

## COMMISSION REGULATION (EC) No 380/2009

of 8 May 2009

**amending Regulation (EC) No 796/2004 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, as well as for the implementation of cross-compliance provided for in Regulation (EC) No 479/2008**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers 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 (1) and in particular Article 142(b), (c), (d), (e), (k), and (n) thereof,

Whereas:

- (1) Council Regulation (EC) No 1782/2003 (2) has been repealed and replaced by Regulation (EC) No 73/2009. Certain provisions of the repealed Regulation will however continue to apply also in 2009. The rules provided for in Commission Regulation (EC) No 796/2004 (3) apply to both Regulations. Consequently the title of Regulation (EC) No 796/2004 should be updated.
- (2) References to various Articles of Regulation (EC) No 1782/2003 which are replaced by Regulation (EC) No 73/2009 are covered by the correlation table in Annex XVIII to that Regulation. Certain references in Regulation (EC) No 796/2004 to the repealed Regulation should however, for the sake of clarity, be updated. In addition, provisions which have become obsolete should be deleted.
- (3) The requirements on set-aside within the framework of the single payment scheme have been abolished. The corresponding provisions in Regulation (EC) No 796/2004 should therefore be deleted.
- (4) The system for the identification and registration of payment entitlements specified in Article 7 of Regulation (EC) No 796/2004 has to ensure effective traceability and

allow for cross-checks of payment entitlements. Specific requirements are linked to entitlements allocated in accordance with Article 68(1)c of Regulation (EC) No 73/2009. Therefore, information required to be able to verify that those specific requirements are fulfilled should be included in the system.

- (5) Article 29(3) of Regulation (EC) No 73/2009 provides that verification of eligibility conditions has to be finalised before payment. Therefore the equivalent provision in Regulation (EC) No 796/2004 has become redundant and should be deleted.
- (6) The specific rules provided for in Article 138 of Commission Regulation (EC) No 1973/2004 of 29 October 2004 laying down detailed rules for the application of Council Regulation (EC) No 1782/2003 as regards the support schemes provided for in Titles IV and IVa of that Regulation and the use of land set aside for the production of raw materials (4) concerning reductions and exclusions under the single area payments scheme have been deleted by Commission Regulation (EC) No 316/2009 (5). References to the said Article in Regulation (EC) No 796/2004 should therefore be deleted. Moreover, the Articles in Regulation (EC) No 796/2004 where an explicit reference to the single area payment scheme is needed, due to the said modification of Regulation (EC) No 73/2009, should be updated.
- (7) Special provisions concerning the administration and control are needed as regards the specific support to be granted in the case of the optional implementation of Article 68 of Regulation (EC) No 73/2009.
- (8) The application for aid to sugar beet and cane producers has also to contain a copy of the delivery contract referred to in Article 110r of Regulation (EC) No 1782/2003. These contracts are in some cases not yet concluded at the latest date the Member State may set for lodging the application. It should therefore be possible to submit this information at a later date to be set by the Member State.

(1) OJ L 30, 31.1.2009, p. 16.

(2) OJ L 270, 21.10.2003, p. 1.

(3) OJ L 141, 30.4.2004, p. 18.

(4) OJ L 345, 20.11.2004, p. 1.

(5) OJ L 100, 18.4.2009, p. 3.

(9) Article 20 of Regulation (EC) No 796/2004 contains special rules to provide for the situation where the latest date for the submission of an aid application is a public holiday, a Saturday or a Sunday. The same rule should apply to the submission of an amendment to the single application in accordance with Article 15 of that Regulation.

(10) Article 21a of Regulation (EC) No 796/2004 lays down the rules for late applications for participation in the single payment scheme. The provisions to be applied the first year of the application of the single payment scheme need to be updated with references to the implementation of that scheme in the new Member States. Article 56 of Regulation (EC) No 73/2009 provides the latest date to be set by the Member State for an application to participate in the single payment scheme. In the case where new sectors are being included in the single payment scheme, the rules in Article 21a of Regulation (EC) No 796/2004 concerning late submissions of applications to the single payment scheme also apply in the case of applications of farmers concerning such new sectors. The importance of punctual lodging of the application to participate in the single payment scheme is crucial for an efficient administration. Therefore a latest date to be set by the Member States for an application for participation when new sectors are included in the single payment scheme should be provided.

(11) The reference in Article 31a of Regulation (EC) No 796/2004 to the scale referred to in Article 110e of Regulation (EC) No 1782/2003 is obsolete and should therefore be deleted.

(12) A major part of the area related payments are now decoupled from production and falling into one crop group. A control of any possible over declaration of the overall area covered by the single application is therefore no longer necessary. As a result the rules concerning reductions for over declaration of areas following such control may be simplified.

(13) To harmonise the rules between area related payments, animal payments and additional payments concerning off-setting of reductions within three calendar years following the calendar year of the finding, the cancellation of the outstanding balance after three years should apply to all payments. Further, Article 5b of Commission Regulation (EC) No 885/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the accreditation of paying agencies and other bodies and the clearance of the accounts of the EAGF and of the EAFRD (<sup>1</sup>) provides for horizontal rules for off-setting outstanding debts against future payments. The reference to which payments the debts can be off-set against should therefore be replaced by a reference to that provision.

(14) Information on the results of controls of cross-compliance should be made available to all paying agencies responsible for the management of the different payments subject to cross-compliance requirements so that, where the findings so justify, appropriate reductions are applied.

(15) New rules concerning modulation have been introduced. In that context the provisions related to additional payments are obsolete and should therefore be deleted. Moreover, the rules providing the order of application and the basis for calculation of different reductions need to be updated and possible reductions following the respect of the net ceilings as provided for in Article 8(1) of Regulation (EC) No 73/2009 should be included.

(16) Regulation (EC) No 885/2006 provides rules concerning off-setting of outstanding amounts and the possibility to decide to not recover outstanding amounts of EUR 100 or lower. The equivalent provisions in Regulation (EC) No 796/2004 are therefore redundant and should be deleted.

(17) Regulation (EC) No 796/2004 should therefore be amended accordingly.

(18) Regulation (EC) No 73/2009 is applicable from 1 January 2009. Hence, amendments provided for in this Regulation should concern aid applications relating to years or premium periods starting as of 1 January 2009. This Regulation should therefore apply from 1 January 2009.

(19) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Direct Payments,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 796/2004 is amended as follows:

1. the title of Regulation (EC) No 796/2004 is replaced by the following:

**'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 Regulations (EC) No 1782/2003 and (EC) No 73/2009, as well as for the implementation of cross compliance provided for in Council Regulation (EC) No 479/2008';**

(<sup>1</sup>) OJ L 171, 23.6.2006, p. 90.

2. in Article 2, the first paragraph is amended as follows:

(a) point 1 is replaced by the following:

'1. "Arable land": shall mean land cultivated for crop production or maintained in good agricultural and environmental condition in accordance with Article 6 of Council Regulation (EC) No 73/2009 (\*), irrespective of whether or not that land is under greenhouses or under fixed or mobile cover;

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

(b) point 2 is replaced by the following:

'2. "Permanent pasture": shall mean land used to grow grasses or other herbaceous forage naturally (self-seeded) or through cultivation (sown) and that has not been included in the crop rotation of the holding for five years or longer, excluding land under set aside schemes pursuant to Article 107(6) of Regulation (EC) No 1782/2003, areas set aside in accordance with Council Regulation (EEC) No 2078/92 (\*\*), areas set aside in accordance with Articles 22, 23 and 24 of Council Regulation (EC) No 1257/1999 (\*\*) and areas set aside in accordance with Article 39 of Council Regulation (EC) No 1698/2005 (\*\*\*)';

(\*) OJ L 215, 30.7.1992, p. 85.

(\*\*) OJ L 160, 26.6.1999, p. 80.

(\*\*\*) OJ L 277, 21.10.2005, p. 1.:'

3. in Article 7(1), point (f) is replaced by the following:

'(f) kind of entitlement, in particular entitlements subject to special conditions in accordance with Article 44 of Regulation (EC) No 73/2009 and entitlements allocated in accordance with Article 68(1)(c) of Regulation (EC) No 73/2009;';

4. Article 8(1) is replaced by the following:

'1. Without prejudice to Article 34(2) of Regulation (EC) No 73/2009, an agricultural parcel that contains trees shall be considered as eligible area for the purposes of the area-related aid schemes provided that agricultural activities or, where applicable, the production envisaged can be carried out in a similar way as on parcels without trees in the same area.:'

5. Article 10 is amended as follows:

(a) the title is replaced by the following text:

'Article 10

**Payment of aid in relation to checks of cross-compliance';**

(b) paragraph 1 is deleted;

6. in Article 11(1), the second subparagraph is replaced by the following:

'A farmer who does not apply for aid under any of the area-related aid schemes but applies for aid under another aid scheme listed in Annex I to Regulation (EC) No 73/2009 or for support pursuant to Articles 11, 12 and 98 of Regulation (EC) No 479/2008 shall, if he has agricultural area as defined in Article 2(h) of Regulation (EC) No 73/2009 at his disposal, submit a single application form in which he shall list these areas in accordance with Article 14 of this Regulation.';

7. Article 12 is amended as follows:

(a) in paragraph 1, point (c) is replaced by the following:

'(c) the identification of the payment entitlements in accordance with the identification and registration system provided for in Article 7 for the purposes of the single payment scheme;';

(b) paragraph 2 is replaced by the following:

'2. For the purpose of the identification of the payment entitlements referred to in paragraph 1(c), the pre-established forms provided to the farmer in accordance with Article 19(2) of Regulation (EC) No 73/2009 shall mention the identification of the payment entitlements in accordance with the identification and registration system provided for in Article 7.:'

(c) in paragraph 3, the first sentence of the first subparagraph is replaced by the following:

'For the purpose of the identification of all agricultural parcels on the holding referred to in paragraph 1(d), the pre-established forms provided to the farmer in accordance with Article 19(2) of Regulation (EC) No 73/2009 shall mention the maximum eligible area per reference parcel for the purposes of the single payment scheme or the single area payment scheme.';

8. Article 13(2) is replaced by the following:

'2. In the case of set-aside land used in accordance with the first indent of Article 107(3) of Regulation (EC) No 1782/2003, the single application shall contain the necessary proof required under the applicable sectoral rules.';

9. in Article 14(1), the first subparagraph is replaced by the following:

'Uses of area referred to in Articles 6(2) and 38 of Regulation (EC) No 73/2009 and those listed in Annex VI to that Regulation, as well as areas used for the production of flax grown for fibre or areas declared for the specific support provided for under Article 68 of Regulation (EC) No 73/2009, where those areas do not have to be declared in accordance with Article 13 of this Regulation, shall be declared under a separate heading in the single application form.';

10. in Article 15(2), the second subparagraph is deleted;

11. in Article 17a(2), the following subparagraph is added:

'Member States may provide that the copy of the delivery contract referred to in the second subparagraph of paragraph 1 may be submitted separately by a later date which shall not be later than 1 December of the year of the application.';

12. Article 20 is replaced by the following:

*'Article 20*

**Derogation from the final date for the submission of aid applications, supporting documents, contracts and declarations and the latest date for amendments to the single application**

By way of derogation from Article 5(1) of Council Regulation (EEC, Euratom) No 1182/71 (\*), where the latest date for the submission of an aid application or any supporting documents, contracts or declarations under this Title, or the latest date for amendments to the single application, is a public holiday, a Saturday or a Sunday, it shall be deemed to fall on the first following working day.

The first paragraph shall also apply with regard to applications by farmers to the single payment scheme in accordance with Article 56 of Regulation (EC) No 73/2009.

(\*) OJ L 124, 8.6.1971, p. 1.'

13. Article 21a is amended as follows:

(a) in paragraph 1, the first subparagraph is replaced by the following:

'Without prejudice to cases of *force majeure* and exceptional circumstances referred to in Article 56(2) of Regulation (EC) No 73/2009 and by way of derogation from Article 21 of this Regulation, in the first year of the application of the single payment scheme in accordance with Chapter 3 of Title III of Regulation (EC) No 73/2009, where, in the Member State

concerned, an application for the allocation of entitlements in accordance with Article 56(1) of that Regulation and the single application for that year have to be submitted together by the farmer and where the farmer submits those applications after the relevant time limit, a 4 % reduction per working day shall be applied to the amounts to be paid in that year in respect of the payment entitlements to be allocated to the farmer.';

(b) in paragraph 2, the second subparagraph is replaced by the following:

'In that case, without prejudice to cases of *force majeure* and exceptional circumstances referred to in Article 56(2) of Regulation (EC) No 73/2009, the submission of an application to the single payment scheme in accordance with that Article after the relevant time limit shall lead to a 3 % reduction per working day in the amounts to be paid in the first year of the application of the single payment scheme in respect of the payment entitlements to be allocated to the farmer.';

(c) in paragraph 3, the following subparagraph is added:

'The application for participation referred to in the first subparagraph shall be submitted by a date to be fixed by the Member State which shall not be later than 15 May of the year in question.';

14. in Article 24(1), point (d) is replaced by the following:

(d) between the payment entitlements and the area determined in order to verify that the entitlements are accompanied by an equal number of eligible hectares as defined in Article 34(2) of Regulation (EC) No 73/2009.';

15. Article 31a is replaced by the following:

*'Article 31a*

**On-the-spot checks on approved inter-branch organisations**

On-the-spot checks on approved inter-branch organisations in the framework of applications for aid under the crop specific payment for cotton provided for in Section 6 of Chapter 1 of Title IV of Regulation (EC) No 73/2009 shall verify the respect of the criteria for approval of those organisations and the list of their members.';

16. in Article 38, the first sentence is replaced by the following:

'As regards the additional payment to be granted for specific types of farming, for quality production as provided for in Article 69 of Regulation (EC) No 1782/2003 or the specific support provided for under Article 68 of Regulation (EC) No 73/2009, the Member States shall, where appropriate, apply the provisions of this Title.'

17. in Article 49(2), the second subparagraph is deleted;

18. in Article 50, paragraph 4 is deleted;

19. Article 51 is amended as follows:

(a) paragraph 1 is replaced by the following:

'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, seed and tobacco as provided for in Sections 2 and 5 of Chapter 1 of Title IV of Regulation (EC) No 73/2009 and Chapter 10c of Title IV of Regulation (EC) No 1782/2003, exceeds the area determined in accordance with Article 50(3) and (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.

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) and (5) of this Regulation. That amount shall be off-set in accordance with Article 5(b) of Commission Regulation (EC) No 885/2006 (\*). If the amount cannot be fully off-set in accordance with that Article in the course of the three calendar years following the calendar year of the finding, the outstanding balance shall be cancelled.

(\*) OJ L 171, 23.6.2006, p. 9.:

(b) paragraph 2 is deleted;

(c) paragraph 2a is replaced by the following:

'2a. If a farmer declares more area than payment entitlements and the area declared fulfils all other eligibility requirements, the reductions or exclusions provided for in paragraph 1 shall not apply.

If a farmer declares more area than payment entitlements and the area declared does not fulfil all other eligibility requirements, the difference referred to in paragraph 1 shall be the difference between the area fulfilling all other eligibility requirements and the amount of payment entitlements declared.:'

(d) paragraph 3 is replaced by the following:

'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 the first indent of Article 107(3) 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.:'

20. in the second subparagraph of Article 52(3), the second and third sentences are replaced by the following:

'That amount shall be off-set in accordance with Article 5(b) of Regulation (EC) No 885/2006. If the amount cannot be fully off-set in accordance with that Article in the course of the three calendar years following the calendar year of the finding, the outstanding balance shall be cancelled.:'

21. in Article 53, the first and second paragraphs are replaced by the following:

'Where differences between the area declared and the area determined in accordance with Article 50(3) and (5) result from irregularities committed intentionally, the aid to which the farmer would have been entitled pursuant to Article 50(3) and (5) shall not be granted for the calendar year in question under the aid scheme concerned if that difference is more than 0,5 % of the area determined or more than one hectare.

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) and (5). That amount shall be off-set in accordance with Article 5(b) of Regulation (EC) No 885/2006. If the amount cannot be fully off-set in accordance with that Article in the course of the three calendar years following the calendar year of the finding, the outstanding balance shall be cancelled.:'

22. Article 59 is amended as follows:

(a) in the third subparagraph of paragraph 2, the second and third sentences are replaced by the following:

'That amount shall be off-set in accordance with Article 5(b) of Regulation (EC) No 885/2006. If the amount cannot be fully off-set in accordance with that Article in the course of the three calendar years following the calendar year of the finding, the outstanding balance shall be cancelled.:'

(b) in the second subparagraph of paragraph 4, the second and third sentences are replaced by the following:

'That amount shall be off-set in accordance with Article 5(b) of Regulation (EC) No 885/2006. If the amount cannot be fully off-set in accordance with that Article in the course of the three calendar years following the calendar year of the finding, the outstanding balance shall be cancelled.';

23. in the second subparagraph of Article 60(6), the second sentence is replaced by the following second and third sentences:

'That amount shall be off-set in accordance with Article 5(b) of Regulation (EC) No 885/2006. If the amount cannot be fully off-set in accordance with that Article in the course of the three calendar years following the calendar year of the finding, the outstanding balance shall be cancelled.';

24. Article 63 is replaced by the following:

**'Article 63**

**Findings in relation to the additional payment**

As regards the additional payment to be granted for specific types of farming or for quality production as provided for in Article 69 of Regulation (EC) No 1782/2003 or the specific support provided for under Article 68 of Regulation (EC) No 73/2009, the Member States shall provide for reductions and exclusions which shall, in substance, be equivalent to those provided for in this Title. In case area-related or livestock payments are granted the provisions of this Part shall apply *mutatis mutandis*.';

25. in the second paragraph of Article 64, the third sentence is replaced by the following third and fourth sentences:

'An amount equal to the amount covered by the refused application shall be off-set in accordance with Article 5(b) of Regulation (EC) No 885/2006. If the amount cannot be fully off-set in accordance with that Article in the course of the three calendar years following the calendar year of the finding, the outstanding balance shall be cancelled.';

26. Article 65(3) is replaced by the following:

'3. Where more than one Paying Agency is responsible for the management of the different direct payment schemes as defined in Article 2(d) of Regulation (EC) No 73/2009 and payments referred to under Articles 11, 12 and 98 of Regulation (EC) No 479/2008, Member States shall take the appropriate measures to ensure an appropriate application of the provisions under this Chapter, in particular that one rate of reduction is applied to the entirety of direct payments and amounts established in

accordance with the third subparagraph of Article 66(1) and the third subparagraph of Article 67(1).

Where, for a farmer, more than one Paying Agency is responsible for the management of different payments as defined under Article 36(a)(i) to (v) and (b)(i), (iv) and (v) of Regulation (EC) No 1698/2005, as defined in Article 2(d) of Regulation (EC) No 73/2009 and as referred to under Articles 11, 12 and 98 of Regulation (EC) No 479/2008, Member States shall ensure that determined non-compliances and, where appropriate, the corresponding reductions and exclusions are brought to the attention of all paying agencies involved in those payments.';

27. in Article 71(1), point (b) is replaced by the following:

'(b) the reductions and exclusions pursuant to Chapter II 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).';

28. Article 71a is amended as follows:

(a) the title is replaced by the following:

**'Article 71a**

**Application of reductions on each support scheme**.'

(b) paragraph 2 is amended as follows:

(i) point (a) is replaced by the following:

'(a) the reductions or exclusions provided for in Chapter I of Title IV shall be applied with regard to irregularities.';

(ii) points (e) and (f) are deleted;

29. After Article 71a, the following Article 71b is inserted:

**'Article 71b**

**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 (\*), 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 71a 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 II of Title IV of this Regulation.

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.;

32. Article 79 is deleted.

(\*) OJ L 95, 5.4.2007, p. 1.;

30. in Article 73, paragraphs 2 and 8 are deleted;

31. in Article 78, the first paragraph is replaced by the following:

'The allocation key for the amounts corresponding to the 4 percentage points referred to in the first subparagraph of

#### *Article 2*

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

It shall apply to aid applications relating to years or premium periods starting from 1 January 2009.

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

Done at Brussels, 8 May 2009.

*For the Commission*

Mariann FISCHER BOEL

*Member of the Commission*