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(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COUNCIL REGULATION (EC) No 378/2007

of 27 March 2007

laying down rules for voluntary modulation of direct payments provided for in Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers, and amending Regulation (EC) No 1290/2005

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) Certain Member States are facing particular difficulties in financing their rural development programmes pursuant 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) ⁽¹⁾. With a view to strengthening their rural development policy, these Member States should be given the possibility to apply a system of voluntary modulation. This possibility should be offered to those Member States where voluntary modulation is already applied according to Commission Regulation (EC) No 1655/2004 of 22 September 2004 laying down rules for the transition from the optional modulation system established by Article 4 of Council Regulation (EC) No 1259/1999 to the mandatory modulation system established by Council Regulation (EC) No 1782/2003 ⁽²⁾, or which were granted a derogation by virtue of Article 70(4a) of Regulation (EC) No 1698/2005 from the requirement to co-finance Community support. The voluntary modulation should take the form of reducing direct payments within the

meaning of Article 2(d) of Regulation (EC) No 1782/2003 ⁽³⁾, using the funds corresponding to that reduction for the financing of rural development programmes pursuant to Regulation (EC) No 1698/2005. Reductions of direct payments applied in respect of voluntary modulation should be additional to those resulting from the application of compulsory modulation provided for in Article 10 of Regulation (EC) No 1782/2003.

(2) In order to facilitate its administrative implementation, the rules applicable to voluntary modulation should be aligned to those applicable to compulsory modulation under Article 10 of Regulation (EC) No 1782/2003, including the calculation basis.

(3) In order to take account of the particular situation of small farmers, an additional amount of aid should be granted in case of application of voluntary modulation as is the case for compulsory modulation. That additional amount should be equal to the amount resulting from the application of voluntary modulation to the first EUR 5 000 of direct payments, within ceilings to be fixed by the Commission.

(4) With regard to Member States where voluntary modulation is already used, the new voluntary modulation arrangements laid down in this Regulation should, to the extent possible, refrain from deviating from the existing mechanism so as to avoid triggering unnecessary administrative burden, interfering with implementing arrangements that have been in place for several years and that farmers have adapted to in practice and in economic terms. Therefore, it appears to be appropriate that Member States applying voluntary modulation upon

⁽¹⁾ OJ L 277, 21.10.2005, p. 1. Regulation as last amended by Regulation (EC) No 2012/2006 (OJ L 384, 29.12.2006, p. 8).

⁽²⁾ OJ L 298, 23.9.2004, p. 3.

⁽³⁾ OJ L 270, 21.10.2003, p. 1. Regulation as last amended by Regulation (EC) No 2013/2006 (OJ L 384, 29.12.2006, p. 13).

the entry into force of this Regulation be given the right to maintain certain well-established patterns of their current system, whilst avoiding unjustified unequal treatment between farmers. Moreover, to ensure the new arrangements to be consistent with the implementation patterns of the single payment scheme, the application of regionally differentiated voluntary modulation rates should only be available to Member States which apply the single payment scheme at regional level as foreseen in Article 58 of Regulation (EC) No 1782/2003.

- (5) The use of the funds resulting from the application of voluntary modulation may not be subject to the ceilings of the EAFRD contribution pursuant to Regulation (EC) No 1698/2005. Derogation from that Regulation should therefore be provided for. The prefinancing arrangements applicable to the EAFRD pursuant to Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy ⁽¹⁾ should not apply to those funds.
- (6) In order to take informed decisions on the application of voluntary modulation, Member States should carry out thorough assessments of the potential impact of such modulation, in particular as regards the economic situation of the farmers subject to such modulation and the effect on their comparative position in the agricultural sector. The impact of the implementation of voluntary modulation should be closely monitored by the Member States applying voluntary modulation. The Commission should be informed about the impact assessment and the monitoring results with a view to any further policy developments.
- (7) Voluntary modulation should be considered in the broader context of Community funding for rural development. Its contribution should be analysed among others in the light of Member States' impact assessments. Based on this analysis, the Commission will submit before the end of 2008 a report to the European Parliament and to the Council presenting the experience gained so far with its implementation.
- (8) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽²⁾.
- (9) The amounts resulting from the application of voluntary modulation should be taken into consideration when

defining the annual ceiling for the expenditure financed by the European Agricultural Guarantee Fund and the possibility to adopt detailed rules concerning in particular voluntary modulation should be included in Regulation (EC) No 1290/2005.

- (10) Regulation (EC) No 1290/2005 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

CHAPTER I

VOLUNTARY MODULATION

Article 1

1. Without prejudice to Article 10 of Regulation (EC) No 1782/2003, Member States:

- (a) where at the entry into force of this Regulation the system of additional reductions of direct payments referred to in Article 1 of Regulation (EC) No 1655/2004 is applied; or
- (b) which were granted a derogation by virtue of Article 70(4a) of Regulation (EC) No 1698/2005 from the requirement to co-finance Community support,

may apply a reduction, hereinafter referred to as 'voluntary modulation', to all the amounts of direct payments within the meaning of Article 2(d) of Regulation (EC) No 1782/2003 to be granted in their territory in a given calendar year within the meaning of Article 2(e) of that Regulation, during the period 2007 to 2012.

2. The net amounts resulting from the application of voluntary modulation shall be available in the Member State where they were generated as Community support for measures under rural development programming financed by the European Agricultural Fund for Rural Development in accordance with Regulation (EC) No 1698/2005.

3. Reductions under voluntary modulation shall be made on the same basis of calculation as that applicable to modulation pursuant to Article 10 of Regulation (EC) No 1782/2003. Additional amounts granted to farmers under Article 12 of that Regulation shall not be subject to such reductions.

⁽¹⁾ OJ L 209, 11.8.2005, p. 1. Regulation as amended by Regulation (EC) No 320/2006 (OJ L 58, 28.2.2006, p. 42).

⁽²⁾ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

In case of application of reductions under voluntary modulation, farmers receiving direct payments under Regulation (EC) No 1782/2003 shall be granted an additional amount of aid which shall be equal to the amount resulting from the application of the percentage of reduction to the first EUR 5 000 or less of direct payments. That additional amount shall not be subject to the reductions under voluntary modulation or to modulation pursuant to Article 10 of Regulation (EC) No 1782/2003.

The total additional amounts of aid resulting from the application of the second subparagraph which may be granted in a Member State in a calendar year shall not be higher than the ceilings to be fixed by the Commission in accordance with the procedure referred to in Article 144(2) of Regulation (EC) No 1782/2003. Where necessary, Member States shall proceed to a linear percentage adjustment of additional amounts of aid in order to respect those ceilings.

4. Each Member State shall apply a single rate of voluntary modulation per calendar year. The rate may be subject to progressive modifications according to pre-established steps. The maximum rate of reduction shall be 20 %.

Article 2

1. Within two months of the entry into force of this Regulation, Member States shall decide on and communicate to the Commission the annual rate of voluntary modulation that will apply for the period 2007 to 2012.

2. Member States intending to apply voluntary modulation shall conduct an assessment in order to gauge the impact of the application of voluntary modulation, in particular on the economic situation of the farmers concerned, taking into account the need to avoid unjustified unequal treatment between farmers.

Member States intending to apply rates that are regionally differentiated according to Article 3(1) shall also gauge the impact of such differentiated rates, taking into account the need to avoid unjustified unequal treatment between farmers.

The Member States concerned shall transmit their impact assessments to the Commission together with the communication referred to in paragraph 1.

Article 3

1. Any Member State where at the entry into force of this Regulation the system of additional reductions of direct payments referred to in Article 1 of Regulation (EC) No 1655/2004 is applied and the single payment scheme is applied at regional level as foreseen in Article 58 of Regulation (EC) No 1782/2003 may, for the period 2007 to 2012 choose:

(a) by derogation from Article 1(3) not to apply the provisions of the second subparagraph of that paragraph; and/or

(b) by derogation from Article 1(4), to apply rates that are regionally differentiated according to objective criteria. The maximum rate for any of the regions of each Member State concerned shall be 20 %.

2. By derogation from Article 2(1), any Member State applying regionally differentiated rates of voluntary modulation as provided for in paragraph 1 of this Article shall submit to the Commission, within two months of the entry into force of this Regulation, for the period 2007 to 2012, the following information subject to examination by the Commission:

(a) the annual rates of voluntary modulation for each region and for the whole territory;

(b) the annual total amounts to be reduced under voluntary modulation;

(c) where appropriate, the annual total additional amounts needed to cover the additional amount of aid referred to in the second subparagraph of Article 1(3);

(d) statistical and other supportive data used to establish the amounts referred to in points (b) and (c).

3. If necessary, Member States shall submit to the Commission an update of the amounts referred to in paragraphs 2(b) and (c). That updated data shall be sent to the Commission before 31 December of the year preceding the calendar year to which the amounts refer to within the meaning of Article 2(e) of Regulation (EC) No 1782/2003.

4. If clarifications concerning the data submitted in accordance with paragraphs 2 and 3 are requested by the Commission, Member States shall reply to this request within one month.

Article 4

1. The net amounts resulting from the application of voluntary modulation shall be fixed by the Commission based on:

(a) a calculation in case of a single national rate of voluntary modulation;

(b) in the case of Member States applying regionally differentiated rates, the amounts communicated by the Member States in their application as provided for in Article 3(2) or the updated amounts as provided for in Article 3(3).

Those net amounts shall be added to the annual breakdown by Member State referred to in Article 69(4) and (5) of Regulation (EC) No 1698/2005.

2. Member States may decide not to apply the ceilings referred to in Article 70(3) of Regulation (EC) No 1698/2005 to the net amounts added to the annual breakdown by Member State pursuant to paragraph 1 of this Article.

Article 25 of Regulation (EC) No 1290/2005 shall not apply to the net amounts added to the annual breakdown by Member State pursuant to paragraph 1 of this Article.

Article 5

The Member States applying voluntary modulation and the Commission shall monitor closely the impact of the implementation of voluntary modulation, in particular as regards the economic situation of the farms, taking into account the need to avoid unjustified unequal treatment between farmers. To this end, those Member States shall submit a report to the Commission by 30 September 2008.

Article 6

Detailed rules for the application of this Chapter shall be adopted in accordance:

- (a) with the procedure referred to in Article 90(2) of Regulation (EC) No 1698/2005, which shall cover, in particular, provisions for the integration of voluntary modulation in the rural development programming, or, as appropriate;
- (b) with the procedure referred to in Article 41(2) of Regulation (EC) No 1290/2005, which shall cover, in particular, provisions for the financial management of voluntary modulation and the incorporation of the system of additional reductions of direct payments referred to in Article 1 of Regulation (EC) No 1655/2004 into the scheme provided for by this Regulation.

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

Done at Brussels, 27 March 2007.

Article 7

Before 31 December 2008, the Commission shall submit to the European Parliament and to the Council a report on the application of voluntary modulation, accompanied, if needed, by appropriate proposals.

CHAPTER II

AMENDMENT OF REGULATION (EC) No 1290/2005 AND FINAL PROVISION

Article 8

Regulation (EC) No 1290/2005 is amended as follows:

1. in Article 12, paragraph 2 is replaced by the following:
 - '2. The Commission shall set the amounts which, pursuant to Articles 10(2), 143d and 143e of Regulation (EC) No 1782/2003 and Article 4(1) of Council Regulation (EC) No 378/2007 (*), are made available to the EAFRD.
2. in the introductory terms of Article 42 the second sentence is replaced by the following:

'Those rules shall include in particular:'

Article 9

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

For the Council
The President
P. STEINBRÜCK