COUNCIL REGULATION (EU) No 1181/2013

of 19 November 2013

fixing an adjustment rate to direct payments provided for in Council Regulation (EC) No 73/2009 in respect of calendar year 2013 and repealing Commission Implementing Regulation (EU) No 964/2013

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) On 25 March 2013, the Commission adopted a proposal for a Regulation of the European Parliament and of the Council on fixing an adjustment rate to direct payments provided for in Council Regulation (EC) No 73/2009 [1] in respect of calendar year 2013. Since the European Parliament and the Council had not determined this adjustment by 30 June, as provided for in Article 11(2) of Regulation (EC) No 73/2009 the Commission, in accordance with Article 18(4) of Council Regulation (EC) No 1290/2005 [2], has set itself that adjustment in Commission Implementing Regulation (EU) No 964/2013 [3].

(2) The forecasts for the direct payments and market related expenditure of Commission Amending Letter No 2 to the 2014 Draft Budget show the need to adapt the amount of financial discipline which was taken into account in the Draft Budget 2014. That Amending Letter has been established taking into account an amount of financial discipline of EUR 902,9 million, including an amount for the reserve for crises in the agricultural sector.

(3) On 16 October 2013, the Commission adopted a proposal for a Council Regulation to fix another adjustment rate for direct payments, in respect of calendar year 2013, based on Article 18(4) and (5) of Regulation (EC) No 1290/2005.

(4) Article 18(4) of Regulation (EC) No 1290/2005 empowers the Commission to set those adjustments and was used by the Commission as a basis for Implementing Regulation (EU) No 964/2013.

(5) Article 18(5) of Regulation (EC) No 1290/2005 provides that until 1 December, on the basis of new information in its possession, the Council is able to adapt the adjustment rate for direct payments. However, taking into account the judgment of the Court of Justice of 6 May 2008 in Case C-133/06 [4], that derived legal basis can no longer be lawfully used.

(6) Article 43(3) TFEU enables the Council to adopt measures on fixing aid. Therefore, in the framework of the financial discipline, the adjustment rate for direct payments to be granted to a farmer for an aid application should be fixed on that legal basis.

(7) As a general rule, farmers submitting an aid application for direct payments for one calendar year (N) are paid within a fixed payment period falling under the financial year (N + 1). However, Member States have the possibility to make late payments, within certain limits, to farmers beyond this payment period without any time limits. Such late payments may fall in a later financial year. When financial discipline is applied for a given calendar year, the adjustment rate should not be applied to payments for which aid applications have been submitted in the calendar years other than that for which the financial discipline applies. Therefore, in order to ensure equal treatment of farmers, it is appropriate to provide that the adjustment rate should only apply to payments for which aid applications have been submitted in the calendar year for which the financial discipline is applied, irrespectively of when the payments to farmers are made.

(8) In the political agreement on the reform of Common Agricultural policy of 26 June 2013, it has been decided that financial discipline will apply to the direct payments in excess of EUR 2 000. Moreover, it has also been agreed that the reimbursement of unused appropriations (if any) at the end of a financial year would be paid to farmers the following year subject to the financial discipline. In order to ensure consistency, it is appropriate to set the same threshold over the years. The financial discipline should be applied in a similar way for calendar year 2013 to be consistent with what has been agreed to apply in the future; therefore, it is appropriate to provide for the application of the adjustment rate only for amounts in excess of EUR 2 000.

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

[2] Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ L 209, 11.8.2005, p. 1).

[3] Commission Implementing Regulation (EU) No 964/2013 of 9 October 2013 on fixing an adjustment rate to direct payments provided for in Regulation (EC) No 73/2009 in respect of calendar year 2013 (OJ L 268, 10.10.2013, p. 5).

[4] Case C-133/06 European Parliament v Council [2008] ECR I-3189.

(9) Article 11(3) of Regulation (EC) No 73/2009 provides that, in the framework of the application of the schedule of increments provided for in Article 121 of that Regulation to all direct payments granted in the new Member States within the meaning of Article 2(g) of that Regulation, the financial discipline should 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 other Member States. Since the direct payments are still subject to the application of the schedule of increments in calendar year 2013 in Bulgaria and Romania, the adjustment rate to be determined by this Regulation should not apply to payments to farmers in these Member States.

(10) Regulation (EC) No 73/2009 has been amended by the Act of Accession of Croatia. Since Croatia is subject to the application of the schedule of increments provided for in Article 121 of Regulation (EC) No 73/2009 in calendar year 2013 the adjustment rate to be determined by this Regulation should not apply to payments to farmers in Croatia.

(11) To ensure that the adapted rate is applicable as of the date provided for by Regulation (EC) No 73/2009 when the payments to the farmer should start, this Regulation should apply from 1 December 2013.

(12) The new adjustment rate should be taken into account for the calculation of the entirety of the payments to be granted to a farmer for an aid application submitted in respect of calendar year 2013. For sake of clarity, Implementing Regulation (EU) No 964/2013 should therefore be repealed,

HAS ADOPTED THIS REGULATION:

Article 1

1. The amounts of direct payments within the meaning of Article 2(d) of Regulation (EC) No 73/2009 to be granted to a farmer in excess of EUR 2 000 for an aid application submitted in respect of calendar year 2013 shall be reduced by 2,453658 %.

2. The reduction provided for in paragraph 1 shall not apply in Bulgaria, Romania and Croatia.

Article 2

Implementing Regulation (EU) No 964/2013 is repealed.

Article 3

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

It shall apply from 1 December 2013.

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

Done at Brussels, 19 November 2013.

For the Council
The President
L. LINKEVIČIUS