

Commission Regulation (EC) No 484/2009 of 9 June 2009 amending Regulation (EC) No 1975/2006 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures

COMMISSION REGULATION (EC) No 484/2009

of 9 June 2009

amending Regulation (EC) No 1975/2006 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)<sup>(1)</sup>, and in particular Articles 51(4), 74(4) and 91 thereof,

Whereas:

- (1) Following the amendments to Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulations (EC) No 1782/2003 and (EC) No 73/2009, as well as for the implementation of cross compliance provided for in Council Regulation (EC) No 479/2008<sup>(2)</sup> the references to that Regulation contained in Commission Regulation (EC) No 1975/2006<sup>(3)</sup> should be updated.
- (2) Furthermore, 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<sup>(4)</sup> is applicable from 1 January 2009. Regulation (EC) No 1975/2006 should therefore be adapted to take into account references to Regulation (EC) No 73/2009.
- (3) Experience has shown that there are gaps and obsolete provisions in Regulation (EC) No 1975/2006 that should be filled or deleted in order to ensure correct understanding and consistency of the text.
- (4) Certain provisions of Regulation (EC) No 796/2004, such as those allowing the announcement of on-the-spot checks contained in Article 23a, those defining the exceptions from the application of reductions and exclusions laid down in Article 68 and those provided for in Article 71(2), should be made generally applicable for the purpose of Regulation (EC) No 1698/2005.

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- (5) For the sake of clarity, when applying the control rules concerning rural development support for certain measures under Axis 2 and Axis 4, as laid down in Part II, Title I, of Regulation (EC) No 1975/2006, reference should be made to the definition and principles of agricultural parcels contained in Regulation (EC) No 796/2004.
- (6) As regards on-the-spot checks relating to the measure set out in Article 36(a)(iv) of Regulation (EC) No 1698/2005, it should be clarified that the 5 % minimum requirement has to be achieved at the measure level.
- (7) Experience has shown that it is necessary to clarify certain provisions, especially as regards reductions in the case of over-declaration of certain area and animal-related measures and the accumulation of reductions.
- (8) For the sake of clarity, certain references to European Agricultural Fund for Rural Development (EAFRD) year should be amended to refer to calendar year.
- (9) The provision of Regulation (EC) No 1975/2006 concerning selection of the control sample for verification of cross-compliance should be redrafted to take account of the amended Article 45 of Regulation (EC) No 796/2004, and a new mechanism should be added to increase the effectiveness of the control system.
- (10) To make for consistent application of reductions in cases of negligence or intentional non-compliance, it is necessary to specify the area of cross-compliance in which the minimum requirements for fertilisers and plant protection product use referred to in Article 39(3) of Regulation (EC) No 1698/2005 are to be classified.
- (11) The order of the reductions to be applied in cases of accumulation of reductions in the context of verification of cross-compliance should be amended to ensure a more consistent sequence.
- (12) In order to cover non-area or animal-related measures, the requirement of a control report should be included as regards on-the-spot checks of support under Axis 1 and Axis 3 and certain measures under Axis 2 and Axis 4.
- (13) Experience has shown that it is necessary to clarify annual notification requirements.
- (14) Information on the results of any type of controls should be made available to all paying agencies responsible for the management of the different support schemes so that, where the findings so justify, they can apply cross-compliance and eligibility reductions at the same time.
- (15) Regulation (EC) No 1975/2006 should therefore be amended accordingly.
- (16) In order to allow sufficient time for Member States to adjust their control procedures and to avoid accountability problems that could occur in case the application starts in the middle of the year, this Regulation should apply from 1 January 2010. However, with a view to preserving legal certainty, the derogation on the reductions resulting from Article 138(1) of Commission Regulation (EC) No 1973/2004 of 29 October 2004 laying down detailed rules for the application of Council Regulation (EC) No 1782/2003 as regards the support schemes provided for in Titles IV and IVa of that Regulation and the use of land set aside for the production of raw materials<sup>(6)</sup>, as applicable to the

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beneficiaries in Member States applying the single area payment scheme; should be maintained for aid applications relating to calendar year 2009.

- (17) The measures provided for in this Regulation are in accordance with the opinion of the Rural Development Committee,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 1975/2006 is amended as follows:

1. Article 2 is replaced by the following:

*Article 2*

**Application of Regulation (EC) No 796/2004**

Without prejudice to specific provisions of this Regulation, Articles 5, 22, 23, 23a(1), 68, 69, 71(2) and 73 of Regulation (EC) No 796/2004 shall apply *mutatis mutandis*;

2. Article 7 is replaced by the following:

*Article 7*

**Application of Regulation (EC) No 796/2004**

Article 2(10), (22) and (23) and Articles 9, 14(1a), 18 and 21 of Regulation (EC) No 796/2004 shall apply *mutatis mutandis* for the purpose of this Title.

Articles 2(1a), 6(1) and 8(1) of Regulation (EC) No 796/2004 shall also apply *mutatis mutandis*. However, for the measures referred to in Article 36(b)(iii), (iv) and (v) of Regulation (EC) No 1698/2005, Member States may establish appropriate alternative systems to uniquely identify the land subject to support.;

3. in Article 8, paragraph 3 is replaced by the following:

3. Articles 11(3), 12, 15 and 20 of Regulation (EC) No 796/2004 shall apply *mutatis mutandis* to payment claims under this Title. Further to the information referred to in Article 12(1)(d) of that Regulation, payment claims shall also contain the information set out in that provision with regard to non-agricultural land for which support is being claimed.;

4. Article 12 is amended as follows:

- (a) paragraph 1 is replaced by the following:

1. The total number of on-the-spot checks related to payment claims presented during each calendar year shall cover at least 5 % of all beneficiaries subject to a commitment under one or more of the measures falling within the scope of this Title. However, for the measure set out in Article 36(a)(iv) of Regulation (EC) No 1698/2005 this minimum requirement has to be achieved at the measure level.

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Applicants found not to be eligible after administrative checks shall not form part of the overall number of beneficiaries referred to in the first subparagraph.;

(b) paragraph 3 is replaced by the following:

3. The control sample referred to in the first subparagraph of paragraph 1 shall be selected in accordance with Article 27 of Regulation (EC) No 796/2004.;

5. Article 16 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

1. The basis for calculation of the aid in respect of area-related measures shall be established in accordance with Article 50(1), (3) and (7) of Regulation (EC) No 796/2004.

For the purpose of the application of this Article, areas declared by a beneficiary which receive the same rate of aid under a certain area-related measure shall be considered as forming one crop group. However, where degressive aid amounts are used, the average of these values in relation to the respective areas declared shall be taken into account.

Where a maximum limit or a ceiling has been set for the area eligible for support, the number of hectares shown in the aid application shall be reduced to the limit or ceiling set.

2. Where the area declared for payment for the crop group concerned exceeds the area determined in accordance with Article 50(3) of Regulation (EC) No 796/2004, the aid shall be calculated on the basis of the area determined minus twice the difference where that difference is more than either 3 % or two hectares, but no more than 20 % of the area determined.

Where the difference is more than 20 % of the area determined, no aid shall be granted for the crop group concerned.

Where the difference is more than 50 %, the beneficiary shall be excluded once again from receiving aid up to the difference between the area declared and the area determined in accordance with Article 50(3) of Regulation (EC) No 796/2004.;

(b) paragraph 3 is deleted;

(c) paragraph 4 is replaced by the following:

4. By way of derogation from paragraph 2 and the first subparagraph of paragraph 3, for beneficiaries in Member States applying the single area payment scheme as provided for in Article 122 of Council Regulation (EC) No 73/2009<sup>(6)</sup>, and where the difference between the area declared and the area determined is more than 3 % but no more than 30 % of the area determined, the amount to be granted shall be reduced, as regards aid applications for the calendar year 2009, by twice the difference found.

Where the difference is more than 30 % of the area determined, no aid shall be granted for calendar year 2009.;

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(d) paragraphs 5 and 6 are replaced by the following:

5. Where differences between the area declared and the area determined in accordance with Article 50(3) of Regulation (EC) No 796/2004 are the result of irregularities committed intentionally, the beneficiary shall be excluded from the aid to which he would have been entitled pursuant to that Article for the calendar year in question for the area-related measure concerned where that difference is more than 0,5 % of the area determined or more than one hectare.

Moreover, where that difference is more than 20 % of the area determined, the beneficiary shall be excluded once again from receiving aid up to the difference between the area declared and the area determined in accordance with Article 50(3) of Regulation (EC) No 796/2004.

6 The amount resulting from the exclusions provided for in the third subparagraph of paragraph 2 and in paragraph 5 of this Article shall be offset against aid payments under any of the support measures under Regulation (EC) No 1698/2005 or Regulation (EC) No 73/2009 to which the beneficiary concerned is entitled in the context of applications he lodges in the course of the three calendar years following the calendar year of the finding. If the amount cannot be fully offset against those payments, the outstanding balance shall be cancelled.;

6. Article 17 is amended as follows:

(a) paragraph 1 is replaced by the following:

1. The basis for the calculation of the aid in respect of animal-related measures shall be established in accordance with Article 57 of Regulation (EC) No 796/2004.;

(b) paragraph 3 is replaced by the following:

3. By way of derogation from the third subparagraph of Article 59(2) and the second subparagraph of Article 59(4) of Regulation (EC) No 796/2004, the amount resulting from the exclusion shall be offset against aid payments under any of the support measures under Regulation (EC) No 1698/2005 or Regulation (EC) No 73/2009 to which the beneficiary concerned is entitled in respect of any applications he lodges in the three calendar years following the calendar year of the finding. Where the amount cannot be fully offset against those payments, the outstanding balance shall be cancelled.;

7. Article 18 is amended as follows:

(a) paragraph 3 is replaced by the following:

3. Where non-respect results from irregularities committed intentionally, the beneficiary shall be excluded from the measure in question both for the calendar year concerned and for the following calendar year.;

(b) paragraph 4 is deleted;

8. in Article 19, paragraph 2 is replaced by the following:

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2. Articles 4(2) and 22 of Regulation (EC) No 73/2009 and Article 2(2), (2a) and (31) to (36) and Articles 41, 42, 43, 46, 47 and 48 of Regulation (EC) No 796/2004 shall apply with regard to controls of cross-compliance.;
9. Articles 20 and 21 are replaced by the following:

*Article 20*

**On-the-spot checks**

- 1 As regards the requirements and standards for which it is responsible, the competent control authority shall carry out on-the-spot checks on at least 1 % of all beneficiaries submitting payment claims under Article 36(a)(i) to (v) and (b)(i), (iv) and (v) of Regulation (EC) No 1698/2005.
- 2 The second and third subparagraphs of Article 44(1), Article 44(1a) and (2) of Regulation (EC) No 796/2004 shall apply.

*Article 21*

**Selection of the control sample**

- 1 Article 45(1), (1a) and (1b) of Regulation (EC) No 796/2004 shall apply as regards selection of the control sample for carrying out on-the-spot checks referred to in Article 20 of this Regulation.
- 2 The samples of beneficiaries to be checked in accordance with Article 20 shall be selected from the sample of beneficiaries which were already selected pursuant to Article 12 and to whom the relevant requirements or standards apply.
- 3 However, the samples of beneficiaries to be checked in accordance with Article 20 of this Regulation may be selected from the population of beneficiaries submitting payment claims under Article 36(a)(i) to (v) and (b)(i), (iv) and (v) of Regulation (EC) No 1698/2005 who are under obligation to meet the respective requirements or standards.
- 4 It may be decided to proceed by a combination of the procedures set out in paragraphs 2 and 3 where such a combination increases the effectiveness of the control system.;
10. in Article 22, paragraph 1 is replaced by the following:
1. Article 22 of Regulation (EC) No 73/2009 and Articles 2(2), (2a) and (31) to (36), 41 and 65(4) of Regulation (EC) No 796/2004 shall apply with regard to reductions or exclusions to be applied following any finding of non-compliance.;
11. Articles 23 and 24 are replaced by the following:

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### Article 23

#### Calculation of reductions and exclusions

- 1 Without prejudice to Article 51(2) of Regulation (EC) No 1698/2005, where non-compliance is determined, a reduction shall be applied to the overall amount of aid under Article 36(a)(i) to (v) and (b)(i), (iv) and (v) of that Regulation that has been, or is to be, granted to the beneficiary concerned following payment claims he has submitted or will submit in the course of the calendar year of the finding.

Where non-compliance is due to negligence on the part of the beneficiary, the reduction shall be calculated in accordance with the rules set out in Article 66 of Regulation (EC) No 796/2004.

In the case of intentional non-compliance, the reduction shall be calculated in accordance with Article 67(1) of Regulation (EC) No 796/2004.

- 2 For the purposes of calculating the reduction referred to in paragraph 1, the minimum requirements for the use of fertilisers and plant protection products as defined in Article 39(3) of Regulation (EC) No 1698/2005 shall be considered as part of the area of “environment” and the area of “public, animal and plant health” respectively, as defined in Article 5(1) of Regulation (EC) No 73/2009. They are each equalised to an “act” within the meaning of Article 2(32) of Regulation (EC) No 796/2004.

### Article 24

#### Accumulation of reductions

Where there is an accumulation of reductions, they shall be applied first in accordance with Articles 16 or 17 of this Regulation, then in accordance with Article 18 of this Regulation, then for late submission in accordance with Article 21 of Regulation (EC) No 796/2004, then in accordance with Article 14(1a) of Regulation (EC) No 796/2004 and finally in accordance with Articles 22 and 23 of this Regulation.;

12. Article 27 is amended as follows:
- (a) paragraph 2 is replaced by the following:
    - 2. The expenditure controlled shall represent at least 4 % of the eligible public expenditure that has been declared to the Commission each calendar year and at least 5 % of the eligible public expenditure declared to the Commission over the whole programming period.;
  - (b) paragraph 5 is deleted;
13. in Article 28(1), point (a) is replaced by the following:
- (a) that the payment claims submitted by the beneficiary can be supported by accounting or other documents held by the bodies or firms carrying out the operations supported.;
14. the following Article 28a is inserted:

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### Article 28a

#### Control report

On-the-spot checks under this Section shall be the subject of a control report. Article 28 of Regulation (EC) No 796/2004 shall apply *mutatis mutandis*;

15. in Article 30, paragraph 3 is replaced by the following:
  3. The ex-post checks shall cover each calendar year at least 1 % of eligible public expenditure for operations referred to in paragraph 1 for which the final payment has been made from the EAFRD. They shall be carried out within 12 months of the end of the respective calendar year.
16. Article 31 is amended as follows:
  - (a) in paragraph 1, the fourth subparagraph is replaced by the following:

However, no reduction shall be applied if the beneficiary can demonstrate that he/she is not at fault for the inclusion of the ineligible amount.

The reductions shall be applied *mutatis mutandis* to ineligible expenditure identified during checks under Articles 27 and 30.;
  - (b) paragraph 2 is replaced by the following:
    2. Where a beneficiary is found to have intentionally made a false declaration, the operation in question shall be excluded from support from the EAFRD and any amounts already paid for that operation shall be recovered. Moreover, the beneficiary shall be excluded from receiving support under the same measure for the calendar year in question and for the following calendar year.;
  - (c) paragraph 3 is deleted.
17. Article 34 is replaced by the following:

### Article 34

#### Notifications

Member States shall send to the Commission by 15 July each year a report:

- (a) covering the results of the checks on payment claims submitted under Title I during the previous calendar year and relating, in particular, to the following points:
  - (i) the number of payment claims for each measure, the total amount checked for these claims, as well as the total area and total number of animals covered by on-the-spot checks under Articles 12 and 20;
  - (ii) for area-related support, the total area broken down by individual aid scheme;



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- (iii) for animal-related measures, the total number of animals broken down by individual aid scheme;
  - (iv) the result of the checks carried out, indicating the reductions and exclusions applied pursuant to Articles 16, 17, 18 and 23;
  - (b) covering the results of administrative checks for measures under Title II during the previous calendar year pursuant to Article 26 and the reductions and exclusions applied pursuant to Article 31;
  - (c) covering the results of the on-the-spot checks for measures under Title II and representing at least 4 % of the public expenditure that has been declared to the Commission in the previous calendar year pursuant to Article 27 and the reductions and exclusions applied pursuant to Article 31;
  - (d) covering the results of ex-post checks during the previous calendar year pursuant to Article 30 and indicating the number of checks carried out, the amount of expenditure verified and the reductions and exclusions applied pursuant to Article 31.;
18. Article 36 is replaced by the following:

#### *Article 36*

#### **Reporting of controls to the paying agencies**

- 1 Where, for a beneficiary, more than one paying agency is responsible for the management of different payments as laid down under Article 36(a)(i) to (v) and (b) (i), (iv) and (v) of Regulation (EC) No 1698/2005, under Article 2(d) of Regulation (EC) No 73/2009 and under Articles 11, 12 and 98 of Council Regulation (EC) No 479/2008<sup>(7)</sup>, Member States shall ensure that determined non-compliances and, where appropriate, the corresponding reductions and exclusions are brought to the attention of all paying agencies involved in those payments.
- 2 Where controls are not carried out by the paying agency, the Member State shall ensure that sufficient information on the controls carried out is received by the paying agency. It is for the paying agency to define its needs for information.
- The information referred to in the first subparagraph may be a report on every control carried out or, if appropriate, be in the form of a summary report.
- 3 A sufficient audit trail shall be maintained. An indicative description of the requirements of a satisfactory audit trail is given in the Annex.
- 4 The paying agency shall have the right to verify the quality of controls carried out by other bodies, and to receive all other information it needs for the execution of its functions.

#### *Article 2*

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

It shall apply from 1 January 2010 with the exception of point 5(c) of Article 1, which shall apply from 1 January 2009.

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

Done at Brussels, 9 June 2009.

*For the Commission*

Mariann FISCHER BOEL

*Member of the Commission*

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- (1) OJ L 277, 21.10.2005, p. 1.
- (2) OJ L 141, 30.4.2004, p. 18.
- (3) OJ L 368, 23.12.2006, p. 74.
- (4) OJ L 30, 31.1.2009, p. 16.
- (5) OJ L 345, 20.11.2004, p. 1.
- (6) OJ L 30, 31.1.2009, p. 16.’;
- (7) OJ L 148, 6.6.2008, p. 1.’

**Changes to legislation:**

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