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Subject: Proposal for a Regulation of the European Parliament and of the Council
establishing rules for direct payments to farmers under support schemes within the
framework of the common agricultural policy (*CAP Reform*)
- *Presidency paper on the Basic Payment Scheme*

With a view to the debate on the Basic Payment Scheme in Council ("Agriculture and Fisheries") at its session on 25-26 February 2013, delegations will find attached in Annex a Presidency paper.

Presidency Paper on the Basic Payment Scheme

Introduction

In order to address a number of important concerns raised by delegations on the operation of the basic payment scheme, the Special Committee on Agriculture considered a package of Presidency suggested amendments at its meeting on 18 February 2013 (doc. 6372/13).

In the light of the SCA discussion and the written contributions received thereafter, the Presidency has made a number of adjustments to this package. The purpose of the Presidency suggestions is set out below.

Presidency suggestions

1) Flexibility on the level of payments and on the total area coming into the basic payment scheme (Articles 21(2b), (2c) and (2d) and consequential amendment to Article 29)

In response to concerns that the draft Regulation could result in a significant increase in the number of eligible hectares in 2014 compared to the number of eligible hectares declared in 2009, the Presidency suggested amendments aim to allow Member States to limit the number of payment entitlements for new hectares coming into the system. This would avoid a disproportionate drop in the value of existing payment entitlements.

Moreover the definition of permanent grassland in Article 4(1)(h) could result in disproportionately high payment entitlements for permanent grassland in certain areas with difficult conditions due to altitude or other natural constraints. The Presidency suggested amendments aim to allow Member States to address this issue by applying a reduction coefficient.

To address concerns raised by a number of delegations at the SCA, a further amendment to Article 21(2) has been introduced by the Presidency to also give Member States the option to exclude land exclusively used for wine production.

A consequential amendment is necessary to Article 29(5) in respect of the greening payment.

2) Additional flexibility on internal convergence (Articles 22(5a) and 29(2))

The Presidency suggested amendments aim to provide Member States applying the Single Payment Scheme and Member States applying the Single Area Payment Scheme with additional flexibility by allowing them to reach partial rather than full convergence, while ensuring a minimum rate of convergence reflecting the mechanism for external convergence set out in the European Council conclusions on the Multi-annual Financial Framework. Member States using this option would also have the possibility to establish minimum and maximum limits to the value of payment entitlements in relation to their national or regional values. In the same vein the Presidency suggests allowing Member States to apply internal convergence to the greening payment by fixing this payment as a percentage of the farmer's individual payment rather than as a percentage of the national or regional flat-rate payment.

3) Value of payment entitlements and convergence – Article 22(2) and Article 22(3a)

To address concerns raised at the SCA about abrupt changes to payments models, the Presidency has introduced an amendment to Article 22(2) and 22(3a) reducing to 10% the amount to which the calculation of the unit value of entitlements may be limited in the first year of operation of the scheme. This amendment applies equally in respect of the Member States that currently apply SPS and SAPS.

4) Value of payment entitlements and convergence – Article 22(3) and 22 (3a)

According to the existing text Article 22(3) (convergence) only applies to those Member States that do not choose to retain their existing payment entitlements in accordance with Article 18(3). In the light of discussion at the SCA, the Presidency has introduced a further amendment aimed at extending the scope of Article 22(3) to include those Member States that have chosen to retain their existing payment entitlements.

In addition, the Presidency is proposing to remove the square brackets surrounding the text of Article 22(3a) to provide equivalent flexibility in respect of Member States currently applying SAPS.

5) Convergence in the case of special entitlements – Article 22(3)

In the light of the discussion at the SCA, the Presidency has introduced a further amendment to address the convergence possibilities for those farmers that hold special entitlements not linked to hectares. The aim is to avoid a disproportionate dilution of the value of these entitlements in the transition to full convergence.

6) Production and Convergence - Article 22(7)

The Presidency amendment provides that a Member State may take into account the production level on farms in a recent year (not later than 2011) when fixing the pace of convergence in order to speed up convergence in certain circumstances. This amendment has been introduced to address concerns expressed at the SCA regarding the pace of convergence in respect of farmers with little or no production.

7) Increase of the national reserve - Article 23(1)

The draft regulation allows Member States to fund the establishment of a national reserve by applying a linear reduction of maximum 3% to their basic payment ceilings. The Presidency suggested amendments aim to allow for an exceptional increase in the 3% upper limit in order to take account of ongoing land re-structuring in some Member States and to encourage uncultivated land back into agricultural production.

8) Operation of national reserve to avoid land abandonment – Article 23(5)

To accommodate concerns raised by delegations at the SCA, the Presidency has introduced a further suggested amendment to Article 23 (5) (a) to make explicit provision for the use of the national reserve to take account of ongoing land restructuring in certain Member States.

9) Unit value of entitlements allocated from national reserve – Article 23(6)

The Presidency has also included a further amendment to clarify that in all cases of internal convergence the value of entitlements allocated from the national reserve should be equal to the average unit value calculated annually at regional or national level. This amendment arises as a consequence of the amendments to Articles 22 and 23.

10) Voluntary redistributive payment (Articles 28a and 28b)

The Presidency suggested amendments aim to introduce a voluntary 'redistributive payment' which would allow Member States to grant a top-up on the basic payment for the first hectares of each farm and in so doing take account of the greater labour intensity on smaller farms and the economies of scale of larger farms.

Delegations should note that some of the dates in the revised text have yet to be adjusted to take account of the deferred commencement of the new regime.

Conclusion

The Presidency noted a substantial degree of support at the SCA for its suggested amendments.

With the further suggested adjustments included in the text set out in the Annex to this paper, the Presidency considers that delegations' concerns have been met to the greatest extent possible.

On this basis the Presidency invites the Council to endorse the text set out in the Annex to this paper.

PROVISIONS RELATING TO THE BASIC PAYMENT SCHEME

Note to delegations:

Presidency suggested amendments are marked in *bold and italics* and ~~strikethrough~~.

These compare to:

doc. 17383/1/12 REV 1: the Cyprus Presidency revised consolidated draft Regulation as amended by:

doc. 5225/1/13 REV 1: the Presidency suggested amendments on a horizontal mechanism to avoid unused funds and

doc. 5876/13: the Presidency suggested amendment aimed at preventing speculative transfers.

- (20) In order to ensure a better distribution of support amongst agricultural land in the Union, including in those Member States which applied the single area payment scheme established under Regulation (EC) No 73/2009, a new basic payment scheme should replace the single payment scheme established under Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers¹, and continued under Regulation (EC) No 73/2009, which combined previously existing support mechanisms into a single scheme of decoupled direct payments. Such a move should entail the expiry of payment entitlements obtained under those Regulations and the allocation of new ones, although still based on the number of eligible hectares at the disposal of farmers in the first year of implementation of the scheme. *However, in order to avoid a significant increase in the number of payment entitlements allocated in 2014 which would disproportionately dilute their value, Member States may, under certain conditions, allocate entitlements to the new land declared in 2014 on a proportional basis.*

¹ OJ L 270, 21.10.2003, p. 1. Regulation repealed and replaced by Regulation (EC) No 73/2009.

New recital:

Taking into account that the unitary support to farmers with smaller holdings has to be sufficient in order to achieve the objective of income support effectively, Member States should be allowed to redistribute direct support between farmers by granting them an extra payment for the first hectares on which they activate payment entitlements.

TITLE I
SCOPE AND DEFINITIONS

Article 1
Scope

This Regulation establishes:

- (a) common rules on payments granted directly to farmers under the support schemes listed in Annex I (hereinafter referred to as "direct payments");
- (b) specific rules concerning:
 - (i) a basic payment for farmers (hereinafter referred to as the "basic payment scheme");
 - (ia) *a voluntary redistributive payment (hereinafter referred to as the 'redistributive payment');***
 - (ii)-(viii) (...)

Article 6

National ceilings

1. For each Member State and each year, the national ceiling comprising the total value of all allocated entitlements, of the national reserve and of the ceilings fixed in accordance with Articles **28b**, 33, 35, 37 and 39 shall be as set out in Annex II.

2. (...)

CHAPTER 2
PROVISIONS APPLYING TO BULGARIA, CROATIA AND ROMANIA

Article 16

Gradual introduction of direct payments *in Bulgaria and Romania*

In Bulgaria and Romania, the national ceilings for payments referred to in Articles **28b**, 33, 35, 37, 39 and 51 shall in 2014 and 2015 be established on the basis of the amounts set out in point A of Annex V.

Article 17

Complementary national direct payments and direct payments *in Bulgaria and Romania*

1. In 2014 and 2015, Bulgaria and Romania may use national direct payments in order to complement payments granted under the basic payment scheme referred to in Chapter 1 of Title III and, in the case of Bulgaria, also to complement payments granted under the crop specific payment for cotton referred to in Chapter 2 of Title IV.
2. The total amount of complementary national direct payments to the basic payment scheme which may be granted in respect of 2014 and 2015 shall not exceed the amounts set out in point B of Annex V for each of those years.
- 3.-4. (...)

Article 17a

Complementary national direct payments for Croatia

1.-2. (...)

2a. [deleted]

3.-8. (...)

TITLE III
BASIC PAYMENT SCHEME AND RELATED PAYMENTS

CHAPTER 1
BASIC PAYMENT SCHEME

SECTION 1
SETTING UP OF THE BASIC PAYMENT SCHEME

Article 18

Payment entitlements

1. Support under the basic payment scheme shall be available to farmers if they obtain payment entitlements under this Regulation through allocation pursuant to Article 17b(4), first allocation pursuant to Article 21, from the national reserve pursuant to Article 23 or by transfer pursuant to Article 27.

Support under the basic payment scheme shall also be available to farmers who dispose of payment entitlements and whose holding is situated in a Member State which has decided, in accordance with paragraph 3, to keep its existing payment entitlements.

2. Payment entitlements obtained under the single payment scheme in accordance with Regulation (EC) No 1782/2003 and with Regulation (EC) No 73/2009 shall expire on 31 December 2013.
3. By way of derogation from paragraph 2, Member States which, by 31 December 2013, operate the single payment scheme on a regional or regional hybrid basis may, by 1 August 2013, decide to keep their existing payment entitlements.

Article 19

Basic payment scheme ceiling

1. The Commission shall, by means of implementing acts, set, for each Member State, the annual national ceiling for the basic payment scheme by deducting from the annual national ceiling established in Annex II the annual amounts to be set in accordance with Articles **28b**, 33, 35, 37 and 39. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 56(2).

The amount calculated in accordance with the first subparagraph may be increased by a percentage of maximum 3% of the annual ceiling as set out in annex II after deduction of the amount resulting from the application of the percentage set in the first paragraph of Article 33 for the relevant year. When a Member State makes use of this option, such increase shall be taken into account by the Commission when setting the annual national ceiling for the basic payment scheme pursuant to the first subparagraph. For this purpose, Member States shall notify the Commission by 1 August 2013 of the annual percentages by which the amount calculated pursuant to the first subparagraph is to be increased.

Member States may review their decision referred to in the second subparagraph on an annual basis and notify the Commission of any such review by 1 August *of the preceding year*.

2. For each Member State and each year, the total value of all payment entitlements and the national reserve shall equal the respective national ceiling adopted by the Commission pursuant to paragraph 1.

3. If the ceiling adopted by the Commission pursuant to paragraph 1 is different from that of the previous year, a Member State shall linearly reduce or increase the value of all payment entitlements in order to ensure compliance with paragraph 2.

The first subparagraph shall not apply where such a modification is due to the application of Article 17b(2).

Article 20

Regional allocation of the national ceilings

1. Member States may decide, before 1 August 2013, to apply the basic payment scheme at regional level. In that case they shall define the regions in accordance with objective and non-discriminatory criteria such as their agronomic and economic characteristics and their regional agricultural potential, or their institutional or administrative structure.
2. Member States shall divide the national ceiling referred to in Article 19(1) between the regions in accordance with objective and non-discriminatory criteria.
By way of derogation from the first subparagraph of this paragraph, Member States not applying Article 23(2) shall divide the national ceiling referred to in Article 19(1), after application of the linear reduction provided for in Article 23(1), between the regions in accordance with objective and non-discriminatory criteria.
3. Member States may decide that the regional ceilings shall be subject to annual progressive modifications in accordance with pre-established annual steps and objective and non-discriminatory criteria such as the agricultural potential or environmental criteria.
4. To the extent necessary to respect the applicable regional ceilings determined in accordance with paragraph 2 or 3, Member States shall make a linear reduction or increase in the value of the payment entitlements in each of the relevant regions.
- 4a. Any Member State applying paragraph 1 may, by 31 July 2013, decide to cease the application of the basic payment scheme at regional level from a date to be set by the Member State.
5. Member States shall, where relevant, notify the Commission by 1 August 2013 of the decision referred to in paragraph 1 and of the measures taken for the application of paragraphs 2, 3 and 4a.

Article 21

First allocation of payment entitlements

1. Without prejudice to Article 18(3), payment entitlements shall be allocated to farmers if they apply for allocation of payment entitlements under the basic payment scheme by the date in 2014 to be set in accordance with point (d) of Article 78 of Regulation (EU) No... [HRZ] except in case of *force majeure* or exceptional circumstances. The number of payment entitlements shall be equal to the number of eligible hectares which they declare in accordance with Article 26(1) of this Regulation.

2. Member States may, by 31 July 2013 decide that, in the first year of application of the basic payment scheme, payment entitlements shall be allocated only to farmers who are entitled to be granted direct payments in accordance with Article 9 and who fulfill at least one of the following conditions:
 - (a) in 2010 or 2011, or in the case of Croatia in 2013, received direct payments or complementary national direct payments, or, in the case of Cyprus, state aid, both in accordance with Regulation (EC) No 73/2009.

 - (b) did not receive in 2010 or 2011 any support referred to in point (a) and:
 - (i) under the single payment scheme, produced fruits, vegetables, ware potatoes and/or cultivate vineyard; or
 - (ii) under the single area payment scheme, had agricultural land that was not in good agricultural conditions on 30 June 2003 as provided for in Article 124(1) of Regulation (EC) No 73/2009;

 - (c) in 2012 or 2013 were allocated payment entitlements under the single payment scheme pursuant to Article 63 or point B or C of Annex IX of Regulation (EC) No 73/2009;

(d) in 2012 or 2013 were allocated payment entitlements from the national reserve under the single payment scheme pursuant to Article 41 of Regulation (EC) No 73/2009.

2a. Except in the case of *force majeure* or exceptional circumstances, the number of payment entitlements allocated per farmer shall be equal to the number of eligible hectares, which the farmer declares in accordance with Article 26(1) for 2014.

2b. *By way of derogation from paragraph 2a, where the total number of hectares declared in a Member State in accordance with Article 26(1) for 2014 entails an increase of more than 45% of the total number of eligible hectares declared in 2009 in accordance with Article 35 of Regulation (EC) No 73/2009, Member States may limit the number of payment entitlements to be allocated in 2014 to 145% of the total number of hectares declared in 2009 in accordance with Article 35 of Regulation (EC) No 73/2009.*

When using this option, Member States shall allocate a reduced number of payment entitlements to farmers that shall be calculated by applying a proportional reduction to the additional number of eligible hectares declared by each farmer in 2014 compared to the number of eligible hectares in accordance with Article 34(2) of Regulation (EC) No 73/2009 he indicated in his aid application in 2011 in accordance with Article 19 of Regulation (EC) No 73/2009.

2c. *By way of derogation from paragraph 2a, a Member State may decide to apply, for the purposes of establishing a number of payment entitlements a farmer shall receive, a reduction coefficient if eligible hectares declared by a farmer in accordance with Article 26(1) of this Regulation consist of permanent grassland located in areas with difficult climate conditions, especially due to the altitude and other natural constraints like poor soil quality, steepness and water supply.*

- 2d. *By way of derogation from paragraph 2a, a Member State may decide that the number of payment entitlements shall be equal to the number of eligible hectares which the farmer declares in accordance with Article 26(1) and which were not hectares of vineyards in the calendar years 2011 or 2012.***
3. In case of sale or lease of their holding or part of it, natural or legal persons complying with paragraph 2 may, by contract signed before 15 May 2014, transfer the right to receive payment entitlements as referred to in paragraph 1 to one or more farmers provided that the latter comply with the conditions laid down in Article 9.
4. The Commission shall, by means of implementing acts, adopt rules on applications for allocation of payment entitlements submitted in the year of allocation of payment entitlements where those payment entitlements may not be definitively established yet and where that allocation is affected by specific circumstances. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 56(2).
5. A Member State may decide to fix a minimum size per holding, expressed in eligible hectares for which the establishment of payment entitlements may be requested. That minimum size shall not be higher than the thresholds set out in point (b) of the first subparagraph of Article 10(1) in conjunction with the second subparagraph thereof.

Article 22

Value of payment entitlements and convergence

1. For each relevant year, the unit value of payment entitlements shall be calculated by dividing the national or regional ceiling established in accordance with Articles 19 or 20, after application of the linear reduction provided for in Article 23(1) or, where applicable, in Article 23(2), by the number of payment entitlements allocated or existing in 2014 at national or regional level, including payment entitlements allocated from the national or regional reserve in accordance with Article 23. The number of payment entitlements shall be expressed in hectares.
2. Member States which applied the single payment scheme as provided for in Regulation (EC) No 73/2009, may limit the calculation of the unit value of payment entitlements provided for in paragraph 1 to an amount corresponding to no less than [410 %] of the national or regional ceiling established in accordance with Articles 19 or 20, after application of the linear reduction provided for in Article 23(1) or, where applicable, in Article 23(2).
3. Member States ~~which have not decided, in accordance with Article 18(3), to keep their existing payment entitlements and which~~ *make* use of the possibility provided for in paragraph 2 of this Article shall use the part of the ceiling which remains after the application of that paragraph to increase the value of payment entitlements in cases where the total value of payment entitlements held by a farmer under the basic payment scheme calculated in accordance with paragraph 2 of this Article is lower than the total ~~amount of direct support granted before the reductions and exclusions provided for in Articles 21 and 23 of Regulation (EC) No 73/2009 to~~ *value of payment entitlements, including special entitlements, which* the farmer *held on the date of submission of his application for 2013* under the single payment scheme ~~for the calendar year 2013~~ in accordance with Regulation (EC) No 73/2009.

To this end, the national or regional unit value of each of the payment entitlements of the farmer concerned shall be increased by a share of the difference between the total value of the payment entitlements under the basic payment scheme calculated in accordance with paragraph 2 of this Article and the total ~~amount of direct support which was granted before the reductions and exclusions provided for in Articles 21 and 23 of Regulation (EC) No 73/2009~~ *to value of payment entitlements, including special entitlements, which the farmer held on the date of submission of his application for 2013* under the single payment scheme ~~for the calendar year 2013~~ in accordance with Regulation (EC) No 73/2009.

Member States applying paragraph 3 may ring-fence the total value of the special entitlements in 2013 on behalf of the farmers who held special entitlements on the date of submission of their single payment application for 2013.

For the calculation of the increase, a Member State may also take into account the support granted in calendar year 2013 pursuant to Article 52, Article 53(1), and Article 68(1)(b) of Regulation (EC) No 73/2009 provided that that Member State has decided not to apply the voluntary coupled support pursuant to Title IV of this Regulation to the relevant sectors.

- 3a. Member States which applied the single area payment scheme as provided for in Regulation (EC) No 73/2009, may limit the calculation of the unit value of payment entitlements provided for in paragraph 1 to an amount corresponding to no less than [410 %] of the national or regional ceiling established in accordance with Articles 19 or 20, after application of the linear reduction provided for in Article 23(1) or, where applicable, in Article 23(2).

Those Member States may increase the national or regional value of payment entitlements calculated in accordance with paragraph 1 in cases where the total value of payment entitlements held by a farmer under the basic payment scheme is lower than the total value of aid, including state aid, received by that farmer in any one of the calendar years in the period between 2009 and 2013, under Regulation (EC) No 73/2009.

To this end, the national or regional value of each of the payment entitlements of the farmer concerned shall be increased by a share of the difference between the total value of the payment entitlements under the basic payment scheme and the total value of aid, including state aid, received by that farmer in the year chosen by the Member State under the second subparagraph under, Regulation (EC) No 73/2009.

For the calculation of the increase, a Member State may take into account all support granted to a farmer in accordance with Regulation (EC) No 73/2009 in the year chosen by the Member State under the second subparagraph, other than payments under the single area payment scheme provided that that Member State has decided not to apply the voluntary coupled support pursuant to Title IV of this Regulation to the relevant sectors.

4. For the purposes of paragraph 3, a Member State may, on the basis of objective criteria, provide that, in cases of sale or grant or expiry of all or part of a lease of agricultural areas after the date fixed pursuant to Article 35 of Regulation (EC) No 73/2009 and before the date fixed pursuant to Article 26 of this Regulation, the increase, or part of the increase, in the value of payment entitlements that would be allocated to the farmer concerned shall revert to the national reserve where the increase would lead to a windfall profit for the farmer concerned.

Those objective criteria shall be established in such a way as to ensure equal treatment between farmers and to avoid market and competition distortions and shall include, at least, the following:

- (a) a minimum duration for the lease;
- (b) the proportion of the payment received which shall revert to the national reserve.

4a. Member States which, in accordance with Article 18(3) decide to keep their existing payment entitlements may decide to calculate the value of payment entitlements held by a farmer either as a uniform value per payment entitlement or by adjusting the value of the existing payment entitlements.

5. As of claim year [2019] at the latest, all payment entitlements in a Member State or, in case of application of Article 20, in a region, shall have a uniform unit value.

5a. *By way of derogation from paragraph 5, Member States may decide that payment entitlements whose unit value in 2014 is lower than 90 % of the national or regional unit value in 2019, shall have, for claim year 2019 at the latest, their unit value increased at least by one third of the difference between their unit value in 2014 and 90 % of the national or regional unit value in 2019.*

Additionally, Member States may provide that no payment entitlement shall have a unit value higher and/or lower than fixed percentages of the national or regional unit value, for claim year 2019 at the latest.

For the purpose of the first subparagraph:

- a) *the unit value of a payment entitlement in 2014 shall be calculated by dividing a figure corresponding to a fixed percentage of the payment the farmer received under the single payment scheme in accordance with Regulation (EC) No 73/2009 in 2013, before reductions and exclusions provided for in Chapter 4 of Title II of that Regulation, by the number of eligible hectares he declared in 2014 in accordance with Article 26 of this Regulation. That fixed percentage shall be calculated by dividing the ceiling of the basic payment scheme to be set in accordance with Article 19(1) or Article 20(2) of this Regulation for the year 2014 by the amount of the payments made under the single payment scheme in 2013 in the Member State or region concerned, before reductions and exclusions.*
- b) *the national or regional unit value in 2019 shall be calculated by dividing a figure corresponding to a fixed percentage of the national ceiling as set out in Annex II, or of the regional ceiling, for calendar year 2019, by the number of eligible hectares declared in 2014 in accordance with Article 26. Such fixed percentage shall be calculated by dividing the ceiling of the basic payment scheme to be set in accordance with Article 19(1) or Article 20(2) of this Regulation for the year 2014 by the national or regional ceiling for 2014.*

The regional ceilings referred to in this subparagraph shall be calculated by applying a fixed percentage to the national ceiling as set out in Annex II for the year 2019. That fixed percentage shall be calculated by dividing the respective regional ceilings, as established in accordance with Article 20(2), by the ceiling to be determined in accordance with Article 19(1) for the year 2014, after application of the linear reduction provided for in Article 23(1) in case of application of the second subparagraph of Article 20(2).

In order to finance the increases in the value of payment entitlements referred to in this paragraph, the payment entitlements having a unit value in 2014 higher than the national or regional average in 2019, shall have the difference between their unit value and the national or regional unit value in 2019 decreased proportionally.

Member States shall notify the Commission by 1 August 2013 of any decision to derogate from the uniform unit value set out in paragraph 5 and the modalities for applying a differentiated unit value.

6. When applying paragraphs 2 and 3, Member States, acting in compliance with Union law, in particular with the principles of proportionality and non-discrimination, shall move towards approximating the value of the payment entitlements at national or regional level. To this end, Member States shall fix the steps to be taken and notify them to the Commission by 1 August 2013. Those steps shall include annual progressive modifications of the payment entitlements in accordance with objective and non-discriminatory criteria.

7. *When applying paragraphs 4a, [5a] and 6, Member States may take into account the production on farm level in a reference year no later than [2011], when fixing the steps and the pace adjusting the payment entitlements for individual farmers.*

SECTION 2
NATIONAL RESERVE

Article 23

Establishment and use of the national reserve

1. Each Member State shall establish a national reserve. For that purpose, in the first year of application of the basic payment scheme, Member States shall proceed to a linear percentage reduction of the basic payment scheme ceiling at national level in order to constitute the national reserve. This reduction shall not be higher than 3 % except, if required, to cover the allocation needs laid down in points (aa), **and/or (a)** of paragraph 5 for the year 2014.
2. By way of derogation from paragraph 1 Member States applying Article 20 may establish regional reserves. For that purpose, in the first year of application of the basic payment scheme, Member States shall proceed to a linear percentage reduction of the basic payment scheme ceiling at regional level in accordance with Article 20(2) in order to constitute the regional reserve. This reduction shall not be higher than 3%.
3. Member States shall allocate payment entitlements from the national or regional reserve in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortions.
4. [deleted]
5. Member States may use the national or regional reserve to:
 - (aa) allocate payment entitlements to young farmers and/or farmers who commence their agricultural activity;

- (a) allocate payment entitlements to farmers in order to prevent land from being abandoned, *including in areas subject to restructuring and/or development programmes relating to a form of public intervention*, and/or to compensate farmers for specific disadvantages and/or force majeure or exceptional circumstances;
- (b) linearly increase on a permanent basis the value of payment entitlements under the basic payment scheme at national or regional level, provided that sufficient amounts remain available for allocations under this Article.
- (bb) cover the yearly needs according to Article 37(2) and Article 51(1).

Member States shall decide on the priorities between the different uses of the national reserve.

- 6. ~~Where~~ *When applying* points (aa) and (a) of paragraph 5, *Member States shall establish* ~~are applied~~ the value of payment entitlements allocated to farmers *on the basis of the national or regional average shall correspond, for each relevant year, to the unit value of payment entitlements in the year of allocation set out in Article 22(1) or, where applicable, Article 22(2) or Article 22(4a).*
- 7. Where a farmer is entitled to receive payment entitlements or increase the value of the existing ones by virtue of a definitive court 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. However, this date shall not be later than the latest date for lodging an application under the basic payment scheme following the date of the court ruling or the administrative act, taking into account the application of Articles 25 and 26.

Where the national or regional reserve is not sufficient to cover the cases referred to in first subparagraph, Member States shall proceed to a linear reduction of the payment entitlements.

Article 24

Replenishment of the national reserve

1. The national or regional reserve shall be replenished by amounts resulting from:
 - (a) payment entitlements not giving right to payments during two consecutive years due to the application of:
 - (i) Article 9;
 - (ii) Article 10(1).
 - (b) a number of payment entitlements equivalent to the total number of payment entitlements which have not been activated by a farmer in accordance with Article 25 for a period of two consecutive years, except in the case of force majeure or exceptional circumstances. For the purpose of establishing the entitlements held by a farmer that shall be reverted to the national or regional reserve, the entitlements having the lowest value shall be given priority;
 - (c) payment entitlements voluntarily reverted by farmers;
 - (d) the application of Article 22(4).
2. The Commission shall, by means of implementing acts, adopt necessary measures regarding the reversion of non-activated payment entitlements to the national or regional reserve. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 56(2).

SECTION 3
IMPLEMENTATION OF THE BASIC PAYMENT SCHEME

Article 25

Activation of payment entitlements

1. Support under the basic payment scheme shall be granted to farmers upon activation, by means of declaration in accordance with Article 26(1), of a payment entitlement per eligible hectare in the Member State where it has been allocated. Activated payment entitlements shall give a right to the annual payment of the amounts fixed therein, without prejudice to the application of financial discipline, progressive reduction and capping, linear reductions in accordance with Article 7, Article 37(2) and Article 51(1), and any reductions and exclusions imposed pursuant to Regulation (EU) No [...] [HZR].

2. For the purposes of this Title, 'eligible hectare' shall mean:
 - (a) any agricultural area of the holding that is used for an agricultural activity or, where the area is used as well for non-agricultural activities, predominantly used for agricultural activities including areas that were not in good agricultural condition on 30 June 2003 in Member States acceding to the Union on 1 May 2004 that opted upon accession to apply the single area payment scheme; or
 - (b) any area which gave a right to payments in 2008 under the single payment scheme or the single area payment scheme laid down, respectively, in Title III and IV a of Regulation (EC) No 1782/2003, and which:
 - (i) no longer complies with the definition of 'eligible hectare' under point (a) as a result of the implementation of Directive 92/43/EEC, 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 policy² and Directive 2009/147/EC; or

² OJ L 327, 22.12.2000, p. 1.

- (ii) for the duration of the relevant commitment by the individual farmer, is afforested pursuant to Article 31 of Regulation (EC) No 1257/1999 or to Article 43 of Regulation (EC) No 1698/2005 or to Article 23 of Regulation (EU) No [...] [RDR] or under a national scheme the conditions of which comply with Article 43(1), (2) and (3) of Regulation (EC) No 1698/2005 and Article 23 of Regulation (EU) No [...] [RDR]; 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 and Article 29 of Regulation (EU) No [...] [RDR].

For the purposes of point (a) of the first subparagraph:

- i) where an agricultural area of a holding is also used for non-agricultural activities, that area shall be considered to be used predominantly for agricultural activities provided that those agricultural activities can be exercised without being significantly hampered by the intensity, nature, duration and timing of the non-agricultural activities.
- ii) Member States may draw up a list with areas which are predominantly used for non agricultural activities.

Member States shall establish criteria for the implementation of the first and second subparagraphs on their territory.

In order to be eligible, areas must comply with the definition of eligible hectare throughout the calendar year, except in the case of *force majeure* or exceptional circumstances.

For the purposes of determining ‘eligible hectare’, Member States deciding to include hectares of permanent grassland where grasses and other herbaceous forage are traditionally not predominant in grazing areas, as referred to in Article 4(1)(h), may apply a reduction coefficient to convert those hectares into ‘eligible hectares’.

3. Areas used for the production of hemp shall only be eligible hectares if the varieties used have a tetrahydrocannabinol content not exceeding 0,2 %.

Article 26

Declaration of eligible hectares

1. For the purposes of the activation of payment entitlements provided for in Article 25 (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, those 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 as referred to in Article 73(1) of Regulation (EU) No [...] [HZR].

2. Member States may, in duly justified circumstances, authorise the farmer to modify his declaration provided that he maintains at least the number of hectares corresponding to his payment entitlements and respects the conditions for granting the basic payment for the area concerned.

Article 27

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.
2. Payment entitlements may be transferred only within the same region or between regions of a Member State where the value of payment entitlements per hectare resulting from the application of either Article 22(1) or Article 22(2) are the same.
3. The Commission shall, by means of implementing acts, lay down the modalities of the notification of transfer of payment entitlements which farmers have to make to the national authorities and the deadlines within which such notification is to take place. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 56(2).

Article 28

Delegated powers

In order to ensure legal certainty and to clarify the specific situations that may arise in the application of the basic payment scheme, the Commission shall be empowered to adopt delegated acts in accordance with Article 55 concerning:

- (a) rules on eligibility and the access in respect of the basic payment scheme of farmers, in case of inheritance and anticipated inheritance, inheritance under a lease, change of legal status or denomination and in the case of merger or scission of the holding;
- (b) rules on the calculation of the value and number or on the increase or reduction in the value of payment entitlements in relation to the allocation of payment entitlements under any provision of this Title, including rules:
 - (i) on the possibility of a provisional value and number or of a provisional increase of payment entitlements allocated on the basis of the application from the farmer,
 - (ii) on the conditions for establishing the provisional and definitive value and number of the payment entitlements,
 - (iii) on the cases where a sale or lease contract could affect the allocation of payment entitlements.
- (c) rules on the establishment and calculation of the value and number of payment entitlements received from the national reserve;
- (d) rules on the modification of the unit value of payment entitlements in the case of fractions of payment entitlements;
- (e) criteria to be applied by Member States where they decide to allocate payment entitlements to farmers who did not activate any entitlement in 2010 or 2011 or did not claim support under the single area payment scheme in 2010 or 2011 as provided for in Article 21(2) and to allocate payment entitlements in case of application of the contract clause referred to in Article 21(3);

- (f) criteria for the allocation of payment entitlements pursuant to in Article 23(4) and (5);
- (g) rules on the content of the declaration and the requirements for the activation of payment entitlements;
- (h) rules making the granting of payments conditional upon the use of certified seeds of certain hemp varieties and laying down the procedure for the determination of hemp varieties and the verification of their tetrahydrocannabinol content referred to in Article 25(3);
- (i) criteria for setting the reduction coefficient referred to in fifth subparagraph of Article 25(2).

CHAPTER 1a

REDISTRIBUTIVE PAYMENT

Article 28a

General rules

- 1. Member States may decide by 1 August of any given year to grant as from the following year an annual payment to farmers who are entitled to a payment under the basic payment scheme referred to in Chapter 1.**

Member States shall notify the Commission of their decision by the date referred to in the first subparagraph.

- 2. Member States which have decided to apply the basic payment scheme at regional level in accordance with Article 20 may apply the payment referred to in this Chapter at regional level.**
- 3. Without prejudice to the application of financial discipline, progressive reduction and capping, linear reductions as referred in Article 7, and any reductions and exclusions imposed pursuant to Article 65 of Regulation (EU) No [...] [HZR], the payment referred to in paragraph 1 of this Article shall be granted annually upon activation of payment entitlements by the farmer.**
- 4. The payment referred to in paragraph 1 shall be calculated each year by Member States by multiplying a figure to be set by the Member State which shall not be higher than [65] % of the national or regional average payment per hectare by the number of payment entitlements that the farmer has activated in accordance with Article 26(1) corresponding to a number of hectares to be set by the Member State which shall not be bigger than the average size of agricultural holdings as set out in Annex VI.**

Provided the maximum limits set out in the first subparagraph are respected, Member States may, at national level, establish a graduation within the number of hectares set in accordance with that subparagraph, which shall apply identically to all farmers.

The national average referred to in the first subparagraph shall be established by the Member States on the basis of the national ceiling set in Annex II for calendar year 2019 and the number of eligible hectares declared in accordance with Article 26 in 2014.

The regional average referred to in the first subparagraph shall be established by the Member States by using a share of the national ceiling set in Annex II for calendar year 2019 and the number of eligible hectares declared in the concerned region in accordance with Article 26 in 2014. For each region, this share shall be calculated by dividing the respective ceiling as established in accordance with Article 20(2) by the ceiling determined according to Article 19(1).

5. *Member States shall ensure that no payment is made to farmers for whom it is established that, as from 19 October 2011, they divide their holding with the sole purpose of benefiting from the redistributive payment. This shall also apply to farmers whose holdings result from that division.*

Article 28b
Financial provisions

1. *In order to finance the payment referred to in this Chapter, Member States may use up to [30 %] of the annual national ceiling set out in Annex II.*

2. *On the basis of the percentage of the national ceiling to be used by Member States pursuant to paragraph 1, the Commission shall, by means of implementing acts, fix the corresponding ceilings for that payment on a yearly basis. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 56(2).*

CHAPTER 2
PAYMENT FOR AGRICULTURAL PRACTICES BENEFICIAL FOR
THE CLIMATE AND THE ENVIRONMENT

Article 29

General rules

1.-1c. (...)

2. Without prejudice to paragraphs 3 and 4 and to the application of financial discipline, linear reductions in accordance with Article 7, and any reductions and penalties imposed pursuant to Regulation (EU) No [...] [HZR], Member States shall grant the payment referred to in this Chapter to farmers observing those of the practices referred to in paragraph 1 that are relevant for them, and in function of their compliance with Articles 30, 31 and 32.

This payment shall take the form of an annual payment per eligible hectare declared in accordance with Article 26(1), the amount of which shall be calculated annually by dividing the amount resulting from the application of Article 33(1) by the total number of eligible hectares declared in the Member State concerned. It shall be without prejudice to the calculation of costs incurred and income foregone for the equivalent practices referred to in paragraph 1b(a) .

By way of derogation from the second subparagraph, Member States deciding to apply paragraph 2 and/or paragraph 5a of Article 22 may decide to grant the payment referred to in paragraph 1 of this Article as a percentage of the total value of the entitlements that the farmer has activated in accordance with Article 25 for each relevant year. For each year and each Member State, this percentage shall be calculated by dividing the amount resulting from the application of Article 33 by the total value of all payment entitlements activated in accordance with Article 25 in that Member State or region.

3-4 (...)

5. *In the first year of the application of the Basic Payment Scheme, this payment shall take the form of an annual payment per eligible hectare declared in accordance with Article 26(1) and, if applicable, for which payment entitlements are allocated in accordance with subparagraphs [xxx, xxx and xxx] of Article 21(2), the amount of which shall be calculated annually by dividing the amount resulting from the application of Article 33(1) by the total number of eligible hectares declared in the Member State concerned according to Article 26(1) and, if applicable, for which payment entitlements are allocated in accordance with Article 21(2).*

6.. (...)

Article 59

Entry into force and application

(...)

However, Articles 14, 18(2), 20(5), 22(6), **28a(1)**, 35(1), 37(1) and 39 shall apply from the date of entry into force of this Regulation.

(...)

ANNEX I

List of support schemes

Sector	Legal base	Notes
Basic payment	Title III, Chapter 1 of this Regulation	Decoupled payment
<i>Redistributive payment</i>	<i>Title III, Chapter 1a of this Regulation</i>	<i>Decoupled payment</i>
Payment for farmers following agricultural practices beneficial for the climate and the environment	Title III, Chapter 2 of this Regulation	Decoupled payment
Payment for farmers in areas with specific natural constraints	Title III, Chapter 3 of this Regulation	Decoupled payment
Payment for young farmers	Title III, Chapter 4 of this Regulation	Decoupled payment
Voluntary coupled support	Title IV, Chapter 1 of this Regulation	
Cotton	Title IV, Chapter 2 of this Regulation	Area payment
Payment for small farmers	Title V of this Regulation	Decoupled payment
Posei	Title III of Regulation (EC) No 247/2006	Direct payments under measures established in the programmes
Aegean islands	Chapter III of Regulation (EC) No 1405/2006	Direct payments under measures established in the programmes