

Commission Regulation (EU) No 65/2011 of 27 January 2011 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the implementation of control procedures as well as cross-compliance in respect of rural development support measures (repealed)

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 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 Regulation (EC) No 1698/2005 with regard to operations coming under 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), (ii) and (iii) of that Regulation as far as the establishment cost is concerned.

- 2 For the purposes of this Title, the following definitions apply:
- a ‘area-related measure’ means measures or sub-measures for which support is based on the size of the area declared;
  - b ‘animal-related measure’ means measures or sub-measures for which support is based on the number of animals declared.
  - c ‘area determined’ means the area of plots or parcels for which aid is claimed, as identified in accordance with Article 11 and Article 15(2), (3) and (4) of this Regulation.
  - d ‘animals determined’ means the number of animals identified in accordance with Article 11 and Article 15(5) of this Regulation.

## Article 7

### Applicable rules

1 Article 2, second subparagraph, points (1), (10) and (20), Article 6(1), Article 10(2), Articles 12, 14, 16, 20, second subparagraph of Article 25(1), Articles 73, 74 and 82 of Regulation (EC) No 1122/2009 shall apply *mutatis mutandis* for the purpose of this Title. 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.

2 For the purpose of this Title, the references in Regulation (EC) No 1122/2009 to ‘farmers’ shall be construed as references to ‘beneficiaries’.

## Article 8

### Payment claims

1 For all commitments starting or contracts entering into force after 1 January 2007, payment claims under area-related measures shall be submitted in accordance with the deadlines set out in Article 11(2) of Regulation (EC) No 1122/2009. However, Member States may decide to apply this provision only as from the claim year 2008.

2 If a Member State applies Article 3(2), second subparagraph, of this Regulation, then the payment claim shall be deemed to be submitted in accordance with the deadlines set out in Article 11(2) of Regulation (EC) No 1122/2009.

3 Articles 22 and 23 of Regulation (EC) No 1122/2009 shall apply *mutatis mutandis* to payment claims under this Title. In addition 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 that 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 75 % of the aid after completion 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 completed before payment, any undue payments shall be recovered in accordance with Article 5.

## CHAPTER II

### **Control, reductions and exclusions**

#### Article 10

##### **General principles**

- 1 Member States shall make use of the integrated administration and control system provided for in Chapter 4 of Title II of Regulation (EC) No 73/2009 (hereinafter referred to as IACS).
- 2 Verification of compliance with the eligibility criteria shall consist of administrative and on-the-spot checks.
- 3 Observance of cross-compliance requirements shall be verified through on-the-spot checks and, where appropriate, through administrative checks.
- 4 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

##### **Compliance with the eligibility criteria, commitments and linked obligations**

#### Subsection I

##### **Control**

#### Article 11

##### **Administrative checks**

- 1 Administrative checks shall be undertaken on all applications for support, payment claims and other declarations required to be submitted by a beneficiary or a third party, 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 apply 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.
- 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 the control of agricultural subsidies.

## Article 12

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

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

Applicants found not to be eligible after administrative checks shall not form part of the minimum number of beneficiaries checked in accordance with the first subparagraph.

2 Where on-the-spot checks reveal significant irregularities for a given measure 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 beneficiaries to be checked on-the-spot in the following year.

3 The control samples of on-the-spot checks to be carried out pursuant to paragraph 1 of this Article shall be selected in accordance with Article 31 of Regulation (EC) No 1122/2009. As a result of the risk analysis referred to in that Article, the Member States may select specific measures of the beneficiaries for the on-the-spot check.

4 For the beneficiaries of any multiannual measures involving payments exceeding five years, the Member States may decide, after the fifth year of payment, to check at least 2,5 % of those beneficiaries.

Beneficiaries checked under the first subparagraph of this paragraph shall not be taken into account for the purpose of 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 32 of Regulation (EC) No 1122/2009.

## 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 of measures selected for the check as referred to in Article 12(3) of this Regulation shall cover all the commitments and obligations of a beneficiary which can be checked at the time of the visit.

## 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 control 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>(1)</sup>.

2 Where the Member States provide 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.

3 With regard to the control of area-related measures, the on-the-spot checks shall cover all agricultural parcels and non-agricultural land for which support is being claimed.

4 Nevertheless, the actual determination of the size of areas for an on-the-spot check may be limited to a sample of at least 50 % of the areas, provided that the sample guarantees a reliable and representative level of control in respect of area checked and support claimed. If the checks on that sample reveal irregularities, the extent and scope of the sample shall be extended appropriately.

5 Determination of areas and remote sensing shall be carried out in accordance with Article 34(1) to (5) and Article 35 of Regulation (EC) No 1122/2009.

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 out in Article 34(1) of Regulation (EC) No 1122/2009.

6 With regard to the control of animal-related measures, the on-the-spot checks shall be carried out in accordance with Article 42 of Regulation (EC) No 1122/2009.

## Subsection II

### **Reductions and exclusions**

## Article 16

### **Reductions and exclusions in relation to the size of area**

1 If, for a given year, a beneficiary does not declare all the agricultural areas, and the difference between the overall agricultural area declared in the payment claim on the one hand and the area declared plus the overall area of the agricultural parcels not declared, on the other, is more than 3 % of the area declared, the overall amount of aid under area-related measures payable to that beneficiary for that year shall be reduced by up to 3 % depending on the seriousness of the omission.

The first subparagraph shall not apply where all the agricultural areas concerned have been declared to the competent authorities in the framework of:

- a the integrated system referred to in Article 15 of Regulation (EC) No 73/2009; or

- b other administration and control systems that guarantee compatibility with the integrated system in accordance with Article 26 of that Regulation.

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

3 If the area determined for a crop group is found to be greater than that declared in the payment claim, the area declared shall be used for the calculation of the aid.

If the area declared in the payment claim exceeds the area determined for that crop group, the aid shall be calculated on the basis of the area determined for that crop group.

However, where the difference between the total area determined and the total area declared in the payment claim for a measure is less than or equal to 0,1 hectare, the area determined shall be considered equal to the area declared. For this calculation, only over-declarations of areas at crop group level shall be taken into account.

The third subparagraph shall not apply where the difference represents more than 20 % of the total area declared for payments.

If a maximum limit or a ceiling has been set for the area eligible for support, the number of hectares declared in the payment claim shall be reduced to the limit or ceiling.

4 If the same area serves as the basis for a payment claim under more than one area-related measure, that area shall be taken into account separately for each of the measures.

5 In the case referred to in the second subparagraph of paragraph 3, 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 not 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 crop group concerned.

If the difference is more than 50 %, the beneficiary shall be excluded once again from receiving aid up to the difference between the area declared in the payment claim and the area determined.

6 If the differences between the area declared in the payment claim and the area determined, as referred to in the second subparagraph of paragraph 3, result from over-declarations committed intentionally, the aid to which the beneficiary would have been entitled pursuant to that subparagraph shall not be granted for the calendar year in question under the area-related measure concerned where that difference is more than 0,5 % of the area determined or more than one hectare.

If the difference is more than 20 % of the area determined, the beneficiary shall be excluded once again from receiving aid, up to an amount equal to the amount corresponding to the difference between the area declared and the area determined.

7 The amount resulting from the exclusions provided for in the third subparagraph of paragraph 5 and in the second subparagraph of paragraph 6 of this Article shall be offset in accordance with Article 5b of Commission Regulation (EC) No 885/2006<sup>(2)</sup>. If the amount cannot be fully offset in accordance with that Article in the course of the three calendar years following the calendar year of the finding, the outstanding balance shall be cancelled.

## Article 17

### **Reductions and exclusions in relation to the number of animals**

1 For the purpose of this Article, bovine animals and ovine and caprine animals shall each be treated separately.

Concerning animals other than those referred to in the first subparagraph, the Member State shall fix an appropriate system of reductions and exclusions.

2 If an individual limit or individual ceiling is applicable, the number of animals declared in the payment claim shall be reduced to the limit or ceiling set for the beneficiary concerned.

In no case may aid be granted for a number of animals greater than that declared in the payment claim.

If the number of animals declared in the payment claim exceeds the number of animals determined as a result of administrative or on-the-spot checks, the aid shall be calculated on the basis of the number of animals determined.

3 A bovine animal which has lost one of the two ear tags shall be deemed to belong to the animals determined provided that it is clearly and individually identified by the other elements of the system for the identification and registration of bovine animals.

In the case of irregularities involving incorrect entries in the register of bovine animals or the animal passports, the bovine animal concerned shall only be deemed not to belong to the animals determined if the errors are found in at least two checks within a period of 24 months. In all other cases the animal concerned shall be deemed not to belong to the animals determined after the first finding.

Article 3(4) of this Regulation shall apply to entries in, and notifications to, the system for the identification and registration of bovine animals.

4 In the case referred to in the third subparagraph of paragraph 2, the total amount of aid to which the beneficiary is entitled under the measure shall be reduced by the percentage to be established in accordance with paragraph 6, if no more than three animals are found with irregularities.

5 If more than three animals are found with irregularities, the total amount of aid to which the beneficiary is entitled under the measure shall be reduced by:

- a the percentage to be established in accordance with paragraph 6, if that percentage is not more than 10 %;
- b twice the percentage to be established in accordance with paragraph 6, if that percentage is more than 10 % but not more than 20 %.

If that percentage is more than 20 %, no aid shall be granted for the measure concerned.

If that percentage is more than 50 %, the beneficiary shall be excluded once again from receiving aid up to an amount corresponding to the difference between the number of animals declared and the number of animals determined in accordance with the third subparagraph of paragraph 2. The amount resulting from the exclusion shall be offset in accordance with Article 5b of Regulation (EC) No 885/2006. If the amount cannot be fully offset in accordance with that Article in the course of the three calendar years following the calendar year of the finding, the outstanding balance shall be cancelled.

6 In order to establish the percentages referred to in paragraphs 4 and 5, the number of animals found with irregularities shall be divided by the number of animals determined.

In case of application of the second subparagraph of Article 16(3) of Regulation (EC) No 1122/2009, potentially eligible animals found not to be correctly identified or registered in the system for identification and registration of bovine animals shall count as animals found with irregularities.

7 If the difference between the number of animals declared and that determined in accordance with the third subparagraph of paragraph 2 results from irregularities committed intentionally no aid shall be granted for the measure concerned.

If the percentage established in accordance with paragraph 6 is more than 20 %, the beneficiary shall be excluded once again from receiving aid up to an amount corresponding to the difference between the number of animals declared and the number of animals determined in accordance with the third subparagraph of paragraph 2. The amount resulting from the exclusion shall be offset in accordance with Article 5b of Regulation (EC) No 885/2006. If the amount cannot be fully offset in the course of three calendar years following the calendar year of the finding, the outstanding balance shall be cancelled.

#### *Article 18*

##### **Reductions and exclusions in the case of non-compliance with other eligibility criteria, commitments and linked obligations**

1 The aid claimed shall be reduced or refused where the following obligations and criteria are not met:

- a for the measures referred to in Article 36(a)(iv) and (v) as well in (b)(v) of Regulation (EC) No 1698/2005, the relevant mandatory standards as well as minimum requirements for fertiliser and plant protection product use, other relevant mandatory requirements as referred to in Articles 39(3), 40(2) and 47(1) of Regulation (EC) No 1698/2005, and commitments that go beyond such standards and requirements; or
- b eligibility criteria other than those related to the size of area or number of animals declared.

In case of multiannual commitments, aid reductions, exclusions and recoveries shall also apply to the amounts already paid in the previous years for that commitment.

2 The Member State shall recover and/or refuse the support or determine the amount of the reduction of the aid, in particular on the basis of the severity, extent and permanent nature of the non-compliance found.

The severity of the non-compliance shall depend, in particular, on the importance of the consequences of the non-compliance, taking into account the objectives of the criteria that were not met.

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

Whether the non-compliance is of a permanent nature shall depend, in particular, on the length of time for which the effect lasts or the possibility of terminating this effect by reasonable means.



3 If the non-compliance results from irregularities committed intentionally, the beneficiary shall be excluded from the measure in question both for the calendar year of finding and for the following calendar year.

## *Section II*

### ***Cross-compliance***

#### *Subsection I*

#### ***Control***

#### *Article 19*

#### **General rules**

1 Without prejudice to Article 51(3) of Regulation (EC) No 1698/2005, ‘cross-compliance’ shall mean compliance with the statutory management requirements and the good agricultural and environmental condition referred to in the first subparagraph of Article 50a(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 Article 22 of Regulation (EC) No 73/2009 and Article 2, second paragraph, points (2) and (32) to (37), Articles 8, 47, 48, 49, Article 50 with the exception of the first subparagraph of paragraph 1, Article 51(1), (2) and (3), Articles 52, 53, 54, Article 70(3), (4), (6) and (7), and Articles 71 and 72 of Regulation (EC) No 1122/2009 shall apply *mutatis mutandis* with regard to cross-compliance.

3 For calculating the reduction referred to in Article 21 of this Regulation, the minimum requirements for the use of fertilisers and plant protection products as referred to in Article 39(3) of Regulation (EC) No 1698/2005 shall be considered to relate to the area of the environment and the area of public, animal and plant health, respectively, as laid down in Article 5(1) of Regulation (EC) No 73/2009. Both minimum requirements shall be considered to be an ‘act’ within the meaning of Article 2, second paragraph, point (33), of Regulation (EC) No 1122/2009.

#### *Article 20*

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

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

2 The samples of beneficiaries to be checked in accordance with paragraph 1 may be selected either from the sample of beneficiaries which were already selected pursuant to Article 12 of this Regulation, and to whom the relevant requirements or standards apply, or from the full population of beneficiaries submitting payment claims under Article 36(a)(i) to (v) and (b)(i), (iv) and (v) of Regulation (EC) No 1698/2005 and who are obliged to meet the respective requirements or standards.

3 A combination of the procedures set out in paragraph 2 may be used where such a combination increases the effectiveness of the control system.

4 Where the acts and standards relevant to cross-compliance require the on-the-spot checks to be unannounced, the same requirement shall also apply to the on-the-spot checks of cross-compliance.

### *Subsection II*

#### ***Reductions and exclusions***

##### *Article 21*

#### **Reductions and exclusions**

Without prejudice to Article 51(2) of Regulation (EC) No 1698/2005, if a case of non-compliance is determined, the reductions and exclusions referred to in Article 19(2) of this Regulation shall be applied to the overall amount of aid under Article 36(a)(i) to (v) and (b)(i), (iv) and (v) of Regulation (EC) No 1698/2005 that has been, or is to be, granted to the beneficiary concerned following payment claims that the beneficiary has submitted or will submit in the course of the calendar year of the finding.

### *Section III*

#### ***Order of reductions***

##### *Article 22*

#### **Order of reductions**

Where several reductions are applicable; they shall be applied in the following order:

- first in accordance with Article 16(5) and (6) and with Article 17(4) and (5) of this Regulation,
- then in accordance with Article 18 of this Regulation,
- then for late submission in accordance with Article 23 of Regulation (EC) No 1122/2009,
- then in accordance with Article 16(1) of this Regulation,
- then in accordance with Article 21 of this Regulation,
- finally, in accordance with Article 16(7) and 17(7) of this Regulation.

- (1) OJ L 368, 23.12.2006, p. 15.
- (2) OJ L 171, 23.6.2006, p. 90.