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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 583/2004

of 22 March 2004

amending Regulations (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers, (EC) No 1786/2003 on the common organisation of the market in dried fodder and (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the European Union

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Treaty concerning the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the European Union [1], signed in Athens on 16 April 2003, and in particular Article 2(3) thereof,

Having regard to the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (hereinafter 'the Act of Accession') [2], and in particular Article 57(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) Council Regulation (EC) No 1782/2003 of 29 September 2003 [3] introduced common rules for direct support schemes under the common agricultural policy and established certain support schemes for farmers.

(2) The said common rules and support schemes should be amended to allow their implementation in the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (hereinafter 'the new Member States').

(3) With a view to the introduction of modulation in the new Member States, the Commission should establish national ceilings for the additional amount of aid for the new Member States.

(4) The farmers in the new Member States will receive direct payments, following a phasing-in mechanism. In order to achieve the proper balance between policy tools designed to promote sustainable agriculture and those designed to promote rural development, the system of modulation should not be applied in the new Member States until the level of direct payments applicable in the new Member States is at least equal to the level applicable in the Community as constituted on 30 April 2004.

(5) Taking into account the levels of direct payments for farmers in the new Member States as a result of phasing-in, it should be foreseen that in the framework of the application of the schedule of increments provided for in Article 143a to all direct payments granted in the new Member States, the instrument of financial discipline should not apply in the new Member States until the level of direct payments applicable in the new Member States is at least equal to the level applicable in the Community as constituted on 30 April 2004.

(6) Direct payments under the single payment scheme are based on reference amounts of direct payments that were received in the past or on regionalised per hectare payments. Farmers in the new Member States did not receive Community direct payments and have no historical references for the calendar years 2000, 2001 and 2002. Therefore, the single payment scheme in the new Member States should be based on regionalised per hectare payments, subdivided between regions according to objective criteria and divided by the farmers whose holdings are located in the region concerned and that meet the eligibility criteria.

(7) The amount of direct payments, described in national ceilings, under the single payment scheme for the new Member States should be based on the quota, ceilings and quantities that were agreed in the accession negotiations multiplied by the relevant aid amounts per hectare, head or tonne.

[1] OJ L 236, 23.9.2003, p. 17.
[2] OJ L 236, 23.9.2003, p. 33.
[3] OJ L 270, 21.10.2003, p. 1.

(8) As of 1 April 2005 the market measure benefiting the production of dried fodder, as provided for in Council Regulation (EC) No 1786/2003 of 29 September 2003 on the common organisation of the market in dried fodder [1], is amended. From that date the market support is partially turned into a direct payment which will benefit farmers. In order to avoid a decrease in overall support in 2005 for the new Member States, it is appropriate to derogate from the general principle of phasing-in of direct payments. Therefore, the dried-fodder-related component in the single payment scheme national ceiling should be calculated at the 100 % aid level instead of at the phasing-in aid level.

(9) Under the regionalised option for the single payment scheme the new Member States should have the possibility of adjusting the premium per hectare on the basis of objective criteria in order to ensure equal treatment between farmers and to avoid market distortions.

(10) The new Member States should have the possibility of partially implementing and/or to exclude certain sectors from the single payment scheme.

(11) The sectoral ceilings for partial implementation and/or the exclusion of certain sectors of the single payment scheme should be based on the quota, ceilings and quantities that were agreed in the accession negotiations.

(12) The transition from the single area payment scheme to the single payment scheme and other aid schemes may give rise to difficulties of adaptation which are not dealt with in this Regulation. In order to deal with this eventuality, a general provision should be included in Regulation (EC) No 1782/2003 enabling the Commission to adopt the transitional measures necessary for a certain period.

(13) In view of the short programming period, the Act of Accession introduced the possibility of integrating a 'LEADER + (Community initiative for rural development) type measure' in the mainstream programmes, instead of having separate LEADER + programming. Therefore the measure 'management of integrated rural development strategies by local partnerships' introduced in Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) [2] is not needed for the new Member States, as it is covered by the LEADER + type measure.

(14) Regulations (EC) No 1782/2003, (EC) No 1786/2003 and (EC) No 1257/1999 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

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

1. In Article 5(2) the following sentence is added at the end of the first subparagraph:

'The new Member States shall ensure that land which was under permanent pasture on 1 May 2004 is maintained under permanent pasture.'

2. In Article 12 the following paragraph is added:

'5. For the new Member States, the ceilings referred to in paragraph 2 shall be fixed by the Commission in accordance with the procedure referred to in Article 144(2).'

3. After Article 12 the following Article is added:

'*Article 12a*

Application to new Member States

1. Articles 10 and 12 shall not apply to the new Member States until the beginning of the calendar year, in respect of which the level of direct payments applicable in the new Member States is at least equal to the then applicable level of such payments in the Community as constituted on 30 April 2004.

2. In the framework of the application of the schedule of increments provided for in Article 143a to all direct payments granted in the new Member States, Article 11 shall not apply to the new Member States until the beginning of the calendar year, in respect of which the level of direct payments applicable in the new Member States is at least equal to the then applicable level of such payments in the Community as constituted on 30 April 2004.'

4. In Article 54(2) the following sentence is added at the end of the first subparagraph:

'For the new Member States, the reference to the date provided for the area aid applications for 2003 shall be construed as a reference to 30 June 2003.'

[1] OJ L 270, 21.10.2003, p. 114.
[2] OJ L 160, 26.6.1999. p. 80. Regulation as last amended by Regulation (EC) No 1783/2003 (OJ L 270, 21.10.2003, p. 70).

5. In Title III the following Chapter is added:

'CHAPTER 6

IMPLEMENTATION IN THE NEW MEMBER STATES

Article 71a

1. Save as otherwise provided for in this Chapter, the provisions of this Title shall apply to the new Member States.

Articles 33, 34, 37, 38, 39, 40(1), (2), (3) and (5), 41, 42, 43, 47 to 50, 53 and 58 to 63 shall not apply.

2. Any new Member State applying the single area payment scheme shall take the decisions referred to in Articles 64(1) and 71(1) by 1 August of the year preceding that in respect of which it will apply the single payment scheme for the first time.

Article 71b

Application for support

1. Farmers shall apply for support under the single payment scheme by a date, to be fixed by the new Member States, but not later than 15 May.

2. Except in case of *force majeure* and exceptional circumstances within the meaning of Article 40(4), no entitlements shall be allocated to farmers if they do not apply for the single payment scheme by 15 May of the first year of application of the single payment scheme.

3. The amounts corresponding to entitlements not allocated shall revert to the national reserve referred to in Article 71d and shall be available for reallocation.

Article 71c

Ceiling

The national ceilings of the new Member States shall be those listed in Annex VIIIa.

Article 71d

National reserve

1. Each new Member State shall proceed to a linear percentage reduction of its national ceiling in order to constitute a national reserve. This reduction shall not be greater than 3 %, without prejudice to the application of Article 71b(3).

2. The new Member States shall use the national reserve for the purpose of allocating, according to objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortions, payment entitlements to farmers finding themselves in a special situation, to be defined by the Commission in accordance with the procedure referred to in Article 144(2).

3. During the first year of application of the single payment scheme, the new Member States may use the national reserve for the purpose of allocating payment entitlements, according to objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortions, to farmers in specific sectors, finding themselves in a special situation as a result of the transition to the single payment scheme. Such payment entitlements shall be distributed according to rules to be defined by the Commission in accordance with the procedure referred to in Article 144(2).

4. In application of paragraphs 2 and 3, new Member States may increase the unit value of entitlements within the limit of EUR 5 000, and/or the number of entitlements allocated to farmers.

5. The new Member States shall proceed to linear reductions of the entitlements where their national reserve is not sufficient to cover the cases referred to in paragraphs 2 and 3.

6. Except in case of transfer by actual or anticipated inheritance and by way of derogation from Article 46, the entitlements established using the national reserve shall not be transferred for a period of five years starting from their allocation.

By way of derogation from Article 45(1), any entitlement which has not been used during each year of the five-year period shall revert immediately to the national reserve.

Article 71e

Regional allocation of the ceiling referred to in Article 71c

1. The new Member States shall apply the single payment scheme at regional level.

2. The new Member States shall define the regions according to objective criteria.

New Member States with less than three million eligible hectares may be considered as one single region.

3. Each new Member State shall subdivide its national ceiling referred to in Article 71c after any reduction according to Article 71d between the regions according to objective criteria.

Article 71f

Regionalisation of the single payment scheme

1. All farmers whose holdings are located in a given region shall receive entitlements, whose unit value is calculated by dividing the regional ceiling established pursuant to Article 71e by the number of eligible hectares within the meaning of Article 44(2), established at regional level.

2. The number of entitlements per farmer shall be equal to the number of hectares he/she declares in accordance with Article 44(2) for the first year of application of the single payment scheme, except in case of *force majeure* or exceptional circumstances within the meaning of Article 40(4).

3. The payment entitlements per hectare shall not be modified save as otherwise provided.

Article 71g

Use of the land

1. Farmers may, by way of derogation from Article 51 and in accordance with the provisions of this Article, also use the parcels declared according to Article 44(3) for the production of products referred to in Article 1(2) of Regulation (EC) No 2200/96 (*) and in Article 1(2) of Regulation (EC) No 2201/96 (**) and potatoes other than those intended for the manufacture of potato starch for which aid is granted pursuant Article 93 of this Regulation, except permanent crops.

2. The new Member States shall establish the number of hectares that may be used according to paragraph 1 by subdividing, according to objective criteria, the average of the number of hectares that were used for the production of the products referred to in paragraph 1 at national level during the three-year period 2000 to 2002 amongst the regions defined pursuant to Article 71e(2). The average number of hectares at national level and the number of hectares at regional level shall be fixed by the Commission in accordance with the procedure referred to in Article 144(2) on the basis of the data communicated by the new Member State.

3. Within the limit established according to paragraph 2 for the region concerned, a farmer shall be allowed to make use of the option referred to in paragraph 1:

(a) within the limit of the number of hectares that he/she used for the production of the products referred to in paragraph 1 in 2003;

(b) by way of derogation from Article 71a(1), second subparagraph, in case of application, *mutatis mutandis*, of Articles 40 and 42(4), within the limit of a number of hectares to be established according to objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortions.

4. Within the limit of the number of hectares that remain available after application of paragraph 3, farmers shall be allowed to produce the products referred to in paragraph 1 on a number of hectares other than the number of hectares falling under paragraph 3 within the limit of a number of hectares used for the production of the products referred to in paragraph 1 in 2004 and/or 2005, whereby priority shall be given to the farmers who produced the products already in 2004 within the limit of the number of hectares used in 2004.

In case of application of Article 71 or Article 143b, 2004 and 2005 shall be replaced by, respectively, the year previous to the year of application of the single payment scheme and the year of application itself.

5. In order to establish the individual limits referred to in paragraphs 3 and 4, new Members States shall use the farmer's individual data, where available, or any other evidence provided by the farmer to their satisfaction.

6. The number of hectares for which the authorisation has been established according to paragraphs 3 and 4 shall in no case exceed the number of eligible hectares as defined in Article 44(2) declared in the first year of application of the single payment scheme.

7. The authorisation shall be used, within the region concerned, with the corresponding payment entitlement.

8. The report referred to in Article 60 shall also concern implementation by the new Member States.

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 2003 and for any other eligible hectare or alternatively for hectares of permanent pasture as identified on 30 June 2003 and for any other eligible hectare.

Article 71i

Dairy premium and additional payments

Starting from 2007, the amounts resulting from dairy premium and additional payments provided for in Articles 95 and 96 and to be granted in 2007 shall be included in the single payment scheme.

However, new Member States may decide that the amounts resulting from dairy premiums and additional payments, provided for in Articles 95 and 96, shall be included, in part or in full, in the single payment scheme starting from 2005. Entitlements established according to this paragraph shall be modified accordingly.

The amount used for the establishment of entitlements in respect of those payments shall be equal to the amounts to be granted according to Articles 95 and 96, calculated on the basis of the individual reference quantity for milk available on the holding on 31 March of the year of inclusion, in part or in full, of those payments in the single payment scheme.

By way of derogation from Article 71a(1), Articles 48, 49 and 50 shall apply *mutatis mutandis*.

Article 71j

Set-aside entitlements

1. Farmers shall receive part of their payment entitlements in the form of set-aside entitlements.

2. The number of set-aside entitlements shall be established by multiplying the farmer's eligible land within the meaning of Article 54(2) declared in the first year of application of the single payment scheme with the applicable set-aside rate.

The set-aside rate shall be calculated by multiplying the basic rate of compulsory set-aside of 10 % by the proportion, in the region concerned, between the regional base area or areas referred to in the third paragraph of Article 101 and the eligible land within the meaning of Article 54(2).

3. The value of the set-aside entitlements shall be the regional value for payment entitlements as established according to Article 71f(1).

4. Paragraphs 1 to 3 shall not apply to farmers who declare less than a number of hectares within the meaning of Article 54(2) which would be needed to produce a number of tonnes equal to 92 tonnes of cereals as defined in Annex IX on the basis of the reference yield referred to in Annex XIb applicable to the new Member State where the holding is located, divided by the proportion referred to in the second subparagraph of paragraph 2.

Article 71k

Conditions for the entitlements

1. By way of derogation from Article 46(1), entitlements established in accordance with this chapter may only be transferred within the same region or between regions where the entitlements per hectare are the same.

2. New Member States may also decide, by 1 August of the year preceding the first year of application of the single payment scheme at the latest, and acting in compliance with the general principle of Community law, that entitlements established in accordance with this chapter shall be subject to progressive modifications according to pre-established steps and objective criteria.

Article 71l

Optional implementation

1. Sections 2, 3 and 4 of Chapter 5 shall apply to the new Member States under the conditions laid down in this Article. However, Section 4 shall not apply to new Member States applying the single area payment scheme referred to in Article 143b.

2. Any reference in Sections 2 and 3 of Chapter 5 to Article 41, in particular with regard to the national ceiling(s), shall be construed as a reference to Article 71c.

3. The report referred to in Article 64(3) shall include the options laid down in this chapter.

(*) OJ L 297, 21.11.1996, p. 1.
(**) OJ L 297, 21.11.1996, p. 29.'