

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amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (repealed)

TITLE II

GENERAL PROVISIONS ON DIRECT PAYMENTS

CHAPTER 1

Cross compliance

Article 4

Main requirements

1 A farmer receiving direct payments shall respect the statutory management requirements listed in Annex II and the good agricultural and environmental condition referred to in Article 6.

The obligations referred to in the first subparagraph shall apply only in so far as the agricultural activity of the farmer or the agricultural area of the holding is concerned.

2 The competent national authority shall provide the farmer, *inter alia* by the use of electronic means, with the list of statutory management requirements and the good agricultural and environmental condition to be respected.

Article 5

Statutory management requirements

1 The statutory management requirements listed in Annex II shall be established by Community legislation in the following areas:

- a public, animal and plant health;
- b environment;
- c animal welfare.

2 The acts referred to in Annex II shall apply as in force and, in the case of Directives, as implemented by the Member States.

Article 6

Good agricultural and environmental condition

1 Member States shall ensure that all agricultural land, especially land which is no longer used for production purposes, is maintained in good agricultural and environmental

condition. Member States shall define, at national or regional level, minimum requirements for good agricultural and environmental condition on the basis of the framework established in Annex III, taking into account the specific characteristics of the areas concerned, including soil and climatic condition, existing farming systems, land use, crop rotation, farming practices, and farm structures. Member States shall not define minimum requirements which are not foreseen in that framework.

The standards listed in the third column of Annex III shall be optional except where:

- a a Member State had defined, for such a standard, a minimum requirement for the good agricultural and environmental condition before 1 January 2009; and/or
- b national rules addressing the standard are applied in the Member State.

2 The Member States other than the new Member States shall ensure that land which was under permanent pasture at the date provided for the area aid applications for 2003 is maintained under permanent pasture. The new Member States other than Bulgaria and Romania shall ensure that land which was under permanent pasture on 1 May 2004 is maintained under permanent pasture. Bulgaria and Romania shall ensure that land which was under permanent pasture on 1 January 2007 is maintained under permanent pasture.

However a Member State may, in duly justified circumstances, derogate from the first subparagraph, provided that it takes action to prevent any significant decrease in its total permanent pasture area.

The first subparagraph shall not apply to land under permanent pasture to be afforested, if such afforestation is compatible with the environment and with the exclusion of plantations of Christmas trees and fast growing species cultivated in the short term.

CHAPTER 2

Modulation and financial discipline

Article 7

Modulation

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

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

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

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

Article 8

Net ceilings

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

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

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

Article 9

Amounts resulting from modulation

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

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

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

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

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

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

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

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

Article 10

Special rules for modulation in the new Member States

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

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

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

Article 11

Financial discipline

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

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

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

CHAPTER 3

Farm advisory system

Article 12

Farm advisory system

1 Member States shall operate a system of advising farmers on land and farm management (hereinafter referred to as the 'farm advisory system') operated by one or more designated authorities or by private bodies.

2 The farm advisory system shall cover at least the statutory management requirements and the good agricultural and environmental condition referred to in Chapter 1.

3 Farmers may participate in the farm advisory system on a voluntary basis.

Member States may determine, in accordance with objective criteria, the priority categories of farmer that have access to the farm advisory system.

4 By 31 December 2010, the Commission shall submit a report to the Council on the application of the farm advisory system, accompanied, if necessary, by appropriate proposals.

Article 13

Obligations of designated authorities and private bodies

Without prejudice to national legislation concerning public access to documents, Member States shall ensure that the designated authorities and private bodies referred to in Article 12(1) do not disclose personal or individual information and data they obtain in their advisory activity to persons other than the farmer managing the holding concerned, with the exception of any irregularity or infringement found during their activity which is covered by an obligation laid down in Community or national law to inform a public authority, in particular in the case of criminal offences.

CHAPTER 4

Integrated administration and control system

Article 14

Scope

Each Member State shall set up and operate an integrated administration and control system (hereinafter referred to as the 'integrated system').

The integrated system shall apply to the support schemes listed in Annex I.

To the extent necessary, it shall also apply to the administration and control of the rules laid down in Chapters 1 and 2 of this Title.

Article 15

Elements of the integrated system

- 1 The integrated system shall comprise the following elements:
 - a a computerised database;
 - b an identification system for agricultural parcels;
 - c a system for the identification and registration of payment entitlements;
 - d aid applications;
 - e an integrated control system;
 - f a single system to record the identity of each farmer who submits an aid application.
- 2 Where Articles 52 and 53 of this Regulation apply, the integrated system shall incorporate a system for the identification and registration of animals set up in accordance with Regulations (EC) No 1760/2000 and (EC) No 21/2004.
- 3 Member States may include a geographical information system for olive cultivation in the identification system for agricultural parcels.

Article 16

Computerised database

- 1 The computerised database shall record, for each agricultural holding, the data obtained from aid applications.

This database shall in particular allow consultation through the competent authority of the Member State, of the data relating to the calendar and/or marketing years, starting from 2000. It shall also allow direct and immediate consultation of the data relating to the four previous years.

- 2 Member States may set up decentralised databases on condition that these, and the administrative procedures for recording and accessing data, are designed homogeneously throughout the territory of the Member State and are compatible with one another in order to allow for cross-checks.

Article 17

Identification system for agricultural parcels

The identification system for agricultural parcels shall be established on the basis of maps or land registry documents or other cartographic references. Use shall be made of computerised geographical information system techniques, including preferably aerial or spatial orthoimagery, with a homogenous standard guaranteeing accuracy at least equivalent to cartography at a scale of 1:10 000.

Article 18

System for the identification and registration of payment entitlements

1 A system for the identification and registration of payment entitlements shall be set up allowing for verification of the entitlements and for cross-checks with the aid applications and the identification system for agricultural parcels.

2 The system referred to in paragraph 1 shall allow direct and immediate consultation, through the competent authority of the Member State, of the data relating to at least the previous four consecutive calendar years.

Article 19

Aid applications

1 Each year, a farmer shall submit an application for direct payments indicating, where applicable:

- a all the agricultural parcels on the holding, and where the Member State is applying Article 15(3), the number of olive trees and their positioning in the parcel;
- b the payment entitlements declared for activation;
- c any other information provided for by this Regulation or by the Member State concerned.

2 Member States shall provide, *inter alia* by the use of electronic means, pre-established forms based on the areas determined in the previous year as well as graphic material indicating the location of those areas and, where appropriate, the positioning of olive trees. A Member State may decide that the aid application needs to contain only changes with respect to the aid application submitted the previous year.

3 A Member State may decide that a single aid application shall cover several or all support schemes listed in Annex I or other support schemes.

Article 20

Verification of eligibility conditions

1 Member States shall carry out administrative controls on the aid applications to verify the eligibility conditions for the aid.

2 Administrative controls shall be supplemented by a system of on-the-spot checks to verify eligibility for the aid. For this purpose, Member States shall draw up a sampling plan of agricultural holdings.

Member States may use remote sensing and Global Navigation Satellite System (GNSS) techniques as a means of carrying out on-the-spot checks on agricultural parcels.

3 Each Member State shall designate an authority responsible for coordinating the controls and checks provided for in this Chapter.

Where a Member State provides for the delegation of some aspects of the work to be carried out under this Chapter to specialised agencies or firms, the designated authority shall retain control over, and responsibility for, that work.

Article 21

Reductions and exclusions in the event of non-compliance with eligibility rules

1 Without prejudice to any reduction or exclusion provided for in Article 23, where it is found that a farmer does not comply with the eligibility conditions relating to the granting of the aid as provided for in this Regulation, the payment or part of the payment granted or to be granted for which the conditions of eligibility have been met shall be subject to the reductions and exclusions to be laid down in accordance with the procedure referred to in Article 141(2).

2 The percentage of reduction shall be graduated according to the severity, extent, permanence and repetition of the non-compliance found and may go as far as total exclusion from one or several aid schemes for one or more calendar years.

Article 22

Controls on cross compliance

1 Member States shall carry out on-the-spot checks to verify whether a farmer complies with the obligations referred to in Chapter 1.

2 Member States may make use of their existing administration and control systems to ensure compliance with the statutory management requirements and good agricultural and environmental condition.

These systems, and notably the system for the identification and registration of animals set up in accordance with Council Directive 2008/71/EC of 15 July 2008 on the identification and registration of pigs⁽³⁾ and Regulations (EC) No 1760/2000 and (EC) No 21/2004, shall be compatible with the integrated system, as provided for in Article 26(1) of this Regulation.

Article 23

Reduction of or exclusion from payments in the event of non-compliance with cross compliance rules

1 Where the statutory management requirements or good agricultural and environmental condition are not complied with at any time in a given calendar year (hereinafter referred to as 'the calendar year concerned'), and the non-compliance in question is the result of an act or omission directly attributable to the farmer who submitted the aid application in the calendar year concerned, the total amount of direct payments granted or to be granted, following application of Articles 7, 10 and 11 to that farmer, shall be reduced or excluded in accordance with the detailed rules laid down in Article 24.

The first subparagraph shall also apply where the non-compliance in question is the result of an act or omission directly attributable to the person to whom or from whom the agricultural land was transferred.

For the purpose of this paragraph, ‘transfer’ shall mean any type of transaction whereby the agricultural land ceases to be at the disposal of the transferor.

By way of derogation from the second subparagraph, from 2010, where the person to whom the act or omission is directly attributable has submitted an aid application in the calendar year concerned, the reduction or exclusion shall be applied to the total amounts of direct payments granted or to be granted to that person.

2 Notwithstanding paragraph 1 and in accordance with the conditions laid down in the detailed rules referred to in Article 24(1) of this Regulation, Member States may decide not to apply a reduction or exclusion amounting to EUR 100 or less per farmer and per calendar year.

Where a Member State decides to make use of the option provided for in the first subparagraph, in the following year the competent authority shall take the actions required to ensure that the farmer remedies the findings of non-compliance concerned. The finding and the obligation to take remedial action shall be notified to the farmer.

Article 24

Detailed rules on reductions and exclusions in the event of non-compliance with cross compliance rules

1 Detailed rules for the reductions and exclusions referred to in Article 23 shall be laid down in accordance with the procedure referred to in Article 141(2). In this context, account shall be taken of the severity, extent, permanence and repetition of the non-compliance found as well as of the criteria set out in paragraphs 2, 3 and 4 of this Article.

2 In the case of negligence, the percentage of reduction shall not exceed 5 % and, in the case of repeated non-compliance, 15 %.

In duly justified cases Member States may decide that no reduction shall be applied where, given its severity, extent and permanence, a case of non-compliance is to be considered as minor. However, cases of non-compliance which constitute a direct risk to public or animal health shall not be considered as minor.

Unless the farmer has taken immediate remedial action putting an end to the non-compliance found, the competent authority shall take the actions required that may, where appropriate, be limited to an administrative control to ensure that the farmer remedies the finding of non-compliance concerned. The finding of minor non-compliance and the obligation to take remedial action shall be notified to the farmer.

3 In the case of intentional non-compliance, the percentage of reduction shall not in principle be less than 20 % and may go as far as total exclusion from one or several aid schemes and apply for one or more calendar years.

4 In any case, the total amount of reductions and exclusions for one calendar year shall not be more than the total amount referred to in Article 23(1).

Article 25

Amounts resulting from cross compliance

The amounts resulting from the application of the reductions and exclusions in the event of non-compliance with Chapter 1 shall be credited to the EAGF. Member States may retain 25 % of those amounts.

Article 26

Compatibility of support schemes with the integrated system

1 For the purpose of applying the support schemes listed in Annex VI, Member States shall ensure that the administration and control procedures applied to these schemes are compatible with the integrated system in the following respects:

- a the computerised database;
- b the identification systems for agricultural parcels;
- c the administrative controls.

To this end, the database, the systems and the controls referred to in points (a), (b) and (c) of the first subparagraph respectively shall be set up so as to allow, without any problems or conflicts, a common functioning or the exchange of data between them.

2 Member States may, for the purposes of applying Community or national support schemes other than those listed in Annex VI, incorporate into their administration and control procedures one or more components of the integrated system.

Article 27

Information and control

1 The Commission shall be kept regularly informed of the application of the integrated system.

It shall organise exchanges of views on this subject with the Member States.

2 In accordance with Article 37 of Regulation (EC) No 1290/2005, after informing the competent authorities concerned in good time, authorised representatives appointed by the Commission may carry out:

- a any examination or control relating to the measures taken in order to establish and implement the integrated system;
- b controls at the specialised agencies and firms referred to in Article 20(3).

3 Without prejudice to the responsibilities of the Member States for the implementation and application of the integrated system, the Commission may seek the assistance of specialised bodies or persons in order to facilitate the establishment, monitoring and utilisation of the integrated system, in particular with a view to providing the competent authorities of the Member States with technical advice, should they request it.

CHAPTER 5

Other general provisions

Article 28

Minimum requirements for receiving direct payments

1 From 2010, Member States shall not grant direct payments to a farmer in one of the following cases:

- a where the total amount of direct payments claimed or due to be granted before the reductions and exclusions provided for in Articles 21 and 23 in a given calendar year is less than EUR 100; or
- b where the eligible area of the holding for which direct payments are claimed or due to be granted before the reductions and exclusions provided for in Article 21 is less than one hectare.

In order to take account of the structure of their agricultural economies, Member States may adjust the thresholds referred to in points (a) and (b) of the first subparagraph of this paragraph within the limits set out in Annex VII.

Farmers holding special entitlements referred to in Article 44(1) shall be subject to the condition referred to in point (a) of the first subparagraph of this paragraph.

The Member States concerned may decide not to apply this paragraph in the French overseas departments, in the Azores and Madeira, in the Canary Islands and in the Aegean islands.

Where the amount paid is reduced as a consequence of a progressive introduction of direct payments as foreseen in Article 121 of this Regulation, in point K of Annex VII to Regulation (EC) No 1782/2003 or in point C of Annex IX to this Regulation, the amount claimed or due to be granted shall be calculated on the basis of the final amount of support to be received by the farmer.

2 From 2010, Member States may establish appropriate objective and non-discriminatory criteria to ensure that no direct payments are granted to a natural or legal person:

- a whose agricultural activities form only an insignificant part of its overall economic activities; or
- b whose principal business or company objects do not consist of exercising an agricultural activity.

3 Payment entitlements not giving right to payments during two consecutive years due to the application of paragraphs 1 and 2 shall revert to the national reserve.

Article 29

Payment

1 Save as otherwise provided for in this Regulation, payments under support schemes listed in Annex I shall be made in full to the beneficiaries.

2 Payments shall be made in up to two instalments per year within the period from 1 December to 30 June of the following calendar year.

3 Payments under support schemes listed in Annex I shall not be made before the verification of eligibility conditions, to be carried out by the Member State pursuant to Article 20, has been finalised.

4 By way of derogation from paragraph 2 of this Article and in accordance with the procedure referred to in Article 141(2), the Commission may:

- a provide for advances;
- b authorise the Member States, subject to the budgetary situation, to pay prior to 1 December advances in regions where, due to exceptional conditions, farmers face severe financial difficulties:
 - (i) of up to 50 % of the payments;
 - or
 - (ii) of up to 80 % of the payments where advances have already been provided for.

Article 30

Circumvention clause

Without prejudice to any specific provisions in individual support schemes, no payment 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 that support scheme.

Article 31

Force majeure and exceptional circumstances

For the purposes of this Regulation, *force majeure* or exceptional circumstances shall be recognised by the competent authority in cases such as:

- (a) the death of the farmer;
- (b) long-term professional incapacity of the farmer;
- (c) a severe natural disaster gravely affecting the holding's agricultural land;
- (d) the accidental destruction of livestock buildings on the holding;
- (e) an epizootic affecting part or all of the farmer's livestock.

Article 32

Review

Support schemes listed in Annex I shall apply without prejudice to a possible review at any time in the light of economic developments and the budgetary situation.

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

- (1) OJ C 139, 14.6.2006, p. 1.
- (2) OJ L 323, 28.11.2002, p. 48.
- (3) OJ L 213, 8.8.2008, p. 31.