COMMISSION REGULATION (EC) No 639/2009

of 22 July 2009

laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards specific support

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to 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 [1], and in particular Article 68(7), Article 69(6), first subparagraph, point (a), Article 69(7), fourth subparagraph, Article 71(6), second subparagraph, Article 71(10) and Article 142(c) and (q) thereof,

Whereas:

(1) Chapter 5 of Title III of Regulation (EC) No 73/2009 provides for specific support to be granted to farmer. Detailed rules for the implementation of that Chapter should be laid down.

(2) In accordance with Article 68(6) of Regulation (EC) No 73/2009, consistency between specific support granted under that Article and other Community support measures or measures financed by state aids is required. For orderly management of the schemes, similar measures should not be financed twice under both specific support and other Community support schemes. Due to the diversity of choices offered for implementing the specific support, the responsibility of ensuring the consistency should otherwise be left to the Member States according to the decision they take to implement specific support measures, within the framework laid down by Regulation (EC) No 73/2009 and in conformity with the conditions laid down in this Regulation.

(3) Articles 71(10) and 140 of Regulation (EC) No 73/2009 provide for the Member States to inform the Commission in detail of the measures taken to implement in particular Articles 68 to 72 of that Regulation. Therefore, provision should be made to specify the timing and content of such communications so that the Commission may monitor their implementation.

(4) Since farmers should always respect legal requirements, specific support should not compensate for complying with them.

(5) Pursuant to Article 68(1)(a)(i) of Regulation (EC) No 73/2009, specific support may be granted for specific types of farming which are important for the protection or enhancement of the environment. In order to maintain discretion for Member States whilst ensuring that measures are well-managed, the responsibility of defining the specific types of farming should be assigned to the Member States, whilst the measures should nevertheless provide for non-negligible and measurable environmental benefits.

(6) Pursuant to Article 68(1)(a)(ii) of Regulation (EC) No 73/2009, specific support may be granted for improving the quality of agricultural products. In order to assist Member States, an indicative list of conditions to be met should be laid down.

(7) Pursuant to Article 68(1)(a)(iii) of Regulation (EC) No 73/2009, specific support may be granted for improving the marketing of agricultural products subject to Article 68(2)(c) of that Regulation which requires the support to satisfy the criteria laid down in Articles 2 to 5 of Council Regulation (EC) No 3/2008 of 17 December 2007 on information provision and promotion measures for agricultural products on the internal market and in third countries [2]. Provision should be made to specify the content of the eligible measures as well as the applicable provisions of Commission Regulation (EC) No 501/2008 of 5 June 2008 laying down detailed rules for the application of Council Regulation (EC) No 3/2008 on information provision and promotion measures for agricultural products on the internal market and in third countries [3].

(8) Pursuant to Article 68(1)(a)(iv) of Regulation (EC) No 73/2009, specific support may be granted for practising enhanced animal welfare standards. In order to achieve enhanced animal welfare standards, provision should be made to assign Member States the responsibility for establishing a system allowing for an assessment of the plans of the applicant aiming at addressing various animal welfare aspects.

[1] OJ L 30, 31.1.2009, p. 16.

[2] OJ L 3, 5.1.2008, p. 1.

[3] OJ L 147, 6.6.2008, p. 3.

(9) Pursuant to Article 68(1)(a)(v) of Regulation (EC) No 73/2009, specific support may be granted for specific agricultural activities entailing additional agri-environment benefits. Pursuant to Article 68(2)(a), the support may be granted in particular if it has been approved by the Commission. Therefore, provision should be made to specify the detailed framework to be complied with by Member States in establishing the eligibility criteria for the support. Provision should also be made for establishing the procedure of notification, assessment and approval of the measure by the Commission.

(10) Pursuant to Article 68(1)(b) of Regulation (EC) No 73/2009, specific support may be granted to address specific disadvantages affecting farmers in specific sectors in economically vulnerable or environmentally sensitive areas or for economically vulnerable types of farming in those sectors. In order to maintain scope for Member States whilst ensuring that measures are well-managed, provision should be made to assign Member States the responsibility of defining the areas and/or types of farming eligible for support and fixing the appropriate level. In order to avoid market distortions, the payments should not however be based on fluctuations of market prices or be equivalent to a deficiency payments system whereby agricultural domestic support is paid by Member States to farmers based on the difference between a target price and a domestic market price.

(11) Pursuant to Article 68(1)(c) of Regulation (EC) No 73/2009, specific support may be granted in areas subject to restructuring and/or development programs in order to ensure against land abandonment and/or to address specific disadvantages for farmers in those areas. Provision should be made in particular as regards the establishment of reference amounts per eligible farmer, the allocation of payment entitlements and the calculation of the increase of their value as well as regarding the control of the programmes by the Member States which should follow those laid down for the allocation of amounts from the national reserve in the interests of coherence.

(12) Pursuant to Article 68(1)(d) of Regulation (EC) No 73/2009, specific support may be granted in the form of contributions to crop, animal and plant insurance premiums. A minimum framework should be established within which the Member States shall lay down rules in accordance with their national laws defining the way financial contribution to the premiums for crop, animal and plant insurance is allocated in order to ensure that contributions are maintained at an appropriate level whilst the interests of the farming community are safeguarded.

(13) Article 68(1)(e) of Regulation (EC) No 73/2009 provides a significant level of detail on the provision of specific support aimed at compensating farmers for certain economic losses in the event of animal or plant diseases and environmental incidents by way of financial contributions to mutual funds. A minimum framework should be established within which the Member States shall lay down rules in accordance with their national laws defining the way financial contribution to mutual funds is organised in order to ensure that contributions are maintained at an appropriate level whilst the interests of the farming community are safeguarded.

(14) Amounts referred to in Article 69(6)(a) of Regulation (EC) No 73/2009 are to be calculated by the Commission in accordance with paragraph 7 of that Article. Therefore, provision should be made to fix for each Member State the amounts concerned as well as the conditions applicable for the revision of those amounts by the Commission.

(15) As certain provisions on specific support provided for in Article 69(1) of Regulation (EC) No 73/2009 become applicable on 1 August 2009, the corresponding detailed rules should be applicable as soon as possible after their adoption.

(16) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Direct Payments,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL RULES

Article 1

Definitions

For the purposes of this Regulation:

(a) 'specific support measures' means measures implementing the specific support provided for in Article 68(1) of Regulation (EC) No 73/2009,

(b) 'other Community support instruments' means:

(i) measures provided for in Council Regulations (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) [1], (EC) No 509/2006 of 20 March 2006 on agricultural products and foodstuffs as traditional specialities guaranteed [2], (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [3], (EC) No

[1] OJ L 277, 21.10.2005, p. 1.
[2] OJ L 93, 31.3.2006, p. 1.
[3] OJ L 93, 31.3.2006, p. 12.

834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 [1], (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) [2] and (EC) No 3/2008; and

(ii) measures financed by the European Agricultural Guarantee Fund under Article 3 of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy [3] including veterinary and plant health measures.

Article 2

Eligibility for specific support measures

1. Member States shall lay down eligibility criteria for specific support measures in compliance with the framework set out in Regulation (EC) No 73/2009 and the conditions laid down in this Regulation.

2. Member States shall implement this Regulation, and in particular paragraph 1, in accordance with objective criteria and in such a way to ensure equal treatment among farmers and to avoid market and competition distortions.

Article 3

Consistency and cumulation of support

1. Member States shall ensure consistency between:

(a) specific support measures and measures implemented under other Community support instruments;

(b) different specific support measures;

(c) specific support measures and measures funded by state aids.

Member States shall in particular ensure that specific support measures do not interfere with the proper functioning of measures implemented under other Community support instruments or measures funded by state aids.

2. Where support under a specific support measure may also be granted under a measure implemented under other Community support instruments, or under another specific support measure, Member States shall ensure that a farmer may receive support for a given operation under only one such measure.

Article 4

Conditions for support measures

1. Specific support measures shall not compensate for the respect of mandatory obligations and, in particular, of the statutory management requirements and standards for good agricultural and environmental condition set out respectively in Annexes II and III to Regulation (EC) No 73/2009 or the other requirements referred to in the first subparagraph of Article 39(3) of Regulation (EC) No 1698/2005.

2. Specific support measures shall not finance taxes.

3. Member States shall ensure that the specific support measures they implement are verifiable and controllable.

Article 5

Transmission of information to the Commission

1. Member States shall inform the Commission of the specific support measures they intend to apply by 1 August of the year preceding the first year of application of that measure.

The content of the information shall be provided in accordance with Part A of Annex I, except for specific support measures for specific agricultural activities entailing additional agri-environmental benefits, which shall be provided in accordance with Part B of Annex I.

2. Member States shall inform the Commission of any decision taken in accordance with Article 136 of Regulation (EC) No 73/2009 by 1 August 2009.

3. Member States shall inform the Commission each year of payments granted to farmers per measure and sector by 15 September of the year following the year in respect of which payments are granted.

4. The annual report to be sent to the Commission by Member States on the implementation of Article 71 of Regulation (EC) No 73/2009 shall be sent by 15 September of each year and shall contain the information listed in Annex II to this Regulation.

5. Member States shall send to the Commission by 1 October 2012 a report on the specific support measures implemented in 2009, 2010 and 2011, their impact on their objectives and any problems encountered.

[1] OJ L 189, 20.7.2007, p. 1.
[2] OJ L 299, 16.11.2007, p. 1.
[3] OJ L 209, 11.8.2005, p. 1.

CHAPTER II

SPECIFIC RULES

Article 6

Specific types of farming which are important for the protection or enhancement of the environment

Member States shall define the specific types of farming which are important for the protection or enhancement of the environment for which an annual additional payment is provided for in Article 68(1)(a)(i) of Regulation (EC) No 73/2009. Those specific types of farming shall provide non-negligible and measurable environmental benefits.

Article 7

Improving the quality of agricultural products

The annual additional payment for improving the quality of agricultural products provided for in Article 68(1)(a)(ii) of Regulation (EC) No 73/2009 may in particular enable farmers to:

(a) meet the conditions necessary in order to join Community food quality schemes as set out in the acts listed in Article 68(2)(b) of Regulation (EC) No 73/2009 and in Commission Regulations (EC) No 1898/2006 of 14 December 2006 laying down detailed rules of implementation of Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [1], (EC) No 1216/2007 of 18 October 2007 laying down detailed rules for the implementation of Council Regulation (EC) No 509/2006 on agricultural products and foodstuffs as traditional specialities guaranteed [2], (EC) No 889/2008 of 5 September 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control [3] and (EC) No 114/2009 of 6 February 2009 laying down transitional measures for the application of Council Regulation (EC) No 479/2008 as regards the references to wines with a protected designation of origin and a protected geographical indication [4] or,

(b) join private or national food quality certification schemes.

If the specific support measures are granted for the purpose of application of point (b) of the first paragraph, the requirements of Article 22(2) of Commission Regulation (EC) No 1974/2006 of 15 December 2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) [5] shall apply *mutatis mutandis*.

[1] OJ L 369, 23.12.2006, p. 1.
[2] OJ L 275, 19.10.2007, p. 3.
[3] OJ L 250, 18.9.2008, p. 1.
[4] OJ L 38, 7.2.2009, p. 26.
[5] OJ L 368, 23.12.2006, p. 15.

Article 8

Improving the marketing of agricultural products

1. The annual additional payment for farmer for improving the marketing of agricultural products provided for in Article 68(1)(a)(iii) of Regulation (EC) No 73/2009 shall encourage farmers to improve the marketing of their agricultural products by ensuring the provision of better information about and/or promotion of the quality or characteristics of the products or their production methods.

2. Articles 4, 5 and 6 and Annexes I and II of Regulation (EC) No 501/2008 shall apply mutatis mutandis.

Article 9

Practising enhanced animal welfare standards

1. When establishing eligibility conditions for the specific support for farmers practising enhanced animal welfare practices provided for in Article 68(1)(a)(iv) of Regulation (EC) No 73/2009, Member States shall, where appropriate, take account of:

(a) the type of farming,

(b) the size of the farm in terms of density or number of animals and manpower, and

(c) the farm management system applicable.

2. Enhanced animal welfare practices shall be those which go beyond the minimum requirements laid down in the applicable Community and national legislation, in particular, the acts referred to in point C of Annex II to Regulation (EC) No 73/2009. Those practices may include the upgraded standards referred to in Article 27(7) of Regulation (EC) No 1974/2006.

Article 10

Specific agricultural activities entailing additional agri-environment benefits

1. When establishing eligibility conditions for the specific support for farmers exercising specific agricultural activities entailing additional agri-environment benefits provided for in Article 68(1)(a)(v) of Regulation (EC) No 73/2009, Member States shall in particular take account of:

(a) environmental objectives in the region where the measure is to be applied, and

(b) any support granted already under other Community support instruments or other specific support measures or measures funded by state aids.

2. Article 27(2) to (6), (8), (9) and (13), Article 48 and Article 53 of Regulation (EC) No 1974/2006 shall apply *mutatis mutandis* to specific support for farmers exercising specific agricultural activities entailing additional agri-environment benefits.

3. The Commission shall assess the proposed specific support measures for farmers exercising specific agricultural activities entailing additional agri-environment benefits notified to it by the Member States for compliance with Regulation (EC) No 73/2009 and this Regulation.

Where the Commission considers that the proposed measures so comply, it shall approve the measures pursuant to Article 68(2)(a)(ii) of Regulation (EC) No 73/2009 within four months of receipt of the information provided in accordance with Article 5(1) of this Regulation.

Where the Commission considers that the proposed measures do not so comply, it shall request the Member State to revise the proposed measures accordingly and notify them to the Commission. It shall approve the measures if it considers that they have been appropriately revised.

Article 11

Specific disadvantages affecting farmers in the dairy, beef and veal, sheepmeat and goatmeat and rice sectors

1. When establishing eligibility conditions for specific support to address specific disadvantages affecting farmers in the dairy, beef and veal, sheepmeat and goatmeat and rice sectors in economically vulnerable or environmentally sensitive areas, or, in the same sectors, for economically vulnerable types of farming under Article 68(1)(b) of Regulation (EC) No 73/2009, Member States shall define the economically vulnerable and/or environmentally sensitive areas and/or the economically vulnerable types of farming eligible for the support, taking into account in particular, the relevant production structures and conditions.

2. The specific support shall not be based on fluctuations of market prices or be equivalent to a deficiency payments system.

Article 12

Areas subject to restructuring and/or development programmes

1. The eligibility conditions for the specific support measures in areas subject to restructuring and/or development programmes in order to ensure against land being abandoned and/or to address specific disadvantages for farmers in those areas provided for in Article 68(1)(c) of Regulation (EC) No 73/2009 shall in particular:

(a) set out how individual reference amounts for eligible farmers are to be fixed, and

(b) set out the restructuring and/or development programmes and/or the conditions for their approval.

2. Where a farmer who does not own any payment entitlement applies for the support referred to in paragraph 1, he may receive a number of payment entitlements not higher than the number of hectares he holds (owned or leased) at that time.

Where a farmer who owns payment entitlement applies for the support referred to in paragraph 1, he may receive a number of payment entitlements not higher than the number of hectares he holds for which he does not own any payment entitlement.

The unit value of each payment entitlement the farmer already owns may be increased.

The value of each payment entitlement received in accordance with this paragraph, except the third subparagraph, shall be calculated by dividing the individual reference amount established by the Member State by the number of entitlements referred to in the previous subparagraph.

3. The increase of the per hectare amount under the single area payment scheme referred to in Article 131(2) of Regulation (EC) No 73/2009 shall be established by dividing the reference amount of the farmer by the number of eligible hectares he declares for payment under the single area payment scheme.

4. Member States shall ensure that the specific disadvantages for farmers in areas affected by restructuring and/or development programmes, for which the specific support is granted, are not compensated under any other provision of such programmes for the same purpose.

Article 13

Crop, animal and plant insurance

1. Member States shall lay down conditions for contracts to be eligible for the specific support by way of contributions to crop, animal and plant insurance premiums as referred to in Article 68(1)(d) of Regulation (EC) No 73/2009.

2. Contracts shall set out:

(a) the particular risks insured against,

(b) the particular economic losses covered and

(c) the premium paid, excluding taxes.

3. Contracts shall not cover more than one year's production. Where a contract's term covers parts of two calendar years, Member States shall ensure that compensation is not granted twice in respect of the same contract.

4. Member States shall adopt rules to be used for establishing the calculation of the destruction of the average annual production of a farmer in accordance with Article 70(2) of Regulation (EC) No 73/2009.

5. The farmer shall inform the Member State every year of the number of his insurance policy and provide a copy of the contract and proof of payment of the premium.

Article 14

Mutual funds for animal and plant diseases and environmental incidents

1. The rules defined by Member States in accordance with Article 71(9) of Regulation (EC) No 73/2009 for mutual funds eligible for financial contributions for animal and plant diseases and environmental incidents as referred to in Article 68(1)(e) of that Regulation shall in particular include:

(a) the conditions for financing the mutual fund,

(b) the outbreaks of animal or plant disease or environmental incidents which may give rise to compensation to be paid to farmers, including geographical scope where appropriate,

(c) the criteria for assessing whether a given event shall give rise to the payment of compensation to farmers,

(d) the methods for calculating of the additional costs which constitute economic losses under Article 71(2)(b) of Regulation (EC) No 73/2009,

(e) the calculation of the administrative costs referred to in Article 71(6) of Regulation (EC) No 73/2009,

(f) any limits to the costs that are eligible for a financial contribution applied under the second subparagraph of Article 71(7) of Regulation (EC) No 73/2009,

(g) a procedure for the accreditation of a given mutual fund under national law,

(h) procedural rules, and

(i) the compliance and clearance audits that the mutual fund shall be subjected to following its accreditation.

2. Where the source of the financial compensation to be paid by the mutual fund is a commercial loan, its minimum and maximum duration shall be between 1 and 5 years respectively.

3. Member States shall ensure that their farming communities are made aware of:

(a) all mutual funds accredited,

(b) the conditions for affiliation to a particular mutual fund, and

(c) the financing arrangements of the mutual funds.

Article 15

Financial provisions for specific support measures

1. The amounts referred to in Article 69(6)(a) of Regulation (EC) No 73/2009 are set out in Annex III to this Regulation.

2. For the purposes of the fourth subparagraph of Article 69(7) of Regulation (EC) No 73/2009, Member States may request by 1 August in any given calendar year from 2010 a revision of the amounts referred to in paragraph 1 of this Article where the amount resulting from application of the calculation set out in the first subparagraph of Article 69(7) of Regulation (EC) No 73/2009 for the financial year in question differs by more than 20 % from the amount fixed in Annex III.

Any revised amount provided for by the Commission shall be applicable from the calendar year following that of the request.

CHAPTER III

FINAL PROVISIONS

Article 16

Entry into force

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

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

Done at Brussels, 22 July 2009.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

ANNEX I

Content of the information to be submitted to the Commission pursuant to Article 5(1)

PART A

For all specific support measures, except measures for specific agricultural activities entailing additional agri-environmental benefits, the information shall include:

— the title of each measure with the reference to the relevant provision of Article 68(1) of Regulation (EC) No 73/2009;

— a description of each measure, including at least:

(a) the sectors concerned;

(b) its duration;

(c) its objectives;

(d) the applicable eligibility conditions;

(e) an indicative level of support for it;

(f) the total amount fixed for it;

(g) the information necessary for establishing the related budget ceilings; and

(h) the source of the funds for it;

— any existing measures applied under other Community support schemes or under measures financed by state aids in the same area or sector as the specific support measure and, where appropriate, the demarcation between them;

— where appropriate, a description of:

(a) the specific types of farming which are important for the protection or enhancement of the environment referred to in Article 68(1)(a)(i) of Regulation (EC) No 73/2009;

(b) the enhanced animal welfare standards referred to in Article 68(1)(a)(iv) of Regulation (EC) No 73/2009;

(c) the economically vulnerable areas and/or the environmentally sensitive areas and/or the economically vulnerable types of farming referred to in Article 68(1)(b) of Regulation (EC) No 73/2009 as well as the current levels of production referred to in Article 68(3) of that Regulation;

(d) the restructuring and/or development programmes referred to in Article 68(1) (c) of Regulation (EC) No 73/2009.

PART B

For specific support measures for specific agricultural activities entailing additional agri-environmental benefits, the information shall include:

— the title of the measure,

— the geographical area covered by the measure,

— a description of the measure proposed and the expected environmental impact in relation to environmental needs and priorities as well as specific verifiable objectives,

— the rationale for intervention, the scope and actions, indicators, quantified targets and, where appropriate, beneficiaries,

— criteria and administrative rules for ensuring that operations are not also supported by other Community support schemes,

— evidence, as referred to in Article 48(2) of Regulation (EC) No 1974/2006, allowing the Commission to check consistency and plausibility of the calculations,

— a detailed description of the national implementation of the minimum requirements for fertilizer and plant protection products use and other relevant mandatory requirements referred to in point 5.3.2.1 of Part A of Annex II to Regulation (EC) No 1974/2006,

— a description of the methodology and of the agronomic assumptions and parameters (including the description of the baseline requirements as set out in Article 39(3) of Regulation (EC) No 1698/2005 which are relevant for each particular type of commitment) used as reference point for the calculations justifying: (a) additional costs and (b) income foregone resulting from the commitment made; where relevant, this methodology shall take into account aid granted under Regulation (EC) No 73/2009; where appropriate, the conversion method used for other units in accordance with Article 27(9) of Regulation (EC) No 1974/2006,

— amounts of support,

— where appropriate, the information referred to in the fifth and sixth indents of point 5.3.2.1.4 of Part A of Annex II to Regulation (EC) No 1974/2006.

ANNEX II

Content of the information to be included in the annual report on mutual funds as referred to in Article 5(4)

— a list of accredited mutual funds and the number of affiliated farmers per fund,

— where appropriate, the administrative costs incurred for setting up new mutual funds,

— the source of funding according to Article 69(6)(a) or (c) of Regulation (EC) No 73/2009 and where applicable, the amount of the linear reduction applied as well as the payments concerned,

— the types of economic losses compensated by each accredited fund and by cause as referred to in Article 71(1) of that Regulation,

— the number of farmers compensated by each accredited fund per type of economic loss and by cause as referred to in Article 71(1) of that Regulation,

— the expenditure of each accredited fund per type of economic loss,

— the percentage and the amount paid by each fund for the financial contribution referred to in Article 71(7) of that Regulation, and

— any experience gained in the implementation of the specific support measure on mutual funds.

ANNEX III

Amounts referred to in Article 15(1) as calculated under Article 69(6)(a) of Regulation (EC) No 73/2009

(EUR Millions)

Belgium	8,6
Denmark	15,8
Germany	42,6
Ireland	23,9
Greece	74,3
Spain	144,4
France	97,4
Italy	144,9
Luxembourg	0,8
Malta	0,1
Netherlands	31,7
Austria	11,9
Portugal	21,7
Finland	4,8
Slovenia	2,4
Sweden	13,9
United Kingdom	42,8