

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 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for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (repealed)

PART II

THE INTEGRATED ADMINISTRATION AND CONTROL SYSTEM

TITLE IV

BASIS FOR THE CALCULATION OF THE AID, REDUCTIONS AND EXCLUSIONS

CHAPTER I

FINDINGS IN RELATION TO ELIGIBILITY CRITERIA

Section I

single payment scheme and other area-related aid schemes

Article 49

General principles

1 For the purposes of this Section, the following crop groups shall be distinguished as appropriate:

- a areas for the purposes of the single payment scheme, as the case may be, each fulfilling the conditions particular to them;
- b areas for which a different rate of aid is applicable;
- c set-aside areas declared under aid schemes established in Title IV of Regulation (EC) No 1782/2003 and, where applicable, set-aside areas for which a different rate of aid is applicable;
- d forage areas declared for the purposes of Article 131 of Regulation (EC) No 1782/2003;
- e forage areas other than pasture land and other than areas used for the production of arable crops, within the meaning of Article 132(3) (b) of Regulation (EC) No 1782/2003 declared for the purposes of that Article;
- f pasture land within the meaning of Article 132(3) (c) of Regulation (EC) No 1782/2003 declared for the purposes of that Article;

By way of derogation from point (b), for the purposes of point (a), the average of the values of different payment entitlements in relation to the respective area declared shall be taken into account.

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2 Where the area determined for the purposes of the single payment scheme is lower than the area declared, the following shall apply to determine which of the payment entitlements have to be returned to the national reserve in accordance with Article 45(1) and the second subparagraph of Article 42(8) of Regulation (EC) No 1782/2003:

- a the area determined shall be taken into account starting with the payment entitlements having the highest value;
- b the payment entitlements with the highest value shall be attributed to that area first, followed by those with the next lower value.

For the purposes of this paragraph, set-aside entitlements and other payment entitlements shall be treated separately.

3 Where the same area serves as the basis for an aid application under more than one area-related aid scheme, that area shall be taken into account separately for each of those aid schemes.

Article 50

Basis of calculation in respect of areas declared

1 In the case of applications for aid under area-related aid schemes, except for starch potato and seed as provided for in Chapters 6 and 9 respectively of Title IV of Regulation (EC) No 1782/2003, if the area of a crop group determined is found to be greater than that declared in the aid application, the area declared shall be used for calculation of the aid.

2 Without prejudice to any reductions or exclusions to be applied following the actual determination of area in accordance with Articles 51 and 53, with regard to an application for aid under the single payment scheme, if there is a discrepancy between the payment entitlements declared and the area declared, the calculation of the payment shall be based on the lower size.

3 Without prejudice to reductions and exclusions in accordance with Articles 51 and 53, in the case of applications for aid under area-related aid schemes, except for starch potato and seed as provided for in Chapters 6 and 9 respectively of Title IV of Regulation (EC) No 1782/2003, if the area declared in a single application exceeds the area determined for that crop group, the aid shall be calculated on the basis of the area determined for that crop group.

4 Without prejudice to reductions and exclusions in accordance with Articles 51 and 53, with regard to applications for aid under the single payment scheme the following shall apply in respect of set-aside entitlements for the purpose of the definition of 'area determined' in Article 2 point (22):

- a if a farmer does not declare all his area for the purposes of activating the set-aside entitlements at his disposal but declares, at the same time, a corresponding area for the activation of other entitlements, that area shall be considered as having been declared as set-aside areas and not determined for the purposes of the crop group referred to in Article 49(1)(a);
- b if area declared as set-aside areas is found not to be set-aside, that area shall be considered as not being determined.

5 With regard to areas declared for the special quality premium for durum wheat in accordance with Article 72 of Regulation (EC) No 1782/2003 and for the durum wheat supplement and special aid in accordance with Article 105 of that Regulation and in case a difference is established between the minimum quantity of certified seeds fixed by the Member State and the quantity effectively used, the area shall be determined by dividing the total quantity

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of certified seeds for which proof of use was given by the farmer, by the minimum quantity of certified seeds per hectare fixed by the Member State in the production zone concerned.

6 The calculation of the maximum eligible area for the payments to farmers applying for the arable crop area payment in accordance with Chapter 10 of Title IV of Regulation (EC) No 1782/2003 shall be made on the basis of the area of set-aside land determined and on a *pro rata* basis for each crop concerned. However, payments to arable crop producers shall, in relation to the area of set-aside land determined, be reduced to the level corresponding to the area which would be needed to produce 92 tonnes of cereal, in accordance with Article 107(7) of Regulation (EC) No 1782/2003.

7 If a farmer has been unable to comply with his obligations as a result of *force majeure* or exceptional circumstances as referred to in Article 72, he shall retain his right to aid in respect of the area eligible at the time when the case of *force majeure* or the exceptional circumstance occurred.

Article 51

Reductions and exclusions in cases of overdeclaration

1 If, in respect of a crop group, the area declared for the purposes of any area-related aid schemes, except those for starch potato and seed in accordance with Articles 93 and 99 respectively of Regulation (EC) No 1782/2003, exceeds the area determined in accordance with Article 50(3) to (5) of this Regulation, 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 no more than 20 % of the area determined.

If the difference is more than 20 % of the area determined, no area-linked aid shall be granted for the crop group concerned.

2 If, in respect of the overall area determined covered by the single application, except for starch potato and seed in accordance with Articles 93 and 99 respectively of Regulation (EC) No 1782/2003, the area declared exceeds the area determined in accordance with Article 50(3) to (5) of this Regulation by more than 30 %, the aid to which the farmer would have been entitled pursuant to Article 50(3) to (5) of this Regulation shall be refused for the calendar year in question under those aid schemes.

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 50(3) to (5). That amount shall be off-set against aid payments under any of the aid schemes referred to in Titles III and IV of Regulation (EC) No 1782/2003 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.

3 For the purposes of this Article, where a farmer applying for aid for energy crops in accordance with Article 88 of Regulation (EC) No 1782/2003 or declaring parcels as set-aside in accordance with Article 55 point (b) or Article 107(3) first indent of that Regulation fails to deliver the requisite quantity of any given raw material, he shall be deemed to have failed to fulfil his obligation as regards parcels intended for energy purposes or set-aside, respectively, in respect of an area calculated by multiplying the area of land cultivated and used by him for the production of the raw materials by the percentage shortfall in deliveries of that raw material.

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Article 52

Reductions with regard to applications for aid for starch potato and seed

1 If it is found that the area actually cultivated is more than 10 % lower than the area declared for the payment of aid for starch potato as provided for in Chapter 6 of Regulation (EC) No 1782/2003, the aid to be paid shall be reduced by twice the difference found.

2 If it is found that the area actually cultivated is more than 10 % higher than the area declared for the payment of seed aid as provided for in Chapter 9 of Regulation (EC) No 1782/2003, the aid to be paid shall be reduced by twice the difference found.

3 Where it is found that the irregularities referred to in paragraphs 1 and 2 result from intention of the farmer, the total amount of aid referred to in paragraphs 1 and 2 shall be refused.

In that case, the farmer shall be excluded once again from receiving aid equal to that amount. That amount shall be off-set against aid payments under any of the aid schemes referred to in Titles III and IV of Regulation (EC) No 1782/2003 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.

Article 53

Intentional overdeclaration

Where differences between the area declared and the area determined in accordance with Article 50(3), (4)(b) and (5) result from irregularities committed intentionally, the aid to which the farmer would have been entitled pursuant to Article 50(3), (4)(b) and (5) shall not be granted for the calendar year in question under the aid scheme concerned.

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 50(3), (4)(b) and (5). That amount shall be off-set against aid payments under any of the aid schemes referred to in Titles III and IV of Regulation (EC) No 1782/2003 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.

Article 54

Reductions and exclusions concerning seed aid applications

1 Where it is found that seed subject to an aid application was not actually marketed within the meaning of Article 31 point (b)(iii) for sowing by the farmer, the aid to be paid for the species concerned, after application of any reductions to be applied in accordance with Article 52, shall be reduced by 50 % if the quantity not marketed amounts to more than 2 % but no more than 5 % of the quantity covered by the aid application. If the quantity not marketed exceeds 5 %, no seed aid shall be granted for the marketing year concerned.

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2 Where it is found that aid has been claimed for seed not officially certified or harvested within the Member State in question during the calendar year in which the marketing year for which the aid has been set begins, no aid shall be granted for that marketing year nor for the following one.

Article 55

Calculation of forage area for premiums referred to in Article 131 of Regulation (EC) No 1782/2003

1 Articles 50(1), 50(3), 51(1) and 53 shall apply to the calculation of the forage area for the granting of the aids referred to in Article 131 of Regulation (EC) No 1782/2003.

2 Where a difference of more than 50 % is found between the area declared and the area determined in accordance with Article 50(3), 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 that period, the outstanding balance shall be cancelled.

3 Reductions and exclusions in accordance with paragraphs 1 and 2 shall only apply if the area declared resulted, or would have resulted, in a higher payment.

Article 56

Calculation of forage area for the extensification payment in accordance with Article 132 of Regulation (EC) No 1782/2003

1 Extensification payments provided for in Article 132 of Regulation (EC) No 1782/2003 may not be granted for a greater number of animals than that for which the premiums referred to in Article 131 of that Regulation may be paid after application of Article 55 of this Regulation.

2 Without prejudice to paragraph 1, the forage area concerned shall be determined in accordance with Article 50.

If the ceiling of the stocking density factor is not exceeded in relation to the area thus determined the area determined shall be the basis for the calculation of the extensification payment.

If the ceiling is exceeded, the total amount of aid to which the farmer is entitled following aid applications under aid schemes referred to in Article 131 of Regulation (EC) No 1782/2003 submitted during the calendar year in question, shall be reduced by 50 % of the amount the farmer has, or would otherwise have, received as extensification payment.

3 Where the difference between the area declared and the area determined results from irregularities committed intentionally and where the ceiling of the stocking density factor is exceeded in relation to the area determined, the total amount of aid referred to in paragraph 2 shall be refused. In that case, the second subparagraph of Article 53 shall apply accordingly.

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Section II

Livestock premia

Article 57

Basis of calculation

1 Where an individual limit or individual ceiling is applicable, the number of animals shown in the aid applications shall be reduced to the limit or ceiling set for the farmer concerned.

2 In no case may aid be granted for a number of animals greater than that shown in the aid application.

3 Without prejudice to Article 59 and 60, if the number of animals declared in an aid application exceeds that determined as a result of administrative or on-the-spot checks, the aid shall be calculated on the basis of the animals determined.

However, if a farmer has been unable to comply with his retention obligation as a result of *force majeure* or exceptional circumstances as referred to in Article 72, he shall retain his right to aid in respect of the number of animals eligible at the time when the case of *force majeure* or the exceptional circumstance occurred.

4 Where cases of irregularities with regard to the system for the identification and registration for bovine animals are found, the following shall apply:

- a a bovine animal which has lost one of the two ear tags shall be regarded as determined provided that it is clearly and individually identified by the other elements of the system for the identification and registration of bovine animals;
- b where the irregularities found relate to incorrect entries in the register or the animal passports, the animal concerned shall only be deemed as not determined if such errors are found on at least two checks within a period of 24 months. In all other cases the animals concerned shall be deemed as not determined after the first finding.

Article 19 shall apply in relation to entries in, and notifications to, the system for the identification and registration of bovine animals.

Article 58

Replacement

1 Bovine animals present on the holding shall only be regarded as determined if they are identified in the aid application. However, suckler cows or heifers in respect of which aid is claimed in accordance with Article 125 or Article 129 of Regulation (EC) No 1782/2003 and dairy cows in respect of which aid is claimed in accordance with Article 132(4) of that Regulation may be replaced during the retention period within the limits provided for in those Articles without the loss of the right to the payment of the aid applied for.

2 Replacements pursuant to paragraph 1 shall occur within 20 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 aid application was submitted shall be informed within seven days after the replacement.

However, in the case a Member State makes use of the possibilities provided for in the second subparagraph of Article 16(3), that Member State may provide that the

notifications to the computerised database for bovine animals of an animal having left the holding and another animal having arrived on the holding within the time limits provided for in the first subparagraph may substitute that information to be sent to the competent authority.

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 113 of Regulation (EC) No 1782/2003 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 10 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.

Article 59

Reductions and exclusions in respect of bovine animals claimed for aid

1 Where, in respect of an application for aid under the bovine aid schemes, a difference is found between the number of animals declared and that determined in accordance with Article 57(3), the total amount of aid to which the farmer is entitled under those schemes for the premium period concerned shall be reduced by the percentage to be established in accordance with paragraph 3 of this Article, if no more than three animals are found with irregularities.

2 If more than three animals are found with irregularities the total amount of aid to which the farmer is entitled under the schemes referred to in paragraph 1 for the premium period concerned shall be reduced by:

- a the percentage to be established in accordance with paragraph 3, if it is not more than 10 %,
- b twice the percentage to be established in accordance with paragraph 3, if it is more than 10 % but not more than 20 %.

If the percentage established in accordance with paragraph 3 is more than 20 %, the aid to which the farmer would have been entitled pursuant to Article 57(3) shall be refused under those schemes for the premium period concerned.

If the percentage established in accordance with paragraph 3 of this Article 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 57(3). That 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.

3 In order to establish the percentages referred to in paragraphs 1 and 2, the bovine animals claimed under all bovine aid schemes during the premium period concerned and found with irregularities shall be divided by all bovine animals determined for the premium period concerned.

4 Where differences between the number of animals declared and that determined in accordance with Article 57(3) result from irregularities committed intentionally the aid to which

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the farmer would have been entitled pursuant to Article 57(3) shall be refused under the bovine aid scheme or schemes concerned for the premium period in question.

Where the difference established in accordance with paragraph 3 of this Article 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 57(3). That 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.

Article 60

Reductions and exclusions in respect of ovine or caprine animals claimed for aid

1 Where, in respect of applications for aid under the ovine/caprine aid scheme, a difference is found in accordance with Article 57(3), Article 59(2), (3) and (4) shall apply *mutatis mutandis* as from the first animal in respect of which irregularities are found.

2 If it is established that a sheep producer marketing sheep's milk and sheep's milk products failed to declare on his premium application that he was doing so, the amount of the aid to which he is entitled shall be reduced to the premium payable to sheep producers marketing sheep's milk and sheep's milk products less the difference between that amount and the full amount of the ewe premium.

3 Where, in respect of applications for the supplementary premium, it is determined that less than 50 % of the area of the holding used for agriculture is located in areas referred to in Article 114(1) of Regulation (EC) No 1782/2003, the supplementary premium shall not be paid and the ewe and goat premium shall be reduced by an amount equivalent to 50 % of the supplementary premium.

4 Where it is determined that the percentage of the area of the holding used for agriculture located in areas listed in Annex I to Regulation (EC) No 2550/2001 is below 50 %, the goat premium shall not be paid.

5 Where it is established that a producer practising transhumance who submits an application for the supplementary premium has not grazed 90 % of his animals for at least 90 days in an area referred to in Article 114(2)(b) of Regulation (EC) No 1782/2003, the supplementary premium shall not be paid and the ewe or goat premium shall be reduced by an amount equivalent to 50 % of the supplementary premium.

6 Where it is found that the irregularity referred to in paragraphs 2, 3, 4 or 5 results from intentional non-compliance, the total amount of aid referred to in those paragraphs shall be refused.

In that case, the farmer shall be excluded once again from receiving aid equal to that amount. That amount shall be off-set against aid payments under the ovine/caprine aid scheme 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.

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.

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Article 61

Natural circumstances

The reductions and exclusions provided for in Articles 59 and 60 shall not apply in cases where, owing to the impact of natural circumstances on the herd or flock, the farmer cannot meet his commitment to keep the animals in respect of which aid is claimed throughout the retention period, provided that he has informed the competent authority in writing within ten working days of finding any reduction in the number of animals.

Without prejudice to the actual circumstances to be taken into account in individual cases, the competent authorities may recognise, in particular, the following cases of natural circumstances of the herd or flock:

- (a) death of an animal as a consequence of a disease;
- (b) death of an animal following an accident for which the farmer cannot be held responsible.

Article 62

False certificates and declarations issued by slaughterhouses

As regards the declarations or certificates issued by slaughterhouses in connection with the slaughter premium provided for in Article 35 of Regulation (EC) No 2342/1999, if it is found that the slaughterhouse gave a false certification or declaration as a result of serious negligence or intentionally, the Member State concerned shall apply appropriate national sanctions. Where such irregularities are found a second time, the slaughterhouse involved shall be excluded for a period of at least one year from the right to make declarations or to issue certificates valid for premium purposes.

Article 63

Findings in relation to additional payments

As regards the additional payments provided for in Article 133 of Regulation (EC) No 1782/2003, Member States shall provide for reductions and exclusions which shall, in substance, be equivalent to those provided for in this Title.

Section I

Dairy premium and additional payments

Article 64

Dairy premium and additional payments

With regard to findings established in relation to aid applications for the dairy premium and additional payments, Articles 50, 51(1) and 53 shall apply to the extent that 'area'

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is read as ‘individual reference quantity’ and ‘area determined’ as ‘individual reference quantity determined’.

Where, in the case referred to in Article 30 of Regulation 2237/2003, the person concerned does not take up production by the deadline for the application, the individual reference quantity determined shall be deemed to be zero. In that case, the aid application of the person concerned for the year in question shall be refused. An amount equal to the amount covered by the refused application shall be off-set against aid payments under any of the aid schemes established in Titles III and IV of Regulation (EC) No 1782/2003 to which the person is entitled in the context of applications he lodges in the course of the calendar year following the calendar year of the finding.