

L.N. 346 of 2005

**AGRICULTURE AND FISHERIES INDUSTRIES
(FINANCIAL ASSISTANCE) ACT
(CAP. 146)**

**Cross-Compliance Related to EU Aid Applications in terms of
the Paying Agency Regulations, 2005**

IN exercise of the powers conferred by article 7 of the Agriculture and Fisheries (Financial Assistance) Act, the Minister for Rural Affairs and the Environment has made the following regulations:

Title and scope.

1. (1) The title of these regulations is the Cross-Compliance Related to EU Aid Applications in terms of the Paying Agency Regulations, 2005.

(2) The scope of these regulations is to determine the structure for the management of Cross Compliance, and the obligations related thereto, particularly for the statutory management requirements referred to in paragraph 5 of Government Notice No. 141 of the 15th February, 2005, and the Good Agricultural and Environmental Conditions, Good Farming Practices and the Code of Good Agricultural Practices mentioned in paragraph 6 of the said notice which allow:

(a) the establishment of such obligations and requirements to be respected by the farmer;

(b) the definition of the structure to be set up for the management of such Cross-Compliance requirements;

(c) the acquisition, by the Paying Agency, of sufficient quantitative and qualitative information obtained during the execution of the on-the-spot checks in order to apply the necessary reductions and, or exclusions from direct payments to which the farmer is entitled, where applicable.

Definitions.

2. (1) For the purposes of these regulations, the following definitions shall apply:

“the Act” means each of the individual Directives and Regulations listed in Annex III to Regulation (EC) No 1782/2003 and subsequent amendments;

“competent control authority” means the specialised control body responsible for carrying out the controls related to the

requirements and standards in question, as described in Article 42(1) of Reg. (EC) No 796/2004, found within the IACS Department, within the Ministry responsible for agriculture

“Co-ordinating Body” means the IACS Department, which is the authority responsible for co-ordinating the checks provided for in Chapter 4 Reg. (EC) 1782/2003;

“cross-compliance” means the adherence by the farmer to all requisites established under these regulations;

“delegated responsible authority” means the entity that may be delegated to carry out on-the-spot checks in respect of relevant SMRs by the competent control authority;

“GAEC” means Good Agriculture and Environmental Condition on the basis of the framework set up in Annex IV to Reg. (EC) 1782/2003, and their related requirements as published from time to time by the Minister in the Gazette;

“Integrated Administration and Control System”, or “IACS”, means the system described in Annex 2 of Paying Agency Regulations, 2004;

“SMR” means the Statutory Management Requirements listed in Annex III to Reg.(EC) 1782/2003, and their related requirements as published from time to time by the Minister in the Gazette;

“standard” means the standards relating to Annex III to Reg. (EC) No 1782/2003, and subsequent amendments.

(2) Any other definitions found in the Paying Agency Regulations, 2004 and in the Annexes thereto shall also apply in these regulations.

3. (1) The aim of satisfactory compliance with the SMRs, GAECs or the provisions of the Code of Good Agricultural Practice and the Action Program, is to enable farmers to benefit from direct payments, subject to other conditions specified by the competent control authority and, or the Paying Agency responsible for direct payments.

Compliance with obligations.

(2) Compliance with the SMRs does not imply that farmers may disregard or not comply with requirements of any other national or European legislation on the protection of the environment, animal welfare and public, animal and plant health. However, non-compliance

with requirements of any other national or European legislation will not lead to the withdrawal of direct payments.

(3) Farmers who do apply for direct payments are also, nevertheless, required to adhere to these requisites. Non-compliance shall be taken into account in the evaluation of any future applications made by such farmers.

(4) The Minister responsible for agriculture may, from time to time, publish guidelines related to these regulations, as and when required.

Transfer of holdings.
L.N. 126 of 2004.

4. With respect to the transfer of holdings as provided for in regulation 18 of Annex II to the Paying Agency Regulations, 2004, where a beneficiary transfers all or part of a holding to another person, all obligations required for the granting of direct payments shall be transferred to the transferee.

Non-compliance of SMRs and, or GAEC.

5. (1) Where the SMRs or GAECs are not complied with, as a result of an act or omission directly attributable to the individual farmer, this shall be considered as a “non-compliance”.

(2) Cases of non-compliance, in terms of extent, severity, permanence and repetition of the non-compliance, shall lead to a reduction in payment of the aid as laid down in sub-regulation (3), except in cases of *force majeure*, according to the procedures adopted by the competent control authority.

(3) In accordance with the detailed rules laid down under Article 7 of Reg. (EC) No 1782/2003, reductions shall be imposed as follows:

(i) in case of negligence the percentage of reductions shall not exceed five percent, and in the case of repeated non-compliance fifteen percent;

(ii) in the case of intentional non-compliance, the percentage of reductions shall not, in principle, be less than twenty percent, and may go as far as total exclusion from one or several aid schemes, and may apply for one or more calendar years;

(iii) in any case the total amount of reductions and, or exclusions for one calendar year shall not exceed the total amount of aid applied for under all the schemes managed by the Paying Agency during the said calendar year.

6. The reductions or exclusions referred to in regulation 5 of these regulations shall only apply if the non-compliance relates to:

Applicability of reductions or exclusions.

- (a) an agricultural activity, or
- (b) one or more parcels of any holding, including the parcels set aside.

7. Where cases of non-compliance are determined by the competent control authority, the Paying Agency in Malta shall be responsible for applying a reduction and, or exclusion from the overall amount of direct payments entitled to the farmer, as set out in Articles 66 and 67 of Regulation (EC) 796/2004.

Paying Agency responsible for applying reductions.

8. (1) In accordance with article 23 of Reg. (EC) 1782/2003, the IACS department in Malta shall be the Co-ordinating Body for Cross-Compliance.

Co-ordinating Body.

(2) The role of the Co-ordinating Body shall be to set up the policy and structure of the Cross-Compliance regime, as well as to co-ordinate the checks carried out by the competent control authority and to recommend sanctions and penalties to be considered by the Paying Agency in cases of non-compliance.

(3) The director IACS shall, as head of the Co-ordinating Body, appoint a Task Force to advise him on technical issues.

9. (1) There shall be a competent control authority within the IACS Department.

Competent control authority.

(2) The role of the competent control authority shall be to ensure compliance with all SMRs and GAECs, in accordance with the provisions of Article 44 (1) paragraph 1, of Reg. (EC) 796/2004.

(3) The competent control authority may delegate part or all of its tasks to responsible authorities except for carrying out the sample selection for the controls, in accordance with the provisions of Articles 44 and 45 of Reg. (EC) 796/2004, which should in no case be delegated to other authorities.

(4) The competent control authority shall transmit the results of all on-the-spot checks carried out to the Co-ordinating Body.

Delegated
responsible
authorities.

10. (1) Where the competent control authority delegates its duties to the responsible authorities, such responsible authorities shall undertake all obligations delegated to them.

(2) The delegated responsible authority shall transmit the results of all on-the-spot checks which have been carried out to the competent control authority.

(3) The delegated responsible authority shall also oblige itself to forward reports on any controls carried out spontaneously related to Annex III and IV of Reg. (EC) 1782/2004, by such authority to the competent control authority.

The Task Force.

11. (1) With reference to regulation 8 (3) of these regulations, the Task Force shall be composed of a Chairperson and two representatives of the Co-ordinating Body, appointed by the director of the IACS department, and a representative of the competent control authority and a representative from each of its delegated responsible authorities.

(2) The role of the task force is to recommend the criteria for establishing the sample selection of the controls, the reporting system, the penalty calculation mechanism and other technical issues.

On-the-spot checks.

12. On-the-spot checks shall be carried out in accordance with Articles 47 and 48 of Reg. (EC) No 796/2004.

Criteria for
reduction to
payments.

13. The reduction to payments, wherever applicable, shall be based on the criteria foreseen by Article 41 of Regulation (EC) 796/2004.