

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amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (repealed)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

Status: Point in time view as at 19/01/2009.

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- 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.

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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.

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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).

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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:

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- 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).

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CHAPTER 2

Regional and partial implementation

Section 1

Regional implementation

Article 46

Regional allocation of the national ceilings referred to in Article 40

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

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

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

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

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

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

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

Article 47

Regionalisation of the single payment scheme

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

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

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

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

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

Article 48

Revision of payment entitlements

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

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

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

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

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

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

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

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

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

Article 49

Grassland

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

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

Article 50

Conditions for the payment entitlements established under this Section

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

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

Section 2

Partial implementation

Article 51

General provisions

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

In the case of the beef and veal payments referred to in Article 53(2) of this Regulation, Member States may also decide, by 1 August 2010, not to grant these payments but to

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integrate them into the single payment scheme from 2011 in accordance with Article 66 of this Regulation.

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

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

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

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

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

Article 52

Sheepmeat and goatmeat payments

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

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

Article 53

Beef and veal payments

1 The Member States having applied Article 68(2)(a)(i) of Regulation (EC) No 1782/2003 and the new Member States having applied the single area payment scheme may retain all or part of the component of the national ceilings referred to in Article 40 of this

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Regulation corresponding to the suckler cow premium referred to in Annex VI to Regulation (EC) No 1782/2003. In these cases they shall make, on a yearly basis, an additional payment to farmers.

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

2 In 2010 and 2011, the Member States having applied Article 68(1), Article 68(2)(a) (ii) or Article 68(2)(b) of Regulation (EC) No 1782/2003 and the new Member States having applied the single area payment scheme may retain all or part of the national ceilings referred to in Article 40 of this Regulation corresponding to the slaughtering premium for calves, the slaughtering premium for bovine animals other than calves or the special male premium. In these cases, they shall make an additional payment to farmers. The additional payments shall be granted for the slaughtering of calves, for the slaughtering of bovine animals other than calves and for holding male bovine animals, under the conditions provided for in Section 11 of Chapter 1 of Title IV of this Regulation and within the ceiling determined in accordance with Article 51(2) of this Regulation.

Article 54

Transitional fruit and vegetables payments

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

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

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

2 Member States may retain:

- a until 31 December 2010, up to 100 % of the component of the national ceilings referred to in Article 40 of this Regulation corresponding to support for the production of fruit and vegetable crops other than annual crops listed in the third subparagraph of this paragraph which are supplied for processing and were eligible under the aid schemes set out in Regulations (EC) No 2201/96 and (EC) No 2202/96; and
- b from 1 January 2011 until 31 December 2012, up to 75 % of the component of the national ceilings referred to in Article 40 of this Regulation corresponding to support for the production of fruit and vegetable crops other than annual crops listed in the third subparagraph of this paragraph which are supplied for processing and were eligible under the aid schemes set out in Council Regulation (EC) No 2201/96 of 28 October 1996 on the common organization of the markets in processed fruit and vegetable products⁽⁶⁾ and Council Regulation (EC) No 2202/96 of 28 October 1996 introducing a Community aid scheme for producers of certain citrus fruits⁽⁷⁾.

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

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

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

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

CHAPTER 3

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

Article 55

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

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

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

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

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

Article 56

Application for support

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

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

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Article 57

National reserve

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

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

3 During the first year of application of the single payment scheme, the new Member States may use the national reserve for the purpose of allocating, in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortions, payment entitlements to farmers in specific sectors placed in a special situation as a result of the transition to the single payment scheme.

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

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

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

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

Article 58

Regional allocation of the national ceilings referred to in Article 40

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

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

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

Status: Point in time view as at 19/01/2009.

Changes to legislation: There are outstanding changes not yet made to Council Regulation (EC) No 73/2009 (repealed). Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

Article 59

Allocation of payment entitlements

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

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

3 By way of derogation from paragraph 2, the new Member States may decide that, except in the case of *force majeure* or exceptional circumstances, the number of payment entitlements per farmer shall be equal to the average annual number of all hectares which during one or more years of a representative period to be fixed by the Member State but no later than 2008 conferred a right to the single area payment.

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

Article 60

Farmers with no eligible hectares

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

Article 61

Grassland

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

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

Status: Point in time view as at 19/01/2009.

Changes to legislation: There are outstanding changes not yet made to Council Regulation (EC) No 73/2009 (repealed). Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

Article 62

Conditions for payment entitlements

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

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

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

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

CHAPTER 4

Integration of coupled support into the single payment scheme

Article 63

Integration of coupled support into the single payment scheme

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

2 By way of derogation from paragraph 1:

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

Member States may also differentiate the increase in value of the payment entitlements by taking into account the criteria referred to in Article 64(1) of this Regulation or on the

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basis of the type of agricultural activities exercised by farmers during one or more years in the period 2005 to 2008 and in accordance with objective and non-discriminatory criteria such as the agricultural potential or environmental criteria.

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

Article 64

Integration of coupled support excluded from the single payment scheme

1 The amounts referred to in Annex XII that were available for coupled support under the schemes referred to in points 1 and 2 of Annex XI shall be distributed by the Member States amongst the farmers in the sectors concerned in accordance with objective and non-discriminatory criteria, taking account, in particular, of support that those farmers received, directly or indirectly, under the relevant support schemes during one or more years in the period 2005 to 2008. In the case of the potato starch schemes referred to in points 1 and 2 of Annex XI, Member States may distribute the amounts available under those schemes taking into account the quantities of potato covered by cultivation contracts between the potato producer and the starch manufacturer within the limit of the quota allocated to that manufacturer, as referred to in Article 84a of Regulation (EC) No 1234/2007, in a given year.

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

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

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

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

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

Article 65

Integration of coupled support partially excluded from the single payment scheme

The amounts that were available for coupled support under the schemes referred to in point 3 of Annex XI shall be distributed by the Member States amongst the farmers in the sectors concerned in proportion to the support that those farmers received under the

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relevant support schemes during the relevant reference periods referred to in Regulation (EC) No 1782/2003.

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

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

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

Article 66

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

Where a Member State:

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

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

Article 67

Advanced integration of coupled support into the single payment scheme

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

Status: Point in time view as at 19/01/2009.

Changes to legislation: There are outstanding changes not yet made to Council Regulation (EC) No 73/2009 (repealed). Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

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⁽⁸⁾, 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⁽⁹⁾, Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products⁽¹⁰⁾ 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⁽¹¹⁾.

Status: Point in time view as at 19/01/2009.

Changes to legislation: There are outstanding changes not yet made to Council Regulation (EC) No 73/2009 (repealed). Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

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.

Status: Point in time view as at 19/01/2009.

Changes to legislation: There are outstanding changes not yet made to Council Regulation (EC) No 73/2009 (repealed). Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

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;

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- 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.

Status: Point in time view as at 19/01/2009.

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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⁽¹²⁾;
- 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.

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Changes to legislation: There are outstanding changes not yet made to Council Regulation (EC) No 73/2009 (repealed). Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

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).

Status: Point in time view as at 19/01/2009.

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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)

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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: Point in time view as at 19/01/2009.

Changes to legislation: There are outstanding changes not yet made to Council Regulation (EC) No 73/2009 (repealed). Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

- (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.
- (6) OJ L 297, 21.11.1996, p. 29.
- (7) OJ L 297, 21.11.1996, p. 49.
- (8) OJ L 93, 31.3.2006, p. 1.
- (9) OJ L 93, 31.3.2006, p. 12.
- (10) OJ L 189, 20.7.2007, p. 1.
- (11) OJ L 3, 5.1.2008, p. 1.
- (12) OJ L 224, 18.8.1990, p. 19.

Status:

Point in time view as at 19/01/2009.

Changes to legislation:

There are outstanding changes not yet made to Council Regulation (EC) No 73/2009 (repealed).
Any changes that have already been made to the legislation appear in the content and are
referenced with annotations.