COMMISSION REGULATION (EC) No 118/2004

of 23 January 2004

amending Regulation (EC) No 2419/2001 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes established by Council Regulation (EEC) No 3508/92

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes [1], and in particular Article 12 thereof,

Whereas:

(1) In the light of experience gained with the application of the rules concerning administrative checks as contained in Commission Regulation (EC) No 2419/2001 [2], some clarifications should be introduced with regard to the kind of checks to be carried out and with regard to the measures to be taken in case of doubts after cross-checks.

(2) Certain clarifications and additional elements should be introduced with regard to risk-sampling.

(3) The existing rules of Regulation (EC) No 2419/2001 concerning remote sensing should be enhanced to ensure a proper use of remote sensing in the performance of the controls by Member States.

(4) In the light of experience, the existing provisions concerning the timing and content of certain on-the-spot checks in respect of the bovine premium should be modified to ensure a balanced and uniform approach.

(5) The existing provisions relating to ewes and goats should be developed in the light of practical reality in so far as animals sometimes need to be replaced during the retention period, and to avoid undue penalisation in some cases of certain farmers maintaining both ewes and goats. The delays for the replacements, the entry of the replacement into the register and the information of the replacement to the competent authority should be fixed in the light of the length of the retention period and of the necessity for effective controls.

(6) In order to protect the Community's financial interests, title IV of Regulation (EC) No 2419/2001 lays down provisions for the reduction of and exclusion from Community aid in the event of irregularities. Some of these provisions should be amended so as to ensure that the reductions and exclusions are at all times strictly graded according to the gravity of the irregularity.

(7) Regulation (EC) No 2419/2001 introduced prescription rules in respect of the recovery of undue payments. These rules should, under certain conditions, also be made applicable to aid applications relating to marketing years and/or premium periods which started before 1 January 2002.

(8) Regulation (EC) No 2419/2001 should be amended accordingly.

(9) The measures provided for in this Regulation are in accordance with the opinion of the Fund Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 2419/2001 is amended as follows:

1. Article 16 is replaced by the following:

'*Article 16*

Cross checks

1. The administrative checks referred to in Article 8(1) of Regulation (EEC) No 3508/92 shall permit the automated detection of irregularities using computerised means, including in particular:

(a) cross-checks on declared agricultural parcels and animals in order to avoid undue multiple granting of the same aid in respect of the same calendar or marketing year and to prevent any undue cumulation of aid granted under Community aid schemes involving declarations of areas as referred to in Article 9a of Regulation (EEC) No 3508/92;

(b) cross-checks by means of the computerised database or, in the case of area aid applications, by any other computerised means, to verify eligibility for the aid.

2. Indications of irregularities resulting from cross-checks shall be followed-up by any other appropriate administrative procedure and, where necessary, by an on-the-spot check.'

[1] OJ L 355, 5.12.1992, p. 1. Regulation as last amended by Commission Regulation (EC) No 495/2001 (OJ L 72, 14.3.2001, p. 6).
[2] OJ L 327, 12.12.2001, p. 11. Regulation as amended by Regulation (EC) No 2550/2001 (OJ L 341, 22.12.2001, p. 105).

2. Article 19 is replaced by the following:

'*Article 19*

Selection of applications to be checked on the spot

1. Farmers subjected to on-the-spot checks shall be selected by the competent authority on the basis of a risk analysis and an element of representativeness of the aid applications submitted. The effectiveness of risk analysis parameters used in previous years shall be assessed on an annual basis.

To provide the element of representativeness, the Member States shall select randomly between 20 % and 25 % of the minimum number of farmers to be subjected to on-the-spot checks as provided for in Article 18(1).

2. The risk analysis shall take account of:

(a) the amount of aid involved;

(b) the number of agricultural parcels and the area or number of animals for which aid is requested;

(c) changes from the previous year;

(d) the findings of checks made in past years;

(e) cases of non-compliance with Regulation (EC) No 1760/2000;

(f) those farmers who are either just above or below ceilings or limits relevant for the granting of aid;

(g) replacements of animals pursuant to Article 37;

(h) other factors to be defined by the Member States.

3. The competent authority shall keep records on the reasons for the selection of each farmer for an on-the-spot check. The inspector carrying out the on-the-spot check shall be informed accordingly prior to the commencement of the on-the-spot check.'

3. In Article 22, paragraph 1 is replaced by the following:

'1. Agricultural parcel areas shall be determined by any appropriate means defined by the competent authority which ensure measurement of a precision at least equivalent to that required for official measurements under the national rules. A measurement tolerance may be defined by the competent authority that shall not exceed either 5 % of the agricultural parcel area or a buffer of 1,5 m applied to the perimeter of the agricultural parcel. However, the maximum tolerance with regard to each agricultural parcel shall not, in absolute terms, exceed 1,0 ha.'

4. Article 23 is replaced by the following:

'*Article 23*

Remote sensing

1. The Member States may make use of remote sensing with regard to the sample referred to in Article 18(1)(a) instead of applying traditional means of on-the-spot checking under the conditions set out in this Article. Articles 17, 18, 19 and 20, the first sentence of Article 21 and Article 22 shall apply where appropriate.

2. The zones to be checked by means of remote sensing shall be selected on the basis of a risk-analysis or at random.

In the case of selection on the basis of a risk-analysis the Member States shall take account of appropriate risk factors, in particular:

(a) their financial significance in terms of Community aid;

(b) the composition of aid applications;

(c) the structure of the agricultural parcel systems, and complexity of the agricultural landscape;

(d) the lack of coverage in previous years;

(e) the technical constraints of effective use of remote sensing, with respect to zone definition;

(f) the findings of checks made in previous years.

3. On-the-spot checks by remote sensing shall cover:

— either all aid applications having at least 80 % of the area for which aid is requested under schemes referred to in Article 1(1) of Regulation (EEC) No 3508/92 within the respective zone,

— or aid applications to be selected by the competent authority on the basis of Article 19(2).

Applications selected randomly in accordance with Article 19(1) may be checked by remote sensing.

4. Once a farmer has been selected for an on-the-spot check in accordance with paragraph 3, at least 80 % of the area for which he requests aid under aid schemes referred to in Article 1(1) of Regulation (EEC) No 3508/92 shall be subject to the on-the-spot check by remote sensing.

5. Where a Member State applies the possibility to carry out on-the-spot checks by remote sensing they shall:

(a) perform photo interpretation of satellite images or aerial photographs of all agricultural parcels per application to be checked in accordance with paragraph 4 with a view to recognising the ground cover and measuring the area;

(b) carry out physical inspections in the field of all agricultural parcels for which photo interpretation does not make it possible to verify the accuracy of the declaration to the satisfaction of the competent authority.

6. The additional checks referred to in Article 18(2) shall be carried out by means of traditional on-the-spot checks if it is no longer possible to carry them out by means of remote sensing within the current year.'