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## XXIV EUROPEAN CONGRESS AND COLLOQUIUM OF AGRICULTURAL LAW

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### SPANISH REPORT OF THE III COMMISSION: "THE APPLICATION OF THE SINGLE PAYMENT SCHEME BY NATIONAL ADMINISTRATIONS AND NATIONAL COURTS"

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## 1. FOUNDATIONS OF THE SPANISH ADMINISTRATIVE ACTION ON THE SINGLE PAYMENT SCHEME (SPS)

### 1.1. Institutional features of the SPS

#### 1.1.1. Main responsible actors

The beginning of the implementation of the SPS did not come into affect in Spain until 1 January 2006, as referred to one of the options regulated in Regulation 1782/2003, although its initiation throughout the whole of the EU had been planned for January 2005. The year 2005 was therefore considered a period of transition towards the new aid system, as well as a preparation period for farmers and the public administration. During this period the new payment scheme of the Common Agricultural Policy (CAP) had to be adjusted as much as possible to the special characteristics of Spanish agriculture, to the characteristic territorial administrative organisation of the State and to the internal legal system. With this purpose in mind, the 15 April 2005 an Order of the Ministry of Agriculture, Fisheries and Food (MAFF), n°. 1171/2005, concerning *data updates and identification of farmers for the implementation of the SPS*<sup>1</sup> was passed and a few months later, on 30 December 2005, two regulatory provisions establishing the legal procedures for the implementation of the SPS in Spain were passed by the Ministry of Agriculture, Fisheries and Food (MAFF). The two provisions are Royal Decree (RD) 1617/2005, which *regulates the granting of rights to farmers within the single payment scheme*, and RD 1618/2005 concerning *the implementation of the single payment scheme and other direct support on agriculture and livestock farming*<sup>2</sup>. To these, RD 2352/2004, of 23 December, *regarding the implementation of cross compliance as regards direct support within the common agricultural policy framework*, and RD 2128/2004, of 29 October, which *regulates the geographical information system for agriculture parcels* should be added, to be used as a management tool of those support schemes related to CAP surfaces.

Regarding the implementation of the SPS in Spain, the role of the Spanish Agricultural Guarantee Fund<sup>3</sup> (SAGF) should be highlighted at a national level. It is an autonomous body which is ascribed to the undersecretary of the MAFF and its main mission is to ensure that all support coming from the CAP is applied strictly to achieve the objectives of this policy, so it efficiently reaches the beneficiaries who comply with the requirements established within the period indicated by the regulations, and so that it promotes a homogeneous implementation of CAP support throughout the Spanish territory. Therefore, Order 3147/2006, of 6 October, authorises the SAGF as the funding source and coordination body for the new European agricultural funds.

<sup>1</sup> Official State Gazette n°. 104, of May 2<sup>nd</sup> 2005.

<sup>2</sup> Published in the Official State Gazette n°. 313, of December 31<sup>st</sup> 2005. Both RD have already been modified and updated by RD 549/2006, of May 5<sup>th</sup> and RD 1582/2006, of December 22<sup>nd</sup>.

<sup>3</sup> The Statute of the Spanish Fund of Agricultural Guarantee (SAGF) was passed by Royal Decree 1441/2001, of December 21<sup>st</sup>.

However, the previously mentioned state RD designated the Autonomous Communities (ACs) ie, the regional public administration, as the main actors or competent authorities in the processing, resolution and payment of the SPS support. An administrative reorganisation at territorial level different to that already existing (a large decentralisation and autonomy in favour of the ACs) was not necessary. In fact, in Spain, due to the constitutional distribution of responsibilities and powers, each Autonomous Community has appointed a single body to distribute the community funds of the EAGF and the European Agricultural Fund for Rural Development (EAFRD).

European legislation establishes that any member state that authorises more than one body to issuing payments will have to appoint a coordination body to collect information, which will have to be made available to the European Commission, and to promote a harmonious implementation of Community regulations. In Spain, the MAFF appointed the SAGF as this coordination body. The coordination work has a double purpose: on one hand it is a link between the paying body and the Commission for all issues related to the financing and control of the CAP and, on the other hand, it promotes a homogeneous implementation of Community law. To carry out of this coordination mission, the SAGF uses Work Teams, formed by representatives appointed by the ACs and by other units of the MAFF. Regarding the SPS, Work Teams have been set up for single payment, cross compliance, modulation, etc.

#### *1.1.2. Responsibility and power distribution*

Article 120 of Law 62/2003, of 30 December, concerning fiscal, administrative and social measures, stipulates the implementation of the SPS at a national level throughout Spain. Thus, regarding the SPS, the State exerts an exclusive responsibility over the bases and coordination of all general economic activity planning (art. 149.1.13<sup>a</sup> of the Constitution), and in this way, it stipulates in all of the regulations passed by the MAFF. With the knowledge and consultation of the ACs, the State organises the implementation of the SPS in a uniform and homogeneous way, establishing the basic procedural and legal framework (RC 1617 and 1618 of 2005).

The ACs are responsible for managing the single payment scheme at a regional level (processing, decree ruling and payments: art. 2.2 of RC 1617/2005) following the guidelines established by State regulations, which are based on the European system. The ACs have already passed their own regulations for the year 2007 regarding the implementation of the SPS: Andalusia (Order 1-2-2007); Aragon (Order 24-1-2007); Asturias (Resolution 23-1-2007); Balearics (Resolution 18-1-2007); Cantabria (Order 12-4-2007); Castile-La Mancha (Order 31-1-2007); Castile-Leon (Order 26-1-2007); Catalonia (Order 16-3-2007); Extremadura (Order 29-1-2007); Galicia (Order 30-1-2007); La Rioja (Order 30-6-2006); Madrid (Order 13-3-2006); Murcia (Order 9-3-2006); Navarra (*Foral* Order 8-2-2007 and 20-2-2007); Basque Country (Decree 25-4-2006); and Valencia (Resolution 29-1-2007).

Regarding communications among the different administrations, article 94 of RD 1618/2005 provides an exhaustive communication system according to the type of aid and product, which obliges the ACs to provide the MAFF with certain information and data. It is articulated hierarchically and is aimed at controlling and executing the SPS.

Some of the data requested the following stands out: "The total number of applications, the total sum of the payment entitlements requested and the total number of hectares which can be subsidized must be handed in at the latest by 15 September, 2006 and at the latest by the 15 August in the following years. By the 15 August of the year after the application has been handed in, the total number of requests accepted during the previous year and the total amount corresponding to the payments granted should be handed in".

Among other sectors such as the livestock industry, information plays an essential role as regards the granting of payments, since during the year in which the applications are presented, the MAFF uses the information provided by the ACs to establish the unitary amount of the additional payment to the dairy sector or the sum of the additional payment to any holding with suckler cows and to the production of quality bovine meat.

Finally, as a closing rule, the MAFF can request the ACs to provide “any other information related to the support regulated by this Royal Decree so as to be able to comply with the obligations imposed on the member States regarding information to the European Commission”.

## **1.2. Handling applications for single payment entitlements and award of Payment Entitlements (PE)**

### *1.2.1. and 1.2.2. Procedure for the obtaining of PE based on areas and PE subject to special conditions*

Above all it must be noted that Spain has opted to apply a partial decoupling of the rights integrated in the SPS, within the limits allowed at community level. Annex I of RD 1617/2005 fixes the percentage of support integrated in the single payment scheme, which varies from being 100% in the case of grain legumes, dried fodder, hops and the obligatory set-aside (complete decoupling); decreasing to 93.61% in the case of olive oil; 75% in the case of cereals, oilseeds, protein crop, flax and hemp; up to 40% in the case of potato starch or to 38% in the case of tobacco, among others.

In Spain, there is a single and common procedure regarding the SPS which can be applied to all types of PE, both based on areas and subject to special conditions, without prejudice to the existence of some reportable particularities. This procedure is carried out through two differentiated phases: a) PE allocation and award phase; b) obtaining and payment of the support.

a) The PE allocation phase was essential in ensuring a correct developing of the system, especially during the first year of implementation of the SPS in Spain (year 2006). RD 1617/2005 (art. 6.3) planned for the year 2006 an initial allocation of *provisional rights* for the farmers specified in Order 1171/2005. The farmers who disagreed with the data regarding the provisional rights announced —concerning: a) the reference amount; b) the number of hectares; c) the number and value of the provisional PE (art. 4.2)— were able to present the ACs with objections and information that justified a new calculation of the PE. However, the *definitive payment entitlements* were established, as a deadline, on 15 August of the first year in which the SPS was implemented (2006). The new geographical information system for agricultural parcels (GISAP), established by RD 2128/2004, was used in this phase. The GISAP is a public registry of administrative nature which depends on the SAGF and on the regional authorities responsible for the agricultural matters of the ACs. The GISAP contains information on parcels which are liable to benefit from Community support based on areas and has a graphic plot of the land indicating the parcels and holdings with particular agricultural uses.

b) The obtaining, payment and collection phase of SPS support is activated each year in which the system is implemented. The regime of RD 1618/2005 applies. The procedure begins with the farmer’s presentation of a *single application* before the relevant Autonomous Community, ie, the AC in which the agricultural holding is located or where most of it is located, and in the case of no land, wherever most of the animals are kept. All of the parcels included in the agricultural holding should appear in the application. The minimum surface per application in the SPS is 0.1 hectares. The minimum information required in the single application can be found in Annex XI of RD 1618/2005. The ACs also provide models of a single application in which the data and documents required from the farmer are indicated in detail.

Although article 86.2 of RD 1618/2005 indicates the period ranging from the 2 January to the second Friday in March of every year as that in which to present the single application, for the year 2007, in accordance with the only additional provision of RD 1582/2006, it should have been presented during the period ranging from 1 February to 16 March 2007. Most ACs have complied with that period except for Cantabria, Catalonia and Castile and Leon, which extended it to 30

April 2007, perhaps justified by the delay in the passing of each of their autonomous Orders or Decrees concerning support, especially in Catalonia where it was passed exactly on 16 March or in Cantabria, where it was passed on 12 April 2007.

“Payment entitlements” refer to each of the fractions resulting from dividing the reference amounts of which a farmer should be the holder during the reference period to be able to access the Single Payment Scheme, by the three-year average number of hectares which gave right to direct payments (Art. 6.1 of RD 1617/2005).

The various methods of allocation of PE are described in Annex II of RD 1617/2005:

1. *According to characteristics:* a) *Standard payment entitlements (based on areas):* granted to agrarian/livestock farmers who obtained direct payments during the reference period from a support scheme in which it was a requirement to declare hectares in the application. b) *Special payment entitlements (subject to special conditions):* granted to agrarian/livestock farmers who obtained direct payments during the reference period exclusively from any of the support schemes mentioned in article 47 of Regulation 1782/2003. c) *Set-aside entitlements:* granted to agrarian/livestock farmers who were obliged to set-aside part of their land during the reference period.

2. *According to origin:* a) Entitlements from the *initial allocation:* the entitlements that were given to farmers who received payments during the reference period after the decision about the definitive allocation of entitlements. (These payment entitlements can also be classified according to section 1). b) Entitlements from the *national reserve:* the entitlements that are allocated to farmers who request entitlements from the reserve.

The national specifications to calculate the PE are collected in Annex IV of RD 1617/2005, concerning the “calculation of the reference amounts, hectares and animals”. In the case of certain crops (such as cereals, oilseeds, protein crop, and flax and hemp not grown for fibre; maize; flax and hemp grown for fibre; and in the case of obligatory set-aside), the yield to consider to calculate the amounts will be that determined in the regionalisation plan for the region in particular in relation to the year 2002. Thus, the yield allocated to each parcel will be obtained from RD 1893/1999 of 10 December (modified by RD 140/2002, of 1<sup>st</sup> February) concerning payments based in areas to certain agricultural products.

In the case of legumes for animal feed, the following amounts are to be used:

Campaign	Price per unit (euros/ha)
2000	175,02
2001	176,60
2002	150,52

In the case of rice, the following penalisation coefficients will be applied to the amounts:

Campaign	Reduction Percentage
2000	7,32%
2001	7,42%

2002	5,48%
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In the case of dehydrated and sun dried fodder the correction factor used provisionally is the following:

Product	Maximum amount	Guaranteed national production	Productionis declared	price per unit	Factor
FD	42.124.000 €	1.224.000 Tm	1.931.700,74 Tm	34,4150 €/Tm	0,6336
F-S	1.951.000 €	101.000 Tm	154.672,403 Tm	19,3168 €/Tm	0,6529

In the case of oil, the amount is to be calculated taking into consideration the payments received by the farmer in seasons of the years 1999/2000, 2000/2001, 2001/2002 and 2002/2003 (production per unit price).

In the case of tobacco, the unit amount will be calculated for each individual and will be obtained as the quotient between the average of the amounts of the reference period and the average of the production during the reference period.

Sugar beet and sugar cane: to calculate the tons corresponding to each producer in each of the commercialisation campaigns, the sugar beet and the sugar cane handed in should be considered, with a 13% yield from the sugar beet and an 8,6 % from the sugar cane, taking into consideration the transfer from the previous campaign, the year's A + B beet and a possible reclassification. The particular amount corresponding to the sugar sector is obtained by multiplying the average of tons of sugar beet and cane, handed in during the reference period, times the annual amount per ton. This annual amount is calculated by dividing 90% of the maximum limits established per year for Spain in table 1 of point K of Annex VII of Regulation (CE) 1782/2003, between the tons of sugar beet and cane entitled to receive payments once the circumstances established in articles 37 and 40 of the above mentioned Regulation have been revised.

The amount of hectares to take into consideration when calculating the PE per farmer is that resulting from dividing the tons of sugar beet and cane handed in between the average yield from the sugar beet and cane production indicated in the following table:

Type of crop	Yield	
Sugar beet	Watered	86 t/ha
	Unwatered	60 t/ha
Sugar cane		105 t/ha

In livestock farming, the amount of each producer is calculated by multiplying the number of animals' times the unit amount of the corresponding premium. In the case of those animals of the special premium of the 2002 campaign, the number of premium animals increases by 10,95 % and the additional payment amount increases by a 300,9 % in the year 2000 and a 149,77 % in the year 2001.

In the fodder lands, the hectares specified in the year 2005 will be used. If the fodder lands of the year 2005 is not enough to justify the payments of the reference period, the fodder lands of the reference period will be used.

According to articles 91 and 92 of RD 1618/2005, the granting and payment or refusal of the SPS support rests with the competent authority of the Autonomous Community in which the application is handed in. Generally, the payment of those entitlements will take place between the 1 December and the 30 June of the following year.

Once the calculation and granting of the number and amount of PE corresponding to each farmer has been carried out, the farmers should “use” and “justify” them adequately in order to be able to receive the payment. Each PE can be justified with one eligible hectare located in the national territory, except for those located in the Autonomous Community of the Canary Islands. Regarding the use of payment entitlements, the set-aside entitlements should be used first, followed by standard PE of larger amount. When the entitlements are of the same value they will be used according to their numbering. National reserve entitlements will be used last (art. 11 of RD 1617/2005).

All farmers applying for the SPS will have to comply with the statutory management requirements and good agricultural and environmental condition established in RD 2352/2004, of 23 December regarding the implementation of cross compliance.

### *1.2.3. Intervention of the Administration in the case of transfer or changes in the legal status of PE: determining the value of PE*

When implementing the SPS through Spanish law, a distinction should be made between the assumption of *changes in the legal status of PE* and the cases of a *transfer of PE*.

#### a) Changes in legal status

There is no direct or indirect intervention of the Administration established in any of the different methods of change in the legal status (inheritance, changes of legal status, mergers of various natural or legal person into another legal person or entity without a legal personality, scissions of legal persons or of merged natural persons). The Administration does not intervene by fixing the value of the PE either, since no retention of PE or of any other type is applied.

Only two formal obligations are established: a) All the circumstances mentioned resulting from changes in legal status have to be demonstrated by a certifying public document; b) All changes in legal status must be notified to the Autonomous Community in which the last single application was presented, before the deadline to present the support application for the single payment.

The logic reason which justifies the compliance of such requisites is based on the need to update legitimate holders so they can present further PE applications, ie, the new beneficiaries of the SPS.

#### b) Transfer of PE

In this case the circumstances differ somewhat. As a general rule, article 13.2 of RD 1617/2005 stipulates that payment entitlements can be transferred from one farmer to another, be it by sale, lease or any of the other methods admitted by the law, following that established in Community Law and in this Royal Decree, throughout the whole national territory. Such transfers of land (art. 15.1) can be carried out at any time of the year. A principle of freedom of transfer of PE among farmers is clear from this precept, be it a temporary one (land lease) or a definitive one (sales contract).

But articles 14 and 15 of the mentioned RD 1617/2005, contain two types of administrative intervention that affect both the process of transfer of PE and the establishment of the value or financial amount of such PE in the case of some transfers:

Regarding the first intervention (art. 15.2), the assignor must communicate any transfer of PE to the Autonomous Community to which it presented its last single application. Together with the communication, the lender must hand over all of the necessary documents to confirm the transfer carried out. The period of communication will begin on 1 November and will end six weeks before the end of the presentation period of the single application of the following campaign.

However, as an exception, for the year 2007, the period planned was the same as that established for the presentation of the single application (from 1 February to 16 March, 2007). These formal requisites ease the intervention of the Administration, which takes place as follows: if six weeks after the handing over of the communication the competent authority has not notified its opposition, it will be understood that *the transfer has been accepted without opposition*. The six week period will allow the Administration to verify that the transfer of entitlements, whichever the type, complies with the legally established requisites. The Administration will only *be entitled to oppose the transfer* if it does not comply with the dispositions included in Regulations 1782/2003 and 795/2004.

VATTIER FUENZALIDA states that it is a “legality control” and that any infractions are likely to be the result of false declarations and applications, of the non-compliance of deadlines, of a lack of correspondence between entitlements and eligible hectares, of the omission of deductions due to windfall profit or of definitive transfers of payment entitlements, or of any infringements invented in the future<sup>4</sup>.

Regarding the second intervention (art. 14), “deductions” from the value of PE will be applied to the advantage of the national reserve, though this will only apply when such PE are sold or transferred definitively:

1. If *payment entitlements are sold without any land* during the first three years of implementation of the SPS, 50% of the equivalent amount expressed in the number of payment entitlements and, if it applies, of the amount of the remaining payment entitlement, will be restored to the national reserve. The restoration will subsequently be 30 %. However, the previous percentages will be 15 % and 10 % respectively, when the buyer is a professional farmer, in accordance with the definition established in article 2.5 of Royal Decree 613/2001, of 8 June<sup>5</sup>.

2. If *payment entitlements are sold with land*, 5% of the value of each entitlement expressed in the number of payment entitlements and, if it applies, of the amount of the remaining payment entitlement, will be restored to the national reserve.

3. No deductions will be applied in the following cases:

a) When payment entitlements are sold together with the whole holding.

b) When payment entitlements are sold with or without land to a farmer who is beginning the agricultural activity.

c) When the sales contract takes place following that established in article 17 of Regulation 795/2004 (selling of land together with payment entitlements pending to be established).

Besides the general deduction regime there is a special transitory deduction system to the advantage of the national reserve for certain sale operations known as “windfall profit” (it is regulated in art. 16 of RD 1617/2005, derived from arts. 49.2 of R. 1782/2003 and art. 10 of R. 795/2004).

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<sup>4</sup> “El derecho a pago único”, *Revista de Derecho Agrario y Alimentario*, (“Payment Entitlements”, *Agricultural and Food Law Magazine*) nº 45, January-April 2005, p.116.

<sup>5</sup> Royal Decree for the improvement and modernisation of farming production structures, which adopts the concept of “professional farmer” from art. 2.5 of Law 19/1995, thus, “the natural person who holds a holding and who obtains at least 50 % of its total rent from agricultural activities or other complementary activities, as long as the part of the rent which comes directly from the agricultural activity exercised in his holding is not smaller than 25 % of its total rent and the working time dedicated to agricultural or complementary activities is more than half of its total working time”.

If the holding, part of it or of its premium rights is sold during the reference period or before 15 May 2004, 90% of the reference amount will go to the National reserve. This amount is calculated for the seller in accordance with article 37 of R. 1782/2003, according to the production units and to the farming hectares or to the transferred part of the holding or to the transferred premium rights.

Once the indicated deduction has been applied, the payment entitlements to be established for the seller are calculated from the amount and hectares of the remaining part.

Those farmers who have transferred their holding during the indicated periods, but who nevertheless are still entitled to the allocation of payment entitlements despite no longer owning any agricultural land or exercising any agricultural activity, are heavily penalised through a reduction of support.

However, no reduction will be applied if, within a year after the sale and before 15 May 2004, the seller buys another holding or part of it. The seller maintains at least the same number of payment entitlements as the number that the farmer can use in the new holding.

The purpose of this system is to encourage continued farming of recently acquired agricultural holdings, allowing any payment entitlements that correspond to them to be received.

#### *1.2.4. Influence of the implementation of the SPS and PE in Spanish Agricultural Law*

An obvious example of the influence of the new SPS derived from the CAP in the shaping of national agricultural law can be observed in the last modification of Law 49/2003, concerning land lease (LL), enforced under Law 26/2005, of 30 November.

The Preamble to Law 26/2005 already takes into consideration CAP reform: "This law envisages the EU framework of which we are a part of and the role that the EU assigns to its agrarian actives as well as its multifunctional character in which agricultural holding is understood as a whole. And it is precisely in this sense that the last reform of the CAP was carried out, which incorporates new ways to support of farmers' income, directly linked to the holding thought of as a whole".

In the provisions of the LL, article 3 titled "Agricultural production rights and other rights" should be pointed out first, where "other rights inherent to land or holdings" (in a direct allusion to PE) are mentioned, which form part of the content of the contract for both land lease and holding.

The new fourth additional Provision concerning the "Agricultural production rights and other rights" specifically establishes in a clearer way: "Regarding land lease, award of single payment entitlement, as well as any other derivative of the Common Agricultural Policy, will follow the provisions of each of the applicable community laws related to this subject, and if applicable, the corresponding regional rules. All of this without prejudice to the freedom of pact among the parts involved".

Another direct effect of community law on internal Spanish Law is that which affects the definition of "agricultural activity". So far Law 19/1995, concerning the modernisation of agricultural holdings, defined this activity in article 2.1 as the work carried out to obtain agricultural, livestock and forestry products, as well as the farmer's direct sale of his production without transforming it, under certain conditions. Regulation 1782/2003 in its article 2.c) extends the concept of agricultural activity not only to the function of producing, rearing or growing of agricultural products, but also to "maintaining the land in good agricultural and environmental condition" (i.e. the cross compliance).

In Spain, Law 19/1995, previously referred to, only mentions activities "related to the conservation of nature and the protection of the environment", which it labels as "other complementary activities" while R. 1782/2003 elevates it to the category of "main" agricultural activity and considers it a requirement for the collection of the single payment. Spanish law has not been modified in this sense until present.

### 1.2.5. *The Administration and the installation of new farmers*

All PE award applications presented by new or young farmers are canalised through the national reserve. Among all potential beneficiaries of the national reserve's PE, the category of farmers which we are referring to occupies a relevant position. And according to article 9 bis of RD 1617/2005, which regulates the access to the national reserve from the year 2007, they are the following:

a) *All new farmers who initiated their agricultural activity* during the twelve months previous to the beginning of the period of application for the single payment scheme in the national reserve.

Nevertheless, for the year 2007, those farmers who began their activity after the 16th May 2004 will also be able to present the application provided they have not applied for entitlements from the national reserve in previous allocations of national reserve payment entitlements.

b) *New farmers* who, having applied for payment entitlements against the national reserve in the previous allocation, then presented grant applications in accordance with that established in article 86.3 of RD 1618/2005<sup>6</sup>.

There are no specific rules for new or young farmers regarding the initial phase of the administrative process. Therefore, any farmer who would like to apply for PE against the national reserve in the following campaign must do so in the Autonomous Community in which he will present the single application in the following campaign, together with the minimum information required in annex III. The common period of presentation is between the 1<sup>st</sup> and the 30<sup>th</sup> of September of the previous year to that of the single application. However, as an exception for the year 2007, the period of application was the same as that established for the presentation of the single application (from the 1st February to the 16th March 2007).

Nor are there any specialities or situations of preference when calculating the PE to be allocated to these farmers: their rights are calculated, if appropriate, following that established in article 6 of Regulation 795/2004, taking the average value of the PE of the corresponding Autonomous Community as a regional measure (art. 9 bis.15).

It is in the resolution phase of the grant applications that we find a criterion of preference favouring certain farmers: any *young farmers who have carried out their first installation* following that which is stipulated in section 2.a) of article 9 bis will be given priority in the allocation of national reserve entitlements.

In Spain, as is defined in article 2.9 of Law 19/1995, a *young farmer* is a person aged 18 above and under 40, who carries out or has the intention of carrying out an agricultural activity.

During a two month period, the ACs present the SAGF with the information contained in the applications referred to in article 9 bis.1 as well as with a relation of the resolution proposals arranged in two groups. The first group includes *young farmers* and the second group includes the rest of the applicants. Parting from the information received and the availabilities of the national reserve, the SAGF establishes the entitlements to be allocated to each farmer and refers the information to each Autonomous Community.

The rest of the procedure is carried out by implementing ordinary law. The deadline for the processing, solving and notification of the resolution is three months after the finalisation of the period of presentation of the applications for the allocation of PE against the national reserve. Once that period has gone by without an express resolution having been dictated and notified, those interested can consider their application as rejected.

ACs will notify the allocation of entitlements to the farmers in their region by December 31st of each year at the latest. However, that date can be exceptionally replaced by the 1<sup>st</sup> of July 2007

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<sup>6</sup> Therefore, annual slaughter premium applications and applications for additional payments for the production of quality bovine meat.

in the case of applications for entitlements from the national reserve presented during the period stipulated for the presentation of the single application in the year 2007.

### *1.2.6. The Administration and rural development and modulation*

Article 6.1 of RD 1618/2005, stipulates that “all payments planned in this Royal Decree to be charged to the European Agricultural Guidance And Guarantee Fund (EAGGF) will be reduced by four per cent in the year 2006 and by five per cent in the years 2007 and to come. Once the corresponding amount is deduced from the grants’ additional amount, the sum obtained from this measure will be used to support measures under rural development programming”.

The 5<sup>th</sup> December 2006, the MAFF published a note concerning the distribution of rural development funds for the 2007-2013 period. This note announced that the 29<sup>th</sup> August 2006 the European Commission had published the Decision to allocate member states with the amount corresponding to the modulation of the period 2006-2012, to be used during the 2007-2013 period. Spain receives a total of 1.392,2 million euros. The 12<sup>th</sup> September 2006 the European Commission published a Decision through which rural development support is distributed yearly among member states through the EAFRD, during the 2007-2013 period. The amount corresponding to Spain in present day prices comes to 7.213,9 million euros, of which 3.178,13 must be destined to the regions which, regarding rural development, are considered as convergence regions (pure convergence: Andalusia, Castile-La Mancha, Extremadura and Galicia; and the statistics effect ones: Asturias and Murcia).

The quantity allocated to Spain unfolds as follows, depending on the origin of the funds: Modulation: 1.392,2 million euros; Cotton: 29,2 million euros; Tobacco: 163,3 million euros; EAGGF - Guarantee: 2.239 million euros; EAGGF - Orientation (convergence): 3.178,13 million euros; LEADER: 191,10 million euros.

The distribution of the modulation, both in the convergence ACs and in the non convergence ACs outside, will be carried out according to the percentage of participation of each Autonomous Community in the modulation distributed in the year 2005. This criterion is followed to distribute both the quantities generated by Spain as well as those generated by other member states, of which Spain benefits due to the implementation of the cohesion criteria (GDP/capita, useful agricultural surface and agricultural employment).

Recently, the Agriculture, Fisheries and Food minister, Elena ESPINOSA, assured that Spain is the country that receives the biggest volume of funds from redistributing the amount collected through the reductions in the European income grants through modulation and its transfer to rural development.

Elena ESPINOSA highlighted the fact that, concerning the less than 5% reduction applicable to the direct payments that farmers get, as a result of the criteria used when redistributing the modulation, Spain gains by getting 32 % more than what it contributes with through the obligatory modulation.

All EU countries are obliged to implement this modulation. However, it does not affect 80% of the beneficiaries of the single payment regime because they get less than 5.000 euro; therefore, the remaining 20 % get the part deducted from the first 5.000 euros. In this sense, the transfer of funds towards the rural areas is positive for Spain as regards its accounts.

## **1.3. Controls and sanctions**

### *1.3.1. Verification of compliance with the requirements linked to the grant of single payments*

#### **A. Participating administrations in the verification and types of controls**

The planning of the control and supervision of the SPS support falls on the MAFF (with the help of the SAGF) and on the ACs (through their own institutions). The SAGF is responsible for the technical coordination of the management and control of support charged to the agricultural funds through the paying bodies of the ACs, with the aim of promoting a homogeneous implementation throughout all of them.

According to article 89.1 of RD 1618/2005, the SAGF, in collaboration with the ACs, will elaborate a *national plan of control* for each campaign that will stipulate both administrative and on-the-spot checks of the aid applications.

As part of the implementation of that stipulation, the SAGF has passed two Circulars of interest for the 2007/2008 campaign: a) *Circular 10/2007, of April 16<sup>th</sup>*, which contains the “*National Plan of administrative checks of the single application based on areas*”; b) *Circular 11/2007, of April 18<sup>th</sup>*, which contains the “*National plan of on-the-spot checks to verify the compliance of the eligibility criteria of the hectares declared in the single application of the aid schemes*”.

Nevertheless, the most direct expression of the attribution of responsibilities concerning aids control is in section 3 of article 89: “It is the responsibility of the competent bodies of the Autonomous Community to control the aids regulated by this Royal Decree. When aids control is carried out by two or more Autonomous Communities, the necessary collaboration mechanisms to ensure a correct management must be established among the administrations involved”.

With this aim in mind, the ACs will allocate their own mechanisms of control and will elaborate their own *regional plans of control*—though adjusted to the national plan—which will have to be communicated to the SAGF (art. 89.2).

## B. Planning at state level: the National Plan of Checks (administrative and on-the-spot)

Regarding *administrative checks*, Circular 10/2007 distinguishes between general, crossed and specific controls.

### 1. General controls:

— The ACs will initially verify that each “single application” complies with that stipulated in article 86.1 of RD 1618/2005, and in particular that the holding or most of its area is located in its territory.

— The applications accepted will be subject to verification to detect omissions or inconsistencies, both in the information that the application should contain and in the documents that should accompany each of the aid regimes which is being applied for, giving the person concerned a period of ten days to make any corrections, which can be extended up to a further five days.

— The corresponding data base should always collect proof of the data declared by the farmers, of the entitlements used as indicated in article 19 of RD 1618/2005, and of the data validated for each parcel/enclosure and type of cultivation/use. Proof should also be kept of the codes corresponding to the cause that led to the elimination of the parcels/enclosures or to the reduction of areas for each aid regime applied for.

— Any incidents detected must be reported to those interested, granting them the prescribed period for allegations.

### 2. Cross-checks:

— In order to avoid undue double or multiple granting on the same aid, the SAGF carries out a cross-check of the “single applications” presented in all the ACs.

— A universal exchange of the entitlements requested will be carried out through the payment entitlement identification and registration system and through the GISAP.

— The area for which the aid application is presented is checked to ensure that it is at least 0,1 ha, for each of the single payment schemes.

### 3. Specific controls related to SPS:

— Once the areas have been calculated separately for set-aside entitlements and for entitlements based on areas the number and type of entitlements used should be determined.

— Regarding set-aside entitlements, the parcels affected should be checked to ensure that they are eligible and that they have an area of at least 0,1 Ha.

In the field of *on-the-spot checks*, regulations of Circular 11/2007 which can be generally implemented in all the aid regimes are summarised in the following:

a) In the year 2007 on-the-spot checks will be carried out throughout the whole country, both through standard field inspections to verify the conditions of the cultivation and carry out measurements with the appropriate instruments, and with remote sensing inspections.

b) The total number of on-the-spot checks, including those carried out through remote sensing must comprise at least 5% of all the farmers presenting a single application concerning aid schemes based on areas.

c) The control of each agricultural parcel begins with the analysis carried out by the controller, in the light of the pictures of the GISAP, of the producer's sketches and of the reality of the land, of all of the GISAP enclosures which partly or totally integrate it.

d) Specific considerations for communal areas. In the case of shared parcels, and particularly in publicly owned ones or those object of municipal regulations for common exploitation, the determination of the area must refer to the whole of the GISAP parcels that figure on the allocation document presented by local or municipal authorities, on which the necessary deductions and adjustments to obtain the area to be considered as exploited in common should be carried out. Depending on the percentage of allocation corresponding to each of the holders, and in agreement with the allocation certificate, the area corresponding to each of the holders is calculated. The administrative check will have previously verified that the sum of the allocations carried out does not exceed the area of the GISAP of the parcels to be allocated.

e) If the difference between the area declared and the area measured (in absolute values) is lower than the corresponding technical tolerance, the area declared will be accepted as the area to consider. If the difference were higher than the tolerance (in absolute value), the area to consider will be the area measured in the control, be it higher or lower than the area declared by the applicant. The technical tolerance of each parcel declared should not be higher than 5% of the area of the agricultural parcel measured.

The maximum technical tolerance for each agricultural parcel, in absolute terms, is 1,0 ha.

f) If on-the-spot checks prove the existence of big irregularities in a certain aid regime, or in a certain region or part of it, the number of on-the-spot checks throughout that year will increase and so will the percentage of producers that will have to undergo a control during the following year (proportionally).

g) Each agricultural parcel selected for an inspection in situ will be checked to ensure that the cultivation or use declared coincide with the crop, to verify the compliance of the agronomic conditions established for the crop and to measure its area.

h) Regarding the verification of eligibility conditions, the compliance with regulations required for the grant of the aid in the control sample agricultural parcels will be ensured for every aid scheme. In the event of a non-compliance of these regulations, the corresponding codes of incidence will be implemented, which are as follows:

\_ If the producer prevents the control from being carried out the aid claimed will be refused and code **Q** will be assigned to all of the parcels involved.

\_ It must be possible to locate the agricultural parcel; on the contrary, the area determined will be 0 and **D** code will be assigned.

\_ The crop planted must coincide with the crop group declared and must comply with any specific conditions required. On the contrary, the area determined will be 0 and an **M** code will be assigned to the parcel.

\_ The area declared of the agricultural parcel must be smaller or the same as the area determined. On the contrary, that which is indicated in section 8 of the National Plan of checks will be implemented and incidence code **D** will be assigned.

i) Regarding the schedule of the checks, they should be carried out before or right after the harvest and in the correct dates to check the lands that have been set-aside.

The National Plan, besides explicitly admitting its applicability to the SPS, contemplates various specific controls and verifications on-the-spot for single payment support:

a) If during the on-the-spot check of a certain agricultural parcel there are signs, suspicions or evidence of non-compliance with the obligation established in article 13 of RD 1618/2005<sup>7</sup>, this circumstance will be included in the control Proceedings. The incidence will be communicated to the farmer and he will be given time to present objections. If the final conclusion is that the farmer has not observed the obligation to keep the parcel available during the dates established in the previously mentioned article 13 of RD, the area determined will be 0 and code **A1** will be assigned.

b) The parcels declared to justify the set-aside entitlements and entitlements based on areas are part of the same group of payment crops. Nevertheless, since these parcels must comply with different eligibility conditions, two control cultivation groups will be considered to check the areas determined: that of set-aside entitlements and that of entitlements based on areas.

### C. Regional level planning: ACs Checks Plans

Since it is impossible—and in many cases even inconvenient, considering the extension and diversity of the national territory—to determine a single action criteria, all the ACs, in their respective Control Plans, as an indispensable complement of the National Plan, must establish objective criteria, specifically regarding the minimum density of plants per unity of area, the maximum percentage of weed in the parcel and any other aspect which is considered appropriate. Each of the ACs should have dictated the corresponding Control Plan for the 2007/2008 campaign and notified it to the SAGF before July 31<sup>st</sup> 2007.

That Plan will particularly indicate the following:

- \_ The number of files in the initial control sample.
- \_ The distribution of the control sample in the jurisdiction of the Autonomous Community.
- \_ The selection method and number of files that comprise the random sample and the directed sample.
- \_ The risk criteria used.
- \_ The schedule of the controls.
- \_ The material and human means planned for carrying out the controls.
- \_ The quality control of the controls established.

The ACs will adopt the necessary means to collect any observations made through the SAGF, in an effort to ensure the homogeneity and efficiency of the controls throughout the country.

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<sup>7</sup> “The parcels with eligible hectares used to justify payment entitlements must remain at the farmer’s disposal from the 1st of December of the previous year to the 30th of September of the year in which the payment is applied for”.

The controls will be carried out unexpectedly. Nevertheless, each Autonomous Community will be authorised to notify the holders about the control a maximum of 48 hours before. Any earlier notifications will only be authorised when properly justified and as long as the purpose of the control is not compromised.

ACs will send the statistic data concerning the control to the SAGF before the 30<sup>th</sup> June 2008.

#### D. The control of the aids' «cross compliance»

It is contained in articles 6 to 8 of RD 2352/2004.

The SAGF is the national authority in charge of the coordination system of cross compliance controls. The ACs will assign the necessary bodies of control to ensure the observance of the statutory management requirements, as well as the compliance of good agricultural and environmental condition, except when the paying body also controls all or some of the fields of implementation of cross compliance.

Most ACs have passed their own regulations as regards cross compliance. Regarding the control function, there are different models. In a few cases the authority lies exclusively on a single regional body, usually the regional authority responsible for agriculture, livestock or rural development (as is the case in Andalusia, Asturias, Castile-La Mancha, Extremadura or the Basque Country). In other cases cross compliance control is distributed among various regional bodies of the Community with different authorities: regional authorities concerned with agriculture and livestock; with territorial planning and the environment; with public health, etc. (as is the case in Cantabria, Castile and Leon, Madrid, Murcia and Navarre). In five ACs the same organism that distributes the payments is in charge of controlling cross compliance (in Aragon, the Balearics, Catalonia, La Rioja and Valencia). In Galicia, control lies both with the Regional Government concerned with the rural area and the paying organism (Galician Fund of Agrarian Guarantee).

The methods applied to select the control samples must fulfil the following rules:

- a) Controls will be carried out on at least 1% of the total number of aid applications presented.
- b) If the result of the controls carried out is a high level of non-compliance in any of the cross compliance's sectors, the number of controls during the following control period will be increased.

The bodies responsible for carrying out the controls will send the reports to the paying body of the ACs that must make the payment, as well as to the SAGF.

As regards planning, the SAGF, together with the ACs, will elaborate a national control plan that will include any aspect considered necessary for a coordinated on-the-spot check, and if necessary, for administrative checks. The regional control plans, adjusted to the general criteria of the national plan, must be communicated to the SAGF during the first term of every year.

#### *1.3.2. Sanctions resulting from the violation of the requirements linked to the grant of SPS*

Unlike what is usually regular in other procedural administrative rules, neither in RD 1617/2005 or in RD 1618/2005 is there a specific chapter or section dedicated to offences and sanctions. Therefore, to locate them one must refer to the legal texts in search of an example of non-compliance from which a sanction is derived.

Next are some sanctioning dispositions planned in RD 1617/2005:

Above all, article 7 stipulates as a "maximum offence" that no payment will be made to any beneficiary who has been proven to have artificially created the conditions required for the granting of such payments, with a view to getting an advantage which is contrary to the objectives of the support regime. Some ACs have included this same sanction in their specific regulations (Cantabria, art. 9 of the Order of April 19<sup>th</sup> 2007; Galicia, art. 5 of the Order of January 30<sup>th</sup> 2007).

Article 12 includes a few regulations which affect the non use of the payment entitlements granted. As a general rule it stipulates that “any grant entitlement which has not been used during a period of three years will be incorporated to the national reserve, except in cases of force majeure or in exceptional cases”. The sanction entails a loss of the beneficiary’s PE due to inaction or carelessness. Regarding the national reserve entitlements, they will immediately be sent back to the national reserve if they are not used during the year of the five-year period, except in the case of inheritance or of anticipated inheritance.

Next we will examine the sanctions as planned in RD 1618/2005:

At the beginning of the administrative procedure late submissions of aid applications may be presented<sup>8</sup> (art. 86). These applications will only be admitted during the following 25 days after the established deadline and the amounts of grant will be reduced in the percentage established in article 21 of Regulation 796/2004 (for every delayed working day, a reduction of 1% of the amount to which the farmer would have been entitled to will be applied). If the delay exceeds 25 days, the application will be considered inadmissible.

Article 93 regulates another general sanction to be implemented when farmers receive undue payments. In such cases producers must refund the amount plus the interests —corresponding to the time gone by between the notification of the obligation of recovery to the farmer and the recovery or effective deduction—, in accordance with that stipulated in article 73 of Regulation 796/2004. The interest rate established will be that of the delay established in the corresponding State General Budget Law.

A few ACs have regulated the sanction described above, developing the circumstances that cause the existence of an ‘undue payment’. This is the case in the Balearic Islands (art. 84 of the Resolution of January 18<sup>th</sup> 2007) and in Castile and Leon (art. 13 of the Order of January 26<sup>th</sup> 2007). The following cases will be considered as *undue payment*: a) Non-compliance of the obligation to justify; b) Obtaining of the aid without fulfilling the conditions required; c) Non-compliance of the aim for which the aid was granted; d) Non-compliance of the obligations imposed as a result of the concession of aid; e) Any other assumption planned in current law. Other ACs only contemplate the sanction of repayment of an undue payment, without making any reference to specific reasons or offences (this is the case of Catalonia, art. 49 of the Order of March 16<sup>th</sup> 2007; La Rioja, art. 6 of the Order of June 30<sup>th</sup> 2006; Murcia, art. 6 of the Order of March 9<sup>th</sup> 2006; and Valencia, art. 55 of the Resolution of January 29<sup>th</sup> 2007).

Within the framework of regional administrative regulations (which regulates the application and granting of the single payment procedures for the year 2007), there are a few ACs with a regime of sanctions that are implemented as a result of an ‘overdeclaration’ or an ‘excessive declaration’, which are regulated in article 51 of Regulation 796/2004. We are now in the checking phase of the applications presented by the beneficiaries: a discrepancy is discovered between the area declared and that checked. The main offence is when the area declared in the aid application is bigger than the area determined by the SPS after an appropriate administrative control.

The sanction involves a reduction of the aid or even the exclusion from it, and is established following the grading of article 51 of the mentioned Regulation, from a lesser to a higher degree of seriousness according to the difference between the area declared and that checked:

- a) In the case of a crop group in which the area determined is smaller than the area declared, the aid will be calculated taking the area determined as a base and will be reduced by half of the difference proved if the difference is more than 3% or two hectares, but smaller or equal to 20% of the area determined.
- b) If the difference is higher than 20% of the area determined no aid will be granted per area to that particular crop group.

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<sup>8</sup> Which includes contracts, declarations or other necessary documents or receipts.

c) If respect of the overall area determined covered by the single application, the area declared exceeds the area determined by more than 30%, all aids that the producer was entitled to under those aid regimes will be refused in that particular civil year.

d) If the difference exceeds 50%, the producer will be excluded from the aid up to an amount equal to that rejected in accordance with the previous paragraph. This amount will be deducted from the payment of aid against any of the grant regimes contemplated in section 1.2° of article 1 to which the farmer is entitled to through the applications presented during the three civil years following the year in which the excessive declaration is discovered.

This is the case in Galicia (art. 82 of the Order of January 30th 2007); Cantabria (art. 38 of the Order of April 12th 2007); Catalonia (art. 50 of the Order of March 16th 2007); Asturias (art. 39 of the Resolution of January 23<sup>rd</sup> 2007); and Valencia (art. 51 of the Resolution of January 29<sup>th</sup> 2007).

The non-compliance of the cross compliance requirements of RD 2352/2004 also generates an economic sanction which is specifically regulated and which affects the amount of payments that the farmer should receive<sup>9</sup>. The proven assumption originates from a lack of respect for the statutory management requirements or the good agricultural and environmental condition when carrying out a particular agricultural activity or in a certain parcel of the holding. In that case, direct payments of the year in which the offences are committed can be deducted or cancelled. The sanction is more or less severe depending on whether the non-compliance was committed as a result of negligence (maximum reduction of 5 %, and 15% if the conduct is repeated) or if it was intentional non-compliance (from a minimum reduction of 20 % to the total exclusion of payments during that civil year and even during the following years). This is a particular implementation of the classic distinction which is typical of the field of civil responsibility, which distinguishes between culpa and intention with the purpose of determining the consequences of a contractual non-compliance. As a means to determine the specific scope of the pecuniary sanction, criteria such as the seriousness, the scope, the persistence and the repetition of the non compliance will be applied.

Some ACs refer to 'force majeure' and to 'exceptional circumstances', as mentioned in article 40.4 of Regulation 1782/2003 (as is the case in Asturias, art. 46; Cantabria, art. 10; Castile and Leon, art. 5; and Galicia, art. 87), to exclude any responsibility and avoid all sanctions.

The legal nature of the sanctions that have just been exposed is administrative but of patrimonial content, since they can involve a temporary loss (on financial year, for example) of payment entitlements (PE), a partial and percentage reduction of the amounts of the aid to be received and of the obligation of recovery of any payment already received plus interests, as a penalization.

Finally, the body in charge of the PE granting procedure will also be the sanctioning body. Thus, responsibility falls on the authority assigned by the ACs (Agricultural Regional Government, paying organism or each Community's Agrarian Guarantee Fund).

## **2. THE ROLE OF THE COURTS IN DISPUTES ON SINGLE PAYMENT ENTITLEMENTS**

Considering that the year 2006 has been the first year in which the SPS has been fully implemented in Spain it is still very difficult for any dispute concerning the award of PE to have been solved by the ordinary Courts of Justice. We have no information on any sentence or judicial resolution dealing with issues related to the SPS in general or to PE in particular.

However, any conflicts which could presumably arise will first be presented through the administrative means, before reaching the Courts and Tribunals.

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<sup>9</sup> At a community level its regime is established in arts. 6 and 7 of R. 1782/2003, as well as in arts. 66, 67, 68 and 71 of R. 796/04. In Spain art. 9 of RD 2352/2004 is applied.

There is proof of allegations presented against the implementation of the SAGF, as well as of allegations concerning the identification of farmers in accordance with Order 1171/2005, of April 15<sup>th</sup> and those concerning entitlements allocated previously in a provisional way.

Nevertheless, all resolutions dictated by the national competent organizations (SAGF) or by the ACs concerning the grant of PE to farmers are of an administrative nature, since it is a grant of public support to agriculture, the passing of which follows an administrative regulated procedure. If a farmer does not agree with the resolution that has been notified to him, regional regulations inform the person interested about the possibility of lodging the corresponding administrative appeals (appeal for reversal, appeal to executive authority, which the Agriculture Government of each Community usually solves). The jurisdictional means, that is, the Courts of Justice, can only be appealed to once the previous administrative means have been exhausted: in such a case the authority to revise the acts and decisions of the Administration falls on the Tribunals and contentious-administrative Courtrooms.

## Summary

The beginning of the implementation of the single payment scheme (SPS) did not come into effect in Spain until 1 January 2006, as referred to one of the options stated in Regulation 1782/2003, although its initiation throughout the whole of the EU had been planned for January 2005. The year 2005 was therefore considered a period of transition towards the new support system, as well as a preparation period for farmers and the public Administration. During this period the new payment scheme of the Common Agricultural Policy had to be adjusted as much as possible to the special characteristics of Spanish agriculture, to the characteristic territorial administrative organisation of the State and to the internal legal system. With this purpose in mind, the 15 April 2005 an Order of the Ministry of Agriculture, Fisheries and Food (MAFF) n°. 1171/2005 concerning *data updates and identification of farmers for the implementation of the SPS* was passed and a few months later, on 30 December 2005, two regulatory provisions establishing the legal procedures for the implementation of the SPS in Spain were passed by the MAFF. The two provisions are Royal Decree (RD) 1617/2005, which *regulates the granting of rights to farmers within the single payment scheme*, and RD 1618/2005 concerning the *implementation of the single payment scheme and other direct support on agriculture and livestock farming*. To these, RD 2352/2004, of 23 December, *regarding the implementation of cross compliance as regards direct support within the common agricultural policy framework*, and RD 2128/2004, of 29 October, which *regulates the geographical information system for agriculture parcels* should be added, to be used as a management tool of those CAP support schemes based on areas.

Regarding the implementation of the SPS in Spain, the role of the Spanish Agricultural Guarantee Fund (SAGF) should be highlighted at a national level. It is an autonomous body which is ascribed to the MAFF and its main mission is to ensure that all support coming from the CAP is applied strictly to achieve the objectives of this policy, so it efficiently reaches the beneficiaries who comply with the requirements established within the period indicated by the regulations, and so that it promotes a homogeneous implementation of CAP support throughout the Spanish territory. Therefore, Order 3147/2006, of 6 October, authorises the SAGF as the funding source and coordination body for the new European agricultural funds.

However, the national regulations designated the Autonomous Communities (ACs) i.e., the regional public Administration, as the main actors or competent authorities in the processing, resolution and payment of the SPS support. An administrative reorganisation at territorial level different to that already existing (a large decentralisation and autonomy in favour of the ACs) was not necessary. In fact, in Spain, due to the constitutional distribution of responsibilities and powers, each AC has appointed a single body to distribute the community funds of the EAGF and the European Agricultural Fund for Rural Development (EAFRD). To promote a harmonious implementation of Community regulations, in Spain the MAFF appointed the SAGF as coordination body. The coordination work has a double purpose: on one hand it is a link between the paying body and the Commission for all issues related to the financing and control of the CAP and, on the other hand, it promotes a homogeneous implementation of Community law.

Article 120 of Law 62/2003, of 30 December, concerning fiscal, administrative and social measures, stipulates the implementation of the SPS at a national level throughout Spain. Spain has opted to apply a partial decoupling of the rights integrated in the SPS, within the limits allowed at community level. There is a single and common procedure regarding the SPS which can be applied to all types of PE, both based on areas and subject to special conditions, without prejudice to the existence of some reportable particularities. This procedure is carried out through two differentiated phases: a) The PE allocation phase planned for the year 2006 an initial allocation of *provisional rights* for the farmers specified in Order 1171/2005; b) The obtaining, payment and collection phase is activated each year in which the system is implemented. Once the calculation and granting of the number and amount of PE corresponding to each farmer has been carried out, the farmers should “use” and “justify” them adequately in order to be able to receive the payment. Each PE can be justified with one eligible hectare located in the national territory, except for those located in the Autonomous Community of the Canary Islands. Regarding the use of payment entitlements, the set-aside entitlements should be used first,

followed by standard PE of larger amount. When the entitlements are of the same value they will be used according to their numbering. National reserve entitlements will be used last.

When implementing the SPS through Spanish law, a distinction should be made: a) Changes in legal status. There is no direct or indirect intervention of the Administration established in any of the different methods of change in the legal status. Only a few formal obligations are established. b) Transfers. Payment entitlements can be transferred from one farmer to another, be it by sale, lease or any of the other methods admitted by the law, and can be carried out at any time of the year. There are two types of administrative intervention that affect both the process of transfer of PE and the establishment of the value or financial amount of such PE in the case of some transfers (1. The assignor must communicate any transfer of PE to the AC to which it presented its last single application; 2. "Deductions" from the value of PE will be applied to the advantage of the national reserve, though this will only apply when such PE are sold or transferred definitively).

An obvious example of the influence of the new SPS derived from the CAP in the shaping of national agricultural law can be observed in the last modification of Law 49/2003, concerning land lease, enforced under Law 26/2005, of 30 November. Another direct effect of community law on internal Spanish Law is that which affects the definition of "agricultural activity". So far Law 19/1995, concerning the modernisation of agricultural holdings, defined this activity in article 2.1 as the work carried out to obtain agricultural, livestock and forestry products, as well as the farmer's direct sale of his production without transforming it, under certain conditions. Regulation 1782/2003 in its article 2.c) extends the concept of agricultural activity not only to the function of producing, rearing or growing of agricultural products, but also to "maintaining the land in good agricultural and environmental condition" (i.e. the cross compliance). In Spain, Law 19/1995, previously referred to, only mentions activities "related to the conservation of nature and the protection of the environment", which it labels as "other complementary activities" while R. 1782/2003 elevates it to the category of "main" agricultural activity and considers it a requirement for the collection of the single payment. Spanish law has not been modified in this sense until present.

Regarding *the installation of new farmers*, it is in the resolution phase of the aid applications that we find a criterion of preference favouring certain farmers: any *young farmers who have carried out their first installation and who initiated their agricultural activity* during the twelve months previous to the beginning of the period of application for the single payment scheme in the national reserve.

In the field of controls and verifications, the SAGF in collaboration with the ACs, will elaborate a *national plan of control* for each campaign that will stipulate both administrative and on-the-spot checks of the aid applications. The SAGF has passed two Circulars of interest for the 2007/2008 campaign: a) Circular 10/2007, of April 16<sup>th</sup>, which contains the *National Plan of administrative checks of the single application based on areas*; b) Circular 11/2007, of April 18<sup>th</sup>, which contains the *National plan of on-the-spot checks to verify the compliance of the eligibility criteria of the hectares declared in the single application of the aid schemes*. It is the responsibility of the competent bodies of the ACs to control the aids. The ACs will allocate their own mechanisms of control and will elaborate their own *regional plans of control* —though adjusted to the national plan— which will have to be communicated to the SAGF. The SAGF is the national authority in charge of the coordination system of cross compliance controls. The ACs will assign the necessary bodies of control to ensure the observance of the statutory management requirements, as well as the compliance of good agricultural and environmental condition, except when the paying body also controls all or some of the fields of implementation of cross compliance. Most ACs have passed their own regulations as regards cross compliance.

Neither in RD 1617/2005 or in RD 1618/2005 is there a specific chapter or section dedicated to offences and sanctions. Therefore, to locate them one must refer to the legal texts in search of an example of non-compliance from which a sanction is derived (Some examples: no payment will be made to any beneficiary who has been proven to have artificially created the conditions required for the granting of such payments, with a view to getting an advantage which is

contrary to the objectives of the support regime; there are a few regulations which affect the non use of the payment entitlements granted; late submissions of aid applications may be presented; farmers who receive undue payments; an “overdeclaration” or an “excessive declaration”). The non-compliance of the cross compliance requirements of RD 2352/2004 also generates an economic sanction which affects the amount of payments that the farmer should receive. In that case, direct payments of the year in which the offences are committed can be deducted or cancelled.

Finally, considering that the year 2006 has been the first year in which the SPS has been fully implemented in Spain it is still very difficult for any dispute concerning the award of PE to have been solved by the ordinary Courts of Justice. We have no information on any sentence or judicial resolution dealing with issues related to the SPS in general or to PE in particular. However, any dispute which could presumably arise will first be presented through the administrative means, before reaching the Courts and Tribunals.