Commission Regulation (EC) No 993/2007 of 27 August 2007 amending and correcting Regulation (EC) No 1973/2004 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

COMMISSION REGULATION (EC) No 993/2007

of 27 August 2007

amending and correcting Regulation (EC) No 1973/2004 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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001[(1)], and in particular Article 145(c), (d), (f) and (j) thereof,

Whereas:

(1) Article 3(1) of Commission Regulation (EC) No 1973/2004[(2)] provides that certain data about determined areas subject for aid for energy crops should be communicated to the Commission. Article 4 of Regulation (EC) No 1973/2004 provides that the coefficient of reduction of determined areas is to be fixed on the basis of the data communicated in accordance with Article 3(1) of the said Regulation. The reference to certain provisions of Article 3(1) is erroneous and should therefore be corrected.

(2) Article 32(3) of Regulation (EC) No 1973/2004 specifies subordinate requirements for collectors and first processors. Lodging of security should also constitute a subordinate requirement for the collectors of raw material intended for use in the production of energy products.

(3) In order to provide for the possibility to grow and process new crops on the holding for the purpose of energy production, it is appropriate to give Member States an option to update the list of raw materials eligible to the use of land set aside and to the aid for energy crops.

(4) It is necessary to bring clarity to the rules for the optional system of approval as well as to provisions applicable in case of trade of raw materials for energy use between Member States of which one has decided not to apply the Optional system of approval according to Article 37 of Regulation (EC) No 1973/2004.

(5) In Article 39(3) of Regulation (EC) No 1973/2004 reference is erroneously made to Article 32(2) instead of the entire Article 32. This error should therefore be corrected.

(6) Commission Regulation (EC) No 270/2007 of 13 March 2007 amending Regulation (EC) No 1973/2004 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[(3)] amended Article 136 of Regulation (EC) No 1973/2004. Due to an error, the subsequent replacement of that Article by Commission Regulation (EC) No 381/2007[(4)] did not take into account the amendment introduced by Regulation (EC) No 270/2007. Article 136 of Regulation (EC) No 1973/2004 should therefore be adapted accordingly with effect from the date of application of Regulation (EC) No 270/2007.

(7) Commission Regulation (EC) No 972/2007[(5)] amended Article 53 of Regulation (EC) No 796/2004[(6)] in order to avoid reductions of payments in case of intentional over declarations of areas when they concern very limited areas. That provision should also apply to applications for the Single Area Payment Scheme. Article 138 of Regulation (EC) No 1973/2004 should therefore be adapted accordingly.

(8) Amendments introduced by Regulation (EC) No 270/2007 have simplified the rules for aid for energy crops laid down in Chapter 8 of Regulation (EC) No 1973/2004. It is appropriate to introduce some of the new elements into the rules for the use of land set aside for the production of raw materials as laid down in Chapter 16 of Regulation (EC) No 1973/2004.

(9) For cereals and oilseeds used on the holding, the denaturation of the production is explicitly required pursuant to Article 146 of Regulation (EC) No 1973/2004. Taking into account the possible limited volume of such production and the technical difficulties for such a process, it is necessary to leave it up to the Member State to permit applicants to use defined agricultural raw materials other than those provided for providing that Member States set the appropriate control measures. This approach should also be extended to the determination of the quantities of raw materials harvested.

(10) It order to simplify the administration of the regime of the use of land set aside for the production of raw materials, it is sufficient to provide that a copy of the contract concluded between the applicant and the collector or the first processor is submitted only by the applicant to his competent authority.

(11) In the case of aid for energy crops, operators are required to lodge a security with their competent authorities by the final date for the amendments to the payments applications. It is appropriate to provide the same arrangement in the rules for the use of land set aside for the production of raw materials.

(12) The system of securities guarantees that the raw material grown on areas benefiting from the aid for land set aside delivered to collectors or first processors is finally processed into raw material not primarily intended for human or animal consumption. However, it should be allowed for the Member States to replace the system of securities by an alternative system of approval of operators designed to guarantee the same degree

of effectiveness. Such authorized operators would have to comply with minimum requirements and would be sanctioned in case of non-compliance with their obligations, according to detailed national rules to be set up by the competent authorities.

(13) In accordance with the third subparagraph of Article 145(3) of Regulation (EC) No 1973/2004 first processors and collectors choosing to replace the raw materials and intermediate products or by-products by their equivalent quantities are required to inform the competent authorities about it. Furthermore, according to that Article, communication between the national authorities of Member States must be ensured in case such transactions concern different Member States, so that sufficient information on such transactions for the national authorities of Member States is available. Therefore the obligation to use the T5 copy provided for in Articles 160 and 161 of that Regulation is not necessary and should be abolished.

(14) In accordance with the second subparagraph of Article 143b(5) of Regulation (EC) No 1782/2003 Bulgaria and Romania requested authorisation to set the minimum size of eligible area per holding for which payments under the single area payment scheme may be requested at a level higher than 0,3 ha. This level was fixed at 1 ha for Bulgaria and Romania[(7)]. However, in the case of Bulgaria, holdings with at least 0,5 ha of permanent crops may request payments. That level should be laid down in Annex XX to Regulation (EC) No 1973/2004.

(15) Annex XXI to Regulation (EC) No 1973/2004 sets the agricultural area under the single area payment scheme for Hungary at 4 355 thousand hectares. However, the correct area to be taken into account following a further review in Hungary of the estimation of the agricultural area under the single area payment scheme in accordance with Article 143b(4) of Regulation (EC) No 1782/2003 amounts to 4 829 thousand hectares. That amount should be laid down in Annex XXI to Regulation (EC) No 1973/2004.

(16) Bulgaria and Romania have estimated their utilised agricultural area which is maintained in good agricultural condition and have proposed to adjust it in accordance with the minimum size of eligible area per holding. The referred agricultural area was fixed for Bulgaria at 3 805 638 ha and for Romania at 8 716 370 ha[(8)]. Those amounts need to be laid down in Annex XXI to Regulation (EC) No 1973/2004.

(17) Regulation (EC) No 1973/2004 should therefore be amended and corrected accordingly.

(18) 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 1973/2004 is amended as follows:

1. in Article 4, the reference ‘Article 3(1)(b), (b)a and (c)’ is replaced by ‘Article 3(1)(b) and (c)’;

2. in Article 32, paragraph 3 is replaced by the following:

3. The following obligations shall constitute subordinate requirements for collectors and first processors within the meaning of Article 20 of Regulation (EEC) No 2220/85:

   a the obligation to take delivery of the relevant quantities of raw materials, as delivered by applicants in accordance with Article 27(3);

   b the obligation to sign the declaration of delivery referred to in Article 27(2);

   c the obligation, where applicable, to lodge a security within the time limit set up in Article 31(1).;

3. in Article 33(1), the following subparagraph is added:

   The Member State may decide to permit applicants to use defined agricultural raw materials other than those provided for in point (a) of the first subparagraph provided that all appropriate control measures are complied with.

4. Article 37 is amended as follows:

   (a) paragraph 3 is replaced by the following:

   3. Member States shall set up a procedure of controls of the approval of the operators before the list referred to in paragraph 6 is published.;

   (b) in paragraph 4, the first sentence is replaced by the following:

   'Where it is found that an approved operator fails to comply with the obligations laid down in this Chapter or with the national provisions adopted on its basis, or where a collector or first processor does not accept or facilitate the on-the-spot checks to be performed by the competent authorities and/or does not provide the information referred to in Article 38, Member States shall provide for the application of appropriate penalties.';

   (c) paragraph 5 is replaced by the following:

   5. If an approved operator, as a result of a serious negligence, fails to comply with the provisions of this Chapter or with the national provisions, a Member State may decide to withdraw its approval for a period to be determined by that Member State.;

   (d) paragraph 7 is replaced by the following:

   7. If a Member State decides to apply paragraph 1, the aid shall be paid only to applicants who have concluded contracts with approved collectors or processors provided those are also established in a Member State which has decided to apply paragraph 1.;

5. in Article 39(3), the reference to 'Article 32(2)' is replaced by the reference to 'Article 32';

6. in Article 136, 'Article 30(3)' is deleted;

7. in Article 138(2), the first subparagraph is replaced by the following:

   Where differences between the area declared and the area determined result from irregularities committed intentionally, the aid to which the farmer would have been entitled shall not be granted for the calendar year in question if that difference is more than 0,5 % of the area determined or more than one hectare.;

8. in Article 144, point (c) is replaced by the following:

(c) "first processor" means any user of agricultural raw materials, except applicants using raw materials on the holding, who undertakes the first processing thereof with a view to obtaining one or more of the products referred to in Annex XXIII to this Regulation.;

9. Article 146 is replaced by the following:

Article 146

Derogations

1 Notwithstanding Article 145(2) and (3), Member States may permit applicants to:

a use all the cereals or oilseeds covered by CN codes 1201 00 90, 1205 10 90, 1205 90 00, 1206 00 91 and 1206 00 99 harvested:

(i) as fuel for heating their agricultural holding;

(ii) for the production on the holding of power or biofuels;

b process into biogas falling within CN code 2711 29 00, on their holdings, all raw materials harvested.

The Member State may decide to permit applicants to use defined agricultural raw materials other than those provided for in point (a) of the first subparagraph providing that all appropriate control measures are complied with.

2 In the cases referred to in paragraph 1, applicants shall undertake, by way of a declaration in place of the contract referred to in Article 147, to use or process directly the raw material covered by the declaration. Articles 147 to 164 shall apply mutatis mutandis.

3 Member States applying paragraph 1 shall introduce adequate control measures to ensure that the raw material is used directly on the holding or is processed into biogas falling within CN code 2711 29 00.;

10. Article 147 is amended as follows:

(a) paragraph 1 is replaced by the following:

1. In support of the single application and by the date provided for in Article 11 of Regulation (EC) No 796/2004, applicants shall submit to their competent authorities a copy of the contract concluded with a collector or first processor. However, Member States may decide that the contract may only be concluded between an applicant and a first processor.;

(b) paragraph 3 is deleted.;

11. in Article 155(1), point (b) is replaced by the following:

(b) a copy of the contract has been deposited with the applicant's competent authority in accordance with Article 147(1) and the conditions referred to in Article 145(1) have been fulfilled.;

12. in Article 157, paragraph 1 is deleted;