

COMMISSION REGULATION (EC) No 451/2009

of 29 May 2009

amending Regulation (EC) No 883/2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the keeping of accounts by the paying agencies, declarations of expenditure and revenue and the conditions for reimbursing expenditure under the EAGF and the EAFRD

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy ⁽¹⁾, and in particular Article 42 thereof,

Whereas:

(1) Deadlines for payments of aid to beneficiaries laid down in Community agricultural legislation must be respected by the Member States. Article 16 of Regulation (EC) No 1290/2005 provides that any overrun of those payment deadlines by the paying agencies shall make the payments ineligible for Community financing, except in cases, conditions and limits determined, according to the principle of proportionality.

(2) Pursuant to Article 9 of Commission Regulation (EC) No 883/2006 ⁽²⁾ where the expenditure effected after the deadlines is equal to 4 % or less of the expenditure effected before the deadlines, no reduction should be made.

(3) The Commission presented a declaration at the meeting of the Special Committee on Agriculture on 6 October 2008 ⁽³⁾ on the increase from 4 % to 5 % of the threshold provided for in Article 9 of Regulation (EC) No 883/2006. It is therefore appropriate to increase the threshold for eligible late payments. The new threshold should apply where the payment deadline expires after 15 October 2009.

(4) Article 8(1) of 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 ⁽⁴⁾ provides that the total net amount of direct payments granted in a Member State in respect of a calendar year, after application of modulation and voluntary modulation and

without prejudice to financial discipline with the exception of direct payment granted under Council Regulations (EC) No 247/2006 ⁽⁵⁾ and (EC) No 1405/2006 ⁽⁶⁾, shall not be higher than the ceilings set out in Annex IV to Regulation (EC) No 73/2009. In order to ensure financial discipline, specific provisions should be laid down to avoid that non-compliance with payment deadlines would lead to total expenditure for direct payments exceeding those ceilings in the corresponding financial exercise.

(5) Furthermore, in line with current practice and in order to ensure transparency, certain provisions should be further clarified.

(6) Regulation (EC) No 883/2006 should therefore be amended accordingly.

(7) The amendments should apply from 16 October 2009 in the case of revenue received and expenditure effected by Member States in respect of 2010 and following financial years.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Committee on the Agricultural Funds,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 883/2006 is amended as follows:

1. Article 9 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Expenditure effected after the payment deadlines shall be eligible for Community financing and monthly payments shall be reduced as follows:

(a) where expenditure effected after the deadlines is equal to 4 % or less of the expenditure effected before the deadlines, no reduction shall be made;

⁽¹⁾ OJ L 209, 11.8.2005, p. 1.

⁽²⁾ OJ L 171, 23.6.2006, p. 1.

⁽³⁾ Interinstitutional file: 2008/0103 (CNS).

⁽⁴⁾ OJ L 30, 31.1.2009, p. 16.

⁽⁵⁾ OJ L 42, 14.2.2006, p. 1.

⁽⁶⁾ OJ L 265, 26.9.2006, p. 1.

(b) above the threshold of 4 %, all further expenditure effected late shall be reduced in accordance with the following rules:

— for expenditure effected in the first month following the month in which the payment deadline expired, expenditure shall be reduced by 10 %,

— for expenditure effected in the second month following the month in which the payment deadline expired, expenditure shall be reduced by 25 %,

— for expenditure effected in the third month following the month in which the payment deadline expired, expenditure shall be reduced by 45 %,

— for expenditure effected in the fourth month following the month in which the payment deadline expired, expenditure shall be reduced by 70 %,

— for expenditure effected later than the fourth month following the month in which the payment deadline expired, expenditure shall be reduced by 100 %;

(c) the threshold of 4 % referred to in paragraphs 1(a) and 1(b) shall be 5 % for payments for which the deadlines expire after 15 October 2009³;

(b) paragraph 2 is replaced by the following:

'2. By way of derogation from paragraph 1, in the case of the direct payments falling under the net ceiling referred to in Article 8(1) of Council Regulation (EC) No 73/2009 (*) the following conditions shall apply:

(a) where the threshold referred to in paragraph 1(a) has not been used in full for payments made no later than 15 October of year N + 1 and the remainder of the threshold exceeds 2 %, that remainder shall be reduced to 2 %;

(b) the total amount of direct payments made within a financial year Y, other than payments in accordance with Council Regulation (EC) No 247/2006 (**) and Council Regulation (EC) No 1405/2006 (***), is only

eligible for Community financing up to the net total amount of direct payments established in respect of the calendar year Y-1 in accordance with Article 8(1) of Regulation (EC) No 73/2009 where applicable corrected by the adjustment provided for in Article 11 of that Regulation;

(c) expenditure exceeding the limits referred to in point (a) or (b) shall be reduced by 100 %.

In the case of Member States for which no net ceiling has been established in accordance with Article 8(1) of Regulation (EC) No 73/2009 the net ceiling referred to in the first subparagraph shall be substituted by the sum of the individual ceilings for direct payments for the Member States concerned.

(*) OJ L 30, 31.1.2009, p. 16.

(**) OJ L 42, 14.2.2006, p. 1.

(***) OJ L 265, 26.9.2006, p. 1.'

(c) in paragraph 3, the second subparagraph is replaced by the following:

'However, the first subparagraph shall not apply for expenditure exceeding the limit referred to in paragraph 2(b).'

2. In Article 19, paragraph 4 is replaced by the following:

'4. Amounts withheld in accordance with Articles 3 and 4 of Regulation (EC) No 1259/1999 or Article 1 of Regulation (EC) No 1655/2004 and any interest that they generate which have not been paid in accordance with Article 1 of Commission Regulation (EC) No 963/2001 (*) or Article 3(1) of Regulation (EC) No 1655/2004 shall be credited to EAGF with the expenditure for October of the financial year concerned. Where applicable, the exchange rate to be used shall be that referred to in Article 7(2) of this Regulation.

(*) OJ L 136, 18.5.2001, p. 4.'

Article 2

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

It shall apply from 16 October 2009 in respect of the 2010 and following financial years.

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

Done at Brussels, 29 May 2009.

For the Commission
Mariann FISCHER BOEL
Member of the Commission
