

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amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (repealed)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 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⁽¹⁾, 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⁽²⁾, Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products⁽³⁾ 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⁽⁴⁾.

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⁽⁶⁾;
- 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 125l 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.

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

- (1) OJ L 93, 31.3.2006, p. 1.
- (2) OJ L 93, 31.3.2006, p. 12.
- (3) OJ L 189, 20.7.2007, p. 1.
- (4) OJ L 3, 5.1.2008, p. 1.
- (5) OJ L 224, 18.8.1990, p. 19.