

Commission Regulation (EC) No 1975/2006 of 7 December 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the implementation of control procedures as well as cross-compliance in respect of rural development support measures (repealed)

COMMISSION REGULATION (EC) No 1975/2006

of 7 December 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the implementation of control procedures as well as cross-compliance in respect of rural development support measures (repealed)

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) Experience shows that the integrated administration and control system (hereinafter referred to as IACS), provided for in Chapter 4 of Title II of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001<sup>(2)</sup>, has proven to be an effective and efficient means for the implementation of direct payment schemes. Therefore, as far as the area and animal-related measures under Axis 2 in Section 2 of Chapter I of Title IV of Regulation (EC) No 1698/2005 are concerned, the administration and control rules, as well as the provisions concerning reductions and exclusions in cases of false declarations, related to such measures should follow the principles set out in the IACS, and in particular in 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<sup>(3)</sup>.
- (2) However, for certain support schemes set out under Axis 2, and equivalent support under Axis 4 provided for in Section 2 of Chapter I of Title IV of Regulation (EC) No 1698/2005, the administration and control rules need to be adapted to their particular characteristics. The same applies in the case of support schemes set out in Axes 1 and 3 in Sections 1 and 3 respectively of that Regulation and equivalent support under Axis 4. Special provisions therefore need to be established for those support schemes.

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- (3) In order to ensure that all national administrations are in the position to organise an efficient integrated control of all areas for which payment is claimed under Axis 2 on the one hand and under the area-related aid schemes covered by Regulation (EC) No 796/2004, on the other hand, payment claims for area-related measures under Axis 2 should be submitted within the same deadline as the single application provided for in Chapter I of Title II of Part II of that Regulation. Nevertheless, to allow the necessary administrative arrangements to be made, a transitional period should be granted.
- (4) In order to ensure the deterrent effect of controls, payments should, as a general rule, not be made before checks on the aid applications have been finalised. However, it is appropriate to allow payments up to a certain level after the completion of administrative checks. When fixing that level, account should be taken of the risk of overpayment.
- (5) The control rules provided for in this Regulation should take into account the special characteristics of the measures under Axis 2 concerned. Particular rules should therefore be established.
- (6) In accordance with Article 51 of Regulation (EC) No 1698/2005, payments under certain of the measures provided for in that Regulation have been made subject to the respect of cross-compliance as provided for in Chapter 1 of Title II of Regulation (EC) No 1782/2003. It is therefore appropriate to align the rules related to cross-compliance with those contained in Regulations (EC) No 1782/2003 and (EC) No 796/2004.
- (7) Ex post checks of investment operations should be undertaken to verify the respect of Article 72(1) of Regulation (EC) No 1698/2005, to ensure that operations have been properly carried out and that the same investment has not been financed in an irregular manner from different national or Community sources. The basis and contents of these checks should be specified.
- (8) Special rules are needed to set out the responsibilities for control of local action groups referred to in Article 62 of Regulation (EC) No 1698/2005 and approved by the Member States.
- (9) To allow the Commission to carry out its obligations for the management of the measures, Member States should report to the Commission on the number of controls undertaken and their results.
- (10) All the eligibility criteria established by Community or national legislation or the rural development programmes should be able to be controlled according to a set of verifiable indicators.
- (11) Member States may use evidence received from other services or organisations to verify the respect of eligibility criteria. However, they should have assurance that the service or organisation is operating to a standard sufficient to control compliance with the eligibility criteria.
- (12) Certain general control principles should be established, covering the right of the Commission to carry out checks.

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- (13) Member States should ensure that the paying agencies referred to in Article 6 of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy<sup>(4)</sup> have sufficient information on controls carried out by other services or bodies in order to fulfil their duties under that Regulation.
- (14) The measures provided for in this Regulation are in accordance with the opinion of the Rural Development Committee,

HAS ADOPTED THIS REGULATION:

## PART I

### Scope and general provisions

#### *Article 1*

##### **Scope**

This Regulation lays down the detailed rules for the implementation of the control procedures as well as cross-compliance in respect of the co-financed rural development support measures established pursuant to Regulation (EC) No 1698/2005.

#### *Article 2*

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

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

#### *Article 3*

##### **Definitions**

For the purposes of this Regulation:

- (a) 'Application for support' shall mean the application to be accepted for support, or to enter into a scheme;
- (b) 'Payment claim' shall mean an application presented by a beneficiary for payment by the national authorities.

#### *Article 4*

##### **Applications for support and payment claims**

1 Without prejudice to specific provisions in this Regulation, the Member States shall provide for appropriate procedures for the submission of applications for support.

2 For measures with multiannual commitments, the beneficiary shall submit an annual payment claim.

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However, Member States may dispense with annual physical payment claims if they introduce effective alternative procedures to carry out the administrative checks provided for in Article 11 or 26 as appropriate.

3 Applications for support and payment claims may be adjusted at any time after their submission in cases of obvious errors recognised by the competent authority.

#### *Article 5*

### **General principles of control**

1 Without prejudice to specific provisions in this Regulation, Member States shall ensure that all the eligibility criteria established by Community or national legislation or by the rural development programmes can be controlled according to a set of verifiable indicators to be established by the Member States.

2 Where possible, on-the-spot checks provided for in Articles 12, 20 and 27 and other checks provided for in Community rules regarding agricultural subsidies shall be carried out at the same time.

3 Without prejudice to specific provisions, no payment shall be made in favour of beneficiaries for whom it is established that they artificially created the conditions required for obtaining such payments with a view to obtaining an advantage contrary to the objectives of the support scheme.

## PART II

### **Administration and control rules**

#### TITLE I

### **Rural development support for certain measures under Axis 2 and Axis 4**

#### CHAPTER I

### **General provisions**

#### *Article 6*

### **Scope and definitions**

- 1 Save as otherwise provided for in this Regulation, this Title shall apply to:
- a support granted in accordance with Article 36 of Regulation (EC) No 1698/2005;
  - b support granted in accordance with Article 63(a) of that Regulation with regard to operations corresponding to measures defined under Axis 2.

However, this Title shall not apply to measures referred to in Article 36(a)(vi) and (b)(vi) and (vii) and in Article 39(5) of Regulation (EC) No 1698/2005 as well as to measures under Article 36(b)(i) and (iii) of that Regulation as far as the establishment cost is concerned.

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- 2 For the purposes of this Title the following definitions shall apply:
- a 'area-related measure' shall mean measures or sub-measures for which support is based on the size of the area declared;
  - b 'animal-related measure' shall mean measures or sub-measures for which support is based on the number of animals declared.

#### *Article 7*

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

Article 2(10), (22) and (23) and Articles 9, 18, 21 and 25(1) of Regulation (EC) No 796/2004 shall apply *mutatis mutandis* for the purpose of this Title.

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

#### *Article 8*

### **Payment claims**

1 For all contracts entering into force after 1 January 2007, payment claims under area-related measures shall be submitted in accordance with the deadline set out in Article 11 of Regulation (EC) No 796/2004. However, Member States may decide to apply this provision only as from the claim year 2008.

2 If a Member State applies the dispositions of Article 4(2), second sub paragraph, then the payment claim shall be deemed to be delivered in accordance with Article 11 of Regulation (EC) No 796/2004.

3 Articles 11(3), 12 and 15 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, the payment claim shall also contain the information set out in that provision with regard to non-agricultural land for which support is being claimed.

#### *Article 9*

### **Payments**

1 No payment for any measure or set of operations falling within the scope of this Title shall be made before the checks of this measure or set of operations with regard to eligibility criteria, as referred to in Section I of Chapter II, have been finalised.

However, Member States may decide, taking into account the risk of overpayment, to pay up to 70 % of the aid after finalisation of the administrative checks provided for in Article 11. The percentage of payment shall be the same for all beneficiaries of the measure or set of operations.

2 With regard to cross-compliance checks provided for in Section II of Chapter II, where such checks cannot be finalised before payment, any undue payments shall be recovered in accordance with Article 73 of Regulation (EC) No 796/2004.

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## CHAPTER II

### Controls, reductions and exclusions

#### Article 10

##### General principles

- 1 Applications for support and subsequent payment claims shall be checked in a manner which ensures effective verification of compliance with the conditions for granting support.
- 2 The Member States shall define suitable methods and means for verifying the conditions for granting support for each support measure.
- 3 Member States shall make use of the integrated administration and control system provided for in Chapter 4 of Title II of Regulation (EC) No 1782/2003 (hereinafter referred to as 'IACS').
- 4 Verification of the eligibility criteria shall consist of administrative and on-the-spot checks.
- 5 Respect of cross-compliance shall be verified through on-the-spot checks and where appropriate through administrative checks.
- 6 During the period covered by a commitment, parcels for which support is being granted may not be exchanged except in cases specifically provided for in the rural development programme.

## SECTION I

### Respect of the eligibility criteria

#### SUBSECTION I

##### Controls

#### Article 11

##### Administrative checks

- 1 Administrative checks shall be undertaken on all applications for support and payment claims, and shall cover all elements that it is possible and appropriate to control by administrative means. The procedures shall ensure the recording of control work undertaken, the results of the verification and the measures taken in respect of discrepancies.
- 2 The administrative checks shall include cross-checks wherever possible and appropriate, *inter alia* with data from the IACS. These cross-checks shall relate at least to parcels and livestock covered by a support measure in order to avoid any undue payments of aid.
- 3 Compliance with long-term commitments shall be checked.

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4 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.

5 Where applicable, administrative checks on eligibility shall take into account the results of verifications carried out by other services, bodies or organisations involved in controls of agricultural subsidies.

#### *Article 12*

### **On-the-spot checks**

1 The total number of on-the-spot checks carried out each 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, 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.

2 Article 26(3) and (4) of Regulation (EC) No 796/2004 shall apply to on-the-spot checks provided for in this Article.

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

4 For any multiannual measures involving payments exceeding five years, the Member States may decide to halve the rate of control provided for in paragraph 1 after the fifth year of payment for a beneficiary.

Beneficiaries in respect of which the Member State makes use of the possibility set out in the first subparagraph of this paragraph shall not form part of the overall number of beneficiaries referred to in the first subparagraph of paragraph 1.

#### *Article 13*

### **Control report**

On-the-spot checks under this Subsection shall be the subject of a control report to be established in accordance with Article 28 of Regulation (EC) No 796/2004.

#### *Article 14*

### **General principles concerning on-the-spot checks**

1 On-the-spot checks shall be spread over the year on the basis of an analysis of the risks presented by the different commitments under each rural development measure.

2 On-the-spot checks shall cover all the commitments and obligations of a beneficiary which can be checked at the time of the visit.

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## Article 15

### Elements of the on-the-spot checks and determination of areas

1 The Member States shall determine criteria and control methods that allow the controls of the different commitments and obligations of the beneficiary to satisfy the requirements of Article 48(1) of Commission Regulation (EC) No 1974/2006<sup>(6)</sup>.

2 With regard to controls on area-related measures, the on-the-spot checks shall be carried out in accordance with Articles 29, 30 and 32 of Regulation (EC) No 796/2004.

However, for the measures set out in Articles 36(b)(iii), (iv) and (v) of Regulation (EC) No 1698/2005, the Member States may define appropriate tolerances, which shall in no case be greater than twice the tolerances set down in Article 30(1) of Regulation (EC) No 796/2004.

3 With regard to controls on animal-related measures, the on-the-spot checks shall be carried out in accordance with Article 35 of Regulation (EC) No 796/2004.

## SUBSECTION II

### Reductions and exclusions

## Article 16

### Area-related measures

1 The basis for the 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 this Article, the areas declared by a beneficiary which receive the same rate of aid shall be considered as forming one crop group.

2 If the area declared for payment under an area-related measure 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 reduced by twice the difference found if that difference is more than either 3 % or two hectares, but no more than 20 % of the area determined.

If the difference is more than 20 % of the area determined, no aid shall be granted for the area-related measure concerned.

3 If the area declared exceeds the area determined in accordance with Article 50(3) of Regulation (EC) No 796/2004 by more than 30 %, the beneficiary shall be excluded from receiving the aid he would have been entitled to pursuant to that Article for the calendar year in question for the measures concerned.

If the difference is more than 50 %, the beneficiary shall be additionally excluded from receiving aid up to an amount equal to the amount which corresponds to the difference between the area declared and the area determined in accordance with Article 50(3) of Regulation (EC) No 796/2004.

4 By way of derogation from paragraphs 2 and the first subparagraph of paragraph 3, for beneficiaries in Member States applying the single area payment scheme as provided for



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in Article 143b of Regulation (EC) No 1782/2003, the reductions and exclusions to be applied shall be calculated in accordance with the first and second subparagraphs of Article 138(1) of Commission Regulation (EC) No 1973/2004<sup>(6)</sup>.

5 Where differences between the area declared and the area determined in accordance with Article 50(3) of Regulation (EC) No 796/2004 result from irregularities committed intentionally, the beneficiary shall be excluded from the aid he would have been entitled to pursuant to that Article for the EAFRD year in question for the area-related measure concerned.

6 The amount resulting from the exclusions provided for in the second subparagraph of paragraph 3 and in paragraph 5 shall be off-set against aid payments under any of the support measures under Regulation (EC) No 1698/2005 or Regulation (EC) No 1782/2003 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 off-set against those payments, the outstanding balance shall be cancelled.

#### *Article 17*

#### **Animal-related measures**

1 The basis for the calculation of the aid in respect of animal-related measures shall be established in accordance with Article 57(2), (3) and (4) of Regulation (EC) No 796/2004.

2 Any reductions or exclusions to be applied in the case of overdeclaration of bovine animals or of ovine or caprine animals respectively shall be calculated in accordance with Article 59 of Regulation (EC) No 796/2004.

Support measures in relation to bovine animals and those relating to ovine or caprine animals shall be treated separately.

3 By way of derogation from the second 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 off-set against aid payments under any of the support measures under Regulation (EC) No 1698/2005 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 off-set against those payments, the outstanding balance shall be cancelled.

4 In respect of overdeclarations concerning animals other than those referred to in paragraph 2, the Member State shall fix an appropriate system of reductions and exclusions.

#### *Article 18*

#### **Reductions and exclusions in the case of non-respect of eligibility criteria**

1 In case any of the commitments attached to the granting of the aid, other than those related to the size of area or number of animals declared, are not respected, the aid claimed shall be reduced or refused.

2 The Member State shall determine the amount of the reduction of the aid, in particular, on the basis of the severity, extent and permanence of the non-respect found.

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The severity of a non-respect shall depend, in particular, on the importance of the consequences of the non-respect taking into account the objectives pursued by the criteria which have not been respected.

The extent of a non-respect shall depend, in particular, on the effect of the non-respect on the operation as a whole.

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.

3 In case the non-respect results from irregularities committed intentionally, the beneficiary shall be excluded from the measure in question for the EAFRD year concerned as well as for the following EAFRD year.

4 The reductions and exclusions provided for in this Article shall apply without prejudice to any additional penalties provided for under national rules.

## SECTION II

### **Respect of cross-compliance**

#### SUBSECTION I

##### **Controls**

###### *Article 19*

##### **General principles**

1 Without prejudice to Article 51(3) of Regulation (EC) No 1698/2005, ‘Cross-compliance’ shall mean the mandatory requirements referred to in the first subparagraph of Article 51(1) of that Regulation and the minimum requirements for fertiliser and plant protection product use referred to in the second subparagraph of Article 51(1) of that Regulation.

2 Articles 3(2) and 25 of Regulation (EC) No 1782/2003 and Article 2(2), (2a) and (31) to (36) as well as Articles 9, 41, 42, 43, 46, 47 and 48 of Regulation (EC) No 796/2004 shall apply with regard to controls on the respect of cross-compliance.

###### *Article 20*

##### **On-the-spot checks**

1 The competent control authority shall, with regard to the requirements or standards for which it is responsible, 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 subparagraph of Article 44(1) and Article 44(2) of Regulation (EC) No 796/2004 shall apply.

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## Article 21

### Selection of the control sample

1 Article 45(1) of Regulation (EC) No 796/2004 shall apply as regards the selection of the control sample referred to in Article 20 of this Regulation.

2 The competent control authority shall, with regard to the requirements or standards for which it is responsible, select the beneficiaries to be checked in accordance with Article 20 by selecting the sample from the sample of beneficiaries which were already selected pursuant to Article 12 and to whom the relevant requirements or standards apply.

3 By way of derogation from paragraph 2, the competent control authority may, with regard to the requirements or standards for which it is responsible, select a control sample of 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 and who are under the obligation to respect at least one of the requirements or standards.

## SUBSECTION II

### Reductions and exclusions

## Article 22

### General

1 Article 25 of Regulation (EC) No 1782/2003 and Article 2(2), (2a) and (31) to (36), Article 41 and Article 65(2) of Regulation (EC) No 796/2004 shall apply with regard to reductions or exclusions to be applied following the determination of non-compliances.

2 Where more than one paying agency is responsible in the context of the management of the different support measures under Article 36(a)(i) to (v) and (b)(i), (iv) and (v) of Regulation (EC) No 1698/2005, the Member States shall take the appropriate measures to ensure the appropriate application of the provisions of this Subsection, in particular that one rate of reduction is applied to the entirety of those payments applied for by the beneficiary.

## Article 23

### Calculation of reductions and exclusions

Without prejudice to Article 51(2) of Regulation (EC) No 1698/2005, where a non-compliance is determined, a reduction shall be applied on the overall amount of aid under Article 36(a)(i) to (v) and (b)(iv) and (v) of that Regulation that has been, or has 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 the non-compliance is due to negligence of the beneficiary, the reduction shall be calculated in accordance with the rules set out in Article 66 of Regulation (EC) No 796/2004.

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

#### *Article 24*

### **Accumulation of reductions**

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

## TITLE II

### **Rural development support under Axis 1 and Axis 3 and certain measures under Axis 2 and Axis 4**

#### CHAPTER I

### **General provisions**

#### *Article 25*

### **Scope**

This Title shall apply to:

- (a) the support measures set out in Articles 20 and 52 of Regulation (EC) No 1698/2005;
- (b) the support measures set out in Articles 36(a)(vi), (b)(vi), (b)(vii) and 39(5) of that Regulation and in Articles 36(b) (i) and (iii) of that Regulation as far as the establishment costs are concerned;
- (c) support granted in accordance with Article 63(a) and (b) of that Regulation with regard to operations corresponding to measures provided for in points (a) and (b) of this Article.

#### SECTION I

### **Controls**

#### *Article 26*

### **Administrative checks**

1 Administrative checks shall be carried out on all applications for support or payment claims, and shall cover all elements that it is possible and appropriate to control by administrative means. The procedures shall require the recording of control work undertaken, the results of the verification and the measures taken in respect of discrepancies.

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2 Administrative checks on applications for support shall in particular include a verification of:

- a the eligibility of the operation for which support is requested;
- b the respect of the selection criteria set out in the rural development programme;
- c the compliance of the operation for which support is requested with applicable national and Community rules on, in particular, and where relevant, public procurement, State aid and the other appropriate obligatory standards established by national legislation or established in the rural development programme;
- d the reasonableness of the costs proposed, which shall be evaluated using a suitable evaluation system, such as reference costs, a comparison of different offers or an evaluation committee;
- e the reliability of the applicant, with reference to any previous co-financed operations undertaken since 2000.

3 Administrative checks on payment claims shall include in particular, and as far as this is appropriate for the claiming question, a verification of:

- a the delivery of the products and services co-financed;
- b the reality of expenditure claimed;
- c the completed operation compared with the operation for which the application for support was submitted and granted.

4 Administrative checks relating to investment operations shall include at least one visit to the operation supported or the investment site to verify the realisation of the investment.

However, Member States may decide not to carry out such visits for smaller investments, or where they consider that the risk that the conditions for receiving aid are not fulfilled, or that the reality of the investment has not been respected, is low. That decision and its justification shall be recorded.

5 Payments by beneficiaries shall be supported by invoices and documents proving payment. Where this cannot be done, payments shall be supported by documents of equivalent probative value.

6 Administrative checks shall include procedures to avoid irregular double financing with other Community or national schemes and with other programming periods. Where financing from other sources exists these checks shall ensure that the total aid received does not breach the maximum permissible aid ceilings.

7 For support relating to food quality schemes recognised by Member States, as provided for in Article 32 of Regulation (EC) No 1698/2005, paying agencies may, where appropriate, make use of evidence received from other services, bodies or organisations to verify the respect of eligibility criteria. However, they must have assurance that the service, body or organisation is operating to a standard sufficient to control compliance with the eligibility criteria.

#### *Article 27*

### **On-the-spot checks**

1 Member States shall organise on-the-spot checks on approved operations on an appropriate sampling basis. These shall be, as far as is possible, carried out before the final payment is made for a project.

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2 The expenditure controlled shall represent at least 4 % of the public expenditure that has been declared to the Commission each year, and at least 5 % of the public expenditure declared to the Commission over the whole programming period.

3 The sample of approved operations to be checked in accordance with paragraph 1 shall take into account in particular:

- a the need to check an appropriate mix of types and sizes of operations;
- b any risk factors which have been identified following national or Community checks;
- c the need to maintain a balance between the axes and measures.

4 The results of the on-the-spot checks shall be evaluated to establish whether any problems encountered are of a systemic character, entailing a risk for other similar operations, beneficiaries or other bodies. The evaluation shall also identify the causes of such situations, any further examination which may be required and the necessary corrective and preventive action.

5 Advance notice of on-the-spot checks may be given, provided that the purpose of the control is not jeopardised. If the advance notice exceeds 48 hours then it should be limited to the minimum necessary, depending on the nature of the measure and the operation being co-financed.

#### *Article 28*

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

1 Through the on-the-spot checks, the Member States shall endeavour to verify the following:

- a that the payments made to the beneficiary can be supported by accounting or other documents held by the bodies of firms carrying out the operations supported;
- b for an adequate number of expenditure items, that the nature and timing of the relevant expenditure comply with Community provisions and correspond to the approved specifications of the operation and the works actually executed or services delivered;
- c that the use or intended use of the operation is consistent with the use described in the application for Community support;
- d that the publicly funded operations have been implemented in accordance with Community rules and policies, especially the rules on public tendering and relevant mandatory standards established by national legislation or established in the rural development programme.

2 The on-the-spot checks shall cover all the commitments and obligations of a beneficiary which can be checked at the time of the visit.

3 Except in exceptional circumstances, duly recorded and explained by the national authorities, the on-the-spot checks shall include a visit to the operation or, if the operation is intangible, to the operation promoter.

4 Only checks meeting the full requirements of this Article may be counted towards the achievement of the control rate set out in Article 27(2).

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## Article 29

### Control of Early retirement and semi-subsistence farming measures

1 For applications for support under Articles 23 and 34 of Regulation (EC) No 1698/2005, the administrative checks shall additionally include those referred to in Article 11(2) of this Regulation.

2 For the measure provided for in Article 23 of Regulation (EC) No 1698/2005, Member States may dispense with on-the-spot checks after the first payment of the support, provided that administrative checks, including *inter alia* appropriate cross-checks, in particular with the information contained in the electronic database referred to in Article 19 of Regulation (EC) No 1782/2003, provide the necessary assurance of legality and regularity of payments.

## Article 30

### Ex-post checks

1 Ex-post checks shall be carried out on investment operations that are still subject to commitments pursuant to Article 72(1) of Regulation (EC) No 1698/2005 or detailed in the rural development programme.

2 The objective of the ex-post checks shall be to:

- a verify the respect of Article 72(1) of Regulation (EC) No 1698/2005;
- b verify the reality and finality of payments made by the beneficiary, except in the case of contributions in kind or standard costs;
- c ensure that the same investment has not been financed in an irregular manner from different national or Community sources.

3 The ex-post checks shall cover each year at least 1 % of eligible expenditure for operations referred to in paragraph 1 for which the final payment has been made. They shall be carried out within 12 months of the end of the relevant EAFRD year.

4 The ex-post checks shall be based on an analysis of the risks and financial impact of different operations, groups of operations or measures.

The controllers for the ex-post checks shall not have been involved in pre-payment checks of the same investment operation.

## SECTION II

### Reductions and exclusions

## Article 31

### Reductions and exclusions

1 Payments shall be calculated on the basis of what is found to be eligible.

The Member State shall examine the payment claim received from the beneficiary, and establish the amounts that are eligible for support. It shall establish:

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- a the amount that is payable to the beneficiary based solely on the payment claim;
- b the amount that is payable to the beneficiary after an examination of the eligibility of the payment claim.

If the amount established pursuant to point (a) exceeds the amount established pursuant to point (b) by more than 3 %, a reduction shall be applied to the amount established pursuant to point (b). The amount of the reduction shall be difference between those two amounts.

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 Article 28 and 30.

2 If a beneficiary is found to have intentionally made a false declaration the operation in question shall be excluded from support of 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 EAFRD year in question and for the following EAFRD year.

3 The penalties provided for in paragraphs 2 and 3 shall apply without prejudice to additional penalties provided for under national rules.

## CHAPTER II

### Specific provisions for Axis 4 (Leader)

#### *Article 32*

#### **Controls**

In the case of expenditure incurred under Article 63(c) of Regulation (EC) No 1698/2005, the Member State shall organise controls in conformity with this Title. Those controls shall be carried out by persons independent from the local action group concerned.

#### *Article 33*

#### **Responsibilities for control**

1 In the case of expenditure incurred under Article 63(a) and (b) of Regulation (EC) No 1698/2005, the administrative checks referred to in Article 26 of this Regulation may be carried out by local action groups under a formal delegation. However, the Member State remains responsible for verifying that local action groups have the administrative and control capacity to undertake that work.

2 The Member State shall implement an appropriate system of supervision of the local action groups. This shall include regular controls of the operations of the local action groups, including bookkeeping checks and sample reperformance of administrative checks.



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## PART III

### Final Provisions

#### Article 34

#### Notifications

Member States shall send to the Commission by 15 July each year, and for the first time by 15 July 2008, a report covering the previous EAFRD financial year relating, in particular, to the following points:

- (a) the number of payment claims for each rural development measure, the total amount checked as well as, where appropriate, the total area and total number of animals covered by on-the-spot checks under Articles 12, 20 and 27;
- (b) for area-related support, the total area broken down by individual aid scheme;
- (c) for animal-related measures, the total number of animals broken down by individual aid scheme;
- (d) the result of the checks carried out, indicating the reductions and exclusions applied pursuant to Articles 16, 17, 18, 22 and 23;
- (e) the number of ex-post checks undertaken under Article 30, the amount of expenditure verified and the results of the checks, indicating the reduction and exclusions applied pursuant to Article 31.

#### Article 35

#### Control by the Commission

Article 27(2) of Regulation (EC) No 1782/2003 shall apply to support paid under Regulation (EC) No 1698/2005.

#### Article 36

#### Reporting of controls to the paying agency

1 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.

A sufficient audit trail shall be maintained. An indicative description of the requirements of a satisfactory audit trail is given in the Annex.

2 The information referred to in the first subparagraph of paragraph 1 may be a report on every control carried out or, if appropriate, be in the form of a summary report.

3 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.

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### *Article 37*

#### **Entry into force**

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

It shall apply to Community support concerning the programming period starting on 1 January 2007.

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

Done at Brussels, 7 December 2006.

*For the Commission*

Mariann FISCHER BOEL

*Member of the Commission*

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## ANNEX

### INDICATIVE DESCRIPTION OF INFORMATION REQUIREMENTS FOR A SUFFICIENT AUDIT TRAIL

A sufficient audit trail, as referred to in Article 36(1), is present when, for a given assistance:

- (a) it allows for a reconciliation between the global amounts declared to the Commission and the invoices, accounting and other supporting documents held by the paying agency or other service for all the operations supported by the EAFRD;
- (b) it allows for a verification of the payment of the public expenditure to the beneficiary;
- (c) it allows for the verification of the application of selection criteria to the operations financed by the EAFRD;
- (d) it contains, as far as it is appropriate, the financial plan, reports of activities, documents relating to the granting of support, documents relative to public tendering procedures and reports relating to any controls carried out.

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- (1) [OJ L 277, 21.10.2005, p. 1.](#)
- (2) [OJ L 270, 21.10.2003, p. 1.](#) Regulation as last amended by Regulation (EC) No 1405/2006 ([OJ L 265, 26.9.2006, p. 1.](#)).
- (3) [OJ L 141, 30.4.2004, p. 18.](#) Regulation as last amended by Regulation (EC) No 659/2006 ([OJ L 116, 29.4.2006, p. 20.](#)).
- (4) [OJ L 209, 11.8.2005, p. 1.](#) Regulation as amended by Regulation (EC) No 320/2006 ([OJ L 58, 28.2.2006, p. 42.](#)).
- (5) See page 15 of this Official Journal.
- (6) [OJ L 345, 20.11.2004, p. 1.](#)

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