

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amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (repealed)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 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⁽¹⁾, Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora⁽²⁾ 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⁽³⁾; 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)⁽⁴⁾ 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⁽⁵⁾ 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).

- (1) OJ L 103, 25.4.1979, p. 1.
- (2) OJ L 206, 22.7.1992, p. 7.
- (3) OJ L 327, 22.12.2000, p. 1.
- (4) OJ L 160, 26.6.1999, p. 80.
- (5) OJ L 148, 6.6.2008, p. 1.