

Official Journal

of the European Union

ISSN 1725-2555

L 141

Volume 47

30 April 2004

English edition

Legislation

Contents

I Acts whose publication is obligatory

- ★ **Commission Regulation (EC) No 795/2004 of 21 April 2004 laying down detailed rules for the implementation of the single payment scheme provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers** 1
- ★ **Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in of Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers** 18

2

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

I

(Acts whose publication is obligatory)

**COMMISSION REGULATION (EC) No 795/2004
of 21 april 2004**

laying down detailed rules for the implementation of the single payment scheme provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) N 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 ⁽¹⁾, and in particular the second subparagraph of Article 40(5), Articles 42(4) and (9), 46(3), 52(2), 54(5), 145(c) and (d) and 155 thereof,

Whereas:

- (1) Detailed rules for the implementation of Title III of Regulation (EC) No 1782/2003 establishing the single payment scheme for farmers should be laid down.
- (2) For clarity reasons it is appropriate to provide for certain definitions. Where appropriate, definitions which already apply in similar situations and/or which have been already used for years should be used.
- (3) In order to facilitate the calculation of the unit value of the payment entitlements, it should be provided for clear rules on the round up of figures and for the possibility to split existing payment entitlements in case the size of the parcel which is declared or transferred with the entitlement only amounts to a fraction of hectares.
- (4) Specific provisions should be provided for the establishment of the national reserve and in particular the calculation of the reductions of the reference amounts or the payment entitlements, as well as the application of the reduction in cases of full or partial decoupling of the dairy premiums and additional payments referred to in Articles 95 and 96 of Regulation (EC) No 1782/2003.
- (5) Article 42(3) and (5) of Regulation (EC) No 1782/2003 provides for optional cases of allocation of payment entitlements from the national reserve. It is appropriate to provide for rules for the calculation of the number and value of the payment entitlements to be allocated in such a way. In order to allow certain flexibility to Member States which are in a better position to evaluate the situation of each farmer applying for such measures, the maximum number of entitlements to be allocated should not be higher than the number of hectares declared and its value should not be higher than an amount to be fixed by the Member State according to objective criteria. According to article 42(6) of Regulation (EC) No 1782/2003, in case of increase of the unit value of existing payment entitlements, a regional average should be respected. Member States should be allowed to establish that regional value at the appropriate territorial level. However, in no case, due to its nature of aid decoupled from the production, the amount should be differentiated or calculated in function of sectorial productions.
- (6) Under certain circumstances farmers could end up with more entitlements than land to use them, for example in case of common use of a forage area, because of the expiry of a lease or the participation to an afforestation program or by buying, in accordance to national provisions, milk reference quantities which were leased in the reference period with land. Therefore it seems appropriate to provide for a mechanism that should guarantee the farmer's support by concentrating it on the remaining available hectares. However, in order to avoid abuse of that mechanism, some conditions for the access to that mechanism should be provided for.
- (7) According to Regulation (EC) No 1782/2003 the national reserve shall be replenished via unused entitlements or, on an optional basis, via retention on sales of payments entitlements or on sales that have taken place before a certain date. It is therefore necessary to provide for a date after which the unused entitlements revert to the national reserve. For administrative reasons, it should also be provided that the payment entitlements accompanied by the authorisation to grow fruit and vegetable or table potatoes or set-aside entitlements when reverting to the national reserve should lose the accompanying obligation or authorisation. Moreover, this is also justified by the fact that that obligation or authorisation is established on the basis of

⁽¹⁾ OJ L 270, 21.10.2003, p. 1. Regulation as amended by Regulation (EC) No 21/2004 (OJ L 5, 9.1.2004, p. 8).

- historical references and once the single payment scheme is in place it will not be possible to determine who should receive set-aside entitlements of authorisations out of the reserve as the support will be decoupled.
- (8) In case of application of the retention on sale of payment entitlements, maximum percentages and criteria of application should be established and differentiated taking into account the type of transfers and of payment entitlements to be transferred. If speculative risks exist in the first years of application of the single payment scheme, Member State may be allowed to increase the percentage of retention for sales without land. In no case the application of such retentions should result in a substantial obstacle or prohibition of transfer of payment entitlements.
- (9) In order to facilitate the administration of the national reserve, it is appropriate to provide for management of the national reserve at regional level except in cases referred to in Article 42(3) of Regulation (EC) No 1782/2003, where applicable, and in Article 42(4) of that Regulation, where Member States are obliged to allocate payment entitlements.
- (10) In order to facilitate the implementation of the single payment scheme, it is appropriate to allow Member States to proceed already in the year preceding the first year of application of the scheme to the identification of the potential beneficiaries of the scheme in particular, in case of modifications in the holding due to inheritance or legal changes and to the provisional establishment of payment entitlements.
- (11) Article 33 of Regulation (EC) No 1782/2003 allows farmers to access to the single payment scheme under specific circumstances. In order to avoid that such circumstances may be used to escape the application of the rules on normal transfers of a holding with the attached reference amounts, some conditions and definitions should be set up for the application of such circumstances.
- (12) Article 46(2) of Regulation (EC) No 1782/2003 provides that a farmer may transfer his payment entitlements without land only after he has used, within the meaning of Article 44 of that Regulation, at least 80 % of his payment entitlements during at least one calendar year. In order to take into account the transfers of land that have taken place in the period before the application of the single payment scheme, it is justified to consider the transfer of holding or part of it together with the future payment entitlements as a valid transfer of the payment entitlements with land within the meaning of Article 46 of Regulation (EC) No 1782/2003, subject to certain conditions, in particular the fact that the seller should apply for the establishment of the payment entitlements as far as that Regulation clearly provides that only those who received the direct payment in the reference period have access to the scheme.
- (13) Article 42(4) of Regulation (EC) No 1782/2003 allows the Commission to define the special situations which shall give right to the establishment of reference amounts for certain farmers finding themselves in situations which prevented them, in full or partially, from receiving direct payments in the reference period. It is therefore appropriate to list those special situations by providing for rules in order to avoid cumulating the benefit from the different allocation of payment entitlements on the same farmer without prejudice to the possibility for the Commission to add further cases where the case may be. Moreover, Member States should be given the flexibility to establish the reference amount to be allocated.
- (14) Where a Member State according to national law or well established usual practice includes in the definition of long term lease also lease for 5 years, it is appropriate to allow Member State to apply this shorter term where the case may be.
- (15) Due to the fact that dairy premiums and additional payments will be included in the single payment scheme on the basis of a different reference period than the one referred to in Article 37 of Regulation (EC) No 1782/2003, it is appropriate, for the purpose of establishing the reference amount, to take into account of dairy farmers finding themselves in a situation referred to in Article 40 of Regulation (EC) No 1782/2003 who lease, because of that situation, their individual reference quantity or part of it according to Article 16 of Regulation (EC) No 1788/2003 during the twelve-month period ending on 31 March of the first year of application of the single payment scheme.
- (16) In cases where a farmer retires or dies and provides for transferring his holding or part of it to a member of the family or inheritor who intends to continue the agricultural activity on this holding, it is appropriate to ensure that the transfer of the holding or part of it within a family can easily take place in particular, in the case where the transferred land was leased to a third person during the reference period without prejudging the possibility for the inheritor to continue the agricultural activity.
- (17) Farmers who made investments resulting in a potential increase of the amount in direct payments that they should have been granted if the single payment scheme had not been introduced should also benefit from the allocation of entitlements. Specific rules should be provided for the calculation of the payment entitlements in case a farmer already owns payment entitlements or has no hectares. In the same circumstances, farmers who bought or leased land or participated in national programmes of reconversion of production for which a direct payment under the single payment scheme could have been granted in the reference period would find themselves without payment entitlements whilst they acquired land or participated in such programmes in order to exercise an agricultural activity that could in the future still benefit from certain direct payments. Therefore it is also appropriate to provide for the allocation of payment entitlements in that case.

- (18) For the good administration of the scheme, it is appropriate to provide for rules in case of transfers of payment entitlements.
- (19) Article 46 of Regulation (EC) No 1782/2003 provides that a Member State may decide that payment entitlements may only be transferred or used within one and the same region. In order to avoid practical problems, specific rules should be provided for holdings situated in between two or more regions.
- (20) Article 43(2) of Regulation (EC) No 1782/2003 provides that all forage area in the reference period should be included in the calculation of the payment entitlements. In order to facilitate the task of the national administrations in establishing the number of forage hectares, it is appropriate to give them the possibility to take into account the number of forage area declared in the area aid application before the introduction of the single payment scheme, whilst letting the farmer the possibility to prove that his forage area in the reference period was lower.
- (21) Article 52 of Regulation (EC) No 1782/2003 allows for the production of hemp under certain conditions. It is necessary to establish the list of eligible varieties as well as to provide for the certification of those varieties.
- (22) Specific rules should be provided for the calculation of the livestock unit in case of establishment of entitlements subject to special conditions by referring to the existing conversion table provided for in the beef sector.
- (23) Specific rules are also needed to facilitate the establishment of payment entitlements in case of anticipated decoupling of the payments in the milk sector.
- (24) Pursuant to Article 54 of Regulation (EC) No 1782/2003, any set-aside entitlement accompanied by an hectare eligible for set-aside entitlement shall give right to the payment of the amount fixed by the set-aside entitlement. The minimum period for which land is to be set aside should extend at least over the growing cycle of the arable crops. However, in order to take certain specific circumstances into account, it should be possible for land set aside to be used before the minimum set-aside period expires. Provisions should also be laid down regarding environmental protection and the maintenance and utilisation of the areas set aside.
- (25) Where a Member State decides to make use of the option of regionalising the single payment scheme, specific provisions should be established in order to facilitate the calculation of the regional reference amount for holdings situated in between two or more regions, as well as in order to guarantee a full allocation of the regional amount in the first year of application of the scheme. Some of the provisions provided for by this Regulation, notably on the establishment of the national reserve, initial allocation of payment entitlements and transfer of payment entitlements should be adjusted in order to make them applicable in the regional model.
- (26) Article 69 of Regulation (EC) No 1782/2003 allows Member States, within a budgetary limit, to provide for an additional payment for specific types of farming which are important for the protection or enhancement of the environment or for improving the quality and marketing of agricultural products. It is therefore necessary to define which farmers should be concerned, how this payment should be compatible with existing measures under the rural development and to define which type of farming should be covered by the measure.
- (27) Article 58 of Regulation (EC) No 1782/2003 provides that Member States shall define the regions in accordance with objective criteria and Article 59 of that Regulation provides that Member States may proceed to a regionalisation of the single payment scheme in duly justified cases and in accordance with objective criteria. It is therefore appropriate to provide for the communication of all the necessary data and information to proceed to the assessment of such criteria.
- (28) In order to assess the application of the single payment scheme, it is appropriate to establish the modalities and deadlines for the exchange of information between the Commission and the Member States and to inform the Commission of the areas for which the aid has been paid, at national, and, where the case may be, at regional level.
- (29) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Direct Payments,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SCOPE AND GENERAL PROVISIONS

Article 1

Subject matter and scope

This Regulation lays down detailed rules for the implementation of the single payment scheme provided for in Title III of Regulation (EC) No 1782/2003.

Article 2

Definitions

For the purposes of Title III of Regulation (EC) No 1782/2003 and of this Regulation, the following definitions shall apply:

- (a) 'agricultural area' shall mean the total area taken up by arable land, permanent pasture and permanent crops;

- (b) 'arable land' shall mean 'arable land' within the meaning of Article 2 point (1) of Commission Regulation (EC) No 795/2004 ⁽¹⁾;
- (c) 'permanent crops' shall mean non-rotational crops other than permanent pasture that occupy the land for five years or longer and yield repeated harvests including nurseries as defined in Annex I point (G/05) of Commission Decision 2000/115/EC ⁽²⁾, with the exception of multiannual crops and the nurseries of such multiannual crops;
- (d) 'multiannual crops' shall mean crops of the following products:

CN code	
0709 10 00	Artichokes
0709 20 00	Asparagus
0709 90 90	Rhubarb
0810 20	Raspberries, blackberries, mulberries and loganberries
0810 30	Black-, white or redcurrants and gooseberries
0810 40	Cranberries, bilberries and other fruits of the genus <i>Vaccinium</i>
Ex 0602 90 41	short rotation coppice
Ex 0602 90 51	<i>Miscanthus sinensis</i>
Ex 1214 90 90	<i>Phalaris arundacea</i> (Reed canary grass)

- (e) 'permanent pasture' shall mean 'permanent pasture' within the meaning of Article 2 point (2) of Commission Regulation (EC) No 795/2004;
- (f) 'grassland' shall mean arable land used for grass production (sown or natural); for the purposes of Article 61 of Regulation (EC) No 1782/2003 grassland shall include permanent pasture;
- (g) 'sale' shall mean the sale or any other definitive transfer of ownership of land or payment entitlements. The definition shall not include the sale of land where land is transferred to public authorities and/or for use in the public interest and the transfer is carried out for non agricultural purposes;
- (h) 'lease' shall mean lease or similar types of temporary transactions;
- (i) 'transfer or sale or lease of payment entitlement with land' shall mean the sale or lease of payment entitlements with, respectively, the sale or lease of a corresponding number of hectares of eligible land within the meaning of Article 44(2) held by the transferor.

In case of lease, the payment entitlements and the hectares shall be leased for the same time period.

The case where all the payment entitlements subject to special conditions referred to in Article 49(2) of Regulation (EC) No 1782/2003 are transferred shall be considered as a case of transfer of payment entitlement with land.

⁽¹⁾ OJ L 141, 30.4.2004, p.1.

⁽²⁾ OJ L 38, 12.2.2000, p.1.

- (j) 'Production unit' shall mean at least one area which gave right to direct payments in the reference period, including forage area within the meaning of Article 43(3) of Regulation (EC) No 1782/2003, or one animal which would have given right to direct payments in the reference period, accompanied, where the case may be, by a corresponding premium right;
- (k) For the purposes of Articles 37(2) and 42(3) of Regulation (EC) No 1782/2003, 'farmers commencing an agricultural activity' shall mean a natural or legal person that did not have any agricultural activity in his own name and at his own risk or must not have had the control of a legal person exercising an agricultural activity in the 5 years preceding the start of the new agricultural activity.

In case of a legal person, the natural person(s) who has the control of the legal person must not have had any agricultural activity in his own name and at his own risk or must not have had the control of a legal person exercising an agricultural activity in the 5 years preceding the start of the agricultural activity by the legal person.

Article 3

Calculation of the unit value of payment entitlements

1. Payment entitlements shall be calculated up to three decimals and rounded up or down to the nearest second decimal. If the calculation gives a result which is exactly half-way, the sum shall be rounded up to the nearest second decimal.
2. Where the size of a parcel, which is declared in accordance with Article 44(3) of Regulation (EC) No 1782/2003, or which is transferred with an entitlement in accordance with Article 46(2) of that Regulation, amounts to a fraction of an hectare, the entitlement concerned shall be declared or transferred with the land at a value calculated to the extent of the same fraction. The remaining part of the entitlement shall remain at the disposal of the farmer at a value calculated correspondingly.

CHAPTER 2

NATIONAL RESERVE

Section 1

Establishment of the national reserve

Article 4

Reductions

1. The reduction provided for in Article 42(1) of Regulation (EC) No 1782/2003 shall apply to all reference amounts after any possible reduction under Article 41(2) of that Regulation and, where applicable, after any possible reduction under Article 65(1) and the second subparagraph of Article 70(2) of that Regulation.

2. In case of application of the reduction referred to in Article 42(7) of Regulation (EC) No 1782/2003, the unit value of all payment entitlements which have been established at the date of application of the linear reduction shall be reduced proportionately.

Article 5

Dairy premiums and additional payments

1. The percentage of reduction fixed by the Member States in accordance with Article 42(1) of Regulation (EC) No 1782/2003 shall apply in 2007 to the amounts resulting from dairy premiums and additional payments to be included in the single payment scheme.

2. Where a Member State makes use of the option, provided for in the first subparagraph of Article 62 of Regulation (EC) No 1782/2003, to include in full the amounts resulting from dairy premiums and additional payments in the single payment scheme, it shall apply the percentage of reduction referred to in paragraph 1 of this Article in the year in which it makes use of that option. In the following years, the Member State concerned shall apply the reduction within the limit of the increase of the amounts provided for in Articles 95(2) and 96(2) of Regulation (EC) No 1782/2003.

3. Where a Member State makes use of the option, provided for in the first subparagraph of Article 62 of Regulation (EC) No 1782/2003, to include in part the amounts resulting from dairy premiums and additional payments in the single payment scheme, it shall apply the percentage of reduction referred to in paragraph 1 of this Article to the corresponding amounts included in the single payment scheme in the year in which it makes use of that option, taking into account the increase of the amounts provided for in Article 95(2) and 96(2) of Regulation (EC) No 1782/2003.

Section 2

Establishment of payment entitlements from the national reserve

Article 6

Establishment of payment entitlements

1. Where a Member State makes use of the options provided for in Article 42(3) and (5) of Regulation (EC) No 1782/2003, farmers may receive, in accordance with the conditions laid down in this Section and in accordance with the objective criteria laid down by the Member State concerned, payment entitlements from the national reserve.

2. When a farmer who does not own any payment entitlement applies for payment entitlements from the national reserve, he may receive a number of payment entitlements not higher than the number of hectares he holds (owned or leased) at that time.

3. When a farmer who owns payment entitlements applies for payment entitlements from the national reserve, he may receive a number of payment entitlements not higher than the number of hectares he holds for which he does not own any payment entitlement.

The unit value of each payment entitlement he already owns may be increased within the limit of the regional average referred to in paragraph 4.

Article 42(8) of Regulation (EC) No 1782/2003 shall apply to payment entitlements whose unit value has been increased by more than 20 % in accordance with the second subparagraph of this paragraph.

4. The regional average shall be established by Member States at the appropriate territorial level in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion. It shall be established at a date to be fixed by the Member States. It may be reviewed annually. It shall be based on the value of the payment entitlements allocated to the farmers in the region concerned. It shall not be differentiated per sector of production.

5. The value of each payment entitlement received in accordance with paragraph 2 or 3, except second subparagraph of paragraph 3, shall be calculated by dividing a reference amount, established by the Member State, in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion, by a number of hectares not higher than the number of hectares referred to in paragraph 2.

Article 7

Application of Article 42(5) of Regulation (EC) No 1782/2003 in case of fewer hectares than payment entitlements

1. Where a Member State makes use of the option provided for in Article 42(5) of Regulation (EC) No 1782/2003, it may in particular allocate, upon request, in accordance with this Article, payment entitlements to farmers, in the areas concerned, who declare fewer hectares than the number corresponding to payment entitlements they would be or would have been allocated in accordance with Article 43 of that Regulation.

In that case, the farmer shall give up to the national reserve all the payment entitlement he owns or should have been allocated, except set-aside entitlements and payment entitlements subject to special conditions referred to in Article 49 of Regulation (EC) No 1782/2003.

2. The number of payment entitlements allocated from the national reserve shall be equal to the number of hectares the farmer declares.

3. The five years period provided for in Article 42(8) of Regulation (EC) No 1782/2003 shall apply or, where the case may be, restart to apply to all the payment entitlements allocated.

4. The unit value of the payment entitlements allocated from the national reserve shall be calculated by dividing the farmer's reference amount by the number of hectares he declares reduced by a number of hectares equal to the number of set-aside entitlements he owns. The regional average provided for in Article 6 (4) shall not apply.

5. Paragraphs 1, 2, 3 and 4 shall not apply to a farmer who declares less than 50 % of the total number of hectares, within the meaning of Article 43(1) and (2) of Regulation (EC) No 1782/2003, which he held (leased and owned) in the reference period.

6. Paragraph 1, 2, 3 and 4 shall not apply to a farmer who declares fewer hectares than the number corresponding to payment entitlements he would be or have been allocated in accordance with Article 43 of Regulation (EC) No 1782/2003 due to the fact that he transferred those hectares by sale or lease.

7. The farmer concerned shall declare all the hectares he holds at the time of the request.

Section 3

Replenishment of the national reserve

Article 8

Unused payment entitlements

1. Without prejudice to Article 34(3) of Regulation (EC) No 1782/2003, unused payment entitlements shall revert to the national reserve on the day following the last day for modifying the application under the single payment scheme in the calendar year in which the period referred to in the second subparagraph of Article 42(8) or in Article 45(1) of Regulation (EC) No 1782/2003 expires.

For the purposes of this Article, 'unused payment entitlement' shall mean that no payment has been granted for that entitlement during the period referred to in the first subparagraph. Payment entitlements for which an application is made and accompanying an area determined within the meaning of Article 2 point (22) of Regulation (EC) No 795/2004 shall be deemed as being used.

2. Set-aside entitlements and payment entitlements accompanied by the authorisation provided for in Article 60 of Regulation (EC) No 1782/2003 when reverting to the national reserve shall lose the accompanying obligation or authorisation.

Article 9

Retention on sales of payment entitlements

1. Where a Member State makes use of the option provided for in Article 46(3) of Regulation (EC) No 1782/2003, the Member State may decide that it shall revert to the national reserve:

(a) in case of sale of payment entitlements without land, up to 30 % of the value of each payment entitlement or the equivalent amount expressed in number of payment entitlements. However during the first 3 years of application of the single payment scheme, the percentage of 30 % may be replaced by 50 %;

and/or

(b) in case of sale of payment entitlements with land, up to 10 % of the value of each payment entitlement or the equivalent amount expressed in number of payment entitlements;

and/or

(c) in case of sale of set-aside entitlements without land, up to 30 % of the value of each payment entitlement. However during the first 3 years of application of the single payment scheme, the percentage of 30 % may be replaced by 50 %;

and/or

(d) in case of sale of payment entitlements with an entire holding, up to 5 % of the value of each payment entitlement and/or the equivalent amount expressed in number of payment entitlements;

and/or

(e) in case of sale of payment entitlements to which it is linked the authorisation referred to in Article 60 of Regulation (EC) No 1782/2003, up to 10 % of the value of each payment entitlement.

In case of sale of payment entitlements with or without land to a farmer commencing an agricultural activity and in case of actual or anticipated inheritance of payment entitlements no retention shall apply.

2. When fixing the percentages referred to in paragraph 1, a Member State may differentiate the percentage within one of the cases referred to in paragraph 1 a) to e) in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion.

Article 10

Windfall profit clause

1. In cases referred to in Article 42(9) of Regulation (EC) No 1782/2003, the following shall revert to the national reserve:

(a) in case of sale, up to 90 % of the reference amount to be established in accordance with Article 37 of Regulation (EC)

No 1782/2003 for the seller in respect of the production units and the hectares of the holding or part of the holding transferred;

(b) in case of six-year lease, up to 50 % of the reference amount to be established in accordance with Article 37 of Regulation (EC) No 1782/2003 for the lessor in respect of the production units and the hectares of the holding or part of the holding transferred;

(c) in case of a lease of more than six years, 5 % per any year after the six-year period but corresponding to no more than 20 % of the reference amount to be established in accordance with Article 37 of Regulation (EC) No 1782/2003 for the lessor in respect of the production units and the hectares of the holding or part of the holding transferred.

2. The payment entitlements to be established for the seller or the lessor shall be calculated in accordance with Article 43 of Regulation (EC) No 1782/2003 on the basis of the remaining reference amount and hectares.

3. Paragraph 1 shall not apply in cases where, within one year but not later than 30 April 2004 from the sale or the lease, the seller or the lessor bought or rented for six or more years another holding or part of it. In that case, the seller or the lessor shall keep a number of payment entitlements at least equal to the number of payment entitlements that the farmer may use on the new holding pursuant to Article 44 of Regulation (EC) No 1782/2003.

4. Paragraph 1 shall not apply in cases where the farmer proves, to the satisfaction of the Member State, that the price of sale or lease corresponds to the value of the holding or, in case of partial transfer of part of the holding without payment entitlements.

Section 4

Regional administration

Article 11

Regional reserves

1. Member States may administer the national reserve at regional level.

In that case, Member States may allocate, in full or in part, the amounts available at national level in accordance with Articles 4, 5, 8, 9 and 10.

2. The amounts allocated to each regional level may be considered available for allocation within the region concerned only, except in cases referred to in Article 42(4) of Regulation (EC) No 1782/2003 or, according to the Member State's choice, in case of application of Article 42(3) of that Regulation.

CHAPTER 3

ALLOCATION OF PAYMENT ENTITLEMENTS

Section 1

Initial allocation of payment entitlements

Article 12

Applications

1. Starting from the calendar year preceding the first year of application of the single payment scheme Member States may proceed to the identification of the eligible farmers referred to in Article 33 of Regulation (EC) No 1782/2003, to the provisional establishment of the amounts and the number of hectares referred to respectively in Article 34(1) (a) and (b) of that Regulation and to a preliminary verification of the conditions referred to in paragraph 5 of this Article.

2. For the provisional establishment of payment entitlements, Member States may send the application form referred to in Article 34(1) of Regulation (EC) No 1782/2003, by a date to be fixed by the Member States but not later than 15 April of the first year of application of the single payment scheme, to the farmers referred to in Article 33(1) (a) of that Regulation or, where the case may be, to the farmers identified in accordance with paragraph 1 of this Article. In this case and by the same date, farmers other than those referred to in Article 33(1) (a) of Regulation (EC) No 1782/2003 shall make an application to establish their payment entitlements.

3. Where a Member State does not make use of the option provided for in paragraph 2, the Member State shall send the application form referred to in Article 34(1) of Regulation (EC) No 1782/2003 by a date to be fixed by the Member State but not later than one month before the last date for lodging an application under the single payment scheme.

4. The definitive establishment of payment entitlements to be allocated in the first year of application of the single payment scheme shall be subject to the application under the single payment scheme in accordance with Article 34(3) of Regulation (EC) No 1782/2003.

No transfer of payment entitlements shall be possible before the definitive establishment.

5. The applicant shall prove to the satisfaction of the Member State that, at the date of application for the payment entitlements, he is a farmer within the meaning of Article 2(a) of Regulation (EC) No 1782/2003.

6. A Member State may decide to set up a minimum size per holding for which the establishment of payment entitlements may be requested. However, the minimum size shall not be higher than 0,3 ha.

No minimum size shall be set up for the establishment of the payment entitlements subject to special conditions referred to in Articles 47 to 50 of Regulation (EC) No 1782/2003.

7. A Member State may decide that the application for the definitive establishment of payment entitlements referred to in paragraph 4 may be lodged at the same time as the application for payment under the single payment scheme.

Section 2

Allocation of payment entitlements outside the national reserve

Article 13

Inheritance and anticipated inheritance

1. In cases referred to in Article 33(1)(b) of Regulation (EC) No 1782/2003, the farmer who has received the holding or part of the holding shall claim, in his name, the payment entitlements to be calculated for the holding or part of the holding received.

The number and value of the payment entitlements shall be established on the basis of the reference amount and number of hectares relating to the production units inherited.

2. In cases of revocable anticipated inheritance, the access to the single payment scheme shall be given only once to the designated inheritor by the date for lodging an application for the payment under the single payment scheme.

Succession under a contract lease or inheritance or anticipated inheritance from a farmer who is a natural person and who was a lessee of a holding or part of it, in the reference period, which would give right to payment entitlements, shall be treated as the inheritance of a holding.

3. In cases where a farmer referred to in paragraph 1 is already entitled to payment entitlements, the number and value of his payment entitlements shall be established on the basis of, respectively, the sum of the reference amounts and the sum of the number of hectares relating to his original holding and the inherited production units.

4. In cases where a farmer referred to in paragraph 1 meets the condition for applying two or more of Articles 19 to 23 of this Regulation or Articles 37(2), 40, 42(3) or 42(5) of Regulation (EC) No 1782/2003, he shall receive a number of payment entitlements not higher than the highest number between the hectares he inherited and those he declares in the first year of application of the single payment scheme and whose value shall be the highest value he may obtain by applying separately each of the Articles for which he meets the conditions.

5. For the purposes of Article 33(1)(b) of Regulation (EC) No 1782/2003 and of this Regulation, the definition in the national legislation for 'inheritance' and 'anticipated inheritance' shall be used.

Article 14

Changes in legal status or denomination

1. For the purposes of Article 33(2) of Regulation (EC) No 1782/2003, in cases of changes of legal status or denomination, the farmer shall have access to the single payment scheme under the same conditions as the farmer originally managing the holding within the limit of the payment entitlements to be allocated for the original holding under the following conditions:

- (a) the number and the value of the payment entitlements shall be established on the basis of the reference amount and number of hectares relating to the original holding;
- (b) in case of changes of the legal status of a legal person or from a natural person to a legal person or from a legal person to a natural person, the farmer managing the new holding shall be the farmer who was in control of the original holding in terms of management, benefits and financial risk;

2. Where the cases referred to in Article 33(2) of Regulation (EC) No 1782/2003 occur in the period between 1 January and the date for lodging an application in the first year of application of the single payment scheme, paragraph 1 of this Article shall apply.

Article 15

Mergers and scissions

1. For the purposes of the first subparagraph of Article 33(3) of Regulation (EC) No 1782/2003, 'merger' shall mean the merger of two or more separate farmers within the meaning of Article 2 (a) of Regulation (EC) No 1782/2003 into one new farmer within the meaning of Article 2 (a) of Regulation (EC) No 1782/2003 controlled in terms of management, benefits and financial risks by the farmers originally managing the holdings or one of them.

The number and value of the payment entitlements shall be established on the basis of the reference amount and number of hectares relating to the original holdings.

2. For the purposes of the second subparagraph of Article 33(3) of Regulation (EC) No 1782/2003, 'scission' shall mean the scission of one farmer within the meaning of Article 2 (a) of Regulation (EC) No 1782/2003 into at least

two new separate farmers within the meaning of Article 2 (a) of Regulation (EC) No 1782/2003 of which at least one remains controlled, in terms of management, benefits and financial risks, by at least one of the legal or natural persons originally managing the holding or the scission of one farmer within the meaning of Article 2 (a) of Regulation (EC) No 1782/2003 into at least one new separate farmer within the meaning of Article 2 (a) of Regulation (EC) No 1782/2003 the other one remaining controlled, in terms of management, benefits and financial risks, by the farmer originally managing the holding.

The number and value of the payment entitlements shall be established on the basis of the reference amount and number of hectares relating to the transferred production units of the original holding.

3. Where the cases referred to in the first or second subparagraph of Article 33(3) of Regulation (EC) No 1782/2003 occur in the period between 1 January and the date for lodging an application in the first year of application of the single payment scheme, paragraph 1 or 2 of this Article shall apply respectively.

Article 16

Hardship cases

1. In cases referred to in Article 40(5) of Regulation (EC) No 1782/2003, where the agri-environmental commitments referred to in that Article expire after the last date for lodging an application for payment under the single payment scheme in its first year of application, the Member State shall establish, in the first year of application of the single payment scheme, reference amounts for each farmer concerned in accordance with Article 40(1), (2), (3) or (5) second subparagraph of that Regulation, provided that any double payment under those agri-environmental commitments is excluded.

Amounts of less than EUR 10 per payment entitlement or less than a total amount of EUR 100 per farmer shall not be considered a double payment.

Where the Member State concerned may not modify the amounts to be paid under those agri-environmental commitments, the farmer concerned may:

a) receive a reduced reference amount and apply, under a program to be established by the Member State according to Article 42(5) of Regulation (EC) No 1782/2003, after the expiry of his agri-environmental commitment, to adjust the unit value of his payment entitlements by a date to be fixed by the Member State but not later than, the latest date for application under the single payment scheme in the following year,

or alternatively

b) receive a full reference amount subject to the condition that he accepts to modify the amounts to be paid under those agri-environmental commitments.

2. In the case referred to in the second subparagraph of Article 40(5) of Regulation (EC) No 1782/2003, the farmer shall receive payment entitlements calculated by dividing a reference amount, established by the Member State, in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion, by a number of hectares not higher than the number of hectares he declares in the first year of application of the single payment scheme.

Article 17

Private contract clause in case of sale

1. Where a sales contract concluded or modified by the last date for lodging an application under the single payment scheme in its first year of application at the latest stipulates that all the holding or part of the holding is sold, in full or in part, together with the payment entitlements to be established in accordance with Article 43 of Regulation (EC) No 1782/2003, in respect of the hectares of the holding or part of the holding transferred, the sales contract shall be considered as a transfer of the payment entitlements with land within the meaning of Article 46 of that Regulation subject to the conditions provided for in paragraph 2, 3 and 4 of this Article.

2. Articles 42(9) and 46(3) of Regulation (EC) No 1782/2003 shall apply, where the case may be, to the payment entitlements to be calculated on the basis of the production units and hectares which were the object of the contract.

3. The seller shall apply for the establishment of the payment entitlements in accordance with Article 12, adding to his application a copy of the sales contract and indicating the production units and the number of hectares for which he intends to transfer the payment entitlements.

A Member State may allow the buyer to apply on behalf of the seller and with the explicit authorisation of the seller for the establishment of the payment entitlements in accordance with Article 12. In this case the Member State shall verify that the seller fulfils the eligibility criteria provided for in Article 33 of Regulation (EC) No 1782/2003 and in particular the condition referred to in Article 12(5) of this Regulation.

4. The buyer shall apply for payment under the single payment scheme in accordance with Article 12, adding to his application a copy of the sales contract.

5. A Member State may require that the applications of the buyer and of the seller are lodged together or that the second application contains a reference to the first one.

Section 3

Allocation of payment entitlements within the national reserve

Article 18

General provisions for farmers in a special situation

1. For the purposes of Article 42(4) of Regulation (EC) No 1782/2003, 'farmers in a special situation' shall mean the farmers referred to in Articles 19 to 23 of this Regulation.

2. In cases where a farmer in a special situation meets the condition for applying two or more of Articles 19 to 23 of this Regulation or Articles 37(2), 40, 42(3) or 42(5) of Regulation (EC) No 1782/2003, he shall receive a number of payment entitlements not higher than the number of hectares he declares in the first year of application of the single payment scheme and whose value shall be the highest value he may obtain by applying separately each of the Articles for which he meets the conditions.

3. Article 6 shall not apply to farmers in a special situation, except the third subparagraph of Article 6(3).

4. In cases where the lease referred to in Articles 20 and 22 or the programs referred to in Article 23 expire after the last date for lodging an application under the single payment scheme in its first year of application, the farmer concerned may apply for the establishment of his payment entitlements, after the expiry of the lease or program, by a date to be fixed by the Member States but not later than the latest date for application under the single payment scheme in the following year.

5. Where, in accordance with their national law or well-established usual practice, the definition of long term lease also includes lease for five years, Member States may decide to apply Articles 20, 21 and 22 to those lease.

Article 19

Dairy farmers

For the purpose of establishing the reference amount of a dairy farmer finding himself in a situation referred to in Article 40 of Regulation (EC) No 1782/2003 who leases, because of that situation, his individual reference quantity or part of it according to Article 16 of Regulation (EC) No 1788/2003 during the twelve-month period ending on 31 March of the first year of application of the single payment scheme to the dairy premiums and additional payments, that individual reference quantity shall be deemed to be available on the holding of that farmer for that calendar year.

Article 20

Transfer of leased land

1. A farmer who received, by transfer free of charge or by lease for six or more years or by way of actual or anticipated inheritance, a holding or part of a holding, that was leased to a third person during the reference period, from a farmer who retired or died before the date for lodging an application under the single payment scheme in its first year of application, shall receive payment entitlements calculated by dividing a reference amount, established by the Member State, in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion, by a number of hectares not higher than the number of hectares of the holding or part of the holding he received.

2. Farmers referred to in paragraph 1 shall be any person who may receive the holding or part of the holding referred to in paragraph 1, by way of actual or anticipated inheritance.

Article 21

Investments

1. A farmer who made investments in production capacity or purchased land in accordance with the conditions laid down in paragraphs 2 to 6, by 29 September 2003 at the latest, shall receive payment entitlements calculated by dividing a reference amount, established by the Member State, in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion, by a number of hectares not higher than the number of hectares he purchased.

2. Investments shall be provided for in a plan or programme whose implementation has already started by 29 September 2003 at the latest. The plan or programme shall be communicated by the farmer to the competent authority of the Member State.

Where no written plan or programs exists, Member States may take account of other objective proof of the investment.

3. The increase in the production capacity shall concern only those sectors for which a direct payment listed in Annex VI to Regulation (EC) No 1782/2003 would have been granted in the reference period taking into account the application of the options provided for in Articles 66 to 70 of that Regulation.

The purchase of land shall only concern the purchase of eligible land within the meaning of Article 44(2) of Regulation (EC) No 1782/2003.

In any case, the part of the increase in production capacity and/or the purchase of land for which the farmer is already entitled to be allocated payment entitlements and/or reference amounts for the reference period shall not be taken into account for the application of this Article.

4. Long term lease of six and more years started by 29 September 2003 at the latest shall be considered as a purchase of land for the application of paragraph 1.

5. Where a farmer already owns payment entitlements, in case of purchase or long term lease, the number of payment entitlements shall be calculated on the basis of the hectares purchased or rented and, in case of other investments, the total value of the existing payment entitlements may be increased within the limit of the reference amount referred to in paragraph 1.

6. Where a farmer has no hectares or does not own any payment entitlements, the number of payment entitlements shall be calculated by dividing the reference amount referred to in paragraph 1 by a unit value that shall not be higher than EUR 5 000.

The value of each payment entitlement shall be that unit value.

The payment entitlements shall be subject to the conditions referred to in Article 49 of Regulation (EC) No 1782/2003. The 50 % of the agricultural activity referred to in paragraph 2 of that Article shall be established by the Member State in accordance with objective criteria.

Article 22

Lease and purchase of leased land

1. A farmer who leased, between the end of the reference period and 29 September 2003 at the latest, for six or more years a holding or part of it whose lease conditions may not be adjusted shall receive payment entitlements calculated by dividing a reference amount, established by the Member State, in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion, by a number of hectares not higher than the number of hectares he leased.

2. Paragraph 1 shall apply to a farmer who bought, in the reference period or before, or by 29 September 2003 at the latest, a holding or part of it whose land was under a lease during the reference period, with the intention to commence or expand his agricultural activity within one year after the expiry of the lease.

Article 23

Reconversion of production

1. A farmer who participated, in the reference period and by 29 September 2003 at the latest, in national programs of reorientation of production for which a direct payment under the single payment scheme could have been granted, such as, in particular, programs of conversion of production, shall receive payment entitlements calculated by dividing a reference amount,

established by the Member State, in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion, by a number of hectares not higher than the number of hectares he declares in the first year of application of the single payment scheme.

2. Paragraph 1 shall apply to a farmer who converted during the reference period and by 29 September 2003 at the latest, his milk production into any other production of a sector referred to in Annex VI of Regulation (EC) No 1782/2003.

CHAPTER 4

SPECIFIC PROVISIONS

Section 1

Declaration and transfer of payment entitlements

Article 24

Declaration and use of payment entitlements

1. Payment entitlements may only be declared for payment, once per year, by the farmer who holds them at the latest date for lodging an application under the single payment scheme

2. Member States shall fix the beginning of the 10 month period referred to in Article 44(3) of Regulation (EC) No 1782/2003 for each individual farmer at a single date within a period to be fixed between 1st September of the calendar year preceding the year of lodging an application under the single payment scheme and 30 April of the following calendar year or leave it at the farmer's choice within the fixed period.

Article 25

Transfers of payment entitlements

1. Payment entitlements may be transferred at any time of the year.

2. The transferor shall inform the competent authority of the Member State of the transfer within a period to be established by the Member State

3. A Member State may require that the transferor shall communicate the transfer to the competent authority of the Member State where the transfer will operate, within a time period to be established by that Member State but not earlier than six weeks before the transfer shall take place and taking into account the last date for lodging an application under the single payment scheme. The transfer shall take place six weeks after the day of communication unless the competent authority objects to the transfer and notifies the transferor thereof within that period. The competent authority may only object to a transfer where the latter is not in accordance with provisions of Regulation (EC) No 1782/2003 and of this Regulation.

*Article 26***Regional limitation**

1. Where a Member State makes use of the option provided for in the third subparagraph of Article 46 (1) of Regulation (EC) No 1782/2003, Member States shall define the region at the appropriate territorial level in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion.

2. The Member State shall define the region referred to in paragraph 1 at the latest one month before the date of beginning of the 10 month period referred to in Article 44(3) of Regulation (EC) No 1782/2003.

A farmer, whose holding is situated in the region concerned, may not transfer or use outside that region his payment entitlements corresponding to the number of hectares which he declares in the first year of application of the option provided for in the third subparagraph of Article 46(1) of Regulation (EC) No 1782/2003.

A farmer, whose holding is partly situated in the region concerned, may not transfer or use outside that region his payment entitlements corresponding to the number of hectares, situated in that region, which he declares in the first year of application of the option.

3. The limitation to the transfer of payment entitlements referred to in the third subparagraph of Article 46(1) of Regulation (EC) No 1782/2003 shall not apply in case of actual or anticipated inheritance of payment entitlements without an equivalent number of eligible hectares.

4. A Member State may decide to apply the limitation to the transfer of payment entitlements referred to in the third subparagraph of Article 46 (1) of Regulation (EC) No 1782/2003 only to set-aside payment entitlements.

*Article 27***Private contract clause in case of lease**

1. Subject to paragraphs 2 and 3, a clause in a lease contract providing for the transfer of a number of entitlements not higher than the number of hectares leased shall be considered as a lease of the payment entitlements with land within the meaning of Article 46 of Regulation (EC) No 1782/2003, in cases where:

- (a) a farmer has leased to another farmer his holding or part of it no later than the date for lodging an application under the single payment scheme in its first year of application,
- (b) the lease contract expires later than the last date for lodging an application under the single payment scheme,

and

- (c) he decides to lease his payment entitlements to the farmer to whom he leased the holding or part of it.

2. The lessor shall apply for the establishment of the payment entitlements in accordance with Article 12, adding to the application a copy of the lease contract and indicating the number of hectares for which he intends to lease the payment entitlements. Where the case may be, Article 42(9) of Regulation (EC) No 1782/2003 shall apply.

3. The lessee shall apply for payment under the single payment scheme in accordance with Article 12, adding to the application a copy of the lease contract.

4. A Member State may require that the applications of the lessee and of the lessor are lodged together or that the second application contains a reference to the first one.

*Section 2***Other specific provisions***Article 28***Forage area**

For the purposes of Article 43(2) (b) of Regulation (EC) No 1782/2003, a Member State may decide to use the forage area declared by the farmer in the area aid application for 2004 or in the year preceding the first year of application of the single payment scheme unless the farmer proves, at the satisfaction of the competent authority, that his forage area in the reference period was lower.

*Article 29***Production of hemp**

For the purposes of Article 52 of Regulation (EC) No 1782/2003, the payment of the entitlements for areas on hemp shall be subject to the use of seed of the varieties listed in Annex II to Regulation (EC) No 795/2004 in the version applicable for the year in respect of which the payment is granted. In the case of hemp grown for fibre, the seed shall be certified in accordance with Council Directive 2002/57/EC ⁽¹⁾ and in particular Article 12 thereof.

*Article 30***Entitlements subject to special conditions**

1. For the purposes of calculating the agricultural activity expressed in livestock units (LU) referred to in Article 49(2) of Regulation (EC) No 1782/2003, the conversion table provided for in Article 131(2) (a) of that Regulation shall apply to the number of animals for which a direct payment referred to in Annex VI of that Regulation was granted in the reference period.

2. Male and female bovine animals of less than six months shall be converted in LU by using the coefficient 0,2.

⁽¹⁾ OJ L 193, 20.7.2002, p. 74.

3. In order to check that the minimum agricultural activity expressed in livestock units in accordance with paragraph 1 is respected, Member States shall determine the number of animals in accordance with one of the following methods:

(a) Member States shall ask each producer to declare, on the basis of his farm register, prior to a date to be determined by the Member State but not later than the date of payment, the number of LUs;

and/or

(b) Member States shall use the computerised database set up in accordance with Council Directive 92/102/EEC ⁽¹⁾ and Regulation (EC) No 1760/2000 of the European Parliament and of the Council ⁽²⁾ to determine the number of LUs on condition that the database offers, to the satisfaction of the Member State, adequate assurances as to the accuracy of the data it contains for the purposes of the single payment scheme.

4. The minimum agricultural activity requirement shall be deemed to be respected when the number of LUs reaches 50 % during a period or at certain dates to be determined by the Member States. All the animals sold or slaughtered during the calendar year concerned shall be taken into account.

5. Member States shall take the measures necessary to apply Article 29 of Regulation (EC) No 1782/2003 in the case of producers who, by means of abnormally low numbers of LUs during part of the year, artificially create the conditions required to respect the minimum agricultural activity.

Article 31

Dairy premium and additional payments

1. Where a Member State makes use of the option provided for in the first paragraph of Article 62 of Regulation (EC) No 1782/2003 in 2005 or, in case of application of Article 71 of Regulation (EC) No 1782/2003, in the first year of application of the single payment scheme:

(a) in the case where a dairy farmer received other direct payments in the reference period:

— if he had hectares in the reference period, the payment entitlements shall be calculated, in accordance with Article 43 of Regulation (EC) No 1782/2003, on the basis of all the hectares which in the reference period gave right to those direct payments including the forage area;

— if he had no hectares in the reference period, he shall receive payment entitlements subject to special conditions calculated in accordance with Article 48 of Regulation (EC) No 1782/2003;

(b) in the case where a dairy farmer did not receive other direct payments in the reference period:

— if he has hectares, the payment entitlements shall be calculated by dividing the amount to be granted under Articles 95 and 96 of Regulation (EC) No 1782/2003 by the hectares he owns in 2005 or, in case of application of Article 71 of Regulation (EC) No 1782/2003, in the first year of application of the single payment scheme;

— If he has no hectares, he shall receive payment entitlements subject to special conditions calculated in accordance with Article 48 of Regulation (EC) No 1782/2003.

2. Where a Member State makes use of the option provided for in the first subparagraph of Article 62 of Regulation (EC) No 1782/2003 in 2006, Article 50 of that Regulation shall apply.

CHAPTER 5

SET-ASIDE

Article 32

Conditions for set aside

1. Areas set aside must so remain for a period commencing on 15 January at the latest and ending on 31 August at the earliest. However, Member States shall lay down the conditions under which producers may be authorised to sow seed from 15 July for harvesting in the following year and the conditions to be met for grazing to be authorised from 15 July or, in case of exceptional climatic condition, from 15 of June in Member States where transhumance is practised traditionally.

2. Member States shall apply suitable measures compatible with the specific situation of areas set aside in order to ensure they are maintained in good agricultural and environmental condition and that the environment is protected.

Such measures may involve green cover. In that case, the measures shall ensure that the green cover cannot be used for seed production and that it cannot be used for agricultural purposes before 31 August or, before 15 January thereafter, to produce crops for marketing.

3. Paragraph 2 shall not apply to areas set aside or afforested pursuant to Articles 22, 23, 24 and 31 of Council Regulation (EC) No 1257/1999 ⁽³⁾ and counting for the purposes of compulsory set-aside, where the measures referred to in paragraph 2 prove to be incompatible with the environmental or afforestation requirements laid down in those Articles.

⁽¹⁾ OJ L 355, 5.12.1992, p. 32.

⁽²⁾ OJ L 204, 11.8.2000, p. 1.

⁽³⁾ OJ L 160, 26.6.1999, p. 80.

Article 33

Exchange of eligible land for set-aside

For the purpose of applying Article 54(5) of Regulation (EC) No 1782/2003, Member States may derogate from the first subparagraph of paragraph 2 of that Article only under the following situations and conditions:

- (a) For areas subject to a restructuring programme, defined as a 'change to the structure and/or eligible area of a holding imposed by the public authorities',
- (b) In case of one or other form of public intervention, where such intervention results in a farmer setting-aside land previously regarded as ineligible in order to continue his normal agricultural activity and the intervention in question means that land originally eligible ceases to be so with,
- (c) Where farmers are able to give relevant and objective reasons for exchanging ineligible land for eligible land on their holdings,

In these cases, Member States shall take action to prevent any significant increase in the total area eligible to set aside entitlements. This may in particular involve deeming previously eligible areas ineligible as an offsetting measure. Areas newly declared eligible by the Member States must not exceed the area newly declared ineligible by more than 5 %. The Member States may provide for a system for the prior notification and approval of such exchanges.

Article 34

Organic production

1. The exemption from set-aside provided for in Article 55 (a) of Regulation (EC) No 1782/2003 shall apply for a number of hectares not higher than the number of set-aside entitlements which a farmer received in the first year of application of the single payment scheme.

2. In case of transfer of set-aside entitlements with land, paragraph 1 shall not apply under the condition that Article 55 (a) of Regulation (EC) No 1782/2003 is respected.

CHAPTER 6

REGIONAL AND OPTIONAL IMPLEMENTATION

Section 1

Regional implementation

Article 35

General provisions

Where a Member State makes use of the options provided for in Articles 58(1) and 59(1) of Regulation (EC) No 1782/2003, save as otherwise provided for in this Section, the other provisions of this Regulation shall apply.

Article 36

Calculation of the regional ceiling

1. Where a Member State makes use of the option provided for in Articles 58(1) and 59(1) of Regulation (EC) No 1782/2003, in case of farmers whose holdings are partly situated in the region concerned, and without prejudice to Article 58(3) of that Regulation, the regional ceiling shall be calculated on the basis of the reference amount corresponding to the production units which gave right to direct payments in the reference period situated in the region concerned, or in accordance with objective criteria established by the Member State.

2. In the case referred to in paragraph 1, the individual reference amount referred to in Article 59(3) second subparagraph of Regulation (EC) No 1782/2003 shall be that which corresponds to the production units which gave right to direct payments in the reference period situated in the region concerned or established according to objective criteria established by the Member State.

3. Article 26 (2) shall apply *mutatis mutandis*.

Article 37

Establishment of the national reserve

Where a Member State makes use of the option provided for in Articles 58 and 59 of Regulation (EC) No 1782/2003, for the purpose of establishing the national reserve, the reduction referred to in Article 42(1) of that Regulation shall be applied to the ceiling referred to in Annex VIII of that Regulation and, where the case may be, adjusted before the definitive establishment of the payment entitlements as referred to in Article 38(3) of this Regulation.

Article 38

Initial allocation of payment entitlements

1. For the purposes of Article 59(2) and (3) of Regulation (EC) No 1782/2003, Member States shall establish the number of eligible hectares referred to in those paragraphs including the

grassland by using the number of hectares declared for the establishment of the payment entitlements in the first year of application of the single payment scheme.

2. By way of derogation from paragraph 1, Member States may establish the number of eligible hectares referred to in Article 59(2) and (3) of Regulation (EC) No 1782/2003 including the grassland by using the number of hectares declared in the area aid declarations for 2004 or for the year preceding the first year of application of the single payment scheme. In cases where the number of eligible hectares declared by farmers in the first year of application of the single payment scheme is lower than the number of eligible hectares established in accordance with the first subparagraph, a Member State may reallocate, in part or in full, the amounts corresponding to the hectares which have not been declared as a supplement to each payment entitlement allocated in the first year of application of the single payment scheme. The supplement shall be calculated by dividing the amount concerned by the number of payment entitlements allocated.

3. The value and number of the payment entitlements allocated on the basis of the farmers' declarations for the establishment of the payment entitlements in the first year of application of the single payment scheme shall be provisional. The definitive value and number shall be established, by 31 December of the first year of application of the single payment scheme at the latest, after the checks made pursuant to Commission Regulation (EC) No 795/2004 are carried out.

Article 39

Initial allocation of set-aside entitlements

1. For the purposes of Article 63(2) 3rd subparagraph of Regulation (EC) No 1782/2003, Member States shall establish the set-aside rate by using the data available related to the land concerned.

2. The number of hectares corresponding to the set-aside entitlements allocated in the first year of application of the single payment scheme shall not vary by a margin of more than 5 % of the average number of hectares set aside in the reference period.

Where the margin referred to in the first subparagraph is exceeded, the number of hectares shall be adjusted by 1 August of the first year of application of the single payment scheme at the latest. However, the set-aside obligation related to the new set-aside payment entitlements shall apply to the farmer concerned only starting from the following year.

Article 40

Application of Article 42(5) of Regulation (EC) No 1782/2003 in case of fewer hectares than payment entitlements

Where a Member State makes use of the option provided for in Article 59 of Regulation (EC) No 1782/2003, and it decides to apply Article 7 of this Regulation, for the purpose of the

allocation of payment entitlements in accordance with that Article 7, the number of payment entitlements to which an authorisation as referred to in Article 60 of Regulation (EC) No 1782/2003 is linked shall be equal to the initial number of payment entitlements with the authorisation and, where the case may be, no higher than the number of payment entitlements allocated.

Article 41

Establishment and transfer of payment entitlements with authorisation

1. Where a Member State makes use of the option provided for in Article 59(1) of Regulation (EC) No 1782/2003, the authorisations established according to Article 60 of that Regulation shall be linked to each individual payment entitlement to be allocated to the farmer concerned.

2. In case the number of authorisation is lower than the number of payment entitlements, the authorisation shall be linked to the payment entitlements starting from those with the highest unit value. In case of transfer of the payment entitlements, the authorisation shall follow the payment entitlement to which it is linked.

3. A Member State may authorize, on farmer's request, the transfer of an authorization linked to a set-aside entitlement to a payment entitlement.

Article 42

Dairy premium and additional payments

1. Where a Member State making use of the option provided for in Article 59(1) of Regulation (EC) No 1782/2003 decides to make use of the option provided for in the first subparagraph of Article 62 of that Regulation in 2005 or, in case of application of Article 71 of Regulation (EC) No 1782/2003, in the first year of application of the single payment scheme, Articles 59(2) and (3) of that Regulation shall apply respectively.

2. Where a farmer has no hectares, he shall receive payment entitlements subject to special conditions calculated in accordance with Article 48 of Regulation (EC) No 1782/2003

3. Where a Member State making use of the option provided for in Article 59(1) of Regulation (EC) No 1782/2003 decides to make use of the option provided for in the first paragraph of Article 62 in 2006 or 2007, Articles 48, 49 and 50 of that Regulation shall apply *mutatis mutandis*.

Article 43

Set-aside

1. Where a Member State makes use of the option provided for in Article 59(1) of Regulation (EC) No 1782/2003, it shall establish and communicate to farmers the set-aside rate referred to in the third subparagraph of Article 63(2) of that Regulation by 1 August of the year preceding the first year of application of the single payment scheme.

2. In case of farmers whose holding is partly situated in the region concerned by the application of Article 59 of Regulation (EC) No 1782/2003, the set aside rate shall apply to the farmer's eligible land, referred to in Article 63(2) second subparagraph of that Regulation, situated in the region concerned.

Article 44

Retention on sale of payment entitlements

Where a Member State making use of the option provided for in Article 59(1) of Regulation (EC) No 1782/2003 decides to make use of the option provided for in Article 46(3) of that Regulation, the percentages of reduction provided for in Article 9 of this Regulation shall apply after deduction from the value of the payment entitlements of a franchise equal to the regional unit value calculated in accordance with Article 59(2) or (3) of Regulation (EC) No 1782/2003.

Article 45

Windfall profit clause

Where a Member State making use of the option provided for in Article 59(1) of Regulation (EC) No 1782/2003 decides to make use of the option provided for in Article 42(9) of that Regulation, the percentages of reduction provided for in Article 10 of this Regulation shall apply to the value of each payment entitlement and/or to the equivalent amount expressed in number of payment entitlements to be allocated.

Article 46

Private contract clause

Where a Member State makes use of the option provided for in Article 59(1) of Regulation (EC) No 1782/2003, for the purposes of Article 17 of this Regulation, the reference amount calculated for the production units which have been transferred shall be taken into account for the establishment of the value of all the payment entitlements of the buyer.

Article 27 shall not apply.

Section 2

Optional implementation

Article 47

Overrun of the ceilings

Where the sum of the amounts to be paid under each of the schemes provided for in Articles 66 to 69 exceeds the ceiling fixed in accordance with Article 64(2) of Regulation (EC) No 1782/2003, the amount to be paid shall be reduced proportionately in the year concerned.

Article 48

Implementation of Article 69 of Regulation (EC) No 1782/2003

1. The additional payment provided for Article 69 of Regulation (EC) No 1782/2003 shall be granted, without prejudice to Article 37(3) of Regulation (EC) No 1257/1999 and its implementing rules, under the conditions provided for in paragraphs 2 to 6 of this Article.

2. The payment shall be made only to farmers within the meaning of Article 2(a) of Regulation (EC) No 1782/2003, irrespective whether they have applied or not to the single payment scheme or they hold payment entitlements.

3. 'In the sector or sectors concerned by the retention' shall mean that the payment may be claimed, in principle, by all the farmers producing, at the time for lodging an application for the additional payment and under the conditions provided for by this Article, the products covered by the sector or sectors referred to in Annex VI to Regulation (EC) No 1782/2003.

4. In case the payment covers types of farming or quality and marketing measures for which no specific production is identified or the production is not directly covered by a sector, payment may be provided for under the condition that the retention is done in all the sectors referred to in Annex VI to Regulation (EC) No 1782/2003 and only the farmers belonging to any of the sectors referred to in that Annex shall participate to the scheme.

5. In case of application of Article 69 of Regulation (EC) No 1782/2003 at regional level, the retention shall be calculated on the basis of the component of the payments of the sectors concerned in the region concerned.

Member States shall define the region at the appropriate territorial level in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion.

6. Member States concerned shall communicate the details of the payment they intend to grant and, in particular, the eligibility conditions and the sectors concerned by 1 August of the year preceding the first year of application of the single payment scheme at the latest.

Any change to the communication referred to in the first subparagraph shall be done by 1 August of a given year at the latest and shall apply to the following year. It shall be immediately communicated to the Commission accompanied by the objective criteria justifying such changes. However, a Member State may not modify the sectors concerned nor the percentage of retention.

CHAPTER 7

COMMUNICATIONS*Article 49***Regionalisation**

Where a Member State makes use of the option provided for in Article 59(1) of Regulation (EC) No 1782/2003, it shall communicate to the Commission, by 1 August of the year preceding the first year of application of the single payment scheme at the latest, the justification and objective criteria on the basis of which the decision of applying that option has been taken and, where necessary, justification of the application of that Article only in a given region, or justification of the partial division provided for in paragraph 3 of that Article.

*Article 50***Payments data**

1. Member States shall communicate, by electronic means, to the Commission each year:

- (a) by 15 September of the first year of application of the single payment scheme at the latest and, in the following years, by 31 August at the latest, the total number of applications under the single payment scheme for the current year, together with the corresponding total amount of the payment entitlements giving right to payment and the total number of accompanying eligible hectares, as well as the total sum of the amounts remaining in the national reserve;

- (b) by 15 September at the latest, definitive data on the total number of applications under the single payment scheme accepted for the preceding year and the corresponding total amount of the payments which have been granted, after application, as the case may be, of the measures referred to in Articles 6, 10, 11, 24 and 25 of Regulation (EC) No 1782/2003.

2. In case of regional implementation of the single payment scheme as provided for in Article 58 of Regulation (EC) No 1782/2003, Member States shall communicate the information referred to in paragraph 1 (a) and (b) for each of the regions concerned, and, by 1 August of the first year of application of the single payment scheme at the latest, the corresponding part of the ceiling established in accordance with Article 58(3) of Regulation (EC) No 1782/2003.

For the first year of application of the single payment scheme, the information referred to in paragraph 1 (a) shall be based on the provisional payment entitlements. The same information based on the definitive payment entitlements shall be communicated by 1st March of the following year.

Chapter 8

Final provisions*Article 51***Entry into force**

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 2005 except Article 12(1) and (2) which shall apply from 1st January 2004.

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

Done at Brussels, 21 April 2004

For the Commission
Franz FISCHLER
Member of the Commission

**COMMISSION REGULATION (EC) No 796/2004
of 21 april 2004**

laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in of Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 ⁽¹⁾, and in particular Articles 7(1), 10(3), 24(2), 34(2), 52(2), 145(b), (c), (d), (g), (j), (k), (l), (m), (n), (p), thereof,

Whereas:

- (1) Regulation (EC) No 1782/2003 introduced the single payment scheme as well as certain other direct payment schemes. At the same time it merged several existing direct payment schemes. Moreover, it establishes a principle according to which direct payments to a farmer who does not comply with certain conditions in the areas of public, animal and plant health, environment and animal welfare ('cross-compliance') shall be subject to reductions or exclusions.
- (2) The direct payment schemes first introduced as a result of the reform of the common agricultural policy in 1992 and further developed under the Agenda 2000 measures have been subjected to an integrated administration and control system (hereinafter referred to as 'integrated system'). That system has proven to be an effective and efficient means for the implementation of direct payment schemes. Regulation (EC) No 1782/2003 builds upon the basis of that integrated system and submits to it the management and control both of the direct payment schemes set up by it and the adherence to the cross-compliance obligations.
- (3) It is therefore appropriate to repeal Commission Regulation (EC) No 2419/2001 of 11 December 2001 laying

down detailed rules for applying the integrated administration and control system for certain Community aid schemes established by Council Regulation (EEC) No 3508/92 ⁽²⁾ and to base this Regulation on the principles as established by Regulation (EC) No 2419/2001.

- (4) For reasons of clarity, it is appropriate to provide for certain definitions.
- (5) Regulation (EC) No 1782/2003 provides, as part of the cross-compliance conditions, for certain obligations of the Member States on the one hand and individual farmers on the other hand, as regards the maintenance of permanent pasture. It is necessary to lay down the details for the determination of the ratio of permanent pasture and agricultural land that has to be maintained and to provide for the individual obligations at the level of farmers to be respected where it is established that that proportion is decreasing to the detriment of land under permanent pasture.
- (6) For the sake of effective control and to prevent the submission of multiple aid applications to different Paying Agencies within one Member State, the Member States should provide for a single system to record the identity of farmers submitting aid applications subject to the integrated system.
- (7) Detailed rules are needed with regard to the system for the identification of agricultural parcels to be operated by the Member States in accordance with Article 20 of Regulation (EC) No 1782/2003. According to that provision use has to be made of computerised geographic information system techniques (GIS). It is necessary to clarify at which level the system should operate and the level of details of information that has to be available in the GIS.
- (8) Moreover, the introduction of an area payment for nuts in Chapter 4 of Title IV of Regulation (EC) No 1782/2003 leads to the need for the introduction of a new layer of information in the GIS. However, it is appropriate to release those Member States from this obligation where the maximum guaranteed area is 1 500 ha or less and to provide for a higher control rate for on-the-spot checks instead.

⁽¹⁾ OJ L 270, 21.10.2003, p. 1. Regulation as amended by Regulation (EC) No 21/2004 (OJ L 5, 9.1.2004, p. 8).

⁽²⁾ OJ L 327, 12.12.2001, p. 11. Regulation as last amended by Regulation (EC) No 118/2004 (OJ L 17, 24.1.2004, p. 7).

- (9) In order to ensure a proper implementation of the single payment scheme as provided for in Title III of Regulation No 1782/2003, the Member States should establish an identification and registration system according to which the payment entitlements have to be traceable and which allows, *inter alia*, to cross-check areas declared for the purposes of the single payment scheme with the payment entitlements available to each farmer and between the different payment entitlements as such.
- (10) Monitoring the adherence to the different cross-compliance obligations requires the setting-up of a control system and of appropriate sanctions. For this purpose, different authorities within the Member States need to communicate information on aid applications, control-samples, results of on-the-spot checks etc. Provision should be made for the basic elements of such a system..
- (11) In order to contribute to the protection of the financial interest of the Community it should be foreseen that payments under Regulation (EC) No 1782/2003 may only be made once the checks with regard to the eligibility criteria have been finalised.
- (12) Regulation (EC) No 1782/2003 leaves a choice for the Member States with regard to the application of certain of the aid schemes provided for therein. This Regulation, therefore, has to make provisions for the administration and control needs in view of any possible choice that might be taken. These provisions to be established in this Regulation may, therefore, only apply to the extent as the Member States have taken such choices.
- (13) For the sake of effective controls, any kind of area use and of the aid schemes concerned should be declared at the same time. Provision should, therefore, be made for submission of a single aid application comprising any applications for aid which are in some way related to area.
- (14) A single application form should, moreover, even be submitted by farmers who do not apply for any of the aids subjected to the single application if they have agricultural area at their disposal.
- (15) In accordance with Article 34(2) of Regulation (EC) No 1782/2003, the Member States may not fix a later date than 15 May of a given year for the submission of applications for aid under the Single Payment scheme. All area-related aid applications being subjected to the single application, it is therefore appropriate to apply this rule also with regard to all other area-related aid applications. Due to the particular climatic conditions in Finland and Sweden, these Member States should, on the basis of the second subparagraph of that provision, be allowed to set a later date which should not be later than 15 June. Moreover, case-to-case derogations should be envisaged on that same legal basis should climatic conditions in a given year in the future so require.
- (16) In the single application, the farmer should declare not only the area he is using for agricultural purposes but also his payment entitlements. Moreover, any specific information relating to production of hemp, durum wheat, rice, nuts, energy crops, starch potato and seeds should be requested together with the single application.
- (17) With a view to simplifying the application procedures and in accordance with Article 22(2) of Regulation (EC) No 1782/2003, provision should, in this context, be made for Member States to provide the farmer as far as possible with pre-printed information.
- (18) For the sake of effective monitoring, each Member State should, furthermore, determine the minimum size of agricultural parcels that may be subject to an aid application.
- (19) It should, furthermore, be provided that areas are declared in the single application form for which no aid is being requested. Depending on the kind of use, it may be important to have exact information which is why certain uses should be declared separately whilst other uses may be declared under one heading. However, in case where Member States already receive that kind of information derogation from this rule should be allowed.
- (20) To allow as much flexibility as possible with regard to farmers planning concerning the use of area, they should be allowed to amend their single application until such dates where sowing would normally take place, provided that all the particular requirements under the different aid schemes are respected and that the competent authority has not yet informed the farmer of errors contained in the single application, nor notified an on-the-spot check which reveals errors, in relation to the part affected by the amendment. Following the amendment, the possibility must be given to adjust the corresponding supporting documents or contracts to be submitted.
- (21) In the case where a Member State opts for the application of the various livestock aid schemes common provisions should be made concerning the details to be included in livestock aid applications.

- (22) 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⁽¹⁾ requires keepers of bovine animals to communicate data concerning these animals to a computerised database. In accordance with Article 138 of Regulation (EC) No 1782/2003, premiums under the bovine aid schemes may only be paid for animals that are properly identified and registered in accordance with Regulation (EC) No 1760/2000. The computerised database has also gained far-reaching importance as far as the management of the aid schemes is concerned. Farmers submitting applications under the aid schemes concerned should therefore be given access to the relevant information in due time.
- (23) The Member States should be authorised to make use of the information contained in the computerised database with a view to introducing simplified application procedures provided that the computerised database is reliable. Different options should be provided for, allowing Member States to make use of the information contained in the computerised database for bovine animals for the purpose of the submission and the management of aid applications. However, where such options foresee that the farmer does not have to identify individually the bovine animals with regard to which he claims the premiums it should be made clear that any potentially eligible animal with regard to which irregularities are detected concerning the compliance with the identification and registration system could, for the purpose of applying sanctions, count as an animal claimed for aid.
- (24) The details with regard to the submission and the substance of aid applications for the dairy premium and the related additional payments have to be established.
- (25) The general framework for the introduction of simplified procedures in the context of communications between the farmer and the Member States authorities should be set up. That framework should, in particular, provide for the possibility to make use of electronic means. It has however to be guaranteed that, in particular, the data thus proceeded is fully reliable and that such procedures are operated without any discrimination between farmers.
- (26) Where aid applications contain obvious errors they should be adjustable at any time.
- (27) Respect for the time limits for the submission of aid applications, for the amendment of area aid applications and for any supporting documents, contracts or declarations is indispensable to enable the national administrations to programme and, subsequently, carry out effective checks on the correctness of the aid applications. Provision should, therefore, be made regarding the time limits within which late submissions are acceptable. Moreover, a reduction should be applied to encourage farmers to respect the time limits.
- (28) Farmers should be entitled to withdraw their aid applications or parts thereof at any time provided that the competent authority has not yet informed the farmer of any errors contained in the aid application nor notified an on-the-spot check which reveals errors in relation to the part affected by the withdrawal.
- (29) Compliance with the provisions on the aid schemes managed under the integrated system should be effectively monitored. To this end, and to have a harmonised level of monitoring in all Member States, it is necessary to set out in detail the criteria and technical procedures for carrying out administrative and on-the-spot checks in respect both of the eligibility criteria established for the aid schemes and the cross compliance obligations. Moreover, as regards checks on the compliance with eligibility criteria, on-the-spot checks should, as a general rule, be unannounced. Where appropriate, the Member States should undertake to combine the various controls under this Regulation.
- (30) The minimum number of farmers to be checked on the spot under the various aid schemes should be determined. In the case where Member States opt for the application of the various livestock aid schemes, an integrated holding-based approach should be foreseen in relation to farmers applying for aids under those schemes.
- (31) The determination of significant irregularities should require an increase in the level of the on-the-spot checks during the current and the following year to reach an acceptable level of assurance of the correctness of the aid applications concerned.
- (32) The sample of the minimum rate of on-the-spot checks should be drawn partly on the basis of a risk analysis and partly at random. The main factors to be taken into consideration for the risk analysis should be specified.
- (33) On-the-spot checks of farmers submitting aid applications do not necessarily have to be carried out on each individual animal or agricultural parcel. Checks on a sample basis may, in certain cases, be carried out. However, where this is allowed the sample should be extended to a degree that
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- ⁽¹⁾ OJ L 204, 11.8.2000, p. 1. Regulation as last amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded - Annex II: List referred to in Article 20 of the Act of Accession - 6. Agriculture - B. Veterinary and phytosanitary legislation - I. Veterinary legislation (OJ L 236, 23.9.2003, p. 381.

- guarantees a reliable and representative level of assurance. In some cases the sample may have to be extended to a full control. The Member States should establish the criteria for the selection of the sample to be checked.
- (34) In order for the on-the-spot check to be effective it is important for the staff carrying out the checks to be informed of the reason for the selection for the on-the-spot check. The Member States should keep records of such information.
- (35) Moreover, to enable the national authorities as well as any competent Community authority to follow up on-the-spot checks carried out, the details of checks should be recorded in a control report. The farmer or a representative should be given the opportunity to sign the report. However, in the case of checks by means of remote-sensing the Member States should be allowed to provide for this right only in cases where the check reveals irregularities. Irrespective of the kind of on-the-spot check carried out, the farmer should receive a copy of the report if irregularities are found.
- (36) On-the-spot checks of areas, as a general rule, consist of two parts, the first of which relates to verifications and measurements of declared agricultural parcels on the basis of graphic material, aerial photography and so forth. The second part consists of a physical inspection of the parcels to verify the actual size of the agricultural parcels declared and, depending on the aid scheme in question, the declared crop and its quality. Where necessary, measurements should be carried out. The physical inspection in the field may be carried out on the basis of a sample.
- (37) Detailed rules regarding the determination of areas and the measurement methods to be used should be laid down. Where aid is paid for the production of certain crops, experience has shown that, in relation to the determination of the area of agricultural parcels eligible for area payments, it is necessary to define the acceptable width of certain features of the fields, in particular hedges, ditches and walls. In view of specific environmental needs, it is appropriate to provide some flexibility within the limits taken into account when the regional yields were fixed.
- (38) With regard to areas declared for the purpose of receiving aid under the Single Payment scheme, a differentiated approach should, however, be taken given the fact that such payments are no more connected to an obligation to produce.
- (39) Given the particularities of the aid scheme for seed in accordance with Article 99 of Regulation (EC) No 1782/2003, special control provisions should be established.
- (40) The conditions for the use of remote sensing for on-the-spot checks should be laid down and provision should be made for physical checks to be carried out in cases where photo-interpretation does not lead to clear results.
- (41) Article 52 of Regulation (EC) No 1782/2003 provides for particular controls on the tetrahydrocannabinol (THC) content in the case where a farmer grows hemp on parcels declared for the purposes of the Single Payment scheme. The details concerning such controls need to be established.
- (42) In the case where a Member State opts for the application of the various livestock aid schemes, where aid is being applied for under those aid schemes, the timing and the minimum content of on-the-spot checks should be specified. In order to check effectively the correctness of declarations in aid applications and notifications to the computerised database for bovine animals it is essential to carry out a major part of such on-the-spot checks whilst animals still have to be kept on farm under the retention obligation.
- (43) In the case where a Member State opts for the application of the various aid schemes for bovine animals, the proper identification and registration of bovine animals being an eligibility condition pursuant to Article 138 of Regulation (EC) No 1782/2003, it should be ensured that Community aid is granted only for bovines properly identified and registered. Such checks should also be carried out in respect of bovine animals not yet claimed but which could be subject to an aid application in the future because such animals, due to the set-up of several of the bovine aid schemes, are, in many cases, only claimed for aid after they have already left the holding.
- (44) In the case where a Member State opts for the application of the slaughter premium, special provision should be made for checks to be carried out in slaughterhouses in order to check that animals claimed for aid are eligible and that the information contained in the computerised database is correct. The Member States should be authorised to apply two different bases for selecting slaughterhouses for such checks.
- (45) In that case, as far as the slaughter premium granted after export of bovine animals is concerned, special provisions are necessary along with Community control provisions relating to export in general because of the differences in the control purposes.
- (46) The control provisions foreseen in relation to the livestock aid should also, where appropriate, apply as regards additional payments pursuant to Article 133 of Regulation (EC) No 1782/2003.

- (47) Special control provisions have been established on the basis of Commission Regulation (EC) No 1082/2003 of 23 June 2003 laying down detailed rules for the implementation of Regulation (EC) No 1760/2000 of the European Parliament and of the Council as regards the minimum level of controls to be carried out in the framework of the system for the identification and registration of bovine animals ⁽¹⁾. Where such checks under that Regulation are carried out, the results should be contained in the control report for the purposes of the integrated system.
- (48) With regard to aid applications for the dairy premium and the related additional payment, the main eligibility criteria are the amount of milk that may be produced within the reference quantity available to the farmer and whether the farmer is actually a producer of milk. The reference quantity is already known to the competent authorities of the Member States. The main condition to be checked on-the-spot is, therefore, whether the farmer is a producer of milk. Such checks may be carried out in particular on the basis of the farmers accounting or other registers.
- (49) Regulation (EC) No 1782/2003 introduces cross compliance obligations for farmers receiving aid-payments under all direct payment schemes listed in Annex I to that Regulation. It provides for a system of reductions and exclusions where such obligations are not adhered to. The details for that system should be established.
- (50) The details concerning the question which authorities in the Member States carry out controls on cross compliance obligations should be established.
- (51) In certain cases it might be useful for the Member States to carry out administrative checks on cross compliance obligations. However, that control-tool should not be made compulsory on the Member States whilst it is useful to envisage its use on a discretionary basis.
- (52) The minimum control-rate for the respect of the cross compliance obligations has to be established. That control-rate should be fixed at 1 % of farmers falling under the area of competence of each control authority to be selected on the basis of an appropriate risk analysis. The sample should either be drawn on the basis of the samples of farmers that are selected for an on-the-spot check as regards eligibility criteria, or from the overall population of farmers submitting aid applications for direct payments. In the latter case certain sub-options should be allowed.
- (53) As a general rule, taking into account the different natures of the cross compliance obligations, on-the-spot checks should focus on all obligations the compliance with which may be checked at the time of that visit. In addition, as regards requirements and standards for which infringements could not be clearly established at the time of the visit, the controller should identify cases to be submitted for further checks if necessary.
- (54) Rules for the setting-up of detailed and specific control reports have to be established. The specialised controllers in the field should indicate any findings and also the degree of seriousness of such findings in order to enable the Paying Agency to fix the related reductions or, as the case may be, to decide on exclusions from receiving direct payments.
- (55) To protect the Community's financial interests effectively adequate measures should be adopted to combat irregularities and fraud. Separate provisions should be made in cases of irregularities found with regard to eligibility criteria for the different aid schemes concerned.
- (56) The system of reductions and exclusions envisaged in Regulation (EC) No 1782/2003 with regard to cross compliance obligations however targets at a different aim, namely to set an incentive for farmers to respect the, already existing, legislation in the different fields of cross compliance.
- (57) Reductions and exclusions should be established having regard to the principle of proportionality and, in the case of eligibility criteria, the special problems linked to cases of *force majeure* as well as exceptional and natural circumstances. In the case of cross compliance obligations reductions and exclusions may only be applied where the farmer acted negligently or intentionally. Reductions and exclusions should be graded according to the gravity of the irregularity committed and should go as far as the total exclusion from one or several aid schemes for a specified period. They should, with regard to the eligibility criteria, take into account the particularities of the various aid schemes.
- (58) In relation to area aid applications, irregularities normally affect parts of areas. Overdeclarations in respect of one parcel may, therefore, be off-set against underdeclarations of other parcels of the same crop-group. Within a certain margin of tolerance it should be foreseen that aid applications are only adjusted to the area actually determined and reductions only start to apply once this margin has been exceeded.

⁽¹⁾ OJ L 156, 25.6.2003, p. 9.

- (59) It is therefore necessary to define the areas falling within the same crop-group. Areas declared for the purposes of the Single Payment scheme should, in principle, fall within the same crop-group. However, special rules need to be established in view of determining which of the related payment entitlements have been activated in case that a discrepancy is established between the area declared and the area determined. Moreover, in accordance with Article 54(6) of Regulation (EC) No 1782/2003, set-aside entitlements have to be activated before any other entitlements. Provisions have to be made in this context with regard to two situations. Firstly, area declared as being set-aside for the purpose of activating set-aside entitlements and being found not to be set-aside in reality, has to be deducted from the overall area declared for the purpose of the Single Payment scheme as area not determined. Secondly, the same should be the case, on a fictional basis, in respect of the area corresponding to set-aside entitlements which are not being activated if, at the same time, other entitlements are being activated along with the corresponding area.
- (60) Special provisions are necessary to take into account the particularities of aid applications under the aid schemes for starch potato and seed. In the case where a Member State opts for the application of the various livestock aid schemes, where farmers apply for livestock aid and declare forage area for that purpose, and where an overdeclaration of such areas does not lead to a higher payment for livestock, no penalties should be foreseen.
- (61) As far as livestock aid applications are concerned, irregularities lead to the ineligibility of the animal concerned. Reductions should be foreseen as from the first animal found with irregularities but, irrespective of the level of the reduction, there should be a less harsh sanction where three animals or less are found with irregularities. In all other cases the severity of the sanction should depend on the percentage of animals found with irregularities.
- (62) Farmers should be allowed to replace the bovine and ovine/caprine animals within the limits allowed under the relevant sectoral rules. Where, due to natural circumstances, a farmer is unable to fulfil the retention obligations under the sectoral rules, reductions and exclusions should not be applied.
- (63) In the case where a Member State opts for the application of the slaughter premium, due to the importance of slaughterhouses for the proper functioning of some of the bovine aid schemes, provision should also be made for cases where slaughterhouses, gross negligently or intentionally, issue false certificates or declarations.
- (64) As far as irregularities are concerned as regards the additional payments provided for in Article 133 of Regulation (EC) No 1782/2003, the Member States should provide for sanctions which should be equivalent to those provided for in relation to the area and livestock aid schemes unless this is inappropriate. In this latter case the Member States should provide for suitable equivalent sanctions.
- (65) Reductions and sanctions should be established as regards dairy premium and additional payments in case a farmer who applies for aid is not complying with its obligation of producing milk.
- (66) With regard to cross compliance obligations, apart from grading reductions or exclusions in view of the principle of proportionality, it should be provided that as of a certain moment repeated infringements of the same cross compliance obligation should, after a prior warning to the farmer, be treated as an intentional non-compliance.
- (67) Reductions and exclusions with regard to eligibility criteria should, as a general rule, not apply where the farmer submitted factually correct information or where he can show otherwise that he is not at fault.
- (68) Farmers who give notice to the competent national authorities at any time of incorrect aid applications should not be subject to any reductions or exclusions irrespective of the reason of the incorrectness, provided that the farmer 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 farmer of any irregularity in the application. The same should apply in relation to incorrect data contained in the computerised database both in respect of claimed bovine animals for which such irregularities not only constitutes a non-respect of a cross compliance obligation but also a breach of an eligibility-criterion, and in respect of unclaimed bovine animals where such irregularities are relevant only under the cross compliance obligations.
- (69) The management of small amounts is a burdensome task for the competent authorities of the Member States. It is therefore appropriate to authorise the Member States not to pay amounts of aid that are below a certain minimum limit and not to request reimbursement of incorrectly paid amounts when the sums involved are minimal.
- (70) Specific and detailed provisions have to be laid down in order to ensure the equitable application of various reductions to be applied in respect of one or several aid applications by the same farmer. The reductions and exclusions provided for under this Regulation should apply without prejudice to additional sanctions under any other provisions of Community or national law.

- (71) Where, as a consequence of *force majeure* or exceptional circumstances, a farmer is not able to fulfil the obligations provided for under the sectoral rules, he should not lose his right to the aid payment. It should be specified which cases may, in particular, be recognized by the competent authorities as cases of exceptional circumstances.
- (72) In order to ensure uniform application of the principle of good faith throughout the Community, where amounts unduly paid are recovered, the conditions under which that principle may be invoked should be laid down without prejudice to the treatment of the expenditure concerned in the context of the clearance of accounts under Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy ⁽¹⁾.
- (73) Rules should be established laying down the consequences of transfers of entire holdings which are under certain obligations in accordance with the direct payment schemes subject to the integrated system.
- (74) As a general rule the Member States should take any further measures necessary to ensure a proper functioning of this Regulation. The Member States should give each other mutual assistance where necessary.
- (75) The Commission should, where appropriate, be informed of any measures taken by the Member States to introduce changes to their implementation of the integrated system. In order to enable the Commission to monitor the integrated system effectively, the Member States should send it certain annual control statistics. The Member States should, moreover, inform the Commission of any measures they are taking with regard to the maintenance of land under permanent pasture.
- (76) Rules have to be established with regard to the basis for the calculation of the reductions to be applied under modulation in accordance with Article 10 of Regulation (EC) No 1782/2003, the subsequent allocation key of the financial means thus becoming available, as well as the calculation of the additional amount of aid provided for in Article 12 of that Regulation in order to fix the rules to determine whether the threshold of EUR 5 000 referred to in that Article has been reached.
- (77) The present Regulation should start to apply as of 1 January 2005. As of that same date, Regulation (EC) No 2419/2001 should be repealed. However, with regard to aid applications relating to marketing years or premium periods which start before 1 January 2005, that Regulation should continue to apply. Special provisions are necessary to ensure that reductions to be applied as a consequence of the rules established in Regulation (EC) No 2419/2001 would not be emptied by the transfer to this new regime.
- (78) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Direct Payments,

HAS ADOPTED THIS REGULATION:

PART I

SCOPE AND GENERAL PROVISIONS

Article 1

Scope

This Regulation lays down the detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system (hereinafter 'the integrated system') established by Title II of Regulation (EC) No 1782/2003. It shall be without prejudice to specific provisions laid down in the Regulations covering the individual aid schemes.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (1) 'Arable land': shall mean land cultivated for crop production and land under set-aside, or maintained in good agricultural

and environmental condition in accordance with Article 5 of Regulation (EC) No 1782/2003 or land under greenhouses or under fixed or mobile cover;

- (2) 'Permanent pasture': shall mean land used to grow grasses or other herbaceous forage naturally (self-seeded) or through cultivation (sown) and that is not included in the crop rotation of the holding for five years or longer;
- (3) 'System for the identification and registration of bovine animals': shall mean the system for the identification and registration of bovine animals established by Regulation (EC) No 1760/2000 of the European Parliament and of the Council ⁽²⁾;
- (4) 'Ear tag': shall mean the ear tag to identify animals individually referred to in Articles 3(a) and 4 of Regulation (EC) No 1760/2000;

⁽¹⁾ OJ L 160, 26.6.1999, p. 103

⁽²⁾ OJ L 204, 11.8.2000, p. 1.

- (5) 'Computerised database for bovine animals': shall mean the computerised database referred to in Articles 3(b) and 5 of Regulation (EC) No 1760/2000;
- (6) 'Animal passport': shall mean the animal passport referred to in Articles 3(c) and 6 of Regulation (EC) No 1760/2000;
- (7) 'Register': shall mean the register kept by the keepers of animals in accordance with Article 4 of Council Directive 92/102/EEC ⁽¹⁾, with Article 5 of Council Regulation (EC) No 21/2004 ⁽²⁾, or Articles 3(d) and 7 of Regulation (EC) No 1760/2000 respectively;
- (8) 'Elements of the system for the identification and registration of bovine animals': shall mean the elements referred to in Article 3 of Regulation (EC) No 1760/2000;
- (9) 'Identification code': shall mean the identification code referred to in Article 4(1) of Regulation (EC) No 1760/2000;
- (10) 'Irregularities': shall mean any non-respect of the relevant rules for the granting of the aid in question;
- (11) 'Single application': shall mean the application for direct payments in respect of the single payment scheme and other area-related aid schemes established under Titles III and IV of Regulation (EC) No 1782/2003;
- (12) 'Area-related aid schemes': shall mean the single payment scheme and all aid schemes established under Title IV of Regulation (EC) No 1782/2003, except those established under Chapters 7, 11 and 12 of that Title;
- (13) 'Livestock aid application': shall mean the applications for the payment of aid under the sheep and goat premiums scheme and the beef and veal payments scheme provided for in Chapters 11 and 12 of Title IV, respectively, of Regulation (EC) No 1782/2003;
- (14) 'Dairy premium aid application': shall mean the applications for the payment of aids under the dairy premium and additional payment scheme provided for in Chapter 7 of Title IV of Regulation (EC) No 1782/2003;
- (15) 'Use': shall mean the use of area in terms of the type of crop or ground cover or the absence of a crop;
- (16) 'Bovine aid schemes': shall mean the aid schemes referred to in Article 121 of Regulation (EC) No 1782/2003;
- (17) 'Ovine/caprine aid scheme': shall mean the aid scheme referred to in Article 111 of Regulation (EC) No 1782/2003;
- (18) 'Claimed bovine animals': shall mean bovine animals subject to a livestock aid application under the bovine aid schemes;
- (19) 'Unclaimed bovine animals': shall mean bovine animals not yet subject to a livestock aid application but potentially eligible for aid under the bovine aid schemes;
- (20) 'Retention period': shall mean the period during which an animal for which aid has been claimed has to be kept on the holding, as provided for in the following provisions:
- (a) Articles 5 and 9 of Commission Regulation (EC) No 2342/1999 of 28 October 1999 laying down detailed rules for the application of Council Regulation (EC) No 1254/1999 on the common organisation of the market in beef and veal as regards premium schemes ⁽³⁾, in relation to the special premium for male bovines,
- (b) Article 16 of Regulation (EC) No 2342/1999, in relation to the suckler cow premium,
- (c) Article 37 of Regulation (EC) No 2342/1999, in relation to the slaughter premium,
- (d) Article 2(3) of Commission Regulation (EC) No 2550/2001 of 21 December 2001 laying down detailed rules for the application of Council Regulation (EC) No 2529/2001 on the common organisation of the market in sheepmeat and goatmeat as regards premium schemes and amending Regulation (EC) No 2419/2001 ⁽⁴⁾ in relation to aids paid for ovines and caprines;
- (21) 'Animal keeper': shall mean any natural or legal person responsible for animals whether on a permanent or on a temporary basis, including during transportation or at a market;
- (22) 'Area determined': shall mean the area for which all conditions laid down in the rules for granting the aid have been met; in the case of the single payment scheme, the area declared may be deemed as being determined only if it is actually being accompanied by a corresponding number of payment entitlements;
- (23) 'Animal determined': shall mean an animal for which all conditions laid down in the rules for granting the aid have been met;
- (24) 'Premium period': shall mean the period to which aid applications refer irrespective of the moment of their submission;
- (25) 'Geographical Information System' (hereinafter referred to as 'GIS'): shall mean the computerised geographical information system techniques referred to in Article 20 of Regulation (EC) No 1782/2003;

⁽¹⁾ OJ L 355, 5.12.1992, p. 32.

⁽²⁾ OJ L 5, 9.1.2004, p. 8.

⁽³⁾ OJ L 281, 4.11.1999, p. 30. Regulation as last amended by Regulation (EC) No 1473/2003 (OJ L 211, 21.8.2003, p. 12).

⁽⁴⁾ OJ L 341, 22.12.2001, p. 105. Regulation as last amended by Regulation (EC) No 2307/2003 (OJ L 342, 30.12.2003, p. 11).

- (26) 'Reference parcel': shall mean a geographically delimited area retaining a unique identification as registered in the GIS in the Member State's identification system referred to in Article 18 of Regulation (EC) No 1782/2003;
- (27) 'Graphical material': shall mean maps or other documents used to communicate the contents of the GIS between the aid applicants and the Member states;
- (28) 'National geodetic system': shall mean a coordinate reference system which permits standardised measurement and unique identification of agricultural parcels throughout the Member State concerned; where different coordinate systems are used, they shall be compatible within each Member State;
- (29) 'Paying Agency': shall mean the authorities and bodies referred to in Article 4 of Council Regulation (EC) No 1258/1999 ⁽¹⁾;
- (30) 'Cross-compliance': shall mean the statutory management requirements and the good agricultural and environmental conditions in accordance with Articles 4 and 5 of Regulation (EC) No 1782/2003;
- (31) 'Areas of cross-compliance': shall mean the different areas of statutory management requirements within the meaning of Article 4(1) of Regulation (EC) No 1782/2003 and the good agricultural and environmental condition as stipulated in Annex IV to that Regulation;
- (32) 'Act': shall mean each of the individual Directives and Regulations listed in Annex III to Regulation (EC) No 1782/2003; however, the Directive and the Regulations listed in points 6, 7, 8 and 8a of Annex III to that Regulation shall establish one single act;
- (33) 'Standard': shall mean the standards as defined by the Member States in accordance with Article 5 and Annex IV of Regulation (EC) No 1782/2003;
- (34) 'Requirement': where this term is used in the context of cross-compliance, it shall mean each individual statutory management requirement resulting from any of the Articles referred to in Annex III to Regulation (EC) No 1782/2003 within a given act, differing in substance from any other requirements of the same act;
- (35) 'Non-compliance': shall mean any non-compliance with the requirements, and standards; the non-compliance with the obligations set out in Article 4 of this Regulation shall equally constitute a case of non-compliance;
- (36) 'Specialised bodies': shall mean the national competent authorities responsible, in accordance with the first subparagraph of Article 25(2) of Regulation (EC) No 1782/2003, for ensuring compliance with the statutory management requirements and good agricultural and environmental condition;

- (37) 'Individual reference quantity determined': shall mean the individual reference quantities to which the farmer is entitled.

Article 3

Maintenance of land under permanent pasture at Member State level

1. Without prejudice to the exceptions provided for in the third subparagraph of Article 5(2) of Regulation (EC) No 1782/2003, the Member States shall, pursuant to the first paragraph thereof, ensure the maintenance of the ratio of the land under permanent pasture in relation to the total agricultural area as defined in Article 2 point (a) of Regulation (EC) No 796/2004. That obligation shall apply at national or regional level.

However, where the amount of land under permanent pasture in absolute terms established in accordance with paragraph 4, point (a) is maintained, the obligation set out in the first subparagraph of Article 5(2) of Regulation (EC) No 1782/2003 shall be considered as being complied with.

2. For the purpose of applying the second subparagraph of Article 5(2) of Regulation (EC) No 1782/2003, the Member States shall ensure that the ratio referred to in paragraph 1 shall not decrease to the detriment of land under permanent pasture by more than 10 % relatively to the ratio of reference for 2003.

3. The ratio referred to in paragraph 1 shall be established each year on the basis of the areas declared by the farmers for the year concerned.

4. The ratio of reference for 2003 referred to in paragraph 2 shall be established as follows:

- (a) the land under permanent pasture shall be the land under permanent pasture declared by the farmers in 2003, plus the land under permanent pasture declared in 2005 in accordance with Article 14(1) of this Regulation and that has not been declared for any use other than grassland in 2003, unless the farmer can demonstrate that such land was not under permanent pasture in 2003.

Areas declared in 2005 as land under permanent pasture and that in 2003 were eligible for the arable crops area payment in accordance with Article 1(3) of Council Regulation (EC) No 1251/1999 of 17 May 1999 establishing a support system for producers of certain arable crops ⁽²⁾ shall be discounted.

Land that was under permanent pasture in 2003 and that has been afforested since 2003 or yet to be afforested in accordance with the third subparagraph of Article 5(2) of Regulation (EC) No 1782/2003 shall be discounted.

⁽¹⁾ OJ L 160, 26.6.1999, p. 103

⁽²⁾ OJ L 160, 26.6.1999, p. 1

- (b) the total agricultural area shall be the total agricultural area declared by the farmers in 2005.

Article 4

Maintenance of land under permanent pasture at individual level

1. Where it is established that the ratio referred to in Article 3(1) of this Regulation is decreasing the Member State concerned shall, at national or regional level, provide for the obligation of farmers applying for aid under any of the direct payment schemes listed in Annex I of Regulation (EC) No 1782/2003 not to convert land under permanent pasture without prior authorisation.

2. Where it is established that the obligation referred to in Article 3(2) of this Regulation cannot be ensured, the Member State concerned shall, further to the measures to be taken in accordance with paragraph 1, provide, at national or regional level, for the obligation of farmers applying for aid under any of the direct payment schemes listed in Annex I of Regulation (EC) No 1782/2003 to re-convert land into land under permanent pasture for those farmers who have land at their disposal which was converted from land under permanent pasture into land for other uses.

This obligation shall, in 2005, apply with regard to land converted into land for other uses since the date provided for the submission of the area aid applications for 2003. As of 2006, this obligation shall apply with regard to land thus converted since the start of the 12-months period preceding the last date at which the

single applications had to be submitted at the latest in accordance with Article 11 in the Member State concerned.

In such case, farmers shall re-convert a percentage of that area into land under permanent pasture or establish such an amount of area as land under permanent pasture. That percentage shall be calculated on the basis of the amount of area thus converted by the farmer and the amount of area needed to re-establish the balance.

However, where such land was subject to a transfer after it had been converted into land for other uses, this obligation shall only apply if the transfer took place after the entry into force of this Regulation.

By way of derogation from Article 2, point 2, areas re-converted or established as land under permanent pasture shall, as of the first day of the re-conversion or establishment be considered as 'permanent pasture'.

3. However, the obligation for farmers set out in paragraphs 1 and 2 shall not apply where farmers created land under permanent pasture in the framework of programmes in accordance with Council Regulations (EEC) No 2078/92 of 30 June 1992 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside ⁽¹⁾ and (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations ⁽²⁾ and Council Regulation (EC) No 1017/94 of 26 April 1994 concerning the conversion of land currently under arable crops to extensive livestock farming in Portugal ⁽³⁾.

PART II

THE INTEGRATED ADMINISTRATION AND CONTROL SYSTEM

TITLE I

GENERAL

Article 5

Identification of farmers

Without prejudice to Article 22(3) of Regulation (EC) No 1782/2003, the single system to record the identity of each farmer provided for by Article 18(1)(f) of that Regulation shall guarantee a unique identification with regard to all aid applications submitted by the same farmer.

Article 6

Identification of agricultural parcels

1. The identification system for agricultural parcels referred to in Article 20 of Regulation (EC) No 1782/2003 shall operate at

reference parcel level such as cadastral parcel, or production block which shall ensure unique identification of each reference parcel.

Member States shall, moreover, ensure that agricultural parcels are reliably identified and shall in particular require the single application to be furnished with particulars or accompanied by documents specified by the competent authority that enable each agricultural parcel to be located and measured. The GIS shall operate on the basis of a national geodetic system.

2. The Member State shall ensure that with regard to at least 75 % of the reference parcels being subject to an aid application, at least 90 % of the respective area is eligible pursuant to the single payment scheme. The assessment shall be made on an annual basis using appropriate statistical methods.

3. In respect of the area payment for nuts provided for in Chapter 4 of Title IV of Regulation (EC) No 1782/2003, the

⁽¹⁾ OJ L 215, 30/7/1992, p. 85

⁽²⁾ OJ L 160, 26/06/1999, p. 80

⁽³⁾ OJ L 112, 3.5.1994, p.2.

Member States for which the national guaranteed area fixed in Article 84(3) of that Regulation is more than 1 500 ha, shall introduce, as from 1 January 2006, an additional layer of GIS information relating to the number of trees per parcel, their type, their positioning and the calculation of the orchard's surface.

Article 7

Identification and registration of payment entitlements

1. The system for the identification and registration of payment entitlements provided for in Article 21 of Regulation (EC) No 1782/2003 shall be an electronic register at Member State level and shall, in particular with regard to the cross-checks provided for in Article 24 of this Regulation, ensure effective traceability of the payment entitlements, in particular as regards the following elements:

- (a) holder;
- (b) value;
- (c) date of establishment;
- (d) date of last activation;
- (e) origin, in particular with regard to its attribution, original or national reserve, purchase, lease, inheritance;
- (f) kind of entitlement, in particular set-aside entitlements, entitlements subject to special conditions in accordance with Article 48 of Regulation (EC) No 1782/2003, and entitlements with authorisation in accordance with Article 60 of that Regulation;
- (g) where applicable, regional restrictions.

2. Member States in which there is more than one Paying Agency, may decide to operate the electronic register at Paying Agency level. In that case, the Member State concerned shall ensure that the different registers are compatible with each other.

Article 8

General principles in respect of agricultural parcels

1. A parcel that contains trees shall be considered an agricultural parcel for the purposes of the area-related aid schemes provided that agricultural activities referred to in Article 51 of Regulation (EC) No 1782/2003 or, where applicable, the production envisaged can be carried out in a similar way as on parcels without trees in the same area.

2. With regard to forage area:

- (a) where a forage area is used in common, the competent authorities shall notionally allocate it between the individual farmers in proportion to their use or right of use of it;

- (b) for the purposes of applying Article 131 of Regulation (EC) No 1782/2003, each forage area must be available for rearing animals for a minimum period of seven months, starting on a date to be determined by the Member State, which shall be between 1 January and 31 March.

- (c) for the purposes of applying Article 131 of Regulation (EC) No 1782/2003, where a forage area is situated in a Member State other than that of the farmer's principal place of business, that area shall be deemed, at the request of the farmer, to be part of that farmer's holding provided that it is situated in the immediate vicinity of the holding and that a major part of all the agricultural land used by that farmer is situated in the Member State in which he has his principal place of business.

Article 9

Control system as regards cross-compliance

Member States shall establish a system guaranteeing an effective control on the respect of cross-compliance. That system shall, in accordance with Chapter III of Title III of this Regulation, in particular provide for:

- (a) where the competent control authority is not the Paying Agency, the transfer of the necessary information concerning the farmers applying for direct payments from the Paying Agency to the specialised control bodies and/or, where applicable, via the coordinating body referred to in Article 23(3) of Regulation (EC) No 1782/2003;
- (b) the methods to be applied for the selection of control samples;
- (c) indications with regard to the nature and extent of the checks to be carried out;
- (d) control reports containing in particular any detected non-compliance and an assessment of its severity, extent, permanence and repetition;
- (e) where the competent control authority is not the Paying Agency, the transfer of the control reports from the specialised control bodies either to the Paying Agency or the coordinating body referred to in Article 23(3) of Regulation (EC) No 1782/2003 or both;
- (f) the application of the system of reductions and exclusions by the Paying Agency.

Member States may, moreover, provide for a procedure according to which the farmer indicates to the Paying Agency the elements necessary to identify the requirements and standards applicable to him.

*Article 10***Payment of aid**

1. Without prejudice to the time period provided for in Article 28(2) of Regulation (EC) No 1782/2003 or any rules providing for the payment of advances in accordance with paragraph 3 of that Article, direct payments falling within the scope of this Regulation shall not be made before the checks with regard to eligibility criteria, to be carried out by the Member State pursuant to this Regulation, have been finalised.

2. With regard to checks of cross-compliance specified in chapter III of Title III of the present Regulation where such checks cannot be finalised before payment, any undue payments shall be recovered according to Article 73 of the this Regulation.

TITLE II

AID APPLICATIONS

CHAPTER I

THE SINGLE APPLICATION*Article 11***Date of submission of the single application**

1. A farmer applying for aid under any of the area-related aid schemes may only submit one single application per year.

A farmer who does not apply for aid under any of the area-related aid schemes but applies for aid under another aid scheme listed in Annex I of Regulation (EC) No 1782/2003, shall submit a single application form if he has agricultural area as defined in Article 2, point (a) of Regulation (EC) No 796/2004 at his disposal in which he shall list these areas in accordance with Article 14. However, Member States may exempt farmers from this obligation where the information concerned is made available to the competent authorities in the framework of other administration and control systems that guarantee compatibility with the integrated system in accordance with Article 26 of Regulation (EC) No 1782/2003.

2. The single application shall be submitted by a date to be fixed by the Member States which shall not be later than 15 May. Finland and Sweden may, however, fix a later date which shall not be later than 15 June.

In accordance with the procedure referred to in Article 144(2) of Regulation (EC) No 1782/2003, it may be allowed to postpone the dates referred to in the first subparagraph of this paragraph in certain zones where exceptional climatic conditions render the normal dates inapplicable.

When fixing that date, Member States shall take into account the period required for all relevant data to be available for the proper administrative and financial management of the aid and shall ensure that effective controls may be scheduled, in particular considering the date to be fixed in accordance with Article 44(3) of Regulation (EC) No 1782/2003.

3. Where more than one Paying Agency is responsible with regard to the same farmer for the management of aid schemes subjected to the submission of a single application, the Member State concerned shall take the appropriate measures to ensure that the information requested in this Article is being made available to all Paying Agencies involved.

*Article 12***Contents of the single application**

1. The single application shall contain all information necessary to establish eligibility for the aid, in particular:

- (a) the identity of the farmer;
- (b) the aid scheme or schemes concerned;
- (c) the identification of the payment entitlements in accordance with the identification and registration system provided for in Article 7 for the purposes of the single payment scheme, broken down by set-aside entitlements and other entitlements;
- (d) particulars permitting identification of all agricultural parcels on the holding, their area expressed in hectares to two decimal places, their location and, where applicable, their use and whether the agricultural parcel is irrigated;
- (e) a statement by the farmer that he is aware of the conditions pertaining to the aid schemes in question.

2. For the purpose of the identification of the payment entitlements referred to in paragraph 1(c), the pre-printed forms distributed to the farmer in accordance with Article 22(2) of Regulation (EC) No 1782/2003 shall mention the identification of the payment entitlements in accordance with the identification and registration system provided for in Article 7 broken down by set-aside entitlements and other entitlements.

When submitting the application-form, the farmer shall correct the pre-printed form if any amendments, in particular transfers of payment entitlements in accordance with Article 46 of Regulation (EC) No 1782/2003, have occurred.

The farmer shall declare separately the area supporting set-aside entitlements and the area supporting other entitlements. In accordance with Article 54(6) of Regulation (EC) No 1782/2003, the farmer shall claim his set-aside entitlements before any other entitlements. Consequently, the farmer shall declare the area for

set-aside corresponding to his number of set-aside entitlements provided he has a sufficient amount of eligible area at his disposal. In case the amount of eligible area is less than the number of set-aside entitlements, the farmer may claim the number of set-aside entitlements corresponding to the amount of area at his disposal.

3. For the purpose of the identification of all agricultural parcels on the holding referred to in paragraph 1(d), the pre-printed forms distributed to the farmer in accordance with Article 22(2) of Regulation (EC) No 1782/2003 shall mention the maximum eligible area per reference parcel for the purposes of the single payment scheme. Moreover, the graphical material supplied to the farmer in accordance with that same provision shall indicate the boundaries of the reference parcels and their unique identification and the farmer shall indicate the location of each agricultural parcel. When submitting the application-form, the farmer shall, moreover, correct the pre-printed form if any amendments have occurred.

Article 13

Specific requirements pertaining to the single application

1. In the case where an application for aid for arable crops area payments in accordance with Chapter 10 of Title IV of Regulation (EC) No 1782/2003 contains a declaration of the cultivation of flax and hemp grown for fibre pursuant to Article 106 of that Regulation, the official labels used on the packaging of the seeds in accordance with Council Directive 2002/57/EC⁽¹⁾, and in particular Article 12 thereof, shall be submitted or, in the case of flax grown for fibre, any other documents recognised as equivalent by the Member State concerned, including the certification provided for in Article 19 of that Directive.

Where sowing takes place after the deadline for submitting the single application, those labels or documents shall be submitted by 30 June at the latest.

Where labels for seed of hemp grown for fibre also have to be submitted to other national authorities, Member States may provide for those labels to be returned to the farmer once they have been submitted.

In the case of hemp grown for fibre, all information required for the identification of the parcels sown in hemp for each variety of hemp sown shall be provided.

In that case and in the case where a farmer intends to produce hemp in accordance with Article 52 of Regulation (EC) No 1782/2003, the single application shall contain:

- (a) a copy of the contract or commitment referred to in Articles 52 and 106 of that Regulation, unless the Member

State has provided that that copy may be submitted by a later date which shall not be later than 15 September;

- (b) in the case referred to in Article 52 of that Regulation, an indication as to the quantities of the seeds used (kg per hectare);
- (c) the official labels used on the packaging of the seeds in accordance with Directive 2002/57/EC, and in particular Article 12 thereof; however, where sowing takes place after the deadline for submitting the single application, the labels shall be submitted by 30 June at the latest; where the labels also have to be submitted to other national authorities, the Member States may provide for those labels to be returned to the farmer once they have been submitted in accordance with this point.

2. In the case of set-aside land used in accordance with Article 55(b) of Regulation (EC) No 1782/2003 or the first indent of Article 107(3) of that Regulation, the single application shall contain the necessary proof required under the applicable sectoral rules.

3. In the case of an application for aid for the specific quality premium for durum wheat provided for in Chapter I of Title IV of Regulation (EC) No 1782/2003 and for the durum wheat supplement and special aid provided for in Article 105 of that Regulation, the single application shall contain a proof, pursuant to the rules to be established by the Member State, that the minimum quantity of certified seeds for durum wheat has been used.

4. In the case of an application for the crop specific payment for rice provided for in Chapter 3 of Title IV of Regulation (EC) No 1782/2003, the single application shall contain a specification of the variety of rice sown and an identification of the respective parcels.

5. In the case of an application for an area payment for nuts provided for in Chapter 4 of Title IV of Regulation (EC) No 1782/2003, the single application shall contain the number of trees, their positioning and their type.

6. In the case of an application for energy crops provided for in Chapter 5 of Title IV of Regulation (EC) No 1782/2003, the single application shall contain a copy of the contract the applicant has concluded with a first processor pursuant to Article 35 of Regulation (EC) No 2237/2003.

7. In the case of an application for aid for starch potato provided for in Chapter 6 of Title IV of Regulation (EC) No 1782/2003, the single application shall contain a copy of the cultivation contract; however, Member States may provide that that copy may be submitted by a later date which shall not be later than 30 June.

⁽¹⁾ OJ L 193, 20.7.2002, p. 74.

8. In the case of an application for seed aid provided for in Chapter 9 of Title IV of Regulation (EC) No 1782/2003, the single application shall contain:

- (a) a copy of the growing contract or growing declaration; however, Member States may provide that that copy may be submitted by a later date which shall not be later than 15 September;
- (b) an indication of the species of seeds sown on each parcel;
- (c) an indication of the quantity of certified seed produced, expressed in quintals to one decimal point; however, Member States may provide that that information may be submitted by a later date which shall not be later than 15 June of the year following the harvest;
- (d) a copy of the supporting documents showing that the quantities of seed referred to have been officially certified; however, Member States may provide that that information may be submitted by a later date which shall not be later than 31 May of the year following the harvest.

Article 14

General rules pertaining to the single application and declarations in relation to particular uses of area

1. Uses of area referred to in Articles 5(2) and 51 of Regulation (EC) No 1782/2003 and those listed in Annex V to that Regulation, as well as areas used for the production of flax grown for fibre where those areas do not have to be declared in accordance with Article 13 of this Regulation, shall be declared under a separate heading in the single application form.

Uses of area neither for the purposes of the aid schemes provided for in Titles III and IV of Regulation (EC) No 1782/2003 nor listed in Annex V to that Regulation shall be declared under one or more 'other uses' headings.

Member States may provide that the first and second subparagraphs shall not apply where the information concerned is made available to the competent authorities in the framework of other administration and control systems that guarantee compatibility with the integrated system in accordance with Article 26 of Regulation (EC) No 1782/2003.

2. For the first year of application of the single payment scheme the Member States may derogate from the provisions of Articles 12 and 13 if the payment entitlements are not yet definitively established at the latest date fixed for the submission of the single application.

3. Member States may decide that all applications for aid under Title IV of Regulation (EC) No 1782/2003 shall be covered by the single application. In that case, Chapters II and III of this Title shall apply *mutatis mutandis* in respect of the particular requirements established in view of the application for aid under those schemes.

4. Each Member State shall determine the minimum size of agricultural parcels in respect of which an application may be made. However, the minimum size may not exceed 0,3 ha.

Article 15

Amendments to the single applications

1. After the expiry of the time limit for the submission of the single application, individual agricultural parcels, as the case may be, accompanied by the corresponding payment entitlements, not yet declared in the single application for the purposes of any of the area-related aid schemes, may be added in the single application provided that the requirements under the aid schemes concerned are respected.

Changes regarding the use or aid scheme in respect of individual agricultural parcels already declared in the single application may be made under the same conditions.

Where the amendments referred to in the first and second subparagraphs have a bearing on any supporting documents or contracts to be submitted, the related amendments to such documents or contracts shall also be allowed.

2. Without prejudice to the dates fixed by Finland or Sweden for the submission of the single application in accordance with the first subparagraph of Article 11(2), amendments in accordance with paragraph 1 of this Article shall be notified to the competent authority in writing by 31 May, in the case of Finland and Sweden by 15 June, of the calendar year concerned at the latest.

3. Where the competent authority has already informed the farmer of irregularities in the single application or where it has given notice to the farmer of its intention to carry out an on-the-spot check and where that on-the-spot check reveals irregularities, amendments in accordance with paragraphs 1 shall not be authorised in respect of the agricultural parcels affected by the irregularities.

CHAPTER II

LIVESTOCK AID APPLICATIONS

Article 16

Requirements pertaining to livestock aid applications

1. A livestock aid application shall contain all information necessary to establish eligibility for the aid, and in particular:

- (a) the identity of the farmer;

- (b) a reference to the single application if it has already been submitted;
- (c) the number of animals of each type in respect of which any aid is applied for and, for bovines, the identification code of the animals;
- (d) where applicable, an undertaking by the farmer to keep the animals referred to in point (c) on his holding during the retention period and information on the location or locations where the animals will be held including the period or periods concerned;
- (e) where applicable, the individual limit or individual ceiling for the animals concerned;
- (f) where applicable, the individual milk reference quantity available to the farmer on 31 March or, if the Member State concerned decides to make use of the derogation provided for in Article 44a of Regulation (EC) No 2342/1999, on 1 April of the calendar year concerned; where this quantity is unknown on the date on which the application is submitted, it shall be notified to the competent authority at the earliest opportunity;
- (g) a statement by the farmer that he is aware of the conditions pertaining to the aid in question.

If the animal is moved to another location during the retention period the farmer shall inform the competent authority in writing in advance.

2. Member States shall guarantee every animal keeper the right to obtain from the competent authority without constraint, at reasonable intervals and without excessive delay, information on the data relating to him and his animals kept in the computerised database for bovine animals. When submitting his aid application, the farmer shall declare that that data is correct and complete or he shall rectify incorrect data or add missing data.

3. Member States may decide that some of the information referred to in paragraph 1 need not be included in the aid application, where it has already been communicated to the competent authority.

Member States may in particular introduce procedures by which data contained in the computerised database for bovine animals may be used for the purposes of the aid application, provided that the computerised database for bovine animals offers the level of assurance and implementation necessary for the proper management of the aid schemes involved. Such procedures may consist of a system according to which a farmer may apply for aid in respect of all animals which, at a date to be determined by the

Member State, qualify for aid on the basis of the data contained in the computerised database for bovine animals. In that case, Member States shall take the necessary measures to guarantee that:

- (a) in accordance with the provisions applicable to the aid scheme in question, the starting and end dates of the relevant retention periods are clearly identified and known to the farmer;
- (b) the farmer is aware that any animals found not to be correctly identified or registered in the system for the identification and registration for bovine animals shall count as animals found with irregularities as referred to in Article 59.

As regards the suckler cow premium in accordance with Article 125 of Regulation (EC) No 1782/2003, irregularities found with regard to the system for the identification and registration of bovine animals shall be allocated proportionately between the number of animals needed to receive the premium and the animals needed for the supply of milk or milk products pursuant to Article 125(2)(b) of that Regulation. However, such irregularities shall first be allocated to the number of animals not needed within the individual limits or ceilings referred to in Article 125(2)(b) and Article 126.

4. Member States may provide that some of the information referred to in paragraph 1 can or shall be forwarded via a body or bodies approved by them. However, the farmer shall remain responsible for the data transmitted.

CHAPTER III

AID APPLICATION FOR THE DAIRY PREMIUM AND THE ADDITIONAL PAYMENTS

Article 17

Requirements pertaining to aid applications for the dairy premium and additional payments

Each milk producer applying for the dairy premium and additional payments provided for in Chapter 7 of Title IV of Regulation (EC) No 1782/2003 shall submit an aid application containing all information necessary to establish eligibility for the aid, and in particular:

- (a) the identity of the farmer;

- (b) a statement by the farmer that he is aware of the conditions pertaining to the aid in question.

The aid application shall be submitted by a date to be determined by the Member States which shall not be later than 15 May and, in the case of Finland and Sweden, 15 June.

CHAPTER IV

COMMON PROVISIONS

Article 18

Simplification of procedures

1. Without prejudice to any specific provisions of this Regulation and of Regulation (EC) No 1782/2003, Member States may permit or require that any kind of communications under this Regulation both from the farmer to the authorities and vice versa be made by electronic means. In that case, appropriate measures shall be taken to ensure in particular that:

- (a) the farmer is unambiguously identified;
- (b) the farmer complies with all requirements under the aid scheme concerned;
- (c) the transmitted data is reliable in view of the proper management of the aid scheme concerned; where use is made of the data contained in the computerised database for bovine animals, that database shall offer the level of assurance and implementation necessary for the proper management of the aid schemes involved;
- (d) where accompanying documents cannot be transmitted electronically, such documents are received by the competent authorities within the same time limits as in the case of transmission by non-electronic means;
- (e) there is no discrimination between farmers using non-electronic means of submission and those opting for electronic transmission;

2. With regard to the submission of aid applications, Member States may, under the conditions provided in paragraph 1(a) to (e), provide for simplified procedures where data is already available to the authorities, in particular where the situation has not changed since the latest submission of an aid application under the aid scheme concerned.

Article 19

Adjustments of obvious errors

Without prejudice to Articles 11 to 18, an aid application may be adjusted at any time after its submission, in cases of obvious errors recognised by the competent authority.

Article 20

Derogation from the final date for the submission of aid applications, supporting documents, contracts and declarations

By way of derogation from Article 5(1) of Council Regulation (EEC, Euratom) No 1182/71 ⁽¹⁾, where the latest date for the submission of an aid application or any supporting documents, contracts or declarations under this Title is a public holiday, a Saturday or a Sunday, it shall be deemed to fall on the first following working day.

Article 21

Late submission

1. Except in cases of *force majeure* and exceptional circumstances as referred to in Article 72, the submission of an aid application pursuant to this Regulation after the relevant time limit shall lead to a 1 % reduction per working day in the amounts to which the farmer would have been entitled if the application had been lodged within the time limit.

Without prejudice to any particular measures to be taken by the Member States with regard to the need for the submission of any supporting documents in due time to allow effective controls to be scheduled and carried out, the first subparagraph shall also apply with regard to documents, contracts or declarations to be submitted to the competent authority in accordance with Articles 12 and 13 where such documents, contracts or declarations are constitutive for the eligibility for the aid in question. In that case, the reduction shall be applied on the amount payable for the aid concerned.

If the delay amounts to more than 25 calendar days the application shall be considered inadmissible.

2. The submission of an amendment to a single application after the latest date as provided for in Article 15(2) shall lead to a 1 % reduction per working day in the amounts relating to the actual use of the agricultural parcels concerned.

Amendments to a single application shall only be admissible until the latest date for a late submission of a single application as specified in the third subparagraph of paragraph 1. However, where that date is earlier than, or the same as, the latest date provided for in Article 15(2), amendments to a single application shall be considered inadmissible after the date provided for in Article 14(2).

3. As regards forage areas, where the single application is submitted late, the resulting reduction shall be in addition to any other reduction applicable to late submissions of applications for aid referred to in Articles 131 et 132 of Regulation (EC) No 1782/2003.

⁽¹⁾ OJ L 124, 8.6.1971, p. 1.

*Article 22***Withdrawal of aid applications**

1. An aid application may be totally or partially withdrawn at any time in writing.

In the case where a Member State makes use of the possibilities provided for in the second subparagraph of Article 16(3), that Member State may provide that the notifications to the computerised database for bovine animals of an animal that has left the holding may substitute a withdrawal in writing.

However, where the competent authority has already informed the farmer of irregularities in the aid application or where the competent authority has given notice to the farmer of its intention to carry out an on-the-spot check and where that on-the-spot check reveals irregularities, withdrawals shall not be authorised in respect of the parts of the aid application affected by the irregularities.

2. Withdrawals in accordance with paragraph 1 shall put the claimant into the position he was in before he submitted the aid application or part of the aid application in question.

TITLE III

CONTROLS

CHAPTER I

COMMON RULES*Article 23***General principles**

1. Administrative and on-the-spot checks provided for in this Regulation shall be made in such a way as to ensure effective verification of compliance with the terms under which aids are granted and of the requirements and standards relevant for cross-compliance.

2. The applications for aid concerned shall be rejected if the farmer or his representative prevents an on-the-spot check from being carried out.

CHAPTER II

CONTROLS WITH REGARD TO ELIGIBILITY CRITERIA

Section I

Administrative checks*Article 24***Cross-checks**

1. The administrative checks referred to in Article 23 of Regulation (EC) No 1782/2003 shall permit the detection of

irregularities, in particular the automated detection using computerised means, including cross-checks:

- (a) on declared payment entitlements and on declared parcels, respectively, in order to avoid undue multiple granting of the same aid in respect of the same calendar or marketing year and to prevent any undue cumulating of aid granted under area-related aid schemes listed in Annexes I and V to Regulation (EC) No 1782/2003;
- (b) on the payment entitlements to verify their existence and the eligibility for aid;
- (c) between the agricultural parcels as declared in the single application and the reference parcels as contained in the identification system for agricultural parcels to verify the eligibility for aid of the areas as such;
- (d) between the payment entitlements and the area determined in order to verify that the entitlements are accompanied by an equal number of eligible hectares as defined in Article 44(2) and Article 54(2), respectively, of Regulation (EC) No 1782/2003;
- (e) by means of the computerised database for bovine animals, to verify eligibility for the aid and to avoid undue multiple granting of the same aid in respect of the same calendar year;
- (f) where supporting documents, contracts or growing declarations have to be submitted and where applicable, between the agricultural parcels as declared in the single application and in the supporting documents, contracts or growing declaration to verify the eligibility for aid of the area;
- (g) between the agricultural parcels as declared in the single application and plots subjected to official examination that have been found to comply with the requirements of the Directives referred to in Article 1(1) of Council Regulation (EEC) No 1674/72 of 2 August 1972 laying down general rules for granting and financing aid for seed ⁽¹⁾;

2. Indications of irregularities resulting from cross-checks shall be followed-up by any other appropriate administrative procedure, and where necessary, by an on-the-spot check.

Section II

on-the-spot checks

Sub-section I

Common provisions*Article 25***General principles**

1. On-the-spot checks shall be unannounced. However, provided that the purpose of the control is not jeopardised, advance

⁽¹⁾ OJ L 177, 4.8.1972, p. 1.

notice may be given, strictly limited to the minimum time period necessary. Such notice shall, except in duly justified cases, not exceed 48 hours.

2. Where appropriate, on-the-spot checks provided for in this Regulation and any other checks provided for in Community rules shall be carried out at the same time.

Article 26

Control rate

1. The total number of on-the-spot checks carried out each year shall cover at least 5 % of all farmers submitting a single application.

Subject to the third subparagraph, in the following cases the Member States shall draw additional control samples of at least:

- (a) 5 % of all farmers applying for aid for starch potato provided for in Chapter 6 of Title IV of Regulation (EC) No 1782/2003;
- (b) 5 % per species of seed for which aid is claimed in accordance with Article 99 of Regulation (EC) No 1782/2003;
- (c) 50 % of all farmers applying for aid for nuts provided for in Chapter 4 of Title IV of Regulation (EC) No 1782/2003 in the case where a Member State makes use of the possibility not to introduce, in accordance with Article 6(3) of this Regulation, an additional layer of GIS information;

With regard to all other Member States, in respect of the year 2005, 5 % of all farmers applying for aid for nuts provided for in Chapter 4 of Title IV of Regulation (EC) No 1782/2003 unless the additional layer of GIS information has already been introduced.

Where the control sample drawn under the first subparagraph already contains applicants for the aids referred to in points (a) to (c) of the second subparagraph, those applicants may be counted towards the control rates stipulated therein.

2. The total number of on-the-spot checks carried out each year shall, moreover, cover at least:

- (a) the minimum control rate of 30 % or 20 % of the areas declared for the production of hemp as referred to in Article 52 of Regulation (EC) No 1782/2003.

Where a Member State has already introduced a system of prior approval for such cultivation and has already notified the Commission of its detailed rules and conditions linked to that system prior to the entry into force of this Regulation, any amendments to those detailed rules or conditions shall be notified to the Commission without undue delay.

- (b) 5 % of all farmers applying for aid under the bovine aid schemes. However, where the computerised database for bovine animals does not offer the level of assurance and implementation necessary for the proper management of the aid schemes involved the percentage shall be increased to 10 %. Those on-the-spot checks shall also cover at least 5 % of all animals per aid scheme for which aid is applied for;
- (c) 10 % of all farmers applying for aid under the ovine/caprine aid scheme irrespective of whether the aid applications are being submitted as part of the single application or independently;
- (d) 2 % of all milk producers applying for the dairy premium and/or additional payments.

3. Should on-the-spot checks reveal significant irregularities in the context of a given aid scheme or in a region or part of a region, the competent authority shall appropriately increase the number of on-the-spot checks during the current year and shall appropriately increase the percentage of farmers to be checked on-the-spot in the following year.

4. Where it is provided that particular elements of an on-the-spot check may be carried out on the basis of a sample, that sample shall guarantee a reliable and representative level of control. Member States shall establish the criteria for the selection of the sample. If the checks on that sample reveal irregularities, the extent and scope of the sample shall be extended appropriately.

Article 27

Selection of the control sample

1. Farmers subjected to on-the-spot checks shall be selected by the competent authority on the basis of a risk analysis and an element of representativeness of the aid applications submitted. The effectiveness of risk analysis parameters used in previous years shall be assessed on an annual basis.

To provide the element of representativeness, the Member States shall select randomly between 20 % and 25 % of the minimum number of farmers to be subjected to on-the-spot checks as provided for in Article 26(1) and (2).

2. The risk analysis shall take account of:

- (a) the amount of aid involved;
- (b) the number of agricultural parcels and the area or number of animals for which aid is requested;

- (c) changes from the previous year;
- (d) the findings of checks made in past years;
- (e) cases of non-compliance with Regulation (EC) No 1760/2000 and Regulation (EC) No 21/2004;
- (f) those farmers who are either just above or below ceilings or limits relevant for the granting of aids;
- (g) replacements of animals pursuant to Article 58 of this Regulation;
- (h) compliance with Article 49(2) of Regulation (EC) No 1782/2003;
- (i) the quantity of potatoes intended for the manufacture of potato starch with regard to the area declared in the cultivation contract referred to in Article 13(7);
- (j) in the case of an application for seed aid provided for in chapter 9 of Title IV of Regulation (EC) No 1782/2003, the quantity of certified seeds in relation to the area declared;
- (k) other factors to be defined by the Member States.

3. The competent authority shall keep records of the reasons for the selection of each farmer for an on-the-spot check. The inspector carrying out the on-the-spot check shall be informed accordingly prior to the commencement of the on-the-spot check.

Article 28

Control report

1. Every on-the-spot check under this Section shall be the subject of a control report which makes it possible to review the details of the checks carried out. The report shall indicate in particular:

- (a) the aid schemes and applications checked;
- (b) the persons present;
- (c) the agricultural parcels checked, the agricultural parcels measured, the results of the measurements per measured agricultural parcel and the measuring methods used;
- (d) the number and type of animals found and, where applicable, the ear tag numbers, entries in the register and in the computerised database for bovine animals and any supporting documents checked, the results of the checks and, where applicable, particular observations in respect of individual animals and/or their identification code;
- (e) whether notice was given to the farmer of the visit and, if so, the period of advance notification;
- (f) indications of any specific control measures to be carried out in the context of individual aid schemes;
- (g) indication of any further control measures carried out.

2. The farmer shall be given the opportunity to sign the report to attest his presence at the check and to add observations. Where irregularities are found the farmer shall receive a copy of the control report.

Where the on-the-spot check is carried out by means of remote sensing in accordance with Article 32, the Member States may decide not to give the farmer or his representative the opportunity to sign the control report if no irregularities are revealed during the check by remote-sensing. If irregularities are revealed as a consequence of such checks the opportunity to sign the report shall be given before the competent authority draws its conclusions from the findings with regard to any resulting reductions or exclusions.

Sub-section II

on-the-spot checks of the Single applications with regard to area-related aid schemes

Article 29

Elements of the on-the-spot checks

On-the-spot checks shall cover all the agricultural parcels for which aid is requested under aid schemes listed in Annex I to Regulation (EC) No 1782/2003, except those related to applications for seed aid in accordance with Article 99 of that Regulation. However, the actual inspection in the field as part of an on-the-spot check may be limited to a sample of at least half of the agricultural parcels for which applications have been submitted.

Article 30

Determination of areas

1. Agricultural parcel areas shall be determined by any appropriate means defined by the competent authority which ensure measurement of a precision at least equivalent to that required for official measurements under the national rules. A measurement tolerance may be defined by the competent authority that shall not exceed either 5 % of the agricultural parcel area or a buffer of 1,5 m applied to the perimeter of the agricultural parcel. However, the maximum tolerance with regard to each agricultural parcel shall not, in absolute terms, exceed 1,0 ha.

2. The total area of an agricultural parcel may be taken into account provided that it is fully utilized in accordance with the customary standards of the Member State or region concerned. In other cases the area actually utilized shall be taken into account.

In respect of the regions where certain features, in particular hedges, ditches and walls, are traditionally part of good agriculture cropping or utilisation practices, the Member States may decide that the corresponding area is to be considered part of the

fully utilised area on condition that it does not exceed a total width to be determined by the Member States. That width must correspond to a traditional width in the region in question and shall not exceed 2 metres.

Member States may, after prior notification to the Commission, allow a width greater than 2 metres if the arable crop areas concerned were taken into account for the fixing of the yields of the regions concerned.

3. Further to paragraph 2, in the case of parcels being declared for the purposes of the single payment scheme, any features referred to in the acts listed in Annex III to Regulation (EC) No 1782/2003 or which may form part of the good agricultural and environmental condition as referred to in Article 5 and Annex IV of that Regulation shall form part of the total area of an agricultural parcel.

4. The eligibility of agricultural parcels shall be verified by any appropriate means. To that end, additional proof shall be requested where necessary.

Article 31

Elements of the on-the-spot checks related to applications for seed aid

On-the-spot checks related to applications for seed aid in accordance with Article 99 of Regulation (EC) No 1782/2003 shall cover in particular:

- (a) checks at the level of the farmer applying for the aid:
 - (i) on all parcels to verify the species or variety group of seeds sown on each parcel declared;
 - (ii) on documents to verify at least the first destination of seed for which aid has been claimed;
 - (iii) any checks deemed necessary by the Member States to ensure that aid is not paid with regard to uncertified seed or seed from third countries.
- (b) if the first destination of the seed is a breeder or a seed establishment, additional checks at their premises to ensure that:
 - (i) the seed has actually been bought and paid by the breeder or seed establishment in accordance with the growing contract;
 - (ii) the payment of the seed is reflected in the financial accounts of the breeder or seed establishment;

- (iii) the seed has actually been marketed for sowing. Marketed shall mean holding available or in stock, displaying for sale, offering for sale, sale or delivery to another person. For that purpose, physical and documentary checks of the stock and financial accounts of the breeder or seed establishment shall be carried out;

- (c) where appropriate, checks at the level of the end users.

Article 32

Remote sensing

1. Member States may make use of remote sensing with regard to the sample referred to in Article 26(1) instead of applying the traditional means of on-the-spot checking under the conditions set out in this Article. Articles 23, 25, 26, 27 and 28, the first sentence of Article 29 and Article 30 shall apply where appropriate.

2. The zones to be checked by means of remote sensing shall be selected on the basis of a risk analysis or at random.

In the case of selection on the basis of a risk analysis the Member States shall take account of appropriate risk factors, and in particular:

- (a) their financial significance in terms of Community aid;
- (b) the composition of aid applications;
- (c) the structure of the agricultural parcel systems, and the complexity of the agricultural landscape;
- (d) the lack of coverage in previous years;
- (e) the technical constraints of effective use of remote sensing, with respect to zone definition;
- (f) the findings of checks made in previous years.

3. On-the-spot checks by remote sensing shall cover either:

- (a) all aid applications having at least 80 % of the area for which aid is requested under schemes established in Titles III and IV of Regulation (EC) No 1782/2003 within the respective zone,
- or
- (b) aid applications to be selected by the competent authority on the basis of Article 27(2) of this Regulation.

Applications selected randomly in accordance with Article the second subparagraph of Article 27(1) may be checked by remote sensing.

4. Once a farmer has been selected for an on-the-spot check in accordance with paragraph 3, at least 80 % of the area for which he requests aid under aid schemes established in Titles III and IV of Regulation (EC) No 1782/2003 shall be subject to on-the-spot check by remote sensing.

5. Where a Member State applies the possibility to carry out on-the-spot checks by remote sensing, it shall:

(a) perform photo interpretation of satellite images or aerial photographs of all agricultural parcels per application to be checked in accordance with paragraph 4 with a view to recognising the ground cover and measuring the area;

(b) carry out physical inspections in the field of all agricultural parcels for which photo interpretation does not make it possible to verify the accuracy of the declaration to the satisfaction of the competent authority.

6. The additional checks referred to in Article 26(3) shall be carried out by means of traditional on-the-spot checks if it is no longer possible to carry them out by means of remote sensing within the current year.

Article 33

Verification of the tetrahydrocannabinol content in hemp growth

1. The system to be used by the Member States in accordance with Article 52(1) of Regulation (EC) No 1782/2003 in order to determine the tetrahydrocannabinol (hereinafter referred to as 'THC') content of the crops grown shall be as set out in Annex I to this Regulation.

2. Member States shall send the Commission, by 15 November of the marketing year in question at the latest, a report on the THC content findings. The report shall indicate, for each variety:

(a) for procedure A as provided for in Annex I, an indication of the point at which the sample was taken;

(b) the number of tests carried out;

(c) the results in terms of THC content, shown separately for each 0,1 %;

(d) measures taken at national level.

3. Where the checks show, for a significant number of samples of a given variety, THC contents exceeding that laid down in Article 52(1) of Regulation (EC) No 1782/2003, it may be decided, without prejudice to any other measures the Commission might take and in accordance with the procedure referred to in Article 144(2) of that Regulation, to use procedure B as provided for in Annex I to this Regulation for the variety concerned in the course of the following calendar year.

4. Varieties of hemp grown for fibre eligible for direct payments are listed in Annex II. Requests by a Member State to include a variety of hemp in that Annex shall be accompanied by a report giving the findings of analyses carried out in accordance with procedure B provided for in Annex I and a description of the variety in question.

Sub-section III

On-the-spot checks of livestock aid applications

Article 34

Timing of on-the-spot checks

1. For aid schemes other than those provided for in Articles 123(6) and 130 of Regulation (EC) No 1782/2003, at least 60 % of the minimum rate of on-the-spot checks provided for in the last sentence of Article 26(2)(b) of this Regulation shall be conducted throughout the retention period of the aid scheme concerned. The remaining percentage of on-the-spot checks shall be conducted throughout the retention period of at least one of those aid schemes.

However, where a Member State makes use of the possibilities provided for in Article 68 of Regulation (EC) No 1782/2003, the minimum rate of on-the-spot checks provided for in the last sentence of Article 26(2)(b) shall be fully conducted throughout the retention period of the aid scheme concerned.

2. At least 50 % of the minimum rate of on-the-spot checks provided for in Article 26(2)(c) shall be conducted throughout the retention period. However, the minimum rate of on-the-spot checks shall be fully conducted throughout the retention period in Member States where the system established by Regulation (EC) No 21/2004 as concerns ovines and caprines, in particular in relation to the identification of animals and the proper keeping of registers, is not fully implemented and applied.

Article 35

Elements of the on-the-spot checks

1. On-the-spot checks shall cover all livestock for which aid applications have been submitted under the aid schemes to be checked and, in the case of checks of the bovine aid schemes, also the unclaimed bovine animals.

2. On-the-spot checks shall include in particular:

(a) a check that the number of animals present on the holding for which aid applications have been submitted and the number of unclaimed bovine animals corresponds to the number of animals entered in the registers and, in the case of bovine animals, to the number of animals notified to the computerised database for bovine animals;

- (b) in relation to the bovine aid schemes, checks
- of the correctness of entries in the register and the notifications to the computerised database for bovine animals on the basis of a sample of supporting documents such as purchase and sales invoices, slaughter certificates, veterinary certificates and, where applicable, animal passports, in relation to animals for which aid applications were submitted in the 12 months prior to the on-the-spot check,
 - that information held in the computerised database for bovine animals corresponds to the information given in the register on the basis of a sample in relation to animals for which aid applications were submitted in the 12 months prior to the on-the-spot check,
 - that all animals present on the holding and still kept under the retention obligation are eligible for the aid claimed,
 - that all bovine animals present on the holding are identified by ear tags and accompanied, where applicable, by animal passports and that they are recorded in the register and have been duly notified to the computerised database for bovine animals.

The checks referred to in the fourth indent of point (b) shall be made individually for each individual male bovine still kept under the retention obligation, for which an application has been submitted for the special beef premium with the exception of those submitted in accordance with Article 123(6) of Regulation (EC) No 1782/2003. In all other cases, the check on correct recording in the animal passports, the register and notification to the database may be made on the basis of a sample;

- (c) in relation to the ovine/caprine aid scheme:
- (i) a check on the basis of the register that all the animals for which aid applications were submitted in the 12 months prior to the on-the-spot check have been kept on the holding throughout the retention period,
 - (ii) a check of the correctness of entries in the register on the basis of a sample of supporting documents such as purchase and sales invoices and veterinary certificates.

Article 36

Control measures as regards on-the-spot checks in slaughterhouses

1. As regards the special beef premium provided for in Article 123(6) of Regulation (EC) No 1782/2003 and the

slaughter premium provided for in Article 130 of that Regulation and in cases where a Member State makes use of the possibilities provided for in Article 68 of that Regulation, on-the-spot checks shall be carried out in the slaughterhouses. In that case, Member States shall carry out on-the-spot checks either:

- (a) in at least 30 % of all slaughterhouses, selected on the basis of a risk analysis, in which case the controls shall cover a sample of 5 % of the total number of bovine animals which have been slaughtered in the slaughterhouse concerned during the 12 months prior to the on-the-spot check, or
- (b) in at least 20 % of the slaughterhouses which have been approved beforehand in accordance with particular criteria of reliability to be determined by the Member States and which are selected on the basis of a risk analysis, in which case the controls shall cover a sample of 2 % of the total number of bovine animals which have been slaughtered in the slaughterhouse concerned during the 12 months prior to the on-the-spot check.

The on-the-spot checks in slaughterhouses shall comprise a *posteriori* scrutiny of documents, a comparison with the entries in the computerised database for bovine animals and checks of summaries relating to the slaughter certificates or information in place thereof, which were sent to other Member States in accordance with Article Article 35(3) of Regulation (EC) No 2342/1999.

2. On-the-spot checks in slaughterhouses shall comprise physical checks of slaughtering procedures carried out on the day of the on-the-spot check on the basis of a sample. Where necessary, it shall be checked whether the carcasses presented for weighing are eligible for aid.

Article 37

Control measures as regards the premium granted after export

1. As regards the slaughter premium granted for bovine animals exported to third countries in accordance with Article 130 of Regulation (EC) No 1782/2003 and where a Member State makes use of the possibilities provided for in Article 68 of Regulation (EC) No 1782/2003, all loading operations shall be subject to on-the-spot checks, which shall be carried out as follows:

- (a) at the time of loading, it shall be verified that all bovine animals are identified by ear tags. Furthermore, at least 10 % of the bovine animals so verified shall be checked individually with a view to verifying their identification;

- (b) at the time of the departure from the Community territory:

- where an official customs seal has been applied to the means of transport, it shall be checked that the seal is undamaged. If the seal is undamaged a sample check shall only be carried out if there are doubts as to the regularity of the load,

- where no official customs seal has been applied to the means of transport or where a customs seal is damaged, at least 50 % of bovine animals that were individually checked at the time of loading shall be checked again.

2. The animal passports shall be surrendered to the competent authority in accordance with Article 6(5) of Regulation (EC) No 1760/2000.

3. The Paying Agency shall scrutinize the aid applications on the basis of the payment files and other available information, paying particular attention to the documents relating to the export and the comments of the competent control authorities and shall check whether the animal passports have been surrendered in accordance with paragraph 2.

Article 38

Special provisions as regards additional payments

As regards the additional payments provided for in Article 133 of Regulation (EC) No 1782/2003, the Member State shall, where appropriate, apply the provisions of this Title. If this is not appropriate because of the structure of the additional payment scheme, Member States shall provide controls ensuring a control level equivalent to that laid down in this Regulation.

Article 39

Special provisions as regards the control report

1. Where Member States carry out on-the-spot checks pursuant to this Regulation in conjunction with inspections pursuant to Regulation (EC) No 1082/2003 the control report provided for in Article 28 of this Regulation shall be supplemented by reports in accordance with Article 2(5) of Regulation (EC) No 1082/2003.

2. With regard to the checks in slaughterhouses provided for in Article 36(1), the control report provided for in Article 28 may consist of an indication in the slaughterhouse accounts showing which animals have been subject to the checks.

With regard to the checks provided for in Article 36(2), the report shall include, inter alia, the identification numbers, the carcass weights and the dates of slaughter in relation to all animals slaughtered and checked on the day of the on-the-spot check.

3. With regard to the checks provided for in Article 37, the control report may consist only of an indication of the animals so checked.

4. Where on-the-spot checks conducted in accordance with this Regulation reveal cases of non-compliance with the provisions of Title I of Regulation (EC) No 1760/2000, copies of the control report provided for in Article 28 of this Regulation shall be sent without delay to the authorities responsible for the implementation of Regulation (EC) No 1082/2003.

Sub-section IV

On-the-spot checks with regard to aid applications for the dairy premium and additional payments

Article 40

On-the-spot checks with regard to aid applications for the dairy premium and additional payments

On-the-spot checks shall cover the eligibility conditions, in particular on the basis of the farmers accounting or other registers.

CHAPTER III

CONTROLS RELATING TO CROSS-COMPLIANCE

Section I

Common provisions

Article 41

General principles and definitions

For the purposes of this Chapter, the following general principles and definitions shall apply:

- (a) A 'repeated' non-compliance shall mean the non-compliance with the same requirement, standard or obligation referred to in Article 4 determined more than once within a consecutive period of three years, provided the farmer has been informed of a previous non-compliance and, as the case may be, has had the possibility to take the necessary measures to terminate that previous non-compliance;
- (b) The 'extent' of a non-compliance shall be determined taking account, in particular, of whether the non-compliance has a far-reaching impact or whether it is limited to the farm itself;
- (c) The 'severity' of a non-compliance shall depend, in particular, on the importance of the consequences of the non-compliance taking account of the aims of the requirement or standard concerned;
- (d) Whether a non-compliance is of 'permanence' shall depend, in particular, on the length of time for which the effect lasts or the potential for terminating those effects by reasonable means.

Article 42

Competent control authority

1. The specialised control bodies shall bear the responsibility to carry out the controls on the respect of the requirements and standards in question.

The Paying Agencies shall bear the responsibility for the fixing of reductions or exclusions in individual cases in accordance with Chapter II of Title IV of this Regulation.

2. By way of derogation from paragraph 1, Member States may decide that controls in relation to all or certain requirements, standards, acts, or areas of cross-compliance shall be carried out by the Paying Agency provided that the Member State guarantees that the effectiveness of the controls is at least equal to the one achieved in the case where the controls are carried out by a specialised control body.

Section II

Administrative checks

Article 43

Administrative checks

Depending on the requirements, standards acts or areas of cross-compliance in question, Member States may decide to carry out administrative checks, in particular those already provided for under the control systems applicable to the respective requirement, standard, act or area of cross-compliance.

Section III

On-the-spot checks

Article 44

Minimum control rate

1. The competent control authority shall, with regard to the requirements or standards for which it is responsible, carry out checks on at least 1 % of all farmers submitting aid applications under support schemes established in Titles III and IV of Regulation (EC) No 1782/2003 and for which the competent control authority in question is responsible.

Where the legislation applicable to the act and standards already fix minimum control rates, that rate shall insofar be applied instead of the minimum rate mentioned in the first subparagraph.

2. Should on-the-spot checks reveal a significant degree of non-compliance with a given area of cross-compliance, the number of on-the-spot checks to be carried out in the following control period shall be increased.

Article 45

Selection of the control sample

1. Without prejudice to checks carried out as a follow-up of non-compliances brought to the attention of the competent control authority in any other way, the selection of farms to be

checked in accordance with Article 44 shall be based, where applicable, on a risk analysis according to the applicable legislation, or on a risk analysis appropriate to the requirements or standards. That risk analysis may be based on the level of an individual farm or on the level of categories of farms or geographical zones or, in the case of point (b) of the second subparagraph of paragraph 3 of this Article, on the level of undertakings.

2. The competent control authority shall, with regard to the requirements or standards for which it is responsible, select the farmers to be checked in accordance with Article 44 by selecting the sample from the sample of farmers which were already selected pursuant to Articles 26 and 27 and to whom the relevant requirements or standards apply.

3. By way of derogation from paragraph 2, the competent control authority may, with regard to the requirements or standards for which it is responsible, select a control sample of 1 % of all farmers submitting aid applications under support schemes established in Titles III and IV of Regulation (EC) No 1782/2003 and who are under the obligation to respect at least one of the requirements or standards.

In that case:

- (a) where the competent control authority concludes, on the basis of the risk analysis applied at farm level, that non-beneficiaries of direct aid establish a higher risk than the farmers who applied for aid, it may replace farmers who applied for aid by non-beneficiaries. In that case, the overall number of farmers checked shall, nevertheless, attain the control rate provided for in the first subparagraph. The reasons for such replacements shall be properly justified and documented;
- (b) if more effective, the competent control authority may perform the risk analysis at the level of undertakings, in particular slaughterhouses, traders or suppliers rather than at farm level. In that case, the farmers thus checked may be counted towards the control rate provided for in Article 44.

4. The competent control authority may decide to proceed by a combination of the procedures set out in paragraphs 2 and 3 in the case where such a combination increases the effectiveness of the control system.

Article 46

Determination of the compliance with the requirements and standards

1. Where applicable, the respect of the requirements and standards shall be determined by the use of means as stipulated in the legislation applicable to the requirement or standard in question.

2. In other cases and where appropriate, the determination shall be carried out by the use of any appropriate means defined by the competent control authority which ensure precision at least equivalent to that required for official determinations under the national rules.

3. Where appropriate, the on-the-spot checks may be conducted by the application of remote-sensing techniques.

Article 47

Elements of the on-the-spot checks

1. In performing the checks on the sample provided for in Article 44, the competent control authority shall ensure that all farmers thus selected are checked with regard to their compliance with the requirements and standards for which it is responsible.

2. The checks referred to in paragraph 1 shall, as a general rule, be carried out as part of one control visit and shall consist of a verification of the requirements and standards the compliance with which may be checked at the time of that visit, aiming to detect any possible non-compliance with those requirements and standards and, in addition, to identify cases to be submitted for further checks.

Article 48

Control report

1. Every on-the-spot check under this Chapter, regardless whether the farmer in question was selected for the on-the-spot check in accordance with Article 45 or as a follow-up of non-compliances brought to the attention of the competent control authority in any other way, shall be the subject of a control report to be established by the competent control authority.

The report shall be divided into the following parts:

- (a) a general part containing, in particular, the following information:
 - (i) the farmer selected for the on-the-spot check;
 - (ii) the persons present;
 - (iii) whether notice of the visit was given to the farmer and, if so, the period of advance notification.
- (b) a part reflecting separately the checks carried out in respect of each of the acts and standards and containing, in particular, the following information:
 - (i) the requirements and standards subject to the on-the-spot check;
 - (ii) the nature and extent of checks carried out;
 - (iii) the findings;
 - (iv) the acts and standards in relation to which non-compliances are found;
- (c) an evaluation part giving an assessment of the importance of the non-compliance in respect of each act and/or standard on the basis of the criteria 'severity', 'extent', 'permanence' and 'repetition' in accordance with Article 7(1) of Regulation (EC)

No 1782/2003 with an indication of any factors that should lead to an increase or decrease of the reduction to be applied.

Where provisions relating to the requirement or standard in question leave a margin not to further pursue the non-compliance found, the report shall make a corresponding indication. The same shall apply in the case where a Member State grants a period for the compliance with a new standard as referred to in Article 5(3) of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) ⁽¹⁾ or a period for the compliance of young farmers with the minimum standards referred to in Article 4(2) of Commission Regulation (EC) No 445/2002 of 26 February 2002 laying down detailed rules for the application of Council Regulation (EC) No 1257/1999 ⁽²⁾.

2. The farmer shall be informed of any non-compliances found.

3. Without prejudice to any particular provisions contained in the legislation applicable to the requirements and standards, the control report shall be finalised within one month of the on-the-spot check. However, that period may be extended to three months under duly justified circumstances, in particular if chemical or physical analysis so require.

Where the competent control authority is not the Paying Agency, the report shall be sent to the Paying Agency within a month of its finalisation.

TITLE IV

BASIS FOR THE CALCULATION OF THE AID, REDUCTIONS AND EXCLUSIONS

CHAPTER I

FINDINGS IN RELATION TO ELIGIBILITY CRITERIA

Section I

single payment scheme and other area-related aid schemes

Article 49

General principles

1. For the purposes of this Section, the following crop groups shall be distinguished as appropriate:

- (a) areas for the purposes of the single payment scheme, as the case may be, each fulfilling the conditions particular to them;

⁽¹⁾ OJ L 160, 26.6.1999, p. 80. Regulation as last amended by Regulation (EC) No 1783/2003 (OJ L 270, 21.10.2003, p. 70).

⁽²⁾ OJ L 74, 15.3.2002, p. 1. Regulation as last amended by Regulation (EC) No 963/2003 (OJ L 138, 5.6.2003, p. 32).

- (b) areas for which a different rate of aid is applicable;
- (c) set-aside areas declared under aid schemes established in Title IV of Regulation (EC) No 1782/2003 and, where applicable, set-aside areas for which a different rate of aid is applicable;
- (d) forage areas declared for the purposes of Article 131 of Regulation (EC) No 1782/2003;
- (e) forage areas other than pasture land and other than areas used for the production of arable crops, within the meaning of Article 132(3) (b) of Regulation (EC) No 1782/2003 declared for the purposes of that Article;
- (f) pasture land within the meaning of Article 132(3) (c) of Regulation (EC) No 1782/2003 declared for the purposes of that Article;

By way of derogation from point (b), for the purposes of point (a), the average of the values of different payment entitlements in relation to the respective area declared shall be taken into account.

2. Where the area determined for the purposes of the single payment scheme is lower than the area declared, the following shall apply to determine which of the payment entitlements have to be returned to the national reserve in accordance with Article 45(1) and the second subparagraph of Article 42(8) of Regulation (EC) No 1782/2003:

- (a) the area determined shall be taken into account starting with the payment entitlements having the highest value;
- (b) the payment entitlements with the highest value shall be attributed to that area first, followed by those with the next lower value.

For the purposes of this paragraph, set-aside entitlements and other payment entitlements shall be treated separately.

3. Where the same area serves as the basis for an aid application under more than one area-related aid scheme, that area shall be taken into account separately for each of those aid schemes.

Article 50

Basis of calculation in respect of areas declared

1. In the case of applications for aid under area-related aid schemes, except for starch potato and seed as provided for in Chapters 6 and 9 respectively of Title IV of Regulation (EC) No 1782/2003, if the area of a crop group determined is found to be greater than that declared in the aid application, the area declared shall be used for calculation of the aid.

2. Without prejudice to any reductions or exclusions to be applied following the actual determination of area in accordance with Articles 51 and 53, with regard to an application for aid under the single payment scheme, if there is a discrepancy between the payment entitlements declared and the area declared, the calculation of the payment shall be based on the lower size.

3. Without prejudice to reductions and exclusions in accordance with Articles 51 and 53, in the case of applications for aid under area-related aid schemes, except for starch potato and seed as provided for in Chapters 6 and 9 respectively of Title IV of Regulation (EC) No 1782/2003, if the area declared in a single application exceeds the area determined for that crop group, the aid shall be calculated on the basis of the area determined for that crop group.

4. Without prejudice to reductions and exclusions in accordance with Articles 51 and 53, with regard to applications for aid under the single payment scheme the following shall apply in respect of set-aside entitlements for the purpose of the definition of 'area determined' in Article 2 point (22):

- (a) if a farmer does not declare all his area for the purposes of activating the set-aside entitlements at his disposal but declares, at the same time, a corresponding area for the activation of other entitlements, that area shall be considered as having been declared as set-aside areas and not determined for the purposes of the crop group referred to in Article 49(1)(a);
- (b) if area declared as set-aside areas is found not to be set-aside, that area shall be considered as not being determined.

5. With regard to areas declared for the special quality premium for durum wheat in accordance with Article 72 of Regulation (EC) No 1782/2003 and for the durum wheat supplement and special aid in accordance with Article 105 of that Regulation and in case a difference is established between the minimum quantity of certified seeds fixed by the Member State and the quantity effectively used, the area shall be determined by dividing the total quantity of certified seeds for which proof of use was given by the farmer, by the minimum quantity of certified seeds per hectare fixed by the Member State in the production zone concerned.

6. The calculation of the maximum eligible area for the payments to farmers applying for the arable crop area payment in accordance with Chapter 10 of Title IV of Regulation (EC) No 1782/2003 shall be made on the basis of the area of set-aside land determined and on a *pro rata* basis for each crop concerned. However, payments to arable crop producers shall, in relation to the area of set-aside land determined, be reduced to the level corresponding to the area which would be needed to produce 92 tonnes of cereal, in accordance with Article 107(7) of Regulation (EC) No 1782/2003.

7. If a farmer has been unable to comply with his obligations as a result of *force majeure* or exceptional circumstances as referred to in Article 72, he shall retain his right to aid in respect of the area eligible at the time when the case of *force majeure* or the exceptional circumstance occurred.

Article 51

Reductions and exclusions in cases of overdeclaration

1. If, in respect of a crop group, the area declared for the purposes of any area-related aid schemes, except those for starch potato and seed in accordance with Articles 93 and 99 respectively of Regulation (EC) No 1782/2003, exceeds the area determined in accordance with Article 50(3) to (5) of this Regulation, the aid shall be calculated on the basis of the area determined reduced by twice the difference found if that difference is more than either 3 % or two hectares, but no more than 20 % of the area determined.

If the difference is more than 20 % of the area determined, no area-linked aid shall be granted for the crop group concerned.

2. If, in respect of the overall area determined covered by the single application, except for starch potato and seed in accordance with Articles 93 and 99 respectively of Regulation (EC) No 1782/2003, the area declared exceeds the area determined in accordance with Article 50(3) to (5) of this Regulation by more than 30 %, the aid to which the farmer would have been entitled pursuant to Article 50(3) to (5) of this Regulation shall be refused for the calendar year in question under those aid schemes.

If the difference is more than 50 %, the farmer shall be excluded once again from receiving aid up to an amount equal to the amount which corresponds to the difference between the area declared and the area determined in accordance with Article 50(3) to (5). That amount shall be off-set against aid payments under any of the aid schemes referred to in Titles III and IV of Regulation (EC) No 1782/2003 to which the farmer is entitled in the context of applications he lodges in the course of the three calendar years following the calendar year of the finding. If the amount cannot be fully off-set against those aid payments, the outstanding balance shall be cancelled.

3. For the purposes of this Article, where a farmer applying for aid for energy crops in accordance with Article 88 of Regulation (EC) No 1782/2003 or declaring parcels as set-aside in accordance with Article 55 point (b) or Article 107(3) first indent of that Regulation fails to deliver the requisite quantity of any given raw material, he shall be deemed to have failed to fulfil his obligation as regards parcels intended for energy purposes or set-aside, respectively, in respect of an area calculated by multiplying the area of land cultivated and used by him for the production of the raw materials by the percentage shortfall in deliveries of that raw material.

Article 52

Reductions with regard to applications for aid for starch potato and seed

1. If it is found that the area actually cultivated is more than 10 % lower than the area declared for the payment of aid for starch potato as provided for in Chapter 6 of Regulation (EC) No 1782/2003, the aid to be paid shall be reduced by twice the difference found.

2. If it is found that the area actually cultivated is more than 10 % higher than the area declared for the payment of seed aid as provided for in Chapter 9 of Regulation (EC) No 1782/2003, the aid to be paid shall be reduced by twice the difference found.

3. Where it is found that the irregularities referred to in paragraphs 1 and 2 result from intention of the farmer, the total amount of aid referred to in paragraphs 1 and 2 shall be refused.

In that case, the farmer shall be excluded once again from receiving aid equal to that amount. That amount shall be off-set against aid payments under any of the aid schemes referred to in Titles III and IV of Regulation (EC) No 1782/2003 to which the farmer is entitled in the context of applications he lodges in the course of the three calendar years following the calendar year of the finding. If the amount cannot be fully off-set against those aid payments, the outstanding balance shall be cancelled.

Article 53

Intentional overdeclaration

Where differences between the area declared and the area determined in accordance with Article 50(3), (4)(b) and (5) result from irregularities committed intentionally, the aid to which the farmer would have been entitled pursuant to Article 50(3), (4)(b) and (5) shall not be granted for the calendar year in question under the aid scheme concerned.

Moreover, where that difference is more than 20 % of the area determined, the farmer shall be excluded once again from receiving aid up to an amount equal to the amount which corresponds to the difference between the area declared and the area determined in accordance with Article 50(3), (4)(b) and (5). That amount shall be off-set against aid payments under any of the aid schemes referred to in Titles III and IV of Regulation (EC) No 1782/2003 to which the farmer is entitled in the context of applications he lodges in the course of the three calendar years following the calendar year of the finding. If the amount cannot be fully off-set against those aid payments, the outstanding balance shall be cancelled.

Article 54

Reductions and exclusions concerning seed aid applications

1. Where it is found that seed subject to an aid application was not actually marketed within the meaning of Article 31

point (b)(iii) for sowing by the farmer, the aid to be paid for the species concerned, after application of any reductions to be applied in accordance with Article 52, shall be reduced by 50 % if the quantity not marketed amounts to more than 2 % but no more than 5 % of the quantity covered by the aid application. If the quantity not marketed exceeds 5 %, no seed aid shall be granted for the marketing year concerned.

2. Where it is found that aid has been claimed for seed not officially certified or harvested within the Member State in question during the calendar year in which the marketing year for which the aid has been set begins, no aid shall be granted for that marketing year nor for the following one.

Article 55

Calculation of forage area for premiums referred to in Article 131 of Regulation (EC) No 1782/2003

1. Articles 50(1), 50(3), 51(1) and 53 shall apply to the calculation of the forage area for the granting of the aids referred to in Article 131 of Regulation (EC) No 1782/2003.

2. Where a difference of more than 50 % is found between the area declared and the area determined in accordance with Article 50(3), the farmer shall, in the framework of aid applications he lodges in the course of the three calendar years following the calendar year of the finding, be excluded once again in respect of a forage area equal to the difference between the area declared and the area determined. If the area to be excluded cannot be fully off-set within that period, the outstanding balance shall be cancelled.

3. Reductions and exclusions in accordance with paragraphs 1 and 2 shall only apply if the area declared resulted, or would have resulted, in a higher payment.

Article 56

Calculation of forage area for the extensification payment in accordance with Article 132 of Regulation (EC) No 1782/2003

1. Extensification payments provided for in Article 132 of Regulation (EC) No 1782/2003 may not be granted for a greater number of animals than that for which the premiums referred to in Article 131 of that Regulation may be paid after application of Article 55 of this Regulation.

2. Without prejudice to paragraph 1, the forage area concerned shall be determined in accordance with Article 50.

If the ceiling of the stocking density factor is not exceeded in relation to the area thus determined the area determined shall be the basis for the calculation of the extensification payment.

If the ceiling is exceeded, the total amount of aid to which the farmer is entitled following aid applications under aid schemes referred to in Article 131 of Regulation (EC) No 1782/2003 submitted during the calendar year in question, shall be reduced by 50 % of the amount the farmer has, or would otherwise have, received as extensification payment.

3. Where the difference between the area declared and the area determined results from irregularities committed intentionally and where the ceiling of the stocking density factor is exceeded in relation to the area determined, the total amount of aid referred to in paragraph 2 shall be refused. In that case, the second subparagraph of Article 53 shall apply accordingly.

Section II

Livestock premia

Article 57

Basis of calculation

1. Where an individual limit or individual ceiling is applicable, the number of animals shown in the aid applications shall be reduced to the limit or ceiling set for the farmer concerned.

2. In no case may aid be granted for a number of animals greater than that shown in the aid application.

3. Without prejudice to Article 59 and 60, if the number of animals declared in an aid application exceeds that determined as a result of administrative or on-the-spot checks, the aid shall be calculated on the basis of the animals determined.

However, if a farmer has been unable to comply with his retention obligation as a result of *force majeure* or exceptional circumstances as referred to in Article 72, he shall retain his right to aid in respect of the number of animals eligible at the time when the case of *force majeure* or the exceptional circumstance occurred.

4. Where cases of irregularities with regard to the system for the identification and registration for bovine animals are found, the following shall apply:

(a) a bovine animal 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 the irregularities 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.

Article 19 shall apply in relation to entries in, and notifications to, the system for the identification and registration of bovine animals.

Article 58

Replacement

1. Bovine animals present on the holding shall only be regarded as determined if they are identified in the aid application. However, suckler cows or heifers in respect of which aid is claimed in accordance with Article 125 or Article 129 of Regulation (EC) No 1782/2003 and dairy cows in respect of which aid is claimed in accordance with Article 132(4) of that Regulation may be replaced during the retention period within the limits provided for in those Articles without the loss of the right to the payment of the aid applied for.

2. Replacements pursuant to paragraph 1 shall occur within 20 days following the event necessitating the replacement and shall be entered in the register not later than three days after the day of replacement. The competent authority to which the aid application was submitted shall be informed within seven days after the replacement.

However, in the case a Member State makes use of the possibilities provided for in the second subparagraph of Article 16(3), that Member State may provide that the notifications to the computerised database for bovine animals of an animal having left the holding and another animal having arrived on the holding within the time limits provided for in the first subparagraph may substitute that information to be sent to the competent authority.

3. Where a farmer applies for aid in respect of both ewes and goats and where there is no difference in the level of aid paid, a ewe may be replaced by a goat and a goat by a ewe. Ewes and goats in respect of which aid is claimed in accordance with Article 113 of Regulation (EC) No 1782/2003 may be replaced during the retention period within the limits provided for in that Article without the loss of the right to the payment of the aid applied for.

4. Replacements pursuant to paragraph 3 shall occur within 10 days following the event necessitating the replacement and shall be entered in the register not later than three days after the day of replacement. The competent authority to which the application was submitted shall be informed within five working days after the replacement.

Article 59

Reductions and exclusions in respect of bovine animals claimed for aid

1. Where, in respect of an application for aid under the bovine aid schemes, a difference is found between the number of animals declared and that determined in accordance with Article 57(3),

the total amount of aid to which the farmer is entitled under those schemes for the premium period 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 irregularities.

2. If more than three animals are found with irregularities the total amount of aid to which the farmer is entitled under the schemes referred to in paragraph 1 for the premium period concerned shall be reduced by:

- (a) the percentage to be established in accordance with paragraph 3, if it is not more than 10 %,
- (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 to which the farmer would have been entitled pursuant to Article 57(3) shall be refused under those schemes for the premium period concerned.

If the percentage established in accordance with paragraph 3 of this Article is more than 50 %, the farmer shall, moreover, be excluded once again from receiving aid up to an amount corresponding to the difference between the number of animals declared and the number of animals determined in accordance with Article 57(3). That amount shall be off-set against aid payments under the bovine aid schemes to which the farmer is entitled in the context of applications he lodges in the course of the three calendar years following the calendar year of the finding. If the amount cannot be fully off-set against those aid payments, the outstanding balance shall be cancelled.

3. In order to establish the percentages referred to in paragraphs 1 and 2, the bovine animals claimed under all bovine aid schemes during the premium period concerned and found with irregularities shall be divided by all bovine animals determined for the premium period concerned.

4. Where differences between the number of animals declared and that determined in accordance with Article 57(3) result from irregularities committed intentionally the aid to which the farmer would have been entitled pursuant to Article 57(3) shall be refused under the bovine aid scheme or schemes concerned for the premium period in question.

Where the difference established in accordance with paragraph 3 of this Article is more than 20 %, the farmer shall be excluded once again from receiving aid up to an amount corresponding to the difference between the number of animals declared and the number of animals determined in accordance with Article 57(3). That amount shall be off-set against aid payments under the bovine aid schemes to which the farmer is entitled in the context of applications he lodges in the course of the three calendar years following the calendar year of the finding. If the amount cannot be fully off-set against those aid payments, the outstanding balance shall be cancelled.

Article 60

Reductions and exclusions in respect of ovine or caprine animals claimed for aid

1. Where, in respect of applications for aid under the ovine/caprine aid scheme, a difference is found in accordance with Article 57(3), Article 59(2), (3) and (4) shall apply *mutatis mutandis* as from the first animal in respect of which irregularities are found.

2. If it is established that a sheep producer marketing sheep s milk and sheep s milk products failed to declare on his premium application that he was doing so, the amount of the aid to which he is entitled shall be reduced to the premium payable to sheep producers marketing sheep s milk and sheep s milk products less the difference between that amount and the full amount of the ewe premium.

3. Where, in respect of applications for the supplementary premium, it is determined that less than 50 % of the area of the holding used for agriculture is located in areas referred to in Article 114(1) of Regulation (EC) No 1782/2003, the supplementary premium shall not be paid and the ewe and goat premium shall be reduced by an amount equivalent to 50 % of the supplementary premium.

4. Where it is determined that the percentage of the area of the holding used for agriculture located in areas listed in Annex I to Regulation (EC) No 2550/2001 is below 50 %, the goat premium shall not be paid.

5. Where it is established that a producer practising transhumance who submits an application for the supplementary premium has not grazed 90 % of his animals for at least 90 days in an area referred to in Article 114(2)(b) of Regulation (EC) No 1782/2003, the supplementary premium shall not be paid and the ewe or goat premium shall be reduced by an amount equivalent to 50 % of the supplementary premium.

6. Where it is found that the irregularity referred to in paragraphs 2, 3, 4 or 5 results from intentional non-compliance, the total amount of aid referred to in those paragraphs shall be refused.

In that case, the farmer shall be excluded once again from receiving aid equal to that amount. That amount shall be off-set against aid payments under the ovine/caprine aid scheme to which the farmer is entitled in the context of applications he lodges in the course of the three calendar years following the calendar year of the finding.

7. In respect of farmers maintaining both ewes and goats entitled to the same level of premium, where an on-the-spot check reveals a difference in the composition of the flock in terms of numbers of animals per species, the animals shall be regarded as being of the same group.

Article 61

Natural circumstances

The reductions and exclusions provided for in Articles 59 and 60 shall not apply in cases where, owing to the impact of natural circumstances on the herd or flock, the farmer cannot meet his

commitment to keep the animals in respect of which aid is claimed throughout the retention period, 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 natural 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 farmer cannot be held responsible.

Article 62

False certificates and declarations issued by slaughterhouses

As regards the declarations or certificates issued by slaughterhouses in connection with the slaughter premium provided for in Article 35 of Regulation (EC) No 2342/1999, if it is found that the slaughterhouse gave a false certification or declaration as a result of serious negligence or intentionally, the Member State concerned shall apply appropriate national sanctions. Where such irregularities are found a second time, the slaughterhouse involved shall be excluded for a period of at least one year from the right to make declarations or to issue certificates valid for premium purposes.

Article 63

Findings in relation to additional payments

As regards the additional payments provided for in Article 133 of Regulation (EC) No 1782/2003, Member States shall provide for reductions and exclusions which shall, in substance, be equivalent to those provided for in this Title.

Section I

Dairy premium and additional payments

Article 64

Dairy premium and additional payments

With regard to findings established in relation to aid applications for the dairy premium and additional payments, Articles 50, 51(1) and 53 shall apply to the extent that 'area' is read as 'individual reference quantity' and 'area determined' as 'individual reference quantity determined'.

Where, in the case referred to in Article 30 of Regulation 2237/2003, the person concerned does not take up production by the deadline for the application, the individual reference quantity determined shall be deemed to be zero. In that case, the aid application of the person concerned for the year in question shall be refused. An amount equal to the amount covered by the refused application shall be off-set against aid payments under any of the aid schemes established in Titles III and IV of Regulation (EC) No 1782/2003 to which the person is entitled in the context of applications he lodges in the course of the calendar year following the calendar year of the finding.

CHAPTER II

FINDINGS IN RELATION TO CROSS-COMPLIANCE

Article 65

General principles and definition

1. For the purposes of this Chapter, the provisions of Article 41 shall apply.
2. For the purposes of applying Article 6(1) of Regulation (EC) No 1782/2003, an action or omission shall be directly attributable to the individual farmer who committed the non-compliance himself and who, at the time of the determination of the non-compliance in question, is in charge of the holding, the area, the production unit or the animal concerned. Where the holding, the area, the production unit or the animal concerned was transferred to a farmer after the non-compliance had started to occur, the transferee shall equally be held liable in case he maintained the non-compliance, provided he could have reasonably detected and terminated that non-compliance.
3. Where more than one Paying Agency is responsible in the context of the management of the different direct payment schemes as defined in Article 2(d) of Regulation (EC) No 1782/2003, the Member States shall take the appropriate measures to ensure an appropriate application of the provisions under this Chapter, in particular that one rate of reduction is applied to the entirety of direct payments applied for by the farmer.
4. Non-compliances shall be deemed to be 'determined' if they are established as a consequence of any kind of checks carried out in accordance with this Regulation or after having been brought to the attention of the competent control authority in whatever other way.

Article 66

Application of reductions in the case of negligence

1. Without prejudice to Article 71, where a non-compliance determined results from the negligence of the farmer, a reduction shall be applied on the overall amount of direct payments, as

defined in Article 2(d) of Regulation (EC) No 1782/2003, that has been, or has to be, granted to the farmer concerned following aid applications he has submitted or will still submit in the course of the calendar year of the finding. That reduction shall, as a general rule, be 3 % of that overall amount.

However, the Paying Agency may, on the basis of the assessment provided by the competent control authority in the control report in accordance with Article 48(1)(c), decide either to reduce that percentage to 1 % or to increase it to 5 % of that overall amount or, in the cases referred to in the second subparagraph of Article 48(1)(c), not to impose any reductions at all.

2. Where more than one case of non-compliance with regard to various acts or standards of the same area of cross-compliance have been determined, those cases shall, for the purposes of the fixing of the reduction in accordance with paragraph 1, be considered as one non-compliance.

3. Where more than one non-compliance with regard to different areas of cross-compliance have been determined, the procedure for the fixing of the reduction as set out in paragraph 1 shall be applied individually to any non-compliance. The resulting percentages of reductions shall be added. The maximum reduction shall, however, not exceed 5 % of the overall amount referred to in paragraph 1.

4. Without prejudice to cases of intentional non-compliance in accordance with Article 67, where repeated non-compliances have been determined, the percentage fixed in accordance with paragraph 1 with regard to the first non-compliance shall, in respect of the first repetition, be multiplied by the factor three. For this purpose, the Paying Agency shall, in the case where that percentage was fixed in accordance with paragraph 2 determine the percentage that would have been applied to the first non-compliance with the requirement or standard concerned.

In the case of further repetitions the multiplication factor three shall be applied each time to the result of the reduction fixed in respect of the previous repeated non-compliance. The maximum reduction shall, however, not exceed 15 % of the overall amount referred to in paragraph 1.

Once the maximum percentage of 15 % has been reached, the competent authority shall inform the farmer concerned that if the same non-compliance is determined again, it shall be considered that he has acted intentionally within the meaning of Article 67. Where a further non-compliance is being determined thereafter, the percentage of reduction to be applied shall be fixed by multiplying the result of the previous multiplication, where applicable, before the limitation to 15 % as provided for in the last sentence of the second subparagraph has been applied, by the factor three.

Article 67

Application of reductions and exclusions in cases of intentional non-compliance

1. Without prejudice to Article 71, where the non-compliance determined has been committed intentionally by the farmer, the reduction to be applied to the overall amount referred to in the first subparagraph of Article 66(1) shall, as a general rule, be 20 % of that overall amount.

However, the Paying Agency may, on the basis of the assessment provided by the competent control authority in the control report in accordance with Article 48(1)(c), decide to reduce that percentage to no less than 15 % or, where appropriate, to increase that percentage to up to 100 % of that overall amount.

2. Where the intentional non-compliance relates to a particular aid scheme, the farmer shall be excluded from that aid scheme for the calendar year in question.

In cases of extreme extent, severity or permanence or where repeated intentional non-compliances have been determined, the farmer shall, moreover, be excluded from the aid scheme concerned in the following calendar year.

CHAPTER III

COMMON PROVISIONS

Article 68

Exceptions from the application of reductions and exclusions

1. The reductions and exclusions provided for in Chapter I shall not apply where the farmer submitted factually correct information or where he can show otherwise that he is not at fault.

2. The reductions and exclusions provided for in Chapter I shall not apply with regard to the parts of the aid application as to which the farmer informs the competent authority in writing that the aid application is incorrect or has become incorrect since it was lodged, provided that the farmer 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 farmer of any irregularity in the application.

The information given by the farmer as referred to in the first subparagraph shall have the effect that the aid application is adjusted to the actual situation.

Article 69

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

In respect of claimed bovine animals, Article 68 shall apply from the time the aid application is submitted to errors and omissions in relation to entries in the computerised database for bovine animals.

As regards unclaimed bovine animals, the same shall apply in respect of reductions and exclusions to be applied in accordance with chapter II of this Title.

TITLE V

GENERAL PROVISIONS

Article 70

Minimum payments

Member States may decide not to grant any aid if the amount per aid application does not exceed EUR 100.

Article 71

Accumulation of reductions

1. Where a case of non-compliance also constitutes an irregularity, therefore being relevant in view of the application of reductions or exclusions in accordance with both Chapter I and with Chapter II of Title IV:

- (a) the reductions or exclusions pursuant to Chapter I of Title IV shall be applied with regard to the aid schemes in question;
- (b) the reductions and exclusions pursuant to Chapter II of Title IV shall be applied with regard to the total amount of payments to be granted under the single payment scheme and any aid schemes that are not subject to reductions or exclusions referred to in point (a).

2. Where applicable after application of paragraph 1, where various reductions have to be applied as a consequence of modulation, non-compliances and irregularities, the competent authority shall calculate the reductions as follows:

- (a) firstly, the reductions in accordance with Articles 10 of Regulation (EC) No 1782/2003 shall be applied;
- (b) secondly, the resulting amount of aid to which the farmer would be entitled shall be reduced by the reductions provided for in Chapter I of Title IV of this Regulation;
- (c) thirdly, the resulting amount shall serve as the basis for the calculation of any reductions to be applied because of late submissions on the basis of Article 21 of this Regulation;
- (d) fourthly, the resulting amount shall be reduced by any reductions provided for in Chapter II of Title IV of this Regulation.

3. Subject to Article 6 of Council Regulation (EC) No 2988/95 ⁽¹⁾, the reductions and exclusions under this Regulation shall be without prejudice to additional sanctions pursuant to other provisions under Community or national law.

⁽¹⁾ OJ L 312, 23.12.1995, p. 1.

Article 72

Force majeure and exceptional circumstances

Cases of *force majeure* and of exceptional circumstances within the meaning of Article 40(4) of Regulation (EC) No 1782/2003 with relevant evidence to the satisfaction of the competent authority shall be notified in writing to the authority within ten working days of the date on which the farmer is in a position to do so.

Article 73

Recovery of undue payments

1. If undue payment is made, the farmer shall repay the amount in question plus interest calculated in accordance with paragraph 3.

2. Member States may decide that recovery of an undue payment is to be made by deduction of the corresponding amount from any advances or payments under aid schemes referred to in Titles III and IV of Regulation (EC) No 1782/2003 made to the farmer concerned following the date of the decision to recover. However, the farmer may repay the amount without waiting for the deduction.

3. Interest shall be calculated for the period elapsing between the notification of the repayment obligation to the farmer and either repayment or deduction.

The rate of interest applicable shall be calculated in accordance with national law but shall not be lower than the interest rate applicable for the recovery of amounts under national provisions.

4. The repayment obligation referred to in paragraph 1 shall not apply if the payment was made by error of the competent authority or of another authority and if the error could not reasonably have been detected by the farmer.

However, where the error relates to factual elements relevant for the calculation of the payment concerned, the first subparagraph shall only apply if the decision to recover was not communicated within 12 months of the payment.

5. The repayment obligation referred to in paragraph 1 shall not apply if the period which elapsed between the date of the payment of the aid and that of the first notification to the beneficiary by the competent authority concerning the undue nature of the payment concerned is more than ten years.

However, the period referred to in the first subparagraph shall be limited to four years if the beneficiary acted in good faith.

6. Amounts to be recovered as a consequence of the application of reductions and exclusions pursuant to Article 21 and Title IV shall, in all cases, be subject to a prescription period of four years.

7. Paragraphs 4 and 5 shall not apply in the case of advances.

8. Member States may decide not to recover amounts of EUR 100 or less, not including interest, per farmer and per premium period, provided that their national law provides for non-recovery in such cases.

Where amounts relating to interest have to be recovered independently from amounts unduly paid, the Member States may, under the same conditions, decide not to recover amounts relating to interest of EUR 50 or less.

Article 74

Transfer of holdings

1. For the purposes of this Article:

- (a) 'transfer of a holding' means the sale, lease or any similar type of transaction in respect of the production units concerned;
- (b) 'transferor' means the farmer whose holding is transferred to another farmer;
- (c) 'transferee' means the farmer to whom the holding is transferred.

2. Where a holding is transferred in its entirety from one farmer to another farmer after an aid application has been lodged and before all the conditions for granting the aid have been fulfilled, no aid shall be granted to the transferor in respect of the transferred holding.

3. The aid applied for by the transferor shall be granted to the transferee where:

- (a) within a period of the transfer to be determined by the Member States the transferee informs the competent authority of the transfer and requests payment of the aid;
- (b) the transferee presents any evidence required by the competent authority;
- (c) all the conditions for granting the aid are fulfilled in respect of the holding transferred.

4. Once the transferee informs the competent authority and requests payment of the aid in accordance with paragraph 3(a):

- (a) all rights and obligations of the transferor resulting from the legal relationship between the transferor and the competent authority generated by the aid application shall be conferred on the transferee;
- (b) all actions necessary for the granting of the aid and all declarations made by the transferor prior to the transfer shall be attributed to the transferee for the purposes of applying the relevant Community rules;
- (c) the holding transferred shall be considered, where appropriate, as a separate holding in respect of the marketing year or premium period in question.

5. Where an aid application is lodged after the actions necessary for the granting of the aid have been performed and a holding is transferred in its entirety from one farmer to another farmer after those actions have started but before all the conditions for granting the aid have been fulfilled, the aid may be granted to the transferee provided the conditions in paragraph 3(a) and (b) are fulfilled. In that case, paragraph 4(b) shall apply.

6. Member States may decide, where appropriate, to grant the aid to the transferor. In that event:

- (a) no aid shall be granted to the transferee,
- (b) the Member States shall apply *mutatis mutandis* the requirements set out in paragraphs 2 to 5.

7. Where a holding is transferred in its entirety from one farmer to another farmer during the period referred to in Article 44(3) of Regulation (EC) No 1782/2003, the transferee may use the parcels concerned for the purposes of submitting an application for payment under the single payment scheme.

Article 75

Additional measures and mutual assistance between Member States

1. Member States shall take all [further] measures required for the proper application of the integrated system and shall give one another the mutual assistance needed for the purposes of checks required pursuant to this Regulation. In that respect, Member States may, where this Regulation does not provide for appropriate reductions and exclusions, provide appropriate national sanctions against producers or other marketing participants, such as slaughterhouses or associations involved in the procedure for granting aid, in order to ensure the compliance with control requirements such as the current herd register of the holding or the respect of notification obligations.

2. Member States shall assist one another to ensure effective controls, and to ensure the check on the authenticity of documents submitted and/or the accuracy of the data exchanged.

Article 76

Notifications

1. Member States shall send the Commission by 31 March each year at the latest, for the single payment and other area-related aid schemes, and by 31 August each year at the latest, for animal premiums, a report covering the previous calendar year and, in particular, relating to the following points:

- (a) the state of implementation of the integrated system, including in particular the options chosen for the control of the cross-compliance requirements and the competent control bodies responsible for the controls of the cross-compliance requirements and conditions;
- (b) the number of applications as well as the total area and total number of animals broken down by individual aid scheme;
- (c) the number of applications as well as the total area and total number of animals covered by checks;
- (d) the result of the checks carried out, indicating the reductions and exclusions applied pursuant to Title IV;

At the same time as the communication referred to in the first subparagraph in respect of animal premiums are sent to the Commission, Member States shall notify the total number of beneficiaries who received aids under aid schemes falling within the scope of the integrated system.

2. Member States shall, moreover, send to the Commission by 31 October each year at the latest a communication about the proportion of the land under permanent pasture in relation to the total agricultural land as referred to in Article 3(1). By 31 October 2005 at the latest, Member States shall, moreover, send to the Commission a communication about that proportion in the reference year 2003 referred to in Article 3(2).

3. In exceptional duly justified situations, Member States may, in agreement with the Commission, derogate from the dates provided for in the paragraphs 1 and 2.

4. The computerised data established as a part of the integrated system shall be used to support the information specified in the framework of sectoral rules which the Member States are obliged to send to the Commission.

PART III

MODULATION

Article 77

Basis for the calculation of the reduction

The amount of reduction in accordance with Article 10 of Regulation (EC) No 1782/2003 shall be calculated on the basis of the amounts of direct payments to which farmers are entitled before any reductions or exclusions are applied under this Regulation or, in the case of aid schemes listed in Annex I to Regulation (EC)

No 1782/2003 but not falling under Titles III or IV of that Regulation, under the specific legislation applicable thereto.

Article 78

Allocation key

The allocation key for the remaining amounts referred to in the first subparagraph of Article 10(3) of Regulation (EC) No 1782/2003 shall be compiled by taking the Member States

shares in agricultural area and agricultural employment with a weight of 65 % and 35 %, respectively.

Each Member State's share in area and employment shall be adjusted in function of its relative Gross Domestic Product (GDP) per capita expressed in purchasing power standard, using one third of the difference of the average of the Member States to which modulation applies.

For that purpose, the following underlying data, based on the data available from Eurostat in August 2003, shall be used:

- (a) in respect of agricultural area, the Farm Structural Survey 2000 in accordance with Council Regulation (EC) No 571/88 ⁽¹⁾;
- (b) in respect of agricultural employment, the annual series of the Labour Force Survey 2001 on employment in agriculture, hunting and fishing in accordance with Council Regulation (EC) No 577/98 ⁽²⁾;
- (c) in respect of GDP per capita in purchasing power, the three-year average, based on the data of national accounts, 1999 to 2001.

Article 79

Additional amount of aid

1. For the purposes of determining whether the threshold of EUR 5 000 referred to in Article 12 of Regulation (EC) No 1782/2003 has been reached, the total amount of direct payments that would have to be granted before the application of any reductions under this Regulation or, in the case of aid schemes listed in Annex I to Regulation (EC) No 1782/2003 but not falling under Titles III or IV of that Regulation, under the specific legislation applicable thereto, shall be taken into account.

However, where a farmer is excluded from receiving any direct payments as a consequence of irregularities or non-compliances, no additional amounts of aid shall be granted.

2. By 31 October at the latest, the Member States shall communicate to the Commission the total amount of the additional aid which has been granted for the preceding year.

PART IV

TRANSITIONAL AND FINAL PROVISIONS

Article 80

Repeal

1. Regulation (EC) No 2419/2001 is repealed. However, it shall continue to apply in respect of aid applications relating to marketing years or premium periods which start before 1 January 2005.

In cases where reductions to be applied by way of off-setting in accordance with the second subparagraph of Article 32(2), the second subparagraph of Article 33, Article 34(2), the last sentence of Article 35(3), the third subparagraph of Article 38(2), the second subparagraph of Article 38(4) and Article 40(1) and (6) of Regulation (EC) No 2419/2001 could not yet fully be off-set before the date of application of this Regulation, the outstanding balance shall be off-set against payments under any of the aid

schemes falling under this Regulation, provided the time limits for the off-setting stipulated in those provisions have not yet expired.

2. References to Regulation (EC) No 2419/2001 shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex III.

Article 81

Entry into force

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 to aid applications relating to marketing years or premium periods starting as of 1 January 2005.

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

Done at Brussels, 21 April 2004

For the Commission
Franz FISCHLER
Member of the Commission

⁽¹⁾ OJ L 56, 2.3.1988, p. 1.

⁽²⁾ OJ L 77, 14.3.1998, p. 3.

ANNEX I

**COMMUNITY METHOD FOR THE QUANTITATIVE DETERMINATION OF
 Δ^9 -TETRAHYDROCANNABINOL CONTENT IN HEMP VARIETIES****1. Scope and area of application**

This method seeks to determine the Δ^9 -tetrahydrocannabinol (hereinafter referred to as 'THC') content of varieties of hemp (*Cannabis sativa* L.) As appropriate, the method involves applying procedure A or B herein described.

The method is based on the quantitative determination of Δ^9 -THC by gas chromatography (GC) after extraction with a suitable solvent.

1.1. Procedure A

Procedure A shall be used for checks on production as provided for in Article 52(1) of Regulation (EC) No 1782/2003 and Article 26(2)(a) of this Regulation.

1.2. Procedure B

Procedure B shall be used in cases as referred to in Article 52(2) of Regulation (EC) No 1782/2003 and Article 33(4) of this Regulation.

2. Sampling**2.1. Samples**

- (a) Procedure A: in a standing crop of a given variety of hemp, a 30 cm part containing at least one female inflorescence of each plant selected shall be taken. Sampling shall be carried out during the period running from 20 days after the start of flowering to 10 days after the end of flowering, during the day, following a systematic pattern to ensure that the sample is representative of the field but excluding the edges of the crop.

Member States may authorise sampling to be carried out during the period from the start of flowering to 20 days after the start of flowering provided that, for each variety grown, other representative samples are taken in accordance with the above rules during the period from 20 days after the start of flowering to 10 days after the end of flowering.

- (b) Procedure B: in a standing crop of a given variety of hemp, the upper third of each plant selected shall be taken. Sampling shall be carried out during the 10 days following the end of flowering, during the day, following a systematic pattern to ensure that the sample is representative of the field but excluding the edges of the crop. In the case of dioecious varieties, only female plants shall be taken.

2.2. Sample size

Procedure A: the sample shall comprise parts of 50 plants per field.

Procedure B: the sample shall comprise parts of 200 plants per field.

Each sample shall be placed in a fabric or paper bag, without crushing it, and be sent to the laboratory for analysis.

The Member State may provide for a second sample to be collected for counteranalysis, if required, to be kept either by the producer or by the body responsible for the analysis.

2.3. Drying and storage of the sample

Drying of the samples shall begin as soon as possible and, in any case, within 48 hours using any method below 70 °C. Samples should be dried to a constant weight and to a moisture content of between 8 % and 13 %.

After drying, the samples shall be stored without crushing them at below 25 °C in a dark place.

3. Determination of THC content

3.1. Preparation of the test sample

Stems and seeds over 2 mm in size shall be removed from the dried samples.

The dried samples shall be grinded to obtain a semi-fine powder (passing through a 1 mm mesh sieve).

The powder may be stored for 10 weeks at below 25 °C in a dark, dry place.

3.2. Reagents and extraction solution

Reagents

- Δ^9 -tetrahydrocannabinol, pure for chromatographic purposes,
- Squalane, pure for chromatographic purposes, as an internal standard.

Extraction solution

- 35 mg of squalane per 100 ml hexane.

3.3. Extraction of Δ^9 -THC

100 mg of the powdered test sample shall be weighed, be placed in a centrifuge tube and 5 ml of extraction solution shall be added containing the internal standard.

Place in an ultrasound bath and leave for 20 minutes. Centrifuge for five minutes at 3000 r.p.m. and then remove the supernatant THC solution. Inject the solution into the chromatograph and carry out a quantitative analysis.

3.4. Gas chromatography

(a) Apparatus

- gas chromatograph with a flame ionisation detector and a split/splitless injector,
- column allowing good separation of cannabinoids, for example a glass capillary column 25 m long and 0.22 mm in diameter impregnated with a 5 % non-polar phenyl-methyl-siloxane phase.

(b) Calibration ranges

At least three points for procedure A and five points for procedure B, including points 0.04 and 0.50 mg/ml Δ^9 -THC in extraction solution.

(c) Experimental conditions

The following conditions are given as an example for the column referred to in (a):

- oven temperature 260 °C
- injector temperature 300 °C
- detector temperature 300 °C

(d) Volume injected: 1 μ l

4. Results

The findings shall be expressed to two decimal places in grams of Δ^9 -THC per 100 grams of analytical sample dried to constant weight. A tolerance of 0.03 g per 100 g shall apply.

- Procedure A: one determination per test sample.

However, where the result obtained is above the limit laid down in Article 52(1) of Regulation (EC) No 1782/2003, a second determination shall be carried out per analysis sample and the mean value of the two determinations shall be taken as the result.

- Procedure B: the result corresponds to the mean value of two determinations per test sample.
-

ANNEX II

VARIETIES OF HEMP GROWN FOR FIBRE ELIGIBLE FOR DIRECT PAYMENTS

a. Hemp grown for fibre

Carmagnola

Beniko

Chamaeleon

Cs

Delta-Ilosa

Delta 405

Dioica 88

Epsilon 68

Fedora 17

Felina 32

Ferimon – Férimon

Fibranova

Fibrimon 24

Futura 75

Juso 14

Red Petiole

Santhica 23

Santhica 27

Uso 31

b. Hemp grown for fibre authorised in the 2004/2005 marketing year

Bialobrzeskie

Cannacomp ^(a)

Fasamo

Felina 34 – Félina 34

^(a) only in Hungary

Fibriko TC

Finola

Lipko ^(a)

Silesia ^(b)

Tiborszálási ^(a)

UNIKO-B

^(a) only in Hungary
^(b) only in Poland

ANNEX III
CORRELATION TABLE

Articles of Commission Regulation (EC) No 2419/2001	Articles of this Regulation
1	–
2	2
3	5
4(1)	6(1)
4(2)	14(4)
5	8
6	–
7	–
8	15
9	–
10	16
11	18
12	19
13	21
14	22
15	23(1)
16	24
17(1)	25(1)
17(2)	25(2)
17(3)	23(2)
18	26
19	27
2	28
21	29
22	30
23	32
24	34
25	35
26	36
27	37
28	38
29	39
30	49
31(1)	50(1)
31(2)	50(3)
31(3)	50(6)
31(4)	50(7)
32	51
33	53
34	55
35	56
36	57
37	58
38	59
39	–
40	60
41	61
42	62
43	63
44	68
45	69
46	70
47	71
48	72
49	73
50	74
51	75
52	76
53	–
54	–