Council Regulation (EC) No 378/2007 of 27 March 2007 laying down rules for voluntary modulation of direct payments provided for in 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 amending Regulation (EC) No 1290/2005

COUNCIL REGULATION (EC) No 378/2007

of 27 March 2007

laying down rules for voluntary modulation of direct payments provided for in 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 amending Regulation (EC) No 1290/2005

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) Certain Member States are facing particular difficulties in financing their rural development programmes pursuant 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)]. With a view to strengthening their rural development policy, these Member States should be given the possibility to apply a system of voluntary modulation. This possibility should be offered to those Member States where voluntary modulation is already applied according to Commission Regulation (EC) No 1655/2004 of 22 September 2004 laying down rules for the transition from the optional modulation system established by Article 4 of Council Regulation (EC) No 1259/1999 to the mandatory modulation system established by Council Regulation (EC) No 1782/2003[(2)], or which were granted a derogation by virtue of Article 70(4a) of Regulation (EC) No 1698/2005 from the requirement to co-finance Community support. The voluntary modulation should take the form of reducing direct payments within the meaning of Article 2(d) of Regulation (EC) No 1782/2003[(3)], using the funds corresponding to that reduction for the financing of rural development programmes pursuant to Regulation (EC) No 1698/2005. Reductions of direct payments applied in respect of voluntary modulation should be additional to those resulting from the application of compulsory modulation provided for in Article 10 of Regulation (EC) No 1782/2003.

(2) In order to facilitate its administrative implementation, the rules applicable to voluntary modulation should be aligned to those applicable to compulsory modulation under Article 10 of Regulation (EC) No 1782/2003, including the calculation basis.

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(3) In order to take account of the particular situation of small farmers, an additional amount of aid should be granted in case of application of voluntary modulation as is the case for compulsory modulation. That additional amount should be equal to the amount resulting from the application of voluntary modulation to the first EUR 5 000 of direct payments, within ceilings to be fixed by the Commission.

(4) With regard to Member States where voluntary modulation is already used, the new voluntary modulation arrangements laid down in this Regulation should, to the extent possible, refrain from deviating from the existing mechanism so as to avoid triggering unnecessary administrative burden, interfering with implementing arrangements that have been in place for several years and that farmers have adapted to in practice and in economic terms. Therefore, it appears to be appropriate that Member States applying voluntary modulation upon the entry into force of this Regulation be given the right to maintain certain well-established patterns of their current system, whilst avoiding unjustified unequal treatment between farmers. Moreover, to ensure the new arrangements to be consistent with the implementation patterns of the single payment scheme, the application of regionally differentiated voluntary modulation rates should only be available to Member States which apply the single payment scheme at regional level as foreseen in Article 58 of Regulation (EC) No 1782/2003.

(5) The use of the funds resulting from the application of voluntary modulation may not be subject to the ceilings of the EAFRD contribution pursuant to Regulation (EC) No 1698/2005. Derogation from that Regulation should therefore be provided for. The prefinancing arrangements applicable to the EAFRD pursuant to Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy[(4)] should not apply to those funds.

(6) In order to take informed decisions on the application of voluntary modulation, Member States should carry out thorough assessments of the potential impact of such modulation, in particular as regards the economic situation of the farmers subject to such modulation and the effect on their comparative position in the agricultural sector. The impact of the implementation of voluntary modulation should be closely monitored by the Member States applying voluntary modulation. The Commission should be informed about the impact assessment and the monitoring results with a view to any further policy developments.

(7) Voluntary modulation should be considered in the broader context of Community funding for rural development. Its contribution should be analysed among others in the light of Member States' impact assessments. Based on this analysis, the Commission will submit before the end of 2008 a report to the European Parliament and to the Council presenting the experience gained so far with its implementation.

(8) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[(5)].

(9) The amounts resulting from the application of voluntary modulation should be taken into consideration when defining the annual ceiling for the expenditure financed by

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the European Agricultural Guarantee Fund and the possibility to adopt detailed rules concerning in particular voluntary modulation should be included in Regulation (EC) No 1290/2005.

(10) Regulation (EC) No 1290/2005 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

CHAPTER I

VOLUNTARY MODULATION

Article 1

1 Without prejudice to Article 10 of Regulation (EC) No 1782/2003, Member States:

a where at the entry into force of this Regulation the system of additional reductions of direct payments referred to in Article 1 of Regulation (EC) No 1655/2004 is applied; or

b which were granted a derogation by virtue of Article 70(4a) of Regulation (EC) No 1698/2005 from the requirement to co-finance Community support,

may apply a reduction, hereinafter referred to as 'voluntary modulation', to all the amounts of direct payments within the meaning of Article 2(d) of Regulation (EC) No 1782/2003 to be granted in their territory in a given calendar year within the meaning of Article 2(e) of that Regulation, during the period 2007 to 2012.

2 The net amounts resulting from the application of voluntary modulation shall be available in the Member State where they were generated as Community support for measures under rural development programming financed by the European Agricultural Fund for Rural Development in accordance with Regulation (EC) No 1698/2005.

[[F1]3 Reductions under voluntary modulation shall be made on the same basis of calculation as that applicable to modulation pursuant to Article 7 of 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[(6)].**]**

4 Each Member State shall apply a single rate of voluntary modulation per calendar year. The rate may be subject to progressive modifications according to pre-established steps. The maximum rate of reduction shall be 20 %.

[[F2]5 The modulation rates applicable to a farmer resulting from the application of Article 7 of Regulation (EC) No 73/2009 reduced by 5 percentage points shall be deducted from the rate of voluntary modulation applied by Member States pursuant to paragraph 4 of this Article. Both the percentage to be deducted and the final voluntary modulation rate shall be equal to or higher than 0.**]**

Textual Amendments

F1 Substituted by 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.

F2 Inserted by 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

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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.

Article 2

1 Within two months of the entry into force of this Regulation, Member States shall decide on and communicate to the Commission the annual rate of voluntary modulation that will apply for the period 2007 to 2012.

2 Member States intending to apply voluntary modulation shall conduct an assessment in order to gauge the impact of the application of voluntary modulation, in particular on the economic situation of the farmers concerned, taking into account the need to avoid unjustified unequal treatment between farmers.

Member States intending to apply rates that are regionally differentiated according to Article 3(1) shall also gauge the impact of such differentiated rates, taking into account the need to avoid unjustified unequal treatment between farmers.

The Member States concerned shall transmit their impact assessments to the Commission together with the communication referred to in paragraph 1.

Article 3

1 Any Member State where at the entry into force of this Regulation the system of additional reductions of direct payments referred to in Article 1 of Regulation (EC) No 1655/2004 is applied and the single payment scheme is applied at regional level as foreseen in Article 58 of Regulation (EC) No 1782/2003 may, for the period 2007 to 2012 choose:

[[F1]a by derogation from Article 1(3) of this Regulation, to apply the reductions under modulation on the basis of calculation applicable to modulation pursuant to Article 7 of Regulation (EC) No 73/2009, without taking into account the exclusion of EUR 5 000 provided for in paragraph 1 of that Article; and/or**]**

b by derogation from Article 1(4), to apply rates that are regionally differentiated according to objective criteria. The maximum rate for any of the regions of each Member State concerned shall be 20 %.

2 By derogation from Article 2(1), any Member State applying regionally differentiated rates of voluntary modulation as provided for in paragraph 1 of this Article shall submit to the Commission, within two months of the entry into force of this Regulation, for the period 2007 to 2012, the following information subject to examination by the Commission:

a the annual rates of voluntary modulation for each region and for the whole territory;

b the annual total amounts to be reduced under voluntary modulation;

c where appropriate, the annual total additional amounts needed to cover the additional amount of aid referred to in the second subparagraph of Article 1(3);

d statistical and other supportive data used to establish the amounts referred to in points (b) and (c).

3 If necessary, Member States shall submit to the Commission an update of the amounts referred to in paragraphs 2(b) and (c). That updated data shall be sent to the Commission before 31 December of the year preceding the calendar year to which the amounts refer to within the meaning of Article 2(e) of Regulation (EC) No 1782/2003.

4 If clarifications concerning the data submitted in accordance with paragraphs 2 and 3 are requested by the Commission, Member States shall reply to this request within one month.