Commission Regulation (EC) No 1423/2006 of 26 September 2006 establishing a mechanism for appropriate measures in the field of agricultural spending in respect of Bulgaria and Romania

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty of Accession of Bulgaria and Romania, and in particular Article 4(3) thereof,

Having regard to the Act of Accession of Bulgaria and Romania, and in particular Article 37 thereof,

Whereas:

(1) According to Article 2 of the Act of Accession, the provisions of the acts adopted by the institutions before accession shall be binding on Bulgaria and Romania and shall apply in those States under the conditions laid down in the Treaties and the aforesaid Act.

(2) Article 37 of the Act of Accession enables the Commission to take appropriate measures in case Bulgaria or Romania has failed to implement commitments undertaken in the context of the accession negotiations, causing a serious breach of the functioning of the internal market or an imminent risk of such a breach.

(3) Article 17 of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001[(1)] requires Member States to set up an integrated administration and control system, hereinafter referred to as the 'IACS'.

(4) As of their accession, Bulgaria and Romania are required to have an IACS in place in order to control a large part of the Community's agricultural support in these States. The Commission has concluded on the basis of information provided by Bulgaria and Romania until the date of adoption of this Regulation and on the basis of its own inspections that there is a real risk as to the existence and operability of the IACS in these States.

(5) Serious deficiencies in the IACS of Bulgaria or Romania would lead to a situation where the payments of agricultural support which should be controlled under this system would not or not properly be controlled. There would exist, therefore, a serious risk that producers who are not, either in total or in part, entitled to the agricultural support would receive this support, thereby being put in a more favourable position

than foreseen in Community legislation. For each of these States expenditure for direct payments and rural development controlled under the IACS will amount to around 80 % of total agricultural expenditure and involve substantial amounts of several hundreds of millions of euro, which demonstrates the importance of a properly functioning IACS for the introduction of the common agricultural policy in the two countries and the good functioning of the Community's internal market. As the more favourable position in combination with the sums involved is likely to have an effect on trade of agricultural products in the internal market, it would cause an imminent risk of a serious breach of the functioning of this market.

(6) This risk cannot be properly addressed solely by the application of Articles 17 and 27 of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy[(2)], given the nature of the systems and procedures foreseen in these provisions. It is therefore necessary to have recourse to Article 37 of the Act of Accession allowing the Commission to take the appropriate measures aimed at eliminating the risk.

(7) After the accession, both Bulgaria and Romania should, on the basis of a report from an independent body, make a declaration to the Commission stating whether their IACS exists and is operational. In case of deficiencies, these States should remedy the deficiencies immediately.

(8) If the Commission, on the basis of the declaration made by Bulgaria and Romania or the report from the independent body or its own audit findings, reaches the conclusion that deficiencies persist which are so serious as to affect the proper functioning of the overall system for the management and control of agricultural expenditure covered by the IACS and that, therefore, there remains an imminent risk of a serious breach of the functioning of the internal market, it should provisionally reduce for a fixed period of one year the monthly and intermediate payments to be made to Bulgaria and Romania under Articles 14 and 26 of Regulation (EC) No 1290/2005. The provisional reduction should correspond to the percentage that the Commission applies in accordance with its own guidelines in the context of the conformity clearance if a Member State's control system is gravely deficient and there is evidence of widespread irregularities. Such a provisional reduction is necessary to make the State concerned remedy the deficiencies of its IACS so as to prevent or detect irregular payments and fraudulent practices and recover any unduly spent amounts, thereby eliminating the risk of a serious breach of the functioning of the Community's internal market.

(9) The Commission should review after 12 months whether or not to continue with the provisional reduction of the monthly and intermediate payments.

(10) The provisional reduction should be applied only in respect of support measures that are managed and controlled through IACS.

(11) The provisional reduction should be followed up in the context of the conformity clearance procedure referred to in Article 31 of Regulation (EC) No 1290/2005 and should be without prejudice to the decisions to be taken in that context,

HAS ADOPTED THIS REGULATION:

Article 1

1 By the end of the third month following the accession, Bulgaria and Romania shall each make a declaration at ministerial level to the Commission stating whether:

a the elements of the integrated administration and control system, hereinafter IACS, referred to in Article 18 of Regulation (EC) No 1782/2003 have been set up within their respective territories in accordance with the relevant Community legislation, to the extent that they relate to the management and control of the aid regimes applicable in Bulgaria and Romania;

b the IACS and the other elements necessary to ensure the correct payment of the support referred to in Article 3 of this Regulation are operational within their respective territories.

2 The declaration provided for in paragraph 1 shall be made on the basis of a report established by a body which has the necessary expertise and is independent from the paying agency and the coordinating body referred to in, respectively, Article 6(1) and 6(3) of Regulation (EC) No 1290/2005. Bulgaria and Romania shall each nominate the body delivering the report.

The report shall express an opinion on whether the requirements provided for in paragraph 1 are fulfilled. It shall be made available to the Commission.

Article 2

1 The Commission shall take a Decision provisionally reducing the monthly and intermediate payments referred to in Articles 14 and 26 of Regulation (EC) No 1290/2005 by 25 % if it concludes, either on the basis of the declaration or the report referred to in Article 1 of this Regulation or its own audit findings, and after giving the Member State concerned opportunity to submit its comments within a reasonable period of time, that:

a Bulgaria or Romania does not comply with its obligations under Article 1(1) and (2);

b the elements referred to in Article 1(1)(a) have not been set up;

c although the elements referred to in Article 1(1)(a) have been set up, the IACS or the other elements necessary to ensure the correct payment of the support referred to in Article 3 are so seriously deficient as to affect the proper functioning of the overall system.

Bulgaria and Romania shall take all the necessary measures to remedy immediately any deficiencies identified.

2 The provisional reduction shall be applied in respect of the monthly and intermediate payments made from 1 December 2007 up to 30 November 2008.

3 The Commission shall prolong the provisional reduction for further periods of 12 months if one or more of the conditions referred to in paragraph 1 continue to be fulfilled.

4 The provisional reduction shall be without prejudice to any reductions or suspensions pursuant to Articles 17 and 27 of Regulation (EC) No 1290/2005.

Article 3

The provisional reduction provided for in Article 2 shall be applied in respect of support granted under the following measures:

(a) the transitional simplified income support for farmers in the new Member States provided for in Article 143b of Regulation (EC) No 1782/2003 or the aid regimes referred to in Titles III and IV of that Regulation;