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► **B** **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

(OJ L 141 , 30.4.2004, p. 1)

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► M2	Commission Regulation (EC) No 394/2005 of 8 March 2005	L 63	17	10.3.2005
► M3	Commission Regulation (EC) No 606/2005 of 19 April 2005	L 100	15	20.4.2005
► M4	Commission Regulation (EC) No 1085/2005 of 8 July 2005	L 177	27	9.7.2005
► M5	Commission Regulation (EC) No 1701/2005 of 18 October 2005	L 273	6	19.10.2005
► M6	Commission Regulation (EC) No 2183/2005 of 22 December 2005	L 347	56	30.12.2005
► M7	Commission Regulation (EC) No 658/2006 of 27 April 2006	L 116	14	29.4.2006

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- **C1** Corrigendum, OJ L 291 , 14.9.2004, p. 18 (795/2004)
- **C2** Corrigendum, OJ L 385 , 29.12.2004, p. 87 (1974/2004)



COMMISSION REGULATION (EC) No 795/2004

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

- (1) Detailed rules for the implementation of Title III of Regulation (EC) No 1782/2003 establishing the single payment scheme for farmers should be laid down.
- (2) For clarity reasons it is appropriate to provide for certain definitions. Where appropriate, definitions which already apply in similar situations and/or which have been already used for years should be used.
- (3) In order to facilitate the calculation of the unit value of the payment entitlements, it should be provided for clear rules on the round up of figures and for the possibility to split existing payment entitlements in case the size of the parcel which is declared or transferred with the entitlement only amounts to a fraction of hectares.
- (4) Specific provisions should be provided for the establishment of the national reserve and in particular the calculation of the reductions of the reference amounts or the payment entitlements, as well as the application of the reduction in cases of full or partial decoupling of the dairy premiums and additional payments referred to in Articles 95 and 96 of Regulation (EC) No 1782/2003.
- (5) Article 42(3) and (5) of Regulation (EC) No 1782/2003 provides for optional cases of allocation of payment entitlements from the national reserve. It is appropriate to provide for rules for the calculation of the number and value of the payment entitlements to be allocated in such a way. In order to allow certain flexibility to Member States which are in a better position to evaluate the situation of each farmer applying for such measures, the maximum number of entitlements to be allocated should not be higher than the number of hectares declared and its value should not be higher than an amount to be fixed by the Member State according to objective criteria. According to article 42(6) of Regulation (EC) No 1782/2003, in case of increase of the unit value of existing payment entitlements, a regional average should be respected. Member States should be allowed to establish that regional value at the appropriate territorial level. However, in no case, due to its nature of aid decoupled from the production, the amount should be differentiated or calculated in function of sectorial productions.

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

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- (6) Under certain circumstances farmers could end up with more entitlements than land to use them, for example in case of common use of a forage area, because of the expiry of a lease or the participation to an afforestation program or by buying, in accordance to national provisions, milk reference quantities which were leased in the reference period with land. Therefore it seems appropriate to provide for a mechanism that should guarantee the farmer's support by concentrating it on the remaining available hectares. However, in order to avoid abuse of that mechanism, some conditions for the access to that mechanism should be provided for.
- (7) According to Regulation (EC) No 1782/2003 the national reserve shall be replenished via unused entitlements or, on an optional basis, via retention on sales of payments entitlements or on sales that have taken place before a certain date. It is therefore necessary to provide for a date after which the unused entitlements revert to the national reserve. For administrative reasons, it should also be provided that the payment entitlements accompanied by the authorisation to grow fruit and vegetable or table potatoes or set-aside entitlements when reverting to the national reserve should lose the accompanying obligation or authorisation. Moreover, this is also justified by the fact that that obligation or authorisation is established on the basis of historical references and once the single payment scheme is in place it will not be possible to determine who should receive set-aside entitlements of authorisations out of the reserve as the support will be decoupled.
- (8) In case of application of the retention on sale of payment entitlements, maximum percentages and criteria of application should be established and differentiated taking into account the type of transfers and of payment entitlements to be transferred. If speculative risks exist in the first years of application of the single payment scheme, Member State may be allowed to increase the percentage of retention for sales without land. In no case the application of such retentions should result in a substantial obstacle or prohibition of transfer of payment entitlements.
- (9) In order to facilitate the administration of the national reserve, it is appropriate to provide for management of the national reserve at regional level except in cases referred to in Article 42 (3) of Regulation (EC) No 1782/2003, where applicable, and in Article 42 (4) of that Regulation, where Member States are obliged to allocate payment entitlements.
- (10) In order to facilitate the implementation of the single payment scheme, it is appropriate to allow Member States to proceed already in the year preceding the first year of application of the scheme to the identification of the potential beneficiaries of the scheme in particular, in case of modifications in the holding due to inheritance or legal changes and to the provisional establishment of payment entitlements.
- (11) Article 33 of Regulation (EC) No 1782/2003 allows farmers to access to the single payment scheme under specific circumstances. In order to avoid that such circumstances may be used to escape the application of the rules on normal transfers of a holding with the attached reference amounts, some conditions and definitions should be set up for the application of such circumstances.
- (12) Article 46(2) of Regulation (EC) No 1782/2003 provides that a farmer may transfer his payment entitlements without land only after he has used, within the meaning of Article 44 of that Regulation, at least 80 % of his payment entitlements during at least one calendar year. In order to take into account the transfers of land that have taken place in the period before the application of the single payment scheme, it is justified to consider the transfer of holding or part of it together with the future payment entitlements as a valid transfer of the payment entitlements with land

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within the meaning of Article 46 of Regulation (EC) No 1782/2003, subject to certain conditions, in particular the fact that the seller should apply for the establishment of the payment entitlements as far as that Regulation clearly provides that only those who received the direct payment in the reference period have access to the scheme.

- (13) Article 42(4) of Regulation (EC) No 1782/2003 allows the Commission to define the special situations which shall give right to the establishment of reference amounts for certain farmers finding themselves in situations which prevented them, in full or partially, from receiving direct payments in the reference period. It is therefore appropriate to list those special situations by providing for rules in order to avoid cumulating the benefit from the different allocation of payment entitlements on the same farmer without prejudice to the possibility for the Commission to add further cases where the case may be. Moreover, Member States should be given the flexibility to establish the reference amount to be allocated.
- (14) Where a Member State according to national law or well established usual practice includes in the definition of long term lease also lease for 5 years, it is appropriate to allow Member State to apply this shorter term where the case may be.
- (15) Due to the fact that dairy premiums and additional payments will be included in the single payment scheme on the basis of a different reference period than the one referred to in Article 37 of Regulation (EC) No 1782/2003, it is appropriate, for the purpose of establishing the reference amount, to take into account of dairy farmers finding themselves in a situation referred to in Article 40 of Regulation (EC) No 1782/2003 who lease, because of that situation, their individual reference quantity or part of it according to Article 16 of Regulation (EC) No 1788/2003 during the twelve-month period ending on 31 March of the first year of application of the single payment scheme.
- (16) In cases where a farmer retires or dies and provides for transferring his holding or part of it to a member of the family or inheritant who intends to continue the agricultural activity on this holding, it is appropriate to ensure that the transfer of the holding or part of it within a family can easily take place in particular, in the case where the transferred land was leased to a third person during the reference period without prejudging the possibility for the inheritant to continue the agricultural activity.
- (17) Farmers who made investments resulting in a potential increase of the amount in direct payments that they should have been granted if the single payment scheme had not been introduced should also benefit from the allocation of entitlements. Specific rules should be provided for the calculation of the payment entitlements in case a farmer already owns payment entitlements or has no hectares. In the same circumstances, farmers who bought or leased land or participated in national programmes of reconversion of production for which a direct payment under the single payment scheme could have been granted in the reference period would find themselves without payment entitlements whilst they acquired land or participated in such programmes in order to exercise an agricultural activity that could in the future still benefit from certain direct payments. Therefore it is also appropriate to provide for the allocation of payment entitlements in that case.
- (18) For the good administration of the scheme, it is appropriate to provide for rules in case of transfers of payment entitlements.
- (19) Article 46 of Regulation (EC) No 1782/2003 provides that a Member State may decide that payment entitlements may only be transferred or used within one and the same region. In order to avoid practical problems, specific rules should be provided for holdings situated in between two or more regions.

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

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Member States and to inform the Commission of the areas for which the aid has been paid, at national, and, where the case may be, at regional level.

- (29) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Direct Payments,

HAS ADOPTED THIS REGULATION:

CHAPTER 1

SCOPE AND GENERAL PROVISIONS

*Article 1***Subject matter and scope**

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

*Article 2***Definitions**

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

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

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- (b) ‘arable land’ shall mean ‘arable land’ within the meaning of Article 2(1) of Commission Regulation (EC) No **►M1** 796/2004 ◀ ⁽¹⁾;

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- (c) ‘permanent crops’ shall mean non-rotational crops other than permanent pasture that occupy the land for five years or longer and yield repeated harvests, including nurseries as defined in point G/05 of Annex I to Commission Decision 2000/115/EC ⁽²⁾, and short rotation coppice (CN code ex 0602 90 41), with the exception of multiannual crops and nurseries of multiannual crops.
- (d) ‘multiannual crops’ shall mean crops of the following products and the nurseries of such multiannual crops:

CN code	
0709 10 00	Artichokes
0709 20 00	Asparagus
0709 90 90	Rhubarb
0810 20	Raspberries, blackberries, mulberries and loganberries
0810 30	Black-, white- or redcurrants and gooseberries
0810 40	Cranberries, bilberries and other fruits of the genus <i>Vaccinium</i>

⁽¹⁾ OJ L 141, 30.4.2004, p. 18.

⁽²⁾ OJ L 38, 12.2.2000, p. 1.

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- (e) 'permanent pasture' shall mean 'permanent pasture' within the meaning of Article 2(2) of Regulation (EC) No ►**M1** 796/2004 ◄;

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

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

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

▼ M1

The case of transfer of payment entitlements without land referred to in Article 46(2), second subparagraph, of Regulation (EC) No 1782/2003 shall be considered as a case of sale of payment entitlements without land.

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

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

*Article 3***Calculation of the unit value of payment entitlements**

1. Payment entitlements shall be calculated up to three decimals and rounded up or down to the nearest second decimal. If the calculation gives a result which is exactly half-way, the sum shall be rounded up to the nearest second decimal.

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2. Where a farmer, after having declared in accordance with Article 44(3) of Regulation (EC) No 1782/2003 all possible entire payment entitlements, needs to declare a payment entitlement accompanying a parcel which amounts to a fraction of a hectare, this last payment entitlement shall give right to a payment calculated pro rata to the size of the parcel and it shall be deemed as fully used for the purpose of Article 45 of that Regulation.

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3. Where the size of a parcel which is transferred with an entitlement in accordance with Article 46(2) of that Regulation 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.

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4. Paragraphs 2 and 3 shall apply only if the farmer still needs to declare or transfer a payment entitlement or a fraction of a payment entitlement with a fraction of a hectare after having declared or transferred existing payment entitlements or fractions of payment entitlements of the same nature.

▼ **M1***Article 3a***Determined hectares and animals**

Without prejudice to the application of Annex VII of Regulation (EC) No 1782/2003, the number of hectares or animals for which a direct payment has been or should have been granted in the reference period to be taken into consideration for the purpose of establishing the reference amount referred to in Article 37(1) of that Regulation shall be the number of hectares or animals determined within the meaning of Article 2 points (r) and (s) of Regulation (EC) No 2419/2001 for each of the direct payments referred to in Annex VI of Regulation (EC) No 1782/2003.

▼ **M5***Article 3b***Eligibility**

1. For the purpose of Article 44(2) of Regulation (EC) No 1782/2003, the following shall be considered as eligible hectares for the establishment and use of the payment entitlements:

- (a) the areas planted with short rotation coppice (CN code ex 0602 90 41), *Miscanthus sinensis* (CN code ex 0602 90 51) or *Phalaris arundicea* (Reed canary grass) between 30 April 2004 and 10 March 2005;
- (b) the areas planted with short rotation coppice (CN code ex 0602 90 41), *Miscanthus sinensis* (CN code ex 0602 90 51) or *Phalaris arundicea* (Reed canary grass) before 30 April 2004 and leased or acquired, between 30 April 2004 and 10 March 2005, in view of applying for the single payment scheme.

2. For the purpose of Article 51 of Regulation (EC) No 1782/2003, set-aside land planted with permanent crops used for the purposes referred to in Article 55(b) of that Regulation and land planted with permanent crops and which are also subject to an application for the aid for energy crops provided for in Article 88 of that Regulation shall be considered as eligible hectares for the use of, respectively, set-aside entitlements and payment entitlements.

3. For the purpose of Article 54(2) of Regulation (EC) No 1782/2003, set-aside land which was planted with permanent crops, to be used for the purposes referred to in Article 6(3) of Council Regulation (EC) No 1251/1999 ⁽¹⁾ and which was granted the area payment referred to in Article 2(2) of that Regulation for 2003 shall be considered as eligible hectares for the use of set-aside entitlements referred to in Article 53 of Regulation (EC) No 1782/2003.

⁽¹⁾ OJ L 160, 26.6.1999, p. 1.

▼ **M5**

4. Without prejudice to Article 51 of Regulation (EC) No 1782/2003, for the purpose of Article 54(2) of that Regulation, land which was planted with multiannual crops, at the date provided for the area aid applications for 2003, shall be considered as eligible hectares for the use of set-aside entitlements referred to in Article 53 of that Regulation.
5. Without prejudice to Article 60 of Regulation (EC) No 1782/2003, where a Member State makes use of the option referred to in Article 59 of that Regulation,
- (a) for the purpose of Article 63(2) of Regulation (EC) No 1782/2003 set-aside land which was planted with permanent crops, to be used for the purposes referred to in Article 6(3) of Regulation (EC) No 1251/1999 and which was granted the area payment referred to in Article 2(2) of that Regulation for 2003, shall be considered as eligible hectares for the establishment of set-aside entitlements;
 - (b) for the purpose of Article 63(2) of Regulation (EC) No 1782/2003 land which is planted with permanent crops used for the purposes referred to in Article 55(b) of Regulation (EC) No 1782/2003 shall be considered as eligible hectares for the establishment of set-aside entitlements;
 - (c) for the purpose of Article 59(4) of Regulation (EC) No 1782/2003 land planted with permanent crops and which is also subject to an application for the aid for energy crops provided for in Article 88 of Regulation (EC) No 1782/2003 shall be considered as eligible hectares for the establishment of payment entitlements;
 - (d) for the purpose of Article 59(4) of Regulation (EC) No 1782/2003 land planted with multiannual crops, shall be considered as eligible hectares for the establishment of payment entitlements.
6. The farmers concerned by the application in 2005 of paragraphs 2 to 5 of this Article may modify their single application within four weeks starting from 19 October 2005 or a date to be fixed by the Member States concerned.

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CHAPTER 2

NATIONAL RESERVE*Section 1**Establishment of the national reserve**Article 4***Reductions**

1. The reduction provided for in Article 42(1) of Regulation (EC) No 1782/2003 shall apply to all reference amounts after any possible reduction under Article 41(2) of that Regulation and, where applicable, after any possible reduction under Article 65(1) and the second subparagraph of Article 70(2) of that Regulation.
2. In case of application of the reduction referred to in Article 42 (7) of Regulation (EC) No 1782/2003, the unit value of all payment entitlements which have been established at the date of application of the linear reduction shall be reduced proportionately.

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3. In the case where the amounts contained in the national reserve show to be higher than what is needed to cover the cases referred to in Article 42 of Regulation (EC) No 1782/2003, the Member States may increase proportionally the unit value of all payment entitlements. The total amount used for this increase shall not be higher than the total amount resulting from the linear reduction applied in accordance with Article 42(1) and (7) of that Regulation.



Article 5

Dairy premiums and additional payments

1. The percentage of reduction fixed by the Member States in accordance with Article 42(1) of Regulation (EC) No 1782/2003 shall apply in 2007 to the amounts resulting from dairy premiums and additional payments to be included in the single payment scheme.
2. Where a Member State makes use of the option, provided for in the first subparagraph of Article 62 of Regulation (EC) No 1782/2003, to include in full the amounts resulting from dairy premiums and additional payments in the single payment scheme, it shall apply the percentage of reduction referred to in paragraph 1 of this Article in the year in which it makes use of that option. In the following years, the Member State concerned shall apply the reduction within the limit of the increase of the amounts provided for in Articles 95 (2) and 96 (2) of Regulation (EC) No 1782/2003.
3. Where a Member State makes use of the option, provided for in the first subparagraph of Article 62 of Regulation (EC) No 1782/2003, to include in part the amounts resulting from dairy premiums and additional payments in the single payment scheme, it shall apply the percentage of reduction referred to in paragraph 1 of this Article to the corresponding amounts included in the single payment scheme in the year in which it makes use of that option, taking into account the increase of the amounts provided for in Article 95 (2) and 96 (2) of Regulation (EC) No 1782/2003.

Section 2

Establishment of payment entitlements from the national reserve

Article 6

Establishment of payment entitlements

1. Where a Member State makes use of the options provided for in Article 42(3) and (5) of Regulation (EC) No 1782/2003, farmers may receive, in accordance with the conditions laid down in this Section and in accordance with the objective criteria laid down by the Member State concerned, payment entitlements from the national reserve.
2. When a farmer who does not own any payment entitlement applies for payment entitlements from the national reserve, he may receive a number of payment entitlements not higher than the number of hectares he holds (owned or leased) at that time.
3. When a farmer who owns payment entitlements applies for payment entitlements from the national reserve, he may receive a number of payment entitlements not higher than the number of hectares he holds for which he does not own any payment entitlement.

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

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

4. The regional average shall be established by Member States at the appropriate territorial level in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion. It shall be established at a date to be fixed by the Member States. It may be reviewed annually. It shall be based on the value of the payment entitlements allocated to the farmers in the region concerned. It shall not be differentiated per sector of production.
5. The value of each payment entitlement received in accordance with paragraph 2 or 3, except second subparagraph of paragraph 3, shall be calculated by dividing a reference amount, established by the

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Member State, in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion, by a number of hectares not higher than the number of hectares referred to in paragraph 2.

*Article 7***Application of Article 42(5) of Regulation (EC) No 1782/2003 in case of fewer hectares than payment entitlements**

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

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

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For the purpose 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.

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

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

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

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

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6. For the purpose of paragraphs 1, 2, 3 and 4, 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.

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

*Section 3****Replenishment of the national reserve****Article 8***Unused payment entitlements**

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

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For the purposes of this Article, ‘unused payment entitlement’ shall mean that no payment has been granted for that entitlement during the period referred to in the first subparagraph. Payment entitlements for which an application is made and accompanying an area determined within the meaning of Article 2 point (22) of ►**M1** Regulation (EC) No 796/2004 ◀ shall be deemed as being used.

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

*Article 9***Retention on sales of payment entitlements**

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

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

and/or

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

and/or

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

and/or

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

and/or

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

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

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

*Article 10***Windfall profit clause**

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

(a) in case of sale, up to 90 % of the reference amount to be established in accordance with Article 37 of Regulation (EC) No 1782/2003 for the seller in respect of the production units and the hectares of the holding or part of the holding transferred ►**M1** or premium rights transferred ◀;

▼B

- (b) in case of six-year lease, up to 50 % of the reference amount to be established in accordance with Article 37 of Regulation (EC) No 1782/2003 for the lessor in respect of the production units and the hectares of the holding or part of the holding transferred ► **M1** or premium rights transferred ◀;
- (c) in case of a lease of more than six years, 5 % per any year after the six-year period but corresponding to no more than 20 % of the reference amount to be established in accordance with Article 37 of Regulation (EC) No 1782/2003 for the lessor in respect of the production units and the hectares of the holding or part of the holding transferred ► **M1** or premium rights transferred ◀.
2. The payment entitlements to be established for the seller or the lessor shall be calculated in accordance with Article 43 of Regulation (EC) No 1782/2003 on the basis of the remaining reference amount and ► **M1** hectares of the reference period corresponding to that remaining reference amount. ◀
3. Paragraph 1 shall not apply in cases where, within one year but not later than ► **M1** 15 May 2004 ◀ from the sale or the lease, the seller or the lessor bought or rented for six or more years another holding or part of it. In that case, the seller or the lessor shall keep a number of payment entitlements at least equal to the number of payment entitlements that the farmer may use on the new holding pursuant to Article 44 of Regulation (EC) No 1782/2003.
4. Paragraph 1 shall not apply in cases where the farmer proves, to the satisfaction of the Member State, that the price of sale or lease corresponds to the value of the holding or, in case of partial transfer of part of the holding without payment entitlements.

▼M1

5. Without prejudice to the application of paragraph 4, paragraph 1 shall not apply in cases where the contractual clause referred to in Article 17 and, where the case may be, Article 27 has been introduced in a contract before 15 May 2004.

▼M2

6. Member States may fix a ceiling above which paragraph 1 shall apply.

▼B*SECTION 4***REGIONAL ADMINISTRATION***Article 11***Regional reserves**

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

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

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

▼ **B**

CHAPTER 3

ALLOCATION OF PAYMENT ENTITLEMENTS

*Section 1**Initial allocation of payment entitlements**Article 12***Applications**

1. Starting from the calendar year preceding the first year of application of the single payment scheme Member States may proceed to the identification of the eligible farmers referred to in Article 33 of Regulation (EC) No 1782/2003, to the provisional establishment of the amounts and the number of hectares referred to respectively in Article 34(1) (a) and (b) of that Regulation and to a preliminary verification of the conditions referred to in paragraph 5 of this Article.
2. For the provisional establishment of payment entitlements, Member States may send the application form referred to in Article 34 (1) of Regulation (EC) No 1782/2003, by a date to be fixed by the Member States but not later than 15 April of the first year of application of the single payment scheme, to the farmers referred to in Article 33(1) (a) of that Regulation or, where the case may be, to the farmers identified in accordance with paragraph 1 of this Article. In this case and by the same date, farmers other than those referred to in Article 33(1) (a) of Regulation (EC) No 1782/2003 shall make an application to establish their payment entitlements.
3. Where a Member State does not make use of the option provided for in paragraph 2, the Member State shall send the application form referred to in Article 34(1) of Regulation (EC) No 1782/2003 by a date to be fixed by the Member State but not later than one month before the last date for lodging an application under the single payment scheme.
4. The definitive establishment of payment entitlements to be allocated in the first year of application of the single payment scheme shall be subject to the application under the single payment scheme in accordance with Article 34(3) of Regulation (EC) No 1782/2003.

▼ **M1**

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

In any case, definitive payment entitlements shall be established by at the latest 15 August of the first year of application of the single payment scheme. Where specific administrative conditions so warrant, a Member State may decide that date for the definitive establishment may be at the same time as the date for the notification of the payment for the first year of application of the single payment scheme but in any case not later than 31 December of the first year of application.

Farmers may introduce, under reserve of the definitive establishment, applications under the single payment on the basis of provisional payment entitlements established by the Member States or acquired via the contractual clause referred to in Articles 17 or 27.

▼ **B**

5. The applicant shall prove to the satisfaction of the Member State that, at the date of application for the payment entitlements, he is a farmer within the meaning of Article 2(a) of Regulation (EC) No 1782/2003.
6. A Member State may decide to set up a minimum size per holding ► **M1** in terms of agricultural area ◀ for which the establishment of payment entitlements may be requested. However, the minimum size shall not be higher than 0,3 ha.

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

▼B

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

▼M1

8. Except for the purpose of establishing payment entitlements from the national reserve referred to in Articles 6, 7 and 18 to 23a, and without prejudice to paragraph 5 and 6 of this Article, no parcel needs to be declared for the purpose of the establishment of the payment entitlements. The declaration of parcels referred to in Article 44(3) of Regulation (EC) No 1782/2003 shall apply for the purpose of the application for payment of the payment entitlements under the single payment scheme.

▼B*Section 2**Allocation of payment entitlements outside the national reserve**Article 13***Inheritance and anticipated inheritance**

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

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

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

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

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

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

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

*Article 14***Changes in legal status or denomination**

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

▼B

- (a) the number and the value of the payment entitlements shall be established on the basis of the reference amount and number of hectares relating to the original holding;
 - (b) in case of changes of the legal status of a legal person or from a natural person to a legal person or from a legal person to a natural person, the farmer managing the new holding shall be the farmer who was in control of the original holding in terms of management, benefits and financial risk;
2. Where the cases referred to in Article 33(2) of Regulation (EC) No 1782/2003 occur in the period between 1 January and the date for lodging an application in the first year of application of the single payment scheme, paragraph 1 of this Article shall apply.

*Article 15***Mergers and scissions**

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

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

2. For the purposes of the second subparagraph of Article 33(3) of Regulation (EC) No 1782/2003, 'scission' shall mean the scission of one farmer within the meaning of Article 2 (a) of Regulation (EC) No 1782/2003 into at least two new separate farmers within the meaning of Article 2 (a) of Regulation (EC) No 1782/2003 of which at least one remains controlled, in terms of management, benefits and financial risks, by at least one of the legal or natural persons originally managing the holding or the scission of one farmer within the meaning of Article 2 (a) of Regulation (EC) No 1782/2003 into at least one new separate farmer within the meaning of Article 2 (a) of Regulation (EC) No 1782/2003 the other one remaining controlled, in terms of management, benefits and financial risks, by the farmer originally managing the holding.

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

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

*Article 16***Hardship cases**

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

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

▼B

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

- a) receive a reduced reference amount and apply, under a program to be established by the Member State according to Article 42(5) of Regulation (EC) No 1782/2003, after the expiry of his agri-environmental commitment, to adjust the unit value of his payment entitlements by a date to be fixed by the Member State but not later than, the latest date for application under the single payment scheme in the following year,
or alternatively
- b) receive a full reference amount subject to the condition that he accepts to modify the amounts to be paid under those agri-environmental commitments.

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

▼M1

3. Article 40 of Regulation (EC) No 1782/2003 shall apply on the basis of each direct payment referred to in Annex VI of that Regulation.

▼B*Article 17***Private contract clause in case of sale**

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

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

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

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

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

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



Section 3

Allocation of payment entitlements within the national reserve

Article 18

General provisions for farmers in a special situation

1. For the purposes of Article 42 (4) of Regulation (EC) No 1782/2003, ‘farmers in a special situation’ shall mean the farmers referred to in Articles 19 to ►**M1** 23a ◀ of this Regulation.
2. In cases where a farmer in a special situation meets the condition for applying two or more of Articles 19 to ►**M1** 23a ◀ of this Regulation or Articles 37 (2), 40, 42(3) or 42(5) of Regulation (EC) No 1782/2003, he shall receive a number of payment entitlements not higher than the number of hectares he declares in the first year of application of the single payment scheme and whose value shall be the highest value he may obtain by applying separately each of the Articles for which he meets the conditions.
3. Article 6 shall not apply to farmers in a special situation, except the third subparagraph of Article 6(3).
4. In cases where the lease referred to in Articles 20 and 22 or the programs referred to in Article 23 expire after the last date for lodging an application under the single payment scheme in its first year of application, the farmer concerned may apply for the establishment of his payment entitlements, after the expiry of the lease or program, by a date to be fixed by the Member States but not later than the latest date for application under the single payment scheme in the following year.
5. Where, in accordance with their national law or well-established usual practice, the definition of long term lease also includes lease for five years, Member States may decide to apply Articles 20, 21 and 22 to those lease.

Article 19

Dairy farmers

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

Article 20

Transfer of leased land

1. A farmer who received, ►**M1** 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 ►**M1** from agricultural activity ◀ or died before the date for lodging an application under the single payment scheme in its first year of application, shall receive payment entitlements calculated by dividing a reference amount, established by the Member State, in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion, by a number of hectares not higher than the number of hectares of the holding or part of the holding he received.
2. Farmers referred to in paragraph 1 shall be any person who may receive the holding or part of the holding referred to in paragraph 1, by way of actual or anticipated inheritance.

▼ **B***Article 21***Investments**

1. A farmer who made investments in production capacity or purchased land in accordance with the conditions laid down in paragraphs 2 to 6, by ► **M1** 15 May 2004 ◀ at the latest, shall receive payment entitlements calculated by dividing a reference amount, established by the Member State, in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion, by a number of hectares not higher than the number of hectares he purchased.

▼ **M6**

However for the investments consisting of the planting of olive trees in the context of programs approved by the Commission, the date referred to in the first subparagraph shall be 31.12.2006.

▼ **M7**

For the investments in the sugar sector the date referred to in the first subparagraph shall be 3 March 2006.

▼ **B**

2. Investments shall be provided for in a plan or programme whose implementation has already started by ► **M1** 15 May 2004 ◀ at the latest. The plan or programme shall be communicated by the farmer to the competent authority of the Member State.

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

▼ **M6**

However, for investments referred to in the second subparagraph of paragraph 1, the implementation of the plan or programme shall end by 31.12.2006 at the latest.

▼ **M7**

For the investments in the sugar sector the date referred to in the first subparagraph shall be 3 March 2006.

▼ **B**

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

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

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

▼ **M2**

4. Long term lease of six and more years started by 15 May 2004 at the latest shall be considered as a purchase of land or investment in production capacity for the application of paragraph 1.

▼ **M7**

For the investments in the sugar sector the date referred to in the first subparagraph shall be 3 March 2006.

▼ **B**

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

▼B

6. Where a farmer has no hectares or does not own any payment entitlements, the number of payment entitlements shall be calculated by dividing the reference amount referred to in paragraph 1 by a unit value that shall not be higher than EUR5 000.

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

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

*Article 22***Lease and purchase of leased land**

1. A farmer who leased, between the end of the reference period and ►**M1** 15 May 2004 ◀ at the latest, for six or more years a holding or part of it whose lease conditions may not be adjusted shall receive payment entitlements calculated by dividing a reference amount, established by the Member State, in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion, by a number of hectares not higher than the number of hectares he leased.

2. Paragraph 1 shall apply to a farmer who bought, in the reference period or before, or by ►**M1** 15 May 2004 ◀ at the latest, a holding or part of it whose land was under a lease during the reference period, with the intention to commence or expand his agricultural activity within one year after the expiry of the lease.

▼M2

For the purposes of application of this paragraph, '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.

▼B*Article 23***Reconversion of production**

1. A farmer who participated, in the reference period and by ►**M1** 15 May 2004 ◀ at the latest, in national programs of reorientation of production for which a direct payment under the single payment scheme could have been granted, such as, in particular, programs of conversion of production, shall receive payment entitlements calculated by dividing a reference amount, established by the Member State, in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion, by a number of hectares not higher than the number of hectares he declares in the first year of application of the single payment scheme.

2. Paragraph 1 shall apply to a farmer who converted during the reference period and by ►**M1** 15 May 2004 ◀ at the latest, his milk production into any other production of a sector referred to in Annex VI of Regulation (EC) No 1782/2003.

▼M1*Article 23a***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 44(3) of Regulation (EC) No 1782/2003.

▼ **B**

CHAPTER 4

SPECIFIC PROVISIONS

*Section 1**Declaration and transfer of payment entitlements**Article 24***Declaration and use of payment entitlements**▼ **M7**

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 Regulation (EC) No 796/2004.

However, where a farmer makes use of the possibility to amend the single application in accordance with Article 15 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 25(2) of this Regulation and withdraws those payment entitlements from his own single application, within the time-limits set out in Article 15 of Regulation (EC) No 796/2004.

▼ **B**

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

▼ **M3**

However, where specific agricultural conditions so warrant, Member States may authorise farmers to fix, within the fixed period referred to in the first subparagraph, two different dates for the beginning of the 10 month period in respect of their holding. Farmers who make use of this possibility shall indicate their choices in respect of each individual parcel in their single application form in addition to the information to be given by them in accordance with Article 12 of Regulation (EC) No 796/2004.

▼ **B***Article 25***Transfers of payment entitlements**

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

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

▼ **M7**

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. The

▼ **M7**

competent authority may only object to a transfer where the latter is not in accordance with provisions of Regulation (EC) No 1782/2003 and of this Regulation.

▼ **M2**

4. For the application of the second subparagraph of Article 46(2) of Regulation (EC) No 1782/2003, 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.

▼ **B***Article 26***Regional limitation**

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

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

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

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

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

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

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

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

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

▼B

2. The lessor shall apply for the establishment of the payment entitlements in accordance with Article 12, adding to the application a copy of the lease contract and indicating the number of hectares for which he intends to lease the payment entitlements. Where the case may be, Article 42(9) of Regulation (EC) No 1782/2003 shall apply.
3. The lessee shall apply for payment under the single payment scheme in accordance with Article 12, adding to the application a copy of the lease contract.
4. A Member State may require that the applications of the lessee and of the lessor are lodged together or that the second application contains a reference to the first one.

*Section 2**Other specific provisions**Article 28***Forage area****▼M1**

1. For the purposes of Article 34(1)(b) of Regulation (EC) No 1782/2003, a Member State may decide, where the case may be, to use:
 - (a) the forage area declared by the farmer in the area aid application for 2004 or in the year preceding the first year of application of the single payment scheme, or
 - (b) the forage area declared in application of Article 12(1) or (2) of this Regulation.
2. For the purpose of the establishment of the definitive payment entitlements the farmer may prove, at the satisfaction of the competent authority, that his forage area in the reference period was lower or, in case the area used by Member States is lower, he shall, in accordance with Article 43(2)(b) of Regulation (EC) No 1782/2003, declare all the forage area he held in the reference period.

▼M3*Article 28a***Three months period provided for in Article 51(b) of Regulation (EC) No 1782/2003**

The Member States indicated in ►M4 Annex I ◀ are authorised to allow secondary crops to be cultivated on the eligible hectares during a period of maximum three months starting each year on the date laid down in that Annex for each Member State.

▼B*Article 29***Production of hemp**

For the purposes of Article 52 of Regulation (EC) No 1782/2003, the payment of the entitlements for areas on hemp shall be subject to the use of seed of the varieties listed in Annex II to ►M1 Regulation (EC) No 796/2004 ◀ in the version applicable for the year in respect of which the payment is granted. In the case of hemp grown for fibre, the seed shall be certified in accordance with Council Directive 2002/57/EC ⁽¹⁾ and in particular Article 12 thereof.

⁽¹⁾ OJ L 193, 20.7.2002, p. 74.

▼ **B***Article 30***Entitlements subject to special conditions**▼ **M1**

1. For the purposes of calculating the agricultural activity expressed in livestock units (LU) referred to in Article 49(2) of Regulation (EC) No 1782/2003, the conversion table provided for in Article 131(2)(a) of that Regulation shall apply to the three-year average number of animals for which a direct payment referred to in Article 47 of that Regulation was granted in the reference period.

▼ **B**

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

▼ **M1**

In case of dairy premium and additional payments, the LU shall be calculated by dividing the reference quantity used for the calculation of the amount of dairy premium and additional payment when included in the single payment scheme by the average milk yield provided for in Annex XVI of Regulation (EC) No 1973/2004 ⁽¹⁾ applicable at that time or by the individual milk yield, in case the individual yield was higher than the average. Where a Member State makes use of the option provided for in Article 62 of Regulation (EC) No 1782/2003, the number of LU shall be modified accordingly.

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 benefitted from several premiums, the coefficient applicable shall be the average of the coefficient applicable to the different premiums.

▼ **B**

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

- (a) Member States shall ask each producer to declare, on the basis of his farm register, prior to a date to be determined by the Member State but not later than the date of payment, the number of LUs;
and/or
- (b) Member States shall use the computerised database set up in accordance with Council Directive 92/102/EEC ⁽²⁾ and Regulation (EC) No 1760/2000 of the European Parliament and of the Council ⁽³⁾ 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.

▼ **M1**

3a. The number of LU shall be calculated pro rata to the payment entitlements for which he did not have hectares in the reference period and for which the farmer requests the application of the special conditions. It shall apply starting from the payment entitlements at the lowest value.

The request shall be made only in the first year of application 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 payment entitlements subject to special conditions 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.

⁽¹⁾ See page 1 of this Official Journal.

⁽²⁾ OJ L 355, 5.12.1992, p. 32.

⁽³⁾ OJ L 204, 11.8.2000, p. 1.

▼ M1

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

No request to re-establish the special condition 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 49(2) second subparagraph of Regulation (EC) No 1782/2003.

▼ B

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

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

*Article 31***Dairy premium and additional payments**

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

- (a) in the case where a dairy farmer received other direct payments in the reference period:
 - if he had hectares in the reference period, the payment entitlements shall be calculated, in accordance with Article 43 of Regulation (EC) No 1782/2003, on the basis of all the hectares which in the reference period gave right to those direct payments including the forage area;
 - if he had no hectares in the reference period, he shall receive payment entitlements subject to special conditions calculated in accordance with Article 48 of Regulation (EC) No 1782/2003;
- (b) in the case where a dairy farmer did not receive other direct payments in the reference period:
 - if he has hectares, the payment entitlements shall be calculated by dividing the amount to be granted under Articles 95 and 96 of Regulation (EC) No 1782/2003 by the hectares he owns in 2005 or, in case of application of Article 71 of Regulation (EC) No 1782/2003, in the first year of application of the single payment scheme;
 - If he has no hectares, he shall receive payment entitlements subject to special conditions calculated in accordance with Article 48 of Regulation (EC) No 1782/2003.

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

▼ M1*Article 31a***Beef and veal and sheep and goat payments**

1. In order to calculate the reference amount relating to extensification payments and additional payments in the beef and veal and sheep and goat sectors referred to in Annex VI of Regulation (EC) No 1782/2003, Member States shall take into account, according to objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion, the eligibility conditions

▼ M1

and amounts set up by the Member State concerned when granting such payments in the reference period provided that the component of such payments in the ceiling referred to in Annex VIII of that Regulation is not exceeded.

2. In order to calculate the reference amount relating to the slaughter premium in the beef and veal sector referred to in Annex VI of Regulation (EC) No 1782/2003, Member State shall take into account the application of Article 11(4) of Regulation (EC) No 1254/1999.

▼ M6*Article 31b***Determination and use of payment entitlements in the olive oil sector**

1. The number of hectares to be taken into account for the determination of the number of payment entitlements referred to in Article 43 and Annex VII, point H, of Regulation (CE) No 1782/2003 is calculated by the Member States in olive GIS -ha according to the common method defined in annex XXIV of the Regulation (CE) No 1973/2004.

2. With regards to the parcels occupied partially by olive trees and partially by other crops covered by the single payment scheme, including set-aside areas, the calculation method to be used to determine the surface occupied by olive trees shall be the method referred to in paragraph 1. The surface of the part of the area planted with other crops covered by the single payment scheme is determined in accordance with the integrated system provided for in Title II, Chapter 4 of Regulation (CE) No 1782/2003.

The application of these two methods of calculation shall not result in a surface higher than the agricultural surface of the parcel.

3. By way of derogation to paragraph 1, the common method defined in Annex XXIV shall not be applicable in cases where:

- (a) The olive-grove parcel is of a minimum size, to be determined by the Member State within the limits of a size of 0,1 hectare.
- (b) The olive-grove parcel is situated in an administrative entity for which the Member State has established an alternative system of olive-grove GIS.

In those cases, Member States determine the eligible area according to objective criteria and in such a way as to ensure equal treatment between farmers.

4. The area to be considered for the use of payment entitlements for the purposes of Article 44 of Regulation (CE) No 1782/2003 shall be the one calculated in accordance with paragraphs 1, 2 and 3 of this Article.

▼ B

CHAPTER 5

SET-ASIDE*Article 32***Conditions for set aside**

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

▼B

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

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

3. Paragraph 2 shall not apply to areas set aside or afforested pursuant to Articles 22, 23, 24 and 31 of Council Regulation (EC) No 1257/1999 ⁽¹⁾ and counting for the purposes of compulsory set-aside, where the measures referred to in paragraph 2 prove to be incompatible with the environmental or afforestation requirements laid down in those Articles.

▼M1

4. For the purposes of Articles 54(2) and 61 of Regulation (EC) No 1782/2003, land under permanent pasture in 2003 shall be:

- (a) land declared by a farmer in his aid application for 2003 as being under permanent pasture, and
- (b) land not declared by a farmer in his aid application for 2003, unless it can be shown that that land was not under permanent pasture in 2003.

However, Member States may provide that land under permanent pasture in 2003 shall be land declared in the aid application for 2003 and in the aid applications for at least the five consecutive years prior to 2003 as land used to grow grasses or other herbaceous forage.

▼M4

Where areas were newly allocated in the framework of a national reparable scheme between the date for the aid application for 2003 and the date of application for the single payment scheme in the first year of implementation, the Member State concerned shall determine which areas are to be considered as permanent pasture for the purpose of articles 54(2) and 61 of Regulation (EC) No 1782/2003. In these cases Member States shall take into account the situation existing at farmer's level before the reparable scheme by minimising, to the maximum extent, any effect on the farmer's possibilities to use the payments entitlements. In doing so Member States shall take action to prevent, in the area affected by the reparable scheme, any significant increase of the total area eligible to set aside entitlements as well as any significant decrease of permanent pasture.

▼B*Article 33***Exchange of eligible land for set-aside**

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

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

⁽¹⁾ OJ L 160, 26.6.1999, p. 80.

▼B

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

*Article 34***Organic production**

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

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

CHAPTRE 6

REGIONAL AND OPTIONAL IMPLEMENTATION*Section 1***Regional implementation***Article 35***General provisions**

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

*Article 36***Calculation of the regional ceiling**

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

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

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

*Article 37***Establishment of the national reserve**

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

▼ **B***Article 38***Initial allocation of payment entitlements**

1. For the purposes of Article 59 (2) and (3) of Regulation (EC) No 1782/2003, Member States shall establish the number of eligible hectares referred to in those paragraphs including the grassland by using the number of hectares declared for the establishment of the payment entitlements in the first year of application of the single payment scheme.
2. By way of derogation from paragraph 1, Member States may establish the number of eligible hectares referred to in Article 59 (2) and (3) of Regulation (EC) No 1782/2003 including the grassland by using the number of hectares declared in the area aid declarations for 2004 or for the year preceding the first year of application of the single payment scheme. In cases where the number of eligible hectares declared by farmers in the first year of application of the single payment scheme is lower than the number of eligible hectares established in accordance with the first subparagraph, a Member State may reallocate, in part or in full, the amounts corresponding to the hectares which have not been declared as a supplement to each payment entitlement allocated in the first year of application of the single payment scheme. The supplement shall be calculated by dividing the amount concerned by the number of payment entitlements allocated.
3. The value and number of the payment entitlements allocated on the basis of the farmers' declarations for the establishment of the payment entitlements in the first year of application of the single payment scheme shall be provisional. The definitive value and number shall be established, by 31 December of the first year of application of the single payment scheme at the latest, after the checks made pursuant to Commission ► **M1** Regulation (EC) No 796/2004 ◀ are carried out.

▼ **M1**

4. Article 40 of Regulation (EC) No 1782/2003 and Article 16 of this Regulation shall apply *mutatis mutandis*.
5. For the purpose of this Article, the reference to 'agricultural area' in Article 12(6) shall be construed as a reference to 'eligible area within the meaning of Article 44(2) of Regulation (EC) No 1782/2003'.

▼ **B***Article 39***Initial allocation of set-aside entitlements**

1. For the purposes of Article 63(2) 3rd subparagraph of Regulation (EC) No 1782/2003, Member States shall establish the set-aside rate by using the data available related to the land concerned.
2. The number of hectares corresponding to the set-aside entitlements allocated in the first year of application of the single payment scheme shall not vary by a margin of more than 5 % of the average number of hectares set aside in the reference period.

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

*Article 40***Application of Article 42(5) of Regulation (EC) No 1782/2003 in case of fewer hectares than payment entitlements**

Where a Member State makes use of the option provided for in Article 59 of Regulation (EC) No 1782/2003, and it decides to apply Article 7 of this Regulation, for the purpose of the allocation of payment entitlements in accordance with that Article 7, the number of payment entitlements to which an authorization as referred to in Article 60 of Regula-

▼ **B**

tion (EC) No 1782/2003 is linked shall be equal to the initial number of payment entitlements with the authorisation and, where the case may be, no higher than the number of payment entitlements allocated.

*Article 41***Establishment and transfer of payment entitlements with authorisation**

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

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

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

▼ **M1**

4. For the purpose of Article 60(3)(b) of Regulation (EC) No 1782/2003, Article 20 to 23a of this Regulation shall apply *mutatis mutandis* to the farmers producing the products referred to in Article 60(1) of Regulation (EC) No 1782/2003.

▼ **M4**

5. The average number of hectares at national and regional level, referred to in Article 60(2) of Regulation (EC) No 1782/2003, is fixed in Annex II to this Regulation.

▼ **B***Article 42***Dairy premium and additional payments**

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

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

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

*Article 43***Set-aside**

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

▼B

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

*Article 44***Retention on sale of payment entitlements**

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

*Article 45***Windfall profit clause**

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

*Article 46***Private contract clause**

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

Article 27 shall not apply.

*Section 2**Optional implementation***▼M2***Article 47***Overrun of the ceilings**

Where the sum of the amounts to be paid under each of the schemes provided for in Articles 66 to 71 of Regulation (EC) No 1782/2003 exceeds the ceiling fixed in accordance with Article 64(2) of that Regulation, the amount to be paid shall be reduced proportionately in the year concerned.

▼B*Article 48***Implementation of Article 69 of Regulation (EC) No 1782/2003**

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

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

▼ **B**

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

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

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

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

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

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

▼ **M1**

CHAPTER 6a

New Member States*Article 48a***Implementation in the new Member States**

1. Save as otherwise provided for in this Chapter, the provisions of this Regulation shall apply to the new Member States.
2. Any reference to Article 42 of Regulation (EC) No 1782/2003 in this Regulation shall be construed as a reference to Article 71d of Regulation (EC) No 1782/2003.
3. Any reference to the regional average in Articles 6(3) and (4) of this Regulation shall be construed as a reference to the limit of EUR 5 000 referred to in Article 71d(4) of Regulation (EC) No 1782/2003.
4. ► **M5** Any reference to Articles 58 and 59 or 58(1) and 59(1) of Regulation (EC) No 1782/2003 in Article 3b and Chapters 6 and 7 of this Regulation shall be construed as a reference to Article 71e of Regulation (EC) No 1782/2003. ◀
5. Any reference to Article 59(2) and (3) of Regulation (EC) No 1782/2003 in Article 38 of this Regulation shall be construed as a reference to Article 71f of Regulation (EC) No 1782/2003.
6. ► **M5** Any reference to Article 60 of Regulation (EC) No 1782/2003 in Article 3b, Article 8(2), Article 9(1)(e), Article 41 and Article 50a of this Regulation shall be construed as a reference to Article 71g of Regulation (EC) No 1782/2003. ◀

▼ M1

7. ► **M5** Any reference to Article 63(2) of Regulation (EC) No 1782/2003 in Articles 39, 43 and 48b of this Regulation shall be construed as a reference to Article 71j(2) of Regulation (EC) No 1782/2003. ◀
8. ► **M5** Articles 3a, 3b(1), (3) and (4), 7, 10, 12 to 17, 27, 28, 30, 31, 31a, 40, 42, 45 to 46 and 49 shall not apply. ◀
9. Article 5, 19, 23, 31 and 42 shall not apply in case of application of the single area payment scheme referred to in Article 143b of Regulation (EC) No 1782/2003.

▼ M5

10. Any reference to Article 59(4) of Regulation (EC) No 1782/2003 in Article 3b of this Regulation shall be construed as a reference to Article 71f(2) of Regulation (EC) No 1782/2003.

▼ M6

11. Malta and Slovenia may grant aid for olive groves per olive GIS-ha in 2006 up to a maximum of five categories of olive groves areas as defined in Article 110i(2) of Regulation (EC) No 1782/2003 and within the maximum amount fixed in paragraph 3 of that Article, in accordance with objective criteria and in such a way as to ensure equal treatment between the farmers.
12. For Slovenia, Articles 12 and 13 of Council Regulation (EEC) No 1696/71 ⁽¹⁾ and Council Regulation (EC) No 1098/98 ⁽²⁾ shall continue to apply, respectively, in respect of the 2006 harvest and until 31 December 2006.

▼ M7

CHAPTER 6b

**INTEGRATION OF TOBACCO, OLIVE OIL, COTTON, HOPS
PAYMENTS AND SUGAR BEET, CANE AND CHICORY SUPPORT IN
THE SINGLE PAYMENT SCHEME**

▼ M6*Article 48c***General rules**

1. Where a Member State has made use of the option provided for in Article 71 of Regulation (EC) No 1782/2003 and decided to apply the single payment scheme in 2006, the rules laid down in Title III of Regulation (EC) No 1782/2003 and in Chapters 1 to 6 of this Regulation shall apply.

▼ M7

However, the reduction referred to in Article 41(2) of Regulation (EC) No 1782/2003 shall not apply to the reference amount calculated for sugar beet, cane and chicory support in accordance with point K of Annex VII to Regulation (EC) No 1782/2003.

⁽¹⁾ OJ L 175, 4.8.1971, p. 1.

⁽²⁾ OJ L 157, 30.5.1998, p. 7.

▼ **M7**

2. Where a Member State has applied the single payment scheme in 2005 and without prejudice to the third subparagraph of Article 71(1) of Regulation (EC) No 1782/2003, for the purposes of the establishment of the amount and the determination of payment entitlements in the framework of the integration of tobacco, olive oil and cotton payments as well as sugar beet, cane and chicory support in the single payment scheme, Articles 37 and 43 of that Regulation shall apply subject to the rules established in Article 48d of this Regulation and, in case the Member State has made use of the option provided for in Article 59 of Regulation (EC) No 1782/2003, in Article 48e of this Regulation.

▼ **M6**

3. Where a Member State has applied the single payment scheme in 2005, the Member State shall ensure the respect of the national ceiling fixed in Annex VIII to Regulation (EC) No 1782/2003.

▼ **M7**

4. As the case may be, Article 41(2) of Regulation (EC) No 1782/2003 shall apply to the value of all the payment entitlements existing before the integration of tobacco, olive oil, cotton and/or dairy payments as well as sugar beet, cane and chicory support, and to the reference amounts calculated for tobacco, olive oil, cotton and/or dairy payments.

5. Where a Member State has applied the single payment scheme in 2005, the percentage of reduction fixed by the Member State in accordance with Article 42(1) of Regulation (EC) No 1782/2003 shall apply in 2006 to the tobacco, olive oil, cotton, sugar beet, cane and chicory reference amounts to be integrated in the single payment scheme.

▼ **M6**

6. The five-year period provided for in Article 42(8) of Regulation (EC) No 1782/2003 shall not restart for the payment entitlements coming from the national reserve whose amount has been recalculated or increased in accordance with Articles 48d and 48e of this Regulation.

▼ **M7**

7. Where a Member State has applied the single payment scheme in 2005, for the purpose of the establishment of the payment entitlements in relation to cotton, tobacco, olive oil, hops, sugar beet, cane and chicory, the first year of application of the single payment scheme referred to in Articles 7(1), 12 to 17 and 20 shall be 2006.

8. Where the inclusion of the sugar reference amounts calculated in accordance with point K of Annex VII to Regulation (EC) No 1782/2003 into the single payment scheme risks to make it impossible to respect the time-limits set out in Article 34 of Regulation (EC) No 1782/2003 and Article 12 of this Regulation, the Member States shall extend those time-limits by one month.

▼ **M6***Article 48d***Specific rules**

1. ► **M7** If the farmer has not been allocated or has not bought payment entitlements by the last date for applying for the establishment of payment entitlements for 2006, he shall receive payment entitlements calculated in accordance with Articles 37 and 43 of Regulation (EC) No 1782/2003 for tobacco, olive oil and cotton payments as well as sugar beet, cane and chicory support. ◀

The first subparagraph shall apply also when the farmer has leased in payment entitlements for 2005 and/or 2006.

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 for 2006, the value and number of his payment entitlements shall be recalculated as follows:

▼ M7

- (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 Article 43 of Regulation (EC) No 1782/2003 for tobacco, olive oil and cotton as well as for sugar beet, cane and chicory;
- (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 Article 37 of Regulation (EC) No 1782/2003 for sugar beet, cane and chicory used for the production of sugar or inuline syrup and for tobacco, olive oil and cotton by the number established in accordance with point (a) of this paragraph.

▼ M6

Set-aside payment entitlements shall not be taken into account in the calculation referred to in the first subparagraph.

3. By way of derogation from Article 27, the contractual clause referred to in that Article may be inserted or modified in a lease contract by the date for lodging an application under the single payment scheme in 2006 at the latest.

4. Payment entitlements leased out before the date for lodging an application under the single payment scheme in 2006 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 before 15 May 2004 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 48e***Regional implementation****▼ M7**

1. Where a Member State has made use of the option provided for in Article 59(1) of Regulation (EC) No 1782/2003, all payment entitlements shall be increased by a supplementary amount corresponding to the increase of the regional ceiling in the corresponding year, divided by the total number of payment entitlements established in the region at the date for lodging an application for the single payment scheme at the latest.

▼ M6

2. Where a Member State has made use of the option provided for in Article 59(1) and (3) of Regulation (EC) No 1782/2003, without prejudice to Article 48 of that Regulation, a farmer shall receive a supplementary amount per payment entitlement.

The supplementary amount shall consist of the sum of the following:

▼ M7

- (a) the corresponding part of the increase of the regional ceiling divided by the total number of payment entitlements established in the region at the date for lodging an application for the single payment scheme at the latest;
- (b) the reference amount corresponding for each farmer to the remaining part of the increase of the regional ceiling divided by the number of payment entitlements that the farmer owns by the date for lodging an application for the single payment scheme in 2006 at the latest.

▼ M6

However, in case of set aside entitlements, the farmer shall receive only the supplementary amount calculated according to point (a) per set aside entitlement.

▼ **B**

CHAPTER 7

COMMUNICATIONS

▼ **M1***Article 48b***Notification of decisions**

Where the Member State decides to make use of the option provided for in Article 71(1) of Regulation (EC) No 1782/2003, it shall notify by 1 August of the year preceding the first year of application of the single payment scheme the decisions it has taken in accordance with Articles 58, 59, 61 to 64 and 70 of Regulation (EC) No 1782/2003.

▼ **B***Article 49***Regionalisation**

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

▼ **M7***Article 49a***Integration of tobacco, cotton, olive oil, hops, sugar beet, cane and chicory**▼ **M6**

1. Where a Member State has made use of the option provided for in Article 59(1) and (3) of Regulation (EC) No 1782/2003, it shall communicate to the Commission, by 1 October 2005 at the latest, the justification of the partial division of the increase of the ceiling.

▼ **M7**

With regard to the integration of sugar beet, cane and chicory support, the communication provided for in the first subparagraph shall be sent to the Commission by 15 May 2006 at the latest.

▼ **M6**

2. Member State shall communicate to the Commission, by 1 October 2005 at the latest, the decision it has taken by 1 August as regards the options provided for in Article 68a of Regulation (EC) No 1782/2003, in points H and I of Annex VII to that Regulation, and in Article 69 of that Regulation as far as cotton, tobacco, olive oil and hops are concerned.

▼ **M7**

By way of derogation from Article 48(6), with regard to the integration of sugar beet, cane and chicory support, the communication concerning the decision as regards the option provided for in Article 69 of Regulation (EC) No 1782/2003 shall be sent to the Commission by 30 April 2006 at the latest.

▼ **B***Article 50***Payments data**

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

▼B

- (a) by 15 September of the first year of application of the single payment scheme at the latest and, in the following years, by 31 August at the latest, the total number of applications under the single payment scheme for the current year, together with the corresponding total amount of the payment entitlements giving right to payment and the total number of accompanying eligible hectares, as well as the total sum of the amounts remaining in the national reserve;
- (b) by 15 September at the latest, definitive data on the total number of applications under the single payment scheme accepted for the preceding year and the corresponding total amount of the payments which have been granted, after application, as the case may be, of the measures referred to in Articles 6, 10, 11, 24 and 25 of Regulation (EC) No 1782/2003.

2. In case of regional implementation of the single payment scheme as provided for in Article 58 of Regulation (EC) No 1782/2003, Member States shall communicate the information referred to in paragraph 1 (a) and (b) for each of the regions concerned, and, by ►**M4** 15 September ◀ of the first year of application of the single payment scheme at the latest, the corresponding part of the ceiling established in accordance with Article 58 (3) of Regulation (EC) No 1782/2003.

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

Chapter 8

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

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

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

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

▼ **M7***ANNEX I*

Member State	Date
Belgium	15 July
Denmark	15 July
Germany	15 July
South Greece (Peloponese, Ionian Islands, western Greece, Attica, south Aegean and Crete)	20 June
Central and north Greece (Eastern Macedonia and Thrace, Central Macedonia, Western Macedonia, Epirus, Thessaly, Mainland (Sterea) Greece and North Aegean)	10 July
Italy	11 June
Austria	30 June
Portugal	1 March

▼ **M7***ANNEX II***Number of hectares referred to in Article 60(2) of Regulation (EC) No 1782/2003**

Member State and regions	Number of hectares
DENMARK	33 740
GERMANY	301 849
Baden-Württemberg	18 322
Bavaria	50 451
Brandenburg and Berlin	12 910
Hessen	12 200
Lower Saxony and Bremen	76 347
Mecklenburg-Western Pomerania	13 895
North Rhine-Westphalia	50 767
Rhineland-Palatinate	19 733
Saarland	369
Saxony	12 590
Saxony-Anhalt	14 893
Schleswig-Holstein and Hamburg	14 453
Thuringia	4 919
LUXEMBOURG	705
FINLAND	38 006
Region A	3 425
Region B-C1	23 152
Region C2-C4	11 429
SWEDEN	
Region 1	9 193
Region 2	8 375
Region 3	17 448
Region 4	4 155
Region 5	4 051
UNITED KINGDOM	
England (other)	241 000
England (moorland SDA)	10
England (upland SDA)	190
Northern Ireland	8 304