

Commission Regulation (EC) No 1120/2009 of 29 October 2009 laying down detailed rules for the implementation of the single payment scheme provided for in Title III of Council Regulation (EC) No 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers (repealed)

## TITLE II

### IMPLEMENTATION

#### CHAPTER 2

#### **National reserve**

##### Section 1

#### **Reversion to the national reserve**

##### *Article 15*

#### **Unused payment entitlements**

1 Except in cases of *force majeure* or exceptional circumstances, unused payment entitlements shall be deemed to have reverted to the national reserve on the day following the last day for modifying the application under the single payment scheme in the calendar year in which the period referred to in Articles 28(3) and 42 of Regulation (EC) No 73/2009 expires.

A payment entitlement shall be considered to be unused where no payment has been granted for that entitlement during the period referred to in the first subparagraph. Payment entitlements for which an application is made and accompanying an area determined within the meaning of Article 2(23) of Regulation (EC) No 1122/2009 shall be deemed to have been used.

Where the area determined for the purposes of the single payment scheme is less than the area declared, the following shall apply to determine which of the payment entitlements have to be returned to the national reserve in accordance with Article 42 of Regulation (EC) No 73/2009:

- a the area determined shall be taken into account starting with the payment entitlements having the highest value;
- b the payment entitlements with the highest value shall be attributed to that area first, followed by those with the next lower value.

2 Farmers may give up payment entitlements to the national reserve voluntarily.

## Article 16

### Retention on sale of payment entitlements

1 Where a Member State makes use of the option provided for in Article 43(3) of Regulation (EC) No 73/2009, the Member State may decide that it shall revert to the national reserve:

- a in case of sale of payment entitlements without land, up to 30 % of the value of each payment entitlement or the equivalent amount expressed in number of payment entitlements. However during the first 3 years of application of the single payment scheme, the percentage of 30 % may be replaced by 50 %; and/or
- b in case of sale of payment entitlements with land, up to 10 % of the value of each payment entitlement or the equivalent amount expressed in number of payment entitlements; and/or
- c in case of sale of payment entitlements with an entire holding, up to 5 % of the value of each payment entitlement and/or the equivalent amount expressed in number of payment entitlements.

In case of sale of payment entitlements with or without land to a farmer who commences his agricultural activity and in case of actual or anticipated inheritance of payment entitlements no retention shall apply.

2 When fixing the percentages referred to in paragraph 1, a Member State may differentiate the percentage within any of the cases referred to in points (a), (b) and (c) of paragraph 1 in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion.

3 Where a Member State having regionalised the single payment scheme in accordance with Article 59(1) of Regulation (EC) No 1782/2003 or making use of the option provided for in Article 48(1) of Regulation (EC) No 73/2009, decides to make use of the option provided for in Article 43(3) of Regulation (EC) No 73/2009, the percentages of reduction provided for in paragraphs 1 and 2 of this Article shall apply after deduction from the value of the payment entitlements of a franchise equal to the regional unit value calculated in accordance with Article 59(2) or (3) of Regulation (EC) No 1782/2003 or with Article 46(2) and (3) of Regulation (EC) No 73/2009.

## Section 2

### Allocation of payment entitlements from the national reserve

## Article 17

### Establishment of payment entitlements

1 Where a Member State makes use of the options provided for in Article 41(2) and (3) of Regulation (EC) No 73/2009, farmers may receive, in accordance with the conditions laid down in this Section and in accordance with the objective criteria laid down by the Member State concerned, payment entitlements from the national reserve.

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

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2 When a farmer who does not own any payment entitlement applies for payment entitlements from the national reserve, he may receive a number of payment entitlements not higher than the number of hectares he holds (owned or leased) at that time.

3 When a farmer who owns payment entitlements applies for payment entitlements from the national reserve, he may receive a number of payment entitlements not higher than the number of hectares he holds for which he does not own any payment entitlement.

The unit value of each payment entitlement he already owns may be increased.

4 The value of each payment entitlement received in accordance with paragraph 2 or 3, except the second subparagraph of paragraph 3, shall be calculated by dividing a reference amount, established by the Member State, in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion, by the number of entitlements to be allocated.

#### *Article 18*

#### **Application of Article 41(3) of Regulation (EC) No 73/2009 in the case of fewer hectares than payment entitlements**

1 Where a Member State makes use of the option provided for in Article 41(3) of Regulation (EC) No 73/2009, it may in particular allocate, upon request, in accordance with this Article, payment entitlements to farmers, in the areas concerned, who declare fewer hectares than the number corresponding to payment entitlements they had been allocated in accordance with Articles 43 and 59 of Regulation (EC) No 1782/2003.

In that case, the farmer shall give up to the national reserve all the payment entitlement he owns or should have been allocated, except payment entitlements subject to conditions referred to in Article 44 of Regulation (EC) No 73/2009.

For the purposes of this Article, 'payment entitlements' shall mean only the payment entitlements allocated by the Member State in the first year of application of the single payment scheme including any year of integration of coupled support.

2 The number of payment entitlements allocated from the national reserve shall be equal to the number of hectares the farmer declares in the year of the request.

3 The unit value of the payment entitlements allocated from the national reserve shall be calculated by dividing the farmer's reference amount by the number of hectares he declares.

4 Paragraphs 1, 2, and 3 shall not apply to a farmer who declares less than 50 % of the total number of hectares, which he held (leased and owned) in the reference period.

5 For the purposes of paragraphs 1, 2, and 3, hectares transferred by sale or by lease, and not replaced by a corresponding number of hectares, shall be included in the number of hectares which the farmer declares.

6 The farmer concerned shall declare all the hectares he holds at the time of the request.

### *Article 19*

#### **General provisions for farmers in a special situation**

1 For the purposes of Article 41(4) of Regulation (EC) No 73/2009, ‘farmers in a special situation’ shall mean the farmers referred to in Articles 20 to 23 of this Regulation.

2 In cases where a farmer in a special situation meets the condition for applying two or more of Articles 20, 21 and 22, he shall receive a number of payment entitlements established in accordance with Article 17(2) and (3) and whose value shall be the highest value he may obtain by applying separately each of the Articles for which he meets the conditions.

In the case where a farmer also benefits from allocation of entitlements under Article 22 the total number of entitlements to be allocated shall not exceed the number fixed in accordance with that Article.

3 In cases where the lease referred to in Articles 20 and 22 expires after the last date for lodging an application under the single payment scheme in its first year of application, the farmer concerned may apply for the establishment of his payment entitlements, after the expiry of the lease, by a date to be fixed by the Member State but not later than the latest date fixed for amending the aid application in the following year.

4 Where, in accordance with their national law or well-established usual practice, the definition of long term lease also includes lease for five years, Member States may decide to apply Articles 20, 21 and 22 to those leases.

### *Article 20*

#### **Transfer of leased land**

1 A farmer who received, by transfer, either by sale or by lease for six or more years, free of charge or at a symbolic price or by way of actual or anticipated inheritance, a holding or part of a holding, that was leased to a third person during the reference period, from a farmer who retired from agricultural activity or died before the date for lodging an application under the single payment scheme in its first year of application, may receive payment entitlements calculated by dividing a reference amount, established by the Member State, in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion, by a number of hectares not higher than the number of hectares of the holding or part of the holding he received.

2 Farmers referred to in paragraph 1 shall be any person who may receive the holding or part or the holding referred to in paragraph 1, by way of actual or anticipated inheritance.

### *Article 21*

#### **Investments**

1 Member States may increase the value or allocate payment entitlements to farmers having invested in a sector which is subject to integration into the single payment scheme under Chapter 4 of Title III of Regulation (EC) No 73/2009, in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion.

When establishing the criteria referred to in the first subparagraph, Member States shall take into account reference period and/or other criteria used for integration of the relevant sector.

2 Paragraph 1 shall apply *mutatis mutandis* in the case of the termination of application of the single area payments scheme under Article 122 of Regulation (EC) No 73/2009.

#### *Article 22*

### **Lease and purchase of leased land**

1 A farmer who leased, either between the end of the relevant reference period for the introduction of the single payment scheme and 15 May 2004 as regards the introduction of the single payment scheme before 2009, or before 31 January 2009 in case of application of Chapter 3 of Title III of Regulation (EC) No 73/2009, for six or more years a holding or part of it whose lease conditions may not be adjusted, may receive payment entitlements calculated by dividing a reference amount, established by the Member State, in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion, by a number of hectares not higher than the number of hectares he leased.

When establishing the criteria referred to in the first subparagraph, Member States shall take into account, in particular, situations where farmers do not have at their disposal hectares other than leased hectares.

2 Paragraph 1 shall apply to a farmer who bought, as regards the introduction of the single payment scheme before 2009 either in the reference period for its introduction or before 15 May 2004, or, in case of application of Chapter 3 of Title III of Regulation (EC) No 73/2009, before 31 January 2009, a holding or part of it whose land was under a lease during the relevant reference period, and who is commencing or expanding his agricultural activity within one year after the expiry of the lease.

For the purposes of the first subparagraph, 'land under a lease' shall mean land which was, at the time of, or after the purchase under a lease which has never been renewed except when the renewal was imposed by a legal obligation.

#### *Article 23*

### **Administrative acts and court's rulings**

Where a farmer should be entitled to receive payment entitlements or increase the value of the existing ones by virtue of a definitive court's ruling or by virtue of a definitive administrative act of the competent authority of a Member State, the farmer shall receive the number and value of payment entitlements established in that ruling or act at a date to be fixed by the Member State but not later than the latest date for lodging an application under the single payment scheme following the date of the ruling or the act and taking into account the application of Article 34 and/or Article 35 of Regulation (EC) No 73/2009.

### Section 3

#### **Regional administration**

##### *Article 24*

#### **Regional reserves**

1 Member States may administer the national reserve at regional level.

In that case, Member States shall allocate, in full or in part, the amounts available at national level to the regional level in accordance with objective and non-discriminatory criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion.

2 The amounts allocated to each regional level may be considered available for allocation within the region concerned only, except in cases referred to in Article 41(4) of Regulation (EC) No 73/2009 or, according to the Member State's choice, in the case of application of Article 41(2) of that Regulation.