

## COMMISSION REGULATION (EC) No 363/2009

of 4 May 2009

**amending Regulation (EC) No 1974/2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

of Regulation (EC) No 1698/2005 and be made subject to a Commission decision.

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) <sup>(1)</sup>, and in particular Article 91 thereof,

Whereas:

- (1) Regulation (EC) No 1698/2005, which establishes the legal framework for the EAFRD support for rural development throughout the Community, has been amended by Council Regulation (EC) No 74/2009 of 19 January 2009 amending Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) <sup>(2)</sup>. Consequently, Commission Regulation (EC) No 1974/2006 <sup>(3)</sup> should be complemented by additional detailed implementing rules.
- (2) The expiry of the dairy quota regime under Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common market organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) <sup>(4)</sup> requires specific efforts from dairy farmers. Therefore, it is appropriate to withdraw, with effect from the beginning of the programming period, the limitation of investment support for dairy farms to stay within the limits of the production quotas allocated to the individual farm.
- (3) Regulation (EC) No 74/2009 introduced the requirement of revision of the national strategy plans. The minimum content of this revision should be defined.
- (4) Because of the importance of the priorities laid down in Article 16a of Regulation (EC) No 1698/2005, the revisions of the rural development programmes following the first implementation of that Article should be considered as revisions under Article 19(1)

- (5) Regulation (EC) No 74/2009 has identified a list of potential effects which the operations linked to the priorities referred to in Article 16a of Regulation (EC) No 1698/2005 are aimed to achieve. This list not being exhaustive, additional potential effects can be proposed by Member States, which the abovementioned operations are aimed to achieve. However, in order to ensure consistency with the potential effects already identified and with the general purpose of strengthening the operations related to the new challenges, the option for Member States to propose such additional potential effects should be subject to review by the Commission and to the opinion of the Rural Development Committee. Therefore, modifications introducing a new potential effect should be subject to a Commission decision.
- (6) Given the high number of cases in which revisions concern an exception of lower importance from demarcation principles between common market organisations and rural development and in order to limit the administrative burden, the Commission should no longer adopt decisions on revisions concerning changes relating to the exception referred to in Article 5(6) of Regulation (EC) No 1698/2005. Accordingly, such a category of revision should be deleted from the list of Article 7 of Regulation (EC) No 1974/2006.
- (7) Content and criteria of the business plans concerning support for holdings undergoing restructuring due to a reform of a common market organisation should be specified.
- (8) Following the abolition of the 'set-aside measure' pursuant to Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes 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 <sup>(5)</sup>, provisions referring to this measure have to be adapted.

<sup>(1)</sup> OJ L 277, 21.10.2005, p. 1.<sup>(2)</sup> OJ L 30, 31.1.2009, p. 100.<sup>(3)</sup> OJ L 368, 23.12.2006, p. 15.<sup>(4)</sup> OJ L 299, 16.11.2007, p. 1.<sup>(5)</sup> OJ L 30, 31.1.2009, p. 16.

- (9) In order to ease the realisation of investment projects in the context of the ongoing economic and financial crisis, the maximum ceiling for advance payments should be raised in 2009 and 2010.
- (10) It is appropriate to adapt the provisions on State aid for certain co-financed measures by the EAFRD and for additional national financing in order to clarify their scope of application and to take into account the new measure on holdings undergoing restructuring due to a reform of a common market organisation introduced by Regulation (EC) No 74/2009.
- (11) There is a need to define the term 'substantial changes' in Article 78(f) of Regulation (EC) No 1698/2005.
- (12) In order to allow monitoring of the actions related to the priorities laid down in Article 16a of Regulation (EC) No 1698/2005, output indicators, and related targets, making part of the Common Monitoring and Evaluation Framework referred to in Article 80 of that Regulation should be specified by type of operations.
- (13) Member States have to provide in their revised programmes information on the types of operations related to the priorities mentioned in Article 16a of Regulation (EC) No 1698/2005 indicating which of these operations are based on new measures, i.e. measures which have not been approved with the rural development programme yet. Additionally, the indicative EAFRD contribution for 2010-2013 has to be shown. For this purpose the Annexes to Regulation (EC) No 1974/2006 should be amended.
- (14) In order to be consistent with the date of application of Regulation (EC) No 74/2009, to which the provisions of this Regulation are complementary, this Regulation should apply as of 1 January 2009. Such retroactive application should not infringe the principle of legal certainty of the beneficiaries concerned.
- (15) Regulation (EC) No 1974/2006 should therefore be amended accordingly.
- (16) The measures provided for in this Regulation are in accordance with the opinion of the Rural Development Committee,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 1974/2006 is amended as follows:

1. in Article 2, paragraph 3 is replaced by the following:

'3. With the exception of the dairy sector, where a common market organisation, including direct support schemes financed by the European Agricultural Guarantee Fund (EAGF) places restrictions on production or limitations on Community support at the level of individual farmers, holdings or processing plants, no investment shall be supported under Regulation (EC) No 1698/2005 which would increase production beyond those restrictions or limitations.';

2. the following Article 3a is inserted:

*'Article 3a*

Revisions of national strategy plans in accordance with Article 12a of Regulation (EC) No 1698/2005 shall include a revision of the relevant elements set out in Article 11(3) of that Regulation which are related to the priorities foreseen in Article 16a(1) of that Regulation, and, in particular, of the main quantified objectives.

The National Strategy shall identify the approximate and indicative EAFRD contribution referred to in Article 69(5a) of Regulation (EC) No 1698/2005 allocated to each of the priorities referred to in Article 16a(1) of that Regulation in the Member State and shall contain the appropriate explanations related to the allocation.';

3. in Article 5, paragraph 1, the first subparagraph is replaced by the following:

'The content of rural development programmes as referred to in Articles 16 and 16a of Regulation (EC) No 1698/2005 shall be established in accordance with Annex II to this Regulation.';

4. in Article 7, paragraph 1 is amended as follows:

- (a) point (d) is replaced by the following:

'(d) the revision relates to the first implementation of Article 16a of Regulation (EC) No 1698/2005.';

- (b) the following point is added:

'(e) the revision introduces an additional potential effect, not listed in Annex II to Regulation (EC) No 1698/2005, related to the priorities mentioned in Article 16a of the same Regulation.';

5. in Article 9, paragraph 1 is replaced by the following:
- '1. Changes in programmes by Member States as referred to in Article 6(1)(c) may involve changes of financial breakdowns by measure within an axis as well as non-financial changes concerning the introduction of new measures and types of operations, the withdrawal of existing measures and types of operations, the changes relating to the exception referred to in Article 5(6) of Regulation (EC) No 1698/2005 or information on and description of existing measures in the programme.;
6. the following Article 24a is inserted:
- 'Article 24a*
- The business plan referred to in Article 35a of Regulation (EC) No 1698/2005 shall:
- (a) describe the main aspects of the restructuring envisaged including diversification outside agricultural activities;
- (b) identify specific objectives.;
7. in Article 27(6) the first subparagraph is deleted;
8. in Article 46, the following paragraph is added:
- 'This Article shall also apply to the commitments concerned by the abolition of the set-aside following the entering into force of Regulation (EC) No 73/2009. On request of the beneficiary, adjustments of such commitments can be allowed also in case no revision clause is provided.;
9. in the first subparagraph of Article 56(2), the following sentence is added:
- 'In the case of investments for which the individual decision to grant support is taken in 2009 or in 2010, the amount of the advances may be increased up to 50 % of the public aid related to that investment.;
10. in Article 57, paragraph 2 is replaced by the following:
- '2. Rural development programmes may cover payments made by Member States for rural development, falling outside the scope of Article 36 of the Treaty, in favour of measures pursuant to Articles 25, 43 to 49 and 52 of Regulation (EC) No 1698/2005 and of operations under measures pursuant to Articles 21, 24, 28, 29, 30 and 35a of that Regulation or additional national funding, falling outside the scope of Article 36 of the Treaty, in favour of the measures pursuant to Articles 25, 27, 43 to 49 and 52 of Regulation (EC) No 1698/2005 and of operations under measures pursuant to Articles 21, 24, 28, 29, 30 and 35a of that Regulation only if the State aid is identified in accordance with point 9.B of Annex II to this Regulation.;
11. in Section 4 'Monitoring and Evaluation', the following Article 59a is inserted:
- 'Article 59a*
- For the purposes of Article 78, point (f) of Regulation (EC) No 1698/2005, "substantial proposals for changes" shall include the changes for which a decision of the Commission is compulsory and changes referred to in Article 9(1) of this Regulation except the changes relating to the exception referred to in Article 5(6) of Regulation (EC) No 1698/2005 and the information on and description of existing measures in the programme.;
12. in Article 62, paragraph 1, the following subparagraph is added:
- 'For measures containing types of operations as specified under Article 16a of Regulation (EC) No 1698/2005 output indicators and indicative targets for output indicators shall be broken down by types of operations.;
13. in Article 63, paragraph 8, the first subparagraph is replaced by the following:
- 'In cases of *force majeure* or exceptional circumstances, and in particular of malfunctioning of the system or a lack of a lasting connection, the Member State may submit the documents to the Commission in hard copy or by other appropriate electronic means. Such submission of hard copies or by other electronic means shall require prior notice to the Commission.;
14. Annexes I, II, VII and VIII are amended in accordance with the Annex to this Regulation.

*Article 2*

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

It shall apply from 1 January 2009. However, Article 1(1) shall apply as of 1 January 2007.

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

Done at Brussels, 4 May 2009.

*For the Commission*  
Mariann FISCHER BOEL  
*Member of the Commission*

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## ANNEX

The Annexes to Regulation (EC) No 1974/2006 are amended as follows:

1. Annex I is replaced by the following:

## ‘ANNEX I

**Support schemes referred to in Article 2(2)**

- Fruit and vegetables (Part II, Title I, Chapter IV, Section IVa of Council Regulation (EC) No 1234/2007 (\*)
- Wine (Title II, Chapter I of Council Regulation (EC) No 479/2008 (\*\*))
- Tobacco (Part II, Title I, Chapter IV, Section V of Regulation (EC) No 1234/2007)
- Olive oil (Part II, Title I, Chapter IV, Section IV of Regulation (EC) No 1234/2007)
- Hops (Article 68a of Regulation (EC) No 1782/2003)
- Sheep and goats (Article 102(1) of Council Regulation (EC) No 73/2009 (\*\*))
- Bee keeping (Title I, Chapter IV, Section VI of Regulation (EC) No 1234/2007)
- Sugar (Council Regulation (EC) No 320/2006 (\*\*\*))
- Specific measures for agriculture in the outermost regions (Title III of Council Regulation (EC) No 247/2006 (\*\*\*\*)) and the smaller Aegean islands (Chapter III of Council Regulation (EC) No 1405/2006 (\*\*\*\*\*))
- Direct payments (Article 41(3) and 68 of Regulation (EC) No 73/2009)

(\*) OJ L 299, 2.10.2007, p. 1.

(\*\*) OJ L 148, 6.6.2008, p. 1.

(\*\*\*) OJ L 30, 31.1.2009, p. 16.

(\*\*\*\*) OJ L 58, 28.2.2006, p. 42.

(\*\*\*\*\*) OJ L 42, 14.2.2006, p. 1.

(\*\*\*\*\*) OJ L 265, 26.9.2006, p. 1.;

2. Annex II is amended as follows:

(a) in point 5.2, the second indent is replaced by the following

- Confirmation that for the measures pursuant to Articles 25, 43 to 49 and 52 of Regulation (EC) No 1698/2005 and for operations under the measures pursuant to Articles 21, 24, 28, 29, 30 and 35a of that Regulation which fall outside the scope of Article 36 of the Treaty, respect of the State aid procedures and material compatibility criteria, in particular aid ceiling of total public support under Articles 87 to 89 of the Treaty, is ensured.;

(b) point 5.3 is replaced by the following:

‘5.3. *Information required for Axes and measures*

The following specific information, including information on the specific types of operations referred to in Article 16a(1) of Regulation (EC) No 1698/2005, is required for measures:;

(c) point 5.3.1.4 is replaced by the following:

‘5.3.1.4. **Transitional measures**’;

(d) the following point 5.3.1.4.4 is inserted:

‘5.3.1.4.4. **Holdings undergoing restructuring due to a reform of a common market organisation**

- designation of the reforms of common market organisation involved,
- summary of the requirements of the business plan,
- amount and duration of support.;

(e) the following point 5.3.6 is inserted:

**'5.3.6. List of types of operations referred to in Article 16a(3)(a) of Regulation (EC) No 1698/2005 up to the amounts referred to in Article 69(5a) of that Regulation**

Axis/measure	Type of operation	Potential effects	"Existing" or "new" type of operation	Reference to the description of the type of operation in the RDP	Output indicator – target
Axis 1 Measure 111	...	...			
Measure ...	...	...			
Axis 2 Measure 211	...	...			
Measure ...	...	...			
Axis 3 Measure 311	...	...			
Measure ...					
Axis 4 Measure 411	...	...			
Measure ...					

NB: The column "existing or new type of operation" shall indicate whether or not the type of operation related to the priorities referred to in Article 16a of Regulation (EC) No 1698/2005 was already included in the version of the RDP applicable on 31 December 2008. In this context modifications of existing types of operations are also considered to be "new types of operations."

(f) Table 6.1 is replaced by the following:

**'6.1. Annual contributions from the EAFRD (in EUR)**

	2007	2008	2009	2010	2011	2012	2013
Non-convergence regions							
Convergence regions (*)							
Outermost regions and smaller Aegean Islands (**)							
Voluntary modulation (***)							
Additional contribution to Portugal							
Additional funds from Article 69(5a) of Regulation (EC) No 1698/2005 – non-convergence region							
Additional funds from Article 69(5a) of Regulation (EC) No 1698/2005 – convergence region (****)							
Total							

(\*) For Member States with convergence regions.

(\*\*) For Member States with outermost regions or smaller Aegean Islands.

(\*\*\*) For Member States applying voluntary modulation pursuant to Regulation (EC) No 378/2007.

(\*\*\*\*) For Member States receiving additional funds as referred to in Article 69(5a) of Regulation (EC) No 1698/2005 with convergence regions.'

(g) footnote (1) the reference of which is set at the end of the title for Table 6.2 is replaced by the following:

'(1) Table 6.2 needs to be replicated for each sub-amount of the EAFRD contribution shown in one row in Table 6.1.;

(h) the following point is inserted:

'6.3. *Indicative budget related to operations referred to in Article 16a of Regulation (EC) No 1698/2005 between 1 January 2010 and 31 December 2013 (Article 16a(3)(b) up to the amounts specified in Article 69(5a) of Regulation (EC) No 1698/2005)*

Axis/measure	EAFRD contribution for 2010-2013
Axis 1 Measure 111	...
Measure ...	...
Axis 2 Measure 211	...
Measure ...	...
Axis 3 Measure 311	...
Measure ...	
Axis 4 Measure 411	...
Measure ...	
Axis 1, 2, 3 and 4, total	...'

(i) in point 7, the following code 144 is inserted:

'(144) Holdings undergoing restructuring due to a reform of a common market organisation';

(j) in point 9(B), the introductory words of the first subparagraph are replaced by the following:

'For the measures pursuant to Articles 25, 27 (for the latter only for additional national funding referred to in Article 89 of Regulation (EC) No 1698/2005), 43 to 49 and 52 of Regulation (EC) No 1698/2005 and operations under the measures pursuant to Articles 21, 24, 28, 29, 30 and 35a of that Regulation which fall outside the scope of Article 36 of the Treaty, either:'

3. Annex VII is amended as follows:

(a) in point 2, the following paragraphs are added:

'Each Member State receiving in accordance with Council Regulation (EC) No 74/2009 (\*), additional financial resources resulting from modulation under that Regulation together with, as of 2011, the amounts of unused funds should include as of 2011 a separate chapter containing at least the same analysis as mentioned in the previous paragraph as regards the operations related to the priorities mentioned in Article 16a(1) of Regulation (EC) No 1698/2005. For new Member States except Bulgaria and Romania this obligation would be effective as of 2014.

Member States applying the new measure "144 Holdings undergoing restructuring" should report about the achievements made in view of the measure's objectives.

(\*) OJ L 30, 31.1.2009, p. 100.;

(b) the following point 3a is inserted:

- 3a. The financial implementation of the programme as regards the new challenges related operations, giving, for each measure, a statement of expenditures paid to beneficiaries after 1 January 2010 for types of operations referred to in Article 16a(1) of Regulation (EC) No 1698/2005 and the amounts referred to in Article 69(5a) of that Regulation.

The table summarising the financial implementation of these types of operations shall have at least the following information:

Axis/measure	Annual payment-year N	Cumulative payments from year 2010 to year N
Measure 111	...	...
Measure ...		
Total Axis 1	...	...
Measure 211	...	...
Measure ...		
Total Axis 2	...	...
Measure 311	...	...
Measure ...		
Total Axis 3	...	...
Measure 411	...	...
Measure ...		
Total Axis 4	...	...
Total programme	...	...'

4. in Annex VIII, the following row is inserted under point II. COMMON OUTPUT INDICATORS at the end of the list concerning Axis 1:

Code	Measure	Output indicators (*)
'144	Holdings undergoing restructuring due to a reform of a common market organisation	Number of holdings that received support'