

Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in 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for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (repealed)

## PART II

### THE INTEGRATED ADMINISTRATION AND CONTROL SYSTEM

#### TITLE I

#### GENERAL

##### *Article 5*

#### **Identification of farmers**

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

##### *Article 6*

#### **Identification of agricultural parcels**

1 The identification system for agricultural parcels referred to in Article 20 of Regulation (EC) No 1782/2003 shall operate at reference parcel level such as cadastral parcel, or production block which shall ensure unique identification of each reference parcel.

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

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

3 In respect of the area payment for nuts provided for in Chapter 4 of Title IV of Regulation (EC) No 1782/2003, the Member States for which the national guaranteed area fixed in Article 84(3) of that Regulation is more than 1 500 ha, shall introduce, as from 1 January 2006, an additional layer of GIS information relating to the number of trees per parcel, their type, their positioning and the calculation of the orchard's surface.

### Article 7

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

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

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

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

### Article 8

#### **General principles in respect of agricultural parcels**

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

2 With regard to forage area:

- a where a forage area is used in common, the competent authorities shall notionally allocate it between the individual farmers in proportion to their use or right of use of it;
- b for the purposes of applying Article 131 of Regulation (EC) No 1782/2003, each forage area must be available for rearing animals for a minimum period of seven months, starting on a date to be determined by the Member State, which shall be between 1 January and 31 March.
- c for the purposes of applying Article 131 of Regulation (EC) No 1782/2003, where a forage area is situated in a Member State other than that of the farmer's principal place of business, that area shall be deemed, at the request of the farmer, to be part of that farmer's holding provided that it is situated in the immediate vicinity of the holding and that a major part of all the agricultural land used by that farmer is situated in the Member State in which he has his principal place of business.

## Article 9

### Control system as regards cross-compliance

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

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

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

## Article 10

### Payment of aid

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

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

## TITLE II

### AID APPLICATIONS

#### CHAPTER I

#### THE SINGLE APPLICATION

##### *Article 11*

##### **Date of submission of the single application**

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

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

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

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

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

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

##### *Article 12*

##### **Contents of the single application**

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

- a the identity of the farmer;

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

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

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

The farmer shall declare separately the area supporting set-aside entitlements and the area supporting other entitlements. In accordance with Article 54 (6) of Regulation (EC) No 1782/2003, the farmer shall claim his set-aside entitlements before any other entitlements. Consequently, the farmer shall declare the area for set-aside corresponding to his number of set-aside entitlements provided he has a sufficient amount of eligible area at his disposal. In case the amount of eligible area is less than the number of set-aside entitlements, the farmer may claim the number of set-aside entitlements corresponding to the amount of area at his disposal.

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

### *Article 13*

#### **Specific requirements pertaining to the single application**

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

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

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

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

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

- a a copy of the contract or commitment referred to in Articles 52 and 106 of that Regulation, unless the Member State has provided that that copy may be submitted by a later date which shall not be later than 15 September;
- b in the case referred to in Article 52 of that Regulation, an indication as to the quantities of the seeds used (kg per hectare);
- c the official labels used on the packaging of the seeds in accordance with Directive 2002/57/EC, and in particular Article 12 thereof; however, where sowing takes place after the deadline for submitting the single application, the labels shall be submitted by 30 June at the latest; where the labels also have to be submitted to other national authorities, the Member States may provide for those labels to be returned to the farmer once they have been submitted in accordance with this point.

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

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

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

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

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

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

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

- a a copy of the growing contract or growing declaration; however, Member States may provide that that copy may be submitted by a later date which shall not be later than 15 September;
- b an indication of the species of seeds sown on each parcel;

- c an indication of the quantity of certified seed produced, expressed in quintals to one decimal point; however, Member States may provide that that information may be submitted by a later date which shall not be later than 15 June of the year following the harvest;
- d a copy of the supporting documents showing that the quantities of seed referred to have been officially certified; however, Member States may provide that that information may be submitted by a later date which shall not be later than 31 May of the year following the harvest.

#### Article 14

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

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

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

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

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

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

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

#### Article 15

##### **Amendments to the single applications**

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

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

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

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

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

## CHAPTER II

### LIVESTOCK AID APPLICATIONS

#### *Article 16*

#### **Requirements pertaining to livestock aid applications**

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

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

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

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



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

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

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

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

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

## CHAPTER III

### **AID APPLICATION FOR THE DAIRY PREMIUM AND THE ADDITIONAL PAYMENTS**

#### *Article 17*

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

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

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

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

## CHAPTER IV

### COMMON PROVISIONS

#### *Article 18*

#### **Simplification of procedures**

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

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

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

#### *Article 19*

#### **Adjustments of obvious errors**

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

#### *Article 20*

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

By way of derogation from Article 5(1) of Council Regulation (EEC, Euratom) No 1182/71<sup>(2)</sup>, where the latest date for the submission of an aid application or any supporting documents, contracts or declarations under this Title is a public holiday, a Saturday or a Sunday, it shall be deemed to fall on the first following working day.

## Article 21

### Late submission

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

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

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

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

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

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

## Article 22

### Withdrawal of aid applications

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

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

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

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

## TITLE III

### CONTROLS

#### CHAPTER I

#### COMMON RULES

##### *Article 23*

##### **General principles**

- 1 Administrative and on-the-spot checks provided for in this Regulation shall be made in such a way as to ensure effective verification of compliance with the terms under which aids are granted and of the requirements and standards relevant for cross-compliance.
- 2 The applications for aid concerned shall be rejected if the farmer or his representative prevents an on-the-spot check from being carried out.

#### CHAPTER II

#### CONTROLS WITH REGARD TO ELIGIBILITY CRITERIA

##### Section I

##### **Administrative checks**

##### *Article 24*

##### **Cross-checks**

- 1 The administrative checks referred to in Article 23 of Regulation (EC) No 1782/2003 shall permit the detection of irregularities, in particular the automated detection using computerised means, including cross-checks:
  - a on declared payment entitlements and on declared parcels, respectively, in order to avoid undue multiple granting of the same aid in respect of the same calendar or marketing year and to prevent any undue cumulating of aid granted under area-related aid schemes listed in Annexes I and V to Regulation (EC) No 1782/2003;
  - b on the payment entitlements to verify their existence and the eligibility for aid;
  - c between the agricultural parcels as declared in the single application and the reference parcels as contained in the identification system for agricultural parcels to verify the eligibility for aid of the areas as such;
  - d between the payment entitlements and the area determined in order to verify that the entitlements are accompanied by an equal number of eligible hectares as defined in Article 44(2) and Article 54(2), respectively, of Regulation (EC) No 1782/2003;
  - e by means of the computerised database for bovine animals, to verify eligibility for the aid and to avoid undue multiple granting of the same aid in respect of the same calendar year;

---

*Status: This is the original version (as it was originally adopted).*

---

- f where supporting documents, contracts or growing declarations have to be submitted and where applicable, between the agricultural parcels as declared in the single application and in the supporting documents, contracts or growing declaration to verify the eligibility for aid of the area;
  - g between the agricultural parcels as declared in the single application and plots subjected to official examination that have been found to comply with the requirements of the Directives referred to in Article 1(1) of Council Regulation (EEC) No 1674/72 of 2 August 1972 laying down general rules for granting and financing aid for seed<sup>(9)</sup>;
- 2 Indications of irregularities resulting from cross-checks shall be followed-up by any other appropriate administrative procedure, and where necessary, by an on-the-spot check.

## Section II

### **on-the-spot checks**

#### Sub-section I

### **Common provisions**

#### *Article 25*

### **General principles**

- 1 On-the-spot checks shall be unannounced. However, provided that the purpose of the control is not jeopardised, advance notice may be given, strictly limited to the minimum time period necessary. Such notice shall, except in duly justified cases, not exceed 48 hours.
- 2 Where appropriate, on-the-spot checks provided for in this Regulation and any other checks provided for in Community rules shall be carried out at the same time.

#### *Article 26*

### **Control rate**

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

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

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

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

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

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

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

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

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

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

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

### *Article 27*

#### **Selection of the control sample**

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

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

2 The risk analysis shall take account of:

---

*Status: This is the original version (as it was originally adopted).*

---

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

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

#### *Article 28*

### **Control report**

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

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

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

Where the on-the-spot check is carried out by means of remote sensing in accordance with Article 32, the Member States may decide not to give the farmer or his representative the opportunity to sign the control report if no irregularities are revealed

during the check by remote-sensing. If irregularities are revealed as a consequence of such checks the opportunity to sign the report shall be given before the competent authority draws its conclusions from the findings with regard to any resulting reductions or exclusions.

## Sub-section II

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

#### *Article 29*

#### **Elements of the on-the-spot checks**

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

#### *Article 30*

#### **Determination of areas**

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

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

In respect of the regions where certain features, in particular hedges, ditches and walls, are traditionally part of good agriculture cropping or utilisation practices, the Member States may decide that the corresponding area is to be considered part of the fully utilised area on condition that it does not exceed a total width to be determined by the Member States. That width must correspond to a traditional width in the region in question and shall not exceed 2 metres.

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

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



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

### *Article 31*

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

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

- (a) checks at the level of the farmer applying for the aid:
  - (i) on all parcels to verify the species or variety group of seeds sown on each parcel declared;
  - (ii) on documents to verify at least the first destination of seed for which aid has been claimed;
  - (iii) any checks deemed necessary by the Member States to ensure that aid is not paid with regard to uncertified seed or seed from third countries.
- (b) if the first destination of the seed is a breeder or a seed establishment, additional checks at their premises to ensure that:
  - (i) the seed has actually been bought and paid by the breeder or seed establishment in accordance with the growing contract;
  - (ii) the payment of the seed is reflected in the financial accounts of the breeder or seed establishment;
  - (iii) the seed has actually been marketed for sowing. Marketed shall mean holding available or in stock, displaying for sale, offering for sale, sale or delivery to another person. For that purpose, physical and documentary checks of the stock and financial accounts of the breeder or seed establishment shall be carried out;
- (c) where appropriate, checks at the level of the end users.

### *Article 32*

#### **Remote sensing**

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

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

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

- a their financial significance in terms of Community aid;
- b the composition of aid applications;

- c the structure of the agricultural parcel systems, and the complexity of the agricultural landscape;
  - d the lack of coverage in previous years;
  - e the technical constraints of effective use of remote sensing, with respect to zone definition;
  - f the findings of checks made in previous years.
- 3 On-the-spot checks by remote sensing shall cover either:
- a all aid applications having at least 80 % of the area for which aid is requested under schemes established in Titles III and IV of Regulation (EC) No 1782/2003 within the respective zone,
- or
- b aid applications to be selected by the competent authority on the basis of Article 27(2) of this Regulation.

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

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

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

- a perform photo interpretation of satellite images or aerial photographs of all agricultural parcels per application to be checked in accordance with paragraph 4 with a view to recognising the ground cover and measuring the area;
- b carry out physical inspections in the field of all agricultural parcels for which photo interpretation does not make it possible to verify the accuracy of the declaration to the satisfaction of the competent authority.

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

### *Article 33*

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

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

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

- a for procedure A as provided for in Annex I, an indication of the point at which the sample was taken;
- b the number of tests carried out;
- c the results in terms of THC content, shown separately for each 0,1 %;
- d measures taken at national level.

---

*Status: This is the original version (as it was originally adopted).*

---

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

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

### Sub-section III

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

### *Article 34*

#### **Timing of on-the-spot checks**

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

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

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

### *Article 35*

#### **Elements of the on-the-spot checks**

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

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

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

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

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

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

### *Article 36*

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

1 As regards the special beef premium provided for in Article 123(6) of Regulation (EC) No 1782/2003 and the slaughter premium provided for in Article 130 of that Regulation and in cases where a Member State makes use of the possibilities provided for in Article 68 of that Regulation, on-the-spot checks shall be carried out in the slaughterhouses. In that case, Member States shall carry out on-the-spot checks either:

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

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

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

#### *Article 37*

### **Control measures as regards the premium granted after export**

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

- a at the time of loading, it shall be verified that all bovine animals are identified by ear tags. Furthermore, at least 10 % of the bovine animals so verified shall be checked individually with a view to verifying their identification;
- b at the time of the departure from the Community territory:
  - where an official customs seal has been applied to the means of transport, it shall be checked that the seal is undamaged. If the seal is undamaged a sample check shall only be carried out if there are doubts as to the regularity of the load,
  - where no official customs seal has been applied to the means of transport or where a customs seal is damaged, at least 50 % of bovine animals that were individually checked at the time of loading shall be checked again.

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

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

#### *Article 38*

### **Special provisions as regards additional payments**

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

---

*Status: This is the original version (as it was originally adopted).*

---

### *Article 39*

#### **Special provisions as regards the control report**

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

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

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

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

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

### Sub-section IV

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

### *Article 40*

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

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

## CHAPTER III

### CONTROLS RELATING TO CROSS-COMPLIANCE

#### Section I

#### Common provisions

#### Article 41

#### General principles and definitions

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

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

#### Article 42

#### Competent control authority

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

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

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

## Section II

### **Administrative checks**

#### *Article 43*

### **Administrative checks**

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

## Section III

### **On-the-spot checks**

#### *Article 44*

### **Minimum control rate**

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

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

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

#### *Article 45*

### **Selection of the control sample**

1 Without prejudice to checks carried out as a follow-up of non-compliances brought to the attention of the competent control authority in any other way, the selection of farms to be checked in accordance with Article 44 shall be based, where applicable, on a risk analysis according to the applicable legislation, or on a risk analysis appropriate to the requirements or standards. That risk analysis may be based on the level of an individual farm or on the level of categories of farms or geographical zones or, in the case of point (b) of the second subparagraph of paragraph 3 of this Article, on the level of undertakings.

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



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

In that case:

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

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

#### *Article 46*

### **Determination of the compliance with the requirements and standards**

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

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

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

#### *Article 47*

### **Elements of the on-the-spot checks**

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

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

## Article 48

### Control report

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

The report shall be divided into the following parts:

- a a general part containing, in particular, the following information:
  - (i) the farmer selected for the on-the-spot check;
  - (ii) the persons present;
  - (iii) whether notice of the visit was given to the farmer and, if so, the period of advance notification.
- b a part reflecting separately the checks carried out in respect of each of the acts and standards and containing, in particular, the following information:
  - (i) the requirements and standards subject to the on-the-spot check;
  - (ii) the nature and extent of checks carried out;
  - (iii) the findings;
  - (iv) the acts and standards in relation to which non-compliances are found;
- c an evaluation part giving an assessment of the importance of the non-compliance in respect of each act and/or standard on the basis of the criteria 'severity', 'extent', 'permanence' and 'repetition' in accordance with Article 7(1) of Regulation (EC) No 1782/2003 with an indication of any factors that should lead to an increase or decrease of the reduction to be applied.

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

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

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

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

## TITLE IV

### **BASIS FOR THE CALCULATION OF THE AID, REDUCTIONS AND EXCLUSIONS**

#### CHAPTER I

#### **FINDINGS IN RELATION TO ELIGIBILITY CRITERIA**

##### Section I

##### **single payment scheme and other area-related aid schemes**

##### *Article 49*

##### **General principles**

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

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

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

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

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

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

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

## Article 50

### **Basis of calculation in respect of areas declared**

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

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

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

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

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

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

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

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

## Article 51

### **Reductions and exclusions in cases of overdeclaration**

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

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

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

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

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

## Article 52

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

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

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

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

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

#### *Article 53*

##### **Intentional overdeclaration**

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

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

#### *Article 54*

##### **Reductions and exclusions concerning seed aid applications**

1 Where it is found that seed subject to an aid application was not actually marketed within the meaning of Article 31 point (b)(iii) for sowing by the farmer, the aid to be paid for the species concerned, after application of any reductions to be applied in accordance with Article 52, shall be reduced by 50 % if the quantity not marketed amounts to more than 2 % but no more than 5 % of the quantity covered by the aid application. If the quantity not marketed exceeds 5 %, no seed aid shall be granted for the marketing year concerned.

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

#### *Article 55*

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

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

2 Where a difference of more than 50 % is found between the area declared and the area determined in accordance with Article 50(3), the farmer shall, in the framework of aid

applications he lodges in the course of the three calendar years following the calendar year of the finding, be excluded once again in respect of a forage area equal to the difference between the area declared and the area determined. If the area to be excluded cannot be fully off-set within that period, the outstanding balance shall be cancelled.

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

#### *Article 56*

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

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

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

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

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

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

#### Section II

### **Livestock premia**

#### *Article 57*

### **Basis of calculation**

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

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

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

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

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

- a a bovine animal which has lost one of the two ear tags shall be regarded as determined provided that it is clearly and individually identified by the other elements of the system for the identification and registration of bovine animals;
- b where the irregularities found relate to incorrect entries in the register or the animal passports, the animal concerned shall only be deemed as not determined if such errors are found on at least two checks within a period of 24 months. In all other cases the animals concerned shall be deemed as not determined after the first finding.

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

#### *Article 58*

### **Replacement**

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

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

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

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

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



## Article 59

### **Reductions and exclusions in respect of bovine animals claimed for aid**

1 Where, in respect of an application for aid under the bovine aid schemes, a difference is found between the number of animals declared and that determined in accordance with Article 57(3), the total amount of aid to which the farmer is entitled under those schemes for the premium period concerned shall be reduced by the percentage to be established in accordance with paragraph 3 of this Article, if no more than three animals are found with irregularities.

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

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

If the percentage established in accordance with paragraph 3 is more than 20 %, the aid to which the farmer would have been entitled pursuant to Article 57(3) shall be refused under those schemes for the premium period concerned.

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

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

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

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

### Article 60

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

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

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

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

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

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

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

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

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

### Article 61

#### **Natural circumstances**

The reductions and exclusions provided for in Articles 59 and 60 shall not apply in cases where, owing to the impact of natural circumstances on the herd or flock, the farmer cannot meet his commitment to keep the animals in respect of which aid is claimed throughout the retention period, provided that he has informed the competent authority in writing within ten working days of finding any reduction in the number of animals.

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

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

#### *Article 62*

### **False certificates and declarations issued by slaughterhouses**

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

#### *Article 63*

### **Findings in relation to additional payments**

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

#### Section I

### **Dairy premium and additional payments**

#### *Article 64*

### **Dairy premium and additional payments**

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

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

## CHAPTER II

### FINDINGS IN RELATION TO CROSS-COMPLIANCE

#### *Article 65*

##### **General principles and definition**

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

#### *Article 66*

##### **Application of reductions in the case of negligence**

1 Without prejudice to Article 71, where a non-compliance determined results from the negligence of the farmer, a reduction shall be applied on the overall amount of direct payments, as defined in Article 2(d) of Regulation (EC) No 1782/2003, that has been, or has to be, granted to the farmer concerned following aid applications he has submitted or will still submit in the course of the calendar year of the finding. That reduction shall, as a general rule, be 3 % of that overall amount.

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

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

3 Where more than one non-compliance with regard to different areas of cross-compliance have been determined, the procedure for the fixing of the reduction as set out in paragraph 1 shall be applied individually to any non-compliance. The resulting percentages of

reductions shall be added. The maximum reduction shall, however, not exceed 5 % of the overall amount referred to in paragraph 1.

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

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

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

#### *Article 67*

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

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

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

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

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

## CHAPTER III

### COMMON PROVISIONS

#### *Article 68*

#### **Exceptions from the application of reductions and exclusions**

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

2 The reductions and exclusions provided for in Chapter I shall not apply with regard to the parts of the aid application as to which the farmer informs the competent authority in writing that the aid application is incorrect or has become incorrect since it was lodged, provided that the farmer has not been informed of the competent authority's intention to carry out an on-the-spot check and that the authority has not already informed the farmer of any irregularity in the application.

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

#### *Article 69*

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

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

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

## TITLE V

### GENERAL PROVISIONS

#### *Article 70*

#### **Minimum payments**

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

## Article 71

### Accumulation of reductions

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

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

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

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

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

## Article 72

### Force majeure and exceptional circumstances

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

## Article 73

### Recovery of undue payments

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

2 Member States may decide that recovery of an undue payment is to be made by deduction of the corresponding amount from any advances or payments under aid schemes referred to in Titles III and IV of Regulation (EC) No 1782/2003 made to the farmer concerned

following the date of the decision to recover. However, the farmer may repay the amount without waiting for the deduction.

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

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

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

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

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

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

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

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

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

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

#### *Article 74*

### **Transfer of holdings**

1 For the purposes of this Article:

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

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

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



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

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

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

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

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

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

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

#### *Article 75*

#### **Additional measures and mutual assistance between Member States**

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

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

## Article 76

### Notifications

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

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

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

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

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

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

---

*Status: This is the original version (as it was originally adopted).*

---

- (1) OJ L 193, 20.7.2002, p. 74.
- (2) OJ L 124, 8.6.1971, p. 1.
- (3) OJ L 177, 4.8.1972, p. 1.
- (4) OJ L 160, 26;-6.1999, p. 80. Regulation as last amended by Regulation (EC) No 1783/2003 (OJ L 270, 21.10.2003, p. 70).
- (5) OJ L 74, 15.3.2002, p. 1. Regulation as last amended by Regulation (EC) No 963/2003 (OJ L 138, 5.6.2003, p. 32).
- (6) OJ L 312, 23.12.1995, p. 1.