

**COMMISSION REGULATION (EC) No 118/2004  
of 23 January 2004**

**amending Regulation (EC) No 2419/2001 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes established by Council Regulation (EEC) No 3508/92**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes<sup>(1)</sup>, and in particular Article 12 thereof,

Whereas:

(1) In the light of experience gained with the application of the rules concerning administrative checks as contained in Commission Regulation (EC) No 2419/2001<sup>(2)</sup>, some clarifications should be introduced with regard to the kind of checks to be carried out and with regard to the measures to be taken in case of doubts after cross-checks.

(2) Certain clarifications and additional elements should be introduced with regard to risk-sampling.

(3) The existing rules of Regulation (EC) No 2419/2001 concerning remote sensing should be enhanced to ensure a proper use of remote sensing in the performance of the controls by Member States.

(4) In the light of experience, the existing provisions concerning the timing and content of certain on-the-spot checks in respect of the bovine premium should be modified to ensure a balanced and uniform approach.

(5) The existing provisions relating to ewes and goats should be developed in the light of practical reality in so far as animals sometimes need to be replaced during the retention period, and to avoid undue penalisation in some cases of certain farmers maintaining both ewes and goats. The delays for the replacements, the entry of the replacement into the register and the information of the replacement to the competent authority should be fixed in the light of the length of the retention period and of the necessity for effective controls.

(6) In order to protect the Community's financial interests, title IV of Regulation (EC) No 2419/2001 lays down provisions for the reduction of and exclusion from Community aid in the event of irregularities. Some of these

provisions should be amended so as to ensure that the reductions and exclusions are at all times strictly graded according to the gravity of the irregularity.

(7) Regulation (EC) No 2419/2001 introduced prescription rules in respect of the recovery of undue payments. These rules should, under certain conditions, also be made applicable to aid applications relating to marketing years and/or premium periods which started before 1 January 2002.

(8) Regulation (EC) No 2419/2001 should be amended accordingly.

(9) The measures provided for in this Regulation are in accordance with the opinion of the Fund Committee,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 2419/2001 is amended as follows:

1. Article 16 is replaced by the following:

*'Article 16*

**Cross checks**

1. The administrative checks referred to in Article 8(1) of Regulation (EEC) No 3508/92 shall permit the automated detection of irregularities using computerised means, including in particular:

(a) cross-checks on declared agricultural parcels and animals in order to avoid undue multiple granting of the same aid in respect of the same calendar or marketing year and to prevent any undue cumulation of aid granted under Community aid schemes involving declarations of areas as referred to in Article 9a of Regulation (EEC) No 3508/92;

(b) cross-checks by means of the computerised database or, in the case of area aid applications, by any other computerised means, to verify eligibility for the aid.

2. 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.'

<sup>(1)</sup> OJ L 355, 5.12.1992, p. 1. Regulation as last amended by Commission Regulation (EC) No 495/2001 (OJ L 72, 14.3.2001, p. 6).

<sup>(2)</sup> OJ L 327, 12.12.2001, p. 11. Regulation as amended by Regulation (EC) No 2550/2001 (OJ L 341, 22.12.2001, p. 105).

2. Article 19 is replaced by the following:

*'Article 19*

### **Selection of applications to be checked on the spot**

1. Farmers subjected to on-the-spot checks shall be selected by the competent authority on the basis of a risk analysis and an element of representativeness of the aid applications submitted. The effectiveness of risk analysis parameters used in previous years shall be assessed on an annual basis.

To provide the element of representativeness, the Member States shall select randomly between 20 % and 25 % of the minimum number of farmers to be subjected to on-the-spot checks as provided for in Article 18(1).

2. The risk analysis shall take account of:

- (a) the amount of aid involved;
- (b) the number of agricultural parcels and the area or number of animals for which aid is requested;
- (c) changes from the previous year;
- (d) the findings of checks made in past years;
- (e) cases of non-compliance with Regulation (EC) No 1760/2000;
- (f) those farmers who are either just above or below ceilings or limits relevant for the granting of aid;
- (g) replacements of animals pursuant to Article 37;
- (h) other factors to be defined by the Member States.

3. The competent authority shall keep records on the reasons for the selection of each farmer for an on-the-spot check. The inspector carrying out the on-the-spot check shall be informed accordingly prior to the commencement of the on-the-spot check.'

3. In Article 22, paragraph 1 is replaced by the following:

'1. Agricultural parcel areas shall be determined by any appropriate means defined by the competent authority which ensure measurement of a precision at least equivalent to that required for official measurements under the national rules. A measurement tolerance may be defined by the competent authority that shall not exceed either 5 % of the agricultural parcel area or a buffer of 1,5 m applied to the perimeter of the agricultural parcel. However, the maximum tolerance with regard to each agricultural parcel shall not, in absolute terms, exceed 1,0 ha.'

4. Article 23 is replaced by the following:

*'Article 23*

### **Remote sensing**

1. The Member States may make use of remote sensing with regard to the sample referred to in Article 18(1)(a) instead of applying traditional means of on-the-spot

checking under the conditions set out in this Article. Articles 17, 18, 19 and 20, the first sentence of Article 21 and Article 22 shall apply where appropriate.

2. The zones to be checked by means of remote sensing shall be selected on the basis of a risk-analysis or at random.

In the case of selection on the basis of a risk-analysis the Member States shall take account of appropriate risk factors, in particular:

- (a) their financial significance in terms of Community aid;
- (b) the composition of aid applications;
- (c) the structure of the agricultural parcel systems, and complexity of the agricultural landscape;
- (d) the lack of coverage in previous years;
- (e) the technical constraints of effective use of remote sensing, with respect to zone definition;
- (f) the findings of checks made in previous years.

3. On-the-spot checks by remote sensing shall cover:

- either all aid applications having at least 80 % of the area for which aid is requested under schemes referred to in Article 1(1) of Regulation (EEC) No 3508/92 within the respective zone,
- or aid applications to be selected by the competent authority on the basis of Article 19(2).

Applications selected randomly in accordance with Article 19(1) may be checked by remote sensing.

4. Once a farmer has been selected for an on-the-spot check in accordance with paragraph 3, at least 80 % of the area for which he requests aid under aid schemes referred to in Article 1(1) of Regulation (EEC) No 3508/92 shall be subject to the on-the-spot check by remote sensing.

5. Where a Member State applies the possibility to carry out on-the-spot checks by remote sensing they shall:

- (a) perform photo interpretation of satellite images or aerial photographs of all agricultural parcels per application to be checked in accordance with paragraph 4 with a view to recognising the ground cover and measuring the area;
- (b) carry out physical inspections in the field of all agricultural parcels for which photo interpretation does not make it possible to verify the accuracy of the declaration to the satisfaction of the competent authority.

6. The additional checks referred to in Article 18(2) shall be carried out by means of traditional on-the-spot checks if it is no longer possible to carry them out by means of remote sensing within the current year.'

5. In Article 24, paragraph 1 is replaced by the following:

'1. For aid schemes other than those provided for in Article 4(6) and Article 11 of Regulation (EC) No 1254/1999, at least 60 % of the minimum rate of on-the-spot checks provided for in the last sentence of Article 18(1)(b) shall be conducted throughout the retention period of the aid scheme concerned. The remaining percentage of on-the-spot checks shall be conducted throughout the retention period of one of those aid schemes.'

6. In Article 32(2) the second subparagraph is replaced by the following:

'If the difference is more than 50 % the farmer shall be excluded once again from receiving aid up to an amount equal to the amount which corresponds to the difference between the area declared and the area determined in accordance with Article 31(2). This amount shall be off-set against aid payments under any of the aid schemes referred to in Article 1(1) of Regulation (EEC) No 3508/92 to which the farmer is entitled in the context of applications he lodges in the course of the three calendar years following the calendar year of the finding. If the amount cannot be fully off-set against those aid payments, the outstanding balance shall be cancelled.'

7. In Article 33 the second subparagraph is replaced by the following:

'Moreover, where that difference is more than 20 % of the area determined, the farmer shall be excluded once again from receiving aid up to an amount equal to the amount which corresponds to the difference between the area declared and the area determined in accordance with Article 31(2). This amount shall be off-set against aid payments under any of the aid schemes referred to in Article 1(1) of Regulation (EEC) No 3508/92 to which the farmer is entitled in the context of applications he lodges in the course of the three calendar years following the calendar year of the finding. If the amount cannot be fully off-set against those aid payments, the outstanding balance shall be cancelled.'

8. In Article 34, paragraph 2 is replaced by the following:

'2. Where a difference of more than 50 % is found between the area declared and the area determined in accordance with Article 31(2), the farmer shall, in the framework of aid applications he lodges in the course of the three calendar years following the calendar year of the finding, be excluded once again in respect of a forage area equal to the difference between the area declared and the area determined. If the area to be excluded cannot be fully off-set within this period, the outstanding balance shall be cancelled.'

9. In Article 37, the following paragraphs are added:

'3. Where a farmer applies for aid in respect of both ewes and goats and where there is no difference in the level of aid paid, a ewe may be replaced by a goat and a goat by a ewe. Ewes and goats in respect of which aid is

claimed in accordance with Article 4 of Regulation (EC) No 2529/2001 may be replaced during the retention period within the limits provided for in that Article without the loss of the right to the payment of the aid applied for.

4. Replacements pursuant to paragraph 3 shall occur within ten days following the event necessitating the replacement and shall be entered in the register not later than three days after the day of replacement. The competent authority to which the application was submitted shall be informed within five working days after the replacement.'

10. Article 38 is amended as follows:

(a) in paragraph 2 the third subparagraph is replaced by the following:

'If the percentage established in accordance with paragraph 3 is more than 50 %, the farmer shall, moreover, 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 Article 36(3). This amount shall be off-set against aid payments under the bovine aid schemes to which the farmer is entitled in the context of applications he lodges in the course of the three calendar years following the calendar year of the finding. If the amount cannot be fully off-set against those aid payments, the outstanding balance shall be cancelled.;

(b) in paragraph 4 the second subparagraph is replaced by the following:

'Where the difference established in accordance with paragraph 3 is more than 20 %, the farmer 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 Article 36(3). This amount shall be off-set against aid payments under the bovine aid schemes to which the farmer is entitled in the context of applications he lodges in the course of the three calendar years following the calendar year of the finding. If the amount cannot be fully off-set against those aid payments, the outstanding balance shall be cancelled.'

11. Article 39 is amended as follows:

(a) in paragraph 1, first subparagraph, the following sentence is added:

'However, the amount of aid to be reduced shall not be more than 20 % of that total amount to which the farmer is entitled.;

(b) in paragraph 2, the explanation for symbol 'b' of the formula is replaced by the following:

'b = the number of bovine animals present on the holding at the time of the on-the-spot check; this number shall not be lower than 1.'

12. In Article 40, the following paragraph is added:  
'7. In respect of farmers maintaining both ewes and goats entitled to the same level of premium, where an on-the-spot check reveals a difference in the composition of the flock in terms of numbers of animals per species, the animals shall be regarded as being of the same group.'

13. In title VI the following Article 52a is inserted:

*'Article 52a*

**Prescription with regard to aid applications relating to marketing years and premium periods which started before 1 January 2002**

By way of derogation from Article 54(2) and without prejudice to more favourable rules on limitation periods laid down by Member States, Article 49(5) shall also apply to aid applications relating to the marketing years and premium periods that started before 1 January 2002, unless the beneficiary has already been notified by the competent authority of the undue nature of the payment concerned before 1 February 2004.'

*Article 2*

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

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

Done at Brussels, 23 January 2004.

*For the Commission*  
Franz FISCHLER  
*Member of the Commission*

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