Commission Regulation (EC) No 484/2009 of 9 June 2009 amending Regulation (EC) No 1975/2006 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures

COMMISSION REGULATION (EC) No 484/2009

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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)[(1)], and in particular Articles 51(4), 74(4) and 91 thereof,

Whereas:

(1) Following the amendments to 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[(2)] the references to that Regulation contained in Commission Regulation (EC) No 1975/2006[(3)] should be updated.

(2) Furthermore, 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[(4)] is applicable from 1 January 2009. Regulation (EC) No 1975/2006 should therefore be adapted to take into account references to Regulation (EC) No 73/2009.

(3) Experience has shown that there are gaps and obsolete provisions in Regulation (EC) No 1975/2006 that should be filled or deleted in order to ensure correct understanding and consistency of the text.

(4) Certain provisions of Regulation (EC) No 796/2004, such as those allowing the announcement of on-the-spot checks contained in Article 23a, those defining the exceptions from the application of reductions and exclusions laid down in Article 68 and those provided for in Article 71(2), should be made generally applicable for the purpose of Regulation (EC) No 1698/2005.

(5) For the sake of clarity, when applying the control rules concerning rural development support for certain measures under Axis 2 and Axis 4, as laid down in Part II, Title I, of Regulation (EC) No 1975/2006, reference should be made to the definition and principles of agricultural parcels contained in Regulation (EC) No 796/2004.

(6) As regards on-the-spot checks relating to the measure set out in Article 36(a)(iv) of Regulation (EC) No 1698/2005, it should be clarified that the 5 % minimum requirement has to be achieved at the measure level.

(7) Experience has shown that it is necessary to clarify certain provisions, especially as regards reductions in the case of over-declaration of certain area and animal-related measures and the accumulation of reductions.

(8) For the sake of clarity, certain references to European Agricultural Fund for Rural Development (EAFRD) year should be amended to refer to calendar year.

(9) The provision of Regulation (EC) No 1975/2006 concerning selection of the control sample for verification of cross-compliance should be redrafted to take account of the amended Article 45 of Regulation (EC) No 796/2004, and a new mechanism should be added to increase the effectiveness of the control system.

(10) To make for consistent application of reductions in cases of negligence or intentional non-compliance, it is necessary to specify the area of cross-compliance in which the minimum requirements for fertilisers and plant protection product use referred to in Article 39(3) of Regulation (EC) No 1698/2005 are to be classified.

(11) The order of the reductions to be applied in cases of accumulation of reductions in the context of verification of cross-compliance should be amended to ensure a more consistent sequence.

(12) In order to cover non-area or animal-related measures, the requirement of a control report should be included as regards on-the-spot checks of support under Axis 1 and Axis 3 and certain measures under Axis 2 and Axis 4.

(13) Experience has shown that it is necessary to clarify annual notification requirements.

(14) Information on the results of any type of controls should be made available to all paying agencies responsible for the management of the different support schemes so that, where the findings so justify, they can apply cross-compliance and eligibility reductions at the same time.

(15) Regulation (EC) No 1975/2006 should therefore be amended accordingly.

(16) In order to allow sufficient time for Member States to adjust their control procedures and to avoid accountability problems that could occur in case the application starts in the middle of the year, this Regulation should apply from 1 January 2010. However, with a view to preserving legal certainty, the derogation on the reductions resulting from Article 138(1) 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[(5)], as applicable to the

beneficiaries in Member States applying the single area payment scheme; should be maintained for aid applications relating to calendar year 2009.

(17) 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 1975/2006 is amended as follows:

1. Article 2 is replaced by the following:

Article 2

Application of Regulation (EC) No 796/2004

Without prejudice to specific provisions of this Regulation, Articles 5, 22, 23, 23a(1), 68, 69, 71(2) and 73 of Regulation (EC) No 796/2004 shall apply *mutatis mutandis*.;

2. Article 7 is replaced by the following:

Article 7

Application of Regulation (EC) No 796/2004

Article 2(10), (22) and (23) and Articles 9, 14(1a), 18 and 21 of Regulation (EC) No 796/2004 shall apply *mutatis mutandis* for the purpose of this Title.

Articles 2(1a), 6(1) and 8(1) of Regulation (EC) No 796/2004 shall also apply *mutatis mutandis*. However, for the measures referred to in Article 36(b)(iii), (iv) and (v) of Regulation (EC) No 1698/2005, Member States may establish appropriate alternative systems to uniquely identify the land subject to support.;

3. in Article 8, paragraph 3 is replaced by the following:

3. Articles 11(3), 12, 15 and 20 of Regulation (EC) No 796/2004 shall apply *mutatis mutandis* to payment claims under this Title. Further to the information referred to in Article 12(1)(d) of that Regulation, payment claims shall also contain the information set out in that provision with regard to non-agricultural land for which support is being claimed.;

4. Article 12 is amended as follows:

(a) paragraph 1 is replaced by the following:

1. The total number of on-the-spot checks related to payment claims presented during each calendar year shall cover at least 5 % of all beneficiaries subject to a commitment under one or more of the measures falling within the scope of this Title. However, for the measure set out in Article 36(a)(iv) of Regulation (EC) No 1698/2005 this minimum requirement has to be achieved at the measure level.

Applicants found not to be eligible after administrative checks shall not form part of the overall number of beneficiaries referred to in the first subparagraph.;

(b) paragraph 3 is replaced by the following:

3. The control sample referred to in the first subparagraph of paragraph 1 shall be selected in accordance with Article 27 of Regulation (EC) No 796/2004.;

5. Article 16 is amended as follows:

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

1. The basis for calculation of the aid in respect of area-related measures shall be established in accordance with Article 50(1), (3) and (7) of Regulation (EC) No 796/2004.

For the purpose of the application of this Article, areas declared by a beneficiary which receive the same rate of aid under a certain area-related measure shall be considered as forming one crop group. However, where degressive aid amounts are used, the average of these values in relation to the respective areas declared shall be taken into account.

Where a maximum limit or a ceiling has been set for the area eligible for support, the number of hectares shown in the aid application shall be reduced to the limit or ceiling set.

2 Where the area declared for payment for the crop group concerned exceeds the area determined in accordance with Article 50(3) of Regulation (EC) No 796/2004, the aid shall be calculated on the basis of the area determined minus twice the difference where that difference is more than either 3 % or two hectares, but no more than 20 % of the area determined.

Where the difference is more than 20 % of the area determined, no aid shall be granted for the crop group concerned.

Where the difference is more than 50 %, the beneficiary shall be excluded once again from receiving aid up to the difference between the area declared and the area determined in accordance with Article 50(3) of Regulation (EC) No 796/2004.;

(b) paragraph 3 is deleted;

(c) paragraph 4 is replaced by the following:

4. By way of derogation from paragraph 2 and the first subparagraph of paragraph 3, for beneficiaries in Member States applying the single area payment scheme as provided for in Article 122 of Council Regulation (EC) No 73/2009[6], and where the difference between the area declared and the area determined is more than 3 % but no more than 30 % of the area determined, the amount to be granted shall be reduced, as regards aid applications for the calendar year 2009, by twice the difference found.

Where the difference is more than 30 % of the area determined, no aid shall be granted for calendar year 2009.;

(d) paragraphs 5 and 6 are replaced by the following:

5. Where differences between the area declared and the area determined in accordance with Article 50(3) of Regulation (EC) No 796/2004 are the result of irregularities committed intentionally, the beneficiary shall be excluded from the aid to which he would have been entitled pursuant to that Article for the calendar year in question for the area-related measure concerned where 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 beneficiary shall be excluded once again from receiving aid up to the difference between the area declared and the area determined in accordance with Article 50(3) of Regulation (EC) No 796/2004.

6 The amount resulting from the exclusions provided for in the third subparagraph of paragraph 2 and in paragraph 5 of this Article shall be offset against aid payments under any of the support measures under Regulation (EC) No 1698/2005 or Regulation (EC) No 73/2009 to which the beneficiary concerned is entitled in the context of applications he lodges in the course of the three calendar years following the calendar year of the finding. If the amount cannot be fully offset against those payments, the outstanding balance shall be cancelled.;

6. Article 17 is amended as follows:

(a) paragraph 1 is replaced by the following:

1. The basis for the calculation of the aid in respect of animal-related measures shall be established in accordance with Article 57 of Regulation (EC) No 796/2004.;

(b) paragraph 3 is replaced by the following:

3. By way of derogation from the third subparagraph of Article 59(2) and the second subparagraph of Article 59(4) of Regulation (EC) No 796/2004, the amount resulting from the exclusion shall be offset against aid payments under any of the support measures under Regulation (EC) No 1698/2005 or Regulation (EC) No 73/2009 to which the beneficiary concerned is entitled in respect of any applications he lodges in the three calendar years following the calendar year of the finding. Where the amount cannot be fully offset against those payments, the outstanding balance shall be cancelled.;

7. Article 18 is amended as follows:

(a) paragraph 3 is replaced by the following:

3. Where non-respect results from irregularities committed intentionally, the beneficiary shall be excluded from the measure in question both for the calendar year concerned and for the following calendar year.;

(b) paragraph 4 is deleted;

8. in Article 19, paragraph 2 is replaced by the following: