

COMMISSION IMPLEMENTING REGULATION (EU) No 679/2011**of 14 July 2011****amending Regulation (EC) No 1974/2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) ⁽¹⁾, and in particular Article 91 thereof,

Whereas:

- (1) Regulation (EC) No 1698/2005 established a single legal framework for the European Agricultural Fund for Rural Development (EAFRD) support for rural development throughout the Union. That legal framework has been complemented by implementing rules laid down by Commission Regulation (EC) No 1974/2006 ⁽²⁾. In the light of experience gained and problems that have arisen in the implementation of Rural Development Programmes it is necessary to amend certain provisions of that Regulation and to introduce certain additional implementing rules.
- (2) Operations concerning the production of renewable energy on agricultural holdings pursuant to Article 26 of Regulation (EC) No 1698/2005 may fall outside the scope of Article 42 of the Treaty. In order to ensure compliance with agricultural State aid rules, a specific provision should be laid down for investments in the production of renewable energy on agricultural holdings.
- (3) Article 27(12) of Regulation (EC) No 1974/2006 provides that adjustment of agri-environment or animal welfare commitments may take the form of an extension of the duration of the commitment. In order to avoid overlapping with the following programming period, such adjustment should be limited to the end of the premium period to which the 2013 payment claim refers.
- (4) Article 47 of Regulation (EC) No 1698/2005 provides that forest-environmental commitments are to be undertaken as a general rule for a period between 5 and 7 years. In order to avoid a situation in which

renewed commitments overlap with the following programming period, it should be provided that Member States may allow such commitments to be extended to the end of the premium period to which the 2013 payment claim refers.

- (5) Article 62(1)(b) of Regulation (EC) No 1698/2005 provides that, at the decision-making level of the local action group, economic and social partners, as well as other representatives of civil society, are to make up at least 50 % of the local partnership. Member States should ensure that local action groups comply with this minimum percentage with respect to voting, too, in order to prevent the public sector from dominating decision-making. Furthermore, it should be ensured that project promoters are not able to influence the project selection decision. Effective safeguards should therefore be established to avoid any conflict of interests with regard to the appraisal and vote on project proposals. The transparency of the decision making should also be guaranteed with the appropriate visibility.
- (6) Article 38(2) of Regulation (EC) No 1974/2006 provides for the possibility of paying advances for the running costs of local action groups. It has been proven that in order to ensure the cash flow needs of local action groups it is necessary to extend the possibility to pay advances to cover the costs related to acquiring skills and animating the territory as referred to in Article 63(c) of Regulation (EC) No 1698/2005.
- (7) Article 44(3) of Regulation (EC) No 1974/2006 allows Member States to take specific measures to ensure that minor changes to the situation of a holding do not lead to inappropriate results in relation to commitments entered into, in terms of the obligation of the beneficiary to repay the assistance where a commitment is not taken over by the transferee of a part of the holding. In order to ensure legal certainty, a definition should be provided of what constitutes a minor change in cases where the area of the holding is reduced.
- (8) Article 46 of Regulation (EC) No 1974/2006 provides for a revision clause in case of amendments to the baseline for certain measures. A revision clause should also be provided in case the duration of new agri-environment, animal welfare or forest-environmental commitments undertaken for a period between 5 and 7 years extends beyond the end of the current programming period, in order to avoid inconsistencies with the legal and policy framework to be laid down for the period following the current programming period.

⁽¹⁾ OJ L 277, 21.10.2005, p. 1.

⁽²⁾ OJ L 368, 23.12.2006, p. 15.

- (9) In order to clarify the application of Article 52(1) of Regulation (EC) No 1974/2006, the basis on which the co-financing rate is applied in the case of financial engineering should be set out.
- (10) As regards guarantee funds in the context of financial engineering under subsection 3 of Section 1 of Chapter IV of Regulation (EC) No 1974/2006, additional details on the method of calculating the eligible expenses of the operation related to such interventions should be provided to ensure the most efficient use of Union resources.
- (11) While acknowledging the specificities of rural development, relating essentially to the small scale of supported operations, it is necessary, in order to maximise the leverage effect of the financial engineering tool, to clarify the reuse of the resources returned to the financial engineering operation during the programming period as well as to make a distinction between it and the reuse after the final date of eligibility of the rural development programme.
- (12) Taking into account the nature of some investments in forestry and the fact that payments could in certain cases be area-related, it should be possible to use standard costs calculations as an alternative to the invoice-based system used to determine the level of support for the measure referred to in Article 27 of Regulation (EC) No 1698/2005. Article 53(1) of Regulation (EC) No 1974/2006 should therefore be adapted accordingly.
- (13) Article 54(1) of Regulation (EC) No 1974/2006 provides for the conditions under which contributions in kind may be considered as eligible expenditure. In its present form, Article 54(1) considers contributions in kind to be eligible only for investment operations. Experience has shown that this condition is too restrictive for the efficient implementation of measures. Therefore, it should be provided that contributions in kind may be eligible for all types of operation.
- (14) Article 55 of Regulation (EC) No 1974/2006 lays down a set of rules for the definition of eligible expenditure for investment operations. In order to bring additional clarity to the implementation of this Article, the acquisition of payment entitlements should be explicitly excluded from eligibility. It should also be clarified that, given their nature, investments replacing agricultural production potential after natural disasters constitute eligible expenditure.
- (15) In order to increase the impact of advances in the context of the ongoing financial crisis, taking due account of the specific role of regional governments in implementing rural development policy, the possibility for advance payments provided for in Article 56 of Regulation (EC) No 1974/2006 should be opened up to regional authorities as well.
- (16) To facilitate the implementation of investment projects in the context of the ongoing economic and financial crisis, the maximum ceiling for advance payments was raised to 50 % for investments in 2009 and 2010. In order to take account of the continuing negative effects of the economic and financial crisis, this higher ceiling should be maintained until the end of the programming period. In order to ensure continuity in the implementation of Rural Development Programmes between the end of 2010 and the entry into force of this Regulation, the relevant provision should be applied retroactively from 1 January 2011.
- (17) To take account of the relatively small size of rural development projects and the difficulty such projects have in obtaining bank guarantees for advance payments, measures should be taken allowing those guarantees to be replaced by written guarantees from public authorities.
- (18) To make the best use of advances, it should be left to the competent paying agency to define when guarantees are released.
- (19) Regulation (EC) No 1974/2006 should therefore be amended accordingly.
- (20) The measures provided for in this Regulation are in accordance with the opinion of the Rural Development Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1974/2006 is amended as follows:

- (1) the following Article 16a is inserted:

'Article 16a

For the purpose of Article 26 of Regulation (EC) No 1698/2005, where investments are made in the production of thermal energy and/or electricity from renewable sources on agricultural holdings, renewable energy production facilities shall be eligible for support only if their production capacity is no more than equivalent to the combined average annual energy consumption of thermal energy and electricity on the agricultural holding, including the farm household.

Where investments are made in the production of biofuels within the meaning of Directive 2009/28/EC of the European Parliament and of the Council (*) on agricultural holdings, renewable energy production facilities shall be eligible for support only if their production capacity is no more than equivalent to the annual average transport fuel consumption on the agricultural holding.

(*) OJ L 140, 5.6.2009, p. 16.;

- (2) in Article 27(12), the second subparagraph is replaced by the following:

'Such adjustments may also take the form of an extension of the duration of the commitment. The extension may not go beyond the end of the period to which the 2013 payment claim refers.;

- (3) the following Article 32a is inserted:

Article 32a

For the purpose of Article 47 of Regulation (EC) No 1698/2005, Member States may allow forest-environmental commitments to be extended until the end of the period to which the 2013 payment claim refers.;

- (4) in Article 37, the following paragraph is added:

'5. For the purposes of Article 62(4) of Regulation (EC) No 1698/2005, decisions on the selection of projects by the decision-making body of local action groups shall be taken by a vote in which the economic and social partners as well as other representatives of the civil society, as provided for in Article 62(1)(b) of that Regulation, shall make up at least 50 % of the votes. As regards the decision-making process with regard to project selection, appropriate rules to guarantee transparency and to avoid situations of conflicts of interest shall be respected.;

- (5) in Article 38, paragraph 2 is replaced by the following:

'2. Member States may, upon request, pay an advance to local action groups. The amount of the advance shall not exceed 20 % of the public aid related to the costs referred to in Article 63(c) of Regulation (EC) No 1698/2005, and its payment shall be subject to the establishment of a bank guarantee or an equivalent guarantee corresponding to 110 % of the amount of the advance. The guarantee shall be released upon closure of the local development strategy at the latest.

Article 24(6) of Commission Regulation (EU) No 65/2011 (*) shall not apply for the payment referred to in the first subparagraph.

(*) OJ L 25, 28.1.2011, p. 8.;

- (6) in Article 44(3), the following subparagraph is added:

'A reduction in the area of the holding of up to 10 % of the area under commitment shall be considered as a minor change for the purpose of the first subparagraph.;

- (7) in Article 46, the following paragraph is added:

'A revision clause shall be provided from 2012 onwards for commitments undertaken for a period of between 5 and 7 years, pursuant to Articles 39, 40 and 47 of Regulation (EC) No 1698/2005, which extend beyond the end of the current programming period, to allow for their adjustment to the legal framework of the following programming period. However, Member States may decide to introduce such a revision clause already in 2011. The second paragraph shall apply also with respect to this paragraph.;

- (8) Article 52 is replaced by the following:

Article 52

1. As regards financial engineering actions referred to in Article 51 of this Regulation, the expenditure declared to the Commission in accordance with Article 26(3)(a) of Regulation (EC) No 1290/2005 shall be the total expenditure paid in establishing or contributing to such funds.

However, when paying the balance and closing the rural development programme in accordance with Article 28 of Regulation (EC) No 1290/2005, the eligible expenditure shall be the total of:

- (a) any payment for investment in enterprises out of each of the funds concerned, or any guarantees provided including amounts committed as guarantees by guarantee funds;

- (b) eligible management costs.

The co-financing rate to be applied shall correspond to the co-financing rate of the measure to which the fund contributes. If the fund contributes to several measures with different co-financing rates, these rates shall apply at the ratio of the respective eligible expenditure.

The difference between the EAFRD contribution actually paid pursuant to the first subparagraph and the eligible expenditure under points (a) or (b) of the second subparagraph shall be cleared in the context of the annual accounts of the last year of implementation of the programme. These accounts shall include the detailed financial information needed.

2. Where EAFRD co-finances operations comprising guarantee funds for repayable investments pursuant to Article 50 of this Regulation, an appropriate *ex ante* assessment of expected losses shall be carried out, taking into account current market practices for similar operations for the type of investments and market concerned. The assessment of the expected losses may be reviewed, if justified by subsequent market conditions. The resources committed to honour guarantees shall reflect such an assessment.

3. Resources returned to the operation during the programming period from investments undertaken by funds or left over after a guarantee has been honoured shall be reused by the fund according to the funding agreement referred to in Article 51(6) of this Regulation or cleared in the context of the annual accounts. After the final date of eligibility of the rural development programme, resources returned to the operation from investments undertaken by funds or left over after all guarantees have been honoured shall be used by the Member States concerned for the benefit of individual undertakings.

Interest generated by payments from rural development programmes to funds shall be used according to the first subparagraph.;

- (9) in Article 53(1), the first subparagraph is replaced by the following:

'Where appropriate, Member States may fix the level of support provided for in Articles 27, 31, 37 to 41 and 43 to 49 of Regulation (EC) No 1698/2005 on the basis of standard costs and standard assumptions of income foregone.;

- (10) in Article 54(1), the introductory phrase of the first subparagraph is replaced by the following:

'Contributions in kind from a public or private beneficiary, namely the provision of goods or services for which no

cash payment supported by invoices or documents of equivalent probative value is made, may be eligible expenditure provided that the following conditions are fulfilled.;

- (11) Article 55(2) is replaced by the following:

'2. In the case of agricultural investments, the purchase of agricultural production rights, payment entitlements, animals, annual plants and their planting shall not be eligible for investment support.

Simple replacement investments shall not be eligible expenditure.

However, in cases of restoration of agricultural production potential damaged by natural disasters pursuant to Article 20(b)(vi) of Regulation (EC) No 1698/2005, expenditure for the purchase of animals and replacement investments may be eligible expenditure.;

- (12) Article 56 is replaced by the following:

'Article 56

1. By way of derogation from Article 24(6) of Regulation (EU) No 65/2011, Member States may, upon request, pay an advance to the beneficiaries of investment support. As regards public beneficiaries, such an advance may be paid to municipalities and associations thereof, to regional authorities and to public law bodies.

2. The amount of the advances shall not exceed 50 % of the public aid related to the investment, and its payment shall be subject to the establishment of a bank guarantee or an equivalent guarantee corresponding to 110 % of the amount of the advance.

A facility provided as a guarantee by a public authority shall be considered equivalent to the guarantee referred to in the first subparagraph, provided that the authority undertakes to pay the amount covered by that guarantee should entitlement to the advance paid not be established.

3. The guarantee may be released when the competent paying agency establishes that the amount of actual expenditure corresponding to the public aid related to the investment exceeds the amount of the advance.;

Article 2

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

Article 1(12), as concerns the first subparagraph of Article 56(2) of Regulation (EC) No 1974/2006, shall apply from 1 January 2011.

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

Done at Brussels, 14 July 2011.

For the Commission
The President
José Manuel BARROSO
