Commission Regulation (EC) No 239/2005 of 11 February 2005 amending and correcting 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

COMMISSION REGULATION (EC) No 239/2005

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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 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 7(1), Article 34(2), and points (c), (d), (k) and (n) of Article 145 thereof,

Whereas:

(1) Article 2 of Commission Regulation (EC) No 796/2004[(2)] contains several definitions that need to be clarified. In particular, the definition of ‘permanent pasture’ in point 2 of that Article needs to be clarified and it is also necessary to introduce a definition for the term ‘grasses or other herbaceous forage’. However, in that context it has to be considered that the Member States need to have a certain flexibility to be able to take account of local agronomic conditions.

(2) Following the introduction of a payment for hops to producer groups in the second paragraph of Article 68a of Regulation (EC) No 1782/2003 and Article 171 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[(3)], Regulation (EC) No 796/2004 needs to be amended in several respects and it is also appropriate to introduce particular provisions with regard to the application procedure and controls for that aid scheme.

(3) Regulation (EC) No 1782/2003 provides for certain specific obligations for the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (the new Member States) as regards the maintenance of permanent pasture, as

part of the cross-compliance conditions. Accordingly, it is necessary to lay down rules for the determination of the proportion of permanent pasture in relation to arable land that has to be maintained in the new Member States. It is also necessary to provide for the individual obligations at the level of farmers to be respected where it is established that that proportion is decreasing to the detriment of land under permanent pasture.

(4) Article 4(1) of Regulation (EC) No 796/2004 provides, with regard to certain situations, for the obligation of farmers not to convert land under permanent pasture without prior authorisation. That authorisation may also include the permission to convert land under permanent pasture subject to the condition that an equivalent amount of area is being established as land under permanent pasture to compensate for the conversion. For those cases, it should be provided that by way of derogation from the definition of 'permanent pasture' contained in Article 2(2) of Regulation (EC) No 796/2004, land thus established should be considered as land under permanent pasture from the moment of its establishment.

(5) Under the second subparagraph of Article 4(2) of Regulation (EC) No 796/2004 a farmer may be obliged to re-convert into land under permanent pasture, land which used to be permanent pasture in the past and which was converted into land for other uses within a certain period of time. That period should be extended in order to share more equally amongst farmers the burden to maintain permanent pasture.

(6) Article 11(2) of Regulation (EC) No 796/2004 provides that single applications are to be submitted by a date to be fixed by the Member States which must not be later than 15 May in a given year. However, due to the particular climatic conditions in Finland and Sweden, those two Member States may fix a later date which must not be later than 15 June. Following the accession of the new Member States, the same exception should now be provided for with regard to Estonia, Latvia and Lithuania. The date of 15 June should also apply with regard to notifications from farmers to the competent authority of subsequent amendments to the single application, as provided for in Article 15(2) of Regulation (EC) No 796/2004.

(7) In order to enable Member States to carry out controls effectively, in particular controls on the respect of cross-compliance obligations, Article 14(1) of Regulation (EC) No 796/2004 obliges farmers to declare all the areas at their disposal whether or not they claim aid for such areas. It is necessary to provide for a mechanism to ensure that farmers comply with that obligation.

(8) 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 applications to the Single Payment Scheme in accordance with Article 34(2) of Regulation (EC) No 1782/2003.

(9) In the first year of the application of the Single Payment Scheme farmers have to lodge an application if they want to participate in that scheme in accordance with Article 34(2) of Regulation (EC) No 1782/2003. Those applications will then serve as the basis for the allocation of payment entitlements. The punctual submission of the information included in those applications is essential for the Member States to establish

the payment entitlements within the time-limits provided for in that Regulation and in order to guarantee a good start to the new scheme. Farmers have been made aware of the time-limits which they have to respect. Moreover, Member States have to provide the farmers with the appropriate pre-printed application forms long in advance of the submission of the application. Late submissions of those applications should therefore only be permitted within the same additional time-limit, as provided for in Article 21 of Regulation (EC) No 796/2004, for the late submission of any aid applications. A dissuasive reduction-rate should also be applied unless the delay is due to cases of *force majeure* or exceptional circumstances.

(10) It is necessary to provide for a time period during which hemp grown for fibre may not be harvested after flowering in order to enable the control obligations provided for in respect of these crops to be carried out effectively.

(11) It is necessary to clarify that areas declared under the Single Area Payment scheme in accordance with Article 143b of Regulation (EC) No 1782/2003, are to be regarded as one crop group within the meaning of Article 49(1) of Regulation (EC) No 796/2004. The same clarification should also be made with regard to areas declared by producer groups to support their aid applications for hops payments in accordance with the second paragraph of Article 68a of Regulation (EC) No 1782/2003.

(12) In Article 50(6) of Regulation (EC) No 796/2004, the reduction level for payments to arable crop producers should be clarified.

(13) Moreover, certain clarifications need to be introduced in respect of the sanctioning system applicable in the case of the non-compliance with such obligations.

(14) 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[(4)] has an impact on the kinds of reductions to be applied in respect of direct payments to be granted in accordance with Regulation (EC) No 796/2004. Those reductions, as well as the introduction of further kinds of reductions by this Regulation, need to be taken into account in the framework of Article 71 of Regulation (EC) No 796/2004.

(15) Rules need to be established to cover the eventuality where a farmer has received unduly a number of payment entitlements or that the value of each of the payment entitlements was fixed at an incorrect level according to the different models under the Single Payment Scheme. Moreover, provision has to be made for the case where such payment entitlements have been transferred and for the case where transfers of payment entitlements have occurred without respecting Article 46(2) of Regulation (EC) No 1782/2003.

(16) In several language versions of Regulation (EC) No 796/2004, the latest date which Members States may fix for the submission of the copies of supporting documents in relation to applications for seed aid referred to in point (d) of Article 13(8) of that Regulation is set at 31 May, instead of 15 June of the year following the harvest.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 239/2005. (See end of Document for details)*

(17) In several language versions of Regulation (EC) No 796/2004 an error needs to be rectified in the second subparagraph of Article 21(2), where reference is made to Article 14(2) of that Regulation, instead of Article 15(2).

(18) With regard to the liability in the case of the non-respect of cross compliance obligations provided for in Article 65(2) of Regulation (EC) No 796/2004, various language versions create ambiguity as regards the possibility to hold the farmer concerned liable under the applicable national rules, notably in case where the farmer did not act himself in the strict sense. It is therefore appropriate to harmonise that Article in all language versions.

(19) It is therefore necessary to amend and correct Regulation (EC) No 796/2004 accordingly.

(20) 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 796/2004 is amended as follows:

1. Article 2 is amended as follows:

   (a) points 1 and 2 are replaced by the following:

      1. "Arable land": shall mean land cultivated for crop production and land under set-aside, or maintained in good agricultural and environmental condition in accordance with Article 5 of Regulation (EC) No 1782/2003, irrespective of whether or not that land is under greenhouses or under fixed or mobile cover;

      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 6 of Council Regulation (EC) No 1251/1999[5], land under set aside schemes pursuant to Article 54(2) and Article 107 of Regulation (EC) No 1782/2003, areas set aside in accordance with Council Regulation (EEC) No 2078/92[6] and areas set aside in accordance with Articles 22, 23 and 24 of Council Regulation (EC) No 1257/1999[7];

   (b) the following point is inserted after the point (2):

      (2a) 'grasses or other herbaceous forage': shall mean all herbaceous plants traditionally found in natural pastures or normally included in mixtures of seeds for pastures or meadows in the Member State (whether or not used for grazing animals). Member States may include crops listed in Annex IX to Regulation (EC) No 1782/2003;

   (c) points 11 and 12 are replaced by the following:

11. "Single application": shall mean the application for direct payments in respect of the single payment scheme and other area-related aid schemes with the exception of an application for hops payment by a recognised producer group pursuant to the second paragraph of Article 68a of Regulation (EC) No 1782/2003;

12. "Area-related aid schemes": shall mean the single payment scheme, the hops payment to recognised producer groups referred to in the second paragraph of Article 68a of Regulation (EC) No 1782/2003 and all aid schemes established under Title IV of Regulation (EC) No 1782/2003, except those established under Chapters 7, 11 and 12 of that Title;

(d) point 36 is replaced by the following:

36. "Specialised control bodies": shall mean the national competent control authorities, as referred to in Article 42 of this Regulation, responsible, in accordance with the first subparagraph of Article 25(2) of Regulation (EC) No 1782/2003, for ensuring compliance with the statutory management requirements and good agricultural and environmental condition;

(e) the following paragraph is added:

For the purposes of this Regulation, "new Member States" shall mean the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia.;

2. Article 3 is amended as follows:

(a) paragraph 2 is replaced by the following:

2. For the purpose of applying the second subparagraph of Article 5(2) of Regulation (EC) No 1782/2003, the Member States shall ensure that the ratio referred to in paragraph 1 of this Article shall not decrease to the detriment of land under permanent pasture by more than 10 % relatively to the ratio for the relevant reference year referred to in the first subparagraph of Article 5(2) of that Regulation (hereinafter referred to as the reference ratio).;

(b) the introductory sentence of paragraph 4 is replaced by the following:

'For the Member States, other than the new Member States, the reference ratio shall be established as follows:';

(c) the following paragraphs are added:

5. For the new Member States that have not applied in respect of the year 2004 the single area payment scheme referred to in Article 143b of Regulation (EC) No 1782/2003, the reference ratio shall be established as follows:

a the land under permanent pasture shall be the land under permanent pasture declared by the farmers in 2004, plus the land under permanent pasture declared in 2005 in accordance with Article 14(1) of this Regulation and that has not been declared for any use other