

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amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (repealed)

## TITLE I

### SCOPE AND DEFINITIONS

#### *Article 1*

##### **Scope**

This Regulation establishes:

- (a) common rules on direct payments;
- (b) an income support scheme for farmers (hereinafter referred to as the ‘single payment scheme’);
- (c) a transitional simplified income support scheme for farmers in the new Member States as defined in Article 2(g) (hereinafter referred to as the ‘single area payment scheme’);
- (d) support schemes for farmers producing rice, starch potatoes, protein crops, nuts, seeds, cotton, sugar, fruit and vegetables, sheepmeat and goatmeat and beef and veal;
- (e) a framework to enable the new Member States as defined in Article 2(g) to complement direct payments.

#### *Article 2*

##### **Definitions**

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

- (a) ‘farmer’ means a natural or legal person, or a group of natural or legal persons, whatever legal status is granted to the group and its members by national law, whose holding is situated within Community territory, as defined in Article 299 of the Treaty, and who exercises an agricultural activity;
- (b) ‘holding’ means all the production units managed by a farmer situated within the territory of the same Member State;
- (c) ‘agricultural activity’ means the production, rearing or growing of agricultural products including harvesting, milking, breeding animals and keeping animals for farming purposes, or maintaining the land in good agricultural and environmental condition as established in Article 6;
- (d) ‘direct payment’ means a payment granted directly to farmers under a support scheme listed in Annex I;

- (e) ‘payments in a given calendar year’ or ‘payments in the representative period’ means the payments granted or to be granted in respect of the year/years concerned, including all payments in respect of other periods starting in that calendar year/years;
- (f) ‘agricultural products’ means the products listed in Annex I to the Treaty, with the exception of fishery products, as well as cotton;
- (g) ‘new Member States’ means Bulgaria, the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Romania, Slovenia and Slovakia;
- (h) ‘agricultural area’ means any area taken up by arable land, permanent pasture or permanent crops.

### *Article 3*

#### **Financing of direct payments**

The support schemes listed in Annex I to this Regulation shall be financed in accordance with Article 3(1)(c) of Regulation (EC) No 1290/2005.

## TITLE II

### **GENERAL PROVISIONS ON DIRECT PAYMENTS**

#### CHAPTER 1

##### **Cross compliance**

### *Article 4*

#### **Main requirements**

1 A farmer receiving direct payments shall respect the statutory management requirements listed in Annex II and the good agricultural and environmental condition referred to in Article 6.

The obligations referred to in the first subparagraph shall apply only in so far as the agricultural activity of the farmer or the agricultural area of the holding is concerned.

2 The competent national authority shall provide the farmer, *inter alia* by the use of electronic means, with the list of statutory management requirements and the good agricultural and environmental condition to be respected.

### *Article 5*

#### **Statutory management requirements**

1 The statutory management requirements listed in Annex II shall be established by Community legislation in the following areas:

- a public, animal and plant health;
- b environment;

c animal welfare.

2 The acts referred to in Annex II shall apply as in force and, in the case of Directives, as implemented by the Member States.

### *Article 6*

#### **Good agricultural and environmental condition**

1 Member States shall ensure that all agricultural land, especially land which is no longer used for production purposes, is maintained in good agricultural and environmental condition. Member States shall define, at national or regional level, minimum requirements for good agricultural and environmental condition on the basis of the framework established in Annex III, taking into account the specific characteristics of the areas concerned, including soil and climatic condition, existing farming systems, land use, crop rotation, farming practices, and farm structures. Member States shall not define minimum requirements which are not foreseen in that framework.

The standards listed in the third column of Annex III shall be optional except where:

- a a Member State had defined, for such a standard, a minimum requirement for the good agricultural and environmental condition before 1 January 2009; and/or
- b national rules addressing the standard are applied in the Member State.

2 The Member States other than the new Member States shall ensure that land which was under permanent pasture at the date provided for the area aid applications for 2003 is maintained under permanent pasture. The new Member States other than Bulgaria and Romania shall ensure that land which was under permanent pasture on 1 May 2004 is maintained under permanent pasture. Bulgaria and Romania shall ensure that land which was under permanent pasture on 1 January 2007 is maintained under permanent pasture.

However a Member State may, in duly justified circumstances, derogate from the first subparagraph, provided that it takes action to prevent any significant decrease in its total permanent pasture area.

The first subparagraph shall not apply to land under permanent pasture to be afforested, if such afforestation is compatible with the environment and with the exclusion of plantations of Christmas trees and fast growing species cultivated in the short term.

## CHAPTER 2

### **Modulation and financial discipline**

#### *Article 7*

#### **Modulation**

1 Any amount of direct payments to be granted in a given calendar year to a farmer in excess of EUR 5 000 shall be reduced for each year until 2012 by the following percentages:

- a in 2009 by 7 %;
- b in 2010 by 8 %;
- c in 2011 by 9 %;

d in 2012 by 10 %.

2 The reductions provided for in paragraph 1 shall be increased by 4 percentage points for amounts exceeding EUR 300 000.

3 Paragraphs 1 and 2 shall not apply to direct payments granted to farmers in the French overseas departments, in the Azores and Madeira, in the Canary Islands and in the Aegean islands.

### *Article 8*

#### **Net ceilings**

1 Without prejudice to Article 11 of this Regulation, the total net amounts of direct payments which may be granted in a Member State in respect of a calendar year after application of Articles 7 and 10 of this Regulation and Article 1 of Regulation (EC) No 378/2007 and with the exception of direct payments granted under Regulations (EC) No 247/2006 and (EC) No 1405/2006 shall not be higher than the ceilings set out in Annex IV to this Regulation. Where necessary, Member States shall make a linear reduction in the amounts of direct payments which are subject to the reduction provided for in Articles 7 and 10 of this Regulation and Article 1 of Regulation (EC) No 378/2007 in order to comply with the ceilings set out in that Annex.

2 The Commission, in accordance with the procedure referred to in Article 141(2) of this Regulation, shall review the ceilings set out in Annex IV to this Regulation in order to take account of:

- a modifications to the total maximum amounts of direct payments that may be granted;
- b modifications to the voluntary modulation system provided for in Regulation (EC) No 378/2007;
- c structural changes to the holdings;
- d transfers to the EAFRD in accordance with Article 136 of this Regulation.

### *Article 9*

#### **Amounts resulting from modulation**

1 The amounts resulting from application of the reductions provided for in Article 7 of this Regulation in any Member State other than the new Member States shall be available as additional Community support for measures under rural development programming financed under the EAFRD, as specified in Regulation (EC) No 1698/2005, in accordance with the conditions set out in this Article.

2 The amounts corresponding to one percentage point shall be allocated to the Member States where the corresponding amounts have been generated. The amounts corresponding to the reduction by 4 percentage points shall be allocated amongst the Member States concerned in accordance with the procedure referred to in Article 141(2), on the basis of the following criteria:

- a agricultural area;
- b agricultural employment;
- c gross domestic product (GDP) per capita in purchasing power.

However, any Member State concerned shall receive at least 80 % of the total amounts referred to in the first subparagraph generated in that Member State.

3 By way of derogation from the second subparagraph of paragraph 2, if in a Member State the proportion of rye as part of its total cereal production exceeded 5 % on average during the period 2000-2002 and its proportion of the total Community production of rye exceeded 50 % during the same period, at least 90 % of the amounts which the modulation generated in the Member State concerned shall be reallocated to that Member State, until 2013 included.

In such a case, without prejudice to the possibilities provided for by Article 68, at least 10 % of the amount allocated to the Member State concerned shall be available for the measures referred to in paragraph 1 of this Article in rye producing regions.

For the purpose of this paragraph, 'cereal' shall mean the products listed in Annex V.

4 The remaining amount resulting from the application of Article 7(1) and the amounts resulting from the application of Article 7(2) shall be allocated to the Member State where the corresponding amounts have been generated, in accordance with the procedure referred to in Article 141(2). They shall be used in accordance with Article 69(5a) of Regulation (EC) No 1698/2005.

#### *Article 10*

#### **Special rules for modulation in the new Member States**

1 Article 7 shall apply to farmers in a new Member State in any given calendar year only if the level of direct payments applicable in that Member State for that calendar year pursuant to Article 121 is at least equal to the then applicable level in the Member States other than the new Member States, taking into account any reductions applied under Article 7(1).

2 If Article 7 applies to farmers in a new Member State, the percentage applicable under Article 7(1) shall be limited to the difference between the level of direct payments applicable to it under Article 121 and the level in the Member States other than the new Member States, taking into account any reductions applied under Article 7(1).

3 Any amount resulting from the application of Article 7(1) and (2) shall be allocated to the new Member State where the corresponding amounts have been generated, in accordance with the procedure referred to in Article 141(2). They shall be used in accordance with Article 69(5a) of Regulation (EC) No 1698/2005.

#### *Article 11*

#### **Financial discipline**

1 With a view to ensuring that the amounts for the financing of the market related expenditure and direct payments of the CAP currently under heading 2 of Annex I to the Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management<sup>(1)</sup> respect the annual ceilings set out in the Decision 2002/929/EC of the Representatives of the Governments of the Member States, meeting within the Council of 18 November 2002, concerning the Conclusions of the European Council meeting in Brussels on 24 and 25 October 2002<sup>(2)</sup>, an adjustment of the direct payments shall be determined when the forecasts for the financing of the aforementioned measures under heading 2 for a given financial year, increased by the amounts given in Articles 134 and 135 of this Regulation and before application of modulation provided for in Articles 7 and 10 of this Regulation and Article 1(1) of Regulation (EC) No 378/2007, indicate

that the applicable abovementioned annual ceiling, taking into account a margin of EUR 300 000 000 below that ceiling, will be exceeded.

2 The Council, acting on a proposal from the Commission presented no later than 31 March of the calendar year in respect of which the adjustments referred to in paragraph 1 apply, shall determine these adjustments no later than 30 June of the same calendar year.

3 In the framework of the application of the schedule of increments provided for in Article 121 to all direct payments granted in the new Member States, paragraph 1 of this Article shall not apply to the new Member States until the beginning of the calendar year in respect of which the level of direct payments applicable in the new Member States is at least equal to the then applicable level of such payments in the Member States other than the new Member States.

### CHAPTER 3

#### **Farm advisory system**

##### *Article 12*

#### **Farm advisory system**

1 Member States shall operate a system of advising farmers on land and farm management (hereinafter referred to as the 'farm advisory system') operated by one or more designated authorities or by private bodies.

2 The farm advisory system shall cover at least the statutory management requirements and the good agricultural and environmental condition referred to in Chapter 1.

3 Farmers may participate in the farm advisory system on a voluntary basis.

Member States may determine, in accordance with objective criteria, the priority categories of farmer that have access to the farm advisory system.

4 By 31 December 2010, the Commission shall submit a report to the Council on the application of the farm advisory system, accompanied, if necessary, by appropriate proposals.

##### *Article 13*

#### **Obligations of designated authorities and private bodies**

Without prejudice to national legislation concerning public access to documents, Member States shall ensure that the designated authorities and private bodies referred to in Article 12(1) do not disclose personal or individual information and data they obtain in their advisory activity to persons other than the farmer managing the holding concerned, with the exception of any irregularity or infringement found during their activity which is covered by an obligation laid down in Community or national law to inform a public authority, in particular in the case of criminal offences.

## CHAPTER 4

### **Integrated administration and control system**

#### *Article 14*

##### **Scope**

Each Member State shall set up and operate an integrated administration and control system (hereinafter referred to as the ‘integrated system’).

The integrated system shall apply to the support schemes listed in Annex I.

To the extent necessary, it shall also apply to the administration and control of the rules laid down in Chapters 1 and 2 of this Title.

#### *Article 15*

##### **Elements of the integrated system**

- 1 The integrated system shall comprise the following elements:
  - a a computerised database;
  - b an identification system for agricultural parcels;
  - c a system for the identification and registration of payment entitlements;
  - d aid applications;
  - e an integrated control system;
  - f a single system to record the identity of each farmer who submits an aid application.
- 2 Where Articles 52 and 53 of this Regulation apply, the integrated system shall incorporate a system for the identification and registration of animals set up in accordance with Regulations (EC) No 1760/2000 and (EC) No 21/2004.
- 3 Member States may include a geographical information system for olive cultivation in the identification system for agricultural parcels.

#### *Article 16*

##### **Computerised database**

- 1 The computerised database shall record, for each agricultural holding, the data obtained from aid applications.

This database shall in particular allow consultation through the competent authority of the Member State, of the data relating to the calendar and/or marketing years, starting from 2000. It shall also allow direct and immediate consultation of the data relating to the four previous years.

- 2 Member States may set up decentralised databases on condition that these, and the administrative procedures for recording and accessing data, are designed homogeneously throughout the territory of the Member State and are compatible with one another in order to allow for cross-checks.

### Article 17

#### **Identification system for agricultural parcels**

The identification system for agricultural parcels shall be established on the basis of maps or land registry documents or other cartographic references. Use shall be made of computerised geographical information system techniques, including preferably aerial or spatial orthoimagery, with a homogenous standard guaranteeing accuracy at least equivalent to cartography at a scale of 1:10 000.

### Article 18

#### **System for the identification and registration of payment entitlements**

1 A system for the identification and registration of payment entitlements shall be set up allowing for verification of the entitlements and for cross-checks with the aid applications and the identification system for agricultural parcels.

2 The system referred to in paragraph 1 shall allow direct and immediate consultation, through the competent authority of the Member State, of the data relating to at least the previous four consecutive calendar years.

### Article 19

#### **Aid applications**

1 Each year, a farmer shall submit an application for direct payments indicating, where applicable:

- a all the agricultural parcels on the holding, and where the Member State is applying Article 15(3), the number of olive trees and their positioning in the parcel;
- b the payment entitlements declared for activation;
- c any other information provided for by this Regulation or by the Member State concerned.

2 Member States shall provide, *inter alia* by the use of electronic means, pre-established forms based on the areas determined in the previous year as well as graphic material indicating the location of those areas and, where appropriate, the positioning of olive trees. A Member State may decide that the aid application needs to contain only changes with respect to the aid application submitted the previous year.

3 A Member State may decide that a single aid application shall cover several or all support schemes listed in Annex I or other support schemes.

### Article 20

#### **Verification of eligibility conditions**

1 Member States shall carry out administrative controls on the aid applications to verify the eligibility conditions for the aid.



2 Administrative controls shall be supplemented by a system of on-the-spot checks to verify eligibility for the aid. For this purpose, Member States shall draw up a sampling plan of agricultural holdings.

Member States may use remote sensing and Global Navigation Satellite System (GNSS) techniques as a means of carrying out on-the-spot checks on agricultural parcels.

3 Each Member State shall designate an authority responsible for coordinating the controls and checks provided for in this Chapter.

Where a Member State provides for the delegation of some aspects of the work to be carried out under this Chapter to specialised agencies or firms, the designated authority shall retain control over, and responsibility for, that work.

#### *Article 21*

### **Reductions and exclusions in the event of non-compliance with eligibility rules**

1 Without prejudice to any reduction or exclusion provided for in Article 23, where it is found that a farmer does not comply with the eligibility conditions relating to the granting of the aid as provided for in this Regulation, the payment or part of the payment granted or to be granted for which the conditions of eligibility have been met shall be subject to the reductions and exclusions to be laid down in accordance with the procedure referred to in Article 141(2).

2 The percentage of reduction shall be graduated according to the severity, extent, permanence and repetition of the non-compliance found and may go as far as total exclusion from one or several aid schemes for one or more calendar years.

#### *Article 22*

### **Controls on cross compliance**

1 Member States shall carry out on-the-spot checks to verify whether a farmer complies with the obligations referred to in Chapter 1.

2 Member States may make use of their existing administration and control systems to ensure compliance with the statutory management requirements and good agricultural and environmental condition.

These systems, and notably the system for the identification and registration of animals set up in accordance with Council Directive 2008/71/EC of 15 July 2008 on the identification and registration of pigs<sup>(3)</sup> and Regulations (EC) No 1760/2000 and (EC) No 21/2004, shall be compatible with the integrated system, as provided for in Article 26(1) of this Regulation.

#### *Article 23*

### **Reduction of or exclusion from payments in the event of non-compliance with cross compliance rules**

1 Where the statutory management requirements or good agricultural and environmental condition are not complied with at any time in a given calendar year (hereinafter referred to as 'the calendar year concerned'), and the non-compliance in question is the result of an

act or omission directly attributable to the farmer who submitted the aid application in the calendar year concerned, the total amount of direct payments granted or to be granted, following application of Articles 7, 10 and 11 to that farmer, shall be reduced or excluded in accordance with the detailed rules laid down in Article 24.

The first subparagraph shall also apply where the non-compliance in question is the result of an act or omission directly attributable to the person to whom or from whom the agricultural land was transferred.

For the purpose of this paragraph, ‘transfer’ shall mean any type of transaction whereby the agricultural land ceases to be at the disposal of the transferor.

By way of derogation from the second subparagraph, from 2010, where the person to whom the act or omission is directly attributable has submitted an aid application in the calendar year concerned, the reduction or exclusion shall be applied to the total amounts of direct payments granted or to be granted to that person.

2 Notwithstanding paragraph 1 and in accordance with the conditions laid down in the detailed rules referred to in Article 24(1) of this Regulation, Member States may decide not to apply a reduction or exclusion amounting to EUR 100 or less per farmer and per calendar year.

Where a Member State decides to make use of the option provided for in the first subparagraph, in the following year the competent authority shall take the actions required to ensure that the farmer remedies the findings of non-compliance concerned. The finding and the obligation to take remedial action shall be notified to the farmer.

#### *Article 24*

##### **Detailed rules on reductions and exclusions in the event of non-compliance with cross compliance rules**

1 Detailed rules for the reductions and exclusions referred to in Article 23 shall be laid down in accordance with the procedure referred to in Article 141(2). In this context, account shall be taken of the severity, extent, permanence and repetition of the non-compliance found as well as of the criteria set out in paragraphs 2, 3 and 4 of this Article.

2 In the case of negligence, the percentage of reduction shall not exceed 5 % and, in the case of repeated non-compliance, 15 %.

In duly justified cases Member States may decide that no reduction shall be applied where, given its severity, extent and permanence, a case of non-compliance is to be considered as minor. However, cases of non-compliance which constitute a direct risk to public or animal health shall not be considered as minor.

Unless the farmer has taken immediate remedial action putting an end to the non-compliance found, the competent authority shall take the actions required that may, where appropriate, be limited to an administrative control to ensure that the farmer remedies the finding of non-compliance concerned. The finding of minor non-compliance and the obligation to take remedial action shall be notified to the farmer.

3 In the case of intentional non-compliance, the percentage of reduction shall not in principle be less than 20 % and may go as far as total exclusion from one or several aid schemes and apply for one or more calendar years.

4 In any case, the total amount of reductions and exclusions for one calendar year shall not be more than the total amount referred to in Article 23(1).

## Article 25

### **Amounts resulting from cross compliance**

The amounts resulting from the application of the reductions and exclusions in the event of non-compliance with Chapter 1 shall be credited to the EAGF. Member States may retain 25 % of those amounts.

## Article 26

### **Compatibility of support schemes with the integrated system**

1 For the purpose of applying the support schemes listed in Annex VI, Member States shall ensure that the administration and control procedures applied to these schemes are compatible with the integrated system in the following respects:

- a the computerised database;
- b the identification systems for agricultural parcels;
- c the administrative controls.

To this end, the database, the systems and the controls referred to in points (a), (b) and (c) of the first subparagraph respectively shall be set up so as to allow, without any problems or conflicts, a common functioning or the exchange of data between them.

2 Member States may, for the purposes of applying Community or national support schemes other than those listed in Annex VI, incorporate into their administration and control procedures one or more components of the integrated system.

## Article 27

### **Information and control**

1 The Commission shall be kept regularly informed of the application of the integrated system.

It shall organise exchanges of views on this subject with the Member States.

2 In accordance with Article 37 of Regulation (EC) No 1290/2005, after informing the competent authorities concerned in good time, authorised representatives appointed by the Commission may carry out:

- a any examination or control relating to the measures taken in order to establish and implement the integrated system;
- b controls at the specialised agencies and firms referred to in Article 20(3).

3 Without prejudice to the responsibilities of the Member States for the implementation and application of the integrated system, the Commission may seek the assistance of specialised bodies or persons in order to facilitate the establishment, monitoring and utilisation of the integrated system, in particular with a view to providing the competent authorities of the Member States with technical advice, should they request it.

## CHAPTER 5

### Other general provisions

#### *Article 28*

#### **Minimum requirements for receiving direct payments**

1 From 2010, Member States shall not grant direct payments to a farmer in one of the following cases:

- a where the total amount of direct payments claimed or due to be granted before the reductions and exclusions provided for in Articles 21 and 23 in a given calendar year is less than EUR 100; or
- b where the eligible area of the holding for which direct payments are claimed or due to be granted before the reductions and exclusions provided for in Article 21 is less than one hectare.

In order to take account of the structure of their agricultural economies, Member States may adjust the thresholds referred to in points (a) and (b) of the first subparagraph of this paragraph within the limits set out in Annex VII.

Farmers holding special entitlements referred to in Article 44(1) shall be subject to the condition referred to in point (a) of the first subparagraph of this paragraph.

The Member States concerned may decide not to apply this paragraph in the French overseas departments, in the Azores and Madeira, in the Canary Islands and in the Aegean islands.

Where the amount paid is reduced as a consequence of a progressive introduction of direct payments as foreseen in Article 121 of this Regulation, in point K of Annex VII to Regulation (EC) No 1782/2003 or in point C of Annex IX to this Regulation, the amount claimed or due to be granted shall be calculated on the basis of the final amount of support to be received by the farmer.

2 From 2010, Member States may establish appropriate objective and non-discriminatory criteria to ensure that no direct payments are granted to a natural or legal person:

- a whose agricultural activities form only an insignificant part of its overall economic activities; or
- b whose principal business or company objects do not consist of exercising an agricultural activity.

3 Payment entitlements not giving right to payments during two consecutive years due to the application of paragraphs 1 and 2 shall revert to the national reserve.

#### *Article 29*

#### **Payment**

1 Save as otherwise provided for in this Regulation, payments under support schemes listed in Annex I shall be made in full to the beneficiaries.

2 Payments shall be made in up to two instalments per year within the period from 1 December to 30 June of the following calendar year.

3 Payments under support schemes listed in Annex I shall not be made before the verification of eligibility conditions, to be carried out by the Member State pursuant to Article 20, has been finalised.

4 By way of derogation from paragraph 2 of this Article and in accordance with the procedure referred to in Article 141(2), the Commission may:

- a provide for advances;
- b authorise the Member States, subject to the budgetary situation, to pay prior to 1 December advances in regions where, due to exceptional conditions, farmers face severe financial difficulties:
  - (i) of up to 50 % of the payments;
  - or
  - (ii) of up to 80 % of the payments where advances have already been provided for.

#### *Article 30*

#### **Circumvention clause**

Without prejudice to any specific provisions in individual support schemes, no payment shall be made to beneficiaries for whom it is established that they artificially created the conditions required for obtaining such payments with a view to obtaining an advantage contrary to the objectives of that support scheme.

#### *Article 31*

#### **Force majeure and exceptional circumstances**

For the purposes of this Regulation, *force majeure* or exceptional circumstances shall be recognised by the competent authority in cases such as:

- (a) the death of the farmer;
- (b) long-term professional incapacity of the farmer;
- (c) a severe natural disaster gravely affecting the holding's agricultural land;
- (d) the accidental destruction of livestock buildings on the holding;
- (e) an epizootic affecting part or all of the farmer's livestock.

#### *Article 32*

#### **Review**

Support schemes listed in Annex I shall apply without prejudice to a possible review at any time in the light of economic developments and the budgetary situation.

## TITLE III

**SINGLE PAYMENT SCHEME**

## CHAPTER 1

**General implementation***Article 33***Payment entitlements**

- 1 Support under the single payment scheme shall be available to farmers if they:
  - a hold payment entitlements which they have obtained in accordance with Regulation (EC) No 1782/2003;
  - b obtain payment entitlements under this Regulation:
    - (i) by transfer;
    - (ii) from the national reserve;
    - (iii) pursuant to Annex IX;
    - (iv) pursuant to Article 47(2), Article 59, the third subparagraph of Article 64(2), Article 65 and Article 68(4)(c).
- 2 For the purpose of Article 47(2), Article 57(6), Article 64(2) and Article 65, a farmer is considered to be holding payment entitlements where payment entitlements have been allocated or definitively transferred to him.
- 3 Set-aside entitlements established in accordance with Article 53(2), Article 63(2) and Article 71j of Regulation (EC) No 1782/2003 shall not be subject to previous set aside obligations.

*Article 34***Activation of payment entitlements per eligible hectare**

- 1 Support under the single payment scheme shall be granted to farmers upon activation of a payment entitlement per eligible hectare. Activated payment entitlements shall give a right to the payment of the amounts fixed therein.
- 2 For the purposes of this Title, 'eligible hectare' shall mean:
  - a any agricultural area of the holding, and any area planted with short rotation coppice (CN code ex 0602 90 41) that is used for an agricultural activity or, where the area is used as well for non-agricultural activities, predominantly used for agricultural activities; and
  - b any area which gave a right to payments under the single payment scheme or the single area payment scheme in 2008 and which:
    - (i) no longer complies with the definition of 'eligible' as a result of the implementation of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds<sup>(4)</sup>, Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora<sup>(5)</sup> and Directive

2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy<sup>(6)</sup>; or

- (ii) for the duration of the relevant commitment of the individual farmer, is afforested pursuant to Article 31 of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF)<sup>(7)</sup> or to Article 43 of Regulation (EC) No 1698/2005 or under a national scheme the conditions of which comply with Article 43(1), (2) and (3) of that Regulation; or
- (iii) for the duration of the relevant commitment of the individual farmer, is set aside pursuant to Articles 22, 23 and 24 of Regulation (EC) No 1257/1999 or to Article 39 of Regulation (EC) No 1698/2005.

The Commission, in accordance with the procedure referred to in Article 141(2), shall lay down detailed rules on the use of eligible hectares for non-agricultural activities.

Except in the case of *force majeure* or exceptional circumstances, hectares shall comply with the eligibility condition throughout the calendar year.

#### *Article 35*

### **Declaration of eligible hectares**

1 The farmer shall declare the parcels corresponding to the eligible hectares accompanying any payment entitlement. Except in the case of *force majeure* or exceptional circumstances, these parcels shall be at the farmer's disposal on a date fixed by the Member State which shall be no later than the date fixed in that Member State for amending the aid application.

2 Member States may, in duly justified circumstances, authorise the farmer to modify his declaration on condition that he adheres to the number of hectares corresponding to his payment entitlements and the conditions for granting the single payment for the area concerned.

#### *Article 36*

### **Modification of payment entitlements**

The payment entitlements per hectare shall not be modified, save as otherwise provided for in this Regulation.

The Commission, in accordance with the procedure referred to in Article 141(2), shall lay down detailed rules for the modification, from 2010, of payment entitlements, in particular in the case of fractions of entitlements.

#### *Article 37*

### **Multiple claims**

The area corresponding to the number of eligible hectares in respect of which an application for a single payment has been submitted may be the subject of an application

for any other direct payment as well as for any other aid not covered by this Regulation, save as otherwise provided for in this Regulation.

#### *Article 38*

##### **Use of land in the event of the deferred integration of the fruit and vegetables sector**

Where a Member State has decided to make use of the option provided for in the second subparagraph of Article 51 of Regulation (EC) No 1782/2003 (hereinafter referred to as 'deferred integration'), the parcels in the regions concerned by the decision, up to a date no later than 31 December 2010, shall not be eligible if used for:

- (a) the production of fruit and vegetables;
- (b) the production of ware potatoes; or
- (c) nurseries.

In the event of deferred integration, Member States may decide to allow secondary crops to be cultivated on the eligible hectares during a maximum period of three months starting each year on 15 August. However, at the request of a Member State, this date may be modified in accordance with the procedure referred to in Article 141(2) for regions where cereals are normally harvested earlier for climatic reasons.

#### *Article 39*

##### **Use of land for the production of hemp**

1 Areas used for the production of hemp shall only be eligible if the varieties used have a tetrahydrocannabinol content not exceeding 0,2 %. Member States shall establish a system for verifying the tetrahydrocannabinol content of the crops grown on at least 30 % of the areas under hemp. However, if a Member State introduces a system of prior approval for such cultivation, the minimum shall be 20 %.

2 In accordance with the procedure referred to in Article 141(2), the granting of payments shall be made subject to the use of certified seeds of certain varieties.

#### *Article 40*

##### **National ceilings**

1 For each Member State and each year, the total value of all allocated payment entitlements and of the ceilings fixed in accordance with Articles 51(2) and 69(3) of this Regulation, or, for 2009, in accordance with Article 64(2) of Regulation (EC) No 1782/2003 shall not be higher than the respective national ceiling determined in Annex VIII to this Regulation.

Where payment entitlements are allocated to wine growers, the Commission shall, taking account of the latest data made available to it by the Member States in accordance with Articles 9 and 102(6) of Council Regulation (EC) No 479/2008 of 29 April 2008 on the common organisation of the market in wine<sup>(8)</sup> and in accordance with the procedure referred to in Article 141(2) of this Regulation, adapt the national ceilings determined in Annex VIII to this Regulation. By 1 December of the year preceding the adaptation of



the national ceilings, Member States shall communicate to the Commission the regional average of the value of the entitlements referred to in point B of Annex IX to this Regulation.

2 Where necessary, a Member State shall make a linear reduction in the value of the payment entitlements in order to ensure compliance with the ceiling determined in Annex VIII.

#### *Article 41*

### **National reserve**

1 Each Member State shall operate a national reserve that incorporates the difference between:

- a the national ceilings determined in Annex VIII to this Regulation; and
- b the total value of all allocated payment entitlements and the ceilings fixed in accordance with Article 51(2) and Article 69(3) of this Regulation, or, for 2009, the ceilings fixed in accordance with Article 64(2) of Regulation (EC) No 1782/2003.

2 Member States may use the national reserve to allocate, as a matter of priority, in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortions, payment entitlements to farmers who commence their agricultural activity.

3 Member States not applying Article 68(1)(c) may use the national reserve for the purpose of establishing, in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortions, payment entitlements for farmers in areas subject to restructuring and/or development programmes relating to one or other form of public intervention in order to ensure against land being abandoned and/or to compensate farmers for specific disadvantages in those areas.

4 Member States shall use the national reserve for the purpose of allocating, in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortions, payment entitlements to farmers placed in a special situation, to be defined by the Commission in accordance with the procedure referred to in Article 141(2).

5 When applying this Article, Member States may increase the unit value and/or the number of payment entitlements allocated to farmers.

#### *Article 42*

### **Unused payment entitlements**

Any payment entitlement which has not been activated in accordance with Article 34 for a period of two years shall be added to the national reserve, except in the case of *force majeure* or exceptional circumstances. However, for 2009, payment entitlements not activated for the two-year period 2007-2008 shall not be added to the national reserve if they were activated in 2006 and, for 2010, payment entitlements not activated for the two-year period 2008-2009 shall not be added to the national reserve if they were activated in 2007.

### Article 43

#### **Transfer of payment entitlements**

1 Payment entitlements may be transferred only to a farmer established within the same Member State except in the case of transfer by actual or anticipated inheritance.

However, even in the case of actual or anticipated inheritance, payment entitlements may be used only in the Member State where the payment entitlements were established.

A Member State may decide that payment entitlements may be transferred or used only within one and the same region.

2 Payment entitlements may be transferred by sale or any other definitive transfer with or without land. In contrast, lease or similar types of transactions shall be allowed only if the payment entitlements transferred are accompanied by the transfer of an equivalent number of eligible hectares.

3 Where payment entitlements are sold, with or without land, Member States may, acting in compliance with the general principles of Community law, decide that part of the payment entitlements sold revert to the national reserve or that their unit value is reduced in favour of the national reserve, in accordance with criteria to be defined by the Commission in accordance with the procedure referred to in Article 141(2).

### Article 44

#### **Conditions for special entitlements**

1 Save as otherwise provided for in this Regulation, payment entitlements established under Section 2 of Chapter 3 of Title III and Article 71m of Regulation (EC) No 1782/2003, as well as Article 60 and the fourth subparagraph of Article 65 of this Regulation (hereinafter referred to as 'special entitlements') shall be subject to the conditions laid down in paragraphs 2 and 3 of this Article.

2 By way of derogation from Article 34(1), a farmer who has special entitlements shall be authorised by the Member State to derogate from the requirement to activate his payment entitlements by an equivalent number of eligible hectares, provided that he maintains at least:

- a 50 % of the agricultural activity carried out in the reference period referred to in Regulation (EC) No 1782/2003, expressed in livestock units (LU); or,
- b in the case of special entitlements established under Article 60, 50 % of the agricultural activity carried out before the transition to the single payment scheme, expressed in LU; or,
- c in the case of Article 65, 50 % of the agricultural activity carried out during the application of Articles 67 and 68 of Regulation (EC) No 1782/2003, expressed in LU.

However, where a farmer has been allocated special entitlements both under Regulation (EC) No 1782/2003 and under this Regulation, he shall maintain at least 50 % of the highest of the levels of activity referred to in the first subparagraph.

The condition referred to in the first subparagraph shall not apply to Malta.

3 In the case of a transfer of the special entitlements in 2009, 2010 and 2011, the transferee may benefit from the derogation provided for in paragraph 2 only if all of the special

entitlements are transferred. From 2012, the transferee shall benefit from the derogation only in the case of actual or anticipated inheritance.

The first subparagraph shall not apply to Malta.

#### *Article 45*

### **Revision of payment entitlements**

1 In duly justified cases, the Member States having introduced the single payment scheme in accordance with Chapters 1 to 4 of Title III of Regulation (EC) No 1782/2003 may decide, acting in compliance with the general principles of Community law, to move in or after 2010 towards approximating the value of payment entitlements.

Where that decision applies from 2010, it shall be taken by 1 August 2009. In any other case it shall be taken by 1 August 2010.

2 For the purpose of applying the first subparagraph of paragraph 1, the payment entitlements may be made subject to annual progressive modifications in accordance with objective and non-discriminatory criteria. If the modification results in a reduction in the value of the payment entitlements, it shall be made in at least three pre-established annual steps.

In none of the annual steps referred to in the first subparagraph shall the reduction in the value of any payment entitlement be more than 50 % of the difference between its initial and final value. Where the reduction in the value is less than 10 % of the initial value, Member States may apply fewer than three steps.

3 Member States may decide to apply this Article:

- a at the appropriate geographical level which shall be determined according to objective and non-discriminatory criteria such as their institutional or administrative structure and the agricultural potential; or
- b where Article 46(4) is applied, in the region defined in accordance with Article 46(2).

## CHAPTER 2

### **Regional and partial implementation**

#### Section 1

### **Regional implementation**

#### *Article 46*

### **Regional allocation of the national ceilings referred to in Article 40**

1 Having introduced the single payment scheme in accordance with Chapters 1 to 4 of Title III of Regulation (EC) No 1782/2003, a Member State may decide to apply the single payment scheme in or after 2010 at regional level under the conditions laid down in this Section.

Where that decision applies from 2010, it shall be taken by 1 August 2009. In any other case it shall be taken by 1 August 2010.

2 Member States shall define the regions in accordance with objective and non-discriminatory criteria such as their institutional or administrative structure and the regional agricultural potential.

Member States may consider their whole territory as one single region.

3 Member States shall divide the national ceilings referred to in Article 40 between the regions in accordance with objective and non-discriminatory criteria. Member States may decide that these regional ceilings shall be subject to annual progressive modifications in accordance with no more than three pre-established annual steps and objective and non-discriminatory criteria such as the agricultural potential or environmental criteria.

4 Where a Member State applying paragraphs 1, 2 and 3 of this Article decides not to apply Article 47, it shall, to the extent necessary to respect the applicable regional ceilings, adjust the value of the payment entitlements in each of its regions. To this end, the payment entitlements shall be subject to linear reductions or increases in their value. The total reduction in the value of the payment entitlements under this paragraph shall be limited to 10 % of their initial value.

5 If a Member State decides to apply both Article 45 and this Article, the reductions in the value of the payment entitlements referred to in paragraph 4 of this Article shall be taken into account for the calculation of the limits set in the second subparagraph of Article 45(2).

#### *Article 47*

### **Regionalisation of the single payment scheme**

1 In duly justified cases, Member States may decide to divide no more than 50 % of the regional ceiling established under Article 46 between all the farmers whose holdings are located in the region concerned, including those who do not hold payment entitlements.

2 Farmers shall receive payment entitlements the unit value of which shall be calculated by dividing the corresponding part of the regional ceiling established under Article 46 by the number of eligible hectares established at regional level.

The value of these payment entitlements shall be increased in cases where, prior to the application of this Article, a farmer holds payment entitlements. To this end, the regional unit value of each of the farmer's payment entitlements shall be increased by an amount calculated on the basis of the total value of the payment entitlements which the farmer held by a date to be fixed by the Member State concerned. These increases shall be calculated within the limits of the remaining part of the regional ceiling after application of paragraph 1 of this Article.

3 The number of payment entitlements per farmer shall be equal to the number of hectares the farmer declares in the year of application of the single payment scheme at regional level, as referred to in Article 46(1), in accordance with Article 34(2), except in the case of *force majeure* or exceptional circumstances.

4 Payment entitlements held by farmers before the division referred to in paragraphs 1 and 2 shall be cancelled and replaced by the new entitlements referred to in paragraph 3.

## Article 48

### Revision of payment entitlements

1 In duly justified cases, the Member States applying Article 47 may decide, acting in compliance with the general principles of Community law, to move, in the year following the application of the single payment scheme at regional level as referred to in Article 46(1), towards approximating the value of the payment entitlements established under this Section.

Where that decision applies from 2010, it shall be taken by 1 August 2009. In any other case it shall be taken by 1 August 2010.

For the purpose of applying the first subparagraph, the payment entitlements may be made subject to annual progressive modifications in accordance with objective and non-discriminatory criteria. If the modification results in a reduction in the value of the payment entitlements, it shall be made in at least two pre-established annual steps.

2 In duly justified cases, the Member States having introduced the single payment scheme in accordance with Section 1 of Chapter 5 or Chapter 6 of Title III of Regulation (EC) No 1782/2003 may decide, acting in compliance with the general principles of Community law, to move, in or after 2010, towards approximating the value of the payment entitlements.

Where that decision applies from 2010, it shall be taken by 1 August 2009. In any other case it shall be taken by 1 August 2010.

For the purpose of applying the first subparagraph, the payment entitlements shall be subject to annual progressive modifications in accordance with objective and non-discriminatory criteria. If the modification results in a reduction in the value of the payment entitlements, it shall be made in at least three pre-established annual steps.

The first subparagraph shall apply without prejudice to the decisions taken by Member States pursuant to Article 63(3) of Regulation (EC) No 1782/2003. The Member States concerned may derogate from the minimum number of steps provided for in the first subparagraph and the limits established in paragraph 3 of this Article.

3 In none of the annual steps referred to in paragraphs 1 and 2 shall the reduction in the value of any payment entitlement be more than 50 % of the difference between its initial and final value. Where the reduction in the value is less than 10 % of the initial value, Member States may apply fewer than three steps.

4 Member States may decide to apply paragraphs 1, 2 and 3 at the appropriate geographical level which shall be determined in accordance with objective and non-discriminatory criteria such as their institutional or administrative structure and the agricultural potential.

## Article 49

### Grassland

When applying Article 47, Member States may, in accordance with objective and non-discriminatory criteria, determine, within the regional ceiling established under Article 46 or part of it, different per unit values of the payment entitlements to be allocated to the farmers referred to in Article 47(1):

- (a) for hectares under grassland on the date set for the area aid applications for 2008 and for any other eligible hectare; or
- (b) for hectares under permanent pasture on the date set for the area aid applications for 2008 and for any other eligible hectare.

#### *Article 50*

### **Conditions for the payment entitlements established under this Section**

1 Payment entitlements established in accordance with this Section or with Section 1 of Chapter 5 or Chapter 6 of Title III of Regulation (EC) No 1782/2003 may only be transferred or used within the same region or between regions where the value of the payment entitlements per hectare is the same.

2 Save as otherwise provided for in this Section, the other provisions of this Title shall apply.

#### Section 2

### **Partial implementation**

#### *Article 51*

### **General provisions**

1 The Member States having granted payments in the sheepmeat and goatmeat sector or the beef and veal payments in accordance with Section 2 of Chapter 5 of Title III of Regulation (EC) No 1782/2003 may decide, by 1 August 2009, to continue to grant these payments under the conditions laid down in this Section. They may also decide to set the part of the component of their national ceilings to be used to grant these payments at a lower level than that decided in accordance with Article 64(2) of Regulation (EC) No 1782/2003. Where a Member State does not take that decision, the payments shall be integrated into the single payment scheme from 2010 in accordance with Article 66 of this Regulation.

In the case of the beef and veal payments referred to in Article 53(2) of this Regulation, Member States may also decide, by 1 August 2010, not to grant these payments but to integrate them into the single payment scheme from 2011 in accordance with Article 66 of this Regulation.

Where a Member State excluded all or part of the fruit and vegetable payments from the single payment scheme pursuant to Article 68b of Regulation (EC) No 1782/2003, it may:

- a from 2010, grant the fruit and vegetable payments under the conditions laid down in this Section and in accordance with the decision taken on the basis of Article 68b(1) and (2) or 143bc(1) and (2) of Regulation (EC) No 1782/2003; or
- b decide, by 1 August 2009, to integrate the fruit and vegetable payments excluded from the single payment scheme pursuant to Article 68b of Regulation (EC) No 1782/2003 into the single payment scheme, in accordance with Article 66 of this Regulation; or
- c decide, by 1 August 2009 to grant the transitional fruit and vegetable payment under the conditions laid down in this Section and at a lower level than that decided in accordance with Article 68b of Regulation (EC) No 1782/2003.

The new Member States having applied the single area payment scheme may decide, when introducing the single payment scheme, to grant the payments referred to in the first subparagraph under the conditions laid down in this Section. In the case of the transitional fruit and vegetables payment, the new Member States not having applied Article 143bc of Regulation (EC) No 1782/2003 shall not apply Article 54 of this Regulation. Furthermore, in the case of the transitional fruit and vegetable payment, the new Member States shall take into account, where relevant, Article 128(3) of this Regulation.

2 On the basis of the choice made by each Member State, the Commission shall determine, in accordance with the procedure referred to in Article 141(2), a ceiling for each of the direct payments referred to in Articles 52, 53 and 54.

This ceiling shall be equal to the component of each type of direct payment in the national ceilings referred to in Article 40, multiplied by the percentages of reduction applied by Member States in accordance with Articles 52, 53 and 54.

#### *Article 52*

### **Sheepmeat and goatmeat payments**

Member States may retain up to 50 % of the component of the national ceilings referred to in Article 40 of this Regulation corresponding to payments in the sheepmeat and goatmeat sector listed in Annex VI to Regulation (EC) No 1782/2003. In this case they shall make, on a yearly basis, an additional payment to farmers.

The additional payment shall be granted to farmers rearing sheep and goats, under the conditions provided for in Section 10 of Chapter 1 of Title IV of this Regulation and within the ceiling determined in accordance with Article 51(2) of this Regulation.

#### *Article 53*

### **Beef and veal payments**

1 The Member States having applied Article 68(2)(a)(i) of Regulation (EC) No 1782/2003 and the new Member States having applied the single area payment scheme may retain all or part of the component of the national ceilings referred to in Article 40 of this Regulation corresponding to the suckler cow premium referred to in Annex VI to Regulation (EC) No 1782/2003. In these cases they shall make, on a yearly basis, an additional payment to farmers.

The additional payment shall be granted for maintaining suckler cows, under the conditions provided for in Section 11 of Chapter 1 of Title IV of this Regulation and within the ceiling determined in accordance with Article 51(2) of this Regulation.

2 In 2010 and 2011, the Member States having applied Article 68(1), Article 68(2)(a)(ii) or Article 68(2)(b) of Regulation (EC) No 1782/2003 and the new Member States having applied the single area payment scheme may retain all or part of the national ceilings referred to in Article 40 of this Regulation corresponding to the slaughtering premium for calves, the slaughtering premium for bovine animals other than calves or the special male premium. In these cases, they shall make an additional payment to farmers. The additional payments shall be granted for the slaughtering of calves, for the slaughtering of bovine animals other than calves and for holding male bovine animals, under the conditions provided for in Section 11 of Chapter

1 of Title IV of this Regulation and within the ceiling determined in accordance with Article 51(2) of this Regulation.

#### *Article 54*

### **Transitional fruit and vegetables payments**

1 Member States may retain, until 31 December 2011, up to 50 % of the component of the national ceilings referred to in Article 40 corresponding to support for the production of tomatoes.

In this case and within the ceiling determined in accordance with Article 51(2), the Member State concerned shall make, on a yearly basis, an additional payment to farmers.

The additional payment shall be granted to farmers producing tomatoes, under the conditions provided for in Section 8 of Chapter 1 of Title IV.

2 Member States may retain:

- a until 31 December 2010, up to 100 % of the component of the national ceilings referred to in Article 40 of this Regulation corresponding to support for the production of fruit and vegetable crops other than annual crops listed in the third subparagraph of this paragraph which are supplied for processing and were eligible under the aid schemes set out in Regulations (EC) No 2201/96 and (EC) No 2202/96; and
- b from 1 January 2011 until 31 December 2012, up to 75 % of the component of the national ceilings referred to in Article 40 of this Regulation corresponding to support for the production of fruit and vegetable crops other than annual crops listed in the third subparagraph of this paragraph which are supplied for processing and were eligible under the aid schemes set out in Council Regulation (EC) No 2201/96 of 28 October 1996 on the common organization of the markets in processed fruit and vegetable products<sup>(9)</sup> and Council Regulation (EC) No 2202/96 of 28 October 1996 introducing a Community aid scheme for producers of certain citrus fruits<sup>(10)</sup>.

In this case and within the ceiling determined in accordance with Article 51(2) of this Regulation, the Member State concerned shall make, on a yearly basis, an additional payment to farmers.

The additional payment shall be granted to farmers producing one or more of the following fruit and vegetables, as determined by the Member State concerned, under the conditions provided for in Section 8 of Chapter 1 of Title IV:

- a fresh figs;
- b fresh citrus fruits;
- c table grapes;
- d pears;
- e peaches and nectarines; and
- f 'd'Ente' plums.

3 The components of the national ceilings referred to in paragraphs 1 and 2 are those set out in Annex X.



## CHAPTER 3

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

#### *Article 55*

#### **Introduction of the single payment scheme in the Member States having applied the single area payment scheme**

1 Save as otherwise provided for in this Chapter, this Title shall apply to the new Member States having applied the single area payment scheme provided for in Chapter 2 of Title V.

Article 41 and Section 1 of Chapter 2 shall not apply.

2 Any new Member State having applied the single area payment scheme shall take the decisions referred to in Article 51(1) and Article 69(1) by 1 August of the year preceding that in respect of which it will apply the single payment scheme for the first time.

3 Except for Bulgaria and Romania, any new Member State having applied the single area payment scheme may provide that, in addition to the eligibility conditions established in Article 34(2), 'eligible hectare' shall mean any agricultural area of the holding which has been maintained in good agricultural condition on 30 June 2003, whether or not in production at that date.

#### *Article 56*

#### **Application for support**

1 Farmers shall apply for support under the single payment scheme by a date to be determined by the new Member States, but no later than 15 May.

2 Except in the case of *force majeure* or exceptional circumstances, payment entitlements shall be allocated only to those farmers who have applied for the single payment scheme by 15 May of the first year of application of the single payment scheme.

#### *Article 57*

#### **National reserve**

1 Each new Member State shall make a linear percentage reduction in its national ceiling referred to in Article 40 in order to constitute a national reserve.

2 The new Member States shall use the national reserve for the purpose of allocating, in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortions, payment entitlements to farmers placed in a special situation to be defined by the Commission in accordance with the procedure referred to in Article 141(2).

3 During the first year of application of the single payment scheme, the new Member States may use the national reserve for the purpose of allocating, in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and

competition distortions, payment entitlements to farmers in specific sectors placed in a special situation as a result of the transition to the single payment scheme.

4 The new Member States may use the national reserve to allocate payment entitlements to farmers who have commenced their agricultural activity after 1 January of the first year of application of the single payment scheme and who have not received any direct payment in that year, in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortions.

5 The new Member States not applying Article 68(1)(c) may use the national reserve for the purpose of allocating, in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortions, payment entitlements to farmers in areas subject to restructuring and/or development programmes relating to one or the other form of public intervention in order to ensure against land being abandoned and to compensate farmers for specific disadvantages in those areas.

6 For the purposes of applying paragraphs 2 to 5, the new Member States may increase the unit value of the payment entitlements held by the farmer concerned, within the limit of EUR 5 000, or may allocate new payment entitlements to the farmer concerned.

7 The new Member States shall make linear reductions in the payment entitlements where their national reserve is not sufficient to cover the cases referred to in paragraphs 2, 3 and 4.

#### *Article 58*

##### **Regional allocation of the national ceilings referred to in Article 40**

1 The new Member States may apply the single payment scheme at regional level.

2 The new Member States shall define the regions in accordance with objective and non-discriminatory criteria.

3 Where applicable, the new Member State shall divide the national ceiling referred to in Article 40 after any reduction provided for in Article 57 between the regions in accordance with objective and non-discriminatory criteria.

#### *Article 59*

##### **Allocation of payment entitlements**

1 Farmers shall receive payment entitlements, the unit value of which shall be calculated by dividing the applicable national ceiling referred to in Article 40 after any reduction provided for in Article 57 by the number of payment entitlements established at national level in accordance with paragraph 2 of this Article.

2 Except in the case of *force majeure* or exceptional circumstances, the number of payment entitlements per farmer shall be equal to the number of hectares the farmer declares in accordance with Article 35(1) for the first year of application of the single payment scheme.

3 By way of derogation from paragraph 2, the new Member States may decide that, except in the case of *force majeure* or exceptional circumstances, the number of payment entitlements per farmer shall be equal to the average annual number of all hectares which during

one or more years of a representative period to be fixed by the Member State but no later than 2008 conferred a right to the single area payment.

However, where a farmer has commenced agricultural activity in the representative period, the average number of hectares shall be based on the payments he was granted in the calendar year or years during which he exercised the agricultural activity.

#### *Article 60*

### **Farmers with no eligible hectares**

A farmer acting in the beef and veal sector, dairy sector or sheepmeat and goatmeat sector who is entitled to receive payment entitlements in accordance with Article 57(3) and Article 59 for which he does not have eligible hectares in the first year of implementation of the single payment scheme shall be allocated special entitlements, not exceeding EUR 5 000 per entitlement, as referred to in Article 44.

#### *Article 61*

### **Grassland**

The new Member States may also, in accordance with objective and non-discriminatory criteria, determine, within the regional ceiling established under Article 58 or part of it, different per unit values of the payment entitlements to be allocated to farmers referred to in Article 59(1):

- (a) for hectares of grassland as identified on 30 June 2008 and for any other eligible hectare; or
- (b) for hectares of permanent pasture as identified on 30 June 2008 and for any other eligible hectare.

#### *Article 62*

### **Conditions for payment entitlements**

1 Payment entitlements established in accordance with this Chapter may be transferred only within the same region or between regions where the entitlements per hectare are the same.

2 The new Member States may, acting in compliance with the general principles of Community law, decide to approximate the value of the payment entitlements established in accordance with this Chapter. This decision shall be taken by 1 August of the year preceding the first year of application of the single payment scheme.

For the purpose of applying the first subparagraph, the payment entitlements shall be made subject to annual progressive modifications in accordance with objective and non-discriminatory criteria and in pre-established annual steps.

3 Except in the case of *force majeure* or exceptional circumstances, a farmer may transfer his payment entitlements without land only after he has activated, within the meaning of Article 34, at least 80 % of his payment entitlements during at least one calendar year or after he has surrendered voluntarily to the national reserve all the payment entitlements he has not used in the first year of application of the single payment scheme.

## CHAPTER 4

### **Integration of coupled support into the single payment scheme**

#### *Article 63*

### **Integration of coupled support into the single payment scheme**

1 As from 2010, Member States shall integrate the support available under the coupled support schemes referred to in Annex XI into the single payment scheme in accordance with the rules laid down in Articles 64, 65, 66 and 67.

2 By way of derogation from paragraph 1:

- a the Member States having introduced the single payment scheme in accordance with Chapters 1 to 4 of Title III of Regulation (EC) No 1782/2003 may decide to use all or part of the support referred to in paragraph 1 to establish payment entitlements or to increase the value of the payment entitlements on the basis of the type of agricultural activities exercised by farmers during one or more years in the period 2005 to 2008 and in accordance with objective and non-discriminatory criteria such as the agricultural potential or environmental criteria;
- b the Member States having introduced the single payment scheme in accordance with Section 1 of Chapter 5 or Chapter 6 of Title III of Regulation (EC) No 1782/2003 or making use of the option provided for in Article 47 of this Regulation may decide to use all or part of the support referred to in paragraph 1 to increase the value of all payment entitlements by a supplementary amount corresponding to the increase of the regional ceiling divided by the total number of payment entitlements.

Member States may also differentiate the increase in value of the payment entitlements by taking into account the criteria referred to in Article 64(1) of this Regulation or on the basis of the type of agricultural activities exercised by farmers during one or more years in the period 2005 to 2008 and in accordance with objective and non-discriminatory criteria such as the agricultural potential or environmental criteria.

3 Where a Member State makes use of the derogation provided for in paragraph 2(a), it shall take adequate measures to ensure that farmers having benefited from the support referred to in paragraph 1 are not excluded from the single payment scheme. In particular, it shall make sure that the overall support the farmer will receive after the integration of the coupled support schemes referred to paragraph 1 into the single payment scheme does not fall below 75 % of the average annual support the farmer received under all the direct payments during the relevant reference periods referred to in Articles 64, 65 and 66.

#### *Article 64*

### **Integration of coupled support excluded from the single payment scheme**

1 The amounts referred to in Annex XII that were available for coupled support under the schemes referred to in points 1 and 2 of Annex XI shall be distributed by the Member States amongst the farmers in the sectors concerned in accordance with objective and non-discriminatory criteria, taking account, in particular, of support that those farmers received, directly or indirectly, under the relevant support schemes during one or more years in the period 2005 to 2008. In the case of the potato starch schemes referred to in points 1 and 2 of Annex XI, Member States may distribute the amounts available under those schemes taking into account

the quantities of potato covered by cultivation contracts between the potato producer and the starch manufacturer within the limit of the quota allocated to that manufacturer, as referred to in Article 84a of Regulation (EC) No 1234/2007, in a given year.

2 Member States shall increase the value of the payment entitlements held by the farmers concerned on the basis of the amounts resulting from the application of paragraph 1.

The increase in value per payment entitlement per farmer shall be calculated by dividing the amounts referred to in the first subparagraph by the number of payment entitlements of each farmer concerned.

However, where a farmer in a sector concerned does not hold any payment entitlement, he shall be allocated payment entitlements:

- a the number of which shall be equal to the number of hectares he declares in accordance with Article 35(1) in respect of the year of integration of the coupled support scheme into the single payment scheme;
- b the value of which shall be established by dividing the amount resulting from the application of paragraph 1 by the number established in accordance with point (a) of this subparagraph.

3 However, where the amount per aid scheme is lower than EUR 250 000, the Member State concerned may decide not to distribute the amounts and add them to the national reserve.

#### *Article 65*

#### **Integration of coupled support partially excluded from the single payment scheme**

The amounts that were available for coupled support under the schemes referred to in point 3 of Annex XI shall be distributed by the Member States amongst the farmers in the sectors concerned in proportion to the support that those farmers received under the relevant support schemes during the relevant reference periods referred to in Regulation (EC) No 1782/2003.

Member States may, however, choose a more recent representative period in accordance with objective and non-discriminatory criteria and, where a Member State introduced the single payment scheme in accordance with Section 1 of Chapter 5 or Chapter 6 of Title III of Regulation (EC) No 1782/2003 or where it makes use of the option provided in Article 47 of this Regulation, in accordance with Article 63(2)(b) of this Regulation.

Member States shall increase the value of the payment entitlements of the farmers concerned or allocate payment entitlements in accordance with Article 64(2) of this Regulation.

Where a farmer that received payments under Articles 67 and 68 of Regulation (EC) No 1782/2003 would be entitled to receive payment entitlements in accordance with this Article for which he does not have eligible hectares in the year of integration of the coupled support scheme into the single payment scheme or where his payment entitlement per hectare results in an amount higher than EUR 5 000, he shall be allocated special entitlements as referred to in Article 44, not exceeding EUR 5 000 per entitlement.

*Article 66***Optional integration of coupled support partially excluded from the single payment scheme**

Where a Member State:

- (a) does not take the decision referred to in the first subparagraph of Article 51(1);
- (b) decides not to grant the beef and veal payments referred to in Article 53(2) from 2011, in application of the second subparagraph of Article 51(1); or
- (c) decides not to grant the fruit and vegetable payments in application of the third subparagraph of Article 51(1),

the amounts that were available for coupled support under the schemes referred to in point 4 of Annex XI shall be integrated into the single payment scheme in accordance with Article 65.

*Article 67***Advanced integration of coupled support into the single payment scheme**

Member States may decide, by 1 August 2009, to integrate the seed aid referred to in Section 5 of Title IV and the schemes referred to in point 1 of Annex XI, with the exception of the specific quality premium for durum wheat, into the single payment scheme in 2010 or 2011. In this case, the Commission, in accordance with the procedure referred to in Article 141(2), shall adjust the national ceilings referred to in Article 40 by adding the amounts from Annex XII for the aid scheme concerned.

## CHAPTER 5

**Specific support***Article 68***General rules**

1 Member States may grant specific support to farmers under the conditions laid down in this Chapter:

- a for:
  - (i) specific types of farming which are important for the protection or enhancement of the environment;
  - (ii) improving the quality of agricultural products;
  - (iii) improving the marketing of agricultural products;
  - (iv) practising enhanced animal welfare standards;
  - (v) specific agricultural activities entailing additional agri-environment benefits;

- b to address specific disadvantages affecting farmers in the dairy, beef and veal, sheepmeat and goatmeat and rice sectors in economically vulnerable or environmentally sensitive areas, or, in the same sectors, for economically vulnerable types of farming;
  - c in areas subject to restructuring and/or development programmes in order to ensure against land being abandoned and/or to address specific disadvantages for farmers in those areas;
  - d in the form of contributions to crop, animal and plant insurance premiums in accordance with the conditions set out in Article 70;
  - e by way of mutual funds for animal and plant diseases and environmental incidents in accordance with the conditions set out in Article 71.
- 2 The support referred to in paragraph 1(a) may only be granted if:
- a as regards the specific agricultural activities referred to in paragraph 1(a)(v):
    - (i) it respects the requirements set out in the first subparagraph of Article 39(3) of Regulation (EC) No 1698/2005, and only for the coverage of the additional costs actually incurred and income foregone in order to fulfil the objective concerned; and
    - (ii) it has been approved by the Commission;
  - b as regards improving the quality of agricultural products referred to in paragraph 1(a)(ii), it is consistent with Council Regulation (EC) No 509/2006 of 20 March 2006 on agricultural products and foodstuffs as traditional specialities guaranteed<sup>(11)</sup>, Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs<sup>(12)</sup>, Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products<sup>(13)</sup> and Chapter 1 of Title II of Part II of Regulation (EC) No 1234/2007;
  - c as regards improving the marketing of agricultural products referred to in paragraph 1(a)(iii), it satisfies the criteria laid down in Articles 2 to 5 of Council Regulation (EC) No 3/2008 of 17 December 2007 on information provision and promotion measures for agricultural products on the internal market and in third countries<sup>(14)</sup>.
- 3 The support referred to in paragraph 1(b) of this Article may only be granted to the extent necessary to create an incentive to maintain current levels of production.

For the sheepmeat and goatmeat and beef and veal sectors, if that support is applied together with the support granted under Articles 52 and 53, the total shall not exceed, respectively, the financial envelope of support obtained after applying the maximum percentage of retention set out in Articles 67 and 68 of Regulation (EC) No 1782/2003.

For the rice sector, the support referred to in paragraph 1(b) of this Article may be granted only from the calendar year where the Member States integrates the crop specific payment for rice provided for in Section 1 of Chapter 1 of Title IV into the single payment scheme.

- 4 The support referred to:
- a in paragraph 1(a) and (d) of this Article shall take the form of annual additional payments;
  - b in paragraph 1(b) of this Article shall take the form of annual additional payments such as headage payments or grassland premiums;
  - c in paragraph 1(c) of this Article shall take the form of an increase in the unit value and/or the number of the farmer's payment entitlements;

d in paragraph 1(e) of this Article shall take the form of compensation payments as specified in Article 71.

5 The transfer of payment entitlements with increased unit values and of additional payment entitlements referred to in paragraph 4(c) may only be allowed if the transferred entitlements are accompanied by the transfer of an equivalent number of hectares.

6 Any support granted under paragraph 1 shall be consistent with other Community measures and policies.

7 The Commission, in accordance with the procedure referred to in Article 141(2), shall define the conditions for the Commission approval referred in paragraph 2(a)(ii) of this Article and the conditions for granting of the support referred to in this Section, in particular with a view to ensuring consistency with other Community measures and policies and to avoid cumulation of support.

8 By 1 August 2011, the Member States that took the decision referred to in Article 69(1) may review it and decide, from 2012, to:

- a modify the amounts for the funding of the support referred to in this Chapter, within the limits of Article 69; or
- b put an end to the application of specific support under this Chapter.

According to the decision taken by each Member State pursuant to the first subparagraph of this paragraph, the Commission shall fix, in accordance with the procedure referred to in Article 141(2), the corresponding ceiling for that support.

Where a Member State decides to put an end to the application of this Chapter or where it reduces the amounts used for its funding, Article 72(2) shall apply.

#### *Article 69*

#### **Financial provisions for specific support**

1 Member States may decide, by 1 August 2009, 1 August 2010 or 1 August 2011, to use from the year following that decision up to 10 % of their national ceiling referred to in Article 40, or, in the case of Malta, the amount of EUR 2 000 000 for the specific support provided for in Article 68(1).

2 Member States may apply the 10 % retention on a sectoral basis by retaining up to 10 % of the component of their national ceiling referred to in Article 41 of Regulation (EC) No 1782/2003 corresponding to any sector referred to in Annex VI of that Regulation. The funds retained may only be used for the application of the support referred to in Article 68(1) of this Regulation in the sectors concerned by the retention.

3 According to the decision made by each Member State pursuant to paragraph 1 on the amount of national ceiling to be used, the Commission shall fix, in accordance with the procedure referred to in Article 141(2), the corresponding ceiling for that support.

For the sole purpose of ensuring compliance with the national ceilings as provided for in Article 40(2), the amounts used to grant the support referred to in point (c) of Article 68(1) shall be deducted from the national ceiling referred to in Article 40(1). They shall be counted as allocated payment entitlements.

4 Support provided for in points (i), (ii), (iii) and (iv) of paragraph 1(a) and paragraphs 1(b) and (e) of Article 68 shall be limited to 3,5 % of the national ceilings referred to in Article



40 or, in the case of Malta, to the amount of EUR 2 000 000, referred to in Article 69(1) of this Regulation, to be used in particular for the funding of the measures referred to in Article 68(1)(b) in the dairy sector.

Member States may set sub-limits per measure.

5 By way of derogation from paragraph 4, during calendar years 2010 to 2013, in those Member States which granted support with regard to suckler cows in accordance with Article 69 of Regulation (EC) No 1782/2003 while not having applied the option provided for in Article 68(2)(a)(i) of that Regulation, the limit set out in paragraph 4 shall be set at 6 % of their national ceiling referred to in Article 40. Furthermore, in Member States where more than 60 % of their milk production takes place north of the 62nd parallel, that limit shall be set at 10 % of their national ceiling referred to in Article 40.

However, any support exceeding 3,5 % of the national ceiling referred to in Article 40 shall be used exclusively for the funding of measures referred to in Article 68(1)(b) of this Regulation in the dairy and beef and veal sectors.

The Commission shall present to the Council a report on the application of this paragraph by 31 December 2013.

- 6 Member States shall raise the funds needed to cover the support provided:
- a in Article 68(1) by using an amount to be calculated by the Commission in accordance with paragraph 7 of this Article and fixed in accordance with the procedure referred to in Article 141(2); and/or
  - b in Article 68(1)(a), (b), (c) and (d) by making a linear reduction in the value of the payment entitlements allocated to farmers and/or in the direct payments referred to in Articles 52 and 53 and/or in the national reserve;
  - c in Article 68(1)(e) by making, if necessary, a linear reduction in one or more of the payments to be made to the beneficiaries of the relevant payments in accordance with this Title and within the limits set out in paragraphs 1 and 4 of this Article.

For the sole purpose of ensuring compliance with the national ceilings provided for in Article 40(2), where a Member State makes use of the option provided for in point (a) of the first subparagraph of this paragraph, the amount concerned shall not be counted as part of the ceilings fixed under paragraph 3 of this Article.

- 7 The amounts referred to in paragraph 6(a) of this Article shall be equal to the difference between:
- a the national ceilings determined in Annex VIII or Annex VIIIa of Regulation (EC) No 1782/2003 for 2007 after application of Article 10(1) of that Regulation and Article 4(1) of Regulation (EC) No 378/2007 and after reduction by 0,5 %; and
  - b the budget execution for financial year 2008 of the single payment scheme and the payments referred to in Sections 2 and 3 of Chapter 5 of Title III of Regulation (EC) No 1782/2003 with regard to payments in respect of the 2007 reduced ceiling referred to in point (a) of this subparagraph.

In no case shall this amount be higher than 4 % of the ceiling referred to in point (a) of the first subparagraph of this paragraph.

For the new Member States having applied the single payment scheme in 2007, this amount shall be multiplied by 1,75 in 2010, 2 in 2011, 2,25 in 2012 and 2,5 from 2013 onwards.

Upon request from a Member State, the Commission shall revise the established amounts in accordance with the procedure referred to in Article 141(2) of this Regulation and on the basis of detailed rules to be laid down in accordance with the same procedure.

The use by Member States of such amounts shall be without prejudice to the application of Article 8 of this Regulation.

8 The decision referred to in paragraph 1 of this Article, in Article 68(8) and in Article 131(1) shall determine the measures to be applied and cover all further implementing arrangements relevant to the application of this Chapter, including the description of the eligibility conditions for the measures to be applied, the amount concerned and the financial resources to be raised.

9 The new Member States may decide to apply paragraphs 1, 2, 4, 5 and 6 of this Article and Article 131(1) on the basis of their national ceilings:

- a specified for the year 2016 in the case of Bulgaria and Romania;
- b specified for the year 2013 for the other new Member States.

In that case, Article 132 shall not apply to the measures taken in accordance with this Article.

#### *Article 70*

### **Crop, animal, and plant insurance**

1 Member States may grant financial contributions to premiums for crop, animal and plant insurance against economic losses caused by adverse climatic events and animal or plant diseases or pest infestation.

For the purpose of this Article:

- a 'adverse climatic event' shall mean weather conditions which can be assimilated to a natural disaster, such as frost, hail, ice, rain or drought;
- b 'animal diseases' shall mean diseases mentioned in the list of animal diseases established by the World Organisation for Animal Health and/or in the Annex to Council Decision 90/424/EEC of 26 June 1990 on expenditure in the veterinary field<sup>(15)</sup>;
- c 'economic losses' shall mean any additional cost incurred by a farmer as a result of exceptional measures taken by the farmer with the objective of reducing supply on the market concerned or any substantial loss of production.

2 A financial contribution may only be granted for loss caused by an adverse climatic event or by an animal or plant disease or a pest infestation which destroys more than 30 % of the average annual production of the farmer in the preceding three-year period or a three-year average based on the preceding five-year period, excluding the highest and lowest entry.

3 The financial contribution granted per farmer shall not exceed 65 % of the insurance premium due.

Member States may limit the amount of the premium that is eligible for a financial contribution by applying appropriate ceilings.

4 Coverage by crop and/or animal and/or plant insurance shall only be available where the occurrence of an adverse climatic event or the outbreak of an animal or plant disease or

pest infestation has been formally recognised as such by the competent authority of the Member State concerned.

Member States may, where appropriate, establish in advance criteria on the basis of which such formal recognition shall be deemed to be granted.

5 Insurance payments shall compensate for not more than the total cost of replacing the losses referred to in paragraph 1 and shall not require or specify the type or quantity of future production.

6 Any financial contribution shall be paid directly to the farmer concerned.

7 Member States' expenditure on the granting of financial contributions shall be co-financed by the Community from the funds referred to in Article 69(1) at a rate of 75 % of the financial contribution.

The first subparagraph shall not prejudice any powers of Member States to cover their participation in the financing of the financial contributions and the part of the insurance premium to be borne by farmers in full or in part through compulsory collective liability schemes in the sectors concerned. This shall be possible notwithstanding Articles 125l and 125n of Regulation (EC) No 1234/2007.

8 Member States shall ensure that economic losses for which compensation is granted in accordance with other Community provisions, including Article 44 of Regulation (EC) No 1234/2007 and any other health and veterinary or plant health measures, shall not be further compensated in accordance with the first subparagraph of paragraph 1.

9 The financial contribution shall not constitute a barrier to the operation of the internal market in insurance services. The financial contribution shall not be limited to insurance provided by a single insurance company or group of companies, or be made subject to the condition that the insurance contract be taken out with a company established in the Member State concerned.

#### *Article 71*

### **Mutual funds for animal and plant diseases and environmental incidents**

1 Member States may provide for financial compensation to be paid to farmers for economic losses caused by the outbreak of an animal or plant disease or an environmental incident by way of financial contributions to mutual funds.

2 For the purpose of this Article:

- a 'mutual fund' shall mean a scheme accredited by the Member State in accordance with its national law for affiliated farmers to insure themselves, whereby compensation payments are made to such farmers affected by economic losses caused by the outbreak of an animal or plant disease or an environmental incident;
- b 'economic losses' shall mean any additional cost incurred by a farmer as a result of exceptional measures taken by the farmer with the objective of reducing supply on the market concerned or any substantial loss of production;
- c 'an environmental incident' shall mean a specific occurrence of pollution, contamination or degradation in the quality of the environment related to a specific event and of limited geographical scope. It shall not cover general environmental risks not connected with a specific event, such as climate change or acid rain.

3 As regards animal diseases, financial compensation may only be granted in respect of diseases mentioned in the list of animal diseases established by the World Organisation for Animal Health and/or in the Annex to Decision 90/424/EEC.

4 Member States shall ensure that economic losses for which financial compensation is granted in accordance with other Community provisions, including Article 44 of Regulation (EC) No 1234/2007 and any other health and veterinary or plant health measures, shall not be further compensated in accordance with paragraph 1.

5 The mutual funds shall pay the financial compensation directly to affiliated farmers who are affected by economic losses.

The source of the financial compensation paid by the mutual funds shall come from:

- a capital stock contributed to the funds by affiliated and non-affiliated farmers or by other operators in the agricultural chain; or
- b loans taken out by the funds on commercial terms; and
- c any amounts recovered in accordance with paragraph 11.

Any initial capital stock shall not be contributed by public funds.

6 The financial contributions referred to in paragraph 1 may relate to:

- a the administrative costs of setting up the mutual fund, spread over a maximum of three years;
- b the repayment of the capital and interest on commercial loans taken out by the mutual fund for the purpose of paying financial compensation to farmers;
- c the amounts paid by the mutual fund from its capital stock as financial compensation to farmers.

The minimum and maximum duration of the commercial loans eligible for a financial contribution shall be determined by the Commission in accordance with the procedure referred to in Article 141(2).

Where financial compensation is paid by the fund in accordance with point (c) of the first subparagraph, the public financial contribution shall follow the same rhythm as that for a commercial loan of minimum duration.

7 Any financial contribution shall not exceed 65 % of the cost referred to in paragraph 6. Any cost not covered by financial contributions shall be borne by the affiliated farmers.

Member States may limit the costs that are eligible for a financial contribution by applying:

- a ceilings per fund;
- b appropriate per unit ceilings.

8 Member States' expenditure on the financial contributions shall be co-financed by the Community from the funds referred to in Article 69(1) at a rate of 75 %.

The first subparagraph shall not prejudice any powers of Member States to cover their participation and/or the participation of affiliated farmers in the financing of the financial contributions in full or in part through compulsory collective liability schemes in the sectors concerned. This shall be possible notwithstanding Articles 1251 and 125n of Regulation (EC) No 1234/2007.

9 Member States shall define the rules for the constitution and management of the mutual funds, in particular for the granting of compensation payments to farmers in the event of crisis and for the administration and monitoring of compliance with these rules.

10 Member States shall submit to the Commission an annual report on the implementation of this Article. The form, content, timing and deadlines of the report shall be laid down by the Commission in accordance with the procedure referred to in Article 141(2).

11 Where a farmer is granted financial compensation by a mutual fund under this Article any legal right for the recovery of damages for the compensated economic losses which the farmer may have under any provisions of Community or national law against any third party shall be transferred to the mutual fund in accordance with rules to be established by the Member State concerned.

## *Article 72*

### **Transitional provisions**

1 Where a Member State applied Article 69 of Regulation (EC) No 1782/2003, the amounts retained under that Article shall be integrated into the single payment scheme in accordance with Article 65 of this Regulation.

2 By way of derogation from the first paragraph, where a Member State having applied Article 69 of Regulation (EC) No 1782/2003 decides to apply the specific support provided for in this Chapter, it may use the amounts retained under Article 69 of Regulation (EC) No 1782/2003 to cover the funding needs referred to in Article 69(6) of this Regulation. Should the funding needs referred to in Article 69(6) be lower than the amounts retained under Article 69 of Regulation (EC) No 1782/2003, the difference shall be integrated into the single payment scheme in accordance with Article 65 of this Regulation.

3 Where a Member State having applied under Article 69 of Regulation (EC) No 1782/2003 measures not compatible with this Chapter decides to apply the specific support provided for in this Chapter, it may decide, by 1 August 2009, to apply under Article 68 of this Regulation the measures communicated to the Commission under Article 69 of Regulation (EC) No 1782/2003 and its implementing rules during 2010, 2011 and 2012. By way of derogation from Article 69(4), the total support under the measures referred to in Article 68(1)(a), (b) and (e) may be limited to the ceiling fixed for the relevant Member State in the application of Article 69 of Regulation (EC) No 1782/2003.

In this case, Member States may also decide, by 1 August 2009, to adjust such measures annually towards making them compatible with this Chapter. Where a Member State decides not to make the measures compatible, the amounts concerned shall be integrated into the single payment scheme in accordance with Article 65 of this Regulation.

4 Member States may grant the support provided for in this Chapter from 2009 provided that, by way of derogation from Article 69(6) of this Regulation, they finance the support referred to in Article 68(1) only by using the amounts of the national reserve and that national provisions are in place by the deadline fixed by the Member State for the lodging of the aid application.

## TITLE IV

**OTHER AID SCHEMES**

## CHAPTER 1

**Community aid schemes**

## Section 1

**Crop specific payment for rice***Article 73***Scope**

For 2009, 2010 and 2011, aid shall be granted to farmers producing rice falling within CN code 1006 10 under the conditions laid down in this Section ('crop specific payment for rice').

*Article 74***Conditions and amount of the aid**

1 The crop specific payment for rice shall be granted per hectare of land sown under rice and where the crop is maintained until at least the beginning of flowering under normal growth conditions.

However, crops grown on areas which are fully sown and which are cultivated in accordance with local standards, but which do not attain the stage of flowering as a result of exceptional weather conditions recognised by the Member State concerned, shall remain eligible for aid provided that the areas in question are not used for any other purpose up to this growing stage.

2 The amount of the crop specific payment for rice shall be as follows, according to the yields in the Member States concerned:

<b>Member State</b>	<b>EUR/ha</b>
Bulgaria	345,255
Greece	561,00
Spain	476,25
<b>France</b>	
— metropolitan territory	411,75
— French Guyana	563,25
Italy	453,00

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Hungary	232,50
Portugal	453,75
Romania	126,075

#### Article 75

##### Areas

The following base areas are hereby established for each producing Member State:

<b>Member State</b>	<b>base areas(ha)</b>
Bulgaria	4 166
Greece	20 333
Spain	104 973
<b>France</b>	
— metropolitan territory	19 050
— for 2009 only, French Guyana	4 190
Italy	219 588
Hungary	3 222
Portugal	24 667
Romania	500

A Member State may divide its base area or areas into sub-base areas in accordance with objective and non-discriminatory criteria.

#### Article 76

##### Overrun of the areas

1 Where, in a Member State, the area given over to rice in a given year exceeds the base area established in Article 75, the area per farmer for which the crop specific payment for rice is claimed shall be reduced proportionately in that year.

2 Where a Member State divides its base area or areas into sub-base areas, the reduction provided for in paragraph 1 shall apply only to the farmers in sub-base areas where the sub-base area limit has been exceeded. This reduction shall be made when, in the Member State concerned, the areas in the sub-base areas which have not reached their sub-base area limit have been redistributed to the sub-base areas in which the sub-base area limits have been exceeded.

## Section 2

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

#### *Article 77*

#### **Scope and amount of the aid**

For the marketing years 2009/2010, 2010/2011 and 2011/2012, aid shall be granted for farmers producing potatoes intended for the manufacture of potato starch under the conditions laid down in this Section ('aid for starch potato growers').

The aid shall be EUR 66,32 for the quantity of potatoes needed for making one tonne of starch.

The amount shall be adjusted according to the starch content of the potatoes.

#### *Article 78*

#### **Conditions**

The aid for starch potato growers shall be paid only in respect of the quantity of potatoes covered by a cultivation contract between the potato producer and the potato starch manufacturer within the limit of the quota allocated to that potato starch manufacturer in accordance with Article 84a(2) of Regulation (EC) No 1234/2007.

## Section 3

### **Protein crop premium**

#### *Article 79*

#### **Scope**

For 2009, 2010 and 2011, aid shall be granted to farmers producing protein crops under the conditions laid down in this Section ('protein crop premium').

Protein crops shall include:

- (a) peas falling within CN code 0713 10;
- (b) field beans falling within CN code 0713 50;
- (c) sweet lupins falling within CN code ex 1209 29 50.

#### *Article 80*

#### **Amount and eligibility**

The protein crop premium shall be EUR 55,57 per hectare of protein crops harvested after the stage of lactic ripeness.



However, crops grown on areas which are fully sown and which are cultivated in accordance with local standards, but which do not attain the stage of lactic ripeness as a result of exceptional weather conditions recognised by the Member State concerned, shall remain eligible for the protein crop premium provided that the areas in question are not used for any other purpose up to this growing stage.

#### *Article 81*

##### **Area**

1 A maximum guaranteed area of 1 648 000 ha for which the protein crop premium may be granted is hereby established.

2 Where the area for which the protein crop premium is claimed exceeds the maximum guaranteed area, the area per farmer for which the protein crop premium is claimed shall be reduced proportionately in that year in accordance with the procedure referred to in Article 141(2).

3 Where, in accordance with Article 67, a Member State decides to integrate the protein crop premium provided for in this Section into the single payment scheme, the Commission, in accordance with the procedure referred to in Article 141(2), shall reduce the maximum guaranteed area referred to in paragraph 1 of this Article in proportion to the protein crops amount corresponding to that Member State in Annex XII.

#### Section 4

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

#### *Article 82*

##### **Community area payment for nuts**

1 For 2009, 2010 and 2011, Community aid shall be granted to farmers producing nuts under the conditions laid down in this Section ('area payment for nuts').

Nuts shall include:

- a almonds falling within CN codes 0802 11 and 0802 12;
- b hazelnuts or filberts falling within CN codes 0802 21 and 0802 22;
- c walnuts falling within CN codes 0802 31 and 0802 32;
- d pistachios falling within CN codes 0802 50;
- e locust beans falling within CN codes 1212 10 10.

2 Member States may differentiate the area payment for nuts according to the products or by increasing or reducing the national guaranteed areas (hereinafter referred to as the 'NGA') established in Article 83(3). However, in each Member State, the total amount of the area payment for nuts granted in a given year shall not be higher than the ceiling established in Article 83(4).

*Article 83***Areas**

1 Member States shall grant the Community area payment for nuts within the limit of a ceiling calculated by multiplying the number of hectares of their respective NGA as fixed in paragraph 3 by the average amount of EUR 120,75.

2 A maximum guaranteed area of 829 229 ha is hereby established.

3 The maximum guaranteed area referred to in paragraph 2 shall be divided into the following NGAs:

<b>Member State</b>	<b>NGA(ha)</b>
Belgium	100
Bulgaria	11 984
Germany	1 500
Greece	41 100
Spain	568 200
France	17 300
Italy	130 100
Cyprus	5 100
Luxembourg	100
Hungary	2 900
Netherlands	100
Austria	100
Poland	4 200
Portugal	41 300
Romania	1 645
Slovenia	300
Slovakia	3 100
United Kingdom	100

4 Member States may subdivide their respective NGA into sub-base areas in accordance with objective criteria, in particular at regional level or in relation to the production.

*Article 84***Overrun of the sub-base areas**

Where a Member State subdivides its NGA into sub-base areas and one or more sub-base area limits have been exceeded, the area per farmer for which the area payment for

nuts is claimed shall be reduced proportionately in that year for the farmers in the sub-base areas where the limit has been exceeded. This reduction shall be made when, in the Member State concerned, the areas in the sub-base areas which have not reached their sub-base area limits have been redistributed to the sub-base areas in which the sub-base area limits have been exceeded.

#### *Article 85*

### **Conditions for eligibility**

- 1 Payment of the area payment for nuts shall be conditional on, in particular, minimum plot size and tree density.
- 2 Member States may make the granting of the area payment for nuts conditional on farmers being members of a producer organisation recognised in accordance with Article 125b of Regulation (EC) No 1234/2007.
- 3 If paragraph 2 is applied, Member States may decide that the payment of the area payment for nuts shall be made to a producer organisation on behalf of its members. In this case, the amount of aid received by the producer organisation shall be paid to its members. However, Member States may authorise a producer organisation, as compensation for the services provided to its members, to reduce the amount of the area payment for nuts by a maximum of 2 %.

#### *Article 86*

### **National aid**

- 1 Member States may grant national aid, in addition to the area payment for nuts, up to a maximum of EUR 120,75 per hectare per year.
- 2 The national aid may be paid only for areas receiving area payment for nuts.
- 3 Member States may make the granting of national aid conditional on farmers being members of a producer organisation recognised in accordance with Article 125b of Regulation (EC) No 1234/2007.

#### Section 5

### **Seed aid**

#### *Article 87*

### **Aid**

- 1 For 2009, 2010 and 2011, the Member States having applied Article 70 of Regulation (EC) No 1782/2003 which do not make use of the option provided for in Article 67 of this Regulation shall grant, on a yearly basis, the aids set out in Annex XIII to this Regulation for the production of basic seed or certified seeds of one or more of the species listed in that Annex, under the conditions laid down in this Section ('seed aid').

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2 Where the area accepted for certification for which the seed aid is claimed is used also for claiming support under the single payment scheme, the amount of seed aid, except in the case of the species referred to in Annex XIII points 1 and 2, shall be reduced, but to no less than zero, by the amount of support under the single payment scheme to be granted in a given year for the area concerned.

3 The amount of seed aid claimed shall not exceed a ceiling fixed by the Commission in accordance with the procedure referred to in Article 141(2) of this Regulation and corresponding to the component of seed aid for the species concerned in the national ceiling referred to in Article 40 of this Regulation, as fixed in accordance with Article 64(2) of Regulation (EC) No 1782/2003 ('seed aid ceiling'). However, for the new Member States, this seed aid ceiling shall correspond to the amounts set out in Annex XIV to this Regulation.

Where the total amount of seed aid claimed exceeds the seed aid ceiling fixed by the Commission, the aid per farmer shall be reduced proportionately in the year concerned.

4 The varieties of hemp (*Cannabis sativa* L.) for which the seed aid provided for in this Article is payable shall be determined in accordance with the procedure referred to in Article 141(2).

## Section 6

### **Crop specific payment for cotton**

#### *Article 88*

##### **Scope**

Aid shall be granted to farmers producing cotton falling within CN code 5201 00 under the conditions laid down in this Section ('crop specific payment for cotton').

#### *Article 89*

##### **Eligibility**

1 The crop specific payment for cotton shall be granted per hectare of eligible area of cotton. In order to be eligible, the area shall be located on agricultural land authorised by the Member State for cotton production, sown under authorised varieties and actually harvested under normal growing conditions.

The crop specific payment for cotton shall be paid for cotton of sound and fair merchantable quality.

2 Member States shall authorise the land and the varieties referred to in paragraph 1 of this Article according to detailed rules and conditions adopted in accordance with the procedure referred to in Article 141(2).

#### *Article 90*

### **Base areas, fixed yields and reference amounts**

1 The following national base areas are hereby established:

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- Bulgaria: 3 342 ha,
- Greece: 250 000 ha,
- Spain: 48 000 ha,
- Portugal: 360 ha.

2 The following fixed yields in the reference period are hereby established:

- Bulgaria: 1,2 tonne/ha,
- Greece: 3,2 tonne/ha,
- Spain: 3,5 tonne/ha,
- Portugal: 2,2 tonne/ha.

3 The amount of the aid per eligible hectare shall be established by multiplying the yields established in paragraph 2 with the following reference amounts:

- Bulgaria: EUR 671,33,
- Greece: EUR 251,75,
- Spain: EUR 400,00,
- Portugal: EUR 252,73.

4 If the eligible area of cotton in a given Member State and in a given year exceeds the base area established in paragraph 1, the aid referred to in paragraph 3 for that Member State shall be reduced proportionately to the overrun of the base area.

5 Detailed rules for the implementation of this Article shall be adopted in accordance with the procedure referred to in Article 141(2).

#### *Article 91*

### **Approved inter-branch organisations**

1 For the purpose of this Section, an ‘approved inter-branch organisation’ shall mean a legal entity made up of farmers producing cotton and at least one ginner, carrying out activities such as:

- a helping to coordinate better the way cotton is placed on the market, particularly through research studies and market surveys;
- b drawing up standard forms of contract compatible with Community rules;
- c orienting production towards products that are better adapted to market needs and consumer demand, particularly in terms of quality and consumer protection;
- d updating methods and means to improve product quality;
- e developing marketing strategies to promote cotton via quality certification schemes.

2 The Member State where the gimmers are established shall approve inter-branch organisations that satisfy criteria to be adopted in accordance with the procedure referred to in Article 141(2).

#### *Article 92*

### **Payment of the aid**

1 Farmers shall be granted the crop specific payment for cotton per eligible hectare pursuant to Article 90.

2 Farmers who are members of an approved inter-branch organisation shall be granted the crop specific payment for cotton per eligible hectare within the base area laid down in Article 90(1), increased by an amount of EUR 2.

## Section 7

### **Aid for sugar beet and cane producers**

#### *Article 93*

##### **Scope**

1 In Member States which have granted the restructuring aid provided for in Article 3 of Regulation (EC) No 320/2006 for at least 50 % of the sugar quota fixed on 20 February 2006 in Annex III to Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector<sup>(16)</sup>, aid shall be granted to sugar beet and cane producers under the conditions laid down in this Section.

2 The aid for sugar beet and cane producers shall be granted for a maximum of five consecutive years as from the marketing year in which the threshold of 50 % referred to in paragraph 1 was reached but no later than for the marketing year 2013/2014.

#### *Article 94*

##### **Conditions**

The aid for sugar beet and cane producers shall be granted in respect of the quantity of quota sugar obtained from sugar beet or cane delivered under contracts concluded in accordance with Article 50 of Regulation (EC) No 1234/2007.

#### *Article 95*

##### **Amount of the aid**

The aid for sugar beet and cane producers shall be expressed per tonne of white sugar of standard quality. The amount of the aid shall be equal to half of the amount obtained by dividing the amount of the ceiling referred to in Annex XV to this Regulation for the Member State concerned for the corresponding year by the total of the sugar and inulin syrup quota fixed on 20 February 2006 in Annex III to Regulation (EC) No 318/2006.

Except for Bulgaria and Romania, Articles 121 and 132 of this Regulation shall not apply to the aid for sugar beet and cane producers.

## Section 8

### **Transitional fruit and vegetables payments**

#### *Article 96*

##### **Transitional area aids**

1 Where Article 54(1) or Article 128(1) is applied during the period referred to in those provisions, a transitional area aid may be granted, under the conditions laid down in this Section, to farmers producing tomatoes which are supplied for processing.

2 Where Article 54(2) or Article 128(2) is applied during the period referred to in those provisions, a transitional area aid may be granted, under the conditions laid down in this Section, to farmers producing one or more of the fruit and vegetable products listed in the third subparagraph of Article 54(2), as determined by the Member States, and which are supplied for processing.

#### *Article 97*

##### **Amount of the aid and eligibility**

1 Member States shall determine the aid per hectare on which tomatoes and each fruit and vegetable product listed in the third subparagraph of Article 54(2) are grown on the basis of objective and non-discriminatory criteria.

2 The total amount of aid provided for in paragraph 1 of this Article shall in no event exceed the ceiling determined in accordance with Article 51(2) or Article 128.

3 The aid provided for in paragraph 1 of this Article shall be granted only in respect of areas the production of which is covered by a contract for processing into one of the products listed in Article 1(1)(j) of Regulation (EC) No 1234/2007.

4 Member States may make the granting of the aid provided for in paragraph 1 of this Article subject to further objective and non-discriminatory criteria, including the condition that the farmer is a member of a producer organisation or a producer group recognised respectively under Article 125b or Article 125e of Regulation (EC) No 1234/2007.

## Section 9

### **Transitional soft fruit payment**

#### *Article 98*

##### **Soft fruit payment**

1 A transitional area aid shall be granted during the period ending on 31 December 2011 to producers of strawberries falling within CN code 0810 10 00 and raspberries falling within CN code 0810 20 10 which are supplied for processing, under the conditions laid down in this Section ('transitional soft fruit payment').

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2 The transitional soft fruit payment shall be granted only in respect of areas the production of which is covered by a contract for processing into one of the products listed in Article 1(1)(j) of Regulation (EC) No 1234/2007.

3 The amount of the transitional soft fruit payment shall be EUR 230/ha.

4 Member States may pay a national aid in addition to the transitional soft fruit payment. The total amount of Community and national aid shall not exceed EUR 400/ha.

5 The transitional soft fruit payment shall be paid only in respect of maximum national guaranteed areas allocated to Member States as follows:

<b>Member State</b>	<b>Maximum national guaranteed area(ha)</b>
Bulgaria	2 400
Hungary	1 700
Latvia	400
Lithuania	600
Poland	48 000

If the eligible area in a given Member State and in a given year exceeds the maximum national guaranteed area, the amount of the transitional soft fruit payment referred to in paragraph 3 shall be reduced proportionately to the overrun of the maximum national guaranteed area.

6 Articles 121 and 132 shall not apply to the transitional soft fruit payment.

## Section 10

### **Premiums in the sheepmeat and goatmeat sector**

#### *Article 99*

##### **Scope**

Where Article 52 is applied, Member States shall grant, on a yearly basis, premiums and supplementary premiums to farmers rearing sheep and goats under the conditions provided for in this Section, save as otherwise provided for in this Regulation.

#### *Article 100*

##### **Definitions**

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

- (a) 'ewe' means any female of the ovine species having lambed at least once or at least one year old;
- (b) 'she-goat' means any female of the caprine species having kidded at least once or at least one year old.



## *Article 101*

### **Ewe and goat premiums**

1 A farmer keeping ewes on his holding may qualify, on application, for a premium for maintaining ewes ('ewe premium').

2 A farmer keeping she-goats on his holding may qualify, on application, for a premium for maintaining she-goats ('goat premium'). This premium shall be granted to farmers in specific areas where the production meets the following two criteria:

- a goat rearing is mainly directed towards the production of goatmeat;
- b goat and sheep rearing techniques are similar in nature.

A list of such areas shall be established in accordance with the procedure referred to in Article 141(2).

3 The ewe premium and the goat premium shall be granted in the form of an annual payment per eligible animal per calendar year and per farmer within the limits of individual ceilings. The minimum number of animals in respect of which an application for a premium is lodged shall be determined by the Member State. This minimum shall not be less than ten nor greater than 50.

4 The amount of the ewe premium shall be EUR 21 per ewe. However, for farmers marketing sheep's milk or products based on sheep's milk, the amount of the ewe premium shall be EUR 16,8 per ewe.

5 The amount of the goat premium shall be EUR 16,8 per she-goat.

## *Article 102*

### **Supplementary premium**

1 A supplementary premium shall be paid to farmers in areas where sheep and goat production constitutes a traditional activity or contributes significantly to the rural economy. These areas shall be defined by Member States. In any event, the supplementary premium shall only be granted to a farmer whose holding has at least 50 % of its area used for agriculture situated in less-favoured areas defined pursuant to Regulation (EC) No 1257/1999.

2 The supplementary premium shall also be granted to a farmer practising transhumance provided that:

- a at least 90 % of the animals for which the premium is applied are grazed for at least 90 consecutive days in an eligible area established in accordance with paragraph 1; and
- b the seat of the holding is situated in a well-defined geographical area for which it has been established by the Member State that transhumance is a traditional practice of sheep and/or goat rearing and that these animal movements are necessary owing to the absence of forage in sufficient quantity during the transhumance period.

3 The amount of the supplementary premium shall be set at EUR 7 per ewe and per she-goat. The supplementary premium shall be granted under the same conditions as those laid down for the grant of the ewe and goat premiums.

*Article 103***Common rules on premiums**

1 Premiums shall be paid to recipient farmers on the basis of the number of ewes and/or she-goats kept on their holding over a minimum period to be determined in accordance with the procedure referred to in Article 141(2).

2 To qualify for the premiums, an animal shall be identified and registered in accordance with Regulation (EC) No 21/2004.

*Article 104***Individual limits**

1 On 1 January 2009, the individual ceiling per farmer referred to in Article 101(3) shall be equal to the number of premium rights which he held on 31 December 2008 in accordance with the relevant Community rules.

2 Member States shall take the necessary measures to ensure that the sum of premium rights on their territory does not exceed the national ceilings set out in paragraph 4 and that the national reserve referred to in Article 106 may be maintained.

After the end of the period of application of the single area payment scheme in accordance with Article 122 and where Article 52 is applied, the allocation of the individual ceilings to producers and the setting up of the national reserve referred to in Article 106 shall take place no later than the end of the first year of the application of the single payment scheme.

3 Premium rights which have been withdrawn under the measures taken pursuant to the first subparagraph of paragraph 2 shall be cancelled.

4 The following national ceilings shall apply:

<b>Member State</b>	<b>National ceiling</b>
Bulgaria	2 058 483
Czech Republic	66 733
Denmark	104 000
Estonia	48 000
Spain	19 580 000
France	7 842 000
Cyprus	472 401
Latvia	18 437
Lithuania	17 304
Hungary	1 146 000
Poland	335 880

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Portugal	2 690 000
Romania	5 880 620
Slovenia	84 909
Slovakia	305 756
Finland	80 000
Total	40 730 523

#### *Article 105*

#### **Transfer of premium rights**

1 When a farmer sells or otherwise transfers his holding, he may transfer all of his premium rights to the person who takes over the holding.

2 A farmer may also transfer, in whole or in part, his rights to other farmers without transferring his holding.

In the event of a transfer of rights without a transfer of the holding, part of the premium rights transferred, not exceeding 15 %, shall be surrendered, without any compensation, to the national reserve of the Member State where the holding is situated for redistribution free of charge.

Member States may acquire premium rights from farmers who agree, on a voluntary basis, to surrender their rights, in whole or in part. In this case, payments for the acquisition of such rights may be made to such farmers from the national budget.

By way of derogation from paragraph 1 and in duly justified circumstances, Member States may provide that, in the event of a sale or other transfer of the holding, the transfer of rights is carried out via the national reserve.

3 Member States may take the necessary measures to avoid premium rights being transferred outside sensitive areas or regions where sheep production is particularly important for the local economy.

4 Before a date that they shall determine, Member States may authorise temporary transfers of that part of the premium rights which is not intended to be used by the farmer who holds them.

#### *Article 106*

#### **National reserve**

1 Each Member State shall maintain a national reserve of premium rights.

2 Any premium rights withdrawn pursuant to Article 105(2) or other Community provisions shall be added to the national reserve.

3 Member States may allocate premium rights to farmers within the limits of their national reserve. When making the allocation, they shall give precedence in particular to newcomers, young farmers or other priority farmers.

## Article 107

### Ceilings

The sum of the amounts of each premium claimed shall not exceed the limit of the ceiling determined by the Commission pursuant to Article 51(2).

When the total amount of aid claimed exceeds the fixed ceiling, the aid per farmer shall be reduced proportionately in that year.

## Section 11

### Beef and veal payments

## Article 108

### Scope

Where Article 53 is applied, Member States shall grant, under the conditions set out in this Section and save as otherwise provided for in this Regulation, the additional payment or payments chosen by the Member State concerned in accordance with that Article.

## Article 109

### Definitions

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

- (a) 'region' means a Member State or a region within a Member State, at the option of the Member State concerned;
- (b) 'bull' means an uncastrated male bovine animal;
- (c) 'steer' means a castrated male bovine animal;
- (d) 'suckler' cow means a cow belonging to a meat breed or born of a cross with a meat breed, and belonging to a herd intended for rearing calves for meat production;
- (e) 'heifer' means a female bovine animal from the age of eight months which has not yet calved.

## Article 110

### Special premium

1 A farmer holding male bovine animals on his holding may qualify, on application, for a special premium. It shall be granted in the form of an annual premium per calendar year and per holding within the limits of the regional ceilings for not more than 90 animals for each of the age brackets referred to in paragraph 2.

For the purposes of this Article, ‘regional ceiling’ shall mean the number of animals entitled to benefit, in a region and per calendar year, from the special premium.

- 2 The special premium shall be granted no more than:
  - a once in the life of each bull from the age of nine months; or
  - b twice in the life of each steer:
    - (i) the first time at the age of nine months;
    - (ii) the second time after it has reached the age of 21 months.
- 3 To qualify for the special premium:
  - a any animal covered by an application shall be held by the farmer for fattening for a period to be determined in accordance with the procedure referred to in Article 141(2);
  - b each animal shall be covered until slaughter or until export by an animal passport referred to in Article 6 of Regulation (EC) No 1760/2000 containing all relevant information on its premium status or, if not available, by an equivalent administrative document.
- 4 Where in a given region the total number of bulls from the age of nine months and of steers from the age of nine months to 20 months, for which an application has been made and which satisfy the conditions for granting the special premium, exceeds the applicable regional ceiling determined in paragraph 8, the total number of eligible animals under paragraph 2(a) and (b) per farmer for the year concerned shall be reduced proportionately.
- 5 By way of derogation from paragraphs 1 and 4, Member States may, on the basis of objective criteria that are part of a rural development policy and only on condition that they take into account environmental as well as employment aspects, change or waive the headage limit of 90 animals per holding and age bracket. In this case, Member States may decide to apply paragraph 4 in such a way as to reach the level of reductions required to comply with the applicable regional ceiling, without applying such reductions to small farmers who, in respect of the year concerned, did not submit special premium applications for more than a minimum number of animals determined by the Member State concerned.
- 6 Member States may decide to grant the special premium at the time of slaughter. In this case, the age criterion referred to in paragraph 2(a) for bulls shall be replaced by a minimum carcass weight of 185 kg.

The premium shall be paid or passed back to the farmers.

- 7 The amount of the special premium shall be set at:
  - a EUR 210 per eligible bull;
  - b EUR 150 per eligible steer and age bracket.
- 8 The following regional ceilings shall apply:

<b>Member State</b>	<b>Regional ceiling</b>
Bulgaria	90 343
Czech Republic	244 349
Denmark	277 110
Germany	1 782 700
Estonia	18 800

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Cyprus	12 000
Latvia	70 200
Lithuania	150 000
Poland	926 000
Romania	452 000
Slovenia	92 276
Slovakia	78 348
Finland	250 000
Sweden	250 000

### *Article 111*

#### **Suckler cow premium**

1 A farmer keeping suckler cows on his holding may qualify, on application, for a premium for maintaining suckler cows ('suckler cow premium'). It shall be granted in the form of an annual premium per calendar year and per farmer within the limits of individual ceilings.

2 The suckler cow premium shall be granted to any farmer:

- a not supplying milk or milk products from his farm for 12 months from the day on which the application is lodged.

The supply of milk or milk products directly from the holding to the consumer shall not, however, prevent the premium being granted;

- b supplying milk or milk products the total individual quota of which, as referred to in Article 67 of Regulation (EC) No 1234/2007, does not exceed 120 000 kg.

However, Member States may decide, on the basis of objective and non-discriminatory criteria which they determine, to change or waive the quantitative limit, provided that the farmer keeps, for at least six consecutive months from the day on which the application is lodged, a number of suckler cows not less than 60 % and of heifers not exceeding 40 % of the number for which the premium was requested.

For the purposes of determining the number of eligible animals under points (a) and (b) of the first subparagraph, whether cows belong to a suckler herd or to a dairy herd shall be established on the basis of the beneficiary's individual quota for milk available on the holding on 31 March of the calendar year concerned, expressed in tonnes and the average milk yield.

3 The farmers' entitlement to the premium shall be limited by the application of an individual ceiling as defined in Article 112.

4 The amount of the premium shall be set at EUR 200 per eligible animal.

5 Member States may grant an additional national suckler cow premium, up to a maximum of EUR 50 per animal, provided that no discrimination is caused between stockfarmers in the Member State concerned.

As regards holdings located in a region as defined in Articles 5 and 8 of Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund<sup>(17)</sup>, the first EUR 24,15 per animal of this additional premium shall be financed by the EAGF.

As regards holdings located throughout the territory of a Member State, if, in the Member State concerned, the cattle population has a high proportion of suckler cows, representing at least 30 % of the total number of cows, and if at least 30 % of the male bovine animals slaughtered belong to conformation classes S and E, the EAGF shall finance the additional premium in total. Any overshoot of these percentages shall be established on the basis of the average of the two years preceding that for which the premium is granted.

6 For the purposes of this Article, only heifers belonging to a meat breed or born of a cross with a meat breed and belonging to a herd intended for rearing calves for meat production shall be taken into account.

#### *Article 112*

#### **Individual ceiling for suckler cow**

1 Aid shall be granted to each farmer of suckler cows within the limit of the individual ceilings which have been established pursuant to Article 126(2) of Regulation (EC) No 1782/2003.

2 Member States shall take the necessary measures to ensure that the sum of premium rights on their territory does not exceed the national ceilings set out in paragraph 5 and that the national reserve referred to in Article 114 may be maintained.

After the end of the period of application of the single area payment scheme in accordance with Article 122 and where Article 53(1) is applied, the allocation of the individual ceilings to producers and the setting up of the national reserve referred to in Article 114 shall take place no later than the end of the first year of application of the single payment scheme.

3 Where the adjustment referred to in paragraph 2 requires a reduction in the individual ceilings held by farmers, it shall be carried out without compensatory payment and decided on the basis of objective criteria, including, in particular:

- a the rate at which farmers have used their individual ceilings during the three reference years prior to 2000;
- b the implementation of an investment or extensification programme in the beef and veal sector;
- c particular natural circumstances or the application of penalties, resulting in non-payment or reduced payment of the premium for at least one reference year;
- d additional exceptional circumstances having the effect that the payments made for at least one reference year do not correspond to the actual situation as established during the previous years.

4 Premium rights which have been withdrawn under the measures taken pursuant to the first subparagraph of paragraph 2 shall be cancelled.

5 The following national ceilings shall apply:

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<b>Member State</b>	<b>National ceiling</b>
Belgium	394 253
Bulgaria	16 019
Czech Republic	90 300
Estonia	13 416
Spain	1 441 539
France	3 779 866
Cyprus	500
Latvia	19 368
Lithuania	47 232
Hungary	117 000
Malta	454
Austria	375 000
Poland	325 581
Portugal	458 941
Romania	150 000
Slovenia	86 384
Slovakia	28 080

### *Article 113*

#### **Transfer of suckler cow premium rights**

1 When a farmer sells or otherwise transfers his holding, he may transfer all of his suckler cow premium rights to the person who takes over his holding.

2 The farmer referred to in paragraph 1 may also transfer, in whole or in part, his rights to other farmers without transferring his holding.

Where premium rights are transferred without a transfer of the holding, part of the rights transferred, not exceeding 15 %, shall be surrendered, without any compensation, to the national reserve of the Member State where the holding is situated for redistribution free of charge.

3 Member States:

- a shall take the necessary measures to prevent premium rights being transferred outside sensitive areas or regions where beef and veal production is particularly important for the local economy;
- b may provide either that the transfer of rights without transfer of the holding is carried out directly between farmers or that it is carried out via the national reserve.



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4 Before a date that they shall determine, Member States may authorise temporary transfers of that part of the premium rights which is not intended to be used by the farmer who holds them.

#### *Article 114*

### **National reserve of suckler cow premium rights**

- 1 Each Member State shall maintain a national reserve of suckler cow premium rights.
- 2 Any premium rights withdrawn pursuant to the second subparagraph of Article 113(2) or other Community provisions shall be added to the national reserve, without prejudice to Article 112(4).
- 3 The Member States shall use their national reserve for allocating, within the limits of those reserves, premium rights in particular to newcomers, young farmers and other priority farmers.

#### *Article 115*

### **Heifers**

1 By way of derogation from Article 111(3) of this Regulation, Member States where more than 60 % of suckler cows and heifers are kept in mountain areas within the meaning of Article 50 of Regulation (EC) No 1698/2005 may decide to manage the granting of the suckler cow premium for heifers separately from that for suckler cows within the limits of a separate national ceiling to be set up by the Member State concerned.

Such a separate national ceiling shall not exceed 40 % of the national ceiling of the Member State concerned set out in Article 112(5). That national ceiling shall be reduced by an amount equal to the separate national ceiling. Where, in a Member State making use of the option provided for in this paragraph, the total number of heifers, for which an application has been made, and which satisfy the conditions for granting the suckler cow premium, exceeds the separate national ceiling, the number of eligible heifers per farmer for the year in question shall be reduced proportionately.

2 For the purpose of this Article, only heifers belonging to a meat breed or born of a cross with a meat breed shall be taken into account.

#### *Article 116*

### **Slaughter premium**

1 A farmer keeping bovine animals on his holding may qualify, on application, for a slaughter premium. It shall be granted on the slaughter of eligible animals or their export to a third country and within national ceilings to be determined.

The following shall be eligible for the slaughter premium:

- a bulls, steers, cows and heifers from the age of eight months;
- b calves of more than one and less than eight months old and of a carcass weight up to 185 kg.

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The animals listed in points (a) and (b) of the second subparagraph shall be eligible for the slaughter premium provided they have been held by the farmer for a period to be determined.

- 2 The amount of the premium shall be set at:
- a EUR 80 per eligible animal as specified in paragraph 1(a);
  - b EUR 50 per eligible animal as specified in paragraph 1(b).

3 The national ceilings referred to in paragraph 1 shall be established per Member State and separately for both groups of animals as specified in (a) and (b) of that paragraph. Each ceiling shall be equal to the number of animals in each of these two groups which, in 1995, were slaughtered in the Member State concerned. The number of animals exported to third countries, according to Eurostat data or any other published official statistical information for that year accepted by the Commission, shall be added to each ceiling.

For the new Member States, the following national ceilings shall apply:

	<b>Bulls, steers, cows and heifers</b>	<b>Calves more than 1 and less than 8 months old and of a carcass weight up to 185 kg</b>
Bulgaria	22 191	101 542
Czech Republic	483 382	27 380
Estonia	107 813	30 000
Cyprus	21 000	—
Latvia	124 320	53 280
Lithuania	367 484	244 200
Hungary	141 559	94 439
Malta	6 002	17
Poland	1 815 430	839 518
Romania	1 148 000	85 000
Slovenia	161 137	35 852
Slovakia	204 062	62 841

4 When, in a given Member State, the total number of animals for which an application has been made in respect of one of the two groups of animals specified in point (a) or (b) of paragraph 1 and which satisfy the conditions for granting the slaughter premium exceeds the national ceiling laid down for that group, the total number of eligible animals under that group per farmer for the year in question shall be reduced proportionately.

#### *Article 117*

#### **Common rules on premiums**

To qualify for the payments under this Section, an animal shall be identified and registered in accordance with Regulation (EC) No 1760/2000.

Nevertheless, an animal shall also be deemed eligible for the payments where the information laid down in the second indent of Article 7(1) of Regulation (EC) No 1760/2000 has been reported to the competent authority on the first day of the retention period of the animal as determined in accordance with the procedure referred to in Article 141(2) of this Regulation.

#### *Article 118*

##### **Ceilings**

The sum of the amounts of each payment claimed under this Section shall not exceed the ceiling determined by the Commission in accordance with Article 51(2).

Where the total amount of the payments claimed exceeds the ceiling determined, the payments per farmer shall be reduced proportionately in that year.

#### *Article 119*

##### **Substances prohibited under Directive 96/22/EC**

1 Where residues of substances prohibited under Council Directive 96/22/EC of 29 April 1996 concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of  $\beta$ -agonists<sup>(18)</sup>, or residues of substances authorised under that Directive but used illegally, are detected pursuant to the relevant provisions of Council Directive 96/23/EC of 29 April 1996 on measures to monitor certain substances and residues thereof in live animals and animal products<sup>(19)</sup> in an animal belonging to the bovine herd of a farmer, or where a non-authorised substance or product or a substance or product authorised under Directive 96/22/EC but held illegally is found on the farmer's holding in any form, the farmer shall be excluded, for the calendar year of that discovery, from receiving the amounts provided for in this Section.

In the event of a repeated infringement, the length of the exclusion period may, according to the seriousness of the offence, be extended to five years as from the year in which the repeated infringement was discovered.

2 If the owner or holder of the animals obstructs the carrying out of the inspections and the taking of samples which are necessary for the application of national residue-monitoring plans or the carrying out of the investigations and checks provided for in Directive 96/23/EC, the penalties provided for in paragraph 1 of this Article shall apply.

## CHAPTER 2

### **National aids**

#### *Article 120*

##### **National aid for nuts**

1 From 2012 or where in application of Article 67 the area payment for nuts provided for in Section 4 of Chapter 1 of this Title is integrated into the single payment scheme, Member

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States may grant national aid, up to a maximum of EUR 120,75 per hectare per year, to farmers producing the following products:

- a almonds falling within CN codes 0802 11 and 0802 12;
- b hazelnuts or filberts falling within CN codes 0802 21 and 0802 22;
- c walnuts falling within CN codes 0802 31 and 0802 32;
- d pistachios falling within CN codes 0802 50;
- e locust beans falling within CN codes 1212 10 10.

2 The national aid may be paid only for a maximum area of:

<b>Member State</b>	<b>Maximum area(ha)</b>
Belgium	100
Bulgaria	11 984
Germany	1 500
Greece	41 100
Spain	568 200
France	17 300
Italy	130 100
Cyprus	5 100
Luxembourg	100
Hungary	2 900
Netherlands	100
Poland	4 200
Portugal	41 300
Romania	1 645
Slovenia	300
Slovakia	3 100
United Kingdom	100

3 Member States may make the granting of national aid conditional on farmers being members of a producer organisation recognised under Article 125b of Regulation (EC) No 1234/2007.

## TITLE V

### IMPLEMENTATION OF DIRECT PAYMENTS IN THE NEW MEMBER STATES

#### CHAPTER 1

##### General provisions

###### *Article 121*

##### Introduction of direct payments

In the new Member States other than Bulgaria and Romania, direct payments shall be introduced in accordance with the following schedule of increments expressed as a percentage of the then applicable level of such payments in the Member States other than the new Member States:

- 60 % in 2009,
- 70 % in 2010,
- 80 % in 2011,
- 90 % in 2012,
- 100 % as from 2013.

In Bulgaria and Romania, direct payments shall be introduced in accordance with the following schedule of increments expressed as a percentage of the then applicable level of such payments in the Member States other than the new Member States:

- 35 % in 2009,
- 40 % in 2010,
- 50 % in 2011,
- 60 % in 2012,
- 70 % in 2013,
- 80 % in 2014,
- 90 % in 2015,
- 100 % as from 2016.

#### CHAPTER 2

##### Single area payment scheme

###### *Article 122*

##### Single area payment scheme

1 The new Member States having decided to replace the direct payments, with the exception, for 2009, 2010 and 2011, of the transitional soft fruit payment established in Section 9 of Chapter 1 of Title IV of this Regulation, and, for 2009, of the energy crops payment referred to in Chapter 5 of Title IV of Regulation (EC) No 1782/2003, with a single area payment scheme shall grant aid to farmers in accordance with this Article.

2 The single area payment shall be granted on an annual basis. It shall be calculated by dividing the annual financial envelope established in accordance with Article 123 by the agricultural area of each new Member State established in accordance with Article 124.

3 The single area payment scheme shall be available until 31 December 2013. The new Member States shall notify the Commission of their intention to terminate the application of the scheme by 1 August of the last year of application.

4 After the end of the period of application of the single area payment scheme, the direct payments shall be applied in accordance with the relevant Community rules and on the basis of the quantitative parameters, such as base area, premium ceilings and maximum guaranteed quantities, specified in the 2003 and 2005 Acts of Accession and subsequent Community legislation for each direct payment. The percentage rates set out in Article 121 of this Regulation for the relevant years shall subsequently apply.

### *Article 123*

#### **Annual financial envelope**

1 For any new Member State, the Commission shall establish an annual financial envelope as the sum of the funds that would be available in respect of the calendar year concerned for granting direct payments in the new Member State.

The annual financial envelope shall be established according to the relevant Community rules and on the basis of the quantitative parameters, such as base areas, premium ceilings and maximum guaranteed quantities, specified in the 2003 and 2005 Acts of Accession and subsequent Community legislation for each direct payment.

The annual financial envelope shall be adjusted using the relevant percentage specified in Article 121 for the gradual introduction of direct payments, except for the amounts available in accordance with Annex XV or in accordance with the differential between these amounts or the amounts corresponding to the fruit and vegetable sector and those actually applied as referred to in Article 130(1).

2 Where in a given year the single area payments in a new Member State would exceed its annual financial envelope, the national amount per hectare applicable in that new Member State shall be reduced proportionately by applying a reduction coefficient.

### *Article 124*

#### **Area under the single area payment scheme**

1 The agricultural area of a new Member State other than Bulgaria and Romania under the single area payment scheme shall be the part of its utilised agricultural area which was maintained in good agricultural condition on 30 June 2003, whether or not in production at that date, and, where appropriate, adjusted in accordance with the objective and non-discriminatory criteria to be set by that new Member State after approval by the Commission.

For the purposes of this Title, 'utilised agricultural area' shall mean the total area taken up by arable land, permanent grassland, permanent crops and kitchen gardens as established by the Commission for its statistical purposes.

For Bulgaria and Romania, the agricultural area under the single area payment scheme shall be the part of its utilised agricultural area which is maintained in good agricultural

condition, whether or not in production, where appropriate adjusted in accordance with the objective and non-discriminatory criteria to be set by Bulgaria or Romania after approval by the Commission.

2 For the purpose of granting payments under the single area payment scheme, all agricultural parcels corresponding to the criteria provided for in paragraph 1, as well as agricultural parcels planted with short rotation coppice (CN code ex 0602 90 41) which were maintained in good agricultural condition on 30 June 2003, shall be eligible. However, for Bulgaria and Romania, all agricultural parcels corresponding to the criteria provided for in paragraph 1, as well as agricultural parcels planted with short rotation coppice (CN code ex 0602 90 41), shall be eligible.

Except in the case of *force majeure* or exceptional circumstances, the parcels referred to in the first subparagraph shall be at the farmer's disposal on the date fixed by the Member State which shall be no later than the date fixed in that Member State for amendment of the aid application.

The minimum size of eligible area per holding for which payments may be requested shall be 0,3 ha. However, any new Member State may decide, on the basis of objective criteria and after approval by the Commission, to set the minimum size at a higher level not exceeding 1 ha.

3 There shall be no obligation to produce or to employ the factors of production. However, farmers may use the land referred to in paragraph 4 of this Article for any agricultural purpose. In the case of the production of hemp, Article 39 shall apply.

4 Any land benefiting from payments under the single area payment scheme shall be maintained in good agricultural and environmental condition in accordance with Article 6.

5 Any farmer receiving support under the single area payment scheme shall respect the statutory management requirements referred to in Annex II in accordance with the following timetable:

- a requirements referred to in Point A of Annex II shall apply from 1 January 2009;
- b requirements referred to in Point B of Annex II shall apply from 1 January 2011;
- c requirements referred to in Point C of Annex II shall apply from 1 January 2013.

6 For Bulgaria and Romania, the application of Articles 4, 5, 23, 24 and 25 shall be optional until 31 December 2011 insofar as those provisions relate to statutory management requirements. As from 1 January 2012 a farmer receiving payments under the single area payment scheme in those Member States shall fulfil the statutory management requirements referred to in Annex II in accordance with the following timetable:

- a requirements referred to in Point A of Annex II shall apply from 1 January 2012;
- b requirements referred to in Point B of Annex II shall apply from 1 January 2014;
- c requirements referred to in Point C of Annex II shall apply from 1 January 2016.

7 The new Member States may also apply the options provided for in paragraphs 5 and 6 where they decide to terminate the application of the single area payment scheme before the end of the period of application provided for in Article 122(3).

8 The application of the single area payment scheme shall in no way affect the obligation of any new Member State with regard to the implementation of Community rules on the identification and registration of animals as provided for by Regulation (EC) No 1760/2000 and Regulation (EC) No 21/2004.

*Article 125***Communication**

The new Member States shall inform the Commission in detail of the measures taken to implement this Chapter, and in particular the measures taken pursuant to Article 123(2).

## CHAPTER 3

**Separate payments and specific support***Article 126***Separate sugar payment**

1 Where a new Member State has made use of the option provided for by Article 143ba of Regulation (EC) No 1782/2003, it shall grant a separate sugar payment to farmers eligible under the single area payment scheme. This payment shall be granted on the basis of the criteria adopted by the relevant Member States in 2006 and 2007.

2 The separate sugar payment shall be granted within the limits of the ceilings set out in Annex XV.

3 By way of derogation from paragraph 2, each new Member State concerned may decide, by 31 March of the year in respect of which the separate sugar payment is granted and on the basis of objective criteria, to apply for the separate sugar payment a ceiling lower than that listed in Annex XV. Where the sum of the amounts determined in accordance with paragraph 1 exceeds the ceiling decided by the new Member State concerned, the annual amount to be granted to the farmers shall be reduced proportionally.

*Article 127***Separate fruit and vegetables payment**

1 Where a new Member State has made use of the option provided for in Article 143bb of Regulation (EC) No 1782/2003, it shall grant a separate fruit and vegetables payment to farmers eligible under the single area payment scheme. This payment shall be granted in accordance with the criteria adopted by the Member State in 2007.

2 The separate fruit and vegetables payment shall be granted within the limits of the component of the national ceiling referred to in Article 40 of this Regulation corresponding to fruit and vegetables or, where a new Member State made use of the option provided for in Article 143bb(3) of Regulation (EC) No 1782/2003, at a lower ceiling.

*Article 128***Separate transitional fruit and vegetables payment**

1 Where a new Member State has made use of the option provided for in Article 143bc(1) of Regulation (EC) No 1782/2003, it may retain, up to 31 December 2011, up to 50 %



of the component of national ceilings referred to in Article 40 of this Regulation corresponding to tomatoes falling within CN code 0702 00 00 in accordance with its decision of 2007.

In this case and within the limit of the ceiling fixed in accordance with the procedure referred to in Article 141(2) of this Regulation, the Member State concerned shall make, on a yearly basis, an additional payment to farmers.

The additional payment shall be granted to farmers producing tomatoes under the conditions provided for in Section 8 of Chapter 1 of Title IV of this Regulation.

2 Where a new Member State has made use of the option provided for in Article 143bc(2) of Regulation (EC) No 1782/2003, it may retain, in accordance with its decision of 2007:

- a up to 31 December 2010, up to 100 % of the component of national ceilings referred to in Article 40 of this Regulation corresponding to the fruit and vegetable crops other than annual crops listed in the third subparagraph of Article 54(2) of this Regulation;
- b from 1 January 2011 up to 31 December 2012, up to 75 % of the component of national ceilings referred to in Article 40 of this Regulation corresponding to fruit and vegetable crops other than annual crops listed in the third subparagraph of Article 54(2) of this Regulation.

In this case and within the limit of the ceiling fixed in accordance with the procedure referred to in Article 141(2) of this Regulation, the Member State concerned shall make, on a yearly basis, an additional payment to farmers.

The additional payment shall be granted to farmers producing one or more of the fruit and vegetables products, as determined by the Member State concerned, listed in the third subparagraph of Article 54(2) of this Regulation.

3 The new Member States having made use of the options provided for in Article 143bc of Regulation (EC) No 1782/2003 may decide, by 1 August 2009, to review the decision taken in 2007 with a view either:

- a to integrate all or part of those payments into the single area payment scheme. In this case, by way of derogation from Article 130 of this Regulation, the amounts concerned shall be included in the annual financial envelope referred to in Article 123(1) of this Regulation; or
- b to integrate all or part of those payments into the separate fruit and vegetable payment referred to in Article 127 of this Regulation. In this case, the new payment shall be granted on the basis of objective and non-discriminatory criteria such as those set out in paragraph 2 of point A of Annex IX to this Regulation and in respect of a representative period ending in 2008.

#### *Article 129*

#### **Separate soft fruit payment**

1 By way of derogation from Article 122, the new Member States applying the single area payment scheme may decide, by 1 August 2011, to grant from 2012 a separate soft fruit payment. It shall be granted on the basis of objective and non-discriminatory criteria such as the payments received under the transitional soft fruit payment provided for in Article 98 and in respect of a representative period to be fixed by that Member State but no later than 2008.

2 The separate soft fruit payment shall be granted within the limits of the amounts referred to in Annex XII corresponding to the soft fruit payment.

3 In 2012, Member States applying this Article may grant national aid in addition to the separate soft fruit payment. The total amount of Community and national aid shall not exceed the following ceilings:

- Bulgaria: EUR 960 000,
- Latvia: EUR 160 000,
- Lithuania: EUR 240 000,
- Hungary: EUR 680 000,
- Poland: EUR 19 200 000.

#### *Article 130*

### **Common provisions for the separate payments**

1 The funds made available for granting the payment referred to in Articles 126, 127, 128 and 129 shall not be included in the annual financial envelope referred to in Article 123(1). However, where Article 126(3) is applied, the differential between the ceiling listed in Annex XV and that actually applied shall be included in the annual financial envelope referred to in Article 123(1).

2 Article 132 shall not apply to the separate payments referred to in Articles 127, 128 and 129. Except in the case of Bulgaria and Romania, Article 132 shall not apply to the separate payments referred to in Article 126.

3 In the event of actual or anticipated inheritance, the separate sugar payment referred to in Article 126, the separate fruit and vegetables payment referred to in Article 127 and the separate soft fruit payment referred to in Article 129 shall be granted to the farmer who inherited the holding, on condition that this farmer is eligible under the single area payment scheme.

#### *Article 131*

### **Specific support**

1 The new Member States applying the single area payment scheme may decide, by 1 August 2009, 1 August 2010 or 1 August 2011, to use, from the year following that decision, up to 10 % of their national ceilings referred to in Article 40 to grant support to farmers as set out in Article 68(1) and in accordance with Chapter 5 of Title III, as applicable to them.

2 By way of derogation from Article 68(4)(c), support for measures referred to in Article 68(1)(c) shall take the form of an increase in the per hectare amounts granted under the single area payment scheme.

The second subparagraph of Article 68(3) shall not apply to the new Member States applying the single area payment scheme.

3 By way of derogation from Article 69(6), new Member States applying the single area payment scheme referred to in Article 122 shall raise the funds needed to cover the support referred to in paragraph 1 of this Article by:

- a reducing their annual financial envelope referred to in Article 123; and/or
- b making a linear reduction in the direct payments other than the single area payment scheme.

4 The amounts referred to in paragraph 1 of this Article shall be set by the Commission in accordance with the procedure referred to in Article 141(2).

These amounts shall be deducted from the annual financial envelopes referred to in Article 123(1) of the new Member States concerned.

## CHAPTER 4

### **Complementary national direct payments and direct payments**

#### *Article 132*

### **Complementary national direct payments and direct payments**

1 For the purposes of this Article, ‘CAP-like national scheme’ shall mean any national direct payment scheme applicable prior to the date of accession of the new Member States under which the support was granted to farmers in respect of production covered by one of the direct payments.

2 The new Member States shall have the possibility, subject to authorisation by the Commission, to complement any direct payments:

- a with regard to all direct payments, up to 30 percentage points above the applicable level referred to in Article 121 in the relevant year. As far as Bulgaria and Romania are concerned, the following shall apply: 65 % of the level of direct payments in the Community as constituted on 30 April 2004 in 2009 and from 2010 up to 50 percentage points above the applicable level referred to in the second paragraph of Article 121 in the relevant year. However, the Czech Republic may complement direct payments in the potato starch sector up to 100 % of the level applicable in the Member States other than the new Member States. For the direct payments referred to in Chapter 7 of Title IV of Regulation (EC) No 1782/2003, the new Member States may complement the direct payments up to 100 %. As far as Bulgaria and Romania are concerned, the following maximum rates shall apply: 95 % in 2009 and 100 % as from 2010;

or

- b (i) with regard to direct payments other than the single payment scheme, up to the total level of direct support the farmer would have been entitled to receive, on a product by product basis, in the new Member State in the calendar year 2003 under a CAP-like national scheme increased by 10 percentage points. However, for Lithuania, the reference year shall be the calendar year 2002. For Bulgaria and Romania, the reference year shall be the calendar year 2006. For Slovenia, the increase shall be 25 percentage points;
- (ii) with regard to the single payment scheme, up to the total amount of complementary national direct aid which may be granted by a new Member State in respect of a given year shall be limited by a specific financial envelope. This envelope shall be equal to the difference between:
  - the total amount of CAP-like national direct support that would be available in the relevant new Member State in respect of the calendar year 2003 or, in the case of Lithuania, of the calendar year 2002, each time increased by 10 percentage points. However, for Bulgaria and Romania, the reference year shall be the calendar year 2006. For Slovenia, the increase shall be 25 percentage points, and
  - the national ceiling of that new Member State listed in Annex VIII adjusted, where appropriate, in accordance with Article 51(2).

For the purpose of calculating the total amount referred to in the first indent of this subpoint, the national direct payments or their components corresponding to the Community direct payments or their components which were taken into account for calculating the effective ceiling of the new Member State concerned in accordance with Article 40 and Article 51(2) shall be included.

For each direct payment concerned, a new Member State may choose to apply either point (a) or (b) of the first subparagraph.

The total direct support which a farmer may be granted in the new Member States after accession under the relevant direct payment, including all complementary national direct payments, shall not exceed the level of direct support a farmer would be entitled to receive under the corresponding direct payment then applicable to the Member States in the Member States other than the new Member States, from 2012, taking into account the application of Article 7 in conjunction with Article 10.

3 Cyprus may complement the direct aid paid to a farmer under any direct payments for the support schemes listed in Annex I up to the total level of support the farmer would have been entitled to receive in Cyprus in 2001.

The Cypriot authorities shall ensure that the total direct support a farmer is granted after accession in Cyprus under the relevant direct payment, including all complementary national direct payments, in no event exceeds the level of direct support a farmer would be entitled to receive under that direct payment in the relevant year in the Member States other than the new Member States.

The total amounts of complementary national aid to be granted shall be those indicated in Annex XVI.

The complementary national aid to be granted shall be subject to any adjustments which may be rendered necessary by developments in the CAP.

Paragraphs 2 and 5 shall not apply to Cyprus.

4 If a new Member State decides to apply the single area payment scheme, that new Member State may grant complementary national direct aid under the conditions referred to in paragraphs 5 and 8.

5 The total amount of complementary national aid granted in that year when applying the single area payment scheme may be limited by a specific financial envelope per (sub)sector provided that such a (sub)sector specific financial envelope may only relate to:

- a the combined direct payments to the single payment scheme; and/or
- b for 2009, one or more of the direct payments that are excluded or may be excluded from the single payment scheme in accordance with Article 70(2) of Regulation (EC) No 1782/2003 or may be subject to partial implementation as referred to in Article 64(2) of that Regulation;
- c from 2010, one or more of the direct payments that may be subject to partial implementation or specific support as provided for in Article 51(2) and Article 68 of this Regulation.

This envelope shall be equal to the difference between:

- a the total amount of support per (sub)sector resulting from the application of point (a) or (b) of the first subparagraph of paragraph 2, as appropriate; and

- b the total amount of direct support that would be available in the relevant new Member State for the same (sub)sector in the year concerned under the single area payment scheme.

6 The new Member State may decide, on the basis of objective criteria and after authorisation by the Commission, on the amounts of complementary national aid to be granted.

7 The authorisation by the Commission shall:

- a where point (b) of the first subparagraph of paragraph 2 applies, specify the relevant CAP-like national direct payment schemes;
- b define the level up to which the complementary national aid may be paid, the rate of the complementary national aid and, where appropriate, the conditions for the granting thereof;
- c be granted subject to any adjustments which may be rendered necessary by developments in the CAP.

8 No complementary national payments or aid shall be granted for agricultural activities in respect of which direct payments are not provided for in the Member States other than the new Member States.

#### *Article 133*

#### **State aid in Cyprus**

Cyprus may, in addition to the complementary national direct payments, grant transitional and digressive national aid until the end of 2012. This State aid shall be granted in a form similar to Community aid, such as decoupled payments.

Taking into account the nature and amount of national support granted in 2001, Cyprus may grant State aid to the (sub)sectors listed in Annex XVII and up to the amounts specified in that Annex.

The State aid to be granted shall be subject to any adjustments which may be rendered necessary by developments in the CAP. Should such adjustments prove necessary, the amount of the aid or the conditions for the granting thereof shall be amended on the basis of a decision by the Commission.

Cyprus shall submit an annual report to the Commission on the implementation of the State aid measures, indicating the forms of aid and amounts per (sub)sector.

#### TITLE VI

#### **FINANCIAL TRANSFERS**

#### *Article 134*

#### **Financial transfer for restructuring in the cotton regions**

An amount of EUR 22 000 000 shall be available per calendar year as additional Community support for measures in cotton producing regions under rural development programming financed under the EAFRD.

*Article 135***Financial transfer for restructuring in the tobacco regions**

As from the financial year 2011, an amount of EUR 484 000 000 shall be available as additional Community support for measures in tobacco producing regions under rural development programming financed under the EAFRD for those Member States in which the tobacco producers received aid in accordance with Council Regulation (EEC) No 2075/92 of 30 June 1992 on the common organization of the market in raw tobacco<sup>(20)</sup> during 2000, 2001 and 2002.

*Article 136***Transfer to EAFRD**

Member States may decide, by 1 August 2009, to make an amount to be calculated in accordance with Article 69(7) available from the financial year 2011 for Community support under rural development programming and financing under the EAFRD instead of having recourse to Article 69(6)(a).

## TITLE VII

**IMPLEMENTING, TRANSITIONAL AND FINAL PROVISIONS**

## CHAPTER 1

**Implementing provisions***Article 137***Confirmation of payment entitlements**

- 1 Payment entitlements allocated to farmers before 1 January 2009 shall be deemed legal and regular as from 1 January 2010.
- 2 Paragraph 1 shall not apply to payment entitlements allocated to farmers on the basis of factually incorrect applications except in cases where the error could not reasonably have been detected by the farmer.
- 3 Paragraph 1 of this Article shall not prejudice the Commission's power to take decisions referred to in Article 31 of Regulation (EC) No 1290/2005 in relation to expenditure incurred for payments granted in respect of any calendar year up to 2009 included.

### *Article 138*

#### **Application to the outermost regions**

Titles III and IV shall not apply to the French overseas departments, to the Azores and Madeira nor to the Canary Islands.

### *Article 139*

#### **State aid**

By way of derogation from Article 180 of Regulation (EC) No 1234/2007 and Article 3 of Council Regulation (EC) No 1184/2006 of 24 July 2006 applying certain rules of competition to the production of, and trade in, agricultural products<sup>(21)</sup>, Articles 87, 88 and 89 of the Treaty shall not apply to payments made under Articles 41, 57, 64, 68, 69, 70 and 71, Article 82(2), Article 86, Article 98(4), Article 111(5), Article 120, Article 129(3) and Articles 131, 132 and 133 of this Regulation by Member States in conformity with this Regulation.

### *Article 140*

#### **Transmission of information to the Commission**

Member States shall inform the Commission in detail of the measures taken to implement this Regulation and, in particular, those relating to Articles 6, 12, 28, 41, 45, 46, 47, 48, 51, 57, 58, 68, 69, 70, 71, 72 and 131.

### *Article 141*

#### **Management Committee for Direct Payments**

1 The Commission shall be assisted by a Management Committee for Direct Payments.

2 Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period provided for in Article 4(3) of Decision 1999/468/EC shall be set at one month.

### *Article 142*

#### **Implementing rules**

In accordance with the procedure referred to in Article 141(2), detailed rules shall be adopted for the implementation of this Regulation. They shall include in particular:

- (a) detailed rules relating to the establishment of a farm advisory system;
- (b) detailed rules relating to the criteria for the allocation of amounts made available by the application of modulation;

- (c) detailed rules for the granting of aid provided for in this Regulation, including eligibility conditions, dates of application and payment and control provisions as well as for checking and establishing entitlement to the aids including any necessary exchange of data with the Member States, and for the establishment of the overrun of the base areas or maximum guaranteed areas as well as detailed rules concerning the determination of the retention period, the withdrawal and reallocation of unused premium rights established under Sections 10 and 11 of Chapter 1 of Title IV;
- (d) with regard to the single payment scheme, detailed rules relating in particular to the establishment of the national reserve, the transfer of payment entitlements, the definition of permanent crops, permanent pastures and grassland, the options provided for in Chapters 2 and 3 of Title III and the integration of coupled payments provided for in Chapter 4 of Title III;
- (e) detailed rules relating to the implementation of the provisions in Title V;
- (f) detailed rules relating to the inclusion of fruit and vegetables, ware potatoes and nurseries support into the single payment scheme, including the application procedure in the first year of implementation, and relating to the payments referred to in Sections 8 and 9 of Chapter 1 of Title IV;
- (g) detailed rules relating to the inclusion of wine support into the single payment scheme, including the application procedure in the first year of implementation, in accordance with Regulation (EC) No 479/2008;
- (h) with regard to hemp, detailed rules relating to the specific control measures and methods for determining tetrahydrocannabinol levels;
- (i) such amendments to Annex I as may become necessary, taking into account the criteria set out in Article 1;
- (j) such amendments to Annexes V and IX as may become necessary, taking into account in particular new Community legislation;
- (k) the basic features of the identification system for agricultural parcels and their definition;
- (l) any amendments which may be made to the aid application and exemption from the requirement to submit an aid application;
- (m) rules on the minimum amount of information to be included in the aid applications;
- (n) rules on the administrative controls, on the on-the-spot checks and on the checks by remote sensing;
- (o) rules on the application of reductions and exclusions from payments in the event of non-compliance with the obligations referred to in Articles 4 and 22, including cases of non-application of reductions and exclusions;
- (p) such amendments to Annex VI as may become necessary, taking into account the criteria set out in Article 26;
- (q) communications between the Member States and the Commission;
- (r) measures which are both necessary and duly justified to resolve, in an emergency, practical and specific problems, in particular those relating to the implementation of Chapter 4 of Title II and Chapters 2 and 3 of Title III; such measures may derogate



from certain parts of this Regulation, but only to the extent, and for such a period as is, strictly necessary;

- (s) with regard to cotton, detailed rules in respect of:
- (i) the calculation of the reduction in the aid provided for in Article 90(4);
  - (ii) the approved inter-branch organisations, in particular their financing and a control and sanction system.

## CHAPTER 2

### Transitional and final provisions

#### *Article 143*

#### **Amendments of Regulation (EC) No 1290/2005**

Regulation (EC) No 1290/2005 is amended as follows:

1. Article 12(2) shall be replaced by the following:
2. The Commission shall set the amounts which, pursuant to Articles 9, 10(4), 134, 135 and 136 of 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<sup>(22)</sup>, Article 4(1) of Council Regulation (EC) No 378/2007 of 27 March 2007 laying down rules for voluntary modulation of direct payments provided for in Regulation (EC) No 1782/2003<sup>(23)</sup> and Article 23(2) of Council Regulation (EC) No 479/2008 of 29 April 2008 on the common organisation of the market in wine<sup>(24)</sup>, are made available to the EAFRD.;
2. Article 18(3) shall be replaced by the following:
3. National ceilings for direct payments referred to in Article 8(2) of Regulation (EC) No 73/2009, corrected by the adjustments laid down in Article 11(1) of that Regulation, shall be deemed to be financial ceilings in euro..

#### *Article 144*

#### **Amendments of Regulation (EC) No 247/2006**

Regulation (EC) No 247/2006 is amended as follows:

1. Article 23(2) shall be replaced by the following:
2. The Community shall finance the measures provided for in Titles II and III of this Regulation up to an annual maximum as follows:

(EUR million)

	<b>Financial year 2007</b>	<b>Financial year 2008</b>	<b>Financial year 2009</b>	<b>Financial year 2010</b>	<b>Financial year</b>
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					<b>2011 and subsequent</b>
French overseas departments	126,6	262,6	269,4	273,0	278,41
Azores and Madeira	77,9	86,98	87,08	87,18	106,21
Canary Islands	127,3	268,4	268,4	268,4	268,42

2. The following Article shall be inserted:

*Article 24b*

- 1 By 1 August 2009, Member States shall submit to the Commission the draft amendments to their overall programme to reflect the changes made to Article 23(2) by 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<sup>(25)</sup>.
- 2 The Commission shall evaluate the amendments submitted and decide on their approval within four months of their submission in accordance with the procedure referred to in Article 26(2). The amendments shall apply from 1 January 2010.

*Article 145*

**Amendments of Regulation (EC) No 378/2007**

Regulation (EC) No 378/2007 is amended as follows:

1. Article 1 shall be amended as follows:
- (a) paragraph 3 shall be replaced by the following:
3. Reductions under voluntary modulation shall be made on the same basis of calculation as that applicable to modulation pursuant to Article 7 of 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<sup>(25)</sup>.
- (b) the following paragraph shall be added:
5. The modulation rates applicable to a farmer resulting from the application of Article 7 of Regulation (EC) No 73/2009 reduced by 5 percentage points shall be deducted from the rate of voluntary modulation applied by Member States pursuant to paragraph 4 of this Article. Both the percentage to be deducted and the final voluntary modulation rate shall be equal to or higher than 0.;
2. In Article 3(1), point (a) shall be replaced by the following:
- by derogation from Article 1(3) of this Regulation, to apply the reductions under modulation on the basis of calculation applicable to modulation pursuant to Article 7 of Regulation (EC) No 73/2009, without taking into account the exclusion of EUR 5 000 provided for in paragraph 1 of that Article; and/or.

### *Article 146*

#### **Repeals**

1 Regulation (EC) No 1782/2003 is hereby repealed.

However, Articles 20(2), 64(2), 66, 67, 68, 68a, 68b, 69, 70(1)(b) and (2) and Chapters 1 (durum wheat), 5 (energy crops), 7 (dairy premium), 10 (arable crops area payment), 10b (aid for olive groves), 10c (tobacco production aid) and 10d (hops area payment) of Title IV of that Regulation shall continue to apply for 2009.

2 The references made in this Regulation to Regulation (EC) No 1782/2003 shall be understood as referring to that Regulation such as it was in force before its repeal.

References made in other acts to Regulation (EC) No 1782/2003 shall be construed as being made to this Regulation and shall be read in accordance with the correlation table set out in Annex XVIII.

### *Article 147*

#### **Transitional rules**

The Commission, in accordance with the procedure referred to in Article 141(2), may adopt the measures required to facilitate the transition from the arrangements provided for in Regulation (EC) No 1782/2003 to those established by this Regulation.

### *Article 148*

#### **Transitional arrangements for the new Member States**

Where transitional measures are necessary in order to facilitate, for the new Member States, the transition from the single area payment scheme to the single payment scheme and other aid schemes referred to in Titles III and IV, such measures shall be adopted in accordance with the procedure referred to in Article 141(2).

### *Article 149*

#### **Entry into force and application**

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

It shall apply from 1 January 2009.

However:

- (a) Article 138 shall apply from 1 January 2010;
- (b) the standards on establishment/and or retention of habitats, compliance with authorisation procedures in case of use of water for irrigation and the specification of landscape features, as provided for in Annex III, shall apply from 1 January 2010;

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

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- (c) the standard on establishment of buffer strips along water courses, as provided for in Annex III, shall apply from 1 January 2010 at the earliest and by 1 January 2012 at the latest.

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

Done at Brussels, 19 January 2009.

*For the Council*

*The President*

P. GANDALOVIČ

- (1) OJ C 139, 14.6.2006, p. 1.
- (2) OJ L 323, 28.11.2002, p. 48.
- (3) OJ L 213, 8.8.2008, p. 31.
- (4) OJ L 103, 25.4.1979, p. 1.
- (5) OJ L 206, 22.7.1992, p. 7.
- (6) OJ L 327, 22.12.2000, p. 1.
- (7) OJ L 160, 26.6.1999, p. 80.
- (8) OJ L 148, 6.6.2008, p. 1.
- (9) OJ L 297, 21.11.1996, p. 29.
- (10) OJ L 297, 21.11.1996, p. 49.
- (11) OJ L 93, 31.3.2006, p. 1.
- (12) OJ L 93, 31.3.2006, p. 12.
- (13) OJ L 189, 20.7.2007, p. 1.
- (14) OJ L 3, 5.1.2008, p. 1.
- (15) OJ L 224, 18.8.1990, p. 19.
- (16) OJ L 58, 28.2.2006, p. 1.
- (17) OJ L 210, 31.7.2006, p. 25.
- (18) OJ L 125, 23.5.1996, p. 3.
- (19) OJ L 125, 23.5.1996, p. 10.
- (20) OJ L 215, 30.7.1992, p. 70.
- (21) OJ L 214, 4.8.2006, p. 7.
- (22) OJ L 30, 31.1.2009, p. 16.
- (23) OJ L 95, 5.4.2007, p. 1.
- (24) OJ L 148, 6.6.2008, p. 1.?’;
- (25) OJ L 30, 31.1.2009, p. 16.’