

Commission Regulation (EC) No 795/2004 of 21 april 2004 laying down detailed rules for the implementation of the single payment scheme provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (repealed)

CHAPTRE 6

REGIONAL AND OPTIONAL IMPLEMENTATION

Section 1

Regional implementation

Article 35

General provisions

Where a Member State makes use of the options provided for in Articles 58(1) and 59(1) of Regulation (EC) No 1782/2003, save as otherwise provided for in this Section, the other provisions of this Regulation shall apply.

Article 36

Calculation of the regional ceiling

1 Where a Member State makes use of the option provided for in Articles 58(1) and 59(1) of Regulation (EC) No 1782/2003, in case of farmers whose holdings are partly situated in the region concerned, and without prejudice to Article 58 (3) of that Regulation, the regional ceiling shall be calculated on the basis of the reference amount corresponding to the production units which gave right to direct payments in the reference period situated in the region concerned, or in accordance with objective criteria established by the Member State.

2 In the case referred to in paragraph 1, the individual reference amount referred to in Article 59 (3) second subparagraph of Regulation (EC) No 1782/2003 shall be that which corresponds to the production units which gave right to direct payments in the reference period situated in the region concerned or established according to objective criteria established by the Member State.

3 Article 26 (2) shall apply *mutatis mutandis*.

Article 37

Establishment of the national reserve

Where a Member State makes use of the option provided for in Articles 58 and 59 of Regulation (EC) No 1782/2003, for the purpose of establishing the national reserve, the reduction referred to in Article 42(1) of that Regulation shall be applied to the ceiling

referred to in Annex VIII of that Regulation and, where the case may be, adjusted before the definitive establishment of the payment entitlements as referred to in Article 38 (3) of this Regulation.

Article 38

Initial allocation of payment entitlements

1 For the purposes of Article 59 (2) and (3) of Regulation (EC) No 1782/2003, Member States shall establish the number of eligible hectares referred to in those paragraphs including the grassland by using the number of hectares declared for the establishment of the payment entitlements in the first year of application of the single payment scheme.

2 By way of derogation from paragraph 1, Member States may establish the number of eligible hectares referred to in Article 59 (2) and (3) of Regulation (EC) No 1782/2003 including the grassland by using the number of hectares declared in the area aid declarations for 2004 or for the year preceding the first year of application of the single payment scheme. In cases where the number of eligible hectares declared by farmers in the first year of application of the single payment scheme is lower than the number of eligible hectares established in accordance with the first subparagraph, a Member State may reallocate, in part or in full, the amounts corresponding to the hectares which have not been declared as a supplement to each payment entitlement allocated in the first year of application of the single payment scheme. The supplement shall be calculated by dividing the amount concerned by the number of payment entitlements allocated.

3 The value and number of the payment entitlements allocated on the basis of the farmers' declarations for the establishment of the payment entitlements in the first year of application of the single payment scheme shall be provisional. The definitive value and number shall be established, by 31 December of the first year of application of the single payment scheme at the latest, after the checks made pursuant to Commission Regulation (EC) No 795/2004 are carried out.

Article 39

Initial allocation of set-aside entitlements

1 For the purposes of Article 63(2) 3rd subparagraph of Regulation (EC) No 1782/2003, Member States shall establish the set-aside rate by using the data available related to the land concerned.

2 The number of hectares corresponding to the set-aside entitlements allocated in the first year of application of the single payment scheme shall not vary by a margin of more than 5 % of the average number of hectares set aside in the reference period.

Where the margin referred to in the first subparagraph is exceeded, the number of hectares shall be adjusted by 1 August of the first year of application of the single payment scheme at the latest. However, the set-aside obligation related to the new set-aside payment entitlements shall apply to the farmer concerned only starting from the following year.

Article 40

Application of Article 42(5) of Regulation (EC) No 1782/2003 in case of fewer hectares than payment entitlements

Where a Member State makes use of the option provided for in Article 59 of Regulation (EC) No 1782/2003, and it decides to apply Article 7 of this Regulation, for the purpose of the allocation of payment entitlements in accordance with that Article 7, the number of payment entitlements to which an authorization as referred to in Article 60 of Regulation (EC) No 1782/2003 is linked shall be equal to the initial number of payment entitlements with the authorisation and, where the case may be, no higher than the number of payment entitlements allocated.

Article 41

Establishment and transfer of payment entitlements with authorisation

1 Where a Member State makes use of the option provided for in Article 59(1) of Regulation (EC) No 1782/2003, the authorisations established according to Article 60 of that Regulation shall be linked to each individual payment entitlement to be allocated to the farmer concerned.

2 In case the number of authorisation is lower than the number of payment entitlements, the authorisation shall be linked to the payment entitlements starting from those with the highest unit value. In case of transfer of the payment entitlements, the authorisation shall follow the payment entitlement to which it is linked.

3 A Member State may authorize, on farmer's request, the transfer of an authorization linked to a set-aside entitlement to a payment entitlement.

Article 42

Dairy premium and additional payments

1 Where a Member State making use of the option provided for in Article 59(1) of Regulation (EC) No 1782/2003 decides to make use of the option provided for in the first subparagraph of Article 62 of that Regulation in 2005 or, in case of application of Article 71 of Regulation (EC) No 1782/2003, in the first year of application of the single payment scheme, Articles 59 (2) and (3) of that Regulation shall apply respectively.

2 Where a farmer has no hectares, he shall receive payment entitlements subject to special conditions calculated in accordance with Article 48 of Regulation (EC) No 1782/2003

3 Where a Member State making use of the option provided for in Article 59(1) of Regulation (EC) No 1782/2003 decides to make use of the option provided for in the first paragraph of Article 62 in 2006 or 2007, Articles 48, 49 and 50 of that Regulation shall apply *mutatis mutandis*.

Article 43

Set-aside

1 Where a Member State makes use of the option provided for in Article 59(1) of Regulation (EC) No 1782/2003, it shall establish and communicate to farmers the set-aside rate referred to in the third subparagraph of Article 63(2) of that Regulation by 1 August of the year preceding the first year of application of the single payment scheme.

2 In case of farmers whose holding is partly situated in the region concerned by the application of Article 59 of Regulation (EC) No 1782/2003, the set aside rate shall apply to the farmer's eligible land, referred to in Article 63 (2) second subparagraph of that Regulation, situated in the region concerned.

Article 44

Retention on sale of payment entitlements

Where a Member State making use of the option provided for in Article 59(1) of Regulation (EC) No 1782/2003 decides to make use of the option provided for in Article 46(3) of that Regulation, the percentages of reduction provided for in Article 9 of this Regulation shall apply after deduction from the value of the payment entitlements of a franchise equal to the regional unit value calculated in accordance with Article 59 (2) or (3) of Regulation (EC) No 1782/2003.

Article 45

Windfall profit clause

Where a Member State making use of the option provided for in Article 59(1) of Regulation (EC) No 1782/2003 decides to make use of the option provided for in Article 42(9) of that Regulation, the percentages of reduction provided for in Article 10 of this Regulation shall apply to the value of each payment entitlement and/or to the equivalent amount expressed in number of payment entitlements to be allocated.

Article 46

Private contract clause

Where a Member State makes use of the option provided for in Article 59(1) of Regulation (EC) No 1782/2003, for the purposes of Article 17 of this Regulation, the reference amount calculated for the production units which have been transferred shall be taken into account for the establishment of the value of all the payment entitlements of the buyer.

Article 27 shall not apply.

Section 2

Optional implementation

Article 47

Overrun of the ceilings

Where the sum of the amounts to be paid under each of the schemes provided for in Articles 66 to 69 exceeds the ceiling fixed in accordance with Article 64(2) of Regulation (EC) No 1782/2003, the amount to be paid shall be reduced proportionately in the year concerned.

Article 48

Implementation of Article 69 of Regulation (EC) No 1782/2003

1 The additional payment provided for Article 69 of Regulation (EC) No 1782/2003 shall be granted, without prejudice to Article 37(3) of Regulation (EC) No 1257/1999 and its implementing rules, under the conditions provided for in paragraphs 2 to 6 of this Article.

2 The payment shall be made only to farmers within the meaning of Article 2(a) of Regulation (EC) No 1782/2003, irrespective whether they have applied or not to the single payment scheme or they hold payment entitlements.

3 'In the sector or sectors concerned by the retention' shall mean that the payment may be claimed, in principle, by all the farmers producing, at the time for lodging an application for the additional payment and under the conditions provided for by this Article, the products covered by the sector or sectors referred to in Annex VI to Regulation (EC) No 1782/2003.

4 In case the payment covers types of farming or quality and marketing measures for which no specific production is identified or the production is not directly covered by a sector, payment may be provided for under the condition that the retention is done in all the sectors referred to in Annex VI to Regulation (EC) No 1782/2003 and only the farmers belonging to any of the sectors referred to in that Annex shall participate to the scheme.

5 In case of application of Article 69 of Regulation (EC) No 1782/2003 at regional level, the retention shall be calculated on the basis of the component of the payments of the sectors concerned in the region concerned.

Member States shall define the region at the appropriate territorial level in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion.

6 Member States concerned shall communicate the details of the payment they intend to grant and, in particular, the eligibility conditions and the sectors concerned by 1 August of the year preceding the first year of application of the single payment scheme at the latest.

Any change to the communication referred to in the first subparagraph shall be done by 1 August of a given year at the latest and shall apply to the following year. It shall be immediately communicated to the Commission accompanied by the objective criteria justifying such changes. However, a Member State may not modify the sectors concerned nor the percentage of retention.