

REGULATIONS

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

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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) ⁽¹⁾, and in particular Article 51(4), Article 74(4) and Article 91 thereof,

Whereas:

- (1) Commission Regulation (EC) No 1122/2009 of 30 November 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for in that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector ⁽²⁾ repealed and replaced Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the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 Regulations (EC) No 1782/2003 and (EC) No 73/2009, as well as for the implementation of cross-compliance provided for in Council Regulation (EC) No 479/2008 ⁽³⁾.
- (2) 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 ⁽⁴⁾, contains many cross-references to the administration and control rules

set out in the repealed Regulation (EC) No 796/2004. Account should be taken of the modifications made to those administration and control rules by Regulation (EC) No 1122/2009, while the principles established by Regulation (EC) No 1975/2006 should be respected. In addition, to ensure coherence, clarity and simplification, certain provisions of Regulation (EC) No 1975/2006 should be amended in order to limit the references to Regulation (EC) 1122/2009 to the minimum necessary. It is therefore appropriate to repeal and replace Regulation (EC) No 1975/2006.

- (3) Member States should establish a control system that ensures that all necessary checks are carried out for effective verification of compliance with the terms under which aid is granted. All the eligibility criteria established by legislation of the Union or national legislation or the rural development programmes should be able to be controlled according to a set of verifiable indicators.
- (4) 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) 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 ⁽⁵⁾, 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 related provisions concerning reductions and exclusions in cases of false declarations, should follow the principles set out in the IACS, in particular in Regulation (EC) No 1122/2009.
- (5) However, for certain support measures set out under Axis 2 and for equivalent support under Axis 4 provided for in Sections 2 and 4, respectively, of Chapter I of Title IV of Regulation (EC) No 1698/2005, the administration and control rules need to be adapted

⁽¹⁾ OJ L 277, 21.10.2005, p. 1.

⁽²⁾ OJ L 316, 2.12.2009, p. 65.

⁽³⁾ OJ L 141, 30.4.2004, p. 18.

⁽⁴⁾ OJ L 368, 23.12.2006, p. 74.

⁽⁵⁾ OJ L 30, 31.1.2009, p. 16.

to their particular characteristics. The same applies to the support measures under Axes 1 and 3 provided for in Sections 1 and 3, respectively, of the same Chapter and equivalent support under Axis 4. Special provisions therefore need to be established for those support measures.

- (6) In order to ensure that all national administrations are able to organise efficient, integrated control of all areas for which payment is claimed under Axis 2 and under the area-related aid schemes covered by Regulation (EC) No 1122/2009, 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.
- (7) In order to ensure the deterrent effect of control, payments should, as a general rule, not be made before the eligibility checks have been completed. However, it is appropriate to allow payments up to a certain level after the completion of administrative checks. In fixing that level, account should be taken of the risk of overpayment.
- (8) The control rules provided for in this Regulation should take into account the special characteristics of the measures concerned under Axis 2. For the sake of clarity, particular rules should therefore be established.
- (9) Member States may use evidence received from other services, bodies or organisations to verify compliance with eligibility criteria. However, they should have assurance that the service, body or organisation is operating to a standard sufficient to control compliance with the eligibility criteria.
- (10) Experience has shown that it is necessary to clarify certain provisions, especially as regards determination of the number of hectares and animals as well as reductions, exclusions and recoveries.
- (11) In accordance with Article 50a of Regulation (EC) No 1698/2005, payments under certain of the measures provided for in that Regulation have been made subject to observance of cross-compliance requirements as provided for in Chapter 1 of Title II of Regulation (EC) No 73/2009. It is therefore appropriate to align the rules governing cross-compliance with those contained in Regulations (EC) No 73/2009 and (EC) No 1122/2009.
- (12) Experience has shown that specific control provisions are needed for certain specific support measures.
- (13) *Ex-post* checks of investment operations should be undertaken to verify compliance with Article 72(1) of

Regulation (EC) No 1698/2005. The basis and the contents of those checks should be specified.

- (14) To allow the Commission to meet its obligations for the management of the measures, Member States should report to the Commission on the number of checks undertaken and their results.
- (15) Certain general control principles should be established, covering the right of the Commission to carry out checks.
- (16) 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⁽¹⁾ have sufficient information on checks carried out by other services or bodies in order to fulfil their duties under that Regulation.
- (17) In order to avoid accounting problems which could occur if for the calendar year 2011 different control procedures had to be applied, this Regulation should apply from 1 January 2011.
- (18) 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 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

Definitions

For the purposes of this Regulation:

- (a) 'Application for support' means an application for support or to enter a scheme under Regulation (EC) No 1698/2005;
- (b) 'Payment claim' means an application by a beneficiary for payment by the national authorities;

⁽¹⁾ OJ L 209, 11.8.2005, p. 1.

(c) 'Other declaration' means any declaration or document, other than those referred to in points (a) and (b), which has to be submitted or kept by a beneficiary or a third party in order to comply with specific requirements of certain rural development measures.

Article 3

Applications for support, payment claims and other declarations

1. 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.

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 24 as appropriate.

3. An application for support, payment claim or other declaration may be totally or partially withdrawn at any time. Evidence of such withdrawal shall be recorded by the competent authority.

If the competent authority has already informed the beneficiary of irregularities in the documents referred to in the first subparagraph or if the competent authority has given notice to the beneficiary of its intention to carry out an on-the-spot check, which subsequently reveals irregularities, withdrawals shall not be authorised in respect of the parts affected by the irregularities.

Withdrawals referred to in the first subparagraph shall put beneficiaries in the position they were before submission of the documents in question or part of them.

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

Article 4

General principles of control

1. Member States shall establish a control system that ensures that all necessary checks are carried out for effective verification of compliance with the terms under which support is granted.

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

3. Member States shall ensure that a unique identification system applies with regard to all applications for support, payment claims and other declarations submitted by the same beneficiary. This identification shall be compatible with the system referred to in Article 15(1)(f) of Regulation (EC) No 73/2009 for recording the identity of each farmer.

4. Where appropriate, on-the-spot checks provided for in Articles 12, 20 and 25 of this Regulation and other checks provided for in Union rules regarding agricultural subsidies shall be carried out at the same time.

5. The results of the checks under Articles 11, 12, 24 and 25 shall be assessed to establish whether any problems encountered could in general entail a risk for other similar operations, beneficiaries or other bodies. The assessment shall also identify the causes of such situations, any further examination which may be required and the necessary corrective and preventive action.

6. Applications for support, payment claims and other declarations shall be rejected if beneficiaries or their representatives prevent checks from being carried out. Any amounts already paid for that operation shall be recovered taking into account the criteria set out in Article 18(2) of this Regulation.

7. Without prejudice to Article 20(4) of this Regulation, and provided that the purpose of control is not jeopardised, on-the-spot checks may be announced. The announcement shall be strictly limited to the minimum time necessary and shall not exceed 14 days. However, for on-the-spot checks concerning animal-related measures, the announcement shall, except in duly justified cases, not exceed 48 hours.

8. Without prejudice to specific provisions, no payments shall be made to 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.

9. The reductions or exclusions under this Regulation shall be without prejudice to additional penalties pursuant to other provisions of Union or national law.

Article 5

Recovery of undue payments

1. If undue payment is made, the beneficiary shall repay the amount in question plus interest calculated in accordance with paragraph 2.

2. Interest shall be calculated for the period elapsing between the notification to the beneficiary of the repayment obligation and the effective repayment or deduction of the amount to be repaid.

The rate of interest applicable shall be calculated in accordance with national law but shall not be lower than the interest rate applicable for the recovery of amounts under national provisions.

3. The repayment obligation referred to in paragraph 1 shall not apply if the payment was made by error of the competent authority or of another authority and if the error could not reasonably have been detected by the beneficiary.

However, where the error relates to factual elements relevant for the calculation of the payment concerned, the first subparagraph shall only apply if the decision to recover was not communicated within 12 months of the payment.

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 ⁽¹⁾.

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.

⁽¹⁾ OJ L 368, 23.12.2006, p. 15.

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 ⁽¹⁾. 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.

⁽¹⁾ OJ L 171, 23.6.2006, p. 90.

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.

TITLE II

RURAL DEVELOPMENT SUPPORT UNDER AXIS 1 AND AXIS 3 AND CERTAIN MEASURES UNDER AXIS 2 AND AXIS 4

CHAPTER I

Introductory provisions

Article 23

Scope

This Title shall apply to expenditure pursuant to Regulation (EC) No 1698/2005 not covered by Title I of this Regulation.

CHAPTER II

Control, reductions and exclusions

Section I

Control

Subsection I

General provisions

Article 24

Administrative checks

1. Administrative checks shall be carried out on all applications for support, payment claims or 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 require recording of the control work undertaken, the results of the verification and the measures taken in the event of discrepancies.

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

- (a) the eligibility of the operation for which support is requested;
- (b) compliance with the selection criteria set out in the rural development programme;
- (c) compliance of the operation for which support is requested with applicable national and Union rules on, in particular, and where relevant, public procurement, State aid and other appropriate obligatory standards established by national legislation or established in the rural development programme;
- (d) the reasonableness of the costs submitted, 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 where appropriate for the claim in question, 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 on 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 duly justified reasons, such as the following:

- (a) the operation is included in the sample for an on-the-spot check to be carried out in accordance with Article 25;
- (b) the operation in question is a small investment;
- (c) the Member State considers that the risk that the conditions for receiving aid are not met is low, or that the risk that the investment has not been realised is low.

The decision referred to in the second subparagraph and its justification shall be recorded.

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

6. 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.

Article 25

On-the-spot checks

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

2. The expenditure covered by on-the-spot checks shall represent at least 4 % of the expenditure referred to in Article 23 which is financed by the European Agricultural Fund for Rural Development (EAFRD) and which is to be paid by the paying agency each calendar year. Only checks carried out until the end of the year in question shall be taken into consideration.

Over the whole programming period, the expenditure covered shall represent at least 5 % of the expenditure financed by the EAFRD.

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 identified following national or Union checks;

(c) the need to maintain a balance between the axes and measures;

(d) the need to select randomly between 20 % and 25 % of expenditure.

4. The inspectors undertaking the on-the-spot check shall not have been involved in administrative checks of the same operation.

Article 26

Content of on-the-spot checks

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

(a) that the payment claims submitted by the beneficiary are supported by accounting or other documents, including, where necessary, a check on the accuracy of the data in the payment claim on the basis of data or commercial documents held by third parties;

(b) for an adequate number of expenditure items, that the nature and the timing of the relevant expenditure comply with Union provisions and correspond to the approved specifications of the operation and the works actually executed or services actually delivered;

(c) that the use or intended use of the operation is consistent with the use described in the application for support;

(d) that the publicly funded operations have been implemented in accordance with Union 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. On-the-spot checks of payment claims selected for the check as referred to in Article 25(3) of this Regulation 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, 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 achievement of the control rate set out in Article 25(2).

Article 27

Control report

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

- (a) the measures and applications checked;
- (b) the persons present;
- (c) whether notice was given to the beneficiary of the visit and, if so, the period of advance notification;
- (d) the results of the checks and, where applicable, any particular observations;
- (e) any further control measures to be carried out.

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

Subsection II

Supplementary control provisions for specific measures

Article 28

Young farmers

For the measure provided for in Article 22(1) of Regulation (EC) No 1698/2005, the Member States shall verify compliance with the business plan according to Article 13(3) of Regulation (EC) No 1974/2006 by administrative checks and, on a sample basis, by on-the-spot checks.

Article 28a

Early retirement

For the measure provided for in Article 23 of Regulation (EC) No 1698/2005, Member States shall verify compliance with the requirements in Article 23(2)(b) and in Article 23(3) of that Regulation after transfer of the farm. Member States may dispense with on-the-spot checks after the first payment of support, provided that administrative checks, including appropriate cross-checks, in particular with the information contained in the electronic database referred to in Article 16 of Regulation (EC) No 73/2009, provide the necessary assurance of the legality and regularity of payments.

Article 28b

Support for food quality schemes recognised by Member States

For the measure 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 compliance with eligibility criteria. However, they shall ensure that they have assurance that the service, body or organisation is operating to a standard sufficient to control compliance with the eligibility criteria.

Article 28c

Semi-subsistence farming

For the measure provided for in Article 34 of Regulation (EC) No 1698/2005, the Member States shall verify progress in respect of the business plan according to paragraph 2 of that Article by administrative checks and, on a sample basis, by on-the-spot checks.

Article 28d

Producer groups

For the measure provided for in Article 35 of Regulation (EC) No 1698/2005, the Member States shall recognise the producer group after verifying compliance of the group with the criteria set out in paragraph 1 of that Article and with the national rules. After recognition, continuous compliance with the recognition criteria shall be verified at least once during the five-year period through an on-the-spot check.

Article 28e

Holdings undergoing restructuring

For the measure provided for in Article 35a of Regulation (EC) No 1698/2005, the Member States shall assess progress in respect of the business plan according to paragraph 2 of that Article by administrative checks and, on a sample basis, by on-the-spot checks.

Article 28f

Leader

1. The Member States shall implement an appropriate system for supervision of local action groups.

2. In the case of expenditure incurred under Article 63(a) and (b) of Regulation (EC) No 1698/2005, Member States may delegate the carrying out of the administrative checks referred to in Article 24 of this Regulation to local action groups by a formal act. However, the Member States shall remain responsible for verifying that those local action groups have the administrative and control capacity to undertake that work.

In case of delegation referred to in the first subparagraph, the Member States shall carry out regular controls of the operations of the local action groups, including bookkeeping checks and repetition of administrative checks on a sample basis.

The Member States shall also carry out on-the-spot checks as referred to in Article 26 of this Regulation. In the sample of approved operations to be checked on-the-spot in accordance with Article 25(1) of this Regulation, expenditure concerning Leader shall at least have the same percentage it has in the expenditure referred to in Article 23 of this Regulation.

3. In the case of expenditure incurred under Article 63(c) of Regulation (EC) No 1698/2005, the checks shall be carried out by persons independent of the local action group concerned.

*Article 28g***Subsidies on interest rates**

In the case of expenditure incurred under Article 49 of Regulation (EC) No 1974/2006, administrative checks and on-the-spot checks shall be carried out with reference to the beneficiary and depending on the realisation of the operation concerned. The risk analysis in accordance with Article 25(3)(b) of this Regulation shall cover, at least once, the operation concerned on the basis of the discounted value of the subsidy.

Furthermore, the Member States shall ensure, via administrative checks and, if necessary, via *in-situ* visits to the intermediate financial institutions and at the beneficiary, that the payments to the intermediate financial institutions are in conformity with Union legislation and with the agreement concluded between the Member State's paying agency and the intermediate financial institution as laid down in Article 49 of Regulation (EC) No 1974/2006.

*Article 28h***Other financial engineering actions**

In the case of expenditure incurred under Article 50 of Regulation (EC) No 1974/2006, the Member States shall ensure, via administrative checks and, if necessary, via *in-situ* visits to the funds or their sponsors, that the conditions laid down in Articles 51 and 52 of that Regulation are complied with. They shall especially verify the correct usage of the funds and the closure at the end of the programming period.

Subsection III

Ex-post checks*Article 29***Ex-post checks**

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

2. The *ex-post* checks shall cover in each calendar year at least 1 % of EAFRD expenditure for investment operations that are still subject to commitment as referred to in paragraph 1 and for which the final payment has been made from the EAFRD. Only checks carried out until the end of the year in question shall be taken into consideration.

3. The sample for operations to be checked in accordance with paragraph 1 shall be based on an analysis of the risks and financial impact of different operations, groups of operations or measures. Part of the sample shall be selected randomly.

Section II

Reductions and exclusions*Article 30***Reductions and exclusions**

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

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

- (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 the 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.

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

3. The reductions and exclusions referred to in paragraphs 1 and 2 shall be applied *mutatis mutandis* to non-eligible expenditure identified during checks under Articles 25 and 29.

PART III

FINAL PROVISIONS*Article 31***Reporting**

Member States shall send to the Commission by 15 July of each year a report:

- (a) covering the results of the checks on payment claims submitted under Title I during the previous calendar year and relating, in particular, to the following points:
 - (i) the number of payment claims for each measure, the total amount checked for these claims, as well as the total area and total number of animals covered by checks under Articles 11, 12 and 20;
 - (ii) for area-related support, the total area broken down by individual aid scheme;
 - (iii) for animal-related measures, the total number of animals broken down by individual aid scheme;
 - (iv) the result of the checks carried out, indicating the reductions and exclusions applied pursuant to Articles 16, 17, 18 and 21;

- (b) covering the checks and the results of the checks on payment claims carried out pursuant to Articles 24 and 25 for payments made during the previous calendar year;
- (c) covering the checks and the results of the checks carried out pursuant to Articles 28 and 29 during the previous calendar year.

Article 32

Control by the Commission

Article 27(2) of Regulation (EC) No 73/2009 shall apply to support paid under Regulation (EC) No 1698/2005.

Article 33

Reporting of checks to the paying agencies

1. Where checks are not carried out by the responsible paying agency, the Member State shall ensure that sufficient information on the checks carried out and their results is received by that paying agency. It is for the paying agency to define its needs for information. The information may be a report on every check carried out or, if appropriate, be in the form of a summary report.
2. A sufficient audit trail shall be maintained. An indicative description of the requirements of a satisfactory audit trail is given in the Annex I.

3. The paying agency shall have the right to verify the quality of checks carried out by other bodies, and to receive all other information it needs for the performance of its functions.

Article 34

Repeal

1. Regulation (EC) No 1975/2006 is repealed with effect from 1 January 2011.

However, it shall continue to apply in respect of payment claims submitted before 1 January 2011.

2. References to Regulation (EC) No 1975/2006 shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II to this Regulation.

Article 35

Entry into force

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

It shall apply from 1 January 2011.

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

Done at Brussels, 27 January 2011.

For the Commission
The President
José Manuel BARROSO

ANNEX I

Indicative description of information requirements for a sufficient audit trail

A sufficient audit trail, as referred to in Article 33(2), is present when, for a given assistance:

- (a) it allows for reconciliation between the overall 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 verification of the payment of the public expenditure to the beneficiary;
 - (c) it allows for verification of the application of selection criteria to the operations financed by the EAFRD;
 - (d) it contains, as far as 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 checks carried out.
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ANNEX II

Correlation table

Regulation (EC) No 1975/2006	This Regulation
Article 1	Article 1
Article 2	Article 4(3), (6), (7) and (9), Article 5, Article 7(1)
Article 3	Article 2
Article 4	Article 3
Article 5	Article 4(2), (4) and (8)
Article 6	Article 6
Article 7	Article 7(1), Article 8(3), Article 16(1)
Article 8(3)	Article 7(1), Article 8(3)
Article 9	Article 9
Article 10(1) and (2)	Article 4(1)
Article 10(3) to (6)	Article 10(1) to (4)
Article 11	Article 11
Article 12(1), (3) and (4)	Article 12(1), (3) and (4)
Article 12(2)	Article 12(2) and Article 15(3)
Article 13	Article 13
Article 14	Article 14
Article 15	Article 15
Article 16(1)	Article 16(2) and (3)
Article 16(2)	Article 16(5)
Article 16(4)	—
Article 16(5) and (6)	Article 16(6) and (7), respectively
Article 17(1)	Article 17(2) and (3)
Article 17(2)	Article 17(4), (5) and (6)
Article 17(3)	Article 17(5) and (7)
Article 17(4)	Article 17(1)
Article 18	Article 18
Article 19(1)	Article 19(1)
Article 19(2)	Article 19(2)
Article 20(1)	Article 20(1)
Article 20(2)	Article 19(2)
Article 21(1)	Article 19(2)

Regulation (EC) No 1975/2006	This Regulation
Article 21(2) and (3)	Article 20(2)
Article 21(4)	Article 20(3)
Article 22	Article 19(2)
Article 23(1), first subparagraph	Article 21
Article 23(1), second and third subparagraphs	Article 19(2)
Article 23(2)	Article 19(3)
Article 24	Article 22
Article 25	Article 23
Article 26(1), (2), (3) and (4)	Article 24(1), (2), (3) and (4), respectively
Article 26(5)	Article 24(6)
Article 26(6)	Article 24(5)
Article 26(7)	Article 28b
Article 27(1), (2) and (3)	Article 25
Article 27(4)	Article 4(5)
Article 28	Article 26
Article 28a	Article 27
Article 29	Article 28a and 28c
Article 30(1) and (2)	Article 29(1)
Article 30(3)	Article 29(2)
Article 30(4), first subparagraph	Article 29(3)
Article 30(4), second subparagraph	—
Article 31(1), first, second and third subparagraphs	Article 30(1), first, second and third subparagraphs, respectively
Article 31(1), fourth subparagraph	Article 30(3)
Article 31(2)	Article 30(2)
Article 32	Article 28f(3)
Article 33	Article 28f(2)
Article 34(a)	Article 31(a)
Article 34(b) and (c)	Article 31(b)
Article 34(d)	Article 31(c)
Article 35	Article 32
Article 36(1)	Article 19(2)
Article 36(2), (3) and (4)	Article 33(1), (2) and (3)
Article 37	Article 35