

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 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Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector (repealed)

PART II

THE INTEGRATED ADMINISTRATION AND CONTROL SYSTEM

TITLE V

GENERAL PROVISIONS

Article 76

Minimum payments

Member States may decide not to grant any aid if the amount per aid application does not exceed EUR 100.

Article 77

Accumulation of reductions

Where a case of non-compliance also constitutes an irregularity, therefore being relevant in view of the application of reductions or exclusions in accordance with both Chapters II and III of Title IV:

- (a) the reductions or exclusions pursuant to Chapter II of Title IV shall be applied with regard to the aid schemes in question;
- (b) the reductions and exclusions pursuant to Chapter III of Title IV shall be applied to the total amount of payments to be granted under the single payment scheme, the single area payment scheme and any aid schemes that are not subject to reductions or exclusions referred to in point (a).

The reductions or exclusions referred to in the first subparagraph shall be applied in accordance with Article 78(2) without prejudice to additional penalties pursuant to other provisions of Community or national law.

Article 78

Application of reductions on each support scheme

1 The amount of the payment to be granted to a farmer under a support scheme listed in Annex I to Regulation (EC) No 73/2009 shall be calculated by the Member States on the

basis of the conditions established in the support scheme in question, taking into account, if necessary, the overrun of the basic area, of the maximum guaranteed area, or of the number of animals entitled to benefit from the premiums.

2 For each support scheme listed in Annex I to Regulation (EC) No 73/2009, reductions or exclusions due to irregularities, late submissions, non-declarations of parcels, exceeding the budgetary ceilings, modulation, financial discipline and non-respect of cross-compliance shall be carried out, if necessary, in the following way and sequence:

- a the reductions or exclusions provided for in Chapter II of Title IV shall be applied with regard to irregularities;
- b the amount resulting from the application of point (a) shall serve as a basis for the calculation of any reductions to be applied in case of late submissions in accordance with Articles 23 and 24;
- c the amount resulting from the application of point (b) shall serve as a basis for the calculation of any reductions to be applied in cases of non-declaration of agricultural parcels in accordance with Article 55;
- d with regard to those support schemes for which a budgetary ceiling is fixed in accordance with Articles 51(2), 69(3), 123(1) and 128(1) of Regulation (EC) No 73/2009 or applied in accordance with Articles 126(2), 127(2) and 129(2) of that Regulation, Member State shall add the amounts resulting from the application of points (a), (b) and (c).

For each of those support schemes, a coefficient shall be determined by dividing the amount of the budgetary ceiling in question by the sum of the amounts referred to in the first subparagraph. If the coefficient obtained is higher than 1, a coefficient equal to 1 shall be applied.

To calculate the payment to be granted to the individual farmer under a support scheme for which a budgetary ceiling is fixed, the amount resulting from the application of points (a), (b) and (c) of the first subparagraph shall be multiplied by the coefficient determined in the second subparagraph.

Article 79

Basis for calculation of reductions due to modulation, financial discipline and cross-compliance

1 Reductions due to the modulation provided for in Articles 7 and 10 of Regulation (EC) No 73/2009 and, as the case may be, in Article 1 of Council Regulation (EC) No 378/2007⁽¹⁾, as well as the reduction due to the financial discipline provided for in Article 11 of Regulation (EC) No 73/2009 and the reduction provided for in Article 8(1) of that Regulation, shall be applied to the sum of the payments from the different support schemes listed in Annex I to Regulation (EC) No 73/2009 to which each farmer is entitled to, in accordance with the procedure provided for in Article 78 of this Regulation.

2 The amount of the payment resulting from the application of paragraph 1 shall serve as the basis for the calculation of any reductions to be applied for the non-respect of cross-compliance in accordance with Chapter III of Title IV.

Article 80

Recovery of undue payments

1 If undue payment is made, the farmer 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 of the repayment obligation to the farmer and either repayment or deduction.

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 farmer.

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.

Article 81

Recovery of undue entitlements

1 Without prejudice of Article 137 of Regulation (EC) No 73/2009, where, after payment entitlements have been allocated to farmers in accordance with Regulation (EC) No 795/2004 or Regulation (EC) No 1120/2009 it is established that certain payment entitlements have been allocated unduly, the farmer concerned shall give up the unduly allocated entitlements to the national reserve referred to in Article 41 of Regulation (EC) No 73/2009.

In the case that the farmer concerned, meanwhile, transferred payment entitlements to other farmers, the transferees shall also be bound by the obligation provided for in the first subparagraph in proportion to the number of payment entitlements which have been transferred to them if the farmer to whom the payment entitlements had initially been allocated does not have a sufficient number of payment entitlements at his disposal to cover the value of the unduly allocated payment entitlements.

The entitlements allocated unduly shall be deemed not to have been allocated ab initio.

2 Without prejudice of Article 137 of Regulation (EC) No 73/2009, where, after payment entitlements have been allocated to farmers in accordance with Regulation (EC) No 795/2004 or Regulation (EC) No 1120/2009 it is established that the value of the payment entitlements is too high, that value shall be adjusted accordingly. That adjustment shall also be carried out in respect of payment entitlements which have, meanwhile, been transferred to other farmers. The value of the reduction shall be allocated to the national reserve referred to in Article 41 of Regulation (EC) No 73/2009.

The payment entitlements shall be deemed as having been allocated ab initio at the value resulting from the adjustment.

3 Where, for the purposes of paragraphs 1 and 2, it is established that the number of the entitlements allocated to a farmer in accordance with Regulation (EC) No 795/2004 or

Regulation (EC) No 1120/2009 is incorrect, and where the undue allocation has no impact on the total value of the entitlements the farmer received, the Member State shall recalculate the payment entitlements and where appropriate correct the type of the entitlements allocated to the farmer.

However, the first subparagraph shall not apply if the errors could reasonably have been detected by the farmers.

4 Member States may decide not to recover undue allocated entitlements where the total amount undue allocated to the farmer is EUR 50 or less. Furthermore, when the total value referred to in paragraph 3 concerns EUR 50 or less, Member States may decide not to carry out the recalculation.

5 Where a farmer has transferred any payment entitlements without respecting Article 46(2) of Regulation (EC) No 1782/2003 or Articles 43(1), 43(2), 62(1), 62(3) and 68(5) of Regulation (EC) No 73/2009, the situation shall be established as if the transfer had not taken place.

6 Undue amounts paid shall be recovered in accordance with Article 80.

Article 82

Transfer of holdings

1 For the purposes of this Article:

- a 'transfer of a holding' means the sale, lease or any similar type of transaction in respect of the production units concerned;
- b 'transferor' means the farmer whose holding is transferred to another farmer;
- c 'transferee' means the farmer to whom the holding is transferred.

2 Where a holding is transferred in its entirety from one farmer to another farmer after an aid application has been lodged and before all the conditions for granting the aid have been fulfilled, no aid shall be granted to the transferor in respect of the transferred holding.

3 The aid applied for by the transferor shall be granted to the transferee where:

- a within a period of the transfer to be determined by the Member States the transferee informs the competent authority of the transfer and requests payment of the aid;
- b the transferee presents any evidence required by the competent authority;
- c all the conditions for granting the aid are fulfilled in respect of the holding transferred.

4 Once the transferee informs the competent authority and requests payment of the aid in accordance with paragraph 3(a):

- a all rights and obligations of the transferor resulting from the legal relationship between the transferor and the competent authority generated by the aid application shall be conferred on the transferee;
- b all actions necessary for the granting of the aid and all declarations made by the transferor prior to the transfer shall be attributed to the transferee for the purposes of applying the relevant Community rules;
- c the holding transferred shall be considered, where appropriate, as a separate holding in respect of the marketing year or premium period in question.

5 Where an aid application is lodged after the actions necessary for the granting of the aid have been performed and a holding is transferred in its entirety from one farmer to another

farmer after those actions have started but before all the conditions for granting the aid have been fulfilled, the aid may be granted to the transferee provided the conditions in paragraph 3(a) and (b) are fulfilled. In that case, paragraph 4(b) shall apply.

6 Member States may decide, where appropriate, to grant the aid to the transferor. In that event:

- a no aid shall be granted to the transferee;
- b Member States shall apply *mutatis mutandis* the requirements set out in paragraphs 2 to 5.

Article 83

Additional measures and mutual assistance between Member States

Member States shall take all further measures required for the proper application of the integrated system and shall give one another the mutual assistance needed for the purposes of the controls required pursuant to this Regulation.

In that respect, Member States may, where this Regulation does not provide for appropriate reductions and exclusions, provide appropriate national penalties against producers or other operators, such as slaughterhouses or associations involved in the procedure for granting aid, in order to ensure the compliance with control requirements such as the current herd register of the holding or the respect of notification obligations.

Article 84

Notifications

1 Member States shall submit to the Commission by 15 July each year at the latest, for the aid schemes covered by the integrated system, a report covering the previous calendar year and, in particular, relating to the following points:

- a the state of implementation of the integrated system, including in particular the options chosen for the control of the cross-compliance requirements and the competent control bodies responsible for the controls of the cross-compliance requirements and conditions as well as particular measures taken for the administration and the control of the specific support;
- b the number of claimants as well as the total area, total number of animals and the total of quantities;
- c the number of claimants as well as the total area, the total number of animals and the total of quantities, covered by controls;
- d the result of the controls carried out, indicating the reductions and exclusions applied pursuant to Title IV;
- e the results of the controls relating to cross-compliance in accordance with Chapter III of Title III.

2 Member States shall notify the Commission by electronic means using the form made available to them by the Commission, by 31 October each year at the latest of the proportion of the land under permanent pasture in relation to the total agricultural land as referred to in Article 3(1) of this Regulation.

3 In exceptional duly justified situations, Member States may, in agreement with the Commission, derogate from the dates provided for in paragraphs 1 and 2.

4 The computerised data established as a part of the integrated system shall be used to support the information specified in the framework of sectoral rules which Member States are obliged to send to the Commission.

5 Member States shall, in case of application of a linear reduction of the direct payments in accordance with Article 8(1) of Regulation (EC) No 73/2009 and Article 79 of this regulation without delay inform the Commission of the reduction percentage applied.

Article 85

Allocation key

The allocation key for the amounts corresponding to the 4 percentage points referred to in the first subparagraph of Article 9(2) of Regulation (EC) No 73/2009 shall be compiled by taking the Member States' shares in agricultural area and agricultural employment with a weight of 65 % and 35 %, respectively.

Each Member State's share in area and employment shall be adjusted in function of its relative Gross Domestic Product (GDP) per capita expressed in purchasing power standard, using one third of the difference of the average of the Member States to which modulation applies.

For that purpose, the following underlying data, based on the data available from Eurostat in August 2003, shall be used:

- (a) in respect of agricultural area, the Farm Structural Survey 2000 in accordance with Regulation (EC) No 1166/2008 of the European Parliament and of the Council⁽²⁾;
- (b) in respect of agricultural employment, the annual series of the Labour Force Survey 2001 on employment in agriculture, hunting and fishing in accordance with Council Regulation (EC) No 577/98⁽³⁾;
- (c) in respect of GDP per capita in purchasing power, the three-year average, based on the data of national accounts, 1999 to 2001.

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

- (1) OJ L 95, 5.4.2007, p. 1.
- (2) OJ L 321, 1.12.2008, p. 14.
- (3) OJ L 77, 14.3.1998, p. 3.