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**COMMISSION REGULATION (EC) No 1122/2009  
of 30 November 2009**

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

(OJ L 316, 2.12.2009, p. 65)

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		Official Journal		
		No	page	date
► <b><u>M1</u></b>	Commission Regulation (EU) No 146/2010 of 23 February 2010	L 47	1	24.2.2010
► <b><u>M2</u></b>	Commission Regulation (EU) No 173/2011 of 23 February 2011	L 49	16	24.2.2011
► <b><u>M3</u></b>	Commission Implementing Regulation (EU) No 1368/2011 of 21 December 2011	L 341	33	22.12.2011



**COMMISSION REGULATION (EC) No 1122/2009**  
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**laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

- (1) Regulation (EC) No 73/2009 repeals and replaces Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 and introduces a number of modifications to the single payment scheme as well as certain other direct payment schemes. At the same time it abolishes a number of direct payment schemes as from 2010. Moreover, it introduces a number of changes to the system according to which direct payments to a farmer who does not comply with certain conditions in the areas of public, animal and plant health, environment and animal welfare (cross-compliance) are to be subject to reductions or exclusions.
- (2) The direct payment schemes were first introduced as a result of the reform of the common agricultural policy in 1992 and further developed under subsequent reforms. The schemes have been subject to an integrated administration and control system (hereinafter referred to as integrated system). That system, as laid

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

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down in Commission Regulation (EC) No 796/2004 of 24 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulations (EC) No 1782/2003 and (EC) No 73/2009, as well as for the implementation of cross compliance provided for in Council Regulation (EC) No 479/2008<sup>(1)</sup>, has proven to be an effective and efficient means for the implementation of direct payment schemes. Regulation (EC) No 73/2009 builds upon the basis of that integrated system.

- (3) Taking into account the modifications made to the direct payments by Regulation (EC) No 73/2009, it is appropriate to repeal and replace Regulation (EC) No 796/2004, whilst basing the new Regulation on the principles as established by Regulation (EC) No 796/2004. At the same time, as a consequence of the incorporation of the wine sector in Council Regulation (EC) No 1234/2007, it is appropriate to replace references to Council Regulation (EC) No 479/2008<sup>(2)</sup> existing in Regulation (EC) No 796/2004 by references to Regulation (EC) No 1234/2007. For reasons of coherence, certain provisions of Regulation (EC) No 796/2004 should be incorporated into Commission Regulation (EC) No 1120/2009<sup>(3)</sup> which has repealed and replaced Commission Regulation (EC) No 795/2004 of 21 April 2004 laying down detailed rules for the implementation of the single payment scheme provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers<sup>(4)</sup>.
- (4) Regulation (EC) No 73/2009 leaves a choice for the Member States with regard to the application of some of the aid schemes provided for therein. This Regulation should, therefore, make provision for the administration and control to be carried out in the Member States in view of their possible choice to enter certain aid schemes. The relevant provisions of this Regulation should, therefore, only apply to the extent as the Member States have made such choices.
- (5) Regulation (EC) No 73/2009 provides, as part of the cross-compliance conditions, for certain obligations of the Member States on the one hand and individual farmers on the other hand, as regards the maintenance of permanent pasture. It is necessary to lay down the details for the determination of the ratio of permanent pasture and agricultural land that has to be maintained and to provide for the individual obligations at the level of farmers to be respected where it is established that the ratio is decreasing to the detriment of land under permanent pasture.
- (6) To allow effective control and to prevent the submission of multiple aid applications to different paying agencies within one Member State, the Member States should provide for a single system to record the identity of farmers submitting aid applications subject to the integrated system.
- (7) Detailed rules are needed with regard to the system for the identification of agricultural parcels to be operated by the Member States in accordance with Article 17 of Regulation (EC) No

<sup>(1)</sup> OJ L 141, 30.4.2004, p. 18.

<sup>(2)</sup> OJ L 148, 6.6.2008, p. 1.

<sup>(3)</sup> See Page 1 of this Official Journal.

<sup>(4)</sup> OJ L 141, 30.4.2004, p. 1.

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73/2009. According to that provision, use has to be made of computerised geographical information system techniques (GIS). It is necessary to clarify at which level the system should operate and the level of details of information that should be available in the GIS.

- (8) In order to ensure a proper implementation of the single payment scheme as provided for in Title III of Regulation (EC) No 73/2009, the Member States should establish an identification and registration system according to which the payment entitlements have to be traceable and which allows, *inter alia*, to cross-check areas declared for the purposes of the single payment scheme with the payment entitlements available to each farmer and between the different payment entitlements as such.
- (9) Monitoring the adherence to the different cross-compliance obligations requires the setting-up of a control system and of appropriate reductions. For this purpose, different authorities within the Member States need to communicate information on aid applications, control samples, results of on-the-spot checks etc. Provision should be made for the basic elements of such a system.
- (10) For the sake of simplification, Member States should be allowed to decide that all applications for aid under Titles III and IV of Regulation (EC) No 73/2009 shall be covered by the single application.
- (11) Member States should take the required measures to make a proper functioning of the integrated system possible where more than one paying agency is responsible with regard to the same farmer.
- (12) To allow effective controls, any kind of area use and of the aid schemes concerned should be declared at the same time. Provision should, therefore, be made for submission of a single aid application comprising any applications for aid which are in some way area-related. A single application form should, moreover, be submitted by farmers who do not apply for any of the aids subject to the single application if they have agricultural area at their disposal. However, it is appropriate to allow Member States to exempt farmers from this obligation, where the information is already available to the authorities.
- (13) Member States should fix a deadline for submission of the single application which, in order to allow timely proceeding and controls of the application, should not be later than the 15 May. Due to the particular climatic conditions in Estonia, Latvia, Lithuania, Finland and Sweden, those Member States should however be allowed to set a later date which should not be later than 15 June. Moreover, case-by-case derogations should be envisaged on that same legal basis should climatic conditions in a given year in the future so require.
- (14) In the single application, the farmer should declare not only the area he is using for agricultural purposes but also his payment entitlements and any information required in order to establish the eligibility for the aid should be requested together with the single application. It is however appropriate to allow Member States to derogate from certain obligations where the payment entitlements to be allocated in the given year are not yet definitively established.

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- (15) With a view to simplifying the application procedures and in accordance with Article 19(2) of Regulation (EC) No 73/2009, provision should, in this context, be made for Member States to provide the farmer as far as possible with pre-established information.
- (16) Any specific information related to production of hemp, nuts starch potato, seeds, cotton, fruit and vegetables and specific support covered by the single application should be requested together with the single application, or where appropriate due to the nature of the information at a later date. It should, furthermore, be provided that areas for which no aid is being requested, are declared in the single application form. Depending on the kind of use, it may be important to have detailed information which is why certain uses should be declared separately whilst other uses may be declared under one heading. However, in cases where Member States already receive that kind of information, derogation from this rule should be allowed.
- (17) To allow effective monitoring, each Member State should, furthermore, determine the minimum size of agricultural parcels that may be subject to an aid application.
- (18) To allow as much flexibility as possible with regard to farmers planning concerning the use of area, they should be allowed to amend their single application until such dates where sowing would normally take place, provided that all the particular requirements under the different aid schemes are respected and that the competent authority has not yet informed the farmer of errors contained in the single application, nor notified an on-the-spot check which reveals errors, in relation to the part affected by the amendment. Following the amendment, the possibility should be given to adjust the corresponding supporting documents or contracts to be submitted.
- (19) The punctual lodging of the application for increase of value or allocation of payment entitlements under the single payment scheme is crucial for an effective administration. Member States should therefore establish a deadline for the application, which should not be later than the 15 May. To simplify procedures Member States should be allowed to decide that the application may be submitted at the same time as the single application. For this reason, Estonia, Latvia, Lithuania, Finland and Sweden should however be allowed to set a later date which should not be later than 15 June.
- (20) In the case where a Member State opts for the application of the various livestock aid schemes, common provisions should be made concerning the details to be included in livestock aid applications.
- (21) In accordance with Article 117 of Regulation (EC) No 73/2009, premiums under the bovine aid schemes may only be paid for animals that are properly identified and registered in accordance with Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the

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identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97 <sup>(1)</sup>. Farmers submitting applications under the aid schemes concerned should therefore be given access to the relevant information in due time.

- (22) The aid for sugar beet and cane producers, the separate sugar payment and the separate fruit and vegetables payment are, due to their nature, not related to agricultural area, which is why the provisions concerning the single application do not apply to those payment schemes. Provision should therefore be made for an appropriate application procedure.
- (23) Further requirements to the application for specific support under Article 68 of Regulation (EC) No 73/2009 other than area or livestock payments should be established. Due to the possible diversity of the specific support measures it is of particular importance that all information required to establish eligibility is submitted by the farmer. For practical reasons Member States should be allowed to require the supporting documents at a later date than the one which should be set for the application.
- (24) In the case of application of Article 68(1)(e) of Regulation (EC) No 73/2009, the beneficiaries are not the farmers but mutual funds having compensated farmers for economic loss. Special requirements should be established for the application for the support to mutual funds reflecting the information needed to establish their eligibility for the payment.
- (25) The general framework for the introduction of simplified procedures in the context of communications between the farmer and the Member States authorities should be set up. That framework should, in particular, provide for the possibility to make use of electronic means. It has however to be guaranteed that, in particular, the data thus proceeded is fully reliable and that such procedures are operated without any discrimination between farmers. Further, it should, in order to simplify the administration for the farmers as well as for the national authorities, be possible for the national authorities to require the supporting documents needed to verify the eligibility of certain payments, directly from the source of information and not from the farmer.
- (26) Where aid applications contain obvious errors, it should be possible to adjust them at any time.
- (27) Rules should be established to deal with the situations where the latest date related to submission of various applications, documents or amendments is a public holiday, a Saturday or a Sunday.
- (28) Respect for the time limits for the submission of aid applications, for the amendment of area aid applications and for any supporting documents, contracts or declarations is indispensable to enable the national administrations to program and, subsequently, carry out effective controls on the correctness of

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

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the aid applications. Provision should, therefore, be made regarding the time limits within which late submissions are acceptable. Moreover, a reduction should be applied to encourage farmers to respect the time limits.

- (29) The punctual submission of applications for payment entitlements by farmers is essential for the Member States with a view to the timely establishment of the payment entitlements. Late submissions of those applications should therefore only be permitted within the same additional time-limit as for the late submission of any aid applications. A dissuasive reduction-rate should also be applied unless the delay is due to cases of force majeure or exceptional circumstances.
- (30) Farmers should be entitled to withdraw their aid applications or parts thereof at any time provided that the competent authority has not yet informed the farmer of any errors contained in the aid application nor notified an on-the-spot check.
- (31) Compliance with the provisions on the aid schemes managed under the integrated system should be effectively monitored. To this end, and to have a harmonised level of monitoring in all Member States, it is necessary to set out in detail the criteria and technical procedures for carrying out administrative controls and on-the-spot checks in respect both of the eligibility criteria established for the aid schemes and the cross-compliance obligations. It is essential for the monitoring that the on-the-spot checks can be carried out. Applications should therefore be rejected if a farmer would prevent those checks from taking place.
- (32) Announcement of on-the-spot checks for eligibility or cross-compliance should only be allowed when this would not jeopardise the checks, and in any case appropriate time limits should be established. Furthermore, where specific sector rules for acts or standards under cross-compliance provide for on-the-spot checks to be un-announced, these rules should be respected.
- (33) It should be provided that, where appropriate, the Member States should undertake to combine the various controls.
- (34) With a view to an effective detection of irregularities in the administrative controls, provisions should be established in particular as regards the content of the cross-checks. Irregularities should be followed up by any appropriate procedure.
- (35) A frequent error when performing the cross-checks is a minor over-declaration of the total agricultural area within a reference parcel. For reasons of simplification, where a reference parcel is subject to an aid application of two or more farmers applying for aid under the same aid scheme and where the overall area declared exceeds the agricultural area with a difference which falls within the tolerance defined for measurement of agricultural parcels, Member States should be authorised to provide for a proportional reduction of the areas concerned. However, the farmers concerned should be entitled to appeal against such decisions.



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- (36) When a Member State makes use of the possibility provided for in Article 68 of Regulation (EC) No 73/2009 and the payments are granted for areas or livestock it is appropriate to apply the same control rate as for other area-related and livestock payments. For other specific support measures, beneficiaries should be considered as a separate population and be submitted to a specific minimum control rate.
- (37) The minimum number of farmers to be checked on-the-spot under the various aid schemes should be determined. In the case where Member States opt for the application of the various livestock aid schemes, an integrated holding-based approach should be foreseen in relation to farmers applying for aids under those schemes.
- (38) The determination of significant irregularities and non-compliances should require an increase in the level of the on-the-spot checks during the current and/or the following year to reach an acceptable level of assurance of the correctness of the aid applications concerned. The extension of the sample should, when it concerns cross-compliance, be targeting the acts or standards concerned.
- (39) On-the-spot checks of farmers submitting aid applications do not necessarily have to be carried out on each individual animal or agricultural parcel. Checks on a sample basis may, in certain cases, be carried out. However, where this is allowed, the sample should be extended to a degree that guarantees a reliable and representative level of assurance. In some cases the sample may have to be extended to a full control. The Member States should establish the criteria for the selection of the sample to be checked.
- (40) The sample of the minimum rate of on-the-spot checks should be drawn partly on the basis of a risk analysis and partly at random. The competent authority should establish the risk factors as it is in a better position to choose the relevant risk factors. To assure relevant and efficient risk analysis, the effectiveness of the risk analysis should be assessed and updated on an annual basis taking into account the relevance of each risk factor, comparing the results of randomly and risk-based selected samples and the specific situation in the Member States.
- (41) In order for the on-the-spot check to be effective it is important for the staff carrying out the checks to be informed of the reason for the selection for the on-the-spot check. The Member States should keep records of such information.
- (42) In certain cases it is relevant to carry out on-the-spot checks before all applications are received and Member States should therefore be allowed to make a partial selection of the control sample before the end of the application period.
- (43) To enable the national authorities as well as any competent Community authority to follow up on-the-spot checks carried out, the details of the checks should be recorded in a control report. The farmer or a representative should be given the opportunity to sign the report. However, in the case of on-the-spot checks by means of remote sensing the Member States should



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be allowed to provide for this right only in cases where the check reveals irregularities. Irrespective of the kind of on-the-spot check carried out, the farmer should receive a copy of the report if irregularities are found.

- (44) On-the-spot checks of area-related schemes should, to ensure proper monitoring, cover all agricultural parcels declared. It should however for the purpose of simplification be allowed that the actual determination of the parcels is limited to a sample of 50 % of the parcels. The sample should however be reliable and representative and increased in the case of anomalies. Results of the sample should be extrapolated to the rest of the population. It is appropriate to specify that Member States for the purpose of the on-the-spot checks may make use of certain technical tools.
- (45) Detailed rules regarding the determination of areas and the measurement methods to be used should be laid down to ensure a quality of the measurement which is equivalent to that required by technical standards as drawn up at Community level.
- (46) Experience has shown that, in relation to the determination of the area of agricultural parcels eligible for area payments, it is necessary to define the acceptable width of certain features of the fields, in particular hedges, ditches and walls. In view of specific environmental needs, some flexibility should be provided within the limits taken into account when the regional yields were fixed.
- (47) It should be established under what conditions agricultural parcels containing trees should be considered as eligible for the area-related schemes. It is also appropriate to establish a provision concerning the administrative procedure to follow in case of areas used in common.
- (48) The conditions for the use of remote sensing for on-the-spot checks should be laid down and provision should be made for physical checks to be carried out in cases where photo-interpretation does not lead to clear results. Due to for example weather conditions there might be cases where additional checks to be carried out following an increase in the rate of the on-the-spot check can no longer be carried out by means of remote sensing. In that case they should be carried out by traditional means.
- (49) Under the single payment scheme, farmers having special entitlements may receive support if they fulfill a certain activity requirement. For the sake of an effective verification of that requirement, Member States should lay down procedures for on-the-spot checks of farmers having special entitlements.
- (50) Given the particularities of the aid scheme for seed, cotton and sugar in accordance with Sections 5, 6 and 7 of Chapter 1 of Title IV of Regulation (EC) No 73/2009, special control provisions should be established.
- (51) Article 39(1) of Regulation (EC) No 73/2009 provides that in order to be eligible for direct payments, the varieties of hemp must have a tetrahydrocannabinol (THC) content not exceeding 0,2 %. With a view to the implementation of this rule, the system to be used by the Member States for the verification of THC content in hemp should be established.

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- (52) Moreover, it is necessary to provide for a time period during which hemp grown for fiber may not be harvested after flowering in order to enable the control obligations provided for in respect of these crops to be carried out effectively.
- (53) In the case where a Member State opts for the application of the various livestock aid schemes, where aid is being applied for under those aid schemes, the timing and the minimum content of on-the-spot checks should be specified. In order to check effectively the correctness of declarations in aid applications and notifications to the computerised database for bovine animals it is essential to carry out a major part of such on-the-spot checks whilst animals still have to be kept on farm under the retention obligation.
- (54) In the case where a Member State opts for the application of the various aid schemes for bovine animals, the proper identification and registration of bovine animals being an eligibility condition pursuant to Article 117 of Regulation (EC) No 73/2009, it should be ensured that Community aid is granted only for bovines properly identified and registered. Such checks should also be carried out in respect of bovine animals not yet claimed but which could be subject to an aid application because such animals, due to the set-up of several of the bovine aid schemes, are, in many cases, only claimed for aid after they have left the holding.
- (55) For ovine and caprine, the on-the-spot checks should in particular cover the fulfillment of the retention period and the correctness of the entries in the register.
- (56) In the case where a Member State opts for the application of the slaughter premium, special provision should be made for on-the-spot checks to be carried out in slaughterhouses in order to check that animals claimed for aid are eligible and that the information contained in the computerised database is correct. The Member States should be authorised to apply two different bases for selecting slaughterhouses for such checks.
- (57) As far as the slaughter premium granted after export of bovine animals is concerned, special provisions are necessary along with Community control provisions relating to export in general because of the differences in the control purposes.
- (58) Special control provisions have been established on the basis of Commission Regulation (EC) No 1082/2003 of 23 June 2003 laying down detailed rules for the implementation of Regulation (EC) No 1760/2000 of the European Parliament and of the Council<sup>(1)</sup> as regards the minimum level of controls to be carried out in the framework of the system for the identification and registration of bovine animals. Where the controls under that Regulation are carried out, the results should be contained in the control report for the purposes of the integrated system.
- (59) Furthermore, there is a need to establish provisions as regards the control report in case of on-the-spot checks in slaughterhouses or when the premium is granted after export. For the purpose of coherence, it should also be provided that in case of non-compliances with the provisions of Title I of Regulation (EC) No 1760/2000 or Council Regulation (EC) No 21/2004 of

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

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17 December 2003 establishing a system for the identification and registration of ovine and caprine animals and amending Regulation (EC) No 1782/2003 and Directives 92/102/EEC and 64/432/EEC <sup>(1)</sup> copies of the control reports should be sent to the authorities responsible for the application of those Regulations.

- (60) In the case where a Member State makes use of the possibility to grant specific support as provided for in Article 68 of Regulation (EC) No 73/2009, the control provisions established by this Regulation should be applied to the extent possible. Where it is not possible to apply those provisions, Member States should provide an equivalent control level. Specific requirements for control of payment applications by mutual funds and for investments should be established.
- (61) Regulation (EC) No 73/2009 introduces cross-compliance obligations for farmers receiving payments under all direct payment schemes listed in Annex I to that Regulation and provides for a system of reductions and exclusions where such obligations are not fulfilled. That system also applies to payments under Articles 85p, 103q and 103r of Regulation (EC) No 1234/2007. The details for that system should be established.
- (62) The details concerning which authorities in the Member States carry out controls on cross-compliance obligations should be established.
- (63) In certain cases it might be useful for the Member States to carry out administrative controls on cross-compliance obligations. However, such control tools should not be made compulsory for the Member States.
- (64) The minimum control rate for the respect of the cross-compliance obligations has to be established. That control rate should be fixed at 1 % of farmers subject to cross-compliance falling under the area of competence of each control authority to be selected on the basis of an appropriate risk analysis.
- (65) The Member States should be given the option to fulfill the minimum control rate at the level of each competent control authority, at the level of the paying agency or at the level of an act or standard, or group of acts or standards.
- (66) Where the specific legislation applicable to the act and standards fixes minimum control rates, Member States should respect these rates. However, Member States should be allowed to apply a single control rate for the cross-compliance on-the-spot checks. If Member States choose this option, any instance of non-compliance detected in the course of on-the-spot checks under the sectoral legislation should be reported and followed-up under cross-compliance.
- (67) Rules which in certain cases require a follow-up by the competent authority that a remedial action has been taken by the farmers have been established by Regulation (EC) No 73/2009. In order to avoid any weakening of the control

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

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system, in particular as to the sampling for the cross-compliance on-the-spot checks, it should be clarified that such follow-up cases should not be taken into account when establishing the minimum control sample.

- (68) The control sample for cross-compliance should either be drawn on the basis of the samples of farmers that are selected for an on-the-spot check as regards eligibility criteria, or from the overall population of farmers submitting aid applications for direct payments. In the latter case certain sub-options should be allowed.
- (69) The sampling of on-the-spot checks for cross-compliance can be improved by allowing taking into account into the risk analysis the farmers participation in the farm advisory system provided for in Articles 12 of Regulation (EC) No 73/2009 as well as farmers participation in relevant certifications systems. It should however be demonstrated when taking that participation into account that the farmers participating in those schemes represent a lesser risk than farmers not participating in those schemes.
- (70) On-the-spot checks for cross-compliance would in general require several visits on the same farm. In order to reduce the burden of the checks for both farmers and administrations, the checks may be limited to one control visit. The timing of that visit should be clarified. Nevertheless, the Member States should ensure that a representative and effective check of the requirements and standards is performed within the same calendar year.
- (71) To simplify the cross-compliance on-the-spot checks and to make better use of existing control capacities, it should be provided, when the effectiveness of the controls is at least equal to that achieved when the on-the-spot checks are to be carried out, to replace controls at farm level by administrative controls or checks at the level of undertakings.
- (72) It should furthermore be possible for the Member States to make use of objective indicators specific to certain requirements or standards when performing the cross-compliance on-the-spot checks. Those indicators should however be directly linked to the requirements or standards they represent and cover all elements to be checked.
- (73) Rules for the setting-up of detailed and specific control reports for cross-compliance have to be established. The specialised controllers in the field should indicate any findings and also the degree of seriousness of such findings in order to enable the paying agency to fix the related reductions or, as the case may be, to decide on exclusions from receiving direct payments.
- (74) The farmers should be informed about any possible non-compliance determined following an on-the-spot check. It is appropriate to provide for a certain time limit within which the farmers should receive this information. However, exceeding such time limit should not entitle the farmers concerned to avoid the consequences that the determined non-compliance would otherwise trigger.

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- (75) Reductions and exclusions should be established having regard to the principle of proportionality and the special problems linked to cases of force majeure as well as exceptional and natural circumstances. In the case of cross-compliance obligations, reductions and exclusions may only be applied where the farmer acted negligently or intentionally. Reductions and exclusions should be graded according to the seriousness of the irregularity committed and should go as far as the total exclusion from one or several aid schemes for a specified period. They should, with regard to the eligibility criteria, take into account the particularities of the various aid schemes.
- (76) In order to enable Member States to carry out controls effectively, in particular controls on the respect of cross-compliance obligations, farmers shall in accordance with Article 19(1)(a) of Regulation (EC) No 73/2009 declare all the areas at their disposal whether or not they claim aid for such areas. It is necessary to provide for a mechanism to ensure that farmers comply with that obligation.
- (77) For the sake of determination of areas and calculation of reductions it is necessary to define the areas falling within the same crop-group. An area should be taken into account several times if it is declared for aid under more than one aid scheme.
- (78) Payment of support under the single payment scheme requires an equal number of payment entitlements and eligible hectares. For the purpose of this scheme it is therefore appropriate to provide that the calculation of the payment in the case of discrepancies between the payment entitlements declared and the area declared should be based on the lower size. To avoid calculation based on non-existing entitlements, it should be provided that the number of payment entitlements used for the calculation should not exceed the number of payment entitlements at the farmers' disposal.
- (79) In relation to area aid applications, irregularities normally affect parts of areas. Over-declarations in respect of one parcel may, therefore, be off-set against under-declarations of other parcels of the same crop-group. Within a certain margin of tolerance it should be foreseen that aid applications are only adjusted to the area actually determined and reductions only start to apply once this margin has been exceeded.
- (80) Furthermore, in relation to applications for area related payments, differences between the total area declared in the application and the total area determined as eligible are often insignificant. To avoid a high number of minor adjustments of applications it should be provided that the aid application should not be adjusted to the area determined unless a certain level of differences is exceeded.
- (81) Special provisions are necessary to take into account the particularities of aid applications under the aid schemes for starch potato, seed and cotton.
- (82) In the case where an over-declaration was intentional, special reduction rules should apply.
- (83) Implementing rules for the basis of calculation of livestock premiums should be laid down.

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- (84) Farmers should be allowed to replace the bovine and ovine/caprine animals under certain conditions and within the limits allowed under the relevant sectoral rules.
- (85) As far as livestock aid applications are concerned, irregularities lead to the ineligibility of the animal concerned. Reductions should be foreseen as from the first animal found with irregularities but, irrespective of the level of the reduction, there should be a less harsh sanction where three animals or less are found with irregularities. In all other cases the severity of the sanction should depend on the percentage of animals found with irregularities.
- (86) With regard to ovine and caprine animals a number of specific provisions should be laid down due to the particularities of the sector.
- (87) Where, due to natural circumstances, a farmer is unable to fulfill the retention obligations under the sectoral rules, reductions and exclusions should not be applied.
- (88) In the case where a Member State opts for the application of the slaughter premium, due to the importance of slaughterhouses for the proper functioning of some of the bovine aid schemes, provision should also be made for cases where slaughterhouses, due to gross negligence or intentionally, issue incorrect certificates or declarations.
- (89) In case the specific support as provided for in Article 68 of Regulation (EC) No 73/2009 is granted as an area-related payment or a livestock payment, the provisions for reductions and exclusions to be hereto established should, to the extent possible, be applied *mutatis mutandis*. For other cases Member States should for each measure under the specific support provide for equivalent reductions and exclusions.
- (90) Information on the results of controls of cross-compliance should be made available to all paying agencies responsible for the management of the different payments subject to cross-compliance requirements so that, where the findings so justify, appropriate reductions are applied.
- (91) Furthermore, where the possibility not to apply any reduction for minor non-compliances or not to apply reductions amounting to EUR 100 or less, as provided for in Articles 23(2) or 24(2) of Regulation (EC) No 73/2009, is applied by a Member State, rules should be established where farmers fail to undertake the remedial action required from them.
- (92) With regard to cross-compliance obligations, apart from grading reductions or exclusions in view of the principle of proportionality, it should be provided that as of a certain moment, repeated infringements of the same cross-compliance obligation should, after a prior warning to the farmer, be treated as an intentional non-compliance.

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- (93) Reductions and exclusions with regard to eligibility criteria should, as a general rule, not apply where the farmer submitted factually correct information or where he can show otherwise that he is not at fault.
- (94) Farmers who give notice to the competent national authorities at any time of incorrect aid applications should not be subject to any reductions or exclusions irrespective of the reason of the incorrectness, provided that the farmer has not been informed of the competent authority's intention to carry out an on-the-spot check and the authority has not already informed the farmer of any irregularity in the application.
- (95) The same should apply in relation to incorrect data contained in the computerised database both in respect of claimed bovine animals for which such irregularities not only constitute a non-respect of a cross-compliance obligation but also a breach of an eligibility criterion, and in respect of unclaimed bovine animals where such irregularities are relevant only under the cross-compliance obligations.
- (96) Article 31 of Regulation (EC) No 73/2009 defines cases of force majeure and exceptional circumstances to be recognised by the Member States. Where, as a consequence of such cases, a farmer is not able to fulfill his obligations, he should not lose his right to the aid payment. A deadline within which such case is to be notified by the farmer should however be fixed.
- (97) The management of small amounts is a burdensome task for the competent authorities of the Member States. It is therefore appropriate to authorise the Member States not to pay amounts of aid that are below a certain minimum.
- (98) Specific and detailed provisions have to be laid down in order to ensure the equitable application of various reductions to be applied in respect of one or several aid applications by the same farmer. The reductions and exclusions provided for in this Regulation should apply without prejudice to additional sanctions under any other provisions of Community or national law.
- (99) The sequence for the calculation of various potential reductions on each support scheme should be determined. In order to ensure the respect of the various budgetary ceilings established for the direct support schemes, it should in particular be provided that the payments are reduced by a coefficient where the ceilings would otherwise be exceeded.
- (100) Articles 7, 10 and 11 of Regulation (EC) No 73/2009 provide for reductions and, as the case may be, adjustments of the sum of direct payments to be granted to a farmer in respect of a calendar year due to modulation and financial discipline, respectively. The implementing provisions should provide for the basis for calculation of those reductions and adjustments in the process of calculating the amount of the payments to be made to farmers.



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- (101) In order to ensure the uniform application of the principle of good faith throughout the Community, where amounts unduly paid are recovered, the conditions under which that principle may be invoked should be laid down without prejudice to the treatment of the expenditure concerned in the context of the clearance of accounts under Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy <sup>(1)</sup>.
- (102) Rules need to be established to cover the eventuality where a farmer has received unduly a number of payment entitlements or that the value of each of the payment entitlements was fixed at an incorrect level and where the case is not covered by Article 137 of Regulation (EC) No 73/2009. However, in certain cases, where unduly allocations of entitlements did not affect the total value, but only the number of the entitlements of the farmer, Member States should correct the allocation or where appropriate the type of entitlements, without reducing the value thereof. That provision should only apply if the farmer could not have reasonably detected the error. Furthermore, in certain cases, unduly allocated entitlements correspond to very small amounts and a substantial administrative burden is required to recover those entitlements. In light of simplification and the balance between the administrative burden and the amount to be recovered, a minimum amount that may trigger a recovery should be fixed. Moreover, provision has to be made for the case where such payment entitlements have been transferred and for the case where transfers of payment entitlements have occurred without respecting Article 46(2) of Regulation (EC) No 1782/2003 or Articles 43, 62(1), 62(2) and 68(5) of Regulation (EC) No 73/2009.
- (103) Rules should be established concerning the consequences of transfers of entire holdings which are under certain obligations in accordance with the direct payment schemes subject to the integrated system.
- (104) As a general rule, Member States should take any further measures necessary to ensure a proper functioning of the integrated administrative control system. The Member States should give each other mutual assistance where necessary.
- (105) The Commission should, where appropriate, be informed of any measures taken by the Member States to introduce changes to their implementation of the integrated system. In order to enable the Commission to monitor the integrated system effectively, the Member States should send to it annual control statistics. The Member States should, moreover, inform the Commission of any measures they are taking with regard to the maintenance of land under permanent pasture as well as of any reduction applied in accordance with Article 8(1) of Regulation (EC) No 73/2009.
- (106) Article 9 of Regulation (EC) No 73/2009 lays down rules concerning the amounts resulting from the modulation. A part of the amounts should be allocated in accordance with an allocation key for which rules should be set up based on the criteria established in that Article.

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

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- (107) This Regulation should apply as from 1 January 2010. Regulation (EC) No 796/2004 should therefore be repealed as from that date. However, it should continue to apply with regard to aid applications relating to marketing years or premium periods which start before 1 January 2010.
- (108) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets and of the Management Committee for Direct Payments,

HAS ADOPTED THIS REGULATION:

## PART I

## GENERAL PROVISIONS

## TITLE I

## SCOPE AND DEFINITIONS

*Article 1***Scope**

This Regulation lays down the detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system (hereinafter the integrated system), established by Chapter 4 of Title II of Regulation (EC) No 73/2009, and for the implementation of cross-compliance provided for in Articles 85t and 103z of Regulation (EC) No 1234/2007. It shall be without prejudice to specific provisions laid down in the Regulations covering the individual aid schemes.

*Article 2***Definitions**

For the purposes of this Regulation, the definitions in Article 2 of Regulation (EC) No 73/2009 shall apply.

The following definitions shall also apply:

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

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

**▼B**

- (5) ‘computerised database for bovine animals’ means the computerised database referred to in Article 3(b) and Article 5 of Regulation (EC) No 1760/2000;
- (6) ‘animal passport’ means the animal passport referred to in Article 3(c) and Article 6 of Regulation (EC) No 1760/2000;
- (7) ‘register’ means the register kept by the keepers of animals in accordance with Article 5 of Regulation (EC) No 21/2004 or Article 3(d) and Article 7 of Regulation (EC) No 1760/2000 respectively;
- (8) ‘elements of the system for the identification and registration of bovine animals’ means the elements referred to in Article 3 of Regulation (EC) No 1760/2000;
- (9) ‘identification code’ means the identification code referred to in Article 4(1) of Regulation (EC) No 1760/2000;
- (10) ‘irregularities’ means any non-respect of the relevant rules for the granting of the aid in question;
- (11) ‘single application’ means the application for direct payments in respect of the single payment scheme and other area-related aid schemes;

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- (12) ‘area-related aid schemes’ means the single payment scheme, area-related payments under specific support and all aid schemes established under Titles IV and V of Regulation (EC) No 73/2009, except those established under Sections 7, 10, and 11 of that Title IV, except the separate sugar payment established in Article 126 of that Regulation, except the separate fruit and vegetable payment established in Article 127 of that Regulation and except the separate soft fruit payment established in Article 129 of that Regulation;

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- (13) ‘livestock aid application’ means the applications for the payment of aid under the sheep and goat premiums scheme and the beef and veal payments schemes provided for in Sections 10 and 11 of Title IV, respectively, of Regulation (EC) No 73/2009 and livestock headage or livestock unit payments under specific support;
- (14) ‘specific support’ means support referred to in Article 68 of Regulation (EC) No 73/2009;
- (15) ‘use’ means the use of area in terms of the type of crop or ground cover or the absence of a crop;
- (16) ‘bovine aid schemes’ means the aid schemes referred to in Article 108 of Regulation (EC) No 73/2009;
- (17) ‘ovine/caprine aid scheme’ means the aid scheme referred to in Article 99 of Regulation (EC) No 73/2009;
- (18) ‘claimed bovine animals’ means bovine animals subject to a livestock aid application under the bovine aid schemes or under specific support;
- (19) ‘unclaimed bovine animals’ means bovine animals not yet subject to a livestock aid application but potentially eligible for aid under the bovine aid schemes;
- (20) ‘potentially eligible animal’ means an animal that could a priori potentially fulfil the eligibility criteria for receiving the aid in the claim year in question;

**▼M3**

- (21) ‘retention period’ means the period during which an animal for which aid has been claimed has to be kept on the holding, as provided for in Article 35(3) and Article 61 of Commission Regulation (EC) No 1121/2009 <sup>(1)</sup>;

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- (22) ‘animal keeper’ means any natural or legal person responsible for animals whether on a permanent or on a temporary basis, including during transportation or at a market;
- (23) ‘area determined’ means the area for which all conditions laid down in the rules for granting the aid have been met; in the case of the single payment scheme, the area declared may be deemed as being determined only if it is actually being accompanied by a corresponding number of payment entitlements;
- (24) ‘animal determined’ means an animal for which all conditions laid down in the rules for granting the aid have been met;
- (25) ‘premium period’ means the period to which aid applications refer irrespective of the moment of their submission;
- (26) ‘geographical Information System’ (hereinafter referred to as GIS) means the computerised geographical information system techniques referred to in Article 17 of Regulation (EC) No 73/2009;
- (27) ‘reference parcel’ means a geographically delimited area retaining a unique identification as registered in the GIS in the Member State’s identification system referred to in Article 15 of Regulation (EC) No 73/2009;
- (28) ‘geographical material’ means maps or other documents used to communicate the contents of the GIS between the aid applicants and the Member State’s;
- (29) ‘national coordinate reference system’ means a system as defined in Directive 2007/2/EC of the European Parliament and of the Council <sup>(2)</sup> which permits standardised measurement and unique identification of agricultural parcels throughout the Member State concerned;
- (30) ‘paying agency’ means the authorities and bodies referred to in Article 8(1) of Regulation (EC) No 1290/2005;
- (31) ‘cross-compliance’ means the statutory management requirements and the good agricultural and environmental condition in accordance with Articles 5 and 6 of Regulation (EC) No 73/2009;
- (32) ‘areas of cross-compliance’ means the different areas of statutory management requirements within the meaning of Article 5(1) of Regulation (EC) No 73/2009 and the good agricultural and environmental condition in accordance with Article 6 of that Regulation;
- (33) ‘act’ means each of the individual Directives and Regulations listed in Annex II to Regulation (EC) No 73/2009;

<sup>(1)</sup> OJ L 316, 2.12.2009, p. 27.

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

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

## TITLE II

## MAINTENANCE OF PERMANENT PASTURE

*Article 3***Maintenance of land under permanent pasture at Member State level**

1. Without prejudice to the exceptions provided for in the third subparagraph of Article 6(2) of Regulation (EC) No 73/2009, the Member States shall, pursuant to the first paragraph thereof, ensure the maintenance of the ratio of the land under permanent pasture in relation to the total agricultural area. That obligation shall apply at national or regional level.

However, where the amount of land under permanent pasture in absolute terms established in accordance with paragraph 4(a), 5(a), 6(a) and 7(a) of this Article is maintained, the obligation set out in the first subparagraph of Article 6(2) of Regulation (EC) No 73/2009 shall be considered as being complied with.

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

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

4. For the Member States, other than the new Member States, the reference ratio shall be established as follows:

- (a) the land under permanent pasture shall be the land under permanent pasture declared by the farmers in 2003, plus the land under permanent pasture declared in 2005 in accordance with Article 14(1) of Regulation (EC) No 796/2004 and that has not

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been declared for any use other than grassland in 2003, unless the farmer can demonstrate that such land was not under permanent pasture in 2003.

Areas declared in 2005 as land under permanent pasture and that in 2003 were eligible for the arable crops area payment in accordance with Article 1(3) of Council Regulation (EC) No 1251/1999 <sup>(1)</sup> shall be discounted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Article 4***Maintenance of land under permanent pasture at individual level**

1. Where it is established that the ratio referred to in Article 3(1) of this Regulation is decreasing the Member State concerned shall, at national or regional level, provide for the obligation of farmers applying for aid under any of the direct payment schemes listed in Annex I to Regulation (EC) No 73/2009 not to convert land under permanent pasture without prior authorisation.

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

2. Where it is established that the obligation referred to in Article 3(2) of this Regulation cannot be ensured, the Member State concerned shall, further to the measures to be taken in accordance with paragraph 1 of this Article, provide, at national or regional level, for the obligation of farmers applying for aid under any of the direct payment schemes listed in Annex I to Regulation (EC) No 73/2009 to re-convert land into land under permanent pasture for those farmers who have land at their disposal which was converted from land under permanent pasture into land for other uses.

This obligation shall apply with regard to land thus converted since the date of the start of the 24-month period proceeding the last date at which the single applications had to be submitted at the latest in accordance with Article 11(2) of this Regulation in the Member State concerned.

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

However, where such land was subject to a transfer after it had been converted into land for other uses, this obligation shall only apply if the transfer took place after the entry into force of Regulation (EC) No 796/2004.

By way of derogation from Article 2(2), areas re-converted or established as land under permanent pasture shall, as of the first day of the re-conversion or establishment be considered as 'permanent pasture'. Those areas shall be used to grow grasses or other herbaceous forage for the five consecutive years following the date of their conversion.



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3. The obligation for farmers set out in paragraphs 1 and 2 shall not apply where farmers created land under permanent pasture in the framework of programmes in accordance with Council Regulations (EEC) No 2078/92 <sup>(1)</sup>, (EC) No 1257/1999 <sup>(2)</sup> and (EC) No 1698/2005 <sup>(3)</sup>.

## PART II

## THE INTEGRATED ADMINISTRATION AND CONTROL SYSTEM

## TITLE I

## SYSTEMS REQUIREMENTS AND CROSS-COMPLIANCE

## CHAPTER I

*Identification and registration system**Article 5***Identification of farmers**

Without prejudice to Article 19(3) of Regulation (EC) No 73/2009, the single system to record the identity of each farmer provided for by Article 15(1)(f) of that Regulation shall guarantee a unique identification with regard to all aid applications submitted by the same farmer.

*Article 6***Identification of agricultural parcels**

1. The identification system for agricultural parcels referred to in Article 17 of Regulation (EC) No 73/2009 shall operate at reference parcel level such as cadastral parcel or production block which shall ensure unique identification of each reference parcel.

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

Member States shall, moreover, ensure that agricultural parcels are reliably identified and shall in particular require the single application to be furnished with particulars or accompanied by documents specified by the competent authority that enable each agricultural parcel to be located and measured.

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2. Member States shall annually assess the quality of the identification system for agricultural parcels. That assessment shall cover the following quality elements:

- (a) the correct quantification of the maximum eligible area;
- (b) the proportion and distribution of reference parcels where the maximum eligible area takes ineligible areas into account or where it does not take agricultural area into account;

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

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

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

**▼ M1**

- (c) the categorisation of reference parcels where the maximum eligible area takes ineligible areas into account or where it does not take agricultural area into account;
- (d) the occurrence of reference parcels with critical defects;
- (e) the ratio of declared area in relation to the maximum eligible area inside the reference parcels;
- (f) the percentage of reference parcels which have been subject to change, accumulated over the years;
- (g) the rate of irregularities determined during on-the-spot checks.

When performing the assessment referred to in the first subparagraph, Member States shall:

- (a) use data allowing to assess the current situation on the ground;
- (b) select an adequate random sample of all reference parcels.

An assessment report and, where appropriate, the remedial actions and the timetable for their implementation shall be sent to the Commission by 31 January following the calendar year in question at the latest. However, in respect of the calendar year 2010, this information shall be sent to the Commission by 28 February 2011 at the latest.

**▼ B***Article 7***Identification and registration of payment entitlements**

1. The system for the identification and registration of payment entitlements provided for in Article 18 of Regulation (EC) No 73/2009 shall be an electronic register at Member State level and shall, in particular with regard to the cross-checks provided for in Article 28 of this Regulation, ensure effective traceability of the payment entitlements, in particular as regards the following elements:

- (a) holder;
- (b) value;
- (c) date of establishment;
- (d) date of last activation;
- (e) origin, in particular with regard to its attribution, original or national reserve, purchase, lease, inheritance;

**▼ M1**

- (f) kind of entitlement, in particular special entitlements provided for in Article 44 of Regulation (EC) No 73/2009, entitlements allocated in accordance with Article 68(1)(c) of Regulation (EC) No 73/2009 and payment entitlements subject to a derogation as provided for in Article 64(2) of Regulation (EC) No 73/2009;

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- (g) where applicable, regional restrictions.

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



*CHAPTER II*

***Cross-compliance***

*Article 8*

**Control system as regards cross-compliance**

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

- (a) where the competent control authority is not the paying agency, the transfer of the necessary information concerning the farmers applying for direct payments from the paying agency to the specialised control bodies and/or, where applicable, via the coordinating authority referred to in Article 20(3) of Regulation (EC) No 73/2009;
- (b) the methods to be applied for the selection of control samples;
- (c) indications with regard to the nature and extent of the checks to be carried out;
- (d) control reports containing in particular any detected non-compliance and an assessment of its severity, extent, permanence and repetition;
- (e) where the competent control authority is not the paying agency, the transfer of the control reports from the specialised control bodies either to the paying agency or the coordinating authority referred to in Article 20(3) of Regulation (EC) No 73/2009 or both;
- (f) the application of the system of reductions and exclusions by the paying agency.

2. Member States may provide for a procedure according to which the farmer indicates to the paying agency the elements necessary to identify the requirements and standards applicable to him.

*Article 9*

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

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

TITLE II

**AID APPLICATIONS**

*CHAPTER I*

***The single application***

*Article 10*

**General provisions pertaining to the single application**

1. Member States may decide that all applications for aid under Title III and IV of Regulation (EC) No 73/2009 shall be covered by the

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single application. In that case, Chapters II to V of this Title shall apply *mutatis mutandis* in respect of the particular requirements established in view of the application for aid under those schemes.

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

*Article 11***Date of submission of the single application**

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

A farmer who does not apply for aid under any of the area-related aid schemes but applies for aid under another aid scheme listed in Annex I to Regulation (EC) No 73/2009 or for support pursuant to Articles 85p, 103q and 103r of Regulation (EC) No 1234/2007 shall, if he has agricultural area at his disposal, submit a single application form in which he shall list these areas in accordance with Article 13 of this Regulation.

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

However, Member States may exempt farmers from the obligations provided for in the second and third subparagraphs where the information concerned is made available to the competent authorities in the framework of other administration and control systems that guarantee compatibility with the integrated system in accordance with Article 26 of Regulation (EC) No 73/2009.

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

When fixing that date, Member States shall take into account the period required for all relevant data to be available for the proper administrative and financial management of the aid and shall ensure that effective controls may be scheduled.

In accordance with the procedure referred to in Article 141(2) of Regulation (EC) No 73/2009, it may be allowed to postpone the dates referred to in the first subparagraph of this paragraph in certain zones where exceptional climatic conditions render the normal dates inapplicable.

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

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

- (a) the identity of the farmer;
- (b) the aid scheme or schemes concerned;

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

2. For the purpose of the identification of the payment entitlements referred to in paragraph 1(c), the pre-established forms provided to the farmer in accordance with Article 19(2) of Regulation (EC) No 73/2009 shall mention the identification of the payment entitlements in accordance with the identification and registration system provided for in Article 7 of this Regulation.

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

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

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

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

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

*Article 13***Specific requirements pertaining to the single application and declarations in relation to particular uses of area**

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

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- (a) all information required for the identification of the parcels sown in hemp, indicating the varieties of seed used;
- (b) an indication as to the quantities of the seeds used (kg per hectare);
- (c) the official labels used on the packaging of the seeds in accordance with Council Directive 2002/57/EC <sup>(1)</sup>, and in particular Article 12 thereof or any other document recognised as equivalent by the Member State.

By way of derogation from point (c) of the first subparagraph, where sowing takes place after the deadline for submitting the single application, the labels shall be submitted by 30 June at the latest. Where the labels also have to be submitted to other national authorities, the Member States may provide for those labels to be returned to the farmer once they have been submitted in accordance with that point. The labels returned shall be marked as used for an application.

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

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

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6. In the case of an application for transitional fruit and vegetables payments provided for in Section 8 of Chapter 1 of Title IV of Regulation (EC) No 73/2009 the single application shall contain a copy of the contract for processing or the commitment to supply provided for in Article 32 of Regulation (EC) No 1121/2009.

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

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

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8. Uses of area referred to in Articles 6(2) of Regulation (EC) No 73/2009 and those listed in Annex VI to that Regulation or areas declared for the specific support provided for in Article 68 of Regulation (EC) No 73/2009, where those areas do not have to be declared in accordance with this Article, shall be declared under a separate heading in the single application form.

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Uses of area neither for the purposes of the aid schemes provided for in Titles III, IV and V of Regulation (EC) No 73/2009 nor listed in Annex VI to that Regulation shall be declared under one or more 'other uses' headings.

Member States may provide that the first and second subparagraphs shall not apply where the information concerned is made available to

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

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the competent authorities in the framework of other administration and control systems that guarantee compatibility with the integrated system in accordance with Article 26 of Regulation (EC) No 73/2009.

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

*Article 14***Amendments to the single application**

1. After the expiry of the time limit for the submission of the single application, individual agricultural parcels or individual payment entitlements may be added in the single application provided that the requirements under the aid schemes concerned are respected.

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

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

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

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By way of derogation from the first subparagraph Member States may fix an earlier latest date for the notification of amendments. That date shall however not be earlier than 15 calendar days after the latest date for submitting the single application fixed in accordance with Article 11(2).

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

*CHAPTER II**Applications for payment entitlements**Article 15***Allocation or increase of payment entitlements**

1. Applications for allocation or, where appropriate, increase of payment entitlements under the single payment scheme shall be submitted by a date to be fixed by the Member States but not later than the 15 May in the first year of implementation of the single payment scheme, of integration of coupled support, of application of



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Articles 46 to 48 of Regulation (EC) No 73/2009, or in the years of application of Articles 41, 57 or 68(1)(c) of the same Regulation. However, Estonia, Latvia, Lithuania, Finland and Sweden may fix a later date which shall not be later than 15 June.

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

*CHAPTER III**Livestock aid applications**Article 16***Requirements pertaining to livestock aid applications**

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

- (a) the identity of the farmer;
- (b) a reference to the single application if it has already been submitted;
- (c) the number of animals of each type in respect of which any aid is applied for and, for bovines, the identification code of the animals;
- (d) where applicable, an undertaking by the farmer to keep the animals referred to in point (c) on his holding during the retention period and information on the location or locations where the animals will be held including the period or periods concerned;
- (e) where applicable, the individual limit or individual ceiling for the animals concerned;
- (f) where applicable, the individual milk reference quantity available to the farmer on 31 March or, if the Member State concerned decides to make use of the derogation provided for in Article 85 of Regulation (EC) No 1121/2009, on 1 April of the calendar year concerned; where this quantity is unknown on the date on which the application is submitted, it shall be notified to the competent authority at the earliest opportunity;
- (g) a statement by the farmer that he is aware of the conditions pertaining to the aid in question.

If the animal is moved to another location during the retention period the farmer shall inform the competent authority in writing in advance, unless the Member State concerned decides not to require this information, provided that the computerised database for bovine animals does offer the level of assurance and implementation necessary for the proper management of the aid schemes and the information therein is sufficient to identify the location of the animals;

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

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

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

- (a) in accordance with the provisions applicable to the aid scheme in question, the starting and end dates of the relevant retention periods are clearly identified and known to the farmer;
- (b) the farmer is aware that any potentially eligible animals found not to be correctly identified or registered in the system for the identification and registration for bovine animals shall count as animals found with irregularities as referred to in Article 65 of this Regulation.

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

*CHAPTER IV***▼ M3**

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

**▼ B***Article 17***▼ M3**

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

1. Farmers applying for the aid for sugar beet and cane producers provided for in Section 7 of Chapter 1 of Title IV of Regulation (EC) No 73/2009, for the separate sugar payment provided for in Article 126 of that Regulation, for the separate fruit and vegetables payment provided for in Article 127 or for the separate soft fruit payment provided for in Article 129 of that Regulation shall submit an aid application containing all information necessary to establish eligibility for the aid, and in particular:

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

The application for the aid to sugar beet and cane producers shall also contain a copy of the delivery contract referred to in Article 94 of Regulation (EC) No 73/2009.

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2. The aid applications referred to in paragraph 1 shall be submitted by a date to be determined by the Member States which shall not be later than 15 May and, in the case of Estonia, Latvia and Lithuania, not later than 15 June.

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

*CHAPTER V**Applications for specific support, other than area or livestock payments**Article 18***Requirements pertaining to aid applications for specific support, other than area or livestock payments**

1. Farmers applying for specific support not covered by applications in Chapter I, II or III of this Title, shall submit an aid application containing all information necessary to establish eligibility for the aid and in particular:

- (a) the identity of the farmer;
- (b) a statement by the farmer that he is aware of the conditions pertaining to the aid in question;
- (c) where appropriate, any supporting documents needed to establish the eligibility for the measure concerned.

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

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

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

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

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

*Article 19***Applications by mutual funds**

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

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

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

*CHAPTER VI****Common provisions****Article 20***Simplification of procedures**

1. Without prejudice to any specific provisions of this Regulation and of Regulation (EC) No 73/2009, Member States may permit or require that any kind of communications under this Regulation both from the farmer to the authorities and vice versa be made by electronic means. In that case, appropriate measures shall be taken to ensure in particular that:

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

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

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

*Article 21***Adjustments of obvious errors**

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

*Article 22***Derogation from the final date for submission**

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

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

*Article 23***Late submission**

1. Except in cases of force majeure and exceptional circumstances as referred to in Article 75, the submission of an aid application pursuant to this Regulation after the relevant time limit shall lead to a 1 % reduction per working day in the amounts to which the farmer would have been entitled if the application had been submitted within the time limit.

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

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

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

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

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lead to a 1 % reduction per working day in the amounts relating to the actual use of the agricultural parcels concerned.

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

*Article 24***Late submission of an application for allocation of payment entitlements**

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

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

*Article 25***Withdrawal of aid applications**

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

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

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

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

## TITLE III

**CONTROLS***CHAPTER I****Common rules****Article 26***General principles**

1. Administrative controls and on-the-spot checks provided for in this Regulation shall be made in such a way as to ensure effective

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verification of compliance with the terms under which aids are granted and of the requirements and standards relevant for cross-compliance.

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

*Article 27***Announcements of on-the-spot checks**

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

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

*CHAPTER II**Controls with regard to eligibility criteria*

## Section I

**Administrative controls***Article 28***Cross-checks**

1. The administrative controls referred to in Article 20 of Regulation (EC) No 73/2009 shall permit the detection of irregularities, in particular the automated detection using computerised means, including cross-checks:

- (a) on declared payment entitlements and on declared parcels, respectively, in order to avoid undue multiple granting of the same aid in respect of the same calendar or marketing year and to prevent any undue accumulation of aid granted under area-related aid schemes listed in ►**MI** Annexes I and VI ◀ to Regulation (EC) No 73/2009;
- (b) on the payment entitlements to verify their existence and the eligibility for aid;
- (c) between the agricultural parcels as declared in the single application and the reference parcels as contained in the identification system for agricultural parcels to verify the eligibility for aid of the areas as such;
- (d) between the payment entitlements and the area determined in order to verify that the entitlements are accompanied by an equal number of eligible hectares as defined in Article 34(2) of Regulation (EC) No 73/2009;
- (e) by means of the computerised database for bovine animals, to verify eligibility for the aid and to avoid undue multiple granting of the same aid in respect of the same calendar year;



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

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

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

*Article 29***Administrative controls of specific support**

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

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

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

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## Section II

**On-the-spot checks**

## Sub-section I

**Common provisions***Article 30***Control rate**

1. The total number of on-the-spot checks carried out each year shall cover at least 5 % of all farmers applying respectively for the single payment scheme, the single area payment scheme or area-related payments under specific support. The Member States shall assure that on-the-spot checks cover at least 3 % of the farmers applying for aid under each of other area-related aid schemes provided for under Titles III, IV and V of Regulation (EC) No 73/2009.

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

- (a) the minimum control rate of 30 % or 20 % of the areas declared for the production of hemp as referred to in Article 39 of Regulation (EC) No 73/2009.

Where a Member State has already introduced a system of prior approval for such cultivation and has already notified the Commission of its detailed rules and conditions linked to that system prior to the entry into force of Regulation (EC) No 796/2004, any amendments to those detailed rules or conditions shall be notified to the Commission without undue delay;

- (b) 5 % of all farmers applying for aid under the bovine aid schemes, headage payments or livestock unit payments for bovine animals under specific support or specific support based on the individual milk quota determined in accordance with Article 65 of Regulation (EC) No 1234/2007 or specific support based on the actual production of milk. However, where the computerised database for bovine animals does not offer the level of assurance and implementation necessary for the proper management of the aid schemes involved the percentage shall be increased to 10 %.

Those on-the-spot checks shall also cover at least 5 % of all animals per aid scheme for which aid is applied for;

- (c) 5 % of all farmers applying for aid under the ovine/caprine aid scheme and headage payments or livestock unit payments for ovine/caprine animals under specific support. Those on-the-spot checks shall also cover at least 5 % of all animals for which aid is applied for. However, where the computerised database for ovine/caprine animals provided for in Article 8 of Regulation (EC) No 21/2004 does not offer the level of assurance and implementation necessary for the proper management of the aid schemes involved, the percentage shall be increased to 10 % of the farmers;
- (d) 10 % of all farmers applying for specific support other than those referred to in paragraph 1 and points (b) and (c) of this paragraph, excluding the measure referred to in Article 68(1)(d) of Regulation (EC) No 73/2009;

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- (e) 10 % of other services, bodies or organisations who provide evidence to verify the respect of eligibility criteria as referred to in Article 29(2).
  - (f) 100 % of the mutual funds applying for support referred to in Article 68(1)(e) of Regulation (EC) No 73/2009;
  - (g) as regards aid applications for the crop specific payment for cotton in accordance with Section 6 of Chapter 1 of Title IV of Regulation (EC) No 73/2009, 20 % of the inter-branch organisations approved in accordance with Article 91 of that Regulation and of which farmers declare to be a member in their single applications;
  - (h) as regards applications for the aid for sugar beet and cane producers provided for in Section 7 of Chapter 1 of Title IV of Regulation (EC) No 73/2009, concerning controls at the sugar manufacturers on the quantity quota sugar obtained from sugar beets and cane delivered in accordance with Article 94 of that Regulation, at least 5 % of the applicants delivering to the manufacturer concerned.
3. Should on-the-spot checks reveal significant irregularities in the context of a given aid scheme or in a region or part of a region, the competent authority shall appropriately increase the number of on-the-spot checks during the current year and shall appropriately increase the percentage of farmers to be checked on-the-spot in the following year.
4. Where it is provided that particular elements of an on-the-spot check may be carried out on the basis of a sample, that sample shall guarantee a reliable and representative level of control. Member States shall establish the criteria for the selection of the sample. If the checks on that sample reveal irregularities, the extent and scope of the sample shall be extended appropriately.

*Article 31***Selection of the control sample**

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

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

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

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

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

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

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

**▼M3***Article 31a***Combined on-the-spot checks**

1. By way of derogation from Article 31 and under the conditions set out in this Article, Member States may, as regards the single payment scheme and the single area payment scheme as referred to in Title III and Title V, Chapter 2 of Regulation (EC) No 73/2009, decide to replace the checks of the control sample to be established based on a risk analysis referred to in first subparagraph of Article 31(1) of this Regulation by checks based on the ortho images used for the update of the identification system for agricultural parcels referred to in Article 6.

The decision referred to in the first subparagraph may be taken at national level or regional level. A region shall be comprised of the whole area covered by one or more autonomous identification systems for agricultural parcels.

Member States shall systematically update the identification system for agricultural parcels and check all farmers in the entire area covered by it within a period of maximum three years, covering per year at least 25 % of the eligible hectares recorded in the identification system for agricultural parcels. However, a Member State with less than 150 000 eligible hectares recorded in the identification system for agricultural parcels may derogate from the requirement of a minimum coverage per year.

Before applying this Article, Member States shall have made a complete update of the identification system for agricultural parcels concerned within the previous three years.

The ortho images used for the update shall not be older than 15 months at the date of their use for the purpose of the update of the identification system for agricultural parcels as referred to in the first subparagraph.

2. The quality of the identification system for agricultural parcels as assessed in accordance with Article 6(2) during the two years preceding the application of this Article, shall be sufficient to ensure effective verification of the conditions under which aids are granted.

3. The rate of errors found in the random sample checked on-the-spot shall not exceed 2 % in the two years preceding the application of this Article. Moreover, the rate of errors shall not exceed 2 % during two consecutive years when applying this Article.

The rate of errors shall be certified by the Member State in accordance with the methodology drawn up at Union level.

4. Article 35(1) shall apply to the checks carried out in accordance with paragraphs 1, 2, and 3.

**▼B***Article 32***Control report**

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

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

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

Where the on-the-spot check is carried out by means of remote sensing in accordance with Article 35, the Member States may decide not to give the farmer or his representative the opportunity to sign the control report if no irregularities are revealed during the check by remote-sensing. If irregularities are revealed as a consequence of such checks the opportunity to sign the report shall be given before the competent authority draws its conclusions from the findings with regard to any resulting reductions or exclusions.

## Sub-section II

**On-the-spot checks of the single application with regard to area-related aid schemes***Article 33***Elements of on-the-spot checks**

► **M3** On-the-spot checks shall cover all the agricultural parcels for which aid is requested under aid schemes listed in Annex I to Regulation (EC) No 73/2009. ◀ Nevertheless, the actual determination of the areas as part of an on-the-spot check may be limited to a sample of at least 50 % of the agricultural parcels for which an application has been submitted under the aid schemes established in Titles III, IV and V

**▼B**

of Regulation (EC) No 73/2009 provided that the sample guarantees a reliable and representative level of control both in respect of area checked and aid claimed. When this sample check reveals anomalies the sample of agricultural parcels actually inspected shall be increased.

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

*Article 34***Determination of areas**

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

A measurement tolerance shall be defined by a buffer of maximum 1,5 m applied to the perimeter of the agricultural parcel. The maximum tolerance with regard to each agricultural parcel shall not, in absolute terms, exceed 1,0 ha.

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

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

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

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

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

5. Where an area is used in common, the competent authorities shall notionally allocate it between the individual farmers in proportion to their use or right of use of it.

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

**▼B***Article 35***Remote sensing**

1. Where a Member State makes use of the possibility, provided for in the second paragraph of Article 33, to carry out on-the-spot checks by remote sensing, it shall:
  - (a) perform photo interpretation of satellite images or aerial photographs of all agricultural parcels per application to be checked with a view to recognising the ground cover and measuring the area;
  - (b) carry out physical inspections in the field of all agricultural parcels for which photo interpretation does not make it possible to verify the accuracy of the declaration to the satisfaction of the competent authority.
2. The additional checks referred to in Article 30(3) shall be carried out by means of traditional on-the-spot checks if it is no longer possible to carry them out by means of remote sensing within the current year.

*Article 36***On-the-spot checks related to special entitlements**

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

**▼M3****▼B***Article 38***On-the-spot checks on approved inter-branch organisations**

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

*Article 39***On-the-spot checks on sugar manufacturers**

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

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



*Article 40***Verification of the tetrahydrocannabinol content in hemp growth**

1. The system to be used by the Member States in accordance with Article 39(1) of Regulation (EC) No 73/2009 in order to determine the tetrahydrocannabinol (hereinafter referred to as THC) content of the crops grown shall be as set out in Annex I to this Regulation.

2. The competent authority of the Member State shall keep the records related to THC findings. At least such records shall comprise for each variety the results in terms of THC content from each sample expressed in percentage to two decimal places, the procedure used, the number of tests carried out, an indication of the point at which the sample was taken and measures taken at national level.

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

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

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

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

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

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

**▼B**

## Sub-section III

**On-the-spot checks of livestock aid applications****▼M3***Article 41***Timing of on-the-spot checks**

1. At least 60 % of the minimum rate of on-the-spot checks provided for in the second subparagraph of Article 30(2)(b) shall be spread throughout the entire retention period of the aid scheme concerned. The remaining percentage of on-the-spot checks shall be spread over the year.

However, where the retention period starts before an aid application has been lodged or where it cannot be fixed in advance, on-the-spot checks provided for in the second subparagraph of Article 30(2)(b) shall be spread over the year.

2. At least 50 % of the minimum rate of on-the-spot checks provided for in Article 30(2)(c) shall be spread throughout the entire retention period. However, the total minimum rate of on-the-spot checks shall be fully conducted and spread 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.

**▼B***Article 42***Elements of the on-the-spot checks****▼M3**

1. On-the-spot checks shall verify that all eligibility conditions are fulfilled and cover all livestock for which aid applications have been submitted, including animals replaced during the retention period in accordance with Article 64 and which are still on the holding, under the aid schemes to be checked. In the case of checks of the bovine aid schemes and where the Member State makes use of the possibility provided for in Article 16(3), also the potentially eligible bovine animals shall be checked.

On-the-spot checks shall include in particular a check that the number of animals present on the holding for which aid applications have been submitted and, where applicable, the number of potentially eligible 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.

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2. In relation to the bovine aid schemes, on-the-spot checks shall also include checks:

- (a) of the correctness of entries in the register and the notifications to the computerised database for bovine animals on the basis of a sample of supporting documents such as purchase and sales invoices, slaughter certificates, veterinary certificates and, where applicable, animal passports, in relation to animals for which aid applications were submitted in the six months prior to the on-the-spot check; however if anomalies are found, the check shall be extended to 12 months prior to the on-the-spot check;

**▼ B**

- (b) that information held in the computerised database for bovine animals corresponds to the information given in the register on the basis of a sample in relation to animals for which aid applications were submitted in the six months prior to the on-the-spot check; however if anomalies are found the check shall be extended to 12 months prior to the on-the-spot check;

**▼ M3**

- (d) that bovine animals are identified by ear tags, accompanied, where applicable, by animal passports and that they are recorded in the register and have been duly notified to the computerised database for bovine animals.

The checks referred to under point (d) may be made on the basis of a sample.

**▼ B**

The checks referred to in the under point (d) shall be made individually for each individual male bovine still kept under the retention obligation, for which an application has been submitted for the special beef premium with the exception of those submitted in accordance with Article 110(6) of Regulation (EC) No 73/2009. In all other cases, the check on correct recording in the animal passports, the register and notification to the database may be made on the basis of a sample.

3. In relation to the ovine/caprine aid scheme, on-the-spot checks shall also include:

- (a) a check on the basis of the register that all the animals for which aid application were submitted have been kept on the holding throughout the retention period;
- (b) a check of the correctness of entries in the register in the six months prior to the on-the-spot check, based on a sample of supporting documents such as purchase and sales invoices and veterinary certificates covering the six months prior to the on-the-spot check; however if anomalies are found the check shall be extended to 12 months prior to the on-the-spot check.

**▼ M3****▼ B***Article 45***Special provisions as regards the control report**

1. Where Member States carry out on-the-spot checks pursuant to this Regulation in conjunction with inspections pursuant to Regulation (EC) No 1082/2003 the control report provided for in Article 32 of this Regulation shall be supplemented by reports in accordance with Article 2(5) of Regulation (EC) No 1082/2003.

**▼ M3****▼ B**

4. Where on-the-spot checks conducted in accordance with this Regulation reveal cases of non-compliance with the provisions of Title I of Regulation (EC) No 1760/2000 or Regulation (EC) No 21/2004, copies of the control report provided for in Article 32 of this Regulation shall be sent without delay to the authorities responsible for the implementation of those Regulations.

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## Sub-section IV

**On-the-spot checks of specific support***Article 46***Special provisions as regards specific support**

1. As regards the specific support provided for under Article 68 of Regulation (EC) No 73/2009, the Member States shall, apply the provisions of this Title. However, if this is not appropriate because of the structure of the scheme concerned, the Member States shall provide controls ensuring a control level equivalent to that laid down in this Title.

The Member States shall in particular verify;

- (a) when controlling applications for payments by mutual funds as provided for in Article 68(1)(e) of Regulation (EC) No 73/2009, that:
  - (i) farmers were effectively eligible to the compensation paid by the fund;
  - (ii) the compensation was effectively paid to affiliated farmers in accordance with Article 71 of Regulation (EC) No 73/2009;
- (b) when checking on-the-spot investment operations to be supported under specific support provided for in Article 68 of Regulation (EC) No 73/2009, that the investment has been realised.

The checks referred to in point (a) of the second subparagraph may be carried out by using a sample of at least 10 % of the farmers concerned.

2. Provided that the Member State ensures that the effectiveness of the controls is at least equal to that achieved when the controls are carried out by on-the-spot checks, controls at farm level may be replaced by administrative controls or checks at the level of services, bodies or organisations which provide evidence to verify the respect of eligibility criteria as referred to in Article 29(2).

*CHAPTER III****Controls relating to cross-compliance***

## Section I

**Common provisions***Article 47***General rules concerning non-compliance**

1. For the purposes of this Chapter a 'repeated' non-compliance means the non-compliance with the same requirement, standard or the obligation referred to in Article 4 determined more than once within a consecutive period of three calendar years, provided the farmer has been informed of a previous non-compliance and, as the case may be, has had the possibility to take the necessary measures to terminate that previous non-compliance;

2. The 'extent' of a non-compliance shall be determined taking account, in particular, of whether the non-compliance has a far-reaching impact or whether it is limited to the farm itself;

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3. The ‘severity’ of a non-compliance shall depend, in particular, on the importance of the consequences of the non-compliance taking account of the aims of the requirement or standard concerned;

4. Whether a non-compliance is of ‘permanence’ shall depend, in particular, on the length of time for which the effect lasts or the potential for terminating those effects by reasonable means.

*Article 48***Competent control authority**

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

The paying agencies shall bear the responsibility for the fixing of reductions or exclusions in individual cases in accordance with Chapter III of Title IV.

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

**Section II****Administrative controls***Article 49***Administrative controls**

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

**Section III****On-the-spot checks***Article 50***Minimum control rate**

1. The competent control authority shall, with regard to the requirements and standards for which it is responsible, carry out on-the-spot checks on at least 1 % of all farmers submitting aid applications under support schemes for direct payments within the meaning of Article 2(d) of Regulation (EC) No 73/2009 and for which the competent control authority in question is responsible. The competent control authority shall also, with regard to the requirements and standards for which it is responsible, carry out checks on at least 1 % of all farmers subject to cross-compliance obligations according to Articles 85t and 103z of Regulation (EC) No 1234/2007 in the calendar year in question and for which the competent control authority in question is responsible.

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The minimum control rate referred to in the first subparagraph may be reached at the level of each competent control authority or at the level of each act or standard or group of acts or standards. In the cases where the controls are not carried out by the paying agency as provided for in Article 48, this minimum control rate may however be reached at the level of each paying agency.

Where the legislation applicable to the act and standards already fixes minimum control rates, that rate shall insofar be applied instead of the minimum rate mentioned in the first subparagraph. Alternatively, Member States may decide that any instances of non-compliance detected in the course of any on-the-spot checks under the legislation applicable to the acts and standards which are performed outside the sample mentioned in the first subparagraph, shall be reported to, and followed up by, the competent control authority in charge of the act or standard concerned. The provisions of this Title shall apply.

**▼M1**

1a. By way of derogation from paragraph 1, in order to reach the minimum control rate referred to in that paragraph at the level of each act or standard or group of acts or standards, the Member State may:

- (a) use the results of on-the-spot checks carried out pursuant to the legislation applicable to those acts and standards for the selected farmers; or
- (b) replace selected farmers by farmers subject to an on-the-spot check carried out pursuant to the legislation applicable to those acts and standards provided that those farmers are submitting aid applications under support schemes for direct payments within the meaning of Article 2(d) of Regulation (EC) No 73/2009 or under support schemes which are subject to the application of Articles 85t and 103z of Regulation (EC) No 1234/2007.

In such cases the on-the-spot checks shall cover all aspects of the relevant acts or standards as defined under cross-compliance. Furthermore the Member State shall ensure that the effectiveness of those on-the-spot checks is at least equal to that achieved when the on-the-spot checks are carried out by competent control authorities.

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2. When establishing the minimum control rate referred to in paragraph 1 of this Article, the required actions as referred to in Article 23(2) or in the third subparagraph of Article 24(2) of Regulation (EC) No 73/2009 shall not be taken into account.

3. Should on-the-spot checks reveal a significant degree of non-compliance with a given act or standard, the number of on-the-spot checks to be carried out for this act or standard in the following control period shall be increased. Within a specific act the competent control authority may decide to limit the scope of these further on-the-spot checks to the most frequently infringed requirements.

*Article 51***Selection of the control sample**

1. Without prejudice to checks carried out as a follow-up of non-compliances brought to the attention of the competent control authority in any other way, the selection of each of the samples of farms to be checked in accordance with Article 50 shall be based, where applicable, on a risk analysis according to the applicable legislation, or on a risk

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analysis appropriate to the requirements or standards. That risk analysis may be based on the level of an individual farm or on the level of categories of farms or geographical zones or, in the case of point (b) of the second subparagraph of paragraph 5 of this Article, on the level of undertakings.

The risk analysis may take into account one or both of following:

- (a) a farmer's participation in the farm advisory system provided for in Article 12 of Regulation (EC) No 73/2009;
- (b) a farmer's participation in a certification system if the scheme in question is relevant for the requirements and standards concerned.

**▼M1**

A Member State may decide on the basis of a risk analysis to exclude farmers participating in a certification system as referred to in point (b) of the second subparagraph from the risk-based control sample. However, when the certification system only covers part of the requirements and standards to be respected under cross-compliance by the farmer, appropriate risk factors shall be applied for the requirements or standards that are not covered by the certification system.

When the analysis of control results reveals that there is a significant frequency of non-compliance with the requirements or standards included in a certification system as referred to in point (b) of the second subparagraph, the risk factors related to the requirements or standards concerned shall be re-assessed and, where appropriate, increased.

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Without prejudice to Article 50(1), a Member State may decide to select farmers receiving direct payments and farmers subject to cross-compliance obligations under Articles 85t and 103z of Regulation (EC) No 1234/2007 under the same risk analysis.

2. To provide the element of representativeness, between 20 % and 25 % of the minimum number of farmers to be subject to on-the-spot checks as provided for in the first subparagraph of Article 50(1), shall be selected randomly.

However, if the number of farmers to be subject to on-the-spot checks exceeds the minimum number of farmers to be subject to on-the-spot checks as provided for in the first subparagraph of Article 50(1), the percentage of randomly selected farmers in the additional sample shall not exceed 25 %.

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

4. The samples of farmers to be checked in accordance with Article 50 shall be selected from the samples of farmers which were already selected pursuant to Articles 30 and 31 and to whom the relevant requirements or standards apply. However, the sample referred to in the second sentence of the first subparagraph of Article 50(1) shall be selected from farmers subject to the application of Articles 85t and 103z of Regulation (EC) No 1234/2007 for the calendar year in question.



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5. By way of derogation from paragraph 4, the samples of farmers to be checked in accordance with Article 50 may be selected amongst the population of farmers submitting aid applications under support schemes for direct payments within the meaning of Article 2(d) of Regulation (EC) No 73/2009 and amongst farmers subject to the application of Articles 85t and 103z of Regulation (EC) No 1234/2007 and who are under the obligation to respect the relevant requirements or standards.

In that case:

- (a) where it is concluded, on the basis of the risk analysis applied at farm level, that non-beneficiaries of direct aid represent a higher risk than the farmers who applied for aid, farmers who applied for aid may be replaced by non-beneficiaries; in that case, the overall number of farmers checked shall, nevertheless, attain the control rate provided for in Article 50(1); the reasons for such replacements shall be properly justified and documented;
- (b) if more effective, the risk analysis may be performed at the level of undertakings, in particular slaughterhouses, traders or suppliers rather than at farm level; in that case, the farmers thus checked may be counted towards the control rate provided for in Article 50(1).

6. It may be decided to proceed by a combination of the procedures set out in paragraphs 4 and 5 in the case where such a combination increases the effectiveness of the control system.

#### *Article 52*

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

1. Where applicable, the respect of the requirements and standards shall be determined by the use of means as stipulated in the legislation applicable to the requirement or standard in question.
2. In other cases and where appropriate, the determination shall be carried out by the use of any appropriate means defined by the competent control authority which ensure precision at least equivalent to that required for official determinations under the national rules.
3. Where appropriate, the on-the-spot checks may be conducted by the application of remote-sensing techniques.

#### *Article 53*

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

1. In performing the checks on the sample provided for in Article 50, the competent control authority shall ensure that all farmers thus selected are checked with regard to their compliance with the requirements and standards for which it is responsible.

Notwithstanding the first subparagraph, where the minimum control rate is reached at the level of each act or standard or group of acts or standards as provided for in the second subparagraph of Article 50(1), the farmers selected shall be checked with regard to their compliance with the act or standard or group of acts and standards in question.

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In general, each farmer selected for an on-the-spot check shall be checked at a time when most requirements and standards for which he was selected may be checked. However, Member States shall ensure that an appropriate level of control for all requirements and standards is achieved during the year.

2. On-the-spot checks shall, where applicable, cover all the agricultural land of the holding. Nevertheless, the actual inspection in the field as part of an on-the-spot check may be limited to a sample of at least half of the agricultural parcels concerned by the requirement or standard on the holding provided that such sample guarantees a reliable and representative level of control in respect of requirements and standards. When this sample check reveals non-compliances, the sample of agricultural parcels actually inspected shall be increased.

Furthermore, where the legislation applicable to the act or standards provides so, the actual inspection of the compliance with the requirements and standards as part of an on-the-spot check may be limited to a representative sample of the objects to check. However, the Member States shall assure that the checks are carried out on all requirements and standards for which the compliance may be checked at the time of the visit.

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

4. Provided that the Member State ensures that the effectiveness of the controls is at least equal to that achieved when the controls are carried out by on-the-spot checks, controls at farm level may be replaced by administrative controls or checks at the level of undertakings as referred to in point (b) of the second subparagraph of Article 51(5).

5. In performing the on-the-spot checks, Member States may make use of objective control indicators specific to certain requirements and standards provided they ensure that the effectiveness of the control of the requirements and standards concerned is at least equal to on-the-spot checks performed without the use of indicators.

The indicators shall have a direct link to the requirements or standards they represent and cover all elements to be checked when controlling that or those requirements or standards.

6. On-the-spot checks related to the sample provided for in Article 50(1) shall be carried out within the same calendar year where the aid applications are submitted.

*Article 54***Control report**

1. ►**M1** Every on-the-spot check under this Chapter, regardless whether the farmer in question was selected for the on-the-spot check in accordance with Article 51, checked on-the-spot pursuant to the legislation applicable to the acts and standards in accordance with Article 50(1a) 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 or under its responsibility. ◀

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The report shall be divided into the following parts:

- (a) a general part containing, in particular, the following information:
  - (i) the farmer selected for the on-the-spot check;
  - (ii) the persons present;
  - (iii) whether notice of the visit was given to the farmer and, if so, the period of advance notification;
- (b) a part reflecting separately the checks carried out in respect of each of the acts and standards and containing, in particular, the following information:
  - (i) the requirements and standards subject to the on-the-spot check;
  - (ii) the nature and extent of checks carried out;
  - (iii) the findings;
  - (iv) the acts and standards in relation to which non-compliances are found;
- (c) an evaluation part giving an assessment of the importance of the non-compliance in respect of each act and/or standard on the basis of the criteria 'severity', 'extent', 'permanence' and 'repetition' in accordance with Article 24(1) of Regulation (EC) No 73/2009 with an indication of any factors that should lead to an increase or decrease of the reduction to be applied.

Where provisions relating to the requirement or standard in question leave a margin not to further pursue the non-compliance found, the report shall make a corresponding indication. The same shall apply in the case where a Member State grants a period for the compliance with newly introduced Community standards as referred to in Article 26(1) of Regulation (EC) No 1698/2005 or a period for the compliance of young farmers with the existing Community standards referred to in that Article.

2. The farmer shall be informed of any determined non-compliance within three months after the date of the on-the-spot check.

Unless the farmer has taken immediate remedial action putting an end to the non-compliance found in the sense of Article 24(2) of Regulation (EC) No 73/2009, the farmer shall be informed that remedial action shall be taken pursuant to that provision within the time limit set in the first subparagraph.

Where a Member State makes use of the possibility not to apply a reduction or exclusion as provided for in Article 23(2) of Regulation (EC) No 73/2009, the farmer concerned shall be informed, at the latest within one month after it is decided not to apply the reduction or exclusion of the payment, that remedial action shall be taken.

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

Where the competent control authority is not the paying agency, the report shall be sent to the paying agency or the coordinating authority within a month of its finalisation.

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However, where the report does not contain any findings, a Member State may decide that such report is not sent, provided that it is made directly accessible to the paying agency or coordinating authority one month after its finalisation.

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## TITLE IV

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

## CHAPTER I

*Non-declaration of areas*

## Article 55

**Non-declaration of all areas**

1. If, for a given year, a farmer does not declare all the areas referred to in Article 13(8) and the difference between the overall area declared in the single application on the one hand and the area declared plus the overall area of the parcels not declared, on the other, is more than 3 % of the area declared, the overall amount of direct payments payable to that farmer for that year shall be reduced by up to 3 % depending on the severity of the omission.

2. Paragraph 1 shall also apply to payments related to schemes provided for in Articles 85p, 103q and 103r of Regulation (EC) No 1234/2007, where the farmer is subject to cross-compliance obligations in accordance with Articles 85t and 103z of that Regulation. The percentage of the reduction shall apply to the total amount to be paid divided by the number of years referred to in Articles 85t and 103z of the same Regulation.

## CHAPTER II

*Findings in relation to eligibility criteria*

## Section I

**Single payment scheme and other area-related aid schemes**

## Article 56

**General principles**

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

- (a) areas declared for the purposes of activation of payment entitlements under the single payment scheme, as the case may be, each fulfilling the conditions particular to them;
- (b) areas for the purposes of the single area payment scheme in accordance with Chapter 2 of Title V of Regulation (EC) No 73/2009;
- (c) a group for each of the areas for the purpose of any other area-related aid scheme, for which a different rate of aid is applicable;

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(d) areas declared under the heading 'other uses'.

For the purposes of point (a) of the first subparagraph, the average of the values of different payment entitlements in relation to the respective area declared shall be taken into account.

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

*Article 57***Basis of calculation in respect of areas declared****▼ M3**

1. In the case of applications for aid under area-related aid schemes 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.

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2. With regard to an application for aid under the single payment scheme;

— if there is a discrepancy between the payment entitlements declared and the area declared, the calculation of the payment shall be based on the lower size,

— if the number of payment entitlements declared exceeds the number of payment entitlements at the farmer's disposal, the payment entitlements declared shall be reduced to the number of payment entitlements at the farmer's disposal,

**▼ M3**

3. Without prejudice to reductions and exclusions in accordance with Articles 58 and 60, in the case of applications for aid under area-related aid schemes 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.

**▼ B**

However, without prejudice to Article 30 of Regulation (EC) No 73/2009, if the difference between the total area determined and the total area declared for payment under aid schemes established in Titles III, IV and V of Regulation (EC) No 73/2009 is less than or equal to 0,1 hectare, the area determined shall be set equal to the area declared. For this calculation only over-declarations of areas at crop group level shall be taken into account.

The second subparagraph shall not apply where that difference represents more than 20 % of the total area declared for payments.

*Article 58***Reductions and exclusions in cases of over-declaration****▼ M3**

If, in respect of a crop group, the area declared for the purposes of any area-related aid schemes exceeds the area determined in accordance with Article 57, 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.

**▼ B**

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

If the difference is more than 50 %, the farmer shall be excluded once again from receiving aid up to an amount equal to the amount which corresponds to the difference between the area declared and the area determined in accordance with Article 57 of this Regulation. That amount shall be off-set in accordance with Article 5b of Commission Regulation (EC) No 885/2006 <sup>(1)</sup>. If the amount cannot be fully off-set in accordance with that article in the course of the three calendar years following the calendar year of the finding, the outstanding balance shall be cancelled.

**▼ M3****▼ B***Article 60***Intentional over-declaration**

Where differences between the area declared and the area determined in accordance with Article 57 result from over-declarations committed intentionally, the aid to which the farmer would have been entitled pursuant to Article 57 shall not be granted for the calendar year in question under the aid scheme concerned if that difference is more than 0,5 % of the area determined or more than one hectare.

Moreover, where that difference is more than 20 % of the area determined, the farmer shall be excluded once again from receiving aid up to an amount equal to the amount which corresponds to the difference between the area declared and the area determined in accordance with Article 57. That amount shall be off-set in accordance with Article 5b of Regulation (EC) No 885/2006. If the amount cannot be fully off-set in accordance with that article in the course of the three calendar years following the calendar year of the finding, the outstanding balance shall be cancelled.

**▼ M3****▼ B***Article 62***Reductions and exclusions concerning the crop specific payment for cotton**

Without prejudice to any reductions and exclusions to be applied in accordance with Article 58 or 60 of this Regulation, where it is found that the farmer does not respect the obligations resulting from ► **M1** Article 29(1) and (2) ◀ of Regulation (EC) No 1121/2009, the farmer shall lose the right to the increase of the aid provided for in Article 92(2) of Regulation (EC) No 73/2009. Moreover, the aid for cotton per eligible hectare pursuant to Article 90 of Regulation (EC) No 73/2009 shall be reduced by the amount of the increase provided for in Article 92(2) of that Regulation for that farmer.

**Section II****Livestock premiums***Article 63***Basis of calculation**

1. Where an individual limit or individual ceiling is applicable, the

<sup>(1)</sup> OJ L 171, 23.6.2006, p. 90.

**▼ B**

number of animals shown in the aid applications shall be reduced to the limit or ceiling set for the farmer concerned.

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

3. Without prejudice to Article 65 and 66, if the number of animals declared in an aid application exceeds that determined as a result of administrative controls or on-the-spot checks, the aid shall be calculated on the basis of the animals determined.

**▼ M3**

3a. Where a farmer has failed to inform the competent authorities that animals have been moved to another location during the retention period, as required by the second subparagraph of Article 16(1), the animals concerned shall be regarded as determined if an immediate localisation of the animals within the holding was made at the on-the-spot check.

**▼ B**

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;

**▼ M3**

(aa) Where one single bovine animal of a holding has lost two ear tags it shall be regarded as determined provided that the animal can still be identified by register, animal passport, database or other means laid down in Regulation (EC) No 1760/2000 and provided that the keeper can provide evidence that he has already taken action to remedy the situation before the announcement of the on-the-spot check;

**▼ B**

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

Article 21 shall apply in relation to entries in, and notifications to, the system for the identification and registration of bovine animals.

**▼ M3**

5. An ovine or caprine animal which has lost one ear tag shall be regarded as determined provided that the animal can still be identified by a first means of identification in accordance with Article 4(2)(a) of Regulation (EC) No 21/2004 and provided that all other requirements of the system for the identification and registration of ovine and caprine animals are fulfilled.

**▼ B***Article 64***Replacement**

1. Bovine animals present on the holding shall only be regarded as determined if they are identified in the aid application. However, suckler cows or heifers in respect of which aid is claimed in accordance with Article 111 or Article 115 of Regulation (EC) No 73/2009 may be



**▼B**

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.

**▼M3**

However, a 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 replace the information to be sent to the competent authority pursuant to the first subparagraph. In that case, where the Member State does not make use of the possibility provided for in Article 16(3) it shall ensure by any means that there are no doubts as to which animals are covered by the farmers applications.

**▼B**

3. Where a farmer applies for aid in respect of both ewes and goats and where there is no difference in the level of aid paid, a ewe may be replaced by a goat and a goat by a ewe. Ewes and goats in respect of which aid is claimed in accordance with Article 101 of Regulation (EC) No 73/2009 may be replaced during the retention period within the limits provided for in that Article without the loss of the right to the payment of the aid applied for.

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

*Article 65***Reductions and exclusions in respect of bovine animals claimed for aid**

1. Where, in respect of an application for aid under the bovine aid schemes, a difference is found between the number of animals declared and that determined in accordance with Article 63(3), the total amount of aid to which the farmer is entitled under those schemes for the premium period concerned shall be reduced by the percentage to be established in accordance with paragraph 3 of this Article, if no more than three animals are found with irregularities.

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

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

If the percentage established in accordance with paragraph 3 is more than 20 %, the aid to which the farmer would have been entitled pursuant to Article 63(3) shall be refused under those schemes for the premium period concerned.

**▼B**

If the percentage established in accordance with paragraph 3 of this Article is more than 50 %, the farmer shall, moreover, be excluded once again from receiving aid up to an amount corresponding to the difference between the number of animals declared and the number of animals determined in accordance with Article 63(3). That amount shall be off-set in accordance with Article 5b of Regulation (EC) No 885/2006. If the amount cannot be fully off-set in accordance with that Article in the course of the three calendar years following the calendar year of the finding, the outstanding balance shall be cancelled.

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

**▼M3**

In the case of application of the second subparagraph of Article 16(3), potentially eligible animals found not to be correctly identified or registered in the system for identification and registration for bovine animals shall count as animals found with irregularities.

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As regards the suckler cow premium in accordance with Article 111 of Regulation (EC) No 73/2009, irregularities found with regard to the system for the identification and registration of bovine animals shall be allocated proportionately between the number of animals needed to receive the premium and the animals needed for the supply of milk or milk products pursuant to Article 111(2)(b) of that Regulation. However, such irregularities shall first be allocated to the number of animals not needed within the individual limits or ceilings referred to in Articles 111(2)(b) and 112 of that Regulation.

4. Where differences between the number of animals declared and that determined in accordance with Article 63(3) result from irregularities committed intentionally the aid to which the farmer would have been entitled pursuant to Article 63(3) shall be refused under the bovine aid scheme or schemes concerned for the premium period in question.

Where the difference established in accordance with paragraph 3 of this Article is more than 20 %, the farmer shall be excluded once again from receiving aid up to an amount corresponding to the difference between the number of animals declared and the number of animals determined in accordance with Article 63(3). That amount shall be off-set in accordance with Article 5b of Regulation (EC) No 885/2006. If the amount cannot be fully off-set in accordance with that Article in the course of the three calendar years following the calendar year of the finding, the outstanding balance shall be cancelled.

*Article 66***Reductions and exclusions in respect of ovine or caprine animals claimed for aid****▼M3**

1. Where, in respect of applications for aid under the ovine/caprine aid scheme, a difference is found between the number of animals declared and that determined in accordance with Article 63(3), Article 63(3a) and Article 63(5), Article 65(2), Article 65(3) and Article 65(4) shall apply *mutatis mutandis* as from the first animal in respect of which irregularities are found.

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

3. Where, in respect of applications for the supplementary premium, it is determined that less than 50 % of the area of the holding used for agriculture is located in areas referred to in Article 102(1) of Regulation (EC) No 73/2009, the supplementary premium shall not be paid and the ewe and goat premium shall be reduced by an amount equivalent to 50 % of the supplementary premium.

4. Where it is determined that the percentage of the area of the holding used for agriculture located in areas listed in Annex III to Regulation (EC) No 1121/2009 is below 50 %, the goat premium shall not be paid.

5. Where it is established that a producer practising transhumance who submits an application for the supplementary premium has not grazed 90 % of his animals for at least 90 days in an area referred to in Article 102(2)(b) of Regulation (EC) No 73/2009, the supplementary premium shall not be paid and the ewe or goat premium shall be reduced by an amount equivalent to 50 % of the supplementary premium.

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

In that case, the farmer shall be excluded once again from receiving aid equal to that amount. That amount shall be off-set in accordance with Article 5b of Regulation (EC) No 885/2006. If the amount cannot be fully off-set in accordance with that Article in the course of the three calendar years following the calendar year of the finding, the outstanding balance shall be cancelled.

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

*Article 67***Natural circumstances**

The reductions and exclusions provided for in Articles 65 and 66 shall not apply in cases where, owing to the impact of natural circumstances on the herd or flock, the farmer cannot meet his commitment to keep the animals in respect of which aid is claimed throughout the retention period, provided that he has informed the competent authority in writing within ten working days of finding any reduction in the number of animals.

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

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

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## Section III

**Specific support***Article 69***Findings in relation to the specific support**

As regards payment to be granted for specific support, the Member States shall, for each measure, provide for reductions and exclusions which shall, in substance, be equivalent to those provided for in this Title. In the case of area-related or livestock payments the provisions of this Title shall apply *mutatis mutandis*. Furthermore, where appropriate, Article 18 of Commission Regulation (EC) No 1975/2006 <sup>(1)</sup> shall apply *mutatis mutandis*.

As regards evidence provided by services, bodies or organisations as referred to in Article 29(2) of this Regulation, if it is found that incorrect evidence has been provided as a result of serious negligence or intentionally, the Member State concerned shall apply appropriate national penalties. Where such irregularities are found a second time, the service, body or organisation involved shall be excluded for a period of at least one year from the right to provide evidence valid for premium purposes.

## CHAPTER III

***Findings in relation to cross-compliance****Article 70***General principles and definition**

1. For the purposes of this Chapter, Article 47 shall apply.
2. For the purpose of the application of Article 23(1) of Regulation (EC) No 73/2009 to farmers who are subject to cross-compliance under Articles 85t and 103z of Regulation (EC) No 1234/2007, the submission of an aid application referred to in Article 23(1) of Regulation (EC) No 73/2009 shall mean the yearly submission of the single application form.
3. Where more than one paying agency is responsible for the management of the different support schemes listed in Annex I to Regulation (EC) No 73/2009, of the measures referred to in Article 36(a)(i) to (v) and (b)(i), (iv) and (v) of Regulation (EC) No 1698/2005 and of payments related to schemes provided for in Articles 85p, 103q and 103r of Regulation (EC) No 1234/2007, Member States shall ensure that determined non-compliances and, where appropriate, the corresponding reductions and exclusions are brought to the attention of all paying agencies involved in those payments, including cases where the non respect of eligibility criteria also forms a non-compliance and vice versa. Member States shall ensure, when applicable, that one rate of reduction is applied.
4. Non-compliances shall be deemed to be ‘determined’ if they are established as a consequence of any kind of controls carried out in accordance with this Regulation or after having been brought to the attention of the competent control authority or, where applicable, the paying agency, in whatever other way.

<sup>(1)</sup> OJ L 368, 23.12.2006, p. 74.

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5. Except in cases of force majeure and exceptional circumstances as referred to in Article 75 of this Regulation, where a farmer subject to cross-compliance obligations in accordance with Articles 85t and 103z of Regulation (EC) No 1234/2007 does not submit the single application form within the time limit provided for in Article 11 of this Regulation, a 1 % reduction per working day shall apply. The maximum reduction shall be limited to 25 %. The reduction shall apply to the total amount to be paid under payments related to schemes provided for in Articles 85p, 103q and 103r of Regulation (EC) No 1234/2007, divided by the number of years referred to in Articles 85t and 103z of the same Regulation.

6. Where more than one case of non-compliance with regard to various acts or standards of the same area of cross-compliance have been determined, those cases shall, for the purposes of the fixing of the reduction in accordance with Articles 71(1) and 72(1), be considered as one non-compliance.

7. A non-compliance with a standard which also constitutes a requirement shall be considered to be one non-compliance. For the purpose of the calculation of reductions, the non-compliance shall be considered as part of the area of the requirement.

8. For the application of reductions, the percentage of the reduction shall be applied to the total amount of:

- (a) the overall amount of direct payments that has been, or has to be, granted to the farmer concerned following aid applications he has submitted or will submit in the course of the calendar year of the finding, and
- (b) the total amount of payments related to schemes provided for in Articles 85p, 103q and 103r of Regulation (EC) No 1234/2007 divided by the number of years referred to in Articles 85t and 103z of that Regulation.

#### *Article 71*

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

1. Without prejudice to Article 77, where a non-compliance determined results from the negligence of the farmer, a reduction shall be applied. That reduction shall, as a general rule, be 3 % of the total amount as referred to in Article 70(8).

However, the paying agency may, on the basis of the assessment provided by the competent control authority in the evaluation part of the control report in accordance with Article 54(1)(c), decide either to reduce that percentage to 1 % or to increase it to 5 % of that total amount or, in the cases referred to in the second subparagraph of Article 54(1)(c), not to impose any reductions at all.

2. Where a Member State makes use of the possibility not to apply a reduction or exclusion as provided for in Article 23(2) of Regulation (EC) No 73/2009 and the farmer has not remedied the situation within a given deadline, the reduction or exclusion shall be applied.

The deadline shall be set by the competent authority and shall not be later than the end of the year following the one in which the finding was made.

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3. Where a Member State makes use of the possibility to consider a case of non-compliance as minor, as provided for in the second and third subparagraphs of Article 24(2) of Regulation (EC) No 73/2009, and the farmer has not remedied the situation within a given deadline, a reduction shall be applied.

The deadline shall be set by the competent authority and shall not be later than the end of the year following the one in which the finding was made.

The non-compliance in question shall not be considered as minor and a reduction of at least 1 % as provided for in paragraph 1 shall be applied.

Furthermore, a non-compliance which has been considered as minor and which has been remedied by the farmer within the time limit set in the first subparagraph of this paragraph shall not be considered as a non-compliance for the purpose of paragraph 5.

4. Where more than one non-compliance with regard to different areas of cross-compliance has been determined, the procedure for the fixing of the reduction as set out in paragraph 1 shall be applied individually to each non-compliance.

The resulting percentages of reductions shall be added together. However, the maximum reduction shall not exceed 5 % of the total amount referred to in Article 70(8).

5. Without prejudice to cases of intentional non-compliance in accordance with Article 72, where repeated non-compliances have been determined, a percentage fixed in accordance with paragraph 1 of this Article with regard to the repeated non-compliance shall, in respect of the first repetition, be multiplied by the factor three. For this purpose, the paying agency shall, in the case where that percentage was fixed in accordance with Article 70(6), determine the percentage that would have been applied to the repeated non-compliance with the requirement or standard concerned.

In the case of further repetitions the multiplication factor three shall be applied each time to the result of the reduction fixed in respect of the previous repeated non-compliance. The maximum reduction shall, however, not exceed 15 % of the total amount referred to in Article 70(8).

Once the maximum percentage of 15 % has been reached, the paying agency shall inform the farmer concerned that if the same non-compliance is determined again, it shall be considered that he has acted intentionally within the meaning of Article 72. Where a further non-compliance is determined thereafter, the percentage reduction to be applied shall be fixed by multiplying the result of the previous multiplication, where applicable, before the limitation to 15 % as provided for in the last sentence of the second subparagraph has been applied, by a factor of three.

6. In the case where a repeated non-compliance is determined together with another non-compliance or another repeated non-compliance, the resulting percentage reductions shall be added together. Without prejudice to the third subparagraph of paragraph 5, the maximum reduction shall, however, not exceed 15 % of the total amount referred to in Article 70(8).

#### *Article 72*

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

1. Without prejudice to Article 77, where the non-compliance determined has been committed intentionally by the farmer, the reduction to be applied to the total amount referred to in Article 70(8) shall, as a general rule, be 20 % of that total amount.

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However, the paying agency may, on the basis of the assessment provided by the competent control authority in the evaluation part of the control report in accordance with Article 54(1)(c), decide to reduce that percentage to no less than 15 % or, where appropriate, to increase that percentage to up to 100 % of that total amount.

2. Where the intentional non-compliance relates to a particular aid scheme, the farmer shall be excluded from that aid scheme for the calendar year in question. In cases of extreme extent, severity or permanence or where repeated intentional non-compliances have been determined, the farmer shall, moreover, be excluded from the aid scheme concerned in the following calendar year.

*CHAPTER IV**Common provisions**Article 73***Exceptions from the application of reductions and exclusions**

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

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

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

*Article 74***Amendments and adjustments of entries in the computerised database for bovine animals**

In respect of claimed bovine animals, Article 73 shall apply from the time the aid application is submitted to errors and omissions in relation to entries in the computerised database for bovine animals.

As regards unclaimed bovine animals, the same shall apply in respect of reductions and exclusions to be applied in accordance with Chapter III.

*Article 75***Force majeure and exceptional circumstances**

1. If a farmer has been unable to comply with his obligations as a result of force majeure or exceptional circumstances as referred to in Article 31 of Regulation (EC) No 73/2009 he shall retain his right to aid in respect of the area or animals eligible at the time when the case of



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force majeure or the exceptional circumstance occurred. In addition, when the non-compliance resulting from such force majeure or exceptional circumstances concerns cross-compliance, the corresponding reduction shall not be applied.

2. Cases of force majeure and exceptional circumstances within the meaning of Article 31 of Regulation (EC) No 73/2009 shall be notified in writing to the competent authority, with relevant evidence to the satisfaction of the competent authority, within ten working days from the date on which the farmer is in a position to do so.

## TITLE V

**GENERAL PROVISIONS***Article 76***Minimum payments**

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

*Article 77***Accumulation of reductions**

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

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

The reductions or exclusions referred to in the first subparagraph shall be applied in accordance with Article 78(2) without prejudice to additional penalties pursuant to other provisions of Community or national law.

*Article 78***Application of reductions on each support scheme**

1. The amount of the payment to be granted to a farmer under a support scheme listed in Annex I to Regulation (EC) No 73/2009 shall be calculated by the Member States on the basis of the conditions established in the support scheme in question, taking into account, if necessary, the overrun of the basic area, of the maximum guaranteed area, or of the number of animals entitled to benefit from the premiums.

2. For each support scheme listed in Annex I to Regulation (EC) No 73/2009, reductions or exclusions due to irregularities, late submissions, non-declarations of parcels, exceeding the budgetary ceilings, modulation, financial discipline and non-respect of cross-compliance shall be carried out, if necessary, in the following way and sequence:

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- (a) the reductions or exclusions provided for in Chapter II of Title IV shall be applied with regard to irregularities;
- (b) the amount resulting from the application of point (a) shall serve as a basis for the calculation of any reductions to be applied in case of late submissions in accordance with Articles 23 and 24;
- (c) the amount resulting from the application of point (b) shall serve as a basis for the calculation of any reductions to be applied in cases of non-declaration of agricultural parcels in accordance with Article 55;

**▼M3**

- (d) with regard to those support schemes for which a budgetary ceiling is fixed in accordance with Article 51(2), Article 69(3), Article 123(1) and Article 128(2) of Regulation (EC) No 73/2009 or applied in accordance with Article 126(2), Article 127(2) and Article 129(2) of that Regulation, Member State shall add the amounts resulting from the application of points (a), (b) and (c) of this paragraph.

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For each of those support schemes, a coefficient shall be determined by dividing the amount of the budgetary ceiling in question by the sum of the amounts referred to in the first subparagraph. If the coefficient obtained is higher than 1, a coefficient equal to 1 shall be applied.

To calculate the payment to be granted to the individual farmer under a support scheme for which a budgetary ceiling is fixed, the amount resulting from the application of points (a), (b) and (c) of the first subparagraph shall be multiplied by the coefficient determined in the second subparagraph.

*Article 79***Basis for calculation of reductions due to modulation, financial discipline and cross-compliance**

1. Reductions due to the modulation provided for in Articles 7 and 10 of Regulation (EC) No 73/2009 and, as the case may be, in Article 1 of Council Regulation (EC) No 378/2007<sup>(1)</sup>, as well as the reduction due to the financial discipline provided for in Article 11 of Regulation (EC) No 73/2009 and the reduction provided for in Article 8(1) of that Regulation, shall be applied to the sum of the payments from the different support schemes listed in Annex I to Regulation (EC) No 73/2009 to which each farmer is entitled to, in accordance with the procedure provided for in Article 78 of this Regulation.

2. The amount of the payment resulting from the application of paragraph 1 shall serve as the basis for the calculation of any reductions to be applied for the non-respect of cross-compliance in accordance with Chapter III of Title IV.

*Article 80***Recovery of undue payments**

1. If undue payment is made, the farmer shall repay the amount in question plus interest calculated in accordance with paragraph 2.

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

<sup>(1)</sup> OJ L 95, 5.4.2007, p. 1.

**▼B**

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

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

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

*Article 81***Recovery of undue entitlements**

1. Without prejudice of Article 137 of Regulation (EC) No 73/2009, where, after payment entitlements have been allocated to farmers in accordance with Regulation (EC) No 795/2004 or Regulation (EC) No 1120/2009 it is established that certain payment entitlements have been allocated unduly, the farmer concerned shall give up the unduly allocated entitlements to the national reserve referred to in Article 41 of Regulation (EC) No 73/2009.

In the case that the farmer concerned, meanwhile, transferred payment entitlements to other farmers, the transferees shall also be bound by the obligation provided for in the first subparagraph in proportion to the number of payment entitlements which have been transferred to them if the farmer to whom the payment entitlements had initially been allocated does not have a sufficient number of payment entitlements at his disposal to cover the value of the unduly allocated payment entitlements.

The entitlements allocated unduly shall be deemed not to have been allocated ab initio.

2. Without prejudice of Article 137 of Regulation (EC) No 73/2009, where, after payment entitlements have been allocated to farmers in accordance with Regulation (EC) No 795/2004 or Regulation (EC) No 1120/2009 it is established that the value of the payment entitlements is too high, that value shall be adjusted accordingly. That adjustment shall also be carried out in respect of payment entitlements which have, meanwhile, been transferred to other farmers. The value of the reduction shall be allocated to the national reserve referred to in Article 41 of Regulation (EC) No 73/2009.

The payment entitlements shall be deemed as having been allocated ab initio at the value resulting from the adjustment.

3. Where, for the purposes of paragraphs 1 and 2, it is established that the number of the entitlements allocated to a farmer in accordance with Regulation (EC) No 795/2004 or Regulation (EC) No 1120/2009 is incorrect, and where the unduly allocation has no impact on the total value of the entitlements the farmer received, the Member State shall recalculate the payment entitlements and where appropriate correct the type of the entitlements allocated to the farmer.

However, the first subparagraph shall not apply if the errors could reasonably have been detected by the farmers.

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4. Member States may decide not to recover unduly allocated entitlements where the total amount unduly allocated to the farmer is EUR 50 or less. Furthermore, when the total value referred to in paragraph 3 concerns EUR 50 or less, Member States may decide not to carry out the recalculation.

5. Where a farmer has transferred any payment entitlements without respecting Article 46(2) of Regulation (EC) No 1782/2003 or Articles 43(1), 43(2), 62(1), 62(3) and 68(5) of Regulation (EC) No 73/2009, the situation shall be established as if the transfer had not taken place.

6. Undue amounts paid shall be recovered in accordance with Article 80.

*Article 82***Transfer of holdings**

1. For the purposes of this Article:

- (a) 'transfer of a holding' means the sale, lease or any similar type of transaction in respect of the production units concerned;
- (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

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fulfilled, the aid may be granted to the transferee provided the conditions in paragraph 3(a) and (b) are fulfilled. In that case, paragraph 4(b) shall apply.

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

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

*Article 83***Additional measures and mutual assistance between Member States**

Member States shall take all further measures required for the proper application of the integrated system and shall give one another the mutual assistance needed for the purposes of the controls required pursuant to this Regulation.

In that respect, Member States may, where this Regulation does not provide for appropriate reductions and exclusions, provide appropriate national penalties against producers or other operators, such as slaughterhouses or associations involved in the procedure for granting aid, in order to ensure the compliance with control requirements such as the current herd register of the holding or the respect of notification obligations.

*Article 84***Notifications**

1. Member States shall submit to the Commission by 15 July each year at the latest, for the aid schemes covered by the integrated system, a report covering the previous calendar year and, in particular, relating to the following points:

- (a) the state of implementation of the integrated system, including in particular the options chosen for the control of the cross-compliance requirements and the competent control bodies responsible for the controls of the cross-compliance requirements and conditions as well as particular measures taken for the administration and the control of the specific support;
- (b) the number of claimants as well as the total area, total number of animals and the total of quantities;
- (c) the number of claimants as well as the total area, the total number of animals and the total of quantities, covered by controls;
- (d) the result of the controls carried out, indicating the reductions and exclusions applied pursuant to Title IV;
- (e) the results of the controls relating to cross-compliance in accordance with Chapter III of Title III.

2. Member States shall notify the Commission by electronic means using the form made available to them by the Commission, by 31 October each year at the latest of the proportion of the land under permanent pasture in relation to the total agricultural land as referred to in Article 3(1) of this Regulation.

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

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

5. Member States shall, in case of application of a linear reduction of the direct payments in accordance with Article 8(1) of Regulation (EC) No 73/2009 and Article 79 of this regulation without delay inform the Commission of the reduction percentage applied.

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6. The notifications referred to in Article 40(2) and paragraph 5 of this Article shall be made in accordance with Commission Regulation (EC) No 792/2009 <sup>(1)</sup>.

**▼B***Article 85***Allocation key**

The allocation key for the amounts corresponding to the 4 percentage points referred to in the first subparagraph of Article 9(2) of Regulation (EC) No 73/2009 shall be compiled by taking the Member States' shares in agricultural area and agricultural employment with a weight of 65 % and 35 %, respectively.

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

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

- (a) in respect of agricultural area, the Farm Structural Survey 2000 in accordance with Regulation (EC) No 1166/2008 of the European Parliament and of the Council <sup>(2)</sup>;
- (b) in respect of agricultural employment, the annual series of the Labour Force Survey 2001 on employment in agriculture, hunting and fishing in accordance with Council Regulation (EC) No 577/98 <sup>(3)</sup>;
- (c) in respect of GDP per capita in purchasing power, the three-year average, based on the data of national accounts, 1999 to 2001.

## PART III

**FINAL PROVISIONS***Article 86***Repeal**

1. Regulation (EC) No 796/2004 is repealed with effect from 1 January 2010.

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

<sup>(1)</sup> OJ L 228, 1.9.2009, p. 3.

<sup>(2)</sup> OJ L 321, 1.12.2008, p. 14.

<sup>(3)</sup> OJ L 77, 14.3.1998, p. 3.

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2. References to Regulation (EC) No 796/2004 shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

*Article 87*

**Entry into force**

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

It shall apply to aid applications relating to marketing years or premium periods starting as of 1 January 2010.

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



## ANNEX I

**Community method for the quantitative determination of  $\Delta^9$ -tetrahydrocannabinol content in hemp varieties****1. Scope and area of application**

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

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

**1.1. Procedure A**

Procedure A shall be used for checks on production as provided for in Article 39 of Regulation (EC) No 73/2009 and Article 30(2)(a) of this Regulation.

**1.2. Procedure B**

Procedure B shall be used in cases as referred to in Article 39(1) of Regulation (EC) No 73/2009 and Article 40(3) of this Regulation.

**2. Sampling****2.1. Samples**

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

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

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

**2.2. Sample size**

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

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

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

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

**2.3. Drying and storage of the sample**

Drying of the samples shall begin as soon as possible and, in any case, within 48 hours using any method below 70 °C.

Samples shall be dried to a constant weight and to a moisture content of between 8 % and 13 %.

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



**▼B****3. Determination of THC content****3.1. Preparation of the test sample**

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

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

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

**3.2. Reagents and extraction solution****Reagents**

- $\Delta^9$ -tetrahydrocannabinol, pure for chromatographic purposes,
- Squalane, pure for chromatographic purposes, as an internal standard.

**Extraction solution**

- 35 mg of squalane per 100 ml hexane.

**3.3. Extraction of  $\Delta^9$ -THC**

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

The sample shall be placed in an ultrasound bath and be left for 20 minutes. It shall be centrifuged for five minutes at 3 000 r.p.m. and then the supernatant THC solution shall be removed. The solution shall be injected into the chromatograph and a quantitative analysis shall be carried out.

**3.4. Gas chromatography****(a) Apparatus**

- gas chromatograph with a flame ionisation detector and a split/splitless injector,
- column allowing good separation of cannabinoids, for example a glass capillary column 25 m long and 0,22 mm in diameter impregnated with a 5 % non-polar phenyl-methyl-siloxane phase.

**(b) Calibration ranges**

At least three points for procedure A and five points for procedure B, including points 0,04 and 0,50 mg/ml  $\Delta^9$ -THC in extraction solution.

**(c) Experimental conditions**

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

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

**(d) Volume injected: 1  $\mu$ l****4. Results**

The findings shall be expressed to two decimal places in grams of  $\Delta^9$ -THC per 100 grams of analytical sample dried to constant weight. A tolerance of 0,03 g per 100 g shall apply.

- Procedure A: one determination per test sample.

However, where the result obtained is above the limit laid down in Article 39(1) of Regulation (EC) No 73/2009, a second determination shall be carried out per analysis sample and the mean value of the two determinations shall be taken as the result.

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



## ANNEX II

Regulation (EC) No 796/2004	This Regulation	Regulation (EC) No 1120/2009
Article 1	Article 1	
Article 2(1)	—	Article 2(a)
Article 2(1a)	Article 2(1)	
Article 2(1b)	—	
Article 2(2)	—	Article 2(c)
Article 2(2a)	—	Article 2(d)
Article 2(3)	Article 2(3)	
Article 2(4)	Article 2(4)	
Article 2(5)	Article 2(5)	
Article 2(6)	Article 2(6)	
Article 2(7)	Article 2(7)	
Article 2(8)	Article 2(8)	
Article 2(9)	Article 2(9)	
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Article 2(11)	Article 2(11)	
Article 2(12)	Article 2(12)	
Article 2(13)	Article 2(14)	
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Article 2(15)	Article 2(15)	
Article 2(16)	Article 2(16)	
Article 2(17)	Article 2(17)	
Article 2(18)	Article 2(18)	
Article 2(19)	Article 2(19)	
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Article 2, last subparagraph	—	
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Article 5	Article 5	
Article 6	Article 6	
Article 7	Article 7	

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Article 8(1)	Article 34(4)	
Article 8(2)	Article 34(5)	
Article 9, first paragraph	Article 8(1)	
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Article 10	Article 9	
Article 11(1)	Article 11(1)	
Article 11(2), first subparagraph	Article 11(2), first subparagraph	
Article 11(2), second subparagraph	Article 11(2), third subparagraph	
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Article 12(1) a), b), c) and d)	Article 12(1) a), b), c) and d) respectively	
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Article 13(2), (3) and (4)	—	
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Article 13(6)	—	
Article 13(7)	Article 13(3)	
Article 13(8)	Article 13(4)	
Article 13(9)	—	
Article 13(10)	Article 13(5)	
Article 13(11) and (12)	—	
Article 13(13a)	Article 13(6)	
Article 13(14)	Article 20(3)	
Article 14(1), first subparagraph	Article 13(8), first subparagraph	
Article 14(1), second subparagraph	—	
Article 14(1), third subparagraph	Article 13(8), second subparagraph	



Regulation (EC) No 796/2004	This Regulation	Regulation (EC) No 1120/2009
Article 14(1), fourth subparagraph	Article 13(8), third subparagraph	
Article 14(1a)	Article 55(1) and (2)	
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Article 15a	—	
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Article 23	Article 26	
Article 23a(1), first and second subparagraphs	Article 27(1)	
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Article 24(1)(a), (b), (c), (d), (e), (g), (i), (j) and (k)	Article 28(1)(a), (b), (c), (d), (e), (f), (g), (h) and (i) respectively	
Article 24(1)(f) and (h)	—	
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Article 24(2) 2nd subparagraph	Article 28(3)	
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Article 26(2)(a), (b), (c), (f) and (h)	30(2)(a), (b), (c), (g) and (h) respectively	

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Article 26(2)(d), (e) and (g)	—	
Article 27(1), first subparagraph, first sentence	Article 31(1), first subparagraph	
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Article 34(1), 1 <sup>st</sup> subparagraph	Article 41(1), 1 <sup>st</sup> subparagraph	
Article 34(1), 2 <sup>nd</sup> subparagraph	—	
Article 34(2)	Article 41(2)	
Article 35(1)	Article 42(1), 1 <sup>st</sup> paragraph	
Article 35(2)(a)	Article 42(1), 2 <sup>nd</sup> paragraph	
Article 35(2)(b), 1 <sup>st</sup> paragraph, 1 <sup>st</sup> to 4 <sup>th</sup> indent	Article 42(2), 1 <sup>st</sup> paragraph, (a) to (d)	
Article 35(2)(b), 2 <sup>nd</sup> paragraph	Article 42(2), 2 <sup>nd</sup> paragraph	
Article 35(2)(c), 1 <sup>st</sup> and 2 <sup>nd</sup> indent	Article 42(3), (a) to (b) respectively	

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Article 57(3), first subparagraph	Article 63(3)	

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