Council Regulation (EC) No 146/2008 of 14 February 2008 amending Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)

COUNCIL REGULATION (EC) No 146/2008

of 14 February 2008

amending Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the third subparagraph of Article 37(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament[(1)],

Whereas:

(1) Experience has shown the need to provide for a measure of tolerance for minor cases of non-compliance with the cross compliance requirements where the severity, extent and permanence of such non-compliance would not justify an immediate reduction of the direct payments to be granted. Such a measure of tolerance should nonetheless include an appropriate follow-up by the competent national authority until the non-compliance has been remedied. Moreover, applying reductions to very low initial amounts of direct payments may prove burdensome in comparison to any deterrent effect to be gained. As a consequence, a suitable threshold should be defined, below which Member States may decide not to apply any reduction, provided that the actions to ensure that the farmer remedies the findings of non-compliance concerned are taken by the competent national authority.

(2) Article 44(3) of Council Regulation (EC) No 1782/2003[(2)] provides that farmers must keep the parcels corresponding to the eligible hectare at their disposal for a period of at least 10 months. Experience has shown that this condition risks constraining the functioning of the land market and creates significant administrative work for the farmers and administrative services involved. Nonetheless, in order to ensure that double claims are not made for the same land, a date should be fixed on which the parcels should be at the farmer's disposal. It would be appropriate for Member States to determine that date which should be no later than the date fixed for amendment of the aid application. The same rule should also be applied for the Member States applying the single area payment scheme.

Changes to legislation: *Council Regulation (EC) No 146/2008 is up to date with all changes known to be in force on or before 26 January 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(3) As a consequence of the reduction of the period during which the farmer shall keep at his disposal the parcels corresponding to the eligible hectare to a single day for both the single payment scheme and the single area payment scheme, the rules on liability under cross compliance, in particular in the case of transfer of land during the calendar year concerned, should be clarified. It should therefore be made clear that the farmer who submits an aid application should be held liable towards the competent authority with regard to any failure to fulfil the cross compliance requirements in the calendar year concerned for all agricultural land declared in the aid application. This should not preclude private law arrangements between the farmer concerned and the person to whom or from whom the agricultural land was transferred.

(4) Article 71h of Regulation (EC) No 1782/2003 provides that, in the framework of the single payment scheme, the new Member States within the meaning of Article 2(g) of that Regulation may fix different per unit values of entitlements to be allocated for hectares of grassland or permanent pasture and for any other eligible hectares as identified on 30 June 2003 or on 30 June 2005 in the case of Bulgaria and Romania. The new Member States have established an identification system for agricultural parcels in compliance with Article 20 of that Regulation. However, due to technical difficulties when switching over to that identification system, the features of certain parcels as existing in 2003 may not have been accurately reflected. In order to allow for the smooth implementation of the possibility to fix different per unit values, the date for identifying the parcels should be adjusted to 30 June 2006. However for Bulgaria and Romania the date for identifying the parcels should be 1 January 2008. Article 71h of Regulation (EC) No 1782/2003 should be amended accordingly.

(5) Experience has also shown that the setting-up of the administrative infrastructure needed for the management of the statutory management requirements covered by the cross compliance rules implies considerable administrative work. A three-year phasing-in of the statutory management requirements in the new Member States using the single area payment scheme, similar to the phasing-in period applied in the Community as constituted on 30 April 2004 in accordance with the time schedule set out in Annex III to Regulation (EC) No 1782/2003, would ease the process of introduction of the statutory management requirements and their smooth implementation. This phasing-in period should be possible even if the new Member State decides to fully apply the direct payments before the last possible date for applying the single area payment scheme. Article 143b(6) of Regulation (EC) No 1782/2003 and Article 51(3) of Council Regulation (EC) No 1698/2005[(3)] should be amended accordingly.

(6) Article 143b(10) and (11) of Regulation (EC) No 1782/2003 lay down the rules governing the passage of new Member States using the single area payment scheme to the application of the single payment system. According to these rules the decision of a new Member State to implement the single payment scheme is subject to the prior authorisation of the Commission on the basis of an assessment of the state of preparedness of the new Member State concerned. This prior authorisation is no longer necessary since almost all direct payments are decoupled and since both the single area payment scheme and the single payment scheme are decoupled and are area-based

***Changes to legislation:** Council Regulation (EC) No 146/2008 is up to date with all changes known to be in force on or before 26 January 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

payments sharing most of the elements of the integrated system, in particular the land parcel identification system. Those provisions should therefore be deleted. Deletion of paragraphs 10 and 11 of Article 143b implies a consequential amendment to Article 143b(9). That provision should therefore also be amended.

(7) Table 2 of Annex XII to Regulation (EC) No 1782/2003 sets out the total amounts of complementary national direct payments to be paid in Cyprus where the single area payment scheme applies up to 2008. Further to the extension of the application of the single area payment scheme by Council Regulation (EC) No 2012/2006[(4)], it is necessary to set out the total amounts to be paid in Cyprus where the single area payment scheme applies for 2009 and 2010.

(8) The new Member States having decided to apply the single payment scheme have opted to introduce it from 2007. It is therefore appropriate for the amendment to Article 71h of Regulation (EC) No 1782/2003 to apply to those new Member States from that date.

(9) A number of the provisions amended by this Regulation, in particular the measure of tolerance for minor cases of non-compliance, the application of reductions below a certain threshold, the fixation of the date at which the farmer shall have the land at his disposal for eligibility under the single payment scheme and the single area payment scheme, as well as the phasing-in period granted to new Member States applying the single area payment scheme in order to fully implement the requirements linked to cross compliance within their territory, would result in rules more favourable for the farmers concerned than the rules currently in force. The retroactive application of such provisions should not infringe the principle of legal certainty of the economic operators concerned. The same applies to the amended provision of Article 71h of Regulation (EC) No 1782/2003. However, the provisions concerning the liability of farmers for non-compliance in case of transfer of land should apply from 1 April 2008 in order to provide sufficient legal certainty for the farmers concerned while ensuring an effective application of these provisions in the year 2008.

(10) Regulation (EC) No 1782/2003 and Regulation (EC) No 1698/2005 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1782/2003 is hereby amended as follows:

1. Article 6 is amended as follows:

(a) paragraph 1 shall be replaced by the following:

> 1. Where the statutory management requirements or good agricultural and environmental conditions are not complied with at any time in a given calendar year (hereinafter "the calendar year concerned"), and the non-compliance in question is the result of an act or omission directly attributable to the farmer who submitted the aid application in the calendar year concerned, the total amount of direct payments to be granted, after application of Articles 10 and 11 to that farmer, shall be reduced or cancelled in accordance with the detailed rules laid down under Article 7.

Changes to legislation: *Council Regulation (EC) No 146/2008 is up to date with all changes known to be in force on or before 26 January 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

The first subparagraph shall also apply where, the non-compliance in question is the result of an act or omission directly attributable to the person to whom or from whom the agricultural land was transferred.

For the purposes of application of the first and second subparagraphs for the year 2008, the calendar year shall correspond to the period of 1 April to 31 December 2008.

For the purpose of this paragraph "transfer" means any type of transaction whereby the agricultural land ceases to be at the disposal of the transferor.;

(b) the following paragraph shall be added:

3. Notwithstanding paragraph 1 and in accordance with the conditions laid down in the detailed rules referred to in Article 7(1), Member States may decide not to apply a reduction or exclusion amounting to EUR 100 or less per farmer and per calendar year.

Where a Member State decides to make use of the option provided for in the first subparagraph, in the following year the competent authority shall take the actions required to ensure that the farmer remedies the findings of non-compliance concerned. The finding and the remedial action to be taken shall be notified to the farmer.;

2. in Article 7, paragraph 2, the following subparagraphs shall be added:

In duly justified cases Member States may decide that no reduction shall be applied where, given its severity, extent and permanence, a case of non-compliance is to be considered as minor. Cases of non-compliance which constitute a direct risk to public or animal health shall however not be considered as minor.

Unless the farmer has taken immediate remedial action putting an end to the non-compliance found, the competent authority shall take the actions required that may, where appropriate, be limited to an administrative check, to ensure that the farmer remedies the findings of non-compliance concerned. The finding of minor non-compliance and the remedial action to be taken shall be notified to the farmer.;

3. in Article 44, paragraph 3, the second sentence shall be replaced by the following:

'Except in case of *force majeure* or exceptional circumstances, these parcels shall be at the farmer's disposal on the date fixed by the Member State which shall be no later than the date fixed in that Member State for amendment of the aid application.';

4. Article 71h shall be replaced by the following:

Article 71h

Grassland

The new Member States may also, according to objective criteria, fix, within the regional ceiling or part of it, different per unit values of entitlements to be allocated to farmers referred to in Article 71f(1), for hectares of grassland as identified on 30 June 2006 and for any other eligible hectare or alternatively for hectares of permanent pasture as identified on 30 June 2006 and for any other eligible hectare.

However for Bulgaria and Romania the date for identification shall be 1 January 2008.;

***Changes to legislation:** Council Regulation (EC) No 146/2008 is up to date with all changes known to be in force on or before 26 January 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

5. Article 143b shall be amended as follows:

(a) in paragraph 5, the following subparagraph shall be added:

Except in case of *force majeure* or exceptional circumstances, the parcels referred to in the first subparagraph shall be at the farmer's disposal on the date fixed by the Member State which shall be no later than the date fixed in that Member State for amendment of the aid application.;

(b) in paragraph 6, the third subparagraph shall be replaced by the following:

As from 1 January 2005 and until 31 December 2008 the application of Articles 3, 4, 6, 7 and 9 shall be optional for the new Member States insofar as those provisions relate to statutory management requirements. As from 1 January 2009 a farmer receiving payments under the single area payment scheme in those Member States shall respect the statutory management requirements referred to in Annex III according to the following timetable:

(a) requirements referred to in point A of Annex III shall apply from 1 January 2009;

(b) requirements referred to in point B of Annex III shall apply from 1 January 2011;

(c) requirements referred to in point C of Annex III shall apply from 1 January 2011.

However, for Bulgaria and Romania, the application of Articles 3, 4, 6, 7 and 9 shall be optional until 31 December 2011 insofar as those provisions relate to statutory management requirements. As from 1 January 2012 a farmer receiving payments under the single area payment scheme in those Member States shall respect the statutory management requirements referred to in Annex III according to the following timetable:

(a) requirements referred to in point A of Annex III shall apply from 1 January 2012;

(b) requirements referred to in point B of Annex III shall apply from 1 January 2014;

(c) requirements referred to in point C of Annex III shall apply from 1 January 2014.

The new Member States may also apply the option provided for in the third subparagraph where they decide to terminate the application of the single area payment scheme before the end of the period of application provided for in paragraph 9.;

(c) in paragraph 9, the first sentence shall be replaced by the following:

'For any new Member State the single area payment scheme shall be available for a period of application until the end of 2010.';

(d) paragraphs 10 and 11 shall be deleted;

6. Annex XII shall be amended in accordance with the Annex to this Regulation.