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COMMISSION IMPLEMENTING REGULATION (EU) .../...

of 18.5.2018

amending Implementing Regulation (EU) No 809/2014 as regards modification of single applications and payment claims and checks

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008¹, and in particular points (a) and (b) of the first subparagraph of Article 62(2) and points (b) and (c) of the first subparagraph of Article 78 thereof,

Whereas:

- (1) Article 15(2a) of Commission Implementing Regulation (EU) No 809/2014² sets out the deadline by which beneficiaries may modify their single applications or payment claims following the notification of the results of the preliminary checks. To ensure beneficiaries are afforded equal treatment, it is appropriate to ensure that all beneficiaries always have the same number of days after the deadline for notification of the results of the preliminary checks to modify their single applications or payment claims.
- (2) Article 24(4) of Implementing Regulation (EU) No 809/2014 provides that physical inspections in the field are required whenever photo-interpretation of satellite or aerial images does not provide conclusive results on compliance with eligibility criteria or the correct size of the area that is the subject of administrative or on-the-spot checks. New technologies such as Unmanned Aircraft Systems, geo-tagged photographs, GNSS-receivers combined with EGNOS and GALILEO, data captured by the Copernicus Sentinels satellites and others, provide relevant data on activities carried out on agricultural areas. With a view to reducing the burden of controls for the competent authorities and beneficiaries, particularly the number of physical inspections in the field, and boosting the use of new technologies in the integrated administration and control system, it is appropriate to allow relevant evidence collected by using such technologies as well as any other relevant documentary evidence to be used for checking compliance with eligibility criteria, commitments or other obligations for the aid scheme or support measure concerned as well as compliance with the requirements and standards relevant for cross-compliance. Physical inspections in the field should remain necessary if this evidence does not lead to conclusive results.

¹ OJ L 347, 20.12.2013, p. 549.

² Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance (OJ L 227, 31.7.2014, p. 69).

- (3) Copernicus Sentinels satellites integrated with EGNOS/Galileo data offer relevant and full, free and open data that allow monitoring of all agricultural areas in Member States. It is appropriate to allow Member States or regions to use an alternative method for carrying out checks by using systematically these or similar data and processing them in an automated way as well as following up cases where the automated processing of data leads to inconclusive results, without compromising the system's performance in delivering the required level of assurance on the legality and regularity of expenditure (hereinafter referred to as 'monitoring'). A legal framework should therefore be provided to set out the conditions under which checks by monitoring in a Member State or a region can substitute the area-related on-the-spot checks.
- (4) When checks by monitoring allow the competent authority to conclude if the administrative penalty set out in Article 19a(3) of Commission Delegated Regulation (EU) No 640/2014³ has to be applied, it should be provided that the follow-up on-the-spot check in accordance with Article 33a of Implementing Regulation (EU) No 809/2014 is not necessary.
- (5) Taking into account the initial investment needed by the competent authorities to substitute the current on-the-spot checks method with checks by monitoring, it is appropriate to provide for a certain flexibility, allowing that checks by monitoring are carried out only for certain aid schemes, support measures or types of operations, and to provide for the possibility to phase-in checks by monitoring of a certain aid scheme or support measure. During the phasing-in period, which should be limited in time to ensure equal treatment of beneficiaries, new provisions should ensure that Member States or regions gradually extend their use of checks by monitoring to the whole area covered by the aid scheme or support measure. Such an approach will allow Member States or regions to prepare for a full implementation of monitoring and fine-tune the follow-up procedures and IT tools used to analyse data. Where checks by monitoring are limited to areas chosen on the basis of clearly defined, objective and non-discriminatory criteria, all beneficiaries in those areas should be subject to checks by monitoring.
- (6) It is appropriate to set a minimum control rate in order to ensure that the checks on compliance with the eligibility conditions, requirements and other obligations are satisfactory in circumstances where data provided by Copernicus Sentinels satellites are not relevant. Physical inspections in the field should only be necessary if evidence collected using new technologies such as geo-tagged photos and Unmanned Aircraft Systems or relevant documentary evidence does not lead to a conclusive result or if the competent authorities anticipate that none of these types of evidence will be effective in checking compliance with the eligibility conditions, requirements and other obligations that cannot be monitored.
- (7) The results of the automated analysis of Copernicus Sentinels satellites data or similar data can be a tool to assist beneficiaries in respecting requirements. Warning alerts about possible non-compliance should be communicated to beneficiaries and national authorities should be required to set up appropriate tools for that purpose. It is appropriate to provide that communication with beneficiaries on these results is not considered as a notice to the beneficiary of the intention of the competent authority to

³ Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance (OJ L 181, 20.6.2014, p. 48).

carry out an on-the-spot check. Beneficiaries should also be given the possibility to modify their aid applications or payment claims so as to correct their declaration on the use of agricultural areas, provided that the requirements in question have been complied with. It is also appropriate to allow Member States to set a deadline by which these modifications can be accepted.

- (8) It is appropriate to clarify that applications or applicants found not to be admissible or not eligible for payment at the time of the on-the-spot check should not be part of the control population from which samples are drawn to fulfil the minimum control rates. It should also be provided that these applications or data concerning these applicants should be used for cross-checks so as to detect double claims in admissible applications and information relevant for the update of the land parcel identification system.
- (9) To clarify the scope of on-the-spot checks concerning the obligation to reconvert in cases of non-respect of the obligation on environmentally sensitive permanent grassland areas, it is appropriate to provide that the on-the-spot checks should be carried out on parcels that have to be reconverted so as to check if the reconversion obligation has been respected.
- (10) To allow Member States to optimise their sample selection, it is appropriate to provide for more flexibility in selecting the control samples as laid down in Articles 30 to 33 of Implementing Regulation (EU) No 809/2014. The mandatory selection method should be replaced by general principles on how samples can be combined. Furthermore, to obtain a representative error rate, a minimum random sample for each of the aid schemes and support measures should be provided. To keep the risk-based approach for checks of the greening payment, it is also appropriate to define the selection method for the relevant control samples.
- (11) In order to facilitate the implementation of the integrated system and to reduce the time of carrying out controls, the possibility to limit checks concerning area measurement to a random sample of 50% of the agricultural parcels declared should be extended to also cover checks concerning eligibility.
- (12) For the purposes of monitoring the implementation of the checks by monitoring, a notification obligation for Member States should be provided.
- (13) Implementing Regulation (EU) No 809/2014 should therefore be amended accordingly.
- (14) To allow Member States to use new technologies in their integrated administration and control systems as soon as possible, the new rules on single applications and payment claims and checks should apply as of claim year 2018. This Regulation should therefore enter into force on the day of its publication in the *Official Journal of the European Union*.
- (15) The measures provided for in this Regulation are in accordance with the opinion of the Committee for Direct Payments and the Rural Development Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) No 809/2014 is amended as follows:

- (1) Article 15 is amended as follows:

- (a) the following paragraph 1b is inserted:
- '1b. Where checks by monitoring are carried out in accordance with Article 40a, beneficiaries may modify the single application or payment claim regarding the use of individual agricultural parcels provided that the requirements under the direct payment schemes or rural development measures concerned are respected.';
- (b) paragraph 2a is replaced by the following:
- '2a. Modifications following the preliminary checks made in accordance with paragraph 1a shall be notified to the competent authority at the latest nine calendar days after the final date for notification of the results of the preliminary checks referred to in Article 11(4) to the beneficiary.
- Such notifications shall be made in writing or via the geo-spatial aid application form.';
- (c) the following paragraph 2b is inserted:
- '2b. Modifications made in accordance with paragraph 1b shall be notified to the competent authority by the date fixed by that competent authority. The date shall be at least 15 calendar days before the date when the payment of the first instalment or the advanced payment is to be made to beneficiaries in accordance with Article 75 of Regulation (EU) No 1306/2013.
- Such notifications shall be made in writing or via the geo-spatial aid application form.';
- (d) in paragraph 3, the following second subparagraph is added:
- 'For the purposes of the first subparagraph, the obligation provided in point (d) of Article 40a(1) shall not be considered as a notice to the beneficiary of a competent authority's intention to carry out an on-the-spot check.';
- (2) in Article 24, paragraph 4 is replaced by the following:
- '4. The competent authority shall carry out physical inspections in the field in the event that photo-interpretation of satellite or aerial ortho-images or other relevant evidence including evidence provided by the beneficiary at the request of the competent authority do not provide results that would permit definitive conclusions to be drawn to the satisfaction of the competent authority concerning the eligibility or, where applicable, the correct size of the area that is the subject of administrative or on-the-spot checks.';
- (3) in Article 29(1), the following third subparagraph is added:
- 'Data from applications or concerning applicants found not to be admissible or not eligible for payment as referred to in Article 34(1) shall be used for the purposes of points (a), (c) and (e) of the first subparagraph of this paragraph.';
- (4) in Article 31(1), point (g) is replaced by the following:

'(g) 100 % of all parcels on which an obligation to re-convert land into land under permanent grassland according to Article 42 of Delegated Regulation (EU) No 639/2014 applies;';

- (5) in Article 33a, paragraph 2 is replaced by the following:

'2. The follow-up on-the-spot check referred to in paragraph 1 shall not be necessary where the over-declaration identified has led to an up-date of the reference parcels concerned in the identification system for agricultural parcels as referred to in Article 5 of Delegated Regulation (EU) No 640/2014 in the year of the finding or where checks by monitoring as referred to in Article 40a of this Regulation are carried out for the aid scheme or support measure in question in the following claim year and allow the competent authority to conclude whether the administrative penalty set out in Article 19a(3) of Delegated Regulation (EU) No 640/2014 shall be applied.';

- (6) Article 34 is amended as follows:

- (a) paragraphs 1, 2 and 3 are replaced by the following:

'1. Applications or applicants found not to be admissible or not eligible for payment at the time of submission or after administrative or on-the-spot checks shall not form part of the control population.'

2. For the purposes of Articles 30 and 31, the sample selection shall ensure that:

- (a) between 1 % and 1,25 % of the control population referred to in points (a) to (f) and (h) of Article 30 and in points (a), (c), (d) and (e) of Article 31(1) shall be selected randomly;
- (b) between 0,6 % and 0,75 % of the control population referred to in point (b) of Article 31(1) shall be selected randomly;
- (c) between 4 % and 5% of the control population referred to in point (h) of Article 31(1) shall be selected randomly;
- (d) the remaining number of beneficiaries in the control sample referred to in points (a) to (e) and (h) of Article 31(1) shall be selected on the basis of a risk analysis.

For the purposes of Article 31, Member States shall ensure representativeness of the control sample as regards the different practices.

The additional beneficiaries to be subject to on-the-spot checks for the purposes of the first subparagraph of Article 31(3) shall be selected on the basis of a risk analysis.

3. For the purposes of Articles 32 and 33, between 20 % and 25 % of the minimum number of beneficiaries to be subject to on-the-spot checks and, where Article 32(2a) applies, 100 % of the collectives and between 20 % and 25 % of the commitments to be subject to on-the-spot checks shall be selected randomly. The remaining number of beneficiaries and commitments to be subject to on-the-spot checks shall be selected on the basis of a risk analysis.

For the purposes of Articles 32 and 33, the random part of the sample may also include either the beneficiaries already randomly selected in accordance with points (a), (b) and (c) of paragraph 2 or the additional beneficiaries selected

randomly in accordance with the second subparagraph of Article 26(4) or both. The number of such beneficiaries in the control sample shall not go beyond their proportion in the control population.

For the purposes of Article 32, Member States may, as a result of the risk analysis, select specific rural development measures which apply to the beneficiaries.';

- (b) the following paragraph 4a is inserted:

'4a. For the purposes of Articles 30 to 33 and point (c) of Article 40a(1), the same beneficiary may be used to respect several of the minimum control rates concerned provided that the effectiveness of selection of the risk based samples required therein is not affected.

The on-the-spot check regarding the selected beneficiaries may be limited to the aid scheme or rural development measure they have been selected for if the minimum control rates of the other aid schemes or support measures they applied for are already respected.';

- (c) in paragraph 5, point (b) is replaced by the following:

'(b) by comparing the results as regards the difference between the area declared and the area determined of the risk based and randomly selected sample; or by comparing the results as regards the difference between the animals declared and the animals determined of the risk based and randomly selected sample;';

- (7) Article 38 is amended as follows:

- (a) paragraph 1 is replaced by the following:

'1. The eligibility checks and the actual area measurement of the agricultural parcel as part of an on-the-spot check may be limited to a randomly selected sample of at least 50 % of the agricultural parcels for which an aid application or payment claim has been submitted under the area-related aid schemes or rural development measures. When this sample check reveals any non-compliance, all agricultural parcels shall be measured and be subject to eligibility checks, or conclusions from the sample shall be extrapolated.';

- (b) in paragraph 7, the words 'Article 17(1)(b) of Delegated Regulation (EU) No 640/2014' are replaced by the words 'Article 17 of Delegated Regulation (EU) No 640/2014';

- (c) in paragraph 8, the words 'two separate measurements' are replaced by the words 'separate measurements';

- (8) in Article 39, paragraph 1 is replaced by the following:

'1. The eligibility of agricultural parcels shall be verified by any appropriate means, including evidence provided by the beneficiary at the request of the competent authority. That verification shall also include a verification of the crop, where appropriate. To that end, additional proof shall be requested where necessary.';

- (9) in Article 40, point (b) is replaced by the following:

'(b) carry out physical inspections in the field of all agricultural parcels for which photo interpretation or other relevant evidence requested by the competent authority does not make it possible to verify the accuracy of the declaration of areas to the satisfaction of the competent authority;';

- (10) the following Article 40a is inserted:

'Article 40a

Checks by monitoring

1. Competent authorities may carry out checks by monitoring. Where they elect to do so, they shall:

- (a) set up a procedure of regular and systematic observation, tracking and assessment of all eligibility criteria, commitments and other obligations which can be monitored by Copernicus Sentinels satellite data or other data with at least equivalent value, over a period of time that allows to conclude on the eligibility of the aid or support requested;
- (b) carry out, where necessary, and in order to conclude on the eligibility of aid or support requested, appropriate follow-up activities;
- (c) carry out checks for 5% of the beneficiaries concerned by eligibility criteria, commitments and other obligations which cannot be monitored by Copernicus Sentinels satellite data or other data with at least equivalent value, and are relevant to conclude on the eligibility of aid or support. Between 1% and 1,25% of the beneficiaries shall be selected randomly. The remaining beneficiaries shall be selected on the basis of a risk analysis;
- (d) inform beneficiaries about the decision to carry out checks by monitoring and set up appropriate tools to communicate with beneficiaries on at least warning alerts and evidence requested for the purposes of points (b) and (c).

For the purposes of points (b) and (c), physical inspections in the field shall be carried out when relevant evidence, including evidence provided by the beneficiary at the request of the competent authority, does not allow to conclude on the eligibility of the aid or support requested. Physical inspections in the field may be limited to checks of eligibility criteria, commitments and other obligations that are relevant to conclude on the eligibility of the aid or support requested.

2. Where the competent authority carries out checks by monitoring in accordance with paragraph 1, can demonstrate effective operational procedures fulfilling the requirements laid down in Articles 7, 17 and 29 of this Regulation and has proven the quality of the identification system for agricultural parcels as assessed in accordance with Article 6 of Delegated Regulation (EU) No 640/2014:

- (a) Articles 25, 26, 30, 31, 32, 34, 35, 36, Article 37(2), (3) and (4) and Articles 38 and 40 of this Regulation do not apply;

- (b) the verification of tetrahydrocannabinol content in hemp growth carried out in accordance with Article 9 of Delegated Regulation (EU) No 639/2014 shall be made for 30% of the area or 20% of the area in case the Member State has a system of prior approval in place.

3. The competent authority may decide to apply checks by monitoring at the level of the individual area-related aid scheme or support measure or type of operation or to defined groups of beneficiaries subject to on-the-spot checks for the greening payment, as referred to in points (a) to (h) of Article 31(1).

In the first two years of application, the competent authority may decide to apply checks by monitoring to beneficiaries of an aid scheme or support measure in areas chosen on the basis of objective and non-discriminatory criteria. In such cases the areas subject to checks by monitoring in the second year of application shall be greater than in the first year of application.

Where the competent authority decides to carry out checks in accordance with the first or second subparagraph, paragraphs 1 and 2 shall apply only to the beneficiaries subject to checks by monitoring.';

- (11) the following Article 40b is inserted:

'Article 40b

Notifications

Member States shall notify the Commission by 1 December of the calendar year preceding the calendar year in which they start carrying out checks by monitoring of their decision to opt for checks by monitoring and indicate the schemes or measures or types of operations and, where relevant, the areas of such schemes or measures subject to checks by monitoring and the criteria used to select them.

However, where the competent authority has decided to carry out checks by monitoring as from claim year 2018, the notification shall be made within one month after the entry into force of this Regulation in the *Official Journal of the European Union*.';

- (12) Article 41 is amended as follows:

- (a) in paragraph 1, the following second subparagraph is added:

'Where checks by monitoring are carried out in accordance with Article 40a, points (b) to (e) of the first subparagraph shall not apply. The control report shall indicate the results of the checks by monitoring at parcel level.';

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

'Where the on-the-spot check is carried out by means of remote sensing in accordance with Article 40 or by means of monitoring in accordance with Article 40a, the Member States may decide not to give the beneficiary the opportunity to sign the control report if no non-compliance is revealed during the check by remote-sensing or by monitoring. If any non-compliance is revealed as a consequence of such checks or by monitoring, the opportunity to sign the report shall be given before the competent authority draws its

conclusions from the findings with regard to any resulting reductions, refusals, withdrawals or administrative penalties.';

(13) in Article 70, paragraph 3 is replaced by the following:

'3. Where appropriate, the on-the-spot checks may be carried out by applying remote-sensing techniques or by using Copernicus Sentinels satellite data or other data with at least equivalent value.'

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 1st January 2018.

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

Done at Brussels, 18.5.2018

For the Commission
The President
Jean-Claude JUNCKER