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### Contents

#### I Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory

#### REGULATIONS

- ★ **Commission Regulation (EC) No 1120/2009 of 29 October 2009 laying down detailed rules for the implementation of the single payment scheme provided for in Title III of Council Regulation (EC) No 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers** ..... 1
- ★ **Commission Regulation (EC) No 1121/2009 of 29 October 2009 laying down detailed rules for the application of Council Regulation (EC) No 73/2009 as regards the support schemes for farmers provided for in Titles IV and V thereof** ..... 27
- ★ **Commission Regulation (EC) No 1122/2009 of 30 November 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector** ..... 65

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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 adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

## REGULATIONS

## COMMISSION REGULATION (EC) No 1120/2009

of 29 October 2009

**laying down detailed rules for the implementation of the single payment scheme provided for in Title III of Council Regulation (EC) No 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003<sup>(1)</sup> and in particular Articles 36, 39(2), 41(4), 43(3), 57(2), 68(7), 69(6), first subparagraph, point (a) and (7), fourth subparagraph, 71(6), second subparagraph, and (10), 142(c), (d), (f), (g), (h) and (q), 147 and 148 thereof,

Whereas:

- (1) 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<sup>(2)</sup> has been substantially amended. Subsequently, Commission Regulation (EC) No 639/2009 of 22 July 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards specific support<sup>(3)</sup> was adopted. Since further amendments to Regulation (EC) No 795/2004 are to be made, it is appropriate, in the interests of clarity, to incorporate Regulations

(EC) No 795/2004 and (EC) No 639/2009 into a single Regulation containing all detailed rules for the implementation of Title III of Regulation (EC) No 73/2009.

- (2) For reasons of legal certainty and clarity it is appropriate to provide for certain definitions. As regards short rotation coppice, it is appropriate to allow Member States to define suitable varieties in the light of their climatic and agro-economic suitability for the territory.
- (3) Article 28 of Regulation (EC) No 73/2009 provides for minimum requirements to be respected, but the application of point (b) of the first subparagraph of Article 28(1) is not appropriate for farmers who are still receiving direct payments under certain coupled schemes but do not hold any hectares. By their nature the premiums for sheep and goat referred to in Title IV, Chapter 1, Section 10 of that Regulation or the beef and veal payment referred to in Title IV, Chapter 1, Section 11 of that Regulation are such coupled schemes. Those farmers are in the same situation as farmers holding special entitlements and in order to ensure the full effectiveness of those schemes they should therefore be treated in the same way for the purposes of Article 28(1) of that Regulation as farmers holding special entitlements.
- (4) In order to facilitate the calculation of the unit value of the payment entitlements, clear rules should be laid down on the rounding-up of figures and for the possibility to split existing payment entitlements where the size of the parcel which is declared or transferred with the entitlement only amounts to a fraction of hectares and for rules to cover the merger of entitlements and fractions.

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

<sup>(2)</sup> OJ L 141, 30.4.2004, p. 1.

<sup>(3)</sup> OJ L 191, 23.7.2009, p. 17.

- (5) Article 51(1) of Regulation (EC) No 73/2009 allows for the deferred integration of fruit and vegetables into the single payment scheme. Appropriate rules to enable that deferral should be provided for. In particular, the third subparagraph of that provision allows Member States to revise the decision taken under Article 68b of Council Regulation (EC) No 1782/2003 <sup>(1)</sup> in order to provide for more rapid integration into the single payment scheme. However, in the light of Article 38 of Regulation (EC) No 73/2009, in order for the third subparagraph of Article 51(1) of that Regulation to have effect, it is necessary for the areas concerned to be made eligible for the single payment scheme. Member States should therefore be able to revise the decision made pursuant to the second subparagraph of Article 51 of Regulation (EC) No 1782/2003.
- (6) Specific provisions for the management of the national reserve should be laid down.
- (7) Article 41(2) and (3) of Regulation (EC) No 73/2009 provide for optional cases of allocation of payment entitlements from the national reserve. It is appropriate to lay down rules for the calculation of the number and value of the payment entitlements to be allocated in such a way. In order to allow a certain flexibility for the Member States, which are in the best 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.
- (8) Under certain circumstances farmers could hold more entitlements than land to activate them because of the expiry of a lease, including in the case of common use of forage area. Therefore it seems appropriate to provide for a mechanism that should ensure that support may continue to be granted to the farmer by concentrating it on the remaining available hectares. However, in order to avoid abuse of the mechanism, conditions for access to it should be laid down.
- (9) Pursuant to Regulation (EC) No 73/2009 the national reserve shall be replenished by unused entitlements or, on an optional basis, by retention on the sale of payment entitlements or on sales that have taken place before a certain date to be fixed by Member States when further decoupling takes place. It is therefore necessary to provide for a date after which the unused entitlements revert to the national reserve.
- (10) Where retention on the sale of payment entitlements is applied, maximum percentages and criteria for its application should be laid down and differentiated to take into account the type of transfer and the type of payment entitlement to be transferred. Such retentions should not however result in a substantial obstacle or prohibition of transfer of payment entitlements. In the case of regional application in the hybrid model however, the retention should not affect the basic regional value of payment entitlements but only the amounts linked to the historical references.
- (11) In order to facilitate the administration of the national reserve, it is appropriate to provide for its management at regional level except in the cases referred to in Article 41(2), or where applicable, Article 41(4) of Regulation (EC) No 73/2009, where Member States are obliged to allocate payment entitlements.
- (12) Article 33(2) of Regulation (EC) No 73/2009 provides that support under the single payment scheme shall be available to farmers by allocation or transfer of payment entitlements. In order to avoid changes of the legal status of the holding being used to evade the application of the rules on normal transfers of a holding with the attached reference amounts, conditions should be applied for anticipated inheritance or inheritance, merges and scissions.
- (13) Article 62(3) of Regulation (EC) No 73/2009 provides that a farmer in a new Member State which has introduced the single payment scheme may transfer his payment entitlements without land only after he has used, within the meaning of Article 34 of that Regulation, at least 80 % of his payment entitlements during at least one calendar year. In order to take into account of transfers of land that took 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 43 of that Regulation, subject to conditions, in particular that the seller should apply for the establishment of the payment entitlements as far as that Regulation provides that only those who received the direct payment in the reference period should have access to the scheme.
- (14) Article 41(4) of Regulation (EC) No 73/2009 allows the Commission to define special situations giving right to the establishment of reference amounts for certain farmers finding themselves in situations which prevented them, in full or in part, 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 cumulation of the benefit from different allocations of payment entitlements for the same farmer, without prejudice to the possibility for the Commission to add further cases if necessary. Moreover, Member States should be given the flexibility to establish the reference amount to be allocated.
- (15) Where a Member State, according to national law or well established usual practice, includes in the definition of long term lease also leases of 5 years, it is appropriate to allow them to apply this shorter term.

<sup>(1)</sup> OJ L 270, 21.10.2003, p. 1.

- (16) Where a farmer retires or dies and provides for the transfer of his holding or part of it to a member of the family or other heir 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 may easily take place, in particular, where the transferred land was leased to a third person during the reference period, without prejudging the possibility for the heir to continue the agricultural activity.
- (17) Farmers who made investments resulting in a potential increase of the amount in direct payments that they would have been granted if the single payment scheme had not been introduced or if the relevant sector had not been decoupled should also benefit from the allocation of entitlements. Specific rules should be provided for the calculation of the payment entitlements where 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 such cases.
- (18) For the good administration of the scheme, it is appropriate to provide for rules to cover transfers and to allow for modification of entitlements, in particular to allow for the merging of fractions.
- (19) Article 43(1) of Regulation (EC) No 73/2009 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 two or more regions.
- (20) Article 39 of Regulation (EC) No 73/2009 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.
- (21) Specific rules should be provided for the calculation of the livestock unit in case of establishment of special entitlements by referring to the existing conversion table provided for in the beef, veal, sheep and goat sectors.
- (22) Where a Member State decides to make use of the option to regionalise 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.
- (23) A common framework for specific solutions for certain situations occurring upon further decoupling should be created.
- (24) Chapter 5 of Title III of Regulation (EC) No 73/2009 provides for specific support to be granted to farmers. Detailed rules for the implementation of that Chapter should be laid down.
- (25) In accordance with Article 68(6) of Regulation (EC) No 73/2009, consistency between specific support granted under that Article and other Community support measures or measures financed by State aids is required. For orderly management of the schemes, similar measures should not be financed twice under both specific support and other Community support schemes. Due to the diversity of choices offered for implementing the specific support, the responsibility of ensuring the consistency should otherwise be left to the Member States according to the decision they take to implement specific support measures, within the framework laid down by Regulation (EC) No 73/2009 and in conformity with the conditions laid down in this Regulation.
- (26) Since farmers should always respect legal requirements, specific support should not compensate for complying with them.
- (27) Pursuant to Article 68(1)(a)(i) of Regulation (EC) No 73/2009, specific support may be granted for specific types of farming which are important for the protection or enhancement of the environment. In order to maintain discretion for Member States whilst ensuring that measures are well-managed, the responsibility of defining the specific types of farming should be assigned to the Member States, whilst the measures should nevertheless provide for non-negligible and measurable environmental benefits.
- (28) Pursuant to Article 68(1)(a)(ii) of Regulation (EC) No 73/2009, specific support may be granted for improving the quality of agricultural products. In order to assist Member States, an indicative list of conditions to be met should be laid down.
- (29) Pursuant to Article 68(1)(a)(iii) of Regulation (EC) No 73/2009, specific support may be granted for improving the marketing of agricultural products subject to Article 68(2)(c) of that Regulation which requires the support to satisfy the criteria laid down in Articles 2 to 5 of Council Regulation (EC) No 3/2008 of 17 December 2007 on information provision and promotion measures for agricultural products on the internal market and in third countries <sup>(1)</sup>. Provision should be made to specify the content of the eligible measures as well as the applicable provisions of Commission Regulation (EC) No 501/2008 of

<sup>(1)</sup> OJ L 3, 5.1.2008, p. 1.

5 June 2008 laying down detailed rules for the application of Council Regulation (EC) No 3/2008 on information provision and promotion measures for agricultural products on the internal market and in third countries <sup>(1)</sup>.

- (30) Pursuant to Article 68(1)(a)(iv) of Regulation (EC) No 73/2009, specific support may be granted for practising enhanced animal welfare standards. In order to achieve enhanced animal welfare standards, provision should be made to assign Member States the responsibility for establishing a system allowing for an assessment of the plans of the applicant aiming at addressing various animal welfare aspects.
- (31) Pursuant to Article 68(1)(a)(v) of Regulation (EC) No 73/2009, specific support may be granted for specific agricultural activities entailing additional agri-environment benefits. Pursuant to Article 68(2)(a), the support may be granted in particular if it has been approved by the Commission. Therefore, provision should be made to specify the detailed framework to be complied with by Member States in establishing the eligibility criteria for the support. Provision should also be made for establishing the procedure of notification, assessment and approval of the measure by the Commission.
- (32) Pursuant to Article 68(1)(b) of Regulation (EC) No 73/2009, specific support may be granted to address specific disadvantages affecting farmers in specific sectors in economically vulnerable or environmentally sensitive areas or for economically vulnerable types of farming in those sectors. In order to maintain scope for Member States whilst ensuring that measures are well-managed, provision should be made to assign Member States the responsibility of defining the areas and/or types of farming eligible for support and fixing the appropriate level. In order to avoid market distortions, the payments should not however be based on fluctuations of market prices or be equivalent to a deficiency payments system whereby agricultural domestic support is paid by Member States to farmers based on the difference between a target price and a domestic market price.
- (33) Pursuant to Article 68(1)(c) of Regulation (EC) No 73/2009, specific support may be granted in areas subject to restructuring and/or development programs in order to ensure against land abandonment and/or to address specific disadvantages for farmers in those areas. Provision should be made in particular as regards the establishment of reference amounts per eligible farmer, the allocation of payment entitlements and the calculation of the increase of their value as well as regarding the control of the programmes by the Member States which should follow those laid down for the allocation of amounts from the national reserve in the interests of coherence.
- (34) Pursuant to Article 68(1)(d) of Regulation (EC) No 73/2009, specific support may be granted in the form of contributions to crop, animal and plant insurance premiums. A minimum framework should be established within which the Member States shall lay down rules in accordance with their national laws defining the way financial contribution to the premiums for crop, animal and plant insurance is allocated in order to ensure that contributions are maintained at an appropriate level whilst the interests of the farming community are safeguarded.
- (35) Article 68(1)(e) of Regulation (EC) No 73/2009 provides a significant level of detail on the provision of specific support aimed at compensating farmers for certain economic losses in the event of animal or plant diseases and environmental incidents by way of financial contributions to mutual funds. A minimum framework should be established within which the Member States shall lay down rules in accordance with their national laws defining the way financial contribution to mutual funds is organised in order to ensure that contributions are maintained at an appropriate level whilst the interests of the farming community are safeguarded.
- (36) Amounts referred to in Article 69(6)(a) of Regulation (EC) No 73/2009 are to be calculated by the Commission in accordance with paragraph 7 of that Article. Therefore, provision should be made to fix for each Member State the amounts concerned as well as the conditions applicable for the revision of those amounts by the Commission.
- (37) Article 46 of Regulation (EC) No 73/2009 provides that Member States shall define the regions in accordance with objective criteria and Article 47 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 before the applicable deadlines.
- (38) Dates for the notification to Commission should be fixed for cases where a Member State decides to apply any of the options provided for in Articles 28(1) and (2), 38, 41(2) to (5), 45(1) and (3), 46(1) and (3), 47(1) to (4), 49, 51(1), 67(1), 68 to 72 and 136 of Regulation (EC) No 73/2009.
- (39) In order to assess the application of the single payment scheme, it is appropriate to establish the detailed rules 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.
- (40) Regulations (EC) No 795/2004 and (EC) No 639/2009 should therefore be repealed.
- (41) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Direct Payments,

<sup>(1)</sup> OJ L 147, 6.6.2008, p. 3.

HAS ADOPTED THIS REGULATION:

## TITLE I

### SCOPE AND DEFINITIONS

#### 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 73/2009.

#### Article 2

##### Definitions

For the purposes of Title III of Regulation (EC) No 73/2009 and of this Regulation, the following definitions shall apply:

- (a) 'arable land' means land cultivated for crop production or maintained in good agricultural and environmental condition in accordance with Article 6 of Regulation (EC) No 73/2009, irrespective of whether or not that land is under greenhouses or under fixed or mobile cover;
- (b) 'permanent crops' means non-rotational crops other than permanent pasture that occupy the land for five years or longer and yield repeated harvests, including nurseries, and short rotation coppice;
- (c) 'permanent pasture' means land used to grow grasses or other herbaceous forage naturally (self-seeded) or through cultivation (sown) and that has not been included in the crop rotation of the holding for five years or longer, excluding areas set aside in accordance with Council Regulation (EEC) No 2078/92 <sup>(1)</sup>, areas set aside in accordance with Articles 22, 23 and 24 of Council Regulation (EC) No 1257/1999 <sup>(2)</sup> and areas set aside in accordance with Article 39 of Council Regulation (EC) No 1698/2005 <sup>(3)</sup>; and to this end, 'grasses or other herbaceous forage' means all herbaceous plants traditionally found in natural pastures or normally included in mixtures of seeds for pastures or meadows in the Member State (whether or not used for grazing animals). Member States may include arable crops listed in Annex I;
- (d) 'grassland' means arable land used for grass production (sown or natural); for the purposes of Article 49 of Regulation (EC) No 73/2009 grassland shall include permanent pasture;
- (e) 'sale' means the sale or any other definitive transfer of ownership of land or payment entitlements; it shall not include the sale of land where land is transferred to public authorities and/or for use in the public interest and in either case the transfer is carried out for non-agricultural purposes;
- (f) 'lease' means lease or similar types of temporary transactions;
- (g) 'transfer, sale or lease of payment entitlements with land' means, without prejudice to Article 27(1) of this Regulation, the sale or lease of payment entitlements with, respectively, the sale or lease for the same period of time of a corresponding number of eligible hectares within the meaning of Article 34 of Regulation (EC) No 73/2009 held by the transferor. The transfer of all the special entitlements within the meaning of Article 44 of Regulation (EC) No 73/2009 held by a farmer shall be considered as a transfer of payment entitlements with land;
- (h) 'merger' means the merger of two or more separate farmers within the meaning of Article 2(a) of Regulation (EC) No 73/2009 into one new farmer within the meaning of that Article controlled in terms of management, benefits and financial risks by the farmers originally managing the holdings or one of them;
- (i) 'scission' means:
  - (i) the scission of one farmer within the meaning of Article 2(a) of Regulation (EC) No 73/2009 into at least two new separate farmers within the meaning of that Article 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
  - (ii) the scission of one farmer within the meaning of Article 2(a) of Regulation (EC) No 73/2009 into at least one new separate farmer within the meaning of that Article 2(a) the other one remaining controlled, in terms of management, benefits and financial risks, by the farmer originally managing the holding;
- (j) 'production unit' means at least one area which gave right to direct payments in the relevant reference period, including forage area, 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) 'forage area' means the area of the holding that was available throughout the calendar year for rearing animals including areas in shared use and areas which were subject to mixed cultivation; it shall not include:
  - buildings, woods, ponds, paths,
  - areas used for other crops eligible for Community aid or for permanent crops or horticultural crops,

<sup>(1)</sup> OJ L 215, 30.7.1992, p. 85.

<sup>(2)</sup> OJ L 160, 26.6.1999, p. 80.

<sup>(3)</sup> OJ L 277, 21.10.2005, p. 1.

- areas qualifying for the support system laid down for the producers of certain arable crops used for the aid scheme for dried fodder or subject to a national set-aside scheme;

- (l) for the purposes of Article 41(2) of Regulation (EC) No 73/2009, 'farmers who commence their agricultural activity' means a natural or legal person that did not have any agricultural activity in his own name and at his own risk or did not have 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;

- (m) 'nurseries' means the nurseries as defined in point G/5 of Annex I to Commission Decision 2000/115/EC <sup>(1)</sup>;
- (n) 'short rotation coppice' means areas planted with those tree species of CN code 0602 90 41 that consist of woody, perennial crops, the rootstock or stools remaining in the ground after harvesting, with new shoots emerging in the following season and that are contained in a list to be drawn up by Member States from 2010 of the species which are appropriate for use as short rotation coppice and their maximum harvest cycle;
- (o) 'specific support measures' means measures implementing the specific support provided for in Article 68(1) of Regulation (EC) No 73/2009;
- (p) 'other Community support instruments' means:
- (i) measures provided for in Council Regulations (EC) No 1698/2005, (EC) No 509/2006 <sup>(2)</sup>, (EC) No 510/2006 <sup>(3)</sup>, (EC) No 834/2007 <sup>(4)</sup>, (EC) No 1234/2007 <sup>(5)</sup> and (EC) No 3/2008; and
  - (ii) measures financed by the European Agricultural Guarantee Fund under Article 3 of Council Regulation (EC) No 1290/2005 <sup>(6)</sup> including veterinary and plant health measures.

<sup>(1)</sup> OJ L 38, 12.2.2000, p. 1.

<sup>(2)</sup> OJ L 93, 31.3.2006, p. 1.

<sup>(3)</sup> OJ L 93, 31.3.2006, p. 12.

<sup>(4)</sup> OJ L 189, 20.7.2007, p. 1.

<sup>(5)</sup> OJ L 299, 16.11.2007, p. 1.

<sup>(6)</sup> OJ L 209, 11.8.2005, p. 1.

## TITLE II

### IMPLEMENTATION

#### CHAPTER 1

#### General provisions

##### Section 1

#### Activation of entitlements and eligibility of land

##### Article 3

#### Inheritance and anticipated inheritance

1. Where inheritance or anticipated inheritance would affect the allocation of payment entitlements, 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 reference amount shall be established on the basis of 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 relevant reference period, which would give right to payment entitlements or increase of the value of 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 or an increase of the value of payment entitlements, the reference amount shall be established on the basis of, respectively, the sum of the reference amounts relating to his original holding and the inherited production units.

4. For the purposes of this Regulation, the definition in the national legislation for 'inheritance' and 'anticipated inheritance' shall be used.

##### Article 4

#### Changes in legal status or denomination

In the case 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 held by the original holding, or in the case of allocation of entitlements or increase of the value of payment entitlements within the limits applicable for allocations to the original holding.

In the 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 risks.

#### Article 5

##### **Mergers and scissions**

Where a case of merger or scission would affect the allocation of payment entitlements or increase of the value of payment entitlements, the farmer or farmers managing the new holding or holdings shall have access to the single payment scheme under the same condition as the farmer or farmers managing the original holding or holdings.

The reference amount shall be established on the basis of the production units relating to the original holding or holdings.

#### Article 6

##### **Minimum requirements**

For the purposes of Article 28(1) of Regulation (EC) No 73/2009, farmers receiving the premiums for sheep and goat referred to in Title IV, Chapter 1, Section 10 of that Regulation or the beef and veal payment referred to in Title IV, Chapter 1, Section 11 of that Regulation, who hold fewer hectares than the threshold selected by a Member State shall be treated in the same way as farmers holding special entitlements referred to in Article 44(1) of that Regulation.

#### Article 7

##### **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 transferred with an entitlement in accordance with Article 43 of Regulation (EC) No 73/2009 amounts to a fraction of a hectare, the farmer may transfer the part of the entitlement concerned 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.

Without prejudice to Article 43(2) of that Regulation, if a farmer transfers a fraction of an entitlement without land the value of the two fractions shall be calculated proportionally.

3. Member States may modify payment entitlements by merging fractions of entitlements of the same type owned by a farmer. Paragraph 1 shall apply to the result of such a merger.

#### Article 8

##### **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 the single application in accordance with Article 11 of Commission Regulation (EC) No 1122/2009 <sup>(1)</sup>.

However, where a farmer makes use of the possibility to amend the single application in accordance with Article 14 of that Regulation, he may also declare payment entitlements which he holds at the date of his notification of the amendments to the competent authority provided that the payment entitlements concerned are not declared by another farmer in respect of the same year.

Where the farmer acquires the payment entitlements concerned by way of a transfer from another farmer and where that other farmer had already declared those payment entitlements, the additional declaration of those payment entitlements shall only be admissible if the transferor has already informed the competent authority of the transfer in accordance with Article 12 of this Regulation and withdraws those payment entitlements from his own single application, within the applicable time-limits set out in Article 14 of Regulation (EC) No 1122/2009.

2. Where a farmer, after having declared parcels corresponding to all his available whole payment entitlements under Article 35(1) of Regulation (EC) No 73/2009, still disposes of a parcel which amounts to a fraction of a hectare, he may declare a further whole payment entitlement which shall give right to a payment calculated pro rata to the size of the parcel. However, the payment entitlement shall be deemed as fully used for the purposes of Article 42 of that Regulation.

#### Article 9

##### **Predominantly agricultural use**

For the purposes of Article 34(2)(a) of Regulation (EC) No 73/2009, where an agricultural area of a holding is used as well for non-agricultural activities that area shall be considered as being used predominantly for agricultural activities, if the agricultural activity can be exercised without being significantly hampered by the intensity, nature, duration and timing of the non-agricultural activity.

Member States shall establish criteria for the implementation of the first subparagraph on their territory.

<sup>(1)</sup> See page 65 of this Official Journal.

## Section 2

**Specific eligibility criteria**

## Article 10

**Production of hemp**

For the purposes of Article 39 of Regulation (EC) No 73/2009, the payment of the entitlements for areas on hemp shall be subject to the use of seed of the varieties listed in 'Common Catalogue of Varieties of Agricultural Plant Species' on 15 March of the year in respect of which the payment is granted and published in accordance with Article 17 of Council Directive 2002/53/EC<sup>(1)</sup>, with exception of the varieties Finola and Tiborszallasi. The seed shall be certified in accordance with Council Directive 2002/57/EC<sup>(2)</sup>.

## Article 11

**Deferred integration of fruit and vegetables into the single payment scheme**

1. Until 31 December 2010 Member States having made use of one of the options as set out in the third subparagraph of Article 51(1) of Regulation (EC) No 73/2009 may allow secondary crops to be cultivated on the eligible hectares during a period of maximum three months starting each year on 15 August or on the date laid down in Annex II for the Member State and region concerned.

2. Where a Member State has made use of one of the options as set out in the third subparagraph of Article 51(1) of Regulation (EC) No 73/2009, it may, where necessary, revise the decision taken pursuant to Article 51, second subparagraph of Regulation (EC) No 1782/2003 within two weeks of the entry into force of this Regulation.

## Section 3

**Transfer of entitlements**

## Article 12

**Transfer 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 where the transfer will operate within a period to be established by that 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 takes place and taking into account the last date for lodging an application under the single payment scheme. The transfer shall take place as foreseen in the communication unless the competent authority objects to the transfer and notifies the transferor thereof within that time period.

<sup>(1)</sup> OJ L 193, 20.7.2002, p. 1.

<sup>(2)</sup> OJ L 193, 20.7.2002, p. 74.

The competent authority may only object to a transfer where the latter is not in accordance with provisions of Regulation (EC) No 73/2009 and of this Regulation.

4. For the purposes of Article 62(3) of Regulation (EC) No 73/2009, the percentage of the payment entitlements the farmer has used shall be calculated on the number of payment entitlements allocated to him in the first year of application of the single payment scheme, with the exception of payment entitlements sold with land, and must be used during one calendar year.

## Article 13

**Regional limitation**

1. Without prejudice to Articles 50(1) and 62(1) of Regulation (EC) No 73/2009, where a Member State makes use of the option provided for in the third subparagraph of Article 43(1) of that Regulation, 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 fixed by the Member State pursuant to Article 35 of Regulation (EC) No 73/2009 in the first year of application of the option provided for in the third subparagraph of Article 43(1) of that Regulation.

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 declared 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 or which he declares in the first year of application of the option provided for in Article 43(1) of Regulation (EC) No 73/2009.

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 43(1) of Regulation (EC) No 73/2009 shall not apply in case of actual or anticipated inheritance of payment entitlements without an equivalent number of eligible hectares.

## Section 4

**Special entitlements**

## Article 14

**Calculation of livestock units for special entitlements**

1. For the purposes of Article 44(2)(a) of Regulation (EC) No 73/2009, the agricultural activity carried out in the reference period expressed in livestock units (LU) shall be the one which was calculated in accordance with Article 30 of Regulation (EC) No 795/2004.

2. For the purposes of Article 65 of Regulation (EC) No 73/2009 and of calculating the agricultural activity carried out during the application of Articles 67 and 68 of Regulation (EC) No 1782/2003 expressed in LU referred to in Article 44(2)(c) of Regulation (EC) No 73/2009, the following conversion table shall apply to the average number of animals determined for the granting of a direct payment referred to in Articles 67 and 68 of Regulation (EC) No 1782/2003 in the relevant reference period:

Male bovine animals and heifers older than 24 months, suckler cows, dairy cows	1,0 LU
Male bovine animals and heifers from six months to 24 months	0,6 LU
Male, female bovine animals of less than six months	0,2 LU
Sheep	0,15 LU
Goat	0,15 LU

In case of slaughter premium, where the necessary data regarding the age of the animals are not available, a Member State may convert bulls, steers, cows and heifers in LU by using the coefficient 0,7 and calves by using the coefficient 0,25.

Where the same animal benefited from several premiums, the coefficient applicable shall be the average of the coefficient applicable to the different premiums.

3. The number of LU referred to in paragraphs 1 and 2 shall be calculated pro rata to the payment entitlements for which the farmer does not have hectares in the year of integration of the coupled support scheme into the single payment scheme or of implementation of the single payment scheme and for which the farmer requests the allocation of entitlements subject to special conditions. It shall apply starting from the payment entitlements at the lowest value.

This request shall be made only in the first year of integration of the coupled support scheme into the single payment scheme or of implementation of the single payment scheme. Member States shall fix the date for the request. It may be renewed in the following years for the same number of special entitlements referred to in Article 44 of Regulation (EC) No 73/2009 in the previous year or, in case of transfer of some of those payment entitlements, or in case of declaration of some of those payment entitlements with a corresponding number of hectares, for the remaining of those payment entitlements.

In these cases, the number of LU shall be recalculated pro rata to the remaining payment entitlements for which the farmer requests the special conditions.

No request to re-establish the conditions referred to in Article 44 of Regulation (EC) No 73/2009 may be introduced for those payment entitlements once they have been declared with an equivalent number of hectares or they have been transferred, without prejudice to Article 44(3) of Regulation (EC) No 73/2009.

4. In order to check that the minimum agricultural activity expressed in LUs is respected, Member States shall use the conversion table provided for in paragraph 2 and 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 Regulation (EC) No 1760/2000 of the European Parliament and of the Council <sup>(1)</sup> 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.

5. 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.

6. Member States shall take the measures necessary to apply Article 30 of Regulation (EC) No 73/2009 in the case of producers who, by means of abnormally high numbers of LUs during part of the year, artificially create the conditions required to respect the minimum agricultural activity.

## CHAPTER 2

### National reserve

#### Section 1

### Reversion to the national reserve

#### Article 15

#### Unused payment entitlements

1. Except in cases of *force majeure* or exceptional circumstances, unused payment entitlements shall be deemed to have reverted 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 Articles 28(3) and 42 of Regulation (EC) No 73/2009 expires.

A payment entitlement shall be considered to be unused where 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(23) of Regulation (EC) No 1122/2009 shall be deemed to have been used.

<sup>(1)</sup> OJ L 204, 11.8.2000, p. 1.

Where the area determined for the purposes of the single payment scheme is less 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 42 of Regulation (EC) No 73/2009:

- (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.
2. Farmers may give up payment entitlements to the national reserve voluntarily.

#### Article 16

##### Retention on sale of payment entitlements

1. Where a Member State makes use of the option provided for in Article 43(3) of Regulation (EC) No 73/2009, 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 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.

In case of sale of payment entitlements with or without land to a farmer who commences his 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 any of the cases referred to in points (a), (b) and (c) of paragraph 1 in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion.

3. Where a Member State having regionalised the single payment scheme in accordance with Article 59(1) of Regulation (EC) No 1782/2003 or making use of the option provided for in Article 48(1) of Regulation (EC) No 73/2009, decides to make use of the option provided for in Article 43(3) of Regulation (EC) No 73/2009, the percentages of reduction provided for in paragraphs 1 and 2 of this Article 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 or with Article 46(2) and (3) of Regulation (EC) No 73/2009.

#### Section 2

##### Allocation of payment entitlements from the national reserve

#### Article 17

##### Establishment of payment entitlements

1. Where a Member State makes use of the options provided for in Article 41(2) and (3) of Regulation (EC) No 73/2009, 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.

4. The value of each payment entitlement received in accordance with paragraph 2 or 3, except the 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 the number of entitlements to be allocated.

#### Article 18

##### Application of Article 41(3) of Regulation (EC) No 73/2009 in the case of fewer hectares than payment entitlements

1. Where a Member State makes use of the option provided for in Article 41(3) of Regulation (EC) No 73/2009, 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 had been allocated in accordance with Articles 43 and 59 of Regulation (EC) No 1782/2003.

In that case, the farmer shall give up to the national reserve all the payment entitlement he owns or should have been allocated, except payment entitlements subject to conditions referred to in Article 44 of Regulation (EC) No 73/2009.

For the purposes of this Article, 'payment entitlements' shall mean only the payment entitlements allocated by the Member State in the first year of application of the single payment scheme including any year of integration of coupled support.

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

3. 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.

4. Paragraphs 1, 2, and 3 shall not apply to a farmer who declares less than 50 % of the total number of hectares, which he held (leased and owned) in the reference period.

5. For the purposes of paragraphs 1, 2, and 3, hectares transferred by sale or by lease, and not replaced by a corresponding number of hectares, shall be included in the number of hectares which the farmer declares.

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

#### Article 19

##### General provisions for farmers in a special situation

1. For the purposes of Article 41(4) of Regulation (EC) No 73/2009, 'farmers in a special situation' shall mean the farmers referred to in Articles 20 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 20, 21 and 22, he shall receive a number of payment entitlements established in accordance with Article 17(2) and (3) and whose value shall be the highest value he may obtain by applying separately each of the Articles for which he meets the conditions.

In the case where a farmer also benefits from allocation of entitlements under Article 22 the total number of entitlements to be allocated shall not exceed the number fixed in accordance with that Article.

3. In cases where the lease referred to in Articles 20 and 22 expires 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, by a date to be fixed by the Member State but not later than the latest date fixed for amending the aid application in the following year.

4. 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 leases.

#### Article 20

##### Transfer of leased land

1. A farmer who received, by transfer, either by sale or by lease for six or more years, free of charge or at a symbolic price 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 from agricultural activity or died before the date for lodging an application under the single payment scheme in its first year of application, may 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 or the holding referred to in paragraph 1, by way of actual or anticipated inheritance.

#### Article 21

##### Investments

1. Member States may increase the value or allocate payment entitlements to farmers having invested in a sector which is subject to integration into the single payment scheme under Chapter 4 of Title III of Regulation (EC) No 73/2009, in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion.

When establishing the criteria referred to in the first subparagraph, Member States shall take into account reference period and/or other criteria used for integration of the relevant sector.

2. Paragraph 1 shall apply *mutatis mutandis* in the case of the termination of application of the single area payments scheme under Article 122 of Regulation (EC) No 73/2009.

#### Article 22

##### Lease and purchase of leased land

1. A farmer who leased, either between the end of the relevant reference period for the introduction of the single payment scheme and 15 May 2004 as regards the introduction of the single payment scheme before 2009, or before 31 January 2009 in case of application of Chapter 3 of Title III of Regulation (EC) No 73/2009, for six or more years a holding or part of it whose lease conditions may not be adjusted, may 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.

When establishing the criteria referred to in the first subparagraph, Member States shall take into account, in particular, situations where farmers do not have at their disposal hectares other than leased hectares.

2. Paragraph 1 shall apply to a farmer who bought, as regards the introduction of the single payment scheme before 2009 either in the reference period for its introduction or before 15 May 2004, or, in case of application of Chapter 3 of Title III of Regulation (EC) No 73/2009, before 31 January 2009, a holding or part of it whose land was under a lease during the relevant reference period, and who is commencing or expanding his agricultural activity within one year after the expiry of the lease.

For the purposes of the first subparagraph, 'land under a lease' shall mean land which was, at the time of, or after the purchase under a lease which has never been renewed except when the renewal was imposed by a legal obligation.

#### Article 23

### Administrative acts and court's rulings

Where a farmer should be entitled to receive payment entitlements or increase the value of the existing ones by virtue of a definitive court's ruling or by virtue of a definitive administrative act of the competent authority of a Member State, the farmer shall receive the number and value of payment entitlements established in that ruling or act at a date to be fixed by the Member State but not later than the latest date for lodging an application under the single payment scheme following the date of the ruling or the act and taking into account the application of Article 34 and/or Article 35 of Regulation (EC) No 73/2009.

#### Section 3

### Regional administration

#### Article 24

### Regional reserves

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

In that case, Member States shall allocate, in full or in part, the amounts available at national level to the regional level in accordance with objective and non-discriminatory criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion.

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 41(4) of Regulation (EC) No 73/2009 or, according to the Member State's choice, in the case of application of Article 41(2) of that Regulation.

#### TITLE III

### ALLOCATION OF PAYMENT ENTITLEMENTS

#### CHAPTER 1

### General provisions

#### Article 25

### Applications

1. The value and number or increase of payment entitlements allocated on the basis of the application from the farmer may be provisional. The definitive value and number shall be established by the 1 April of the year following the first year of application of

the single payment scheme or of integration of coupled support at the latest, after relevant checks made pursuant to Article 20 of Regulation (EC) No 73/2009 are carried out.

2. Farmers may introduce, subject to the definitive establishment of entitlements, applications under the single payment scheme on the basis of provisional entitlements or if a Member State makes use of the option provided for in Articles 26 and 27, entitlements acquired under the private contract clauses referred to in those Articles.

3. 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 73/2009.

4. A Member State may decide to fix a minimum size per holding in terms of agricultural area for which the establishment of payment entitlements may be requested. However, the minimum size shall not be higher than the limits set in accordance with Article 28(1)(b) of Regulation (EC) No 73/2009.

No minimum size shall be fixed for the establishment of the special entitlements referred to in Article 60 or 65 of Regulation (EC) No 73/2009 as provided for by Article 28(1) of that Regulation.

#### Article 26

### Private contract clause in case of sale

1. Where a sales contract concluded or modified no later than the date for lodging an application for allocation of entitlements either in the first year of application of the single payment scheme or in the year of integration of coupled support stipulates that all or part of the holding is sold, in full or in part, together with the payment entitlements or the increase of the value of payment entitlements to be allocated in respect of the hectares or the part of the holding transferred, the Member State may consider the sales contract as a transfer of the payment entitlements with land.

2. The seller shall apply for the allocation or increase of the payment entitlements, adding to his application a copy of the sale contract and indicating the production units and the number of hectares for which he intends to transfer the payment entitlements.

3. A Member State may allow the buyer to apply on behalf of the seller and with the explicit authorisation of the seller for the allocation of the payment entitlements. In this case the Member State shall verify that the seller fulfils at the date of the transfer the eligibility criteria and in particular the condition referred to in Article 25(3). The buyer shall apply for payment under the single payment scheme, adding to his application a copy of the sales contract.

4. 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.

## Article 27

**Private contract clause in case of lease**

1. A clause in a lease contract providing for the transfer of a number of entitlements not higher than the number of hectares leased may be considered as a lease of the payment entitlements with land within the meaning of Article 43(2) of Regulation (EC) No 73/2009, 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 or in the year of integration of coupled support;
- (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 allocation or increase of the payment entitlements, 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.

3. The lessee shall apply for payment under the single payment scheme, 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.

## CHAPTER 2

**Implementation of the single payment scheme in the new Member States having applied the single area payment scheme**

## Article 28

**General provisions**

1. Save as otherwise provided for in this Chapter, this Regulation shall apply to the new Member States having applied the single area payment scheme.

2. Any reference in this Regulation to Article 41 of Regulation (EC) No 73/2009 shall be construed as a reference to Article 57 of that Regulation.

3. For the purposes of Article 57(3) of Regulation (EC) No 73/2009 the new Member State may set a representative period which is preceding the first year of application of the single payment scheme.

4. Any references in this Regulation to the 'reference period' shall be construed as a reference to the first year of application of the single payment scheme or to the reference period set under Article 59(3) of Regulation (EC) No 73/2009.

## Article 29

**Initial allocation of payment entitlements**

1. Without prejudice to Article 59(3) of Regulation (EC) No 73/2009, for the purposes of Article 59(2) of that Regulation, new Member States shall establish the number of eligible hectares referred to in that paragraph 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, new Member States may establish the number of eligible hectares referred to in Article 59(2) of Regulation (EC) No 73/2009 by using the number of hectares declared 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 new Member State may re-allocate, 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. Where a Member State makes use of the option provided for in Article 59(3) of Regulation (EC) No 73/2009 it may, starting from the calendar year preceding the first year of application of the single payment scheme, proceed to the identification of the eligible farmers and the provisional establishment of the number of hectares referred to in that paragraph and to a preliminary verification of the conditions referred to in Article 25(3) of this Regulation.

Without prejudice to Article 61 of Regulation (EC) No 73/2009, the value of the entitlements shall be calculated by dividing the amount referred to in Article 59(1) of that Regulation with the total number of entitlements allocated under this paragraph.

4. The farmer shall be informed about the provisional entitlements at least one month before the deadline for application determined in accordance with Article 56(1) of Regulation (EC) No 73/2009.

For the purpose of calculating the agricultural activity expressed in livestock units (LU) referred to in Article 44(2)(b) of Regulation (EC) No 73/2009, the number of animals held by the farmer in a period set by the Member State shall be converted to LU by reference to the conversion table provided for in Article 14(2). For the purpose of checking the minimum agricultural activity in new Member States under Article 44(2)(b) of Regulation (EC) No 73/2009, Article 14(4), (5) and (6) shall apply.

## CHAPTER 3

**Integration of coupled support**

## Section 1

**Integration of the fruit and vegetable sector in the single payment scheme**

## Article 30

**General rules**

1. For the purpose of the establishment of the amount and the determination of payment entitlements in the framework of the integration of the fruit and vegetable sector in the single payment scheme, Section A of Annex IX to Regulation (EC) No 73/2009 shall apply subject to Article 31 of this Regulation and, if the Member State made use of the option provided for in Article 59 of Regulation (EC) No 1782/2003, subject to Article 32 of this Regulation.

2. As the case may be, Article 40 of Regulation (EC) No 73/2009 shall apply to the value of all the payment entitlements existing before the integration of fruit and vegetable support and to the reference amounts calculated for fruit and vegetables support.

3. For the purposes of this Regulation in relation to the fruit and vegetables sector, the first year of application of the single payment scheme shall be the year of the determination by the Member State of the amounts and eligible hectares as referred to in Section A of Annex IX to Regulation (EC) No 73/2009, taking account of the optional transitional three year period referred to in the second subparagraph of point 2 of that point.

## Article 31

**Specific rules**

1. If the farmer does not own payment entitlements or only owns special entitlements by the last date for applying for the establishment of payment entitlements, he shall receive payment entitlements calculated in accordance with Section A of Annex IX to Regulation (EC) No 73/2009 for fruit and vegetables.

The first subparagraph shall also apply when the farmer has leased in payment entitlements between the first year of the application of the single payment scheme and the year of the integration of the fruit and vegetable sector.

2. If the farmer has been allocated or has bought or received payment entitlements by the last date for applying for the establishment of payment entitlements, the value and number of the payment entitlements he owns shall be recalculated as follows:

- (a) the number of payment entitlements shall be equal to the number of payment entitlements he owns, increased by the number of hectares established in accordance with point 3 of Section A of Annex IX to Regulation (EC) No 73/2009 for fruit and vegetables, ware potatoes and nurseries;

- (b) the value shall be obtained by dividing the sum of the value of the payment entitlements he owns and the reference amount calculated in accordance with point 2 of Section A of Annex IX to Regulation (EC) No 73/2009 for fruit and vegetables by the number established in accordance with point (a) of this paragraph.

Special entitlements shall not be taken into account in the calculation referred to in this paragraph.

3. Payment entitlements leased out before the date for lodging an application under the single payment scheme shall be taken into account in the calculation referred to in paragraph 2. However, payment entitlements leased out via a contractual clause as referred to in Article 27 shall be taken into account in the calculation referred to in paragraph 2 of this Article only if the lease conditions may be adjusted.

## Article 32

**Regional implementation**

1. Where a Member State has made use of the option provided for in Article 59(1) of Regulation (EC) No 1782/2003, farmers shall receive a number of payment entitlements equal to the number of new eligible hectares under fruit and vegetables, ware potatoes and nurseries declared in his single application in 2008.

The value of the entitlements shall be calculated on the basis of objective and non-discriminatory criteria.

2. By way of derogation from the first subparagraph of paragraph 1, Member States may establish the additional number of entitlements per farmer on the basis of objective criteria in accordance with Section A of Annex IX to Regulation (EC) No 73/2009 for fruit and vegetables, ware potatoes and nurseries.

## Section 2

**Wine**

## Subsection 1

**Transfer from wine support programmes into the single payment scheme**

## Article 33

**General rules**

1. For the purpose of the establishment of the amount and the determination of payment entitlements in the framework of the transfer from the wine support programmes into the single payment scheme, Section C of Annex IX to Regulation (EC) No 73/2009 shall apply subject to Article 34 of this Regulation and, in case the Member State has made use of the option provided for in Article 59 or 71f of Regulation (EC) No 1782/2003 or of Article 47 or 58 of Regulation (EC) No 73/2009, subject to Article 35 of this Regulation.

2. Member States may proceed to the identification of the eligible farmers as from 1 January 2009 for allocating payment entitlements deriving from the transfer from wine support programmes into the single payment scheme.

3. For the purposes of Article 18 of this Regulation in relation to the wine sector, the first year of application of the single payment scheme shall be the year of the determination by the Member State of the amounts and eligible hectares as referred to in Section C of Annex IX to Regulation (EC) No 73/2009.

#### Article 34

#### Specific rules

1. If the farmer does not own payment entitlements or only special entitlements by the last date for applying for the establishment of payment entitlements fixed in accordance with this Regulation, he shall receive payment entitlements for wine calculated in accordance with Section C of Annex IX to Regulation (EC) No 73/2009.

The first subparagraph shall also apply when the farmer has leased in payment entitlements between the first year of the application of the single payment scheme and the year of the transfer from support programmes.

2. If the farmer has been allocated or has bought or received payment entitlements by the last date for applying for the establishment of payment entitlements fixed in accordance with this Regulation, the value and number of the payment entitlements he owns shall be recalculated as follows:

- (a) the number of payment entitlements shall be equal to the number of payment entitlements he owns, increased by the number of hectares established in accordance with Section C of Annex IX to Regulation (EC) No 73/2009;
- (b) the value shall be obtained by dividing the sum of the value of the payment entitlements he owns and the reference amount calculated in accordance with Section C of Annex IX to Regulation (EC) No 73/2009 by the number established in accordance with point (a) of this paragraph.

Special entitlements shall not be taken into account in the calculation referred to in this paragraph.

3. Payment entitlements leased out before the date for lodging an application under the single payment scheme fixed in accordance with this Regulation shall be taken into account in the calculation referred to in paragraph 2.

#### Article 35

#### Regional implementation

1. Where a Member State has made use of the option provided for in Article 59 or Article 71f of Regulation (EC) No 1782/2003 or of Article 47 or 58 of Regulation (EC) No 73/2009, farmers

shall receive a number of payment entitlements equal to the number of new eligible hectares under vineyards declared in his single application in 2009.

The value of the payment entitlements is calculated on the basis of objective and non-discriminatory criteria.

2. By way of derogation from paragraph 1, Member States may establish the number of entitlements per farmer on the basis of objective criteria in accordance with Section C of Annex IX to Regulation (EC) No 73/2009.

#### Subsection 2

#### Grubbing up

#### Article 36

#### Regional average

For the purpose of determining the value of payment entitlements in application of Section B of Annex IX to Regulation (EC) No 73/2009, the regional average shall be established by Member States at the appropriate territorial level. It shall be established at a date to be fixed by the Member State. 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.

#### TITLE IV

#### SPECIFIC SUPPORT

#### CHAPTER 1

#### General rules

#### Article 37

#### Eligibility for specific support measures

1. Member States shall lay down eligibility criteria for specific support measures in compliance with the framework set out in Regulation (EC) No 73/2009 and the conditions laid down in this Title.

2. Member States shall implement this Title, and in particular paragraph 1, in accordance with objective criteria and in such a way to ensure equal treatment among farmers and to avoid market and competition distortions.

#### Article 38

#### Consistency and cumulation of support

1. Member States shall ensure consistency between:

- (a) specific support measures and measures implemented under other Community support instruments;
- (b) different specific support measures;

(c) specific support measures and measures funded by State aids.

Member States shall in particular ensure that specific support measures do not interfere with the proper functioning of measures implemented under other Community support instruments or measures funded by State aids.

2. Where support under a specific support measure may also be granted under a measure implemented under other Community support instruments, or under another specific support measure, Member States shall ensure that a farmer may receive support for a given operation under only one such measure.

#### Article 39

### Conditions for support measures

1. Specific support measures shall not compensate for the respect of mandatory obligations and, in particular, of the statutory management requirements and standards for good agricultural and environmental condition set out respectively in Annexes II and III to Regulation (EC) No 73/2009 or the other requirements referred to in the first subparagraph of Article 39(3) of Regulation (EC) No 1698/2005.

2. Specific support measures shall not finance taxes.

3. Member States shall ensure that the specific support measures they implement are verifiable and controllable.

#### CHAPTER 2

### Specific rules

#### Article 40

### Specific types of farming which are important for the protection or enhancement of the environment

Member States shall define the specific types of farming which are important for the protection or enhancement of the environment for which an annual additional payment is provided for in Article 68(1)(a)(i) of Regulation (EC) No 73/2009. Those specific types of farming shall provide non-negligible and measurable environmental benefits.

#### Article 41

### Improving the quality of agricultural products

The annual additional payment for improving the quality of agricultural products provided for in Article 68(1)(a)(ii) of Regulation (EC) No 73/2009 may in particular enable farmers to:

(a) meet the conditions necessary in order to join Community food quality schemes as set out in the acts listed in Article 68(2)(b) of Regulation (EC) No 73/2009 and in Commission Regulations (EC) No 1898/2006 <sup>(1)</sup>, (EC) No 1216/2007 <sup>(2)</sup>, (EC) No 889/2008 <sup>(3)</sup> and (EC) No 114/2009 <sup>(4)</sup>; or

(b) join private or national food quality certification schemes.

If the specific support measures are granted for the purposes of point (b) of the first paragraph, the requirements of Article 22(2) of Commission Regulation (EC) No 1974/2006 <sup>(5)</sup> shall apply *mutatis mutandis*.

#### Article 42

### Improving the marketing of agricultural products

1. The annual additional payment for farmers for improving the marketing of agricultural products provided for in Article 68(1)(a)(iii) of Regulation (EC) No 73/2009 shall encourage farmers to improve the marketing of their agricultural products by ensuring the provision of better information about and/or promotion of the quality or characteristics of the products or their production methods.

2. Articles 4, 5 and 6 and Annexes I and II to Regulation (EC) No 501/2008 shall apply *mutatis mutandis*.

#### Article 43

### Practising enhanced animal welfare standards

1. When establishing eligibility conditions for the specific support for farmers practising enhanced animal welfare practices provided for in Article 68(1)(a)(iv) of Regulation (EC) No 73/2009, Member States shall, where appropriate, take account of:

- (a) the type of farming;
- (b) the size of the farm in terms of density or number of animals and manpower; and
- (c) the farm management system applicable.

2. Enhanced animal welfare practices shall be those which go beyond the minimum requirements laid down in the applicable Community and national legislation, in particular, the acts referred to in point C of Annex II to Regulation (EC) No 73/2009. Those practices may include the upgraded standards referred to in Article 27(7) of Regulation (EC) No 1974/2006.

<sup>(1)</sup> OJ L 369, 23.12.2006, p. 1.

<sup>(2)</sup> OJ L 275, 19.10.2007, p. 3.

<sup>(3)</sup> OJ L 250, 18.9.2008, p. 1.

<sup>(4)</sup> OJ L 38, 7.2.2009, p. 26.

<sup>(5)</sup> OJ L 368, 23.12.2006, p. 15.

## Article 44

**Specific agricultural activities entailing additional agri-environment benefits**

1. When establishing eligibility conditions for the specific support for farmers exercising specific agricultural activities entailing additional agri-environment benefits provided for in Article 68(1)(a)(v) of Regulation (EC) No 73/2009, Member States shall in particular take account of:

- (a) environmental objectives in the region where the measure is to be applied; and
- (b) any support granted already under other Community support instruments or other specific support measures or measures funded by State aids.

2. Article 27(2) to (6), (8), (9) and (13), Article 48 and Article 53 of Regulation (EC) No 1974/2006 shall apply *mutatis mutandis* to specific support for farmers exercising specific agricultural activities entailing additional agri-environment benefits.

3. The Commission shall assess the proposed specific support measures for farmers exercising specific agricultural activities entailing additional agri-environment benefits notified to it by the Member States for compliance with Regulation (EC) No 73/2009 and this Regulation.

Where the Commission considers that the proposed measures so comply, it shall approve the measures pursuant to Article 68(2)(a)(ii) of Regulation (EC) No 73/2009 within four months of receipt of the information provided in accordance with Article 50(3) of this Regulation.

Where the Commission considers that the proposed measures do not so comply, it shall request the Member State to revise the proposed measures accordingly and notify them to the Commission. It shall approve the measures if it considers that they have been appropriately revised.

## Article 45

**Specific disadvantages affecting farmers in the dairy, beef and veal, sheepmeat and goatmeat and rice sectors**

1. When establishing eligibility conditions for specific support to address specific disadvantages affecting farmers in the dairy, beef and veal, sheepmeat and goatmeat and rice sectors in economically vulnerable or environmentally sensitive areas, or, in the same sectors, for economically vulnerable types of farming under Article 68(1)(b) of Regulation (EC) No 73/2009, Member States

shall define the economically vulnerable and/or environmentally sensitive areas and/or the economically vulnerable types of farming eligible for the support, taking into account in particular, the relevant production structures and conditions.

2. The specific support shall not be based on fluctuations of market prices or be equivalent to a deficiency payments system.

## Article 46

**Areas subject to restructuring and/or development programmes**

1. The eligibility conditions for the specific support measures in areas subject to restructuring and/or development programmes in order to ensure against land being abandoned and/or to address specific disadvantages for farmers in those areas provided for in Article 68(1)(c) of Regulation (EC) No 73/2009 shall in particular:

- (a) set out how individual reference amounts for eligible farmers are to be fixed; and
- (b) set out the restructuring and/or development programmes and/or the conditions for their approval.

2. Where a farmer who does not own any payment entitlement applies for the support referred to in paragraph 1, he may receive a number of payment entitlements not higher than the number of hectares he holds (owned or leased) at that time.

Where a farmer who owns payment entitlement applies for the support referred to in paragraph 1, 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 the farmer already owns may be increased.

The value of each payment entitlement received in accordance with this paragraph, except the third subparagraph, shall be calculated by dividing the individual reference amount established by the Member State by the number of entitlements referred to in the second subparagraph.

3. The increase of the per hectare amount under the single area payment scheme referred to in Article 131(2) of Regulation (EC) No 73/2009 shall be established by dividing the reference amount of the farmer by the number of eligible hectares he declares for payment under the single area payment scheme.

4. Member States shall ensure that the specific disadvantages for farmers in areas affected by restructuring and/or development programmes, for which the specific support is granted, are not compensated under any other provision of such programmes for the same purpose.

*Article 47***Crop, animal and plant insurance**

1. Member States shall lay down conditions for contracts to be eligible for the specific support by way of contributions to crop, animal and plant insurance premiums as referred to in Article 68(1)(d) of Regulation (EC) No 73/2009.

2. Contracts shall set out:

- (a) the particular risks insured against;
- (b) the particular economic losses covered; and
- (c) the premium paid, excluding taxes.

3. Contracts shall not cover more than one year's production. Where a contract's term covers parts of two calendar years, Member States shall ensure that compensation is not granted twice in respect of the same contract.

4. Member States shall adopt rules to be used for establishing the calculation of the destruction of the average annual production of a farmer in accordance with Article 70(2) of Regulation (EC) No 73/2009.

5. The farmer shall inform the Member State every year of the number of his insurance policy and provide a copy of the contract and proof of payment of the premium.

*Article 48***Mutual funds for animal and plant diseases and environmental incidents**

1. The rules defined by Member States in accordance with Article 71(9) of Regulation (EC) No 73/2009 for mutual funds eligible for financial contributions for animal and plant diseases and environmental incidents as referred to in Article 68(1)(e) of that Regulation shall in particular include:

- (a) the conditions for financing the mutual fund;
- (b) the outbreaks of animal or plant disease or environmental incidents which may give rise to compensation to be paid to farmers, including geographical scope where appropriate;
- (c) the criteria for assessing whether a given event shall give rise to the payment of compensation to farmers;
- (d) the methods for calculating of the additional costs which constitute economic losses under Article 71(2)(b) of Regulation (EC) No 73/2009;
- (e) the calculation of the administrative costs referred to in Article 71(6) of Regulation (EC) No 73/2009;

(f) any limits to the costs that are eligible for a financial contribution applied under the second subparagraph of Article 71(7) of Regulation (EC) No 73/2009;

- (g) a procedure for the accreditation of a given mutual fund under national law;
- (h) procedural rules; and
- (i) the compliance and clearance audits that the mutual fund shall be subjected to following its accreditation.

2. Where the source of the financial compensation to be paid by the mutual fund is a commercial loan, its minimum and maximum duration shall be between 1 and 5 years respectively.

3. Member States shall ensure that their farming communities are made aware of:

- (a) all mutual funds accredited;
- (b) the conditions for affiliation to a particular mutual fund; and
- (c) the financing arrangements of the mutual funds.

*Article 49***Financial provisions for specific support measures**

1. The amounts referred to in Article 69(6)(a) of Regulation (EC) No 73/2009 are set out in Annex III to this Regulation.

2. For the purposes of the fourth subparagraph of Article 69(7) of Regulation (EC) No 73/2009, Member States may request by 1 August in any given calendar year from 2010 a revision of the amounts referred to in paragraph 1 of this Article where the amount resulting from application of the calculation set out in the first subparagraph of Article 69(7) of Regulation (EC) No 73/2009 for the financial year in question differs by more than 20 % from the amount fixed in Annex III to this Regulation.

Any revised amount provided for by the Commission shall be applicable from the calendar year following that of the request.

## TITLE V

**NOTIFICATIONS AND FINAL PROVISIONS**

## CHAPTER 1

**Notifications***Article 50***Notification of decisions**

1. Where a Member State makes use of the options provided for in Articles 28(1) and (2), 38, 41(2) to (5), 45(1) and (3), 46(1)

and (3), 47(1) to (4), 48, 49, 51(1) and 67 of Regulation (EC) No 73/2009 and Article 11(2) of this Regulation, it shall notify the Commission of the details of the decision taken and the justification and objective criteria on the basis of which the decision of applying the option concerned has been chosen:

(a) for decisions applying for 2010, within two weeks of:

(i) the date of entry into force of this Regulation; or

(ii) the date on which the decision was taken if later than the date of entry into force of this Regulation; and

(b) by 1 August 2010 in other cases.

Where a Member State takes a new decision as regards the use of the options provided for in Article 41(2) to (5) of Regulation (EC) No 73/2009, it shall notify the Commission of the details of the decision taken and the justification and objective criteria on the basis of which the decision of applying the option concerned has been chosen within two weeks of the date on which the decision is taken.

2. Where a new Member State intends to terminate the application of the single area payment scheme in accordance with Article 122(3) of Regulation (EC) No 73/2009, 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 details of the implementation of the single payment scheme, including the options according to Articles 55(3), 57(3) to (6), 59(3) and 61 of that Regulation as well as the objective criteria on the basis of which the decisions have been taken.

3. Member States shall inform the Commission of the specific support measures they intend to apply by 1 August of the year preceding the first year of application of that measure.

The content of the information shall be provided in accordance with Part A of Annex IV, except for specific support measures for specific agricultural activities entailing additional agri-environmental benefits, which shall be provided in accordance with Part B of that Annex.

#### Article 51

#### Statistics and reports

The Member States shall notify the Commission of the following information by electronic means using the form made available to them by the Commission:

1. by 1 September of the year concerned at the latest:
  - (a) the total number of applications claimed under the single payment scheme for the current year, together with the corresponding total amount of the payment entitlements and the total number of accompanying eligible hectares; those data shall be broken down by regions in case of regional implementation of the single payment scheme. For the first year of application of the single payment scheme, the information shall be based on the provisional payment entitlements;
  - (b) in case of application of measures under Article 68 of Regulation (EC) No 73/2009, Member States shall communicate the total amount of support claimed for the current year for each of the measures and, where applicable, sectors concerned;
2. by 1 May of the following year at the latest, for the first year of application of the single payment scheme, the same information as referred to in point 1(a), but based on the definitive payment entitlements;
3. by 15 September of the following year at the latest:
  - (a) the total value of existing payment entitlements activated or not in the given year and the number of hectares required for activation. The information shall be broken down by type of entitlements and by regions in case of regional implementation of the single payment scheme;
  - (b) 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 7, 9, 11(1) and (2), 21, 22 and 23 of Regulation (EC) No 73/2009 as well as the total sum of the amounts remaining in the national reserve by the 31 December of the preceding year and the total number of accompanying eligible hectares; those data shall be broken down by regions, were applicable in case of regional implementation of the single payment scheme;
  - (c) as regards Article 68 of Regulation (EC) No 73/2009, for the preceding year, the total number of beneficiaries and the amount of the payments which have been granted per measure and where applicable for each of the sectors concerned; and
  - (d) the annual report to be sent to the Commission by Member States on the implementation of Article 71 of Regulation (EC) No 73/2009 which shall contain the information listed in Annex V to this Regulation;
4. by 1 October 2012 at the latest, a report on the specific support measures implemented in 2009, 2010 and 2011, their impact on their objectives and any problems encountered.

## CHAPTER 2

**Final provisions**

## Article 52

**Repeal**

Regulations (EC) No 795/2004 and (EC) No 639/2009 are repealed.

However, they shall continue to apply in respect of aid applications relating to premium periods starting before 1 January 2010.

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

Done at Brussels, 29 October 2009.

## Article 53

**Entry into force and application**

This Regulation shall enter into force on the 7th day following its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2010 except for Articles 11(2) and 50(1)(a), which shall apply from the date of entry into force of this Regulation.

*For the Commission*  
Mariann FISCHER BOEL  
*Member of the Commission*

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## ANNEX I

## List of arable crops referred to in Article 2(c)

CN code	Description
I. CEREALS	
1001 10 00	Durum wheat
1001 90	Other wheat and meslin other than durum wheat
1002 00 00	Rye
1003 00	Barley
1004 00 00	Oats
1005	Maize
1007 00	Grain sorghum
1008	Buckwheat, millet and canary seed; other cereals
0709 90 60	Sweet corn
II. OILSEEDS	
1201 00	Soya beans
ex 1205 00	Rape seed
ex 1206 00 10	Sunflower seed
III. PROTEIN CROPS	
0713 10	Peas
0713 50	Field beans
ex 1209 29 50	Sweet lupins
IV. FLAX	
ex 1204 00	Linseed ( <i>Linum usitatissimum</i> L.)
ex 5301 10 00	Flax, raw or retted, grown for fibre ( <i>Linum usitatissimum</i> L.)
V. HEMP	
ex 5302 10 00	Hemp, raw or retted, grown for fibre ( <i>Cannabis sativa</i> L.)

## ANNEX II

**Dates referred to in Article 11(1)**

Member State and regions	Date
Spain: Castilla-La Mancha	1 June
Spain: Aragón, Asturias, Baleares, Cantabria, Castilla y León, Cataluña, Galicia, Madrid, Murcia, País Vasco, la Rioja, Comunidad Valenciana	1 July
Spain: Andalucía	1 September
Spain: Extremadura	15 September
Spain: Navarra	15 August
France: Aquitaine, Midi-Pyrénées and Languedoc-Roussillon	1 July
France: Alsace, Auvergne, Burgundy, Brittany, Centre, Champagne-Ardenne, Corsica, Franche-Comté, Île-de-France, Limousin, Lorraine, Nord-Pas-de-Calais, Lower Normandy, Upper Normandy, Loire Region (except the departments of Loire-Atlantique and Vendée), Picardy, Poitou-Charentes, Provence-Alpes-Côte-d'Azur and Rhône-Alpes	15 July
France: departments of Loire-Atlantique and Vendée	15 October
Austria	30 June

## ANNEX III

**Amounts referred to in Article 49(1) as calculated under Article 69(6)(a) of Regulation (EC) No 73/2009**

(EUR millions)	
Belgium	8,6
Denmark	15,8
Germany	42,6
Ireland	23,9
Greece	74,3
Spain	144,4
France	97,4
Italy	144,9
Luxembourg	0,8
Malta	0,1
Netherlands	31,7
Austria	11,9
Portugal	21,7
Finland	4,8
Slovenia	2,4
Sweden	13,9
United Kingdom	42,8

## ANNEX IV

**Content of the information to be submitted to the Commission pursuant to Article 50(3)**

## PART A

For all specific support measures, except measures for specific agricultural activities entailing additional agri-environmental benefits, the information shall include:

- (a) the title of each measure with the reference to the relevant provision of Article 68(1) of Regulation (EC) No 73/2009;
- (b) a description of each measure, including at least:
  - (i) the sectors concerned;
  - (ii) its duration;
  - (iii) its objectives;
  - (iv) the applicable eligibility conditions;
  - (v) an indicative level of support for it;
  - (vi) the total amount fixed for it;
  - (vii) the information necessary for establishing the related budget ceilings; and
  - (viii) the source of the funds for it;
- (c) any existing measures applied under other Community support schemes or under measures financed by State aids in the same area or sector as the specific support measure and, where appropriate, the demarcation between them;
- (d) where appropriate, a description of:
  - (i) the specific types of farming which are important for the protection or enhancement of the environment referred to in Article 68(1)(a)(i) of Regulation (EC) No 73/2009;
  - (ii) the enhanced animal welfare standards referred to in Article 68(1)(a)(iv) of Regulation (EC) No 73/2009;
  - (iii) the economically vulnerable areas and/or the environmentally sensitive areas and/or the economically vulnerable types of farming referred to in Article 68(1)(b) of Regulation (EC) No 73/2009 as well as the current levels of production referred to in Article 68(3) of that Regulation;
  - (iv) the restructuring and/or development programmes referred to in Article 68(1)(c) of Regulation (EC) No 73/2009.

## PART B

For specific support measures for specific agricultural activities entailing additional agri-environmental benefits, the information shall include:

- (a) the title of the measure;
- (b) the geographical area covered by the measure;
- (c) a description of the measure proposed and the expected environmental impact in relation to environmental needs and priorities as well as specific verifiable objectives;
- (d) the rationale for intervention, the scope and actions, indicators, quantified targets and, where appropriate, beneficiaries;

- (e) criteria and administrative rules for ensuring that operations are not also supported by other Community support schemes;
  - (f) evidence, as referred to in Article 48(2) of Regulation (EC) No 1974/2006, allowing the Commission to check consistency and plausibility of the calculations;
  - (g) a detailed description of the national implementation of the minimum requirements for fertiliser and plant protection products use and other relevant mandatory requirements referred to in point 5.3.2.1 of Part A of Annex II to Regulation (EC) No 1974/2006;
  - (h) a description of the methodology and of the agronomic assumptions and parameters (including the description of the baseline requirements as set out in Article 39(3) of Regulation (EC) No 1698/2005 which are relevant for each particular type of commitment) used as reference point for the calculations justifying: (a) additional costs and (b) income foregone resulting from the commitment made; where relevant, this methodology shall take into account aid granted under Regulation (EC) No 73/2009; where appropriate, the conversion method used for other units in accordance with Article 27(9) of Regulation (EC) No 1974/2006;
  - (i) amounts of support;
  - (j) where appropriate, the information referred to in the fifth and sixth indents of point 5.3.2.1.4 of Part A of Annex II to Regulation (EC) No 1974/2006.
-

## ANNEX V

**Content of the information to be included in the annual report on mutual funds as referred to in Article 51(3)(d)**

The information shall include:

- (a) a list of accredited mutual funds and the number of affiliated farmers per fund;
  - (b) where appropriate, the administrative costs incurred for setting up new mutual funds;
  - (c) the source of funding according to Article 69(6)(a) or (c) of Regulation (EC) No 73/2009 and where applicable, the amount of the linear reduction applied as well as the payments concerned;
  - (d) the types of economic losses compensated by each accredited fund and by cause as referred to in Article 71(1) of Regulation (EC) No 73/2009;
  - (e) the number of farmers compensated by each accredited fund per type of economic loss and by cause as referred to in Article 71(1) of Regulation (EC) No 73/2009;
  - (f) the expenditure of each accredited fund per type of economic loss;
  - (g) the percentage and the amount paid by each fund for the financial contribution referred to in Article 71(7) of Regulation (EC) No 73/2009; and
  - (h) any experience gained in the implementation of the specific support measure on mutual funds.
-

**COMMISSION REGULATION (EC) No 1121/2009****of 29 October 2009****laying down detailed rules for the application of Council Regulation (EC) No 73/2009 as regards the support schemes for farmers provided for in Titles IV and V thereof**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 <sup>(1)</sup>, and in particular Article 29(4)(a), Article 87(4), Article 89(2), Article 91(2), the second subparagraph of Article 101(2), Article 103(1), Article 142(c), (e), (q) and (s) and Article 147 thereof,

Whereas:

- (1) Regulation (EC) No 73/2009 repeals and replaces 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) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 <sup>(2)</sup>. The implementing rules for the application of the support schemes provided for in Titles IV and IVa of Regulation (EC) No 1782/2003 were laid down in Commission Regulation (EC) No 1973/2004 of 29 October 2004 laying down detailed rules for the application of Council Regulation (EC) No 1782/2003 as regards the support schemes provided for in Titles IV and IVa of that Regulation and the use of land set aside for the production of raw materials <sup>(3)</sup>. Regulation (EC) No 1973/2004 needs to be adapted to the changes introduced by Regulation (EC) No 73/2009, notably those provided for in Title IV and in Chapters 2 and 4 of Title V thereof. In the interest of clarity and simplification Regulation (EC) No 1973/2004 should be repealed and replaced by a new Regulation.
- (2) In order to ensure the efficient administration of the schemes provided for in Title IV of Regulation (EC) No 73/2009, the payments to be granted under some of those schemes should be restricted to minimum size of the areas (area payment). The minimum area size should be

fixed taking into account the particular size of farms in some Member States or the specific conditions for some productions.

- (3) The sowing of land for the sole purpose of qualifying for area payments should be prevented. Certain conditions relating to the sowing and cultivation of crops should be specified, in particular as regards protein plants and rice and fruit and vegetables. Local standards should be respected in order to reflect the diversity of agricultural practice within the Community.
- (4) Only one application for an area payment should be permitted in respect of any parcel cultivated in a given year except in cases where the aid concerns the production of seeds. Area payments may be granted on crops subsidised under a scheme falling within the Community's structural or environmental policies.
- (5) Supports schemes provide that where the area, the quantity or the number of animals for which aid is claimed exceeds maximum limits, the area or quantity or number for which aid is claimed is to be reduced proportionately in that year. It is therefore appropriate to establish the modalities and deadlines for the exchange of information between the Commission and the Member States in order to inform the Commission of the areas or quantities or numbers for which the aid has been paid.
- (6) The terms of payment as well as the crop-specific payment for rice calculation depend not only on the base area or areas fixed for each producing Member State in Article 75 of Regulation (EC) No 73/2009, but also on the possible subdivision of those base areas into sub-base areas and on the objective criteria chosen by each Member State to perform this subdivision, on conditions in which the cultivated parcels are put into cultivation and on the minimum size of the areas. As a consequence, detailed rules should be laid down for the establishment, the management and the cultivation modalities applicable to base areas and sub-base areas.
- (7) The observation of a possible overrun of the base area referred to in Article 76 of Regulation (EC) No 73/2009 implies a reduction of the crop-specific payment for rice. In order to set the calculation modalities for such a reduction, the criteria to be taken into consideration as well as applicable coefficients should be defined.

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

<sup>(2)</sup> OJ L 270, 21.10.2003, p. 1.

<sup>(3)</sup> OJ L 345, 20.11.2004, p. 1.

- (8) The follow-up of the payments of the crop-specific payment for rice presumes that the Commission has been forwarded certain information related to the cultivation of base areas and sub-base areas. For that purpose, the detailed information that the Member States should communicate to the Commission as well as the deadlines for such communications should be determined.
- (9) Articles 77 and 78 of Regulation (EC) No 73/2009 provide for an aid to farmers producing potatoes intended for the manufacture of potato starch subject to a cultivation contract and within the quota limit established by Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (the single CMO Regulation) <sup>(1)</sup>. The conditions for the granting of the aid should therefore be established and, where applicable, cross references should be made to the existing provisions concerning the quota system provided for in Regulation (EC) No 1234/2007.
- (10) Standards for sweet lupins and tests to determine whether or not a sample of lupins is sweet should be laid down.
- (11) In some regions, the protein crops are traditionally sown in a mixture with cereals for agronomical reasons. The resulting crop principally consists of protein crops. For the purpose of granting the protein crop premium, the areas thus sown should therefore be considered as areas of protein crops.
- (12) In the interest of efficiency and good management of the aid scheme for nuts, the area aid granted should not be used to finance marginal plantations or isolated trees. A minimum plot size and a minimum tree density of a specialised orchard should therefore be defined.
- (13) Article 87 of Regulation (EC) No 73/2009 provides for the possibility of direct aid being granted for the production of one or more seed species. That aid may be granted only for the production of basic seed or certified seed and these products should be clearly defined by reference to the Directives on certification and marketing of seeds: Council Directive 66/401/EEC of 14 June 1966 on the marketing of fodder plant seed <sup>(2)</sup>, Council Directive 66/402/EEC of 14 June 1966 on the marketing of cereal seed <sup>(3)</sup>, and Council Directive 2002/57/EC of 13 June 2002 on the marketing of seed of oil and fibre plants <sup>(4)</sup>.
- (14) To make checks possible, basic seed and certified seed should be produced under growing contracts or growing declarations which will be joined to the single application and seed establishments and breeders should be officially approved or registered.
- (15) Under Annex XIII to Regulation (EC) No 73/2009, production aid is payable for basic and certified seed of varieties of *Cannabis sativa* L. with a tetrahydrocannabinol content not exceeding 0,2 %. In order to ensure uniform application throughout the Community of the rules for granting the aid, the eligible varieties of *Cannabis sativa* L. should be those defined as eligible for direct payments in accordance with Article 39 of Regulation (EC) No 73/2009.
- (16) Section 6 of Chapter 1 of Title IV of Regulation (EC) No 73/2009 provides for a crop-specific payment for cotton. Detailed rules should be laid down for the application of this scheme. These rules should cover the authorisation of land suitable for cotton production and the approval of varieties. Furthermore a criterion defining 'sowing' should be established. The Member States' fixing of the minimum planting density on these lands based on soil and climate conditions and specific regional features must be an objective criterion for establishing whether sowing has been conducted properly or not.
- (17) The Member States should approve inter-branch cotton producing organisations on the basis of objective criteria relating to their scale and internal organisation. The scale of an inter-branch organisation should be fixed, taking into account the requirement on the member ginning undertaking to be able to take delivery of sufficient quantities of unginned cotton.
- (18) In order to avoid complications in managing the aid scheme, a producer may not be a member of more than one inter-branch organisation. For that same reason, where a producer belonging to an inter-branch organisation undertakes to supply the cotton he has produced, he should supply it only to a ginning undertaking belonging to that same organisation.
- (19) The cotton aid scheme requires Member States to send their producers certain information on cotton growing, such as approved varieties, the objective criteria for authorising land and the minimum plant density. In order to inform the farmers in good time, the Member State should send them this information by a specific date.
- (20) Sections 8 and 9 of Chapter 1 of Title IV of Regulation (EC) No 73/2009 provides that the aids for fruit and vegetable are granted on the condition that a processing contract is concluded. For that purpose, it is appropriate to require that a contract must be concluded with respect to the agricultural raw materials concerned, between, on the one hand, an approved first processor, and, on the other hand, a producer or a recognised producer organisation representing him or, in the case of the transitional fruit and vegetables payments and the transitional soft fruit payment, an approved collector representing the producer.

<sup>(1)</sup> OJ L 299, 16.11.2007, p. 1.

<sup>(2)</sup> OJ 125, 11.7.1966, p. 2298/66.

<sup>(3)</sup> OJ 125, 11.7.1966, p. 2309/66.

<sup>(4)</sup> OJ L 193, 20.7.2002, p. 74.

- (21) To ensure that the raw material benefiting from the transitional fruit and vegetable payments and the transitional soft fruit payment is finally processed, it appears appropriate to set up a system of approval of first processors and collectors. Such authorised operators would have to comply with minimum requirements and would be sanctioned in case of non-compliance with their obligations, according to detailed rules to be set up at national level by the competent authorities.
- (22) In order to be able to manage the financial envelope for transitional fruit and vegetable payments appropriately, Member States should fix early in the year an indicative aid amount per hectare and, before the time period for payments, a final aid amount per hectare.
- (23) The criteria for eligibility for sheep and goat premiums provided for in Section 10 of Chapter 1 of Title IV of Regulation (EC) No 73/2009, and in particular the conditions required, need to be laid down.
- (24) Article 101(2) of Regulation (EC) No 73/2009 provides for the granting of a premium to goat meat farmers in certain areas of the Community. The areas in question should therefore be determined in accordance with the criteria laid down in that provision.
- (25) Under Article 102(1) of Regulation (EC) No 73/2009 farmers whose holdings have at least 50 % of their area used for agriculture situated in less-favoured areas may qualify for a supplementary premium. Article 101(2) makes reference to the specific geographical zones where goat meat farmers meet the necessary conditions to qualify for the goat premium. Provisions should be made for a declaration to be provided by farmers meeting those criteria to prove that at least half of the land they are using for agricultural production is located in less-favoured areas or in areas which qualify for the goat premium.
- (26) For the purpose of control on eligibility for the correct level of ewe premium, Member States should draw up an inventory of farmers marketing sheep's milk or sheep's milk products.
- (27) With a view to implementing the system of individual limits as introduced by Articles 104, 105 and 106 of Regulation (EC) No 73/2009, the existing administrative rules may continue to be applied as regards, in particular, the use of rights granted free of charge, the use of normal rights including minimum use, the temporary leasing and transfer of rights, the notification of changes on individual ceiling and the transfer of rights through the national reserve. Some of those rules are specific provisions for exceptional and duly justified circumstances such as, regarding the use of rights, the small farmers and farmers participating in extensification programmes and early retirement schemes, and, for the transfer purpose, the inheritance of premiums rights and the case of farmers using only publicly or collectively owned land for grazing.
- (28) The Commission is to monitor the new arrangements and as a result it needs to be properly provided by the Member States with the essential information regarding the implementation of the premium rules.
- (29) If applicable, detailed information on the national rules on, and the implementation of, the additional payments should be forwarded to the Commission.
- (30) Section 11 of Chapter 1 of Title IV of Regulation (EC) No 73/2009 provides for beef and veal payments. The criteria for eligibility, and in particular the conditions required for those payments, need to be laid down.
- (31) Provision should be made for the administrative document laid down in Article 110(3)(b) of Regulation (EC) No 73/2009 to be drawn up and issued at national level. In order to take account of particular administrative and control conditions in the Member States, different forms of administrative document should be allowed.
- (32) Article 110(3)(a) and Article 116(1) of Regulation (EC) No 73/2009 lay down a retention period as a condition for granting the special premium and the slaughter premium. It is therefore necessary to define and quantify that period.
- (33) The arrangements for granting the special premium at the time of slaughter should be consistent with the arrangements for granting the slaughter premium. The types of documents which are to accompany the animal until slaughter, dispatch or export should be specified. In order to take account of the specific features of the form of granting at the time of slaughter, the age conditions for steers and the method of presentation of the carcase for adult bovine animals should be laid down.
- (34) The concept of suckler cow laid down in Article 111 of Regulation (EC) No 73/2009 should be defined. In that respect, the same breeds should be kept as those under 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 <sup>(1)</sup>. Moreover, the existing essential requirements may continue to be applied, in particular as regards the average milk yield and the additional national premium.

<sup>(1)</sup> OJ L 281, 4.11.1999, p. 30.

- (35) The existing administrative rules may continue to be applied as regards in particular the individual ceilings, the notifications on the individual ceilings and the national reserve, the rights obtained free of charge, the use of rights, the transfer and temporary leasing of rights, the transfers through the national reserve.
- (36) The Commission should determine, on the basis of available information, which Member States meet the conditions for applying the special scheme laid down in Article 115 of Regulation (EC) No 73/2009. The special arrangements for granting the premium should be specified.
- (37) Specific provisions should be laid down as regards the application of the rules on periods, dates and time limits to the retention period.
- (38) In the interests of simplification, the 'livestock' aid application provided for in the integrated system should be taken to represent application for the slaughter premium, provided that it contains all the elements needed to justify payment of the premium and that the animal is slaughtered in the same Member State or in another Member State, or exported.
- (39) It should be possible to use the computerised database referred to in 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 <sup>(1)</sup> to facilitate the management of the slaughter premium, on condition that the Member State concerned considers that the database offers adequate assurances as to the accuracy of the data it contains for the purposes of the payment of premiums.
- (40) The slaughter premium for calves is conditional on a maximum weight limit. A standard type of carcase presentation should therefore be laid down, to which this maximum weight applies.
- (41) To ensure that farmers receive payments as quickly as possible, provision should be made for granting advances. However, in view of the application of the national or regional ceilings, steps should be taken to ensure that the advance does not exceed the definitive payment. Provision should therefore be made to allow Member States to reduce the percentage of the advance for the premium schemes subject to those ceilings.
- (42) It is necessary to fix the date determining the elements to be taken into consideration for the application of the special premium and suckler cow premium schemes.
- In order to ensure sound and consistent administration, that date should, as a general rule, be the date of the submission of applications. However, with respect to the special premium paid on slaughter, special rules should be laid down in order to avoid carry-overs from one year to the next with a view to obtaining a higher premium. As regards the slaughter premium, the date of slaughter or of export is a better indication of whether the operations concerned have actually been carried out.
- (43) In accordance with the third subparagraph of Article 124(2) of Regulation (EC) No 73/2009 and in order to avoid managing numerous applications that would entail very low payments per holding, Bulgaria, the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Romania and Slovakia have requested the authorisation to set the minimum size of eligible area per holding at levels higher than 0,3 ha.
- (44) The new Member States, within the meaning of Article 2(g) of Regulation (EC) No 73/2009, applying the Single Area payment Scheme have estimated the part of their utilised agricultural area which has been maintained in good agricultural condition on 30 June 2003 and have proposed to adjust it in accordance with the minimum size of eligible area per holding.
- (45) Article 132 of Regulation (EC) No 73/2009 provides for the possibility in the new Member States of complementing direct aid paid to a farmer, subject to authorisation by the Commission. The general modalities for implementing this possibility should be established.
- (46) Taking into account specific provisions of the aid for energy crops provided for in Chapter 5 and set-aside scheme provided for in Chapter 10 of Title IV of Regulation (EC) No 1782/2003, notably for multiannual crops, and in order to relieve farmers and processors from unnecessary administrative burden after abolition of this aid, it is appropriate to define certain transitional rules for its smooth abolition and release of the securities lodged by the collectors and processors.
- (47) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Direct Payments,

HAS ADOPTED THIS REGULATION:

#### TITLE I

### SCOPE AND GENERAL PROVISIONS

#### Article 1

#### Subject matter and scope

1. This Regulation lays down detailed rules for the implementation of the following support schemes provided for in Chapter 1 of Title IV of Regulation (EC) No 73/2009:

<sup>(1)</sup> OJ L 204, 11.8.2000, p. 1.

- (a) crop-specific payment for rice provided for in Section 1 thereof;
- (b) aid for starch potato growers provided for in Section 2 thereof;
- (c) protein crop premium provided for in Section 3 thereof;
- (d) area payment for nuts provided for in Section 4 thereof;
- (e) seed aid provided for in Section 5 thereof;
- (f) crop-specific payment for cotton provided for in Section 6 thereof;
- (g) transitional fruit and vegetable payments and transitional soft fruit payment provided for in Sections 8 and 9 thereof;
- (h) premiums in the sheepmeat and goatmeat sector provided for in Section 10 thereof;
- (i) beef and veal payments provided for in Section 11 thereof.

2. This Regulation lays down detailed rules for the implementation of the following support schemes provided for in Title V of Regulation (EC) No 73/2009:

- (a) single area payment scheme (SAPS) provided for in Chapter 2 thereof;
- (b) complementary national direct payments provided for in Chapter 4 thereof.

#### Article 2

##### Definitions

For the purposes of this Regulation, the definitions laid down in Article 2 of Regulation (EC) No 73/2009, in Article 2 of Commission Regulation (EC) No 1120/2009 <sup>(1)</sup> and in Article 2 of Commission Regulation (EC) No 1122/2009 <sup>(2)</sup> shall apply.

In particular the definition of short rotation coppice in Article 2(n) of Regulation (EC) No 1120/2009 shall apply *mutatis mutandis* in relation to SAPS.

#### Article 3

##### Cumulation of area payments

In a given year, no more than one application for an area payment listed in Annex I to Regulation (EC) No 73/2009 may be made in respect of any cultivated parcel.

<sup>(1)</sup> See page 1 of this Official Journal.

<sup>(2)</sup> See page 65 of this Official Journal.

#### Article 4

##### Notifications on farmers' applications and payments

1. The Member States shall notify the Commission of the following information by electronic means using the form made available to them by the Commission:

- (a) by 1 September of the year concerned at the latest:
  - (i) the total area for which the aid has been claimed in the case of:
    - the crop-specific payment for rice provided for in Article 73 of Regulation (EC) No 73/2009,
    - the protein crop premium provided for in Article 79 of Regulation (EC) No 73/2009,
    - the area payment for nuts provided for in Article 82 of Regulation (EC) No 73/2009, by categories of nut trees,
    - the crop-specific payment for cotton provided for in Article 88 of Regulation (EC) No 73/2009,
    - the single area payment scheme (SAPS) provided for in Article 122 of Regulation (EC) No 73/2009;
  - (ii) the total number of applications in the case of the sheep and goat premiums provided for in Article 99 of Regulation (EC) No 73/2009, by type of female and type of premiums;
- (b) by 15 October of the year concerned at the latest, the total determined area in the case of the protein crop premium provided for in Article 79 of Regulation (EC) No 73/2009;
- (c) by 31 January of the following year at the latest:
  - (i) the total determined area used for the calculation of the coefficient of reduction in the case of:
    - the crop-specific payment for rice provided for in Article 73 of Regulation (EC) No 73/2009, broken down for by base area and sub-base area,
    - the area payment for nuts provided for in Article 82 of Regulation (EC) No 73/2009, by categories of nut trees,
    - the crop-specific payment for cotton provided for in Article 88 of Regulation (EC) No 73/2009,

- the single area payment scheme (SAPS) provided for in Article 122 of Regulation (EC) No 73/2009;
- (ii) the total number of male bovines in respect of which the special premium, provided for in Article 110 of Regulation (EC) No 73/2009, has been applied for, broken down by age bracket and type of animal (bull or steer);
- (iii) the total number of cows in respect of which the suckler cow premium, provided for in Article 111 of Regulation (EC) No 73/2009, has been applied for, broken down according to the schemes referred to in Article 111(2)(a) and (b);
- (d) by 1 March of the following year at the latest, the total number of animals in respect of which the slaughter premium, provided for in Article 116 of Regulation (EC) No 73/2009, has been applied for and indicating whether the animals were slaughtered or exported, broken down by type of animal (calves, adults);
- (e) by 31 July of the following year at the latest the total quantity for which the aid has actually been paid in the case of the seed aid provided for in Article 87 of Regulation (EC) No 73/2009, by seed species as listed in Annex XIII to Regulation (EC) No 73/2009.

2. In the notifications provided for in paragraph 1, the areas shall be expressed in hectares to two decimal places; the quantities shall be expressed in tonnes to three decimal places.

3. Where the information required under paragraph 1 change, in particular as a result of the checks or corrections or improvements of previous figures, an update shall be communicated to the Commission within 1 month after the occurrence of the change.

## TITLE II

### SPECIFIC RULES CONCERNING TITLE IV OF REGULATION (EC) No 73/2009

#### CHAPTER 1

#### *General provisions*

##### *Article 5*

#### **Specific requirements on minimum areas and sowing and cultivation**

1. The crop-specific payment for rice, the protein crop premium, the seed aid and the fruit and vegetable payments referred to in Article 1(1)(a), (c), (e) and (g) shall be granted only for the areas, per each type of crop, which have been the subject of an aid application in respect of at least 0,3 hectares. Furthermore, each cultivated parcel shall exceed the minimum size set by the Member State within the limit provided for in Article 13(9) of Regulation (EC) No 1122/2009.

In the case of Malta, the direct payments referred to in Article 1(1)(a), (c), (e) and (g) shall be granted only for the areas, per each type of crop, which have been the subject of application in respect of at least 0,1 hectares, where each cultivated parcel exceeds the minimum size set by the Member State within the limit provided for in Article 13(9) of Regulation (EC) No 1122/2009.

In the case of Greece, the transitional fruit and vegetable payments referred to in Article 1(1)(g) shall be granted only for the areas, per each type of crop, which have been the subject of application in respect of at least 0,1 hectares, where each cultivated parcel exceeds the minimum size set by the Member State within the limit provided for in Article 13(9) of Regulation (EC) No 1122/2009.

In the case of Bulgaria, Latvia, Hungary, and Poland, the soft fruit payment referred to in Article 1(1)(g) shall be granted only for the areas, per each type of crop, which have been the subject of application in respect of at least 0,1 hectares, where each cultivated parcel exceeds the minimum size set by the Member State within the limit provided for in Article 13(9) of Regulation (EC) No 1122/2009.

2. The minimum size of the parcel eligible for the area payment referred to in Article 1(1)(d) shall be 0,10 hectares. However, Member States may fix a higher minimum parcel size on the basis of objective criteria and taking into account the specific characteristics of the areas concerned.

3. The crop-specific payment for rice, the protein crop premium and the fruit and vegetable payments referred to in Article 1(1)(a), (c) and (g) shall be granted only for the areas entirely sown or planted and on which all normal cultivation conditions have been performed in accordance with local standards.

## *Article 6*

### **Coefficients of reductions**

The coefficient of reduction of areas in the case referred to in Articles 76, 81(2) and 84 of Regulation (EC) No 73/2009 shall be fixed before the payments are granted to the farmers and at the latest by 31 January of the following year on the basis of the data notified in accordance with Article 4(1)(b) and (c) of this Regulation.

#### CHAPTER 2

#### **Crop-specific payment for rice**

## *Article 7*

### **Dates for sowings**

To be eligible for the crop-specific payment for rice, the declared area shall be sown at the latest:

- (a) on 30 June preceding the harvest in question, for France, Italy, Portugal, and Spain;

- (b) on 31 May for the other producing Member States referred to in Article 74(2) of Regulation (EC) No 73/2009.

#### Article 8

##### **Coefficient of reduction**

The coefficient of reduction of the crop-specific payment for rice referred to in Article 76 of Regulation (EC) No 73/2009 shall be calculated in accordance with Annex I to this Regulation.

#### Article 9

##### **Notifications**

Member States may revise annually the subdivision of their base area or areas established in Article 75 of Regulation (EC) No 73/2009 into sub-base areas and the objective criteria on which those subdivisions are based. They shall notify that information to the Commission by 15 May preceding the harvest in question at the latest.

#### CHAPTER 3

##### **Aid for starch potato growers**

#### Article 10

##### **Eligibility**

The aid for starch potato provided for in Article 77 of Regulation (EC) No 73/2009 shall be granted for potatoes which are covered by a cultivation contract as provided for in Article 3 of Commission Regulation (EC) No 571/2009 <sup>(1)</sup>, on the basis of the net weight of the potatoes determined by one of the methods described in Annex I to Commission Regulation (EC) No 2235/2003 <sup>(2)</sup> and the starch content of the potatoes delivered, in accordance with the rates fixed in Annex II to that Regulation.

No aid for starch potato shall be granted for potatoes whose starch content is less than 13 %, except where the second subparagraph of Article 5(3) of Regulation (EC) No 571/2009 applies.

#### Article 11

##### **Minimum price**

The aid for starch potato shall be subject to the requirement that proof is provided that a price not less than that referred to in Article 95a(2) of Regulation (EC) No 1234/2007 has been paid at the delivered-to-factory stage in accordance with the rates fixed in Annex II to Regulation (EC) No 2235/2003.

Article 10(2) of Regulation (EC) No 571/2009 shall apply.

<sup>(1)</sup> OJ L 171, 1.7.2009, p. 6.

<sup>(2)</sup> OJ L 339, 24.12.2003, p. 36.

#### Article 12

##### **Payment**

1. Without prejudice to Article 29 of Regulation (EC) No 73/2009, the aid for potato starch shall be paid, by the Member State on whose territory is situated the holding delivering the potatoes for the manufacturing of the potato starch, per farmer once all his quantities for the marketing year have been delivered to the starch-producing undertaking within 4 months from the date on which the proof referred to in Article 11 of this Regulation has been provided and the conditions referred to in Article 10 of this Regulation have been respected.

2. Member States may grant advances, as from 1 December of the marketing year, based on the different parts of the quantity of starch potatoes by farmer delivered to the starch-producing undertaking for that marketing year. Each advance payment shall be granted for the quantity of starch potatoes delivered for which the proof referred to in Article 11 has been provided and the conditions referred to in Article 10 have been respected.

#### CHAPTER 4

##### **Protein crop premium**

#### Article 13

##### **Sweet lupins**

For the purpose of the protein crop premium provided for in Title IV Chapter 1 Section 3 of Regulation (EC) No 73/2009, 'sweet lupins' shall mean those varieties of lupins producing seed comprising not more than 5 % bitter seeds. The bitter seed content shall be calculated in accordance with the test set out in Annex II to this Regulation.

#### Article 14

##### **Mixture of cereals and protein crops**

In regions where protein crops are traditionally sown in a mixture with cereals, the protein crop premium shall be paid at the request of the applicant provided that he proves, to the satisfaction of the competent authorities of the Member State concerned, that the protein crops are predominant in the mixture.

#### CHAPTER 5

##### **Area payment for nuts**

#### Article 15

##### **Conditions of payment of Community aid**

1. Only agricultural parcels planted with nut trees and meeting the conditions provided for in paragraphs 2 and 3 of this Article at the date to be fixed in accordance with Article 11(2) of Regulation (EC) No 1122/2009 shall be eligible for the area payment provided for in Article 82 of Regulation (EC) No 73/2009.

In the case of a parcel planted with different species of nut trees and when the aid is differentiated by species, eligibility shall be conditional on compliance for at least one of the species of nuts with the minimum number of trees per hectare laid down in paragraph 2 of this Article.

2. The number of nut trees per hectare may not be less than:

- (i) 125 for hazelnuts;
- (ii) 50 for almonds;
- (iii) 50 for walnuts;
- (iv) 50 for pistachios;
- (v) 30 for locust beans.

However, Member States may fix a higher tree density on the basis of objective criteria and taking into account the specific characteristics of the production concerned.

3. In the cases referred to in the second subparagraph of paragraph 1, the level of the aid to be granted is the level corresponding to the species for which the eligibility conditions are met and for which the amount is highest.

#### Article 16

##### **Eligibility conditions for national aid**

Article 15 of this Regulation shall apply to the national aid provided for in Articles 86 and 120 of Regulation (EC) No 73/2009.

Without prejudice to Article 86 of Regulation (EC) No 73/2009, a Member State may establish further eligibility criteria, provided that such criteria are consistent with the environmental, rural, social and economic objectives of the aid scheme and do not introduce discrimination between producers. Member States shall establish the necessary arrangements in order to control that those eligibility criteria are respected by farmers.

#### Article 17

##### **Notifications**

1. Member States shall notify to the Commission in any case before the date for lodging an application fixed by Member States in accordance with Article 11 of Regulation (EC) No 1122/2009 and at the latest:

- (a) by 31 March, the higher density levels and the criteria referred to in Article 15(2) of this Regulation and the additional criteria referred to in Article 16 of this Regulation;

- (b) by 15 May, where a Member State differentiates the aid in accordance with Article 82(2) of Regulation (EC) No 73/2009, the level of the area payment per products and/or the modified national guaranteed area (the NGA).

2. Any modification of the information to be notified to the Commission pursuant to paragraph 1 shall apply from the following year and shall be notified by the Member State concerned to the Commission accompanied by the objective criteria justifying any such modification.

#### CHAPTER 6

##### **Seed aid**

#### Article 18

##### **Certification of seeds**

The seed aid provided for in Article 87 of Regulation (EC) No 73/2009 shall be granted for production of basic and officially certified seed as defined by Directives 66/401/EEC, 66/402/EEC and 2002/57/EC and complying with the standards and conditions laid down in those Directives, in accordance with Articles 19 to 23 of this Regulation.

#### Article 19

##### **Production of seeds**

1. The seed shall be produced:

- (a) either under a growing contract concluded between a seed establishment or a breeder and a seed grower;
- (b) or directly by the seed establishment or the breeder; such production being attested by a growing declaration.

2. The seed establishments and breeders referred to in paragraph 1 shall be approved or registered by Member States. Approval or registration by a Member State shall be valid throughout the Community.

3. A seed establishment or a breeder growing seed or having seed grown in a Member State other than that in which approval or registration referred to in paragraph 2 took place shall supply the competent authorities of that other Member State, on request, with all the information required for checking entitlement to aid.

#### Article 20

##### **Territorial eligibility**

Each Member State shall grant aid only in respect of seed harvested on its territory during the calendar year in which the marketing year for which the aid was fixed begins.

The aid shall be granted to all seed growers under conditions which ensure equal treatment for beneficiaries irrespective of the place of their establishment within the Community.

## Article 21

**Marketing of seeds**

Aid shall be granted only on condition that the seed has in fact been marketed for sowing by the recipient by 15 June of the year following the harvest at the latest. 'Marketed' shall mean holding available or in stock, displaying for sale, offering for sale, sale or delivery to another person.

## Article 22

**Advance payments**

Member States may grant advance payments to seed growers as from 1 December of the year in respect of which the aid is granted. Such payment shall be proportional to the quantity of seeds already marketed for sowing within the meaning of Article 21 provided that all the conditions of this Chapter are complied with.

## Article 23

**Hemp varieties**

The varieties of hemp (*Cannabis sativa* L.) eligible for aid in accordance with Article 87(4) of Regulation (EC) No 73/2009 shall be those referred to in Article 10 of Commission Regulation (EC) No 1120/2009.

## CHAPTER 7

**Crop-specific payment for cotton**

## Article 24

**Authorisation of agricultural land for cotton production**

The Member States shall establish objective criteria on the basis of which land is authorised for the crop-specific payment for cotton provided for in Article 88 of Regulation (EC) No 73/2009.

The criteria shall be based on one or more of the following:

- (a) the agricultural economy of those regions where cotton is a major crop;
- (b) the soil and climate in the areas in question;
- (c) the management of irrigation water;
- (d) rotation systems and cultivation methods likely to respect the environment.

## Article 25

**Approval of varieties for sowing**

The Member States shall approve the varieties registered in the 'Common Catalogue of Varieties of Agricultural Plant Species' that are adapted to market needs.

## Article 26

**Eligibility requirements**

Sowing the areas referred to in Article 89(1) of Regulation (EC) No 73/2009 shall be done by achieving a minimum plant density, to be fixed by the Member State on the basis of the soil and weather conditions and specific regional characteristics, where appropriate.

## Article 27

**Agronomic practices**

The Member States shall be authorised to establish specific rules on the agronomic practices needed to maintain and harvest the crops under normal growing conditions.

## Article 28

**Approval of inter-branch organisations**

1. Before 31 December each year, Member States shall approve for the following year any inter-branch cotton-producing organisation that applies to plant cotton and which:

- (a) covers a total area of at least 4 000 ha as established by the Member State and meeting the authorisation criteria laid down in Article 24, and which includes at least one ginning undertaking;
- (b) has adopted internal operating rules, in particular on membership conditions and fees, in accordance with national and Community rules and regulations.

2. Where it is found that an approved inter-branch organisation does not respect the criteria for approval provided for in paragraph 1, the Member State shall withdraw the approval unless the non-respect of the criteria concerned is remedied within a reasonable period of time. Where it is planned to withdraw the approval, the Member State shall notify that intention to the inter-branch organisation, together with the reasons for the withdrawal. The Member State shall allow the inter-branch organisation to submit its observations within a specified period. In case of withdrawal, the Member States shall provide for the application of appropriate sanctions.

Farmers who are members of an approved inter-branch organisation whose approval is withdrawn in accordance with the first subparagraph of this paragraph shall lose their right to the increase of the aid provided for in Article 92(2) of Regulation (EC) No 73/2009.

*Article 29***Producers' obligations**

1. A producer shall not be a member of more than one inter-branch organisation.
2. A producer who is a member of an inter-branch organisation shall deliver his cotton to a ginner belonging to that same organisation.
3. The participation of producers in an approved inter-branch organisation must be the result of voluntary membership.

*Article 30***Communications to the producers**

1. Before January 31 of the year in question, Member States shall notify cotton growers of:
  - (a) the approved varieties; however, varieties approved in accordance with Article 25 after that date must be notified to the growers before 15 March in the same year;
  - (b) the criteria for authorising land;
  - (c) the minimum cotton plant density referred to in Article 26;
  - (d) the required agronomic practices.
2. Where approval for a variety is withdrawn, the Member States shall inform the growers no later than 31 January for the purposes of the following year's sowing season.

*CHAPTER 8****Transitional fruit and vegetables payments and transitional soft fruit payment****Article 31***Definitions**

For the purposes of this Chapter:

- (a) 'applicant' means any farmer cultivating the areas referred to in Articles 96 and 98 of Regulation (EC) No 73/2009 with a view to obtaining the aids provided for in those Articles;
- (b) 'aid' means the transitional fruit and vegetables payment provided for in Article 96 of Regulation (EC) No 73/2009 or the transitional soft fruit payment provided for in Article 98 of that Regulation;

- (c) 'first processor' means any user of an agricultural raw material referred to in Articles 96 and 98 of Regulation (EC) No 73/2009 who undertakes the first processing thereof with a view to obtaining one or more of the products listed in Article 1(1)(j) of Regulation (EC) No 1234/2007;
- (d) 'collector' means any person concluding a contract with an applicant within the meaning of point (a) who purchases on his own account at least one of the products referred to respectively in the fourth subparagraph of Article 54(2) or in Article 98(1) of Regulation (EC) No 73/2009;
- (e) 'recognised producer organisation' means any legal entity or a clearly defined part of a legal entity which complies with the requirements of Articles 122, 125a(1) and 125b(1)(a) of Regulation (EC) No 1234/2007 and that is recognised by the concerned Member State in accordance with Article 125b of that Regulation and recognised producer groups in accordance with Articles 125e and 103a of that Regulation.

*Article 32***Contract**

1. Without prejudice of the application by Member States of the possibility provided for in Article 97(4) of Regulation (EC) No 73/2009, the contract for processing referred to in Articles 97(3) and 98(2) of that Regulation shall be concluded between, on the one hand, an approved first processor, within the meaning of Article 33, and, on the other hand, an applicant or a recognised producer organisation representing him or an approved collector, within the meaning of Article 33, representing the applicant.

Where the recognised producer organisation also acts as an approved first processor, the contract may take the form of a commitment to supply.

2. The contract or the commitment to supply shall specify at least the following:
  - (a) the names and addresses of the parties to the contract or the commitment to supply;
  - (b) the species concerned and the area planted with each species;
  - (c) where appropriate, an undertaking by the applicant to deliver to the first processor the total quantity harvested or minimum quantities defined by Member States.

In the cases where the contract is concluded between an approved first processor and a recognised producer organisation or an approved collector representing the applicant, the contract shall specify also the names and addresses, referred to in point (a), of the applicants concerned, as well as the species and the area planted, referred to in point (b), for each applicant concerned.

## Article 33

**Approval of the first processors and collectors**

1. For the purpose of this Chapter Member States shall set up a system of approval of the first processors and collectors located on their territory. They shall in particular lay down conditions for approval ensuring that at least:

- (a) the approved first processors and collectors have the administrative capacities for managing the contracts referred to in Article 32;
- (b) the approved first processors have the appropriate production capacities.

2. Member States shall set up a procedure of controls of the approval.

3. Approvals granted pursuant to Council Regulations (EC) No 2201/96 <sup>(1)</sup>, (EC) No 2202/96 <sup>(2)</sup> and (EC) No 1234/2007 shall remain valid for the purposes of this Chapter.

4. Where it is found that an approved first processor or collector fails to comply with the obligations laid down in this Chapter or with the national provisions adopted on its basis, or where an approved first processor or collector does not accept or facilitate the checks to be performed by the competent authorities in accordance with Regulation (EC) No 1122/2009, Member States shall impose appropriate penalties. The rate of penalties shall be calculated in the light of the seriousness of the infringement.

5. Member States shall make available to the public a list of approved first processors and collectors at least 2 months before the date fixed in accordance with Article 11(2) or Article 13(6) of Regulation (EC) No 1122/2009.

## Article 34

**Aid level for transitional fruit and vegetable payments**

1. In application of Article 97(1) of Regulation (EC) No 73/2009 and before 15 March of the year in respect of which the aid is claimed, Member States shall fix and make available to the public the indicative aid amount per hectare.

2. In application of Articles 97(1) and 97(2) of Regulation (EC) No 73/2009, Member States shall fix the final aid amount per hectare on the basis of the determined area.

<sup>(1)</sup> OJ L 297, 21.11.1996, p. 29.

<sup>(2)</sup> OJ L 297, 21.11.1996, p. 49.

## CHAPTER 9

**Premiums in the sheepmeat and goatmeat sector**

## Section 1

**Applications and payments**

## Article 35

**Applications and retention period**

1. In addition to the requirements under the integrated administration and control system provided for in Chapter 4 of Title II of Regulation (EC) No 73/2009 (the integrated system), farmers shall indicate in their application for ewe and goat premiums and supplementary premiums whether or not they are marketing sheep's milk, or milk products based on sheep's milk, during the year in respect of which the premium is requested.

2. Applications for ewe and goat premiums and supplementary premiums shall be submitted to the competent authority, during a unique period fixed by the Member State concerned commencing not before 1 November and ending not later than 30 April, respectively, preceding and following the commencement of the year in respect of which the applications are submitted.

3. The period referred to in Article 103(1) of Regulation (EC) No 73/2009 during which the farmer undertakes to keep on his holding the number of ewes and/or she-goats in respect of which the premium is requested (the retention period) shall be 100 days starting on the first day following the last day of the period for the submission of applications referred to in paragraph 2.

## Article 36

**Areas eligible for goat premium**

The criteria referred to in Article 101(2) of Regulation (EC) No 73/2009 are met in the areas listed in Annex III to this Regulation.

However, Member States shall, on a regular basis, verify whether these criteria continue to be met in all the areas listed in that Annex III falling within their respective territories. Following this evaluation, Member States shall notify the Commission of any need for amending Annex III before 31 July of the year preceding the year in respect of which the amendment shall apply. The notification shall, in particular, indicate the zones, or parts of zones, listed in Annex III that do not further meet the criteria referred to in Article 101(2) of Regulation (EC) No 73/2009, as well as the eventual zones that meet those criteria but are not yet listed in Annex III to this Regulation. For these potential new zones, the Member States shall supply the Commission with a detailed justification of their proposal.

#### Article 37

##### **Application for supplementary premium and for the goat premium**

1. In order to benefit from the supplementary premium or the goat premium, a farmer whose holding has at least 50 % but less than 100 % of its area used for agriculture situated in areas referred to in Article 102(1) of Regulation (EC) No 73/2009 or in areas listed in Annex III to this Regulation, shall submit a declaration or declarations indicating the location of his land, in accordance with paragraphs 2 and 3 of this Article.

2. A farmer who is required to submit each year a declaration of the total utilised agricultural area of his holding, at the occasion of an aid application, as provided for in Article 19(1) of Regulation (EC) No 73/2009, shall indicate in that declaration those parcels used for agriculture which are located in areas referred to in Article 102(1) of Regulation (EC) No 73/2009 or in areas listed in Annex III to this Regulation as appropriate.

A farmer who is not required to submit the declaration referred to in the first subparagraph shall submit each year a specific declaration using, where appropriate, the system for identifying agricultural parcels provided for under the integrated system.

That specific declaration shall indicate the location of all the land the farmer owns, rents or uses under whatever arrangements, indicating its area and detailing those parcels used for agriculture which are located in areas referred to in Article 102(1) of Regulation (EC) No 73/2009 or in areas listed in Annex III to this Regulation as appropriate. Member States may provide for the specific declaration to be included in the application for the ewe and/or goat premium. Member States may also demand that the specific declaration be made by means of a 'single payment application' form.

3. The competent national authority may demand the presentation of a property deed, a rental contract or a written agreement between farmers and, where appropriate, an attestation from the local or regional authority which has made land used for agriculture available to the farmer concerned. The attestation shall indicate the area of land granted to the producer and the parcels located in areas referred to in Article 102(1) of Regulation (EC) No 73/2009 or areas listed in Annex III to this Regulation as appropriate.

#### Article 38

##### **Farmers practising transhumance**

1. Premium applications submitted by farmers the registered addresses of whose farms are in one of the geographical areas referred to in Article 102(2)(b) of Regulation (EC) No 73/2009 and who wish to qualify for the supplementary premium shall indicate:

- (a) the place or places where transhumance is to be carried out for the current year;

- (b) the period of at least 90 days referred to in Article 102(2)(a) of Regulation (EC) No 73/2009 and laid down for the current year.

2. Premium applications from farmers referred to in paragraph 1 shall be accompanied by documents certifying that transhumance has actually been carried out, except in cases of *force majeure* or due to the impact of duly justified natural circumstances affecting the life of the flock, during the two previous years and in particular by an attestation from the local or regional authority at the place of transhumance certifying that it has actually taken place during at least 90 consecutive days.

When carrying out administrative checks on applications Member States shall ensure that the place of transhumance specified in the premium application is actually within an area referred to in Article 102(1) of Regulation (EC) No 73/2009.

#### Article 39

##### **Payment of the premiums**

1. Premiums shall be paid to farmers on the basis of the number of ewes and/or she-goats kept on their holding throughout the retention period referred to in Article 35(3).

2. Premiums shall be paid for animals satisfying the conditions provided for in the definitions referred to in Article 100 of Regulation (EC) No 73/2009 on the final day of the retention period.

#### Article 40

##### **Inventory of farmers marketing sheep's milk or sheep's milk products**

For each year Member States shall draw up, no later than the 30th day of the retention period, an inventory of farmers marketing sheep's milk or sheep's milk products on the basis of the farmers' declarations referred to in Article 35(1).

When drawing up the inventory, Member States shall take account of the results of controls and any other source of information available to the competent authority, in particular information obtained from processors or distributors relating to the marketing of sheep's milk or sheep's milk products by farmers.

#### Article 41

##### **Notification**

Member States shall notify the Commission, by 31 October of each year at the latest, of any changes in the list of geographical areas practising transhumance referred to in Article 102(2) of Regulation (EC) No 73/2009 and Article 38 of this Regulation.

## Section 2

**Limits, Reserves and Transfers**

## Article 42

**Rights obtained free of charge**

Except in duly justified exceptional circumstances, where a farmer has obtained premium rights free of charge from the national reserve he shall not be authorised to transfer his rights or to lease them temporarily for a period of 3 years from the date he obtained those rights.

## Article 43

**Use of rights**

1. A farmer holding rights may make use of them by availing himself of those rights and/or leasing those rights to another farmer.

2. Where a farmer has not made use of the minimum percentage of his rights provided for in paragraph 4, during each year, the part not used shall be transferred to the national reserve, except in the following cases:

- (a) in the case of farmers holding a maximum of 20 premium rights, where this farmer has not made use of the minimum percentage of his rights, during each of two consecutive calendar years, only the part not used during the last calendar year shall be transferred to the national reserve;
- (b) in the case of a farmer participating in an extensification programme recognised by the Commission;
- (c) in the case of a farmer participating in an early retirement scheme recognised by the Commission in which the transfer and/or temporary leasing of rights is not obligatory;
- (d) in exceptional and duly justified circumstances.

3. Temporary leasing shall be only in respect of whole years and shall involve at least the minimum number of animals provided for in Article 44(1). At the end of each period of temporary leasing, which may not exceed three consecutive years, a farmer shall, except in the event of a transfer of rights, recover all his rights for himself, for at least two consecutive years. If the farmer does not avail himself of at least the minimum percentage of his rights provided for in paragraph 4 during each of the 2 years, the Member State shall, except in exceptional and duly justified cases, withdraw and return annually to the national reserve that part of the rights not used by the farmer.

However, in the case of farmers participating in early retirement schemes recognised by the Commission, Member States may provide for the total duration of the temporary leasing on the basis of such schemes to be increased.

Farmers who have undertaken to participate in an extensification programme in accordance with the measure referred to in Article 2(1)(c) of Council Regulation (EEC) No 2078/92 <sup>(1)</sup> or in an extensification programme in accordance with Articles 22 and 23 of Council Regulation (EC) No 1257/1999 <sup>(2)</sup> or in accordance with Article 39 of Council Regulation (EC) No 1698/2005 <sup>(3)</sup> shall not be authorised to temporarily lease and/or to transfer their rights throughout the period of that participation. However, this provision shall not apply in cases where the programme permits the transfer and/or temporary leasing of rights to farmers whose participation in measures other than those referred to in this subparagraph requires the acquisition of rights.

4. The minimum percentage of use of rights to the premium shall be 70 %.

However, Member States may increase that percentage up to 100 %. They shall inform the Commission in advance of the percentage they intend to apply.

## Article 44

**Transfer of rights and temporary leasing**

1. Member States may lay down, on the basis of their production structures, a minimum number of premium rights which may be the subject of a partial transfer not involving the transfer of a holding. This minimum may not exceed 10 premium rights.

2. Transfers of premium rights and temporary leasing of such rights shall be effective only after they have been notified to the competent authorities of the Member State by the farmer transferring and/or leasing the rights and by the farmer receiving the rights.

Such notification shall take place within a deadline set by the Member State and not later than the date on which the premium application period ends in that Member State, except in those cases where the transfer takes place through an inheritance. In those cases, the farmer who receives the rights shall be in a position to furnish appropriate legal documents to prove that he/she is the beneficiary of the deceased farmer.

3. In the case of a transfer without a transfer of the holding, the number of rights transferred without compensation to the national reserve may in no case be less than one.

## Article 45

**Change of individual ceiling**

In the case of transfers or temporary leasing of premium rights, Member States shall set the new individual ceiling and shall notify the farmers concerned of the number of premium rights to which they are entitled not later than 60 days from the last day of the period during which the producer submitted his application.

<sup>(1)</sup> OJ L 215, 30.7.1992, p. 85.

<sup>(2)</sup> OJ L 160, 26.6.1999, p. 80.

<sup>(3)</sup> OJ L 277, 21.10.2005, p. 1.

The first paragraph shall not apply in the case where the transfer takes effect through an inheritance as referred to in the second subparagraph of Article 44(2).

#### Article 46

##### **Farmers who do not own the land they farm**

Farmers farming only publicly or collectively owned land who decide to stop using that land for grazing and to transfer all their rights to another farmer shall be treated in the same way as farmers selling or transferring their holdings. In all other cases such farmers shall be treated in the same way as farmers transferring their premium rights only.

#### Article 47

##### **Transfer through the national reserve**

Where Member States provide that the transfer of rights is to take place via the national reserve, they shall apply national provisions analogous to those laid down in this Section. Moreover, in such cases:

- (a) Member States may provide for temporary leasing to be carried out via the national reserve;
- (b) in the event of the transfer of premium rights or temporary leasing pursuant to point (a), transfer to the reserve shall not become effective until after notification by the competent authorities of the Member State to the farmer transferring and/or leasing the rights, and transfers from the reserve to another farmer shall not become effective until after notification to that farmer by the authorities.

In addition, the national provisions referred to in the first paragraph shall ensure that the part of the rights not covered by the second subparagraph of Article 105(2) of Regulation (EC) No 73/2009 must be offset by a payment by the Member State corresponding to the payment which would have resulted from a direct transfer between farmers, account being taken in particular of the trend in production in the Member State concerned. That payment shall be equal to the payment charged to a farmer who receives equivalent rights from the national reserve.

#### Article 48

##### **Calculation of individual limits**

Only whole numbers shall be used in the initial calculations and in subsequent adjustments to individual limits on premium rights.

To that end, where the final result of the arithmetical calculations is not a whole number, the nearest whole number shall be used. However, where the result of the calculations falls exactly between whole numbers, the higher whole number shall be used.

#### Article 49

##### **Notification**

1. Member States shall notify the Commission, by 31 December each year, of any amendment to the part of the premiums rights transferred which shall be surrendered to the national reserve in accordance with Article 105(2) of Regulation (EC) No 73/2009 and, where applicable, of the measures taken under Article 105(3) of that Regulation.

2. Member States shall notify the Commission by 30 April each year of:

- (a) the number of premium rights returned without compensatory payment to the national reserve following transfers of rights without transfers of holdings during the preceding year;
- (b) the number of unused premium rights as referred to in Article 106(2) of Regulation (EC) No 73/2009 transferred to the national reserve during the preceding year;
- (c) the number of rights granted under Article 106(3) of Regulation (EC) No 73/2009 during the preceding year;
- (d) the number of premium rights granted to farmers in less favoured areas from the national reserve during the preceding year.

#### CHAPTER 10

##### **Beef and veal payments**

#### Section 1

##### **Special premium**

#### Article 50

##### **Applications**

1. In addition to the requirements under the integrated system, each application for direct payments as referred to in Article 19 of Regulation (EC) No 73/2009 as regards the special premium provided for in this Chapter shall contain:

- (a) the breakdown of the number of animals by age bracket;
- (b) a reference to the passports or administrative documents accompanying the animals which are the subject of the application.

2. Applications may only be submitted in respect of animals which on the date of commencement of the retention period referred to in Article 53 are:

- (a) in the case of bulls, not less than 7 months old;

- (b) in the case of steers:
- (i) not less than 7 months nor more than 19 months old in the case of the first age bracket;
  - (ii) at least 20 months old in the case of the second age bracket.

#### Article 51

##### **Grant of premium**

Animals which have not qualified for the special premium on account of the application of the proportional reduction provided for in Article 110(4) of Regulation (EC) No 73/2009 may no longer be the subject of an application for the same age bracket and shall be considered to have been the subject of payment of the premium.

#### Article 52

##### **Passports and administrative documents**

1. The competent authorities of the Member State shall ensure that passports referred to in Article 6 of Regulation (EC) No 1760/2000 or equivalent national administrative documents referred to in Article 110(3)(b) of Regulation (EC) No 73/2009 guarantee that only one premium is granted per animal and per age bracket.

Member States shall assist one another, as necessary, to this end.

2. Member States may provide that the national administrative document referred to in paragraph 1 shall take the form of:

- (a) a document accompanying each individual animal;
- (b) a comprehensive list, held by the farmer, containing all the information required for the administrative document, on condition that the animals concerned remain, from the date on which the first application is made, with the same farmer until they are placed on the market for the purpose of being slaughtered;
- (c) a comprehensive list, held by the central authorities, containing all the information required for the administrative document, on condition that the Member State or region of a Member State availing itself of this possibility carries out on-the-spot checks on all the animals covered by an application, checks the movements of those animals and makes a distinctive mark on each animal checked which the farmers shall be required to permit;
- (d) a comprehensive list, held by the central authorities, containing all the information required for the administrative document, on condition that the Member State takes the measures necessary to ensure that the premium is not granted twice for the same age bracket and provides information as to the premium status of each animal immediately upon request.

3. Member States which decide to avail themselves of one or more of the possibilities provided for in paragraph 2 shall notify the Commission thereof in due time and forward to it the relevant implementing provisions.

#### Article 53

##### **Retention period**

The duration of the retention period referred to in Article 110(3)(a) of Regulation (EC) No 73/2009 shall be 2 months, starting on the day following that on which the application is submitted.

However, Member States may provide that other starting dates may be set by the farmer on condition that they do not begin more than 2 months following the day on which the application is submitted.

#### Article 54

##### **Regional ceiling**

1. Where the application of the proportional reduction provided for in Article 110(4) of Regulation (EC) No 73/2009 gives a number of eligible animals which is less than a whole number, there shall be granted in respect of the decimal part a corresponding fraction of the unit amount of the premium. For this purpose, account shall be taken of the first decimal place only.

2. Where Member States decide to introduce different regions within the meaning of Article 109(a) of Regulation (EC) No 73/2009, or to modify the existing regions within their territory, they shall inform the Commission of their decision before 1 January of the year concerned, giving a definition of the region and the ceiling set. Any subsequent modification shall be notified to the Commission before 1 January of the year concerned.

#### Article 55

##### **Limits on the number of animals per holding**

1. Where Member States decide to amend the limit of 90 heads of cattle per holding and per age bracket referred to in Article 110(1) of Regulation (EC) No 73/2009, or to derogate from it, they shall inform the Commission before 1 January of the calendar year concerned.

Where, moreover, Member States fix a minimum number of animals per holding, below which the proportional reduction will not be applied, they shall inform the Commission before 1 January of the calendar year concerned.

2. Any subsequent amendment in the application of paragraph 1 shall be notified to the Commission before 1 January of the year concerned.

## Article 56

**Granting of the premium at the time of slaughter**

1. Member States may grant the special premium at the time of slaughter as follows:

- (a) in the case of bulls, for the single age bracket;
- (b) in the case of steers, for the first or second age bracket or by combining the granting of the premiums for the two age brackets.

2. Member States which decide to grant the special premium at the time of slaughter in accordance with paragraph 1 shall provide that the premium is also to be granted when eligible animals are being dispatched to another Member State or being exported to a third country.

3. Where Member States decide to grant the special premium at the time of slaughter in accordance with paragraph 1 of this Article, this Section and Article 77 and Article 78(1) and (2) shall apply *mutatis mutandis* to the grant of the premium.

4. In addition to the information referred to in Article 78(1), aid applications shall indicate whether the animal is a bull or a steer, and shall be accompanied by a document containing the details required for the purposes of Article 52. That document shall be one of the following, at the choice of the Member State:

- (a) the passport or a copy of the passport where the type used consists of several copies;
- (b) a copy of the passport where the type of passport used consists of one copy only which must be returned to the competent authority referred to in Article 6 of Regulation (EC) No 1760/2000; in that case the Member State shall take steps to ensure that the information contained in the copy corresponds to the original;
- (c) the national administrative document where the passport is not available, under the conditions laid down in Article 6 of Regulation (EC) No 1760/2000.

Member States may suspend the application of the national administrative document. In that case they shall take the measures necessary to ensure that the premium is not granted twice for the same age bracket for animals which have been the subject of intra-Community trade.

Where the computerised databases as provided for in Article 3(b) of Regulation (EC) No 1760/2000 contain, to the satisfaction of the Member State, the information necessary to ensure that one premium only is granted for each animal and each age bracket, the aid application need not be accompanied by the document referred to in the first subparagraph of this paragraph.

By way of derogation from the first subparagraph of this paragraph, where Member States apply the option referred to in the first subparagraph of Article 78(2), they shall take the measures necessary to ensure that the farmer can determine the animals for which he is requesting a special premium.

5. In the case of bulls, proof of slaughter shall specify the carcass weight.

6. Where the animal is dispatched, proof of dispatch shall be provided by means of a statement by the consignor indicating the Member State of destination of the animal.

In that case, aid applications shall include:

- (a) the name and address of the consignor (or an equivalent code);
- (b) the identity number of the animal;
- (c) a statement that the animal is not less than 9 months old.

Aid applications shall be submitted before the animal leaves the territory of the Member State concerned and proof of dispatch shall be submitted within 3 months from the date of the animals leaving the territory of the Member State concerned.

## Article 57

**Details of the grant system**

1. In case of the application of Article 56 and by way of derogation from Article 53, the premium shall be paid to farmers who have kept animals for a minimum retention period of 2 months ending less than 1 month before the date of slaughter or consignment or ending less than 2 months before the date of export.

In the case of steers, payment of the premium shall be subject to the following rules:

- (a) the premium in respect of the first age bracket shall be paid only if the farmer has kept the animal for a period of not less than 2 months between the time when the animal was not less than 7 months old and the time when it was less than 22 months old;
- (b) the premium in respect of the second age bracket may be paid only if the farmer has kept the animal aged not less than 20 months for a period of not less than 2 months;
- (c) the premiums in respect of the two age brackets may be paid together only if the farmer has kept the animal for not less than 4 consecutive months in compliance with the age requirements laid down in points (a) and (b);
- (d) the premium in respect of the second age bracket only may be paid if the animal was dispatched from another Member State when it had reached 19 months.

2. The carcass weight shall be established on the basis of a carcass within the meaning of Article 2 of Council Regulation (EC) No 1183/2006 <sup>(1)</sup>.

Where the carcass presentation differs from that definition, the corrective factors set out in Annex III to Commission Regulation (EC) No 1249/2008 <sup>(2)</sup> shall apply.

<sup>(1)</sup> OJ L 214, 4.8.2006, p. 1.

<sup>(2)</sup> OJ L 337, 16.12.2008, p. 3.

Where slaughter takes place in a slaughterhouse which is not subject to the application of the Community grading scale for carcasses of adult bovine animals, Member States may permit the weight to be established on the basis of the live weight of the slaughtered animal. In such cases the carcass weight shall be considered to be equal to or greater than 185 kilograms if the live weight of the slaughtered animal was equal to or greater than 340 kilograms.

#### Article 58

##### **Notification**

Member States shall notify the Commission before the start of the calendar year concerned of their decision, or any amendments thereto, concerning the application of Article 56 and the relevant procedures.

#### Section 2

##### **Suckler cow premium**

#### Article 59

##### **Cows belonging to a meat breed**

For the purposes of Article 109(d) and Article 115(2) of Regulation (EC) No 73/2009, cows belonging to the bovine breeds listed in Annex IV to this Regulation shall not be considered to be cows belonging to a meat breed.

#### Article 60

##### **Maximum individual quota**

1. Where Member States decide to change the maximum individual quota of 120 000 kilograms referred to in Article 111(2)(b) of Regulation (EC) No 73/2009 or to derogate from it, they shall inform the Commission before 1 January of the calendar year concerned.

2. Any subsequent change in the application of paragraph 1 shall be notified to the Commission by 31 December of the year concerned.

#### Article 61

##### **Retention period**

The 6-month retention period provided for in the second subparagraph of Article 111(2) of Regulation (EC) No 73/2009 shall start on the day following that on which the application is submitted.

#### Article 62

##### **Applications**

1. Without prejudice to the requirements under the integrated system, where the application for direct payments provided for in Article 19 of Regulation (EC) No 73/2009 includes an application for the premium to be granted pursuant to Article 111(2)(b) of Regulation (EC) No 73/2009, it shall contain:

- (a) a statement setting out the individual milk quota available to the producer on 31 March preceding the beginning of the 12-month period of application of the surplus levy scheme starting in 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;
- (b) an undertaking by the farmer not to increase his individual quota above the quantitative limit laid down in Article 111(2)(b) of Regulation (EC) No 73/2009 during the 12-month period starting on the date on which the application is submitted.

Point (b) shall not apply if the Member State has abolished the quantitative limit.

2. Applications for suckler cow premium shall be submitted within an overall period of 6 months during a calendar year, to be determined by the Member State.

Member States may provide for separate periods or dates for submitting applications within that overall period and the number of applications that farmers may submit for the premium and per calendar year.

#### Article 63

##### **Average milk yield**

The average milk yield shall be calculated on the basis of the average yields set out in Annex V. However, for that calculation, Member States may use a document recognised by them certifying the farmer's dairy herd's average yield.

#### Article 64

##### **Additional national premium**

1. An additional national suckler cow premium as provided for in Article 111(5) of Regulation (EC) No 73/2009 may be granted only to a farmer who, in respect of the same calendar year, receives the suckler cow premium.

The additional national suckler cow premium shall be granted only within the limit of the number of animals qualifying for the suckler cow premium, if appropriate after application of the proportional reduction laid down in the second subparagraph of Article 115(1) of Regulation (EC) No 73/2009.

2. Member States may lay down additional conditions for the grant of the additional national suckler cow premium. They shall inform the Commission thereof in good time before those conditions are brought into effect.

3. The Commission shall decide by 31 August at the latest of each calendar year which Member States fulfil the conditions laid down in the third subparagraph of Article 111(5) of Regulation (EC) No 73/2009.

*Article 65***Individual ceiling**

Member States shall determine an individual ceiling per farmer in accordance with Article 112(1) of Regulation (EC) No 73/2009.

*Article 66***Notification**

1. Member States shall notify the Commission by 31 December each year:

- (a) of any change to the reduction referred to in the second subparagraph of Article 113(2) of Regulation (EC) No 73/2009;
- (b) where applicable, of any amendments to the measures taken pursuant to Article 113(3)(a) of that Regulation.

2. The Member States shall notify the Commission by electronic means using the form made available to them by the Commission the following information by 31 July at the latest for each calendar year:

- (a) the number of premium rights returned without compensatory payment to the national reserve following transfers of rights without transfers of holdings during the preceding calendar year;
- (b) the number of unused premium rights as referred to in Article 69(2) transferred to the national reserve during the preceding calendar year;
- (c) the number of rights granted under Article 114(3) of Regulation (EC) No 73/2009 during the preceding calendar year.

*Article 67***Rights obtained free of charge**

Except in duly justified exceptional cases, where a farmer has obtained premium rights free of charge from the national reserve he shall not be authorised to transfer and/or temporarily lease his rights during the three following calendar years

*Article 68***Use of rights**

1. A farmer holding rights may make use of them by availing himself of those rights and/or leasing those rights to another producer.

2. Where a farmer has not made use of at least the minimum percentage of his rights, fixed in accordance with paragraph 4, during each calendar year, the part not used shall be transferred to the national reserve, except:

- (a) in the case of a farmer holding a maximum of seven premium rights, where this farmer has not made use of the minimum percentage of his rights, fixed in accordance with paragraph 4, during each of two consecutive calendar years, the part not used during the last calendar year shall be transferred to the national reserve;
- (b) in the case of a farmer participating in an extensification programme recognised by the Commission;
- (c) in the case of a farmer participating in an early retirement scheme recognised by the Commission in which the transfer and/or temporary leasing of rights is not obligatory; or
- (d) in exceptional and duly justified cases.

3. Temporary leasing shall be only in respect of whole calendar years and shall involve at least the minimum number of animals provided for in Article 69(1). At the end of each period of temporary leasing, which may not exceed three consecutive years, a farmer shall, except in the event of a transfer of rights, recover all his rights for himself, for at least two consecutive calendar years. If the farmer does not avail himself of at least the minimum percentage of his rights, fixed in accordance with paragraph 4, during each of the 2 years, the Member State shall, except in exceptional and duly justified cases, withdraw and return annually to the national reserve that part of the rights not used by the farmer.

However, in the case of farmers participating in early retirement schemes recognised by the Commission, Member States may provide for the total duration of the temporary leasing on the basis of such schemes to be increased.

Farmers who have undertaken to participate in an extensification programme in accordance with the measure referred to in Article 2(1)(c) of Regulation (EEC) No 2078/92 or in an extensification programme in accordance with Articles 22 and 23 of Regulation (EC) No 1257/1999 or in an extensification programme in accordance with Article 39 of Regulation (EC) No 1698/2005 shall not be authorised to temporarily lease and/or to transfer their rights throughout the period of that participation. However, this subparagraph shall not apply in cases where the programme permits the transfer and/or temporary leasing of rights to farmers whose participation in the measures other than those referred to in this subparagraph requires the acquisition of rights.

4. The minimum percentage of use of rights to the premium shall be 70 %. However, the Member States may raise this percentage up to 100 %.

The Member States shall inform the Commission in advance of the percentage that they intend to apply or of any change of this one.

*Article 69***Transfer of rights and temporary leasing**

1. Member States may lay down, on the basis of their production structures, a minimum number of premium rights which may be the subject of a partial transfer not involving the transfer of a holding. This minimum may not exceed five premium rights.

2. Transfers of premium rights and temporary leasing of such rights shall be effective only after they have been notified jointly to the competent authorities of the Member State by the farmer transferring and/or leasing the rights and by the farmer receiving the rights.

Such notification shall take place within a deadline set by the Member State and not later than the date on which the farmer receiving the rights submits his premium application, except in those cases where the transfer of rights takes effect through an inheritance. In that case, the farmer who receives the rights shall be in a position to furnish appropriate legal documents to prove that he or she is the beneficiary of the deceased farmer.

*Article 70***Change of individual ceiling**

In the case of transfers or temporary leasing of premium rights, Member States shall set the new individual ceiling and shall notify the farmers concerned of the number of premium rights to which they are entitled not later than 60 days from the last day of the period during which the farmer submitted his application.

The first paragraph shall not apply in the case where the transfer takes effect through an inheritance.

*Article 71***Farmers who do not own the land that they farm**

Farmers farming only public land or collectively owned land who decide to discontinue the farming of such land and to transfer all their rights to another farmer shall be treated in the same way as farmers selling or transferring their holdings. In all other cases such farmers shall be treated in the same way as farmers transferring their premium rights only.

*Article 72***Transfer through the national reserve**

Where Member States provide that the transfer of rights without transfer of the holding is to take place through the national reserve in accordance with Article 113(3)(b) of Regulation (EC) No 73/2009, they shall apply national provisions analogous to those set out in Articles 69 to 71. In addition, in this event:

- Member States may provide that temporary leasing is to take place through the national reserve,
- when premium rights are transferred, or temporarily leased in cases where the first indent is applied, transfers to the reserve shall be effective only after they have been notified by the competent authorities of the Member State to the farmer transferring and/or leasing the rights, and transfers from the reserve to another farmer shall be effective only after they have been notified to that farmer by these authorities.

In addition, such provisions must ensure that a payment will be made by the Member State for that part of the rights other than the part referred to in the second subparagraph of Article 113(2) of Regulation (EC) No 73/2009 corresponding to that which would have resulted from a direct transfer between farmers, account being taken in particular of the trend of production in the Member State concerned. This payment shall be equal to the payment which will be claimed from farmers receiving equivalent rights from the national reserve.

*Article 73***Partial rights**

1. Where calculations to be made pursuant to Articles 65 to 72 produce numbers which are not whole numbers, only the first decimal place shall be taken into account.
2. Where application of the provisions of this Section results in partial premium rights, either for farmers or the national reserve, these partial rights shall be added up.
3. Where a farmer holds a partial right, this partial right shall only confer entitlement to the corresponding fraction of the unit amount of the premium and, where applicable, of the additional national premium referred to in Article 64.

*Article 74***Special scheme for heifers**

1. Member States wishing to make use of the possibility provided for in Article 115(1) of Regulation (EC) No 73/2009 shall inform the Commission thereof and, at the same time, notify the Commission of the relevant data allowing establishing whether the conditions laid down in Article 115(1) of that Regulation are met.

Member States concerned shall also, where applicable, communicate the specific ceiling that they have determined.

The Commission shall decide which Member States meet the conditions laid down in Article 115(1) of Regulation (EC) No 73/2009.

The decisions in force at the time of the entry into force of this Regulation shall continue to apply.

2. Member States meeting the conditions laid down in Article 115(1) of Regulation (EC) No 73/2009 shall notify the Commission, before 1 January of the year concerned, of any modification of the specific national ceiling that they have determined.

3. Member States applying the special scheme shall lay down criteria to ensure that the premium is paid to farmers whose herd of heifers is intended to restock cow herds. Those criteria may include in particular an age limit and/or breed requirements. Member States shall inform the Commission by 31 December of the year before the year concerned of the criteria adopted. Any subsequent modification shall be notified to the Commission by 31 December of the year before the year concerned.

4. Where the application of the proportional reduction referred to in the second subparagraph of Article 115(1) of Regulation (EC) No 73/2009 gives a number of eligible animals which is less than a whole number, there shall be granted in respect of the decimal part a corresponding fraction of the unit amount of the premium and, where applicable, of the additional national premium referred to in Article 64. For this purpose account shall be taken of the first decimal place only.

5. In Member States applying the special scheme, the requirement laid down in Article 111(2) of Regulation (EC) No 73/2009 concerning the minimum number of animals to be held shall be met in full either by suckler cows if the farmer has lodged an application for suckler cows or by heifers if the farmer has lodged an application for heifers.

6. The provisions of Articles 65 to 73 shall not apply to this special scheme.

#### Article 75

### **Rounding-off of animal numbers**

If the calculation of the maximum number of heifers as a percentage as laid down in the second subparagraph of Article 111(2) of Regulation (EC) No 73/2009 produces a result which is not a whole number, that number shall be rounded down to the nearest whole number if it is less than 0,5 and up to the nearest whole number if it is 0,5 or more.

#### Section 3

### **Provisions common to the special premium and the suckler cow premium**

#### Article 76

### **Applications for the special premium and the suckler cow premium**

Member States may, for administrative reasons, provide that aid applications for direct payments referred to in Article 19 of Regulation (EC) No 73/2009, as regards the special premium and the suckler cow premium, shall be for a minimum number of animals, provided that that number does not exceed three.

#### Section 4

### **Slaughter premium**

#### Article 77

### **Statement of participation**

Member States may provide that in order to qualify for the slaughter premium provided for in Article 116 of Regulation (EC) No 73/2009 for a given calendar year each farmer shall, before or at the same time as making the first application for that calendar year, submit a statement of participation.

However, where the farmer makes no changes to the statement of participation, the Member State may accept that the previous statement remains valid.

#### Article 78

### **Applications**

1. Aid applications shall include the information needed for payment of the slaughter premium, in particular the date of birth of the animal in the case of animals born after 1 January 1998.

Aid applications shall be submitted within a period to be determined by the Member State which may not exceed 6 months following slaughter of the animal or, where the animal is exported, after the date on which it leaves Community customs territory. That period shall expire no later than the end of February of the following year except in exceptional cases to be decided by the Member State concerned where animals are dispatched or exported. Subject to that time limit, the Member States may set periods and dates for the submission of aid applications and may determine the number of applications that each farmer may submit per calendar year.

Member States may permit applications to be submitted through a person other than the farmer. In such cases the application shall bear the name and address of the farmer who is liable to qualify for the slaughter premium.

In addition to the requirements introduced as part of the integrated system, each application shall contain:

- (a) in cases where the grant is made at the time of slaughter, a certificate from the slaughterhouse or any document produced or endorsed by the slaughterhouse containing at least the same information, showing:
  - (i) the name and address of the slaughterhouse (or an equivalent code);
  - (ii) the date of slaughter and the identity and slaughter numbers of the animal;
  - (iii) in the case of calves, the carcase weight, save where Article 79(4) applies;

- (b) in cases where the animal is exported to a third country:
- (i) the name and address of the exporter (or an equivalent code);
  - (ii) the identity number of the animal;
  - (iii) the export declaration stating the age of the animal for animals born after 1 January 1998 and, in the case of calves, save where Article 79(4) applies, the live weight, which may not exceed 300 kilograms;
  - (iv) proof that the animal has left Community customs territory, shown in the same manner as for an export refund.

Member States may provide that the information referred to in points (a) and (b) of the fourth subparagraph shall be forwarded via a body or bodies approved by the Member State, which may use information technology.

Member States shall carry out regular, unannounced checks on the accuracy of the certificates or documents issued and, where appropriate, the information referred to in the fourth subparagraph.

2. By way of derogation from paragraph 1, Member States may provide that information on the slaughter of animals, entered in the computerised databases referred to in Article 3(b) of Regulation (EC) No 1760/2000, forwarded to the competent authority by slaughterhouses shall be regarded as applications for slaughter premiums on behalf of the farmers, on condition that those databases offer, to the satisfaction of the Member State, adequate assurances as to the accuracy of the data they contain for the purposes of the slaughter premium scheme and, where applicable, the payment on slaughter of the special premium.

However, Member States may provide that applications shall be submitted. In such a case they may determine the type of information that shall accompany the application.

Member States choosing to apply this paragraph shall inform the Commission of any subsequent change before it is implemented.

Member States shall ensure that the data made available to the paying agency includes all the information needed to pay the slaughter premium, in particular:

- (a) the types and quantities of animals as referred to in Article 116(1) of Regulation (EC) No 73/2009 slaughtered during the year concerned;
- (b) information regarding compliance with the age limits and carcase weight of the animals referred to in that Article and with the retention period referred to in Article 80 of this Regulation;
- (c) where applicable, the information needed to pay the special premium at the time of slaughter.

3. For animals which have been the subject of intra-Community trade after the retention period referred to in Article 80, even if the Member State where slaughter was carried out chose to apply the derogation laid down in paragraph 2 of this Article, the slaughterhouse shall issue the document referred to in point (a) of the fourth subparagraph of paragraph 1 of this Article.

However, where their data transfer systems are compatible, two Member States may agree to apply paragraph 2.

Member States shall assist one another to ensure effective controls on the authenticity of documents submitted and/or the accuracy of the data exchanged. To that end the Member State where payment is made shall forward regularly to the Member State where slaughter takes place a summary, grouped by slaughterhouse, of the slaughter certificates (or information in place thereof) received from the latter Member State.

#### Article 79

#### Weight and presentation of carcasses

1. For the purposes of Article 116(1)(b) of Regulation (EC) No 73/2009, veal carcasses shall be presented after skinning, evisceration and bleeding, without the head or the feet but with the liver, kidneys and kidney fat.

2. The weight to be taken into consideration shall be the weight of the carcase after chilling, or the warm weight of the carcase established as soon as possible after slaughter, reduced by 2 %.

3. Where carcasses are presented without the liver, kidneys and/or kidney fat, their weight shall be increased by:

- (a) 3,5 kilograms for the liver;
- (b) 0,5 kilogram for the kidneys;
- (c) 3,5 kilograms for the kidney fat.

4. Member States may provide that where a calf is less than 6 months old at the time of slaughter or export, the weight requirement referred to in Article 116(1)(b) of Regulation (EC) No 73/2009 shall be deemed to have been met.

Where the carcase weight cannot be established in the slaughterhouse, the weight requirement referred to in Article 116(1)(b) of Regulation (EC) No 73/2009 shall be deemed to have been met if the live weight does not exceed 300 kilograms.

#### Article 80

#### Retention period

1. The slaughter premium shall be paid to the farmer who has held the animal for a minimum retention period of 2 months ending less than 1 month before slaughter or ending less than 2 months before export.

2. In the case of calves slaughtered before the age of 3 months, the retention period shall be 1 month.

#### Article 81

##### National ceilings

1. The national ceilings referred to in Article 116(1) and (3) of Regulation (EC) No 73/2009 are set out in Annex VI to this Regulation.

2. Where the application of the proportional reduction provided for in Article 116(4) of Regulation (EC) No 73/2009 gives a number of eligible animals which is less than a whole number, there shall be granted in respect of the decimal part a corresponding fraction of the unit amount of the slaughter premium. For this purpose account shall be taken of the first decimal place only.

#### Section 5

##### General provisions

#### Article 82

##### Payment of advances

1. In accordance with Article 29(4)(a) of Regulation (EC) No 73/2009, on the basis of the results of administrative checks and on-the-spot checks, the competent authority shall pay to the farmer, for the number of animals deemed to be eligible, an advance equal to 60 % of the special premium, the suckler cow premium and the slaughter premium.

In the case of the special premium, the special scheme for heifers referred to in Article 74 and the slaughter premium, the advance percentage may be reduced by the Member States but may not be less than 40 %.

The advance may not be paid before 16 October of the calendar year in respect of which the premium is applied for.

2. The definitive payment of the premium shall be an amount equal to the difference between the advance payment and the amount of the premium to which the farmer is entitled.

#### Article 83

##### Allocation year

1. The date of submission of the application shall constitute the operative event for determining the year to which animals covered by the special premium and suckler cow premium schemes are allocated and the number of livestock units (LUs) to be used for calculating the stocking density.

However, if the special premium is granted in accordance with Article 56, the amount of the premium applicable shall be that in force on 31 December of the year in which slaughter or export took place in the following cases:

- (a) where the animal was slaughtered or exported no later than 31 December;
- (b) where the premium application for that animal is submitted after that date.

2. As regards the slaughter premium, for the purposes of applying the rate of aid and calculating the proportional reduction in accordance with Article 81, the allocation year shall be the year of slaughter or export.

#### Article 84

##### Penalties for the illegal use or holding of certain substances or products

In the event of repeated infringements through the illegal use or holding of substances or products not authorised by the relevant Community regulations in the veterinary sector, Member States shall determine, in the light of the seriousness of the infringement, the length of the exclusion from the aid schemes pursuant to the second subparagraph of Article 119(1) of Regulation (EC) No 73/2009.

#### Article 85

##### Determination of the individual quota for milk

Up to the end of the seventh consecutive period laid down in Article 66 of Regulation (EC) No 1234/2007, by way of derogation from the dates set out in Article 62(1)(a) of this Regulation, a Member State may decide that in the case of milk farmers who release or take over all or part of individual quota with effect on 31 March or 1 April respectively in accordance with Article 65(i) and (k) of Regulation (EC) No 1234/2007 or pursuant to national provisions adopted for the implementation of Articles 73, 74 and 75 of that Regulation, the maximum individual quota of milk available to qualify for the suckler cow premium and the maximum number of suckler cows shall be determined on 1 April.

#### Article 86

##### Determination of retention periods

The last day of the retention periods referred to in Articles 53, 57(1), 61 and 80 shall be the day, whether a working day or not, preceding the day which bears the same number as the starting day for the period.

## Article 87

**Identification and registration of animals**

The requirement to identify and register animals laid down in Article 117 of Regulation (EC) No 73/2009 shall apply, for animals born before 1 January 1998, in accordance with the procedure laid down in Council Directive 2008/71/EC <sup>(1)</sup>, save in the case of animals which are the subject of intra-Community trade.

## TITLE III

**SPECIFIC RULES CONCERNING TITLE V OF REGULATION (EC) No 73/2009**

## CHAPTER 1

**Single area payment scheme**

## Article 88

**Minimum size of eligible area per holding**

The minimum size of eligible area per holding for which payments may be requested at a level higher than 0,3 ha, as provided for in the third sub-paragraph of Article 124(2) of Regulation (EC) No 73/2009, is set out in Annex VII to this Regulation.

## Article 89

**Agricultural areas**

The agricultural areas under the single area payment scheme, as provided for in Article 124(1) of Regulation (EC) No 73/2009, are set out in Annex VIII to this Regulation.

## Article 90

**Production of hemp**

The provisions related to hemp varieties referred to in Article 39(1) of Regulation (EC) No 73/2009 and Article 10 of Regulation (EC) No 1120/2009 shall apply *mutatis mutandis* as regards eligibility for the single area payment scheme.

## CHAPTER 2

**Complementary national direct payments**

## Article 91

**Coefficient of reduction**

Where in a given sector the complementary national direct payments would exceed the maximum level authorised by the Commission in accordance with Article 132(7) of Regulation (EC) No 73/2009, the rate of complementary national direct payments of the concerned sector shall be reduced proportionally by application of a coefficient of reduction.

<sup>(1)</sup> OJ L 213, 8.8.2008, p. 31.

## Article 92

**Eligibility conditions**

For the purposes of Article 132(7)(b) of Regulation (EC) No 73/2009, the Commission shall in particular take into account the (sub)sector specific financial envelopes referred to in Article 132(5) of that Regulation and the eligibility conditions applicable to the corresponding direct payment then applicable to the Member States other than the new Member States referred to in the fourth subparagraph of Article 132(2) of that Regulation.

For the purposes of Article 132 of Regulation (EC) No 73/2009 and of this Chapter 'corresponding direct payment then applicable to the Member States in the Member States other than the new Member States' means any direct payment listed in Annex I to Regulation (EC) No 73/2009 granted in the year of application of the complementary national direct payments whose eligibility conditions are similar to that of the complementary national direct payment concerned.

## Article 93

**Controls**

New Member States shall apply appropriate control measures in order to ensure that the conditions for the granting of the complementary national direct payments, as defined by the Commission authorisation in accordance with Article 132(7) of Regulation (EC) No 73/2009, are complied with.

## Article 94

**Annual report**

New Member States shall submit a report providing information on the measures for the implementation of the complementary national direct payments before 30 June of the year following their implementation. The report shall cover at least the following:

- (a) any changes in the situation affecting the complementary national direct payments;
- (b) for each complementary national direct payment, the numbers of beneficiaries, the total amount of complementary national aid granted, the hectares, the number of animals or other units of payment paid;
- (c) a report on control measures applied in accordance with Article 93.

## Article 95

**State aid**

Complementary national direct payments paid not in conformity with the authorisation by the Commission referred to in Article 132(7) of Regulation (EC) No 73/2009 shall be considered as unlawful State aid within the meaning of Council Regulation (EC) No 659/1999 <sup>(2)</sup>.

<sup>(2)</sup> OJ L 83, 27.3.1999, p. 1.

## TITLE IV

**REPEALS, TRANSITIONAL AND FINAL PROVISIONS***Article 96***Repeal**

1. Regulation (EC) No 1973/2004 is repealed with effect from 1 January 2010.

However it shall continue to apply to aid applications relating to the 2009 and previous premium years.

2. References made to Regulation (EC) No 1973/2004 shall be constructed as being made to this Regulation and shall be read in accordance with the correlation table set out in Annex IX.

*Article 97***Transitional rules**

By way of derogation from Article 32(2) and Article 159(1) of Regulation (EC) No 1973/2004 and in respect of the aid for

energy crops according to Chapter 8 and voluntary set-aside scheme according to Chapter 16 of that Regulation, the processing of the raw materials harvested in 2009 shall take place by the date established by the Member State concerned which shall not be later than 31 July 2011.

For crops other than annual crops to be harvested after 2009, Chapters 8 and 16 of Regulation (EC) No 1973/2004 shall cease to apply in respect of such harvest from 2010 and the securities lodged according to Articles 31(3) and 158(1) of Regulation (EC) No 1973/2004 shall be released by a date to be established by the Member State concerned which shall not be later than 31 July 2010.

*Article 98***Entry into force and application**

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

It shall apply to aid applications relating to premium periods starting from 1 January 2010.

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

Done at Brussels, 29 October 2009.

*For the Commission*  
Mariann FISCHER BOEL  
*Member of the Commission*

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## ANNEX I

**CROP-SPECIFIC PAYMENT FOR RICE****Calculation of the coefficient of reduction referred to in Article 8**

1. For the observation of a possible overrun of the base area referred to in Article 76 of Regulation (EC) No 73/2009, the competent authority of the Member State shall take into account, on the one hand, the base areas or sub-base areas, fixed in Article 75 of that Regulation, and on the other hand, the total of the areas for which aid applications have been submitted for these base areas and sub-base areas.
2. In establishing the total area for which aid applications have been submitted, account shall not be taken of applications or parts of applications that a check has shown to be clearly unjustified.
3. If an overrun is observed for certain base areas or sub-base areas, the Member State shall establish for these, the percentage of overrun, calculated with two decimal places according to the deadline fixed in Article 6 of this Regulation. When an overrun can be foreseen, the Member State shall inform the producers forthwith.
4. The coefficient of reduction of the crop-specific payment for rice shall be calculated, in accordance with Article 76 of Regulation (EC) No 73/2009, according to the following formula:

Reduction coefficient = reference area of the sub-base area divided by the total area for which aid applications have been submitted for this sub-base area.

The reduced crop-specific payment for rice shall be calculated according to the following formula:

Reduced crop-specific aid for rice = crop-specific aid for rice multiplied by the reduction coefficient.

This reduction coefficient and this reduced crop-specific payment for rice shall be calculated for each sub-base area, after application of the redistribution provided for in Article 76(2) of Regulation (EC) No 73/2009. Redistribution shall be done to the profit of the sub-base areas for which limits have been exceeded. It shall be done proportionally to the overruns noted in the sub-base areas for which limits have been exceeded.

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## ANNEX II

**TEST FOR BITTER LUPINS REFERRED TO IN ARTICLE 13**

To be performed on a sample of 200 grains taken from a batch of 1 kg from each lot of 20 t maximum.

The test is intended solely to provide qualitative evidence of the presence of bitter grains in the sample. The homogeneity tolerance is 1 grain per 100. Use the Grain-Cut method according to Von Sengbusch (1942), Ivanov and Smirnova (1932) and Eggebrecht (1949). Cut the dry or swollen grains crosswise. Place the half-grains in a sieve and dip in an iodine solution for 10 seconds, then rinse under water for 5 seconds. The cut surfaces of bitter grains turn brown while those low in alkaloids remain yellow.

To prepare the iodine solution, dissolve 14 g of potassium iodate in as little water as possible, add 10 g of iodine and dilute to 1 000 cm<sup>3</sup>. Leave the solution to stand for 1 week before use. Store in brown bottles. Dilute the stock solution to three to five times its initial volume before using.

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*ANNEX III***AREAS ELIGIBLE FOR RECEIVING THE GOAT PREMIUM**

1. Bulgaria: the whole country.
  2. Cyprus: the whole country.
  3. Portugal: the whole country, with the exception of the Azores.
  4. Slovenia: the whole country.
  5. Slovakia: all mountain areas within the meaning of Article 18 of Regulation (EC) No 1257/1999.
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## ANNEX IV

**LIST OF BOVINE BREEDS REFERRED TO IN ARTICLE 59**

- Angler Rotvieh (Angeln) — Rød dansk mælkerace (RMD) — German Red — Lithuanian Red
  - Ayrshire
  - Armoricaïne
  - Bretonne pie noire
  - Fries-Hollands (FH), Française frisonne pie noire (FFPN), Friesian-Holstein, Holstein, Black and White Friesian, Red and White Friesian, Frisona española, Frisona Italiana, Zwartbonten van België/pie noire de Belgique, Sortbroget dansk mælkerace (SDM), Deutsche Schwarzbunte, Schwarzbunte Milchrasse (SMR), Czarno-biała, Czerwono-biała, Magyar Holstein-Friz, Dutch Black and White, Estonian Holstein, Estonian Native, Estonian Red, British Friesian, črno-bela, German Red and White, Holstein Black and White, Red Holstein
  - Groninger Blaarkop
  - Guernsey
  - Jersey
  - Malkeborthorn
  - Reggiana
  - Valdostana Nera
  - Itäsuomenkarja
  - Länsisuomenkarja
  - Pohjoissuomenkarja.
-

## ANNEX V

## AVERAGE MILK YIELD REFERRED TO IN ARTICLE 63

	(kilograms)
Belgium	6 920
Czech Republic	5 682
Estonia	5 608
Spain	6 500
France	5 550
Cyprus	6 559
Latvia	4 796
Lithuania	4 970
Hungary	6 666
Austria	4 650
Poland	3 913
Portugal	5 100
Slovakia	5 006

## ANNEX VI

## NATIONAL CEILINGS FOR THE SLAUGHTER PREMIUM REFERRED TO IN ARTICLE 81(1)

	Adult bovines	Calves
Belgium	—	335 935
Spain	1 982 216	25 629
Portugal	325 093	70 911

## ANNEX VII

## MINIMUM SIZE OF ELIGIBLE AREA PER HOLDING UNDER THE SINGLE AREA PAYMENT SCHEME

New Member States	Minimum size of eligible area per holding referred to in Article 124(2) of Regulation (EC) No 73/2009 (ha)
Bulgaria	1 However, holdings with at least 0,5 ha of permanent crops may request payments
Cyprus	0,3
Czech Republic	1
Estonia	1
Hungary	1 However, holdings with more than 0,3 ha of orchards or vineyards may request payments
Latvia	1
Lithuania	1
Poland	1
Romania	1
Slovakia	1

## ANNEX VIII

## AGRICULTURAL AREA UNDER THE SINGLE AREA PAYMENT SCHEME

New Member States	Agricultural area under the single area payment scheme referred to in Article 124(1) of Regulation (EC) No 73/2009 (thousands ha)
Bulgaria	3 492
Cyprus	140
Czech Republic	3 469
Estonia	800
Hungary	4 829
Latvia	1 475
Lithuania	2 574
Poland	14 337
Romania	8 716
Slovakia	1 880

## ANNEX IX

**Correlation table**

Regulation (EC) No 1973/2004	Present Regulation
Article 1	Article 1
Article 2	Article 5
Article 2(2)	Article 5(3)
Article 2(3)	Article 3
Article 2(5)	Article 13
Article 3	Article 4
Article 4	Article 6
Article 5	—
Article 6	—
Article 7	—
Article 8	—
Article 9	—
Article 10	—
Article 11	Article 14
Article 12	Article 7
Article 13	Article 8
Article 14	Article 9
Article 15	Article 15
Article 16	Article 16
Article 17	Article 17
Article 18	—
Article 19	Article 10
Article 20	Article 11
Article 21	Article 12
Article 22	—
Article 23	—
Article 24	—
Article 25	—
Article 26	—
Article 27	—
Article 28	—
Article 29	—
Article 30	—
Article 31	—
Article 32	—
Article 33	—
Article 34	—
Article 35	—
Article 36	—
Article 36a	—
Article 37	—
Article 38	—

Regulation (EC) No 1973/2004	Present Regulation
Article 39	—
Article 40	—
Article 41	—
Article 42	—
Article 43	—
Article 44	—
Article 45	—
Article 46	Article 18
Article 47	Article 19
Article 48	Article 20
Article 49	Article 21
Article 49a	Article 22
Article 50	Article 23
Article 51	—
Article 52	—
Article 53	—
Article 54	—
Article 55	—
Article 56	—
Article 57	—
Article 58	—
Article 59	—
Article 60	—
Article 61	—
Article 62	—
Article 63	—
Article 64	—
Article 65	—
Article 66	—
Article 67	—
Article 68	—
Article 69	—
Article 70	Article 35
Article 71	Article 36
Article 72	Article 37
Article 73	Article 38
Article 74	Article 39
Article 75	Article 40
Article 76	Article 41
Article 77	Article 42
Article 78	Article 43
Article 79	Article 44
Article 80	Article 45
Article 81	Article 46
Article 82	Article 47

Regulation (EC) No 1973/2004	Present Regulation
Article 83	Article 48
Article 84	Article 49
Article 85	—
Article 86	—
Article 87	Article 50
Article 88	Article 51
Article 89	Article 52
Article 90	Article 53
Article 91	Article 54
Article 92	Article 55
Article 93	Article 56
Article 94	Article 57
Article 95	Article 58
Article 96	—
Article 97	—
Article 98	—
Article 99	Article 59
Article 100	Article 60
Article 101	Article 61
Article 102	Article 62
Article 103	Article 63
Article 104	Article 64
Article 105	Article 65
Article 106	Article 66
Article 107	Article 67
Article 108	Article 68
Article 109	Article 69
Article 110	Article 70
Article 111	Article 71
Article 112	Article 72
Article 113	Article 73
Article 114	Article 74
Article 115	Article 75
Article 116	Article 76
Article 117	—
Article 118	—
Article 118a	—
Article 118b	—
Article 118c	—
Article 118d	—
Article 119	—
Article 120	Article 77
Article 121	Article 78
Article 122	Article 79
Article 123	Article 80

Regulation (EC) No 1973/2004	Present Regulation
Article 124	Article 81
Article 125	—
Article 126	Article 82
Article 127	Article 83
Article 128	—
Article 129	Article 84
Article 130	Article 85
Article 130a	Article 86
Article 131	—
Article 132	Article 87
Article 133	—
Article 134	Article 88
Article 135	Article 89
—	Article 90
Article 136	—
Article 137	—
Article 138	—
Article 139	Article 91
Article 139a	Article 92
Article 140	Article 93
Article 141	Article 94
Article 142	Article 95
Article 142a	—
Article 143	—
Article 144	—
Article 145	—
Article 146	—
Article 147	—
Article 148	—
Article 149	—
Article 150	—
Article 151	—
Article 152	—
Article 153	—
Article 154	—
Article 155	—
Article 156	—
Article 157	—
Article 158	—
Article 159	—
Article 160	—
Article 163	—
Article 164	—
Article 165	—
Article 166	—

Regulation (EC) No 1973/2004	Present Regulation
Article 167	—
Article 168	—
Article 169	—
Article 170	—
Article 171	—
Article 171a	Article 24
Article 171aa	Article 25
Article 171ab	Article 26
Article 171ac	Article 27
Article 171ad	Article 28
Article 171ae	Article 29
Article 171af	Article 30
Article 171ag	—
Article 171 ah	—
Article 171 ai	—
Article 171b	—
Article 171ba	—
Article 171bb	—
Article 171bc	—
Article 171c	—
Article 171ca	—
Article 171cb	—
Article 171cc	—
Article 171cd	—
Article 171ce	—
Article 171cf	—
Article 171cg	—
Article 171ch	—
Article 171ci	—
Article 171cj	—
Article 171ck	—
Article 171cl	—
Article 171cm	—
Article 171cn	—
Article 171co	—
Article 171cp	—
Article 171d	Article 31
Article 171da	Article 32
Article 171db	Article 33
Article 171dc	Article 34
Article 172	Article 96
—	Article 97
Article 173	Article 98
Annex I	Annex II
Annex II	Annex I

Regulation (EC) No 1973/2004	Present Regulation
Annex III, IV, V, VI, VII, VIII, IX	—
Annex X	Annex III
Annex XI, XII, XIII, XIV	—
Annex XV	Annex IV
Annex XVI	Annex V
Annex XVII	Annex VI
Annex XVIII, XIX	—
Annex XX	Annex VII
Annex XXI	Annex VIII
Annex XXII-XXX	—

## COMMISSION REGULATION (EC) No 1122/2009

of 30 November 2009

**laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) <sup>(1)</sup>, and in particular Articles 85x and 103za, in conjunction with Article 4 thereof,

Having regard to Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003, and in particular Article 142 (b), (c), (d), (e), (h), (k), (l), (m), (n), (o), (q) and (s) thereof,

Whereas:

(1) Regulation (EC) No 73/2009 repeals and replaces 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) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 and introduces a number of modifications to the single payment scheme as well as certain other direct payment schemes. At the same time it abolishes a number of direct payment schemes as from 2010. Moreover, it introduces a number of changes to the system 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) are to be subject to reductions or exclusions.

(2) The direct payment schemes were first introduced as a result of the reform of the common agricultural policy in 1992 and further developed under subsequent reforms.

The schemes have been subject to an integrated administration and control system (hereinafter referred to as integrated system). That system, as laid down in Commission Regulation (EC) No 796/2004 of 24 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulations (EC) No 1782/2003 and (EC) No 73/2009, as well as for the implementation of cross compliance provided for in Council Regulation (EC) No 479/2008 <sup>(2)</sup>, has proven to be an effective and efficient means for the implementation of direct payment schemes. Regulation (EC) No 73/2009 builds upon the basis of that integrated system.

(3) Taking into account the modifications made to the direct payments by Regulation (EC) No 73/2009, it is appropriate to repeal and replace Regulation (EC) No 796/2004, whilst basing the new Regulation on the principles as established by Regulation (EC) No 796/2004. At the same time, as a consequence of the incorporation of the wine sector in Council Regulation (EC) No 1234/2007, it is appropriate to replace references to Council Regulation (EC) No 479/2008 <sup>(3)</sup> existing in Regulation (EC) No 796/2004 by references to Regulation (EC) No 1234/2007. For reasons of coherence, certain provisions of Regulation (EC) No 796/2004 should be incorporated into Commission Regulation (EC) No 1120/2009 <sup>(4)</sup> which has repealed and replaced 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 <sup>(5)</sup>.

(4) Regulation (EC) No 73/2009 leaves a choice for the Member States with regard to the application of some of the aid schemes provided for therein. This Regulation should, therefore, make provision for the administration and control to be carried out in the Member States in view of their possible choice to enter certain aid schemes. The relevant provisions of this Regulation should, therefore, only apply to the extent as the Member States have made such choices.

<sup>(1)</sup> OJ L 299, 16.11.2007, p. 1.

<sup>(2)</sup> OJ L 141, 30.4.2004, p. 18.

<sup>(3)</sup> OJ L 148, 6.6.2008, p. 1.

<sup>(4)</sup> See Page 1 of this Official Journal.

<sup>(5)</sup> OJ L 141, 30.4.2004, p. 1.

- (5) Regulation (EC) No 73/2009 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 the ratio is decreasing to the detriment of land under permanent pasture.
- (6) To allow 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 17 of Regulation (EC) No 73/2009. According to that provision, use has to be made of computerised geographical information system techniques (GIS). It is necessary to clarify at which level the system should operate and the level of details of information that should be available in the GIS.
- (8) In order to ensure a proper implementation of the single payment scheme as provided for in Title III of Regulation (EC) No 73/2009, 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.
- (9) Monitoring the adherence to the different cross-compliance obligations requires the setting-up of a control system and of appropriate reductions. 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.
- (10) For the sake of simplification, Member States should be allowed to decide that all applications for aid under Titles III and IV of Regulation (EC) No 73/2009 shall be covered by the single application.
- (11) Member States should take the required measures to make a proper functioning of the integrated system possible where more than one paying agency is responsible with regard to the same farmer.
- (12) To allow 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 area-related. A single application form should, moreover, be submitted by farmers who do not apply for any of the aids subject to the single application if they have agricultural area at their disposal. However, it is appropriate to allow Member States to exempt farmers from this obligation, where the information is already available to the authorities.
- (13) Member States should fix a deadline for submission of the single application which, in order to allow timely proceeding and controls of the application, should not be later than the 15 May. Due to the particular climatic conditions in Estonia, Latvia, Lithuania, Finland and Sweden, those Member States should however be allowed to set a later date which should not be later than 15 June. Moreover, case-by-case derogations should be envisaged on that same legal basis should climatic conditions in a given year in the future so require.
- (14) In the single application, the farmer should declare not only the area he is using for agricultural purposes but also his payment entitlements and any information required in order to establish the eligibility for the aid should be requested together with the single application. It is however appropriate to allow Member States to derogate from certain obligations where the payment entitlements to be allocated in the given year are not yet definitively established.
- (15) With a view to simplifying the application procedures and in accordance with Article 19(2) of Regulation (EC) No 73/2009, provision should, in this context, be made for Member States to provide the farmer as far as possible with pre-established information.
- (16) Any specific information related to production of hemp, nuts starch potato, seeds, cotton, fruit and vegetables and specific support covered by the single application should be requested together with the single application, or where appropriate due to the nature of the information at a later date. It should, furthermore, be provided that areas for which no aid is being requested, are declared in the single application form. Depending on the kind of use, it may be important to have detailed information which is why certain uses should be declared separately whilst other uses may be declared under one heading. However, in cases where Member States already receive that kind of information, derogation from this rule should be allowed.
- (17) To allow effective monitoring, each Member State should, furthermore, determine the minimum size of agricultural parcels that may be subject to an aid application.
- (18) 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 should be given to adjust the corresponding supporting documents or contracts to be submitted.

- (19) The punctual lodging of the application for increase of value or allocation of payment entitlements under the single payment scheme is crucial for an effective administration. Member States should therefore establish a deadline for the application, which should not be later than the 15 May. To simplify procedures Member States should be allowed to decide that the application may be submitted at the same time as the single application. For this reason, Estonia, Latvia, Lithuania, Finland and Sweden should however be allowed to set a later date which should not be later than 15 June.
- (20) 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.
- (21) In accordance with Article 117 of Regulation (EC) No 73/2009, 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 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 <sup>(1)</sup>. Farmers submitting applications under the aid schemes concerned should therefore be given access to the relevant information in due time.
- (22) The aid for sugar beet and cane producers, the separate sugar payment and the separate fruit and vegetables payment are, due to their nature, not related to agricultural area, which is why the provisions concerning the single application do not apply to those payment schemes. Provision should therefore be made for an appropriate application procedure.
- (23) Further requirements to the application for specific support under Article 68 of Regulation (EC) No 73/2009 other than area or livestock payments should be established. Due to the possible diversity of the specific support measures it is of particular importance that all information required to establish eligibility is submitted by the farmer. For practical reasons Member States should be allowed to require the supporting documents at a later date than the one which should be set for the application.
- (24) In the case of application of Article 68(1)(e) of Regulation (EC) No 73/2009, the beneficiaries are not the farmers but mutual funds having compensated farmers for economic loss. Special requirements should be established for the application for the support to mutual funds reflecting the information needed to establish their eligibility for the payment.
- (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. Further, it should, in order to simplify the administration for the farmers as well as for the national authorities, be possible for the national authorities to require the supporting documents needed to verify the eligibility of certain payments, directly from the source of information and not from the farmer.
- (26) Where aid applications contain obvious errors, it should be possible to adjust them at any time.
- (27) Rules should be established to deal with the situations where the latest date related to submission of various applications, documents or amendments is a public holiday, a Saturday or a Sunday.
- (28) 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 program and, subsequently, carry out effective controls 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.
- (29) The punctual submission of applications for payment entitlements by farmers is essential for the Member States with a view to the timely establishment of the payment entitlements. Late submissions of those applications should therefore only be permitted within the same additional time-limit as for the late submission of any aid applications. A dissuasive reduction-rate should also be applied unless the delay is due to cases of force majeure or exceptional circumstances.
- (30) 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.
- (31) 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 controls and on-the-spot checks in respect both of the eligibility criteria established for the aid schemes and the cross-compliance obligations. It is essential for the monitoring that the on-the-spot checks can be carried out. Applications should therefore be rejected if a farmer would prevent those checks from taking place.

<sup>(1)</sup> OJ L 204, 11.8.2000, p. 1.

- (32) Announcement of on-the-spot checks for eligibility or cross-compliance should only be allowed when this would not jeopardise the checks, and in any case appropriate time limits should be established. Furthermore, where specific sector rules for acts or standards under cross-compliance provide for on-the-spot checks to be un-announced, these rules should be respected.
- (33) It should be provided that, where appropriate, the Member States should undertake to combine the various controls.
- (34) With a view to an effective detection of irregularities in the administrative controls, provisions should be established in particular as regards the content of the cross-checks. Irregularities should be followed up by any appropriate procedure.
- (35) A frequent error when performing the cross-checks is a minor over-declaration of the total agricultural area within a reference parcel. For reasons of simplification, where a reference parcel is subject to an aid application of two or more farmers applying for aid under the same aid scheme and where the overall area declared exceeds the agricultural area with a difference which falls within the tolerance defined for measurement of agricultural parcels, Member States should be authorised to provide for a proportional reduction of the areas concerned. However, the farmers concerned should be entitled to appeal against such decisions.
- (36) When a Member State makes use of the possibility provided for in Article 68 of Regulation (EC) No 73/2009 and the payments are granted for areas or livestock it is appropriate to apply the same control rate as for other area-related and livestock payments. For other specific support measures, beneficiaries should be considered as a separate population and be submitted to a specific minimum control rate.
- (37) 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.
- (38) The determination of significant irregularities and non-compliances should require an increase in the level of the on-the-spot checks during the current and/or the following year to reach an acceptable level of assurance of the correctness of the aid applications concerned. The extension of the sample should, when it concerns cross-compliance, be targeting the acts or standards concerned.
- (39) 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 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.
- (40) 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 competent authority should establish the risk factors as it is in a better position to choose the relevant risk factors. To assure relevant and efficient risk analysis, the effectiveness of the risk analysis should be assessed and updated on an annual basis taking into account the relevance of each risk factor, comparing the results of randomly and risk-based selected samples and the specific situation in the Member States.
- (41) 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.
- (42) In certain cases it is relevant to carry out on-the-spot checks before all applications are received and Member States should therefore be allowed to make a partial selection of the control sample before the end of the application period.
- (43) To enable the national authorities as well as any competent Community authority to follow up on-the-spot checks carried out, the details of the 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 on-the-spot 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.
- (44) On-the-spot checks of area-related schemes should, to ensure proper monitoring, cover all agricultural parcels declared. It should however for the purpose of simplification be allowed that the actual determination of the parcels is limited to a sample of 50 % of the parcels. The sample should however be reliable and representative and increased in the case of anomalies. Results of the sample should be extrapolated to the rest of the population. It is appropriate to specify that Member States for the purpose of the on-the-spot checks may make use of certain technical tools.

- (45) Detailed rules regarding the determination of areas and the measurement methods to be used should be laid down to ensure a quality of the measurement which is equivalent to that required by technical standards as drawn up at Community level.
- (46) 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, some flexibility should be provided within the limits taken into account when the regional yields were fixed.
- (47) It should be established under what conditions agricultural parcels containing trees should be considered as eligible for the area-related schemes. It is also appropriate to establish a provision concerning the administrative procedure to follow in case of areas used in common.
- (48) 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. Due to for example weather conditions there might be cases where additional checks to be carried out following an increase in the rate of the on-the-spot check can no longer be carried out by means of remote sensing. In that case they should be carried out by traditional means.
- (49) Under the single payment scheme, farmers having special entitlements may receive support if they fulfill a certain activity requirement. For the sake of an effective verification of that requirement, Member States should lay down procedures for on-the-spot checks of farmers having special entitlements.
- (50) Given the particularities of the aid scheme for seed, cotton and sugar in accordance with Sections 5, 6 and 7 of Chapter 1 of Title IV of Regulation (EC) No 73/2009, special control provisions should be established.
- (51) Article 39(1) of Regulation (EC) No 73/2009 provides that in order to be eligible for direct payments, the varieties of hemp must have a tetrahydrocannabinol (THC) content not exceeding 0,2 %. With a view to the implementation of this rule, the system to be used by the Member States for the verification of THC content in hemp should be established.
- (52) Moreover, it is necessary to provide for a time period during which hemp grown for fiber may not be harvested after flowering in order to enable the control obligations provided for in respect of these crops to be carried out effectively.
- (53) 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.
- (54) 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 117 of Regulation (EC) No 73/2009, 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 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 left the holding.
- (55) For ovine and caprine, the on-the-spot checks should in particular cover the fulfillment of the retention period and the correctness of the entries in the register.
- (56) In the case where a Member State opts for the application of the slaughter premium, special provision should be made for on-the-spot 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.
- (57) 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.
- (58) 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 <sup>(1)</sup> 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. Where the controls under that Regulation are carried out, the results should be contained in the control report for the purposes of the integrated system.

<sup>(1)</sup> OJ L 156, 25.6.2003, p. 9.

- (59) Furthermore, there is a need to establish provisions as regards the control report in case of on-the-spot checks in slaughterhouses or when the premium is granted after export. For the purpose of coherence, it should also be provided that in case of non-compliance with the provisions of Title I of Regulation (EC) No 1760/2000 or Council Regulation (EC) No 21/2004 of 17 December 2003 establishing a system for the identification and registration of ovine and caprine animals and amending Regulation (EC) No 1782/2003 and Directives 92/102/EEC and 64/432/EEC <sup>(1)</sup> copies of the control reports should be sent to the authorities responsible for the application of those Regulations.
- (60) In the case where a Member State makes use of the possibility to grant specific support as provided for in Article 68 of Regulation (EC) No 73/2009, the control provisions established by this Regulation should be applied to the extent possible. Where it is not possible to apply those provisions, Member States should provide an equivalent control level. Specific requirements for control of payment applications by mutual funds and for investments should be established.
- (61) Regulation (EC) No 73/2009 introduces cross-compliance obligations for farmers receiving payments under all direct payment schemes listed in Annex I to that Regulation and provides for a system of reductions and exclusions where such obligations are not fulfilled. That system also applies to payments under Articles 85p, 103q and 103r of Regulation (EC) No 1234/2007. The details for that system should be established.
- (62) The details concerning which authorities in the Member States carry out controls on cross-compliance obligations should be established.
- (63) In certain cases it might be useful for the Member States to carry out administrative controls on cross-compliance obligations. However, such control tools should not be made compulsory for the Member States.
- (64) 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 subject to cross-compliance falling under the area of competence of each control authority to be selected on the basis of an appropriate risk analysis.
- (65) The Member States should be given the option to fulfill the minimum control rate at the level of each competent control authority, at the level of the paying agency or at the level of an act or standard, or group of acts or standards.
- (66) Where the specific legislation applicable to the act and standards fixes minimum control rates, Member States should respect these rates. However, Member States should be allowed to apply a single control rate for the cross-compliance on-the-spot checks. If Member States choose this option, any instance of non-compliance detected in the course of on-the-spot checks under the sectoral legislation should be reported and followed-up under cross-compliance.
- (67) Rules which in certain cases require a follow-up by the competent authority that a remedial action has been taken by the farmers have been established by Regulation (EC) No 73/2009. In order to avoid any weakening of the control system, in particular as to the sampling for the cross-compliance on-the-spot checks, it should be clarified that such follow-up cases should not be taken into account when establishing the minimum control sample.
- (68) The control sample for cross-compliance 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.
- (69) The sampling of on-the-spot checks for cross-compliance can be improved by allowing taking into account into the risk analysis the farmers participation in the farm advisory system provided for in Articles 12 of Regulation (EC) No 73/2009 as well as farmers participation in relevant certifications systems. It should however be demonstrated when taking that participation into account that the farmers participating in those schemes represent a lesser risk than farmers not participating in those schemes.
- (70) On-the-spot checks for cross-compliance would in general require several visits on the same farm. In order to reduce the burden of the checks for both farmers and administrations, the checks may be limited to one control visit. The timing of that visit should be clarified. Nevertheless, the Member States should ensure that a representative and effective check of the requirements and standards is performed within the same calendar year.
- (71) To simplify the cross-compliance on-the-spot checks and to make better use of existing control capacities, it should be provided, when the effectiveness of the controls is at least equal to that achieved when the on-the-spot checks are to be carried out, to replace controls at farm level by administrative controls or checks at the level of undertakings.

<sup>(1)</sup> OJ L 5, 9.1.2004, p. 8.

- (72) It should furthermore be possible for the Member States to make use of objective indicators specific to certain requirements or standards when performing the cross-compliance on-the-spot checks. Those indicators should however be directly linked to the requirements or standards they represent and cover all elements to be checked.
- (73) Rules for the setting-up of detailed and specific control reports for cross-compliance 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.
- (74) The farmers should be informed about any possible non-compliance determined following an on-the-spot check. It is appropriate to provide for a certain time limit within which the farmers should receive this information. However, exceeding such time limit should not entitle the farmers concerned to avoid the consequences that the determined non-compliance would otherwise trigger.
- (75) Reductions and exclusions should be established having regard to the principle of proportionality and the special problems linked to cases of force majeure as well as exceptional and natural circumstances. 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 seriousness 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.
- (76) In order to enable Member States to carry out controls effectively, in particular controls on the respect of cross-compliance obligations, farmers shall in accordance with Article 19(1)(a) of Regulation (EC) No 73/2009 declare all the areas at their disposal whether or not they claim aid for such areas. It is necessary to provide for a mechanism to ensure that farmers comply with that obligation.
- (77) For the sake of determination of areas and calculation of reductions it is necessary to define the areas falling within the same crop-group. An area should be taken into account several times if it is declared for aid under more than one aid scheme.
- (78) Payment of support under the single payment scheme requires an equal number of payment entitlements and eligible hectares. For the purpose of this scheme it is therefore appropriate to provide that the calculation of the payment in the case of discrepancies between the payment entitlements declared and the area declared should be based on the lower size. To avoid calculation based on non-existing entitlements, it should be provided that the number of payment entitlements used for the calculation should not exceed the number of payment entitlements at the farmers' disposal.
- (79) In relation to area aid applications, irregularities normally affect parts of areas. Over-declarations in respect of one parcel may, therefore, be off-set against under-declarations 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.
- (80) Furthermore, in relation to applications for area related payments, differences between the total area declared in the application and the total area determined as eligible are often insignificant. To avoid a high number of minor adjustments of applications it should be provided that the aid application should not be adjusted to the area determined unless a certain level of differences is exceeded.
- (81) Special provisions are necessary to take into account the particularities of aid applications under the aid schemes for starch potato, seed and cotton.
- (82) In the case where an over-declaration was intentional, special reduction rules should apply.
- (83) Implementing rules for the basis of calculation of livestock premiums should be laid down.
- (84) Farmers should be allowed to replace the bovine and ovine/caprine animals under certain conditions and within the limits allowed under the relevant sectoral rules.
- (85) 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.
- (86) With regard to ovine and caprine animals a number of specific provisions should be laid down due to the particularities of the sector.

- (87) Where, due to natural circumstances, a farmer is unable to fulfill the retention obligations under the sectoral rules, reductions and exclusions should not be applied.
- (88) 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, due to gross negligence or intentionally, issue incorrect certificates or declarations.
- (89) In case the specific support as provided for in Article 68 of Regulation (EC) No 73/2009 is granted as an area-related payment or a livestock payment, the provisions for reductions and exclusions to be hereto established should, to the extent possible, be applied *mutatis mutandis*. For other cases Member States should for each measure under the specific support provide for equivalent reductions and exclusions.
- (90) Information on the results of controls of cross-compliance should be made available to all paying agencies responsible for the management of the different payments subject to cross-compliance requirements so that, where the findings so justify, appropriate reductions are applied.
- (91) Furthermore, where the possibility not to apply any reduction for minor non-compliances or not to apply reductions amounting to EUR 100 or less, as provided for in Articles 23(2) or 24(2) of Regulation (EC) No 73/2009, is applied by a Member State, rules should be established where farmers fail to undertake the remedial action required from them.
- (92) 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.
- (93) 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.
- (94) 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.
- (95) 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 constitute 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.
- (96) Article 31 of Regulation (EC) No 73/2009 defines cases of force majeure and exceptional circumstances to be recognised by the Member States. Where, as a consequence of such cases, a farmer is not able to fulfill his obligations, he should not lose his right to the aid payment. A deadline within which such case is to be notified by the farmer should however be fixed.
- (97) 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.
- (98) 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 in this Regulation should apply without prejudice to additional sanctions under any other provisions of Community or national law.
- (99) The sequence for the calculation of various potential reductions on each support scheme should be determined. In order to ensure the respect of the various budgetary ceilings established for the direct support schemes, it should in particular be provided that the payments are reduced by a coefficient where the ceilings would otherwise be exceeded.
- (100) Articles 7, 10 and 11 of Regulation (EC) No 73/2009 provide for reductions and, as the case may be, adjustments of the sum of direct payments to be granted to a farmer in respect of a calendar year due to modulation and financial discipline, respectively. The implementing provisions should provide for the basis for calculation of those reductions and adjustments in the process of calculating the amount of the payments to be made to farmers.
- (101) In order to ensure the 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 1290/2005 of 21 June 2005 on the financing of the common agricultural policy <sup>(1)</sup>.

<sup>(1)</sup> OJ L 171, 2.7.2005, p. 6.

- (102) Rules need to be established to cover the eventuality where a farmer has received unduly a number of payment entitlements or that the value of each of the payment entitlements was fixed at an incorrect level and where the case is not covered by Article 137 of Regulation (EC) No 73/2009. However, in certain cases, where unduly allocations of entitlements did not affect the total value, but only the number of the entitlements of the farmer, Member States should correct the allocation or where appropriate the type of entitlements, without reducing the value thereof. That provision should only apply if the farmer could not have reasonably detected the error. Furthermore, in certain cases, unduly allocated entitlements correspond to very small amounts and a substantial administrative burden is required to recover those entitlements. In light of simplification and the balance between the administrative burden and the amount to be recovered, a minimum amount that may trigger a recovery should be fixed. Moreover, provision has to be made for the case where such payment entitlements have been transferred and for the case where transfers of payment entitlements have occurred without respecting Article 46(2) of Regulation (EC) No 1782/2003 or Articles 43, 62(1), 62(2) and 68(5) of Regulation (EC) No 73/2009.
- (103) Rules should be established concerning the consequences of transfers of entire holdings which are under certain obligations in accordance with the direct payment schemes subject to the integrated system.
- (104) As a general rule, Member States should take any further measures necessary to ensure a proper functioning of the integrated administrative control system. The Member States should give each other mutual assistance where necessary.
- (105) 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 to it 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 as well as of any reduction applied in accordance with Article 8(1) of Regulation (EC) No 73/2009.
- (106) Article 9 of Regulation (EC) No 73/2009 lays down rules concerning the amounts resulting from the modulation. A part of the amounts should be allocated in accordance with an allocation key for which rules should be set up based on the criteria established in that Article.
- (107) This Regulation should apply as from 1 January 2010. Regulation (EC) No 796/2004 should therefore be repealed as from that date. However, it should continue to apply with regard to aid applications relating to marketing years or premium periods which start before 1 January 2010.

- (108) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets and of the Management Committee for Direct Payments,

HAS ADOPTED THIS REGULATION:

## PART I

### GENERAL PROVISIONS

#### TITLE I

#### SCOPE AND DEFINITIONS

##### *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 Chapter 4 of Title II of Regulation (EC) No 73/2009, and for the implementation of cross-compliance provided for in Articles 85t and 103z of Regulation (EC) No 1234/2007. 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 definitions in Article 2 of Regulation (EC) No 73/2009 shall apply.

The following definitions shall also apply:

- (1) 'agricultural parcel' means a continuous area of land, declared by one farmer, which does not cover more than one single crop group; however, where a separate declaration of the use of an area within a crop group is required in the context of this Regulation, that specific use shall if necessary further limit the agricultural parcel; Member States may lay down additional criteria for further delimitation of an agricultural parcel;
- (2) 'permanent pasture' means permanent pasture as defined in Article 2(c) of Regulation (EC) No 1120/2009 <sup>(1)</sup>;
- (3) 'system for the identification and registration of bovine animals' means the system for the identification and registration of bovine animals established by Regulation (EC) No 1760/2000;
- (4) 'ear tag' means the ear tag to identify animals individually referred to in Article 3(a) and Article 4 of Regulation (EC) No 1760/2000;

<sup>(1)</sup> See Page 1 of this Official Journal.

- (5) 'computerised database for bovine animals' means the computerised database referred to in Article 3(b) and Article 5 of Regulation (EC) No 1760/2000;
- (6) 'animal passport' means the animal passport referred to in Article 3(c) and Article 6 of Regulation (EC) No 1760/2000;
- (7) 'register' means the register kept by the keepers of animals in accordance with Article 5 of Regulation (EC) No 21/2004 or Article 3(d) and Article 7 of Regulation (EC) No 1760/2000 respectively;
- (8) 'elements of the system for the identification and registration of bovine animals' means the elements referred to in Article 3 of Regulation (EC) No 1760/2000;
- (9) 'identification code' means the identification code referred to in Article 4(1) of Regulation (EC) No 1760/2000;
- (10) 'irregularities' means any non-respect of the relevant rules for the granting of the aid in question;
- (11) 'single application' means the application for direct payments in respect of the single payment scheme and other area-related aid schemes;
- (12) 'area-related aid schemes' means the single payment scheme, area-related payments under specific support and all aid schemes established under Titles IV and V of Regulation (EC) No 73/2009, except those established under Sections 7, 10, and 11 of that Title IV, except the separate sugar payment established in Article 126 of that Regulation and except the separate fruit and vegetable payment established in Article 127 of that Regulation;
- (13) 'livestock aid application' means the applications for the payment of aid under the sheep and goat premiums scheme and the beef and veal payments schemes provided for in Sections 10 and 11 of Title IV, respectively, of Regulation (EC) No 73/2009 and livestock headage or livestock unit payments under specific support;
- (14) 'specific support' means support referred to in Article 68 of Regulation (EC) No 73/2009;
- (15) 'use' means the use of area in terms of the type of crop or ground cover or the absence of a crop;
- (16) 'bovine aid schemes' means the aid schemes referred to in Article 108 of Regulation (EC) No 73/2009;
- (17) 'ovine/caprine aid scheme' means the aid scheme referred to in Article 99 of Regulation (EC) No 73/2009;
- (18) 'claimed bovine animals' means bovine animals subject to a livestock aid application under the bovine aid schemes or under specific support;
- (19) 'unclaimed bovine animals' means bovine animals not yet subject to a livestock aid application but potentially eligible for aid under the bovine aid schemes;
- (20) 'potentially eligible animal' means an animal that could a priori potentially fulfil the eligibility criteria for receiving the aid in the claim year in question;
- (21) 'retention period' means 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 of Commission Regulation (EC) No 1121/2009 <sup>(1)</sup>:
- (a) Articles 53 and 57, in relation to the special premium for male bovines;
- (b) Article 61, in relation to the suckler cow premium;
- (c) Article 80, in relation to the slaughter premium;
- (d) Article 35(3), in relation to aid paid for ovines and caprines;
- (22) 'animal keeper' means any natural or legal person responsible for animals whether on a permanent or on a temporary basis, including during transportation or at a market;
- (23) 'area determined' means 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;
- (24) 'animal determined' means an animal for which all conditions laid down in the rules for granting the aid have been met;
- (25) 'premium period' means the period to which aid applications refer irrespective of the moment of their submission;
- (26) 'geographical Information System' (hereinafter referred to as GIS) means the computerised geographical information system techniques referred to in Article 17 of Regulation (EC) No 73/2009;
- (27) 'reference parcel' means a geographically delimited area retaining a unique identification as registered in the GIS in the Member State's identification system referred to in Article 15 of Regulation (EC) No 73/2009;
- (28) 'geographical material' means maps or other documents used to communicate the contents of the GIS between the aid applicants and the Member State's;
- (29) 'national coordinate reference system' means a system as defined in Directive 2007/2/EC of the European Parliament and of the Council <sup>(2)</sup> which permits standardised measurement and unique identification of agricultural parcels throughout the Member State concerned;

<sup>(1)</sup> See Page 27 of this Official Journal.

<sup>(2)</sup> OJ L 108, 25.4.2007, p. 1.

- (30) 'paying agency' means the authorities and bodies referred to in Article 8(1) of Regulation (EC) No 1290/2005;
- (31) 'cross-compliance' means the statutory management requirements and the good agricultural and environmental condition in accordance with Articles 5 and 6 of Regulation (EC) No 73/2009;
- (32) 'areas of cross-compliance' means the different areas of statutory management requirements within the meaning of Article 5(1) of Regulation (EC) No 73/2009 and the good agricultural and environmental condition in accordance with Article 6 of that Regulation;
- (33) 'act' means each of the individual Directives and Regulations listed in Annex II to Regulation (EC) No 73/2009;
- (34) 'standards' means the standards as defined by the Member States in accordance with Article 6 of Regulation (EC) No 73/2009 and Annex III thereto as well as the obligations in relation to permanent pasture as laid down in Article 4 of this Regulation;
- (35) 'requirement', where this term is used in the context of cross-compliance, it means each individual statutory management requirement resulting from any of the Articles referred to in Annex II to Regulation (EC) No 73/2009 within a given act, differing in substance from any other requirements of the same act;
- (36) 'non-compliance' means any non-compliance with the requirements and standards;
- (37) 'specialised control bodies' means the national competent control authorities, as referred to in Article 48 of this Regulation, responsible, in accordance with the first subparagraph of Article 22(2) of Regulation (EC) No 73/2009, for ensuring compliance with the statutory management requirements and good agricultural and environmental condition;
- (38) 'from payment' means, for the purposes of the cross-compliance obligations provided for in Articles 85t and 103z of Regulation (EC) No 1234/2007, as from 1 January of the year following the calendar year in which the first payment was granted.

## TITLE II

### MAINTENANCE OF PERMANENT PASTURE

#### 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 6(2) of Regulation (EC) No 73/2009, 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. 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(a), 5(a), 6(a) and 7(a) of this Article is maintained, the obligation set out in the first subparagraph of Article 6(2) of Regulation (EC) No 73/2009 shall be considered as being complied with.

2. For the purposes of the second subparagraph of Article 6(2) of Regulation (EC) No 73/2009, the Member States shall ensure that the ratio referred to in paragraph 1 of this Article shall not decrease to the detriment of land under permanent pasture by more than 10 % relatively to the ratio for the relevant reference year referred to in the first subparagraph of Article 6(2) of that Regulation (hereinafter referred to as the reference ratio).

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. For the Member States, other than the new Member States, the reference ratio 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 Regulation (EC) No 796/2004 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 <sup>(1)</sup> shall be discounted.

Land that was under permanent pasture in 2003 and that has been afforested in accordance with the third subparagraph of Article 6(2) of Regulation (EC) No 73/2009 shall be discounted;

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

5. For the new Member States that have not applied in respect of the year 2004 the single area payment scheme referred to in Article 143b of Regulation (EC) No 1782/2003, the reference ratio shall be established as follows:

- (a) the land under permanent pasture shall be the land under permanent pasture declared by the farmers in 2004, plus the land under permanent pasture declared in 2005 in accordance with Article 14(1) of Regulation (EC) No 796/2004 and that has not been declared for any use other than grassland in 2004, unless the farmer can demonstrate that such land was not under permanent pasture in 2004.

<sup>(1)</sup> OJ L 160, 26.6.1999, p. 1.

Areas declared in 2005 as land under permanent pasture and that in 2004 were eligible for the arable crops area payment in accordance with Article 1(3) of Regulation (EC) No 1251/1999 shall be discounted.

Land that was under permanent pasture in 2004 and that has been afforested in accordance with the third subparagraph of Article 6(2) of Regulation (EC) No 73/2009 shall be discounted;

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

6. For the new Member States that have applied in respect of the year 2004 the single area payment scheme referred to in Article 143b of Regulation (EC) No 1782/2003, the reference ratio shall be established as follows:

- (a) the land under permanent pasture shall be the land under permanent pasture declared by the farmers in 2005 in accordance with Article 14(1) of Regulation (EC) No 796/2004.

Land that was under permanent pasture in 2005 and that has been afforested in accordance with the third subparagraph of Article 6(2) of Regulation (EC) No 73/2009 shall be discounted;

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

7. For Bulgaria and Romania, the reference ratio shall be established as follows:

- (a) the land under permanent pasture shall be the land under permanent pasture declared by the farmers in 2007 in accordance with Article 14(1) of Regulation (EC) No 796/2004.

Land that was under permanent pasture in 2005 and that has been afforested in accordance with the third subparagraph of Article 6(2) of Regulation (EC) No 73/2009 shall be discounted;

- (b) the total agricultural area shall be the total agricultural area declared by the farmers in 2007.

8. In case where objective elements show that the evolution of the ratio does not reflect the actual development of land under permanent pasture, Member States shall adapt the reference ratio. In such situation, the Commission shall, without delay, be informed on the adaptation made and the justification for that adaptation.

#### 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 to Regulation (EC) No 73/2009 not to convert land under permanent pasture without prior authorisation.

If the authorisation referred to in the first subparagraph is subject to the condition that an area of land shall be established as permanent pasture, such land shall, as of the first day of conversion, be considered as permanent pasture by way of derogation from the definition laid down in Article 2(2). Those areas shall be used to grow grasses or other herbaceous forage for the five consecutive years following the date of conversion.

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 of this Article, 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 to Regulation (EC) No 73/2009 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 apply with regard to land thus converted since the date of the start of the 24-month period proceeding the last date at which the single applications had to be submitted at the latest in accordance with Article 11(2) of this Regulation 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 Regulation (EC) No 796/2004.

By way of derogation from Article 2(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'. Those areas shall be used to grow grasses or other herbaceous forage for the five consecutive years following the date of their conversion.

3. 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 <sup>(1)</sup>, (EC) No 1257/1999 <sup>(2)</sup> and (EC) No 1698/2005 <sup>(3)</sup>.

## PART II

### THE INTEGRATED ADMINISTRATION AND CONTROL SYSTEM

#### TITLE I

#### SYSTEMS REQUIREMENTS AND CROSS-COMPLIANCE

##### CHAPTER I

#### *Identification and registration system*

##### Article 5

#### **Identification of farmers**

Without prejudice to Article 19(3) of Regulation (EC) No 73/2009, the single system to record the identity of each farmer provided for by Article 15(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 17 of Regulation (EC) No 73/2009 shall operate at reference parcel level such as cadastral parcel or production block which shall ensure unique identification of each reference parcel.

For each reference parcel, a maximum eligible area shall be determined for the purpose of the single payment scheme or the single area payment scheme. The GIS shall operate on the basis of a national coordinate reference system. Where different coordinate systems are used, they shall be compatible within each Member State.

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.

<sup>(1)</sup> OJ L 215, 30.7.1992, p. 85.

<sup>(2)</sup> OJ L 160, 26.6.1999, p. 80.

<sup>(3)</sup> OJ L 277, 21.10.2005, p. 1.

2. Member States 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 respectively the single area payment scheme. The assessment shall be made on an annual basis using appropriate statistical methods.

##### Article 7

#### **Identification and registration of payment entitlements**

1. The system for the identification and registration of payment entitlements provided for in Article 18 of Regulation (EC) No 73/2009 shall be an electronic register at Member State level and shall, in particular with regard to the cross-checks provided for in Article 28 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 special entitlements provided for in Article 44 of Regulation (EC) No 73/2009 and entitlements allocated in accordance with Article 68(1)(c) of Regulation (EC) No 73/2009;
- (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.

##### CHAPTER II

#### **Cross-compliance**

##### Article 8

#### **Control system as regards cross-compliance**

1. Member States shall establish a system guaranteeing an effective control of the respect of cross-compliance. That system shall, in accordance with Chapter III of Title III of this Part, 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 authority referred to in Article 20(3) of Regulation (EC) No 73/2009;

- (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 authority referred to in Article 20(3) of Regulation (EC) No 73/2009 or both;
- (f) the application of the system of reductions and exclusions by the paying agency.

2. Member States may 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 9

#### Payment of aid in relation to controls of cross-compliance

With regard to controls of cross-compliance specified in Chapter III of Title III of this Part, where such controls cannot be finalised before payment, any undue payments shall be recovered in accordance with Article 80.

### TITLE II

#### AID APPLICATIONS

##### CHAPTER I

#### *The single application*

#### Article 10

#### General provisions pertaining to the single application

1. Member States may decide that all applications for aid under Title III and IV of Regulation (EC) No 73/2009 shall be covered by the single application. In that case, Chapters II to V of this Title shall apply *mutatis mutandis* in respect of the particular requirements established in view of the application for aid under those schemes.

2. Where more than one paying agency is responsible with regard to the same farmer for the management of aid schemes subject to the submission of a single application, the Member State concerned shall take the appropriate measures to ensure that the information requested in the single application is being made available to all paying agencies involved.

#### 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 to Regulation (EC) No 73/2009 or for support pursuant to Articles 85p, 103q and 103r of Regulation (EC) No 1234/2007 shall, if he has agricultural area at his disposal, submit a single application form in which he shall list these areas in accordance with Article 13 of this Regulation.

A farmer who is only subject to cross-compliance obligations in accordance with Articles 85t and 103z of Regulation (EC) No 1234/2007 shall submit a single application form in each calendar year in which those obligations apply.

However, Member States may exempt farmers from the obligations provided for in the second and third subparagraphs 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 73/2009.

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. However, Estonia, Latvia, Lithuania, Finland and Sweden may fix a later date which shall not be later than 15 June.

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 accordance with the procedure referred to in Article 141(2) of Regulation (EC) No 73/2009, 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.

#### 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;

- (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-established forms provided to the farmer in accordance with Article 19(2) of Regulation (EC) No 73/2009 shall mention the identification of the payment entitlements in accordance with the identification and registration system provided for in Article 7 of this Regulation.

3. For the purpose of the identification of all agricultural parcels on the holding referred to in paragraph 1(d), the pre-established forms provided to the farmer in accordance with Article 19(2) of Regulation (EC) No 73/2009 shall mention the maximum eligible area per reference parcel for the purposes of the single payment scheme or the single area payment scheme. Moreover, the geographical material supplied to the farmer in accordance with that provision shall indicate the boundaries of the reference parcels and their unique identification and the farmer shall indicate the location of each agricultural parcel.

4. When submitting the application form, the farmer shall correct the pre-established form referred to in paragraphs 2 and 3 if any amendments, in particular transfers of payment entitlements in accordance with Article 43 of Regulation (EC) No 73/2009, have occurred or if any of the information contained in the pre-established forms is incorrect.

If the correction relates to the reference parcel area, the farmer shall declare the up-to-date area of each agricultural parcel concerned and where necessary indicate the new boundaries of the reference parcel.

5. For the first year of application of the single payment scheme the Member States may derogate from the provisions of this Article and of Article 13 concerning payment entitlements if those are not yet definitively established at the latest date fixed for the submission of the single application.

The derogations provided for in the first subparagraph shall also apply with regard to the first year when new sectors are introduced into the single payment scheme and the payment entitlements are not yet definitively established for the farmers concerned by this introduction.

#### Article 13

#### Specific requirements pertaining to the single application and declarations in relation to particular uses of area

1. In the case where a farmer intends to produce hemp in accordance with Article 39 of Regulation (EC) No 73/2009, the single application shall contain:

- (a) all information required for the identification of the parcels sown in hemp, indicating the varieties of seed used;
- (b) 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 Council Directive 2002/57/EC <sup>(1)</sup>, and in particular Article 12 thereof or any other document recognised as equivalent by the Member State.

By way of derogation from point (c) of the first subparagraph, 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 that point. The labels returned shall be marked as used for an application.

2. In the case of an application for an area payment for nuts as provided for in Section 4 of Chapter 1 of Title IV of Regulation (EC) No 73/2009, the single application shall contain the number of nut trees by species.

3. In the case of an application for aid for starch potato provided for in Section 2 of Chapter 1 of Title IV of Regulation (EC) No 73/2009, 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.

4. In the case of an application for seed aid provided for in Section 5 of Chapter 1 of Title IV of Regulation (EC) No 73/2009, 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 seed 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 15 June of the year following the harvest.

5. In the case of an application for the crop specific payment for cotton provided for in Section 6 Chapter 1 of Title IV of Regulation (EC) No 73/2009, the single application shall contain:

- (a) the name of the variety of cotton seed used;
- (b) where appropriate, the name and address of the approved inter-branch organisation of which the farmer is a member.

<sup>(1)</sup> OJ L 193, 20.7.2002, p. 74.

6. In case of application for transitional fruit and vegetables payments provided for in Section 8 of Chapter 1 of Title IV of Regulation (EC) No 73/2009 or application for transitional soft fruit payments provided for in Section 9 of that Chapter, the single application shall contain a copy of the contract for processing or the commitment to supply pursuant to Article 33 of Regulation (EC) No 1121/2009.

Member States may provide that the information in the first subparagraph may be submitted separately by a later date which shall not be later than 1 December the year of the application.

7. In the case of an application for any area related measure under specific support, the single application shall contain any document required by the Member State.

8. Uses of area referred to in Articles 6(2) and 38 of Regulation (EC) No 73/2009 and those listed in Annex VI to that Regulation or areas declared for the specific support provided for in Article 68 of Regulation (EC) No 73/2009, where those areas do not have to be declared in accordance with this Article, 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, IV and V of Regulation (EC) No 73/2009 nor listed in Annex VI 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 73/2009.

9. 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 14

### Amendments to the single application

1. After the expiry of the time limit for the submission of the single application, individual agricultural parcels or individual payment entitlements 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 or in respect of payment entitlements 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 Estonia, Latvia, Lithuania, Finland or Sweden for the submission of the single application in accordance with the first subparagraph of Article 11(2), amendments made in accordance with paragraph 1 of this Article shall be notified to the competent authority in writing by 31 May of the calendar year concerned at the latest, except in the case of Estonia, Latvia, Lithuania, Finland and Sweden where they shall be notified 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 paragraph 1 shall not be authorised in respect of the agricultural parcels affected by the irregularities.

#### CHAPTER II

### Applications for payment entitlements

#### Article 15

### Allocation or increase of payment entitlements

1. Applications for allocation or, where appropriate, increase of payment entitlements under the single payment scheme shall be submitted by a date to be fixed by the Member States but not later than the 15 May in the first year of implementation of the single payment scheme, of integration of coupled support, of application of Articles 46 to 48 of Regulation (EC) No 73/2009, or in the years of application of Articles 41, 57 or 68(1)(c) of the same Regulation. However, Estonia, Latvia, Lithuania, Finland and Sweden may fix a later date which shall not be later than 15 June.

2. Member States may decide that the application for allocation of payment entitlements shall be submitted at the same time as the application for payment under the single payment scheme.

#### CHAPTER III

### 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 85 of Regulation (EC) No 1121/2009, 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, unless the Member State concerned decides not to require this information, provided that the computerised database for bovine animals does offer the level of assurance and implementation necessary for the proper management of the aid schemes and the information therein is sufficient to identify the location of the animals;

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 potentially eligible 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 65 of this Regulation.

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 IV

#### ***Aid for sugar beet and cane producers, separate sugar payment and separate fruit and vegetables payment***

#### Article 17

#### **Requirements pertaining to applications for the aid for sugar beet and cane producers, the separate sugar payment and the separate fruit and vegetables payment**

1. Farmers applying for the aid for sugar beet and cane producers provided for in Section 7 of Chapter 1 of Title IV of Regulation (EC) No 73/2009, for the separate sugar payment provided for in Article 126 of that Regulation or for the separate fruit and vegetables payment provided for in Article 127 of that Regulation 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 application for the aid to sugar beet and cane producers shall also contain a copy of the delivery contract referred to in Article 94 of Regulation (EC) No 73/2009.

2. The aid applications referred to in paragraph 1 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 Estonia, Latvia and Lithuania, not later than 15 June.

Member States may provide that the copy of the delivery contract referred to in the second subparagraph of paragraph 1 may be submitted separately by a later date which shall not be later than 1 December of the year of the application.

## CHAPTER V

## Article 19

**Applications for specific support, other than area or livestock payments****Applications by mutual funds**

## Article 18

**Requirements pertaining to aid applications for specific support, other than area or livestock payments**

1. Farmers applying for specific support not covered by applications in Chapter I, II or III of this Title, 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;
- (c) where appropriate, any supporting documents needed to establish the eligibility for the measure concerned.

The aid application shall be submitted by a date to be determined by the Member States. The date set shall allow sufficient time to perform the verification of eligibility conditions before payment, as provided for in Article 29(3) of Regulation (EC) No 73/2009.

2. For the purposes of paragraph (1)(c), when a farmer applies for specific support in relation to an investment operation, the application shall also contain a copy of any relevant supporting documents such as invoices and documents proving the payment by the farmer. Where such copies or documents cannot be submitted, payments made by the farmer shall be supported by documents of equivalent probative value.

3. For the purposes of paragraph (1)(c), where a farmer applies for specific support as provided for in Article 68(1)(a)(v) of Regulation (EC) No 73/2009 and where the individual payment is based on actual costs or actual income foregone, the application shall also contain a copy of any relevant supporting documents proving the additional costs actually incurred and income foregone in accordance with Article 68(2)(a)(i) of that Regulation.

4. For the purposes of paragraph (1)(c), where a farmer applies for specific support as provided for in Article 68(1)(d) of Regulation (EC) No 73/2009, the application shall also contain a copy of the insurance contract referred to in Article 13 of Regulation (EC) No 1120/2009 as well as a proof of payment of the premium.

5. Member States may provide that the copies or documents referred to in paragraphs 2, 3 and 4 may be submitted separately by a later date. The date set shall allow sufficient time to perform the verification of eligibility conditions before payment, as provided for in Article 29(3) of Regulation (EC) No 73/2009.

1. Mutual funds applying for specific support shall submit an aid application containing all information necessary to establish eligibility for the aid and in particular:

- (a) the identity of the mutual fund;
- (b) documentation of the event triggering the compensation payments made to the affiliated farmers;
- (c) the dates when the compensation payments to affiliated farmers have occurred;
- (d) the identity of the affiliated farmers benefiting from the compensation payment made by the fund;
- (e) the total amount of the compensation paid;
- (f) a statement by the mutual fund that it is aware of the conditions pertaining to the aid in question.

2. Member States shall set a latest date by which applications for specific support by mutual funds shall be submitted. The date set shall allow sufficient time to perform the verification of eligibility conditions before payment, as provided for in Article 29(3) of Regulation (EC) No 73/2009.

## CHAPTER VI

**Common provisions**

## Article 20

**Simplification of procedures**

1. Without prejudice to any specific provisions of this Regulation and of Regulation (EC) No 73/2009, 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 laid down in paragraph 1 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.

3. The information required in any supporting documents to be submitted together with the aid application may, when possible, be requested directly from the source of the information by the competent authority.

#### Article 21

##### Adjustments of obvious errors

Without prejudice to Articles 11 to 20, an aid application may be adjusted at any time after its submission, in cases of obvious errors recognised by the competent authority.

#### Article 22

##### Derogation from the final date for submission

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

The first paragraph shall also apply with regard to applications by farmers to the single payment scheme in accordance with Article 56 of Regulation (EC) No 73/2009 and to applications by farmers for payment entitlements in accordance with Article 15 of this Regulation.

#### Article 23

##### Late submission

1. Except in cases of force majeure and exceptional circumstances as referred to in Article 75, 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 submitted 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. Except in cases of force majeure and exceptional circumstances as referred to in Article 75, the submission of an amendment to a single application after the latest date as provided for in Article 14(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 14(2), amendments to a single application shall be considered inadmissible after the date provided for in Article 14(2).

#### Article 24

##### Late submission of an application for allocation of payment entitlements

Except in cases of force majeure and exceptional circumstances referred to in Article 75, the submission of an application for allocation or, when applicable, increase of entitlements after the latest date established pursuant to Article 15 of this Regulation or to Article 56(1) of Regulation (EC) No 73/2009, shall lead to a 3 % reduction per working day of the amounts to be paid in that year in respect of the payment entitlements to be allocated to the farmer.

If such delay exceeds 25 calendar days, the application shall be considered inadmissible and no payment entitlements shall be allocated to the farmer.

#### Article 25

##### 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.

2. 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.

3. 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.

<sup>(1)</sup> OJ L 124, 8.6.1971, p. 1.

## TITLE III

**CONTROLS**

## CHAPTER I

**Common rules**

## Article 26

**General principles**

1. Administrative controls 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.

## Article 27

**Announcements of on-the-spot checks**

1. Provided that the purpose of the control is not jeopardised, on-the-spot checks may be announced. The announcement shall be strictly limited to the minimum time period necessary and shall not exceed 14 days. However, for on-the-spot checks concerning livestock aid applications, the notice shall, except in duly justified cases, not exceed 48 hours. Furthermore, where the legislation applicable to the acts and standards relevant to cross-compliance requires the on-the-spot check to be unannounced, those rules shall also apply in the case of on-the-spot checks related to cross-compliance.

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

## CHAPTER II

**Controls with regard to eligibility criteria**

## Section I

**Administrative controls**

## Article 28

**Cross-checks**

1. The administrative controls referred to in Article 20 of Regulation (EC) No 73/2009 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 accumulation of aid granted under area-related aid schemes listed in Annexes I and IV to Regulation (EC) No 73/2009;
  - (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 34(2) of Regulation (EC) No 73/2009;
  - (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) 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 Article 87(1) of Regulation EC (No) 73/2009;
  - (g) between the agricultural parcels as declared in the single application and the parcels authorised for cotton production by the Member State in accordance with Article 89 of Regulation (EC) No 73/2009;
  - (h) between the declarations of the farmer in the single application to be a member of an approved inter-branch organisation, the information under Article 13(5)(b) of this Regulation and the information transmitted by the approved inter-branch organisations concerned, to verify eligibility for the increase of the aid provided for in Article 92(2) of Regulation (EC) No 73/2009;
  - (i) between the information provided in the delivery contract referred to in Article 94 of Regulation (EC) No 73/2009 and the information on deliveries provided by the sugar manufacturer.
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.

3. Where a reference parcel is subject to an aid application by two or more farmers under the same aid scheme and where the overall area declared exceeds the agricultural area with a difference which falls within the measurement tolerance defined in accordance with Article 34(1), Member States may provide for a proportional reduction of the areas concerned. In that case, farmers concerned may appeal against the decision of reduction on the grounds that any of the other farmers concerned over-declared their areas beyond that tolerance to his detriment.

#### Article 29

### Administrative controls of specific support

1. For each measure under the specific support for which administrative controls are technically possible, all applications should be checked. The controls shall in particular ensure that:

- (a) the eligibility conditions for specific support are fulfilled;
- (b) there is no double financing through other community schemes;
- (c) there is no overcompensation to farmers as regards financial contributions provided for in Articles 70(3) and 71(7) of Regulation (EC) No 73/2009 and,
- (d) when applicable, supporting documents have been submitted and that they are proving the eligibility.

2. Member States may, where appropriate, make use of evidence received from other services, bodies or organisations to verify the respect of eligibility criteria. However, it must be assured that the service, body or organisation in question is operating to a standard sufficient to control compliance with the eligibility criteria.

#### Section II

### On-the-spot checks

#### Sub-section I

### Common provisions

#### Article 30

### Control rate

1. The total number of on-the-spot checks carried out each year shall cover at least 5 % of all farmers applying respectively for the single payment scheme, the single area payment scheme or area-related payments under specific support. The Member States

shall assure that on-the-spot checks cover at least 3 % of the farmers applying for aid under each of other area-related aid schemes provided for under Titles III, IV and V of Regulation (EC) No 73/2009.

2. The total number of on-the-spot checks carried out each year shall 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 39 of Regulation (EC) No 73/2009.

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 Regulation (EC) No 796/2004, 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, headage payments or livestock unit payments for bovine animals under specific support or specific support based on the individual milk quota determined in accordance with Article 65 of Regulation (EC) No 1234/2007 or specific support based on the actual production of milk. 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) 5 % of all farmers applying for aid under the ovine/caprine aid scheme and headage payments or livestock unit payments for ovine/caprine animals under specific support. Those on-the-spot checks shall also cover at least 5 % of all animals for which aid is applied for. However, where the computerised database for ovine/caprine animals provided for in Article 8 of Regulation (EC) No 21/2004 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 % of the farmers;
- (d) 10 % of all farmers applying for specific support other than those referred to in paragraph 1 and points (b) and (c) of this paragraph, excluding the measure referred to in Article 68(1)(d) of Regulation (EC) No 73/2009;
- (e) 10 % of other services, bodies or organisations who provide evidence to verify the respect of eligibility criteria as referred to in Article 29(2).

- (f) 100 % of the mutual funds applying for support referred to in Article 68(1)(e) of Regulation (EC) No 73/2009;

- (g) as regards aid applications for the crop specific payment for cotton in accordance with Section 6 of Chapter 1 of Title IV of Regulation (EC) No 73/2009, 20 % of the inter-branch organisations approved in accordance with Article 91 of that Regulation and of which farmers declare to be a member in their single applications;
- (h) as regards applications for the aid for sugar beet and cane producers provided for in Section 7 of Chapter 1 of Title IV of Regulation (EC) No 73/2009, concerning controls at the sugar manufacturers on the quantity quota sugar obtained from sugar beets and cane delivered in accordance with Article 94 of that Regulation, at least 5 % of the applicants delivering to the manufacturer concerned.

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 31

##### Selection of the control sample

1. Control samples for on-the-spot checks under this Regulation shall be selected by the competent authority on the basis of a risk analysis and representativeness of the aid applications submitted.

To provide the element of representativeness, the Member States shall select randomly between 20 % and 25 % of the minimum number of farmers to be subject to on-the-spot checks as provided for in Article 30(1) and (2).

However, if the number of farmers to be subject to on-the-spot checks exceeds the minimum number of farmers to be subject to on-the-spot checks as provided for in Article 30(1) and (2), the percentage of randomly selected farmers in the additional sample should not exceed 25 %.

2. The effectiveness of the risk analysis shall be assessed and updated on an annual basis:

- (a) by establishing the relevance of each risk factor;

- (b) by comparing the results of the risk based and randomly selected sample referred to in the second subparagraph of paragraph 1;
- (c) by taking into account the specific situation in the Member State.

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.

4. A partial selection of the control sample may, where appropriate, be made before the end of the application period in question, on the basis of available information. The provisional sample shall be completed when all relevant applications are available.

#### Article 32

##### 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 including, where applicable, the result 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 databases for bovine and/or ovine/caprine 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 35, 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 application with regard to area-related aid schemes**

#### *Article 33*

#### **Elements of 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 73/2009, except those related to applications for seed aid in accordance with Article 87 of that Regulation. Nevertheless, the actual determination of the areas as part of an on-the-spot check may be limited to a sample of at least 50 % of the agricultural parcels for which an application has been submitted under the aid schemes established in Titles III, IV and V of Regulation (EC) No 73/2009 provided that the sample guarantees a reliable and representative level of control both in respect of area checked and aid claimed. When this sample check reveals anomalies the sample of agricultural parcels actually inspected shall be increased.

Member States may make use of remote sensing in accordance with Article 35 and Global Navigation Satellite Systems techniques where possible.

#### *Article 34*

#### **Determination of areas**

1. Agricultural parcel areas shall be determined by any means proven to assure measurement of quality at least equivalent to that required by applicable technical standard, as drawn up at Community level.

A measurement tolerance shall be defined by a buffer of maximum 1,5 m applied to the perimeter of the agricultural parcel. 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 utilised in accordance with the customary standards of the Member State or region concerned. In other cases the area actually utilised 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.

However, where Member States notified to the Commission, in conformity with third subparagraph of Article 30(2) of Regulation (EC) No 796/2004, prior to the entry into force of this Regulation, a width greater than 2 metres, this width may still be applied.

3. Any features referred to in the acts listed in Annex II to Regulation (EC) No 73/2009 or which may form part of the good agricultural and environmental condition as referred to in Article 6 of that Regulation and Annex III thereto shall form part of the total area of an agricultural parcel.

4. Without prejudice to Article 34(2) of Regulation (EC) No 73/2009, an agricultural parcel that contains trees shall be considered as eligible area for the purposes of the area-related aid schemes provided that agricultural activities or, where applicable, the production envisaged can be carried out in a similar way as on parcels without trees in the same area.

5. Where an 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.

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

#### *Article 35*

#### **Remote sensing**

1. Where a Member State makes use of the possibility, provided for in the second paragraph of Article 33, 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 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.

2. The additional checks referred to in Article 30(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 36

##### **On-the-spot checks related to special entitlements**

Member States shall establish procedures for on-the-spot checks of farmers declaring special entitlements in order to ensure the fulfilment of the activation requirement referred to in Article 44 of Regulation (EC) No 73/2009.

#### Article 37

##### **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 87 of Regulation (EC) No 73/2009 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. 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.

For the purposes of point (b)(iii) of the first paragraph, 'marketed' means holding available or in stock, displaying for sale, offering for sale, sale or delivery to another person.

#### Article 38

##### **On-the-spot checks on approved inter-branch organisations**

On-the-spot checks on approved inter-branch organisations in the framework of applications for aid under the crop specific payment for cotton provided for in Section 6 of Chapter 1 of Title IV of Regulation (EC) No 73/2009 shall verify the respect of the criteria for approval of those organisations and the list of their members.

#### Article 39

##### **On-the-spot checks on sugar manufacturers**

On-the-spot checks on sugar manufacturers in the framework of applications for sugar beet aid for sugar beet and cane producers provided for in Section 7 of Chapter 1 of Title IV of Regulation (EC) No 73/2009 shall verify:

- (a) the information in the delivery contracts provided by the farmer;
- (b) the correctness of the information on deliveries provided to the competent authority;
- (c) the certification of the weighting scales used for deliveries;
- (d) the results of the official laboratory analyses performed to determine the percentage of sucrose of the sugar beets and cane delivered.

#### Article 40

##### **Verification of the tetrahydrocannabinol content in hemp growth**

1. The system to be used by the Member States in accordance with Article 39(1) of Regulation (EC) No 73/2009 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. The competent authority of the Member State shall keep the records related to THC findings. At least such records shall comprise for each variety the results in terms of THC content from each sample expressed in percentage to two decimal places, the procedure used, the number of tests carried out, an indication of the point at which the sample was taken and measures taken at national level.

However, if the THC content of any sample exceeds that laid down in Article 39(1) of Regulation (EC) 73/2009, the Member State shall notify the Commission, by electronic means using the form made available to them by the Commission, by 15 November of the marketing year in question at the latest, a report on all the THC findings in respect of such variety. Such report shall indicate the results in terms of THC content from each sample expressed in percentage to two decimal places, the procedure used, the number of tests carried out, an indication of the point at which the sample was taken and measures taken at national level.

3. If an average of all the samples of given variety exceeds the THC content as laid down in Article 39(1) of Regulation (EC) No 73/2009, Member States shall use procedure B of Annex I to this Regulation for the variety concerned in the course of the following marketing year. This procedure shall be used in the course of the next marketing years unless all of the analytical results of given variety are below the THC content as laid down in Article 39(1) of Regulation (EC) No 73/2009.

If for the second year the average of all the samples of a given variety exceeds the THC content as laid down in Article 39(1) of Regulation (EC) No 73/2009, the Member State shall request authorisation to prohibit the marketing of such variety in accordance with Article 18 of Council Directive 2002/53/EC<sup>(1)</sup>. Such request shall be sent to the Commission by 15 November of the marketing year in question at the latest. From the following year the variety subject of this request is not eligible for direct payments in the Member State concerned.

4. Crops of hemp shall continue to be cultivated under normal growing conditions in accordance with local practice for at least 10 days from the date of the end of flowering so that the checks provided for in paragraphs 1, 2 and 3 can be made.

However, the Member States may authorise hemp to be harvested after flowering has begun but before the end of the 10-day period after the end of flowering, provided the inspectors indicate which representative parts of each plot concerned must continue to be cultivated for at least 10 days following the end of flowering for inspection purposes, in accordance with the method laid down in Annex I.

#### Sub-section III

### On-the-spot checks of livestock aid applications

#### Article 41

#### Timing of on-the-spot checks

1. At least 60 % of the minimum rate of on-the-spot checks provided for in the second subparagraph of Article 30(2)(b) shall be conducted throughout the retention period of the aid scheme concerned. The remaining percentage of on-the-spot checks shall be spread over the year.

However, where the retention period takes place before lodging the claim or where it cannot be fixed in advance, on-the-spot checks provided for in the second subparagraph of Article 30(2)(b) shall be spread over the year.

2. At least 50 % of the minimum rate of on-the-spot checks provided for in Article 30(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 42

#### 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.

On-the-spot checks shall include in particular 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.

2. In relation to the bovine aid schemes, on-the-spot checks shall also include checks:

- (a) 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 six months prior to the on-the-spot check; however if anomalies are found, the check shall be extended to 12 months prior to the on-the-spot check;
- (b) 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 six months prior to the on-the-spot check; however if anomalies are found the check shall be extended to 12 months prior to the on-the-spot check;
- (c) that all animals present on the holding and still kept under the retention obligation are eligible for the aid claimed;
- (d) that all bovine animals present on the holding are identified by ear tags, 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 under point (d) 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 110(6) of Regulation (EC) No 73/2009. 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.

<sup>(1)</sup> OJ L 193, 20.7.2002, p. 1.

3. In relation to the ovine/caprine aid scheme, on-the-spot checks shall also include:

- (a) a check on the basis of the register that all the animals for which aid application were submitted have been kept on the holding throughout the retention period;
- (b) a check of the correctness of entries in the register in the six months prior to the on-the-spot check, based on a sample of supporting documents such as purchase and sales invoices and veterinary certificates covering the six months prior to the on-the-spot check; however if anomalies are found the check shall be extended to 12 months prior to the on-the-spot check.

#### Article 43

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

1. As regards the special beef premium provided for in Article 110(6) of Regulation (EC) No 73/2009 and the slaughter premium provided for in Article 116 of that Regulation and in cases where a Member State makes use of the possibilities provided for in Article 53 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 checks 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 checks 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.

2. The on-the-spot checks in slaughterhouses shall comprise an ex post 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 78(3) of Regulation (EC) No 1121/2009.

3. 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 44

##### **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 116 of Regulation (EC) No 73/2009 and where a Member State makes use of the possibilities provided for in Article 53 of that Regulation, 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:
  - (i) 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;
  - (ii) 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 scrutinise 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 45

##### **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 32 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 on the-spot-checks in slaughterhouses provided for in Article 43(1) and (2), the control report provided for in Article 32 may consist of an indication in the slaughterhouse accounts showing which animals have been subject to the checks. With regard to the physical checks of slaughtering procedures provided for in Article 43(3), the report shall include, *inter alia*, the identification codes, 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 44, 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 or Regulation (EC) No 21/2004, copies of the control report provided for in Article 32 of this Regulation shall be sent without delay to the authorities responsible for the implementation of those Regulations.

#### Sub-section IV

### On-the-spot checks of specific support

#### Article 46

### Special provisions as regards specific support

1. As regards the specific support provided for under Article 68 of Regulation (EC) No 73/2009, the Member States shall, apply the provisions of this Title. However, if this is not appropriate because of the structure of the scheme concerned, the Member States shall provide controls ensuring a control level equivalent to that laid down in this Title.

The Member States shall in particular verify;

- (a) when controlling applications for payments by mutual funds as provided for in Article 68(1)(e) of Regulation (EC) No 73/2009, that:
  - (i) farmers were effectively eligible to the compensation paid by the fund;
  - (ii) the compensation was effectively paid to affiliated farmers in accordance with Article 71 of Regulation (EC) No 73/2009;
- (b) when checking on-the-spot investment operations to be supported under specific support provided for in Article 68 of Regulation (EC) No 73/2009, that the investment has been realised.

The checks referred to in point (a) of the second subparagraph may be carried out by using a sample of at least 10 % of the farms concerned.

2. Provided that the Member State ensures that the effectiveness of the controls is at least equal to that achieved when the controls are carried out by on-the-spot checks, controls at farm level may be replaced by administrative controls or checks at the level of services, bodies or organisations which provide evidence to verify the respect of eligibility criteria as referred to in Article 29(2).

#### CHAPTER III

### Controls relating to cross-compliance

#### Section I

### Common provisions

#### Article 47

### General rules concerning non-compliance

1. For the purposes of this Chapter a 'repeated' non-compliance means the non-compliance with the same requirement, standard or the obligation referred to in Article 4 determined more than once within a consecutive period of three calendar 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;

2. 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;

3. 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;

4. 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 48

### Competent control authority

1. The specialised control bodies shall bear the responsibility to carry out the controls and checks 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 III of Title IV.

2. By way of derogation from paragraph 1, Member States may decide that controls and checks 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 and checks is at least equal to that achieved when the controls and checks are carried out by a specialised control body.

## Section II

**Administrative controls**

## Article 49

**Administrative controls**

Depending of the requirements, standards, acts or areas of cross-compliance in question, Member States may decide to carry out administrative controls, 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 50

**Minimum control rate**

1. The competent control authority shall, with regard to the requirements and standards for which it is responsible, carry out on-the-spot checks on at least 1 % of all farmers submitting aid applications under support schemes for direct payments within the meaning of Article 2(d) of Regulation (EC) No 73/2009 and for which the competent control authority in question is responsible. The competent control authority shall also, with regard to the requirements and standards for which it is responsible, carry out checks on at least 1 % of all farmers subject to cross-compliance obligations according to Articles 85t and 103z of Regulation (EC) No 1234/2007 in the calendar year in question and for which the competent control authority in question is responsible.

The minimum control rate referred to in the first subparagraph may be reached at the level of each competent control authority or at the level of each act or standard or group of acts or standards. In the cases where the controls are not carried out by the paying agency as provided for in Article 48, this minimum control rate may however be reached at the level of each paying agency.

Where the legislation applicable to the act and standards already fixes minimum control rates, that rate shall insofar be applied instead of the minimum rate mentioned in the first subparagraph. Alternatively, Member States may decide that any instances of non-compliance detected in the course of any on-the-spot checks under the legislation applicable to the acts and standards which are performed outside the sample mentioned in the first subparagraph, shall be reported to, and followed up by, the competent control authority in charge of the act or standard concerned. The provisions of this Title shall apply.

2. When establishing the minimum control rate referred to in paragraph 1 of this Article, the required actions as referred to in Article 23(2) or in the third subparagraph of Article 24(2) of Regulation (EC) No 73/2009 shall not be taken into account.

3. Should on-the-spot checks reveal a significant degree of non-compliance with a given act or standard, the number of on-the-spot checks to be carried out for this act or standard in the following control period shall be increased. Within a specific act the competent control authority may decide to limit the scope of these further on-the-spot checks to the most frequently infringed requirements.

## Article 51

**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 each of the samples of farms to be checked in accordance with Article 50 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 5 of this Article, on the level of undertakings.

The risk analysis may take into account one or both of following:

- (a) a farmer's participation in the farm advisory system provided for in Article 12 of Regulation (EC) No 73/2009;
- (b) a farmer's participation in a certification system if the scheme in question is relevant for the requirements and standards concerned.

Without prejudice to Article 50(1), a Member State may decide to select farmers receiving direct payments and farmers subject to cross-compliance obligations under Articles 85t and 103z of Regulation (EC) No 1234/2007 under the same risk analysis.

2. To provide the element of representativeness, between 20 % and 25 % of the minimum number of farmers to be subject to on-the-spot checks as provided for in the first subparagraph of Article 50(1), shall be selected randomly.

However, if the number of farmers to be subject to on-the-spot checks exceeds the minimum number of farmers to be subject to on-the-spot checks as provided for in the first subparagraph of Article 50(1), the percentage of randomly selected farmers in the additional sample shall not exceed 25 %.

3. A partial selection of the control sample may, where appropriate, be made before the end of the application period in question, on the basis of available information. The provisional sample shall be completed when all relevant applications are available.

4. The samples of farmers to be checked in accordance with Article 50 shall be selected from the samples of farmers which were already selected pursuant to Articles 30 and 31 and to whom the relevant requirements or standards apply. However, the sample referred to in the second sentence of the first subparagraph of Article 50(1) shall be selected from farmers subject to the application of Articles 85t and 103z of Regulation (EC) No 1234/2007 for the calendar year in question.

5. By way of derogation from paragraph 4, the samples of farmers to be checked in accordance with Article 50 may be selected amongst the population of farmers submitting aid applications under support schemes for direct payments within the meaning of Article 2(d) of Regulation (EC) No 73/2009 and amongst farmers subject to the application of Articles 85t and 103z of Regulation (EC) No 1234/2007 and who are under the obligation to respect the relevant requirements or standards.

In that case:

- (a) where it is concluded, on the basis of the risk analysis applied at farm level, that non-beneficiaries of direct aid represent a higher risk than the farmers who applied for aid, farmers who applied for aid may be replaced by non-beneficiaries; in that case, the overall number of farmers checked shall, nevertheless, attain the control rate provided for in Article 50(1); the reasons for such replacements shall be properly justified and documented;
- (b) if more effective, the risk analysis may be performed 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 50(1).

6. It may be decided to proceed by a combination of the procedures set out in paragraphs 4 and 5 in the case where such a combination increases the effectiveness of the control system.

#### Article 52

##### **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 53

##### **Elements of the on-the-spot checks**

1. In performing the checks on the sample provided for in Article 50, 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.

Notwithstanding the first subparagraph, where the minimum control rate is reached at the level of each act or standard or group of acts or standards as provided for in the second subparagraph of Article 50(1), the farmers selected shall be checked with regard to their compliance with the act or standard or group of acts and standards in question.

In general, each farmer selected for an on-the-spot check shall be checked at a time when most requirements and standards for which he was selected may be checked. However, Member States shall ensure that an appropriate level of control for all requirements and standards is achieved during the year.

2. On-the-spot checks shall, where applicable, cover all the agricultural land of the holding. Nevertheless, 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 concerned by the requirement or standard on the holding provided that such sample guarantees a reliable and representative level of control in respect of requirements and standards. When this sample check reveals non-compliances, the sample of agricultural parcels actually inspected shall be increased.

Furthermore, where the legislation applicable to the act or standards provides so, the actual inspection of the compliance with the requirements and standards as part of an on-the-spot check may be limited to a representative sample of the objects to check. However, the Member States shall assure that the checks are carried out on all requirements and standards for which the compliance may be checked at the time of the visit.

3. 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.

4. Provided that the Member State ensures that the effectiveness of the controls is at least equal to that achieved when the controls are carried out by on-the-spot checks, controls at farm level may be replaced by administrative controls or checks at the level of undertakings as referred to in point (b) of the second subparagraph of Article 51(5).

5. In performing the on-the-spot checks, Member States may make use of objective control indicators specific to certain requirements and standards provided they ensure that the effectiveness of the control of the requirements and standards concerned is at least equal to on-the-spot checks performed without the use of indicators.

The indicators shall have a direct link to the requirements or standards they represent and cover all elements to be checked when controlling that or those requirements or standards.

6. On-the-spot checks related to the sample provided for in Article 50(1) shall be carried out within the same calendar year where the aid applications are submitted.

#### Article 54

##### 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 51 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 24(1) of Regulation (EC) No 73/2009 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 newly introduced Community standards as referred to in Article 26(1) of Regulation (EC) No 1698/2005 or a period for the compliance of young farmers with the existing Community standards referred to in that Article.

2. The farmer shall be informed of any determined non-compliance within three months after the date of the on-the-spot check.

Unless the farmer has taken immediate remedial action putting an end to the non-compliance found in the sense of Article 24(2) of Regulation (EC) No 73/2009, the farmer shall be informed that remedial action shall be taken pursuant to that provision within the time limit set in the first subparagraph.

Where a Member State makes use of the possibility not to apply a reduction or exclusion as provided for in Article 23(2) of Regulation (EC) No 73/2009, the farmer concerned shall be informed, at the latest within one month after it is decided not to apply the reduction or exclusion of the payment, that remedial action shall be taken.

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 requires.

Where the competent control authority is not the paying agency, the report shall be sent to the paying agency or the coordinating authority within a month of its finalisation.

#### TITLE IV

##### BASIS FOR THE CALCULATION OF THE AID, REDUCTIONS AND EXCLUSIONS

#### CHAPTER I

##### *Non-declaration of areas*

#### Article 55

##### **Non-declaration of all areas**

1. If, for a given year, a farmer does not declare all the areas referred to in Article 13(8) and the difference between the overall area declared in the single application on the one hand and the area declared plus the overall area of the parcels not declared, on the other, is more than 3 % of the area declared, the overall amount of direct payments payable to that farmer for that year shall be reduced by up to 3 % depending on the severity of the omission.

2. Paragraph 1 shall also apply to payments related to schemes provided for in Articles 85p, 103q and 103r of Regulation (EC) No 1234/2007, where the farmer is subject to cross-compliance obligations in accordance with Articles 85t and 103z of that Regulation. The percentage of the reduction shall apply to the total amount to be paid divided by the number of years referred to in Articles 85t and 103z of the same Regulation.

## CHAPTER II

**Findings in relation to eligibility criteria**

## Section I

**Single payment scheme and other area-related aid schemes**

## Article 56

**General principles**

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

- (a) areas declared for the purposes of activation of payment entitlements under the single payment scheme, as the case may be, each fulfilling the conditions particular to them;
- (b) areas for the purposes of the single area payment scheme in accordance with Chapter 2 of Title V of Regulation (EC) No 73/2009;
- (c) a group for each of the areas for the purpose of any other area-related aid scheme, for which a different rate of aid is applicable;
- (d) areas declared under the heading 'other uses'.

For the purposes of point (a) of the first subparagraph, the average of the values of different payment entitlements in relation to the respective area declared shall be taken into account.

2. 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 57

**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 Sections 2 and 5 of Chapter 1 of Title IV of Regulation (EC) No 73/2009, 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. 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,

- if the number of payment entitlements declared exceeds the number of payment entitlements at the farmer's disposal, the payment entitlements declared shall be reduced to the number of payment entitlements at the farmer's disposal,

3. Without prejudice to reductions and exclusions in accordance with Articles 58 and 60 of this Regulation, in the case of applications for aid under area-related aid schemes, except for starch potato and seed as provided for in Sections 2 and 5 of Chapter 1 of Title IV of Regulation (EC) No 73/2009, 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.

However, without prejudice to Article 30 of Regulation (EC) No 73/2009, if the difference between the total area determined and the total area declared for payment under aid schemes established in Titles III, IV and V of Regulation (EC) No 73/2009 is less than or equal to 0,1 hectare, the area determined shall be set equal to the area declared. For this calculation only over-declarations of areas at crop group level shall be taken into account.

The second subparagraph shall not apply where that difference represents more than 20 % of the total area declared for payments.

## Article 58

**Reductions and exclusions in cases of over-declaration**

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 as provided for in Sections 2 and 5 of Chapter 1 of Title IV of Regulation (EC) No 73/2009, exceeds the area determined in accordance with Article 57 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.

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 57 of this Regulation. That amount shall be off-set in accordance with Article 5b of Commission Regulation (EC) No 885/2006 <sup>(1)</sup>. If the amount cannot be fully off-set in accordance with that article in the course of the three calendar years following the calendar year of the finding, the outstanding balance shall be cancelled.

<sup>(1)</sup> OJ L 171, 23.6.2006, p. 90.

*Article 59***Reductions in cases of irregularities concerning the size of the areas declared for the payment of aid for starch potato and seed**

1. If it is found that the area actually cultivated with potatoes is more than 10 % lower than the area declared for the payment of aid for starch potato as provided for in Section 2 of Chapter 1 of Title IV of Regulation (EC) No 73/2009, the aid to be paid shall be reduced by twice the difference found.

2. If it is found that the area actually cultivated with seed is more than 10 % higher than the area declared for the payment of seed aid as provided for in Section 5 of Chapter 1 of Title IV of Regulation (EC) No 73/2009, 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 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 in accordance with Article 5b of Regulation (EC) No 885/2006. If the amount cannot be fully off-set in accordance with that Article in the course of the three calendar years following the calendar year of the finding, the outstanding balance shall be cancelled.

*Article 60***Intentional over-declaration**

Where differences between the area declared and the area determined in accordance with Article 57 result from over-declarations committed intentionally, the aid to which the farmer would have been entitled pursuant to Article 57 shall not be granted for the calendar year in question under the aid scheme concerned if that difference is more than 0,5 % of the area determined or more than one hectare.

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 57. That amount shall be off-set in accordance with Article 5b of Regulation (EC) No 885/2006. If the amount cannot be fully off-set in accordance with that article in the course of the three calendar years following the calendar year of the finding, the outstanding balance shall be cancelled.

*Article 61***Reductions and exclusions concerning seed aid applications**

1. Where it is found that seed subject to an aid application was not actually marketed for sowing, as referred to in point (b)(iii) of the first subparagraph of Article 37, the aid to be paid for the

species concerned, after application of any reductions to be applied in accordance with Article 59, 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 62***Reductions and exclusions concerning the crop specific payment for cotton**

Without prejudice to any reductions and exclusions to be applied in accordance with Article 58 or 60 of this Regulation, where it is found that the farmer does not respect the obligations resulting from Article 30(1) and (2) of Regulation (EC) No 1121/2009, the farmer shall lose the right to the increase of the aid provided for in Article 92(2) of Regulation (EC) No 73/2009. Moreover, the aid for cotton per eligible hectare pursuant to Article 90 of Regulation (EC) No 73/2009 shall be reduced by the amount of the increase provided for in Article 92(2) of that Regulation for that farmer.

*Section II***Livestock premiums***Article 63***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 65 and 66, if the number of animals declared in an aid application exceeds that determined as a result of administrative controls or on-the-spot checks, the aid shall be calculated on the basis of the animals determined.

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

#### Article 64

##### 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 111 or Article 115 of Regulation (EC) No 73/2009 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 of this Article 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 101 of Regulation (EC) No 73/2009 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 seven days after the replacement.

#### Article 65

##### 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 63(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 63(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 63(3). That amount shall be off-set in accordance with Article 5b of Regulation (EC) No 885/2006. If the amount cannot be fully off-set in accordance with that Article in the course of the three calendar years following the calendar year of the finding, the outstanding balance shall be cancelled.

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.

In the case of application of the second subparagraph of Article 16(3), potentially eligible animals found not to be correctly identified or registered in the system for identification and registration for bovine animals shall count as animals found with irregularities. As regards the slaughter premium provided for in Article 116 of Regulation (EC) No 73/2009, for the purpose of the application of this subparagraph, only animals actually slaughtered within the year in question shall count as potentially eligible animals.

As regards the suckler cow premium in accordance with Article 111 of Regulation (EC) No 73/2009, 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 111(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 Articles 111(2)(b) and 112 of that Regulation.

4. Where differences between the number of animals declared and that determined in accordance with Article 63(3) result from irregularities committed intentionally the aid to which the farmer would have been entitled pursuant to Article 63(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 63(3). That amount shall be off-set in accordance with Article 5b of Regulation (EC) No 885/2006. If the amount cannot be fully off-set in accordance with that Article in the course of the three calendar years following the calendar year of the finding, the outstanding balance shall be cancelled.

#### *Article 66*

##### **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 between the number of animals declared and that determined in accordance with Article 63(3), Article 65(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 102(1) of Regulation (EC) No 73/2009, 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 III to Regulation (EC) No 1121/2009 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 102(2)(b) of Regulation (EC) No 73/2009, 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 irregularities committed intentionally, 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 in accordance with Article 5b of Regulation (EC) No 885/2006. If the amount cannot be fully off-set in accordance with that Article in the course of the three calendar years following the calendar year of the finding, the outstanding balance shall be cancelled.

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 67*

##### **Natural circumstances**

The reductions and exclusions provided for in Articles 65 and 66 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 68*

##### **Incorrect certificates and declarations issued by slaughterhouses**

As regards the declarations or certificates issued by slaughterhouses in connection with the special beef premium provided for in Article 110(6) of Regulation (EC) No 73/2009 and the slaughter premium provided for in Article 116 of that Regulation, if it is found that the slaughterhouse made an incorrect certification or declaration as a result of serious negligence or intentionally, the Member State concerned shall apply appropriate national penalties. 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.

## Section III

**Specific support**

## Article 69

**Findings in relation to the specific support**

As regards payment to be granted for specific support, the Member States shall, for each measure, provide for reductions and exclusions which shall, in substance, be equivalent to those provided for in this Title. In the case of area-related or livestock payments the provisions of this Title shall apply *mutatis mutandis*. Furthermore, where appropriate, Article 18 of Commission Regulation (EC) No 1975/2006 <sup>(1)</sup> shall apply *mutatis mutandis*.

As regards evidence provided by services, bodies or organisations as referred to in Article 29(2) of this Regulation, if it is found that incorrect evidence has been provided as a result of serious negligence or intentionally, the Member State concerned shall apply appropriate national penalties. Where such irregularities are found a second time, the service, body or organisation involved shall be excluded for a period of at least one year from the right to provide evidence valid for premium purposes.

## CHAPTER III

**Findings in relation to cross-compliance**

## Article 70

**General principles and definition**

1. For the purposes of this Chapter, Article 47 shall apply.

2. For the purpose of the application of Article 23(1) of Regulation (EC) No 73/2009 to farmers who are subject to cross-compliance under Articles 85t and 103z of Regulation (EC) No 1234/2007, the submission of an aid application referred to in Article 23(1) of Regulation (EC) No 73/2009 shall mean the yearly submission of the single application form.

3. Where more than one paying agency is responsible for the management of the different support schemes listed in Annex I to Regulation (EC) No 73/2009, of the measures referred to in Article 36(a)(i) to (v) and (b)(i), (iv) and (v) of Regulation (EC) No 1698/2005 and of payments related to schemes provided for in Articles 85p, 103q and 103r of Regulation (EC) No 1234/2007, Member States shall ensure that determined non-compliances and, where appropriate, the corresponding reductions and exclusions are brought to the attention of all paying agencies involved in those payments, including cases where the non respect of eligibility criteria also forms a non-compliance and vice versa. Member States shall ensure, when applicable, that one rate of reduction is applied.

4. Non-compliances shall be deemed to be 'determined' if they are established as a consequence of any kind of controls carried out in accordance with this Regulation or after having been brought to the attention of the competent control authority or, where applicable, the paying agency, in whatever other way.

5. Except in cases of force majeure and exceptional circumstances as referred to in Article 75 of this Regulation, where a farmer subject to cross-compliance obligations in accordance with Articles 85t and 103z of Regulation (EC) No 1234/2007 does not submit the single application form within the time limit provided for in Article 11 of this Regulation, a 1 % reduction per working day shall apply. The maximum reduction shall be limited to 25 %. The reduction shall apply to the total amount to be paid under payments related to schemes provided for in Articles 85p, 103q and 103r of Regulation (EC) No 1234/2007, divided by the number of years referred to in Articles 85t and 103z of the same Regulation.

6. 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 Articles 71(1) and 72(1), be considered as one non-compliance.

7. A non-compliance with a standard which also constitutes a requirement shall be considered to be one non-compliance. For the purpose of the calculation of reductions, the non-compliance shall be considered as part of the area of the requirement.

8. For the application of reductions, the percentage of the reduction shall be applied to the total amount of:

- (a) the overall amount of direct payments that has been, or has to be, granted to the farmer concerned following aid applications he has submitted or will submit in the course of the calendar year of the finding, and
- (b) the total amount of payments related to schemes provided for in Articles 85p, 103q and 103r of Regulation (EC) No 1234/2007 divided by the number of years referred to in Articles 85t and 103z of that Regulation.

## Article 71

**Application of reductions in the case of negligence**

1. Without prejudice to Article 77, where a non-compliance determined results from the negligence of the farmer, a reduction shall be applied. That reduction shall, as a general rule, be 3 % of the total amount as referred to in Article 70(8).

However, the paying agency may, on the basis of the assessment provided by the competent control authority in the evaluation part of the control report in accordance with Article 54(1)(c), decide either to reduce that percentage to 1 % or to increase it to 5 % of that total amount or, in the cases referred to in the second subparagraph of Article 54(1)(c), not to impose any reductions at all.

<sup>(1)</sup> OJ L 368, 23.12.2006, p. 74.

2. Where a Member State makes use of the possibility not to apply a reduction or exclusion as provided for in Article 23(2) of Regulation (EC) No 73/2009 and the farmer has not remedied the situation within a given deadline, the reduction or exclusion shall be applied.

The deadline shall be set by the competent authority and shall not be later than the end of the year following the one in which the finding was made.

3. Where a Member State makes use of the possibility to consider a case of non-compliance as minor, as provided for in the second and third subparagraphs of Article 24(2) of Regulation (EC) No 73/2009, and the farmer has not remedied the situation within a given deadline, a reduction shall be applied.

The deadline shall be set by the competent authority and shall not be later than the end of the year following the one in which the finding was made.

The non-compliance in question shall not be considered as minor and a reduction of at least 1 % as provided for in paragraph 1 shall be applied.

Furthermore, a non-compliance which has been considered as minor and which has been remedied by the farmer within the time limit set in the first subparagraph of this paragraph shall not be considered as a non-compliance for the purpose of paragraph 5.

4. Where more than one non-compliance with regard to different areas of cross-compliance has been determined, the procedure for the fixing of the reduction as set out in paragraph 1 shall be applied individually to each non-compliance.

The resulting percentages of reductions shall be added together. However, the maximum reduction shall not exceed 5 % of the total amount referred to in Article 70(8).

5. Without prejudice to cases of intentional non-compliance in accordance with Article 72, where repeated non-compliances have been determined, a percentage fixed in accordance with paragraph 1 of this Article with regard to the repeated 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 Article 70(6), determine the percentage that would have been applied to the repeated 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 total amount referred to in Article 70(8).

Once the maximum percentage of 15 % has been reached, the paying agency 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 72. Where a further non-compliance is determined thereafter, the percentage 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 a factor of three.

6. In the case where a repeated non-compliance is determined together with another non-compliance or another repeated non-compliance, the resulting percentage reductions shall be added together. Without prejudice to the third subparagraph of paragraph 5, the maximum reduction shall, however, not exceed 15 % of the total amount referred to in Article 70(8).

#### Article 72

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

1. Without prejudice to Article 77, where the non-compliance determined has been committed intentionally by the farmer, the reduction to be applied to the total amount referred to in Article 70(8) shall, as a general rule, be 20 % of that total amount.

However, the paying agency may, on the basis of the assessment provided by the competent control authority in the evaluation part of the control report in accordance with Article 54(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 total 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 IV

#### **Common provisions**

#### Article 73

#### **Exceptions from the application of reductions and exclusions**

1. The reductions and exclusions provided for in Chapter I and II 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 Chapters I and II 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 irregularities 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 74***Amendments and adjustments of entries in the computerised database for bovine animals**

In respect of claimed bovine animals, Article 73 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 III.

*Article 75***Force majeure and exceptional circumstances**

1. 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 31 of Regulation (EC) No 73/2009 he shall retain his right to aid in respect of the area or animals eligible at the time when the case of force majeure or the exceptional circumstance occurred. In addition, when the non-compliance resulting from such force majeure or exceptional circumstances concerns cross-compliance, the corresponding reduction shall not be applied.

2. Cases of force majeure and exceptional circumstances within the meaning of Article 31 of Regulation (EC) No 73/2009 shall be notified in writing to the competent authority, with relevant evidence to the satisfaction of the competent authority, within ten working days from the date on which the farmer is in a position to do so.

## TITLE V

**GENERAL PROVISIONS***Article 76***Minimum payments**

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

*Article 77***Accumulation of reductions**

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 Chapters II and III of Title IV:

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

The reductions or exclusions referred to in the first subparagraph shall be applied in accordance with Article 78(2) without prejudice to additional penalties pursuant to other provisions of Community or national law.

*Article 78***Application of reductions on each support scheme**

1. The amount of the payment to be granted to a farmer under a support scheme listed in Annex I to Regulation (EC) No 73/2009 shall be calculated by the Member States on the basis of the conditions established in the support scheme in question, taking into account, if necessary, the overrun of the basic area, of the maximum guaranteed area, or of the number of animals entitled to benefit from the premiums.

2. For each support scheme listed in Annex I to Regulation (EC) No 73/2009, reductions or exclusions due to irregularities, late submissions, non-declarations of parcels, exceeding the budgetary ceilings, modulation, financial discipline and non-respect of cross-compliance shall be carried out, if necessary, in the following way and sequence:

- (a) the reductions or exclusions provided for in Chapter II of Title IV shall be applied with regard to irregularities;
- (b) the amount resulting from the application of point (a) shall serve as a basis for the calculation of any reductions to be applied in case of late submissions in accordance with Articles 23 and 24;
- (c) the amount resulting from the application of point (b) shall serve as a basis for the calculation of any reductions to be applied in cases of non-declaration of agricultural parcels in accordance with Article 55;
- (d) with regard to those support schemes for which a budgetary ceiling is fixed in accordance with Articles 51(2), 69(3), 123(1) and 128(1) of Regulation (EC) No 73/2009 or applied in accordance with Articles 126(2), 127(2) and 129(2) of that Regulation, Member State shall add the amounts resulting from the application of points (a), (b) and (c).

For each of those support schemes, a coefficient shall be determined by dividing the amount of the budgetary ceiling in question by the sum of the amounts referred to in the first subparagraph. If the coefficient obtained is higher than 1, a coefficient equal to 1 shall be applied.

To calculate the payment to be granted to the individual farmer under a support scheme for which a budgetary ceiling is fixed, the amount resulting from the application of points (a), (b) and (c) of the first subparagraph shall be multiplied by the coefficient determined in the second subparagraph.

*Article 79***Basis for calculation of reductions due to modulation, financial discipline and cross-compliance**

1. Reductions due to the modulation provided for in Articles 7 and 10 of Regulation (EC) No 73/2009 and, as the case may be, in Article 1 of Council Regulation (EC) No 378/2007 <sup>(1)</sup>, as well as the reduction due to the financial discipline provided for in Article 11 of Regulation (EC) No 73/2009 and the reduction provided for in Article 8(1) of that Regulation, shall be applied to the sum of the payments from the different support schemes listed in Annex I to Regulation (EC) No 73/2009 to which each farmer is entitled to, in accordance with the procedure provided for in Article 78 of this Regulation.

2. The amount of the payment resulting from the application of paragraph 1 shall serve as the basis for the calculation of any reductions to be applied for the non-respect of cross-compliance in accordance with Chapter III of Title IV.

*Article 80***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 2.

2. 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.

3. 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.

*Article 81***Recovery of undue entitlements**

1. Without prejudice of Article 137 of Regulation (EC) No 73/2009, where, after payment entitlements have been allocated to farmers in accordance with Regulation (EC) No 795/2004 or Regulation (EC) No 1120/2009 it is established that certain payment entitlements have been allocated unduly, the farmer concerned shall give up the unduly allocated entitlements to the national reserve referred to in Article 41 of Regulation (EC) No 73/2009.

In the case that the farmer concerned, meanwhile, transferred payment entitlements to other farmers, the transferees shall also be bound by the obligation provided for in the first subparagraph in proportion to the number of payment entitlements which have been transferred to them if the farmer to whom the payment entitlements had initially been allocated does not have a sufficient number of payment entitlements at his disposal to cover the value of the unduly allocated payment entitlements.

The entitlements allocated unduly shall be deemed not to have been allocated ab initio.

2. Without prejudice of Article 137 of Regulation (EC) No 73/2009, where, after payment entitlements have been allocated to farmers in accordance with Regulation (EC) No 795/2004 or Regulation (EC) No 1120/2009 it is established that the value of the payment entitlements is too high, that value shall be adjusted accordingly. That adjustment shall also be carried out in respect of payment entitlements which have, meanwhile, been transferred to other farmers. The value of the reduction shall be allocated to the national reserve referred to in Article 41 of Regulation (EC) No 73/2009.

The payment entitlements shall be deemed as having been allocated ab initio at the value resulting from the adjustment.

3. Where, for the purposes of paragraphs 1 and 2, it is established that the number of the entitlements allocated to a farmer in accordance with Regulation (EC) No 795/2004 or Regulation (EC) No 1120/2009 is incorrect, and where the undue allocation has no impact on the total value of the entitlements the farmer received, the Member State shall recalculate the payment entitlements and where appropriate correct the type of the entitlements allocated to the farmer.

However, the first subparagraph shall not apply if the errors could reasonably have been detected by the farmers.

4. Member States may decide not to recover unduly allocated entitlements where the total amount unduly allocated to the farmer is EUR 50 or less. Furthermore, when the total value referred to in paragraph 3 concerns EUR 50 or less, Member States may decide not to carry out the recalculation.

5. Where a farmer has transferred any payment entitlements without respecting Article 46(2) of Regulation (EC) No 1782/2003 or Articles 43(1), 43(2), 62(1), 62(3) and 68(5) of Regulation (EC) No 73/2009, the situation shall be established as if the transfer had not taken place.

6. Undue amounts paid shall be recovered in accordance with Article 80.

*Article 82***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;

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

(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) Member States shall apply *mutatis mutandis* the requirements set out in paragraphs 2 to 5.

#### Article 83

#### Additional measures and mutual assistance between Member States

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 the controls 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 penalties against producers or other operators, 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.

#### Article 84

#### Notifications

1. Member States shall submit to the Commission by 15 July each year at the latest, for the aid schemes covered by the integrated system, 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 as well as particular measures taken for the administration and the control of the specific support;

(b) the number of claimants as well as the total area, total number of animals and the total of quantities;

(c) the number of claimants as well as the total area, the total number of animals and the total of quantities, covered by controls;

(d) the result of the controls carried out, indicating the reductions and exclusions applied pursuant to Title IV;

(e) the results of the controls relating to cross-compliance in accordance with Chapter III of Title III.

2. Member States shall notify the Commission by electronic means using the form made available to them by the Commission, by 31 October each year at the latest of the proportion of the land under permanent pasture in relation to the total agricultural land as referred to in Article 3(1) of this Regulation.

3. In exceptional duly justified situations, Member States may, in agreement with the Commission, derogate from the dates provided for in 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 Member States are obliged to send to the Commission.

5. Member States shall, in case of application of a linear reduction of the direct payments in accordance with Article 8(1) of Regulation (EC) No 73/2009 and Article 79 of this regulation without delay inform the Commission of the reduction percentage applied.

#### Article 85

##### Allocation key

The allocation key for the amounts corresponding to the 4 percentage points referred to in the first subparagraph of Article 9(2) of Regulation (EC) No 73/2009 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 Regulation (EC) No 1166/2008 of the European Parliament and of the Council <sup>(1)</sup>;
- (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 <sup>(2)</sup>;

- (c) in respect of GDP per capita in purchasing power, the three-year average, based on the data of national accounts, 1999 to 2001.

#### PART III

##### FINAL PROVISIONS

#### Article 86

##### Repeal

1. Regulation (EC) No 796/2004 is repealed with effect from 1 January 2010.

However, it shall continue to apply in respect of aid applications relating to marketing years or premium periods starting before 1 January 2010.

2. References to Regulation (EC) No 796/2004 shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

#### Article 87

##### Entry into force

This Regulation shall enter into force on the seventh day following 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 2010.

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

Done at Brussels, 30 November 2009.

For the Commission  
Mariann FISHER BOEL  
Member of the Commission

<sup>(1)</sup> OJ L 321, 1.12.2008, p. 14.

<sup>(2)</sup> OJ L 77, 14.3.1998, p. 3.

## ANNEX I

**Community method for the quantitative determination of  $\Delta 9$ -tetrahydrocannabinol content in hemp varieties****1. Scope and area of application**

This method seeks to determine the  $\Delta 9$ -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  $\Delta 9$ -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 39 of Regulation (EC) No 73/2009 and Article 30(2)(a) of this Regulation.

**1.2. Procedure B**

Procedure B shall be used in cases as referred to in Article 39(1) of Regulation (EC) No 73/2009 and Article 40(3) 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 first subparagraph 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 shall 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

- $\Delta^9$ -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 $\Delta^9$ -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.

The sample shall be placed in an ultrasound bath and be left for 20 minutes. It shall be centrifuged for five minutes at 3 000 r.p.m. and then the supernatant THC solution shall be removed. The solution shall be injected into the chromatograph and a quantitative analysis shall be carried out.

#### 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  $\Delta^9$ -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 $\mu$ l

#### 4. **Results**

The findings shall be expressed to two decimal places in grams of  $\Delta^9$ -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 39(1) of Regulation (EC) No 73/2009, 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 shall correspond to the mean value of two determinations per test sample.

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## ANNEX II

Regulation (EC) No 796/2004	This Regulation	Regulation (EC) No 1120/2009
Article 1	Article 1	
Article 2(1)	—	Article 2(a)
Article 2(1a)	Article 2(1)	
Article 2(1b)	—	
Article 2(2)	—	Article 2(c)
Article 2(2a)	—	Article 2(d)
Article 2(3)	Article 2(3)	
Article 2(4)	Article 2(4)	
Article 2(5)	Article 2(5)	
Article 2(6)	Article 2(6)	
Article 2(7)	Article 2(7)	
Article 2(8)	Article 2(8)	
Article 2(9)	Article 2(9)	
Article 2(10)	Article 2(10)	
Article 2(11)	Article 2(11)	
Article 2(12)	Article 2(12)	
Article 2(13)	Article 2(14)	
Article 2(14)	—	
Article 2(15)	Article 2(15)	
Article 2(16)	Article 2(16)	
Article 2(17)	Article 2(17)	
Article 2(18)	Article 2(18)	
Article 2(19)	Article 2(19)	
Article 2(20) to 2(36)	Article 2(21) to 2(37) respectively	
Article 2(37)	—	
Article 2, second last subparagraph	Article 2(38)	
Article 2, last subparagraph	—	
Article 3(1) to 3(7)	Article 3(1) to 3(7)	
Article 4	Article 4	
Article 5	Article 5	
Article 6	Article 6	
Article 7	Article 7	
Article 8(1)	Article 34(4)	
Article 8(2)	Article 34(5)	
Article 9, first paragraph	Article 8(1)	
Article 9, second paragraph	Article 8(2)	
Article 10	Article 9	
Article 11(1)	Article 11(1)	
Article 11(2), first subparagraph	Article 11(2), first subparagraph	
Article 11(2), second subparagraph	Article 11(2), third subparagraph	
Article 11(2), third subparagraph	Article 11(2), second subparagraph	

Regulation (EC) No 796/2004	This Regulation	Regulation (EC) No 1120/2009
Article 11(3)	Article 10(2)	
Article 12(1) a), b), c) and d)	Article 12(1) a), b), c) and d) respectively	
Article 12(1) e)	—	
Article 12(1) f)	Article 12(1) e)	
Article 12(2), (3) and (4)	Article 12(2), (3) and (4)	
Article 13(1), 1 <sup>st</sup> and 2nd subparagraphs	Article 13(1)	
Article 13(1) third subparagraph	—	
Article 13(2), (3) and (4)	—	
Article 13(5)	Article 13(2)	
Article 13(6)	—	
Article 13(7)	Article 13(3)	
Article 13(8)	Article 13(4)	
Article 13(9)	—	
Article 13(10)	Article 13(5)	
Article 13(11) and (12)	—	
Article 13(13a)	Article 13(6)	
Article 13(14)	Article 20(3)	
Article 14(1), first subparagraph	Article 13(8), first subparagraph	
Article 14(1), second subparagraph	—	
Article 14(1), third subparagraph	Article 13(8), second subparagraph	
Article 14(1), fourth subparagraph	Article 13(8), third subparagraph	
Article 14(1a)	Article 55(1) and (2)	
Article 14(2)	Article 12(5)	
Article 14(3)	Article 10(1)	
Article 14(4)	Article 13(9)	
Article 15	Article 14	
Article 15a	—	
Article 16(1), (2) and (3)	Article 16(1), (2) and (3) respectively	
Article 16(3), third subparagraph	Article 65(3), third subparagraph	
Article 16(4)	Article 16(4)	
Article 17	—	
Article 17a	Article 17	
Article 18	Article 20	
Article 19	Article 21	
Article 20	Article 22	
Article 21	Article 23	
Article 21a(1) and (2)	Article 24	
Article 21a,(3) 2 <sup>nd</sup> subparagraph	Article 15(1)	
Article 22	Article 25	
Article 23	Article 26	
Article 23a(1), first and second subparagraphs	Article 27(1)	

Regulation (EC) No 796/2004	This Regulation	Regulation (EC) No 1120/2009
Article 23a(2)	Article 27(2)	
Article 24(1)(a), (b), (c), (d), (e), (g), (i), (j) and (k)	Article 28(1)(a), (b), (c), (d), (e), (f), (g), (h) and (i) respectively	
Article 24(1)(f) and (h)	—	
Article 24(2) 1st subparagraph	Article 28(2)	
Article 24(2) 2nd subparagraph	Article 28(3)	
Article 26(1), (3) and (4)	Article 30(1), (3) and (4) respectively	
Article 26(2)(a), (b), (c), (f) and (h)	30(2)(a), (b), (c), (g) and (h) respectively	
Article 26(2)(d), (e) and (g)	—	
Article 27(1), first subparagraph, first sentence	Article 31(1), first subparagraph	
Article 27(1), first subparagraph, second sentence, points (a), (b) and (c)	Article 31(2)	
Article 27(1), second and third subparagraphs	Article 31(1), second and third subparagraphs	
Article 27(3) and (4)	Article 31(3) and (4)	
Article 28	Article 32	
Article 29	Article 33	
Article 30(1) first and second subparagraphs, (2), (3) and (4)	Article 34(1), (2), (3) and (6) respectively	
Article 30(1), third subparagraph	—	
Article 31	Article 37	
Article 31a	Article 38	
Article 31b	Article 39	
Article 32	Article 35	
Article 33(1)	—	
Article 33(2), (3), (4) and (5)	Article 40(1), (2), (3) and (4) respectively	
Article 33a	—	
Article 33b	—	
Article 33c	—	
Article 34(1), 1 <sup>st</sup> subparagraph	Article 41(1), 1 <sup>st</sup> subparagraph	
Article 34(1), 2 <sup>nd</sup> subparagraph	—	
Article 34(2)	Article 41(2)	
Article 35(1)	Article 42(1), 1 <sup>st</sup> paragraph	
Article 35(2)(a)	Article 42(1), 2 <sup>nd</sup> paragraph	
Article 35(2)(b), 1 <sup>st</sup> paragraph, 1 <sup>st</sup> to 4 <sup>th</sup> indent	Article 42(2), 1 <sup>st</sup> paragraph, (a) to (d)	
Article 35(2)(b), 2 <sup>nd</sup> paragraph	Article 42(2), 2 <sup>nd</sup> paragraph	
Article 35(2)(c), 1 <sup>st</sup> and 2 <sup>nd</sup> indent	Article 42(3), (a) to (b) respectively	
Article 36	Article 43	
Article 37	Article 44	

Regulation (EC) No 796/2004	This Regulation	Regulation (EC) No 1120/2009
Article 38	—	
Article 39	Article 45	
Article 40	—	
Article 41, (a), (b), (c) and (d)	Article 47(1), (2), (3) and (4)	
Article 42	Article 48	
Article 43	Article 49	
Article 44(1), (1a) and (2)	Article 50(1), (2) and (3) respectively	
Article 45(1), (1a), (1b), (2), (3) and (4)	Article 51(1), (2), (3), (4), (5) and (6) respectively	
Article 46	Article 52	
Article 47(1), (1a), (2), (3), (4) and (5)	Article 53(1), (2), (3), (4), (5) and (6) respectively	
Article 48	Article 54	
Article 49(1)	Article 56(1)	
Article 49(2)		Article 19(1), 3 <sup>rd</sup> paragraph
Article 49(3)	Article 56(2)	
Article 50(1), (2) and (3)	Article 57(1), (2) and (3) respectively	
Article 50(5)	—	
Article 50(7)	Article 75(1)	
Article 51(1)	Article 58	
Article 51(2a)	Article 57(2)	
Article 51(3)	—	
Article 52	Article 59	
Article 53, 1 <sup>st</sup> and 2 <sup>nd</sup> subparagraphs	Article 60	
Article 53, 3 <sup>rd</sup> and 4 <sup>th</sup> subparagraphs	Article 57(2)	
Article 54	Article 61	
Article 54a	—	
Article 54b	Article 62	
Article 57(1)	Article 63(1)	
Article 57(2)	Article 63(2)	
Article 57(3), first subparagraph	Article 63(3)	
Article 57(3), 2 <sup>nd</sup> subparagraph	Article 75(1)	
Article 57(4)	Article 63(4)	
Article 58	Article 64	
Article 59	Article 65	
Article 60	Article 66	
Article 61	Article 67	
Article 62	Article 68	
Article 63	—	
Article 64	—	
Article 65(1), (2a), (3), (4) and (5)	Article 70(1), (2), (3), (4) and (5) respectively	
Article 66(1)	Article 70(8) and 71(1)	
Article 66(2)	Article 70(6)	
Article 66(2a) and (2b)	Article 71(2) and (3) respectively	

Regulation (EC) No 796/2004	This Regulation	Regulation (EC) No 1120/2009
Article 66(3), 1 <sup>st</sup> and 3 <sup>rd</sup> subparagraphs	Article 71(4)	
Article 66(3), 2 <sup>nd</sup> subparagraph	Article 70(7), first sentence	
Article 66(4) and (5)	Article 71(5) and (6) respectively	
Article 67(1)	Article 70(8) and 72(1)	
Article 67(2)	Article 72(2)	
Article 68	Article 73	
Article 69	Article 74	
Article 70	Article 76	
Article 71	Article 77	
Article 71a	Article 78	
Article 71b	Article 79	
Article 72	Article 75(2)	
Article 73(1), (3) and (4)	Article 80(1), (2), and (3) respectively	
Article 73(5), (6) and (7)	—	
Article 73a(1), (2), (2a), (2b), (3) and (4)	Article 81(1), (2), (3), (4), (5) and (6) respectively	
Article 74	Article 82	
Article 75	Article 83	
Article 76	Article 84	
Article 77	—	
Article 78	Article 85	
Article 80	—	
Article 81	—	
Annex I	Annex II	



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