- (3) OJ L 270, 21.10.2003, p. 1.
- (4) OJ L 30, 31.1.2009, p. 16.;

Changes to legislation:

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