

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amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (repealed)

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amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (repealed)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 36 and 37 and Article 299(2) thereof,

Having regard to the 1979 Act of Accession, and in particular paragraph 6 of Protocol No 4 on cotton attached thereto,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament⁽¹⁾,

After consulting the European Economic and Social Committee⁽²⁾,

After consulting the Committee of the Regions⁽³⁾,

Whereas:

- (1) The reforms of the Common Agricultural Policy (CAP) agreed in 2003 and 2004 included provisions to gauge their effectiveness. In this context the Commission presented a Communication to the European Parliament and the Council entitled 'Preparing for the' Health Check 'of the CAP reform' on 20 November 2007. That Communication and the subsequent discussions of its main elements by the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, as well as numerous contributions arising from public consultation should be taken into account.
- (2) Experience drawn from the implementation of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes⁽⁴⁾ in particular shows that certain elements of the support mechanism need to be adjusted. In particular, the decoupling of direct support should be extended and the functioning of the single payment scheme should be simplified. Furthermore, Regulation (EC) No 1782/2003 has been substantially amended on several occasions. In the light of these developments and in the interest of clarity, it should be repealed and replaced by this Regulation.

- (3) Regulation (EC) No 1782/2003 established the principle that farmers who do not comply with certain requirements in the areas of public, animal and plant health, environment and animal welfare are subject to reductions of or exclusion from direct support. This ‘cross compliance’ system forms an integral part of Community support under direct payments and should therefore be maintained. However, experience has shown that a number of the requirements within the scope of cross compliance are not sufficiently relevant to farming activity or farm land or concern national authorities rather than farmers. It is therefore appropriate to adjust the scope of cross compliance.
- (4) Furthermore, in order to avoid agricultural land being abandoned and to ensure that it is maintained in good agricultural and environmental condition, Regulation (EC) No 1782/2003 established a Community framework within which Member States adopt standards taking account of the specific characteristics of the areas concerned, including soil and climatic conditions and existing farming systems, land use, crop rotation, farming practices and farm structures. This framework should be maintained. Experience has shown nevertheless that the relevance and beneficial effects of certain standards are not sufficient to justify their implementation by all Member States. Such standards should therefore become optional for Member States. However, to ensure that the framework is as consistent as possible, a standard should not be optional where before 2009 the Member State concerned already defined a minimum requirement on the basis of such a standard or where national rules which address such a standard are in place.
- (5) The abolition, in accordance with this Regulation, of compulsory set aside within the single payment scheme could in certain cases have adverse effects on the environment, in particular as regards certain landscape features. It is therefore appropriate to reinforce the Community provisions aimed at protecting specified landscape features. In specific situations it should also be possible for a Member State to provide for the establishment and/or retention of habitats.
- (6) Protection and management of water in the context of agricultural activity has increasingly become a problem in certain areas. The Community framework for good agricultural and environmental condition should therefore also be reinforced with the aim of protecting water against pollution and run-off and of managing the use of water.
- (7) Regulation (EC) No 1782/2003 recognised the positive environmental effect of permanent pasture. The measures in that Regulation aimed at encouraging the maintenance of existing permanent pasture to ensure against mass conversion to arable land should be maintained.
- (8) In order to achieve a better balance between policy tools designed to promote sustainable agriculture and those designed to promote rural development, a system of compulsory progressive reduction of direct payments (‘modulation’) was introduced by Regulation (EC) No 1782/2003. That system should be maintained and should include the exemption of direct payments of up to EUR 5 000.
- (9) The savings made through modulation are used to finance measures under the rural development policy. Since Regulation (EC) No 1782/2003 was adopted, the agricultural

sector has been faced with a number of new and demanding challenges such as climate change and the increasing importance of bio-energy, as well as the need for better water management and more effective protection of biodiversity. The Community, as party to the Kyoto Protocol⁽⁵⁾, has been called upon to adapt its policies in the light of climate change considerations. Furthermore, following serious problems relating to water scarcity and droughts, the Council, in its Conclusions ‘Water Scarcity and Drought’ of 30 October 2007, considered that water management issues in agriculture should be further addressed. Furthermore, the Council emphasised, in its Conclusions ‘Halting the Loss of Biodiversity’ of 18 December 2006, that protecting biodiversity remains a major challenge and while important progress has been made, the attainment of the Community's biodiversity target for 2010 will require additional efforts. Moreover, since innovation can, in particular, contribute to the development of new technologies, products and processes, it will underpin the efforts to tackle these new challenges. The expiry of the milk quota regime in 2015 in accordance with Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products⁽⁶⁾ will require specific efforts on the part of dairy farmers to adapt to changing conditions, particularly in disadvantaged regions. It is therefore appropriate that this particular situation should also be defined as a new challenge which Member States should be able to address with a view to ensuring a ‘soft-landing’ of their dairy sectors.

- (10) The Community acknowledges the need to tackle these new challenges in the framework of its policies. In the area of agriculture, rural development programmes adopted under Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)⁽⁷⁾ are an appropriate tool for dealing with them. To enable Member States to revise their rural development programmes accordingly without being required to reduce their current rural development activities in other areas, additional funding needs to be made available. However, the financial perspective for the period 2007 to 2013 does not provide for the financial means to reinforce the Community's rural development policy as necessary. Under these circumstances, a large part of the financial resources needed should be mobilised by providing for a gradual increase in the reduction of direct payments through modulation.
- (11) The distribution of direct income support among farmers is characterised by the allocation of a large quantity of payments to a rather small number of large beneficiaries. It is clear that larger beneficiaries do not require the same level of unitary support for the objective of income support to be efficiently attained. Moreover, the potential to adapt makes it easier for larger beneficiaries to operate with lower levels of unitary support. It is therefore fair to expect farmers with large amounts of support to make a special contribution to the financing of rural development measures addressing new challenges. Therefore, it is appropriate to establish a mechanism providing for an increased reduction in the larger payments, the proceeds of which are to be used to address the new challenges in the framework of rural development.
- (12) The particular geographical situation of the outermost regions as well as their insularity, small size, mountainous terrain and climate impose additional burdens on their

agricultural sectors. In order to mitigate such burdens and constraints, a derogation from the obligation to apply the modulation reduction to farmers in the outermost regions should be provided for.

- (13) The increased rates of compulsory modulation need to be taken into account by those Member States that opted to apply a system of voluntary modulation. 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 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers⁽⁸⁾ should be therefore amended accordingly.
- (14) The amounts resulting from the application of 5 percentage points corresponding to the modulation reductions determined in Regulation (EC) No 1782/2003 should be allocated amongst Member States according to the same criteria established under that Regulation, that is in accordance with objective criteria, while establishing that a certain percentage of the amounts is to remain in the Member States where they were generated. In view of the structural adjustments resulting from the abolition of rye intervention, the specific measures for certain rye production regions to be financed with part of the amounts generated by modulation should be maintained. Moreover, the amounts raised by applying any further modulation reduction should be made available to the Member States in which they were generated.
- (15) In order to facilitate the functioning of modulation, notably with regard to the procedures for granting direct payments to farmers, and the transfers to the rural development programmes, net ceilings should be determined for each Member State to limit the payments to be made to farmers following the application of modulation. To take into account the specificities of CAP support in the outermost regions and the fact that direct payments are not subject to modulation, the net ceiling for the Member States concerned should not include the direct payments in these regions. Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy⁽⁹⁾ should therefore be amended accordingly.
- (16) Farmers in the new Member States which acceded to the European Union on or after 1 May 2004 receive direct payments following a phasing-in mechanism provided for in the respective Acts of Accession. In order to achieve a proper balance between policy tools designed to promote sustainable agriculture and those designed to promote rural development, the system of modulation should not be applied to farmers in the new Member States until the level of direct payments applicable in those Member States is equal to the level applicable in the Member States other than the new Member States.
- (17) Modulation should not reduce the net amount paid to a farmer in a new Member State below the amount to be paid to an equivalent farmer in the Member States other than the new Member States. Therefore, once modulation becomes applicable to farmers in the new Member States, the rate of reduction should be limited to the difference between the level under the phasing-in schedule and the level in the Member States other than the new Member States following the application of modulation. Moreover, modulation

should be taken into account in the granting of complementary national direct payments to farmers in new Member States who are subject to modulation.

- (18) With a view to ensuring that the amounts for the financing of the CAP comply with the annual ceilings set in the financial perspective, the financial mechanism in Regulation (EC) No 1782/2003 whereby the level of direct support is adjusted when the forecasts indicate that the subceiling of heading 2, with a safety margin of EUR 300 000 000, is exceeded in a given financial year should be maintained. Taking into account the levels of direct payments for farmers in the new Member States as a result of phasing-in, and in the framework of the application of the phasing-in mechanism to all direct payments granted in the new Member States, this instrument of financial discipline should not apply in those Member States until the level of direct payments applicable in those Member States is at least equal to the level applicable in the Member States other than the new Member States. In view of the particular weight in the general budget of the European Communities of the resource referred to in Article 2(1)(c) of Council Decision 2007/436/EC, Euratom of 7 June 2007 on the system of the European Communities' own resources⁽¹⁰⁾, it is appropriate to provide, exceptionally, for the Council to adopt the necessary decision to apply the instrument of financial discipline on a proposal from the Commission.
- (19) In order to help farmers to meet the standards of modern, high-quality agriculture, it is necessary that Member States continue to operate the comprehensive system offering advice to farms provided for in Regulation (EC) No 1782/2003. The farm advisory system should help farmers to become more aware of material flows and on-farm processes relating to the environment, food safety, animal health and welfare without in any way affecting their obligation and responsibility to comply with those standards.
- (20) Regulation (EC) No 1290/2005 provides that Member States have to take the measures necessary to satisfy themselves that transactions financed by the European Agricultural Guarantee Fund (EAGF) are actually carried out and are executed correctly, and to prevent and deal with irregularities. To this end, they should operate an integrated administration and control system for direct payments. In order to improve the effectiveness and control of Community support, Member States should be authorised to make use of the integrated system also in the case of Community schemes not covered by this Regulation.
- (21) The main elements of the integrated administration and control system and, in particular, the provisions concerning a computerised database, an identification system for agricultural parcels, aid applications from farmers, a harmonised control system and, within the single payment scheme, a system for the identification and recording of payment entitlements should be maintained.
- (22) Managing small amounts is a burdensome task for the competent authorities of the Member States. To avoid an excessive administrative burden, Member States should in general refrain from granting direct payments where the payment would be lower than EUR 100 or the eligible area of the holding for which support is claimed would be less than one hectare. However, as the structures of the Member States' agricultural economies vary considerably and may differ significantly from the average Community

farm structure, special provision should be made to allow Member States to apply minimum thresholds that reflect their particular situation. Due to the very specific farming structure in the outermost regions and the Aegean Islands, these regions should not be subject to the application of any minimum threshold. Moreover, Member States should have discretion to opt for the implementation of one of the two types of minimum threshold taking account of the particularities of the structures of their farming sectors. As special payment entitlements were allocated to farmers with so-called 'landless' holdings, the application of the hectare-based threshold would be ineffective. The average support-related minimum amount should therefore apply to such farmers. To ensure equal treatment of farmers whose direct payments are subject to phasing-in, the minimum threshold should be based on the final amounts to be granted at the end of the phasing-in process.

- (23) Experience of the application of the single payment scheme shows that decoupled income support was in a number of cases granted to beneficiaries whose agricultural activities formed only an insignificant part of their overall economic activities or whose business purpose was not or only marginally targeted at performing an agricultural activity. To prevent agricultural income support from being allocated to such beneficiaries and to ensure that Community support is entirely used to ensure a fair standard of living for the agricultural community, Member States should be empowered, where such allocation occurs, to refrain from granting such natural and legal persons direct payments under this Regulation.
- (24) Payments provided for under Community support schemes should be made by the competent national authorities to beneficiaries in full, subject to any reductions provided for in this Regulation, and within prescribed periods. In order to render the management of direct payments more flexible, Member States should be allowed to pay direct payments in up to two instalments per year.
- (25) The support schemes under the CAP provide for direct income support, in particular with a view to ensuring a fair standard of living for the agricultural community. That objective is closely related to the maintenance of rural areas. In order to avoid any misallocation of Community funds, no support payments should be made to farmers who have artificially created the conditions required to obtain such payments.
- (26) In order to achieve the objectives of the CAP, common support schemes have to be adapted to changing developments, if necessary within short time-limits. Beneficiaries cannot, therefore, rely on support conditions remaining unchanged and should be prepared for a possible review of schemes, in particular in the light of economic developments or the budgetary situation.
- (27) Regulation (EC) No 1782/2003 established a single payment scheme that combined the existing various support mechanisms into a single scheme of decoupled direct payments. Experience of the application of the single payment scheme shows that some of its elements can be simplified for the benefit of farmers and administrations. Furthermore, given that the single payment scheme has in the meantime been implemented by all Member States that were required to do so, a number of provisions that were linked to its initial implementation have become obsolete and should therefore

be adjusted. In this context, a significant under use of payment entitlements has been detected in some cases. To avoid such a situation and taking into account the fact that farmers are already familiar with the functioning of the single payment scheme, the period initially fixed for returning unused payment entitlements to the national reserve should be reduced to two years.

- (28) The main elements of the single payment scheme should be maintained. In particular, the determination of national ceilings should ensure that the total level of support and entitlements does not exceed current budgetary constraints. Member States should also operate a national reserve that may be used to facilitate the participation of new farmers in the scheme or to take account of specific needs in certain regions. Rules on the transfer and use of payment entitlements should be laid down to prevent speculative transfer and accumulation of payment entitlements without a corresponding agricultural basis.
- (29) The progressive integration of further sectors into the single payment scheme makes it necessary to review the definition of the land eligible to benefit from the scheme or for the activation of payment entitlements. However, provision should be made for excluding support for areas cultivated with fruit and vegetables in cases where Member States have opted for deferred integration of this sector into the single payment scheme. Besides, specific measures should be laid down for hemp to prevent support being granted for illegal crops.
- (30) Compulsory set aside of arable land was introduced as a supply control mechanism. Market developments in the arable crops sector together with the introduction of decoupled aids no longer justify the need for maintaining this instrument, which therefore should be abolished. Set-aside entitlements established in accordance with Regulation (EC) No 1782/2003 should therefore be activated as regards hectares subject to the same eligibility conditions as any other entitlement. The abolition of the set-aside obligation may lead to the result that land that was eligible for the purpose of activating set-aside entitlements is no longer eligible. In order to maintain the eligibility of such land, it should be provided that certain afforested areas, including those afforested under national schemes complying with the relevant rules in Regulation (EC) No 1698/2005, or areas subject to certain environmental commitments are eligible under the single payment scheme.
- (31) Further to the integration of formerly coupled market support into the single payment scheme, the value of payment entitlements was, in those Member States opting for historic implementation, based on the individual level of past support. With the time elapsing since the introduction of the single payment scheme and following the successive integration of further sectors into that scheme, it is becoming increasingly hard to justify the legitimacy of significant individual differences in the support level which are based only on past support. For this reason, Member States that chose the historic implementation model should be allowed under certain conditions to review the allocated payment entitlements with a view to approximating their unit value while complying with the general principles of Community law and the objectives of the CAP. In this context, Member States may take into account the specificities of geographical

areas when fixing closer values. The levelling of payment entitlements should take place during an adequate transition period and within a limited range of reductions in order to allow farmers reasonably to adapt to the changing levels of support.

- (32) Under Regulation (EC) No 1782/2003, Member States had the option to apply the single payment scheme by way of historic or regional implementation. Since then, Member States have had the opportunity to evaluate the effects of their choice as regards both their economic and administrative appropriateness. Member States should therefore be given the opportunity to review their initial choice in the light of their experience. For this reason, in addition to the possibility of levelling the value of payment entitlements, Member States that applied the historic model should be authorised to change over to a regionalised application of the single payment scheme in accordance with the options already provided for in Regulation (EC) No 1782/2003. In particular, Member States should be allowed to adjust the territorial distribution of direct support by effecting a gradual redistribution between regions. This option would give Member States increased flexibility to target direct support in the most appropriate way on the basis of the objectives laid down in Article 33 of the Treaty and on the basis of objective and non-discriminatory criteria such as agricultural potential and environmental criteria. Furthermore, Member States that chose to apply the regional model should be given the option to review their decisions under certain conditions with the aim of approximating the value of payment entitlements according to pre-established annual steps, while complying with the general principles of Community law and the objectives of the CAP. Such changes should take place during an adequate transition period and within a limited range of reductions in order to allow farmers reasonably to adapt to the changing levels of support.
- (33) Regulation (EC) No 1782/2003, while introducing a decoupled single payment scheme, allowed Member States to exclude in whole or in part certain payments from that scheme. That Regulation also provided for the review and possible revision of this option in the light of market and structural developments. An analysis of relevant experience shows that decoupling introduces flexibility in the choice of products to be farmed, enabling farmers to take their production decisions on the basis of profitability and market response. This is particularly the case for the arable crops and hops sectors, and to a certain extent, the beef and veal and seeds sectors. Therefore, the partially coupled payments in the arable crops and hops sectors should be integrated into the single payment scheme from 2010. In the case of hops, Regulation (EC) No 1782/2003 allowed Member States to grant part of the hops area payments to recognised producer organisations. In order to allow the producer organisations to continue their activities as before, Regulation (EC) No 1234/2007, as amended by Regulation (EC) No 72/2009 of 19 January 2009 on modifications to the Common Agricultural Policy⁽¹¹⁾, provides for equivalent amounts to be used in the Member State concerned for the same activities. Such amounts should therefore be deducted from the national ceilings provided for in this Regulation for that Member State. In order for farmers in the beef and veal and seeds sectors to adjust to the new support arrangements, provision should be made for the integration of the beef and veal payments and the seed aid to be carried out by 2012 at the latest. Since partially coupled payments in the fruit and vegetable sectors were only

recently introduced, and only as a transitional measure, the exclusion of such payments from the single payment scheme should be allowed to continue, whilst Member States should be allowed to review their decisions with a view to increasing the degree of decoupling.

- (34) However, as regards the suckler cow and sheepmeat and goatmeat sector, maintaining a minimum level of agricultural production may still be necessary for the agricultural economies in certain regions and, in particular, where farmers cannot have recourse to other economic alternatives. Against this background, Member States should have the option to maintain coupled support either at the current level or at a lower level. In that case, special provision should be made for compliance with the identification and registration requirements provided for by Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products⁽¹²⁾ and Council Regulation (EC) No 21/2004 of 17 December 2003 establishing a system for the identification and registration of ovine and caprine animals⁽¹³⁾, in particular with a view to ensuring the traceability of animals.
- (35) Member States should be allowed to use up to 10 % of their national ceilings for the single payment scheme for granting specific support in clearly defined cases. Such support should allow Member States to address environmental and animal welfare issues and improve the quality and marketing of agricultural products. Specific support should also be available to buffer the consequences of the phasing-out of milk quotas and the decoupling of support in particularly sensitive sectors. Given the growing importance of the effective management of risks, Member States should be given the option to contribute financially to the premiums farmers pay for crop, animal and plant insurance as well as to the financing of compensation for certain economic losses in the event of animal or plant diseases and environmental incidents. With a view to respecting the Community's international obligations, the resources that could be used for any coupled support should be limited to an appropriate level while allowing for transitional measures for Member States facing particular difficulties. The conditions applicable to the financial contributions for crop, animal and plant insurance premiums and compensation in relation to animal and plant diseases and environmental incidents should be established accordingly. Moreover, Member States which have made use of Article 69 of Regulation (EC) No 1782/2003 should be given a sufficient transitional period in order to allow for a smooth transition to the new rules for specific support.
- (36) Experience has shown that currently Member States do not use the entire amount of the funds available under the national ceilings for the single payment scheme, in particular where the payment entitlements have not been activated. In order to facilitate the more efficient use of the funds, Member States should be allowed to grant support above their national ceilings up to an amount the level of which ensures that it remains within the margins of the under-execution of the national ceiling. Such amount should be calculated on the basis of the budget under-execution for the most recent year available and should not put into question the respect of the total net ceiling for direct payments per Member State. For this reason and to ensure that farmers do not face unforeseen reductions of payments, the calculation should be carried out within certain safety

margins. These amounts should either be used for the funding of specific support or transferred to the EAFRD.

- (37) Direct payments under the single payment scheme were based on reference amounts of direct payments that were received in the past or on regionalised per hectare amounts. Farmers in the new Member States did not receive Community direct payments and had no historical references for the calendar years 2000, 2001 and 2002. Therefore, provision was made under Regulation (EC) No 1782/2003 for the single payment scheme in the new Member States to be based on regionalised per hectare amounts. Several years after the accession of the new Member States to the Community, however, the use of reference periods could be considered for those new Member States that have not yet moved to the single payment scheme. With a view to facilitating the transition to the single payment scheme and, in particular, to preventing speculative applications, the new Member States should be authorised to take account, for the purpose of the calculation of the payment entitlements under the single payment scheme, of the areas for which, historically, support under the single area payment scheme was granted.
- (38) Under the regionalised option for the single payment scheme, the new Member States should have the possibility to adjust the value of the payment entitlements per hectare on the basis of objective criteria in order to ensure equal treatment between farmers and to avoid market distortions.
- (39) The new Member States should have the same possibilities as the other Member States to partially implement the single payment scheme.
- (40) The decoupling of direct support and the introduction of the single payment scheme were essential elements in the process of reforming the CAP. However, in 2003, several reasons called for specific support to be maintained for a number of crops. Experience gained through the application of Regulation (EC) No 1782/2003 together with the evolution of the market situation indicates that schemes that were kept outside the single payment scheme in 2003 can now be integrated into that scheme to promote more market-oriented and sustainable agriculture. This is the case, in particular, with the olive oil sector, where only marginal coupling was applied, as well as with durum wheat, protein crops, rice, potato starch, and nuts payments, where the decreasing effectiveness of remaining coupled payment supports the decoupling option. In the case of flax and hemp, dried fodder and potato starch, the support for processing should be decoupled and the relevant amounts should be integrated into the single payment scheme. As regards protein crops, rice, potato starch, nuts and flax and hemp, in order to allow producers to adjust, it is appropriate to integrate the aids for those sectors into the single payment scheme from 2012 while at the same time, and with the exception of the processing aids which are dealt with under Regulation (EC) No 1234/2007, allowing Member States to decide on an earlier date for their integration. As regards nuts, Member States should be allowed to continue to pay the national part of the aid in a coupled way in order to cushion the effects of decoupling.
- (41) As a consequence of the integration of further sectors into the single payment scheme, provision should be made for the calculation of the new level of individual income support under that scheme. In the case of nuts, potato starch, flax and hemp and dried

fodder, such an increase should be granted on the basis of the support farmers received in most recent years. However, in the case of the integration of payments that were partially excluded from the single payment scheme, Member States should be given the option to use the original reference periods. For potato starch, the amounts available for distribution in Germany and the Netherlands should take into account the cross-border deliveries of potato starch produced in one of those Member States for processing in the other. Furthermore, with a view to covering the specific needs of their agricultural sectors and to ensure that the support received in the past by farmers is not drastically reduced, Member States should be allowed under certain limits to use the funds to be integrated into the single payment scheme to support farmers who exercised certain agricultural activities in other sectors during the same years, such as using grassland or keeping animals.

- (42) Regulation (EC) No 1782/2003 established specific support for energy crops with a view to assisting the development of the sector. Due to recent developments in the bio-energy sector and, in particular, to the strong demand for such products on international markets and the introduction of binding targets for the share of bio-energy in total fuel by 2020, there is no longer sufficient reason to grant specific support for energy crops.
- (43) When the cotton sector was integrated into the single payment scheme, it was deemed necessary for part of the support to continue to be linked to the cultivation of cotton through a crop specific payment per eligible hectare to ensure against any risk of disruption to production in the cotton producing regions. This choice should be maintained in accordance with the objectives set out in Protocol No 4 on cotton attached to the 1979 Act of Accession.
- (44) To buffer the effects of the restructuring process in Member States which have granted the restructuring aid provided for in Council Regulation (EC) No 320/2006 of 20 February 2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community⁽¹⁴⁾, the aid foreseen for sugar beet and cane producers for a maximum of five consecutive years should be maintained.
- (45) When the fruit and vegetables sector was integrated into the single payment scheme, a temporary coupled area aid for strawberries and raspberries was provided for. It is appropriate to extend such support beyond the original deadline while at the same time providing for the decoupling of this support from production. The national ceilings should be adjusted to take this into account.
- (46) The transitional simplified support scheme for granting direct payments in the new Member States based on area, that is the single area payment scheme, has proved to be an efficient and simple system for granting income support to farmers in the new Member States. In the interest of simplification, the new Member States that opted to apply the scheme should be allowed to continue to apply it until the end of 2013.
- (47) Further to the respective reforms of the sugar and fruit and vegetable sectors and their integration into the single payment scheme, those Member States that opted to apply the single area payment scheme should be allowed to grant income support to growers of sugar beet, cane and chicory and producers of certain fruit and vegetables in the form

of separate payments. Likewise, such Member States should be allowed to pay separate specific support under similar conditions to those applicable to the other Member States.

- (48) As a consequence of the phasing-in of direct payments in the new Member States, the new Member States were allowed to grant complementary national direct payments. The conditions for granting such payments should be maintained.
- (49) In the initial allocation of payment entitlements by Member States, some errors led to particularly high payments to farmers. This non-compliance is normally the subject of financial correction until such time as corrective measures are taken. However, taking into account the time that has elapsed since the payment entitlements were first allocated, the necessary correction would lead to disproportionate legal and administrative constraints for Member States. In the interest of legal certainty, the allocation of such payments should therefore be regularised.
- (50) In accordance with Regulation (EC) No 1782/2003, France, Portugal and Spain decided to exclude from the single payment scheme the direct payments made in the French overseas departments, the Azores and Madeira and the Canary Islands respectively and to grant them under the conditions provided for in Title IV of that Regulation. Part of the aid provided for in that Title has been completely integrated into the single payment scheme. In the interest of simplification and to take into account the specific circumstances of the outermost regions, such aid should be managed within the support programmes established by Regulation (EC) No 247/2006 of 30 January 2006 laying down specific measures for agriculture in the outermost regions of the Union⁽¹⁵⁾. To this end, the relevant funds should be transferred from the national ceilings for direct payments to the financial amount set out in that Regulation. In order to allow the Member States concerned to adapt the support programmes, such transfers should only take place in 2010. In the meantime, direct payments will apply in the outermost regions under the conditions provided for in Regulation (EC) No 1782/2003. Regulation (EC) No 247/2006 should therefore be amended accordingly.
- (51) It should be specified that the provisions of this Regulation which could give rise to behaviour of a Member State possibly constitutive of State aid are, save as otherwise provided for in this Regulation, excluded from the application of the State aid rules given that the provisions concerned include appropriate conditions for the granting of support, or envisage the adoption of such conditions by the Commission, in order to prevent undue distortion of competition.
- (52) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽¹⁶⁾.
- (53) In order to allow Member States as well as the farming community to benefit from the simplification mechanisms introduced by this Regulation, and in particular from the abolition of the set aside obligation, this Regulation should apply from 1 January 2009. However, those provisions that may reduce farmers' rights or create new obligations, *inter alia* the cross compliance obligations with which farmers have to comply throughout the year, should only apply from 2010 and, in the case of the standard on establishment of buffer strips along water courses, by 1 January 2012. Furthermore,

Member States should be given sufficient time to implement the provisions allowing further decoupling of direct payments and those allowing them to review the decisions taken in the context of the 2003 reform. For this reason, the relevant provisions of this Regulation should only apply from 2010 and the repealed Regulation (EC) No 1782/2003 should be applied during 2009 to those aid schemes that will only be integrated into the single payment scheme from 2010,

HAS ADOPTED THIS REGULATION:

- (1) Opinion of 19 November 2008 (not yet published in the Official Journal).
- (2) Opinion of 23 October 2008 (not yet published in the Official Journal). Opinion delivered following non-compulsory obligation.
- (3) Opinion of 8 October 2008 (not yet published in the Official Journal). Opinion delivered following non-compulsory obligation.
- (4) [OJ L 270, 21.10.2003, p. 1.](#)
- (5) Council Decision 2002/358/EC of 25 April 2002 concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework convention on Climate change and the joint fulfilment of commitments thereunder ([OJ L 130, 15.5.2002, p. 1.](#)).
- (6) [OJ L 299, 16.11.2007, p. 1.](#)
- (7) [OJ L 277, 21.10.2005, p. 1.](#)
- (8) [OJ L 95, 5.4.2007, p. 1.](#)
- (9) [OJ L 209, 11.8.2005, p. 1.](#)
- (10) [OJ L 63, 23.6.2007, p. 17.](#)
- (11) See page 1 of this Official Journal.
- (12) [OJ L 204, 11.8.2000, p. 1.](#)
- (13) [OJ L 5, 9.1.2004, p. 8.](#)
- (14) [OJ L 58, 28.2.2006, p. 42.](#)
- (15) [OJ L 42, 14.2.2006, p. 1.](#)
- (16) [OJ L 184, 17.7.1999, p. 23.](#)