II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) No 146/2010

of 23 February 2010

amending Regulation (EC) No 1122/2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for in that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector under the support scheme provided for the wine sector

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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) [1], and in particular Articles 85x and 103za, in conjunction with Article 4 thereof,

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 [2] and in particular Article 142(c), (k) and (n) thereof,

Whereas:

(1) Following the presentation of simplification proposals to the Council in April 2009, a number of possible improvements in terms of efficiency and simplification of the rules governing the implementation of cross-compliance have been identified. It is appropriate to incorporate those improvements in Commission Regulation (EC) No 1122/2009 [3].

(2) The identification system for agricultural parcels is a key element in the process of assuring correct payments to the farmer and safeguarding the funds of the Union. In order to enhance the quality of that system, provisions should be introduced requiring a yearly assessment of the system. The quality of the system should be assessed by the Member States in accordance with a harmonised method and reporting by Member States should be made timely enough to allow effective use of the results of the assessment.

(3) Article 64(2) of Regulation (EC) No 73/2009 provides for a derogation where a farmer concerned by the integration of coupled support does not hold any payment entitlements but declares a number of leased payment entitlements in the first year of integration of that support. Such a farmer should be allocated entitlements for which a derogation as regards activation applies. In order to ensure an efficient control, the traceability of those entitlements should be assured.

(4) In performing the cross-compliance checks provided for in Regulation (EC) No 1122/2009, a Member State can only use the results of on-the-spot checks carried out by the competent control authorities. For efficiency reasons, a Member State should have the possibility to also use the results of on-the-spot checks carried out pursuant to the legislation applicable to the acts and standards in question in order to reach the minimum control rate. However, it should be ensured that an effective control system is maintained.

(5) For the sampling of on-the-spot checks for cross-compliance, a Member State may take into account in the risk analysis the farmers' participation in relevant certification systems. The use of that option should be clarified.

(6) Control reports have to be sent to the paying agency or coordinating authority within an established deadline. In order to reduce the administrative burden, where the control report does not contain any findings, it should be considered sufficient if the control reports are made directly accessible to the paying agency or coordinating authority.

[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 30, 31.1.2009, p. 16.
[3] OJ L 316, 2.12.2009, p. 65.

(7) At the occasion of this amendment of Regulation (EC) No 1122/2009 it is appropriate to correct two erroneous references to Regulation (EC) No 73/2009 and Commission Regulation (EC) No 1121/2009 [1] respectively.

(8) Regulation (EC) No 1122/2009 should therefore be amended accordingly.

(9) The amendments provided for in this Regulation concern aid applications relating to marketing years or premium periods starting as of 1 January 2010. This Regulation should therefore apply accordingly.

(10) The Management Committee for the Common Organisation of Agricultural Markets and the Management Committee for Direct Payments have not delivered an opinion within the time limit set by their chairman,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1122/2009 is amended as follows:

1. Article 6(2) is replaced by the following:

'2. Member States shall annually assess the quality of the identification system for agricultural parcels. That assessment shall cover the following quality elements:

(a) the correct quantification of the maximum eligible area;

(b) the proportion and distribution of reference parcels where the maximum eligible area takes ineligible areas into account or where it does not take agricultural area into account;

(c) the categorisation of reference parcels where the maximum eligible area takes ineligible areas into account or where it does not take agricultural area into account;

(d) the occurrence of reference parcels with critical defects;

(e) the ratio of declared area in relation to the maximum eligible area inside the reference parcels;

(f) the percentage of reference parcels which have been subject to change, accumulated over the years;

(g) the rate of irregularities determined during on-the-spot checks.

When performing the assessment referred to in the first subparagraph, Member States shall:

(a) use data allowing to assess the current situation on the ground;

(b) select an adequate random sample of all reference parcels.

An assessment report and, where appropriate, the remedial actions and the timetable for their implementation shall be sent to the Commission by 31 January following the calendar year in question at the latest. However, in respect of the calendar year 2010, this information shall be sent to the Commission by 28 February 2011 at the latest.'

2. In Article 7(1), point (f) is replaced by the following:

'(f) kind of entitlement, in particular special entitlements provided for in Article 44 of Regulation (EC) No 73/2009, entitlements allocated in accordance with Article 68(1)(c) of Regulation (EC) No 73/2009 and payment entitlements subject to a derogation as provided for in Article 64(2) of Regulation (EC) No 73/2009;'

3. In Article 28(1)(a), the words 'Annexes I and IV' are replaced by 'Annexes I and VI'.

4. In Article 50, the following paragraph 1a is inserted:

'1a. By way of derogation from paragraph 1, in order to reach the minimum control rate referred to in that paragraph at the level of each act or standard or group of acts or standards, the Member State may:

(a) use the results of on-the-spot checks carried out pursuant to the legislation applicable to those acts and standards for the selected farmers; or

(b) replace selected farmers by farmers subject to an on-the-spot check carried out pursuant to the legislation applicable to those acts and standards provided that those farmers are submitting aid applications under support schemes for direct payments within the meaning of Article 2(d) of Regulation (EC) No 73/2009 or under support schemes which are subject to the application of Articles 85t and 103z of Regulation (EC) No 1234/2007.

In such cases the on-the-spot checks shall cover all aspects of the relevant acts or standards as defined under cross-compliance. Furthermore the Member State shall ensure that the effectiveness of those on-the-spot checks is at least equal to that achieved when the on-the-spot checks are carried out by competent control authorities.'

[1] OJ L 316, 2.12.2009, p. 27.

5. In Article 51(1), the following subparagraphs are inserted after the second subparagraph:

'A Member State may decide on the basis of a risk analysis to exclude farmers participating in a certification system as referred to in point (b) of the second subparagraph from the risk-based control sample. However, when the certification system only covers part of the requirements and standards to be respected under cross-compliance by the farmer, appropriate risk factors shall be applied for the requirements or standards that are not covered by the certification system.

When the analysis of control results reveals that there is a significant frequency of non-compliance with the requirements or standards included in a certification system as referred to in point (b) of the second subparagraph, the risk factors related to the requirements or standards concerned shall be re-assessed and, where appropriate, increased.'

6. Article 54 is amended as follows:

(a) In paragraph 1, the first subparagraph is replaced by the following:

'Every on-the-spot check under this Chapter, regardless whether the farmer in question was selected for the on-the-spot check in accordance with Article 51, checked on-the-spot pursuant to the legislation applicable to the acts and standards in accordance with Article 50(1a) or as a follow-up of non-compliances brought to the attention of the competent control authority in any other way, shall be the subject of a control report to be established by the competent control authority or under its responsibility.'

(b) In paragraph 3, the following subparagraph is added:

'However, where the report does not contain any findings, a Member State may decide that such report is not sent, provided that it is made directly accessible to the paying agency or coordinating authority one month after its finalisation.'

7. In Article 62, the words 'Article 30(1) and (2)' are replaced by 'Article 29(1) and (2)'.

Article 2

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

It shall apply to aid applications relating to marketing years or premium periods starting from 1 January 2010.

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

Done at Brussels, 23 February 2010.

For the Commission
The President
José Manuel BARROSO