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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.6.2009
COM(2009) 321 final

2009/0084 (CNS)

Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 73/2009 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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

The aim of the proposal is to clarify two aspects of interpretation found in Articles 11 and 69(5) of Council Regulation (EC) No 73/2009.

- **General context**

Article 11 of Regulation (EC) No 73/2009 establishes the mechanism of financial discipline which provides for an adjustment of the direct payments when the forecasts indicate that the sub-ceiling for direct aids and market measures, under heading 2 of Annex I to the Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management¹, with a safety margin of EUR 300 000 000, is exceeded. The sub-ceiling under heading 2 covers expenditure for direct aids before all transfers to rural development. Therefore, the expenditure to be compared with the ceiling for the adjustment should be done before modulation and the transfers to the rural development. Consequently, a correct comparison of expenditure to the ceiling should also include the possible transfer to the European Agricultural Fund for Rural Development, referred to in Article 136 of Regulation (EC) No 73/2009, and the amounts resulting from Article 190a(2) of Council Regulation (EC) No 1234/2007 concerning financial transfers to rural development in the wine sector.

The first sub-paragraph of Article 69(5) of Regulation (EC) No 73/2009 derogates from Article 69(4) of that Regulation in relation to the use of Articles 68 and 69 of Regulation (EC) No 1782/2003. The purpose of this derogation is to set a transitional period for a gradual adaptation of the support in the beef and veal sector. This derogation should therefore be limited to cases where Article 69 of Regulation (EC) No 1782/2003 has been used mainly for supporting the beef and veal sector.

- **Existing provisions in the area of the proposal**

Regulation (EC) No 73/2009 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.

- **Consistency with the other policies and objectives of the Union**

Not applicable.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

- **Collection and use of expertise**

There was no need for consultation of interested parties or for external expertise.

¹ OJ C 139, 14.6.2006, p. 1.

- **Impact assessment**

Not applicable.

3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

A technical correction has to be introduced to the calculation formula of Article 11 (Financial discipline) in order to take into account the transfers to Rural Development foreseen in Article 23 of Council Regulation (EC) No 479/2008 and Article 136 of Council Regulation (EC) No 73/2009. This adjustment has already been introduced in Article 12 of Council Regulation (EC) No 1290/2005.

In addition, an adjustment of Article 69(5) is proposed in order to comply with point 6.6 of the Final Presidency compromise on Health Check proposals.

- **Legal basis**

Article 37(2) of the Treaty establishing the European Community.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle.

- **Choice of instruments**

Proposed instrument: Council Regulation.

Other means would not be adequate for the following reason: a Regulation must be amended by a Regulation.

4. BUDGETARY IMPLICATIONS

This measure does not involve any additional Community expenditure.

A technical correction has to be introduced to the calculation formula of Article 11 (Financial discipline) in order to take into account the transfers to Rural Development foreseen in Article 23 of Council Regulation (EC) No 479/2008 and Article 136 of Council Regulation (EC) No 73/2009. This adjustment has already been introduced in Article 12 of Council Regulation (EC) No 1290/2005.

In addition, an adjustment of Article 69(5) is proposed in order to comply with point 6.6 of the Final Presidency compromise on Health Check proposals.

5. ADDITIONAL INFORMATION

- **Simplification**

Not applicable.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament²,

Whereas:

- (1) Article 11 of Council Regulation (EC) No 73/2009³ establishes the mechanism of financial discipline which provides for an adjustment of the direct payments when the forecasts indicate that the sub-ceiling for direct aids and market measures, under heading 2 of Annex I to the Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management⁴, with a safety margin of EUR 300 000 000, is exceeded.
- (2) The sub-ceiling under heading 2 covers expenditure for direct aids before all transfers to rural development. Therefore, the expenditure to be compared with the ceiling for the adjustment should be done before modulation and the transfers to the rural development. Therefore, a correct comparison of expenditure to the ceiling should also include the possible transfer to the European Agricultural Fund for Rural Development, referred to in Article 136 of Regulation (EC) No 73/2009, and the amounts resulting from Article 190a(2) of 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)⁵ concerning financial transfers to rural development in the wine sector.
- (3) The first sub-paragraph of Article 69(5) of Regulation (EC) No 73/2009 derogates from Article 69(4) of that Regulation in relation to the use of Articles 68 and 69 of Regulation (EC) No 1782/2003. The purpose of this derogation is to set a transitional period for a gradual adaptation of the support in the beef and veal sector. This derogation should therefore be limited to cases where Article 69 of Regulation (EC) No 1782/2003 has been used mainly for supporting the beef and veal sector.

² OJ C , , p. .

³ OJ L 30, 31.1.2009, p. 16.

⁴ OJ C 139, 14.6.2006, p. 1.

⁵ OJ L 299, 16.11.2007, p. 1.

(4) Regulation (EC) No 73/2009 should therefore be amended accordingly,
HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 73/2009 is amended as follows:

(1) Article 11(1) is replaced by the following:

"1. With a view to ensuring that the amounts for the financing of the market related expenditure and direct payments of the CAP currently under heading 2 of Annex I to the Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management* respect the annual ceilings set out in the Decision 2002/929/EC of the Representatives of the Governments of the Member States, meeting within the Council of 18 November 2002, concerning the Conclusions of the European Council meeting in Brussels on 24 and 25 October 2002**, an adjustment of the direct payments shall be determined when the forecasts for the financing of the aforementioned measures under heading 2 for a given financial year, increased by the amounts given in Article 190a of Regulation (EC) No 1234/2007 and the amounts given in Articles 134 and 135 and the amounts referred to in Article 136 of this Regulation and before application of modulation provided for in Articles 7 and 10 of this Regulation and Article 1(1) of Regulation (EC) No 378/2007, indicate that the applicable abovementioned annual ceiling, taking into account a margin of EUR 300 000 000 below that ceiling, will be exceeded.

* OJ C 139, 14.6.2006, p. 1.

** OJ L 323, 28.11.2002, p. 48."

(2) In Article 69(5), the first subparagraph is replaced by the following:

"By way of derogation from paragraph 4, during calendar years 2010 to 2013, in those Member States which granted support with regard to suckler cows in accordance with Article 69 of Regulation (EC) No 1782/2003 while not having applied the option provided for in Article 68(2)(a)(i) of that Regulation, and in that connection used more than 50% of the amounts established in accordance with Article 69 of that Regulation for the beef and veal sector, the limit set out in paragraph 4 of this Article shall be set at 6% of their national ceiling referred to in Article 40 of this Regulation. Furthermore, in Member States where more than 60% of their milk production takes place north of the 62nd parallel, that limit shall be set at 10% of their national ceiling referred to in Article 40 of this Regulation."

Article 2

This Regulation shall enter into force on the third day following that of 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,

*For the Council
The President*

FINANCIAL STATEMENT		AGRI/I.1-D/95345 (HA) 6.15.2009.1		
		DATE: 29/04/2009		
1.	BUDGET HEADING: 05 03 Direct Aids	APPROPRIATIONS		
2.	TITLE: Proposal for a Council Regulation amending Regulation (EC) No 73/2009 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.			
3.	LEGAL BASIS: Article 37 of the Treaty establishing the European Community			
4.	AIMS: To introduce some technical adjustments to Regulation No 73/2009.			
5.	FINANCIAL IMPLICATIONS	12 MONTH PERIOD (EUR million)	CURRENT FINANCIAL YEAR 2008 (EUR million)	FOLLOWING FINANCIAL YEAR 2009 (EUR million)
5.0	EXPENDITURE - CHARGED TO THE EC BUDGET (REFUNDS/INTERVENTIONS) - NATIONAL AUTHORITIES - OTHER	-	-	-
5.1	REVENUE - OWN RESOURCES OF THE EC (LEVIES/CUSTOMS DUTIES) - NATIONAL	-	-	-
		2010	2011	2012
5.0.1	ESTIMATED EXPENDITURE	-	-	-
5.1.1	ESTIMATED REVENUE	-	-	-
5.2	METHOD OF CALCULATION: -			
6.0	CAN THE PROJECT BE FINANCED FROM APPROPRIATIONS ENTERED IN THE RELEVANT CHAPTER OF THE CURRENT BUDGET?			YES-NO
6.1	CAN THE PROJECT BE FINANCED BY TRANSFER BETWEEN CHAPTERS OF THE CURRENT BUDGET?			YES-NO
6.2	WILL A SUPPLEMENTARY BUDGET BE NECESSARY?			YES-NO
6.3	WILL APPROPRIATIONS NEED TO BE ENTERED IN FUTURE BUDGETS?			YES-NO
OBSERVATIONS:				
This Regulation does not involve any additional Community expenditure.				
A technical correction has to be introduced to the calculation formula of Article 11 (Financial discipline) in order to take into account the transfers to Rural Development foreseen in Article 23 of Regulation 479/2008 and Article 136 of Regulation 73/2009. This adjustment has already been introduced in Art. 12 of Regulation 1290/2005.				
In addition, an adjustment of Art. 69(5) is proposed, in order to comply with point 6.6 of the Final Presidency compromise on Health Check proposals.				