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

COMMISSION REGULATION (EC) No 380/2009

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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 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(1) Council Regulation (EC) No 1782/2003[(2)] has been repealed and replaced by Regulation (EC) No 73/2009. Certain provisions of the repealed Regulation will however continue to apply also in 2009.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 Certain references in Regulation (EC) No 796/2004 to the repealed Regulation should however, for the sake of clarity, be updated.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.

(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[(6)] 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:

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 380/2009. (See end of Document for details)*

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;

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[7], irrespective of whether or not that land is under greenhouses or under fixed or mobile cover;;

   (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[8], areas set aside in accordance with Articles 22, 23 and 24 of Council Regulation (EC) No 1257/1999[9] and areas set aside in accordance with Article 39 of Council Regulation (EC) No 1698/2005[10];;

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.;