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(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COUNCIL REGULATION (EC) No 1250/2009

of 30 November 2009

amending Regulation (EC) No 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers

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:

Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽³⁾.

(3) 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 ⁽⁴⁾ authorised the Commission to adopt, inter alia, a provision to deal with the situation where the allocation of payment entitlements to a farmer would lead to a windfall profit for the farmer. Such a situation can also occur under Regulation (EC) No 73/2009 and should therefore be addressed.

(1) Regulation (EC) No 73/2009 ⁽¹⁾ establishes the mechanism of financial discipline whereby the level of direct support is adjusted when the forecasts indicate that the subceiling for market related expenditure and direct payments, under heading 2 of Annex I to the Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management ⁽²⁾, with a safety margin of EUR 300 000 000, is exceeded in a given financial year.

(2) The abovementioned subceiling covers expenditure for direct payments before all transfers to rural development and before modulation. The text of Regulation (EC) No 73/2009 should therefore be clarified so as to provide that the expenditure to be compared with the subceiling also includes possible transfers to the European Agricultural Fund for Rural Development (EAFRD) referred to in Article 136 of Regulation (EC) No 73/2009, as well as possible transfers to EAFRD in the wine sector resulting from the application of Article 190a(2) of

(4) Under Regulation (EC) No 1782/2003 some Member States opted for the implementation of the single payment scheme and for the partial implementation of the single payment scheme in the sheepmeat and goatmeat sector as well as in the beef and veal sector at regional level. Regional considerations may also be relevant for the decisions to be taken under Regulation (EC) No 73/2009 to continue or to adjust the partial implementation of the single payment scheme in those sectors. It should therefore be made possible for those decisions to be taken at regional level.

(5) Regulation (EC) No 73/2009 provides for the allocation of payment entitlements where a farmer in a sector concerned does not hold any payment entitlement. However, this provision does not adequately deal with the situation where that farmer nevertheless declares a number of leased payment entitlements in the first year of integration of the coupled support into the single payment scheme. In that case the farmer would not be able or only partly be able to activate the new payment

⁽¹⁾ OJ L 30, 31.1.2009, p. 16.

⁽²⁾ OJ C 139, 14.6.2006, p. 1.

⁽³⁾ OJ L 299, 16.11.2007, p. 1.

⁽⁴⁾ OJ L 270, 21.10.2003, p. 1.

entitlements allocated since all or some of the farmer's eligible hectares would already have been used to activate the leased entitlements. It is therefore appropriate to provide a temporary derogation according to which the farmer concerned should be allocated payment entitlements for the hectares declared which correspond to those hectares over and above the hectares declared to activate the leased payment entitlements and/or the payment entitlements which give right to a payment without any declaration of the corresponding hectares. This derogation should be limited to the situation where a farmer is to remain in agricultural activity.

- (6) Pursuant to Regulation (EC) No 73/2009, Member States wishing to grant, from 2010, specific support measures as referred to in that Regulation had to take a decision by 1 August 2009 on the use of their national ceiling for financing those measures. Following the Communication from the Commission to the Council of 22 July 2009 entitled 'Dairy market situation 2009', and in view of the current dairy market situation, a derogation from that deadline is necessary in order to allow Member States under certain conditions to grant, from 2010, specific support in favour of farmers in the dairy sector.
- (7) Regulation (EC) No 73/2009 provides for a derogation from the upper limit of support laid down in that Regulation in certain cases where Article 69 of Regulation (EC) No 1782/2003 was used to provide support with regard to suckler cows. The purpose of this derogation is to provide for a sufficient transitional period in order to allow for a smooth transition to the new rules for specific support in the beef and veal sector. It should therefore be clarified that this derogation is limited to cases where Article 69 of Regulation (EC) No 1782/2003 was used mainly to support the beef and veal sector.
- (8) Regulation (EC) No 73/2009 repeals Regulation (EC) No 1782/2003 as from the date of its entry into force and applies from 1 January 2009. However, Regulation (EC) No 73/2009 provides for the continued application of Regulation (EC) No 1782/2003 in specific cases including that of the partial implementation of the single payment scheme in the sheepmeat and goatmeat sector. In order to ensure a coherent approach for this sector, the corresponding provision in Regulation (EC) No 73/2009 should apply instead in 2009. It is therefore appropriate to establish a transitional provision as regards the additional sheep and goat payments for 2009.
- (9) Regulation (EC) No 73/2009 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 73/2009 is amended as follows:

1. Article 11(1) is replaced by the following:

'1. With a view to ensuring that the amounts for the financing of the market related expenditure and direct payments of the CAP currently under heading 2 of Annex I to the Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management (*) respect the annual ceilings set out in the Decision 2002/929/EC of the Representatives of the Governments of the Member States, meeting within the Council of 18 November 2002, concerning the Conclusions of the European Council meeting in Brussels on 24 and 25 October 2002 (**), an adjustment of the direct payments shall be determined when the forecasts for the financing of the aforementioned measures under heading 2 for a given financial year, increased by the amounts given in Article 190a of Regulation (EC) No 1234/2007, the amounts given in Articles 134 and 135 and the amounts referred to in Article 136 of this Regulation and before application of modulation provided for in Articles 7 and 10 of this Regulation and Article 1(1) of Regulation (EC) No 378/2007, indicate that the applicable abovementioned annual ceiling, taking into account a margin of EUR 300 000 000 below that ceiling, will be exceeded.

(*) OJ C 139, 14.6.2006, p. 1.

(**) OJ L 323, 28.11.2002, p. 48.;

2. the following paragraph is added to Article 41:

'6. Where a Member State applies Articles 59 or 63, it may, on the basis of objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortions, provide that, in cases of sale or grant or expiry of all or part of a lease of a holding or of premium rights, some or all of the payment entitlements or of the increase in the value of payment entitlements that would be allocated to the farmer in question shall revert to the national reserve where the allocation or increase would lead to a windfall profit for the farmer in question. The criteria shall include at least:

- (a) a minimum duration for the lease;
- (b) the period in which the sale or grant or expiry of the lease can be deemed to lead to a windfall profit. That period shall start no earlier than the start date of the relevant reference period for decoupling and shall end no later than the date when the farmer concerned was made aware of the decoupling and of the relevant conditions;
- (c) the proportion of the payment received which shall revert to the national reserve.;

3. Article 51 is amended as follows:

- (a) in paragraph 1, the following subparagraph is added:

'Member States having made use of the option provided for in Section 2 of Chapter 5 of Title III of Regulation (EC) No 1782/2003 to apply the single payment scheme at regional level may apply the first and second subparagraph at the same regional level.;

- (b) the following paragraph is added:

'3. Any Member State applying the possibility provided for in the fifth subparagraph of paragraph 1 shall submit the following information to the Commission, by 1 December 2009:

- (a) the breakdown per region of the amounts foreseen for the measure or measures concerned for the years 2010 to 2012 according to objective criteria;
- (b) the statistical and other supporting data used to establish the amounts referred to in point (a).

Member States shall reply to any request from the Commission for further clarifications on the information submitted within one month.

The Commission shall use the amounts referred to in point (a) of the first subparagraph of this paragraph as a basis for fixing the ceiling of the Member States concerned for each of the direct payments referred to in Articles 52 and 53 as provided for in paragraph 2 of this Article.;

4. the following subparagraphs are added to Article 64(2):

'By way of derogation from the third subparagraph, where a farmer of the sector concerned does not hold any payment entitlement but declares a number of leased payment entitlements in the first year of integration of the coupled support, he shall be allocated a number of payment entitlements corresponding to the difference between the number of eligible hectares he declares and the number of leased payment entitlements he declares. The value of the entitlements allocated shall be established by dividing the amount resulting from the application of paragraph 1 by the number of entitlements to be allocated. However, the value of each entitlement allocated shall not exceed EUR 5 000.

In order to ensure the full allocation of the amount resulting from the application of paragraph 1 after application of the fourth subparagraph of this paragraph, the farmer of the sector concerned shall be allocated payment entitlements

of a maximum value per entitlement of EUR 5 000. By way of derogation from Article 35, these payment entitlements shall give right to an annual support under the single payment scheme without declaration of the corresponding hectares. However, the number of payment entitlements activated by use of this derogation shall in a given year not exceed the number of payment entitlements activated by the farmer in accordance with Article 35. This derogation shall cease to apply from the first year where, and to the extent to which, the farmer of the sector concerned declares sufficient eligible hectares for activation of the payment entitlements or part thereof in accordance with Article 35. Those payment entitlements shall be activated on the available eligible hectares before any payment entitlements are transferred to the farmer, after the allocation of payment entitlement in accordance with the first sentence of this subparagraph.

In the case of transfer of the payment entitlements resulting from the fifth subparagraph of this paragraph, other than by actual or anticipated inheritance or as a consequence to change in legal status, Article 35 shall apply where the transferee activates those payment entitlements.;

5. in Article 67, the current text becomes paragraph 1 and the following paragraph is added:

'2. Member States having made use only in some parts of their territory of the option provided for in Section 1 of Chapter 5 of Title III of Regulation (EC) No 1782/2003 to apply the single payment scheme at regional level may apply this Article at the same regional level.

Any Member State applying the possibility provided for in the first subparagraph shall submit the following information to the Commission, by 1 December 2009:

- (a) the breakdown per region of the amounts foreseen for the measure or measures concerned for the years 2010 to 2012 according to objective criteria;
- (b) the statistical and other supporting data used to establish the amounts referred to in point (a).

Member States shall reply to any request from the Commission for further clarifications on the information submitted within one month.

The Commission shall use the amounts referred to in point (a) of the second subparagraph of this paragraph as a basis for adjusting the national ceilings referred to in Article 40 for the Member States concerned as provided for in this Article.;

6. Article 69 is amended as follows:

(a) the following subparagraph is added to paragraph 1:

'The deadline of 1 August 2009 referred to in the previous subparagraph shall be replaced by 1 January 2010 in the case of Member States which decide to grant, from 2010, the support provided for in Article 68(1)(b) of this Regulation in favour of farmers in the dairy sector provided that, by way of derogation from Article 69(6) of this Regulation, the support is financed only by using the amounts of the national reserve.';

(b) in paragraph 5, the first subparagraph is replaced by the following:

'By way of derogation from paragraph 4, during calendar years 2010 to 2013, where a Member State granted support with regard to suckler cows in accordance with Article 69 of Regulation (EC) No 1782/2003 while not having applied the option provided for in Article 68(2)(a)(i) of that Regulation, and in that connection used more than 50 % of the amounts established in accordance with Article 69 of that Regulation for the beef and veal sector, the limit set out in paragraph 4 of this Article shall be set at 6 % of that Member State's national ceiling referred to in Article 40 of this Regulation. Furthermore, where more than 60 % of a Member State's milk production takes place north of the 62nd parallel, that limit shall be set at 10 % of that Member State's national ceiling referred to in Article 40 of this Regulation.';

7. the following subparagraph is added to Article 131(1):

'The deadline of 1 August 2009 referred to in the first subparagraph shall be replaced by 1 January 2010 in the case of the new Member States applying the single area payment scheme which decide to grant, from 2010, the support provided for in Article 68(1)(b) in favour of farmers in the dairy sector, provided that the support is financed in accordance with paragraph 3(a) of this Article.';

8. in Chapter 2 of Title VII, the following Article is inserted:

'Article 146a

Sheep and goat payments in 2009

In 2009, Member States having granted payments in the sheepmeat and goatmeat sector in accordance with Section 2 of Chapter 5 of Title III of Regulation (EC) No 1782/2003 may retain up to 50 % of the component of national ceilings referred to in Article 41 of this Regulation corresponding to the sheep and goat payments listed in Annex VI of Regulation (EC) No 1782/2003.

In this case and within the limit of the ceiling fixed in accordance with Article 64(2) of Regulation (EC) No 1782/2003, the Member States concerned shall make, in 2009, an additional payment to farmers.

The additional payment shall be granted to farmers rearing sheep and goats under the conditions provided for in Chapter 11 of Title IV of Regulation (EC) No 1782/2003.';

9. the second subparagraph of Article 146(1) is replaced by the following:

'However, Article 20(2), Article 64(2), Articles 66, 68, 68a, 68b and 69, Article 70(1)(b) and (2) and Chapters 1 (durum wheat), 5 (energy crops), 7 (dairy premium), 10 (arable crops area payment), 10b (aid for olive groves), 10c (tobacco production aid) and 10d (hops area payment) of Title IV of that Regulation shall continue to apply for 2009.'.

Article 2

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Union*.

However, points 8 and 9 of Article 1 shall apply from 1 January 2009.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 30 November 2009.

For the Council
The President
S. O. LITTORIN