

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amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (repealed)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 VII

IMPLEMENTING, TRANSITIONAL AND FINAL PROVISIONS

CHAPTER 1

Implementing provisions

Article 137

Confirmation of payment entitlements

- 1 Payment entitlements allocated to farmers before 1 January 2009 shall be deemed legal and regular as from 1 January 2010.
- 2 Paragraph 1 shall not apply to payment entitlements allocated to farmers on the basis of factually incorrect applications except in cases where the error could not reasonably have been detected by the farmer.
- 3 Paragraph 1 of this Article shall not prejudice the Commission's power to take decisions referred to in Article 31 of Regulation (EC) No 1290/2005 in relation to expenditure incurred for payments granted in respect of any calendar year up to 2009 included.

Article 138

Application to the outermost regions

Titles III and IV shall not apply to the French overseas departments, to the Azores and Madeira nor to the Canary Islands.

Article 139

State aid

By way of derogation from Article 180 of Regulation (EC) No 1234/2007 and Article 3 of Council Regulation (EC) No 1184/2006 of 24 July 2006 applying certain rules of competition to the production of, and trade in, agricultural products⁽¹⁾, Articles 87, 88 and 89 of the Treaty shall not apply to payments made under Articles 41, 57, 64, 68, 69, 70 and 71, Article 82(2), Article 86, Article 98(4), Article 111(5), Article 120, Article 129(3) and Articles 131, 132 and 133 of this Regulation by Member States in conformity with this Regulation.

Article 140

Transmission of information to the Commission

Member States shall inform the Commission in detail of the measures taken to implement this Regulation and, in particular, those relating to Articles 6, 12, 28, 41, 45, 46, 47, 48, 51, 57, 58, 68, 69, 70, 71, 72 and 131.

Article 141

Management Committee for Direct Payments

1 The Commission shall be assisted by a Management Committee for Direct Payments.

2 Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period provided for in Article 4(3) of Decision 1999/468/EC shall be set at one month.

Article 142

Implementing rules

In accordance with the procedure referred to in Article 141(2), detailed rules shall be adopted for the implementation of this Regulation. They shall include in particular:

- (a) detailed rules relating to the establishment of a farm advisory system;
- (b) detailed rules relating to the criteria for the allocation of amounts made available by the application of modulation;
- (c) detailed rules for the granting of aid provided for in this Regulation, including eligibility conditions, dates of application and payment and control provisions as well as for checking and establishing entitlement to the aids including any necessary exchange of data with the Member States, and for the establishment of the overrun of the base areas or maximum guaranteed areas as well as detailed rules concerning the determination of the retention period, the withdrawal and reallocation of unused premium rights established under Sections 10 and 11 of Chapter 1 of Title IV;
- (d) with regard to the single payment scheme, detailed rules relating in particular to the establishment of the national reserve, the transfer of payment entitlements, the definition of permanent crops, permanent pastures and grassland, the options provided for in Chapters 2 and 3 of Title III and the integration of coupled payments provided for in Chapter 4 of Title III;
- (e) detailed rules relating to the implementation of the provisions in Title V;
- (f) detailed rules relating to the inclusion of fruit and vegetables, ware potatoes and nurseries support into the single payment scheme, including the application procedure in the first year of implementation, and relating to the payments referred to in Sections 8 and 9 of Chapter 1 of Title IV;

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- (g) detailed rules relating to the inclusion of wine support into the single payment scheme, including the application procedure in the first year of implementation, in accordance with Regulation (EC) No 479/2008;
- (h) with regard to hemp, detailed rules relating to the specific control measures and methods for determining tetrahydrocannabinol levels;
- (i) such amendments to Annex I as may become necessary, taking into account the criteria set out in Article 1;
- (j) such amendments to Annexes V and IX as may become necessary, taking into account in particular new Community legislation;
- (k) the basic features of the identification system for agricultural parcels and their definition;
- (l) any amendments which may be made to the aid application and exemption from the requirement to submit an aid application;
- (m) rules on the minimum amount of information to be included in the aid applications;
- (n) rules on the administrative controls, on the on-the-spot checks and on the checks by remote sensing;
- (o) rules on the application of reductions and exclusions from payments in the event of non-compliance with the obligations referred to in Articles 4 and 22, including cases of non-application of reductions and exclusions;
- (p) such amendments to Annex VI as may become necessary, taking into account the criteria set out in Article 26;
- (q) communications between the Member States and the Commission;
- (r) measures which are both necessary and duly justified to resolve, in an emergency, practical and specific problems, in particular those relating to the implementation of Chapter 4 of Title II and Chapters 2 and 3 of Title III; such measures may derogate from certain parts of this Regulation, but only to the extent, and for such a period as is, strictly necessary;
- (s) with regard to cotton, detailed rules in respect of:
 - (i) the calculation of the reduction in the aid provided for in Article 90(4);
 - (ii) the approved inter-branch organisations, in particular their financing and a control and sanction system.

CHAPTER 2

Transitional and final provisions

Article 143

Amendments of Regulation (EC) No 1290/2005

Regulation (EC) No 1290/2005 is amended as follows:

Status: This is the original version (as it was originally adopted).

1. Article 12(2) shall be replaced by the following:
2. The Commission shall set the amounts which, pursuant to Articles 9, 10(4), 134, 135 and 136 of 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⁽²⁾, Article 4(1) of Council Regulation (EC) No 378/2007 of 27 March 2007 laying down rules for voluntary modulation of direct payments provided for in Regulation (EC) No 1782/2003⁽³⁾ and Article 23(2) of Council Regulation (EC) No 479/2008 of 29 April 2008 on the common organisation of the market in wine⁽⁴⁾, are made available to the EAFRD.;
2. Article 18(3) shall be replaced by the following:
3. National ceilings for direct payments referred to in Article 8(2) of Regulation (EC) No 73/2009, corrected by the adjustments laid down in Article 11(1) of that Regulation, shall be deemed to be financial ceilings in euro..

Article 144

Amendments of Regulation (EC) No 247/2006

Regulation (EC) No 247/2006 is amended as follows:

1. Article 23(2) shall be replaced by the following:
2. The Community shall finance the measures provided for in Titles II and III of this Regulation up to an annual maximum as follows:

(EUR million)

| | Financial year 2007 | Financial year 2008 | Financial year 2009 | Financial year 2010 | Financial year 2011 and subsequent |
|-----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|---|
| French overseas departments | 126,6 | 262,6 | 269,4 | 273,0 | 278,41 |
| Azores and Madeira | 77,9 | 86,98 | 87,08 | 87,18 | 106,21 |
| Canary Islands | 127,3 | 268,4 | 268,4 | 268,4 | 268,42 |

2. The following Article shall be inserted:

Article 24b

 1. By 1 August 2009, Member States shall submit to the Commission the draft amendments to their overall programme to reflect the changes made to Article 23(2) by 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⁽⁵⁾.

- 2 The Commission shall evaluate the amendments submitted and decide on their approval within four months of their submission in accordance with the procedure referred to in Article 26(2). The amendments shall apply from 1 January 2010.

Article 145

Amendments of Regulation (EC) No 378/2007

Regulation (EC) No 378/2007 is amended as follows:

1. Article 1 shall be amended as follows:
 - (a) paragraph 3 shall be replaced by the following:
 3. Reductions under voluntary modulation shall be made on the same basis of calculation as that applicable to modulation pursuant to Article 7 of 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⁽⁵⁾.
 - (b) the following paragraph shall be added:
 5. The modulation rates applicable to a farmer resulting from the application of Article 7 of Regulation (EC) No 73/2009 reduced by 5 percentage points shall be deducted from the rate of voluntary modulation applied by Member States pursuant to paragraph 4 of this Article. Both the percentage to be deducted and the final voluntary modulation rate shall be equal to or higher than 0.;
2. In Article 3(1), point (a) shall be replaced by the following:

by derogation from Article 1(3) of this Regulation, to apply the reductions under modulation on the basis of calculation applicable to modulation pursuant to Article 7 of Regulation (EC) No 73/2009, without taking into account the exclusion of EUR 5 000 provided for in paragraph 1 of that Article; and/or.

Article 146

Repeals

- 1 Regulation (EC) No 1782/2003 is hereby repealed.

However, Articles 20(2), 64(2), 66, 67, 68, 68a, 68b, 69, 70(1)(b) and (2) and Chapters 1 (durum wheat), 5 (energy crops), 7 (dairy premium), 10 (arable crops area payment), 10b (aid for olive groves), 10c (tobacco production aid) and 10d (hops area payment) of Title IV of that Regulation shall continue to apply for 2009.
 - 2 The references made in this Regulation to Regulation (EC) No 1782/2003 shall be understood as referring to that Regulation such as it was in force before its repeal.
- References made in other acts to Regulation (EC) No 1782/2003 shall be construed as being made to this Regulation and shall be read in accordance with the correlation table set out in Annex XVIII.

*Article 147***Transitional rules**

The Commission, in accordance with the procedure referred to in Article 141(2), may adopt the measures required to facilitate the transition from the arrangements provided for in Regulation (EC) No 1782/2003 to those established by this Regulation.

*Article 148***Transitional arrangements for the new Member States**

Where transitional measures are necessary in order to facilitate, for the new Member States, the transition from the single area payment scheme to the single payment scheme and other aid schemes referred to in Titles III and IV, such measures shall be adopted in accordance with the procedure referred to in Article 141(2).

*Article 149***Entry into force and application**

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

It shall apply from 1 January 2009.

However:

- (a) Article 138 shall apply from 1 January 2010;
- (b) the standards on establishment/and or retention of habitats, compliance with authorisation procedures in case of use of water for irrigation and the specification of landscape features, as provided for in Annex III, shall apply from 1 January 2010;
- (c) the standard on establishment of buffer strips along water courses, as provided for in Annex III, shall apply from 1 January 2010 at the earliest and by 1 January 2012 at the latest.

- (1) OJ L 214, 4.8.2006, p. 7.
- (2) OJ L 30, 31.1.2009, p. 16.
- (3) OJ L 95, 5.4.2007, p. 1.
- (4) OJ L 148, 6.6.2008, p. 1.’;
- (5) OJ L 30, 31.1.2009, p. 16.’