
Status: Point in time view as at 07/08/2012.

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Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (repealed)

TITLE II

GENERAL PROVISIONS ON DIRECT PAYMENTS

CHAPTER 2

Modulation and financial discipline

Article 7

Modulation

1 Any amount of direct payments to be granted in a given calendar year to a farmer in excess of EUR 5 000 shall be reduced for each year until 2012 by the following percentages:

- a in 2009 by 7 %;
- b in 2010 by 8 %;
- c in 2011 by 9 %;
- d in 2012 by 10 %.

2 The reductions provided for in paragraph 1 shall be increased by 4 percentage points for amounts exceeding EUR 300 000.

3 Paragraphs 1 and 2 shall not apply to direct payments granted to farmers in the French overseas departments, in the Azores and Madeira, in the Canary Islands and in the Aegean islands.

Article 8

Net ceilings

1 Without prejudice to Article 11 of this Regulation, the total net amounts of direct payments which may be granted in a Member State in respect of a calendar year after application of Articles 7 and 10 of this Regulation and Article 1 of Regulation (EC) No 378/2007 and with the exception of direct payments granted under Regulations (EC) No 247/2006 and (EC) No 1405/2006 shall not be higher than the ceilings set out in Annex IV to this Regulation. Where necessary, Member States shall make a linear reduction in the amounts of direct payments which are subject to the reduction provided for in Articles 7 and 10 of this Regulation and Article 1 of Regulation (EC) No 378/2007 in order to comply with the ceilings set out in that Annex.

2 The Commission, in accordance with the procedure referred to in Article 141(2) of this Regulation, shall review the ceilings set out in Annex IV to this Regulation in order to take account of:

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- a modifications to the total maximum amounts of direct payments that may be granted;
- b modifications to the voluntary modulation system provided for in Regulation (EC) No 378/2007;
- c structural changes to the holdings;
- d transfers to the EAFRD in accordance with Article 136 of this Regulation.

Article 9

Amounts resulting from modulation

1 The amounts resulting from application of the reductions provided for in Article 7 of this Regulation in any Member State other than the new Member States shall be available as additional Community support for measures under rural development programming financed under the EAFRD, as specified in Regulation (EC) No 1698/2005, in accordance with the conditions set out in this Article.

2 The amounts corresponding to one percentage point shall be allocated to the Member States where the corresponding amounts have been generated. The amounts corresponding to the reduction by 4 percentage points shall be allocated amongst the Member States concerned in accordance with the procedure referred to in Article 141(2), on the basis of the following criteria:

- a agricultural area;
- b agricultural employment;
- c gross domestic product (GDP) per capita in purchasing power.

However, any Member State concerned shall receive at least 80 % of the total amounts referred to in the first subparagraph generated in that Member State.

3 By way of derogation from the second subparagraph of paragraph 2, if in a Member State the proportion of rye as part of its total cereal production exceeded 5 % on average during the period 2000-2002 and its proportion of the total Community production of rye exceeded 50 % during the same period, at least 90 % of the amounts which the modulation generated in the Member State concerned shall be reallocated to that Member State, until 2013 included.

In such a case, without prejudice to the possibilities provided for by Article 68, at least 10 % of the amount allocated to the Member State concerned shall be available for the measures referred to in paragraph 1 of this Article in rye producing regions.

For the purpose of this paragraph, 'cereal' shall mean the products listed in Annex V.

4 The remaining amount resulting from the application of Article 7(1) and the amounts resulting from the application of Article 7(2) shall be allocated to the Member State where the corresponding amounts have been generated, in accordance with the procedure referred to in Article 141(2). They shall be used in accordance with Article 69(5a) of Regulation (EC) No 1698/2005.

Article 10

Special rules for modulation in the new Member States

1 Article 7 shall apply to farmers in a new Member State in any given calendar year only if the level of direct payments applicable in that Member State for that calendar year pursuant to Article 121 is at least equal to the then applicable level in the Member States other than the new Member States, taking into account any reductions applied under Article 7(1).

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2 If Article 7 applies to farmers in a new Member State, the percentage applicable under Article 7(1) shall be limited to the difference between the level of direct payments applicable to it under Article 121 and the level in the Member States other than the new Member States, taking into account any reductions applied under Article 7(1).

3 Any amount resulting from the application of Article 7(1) and (2) shall be allocated to the new Member State where the corresponding amounts have been generated, in accordance with the procedure referred to in Article 141(2). They shall be used in accordance with Article 69(5a) of Regulation (EC) No 1698/2005.

f¹ Article 10b

Voluntary adjustment of direct payments in 2013

5 By 8 October 2012 Member States shall decide on, and communicate to the Commission, the following:

- a the rate of voluntary adjustment for the whole territory and, where applicable, for each region;
- b the total amount to be reduced under voluntary adjustment for the whole territory and, where applicable, for each region.

Textual Amendments

- F1** Inserted by [Regulation \(EU\) No 671/2012 of the European Parliament and of the Council of 11 July 2012 amending Council Regulation \(EC\) No 73/2009 as regards the application of direct payments to farmers in respect of the year 2013](#).

Article 10c

Amounts resulting from voluntary adjustment and from application of Article 136

1 Based on the amounts communicated by the Member States pursuant to Article 10b(5), the Commission shall adopt implementing acts, without applying the procedure referred to in Article 141(2) or 141b(2), fixing the amounts resulting from voluntary adjustment.

4 The Commission shall adopt implementing acts laying down rules for the presentation of the amounts referred to in paragraph 2 in the financing plans of the rural development programmes. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 141b(2).

Textual Amendments

- F1** Inserted by [Regulation \(EU\) No 671/2012 of the European Parliament and of the Council of 11 July 2012 amending Council Regulation \(EC\) No 73/2009 as regards the application of direct payments to farmers in respect of the year 2013](#).

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Article 10d

EAGF net ceiling

2 The Commission shall adopt implementing acts, without applying the procedure referred to in Article 141(2) or 141b(2), setting the net balance available for EAGF expenditure in respect of financial year 2014 on the basis of the data referred to in paragraph 1.]

Textual Amendments

- F1** Inserted by [Regulation \(EU\) No 671/2012 of the European Parliament and of the Council of 11 July 2012 amending Council Regulation \(EC\) No 73/2009 as regards the application of direct payments to farmers in respect of the year 2013.](#)

Article 11

Financial discipline

[^{F2}1 With a view to ensuring that the amounts for the financing of the market related expenditure and direct payments of the CAP currently under heading 2 of Annex I to the Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management⁽¹⁾ respect the annual ceilings set out in the Decision 2002/929/EC of the Representatives of the Governments of the Member States, meeting within the Council of 18 November 2002, concerning the Conclusions of the European Council meeting in Brussels on 24 and 25 October 2002⁽²⁾, an adjustment of the direct payments shall be determined when the forecasts for the financing of the aforementioned measures under heading 2 for a given financial year, increased by the amounts given in Article 190a of Regulation (EC) No 1234/2007, the amounts given in Articles 134 and 135 and the amounts referred to in Article 136 of this Regulation and before application of modulation provided for in Articles 7 and 10 of this Regulation and Article 1(1) of Regulation (EC) No 378/2007, indicate that the applicable abovementioned annual ceiling, taking into account a margin of EUR 300 000 000 below that ceiling, will be exceeded.]

2 The Council, acting on a proposal from the Commission presented no later than 31 March of the calendar year in respect of which the adjustments referred to in paragraph 1 apply, shall determine these adjustments no later than 30 June of the same calendar year.

3 In the framework of the application of the schedule of increments provided for in Article 121 to all direct payments granted in the new Member States, paragraph 1 of this Article shall not apply to the new Member States until the beginning of the calendar year in respect of which the level of direct payments applicable in the new Member States is at least equal to the then applicable level of such payments in the Member States other than the new Member States.

Textual Amendments

- F2** Substituted by [Council Regulation \(EC\) No 1250/2009 of 30 November 2009 amending Regulation \(EC\) No 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers.](#)

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f^{F1} Article 11a

Delegation of powers

In order to ensure an optimal application of the adjustments of direct payments in 2013 and financial discipline for calendar year 2013, the Commission shall be empowered to adopt delegated acts, in accordance with Article 141a, laying down rules concerning the basis of calculation for reductions to be applied to farmers by Member States due to the adjustments of payments in 2013 provided for in Article 10a and financial discipline provided for in Article 11.]

Textual Amendments

- F1** Inserted by [Regulation \(EU\) No 671/2012 of the European Parliament and of the Council of 11 July 2012 amending Council Regulation \(EC\) No 73/2009 as regards the application of direct payments to farmers in respect of the year 2013.](#)

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- (1) [^{F2}OJ C 139, 14.6.2006, p. 1.
(2) OJ L 323, 28.11.2002, p. 48.]

Textual Amendments

- F2** Substituted by Council Regulation (EC) No 1250/2009 of 30 November 2009 amending Regulation (EC) No 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers.

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