

WORKING DOCUMENT**DELEGATED ACT FOR INTEGRATED ADMINISTRATION AND CONTROL SYSTEM**

Legal draft of the Articles related to the **calculation of aid and administrative penalties for animal related aid schemes and support measures**

DISCLAIMER

This working document has been prepared by DG AGRI staff in order to facilitate the discussion in the Expert group for direct payments. It has not yet been subject of an inter-service consultation nor revised by the Legal Service

Whereas:

- (1) As a general rule, Member States should take any further measures necessary to ensure a proper functioning of the integrated system. As regards voluntary coupled support measures, Member States ~~may~~should be allowed to impose additional national penalties where necessary.
- (2) ~~Undue~~Refusals and withdrawals of undue payments and administrative penalties should be established having regard to the principle of proportionality and the special problems linked to cases of force majeure as well as exceptional ~~and natural~~ circumstances. ~~Undue~~The refusals and withdrawals of undue payments and administrative penalties should be graded according to the seriousness of the non-compliance committed and should go as far as the total exclusion from one or several aid schemes or support measures for a specified period. They should, with regard to the eligibility criteria, take into account the particularities of the various aid schemes or support measures. The administrative penalties under this regulation are considered proportionate to discourage intentional over-declaration.
- (3) Supplementary rules for the basis of calculation of ~~livestock premiums under the~~ voluntary coupled support based on livestock aid applications under animal aid schemes or rural development support based on payment claims under animal-related support measures should be laid down.
- (4) As far as ~~livestock~~-aid applications under animal aid schemes or payment claims under animal-related support measures are concerned, non-compliances lead to the ineligibility of the animal concerned. Reductions should be foreseen as from the first animal found with non-compliances but, irrespective of the level of the reduction, there should be a less harsh administrative penalty where three animals or less are found with non-compliances. In all other cases the severity of the administrative penalty should depend on the percentage of animals found with non-compliances.
- (5) Beneficiaries who give notice to the competent national authorities at any time of incorrect aid applications or payment claims should not be subject to any ~~undue payments and~~ administrative penalties irrespective of the reason of the incorrectness, provided that the beneficiary has not been informed of the competent authority's intention to carry out an on-the-spot check and the authority has not already informed the beneficiary of any non-compliance in the aid application or payment claim.

- (6) The same should apply in relation to incorrect data contained in the computerised database both in respect of ~~elaimed~~declared bovine animals for which such non-compliances not only constitute a non-respect of a cross-compliance obligation but also a breach of an eligibility criterion, and in respect of ~~unelaimed~~undeclared bovine animals where such non-compliances are relevant only under the cross-compliance obligations.

Article 1

General ~~principles~~Principle

The application of the administrative penalties set out in this Regulation ~~is~~shall be without prejudice to the national anti-fraud legislation, should Member States have indications that non-compliances were committed intentionally.

~~/SECTION II—voluntary[XX] - VOLUNTARY COUPLED SUPPORT BASED ON LIVESTOCK AID APPLICATIONS and UNDER ANIMAL AID SCHEMES OR RURAL DEVELOPMENT SUPPORT BASED ON PAYMENT CLAIMS UNDER ANIMAL-RELATED SUPPORT MEASURES/~~

Article 2

Basis of calculation

1. In no case may aid or support be granted for a number of animals greater than that shown in the aid application or in the payment claim.
2. Animals present on the holding shall only be regarded as determined if they are identified in the aid application or in the payment claim. ~~However, Identified~~ Identified animals ~~that are identified in these documents~~ may be replaced without the loss of the right to payment of the aid or support in cases where the competent authority has not already informed the beneficiary of non-compliances in the application or claim and where it has not already given notice to the beneficiary of its intention to carry out an on-the-spot check. Where the Member State does not make use of the possibility provided for in Article 16(3) of IA IACS Regulation (EU) No [HZR] it shall ensure by any means that there are no doubts as to which animals are covered by the beneficiaries' applications.
3. Without prejudice to Article 3, if the number of animals declared in an aid application or payment claim exceeds that determined as a result of administrative controls or on-the-spot checks, the aid or support shall be calculated on the basis of the animals determined.
4. Where cases of non-compliances with regard to the system for the identification and registration for bovine animals are found, the following shall apply:
 - (a) A bovine animal present on the holding which has lost one of the two ear tags shall be regarded as determined provided that it is clearly and individually identified by the other elements of the system for the identification and registration of bovine animals;
 - (b) where one single bovine animal of a holding has lost two ear tags it shall be regarded as determined provided that the animal can still be identified by the

register, animal passport, database or other means laid down in Regulation (EC) No 1760/2000 of the European Parliament and of the Council¹ and provided that the keeper can provide evidence that he has already taken action to remedy the situation before the announcement of the on-the-spot check;

- (c) where the non-compliances found relate to incorrect entries in the register or the animal passports, the animal concerned shall only be deemed as not determined if such errors are found on at least two checks within a period of 24 months. In all other cases the animals concerned shall be deemed as not determined after the first finding.

The entries in, and notifications to, the system for the identification and registration of bovine animals may be adjusted at any time in cases of obvious errors recognised by the competent authority.

5. An ovine or caprine animal which has lost one ear tag shall be regarded as determined provided that the animal can still be identified by a first means of identification in accordance with Article 4(2)(a) of Council Regulation (EC) No 21/2004² and provided that all other requirements of the system for the identification and registration of ovine and caprine animals are fulfilled.

Article 3

Administrative Refusals and withdrawals of aid or support and administrative penalties in respect of ~~claimed~~ declared animals under the animal aid schemes or animal-related support measures

6.1. Where, in respect of an aid application ~~for aid~~ under an animal aid scheme or in respect of a payment claim under an animal-related support measure, a difference is found between the number of animals declared and that determined in accordance with Article 2(3), the total amount of aid or support to which the beneficiary is entitled under that aid scheme or support measure for the claim year concerned shall be reduced by the percentage to be established in accordance with paragraph 3 of this Article, if no more than three animals are found with non-compliances.

7.2. If more than three animals are found with non-compliances the total amount of aid or support to which the beneficiary is entitled under the aid scheme or support measure referred to in paragraph 1 for the claim year concerned shall be reduced by:

- (a) the percentage to be established in accordance with paragraph 3, if it is not more than 10 %;

¹ Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97 (OJ L 204, 11.8.2000, p. 1).

² Council Regulation (EC) No 21/2004 of 17 December 2003 establishing a system for the identification and registration of ovine and caprine animals and amending Regulation (EC) No 1782/2003 and Directives 92/102/EEC and 64/432/EEC (OJ L 5, 9.1.2004, p. 8).

- (b) twice the percentage to be established in accordance with paragraph 3, if it is more than 10 % but not more than 20 %.

If the percentage established in accordance with paragraph 3 is more than 20 %, the aid or support to which the beneficiary would have been entitled pursuant to Article 2(3) shall be refused under the aid scheme or support measure for the claim year concerned.

If the percentage established in accordance with paragraph 3 of this Article is more than 50 %, the beneficiary shall, moreover, be excluded once again from receiving aid or support ~~up of an amount equal~~ to ~~an~~the amount corresponding to the difference between the number of animals declared and the number of animals determined in accordance with Article 2(3). That amount shall be off-set in accordance with Article ~~10[XX]~~ of ~~DAIA~~ HZR Regulation (EU) No [HZR]. If the amount cannot be fully off-set in accordance with that Article in the course of the three calendar years following the calendar year of the finding, the outstanding balance shall be cancelled.

~~8.3.~~ In order to establish the percentages referred to in paragraphs 1 and 2, the number of animals ~~elaimed~~declared under an animal aid scheme or animal-related support measure and found with non-compliances shall be divided by the number of animals determined for that animal aid scheme or support measure in respect of the aid application or payment claim for the claim year concerned.

~~In the case of application of~~Where the second subparagraph of Article 16(3) of IA IACS Regulation (EU) No [HZR], ~~is applied~~, potentially eligible animals found not to be correctly identified or registered in the system for identification and registration for animals shall count as animals found with non-compliances.

Article 4

Force majeure and exceptional circumstances under animal related aid schemes and animal related support schemes [DA empowerment, Art 77a(6)(b HZR)]

As regards the animal-related aid schemes and animal-related support schemes, the refusals and withdrawals of aid or support and administrative penalties provided for in Article 3 shall not apply in cases where the beneficiary is unable to comply with the eligibility criteria, commitments or other obligations as a result of force majeure or exceptional circumstances on the herd or flock, provided that he has informed the competent authority in writing within ten working days of finding any reduction in the number of animals.

Without prejudice to the actual circumstances to be taken into account in individual cases, the competent authorities may recognise, in particular, the following cases of force majeure or exceptional circumstances of the herd or flock:

- (a) death of an animal as a consequence of a disease;
- (b) death of an animal following an accident for which the beneficiary cannot be held responsible.

Article 45

National penalties and additional measures and findings in relation to the voluntary coupled support

1. Member States may, ~~where~~Where this Regulation does not provide for appropriate administrative penalties, Member States may provide national penalties against intermediaries, involved in the procedure for granting aid, in order to ensure the

compliance with control requirements ~~such as~~including the respect of notification obligations.

2. As regards evidence provided by services, bodies or organisations as referred to in Article 29(2) of IA IACS Regulation (EU) No [HZR], if it is found that incorrect evidence has been provided as a result of serious negligence or intentionally, the Member State concerned shall apply appropriate national penalties. Where such non-compliances are found a second time, the service, body or organisation involved shall be excluded for a period of at least one year from the right to provide evidence valid for premiumsupport purposes.

COMMON PROVISIONS

Article 5-6

Exceptions from the application of ~~undue payments and~~ administrative penalties

1. The ~~undue payments and~~ administrative penalties provided for in Chapters I[XX] [non-declaration of areas] and II[XY] [findings in relation to eligibility criteria] of this Regulation shall not apply with regard to the part of the aid application or payment claim as to which the beneficiary informs the competent authority in writing that the aid application or payment claim is incorrect or has become incorrect since it was lodged, provided that the beneficiary has not been informed of the competent authority's intention to carry out an on-the-spot check and that the authority has not already informed the beneficiary of any non-compliances in the aid application or payment claim.
2. The information given by the beneficiary as referred to in the first ~~subparagraph~~paragraph shall have the effect that the aid application or payment claim is adjusted to the actual situation.

Article 6-7

Amendments and adjustments of entries in the computerised database for bovine animals

In respect of elaimeddeclared bovine animals, Article 5 shall apply to errors and omissions in relation to entries in the computerised database for bovine animals made from the moment the aid application or payment claim is submitted.

As regards unelaimedundeclared bovine animals, the same shall apply in respect of undue payments and administrative penalties to be applied in accordance with Chapter III[XX] [findings in relation to cross-compliance-].] of this Regulation.