

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 Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (repealed)

## PART II

### THE INTEGRATED ADMINISTRATION AND CONTROL SYSTEM

#### TITLE III

#### CONTROLS

##### CHAPTER I

#### COMMON RULES

##### *Article 23*

#### **General principles**

- 1 Administrative and on-the-spot checks provided for in this Regulation shall be made in such a way as to ensure effective verification of compliance with the terms under which aids are granted and of the requirements and standards relevant for cross-compliance.
- 2 The applications for aid concerned shall be rejected if the farmer or his representative prevents an on-the-spot check from being carried out.

##### CHAPTER II

#### CONTROLS WITH REGARD TO ELIGIBILITY CRITERIA

##### Section I

#### **Administrative checks**

##### *Article 24*

#### **Cross-checks**

- 1 The administrative checks referred to in Article 23 of Regulation (EC) No 1782/2003 shall permit the detection of irregularities, in particular the automated detection using computerised means, including cross-checks:

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*Changes to legislation: There are outstanding changes not yet made to Commission Regulation (EC) No 796/2004 (repealed). Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)*

- a on declared payment entitlements and on declared parcels, respectively, in order to avoid undue multiple granting of the same aid in respect of the same calendar or marketing year and to prevent any undue cumulating of aid granted under area-related aid schemes listed in Annexes I and V to Regulation (EC) No 1782/2003;
- b on the payment entitlements to verify their existence and the eligibility for aid;
- c between the agricultural parcels as declared in the single application and the reference parcels as contained in the identification system for agricultural parcels to verify the eligibility for aid of the areas as such;
- d between the payment entitlements and the area determined in order to verify that the entitlements are accompanied by an equal number of eligible hectares as defined in Article 44(2) and Article 54(2), respectively, of Regulation (EC) No 1782/2003;
- e by means of the computerised database for bovine animals, to verify eligibility for the aid and to avoid undue multiple granting of the same aid in respect of the same calendar year;
- f where supporting documents, contracts or growing declarations have to be submitted and where applicable, between the agricultural parcels as declared in the single application and in the supporting documents, contracts or growing declaration to verify the eligibility for aid of the area;
- g between the agricultural parcels as declared in the single application and plots subjected to official examination that have been found to comply with the requirements of the Directives referred to in Article 1(1) of Council Regulation (EEC) No 1674/72 of 2 August 1972 laying down general rules for granting and financing aid for seed<sup>(1)</sup>;
- [<sup>F1</sup>h between the agricultural parcels declared by producer groups in accordance with Article 15a, the corresponding parcels declared by the members of the producer group in accordance with the second subparagraph of Article 14(1), and the reference parcels as contained in the identification system for agricultural parcels to verify the eligibility for the aid;]
- [<sup>F2</sup>i between the agricultural parcels as declared in the single application and the parcels authorised for cotton production by the Member State in accordance with Article 110b of Regulation (EC) No 1782/2003;
- j between the declarations of the farmers in the single application to be a member of an approved inter-branch organisation, the information under Article 13(10)(b) of this Regulation and the information transmitted by the approved inter-branch organisations concerned, to verify eligibility for the increase of the aid provided for in Article 110f(2) of Regulation (EC) No 1782/2003<sup>[<sup>F3</sup>];]</sup>
- [<sup>F4</sup>k between the information provided in the delivery contract referred to in Article 110r of Regulation (EC) No 1782/2003 and the information on deliveries provided by the sugar manufacturer.]

2 Indications of irregularities resulting from cross-checks shall be followed-up by any other appropriate administrative procedure, and where necessary, by an on-the-spot check.

[<sup>F2</sup>Where a reference parcel is subject to an aid application of two or more farmers under the same aid scheme and where the overall area declared exceeds the agricultural area with a difference which falls within the measurement tolerance defined in accordance with Article 30(1), Member States may provide for a proportional reduction of the areas concerned. In that case, farmers concerned may appeal against the decision of reduction on the grounds that any of the other farmers concerned over-declared their areas beyond that tolerance to his detriment.]

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### **Textual Amendments**

- F1** Inserted by Commission Regulation (EC) No 239/2005 of 11 February 2005 amending and correcting 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.
- F2** Inserted by Commission Regulation (EC) No 2184/2005 of 23 December 2005 amending Regulations (EC) No 796/2004 and (EC) No 1973/2004 laying down detailed rules for the application of 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.
- F3** Substituted by Commission Regulation (EC) No 659/2006 of 27 April 2006 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.
- F4** Inserted by Commission Regulation (EC) No 659/2006 of 27 April 2006 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.

## **Section II**

### **on-the-spot checks**

#### **Sub-section I**

### **Common provisions**

#### *Article 25*

### **General principles**

1 On-the-spot checks shall be unannounced. However, provided that the purpose of the control is not jeopardised, advance notice may be given, strictly limited to the minimum time period necessary. Such notice shall, except in duly justified cases, not exceed 48 hours.

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.

#### *Article 26*

### **Control rate**

1 The total number of on-the-spot checks carried out each year shall cover at least 5 % of all farmers submitting a single application.

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Subject to the third subparagraph, in the following cases the Member States shall draw additional control samples of at least:

- a 5 % of all farmers applying for aid for starch potato provided for in Chapter 6 of Title IV of Regulation (EC) No 1782/2003;
- b 5 % per species of seed for which aid is claimed in accordance with Article 99 of Regulation (EC) No 1782/2003;
- [<sup>F5</sup>c 5 % of all farmers applying for the tobacco aid provided for in Chapter 10c of Title IV of Regulation (EC) No 1782/2003;
- [<sup>F6</sup>d 5 % of all farmers applying for the aid for nuts provided for in Chapter 4 of Title IV of Regulation (EC) No 1782/2003[<sup>F3</sup>;]]
- [<sup>F4</sup>e 5 % of all 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.]

[<sup>F3</sup>Where the control sample drawn under the first subparagraph already contains applicants for the aids referred to in points (a) to (e) of the second subparagraph, those applicants may be counted towards the control rates stipulated therein.]

2 The total number of on-the-spot checks carried out each year shall, moreover, cover at least:

- a the minimum control rate of 30 % or 20 % of the areas declared for the production of hemp as referred to in Article 52 of Regulation (EC) No 1782/2003.  
  
Where a Member State has already introduced a system of prior approval for such cultivation and has already notified the Commission of its detailed rules and conditions linked to that system prior to the entry into force of this Regulation, any amendments to those detailed rules or conditions shall be notified to the Commission without undue delay.
- b 5 % of all farmers applying for aid under the bovine aid schemes. However, where the computerised database for bovine animals does not offer the level of assurance and implementation necessary for the proper management of the aid schemes involved the percentage shall be increased to 10 %. Those on-the-spot checks shall also cover at least 5 % of all animals per aid scheme for which aid is applied for;
- c 10 % of all farmers applying for aid under the ovine/caprine aid scheme irrespective of whether the aid applications are being submitted as part of the single application or independently;
- d 2 % of all milk producers applying for the dairy premium and/or additional payments[<sup>F7</sup>;]
- [<sup>F1</sup>e 5 % of all farmers whose agricultural parcels are being declared by a producer group applying for hops payments in accordance with Article 15a[<sup>F5</sup>;]]
- [<sup>F2</sup>f as regards aid applications for the crop specific payment for cotton in accordance with Chapter 10a of Title IV of Regulation (EC) No 1782/2003, 20 % of the inter-branch organisations approved in accordance with Article 110d of that Regulation and of which farmers declare to be a member in their single applications;
- g as regards applications for the tobacco aid in accordance with Chapter 10c of Title IV of Regulation (EC) No 1782/2003, 5 % of first processors as regards checks during first processing and market preparation[<sup>F3</sup>;]]
- [<sup>F4</sup>h as regards applications for the aid for sugar beet and cane producers provided for in Chapter 10f of Title IV of Regulation (EC) No 1782/2003, concerning controls at the sugar manufacturers on the quantity quota sugar obtained from sugar beets and cane delivered in accordance with Article 110r of that Regulation, at least 5 % of the applicants delivering to the manufacturer concerned.]

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3 Should on-the-spot checks reveal significant irregularities in the context of a given aid scheme or in a region or part of a region, the competent authority shall appropriately increase the number of on-the-spot checks during the current year and shall appropriately increase the percentage of farmers to be checked on-the-spot in the following year.

4 Where it is provided that particular elements of an on-the-spot check may be carried out on the basis of a sample, that sample shall guarantee a reliable and representative level of control. Member States shall establish the criteria for the selection of the sample. If the checks on that sample reveal irregularities, the extent and scope of the sample shall be extended appropriately.

#### **Textual Amendments**

- F1** Inserted by Commission Regulation (EC) No 239/2005 of 11 February 2005 amending and correcting 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.
- F2** Inserted by Commission Regulation (EC) No 2184/2005 of 23 December 2005 amending Regulations (EC) No 796/2004 and (EC) No 1973/2004 laying down detailed rules for the application of 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.
- F3** Substituted by Commission Regulation (EC) No 659/2006 of 27 April 2006 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.
- F4** Inserted by Commission Regulation (EC) No 659/2006 of 27 April 2006 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.
- F5** Substituted by Commission Regulation (EC) No 2184/2005 of 23 December 2005 amending Regulations (EC) No 796/2004 and (EC) No 1973/2004 laying down detailed rules for the application of 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.
- F6** Substituted by Commission Regulation (EC) No 263/2006 of 15 February 2006 amending Regulations (EC) No 796/2004 and (EC) No 1973/2004 as regards nuts.
- F7** Substituted by Commission Regulation (EC) No 239/2005 of 11 February 2005 amending and correcting 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.

#### *Article 27*

#### **Selection of the control sample**

1 [F5Control samples for on-the-spot checks under this Regulation shall be selected by the competent authority on the basis of a risk analysis and representativeness of the aid applications submitted. The effectiveness of risk analysis parameters used in previous years shall be assessed on an annual basis.]

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To provide the element of representativeness, the Member States shall select randomly between 20 % and 25 % of the minimum number of farmers to be subjected to on-the-spot checks as provided for in Article 26(1) and (2).

[<sup>F4</sup>However, if the number of farmers to be subjected to on-the-spot checks exceeds the minimum number of farmers to be subjected to on-the-spot checks as provided for in Article 26(1) and (2), the percentage of randomly selected farmers in the additional sample should not exceed 25 %.]

- 2 The risk analysis shall take account of:
- a the amount of aid involved;
  - b the number of agricultural parcels and the area or number of animals for which aid is requested;
  - c changes from the previous year;
  - d the findings of checks made in past years;
  - e cases of non-compliance with Regulation (EC) No 1760/2000 and Regulation (EC) No 21/2004;
  - f those farmers who are either just above or below ceilings or limits relevant for the granting of aids;
  - g replacements of animals pursuant to Article 58 of this Regulation;
  - h compliance with Article 49(2) of Regulation (EC) No 1782/2003;
  - i the quantity of potatoes intended for the manufacture of potato starch with regard to the area declared in the cultivation contract referred to in Article 13(7);
  - j in the case of an application for seed aid provided for in chapter 9 of Title IV of Regulation (EC) No 1782/2003, the quantity of certified seeds in relation to the area declared;
  - [<sup>F5</sup>k in the case of applications for the tobacco aid provided for in Chapter 10c of Title IV of Regulation (EC) No 1782/2003, the quantities of raw tobacco, by variety, covered by cultivation contracts in relation to the areas declared as under tobacco;
  - l in the case of checks on first processing undertakings in the framework of applications for the tobacco aid provided for in Chapter 10c of Title IV of Regulation (EC) No 1782/2003, the different sizes of undertakings;
  - m other factors to be defined by the Member States.]
- 3 The competent authority shall keep records of the reasons for the selection of each farmer for an on-the-spot check. The inspector carrying out the on-the-spot check shall be informed accordingly prior to the commencement of the on-the-spot check.

#### Textual Amendments

- F4** Inserted by Commission Regulation (EC) No 659/2006 of 27 April 2006 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.
- F5** Substituted by Commission Regulation (EC) No 2184/2005 of 23 December 2005 amending Regulations (EC) No 796/2004 and (EC) No 1973/2004 laying down detailed rules for the application of 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.

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## Article 28

### Control report

1 Every on-the-spot check under this Section shall be the subject of a control report which makes it possible to review the details of the checks carried out. The report shall indicate in particular:

- a the aid schemes and applications checked;
- b the persons present;
- [<sup>F5</sup>c the agricultural parcels checked, the agricultural parcels measured including, where applicable, the number of olive trees and their positioning in the parcel, the result of the measurements per measured agricultural parcel and the measuring methods used;]
- d the number and type of animals found and, where applicable, the ear tag numbers, entries in the register and in the computerised database for bovine animals and any supporting documents checked, the results of the checks and, where applicable, particular observations in respect of individual animals and/or their identification code;
- e whether notice was given to the farmer of the visit and, if so, the period of advance notification;
- f indications of any specific control measures to be carried out in the context of individual aid schemes;
- g indication of any further control measures carried out.

2 The farmer shall be given the opportunity to sign the report to attest his presence at the check and to add observations. Where irregularities are found the farmer shall receive a copy of the control report.

Where the on-the-spot check is carried out by means of remote sensing in accordance with Article 32, the Member States may decide not to give the farmer or his representative the opportunity to sign the control report if no irregularities are revealed during the check by remote-sensing. If irregularities are revealed as a consequence of such checks the opportunity to sign the report shall be given before the competent authority draws its conclusions from the findings with regard to any resulting reductions or exclusions.

#### Textual Amendments

- F5** Substituted by [Commission Regulation \(EC\) No 2184/2005 of 23 December 2005 amending Regulations \(EC\) No 796/2004 and \(EC\) No 1973/2004 laying down detailed rules for the application of 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.](#)

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## Sub-section II

### **on-the-spot checks of the Single applications with regard to area-related aid schemes**

#### *Article 29*

#### **Elements of the on-the-spot checks**

On-the-spot checks shall cover all the agricultural parcels for which aid is requested under aid schemes listed in Annex I to Regulation (EC) No 1782/2003, except those related to applications for seed aid in accordance with Article 99 of that Regulation. However, 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 for which applications have been submitted.

#### *Article 30*

#### **Determination of areas**

[<sup>F51</sup> Agricultural parcel areas shall be determined by any appropriate means defined by the competent authority which ensure measurement of a precision at least equivalent to that required for official measurements under the national rules. A measurement tolerance may be defined by the competent authority that shall not exceed:

- a for parcels of less than 0,1 ha, a buffer of 1,5 m applied to the perimeter of the agricultural parcel;
- b for other parcels, 5 % of the agricultural parcel area or a buffer of 1,5 m applied to the perimeter of the agricultural parcel. However, the maximum tolerance with regard to each agricultural parcel shall not, in absolute terms, exceed 1,0 ha.

The tolerance provided for in the first subparagraph shall not apply to olive parcels for which the area is expressed in olive GIS-ha in accordance with points 2 and 3 of Annex XXIV to Regulation (EC) No 1973/2004.]

2 The total area of an agricultural parcel may be taken into account provided that it is fully utilized in accordance with the customary standards of the Member State or region concerned. In other cases the area actually utilized shall be taken into account.

In respect of the regions where certain features, in particular hedges, ditches and walls, are traditionally part of good agriculture cropping or utilisation practices, the Member States may decide that the corresponding area is to be considered part of the fully utilised area on condition that it does not exceed a total width to be determined by the Member States. That width must correspond to a traditional width in the region in question and shall not exceed 2 metres.

Member States may, after prior notification to the Commission, allow a width greater than 2 metres if the arable crop areas concerned were taken into account for the fixing of the yields of the regions concerned.

3 Further to paragraph 2, in the case of parcels being declared for the purposes of the single payment scheme, any features referred to in the acts listed in Annex III to Regulation (EC) No 1782/2003 or which may form part of the good agricultural and environmental condition as referred to in Article 5 and Annex IV of that Regulation shall form part of the total area of an agricultural parcel.

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4 The eligibility of agricultural parcels shall be verified by any appropriate means. To that end, additional proof shall be requested where necessary.

#### **Textual Amendments**

- F5** Substituted by [Commission Regulation \(EC\) No 2184/2005 of 23 December 2005 amending Regulations \(EC\) No 796/2004 and \(EC\) No 1973/2004 laying down detailed rules for the application of 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.](#)

### *Article 31*

#### **Elements of the on-the-spot checks related to applications for seed aid**

On-the-spot checks related to applications for seed aid in accordance with Article 99 of Regulation (EC) No 1782/2003 shall cover in particular:

- (a) checks at the level of the farmer applying for the aid:
  - (i) on all parcels to verify the species or variety group of seeds sown on each parcel declared;
  - (ii) on documents to verify at least the first destination of seed for which aid has been claimed;
  - (iii) any checks deemed necessary by the Member States to ensure that aid is not paid with regard to uncertified seed or seed from third countries.
- (b) if the first destination of the seed is a breeder or a seed establishment, additional checks at their premises to ensure that:
  - (i) the seed has actually been bought and paid by the breeder or seed establishment in accordance with the growing contract;
  - (ii) the payment of the seed is reflected in the financial accounts of the breeder or seed establishment;
  - (iii) the seed has actually been marketed for sowing. Marketed shall mean holding available or in stock, displaying for sale, offering for sale, sale or delivery to another person. For that purpose, physical and documentary checks of the stock and financial accounts of the breeder or seed establishment shall be carried out;
- (c) where appropriate, checks at the level of the end users.

### *f<sup>2</sup> Article 31a*

#### **On-the-spot checks on approved inter-branch organisations**

On-the-spot checks on approved inter-branch organisations in the framework of applications for aid under the crop specific payment for cotton provided for in Chapter 10a of Title IV of Regulation (EC) No 1782/2003 shall verify the respect of the criteria for approval of those organisations, the list of their members and the scale referred to in Article 110e of that Regulation.]

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#### Textual Amendments

- F2** Inserted by [Commission Regulation \(EC\) No 2184/2005 of 23 December 2005 amending Regulations \(EC\) No 796/2004 and \(EC\) No 1973/2004 laying down detailed rules for the application of 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.](#)

### *F4* Article 31b

#### On-the-spot checks on sugar manufacturers

On-the-spot checks on sugar manufacturers in the framework of applications for sugar beet aid for sugar beet and cane producers provided for in Chapter 10f of Title IV of Regulation (EC) No 1782/2003 shall verify:

- (a) the information in the delivery contracts provided by the farmer;
- (b) the correctness of the information on deliveries provided to the competent authority;
- (c) the certification of the weighting scales used for deliveries;
- (d) the results of the official laboratory analyses performed to determine the percentage of sucrose of the sugar beets and cane delivered.]

#### Textual Amendments

- F4** Inserted by [Commission Regulation \(EC\) No 659/2006 of 27 April 2006 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.](#)

### Article 32

#### Remote sensing

1 Member States may make use of remote sensing with regard to the sample referred to in Article 26(1) instead of applying the traditional means of on-the-spot checking under the conditions set out in this Article. Articles 23, 25, 26, 27 and 28, the first sentence of Article 29 and Article 30 shall apply where appropriate.

2 The zones to be checked by means of remote sensing shall be selected on the basis of a risk analysis or at random.

In the case of selection on the basis of a risk analysis the Member States shall take account of appropriate risk factors, and in particular:

- a their financial significance in terms of Community aid;
- b the composition of aid applications;
- c the structure of the agricultural parcel systems, and the complexity of the agricultural landscape;
- d the lack of coverage in previous years;

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- e the technical constraints of effective use of remote sensing, with respect to zone definition;
  - f the findings of checks made in previous years.
- 3 On-the-spot checks by remote sensing shall cover either:
- [<sup>F3</sup>a all aid applications having at least 80 % of the area for which aid is requested under schemes established in Titles III, IV and IVa of Regulation (EC) No 1782/2003 within the respective zone;]
  - b aid applications to be selected by the competent authority on the basis of Article 27(2) of this Regulation.
- [<sup>X1</sup>Applications selected randomly in accordance with the second subparagraph of Article 27(1)] may be checked by remote sensing.
- [<sup>F34</sup> Once a farmer has been selected for an on-the-spot check in accordance with paragraph 3, at least 80 % of the area for which he requests aid under aid schemes established in Titles III, IV and IVa of Regulation (EC) No 1782/2003 shall be subject to the on-the-spot check by remote sensing.]
- 5 Where a Member State applies the possibility to carry out on-the-spot checks by remote sensing, it shall:
- a perform photo interpretation of satellite images or aerial photographs of all agricultural parcels per application to be checked in accordance with paragraph 4 with a view to recognising the ground cover and measuring the area;
  - b carry out physical inspections in the field of all agricultural parcels for which photo interpretation does not make it possible to verify the accuracy of the declaration to the satisfaction of the competent authority.
- 6 The additional checks referred to in Article 26(3) shall be carried out by means of traditional on-the-spot checks if it is no longer possible to carry them out by means of remote sensing within the current year.

#### **Editorial Information**

- X1** Substituted by [Corrigendum 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 of 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 \(Official Journal of the European Union L 141 of 30 April 2004\)](#).

#### **Textual Amendments**

- F3** Substituted by [Commission Regulation \(EC\) No 659/2006 of 27 April 2006 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](#).

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### Article 33

#### Verification of the tetrahydrocannabinol content in hemp growth

1 The system to be used by the Member States in accordance with Article 52(1) of Regulation (EC) No 1782/2003 in order to determine the tetrahydrocannabinol (hereinafter referred to as 'THC') content of the crops grown shall be as set out in Annex I to this Regulation.

2 Member States shall send the Commission, by 15 November of the marketing year in question at the latest, a report on the THC content findings. The report shall indicate, for each variety:

- a for procedure A as provided for in Annex I, an indication of the point at which the sample was taken;
- b the number of tests carried out;
- c the results in terms of THC content, shown separately for each 0,1 %;
- d measures taken at national level.

3 Where the checks show, for a significant number of samples of a given variety, THC contents exceeding that laid down in Article 52(1) of Regulation (EC) No 1782/2003, it may be decided, without prejudice to any other measures the Commission might take and in accordance with the procedure referred to in Article 144(2) of that Regulation, to use procedure B as provided for in Annex I to this Regulation for the variety concerned in the course of the following calendar year.

4 Varieties of hemp grown for fibre eligible for direct payments are listed in Annex II. Requests by a Member State to include a variety of hemp in that Annex shall be accompanied by a report giving the findings of analyses carried out in accordance with procedure B provided for in Annex I and a description of the variety in question.

[<sup>F15</sup> Crops of hemp grown for fibre must continue to be cultivated under normal growing conditions in accordance with local practice for at least 10 days from the date of the end of flowering so that the checks provided for in paragraphs 1, 2 and 3 can be made.

However, the Member States may authorise hemp grown for fibre to be harvested after flowering has begun but before the end of the 10-day period after the end of flowering, provided the inspectors indicate which representative parts of each plot concerned must continue to be cultivated for at least 10 days following the end of flowering for inspection purposes, in accordance with the method laid down in Annex I.]

#### Textual Amendments

- F1** Inserted by [Commission Regulation \(EC\) No 239/2005 of 11 February 2005 amending and correcting 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.](#)

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*Status: Point in time view as at 01/08/2006.*

*Changes to legislation: There are outstanding changes not yet made to Commission Regulation (EC) No 796/2004 (repealed). Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)*

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## [<sup>F1</sup>Sub-section IIA

### **On-the-spot checks of aid applications for hops payments by recognised producer groups**

#### *Article 33a*

#### **Elements of the on-the-spot-checks**

The on-the-spot checks referred to in Article 26(2)(e) shall be carried out by way of application of the provisions of Article 29, Article 30(1), the first and second subparagraphs of Article 30(2), Article 30(4) and Article 32 *mutatis mutandis*.

Those on-the-spot checks shall verify whether the conditions, as provided for in Article 171 of Regulation (EC) No 1973/2004, are respected.]

## [<sup>F2</sup>Subsection IIB

### **On-the-spot checks related to the applications for tobacco aid**

#### *Article 33b*

#### **Checks of deliveries**

1 With regard to applications for the aid for tobacco provided for in Chapter 10c of Title IV of Regulation (EC) No 1782/2003, all deliveries shall be checked. Each delivery shall be authorised by the competent authority which shall be informed in advance so that it can determine the date of delivery. During a check, the competent authority shall verify that it has authorised the delivery in advance.

2 If delivery is made to an approved purchasing centre as provided for in Article 171ck(2) of Regulation (EC) No 1973/2004, unprocessed tobacco, once checked, may leave the purchasing centre solely for the purpose of being transferred to the processing plant. After the checks have been made, the tobacco shall be assembled in distinct quantities.

The transfer of those quantities to the processing plant shall be authorised in writing by the competent authority which shall be informed in advance so that it can accurately identify the means of transport used, the route, the time of departure and arrival and the quantities of tobacco transported in each separate instance.

3 When the tobacco reaches the processing plant, the competent control body shall verify that the separate quantities checked in the purchasing centres are those actually delivered, in particular by weighing them.

The competent authority may lay down any special conditions it deems necessary for checking the operations.

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### Article 33c

#### **Placing under supervision and checks during first processing and market preparation**

1 Member States shall take the appropriate measures to ensure that raw tobacco is placed under supervision at the moment when it is delivered from the farmer to the first-processing undertaking.

Placing under supervision shall ensure that raw tobacco cannot be released before the first processing and market preparation operations are completed and that no raw tobacco is submitted more than once for checking.

2 Checks during first processing and market preparation of the tobacco shall verify compliance with Article 171cb of Regulation (EC) No 1973/2004, in particular relating to the quantities of raw tobacco in each undertaking being checked, distinguishing between raw tobacco produced in the Community and raw tobacco originating in or coming from third countries. To that end, those checks shall include:

- a checks of the processing undertaking's stocks;
- b checks when the tobacco leaves the place in which it was under supervision, having undergone first processing and market preparation;
- c all additional control measures that Member States deem necessary, in particular to ensure that no premium is paid for raw tobacco originating in or coming from third countries.

3 Checks pursuant to this Article shall be undertaken in the place where the raw tobacco is processed. Within a time-limit to be determined by the Member State, the undertakings involved shall notify their competent bodies, in writing, of the places where processing will take place. To that end, Member States may specify the information to be provided by the first-processing undertakings to the competent bodies.

4 Checks pursuant to this Article shall in all cases be unannounced.]

### Sub-section III

#### **On-the-spot checks of livestock aid applications**

### Article 34

#### **Timing of on-the-spot checks**

1 For aid schemes other than those provided for in Articles 123(6) and 130 of Regulation (EC) No 1782/2003, at least 60 % of the minimum rate of on-the-spot checks provided for in the last sentence of Article 26(2)(b) of this Regulation shall be conducted throughout the retention period of the aid scheme concerned. The remaining percentage of on-the-spot checks shall be conducted throughout the retention period of at least one of those aid schemes.

However, where a Member State makes use of the possibilities provided for in Article 68 of Regulation (EC) No 1782/2003, the minimum rate of on-the-spot checks provided for in the last sentence of Article 26(2)(b) shall be fully conducted throughout the retention period of the aid scheme concerned.

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2 At least 50 % of the minimum rate of on-the-spot checks provided for in Article 26(2) (c) shall be conducted throughout the retention period. However, the minimum rate of on-the-spot checks shall be fully conducted throughout the retention period in Member States where the system established by Regulation (EC) No 21/2004 as concerns ovines and caprines, in particular in relation to the identification of animals and the proper keeping of registers, is not fully implemented and applied.

### Article 35

#### Elements of the on-the-spot checks

1 On-the-spot checks shall cover all livestock for which aid applications have been submitted under the aid schemes to be checked and, in the case of checks of the bovine aid schemes, also the unclaimed bovine animals.

2 On-the-spot checks shall include in particular:

- a a check that the number of animals present on the holding for which aid applications have been submitted and the number of unclaimed bovine animals corresponds to the number of animals entered in the registers and, in the case of bovine animals, to the number of animals notified to the computerised database for bovine animals;
- b in relation to the bovine aid schemes, checks
  - of the correctness of entries in the register and the notifications to the computerised database for bovine animals on the basis of a sample of supporting documents such as purchase and sales invoices, slaughter certificates, veterinary certificates and, where applicable, animal passports, in relation to animals for which aid applications were submitted in the 12 months prior to the on-the-spot check,
  - that information held in the computerised database for bovine animals corresponds to the information given in the register on the basis of a sample in relation to animals for which aid applications were submitted in the 12 months prior to the on-the-spot check,
  - that all animals present on the holding and still kept under the retention obligation are eligible for the aid claimed,
  - that all bovine animals present on the holding are identified by ear tags and accompanied, where applicable, by animal passports and that they are recorded in the register and have been duly notified to the computerised database for bovine animals.

[<sup>XI</sup>The checks referred to in the fourth indent shall be made individually for each individual male bovine still kept under the retention obligation, for which an application has been submitted for the special beef premium with the exception of those submitted in accordance with Article 123(6) of Regulation (EC) No 1782/2003.] In all other cases, the check on correct recording in the animal passports, the register and notification to the database may be made on the basis of a sample;

c in relation to the ovine/caprine aid scheme:

- (i) a check on the basis of the register that all the animals for which aid applications were submitted in the 12 months prior to the on-the-spot check have been kept on the holding throughout the retention period,

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- (ii) a check of the correctness of entries in the register on the basis of a sample of supporting documents such as purchase and sales invoices and veterinary certificates.

#### Editorial Information

- X1** Substituted by [Corrigendum 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 of 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 \(Official Journal of the European Union L 141 of 30 April 2004\)](#).

### Article 36

#### Control measures as regards on-the-spot checks in slaughterhouses

1 As regards the special beef premium provided for in Article 123(6) of Regulation (EC) No 1782/2003 and the slaughter premium provided for in Article 130 of that Regulation and in cases where a Member State makes use of the possibilities provided for in Article 68 of that Regulation, on-the-spot checks shall be carried out in the slaughterhouses. In that case, Member States shall carry out on-the-spot checks either:

- a in at least 30 % of all slaughterhouses, selected on the basis of a risk analysis, in which case the controls shall cover a sample of 5 % of the total number of bovine animals which have been slaughtered in the slaughterhouse concerned during the 12 months prior to the on-the-spot check, or
- b in at least 20 % of the slaughterhouses which have been approved beforehand in accordance with particular criteria of reliability to be determined by the Member States and which are selected on the basis of a risk analysis, in which case the controls shall cover a sample of 2 % of the total number of bovine animals which have been slaughtered in the slaughterhouse concerned during the 12 months prior to the on-the-spot check.

[<sup>F3</sup>The on-the-spot checks in slaughterhouses shall comprise a posteriori scrutiny of documents, a comparison with the entries in the computerised database for bovine animals and checks of summaries relating to the slaughter certificates or information in place thereof, which were sent to other Member States in accordance with Article 121(3) of Regulation (EC) No 1973/2004.]

2 On-the-spot checks in slaughterhouses shall comprise physical checks of slaughtering procedures carried out on the day of the on-the-spot check on the basis of a sample. Where necessary, it shall be checked whether the carcasses presented for weighing are eligible for aid.

#### Textual Amendments

- F3** Substituted by [Commission Regulation \(EC\) No 659/2006 of 27 April 2006 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](#).

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### Article 37

#### Control measures as regards the premium granted after export

1 As regards the slaughter premium granted for bovine animals exported to third countries in accordance with Article 130 of Regulation (EC) No 1782/2003 and where a Member State makes use of the possibilities provided for in Article 68 of Regulation (EC) No 1782/2003, all loading operations shall be subject to on-the-spot checks, which shall be carried out as follows:

- a at the time of loading, it shall be verified that all bovine animals are identified by ear tags. Furthermore, at least 10 % of the bovine animals so verified shall be checked individually with a view to verifying their identification;
- b at the time of the departure from the Community territory:
  - where an official customs seal has been applied to the means of transport, it shall be checked that the seal is undamaged. If the seal is undamaged a sample check shall only be carried out if there are doubts as to the regularity of the load,
  - where no official customs seal has been applied to the means of transport or where a customs seal is damaged, at least 50 % of bovine animals that were individually checked at the time of loading shall be checked again.

2 The animal passports shall be surrendered to the competent authority in accordance with Article 6(5) of Regulation (EC) No 1760/2000.

3 The Paying Agency shall scrutinize the aid applications on the basis of the payment files and other available information, paying particular attention to the documents relating to the export and the comments of the competent control authorities and shall check whether the animal passports have been surrendered in accordance with paragraph 2.

### *[<sup>F5</sup>Article 38*

#### Special provisions as regards additional payments

As regards the additional payment to be granted for specific types of farming or for quality production as provided for in Article 69 of Regulation (EC) No 1782/2003 and the additional payment provided for in Articles 119 and 133 of that Regulation, the Member States shall, where appropriate, apply the provisions of this Title. If this is not appropriate because of the structure of the scheme concerned, the Member States shall provide controls ensuring a control level equivalent to that laid down in this Title.]

#### Textual Amendments

- F5** Substituted by [Commission Regulation \(EC\) No 2184/2005 of 23 December 2005 amending Regulations \(EC\) No 796/2004 and \(EC\) No 1973/2004 laying down detailed rules for the application of 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.](#)

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### Article 39

#### **Special provisions as regards the control report**

1 Where Member States carry out on-the-spot checks pursuant to this Regulation in conjunction with inspections pursuant to Regulation (EC) No 1082/2003 the control report provided for in Article 28 of this Regulation shall be supplemented by reports in accordance with Article 2(5) of Regulation (EC) No 1082/2003.

2 With regard to the checks in slaughterhouses provided for in Article 36(1), the control report provided for in Article 28 may consist of an indication in the slaughterhouse accounts showing which animals have been subject to the checks.

With regard to the checks provided for in Article 36(2), the report shall include, inter alia, the identification numbers, the carcass weights and the dates of slaughter in relation to all animals slaughtered and checked on the day of the on-the-spot check.

3 With regard to the checks provided for in Article 37, the control report may consist only of an indication of the animals so checked.

4 Where on-the-spot checks conducted in accordance with this Regulation reveal cases of non-compliance with the provisions of Title I of Regulation (EC) No 1760/2000, copies of the control report provided for in Article 28 of this Regulation shall be sent without delay to the authorities responsible for the implementation of Regulation (EC) No 1082/2003.

### Sub-section IV

#### **On-the-spot checks with regard to aid applications for the dairy premium and additional payments**

### Article 40

#### **On-the-spot checks with regard to aid applications for the dairy premium and additional payments**

On-the-spot checks shall cover the eligibility conditions, in particular on the basis of the farmers accounting or other registers.

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## CHAPTER III

### CONTROLS RELATING TO CROSS-COMPLIANCE

#### Section I

#### Common provisions

#### Article 41

#### General principles and definitions

For the purposes of this Chapter, the following general principles and definitions shall apply:

- (a) A 'repeated' non-compliance shall mean the non-compliance with the same requirement, standard or obligation referred to in Article 4 determined more than once within a consecutive period of three years, provided the farmer has been informed of a previous non-compliance and, as the case may be, has had the possibility to take the necessary measures to terminate that previous non-compliance;
- (b) The 'extent' of a non-compliance shall be determined taking account, in particular, of whether the non-compliance has a far-reaching impact or whether it is limited to the farm itself;
- (c) The 'severity' of a non-compliance shall depend, in particular, on the importance of the consequences of the non-compliance taking account of the aims of the requirement or standard concerned;
- (d) Whether a non-compliance is of 'permanence' shall depend, in particular, on the length of time for which the effect lasts or the potential for terminating those effects by reasonable means.

#### Article 42

#### Competent control authority

1 The specialised control bodies shall bear the responsibility to carry out the controls on the respect of the requirements and standards in question.

The Paying Agencies shall bear the responsibility for the fixing of reductions or exclusions in individual cases in accordance with Chapter II of Title IV of this Regulation.

2 By way of derogation from paragraph 1, Member States may decide that controls in relation to all or certain requirements, standards, acts, or areas of cross-compliance shall be carried out by the Paying Agency provided that the Member State guarantees that the effectiveness of the controls is at least equal to the one achieved in the case where the controls are carried out by a specialised control body.

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## Section II

### Administrative checks

#### Article 43

### Administrative checks

[<sup>X1</sup>Depending of the requirements, standards, acts or areas] of cross-compliance in question, Member States may decide to carry out administrative checks, in particular those already provided for under the control systems applicable to the respective requirement, standard, act or area of cross-compliance.

#### Editorial Information

- X1** Substituted by [Corrigendum 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 of 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 \(Official Journal of the European Union L 141 of 30 April 2004\)](#).

## Section III

### On-the-spot checks

#### Article 44

### Minimum control rate

1 [<sup>F5</sup>The competent control authority shall, with regard to the requirements or 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.]

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.

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

#### Textual Amendments

- F5** Substituted by [Commission Regulation \(EC\) No 2184/2005 of 23 December 2005 amending Regulations \(EC\) No 796/2004 and \(EC\) No 1973/2004 laying down detailed rules for the application of 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](#).

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## 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 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.

2 The competent control authority shall, with regard to the requirements or standards for which it is responsible, select the farmers to be checked in accordance with Article 44 by selecting the sample from the sample of farmers which were already selected pursuant to Articles 26 and 27 and to whom the relevant requirements or standards apply.

3 <sup>[F3]</sup>By way of derogation from paragraph 2, the competent authority may, with regard to the requirements or standards for which it is responsible, select a control sample of 1 % of all farmers submitting aid applications under support schemes established in Titles III, IV and IVa of Regulation (EC) No 1782/2003 and who are under the obligation to respect at least one of the requirements or standards.]

In that case:

- a where the competent control authority concludes, on the basis of the risk analysis applied at farm level, that non-beneficiaries of direct aid establish a higher risk than the farmers who applied for aid, it may replace farmers who applied for aid by non-beneficiaries. In that case, the overall number of farmers checked shall, nevertheless, attain the control rate provided for in the first subparagraph. The reasons for such replacements shall be properly justified and documented;
- b if more effective, the competent control authority may perform the risk analysis 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.

4 The competent control authority may decide 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.

#### Textual Amendments

- F3** Substituted by [Commission Regulation \(EC\) No 659/2006 of 27 April 2006 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.](#)

*Status: Point in time view as at 01/08/2006.*

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## Article 46

### Determination of the compliance with the requirements and standards

1 Where applicable, the respect of the requirements and standards shall be determined by the use of means as stipulated in the legislation applicable to the requirement or standard in question.

2 In other cases and where appropriate, the determination shall be carried out by the use of any appropriate means defined by the competent control authority which ensure precision at least equivalent to that required for official determinations under the national rules.

3 Where appropriate, the on-the-spot checks may be conducted by the application of remote-sensing techniques.

## Article 47

### Elements of the on-the-spot checks

1 In performing the checks on the sample provided for in Article 44, the competent control authority shall ensure that all farmers thus selected are checked with regard to their compliance with the requirements and standards for which it is responsible.

2 The checks referred to in paragraph 1 shall, as a general rule, be carried out as part of one control visit and shall consist of a verification of the requirements and standards the compliance with which may be checked at the time of that visit, aiming to detect any possible non-compliance with those requirements and standards and, in addition, to identify cases to be submitted for further checks.

## Article 48

### Control report

1 Every on-the-spot check under this Chapter, regardless whether the farmer in question was selected for the on-the-spot check in accordance with Article 45 or as a follow-up of non-compliances brought to the attention of the competent control authority in any other way, shall be the subject of a control report to be established by the competent control authority.

The report shall be divided into the following parts:

- a a general part containing, in particular, the following information:
  - (i) the farmer selected for the on-the-spot check;
  - (ii) the persons present;
  - (iii) whether notice of the visit was given to the farmer and, if so, the period of advance notification.
- b a part reflecting separately the checks carried out in respect of each of the acts and standards and containing, in particular, the following information:
  - (i) the requirements and standards subject to the on-the-spot check;
  - (ii) the nature and extent of checks carried out;

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- (iii) the findings;
- (iv) the acts and standards in relation to which non-compliances are found;
- c an evaluation part giving an assessment of the importance of the non-compliance in respect of each act and/or standard on the basis of the criteria ‘severity’, ‘extent’, ‘permanence’ and ‘repetition’ in accordance with Article 7(1) of Regulation (EC) No 1782/2003 with an indication of any factors that should lead to an increase or decrease of the reduction to be applied.

Where provisions relating to the requirement or standard in question leave a margin not to further pursue the non-compliance found, the report shall make a corresponding indication. The same shall apply in the case where a Member State grants a period for the compliance with a new standard as referred to in Article 5(3) of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF)<sup>(2)</sup> or a period for the compliance of young farmers with the minimum standards referred to in Article 4(2) of Commission Regulation (EC) No 445/2002 of 26 February 2002 laying down detailed rules for the application of Council Regulation (EC) No 1257/1999<sup>(3)</sup>.

2 The farmer shall be informed of any non-compliances found.

3 Without prejudice to any particular provisions contained in the legislation applicable to the requirements and standards, the control report shall be finalised within one month of the on-the-spot check. However, that period may be extended to three months under duly justified circumstances, in particular if chemical or physical analysis so require.

Where the competent control authority is not the Paying Agency, the report shall be sent to the Paying Agency within a month of its finalisation.

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- (1) [OJ L 177, 4.8.1972, p. 1.](#)
- (2) [OJ L 160, 26;-6.1999, p. 80.](#) Regulation as last amended by Regulation (EC) No 1783/2003 ([OJ L 270, 21.10.2003, p. 70](#)).
- (3) [OJ L 74, 15.3.2002, p. 1.](#) Regulation as last amended by Regulation (EC) No 963/20003 ([OJ L 138, 5.6.2003, p. 32](#)).

**Status:**

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**Changes to legislation:**

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