



## EUROPEAN UNION

THE EUROPEAN PARLIAMENT

THE COUNCIL

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### LEGISLATIVE ACTS AND OTHER INSTRUMENTS

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Subject: REGULATION OF THE EUROPEAN PARLIAMENT AND OF  
THE COUNCIL amending Council Regulation (EC) No 73/2009 as  
regards the application of direct payments to farmers in respect of the  
year 2013  
**COMMON GUIDELINES**  
**Consultation deadline for Croatia: 9.7.2012**

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**REGULATION (EU) No .../2012**  
**OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of**

**amending Council Regulation (EC) No 73/2009**  
**as regards the application of direct payments**  
**to farmers in respect of the year 2013**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first paragraph of Article 42 and Article 43(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure<sup>3</sup>,

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<sup>1</sup> OJ C 191, 29.6.2012, p. 116.

<sup>2</sup> Opinion of 4 May 2012 (not yet published in the Official Journal).

<sup>3</sup> Position of the European Parliament of 4 July 2012 (not yet published in the Official Journal) and decision of the Council of ....

Whereas:

- (1) New support schemes for farmers within the framework of the common agricultural policy are to apply from 1 January 2014 and are to replace the current schemes. 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<sup>1</sup> should continue to form the basis on which to grant income support for farmers in calendar year 2013.
- (2) Regulation (EC) No 73/2009 established a system of compulsory, progressive reduction of direct payments ('modulation') including an exemption of direct payments of up to EUR 5 000 which is to apply until calendar year 2012. As a consequence, the total net amounts of direct payments ('net ceilings') which may be granted in a Member State, after the application of modulation, have been fixed until calendar year 2012. In order to maintain the amount of direct payments in calendar year 2013 on a level similar to that of 2012, with due account being taken of phasing-in in the new Member States, within the meaning of Regulation (EC) No 73/2009, it is appropriate to establish an adjustment mechanism for calendar year 2013 with an effect equivalent to that of modulation and the net ceilings. Due to the special characteristics of the support in the outermost regions under the common agricultural policy, this adjustment mechanism should not be applied to farmers in those regions.

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<sup>1</sup> OJ L 30, 31.1.2009, p. 16.

- (3) For the smooth functioning of the direct payments to be made by the Member States in respect of applications made in calendar year 2013, it is necessary to extend the net ceilings set for calendar year 2012 to 2013 and to adjust them, where necessary, in particular as regards the increases resulting from the phasing-in of direct payments in the new Member States.
- (4) In parallel with compulsory modulation, Council Regulation (EC) No 378/2007 of 27 March 2007 laying down rules for voluntary modulation of direct payments provided for in Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers<sup>1</sup> made it possible for Member States to apply a reduction ('voluntary modulation') to all amounts of direct payments to be granted in their territory in respect of a given calendar year until calendar year 2012. In order to maintain the amount of direct payments to be made in respect of applications made in calendar year 2013 on a level similar to that of 2012, Member States which made use of voluntary modulation in respect of calendar year 2012 should continue to have the possibility to reduce direct payments in respect of calendar year 2013 and to use the funds generated thereby to finance rural development programmes. Therefore, it is appropriate to provide for the possibility to further reduce the amount of direct payments by applying a system of voluntary adjustment of direct payments in respect of calendar year 2013. Such reduction should be in addition to the compulsory adjustment of direct payment foreseen in respect of calendar year 2013.

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<sup>1</sup> OJ L 95, 5.4.2007, p. 1.

- (5) Where a Member State has applied regionally differentiated voluntary modulation rates in respect of calendar year 2012, it should also have that possibility in respect of calendar year 2013. In order to safeguard the level of direct support to farmers, the combined application of the compulsory and voluntary adjustment of direct payments in calendar year 2013 should not lead to a reduction of direct payment in excess of the reductions applied in 2012, through both compulsory and voluntary modulation. Therefore, the maximum rate of adjustment of direct payments to be applied in respect of calendar year 2013 in each region should not exceed the reductions resulting from both compulsory and voluntary modulation, as applied in respect of calendar year 2012.
- (6) Where a Member State made use of the option provided for in Article 4(2) of Regulation (EC) No 378/2007 by deciding not to apply the maximum rate for the contribution from the European Agricultural Fund for Rural Development (EAFRD) to the net amounts resulting from the application of voluntary modulation in the programming period 2007 to 2013, the same option should be made available to that Member State in respect of the funds raised through the voluntary adjustment of direct payments, in order to ensure continuity in the financing of public expenditure of the rural development measures in 2014. For reasons of consistency, the prefinancing arrangements for the rural development programmes should not apply to such funds.

- (7) According to the phasing-in mechanism provided for in the Act of Accession of 2005, the level of direct payments in Bulgaria and Romania continues to be below the level of direct payments applicable in the other Member States in 2013 after application of the adjustment of payments to farmers in the transitional period. Therefore, the adjustment mechanism should not apply to farmers in Bulgaria and Romania.
- (8) The new Member States were allowed to grant complementary national direct payments as a consequence of the phasing-in of direct payments in those Member States. Such possibility will no longer be available in 2013, when the schedule for the gradual introduction of direct payments in the new Member States will be complete. In the new Member States applying the single area payment scheme, the complementary national direct payments have played an important role in supporting the income of farmers in specific sectors. As regards Cyprus, the same can be said of State aids. For that reason, and in order to avoid a sudden and substantial decrease of support in 2013 in those sectors benefiting, until 2012, from complementary national direct payments and, in the case of Cyprus, from State aids, it is appropriate to provide, in those Member States, for the possibility to grant, subject to authorisation by the Commission, transitional national aids to farmers in 2013. In order to ensure the continuity of the level of support to farmers in 2013, only those sectors that benefited, in 2012, from complementary national direct payments and, in the case of Cyprus, from State aids should be eligible for the transitional national aid, and if that transitional aid is granted, it should be granted under the same conditions as the ones applied to those payments in 2012.

- (9) The financial transfers to the EAFRD provided for in Articles 134 and 135 of Regulation (EC) No 73/2009 relate to the 2007-2013 multi-annual financial framework. The direct payments to be made by the Member States in respect of applications made in calendar year 2013 will have effects in financial year 2014, thereby falling under the next multi-annual financial framework. Under that framework, the amounts available for rural development programming already include the amounts corresponding to the financial transfers provided for in Articles 134 and 135 of Regulation (EC) No 73/2009. Therefore, such financial transfers should be abolished.
- (10) In order to facilitate the more efficient use of the funds, Regulation (EC) No 73/2009 provided for the possibility for Member States to grant support above their national ceilings up to an amount the level of which ensures that it remains within the margins of the under-execution of the national ceiling. That Regulation provided for those amounts either to be used for the funding of specific support or to be transferred to the EAFRD under Article 136 of Regulation (EC) No 73/2009. As the possibility to grant support above the national ceilings will be abolished when the new direct support system becomes applicable, the financial transfer to the EAFRD provided for in Article 136 of Regulation (EC) No 73/2009 should be maintained only until 31 December 2013.

- (11) The possibility to make the amounts resulting from the application of voluntary adjustment available as an additional Union support under rural development programming and financing under EAFRD for financial year 2014 and the prolongation of the financial transfers provided for in Article 136 of Regulation (EC) No 73/2009 should not affect the future adjustment of the level of direct payments with a view to a more equal distribution of direct support among Member States which is foreseen to be part of the new direct support system.
- (12) In the context of respecting budget discipline, it is necessary to define, for the financial year 2014, the ceiling for the expenditure financed by the EAGF, by taking into account the maximum amounts set in the Regulation laying down the multi-annual financial framework adopted by the Council pursuant to Article 312(2) of the Treaty and the amounts resulting from the voluntary adjustment, along with the amounts resulting from the application of Article 136 of Regulation (EC) No 73/2009 for that financial year.



- (13) In order to ensure the correct application of the adjustments of direct payments to be made by the Member States in respect of applications made in 2013 and financial discipline for calendar year 2013, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of the relevant rules concerning the basis of calculation for reductions to be applied to the farmers by the Member States. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (14) Under Regulation (EC) No 73/2009, Member States had the possibility to decide to use, from the following year, a certain percentage of their national ceiling for specific support for their farmers as well as to review a previous decision by deciding to modify, or put an end to, such support. It is appropriate to provide for an additional review of those decisions with effect for calendar year 2013.

- (15) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission as regards the presentation of the amounts resulting from the voluntary adjustment. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers<sup>1</sup>.
- (16) In respect of fixing the amounts resulting from voluntary adjustment, setting the net balance available for EAGF expenditure in respect of financial year 2014 and authorising the granting of transitional national aids, the Commission should be empowered to adopt implementing acts without applying Regulation (EU) No 182/2011.
- (17) Regulation (EC) No 73/2009 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

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<sup>1</sup> OJ L 55, 28.2.2011, p. 13.

## *Article 1*

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

(1) Article 8 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. Without prejudice to Article 11 of this Regulation, the total net amounts of direct payments which may be granted in a Member State in respect of any calendar year before 2013 after application of Articles 7 and 10 of this Regulation and Article 1 of Regulation (EC) No 378/2007 or in calendar year 2013 after application of Articles 10a and 10b of this Regulation, and with the exception of direct payments granted under Regulations (EC) No 247/2006 and (EC) No 1405/2006, shall not be higher than the ceilings set out in Annex IV to this Regulation. Where necessary, Member States shall make a linear reduction in the amounts of direct payments which are subject to the reduction provided for in Articles 7 and 10 of this Regulation and Article 1 of Regulation (EC) No 378/2007 in respect of any calendar year before 2013 or in Articles 10a and 10b of this Regulation in respect of calendar year 2013, in order to comply with the ceilings set out in Annex IV to this Regulation.";

(b) in paragraph 2, point (d) is deleted;

(2) The following Articles are inserted:

*"Article 10a*

*Adjustment of direct payments in 2013*

1. Any amount of direct payments to be granted in calendar year 2013 to a farmer in excess of EUR 5 000 shall be reduced by 10 %.
2. The reduction provided for in paragraph 1 shall be increased by four percentage points for amounts exceeding EUR 300 000.
3. Paragraphs 1 and 2 shall not apply to direct payments granted to farmers in Bulgaria and in Romania and in the French overseas departments, in the Azores and Madeira, in the Canary Islands and in the Aegean Islands.
4. By way of derogation from paragraph 1, the reduction referred to in that paragraph shall be set at 0 % for new Member States other than Bulgaria and Romania.

*Article 10b*

*Voluntary adjustment of direct payments in 2013*

1. Any Member State having applied Article 1 of Regulation (EC) No 378/2007 in respect of calendar year 2012 may apply a reduction (hereinafter referred to as 'voluntary adjustment') to all amounts of direct payments to be granted in its territory in respect of calendar year 2013. Voluntary adjustment shall be applied in addition to the adjustment of direct payments provided for in Article 10a of this Regulation.

Voluntary adjustment may be regionally differentiated, provided that the Member State has made use of the option provided for in Article 3(1)(b) of Regulation (EC) No 378/2007.

2. The maximum rate of reduction resulting from the combined application of Article 10a and paragraph 1 of this Article shall not exceed the percentage rate of reduction resulting from the combined application of Article 7 of this Regulation and Article 1(1) of Regulation (EC) No 378/2007 as applied to the amounts to be granted to farmers in respect of calendar year 2012 in the regions concerned.
3. The amounts resulting from the application of voluntary adjustment shall not exceed the net amounts fixed by the Commission for calendar year 2012 pursuant to Article 4(1) of Regulation (EC) No 378/2007.

4. The amounts resulting from the application of voluntary adjustment shall be available, in the Member State where they were generated, as Union support under rural development programming and financing by the EAFRD.
5. By ...\* Member States shall decide on, and communicate to the Commission, the following:
  - (a) the rate of voluntary adjustment for the whole territory and, where applicable, for each region;
  - (b) the total amount to be reduced under voluntary adjustment for the whole territory and, where applicable, for each region.

*Article 10c*

*Amounts resulting from voluntary adjustment and from application of Article 136*

1. Based on the amounts communicated by the Member States pursuant to Article 10b(5), the Commission shall adopt implementing acts, without applying the procedure referred to in Article 141(2) or Article 141b(2), fixing the amounts resulting from voluntary adjustment.
2. The amounts fixed pursuant to paragraph 1, as well as the amounts resulting from the application of Article 136 for financial year 2014, shall be added to the annual breakdown by Member State of the EAFRD contribution to the rural development programmes.

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\* OJ Please insert the date two months from the entry into force of this Regulation.

3. Member States may decide to exceed the maximum EAFRD contribution rate as regards the amounts added to the annual breakdown by Member State referred to in paragraph 2.

The amounts added to the annual breakdown by Member State referred to in paragraph 2 shall not be subject to the payment of the single prefinancing amount for the rural development programmes.

4. The Commission shall adopt implementing acts laying down rules for the presentation of the amounts referred to in paragraph 2 in the financing plans of the rural development programmes. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 141b(2).

#### *Article 10d*

##### *EAGF net ceiling*

1. The ceiling for EAGF expenditure in respect of financial year 2014 shall be calculated as the maximum amounts set for it by the Regulation adopted by the Council pursuant to Article 312(2) of the Treaty on the Functioning of the European Union minus the amounts referred to in Article 10c(2) of this Regulation.

2. The Commission shall adopt implementing acts, without applying the procedure referred to in Article 141(2) or Article 141b(2), setting the net balance available for EAGF expenditure in respect of financial year 2014 on the basis of the data referred to in paragraph 1.";

(3) In Article 11(1), the following subparagraph is added:

"However, in financial year 2014, the adjustment referred to in the first subparagraph shall be determined taking into account the forecasts for the financing of direct payments and market related expenditure of the CAP laid down in the Regulation adopted by the Council pursuant to Article 312(2) of the Treaty on the Functioning of the European Union, increased by the amounts referred to in Article 10b of this Regulation and the amounts resulting from the application of Article 136 thereof for financial year 2014, before the adjustment of direct payments provided for in Article 10a of this Regulation, but without taking into account the margin of EUR 300 000 000.";

(4) In Article 11, paragraph 2 is replaced by the following:

"2. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure on a proposal from the Commission presented no later than 31 March of the calendar year in respect of which the adjustments referred to in paragraph 1 apply, shall determine these adjustments no later than 30 June of the same calendar year.";



(5) The following Article is inserted:

*"Article 11a*

*Delegation of powers*

In order to ensure an optimal application of the adjustments of direct payments in 2013 and financial discipline for calendar year 2013, the Commission shall be empowered to adopt delegated acts, in accordance with Article 141a, laying down rules concerning the basis of calculation for reductions to be applied to farmers by Member States due to the adjustments of payments in 2013 provided for in Article 10a and financial discipline provided for in Article 11.";

(6) In Article 68(8), the introductory phrase is replaced by the following:

"8. By ...<sup>\*</sup>, the Member States that took the decision referred to in Article 69(1) may review it and decide, with effect from 2013, to:";

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\* OJ please insert the date one month from the date of publication of this Regulation.

(7) Article 69(1) is replaced by the following:

"1. Member States may decide, by 1 August 2009, 1 August 2010, 1 August 2011 or by ...\*, to use, from the year following such decision, up to 10 % of their national ceiling referred to in Article 40, or, in the case of Malta, the amount of EUR 2 000 000 for the specific support provided for in Article 68(1).";

(8) Article 131(1) is replaced by the following:

"1. The new Member States applying the single area payment scheme may decide, by 1 August 2009, 1 August 2010, 1 August 2011 or by ...\*, to use, from the year following that decision, up to 10 % of their national ceilings referred to in Article 40 to grant support to farmers as set out in Article 68(1) and in accordance with Chapter 5 of Title III, as applicable to them.";

(9) The following Article is inserted:

*"Article 133a*

*Transitional national aid*

1. With the exception of Bulgaria and Romania, the new Member States applying the single area payment scheme shall have the possibility to grant transitional national aid in 2013.

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\* OJ please insert the date one month from the date of publication of this Regulation.

Except in the case of Cyprus, the granting of such aid shall be subject to authorisation by the Commission, to be granted in accordance with paragraph 5.

2. The transitional national aid may be granted to farmers in sectors in respect of which complementary national direct payments and, in the case of Cyprus, State aids have been authorised in 2012 pursuant to Articles 132 and 133.
3. The conditions for granting the aid shall be identical to those authorised for the granting of payments pursuant to Articles 132 and 133 in respect of 2012.
4. The total amount of aid that may be granted to farmers in any of the sectors referred to in paragraph 2 shall be limited by a specific financial envelope per sector, which shall be equal to the difference between:
  - (a) the total direct support which may be granted to farmers in the relevant sector in 2012, including all payments received pursuant to Article 132; and
  - (b) the total amount of direct support that would be available for the same sector under the single area payment scheme in 2013.

For Cyprus, the sector specific financial envelopes are set out in Annex XVIIa.

5. On the basis of a notification submitted, the Commission shall adopt implementing acts, without applying the procedure referred to in Article 141(2) or Article 141b(2), authorising the transitional national aid and:
    - (a) setting the financial envelope per sector;
    - (b) setting the maximum rate of transitional national aid where appropriate;
    - (c) setting the conditions for the granting thereof; and
    - (d) defining the applicable exchange rate to be used for the payments.
  6. The new Member States may decide, on the basis of objective criteria and within the limits authorised by the Commission pursuant to paragraph 5, on the amounts of transitional national aid to be granted.";
- (10) Articles 134 and 135 are deleted;
- (11) Article 136 is deleted;

(12) Article 139 is replaced by the following:

*"Article 139*

*State aid*

By way of derogation from Article 180 of Regulation (EC) No 1234/2007 and Article 3 of Council Regulation (EC) No 1184/2006 of 24 July 2006 applying certain rules of competition to the production of, and trade in, agricultural products\*, Articles 107, 108 and 109 of the Treaty on the Functioning of the European Union shall not apply to payments made under Articles 41, 57, 64, 68, 69, 70 and 71, Article 82(2), Article 86, Article 98(4), Article 111(5), Article 120, Article 129(3) and Articles 131, 132, 133 and 133a of this Regulation by Member States in conformity with this Regulation.

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\* OJ L 214, 4.8.2006, p. 7.";

(13) The following Articles are inserted:

*"Article 141a*

*Exercise of the delegation*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 11a shall be conferred on the Commission for a period from ...\* until 31 December 2013.
3. The delegation of power referred to in Article 11a may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

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\* OJ Please insert the date one month from the entry into force of this Regulation.

5. A delegated act adopted pursuant to Article 11a shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

*Article 141b*

*Committee procedure*

1. The Commission shall be assisted by the Rural Development Committee established by Regulation (EC) No 1698/2005. That committee is a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers\*.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

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\* OJ L 55, 28.2.2011, p. 13.";

(14) In Annex IV, the following column is added:

"

2013
569
903
964,3
5 329,6
101,2
1 255,5
2 344,5
5 055,2
7 853,1
4 128,3
53,5
146,4
379,8
34,7
1 313,1
5,5
830,6
715,7
3 043,4
566,6
144,3
385,6
539,2
708,5
3 650

".  
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(15) The following Annex is inserted:

*"Annex XVIIa*

*Transitional national aid in Cyprus*

(EUR)

Sector	2013
Cereals (durum wheat excluded)	141 439
Durum wheat	905 191
Milk and dairy	3 419 585
Beef	4 608 945
Sheep and goats	10 572 527
Pig sector	170 788
Poultry and eggs	71 399
Wine	269 250
Olive oil	3 949 554
Table grapes	66 181
Dried grapes	129 404
Processed tomatoes	7 341
Bananas	4 285 696
Tobacco	1 027 775
Deciduous fruit including stone fruit	173 390
Total	29 798 462

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## *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 from 1 January 2013.

By way of derogation from the second paragraph:

- (a) the following provisions shall apply from the date of entry into force of this Regulation:
  - (i) Article 10b(5), Article 10c(1) and (4) and Article 10d(2) of Regulation (EC) No 73/2009, as inserted by point (2) of Article 1 of this Regulation;
  - (ii) Article 133a(5) and (6) of Regulation (EC) No 73/2009, as inserted by point (9) of Article 1 of this Regulation;
  - (iii) points (5), (6), (7), (8) and (13) of Article 1 of this Regulation;
- (b) points (1)(b) and (11) of Article 1 of this Regulation shall apply from 1 January 2014.

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

Done at ...,

*For the European Parliament*

*The President*

*For the Council*

*The President*

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