Commission Regulation (EC) No 370/2009 of 6 May 2009 amending Regulation (EC) No 795/2004 laying down detailed rules for the implementation of the single payment scheme provided for in Council Regulation (EC) No 1782/2003

COMMISSION REGULATION (EC) No 370/2009

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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 34(2), second subparagraph and Article 142(c), (d) and (g) thereof,

Whereas:

(1) Regulation (EC) No 73/2009 has established new rules for the single payment scheme, which apply as from 1 January 2009. As a consequence, the implementing rules laid down in Commission Regulation (EC) No 795/2004[(2)] need to be adapted.

(2) The definitions as set out in Article 2 of Regulation (EC) No 795/2004 should reflect the extended eligibility of areas under the single payment scheme.

(3) The provisions on eligibility as set out in Article 3b of Regulation (EC) No 795/2004 are obsolete and should therefore be removed. However, Article 34(2)(a) of Regulation (EC) No 73/2009 includes the use of eligible hectares for non-agricultural activities. A framework of criteria should be set for all Member States.

(4) Regulation (EC) No 73/2009 puts an end to the set aside obligation and abolishes some of the limitations attached to payment entitlements issued from the national reserve, rendering obsolete the provisions on those matters.

(5) Article 7 of Regulation (EC) No 795/2004 should be clarified as regards the references to Council Regulation (EC) No 1782/2003[(3)] and Regulation (EC) No 73/2009.

(6) Regulation (EC) No 73/2009 does not provide any more for special rules on the application procedure to the single payment scheme in its first year of application. Consequently the relevant rules in Regulation (EC) No 795/2004 should be adapted.

(7) In cases of expiry of the lease referred to in Articles 20 and 22 or the programmes referred to in Article 23 of Regulation (EC) No 795/2004 after the last date for lodging an application under the single payment scheme in its first year of application, the deadline for application for the establishment of payment entitlements should be

extended in order to provide farmers with sufficient time to lodge an application that reflects the actual situation of the holding.

(8) The regional limitation as fixed in Article 26 of Regulation (EC) No 795/2004 should be adapted to Article 43(1) of Regulation (EC) No 73/2009.

(9) Whereas provisions on compulsory set-aside become obsolete, conditions should be kept in 2009 for voluntary set aside as provided for in Article 107 of Regulation (EC) No 1782/2003.

(10) Where Member States decide to apply Article 72(4) of Regulation (EC) No 73/2009, deadline and content of the communication of this application to the Commission should be fixed.

(11) Provision should be made for rules for new Member States moving from the single area payment scheme to the single payment scheme. These rules should cover in particular the initial allocation of payment entitlements and special entitlements as well as the notification of the decision.

(12) Regulation (EC) No 73/2009 provides for the granting of direct support under the single payment scheme for wine producers in particular by transfer from the support programmes for wine into the single payment scheme. The related detailed rules for allocation of entitlements should therefore be adopted. Those detailed rules should follow the same lines as those already laid down in Regulation (EC) No 795/2004 with regard to the fruit and vegetables sector.

(13) For farmers who have already been allocated, or who bought or received payment entitlements by the last date for applying for the establishment of payment entitlements fixed in accordance with Regulation (EC) No 795/2004, the value and number of their payment entitlements should be recalculated. Payment entitlements subject to special conditions should not be taken into account in this calculation.

(14) Member States that apply the regional model established in Article 59(1) and (3) or Article 71f of Regulation (EC) No 1782/2003, should be empowered to fix the number of payment entitlements per farmer resulting from the transfer of support programmes for wine in accordance with Part C of Annex IX to Regulation (EC) No 73/2009.

(15) Provision should be made as regards the regional average in the framework of the determination of the value of payment entitlements in application of Part B of Annex IX (grubbing up) to Regulation (EC) No 73/2009.

(16) Annex I to Regulation (EC) No 795/2004 fixes the date from which the growing of secondary crops may be temporarily allowed in regions where cereals are usually harvested sooner for climatic reasons as referred to in Article 38, second paragraph of Regulation (EC) No 73/2009. At the request of Spain, different dates should be fixed for the different regions of that Member State to take into account the different agronomic and climatic conditions. The Annex should also be updated to take into account the eligibility of fruit and vegetables in those Member States that do not apply its deferred integration.

(17) Regulation (EC) No 795/2004 should therefore be amended accordingly.

(18) The proposed amendments should apply as from the date of application of Regulation (EC) No 73/2009.

(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:

Article 1

Regulation (EC) No 795/2004 is amended as follows:

1. Article 2 is amended as follows:

   (a) point (a) is deleted;

   (b) point (c) is replaced by the following:

   (c) "permanent crops" shall mean non-rotational crops other than permanent pasture that occupy the land for five years or longer and yield repeated harvests, including nurseries, and short rotation coppice (CN code ex 0602 90 41);;

   (c) point (d) is deleted;

   (d) point (f) is replaced by the following:

   (f) "grassland" shall mean arable land used for grass production (sown or natural); for the purposes of Article 49 of Council Regulation (EC) No 73/2009[4] grassland shall include permanent pasture;;

2. Article 3b is deleted;

3. the following Article 3c is added in Chapter 1:

Article 3c

Predominantly agricultural use

For the purposes of the application of Article 34(2)(a) of Regulation (EC) No 73/2009, where an agricultural area of a holding is used as well for non-agricultural activities that area shall be considered as being used predominantly for agricultural activities, if the agricultural activity can be exercised without being significantly hampered by the intensity, nature, duration and timing of the non-agricultural activity.

Member States shall establish criteria for the implementation of the first subparagraph on their territory.;

4. Article 6 is amended as follows:

   (a) paragraph 3 is amended as follows:

   (i) the second subparagraph is replaced by the following:

   The unit value of each payment entitlement he already owns may be increased.;

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 370/2009. (See end of Document for details)*

(ii) the third subparagraph is deleted;

(b) paragraph 4 is deleted;

5. Article 7 is amended as follows:

(a) in paragraph 1 the first and the second subparagraphs are replaced by the following:

Where a Member State makes use of the option provided for in Article 42(5) of Regulation (EC) No 1782/2003, it may in particular allocate, upon request, in accordance with this Article, payment entitlements to farmers, in the areas concerned, who declare fewer hectares than the number corresponding to payment entitlements they would be or would have been allocated in accordance with Article 43 of that Regulation and Article 59 of Regulation (EC) No 73/2009.

In that case, the farmer shall give up to the national reserve all the payment entitlement he owns or should have been allocated, except payment entitlements subject to special conditions referred to in Article 49 of Regulation (EC) No 1782/2003.;

(b) paragraph 3 is deleted;

(c) paragraph 4 is replaced by the following:

4. The unit value of the payment entitlements allocated from the national reserve shall be calculated by dividing the farmer's reference amount by the number of hectares he declares.;

6. Article 8 is amended as follows:

(a) in paragraph 1, the first subparagraph is replaced by:

Unused payment entitlements shall be deemed to have reverted to the national reserve on the day following the last day for modifying the application under the single payment scheme in the calendar year in which the period referred to in Articles 28(3) and 42 of Regulation (EC) No 73/2009 expires.;

(b) paragraph 2 is deleted;

7. in Article 9(1), point (c) is deleted;

8. in Article 12(4), the first subparagraph is replaced by the following:

The definitive establishment of payment entitlements to be allocated in the first year of the single payment scheme shall be subject to an application for entitlements submitted by the deadline set in accordance with Article 21a(3) of Regulation (EC) No 796/2004.;

9. Article 18 is amended as follows:

(a) paragraph 3 is deleted;

(b) paragraph 4 is replaced by the following:

4. In cases where the lease referred to in Articles 20 and 22 or the programmes referred to in Article 23 expire after the last date for lodging an application under the single payment scheme in its first year of application, the farmer concerned may apply for the establishment of his payment entitlements, after the expiry of the lease or programme, by a date to be fixed by the Member State but not later than the latest date fixed for amending the aid application in the following year.;

10. in Article 23a the second paragraph is deleted;

11. in Article 24, paragraph 3 is replaced by the following:

3. Farmers may give up voluntarily payment entitlements to the national reserve.;

12. Article 26 is amended as follows:

(a) paragraph 1 is replaced by the following:

1. Without prejudice to Articles 50(1) and 62(1) of Regulation (EC) No 73/2009 where a Member State makes use of the option provided for in the third subparagraph of Article 43(1) of that Regulation, Member States shall define the region at the appropriate territorial level in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion.;

(b) paragraph 4 is deleted;

13. Article 32 is replaced by the following:

Article 32

Conditions for voluntary set aside provided for in Article 107 of Regulation (EC) No 1782/2003

1 Areas set aside must so remain for a period commencing on 15 January at the latest and ending on 31 August at the earliest. However, Member States shall lay down the conditions under which producers may be authorised to sow seed from 15 July for harvesting in the following year and the conditions to be met for grazing to be authorised from 15 July or, in case of exceptional climatic condition, from 15 June in Member States where transhumance is practised traditionally.

2 Member States shall apply suitable measures compatible with the specific situation of areas set aside in order to ensure they are maintained in good agricultural and environmental condition and that the environment is protected.

Such measures may involve green cover. In that case, the measures shall ensure that the green cover cannot be used for seed production and that it cannot be used for agricultural purposes before 31 August or, before 15 January thereafter, to produce crops for marketing.

3 In cases as referred to in Article 31(c) of Regulation (EC) No 73/2009, Member States may authorise all producers affected to use land declared as set aside for animal feed purposes for the year of the single application. Member States shall take all necessary measures to ensure that the set-aside area subject to the authorisation