

L.N. 294 of 2007

**AGRICULTURE AND FISHERIES INDUSTRIES
 (FINANCIAL ASSISTANCE) ACT,
 (CAP. 146)**

Paying Agency (Amendment) Regulations, 2007

IN exercise of the powers conferred by article 7 of Agricultural and Fishing Industries (Financial Assistance) Act, the Minister for Rural Affairs and the Environment, with the concurrence of the Prime Minister and Minister of Finance, has made the following regulations:

1. The title of these regulations is the Paying Agency (Amendment) Regulations, 2007 and they shall be read and construed as one with Paying Agency Regulations, 2004, hereinafter referred to as “the principal regulations”. Title.
L.N. 126 of 2004.

2. Regulation 2 of the principal regulations shall be amended as follows: Amends regulation
2 of the principal
regulation.

(a) for the definition “certifying body” there shall be substituted the following:-

“ “certifying body” means such units within the Internal Audit and Investigations Directorate having the function to carry out accreditation and certification;”;

(b) for the definition “competent authority” there shall be substituted the following:-

“ “the competent authority” means the section in charge of European Union Affairs within the Ministry responsible for agricultural affairs and fisheries;”;

(c) the definition “Commission Regulation 1663/95” shall be deleted; and

(d) for the definition “ “Fund” or “EAGGF” ” there shall be substituted the following:-

““EAFRD” means the European Agricultural Fund for Rural Development;

“EAGF” means the European Agricultural Guarantee Fund;”.

Amends regulation 3 of the principal regulations.

3. Regulation 3 of the principal regulations shall be amended as follows:

(a) for sub-regulation (3) thereof, there shall be substituted the following:

“(3) The competent authority shall dispose of an organisational structure allowing it to execute the following main functions in respect of EAGF and EAFRD expenditure:

(a) the authorisation and control of payments to establish that the amount to be paid to a claimant is in conformity with Community rules, which shall include, in particular, the administrative and on-the-spot controls;

(b) the execution of payments to pay the authorised amount to the claimant, or his assignee, or, in the case of rural development, the Community co-financing part;

(c) accounting for payment to record all payments in the agency’s separate accounts for EAGF and EAFRD expenditure, in the form of an information system, and the preparation of periodic summaries of expenditure, including the monthly, quarterly (in respect of EAFRD) and annual declarations to the Commission. The accounts shall also record the assets financed by both Funds, in particular concerning intervention stocks, uncleared advances, securities and debtors.”; and

(b) for sub-regulation (4) thereof, there shall be substituted the following:

“(4) (a) The internal control activities shall cover at least the following areas:

(i) the monitoring of the technical services and delegated bodies responsible for carrying out the controls and other functions to ensure a proper implementation of regulations, guidelines and procedures;

(ii) the initiation of system changes in order to improve control systems in general;

(iii) reviewing claims and requests submitted to the agency as well as other information providing suspicion of irregularities.

(b) The agency shall adopt in this respect the following procedures:

(i) the internal audit service shall be independent of the agency's other departments and shall report to the agency's director;

(ii) the internal audit service shall verify that procedures adopted by the agency are adequate to ensure that compliance with Community rules is verified and that the accounts are accurate, complete and timely. Verifications may be limited to selected measures and to samples of transactions provided that an audit plan ensures that all significant areas, including the departments responsible for authorisation, are covered over a period not exceeding five years;

(iii) the service's work shall be performed in accordance with internationally accepted standards, shall be recorded in working papers and shall result in reports and recommendations addressed to the agency's top management."; and

(c) in regulation (5) thereof, for the word "Manager" wherever it occurs, there shall be substituted the word "Head".

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| <p>4. Regulation 4 of the principal regulations shall be deleted.</p> | <p>Deletes regulation 4 of the principal regulations.</p> |
| <p>5. Sub-regulation (2) of regulation 5 of the principal regulations shall be deleted and sub-regulation (1) thereof shall be renumbered as the whole regulation.</p> | <p>Amends regulation 5 of the principal regulations.</p> |
| <p>6. Regulation 6 the principal regulations shall be deleted.</p> | <p>Deletes regulation 6 of the principal regulations.</p> |
| <p>7. For regulation 7 of the principal regulations, there shall be substituted the following:</p> | <p>Amends regulation 7 of the principal regulations.</p> |

“7. The agency shall adopt the following procedures:

(a) the agency shall lay down detailed procedures for the receipt, recording and processing of claims, including a description of all documents to be used;

(b) each official responsible for authorisation shall have at his disposal a detailed checklist of the verifications he is required to undertake, and shall include in the supporting documents of the claim his attestation that those checks have been performed. That attestation may be made by electronic means. There shall be evidence of review of the work by a senior staff member;

(c) a claim shall be authorised for payment only after sufficient checks have been made to verify that it complies with Community rules. Those checks shall include those required by the Regulation governing the specific measure under which aid is claimed, and those required pursuant to Article 9 of Regulation (EC) No 1290/2005 to prevent and detect fraud and irregularity with particular regard to the risks incurred. For the EAFRD there shall in addition be procedures for verifying that the criteria for the granting of aid have been respected and that all applicable Community rules have been complied with;

(d) the management of the agency shall, at an appropriate level, be informed on a regular and timely basis of the results of controls carried out, so that the sufficiency of those controls may always be taken into account before a claim is settled;

(e) the work performed shall be described in detail in a report accompanying each claim, batch of claims or, when appropriate, in a report covering one marketing year. The report shall be accompanied by an attestation of the eligibility of the approved claims and of the nature, scope and limits of the work done. For the EAFRD there shall in addition be an assurance that the criteria for the granting of aid have been respected and that all applicable Community rules have been complied with. If any physical or administrative checks are not exhaustive, but performed on a sample of claims, the claims selected shall be identified, the sampling method described, the results of all inspections and the measures taken in respect of discrepancies and irregularities reported upon. The supporting documents shall be sufficient to provide

assurance that all the required checks on the eligibility of the authorised claims have been performed;

(f) where documents (in paper or electronic form) relating to the claims authorised and controls effected are retained by other bodies, both those bodies and the agency shall set up procedures to ensure that the location of all such documents that are relevant to specific payments made by the agency is recorded.”.

8. For regulation 8 of the principal regulations there shall be substituted the following:

Substitutes
regulation 8 of the
principal
regulations.

“8. The Paying Agency shall adopt the necessary procedures to ensure that payments are made only to bank accounts belonging to either the claimant or to his assignee. The payment shall be executed by the agency’s banker, or, as appropriate, a governmental payments office, within five working days of the date of charge to the EAGF or to the EAFRD. However, for the financial years 2007 and 2008 payments may also be made by payable order. Procedures shall be adopted to ensure that all payments for which transfers are not executed are re-credited to the Funds. No payments shall be made in cash. The approval of the authorising official and, or his supervisor may be made by electronic means, provided an appropriate level of security over those means is ensured, and the identity of the signatory is entered into the electronic records.”.

9. For regulation 9 of the principal regulations there shall be substituted the following:

Substitutes
regulation 9 of the
principal
regulations.

“9. Information systems security shall be based on the criteria laid down in the version applicable in the financial year concerned of one of the following internationally accepted standards:

(a) International Standards Organisation 17799/British Standard 7799: Code of practise for Information Security Management (BS ISO/IEC 17799);

(b) Bundesamt für Sicherheit in der Informationstechnik: IT Grundschutzhandbuch/IT Baseline Protection Manual (BSI);

(c) Information Systems Audit and Control Foundation: Control objectives for Information and related Technology (COBIT).

The agency shall choose one of those international standards as the basis for its information systems security. Security measures should be adapted to the administrative structure, staffing and technological environments of each individual paying agency. The financial and technological effort should be in proportion to the actual risks incurred.”.

Deletes regulation 10 of the principal regulations.

10. Regulation 10 of the principal regulations shall be deleted.

Deletes regulation 11 of the principal regulation.

11. Regulation 11 the principal regulations shall be deleted.

Substitutes regulation 13 of the principal regulations.

12. For regulation 13 of the principal regulations, there shall be substituted the following:

“Applicability of L.N. 168 of 2007 for dispute resolution.

13. Any dispute arising from claims made to the Paying Agency shall be regulated by the provisions of the Dispute Resolution Board Regulations, 2007.

Substitutes Annex I to the principal regulations.

13. For Annex I to the principal regulations, there shall be substituted the following:

“ANNEX I

(Regulation 13)

CRITERIA FOR THE ACCREDITATION OF THE PAYING AGENCY

1 The competent authority shall consist of three or more members responsible for audit within the EU Affairs of the Ministry responsible for Agriculture appointed by the Minister responsible for rural affairs, who shall appoint one of such members as chairman and shall be the authority responsible for the granting or withdrawal of accreditation to the Paying Agency.

2. (1) The accreditation of the Paying Agency shall be subject to the authorisation of the Minister and the competent authority shall be informed about such accreditation.

(2) In the exercise of its function to accredit the Paying Agency, the competent authority shall ensure that the Paying Agency is in compliance with the criteria established in Commission Regulation

No 885/2006 and such Guidelines as may be issued in respect thereof by the organs of the European Union.

(3) In particular, the competent authority shall ensure that the Paying Agency will comply with four basis areas: internal environment, control activities, information and communication, and monitoring as established in Annex 1 of EU Regulation No 885/2006 and that the Paying Agency has set up the proper systems for:

- i. the arrangements for the authorisation of claims,
- ii. the arrangements for the execution of payments,
- iii. the safeguarding of the Community budget,
- iv. the security of the information system,
- v. the maintenance of the accounting records, the division of duties,
- vi. the adequacy of internal and external controls insofar as transactions financed by the European Agricultural Guarantee Fund (EAGF) and European Agricultural Fund for Rural Development (EAFRD) are concerned.

In respect of payments made by them and as regards communicating and keeping information, provide sufficient guarantees that:

- (a) the eligibility of requests and, in the framework of rural development, the procedure for allocating aid, as well as their compliance with Community rules are checked before payment is authorised,
- (b) accurate and exhaustive accounts are kept of the payments made,
- (c) the checks laid down by Community legislation are made,
- (d) the requisite documents are presented within the time limits and in the form stipulated by Community rules,
- (e) the documents are accessible and kept in a manner which ensures their completeness, validity and legibility over time,

including with regard to electronic documents within the meaning of Community rules.

(4) The Head of the Paying Agency shall provide the competent authority with the following documents to enable it to carry out its functions:

i. A formal act in compliance with Paying Agency (Amendment) Regulation 2007 that lays down the powers, obligations and responsibilities and administrative structure of the Paying Agency including all the manual of procedures referred to each separate accounts for EAGF and EAFRD,

ii. All the Memoranda of Understandings (MoUs) regarding the delegated functions in compliance with annex 1(c) of Commission Regulation 885/2006 and such guideline. These MoUs shall be signed by the Head of the Paying Agency and the respective services to whom the tasks have been delegated as required by the Commission guideline no 2,

iii. A written guarantee that the services of the Paying Agency which have been delegated shall operate according to the relevant parts of Commission Regulation 885/2006, in particular with regards to the separation of functions, the use of check-lists, written procedures and administrative controls and inspections,

iv. A written report on the administration and accounting conditions and those adopted to protect the interests of the Community with regards to payment of advances, guarantees obtained, intervention stocks and the amounts due to the Guarantee Fund of the EAGF and EAFRD,

v. The manual of procedure for access to the computer system for the payment of claims which lays down that the access to the computer system shall be protected and the passwords shall be changed regularly to avoid misuse. The manual shall state that the computer system shall be protected from unauthorized access by physical controls and copies stored in a separate and safe location and shall back up the data provided by the Office of Audit of the Paying Agency, in compliance with such guidelines as may be issued in respect thereof by the organs of the European Union,

vi. The measures, in written form, adopted so as to avoid conflict of interest that may arise with regard to certain responsibilities within the Paying Agency, in particular those

referring to the authorisation, execution of payments and accounting for payments functions,

vii. The payments made by the Paying Agency are made only to bank accounts belonging to either the claimant or to his assignee. The payment system should guarantee that the payment are executed by the agency's banker, or, as appropriate a governmental payments office within 5 working days of charge to the EAGF or to EAFRD.

(5) In case article 17 of EU Regulation No 885/2006 shall be applied, the Head of the Paying Agency shall provide the above mentioned documents only for the new responsibilities by the 1st October, 2007.

(6) The competent authority also shall verify that all the requirements of the Integrated Administrative Control system and the accounting requirements are satisfactory particularly with regards to the following requisites:

i. the computerised databases shall record the data obtained from the aid applications for each agricultural holding to allow direct and immediate consultation,

ii. Entitlements register linked with eligible area and IACS administrative controls shall ensure that aid is calculated correctly and that no duplicate payments are made,

iii. the identification of agricultural land shall be done either by land registry maps or other cartographic references, aerial photographs, satellite images, or other equivalent supporting references,

iv. the competent authority shall verify that the Paying Agency has the necessary human resources for the identification and registration of animals, where such verification shall be based on the quality of the basic data (alphanumerical system of identification of agricultural land and registration and identification of animals registers), the information available in the applications and the type of computer programs,

v. the main role of the field inspectors shall verify that holdings made by the farmers in their aid application are accurate and the Paying Agency shall effect a number of field inspections, in accordance with Commission Regulation 796/2004 of the 21st April 2004,

vi. the rules for sanctions and reductions applied shall be those established by IACS Regulation No 796/2004 concerning the eligibility and the cross-compliance regime,

vii. the identity of each farmer who submits an aid application subject to the integrated system is duly recorded,

viii. the creation of an accounting system that records all the EAGF and EAFRD payments and provides for the recording of overpayments in a ledger of the debtor thereby providing a system for the effective collection of credit and the existence of a certifying body as established by Article 5 of Commission Regulation 885/2006.

ix. the verification on the Integrated System shall comprise the existence of a computerised data base, an identification system for agricultural parcels, a system for the identification and registration of payment entitlements as referred to in Article 21 of EU Regulation No 1782/2003, aid applications, an integrated control system and a single system to record the identity of each farmer who submits an aid application.

(7) The verification of the accounts systems should clearly to ensure that the two Funds EAGF and EAFRD should be tested separately, as the competent authority should have to provide an opinion in respect of each set of account.

3. (1) The competent authority shall set the period within which the above mentioned checks have to be fulfilled.

(2) The competent authority has a time limit of 60 days within which to authorize the accreditation of the Paying Agency, which shall commence from the day the Paying Agency first communicates its interest in writing, to apply for accreditation.

(3) With reference to the above mentioned point 2(5), the accreditation shall be carried only for these new responsibilities. The accreditation by the competent authority shall be completed by 16 October 2007 and it should have to exclude the measures for which the procedures have still to be put in place. For these measures an accreditation should have to be provided later. The above terms expenditure means expenditure for measures not accredited already under EU Regulation No 1663/1995.

(4) The competent authority shall authorize the accreditation provided that the Paying Agency complies with all the relevant

requirements through a specific report, which structure reporting has to be in compliance with the Commission Guideline No 2.

(5) The competent authority shall be assisted by the “audit body” defined as the accreditation Unit within the IAID to carry out the tasks of the above mentioned accreditation criteria.

(6) The act of accreditation shall consist of a written confirmation by the Ministry that the Paying Agency meets the criteria for accreditation.

(7) The accreditation of the Paying Agency shall be communicated to the European Commission.

4. (1) In the case where the competent authority that applied for accreditation does not meet the criteria laid down in these regulations, the competent authority may grant temporary accreditation to be determined taking into account the severity of the problem identified, which shall not exceed 12 months. The extension period may be granted upon request by the competent authority to the Commission.

(2) Where the competent authority is not satisfied that the competent authority complies with the above mentioned accreditation criteria, it shall address instructions to the Paying Agency specifying the conditions it is required to fulfil before accreditation may be granted. The competent authority should set up a contingency plan in case the accreditation would be withdrawn. If accreditation is withdrawn, the competent authority shall without delay accredit another competent authority in accordance with article 6(2) of EU Regulation No 1290/2005 and article 1 of EU Regulation No 885/2005.

5. The competent authority shall keep the paying agency for which it is responsible under constant supervision, notably on the basis of the certificates and report drawn up by the certification body under the Paying Agency Regulation 2007. Every three years, the competent authority shall inform the Commission in writing of the results of its supervision and indicate whether the competent authority continue to comply with the above mentioned accreditation criteria.

6. The Head of the Paying Agency and the Permanent Secretary of the MRAE shall ensure that any information suggesting that the paying agency not complying with the above mentioned accreditation criteria is communicated to the competent authority within five working days.

7. Where the competent authority no longer respects or is seriously deficient to fulfil the tasks set out in article 6(1) of EU

regulation No 1290/2005, the competent authority shall put the agency's accreditation under probation and draw up a plan remedy the deficiencies found within a period to be determined according from the date on which the accreditation is put under probation. The competent authority shall inform the Commission of the above mentioned plan drawn and of the implementation of such plan. During this period where those deficiencies found by the competent authority have not been remedied, the competent authority cannot affect payments related to the measures concerned.”.

Substitutes Annex II
of the principal
regulations.

14. For Annex II to the principal regulations, there shall be substituted the following:

“ANNEX II

(Regulation 14)

1. For the purposes of this Regulation, unless the context otherwise requires, the following definitions shall apply:

‘Arable land’ means land cultivated for crop production and land under set-aside, or maintained in good agricultural and environmental condition in accordance with Article 5 of Regulation (EC) No 1782/2003 irrespective of whether or not that land is under greenhouses or under fixed or mobile cover;

‘Single application’ means the application for direct payments in respect of the single payment scheme and other area related direct or indirect aid schemes. The single application also includes the Rural Development land-based measures and livestock measures, aid for tomatoes for processing, additional aid for potatoes, additional aid for Vine and restructuring aid for Wine;

‘Agricultural activity’ means the production, rearing or growing of agricultural products including harvesting, milking, breeding animals and keeping animals for farming purposes, or maintaining the land in good agricultural and environmental condition;

‘Irregularities’ means any non-respect of the relevant rules for the granting of the aid in question;

‘Land Use’ means the use of area in terms of the type of crop or ground cover or the absence of a crop, as referred to in the aid scheme under the Act;

‘Area determined’ means the area for which all conditions laid down in the rules for granting the aid have been met; in the case of the single payment scheme, the area declared may be deemed as being determined only if it is actually being accompanied by a corresponding number of payment entitlements;

‘System for the identification and registration of bovine animals’ means the system for the identification and registration of bovine animals established by Regulation (EC) No 1760/2000 of the European Parliament and of the Council;

‘Beneficiary’ means the farmer, livestock breeders, agro-processors and local action groups registered and coded in a unique manner of identification and who applies for aid using the IACS System;

‘Integrated Control System’ means the control system covering the single application, in particular as regards administrative checks, on-the-spot checks and, if appropriate, verification by aerial or satellite remote-sensing;

‘Livestock’ means any living member of the animal kingdom, to which any aid scheme designated by the Minister under point 4 of this annex applies;

‘Ear tag’ means the ear tag to identify animals individually referred to in Articles 3(a) and 4 of Regulation (EC) No 1760/2000;

‘Computerised database for bovine animals’ means the computerised database referred to in Articles 3(b) and 5 of Regulation (EC) No 1760/2000;

‘Animal passport’ means the animal passport referred to in Articles 3(c) and 6 of Regulation (EC) No 1760/2000;

‘Register’ means the register kept by the keepers of animals in accordance with Article 4 of Council Directive 92/102/EEC(7), with Article 5 of Council Regulation (EC) No 21/2004(8), or Articles 3(d) and 7 of Regulation (EC) No 1760/2000 respectively;

‘Elements of the system for the identification and registration of bovine animals’ means the elements referred to in Article 3 of Regulation (EC) No 1760/2000;

‘Identification code’ means the identification code referred to in Article 4(1) of Regulation (EC) No 1760/2000;

‘Animal keeper’ means any natural or legal person responsible for animals whether on a permanent or on a temporary basis, including during transportation or at a market;

‘Authorised person’ means any person, whether or not an officer of the Paying Agency, who is authorised by the Paying Agency, either generally or specifically, to act in matters arising under these regulations;

‘Reference parcel’ means a geographically delimited area retaining a unique identification as registered in the Land Parcel Identification System (LPIS) and available in the IACS database, which refers to an area of land on which more than one crop may be raised by more than one farmer.;

‘Agricultural parcel’ means a continuous area of land on which a single crop is raised by a single farmer;

‘Crop Group’ means in relation to the use of areas, means a set of distinct parcels in the application that have the same relevant cultivation for the purposes of the calculation of the financial assistance under the relevant aid scheme designated by the Minister under point 4 of this Annex;

‘Farmer’ means a natural or legal person, or a group of natural or legal persons, who is responsible for agricultural parcels and/or who breeds livestock in Malta;

‘Minister’ means the Minister responsible for the rural affairs;

‘Premium period’ means the period to which a single application refers irrespective of the moment of its submission;

‘Geographical Information System’ (GIS) means the computerised geographical information system techniques referred to in Article 20 of Regulation (EC) No 1782/2003;

‘LPIS’ (Land Parcel Identification System) means a Geographical Information System (GIS) which identifies reference parcels, assigning to each of them a unique identification code (reference parcel number);

‘Holding’ means all the production units situated in Malta managed by the same farmer;

‘Paying Agency’ means the Paying Agency established by these regulations;

‘Cross-compliance’ means the statutory management requirements and the good agricultural and environmental conditions in accordance with Articles 4 and 5 of Regulation (EC) No 1782/2003;

‘Areas of cross-compliance’ means the different areas of statutory management requirements within the meaning of Article 4(1) of Regulation (EC) No 1782/2003 and the good agricultural and environmental condition as stipulated in Annex IV to that Regulation;

‘Standard’ means the standards as defined by the Member States in accordance with Article 5 and Annex IV of Regulation (EC) No 1782/2003;

‘Requirement’ means where this term is used in the context of cross-compliance, it shall mean each individual statutory management requirement resulting from any of the Articles referred to in Annex III to Regulation (EC) No 1782/2003 within a given act, differing in substance from any other requirements of the same act;

‘Non-compliance’ means any non-compliance with the requirements, obligations and standards set out in the statutory management requirements and the good agricultural and environmental conditions;

‘Specialised bodies’ means the national competent authorities responsible delegated by the Paying Agency responsible in relation to all requirements, standard, acts, or areas of cross compliance, in accordance with the first subparagraph of Article 25(2) of Regulation (EC) No 1782/2003, for ensuring compliance with the statutory management requirements and good agricultural and environmental condition;

‘Control Unit’ within the Paying Agency means the authority responsible for coordinating the checks provided for Chapter IV of Regulation (EC) No 1782/2003

‘Eligible hectares’ means any agricultural area of the holding taken up by arable land and permanent pasture except areas under permanent crops, forests or used for non agricultural activities.

2. The identity of applicants shall be established on the basis of the identity card number in the case of individuals, and on the basis of the VAT number in the case of companies.

3. (1) For the purposes of this annex a reference parcel shall be identified on the basis of the reference number attributed to it in the LPIS.

(2) There shall be no minimum size for a reference parcel in respect of which a single application may be made.

4. The system for the identification and registration of animals to be taken into account for the granting of aid governed by this annex shall be such system as may be established under the provisions of the Veterinary Services Act, and recognised by the Paying Agency for the purpose of this Annex.

5. (1) In order to be eligible under one or more aid schemes governed by this annex, a farmer shall submit, for each year, a single application to the Paying Agency on such form as is made available to farmers by the Paying Agency:

Provided that such application need not be submitted in relation to such financial assistance as the Minister may by notice in the Gazette exempt subject to any conditions, if any, attached to such exemption by the terms of the relevant aid scheme.

(2) A farmer shall provide such supplementary documentation as may be required by the Paying Agency for the purposes of determining eligibility for financial assistance under the relevant aid scheme.

(3) Single applications shall be submitted by the 15th of May of each year:

Provided that where such date falls on a Saturday, Sunday or other public holiday, such date shall be deemed to be the first following working day not being a Saturday:

Provided further that where a single application is submitted electronically in accordance with sub-point (2) of point 7 of this Annex, the time limit for receipt shall be 11.59 pm on the latest submission date.

(4) A farmer shall declare the kind of use of area of all agricultural parcels in all the reference parcels on the holding in the

single application in such manner as may be specified by the relevant aid scheme;

Provided that the Minister may declare by Notice in the Gazette that no declaration is to be made in respect of the use of area for which a scheme is established by regulations made under the Act, where such information is made available to the Paying Agency in the framework of an administration and control system applicable to that scheme which is compatible with the integrated administration and control system established in this Annex.

(5) Subject to sub-point (7) hereof where this is permitted by and made in accordance with the rules applicable to the aid scheme concerned, after the expiry of the time limit for the submission of the single application, a farmer may apply for individual agricultural parcels not declared in the single application to be indicated and to have changes regarding the use or aid scheme to be made to the single application.

(6) The addition of agricultural parcels and amendments in accordance with sub-point (5) shall be notified to the Paying Agency in writing by not later than the latest sowing date laid down in the relevant aid scheme.

Provided that provisos to sub-point (3) hereof shall apply *mutatis mutandis* in relation to the latest sowing date.

(7) Where the Paying Agency has already informed the farmer of irregularities in the single application or where it has given notice to the farmer of its intention to carry out an on-the-spot check as referred to in point 14 of this Annex and where this on-the-spot check reveals irregularities, additions and amendments in accordance with sub-points (5) and (6) of this point may not be made in respect of the agricultural parcels affected by the irregularities.

(8) The area corresponding to the number of eligible hectares in respect of which a single payment application is submitted may be the subject of an application for any other direct payment as well as for any other area-related aid, save as otherwise provided.

6. (1) Farmers in the livestock sector shall apply for payment entitlements subject to special conditions in the first year of implementation of the single payment scheme. In order to be eligible for such assistance a farmer must have been granted payments for slaughter premium, special premium for male bovine animals and the suckler cow premium and/or aids provided for under the sheep and goats aid scheme, or must have been acting in one of the sectors

aforementioned prior to the first year of application of the single payment scheme.

(2) Where a farmer does not have any land on which to activate such entitlements, he shall be required that he maintains at least 50 % of the agricultural activity exercised before the transition to the single payment scheme expressed in livestock units (LU).

(3) Where a farmer does not have any land on which to activate such entitlements, he shall be required to he maintains at least the agricultural activity during the period of the single payment scheme.

7. (1) Where the single application or any amendments to it is required to be accompanied by supplementary documentation, under rules governing the aid scheme or by the Paying Agency, such documentation shall be considered part of the application.

(2) An aid application may be adjusted at any time after its submission, in cases of obvious errors recognised by the competent authority. The Paying Agency may accept to rectify the error and thereupon the benefits to which the farmer may lawfully qualify under the said aid application shall not be prejudiced if the Paying Agency is satisfied that the error was made *buona fide* and was not due to gross negligence on the part of the applicant.

(3) A farmer may apply to the Paying Agency at any time for his aid application to be withdrawn in whole or in part, and in such case the applicant farmer shall be put in the position he was in before he submitted the aid application or the part thereof so withdrawn:

Provided that no withdrawal shall be allowed between the time when the Paying Agency has given notice to the farmer of its intention to carry out an on-the-spot check and the time when the spot check is effectively carried out;

Provided further that no withdrawal shall be allowed in respect of any part of the aid application where the Paying Agency has discovered any irregularity in relation to such part after carrying out the on-the-spot check .

8. (1) The Paying Agency shall keep and administer a computerised database which shall contain all the data obtained from the aid applications for aid schemes.

(2) The Paying Agency shall be responsible for the processing of the data concerned, and for such purpose, the computerised

database shall be such so as to allow direct and immediate consultation of the data, as available, relating at least to the previous three consecutive years.

9. The Paying Agency shall be responsible for the setting up and maintenance of the single integrated control system which is herein established.

10. The Paying Agency shall carry out administrative checks on every aid application received and every aid application shall be subject to such verification and control as the Paying Agency may deem necessary, and for such purpose the applicant shall allow the Paying Agency or its lawful representative or delegate access to premises and sites related to the application.

11. (1) The Paying Agency may delegate to any competent person or specialised agency or firm such duties in relation to the carrying out and co-ordination of checks to ensure effective verification of compliance with the terms under which aid is granted in terms of this annex.

(2) Notwithstanding any such delegation, the Paying Agency shall retain control over and responsibility for such duties.

12. (1) On-the-spot checks shall be carried out by authorised persons and shall cover a sample of agricultural holdings according to a sampling plan drawn up for such purpose by the Paying Agency.

(2) Farmers in whose regard on-the-spot checks are to be carried out shall be selected by the Paying Agency on the basis of a risk analysis and in such manner that the sample selected shall represent a fair cross-section of all forms.

(3) An application shall be rejected if the applicant or his representative prevents or hinders an on-the-spot check from being carried out.

(4) Every on-the-spot check shall be the subject of a control report.

(5) Where the on-the-spot check reveals any irregularity the applicant shall be given a copy of the control report. A copy of such report shall also be given to the applicant if the irregularity is revealed by remote sensing carried out in accordance with sub-point (4) of point 13.

13. (1) The measured area resulting from on-the-spot controls shall be determined by such means as may be established by the Paying Agency to be appropriate.

(2) Where certain landscape features, in particular hedges, ditches and walls, are traditionally part of good agriculture cropping or utilisation practices, the corresponding area is to be considered part of the eligible area. The list of such landscape features shall be established by the Paying Agency.

(3) The eligibility of agricultural parcels shall be verified by such means as may be established as appropriate by the Paying Agency and for such purpose the Paying Agency may require such additional proof as it may consider necessary.

(4) On-the-spot checks in respect of area aid applications may be carried out by way of remote sensing on all or part of the sample referred to in sub-point (1) of point 12 to determine the area of agricultural parcels and identify crops where necessary.

14. (1) The amount of the aid to be granted shall be calculated according to the provisions of the aid schemes, subject to such reductions and exclusions as are applicable thereto. The Paying Agency has the responsibility for the fixing of reductions or exclusion in individual cases in accordance with Chapter II of Title IV of Regulation (EC) No 796/2004.

(2) Reductions or exclusions shall not apply:

(i) where the farmer can show that he submitted factually correct information or where he proves that he has exercised all due diligence in the submission of his application;

(ii) with regard to such parts of the aid application in respect of which the farmer has informed the Paying Agency in writing that the aid application is incorrect or has become incorrect since it was submitted.

Notwithstanding the provisions of sub-point 2(i) above, the application shall be adjusted to reflect the actual situation.

(3) In relation to the area-related applications, calculations shall be made for crop groups, in the appropriate manner as may be determined by the Paying Agency:

Provided that, if the area of a crop group determined is found to be greater than that declared in the aid application, the area declared shall be taken for calculation of the aid.

(4) Where environmental requirements, provided for under any enactment containing environmental measures in relation to the agricultural land used or production concerned, are not respected, such reductions or cancellations of the benefits accruing from the relevant aid schemes shall apply as provided under the Act or the regulations as the case may be, containing the environmental measures.

(5) The value and number of the payment entitlements allocated on the basis of the application submitted by the farmers in 2007 for the establishment of the payment entitlements in the first year of application of the single payment scheme shall be provisional. The definitive value and number shall be established, by 31 December 2007, to all active Maltese farmers in 2007 during the first year of application of the single payment scheme, after the checks made pursuant to Commission Regulation (EC) No 796/2004 are carried out.

(6) The value of each payment entitlement shall be a unit value and all the entire territory of Malta (including Gozo) shall be one region for the purpose of article 58 of the Council Regulation No 1782/2003.

(7) The rules of Regulation (EC) No 795/2004 as regards the controls procedures for the calculation of the unit value of payment entitlements and the eligible hectares and use of the payment entitlements shall apply *mutatis mutandis*.

15. (1) The Paying Agency will constitute a national reserve for the purpose of allocating payment entitlements on the basis of 2007 applications, according to objective criteria, to dairy and livestock farmers finding themselves in a special situation as a result of the transition to the single payment scheme. It shall be utilized to allocate entitlements to producers with or without land. The objective criteria will be established according to the level of farming activity during a reference period.

(2) The National Reserve shall also be used to ensure equal treatment between livestock and dairy farmers and to avoid market and competition distortion between these two groups of producers. The measure shall be implemented as a top-up to the payment entitlements to dairy farmers. The objective criteria will be determined according to evidence of a potential loss of income to dairy farmers from the

introduction of the Single Payment Scheme in the first year of implementation.

(3) The funding for these measures will be provided by the maximum linear percentage reduction of the national ceiling, supplemented by a linear reduction from the value of the land based entitlements.

16. (1) Where a farmer has been unable to comply with his obligations as a result of *force majeure* or any other exceptional circumstance, he shall notify the Paying Agency in writing of the occurrence of the *force majeure* or the exceptional circumstance within ten days of the date on which the farmer is in a position to do so and in the case of the death of a farmer such notification shall be made within a reasonable time of the occurrence by the heirs.

(2) The notification in accordance with sub-point (1) hereof shall be accompanied by such relevant information as the Paying Agency may require.

(3) For the purposes of this point exceptional circumstances shall include:

- (a) the death of the farmer;
- (b) long-term professional incapacity of the farmer;
- (c) a severe natural disaster gravely affecting the holding's agricultural land;
- (d) the accidental destruction of livestock buildings on the holding;
- (e) an epizootic affecting part or all of the farmer's livestock.

17. (1) If undue payment is made, the farmer shall upon notification by the Paying Agency repay the amount unduly paid together with interest calculated in accordance with sub-point (3) hereof.

(2) Recovery of the undue payment is to be made by deduction of the amount unduly paid from any advances or payments otherwise payable to the farmer following the date of the decision to recover under such aid scheme as referred to in sub-point (4) hereof:

Provided that no such deduction shall be made if the farmer has repaid the amount in question.

(3) Interest shall be charged at 6% and shall be calculated for the period elapsing between the date of the notification of the repayment obligation to the farmer and the date either of repayment or of deduction as provided in sub-point (2) hereof.

(4) The repayment obligation referred to in sub-point (1) hereof shall not apply if the payment was made through the error of the Paying Agency itself or of another authority and if the error could not reasonably have been detected by the farmer:

Provided that, where the error relates to factual elements relevant to the calculation of the payment concerned, this sub-point shall only apply if the decision to recover was not communicated within twelve months of the payment.

(5) The repayment obligation referred to in sub-point (1) hereof shall not apply if the period which elapsed between the date of the payment of the aid and that of the first notification to the beneficiary by the Paying Agency concerning the undue nature of the payment concerned is more than ten years:

Provided that the period referred to in this sub-point shall be limited to four years if the beneficiary acted in good faith.

(6) Amounts to be recovered as a consequence of the application of reductions and exclusions referred to in sub-point (1) of point 14 of these regulations shall be subject to a prescriptive period of four years.

(7) The provisions of sub-point (4) and (5) hereof shall not apply in the case of advances.

18. (1) For the purposes of this point:

(a) the “transfer of a holding” includes the sale, lease or any similar transfer in respect of the production units concerned;

(b) “transferor” means the farmer whose holding is transferred to another farmer;

(c) “transferee” means the farmer to whom the holding is transferred.

(2) Where a holding is transferred in its entirety from one farmer to another farmer after an aid application has been lodged and

before all the conditions for granting the aid have been fulfilled, no aid shall be granted to the transferor in respect of the transferred holding.

(3) The aid applied for by the transferor shall be granted to the transferee where:

(a) within ten working days from the date of the transfer agreement the transferee notifies the Paying Agency of the transfer and requests payment of the aid;

(b) the transferee presents such evidence as may be required by the Paying Agency;

(c) all the conditions for granting the aid are fulfilled in respect of the holding transferred.

(4) Once the transferee informs the Paying Agency of the transfer of the holding and requests payment of the aid in accordance with sub-point (3)(a) above and provided that the transferee produces such evidence as may be required under sub-point (3) (b):

(a) all rights and obligations of the transferor resulting from the legal relationship between the transferor and the Paying Agency generated by the aid application shall be transferred on the transferee;

(b) all actions necessary for the granting of the aid and all declarations made by the transferor prior to the transfer shall be attributed to the transferee for the purpose of applying the relevant rules;

(c) the holding transferred shall be considered, if the case so requires, as a separate holding in respect of the marketing year or premium period in question.

(5) Where an aid application is lodged after the actions necessary for the granting of the aid have been performed and a holding is transferred in its entirety from one farmer to another farmer after those actions have started but before all the conditions for granting the aid have been fulfilled, the aid may be granted to the transferee provided the conditions in sub-point (3) (a) and (b) hereof are fulfilled. In which case, sub-point (4) (b) above shall apply.

(6) The Paying Agency may decide, if the case so requires, to grant the aid to the transferor, in which event:

- (a) no aid shall be granted to the transferee and
- (b) the requirements set out in sub-points (2) to (5) hereof shall apply *mutatis mutandis*.

19. Any information given or collected by virtue of this annex shall be treated as confidential and shall not be disclosed except for the purposes of this annex or as may be required under any other law where provision is made for such disclosure.

20. (1) An authorised person may at any reasonable time and on producing, if so required, a duly authenticated document showing his authority, exercise the powers specified in this point for the purposes of:-

- (a) carrying out any check, test, verification, inspection, control or other operation in relation to land and livestock required under this annex, or
- (b) ascertaining whether an irregularity under this annex has been or is being committed.

(2) In the exercise of his powers as afore said, the authorised person may enter -

- (a) any slaughterhouse or any premises where loading operations are carried out, and where animals are kept to which any of the aid schemes may apply or where the authorised person has reasonable cause to believe that such animals are kept, and
- (b) any premises which are, or which are believed to be, in the possession of a farmer, or employee or representative of a farmer.

(3) An authorised person who has entered any premises by virtue of this point may-

- (a) inspect all or any part of the land farmed, laid fallow or withdrawn from agricultural production by a farmer, and
- (b) inspect any crops growing on that land or kept on it, and
- (c) inspect any of the animals to which any of the aid schemes apply or may become applicable.

(4) An authorised person entering any premises by virtue of this point may take with him such other person, as he considers necessary or as may be required.

(5) Where the Paying Agency, in exercising its control over any person or specialised agency or firm as referred to in sub-point (1) of point 12, carries out any inspection or check, the official of the agency carrying out such inspection or check shall be accompanied by an authorised person.

21. (1) No person shall refuse entry to an authorised officer exercising his power under point 19 of this annex.

(2) Any farmer or any employee or other person representing such farmer shall during any inspection or verification, or at any such time as may be required give to an authorised person all the assistance and any information as the authorised person may reasonably require so as to enable him to exercise his duties in relation to any power conferred upon him by the point 19 of this annex.’.

22. Without prejudice to specific provision of this Regulation, the rules of Regulation (EC) No 796/2004 and the rules of Regulation (EC) No 1975/2006 as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures shall apply *mutatis mutandis*.