Commission Implementing Regulation (EU) 2018/746 of 18 May 2018 amending Implementing Regulation (EU) No 809/2014 as regards modification of single applications and payment claims and checks

COMMISSION IMPLEMENTING REGULATION (EU) 2018/746

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

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 485/2008[(1)], 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 809/2014[(2)] 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.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2018/746. (See end of Document for details)*

(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 640/2014[(3)] 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 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:

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2018/746. (See end of Document for details)*

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