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EUROPEAN COMMISSION

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Proposal for a

**REGULATION (EU) No .../ OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL**

laying down specific measures for agriculture in the outermost regions of the Union

EXPLANATORY MEMORANDUM

1. ALIGNMENT WITH THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION (TFEU).

The Treaty on the Functioning of the European Union (TFEU) makes a clear distinction between, on the one hand, the powers delegated to the Commission to adopt non-legislative acts (delegated acts) of general application in order to supplement or amend certain non-essential elements of a legislative act, as set out in Article 290, and, on the other, those conferred upon the Commission to adopt implementing acts as referred to in Article 291.

In the case of delegated acts, the Legislator delegates to the Commission the power to adopt quasi-legislative measures. In the case of implementing acts, the context is very different. The Member States are the primary parties responsible for implementing legally binding acts of the European Union. However, if the implementation of that legislative act necessitates uniform conditions of implementation, the Commission is responsible for adopting these.

The harmonisation of Regulation (EC) No 247/2006 with the new rules contained in the Treaty is based on classifying into delegated powers and implementing powers of the provisions adopted by the Commission pursuant to that Regulation (Regulation (EC) No 793/2006 laying down certain detailed rules for applying Council Regulation (EC) No 247/2006).

Following this exercise, a draft proposal recasting Regulation (EC) No 247/2006 has been drafted. Under this draft, the Legislator reserves the right to issue decisions concerning the essential elements of a specific scheme for certain agricultural products in the outermost regions, in order to remedy the difficulties caused by their extreme remoteness (the 'POSEI programme'). The general guidelines for this scheme and the general principles which underpin them are determined by the Legislator. As such, the objectives of the measures introduced by this specific scheme and the principles regarding programming, compatibility and consistency with other EU policies are defined by the Legislator. The Legislator also establishes the principles for a certification scheme and the application of penalties, reductions and exclusions. The Legislator also makes provision for the existence of a POSEI logo.

In accordance with Article 290 of the Treaty on the functioning of the European Union, the Legislator entrusts the Commission with the task of supplementing or amending certain non-essential elements. A Commission delegated act may therefore set out additional elements which are necessary for the smooth running of the scheme defined by the Legislator. The Commission therefore adopts, by means of a delegated act, the conditions for operators being registered in the register of certificates and can, if necessary (given the economic situation) require the lodging of a security for the issuing of certificates (Article 11(2)). The Legislator can also delegate to the Commission the power to adopt measures relating to the establishment of the procedure for approving amendments to programmes (Article 6(3)), conditions for processing (Article 13(6)), the conditions on establishing aid amounts (Articles 18(4), 23(3) and 29(4)), the conditions for the exemption from importing rights (Article 26(2)), the conditions on the right to use the logo (Article 20(3)) and penalties (Article 17(2)).

The Member States, in accordance with Article 291 of the Treaty on the Functioning of the European Union, are responsible for implementing the scheme defined by the Legislator.

However, it would appear that it is necessary to ensure that the POSEI programme is applied in a uniform manner across all Member States in order to avoid unfair competition or discrimination between operators. The Legislator therefore grants the Commission the power to implement, in accordance with Article 291(2) of the Treaty, specifically with regard to the uniform conditions under which products which are the subject of specific supply arrangements enter, leave and move within the outermost regions (Articles 11(3), 13(2)(a), 13(2)(b), 13(3), 26(1) and 28(2), the uniform conditions for implementing the programmes, (Articles 6(2), 18(3), 20(4) and 29(3)), and a general framework of checks which the Member States must perform (Articles 7, 12(2) and 17(1)).

2. SUBSTANTIVE AMENDMENTS

In view of the fact that since it was adopted on 30 January 2006, Council Regulation (EC) No 247/2006 laying down specific measures for agriculture in the outermost regions of the Union has been the subject of several amendments, it is proposed that it be recast in the interests of clarity.

Furthermore, changes in Community legislation and the practical implementation of this Regulation that have occurred since it was adopted, make it necessary to also modify certain provisions thereof and to restructure the legislative text so that it reflects more effectively the reality of the POSEI agricultural scheme.

This new regulation is more explicit in setting out the scheme's main objectives, the implementation of which the specific measures for agriculture in the outermost regions should contribute to (Article 2).

Its new structure highlights the central role played by the Programmes of Options Specifically Relating to the Remoteness and Insularity (POSEI programmes) which have now been defined for each outermost region at the most appropriate level and coordinated by the relevant Member States. These programmes relate to the two fundamental POSEI elements, namely the specific supply arrangements and the specific measures in favour of local production (Article 3).

Other minor amendments have been made to the wording of the Regulation, in particular:

- (1) The procedure for submitting programmes and amendments for approval to the Commission has been specified to make it more consistent with current practice and in view of the need for greater flexibility and efficiency as regards the process of adapting programmes to meet the actual needs of agriculture and the supply of products essential for the outermost regions (Article 6).
- (2) In Article 10, it has been specified that the specific supply arrangements should be designed for each region in accordance with local agricultural production, the development of which should not be limited by aid for supply which is too excessive for products which are also produced locally. This provision is considered to be necessary to make it compulsory for the two POSEI instruments to be compatible with each other.
- (3) The possibility of re-dispatching products which have been processed locally using basic products which have benefited from the specific supply arrangements, without the benefit being reimbursed, which was restricted to products dispatched from the

Azores to Madeira or vice versa, or from Madeira to the Canary Islands or vice versa, will also now apply to the French overseas departments (Article 13(2)(e)).

- (4) In the interests of sound budgetary management, the Member States must indicate in their programmes the list of aid constituting direct payments (Article 18(2)(d)).
- (5) It is also helpful to indicate how the aid amounts for measures to assist local agricultural products are defined, which was previously not indicated in the basic act (Article 18(2)(e) and (f)).
- (6) Finally the financial allocation for each national programme selected is that which corresponds to the 2011 financial year and subsequent years. However, the ceiling for financing for the specific supply arrangements for France and Portugal has increased by 20% (Article 29(3)), in the light of the conclusions of the first report on the impact of the 2006 POSEI reform, submitted to the European Parliament and the Council in 2010.

The Regulation does not affect the sources of financing or the intensity of Community support.

Proposal for a

REGULATION (EU) No .../ OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

laying down specific measures for agriculture in the outermost regions of the Union

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 42 and Article 43(2) thereof,

Having regard to the proposal from the European Commission¹,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the ordinary legislative procedure⁴,

Whereas:

- (1) Specific measures in the agricultural sector in order to remedy the difficulties caused by the specific situation facing the European Union's outermost regions, as referred to in Article 349 of the Treaty, have been established by Council Regulation (EC) No 247/2006 of 30 January 2006 laying down specific measures for agriculture in the outermost regions of the Union⁵. These measures have been implemented by means of support programmes for each region, which constitute an essential tool for supplying such regions with agricultural products. In view of the new amendments which have become necessary and following the entry into force of the Lisbon Treaty, it is necessary to repeal Regulation (EC) No 247/2006 and replace it with a new text.
- (2) The fundamental objectives which the scheme promoting the Union's outermost regions will help to meet, need to be specified.

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ C , , p. .

⁴ OJ C , , p. .

⁵ OJ L 42, 14.2.2006, p. 1.

- (3) The content of the Programmes of Options Specifically Relating to Remoteness and Insularity ('POSEI programmes') which, in accordance with the principle of subsidiarity, must be established by the Member States concerned at the most appropriate geographical level and submitted by the Member States to the Commission for approval, must also be specified.
- (4) In order to achieve the objectives of the scheme promoting the Union's outermost regions more effectively, the POSEI programmes must include measures which ensure the supply of agricultural products and the preservation and development of local agricultural production. The level of programming for the regions concerned needs to be harmonised and the policy of partnership between the Commission and the Member States needs to become more systematic.
- (5) In keeping with the principle of subsidiarity and in order to ensure flexibility, two principles which form the basis of the programming approach adopted for the scheme promoting the Union's outermost regions, the authorities appointed by the Member State may propose amendments to the programme to bring it into line with the reality of the situation in the outermost regions. Also in keeping with this approach, the procedure for amending the programmes must be adapted to reflect the level of relevance of each type of amendment.
- (6) In order to ensure the supply of essential agricultural products to the outermost regions and to compensate for the additional costs caused by their extreme remoteness, it is appropriate to introduce a specific supply arrangement. In fact, the exceptional geographical situation of the outermost regions imposes additional transport costs in supplying products which are essential for human consumption, for processing or as agricultural inputs. In addition, other objective factors linked to these regions' extreme remoteness, namely their insularity and small surface areas, lead to further constraints on economic operators and producers in the outermost regions that severely handicap their activities. These handicaps can be alleviated by lowering the price of these essential products.
- (7) To that end, notwithstanding Article 28 of the Treaty, imports of certain agricultural products from third countries should be exempt from the applicable import duties. To take account of their origin and the customs treatment accorded to them under European Union law, products which have entered the Union's customs territory under inward processing or customs warehousing arrangements should be considered as direct imports, for the purpose of granting the benefits of the specific supply arrangements.
- (8) In order to achieve in an effective manner the lowering of prices in the outermost regions and mitigating the additional costs of their extreme remoteness, all the while maintaining the competitiveness of EU products, aid should be granted for the supply of Community products to the outermost regions. Such aid should take account of the additional cost of transport to these regions and the cost of exports to third countries and, in the case of agricultural inputs and products intended for processing, the additional costs of their extreme remoteness, specifically insularity and small surface areas.

- (9) In order to avoid speculation which would be harmful to end users in the outermost regions, it is important to specify that the specific supply arrangements may only apply to products of sound, fair and marketable quality.
- (10) Rules should be established concerning the operation of the scheme, particularly relating to the creation of a register of operators and a system of certificates, based on the certificates referred to in Articles 130 and 161 of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products ('Single CMO' Regulation)⁶.
- (11) Given the requirements relating to the monitoring of transactions benefiting from the specific supply arrangements, administrative checks must be conducted on the products concerned at the time of their import or entry into the outermost regions and also at the time of their export or dispatch from the same. In addition, in order to achieve the objectives of the arrangements, the economic advantages of the specific supply arrangements must be in terms of production costs and must reduce prices up to the end user stage. They should therefore be granted only on condition that they are actually passed on, and appropriate checks must be carried out.
- (12) Since the quantities covered by the specific supply arrangements are limited to the supply requirements of the outermost regions, this system does not impair the proper functioning of the internal market. Nor should the economic advantages of the specific supply arrangements provoke diversions of trade in the products concerned. Dispatching or exportation of those products from the outermost regions should therefore be prohibited. Nevertheless, the dispatch or export of these products must be authorised if the financial advantage resulting from the specific supply arrangements is reimbursed.
- (13) With regard to processed products, trade between the outermost regions should be authorised in order to allow commerce between these regions. Account should also be taken of trade flows within the context of regional commerce and traditional exports and dispatching with the rest of the Union or third countries in the outermost regions, and exports of processed products corresponding to traditional trade for all those regions. For the sake of clarity, the reference period for defining traditionally exported or dispatched quantities should be specified.
- (14) However, appropriate measures should be taken to allow for the necessary restructuring of the sugar processing sector in the Azores. These measures should take into account that in order for the sugar sector on the Azores to be viable, a certain level of production and processing needs to be ensured. Against this background, dispatches of sugar from the Azores to the rest of the Union should be allowed exceptionally to exceed traditional flows for a limited period of five years, subject to progressively reduced annual limits. Given that the quantities that may be re-dispatched will be proportional and limited to the extent strictly necessary for ensuring the viability of local sugar production and processing, such temporary dispatching of sugar from the Azores will not adversely affect the internal market of the Union.

⁶ OJ L 299, 16.11.2007, p. 1.

- (15) With regard to out-of-quota sugar to be supplied to the Azores, Madeira and the Canary Islands, the scheme of exemption from import duties will continue to apply. In particular, the Azores should be also authorised to benefit from the exemption from import duties for raw cane sugar within the limit of their forecast supply balance.
- (16) To date the Canary Islands have been supplied under the specific supply arrangements for skimmed milk powder containing vegetable fat with CN code 1901 90 99 for industrial processing. The continued supply of this product, which has become a traditional component of the local diet, should be permitted.
- (17) Given that rice constitutes a staple of the diet of Réunion, and since the island does not produce sufficient quantities to meet local requirements, the import of this product to the island should continue to be exempt from any form of import tax.
- (18) European Union policy to assist local production in the outermost regions has involved a multitude of products and measures for their production, marketing or processing. These measures have proved effective and ensured that agriculture continues and develops. The EU should continue to support these lines of production, which are a key element to ensure the environmental, social and economic equilibrium of the outermost regions. Experience has shown that, as in the case of rural development policy, a closer partnership with local authorities can help to address the particular issues affecting the regions concerned in a more targeted way. Support to promote local production therefore needs to continue by means of the POSEI programmes.
- (19) In order to support the marketing of products from the outermost regions, aid should be established to assist commercialisation of these products outside of the region in which they are produced.
- (20) The minimum elements which must be provided under the POSEI programmes in order to establish the measures supporting local agricultural production, specifically the description of location, the strategy proposed, the objectives and measures, should be established. The principles where these measures are consistent with other EU policies should also be stipulated, in order to avoid any incompatibility and overlapping of aid.
- (21) In order to ensure that it can be implemented, the POSEI programme may also contain measures for financing studies, demonstration projects, training and technical assistance.
- (22) Farmers in the outermost regions should be encouraged to supply high-quality products and to prioritise their marketing. Use of the logo introduced by the Union may be useful to this end.
- (23) The structures of certain farms or processing and marketing firms in the outermost regions are seriously defective and face specific difficulties. Articles 26(2) and 28(2) of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)⁷ therefore provide for more favourable support rates for certain types of investment in the outermost regions.

⁷ OJ L 277, 21.10.2005, p. 1.

- (24) Article 27(1) of Regulation (EC) No 1698/2005 excludes the outermost regions from the restriction to a grant of forestry support provided for in Article 20(b)(ii) of that Regulation.
- (25) Article 39(4) of Regulation (EC) No 1698/2005 and Annex I thereto determine the maximum annual amounts eligible for agri-environmental payments. To take into account the specific environmental situation of certain very sensitive pasture areas in the Azores and the preservation of the landscape and traditional features of agricultural land, in particular the areas of terrace cultivation in Madeira, provision should be made for the possibility, in the case of certain specific measures, of increasing those amounts up to twofold.
- (26) A derogation may be granted from the Commission's consistent policy of not authorising State operating aid for the production, processing and marketing of agricultural products covered by Annex I to the Treaty, in order to mitigate the specific constraints on farming in the outermost regions linked to their extreme remoteness, specifically their isolation, insularity, small surface areas, mountainous terrain and climate and their economic dependency on a small number of products.
- (27) The plant health of agricultural crops in the outermost regions is subject to particular problems associated with the climate and the inadequacy of the control measures hitherto applied there. Programmes should therefore be implemented to combat harmful organisms, including by organic methods. The Union's financial contribution towards such programmes should be defined.
- (28) The maintenance of vineyards, which are the most widespread type of cultivation in the regions of Madeira and the Canary Islands and a very important one for the Azores, is an economic and environmental imperative. To help support production, neither the abandonment premiums nor the market mechanisms provided for in Regulation (EC) No 1234/2007 should be applicable in these regions, but nonetheless, in the Canary Islands, it should be possible to apply crisis distillation measures in the event of exceptional market disturbance arising from quality problems. Similarly, technical and socio-economic difficulties have prevented complete conversion, within the time limits established, of the areas in the regions of Madeira and the Azores under vines of hybrid varieties prohibited by Regulation (EC) No 1234/2007. The wine produced by such vineyards is intended solely for traditional local consumption.
- (29) The restructuring of the milk sector is not yet complete in the Azores. In line with the high dependence of the Azores on milk production, combined with other handicaps connected with their extreme remoteness and the absence of profitable alternative lines of production, the derogation from certain provisions of Regulation (EC) No 1234/2007 concerning surplus levies on milk and milk products should be maintained.
- (30) Support for the production of cow's milk in Madeira and Réunion has not been sufficient to maintain the balance between domestic and external supply, chiefly because of the serious structural difficulties affecting the sector and its poor capacity to adapt to new economic environments. Consequently, authorisation to produce UHT milk reconstituted from milk powder of EU origin should continue, in order to cover local consumption more fully. In order to inform the consumer correctly, it should be

made compulsory to indicate the method by which UHT milk is reconstituted using milk powder on the sales labelling.

- (31) The need to maintain local milk production by means of incentives justifies not applying Regulation (EC) No 1234/2007 in the French overseas departments and Madeira. This exemption should apply to Madeira subject to a limit of 4 000 tonnes.
- (32) Traditional livestock farming activities should be supported. In order to meet the local consumption needs of the French overseas departments and Madeira, duty-free imports from third countries of male bovine animals intended for fattening should be authorised subject to certain conditions and up to a maximum annual limit.
- (33) The possibility opened under Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers⁸ to enable Portugal to transfer rights to the suckler cow premium from the mainland to the Azores should be renewed and that instrument should be adjusted in the light of the support arrangements for the outermost regions.
- (34) Tobacco growing is of historical importance in the Canary Islands. Economically speaking, tobacco preparation continues to be one of the chief industrial activities in the region. In social terms, tobacco cultivation is very labour-intensive and carried out by small farms. Since the crop is not sufficiently profitable, however, it is in danger of dying out. Tobacco is currently cultivated on only a small area on the island of La Palma, for the small-scale manufacture of cigars. Spain should therefore be authorised to continue to grant aid, in addition to EU aid, so that this traditional crop can be maintained with a view to supporting the artisanal activity associated with it. In addition, to maintain the manufacture of tobacco products, imports into the Canary Islands of raw and semi-manufactured tobacco should continue to be exempt from customs duty, up to an annual limit of 20 000 tonnes of stripped raw tobacco equivalent.
- (35) Implementation of this Regulation must not jeopardise the level of special support from which the outermost regions have benefited up to now. For that reason, so that they can implement the appropriate measures, the Member States should have at their disposal sums equivalent to the support already granted by the Community under Regulation (EC) No 247/2006.
- (36) Since 2006, requirements in essential products have increased in some outermost regions, particularly in the Azores and in the French overseas departments, as a result of the increasing livestock population and demographic pressure. The proportion of the budget which Member States may use for the specific supply arrangements for the regions concerned should therefore be increased.
- (37) The Commission should therefore be able to adopt delegated acts in accordance with Article 290 of the Treaty, in order to supplement or modify certain non-essential elements of the present Regulation. The areas with regard to which this ability can be exercised, and the conditions to which this delegation should be subject should be set out.

⁸ OJ L 30, 31.1.2009, p. 16.

- (38) In order to ensure that the POSEI programme is implemented in the Member States in a uniform manner and to avoid unfair competition or discrimination between operators, the Commission should be able to adopt implementing acts in accordance with Article 291(2) of the Treaty. The Commission should therefore be granted implementing powers under that provision, specifically vis-à-vis the uniform conditions under which products affected by the special supply arrangements enter, leave and move within the outermost regions, the uniform conditions for implementing programmes and the minimum characteristics for checks which Member States must apply.
- (39) [Recital concerning control of implementing measures. To be completed following the adoption of the regulation on control mechanisms, as referred to in Article 291(2) of the TFEU, currently the subject of discussion by the European Parliament and the Council],

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SCOPE

Article 1

Subject

This Regulation lays down specific measures for agriculture to mitigate the difficulties caused by extreme remoteness, specifically remoteness, isolation, small surface areas, terrain, difficult climate and economic dependence on a limited number of products of the regions of the Union referred to in Article 349 of the Treaty, hereinafter referred to as ‘outermost regions’.

Article 2

Objectives

1. The specific measures referred to in Article 1 shall help to meet the following objectives:
 - a) guaranteed supply to the outermost regions of products essential for human consumption or for processing and as agricultural inputs by mitigating the additional costs due to extreme remoteness;
 - b) preservation and development of agricultural activities in the outermost regions, including the production, processing and the sale of local products.
2. The objectives set out in paragraph 1 shall be implemented by means of the measures referred to in Chapters III, IV and V.

CHAPTER II

POSEI PROGRAMMES

Article 3

Establishing the POSEI programmes

1. The measures provided for in Article 1 are defined for each outermost region by a Programme of Options Specifically Relating to Remoteness and Insularity (POSEI), hereinafter referred to as the 'POSEI programme', which shall comprise:
 - a) specific supply arrangements as provided for in Chapter III, and
 - b) specific measures to assist local agricultural production as provided for in Chapter IV.
2. The POSEI programme shall be established at the geographical level which the Member State concerned deems most appropriate. It shall be prepared by the competent authorities designated by the said Member State, which shall submit it to the Commission for approval in accordance with Article 6 after the competent authorities and organisations at the appropriate regional level have been consulted.
3. A single POSEI programme may be submitted for each Member State in respect of its outermost regions.

Article 4

Compatibility and consistency

1. Measures taken under POSEI programmes must comply with European Union law and be consistent with other EU policies and with the measures taken under such policies.
2. Consistency of the measures taken under POSEI programmes with measures implemented under other instruments of the common agricultural policy, and in particular the common organisations of markets, rural development, product quality, animal welfare and protection of the environment, must be ensured.

In particular, no measure under this Regulation may be financed as:

- a) additional support for premium or aid schemes under a common organisation of the market save in exceptional cases justified by objective criteria;

- b) support for research projects, measures to support research projects or measures eligible for European Union financing under Council Decision 2009/470/EC⁹;
- c) support for measures within the scope of Regulation (EC) No 1698/2005.

Article 5

Content of programmes

A POSEI programme shall comprise:

- a) a schedule for the implementation of the measures and a general annual indicative financing table showing the resources to be deployed;
- b) proof of the compatibility and consistency between the various measures under the programmes and the criteria and quantitative indicators to be used for monitoring and evaluation;
- c) the steps taken to ensure the programmes are implemented effectively and appropriately, including the arrangements for publicity, monitoring and evaluation, and a specified set of quantified indicators for use in programme evaluation.
- d) the designation of the competent authorities and bodies responsible for implementing the programme and the designation at the appropriate levels of authorities or associated bodies and socio-economic partners, and the results of consultations held.

Article 6

Approval and amendments of programmes

1. Member States shall submit a draft POSEI programme to the Commission in the light of the financial allocation referred to in Article 29(2) and (3).

The draft programme shall comprise a draft forecast supply balance indicating the products, the quantities thereof and the amount of aid for supply from the Union together with a draft programme of support for local production.

The Commission shall evaluate the POSEI programme proposed and decide whether or not to approve it by means of an implementing act.

2. Depending on the annual evaluation of the implementation of measures included in the POSEI programmes, the Member States may submit to the Commission proposals for amendments thereto within the context of the financial allocation referred to in Article 29(2) and (3), to bring them more into line with the requirements of the outermost regions and the strategy proposed. The Commission shall adopt by means of an implementing act the uniform measures for the submission of proposals for amendments to the programme.

⁹ OJ L 155, 18.6.2009, p. 30.

3. In order to take into account the different types of amendments proposed and the time frame within which they must be implemented, the Commission shall determine by delegated act the procedure for approving amendments.

Article 7

Monitoring and follow-up

The Member States shall conduct verifications by means of administrative and on-the-spot checks. In order to ensure uniform application, the Commission shall adopt by implementing act the minimum characteristics of the checks to be carried out by the Member States.

By the same type of act, the Commission shall adopt the procedures and physical and financial indicators in order to ensure that the implementation of the programmes is monitored in an effective manner.

CHAPTER III

SPECIFIC SUPPLY ARRANGEMENTS

Article 8

Forecast supply balance

1. Specific supply arrangements are hereby established for the agricultural products listed in Annex I to the Treaty, which are essential in the outermost regions for human consumption, for the manufacture of other products or as agricultural inputs.
2. The Member State concerned shall establish, at the geographical level which it deems most appropriate, a forecast supply balance so as to quantify the annual supply requirements for each outermost region with regard to the products listed in Annex I to the Treaty.

A separate forecast balance may be drawn up for the requirements of undertakings packaging and processing products intended for the local market for traditional consignment to the rest of the EU or for export as part of regional trade, in accordance with Article 13(3), or within the context of traditional trade flows.

Article 9

Operation of the arrangements

1. Within the limit of the quantities determined in the forecast supply balance, no duties shall apply to direct imports from third countries into the outermost regions of products covered by the specific supply arrangements.

Products which have entered the Union's customs territory under inward processing or customs warehousing arrangements shall be considered as direct imports from third countries for the purposes of this chapter.

2. In order to ensure coverage of the requirements established in accordance with Article 8(2) in terms of price and quality, while taking care to maintain the Union's share in supplies, aid shall be granted to supply the outermost regions with EU products held in public intervention storage or available on the EU market.

Such aid shall be determined for each type of product concerned to take account of the additional cost of transport to the outermost regions and the prices applied to exports to third countries and, in the case of products intended for processing or agricultural inputs, other additional costs of extreme remoteness, specifically insularity and small surface areas.

3. No aid shall be granted for the supply of products which have already benefited from the specific supply arrangements in another outermost region.
4. Only products of sound, fair and marketable quality may benefit from the specific supply arrangements.

Article 10

Implementation

In implementing the specific supply arrangements, account shall be taken, in particular, of the following:

- a) the specific requirements of the outermost regions and, in the case of products intended for processing and agricultural inputs, the quality requirements;
- b) trade flows with the rest of the Union;
- c) the economic aspect of the proposed aid;
- d) where applicable, the need not to obstruct the potential development of local products.

Article 11

Certificates

1. Exemption from import duties or access to aid within the framework of the specific supply arrangements is granted upon the presentation of a certificate.

Certificates shall be issued only to operators entered in a register held by the competent authorities.

Licences and certificates shall not be transferable.

2. In order to ensure that operators fully exercise their rights to participate in the specific supply arrangements, the Commission shall determine, by delegated act, the conditions for recording operators in the register and, if necessary, shall make it compulsory to establish a security for the issuing of certificates.
3. The Commission shall adopt by means of an implementing act all measures necessary to ensure the uniform application by the Member States of this Article, specifically relating to the introduction of the system of certificates, not including the establishment of the security certificates, and the commitment of operators at the time of registration.

Article 12

Impact of advantage

1. Benefiting from the specific supply arrangements resulting from the exemption of import duty or the awarding of aid shall be subject to the condition that the impact of the economic advantage is passed on up to the end user who, as appropriate, may be the consumer in the case of products meant for direct consumption, the end processor or packager in the case of products meant for the processing or packaging industries, or farmers in the case of products used for animal feed or as agricultural inputs.
2. In order to ensure that paragraph 1 above is applied in a uniform manner, the Commission shall adopt by means of an implementing act detailed rules for its application and more specifically conditions for governing monitoring by Member States that the advantage has in fact been passed on up to the end user.

Article 13

Export to third countries and dispatch to the rest of the European Union

1. Products covered by the specific supply arrangements may be exported to third countries or dispatched to the rest of the Union only under uniform conditions established by the Commission by means of an implementing act, which shall include the payment of import duty or the reimbursement of the aid received, as indicated in Article 9.

Exports to third countries of products covered by the specific supply arrangements shall not be subject to the presentation of a certificate.

The first subparagraph above shall not apply to trade flows between French overseas departments.

2. The first subparagraph of paragraph 1 above shall not apply to products processed in the outermost regions from products having benefited from the specific supply arrangements which are:
 - a) exported to third countries or dispatched to the rest of the Union within the limits of traditional exports and traditional dispatches. These amounts are

established by the Commission by means of an implementing act on the basis of dispatches or export average figures during 1989, 1990 and 1991;

- b) exported to third countries as part of regional trade in accordance with the destinations and conditions determined by the Commission by means of an implementing act;
- c) dispatched from the Azores to Madeira or vice versa;
- d) dispatched from Madeira to the Canary Islands or vice versa;
- e) dispatched between French overseas departments.

No refunds shall be granted in respect of products exported as referred to in the first subparagraph, points a) and b).

Exports to third countries of products referred to in the first subparagraph, points a) and b) shall not be subject to the presentation of a certificate.

3. For the purposes of this chapter, 'regional trade' shall be understood as trade, for each French overseas department, with the Azores and Madeira and the Canary Islands, with third countries established by the Commission by means of an implementing act.
4. Products delivered to the French overseas departments, the Azores, Madeira or the Canary Islands which have benefited from the specific supply arrangements and are used to supply ships and aircraft shall be deemed to have been consumed locally.
5. By way of derogation from paragraph 2, first subparagraph, point (a), the following maximum quantities of sugar (CN code 1701) may be dispatched annually from the Azores to the rest of the Union for a five-year period:
 - in 2011: 3 000 tonnes,
 - in 2012: 2 500 tonnes,
 - in 2013: 2 000 tonnes,
 - in 2014: 1 500 tonnes,
 - in 2015: 1 000 tonnes.
6. In order to target the benefit resulting from the application of the specific supply arrangements to regional and traditional trade, the Commission shall establish by means of delegated act, the conditions that processing operations which may give rise to traditional exports or regional trade must comply with.

Article 14

Sugar

1. During the period established in Article 204(2) and (3) of Council Regulation (EC) No 1234/2007, the non-quota production referred to in Article 61 of that Regulation shall be exempt from import duties subject to the forecast supply balance referred to in Article 8 of this Regulation in respect of:
 - a) sugar brought for consumption to Madeira or the Canary Islands in the form of white sugar falling within CN code 1701;
 - b) sugar refined and consumed in the Azores in the form of raw sugar falling within CN code 1701 12 10 (raw beet sugar).
2. In the Azores, for the purpose of refining, the quantities referred to in paragraph 1 may be supplemented, subject to the limit of the forecast supply balance, by raw sugar falling within code 1701 11 10 (raw cane sugar).

When determining the Azores' raw sugar requirements, account shall be taken of the development of local production of sugar beet. The quantities covered by the supply arrangements shall be determined so as to ensure that the total volume of sugar refined in the Azores each year does not exceed 10 000 tonnes.

Article 15

Skimmed milk powder

By way of derogation from Article 8 above, the Canary Islands may continue to receive supplies of skimmed milk powder falling within CN code 1901 90 99 (skimmed milk powder containing vegetable fat) meant for industrial processing, subject to a limit of 800 tonnes per year. Aid granted for supplies of this product from the Union may not exceed EUR 210 per tonne and shall be included in the limit laid down in Article 29. This product shall be used for local consumption only.

Article 16

Imports of rice into Réunion

No customs duties shall be charged in the French overseas department of Réunion on products falling within CN codes 1006 10, 1006 20 and 1006 40 00 imported for consumption there.

Article 17

Controls and penalties

1. Products which are the subject of specific supply arrangements are to be subject to administrative checks at the time that they are imported into or enter the outermost regions, as well as when they are exported or leave.

In order to ensure uniform application of this provision, the Commission shall adopt by means of an implementing act the minimum characteristics of the checks to be carried out by the Member States.

2. Unless in the event of force majeure or exceptional climatic accident, non-compliance by the operator with the commitments made in accordance with Article 11, the advantage granted to the holder of the certificate shall be recovered and its registration suspended or deleted depending on the severity of the non-compliance.

In order to ensure that the operators participating in the scheme comply with their obligations, the Commission shall establish by means of delegated act the conditions necessary for the implementation of the first subparagraph above and the processing of new applications for certificates by the operator.

CHAPTER IV

MEASURES TO ASSIST LOCAL AGRICULTURAL PRODUCTS

Article 18

Measures

1. The POSEI programmes consist of specific measures designed to promote local agricultural production under the scope of Part 3, Title III of the Treaty, necessary in order to ensure the continuity and development of local agricultural production in each outermost region.
2. The part of the programme which includes measures to assist local agricultural production shall comprise at least the following elements:
 - a) a quantified description of the current situation of the agricultural production in question taking into account the results of available evaluations, showing disparities, gaps and potential for development, the financial resources that have been mobilised and the primary results of measures taken previously;
 - b) a description of the strategy proposed, the priorities selected, its quantified general and operational objectives, and an appraisal showing the expected economic, environmental and social impact, including employment effects;
 - c) a description of the measures envisaged, and in particular aid schemes for implementing them, and, where appropriate, information on the need for any studies, demonstration projects, training or technical assistance operations relating to the preparation, implementation or adaptation of the measures concerned;
 - d) a list of the aid constituting direct payments in accordance with Article 2(d) of Regulation (EC) No 73/2009;

- e) conditions for the granting of aid, the products and volumes concerned;
 - f) the aid amount established for each measure or action in order to achieve one or more objectives for the programme.
3. The Commission shall adopt by means of an implementing act the uniform conditions for the provision of the aid described in paragraph 2.
 4. The programme may include measures to support production, processing or sale of agricultural products in the outermost regions.

Each measure may include a variety of actions. For each action, the programme shall define at least the following elements:

- a) beneficiaries;
- b) eligibility conditions;
- c) individual aid;
- d) ceiling.

In order to support the marketing of products outside a region in which they are produced, the Commission shall adopt by means of a delegated act the conditions for establishing the amount of aid awarded in respect of such marketing and, where appropriate, the maximum amounts which form the subject of this aid.

Article 19

Controls and wrongful payments

1. Verification of measures provided for in this chapter shall be conducted by administrative and on-the-spot checks.
2. In the event of wrongful payments, the beneficiary concerned shall be obliged to reimburse the amounts in question. Article 80 of Commission Regulation (EC) No 1122/2009¹⁰ shall apply mutatis mutandis.

¹⁰ OJ L 316, 2.12.2009, p. 65.

CHAPTER V

ACCOMPANYING MEASURES

Article 20

Logo

1. A logo shall be introduced with a view to improving awareness and the consumption of quality agricultural products, whether processed or not, specific to the outermost regions.
2. The conditions for using the logo referred to in paragraph 1 shall be proposed by the trade organisations concerned. The national authorities shall forward such proposals, with their opinion, to the Commission.

Use of the symbol shall be monitored by a public authority or a body approved by the competent national authorities.

3. In order to improve awareness of high-quality agricultural products from the outermost regions and to increase the consumption thereof, whether processed or non-processed, the Commission shall establish, by means of a delegated act, the conditions for exercising the right to use the logo and for reproducing and using it.
4. In order to ensure that this Article is applied in a uniform way, the Commission shall adopt, by means of a implementing act, the detailed rules concerning the use of the logo and the minimum characteristics for the checks and monitoring which the Member States shall perform.

Article 21

Rural development

1. Notwithstanding Article 39(4) of Regulation (EC) No 1698/2005, the maximum annual amounts eligible for European Union aid, as set out in Annex I to that Regulation, may be increased up to twofold in the case of the measure to protect lakes in the Azores and the measure to preserve the landscape and traditional features of agricultural land and the conservation of stone walls supporting terraces in Madeira.
2. A description of the measures planned under paragraph 1 of this Article shall be included, where appropriate, in the programmes for these regions referred to in Article 16 of Regulation (EC) No 1698/2005.

Article 22

State aid

1. For the agricultural products covered by Annex I to the Treaty, to which Articles 107, 108 and 109 thereof apply, the Commission may authorise, in accordance with Article 108 of the Treaty, operating aid in the sectors producing, processing and marketing those products, with a view to mitigating the specific constraints on farming in the outermost regions as a result of their isolation, insularity and extreme remoteness.
2. Member States may agree additional financing for the implementation of POSEI programmes. In such cases the State aid must be notified by the Member States to the Commission and approved in accordance with this Regulation as part of those programmes. Aid thus notified shall be regarded as notified within the meaning of the first sentence of Article 108(3) of the Treaty.
3. France may grant the sugar sector in the French outermost regions aid of up to EUR 90 million per marketing year.

France shall inform the Commission within 30 days of the end of each marketing year of the amount of aid actually granted.

4. Without prejudice to paragraphs 1 and 2 of this Article and by way of derogation from the first subparagraph of Article 180 of Regulation (EC) No 1234/2007 and Article 3 of Council Regulation (EC) No 1184/2006¹¹, Articles 107, 108 and 109 of the Treaty shall not apply to payments made under Title IV, paragraph 3 of this Article and Articles 23 and 27 of this Regulation by Member States in conformity with this Regulation.

Article 23

Plant health programmes

1. France and Portugal shall submit programmes to the Commission for the control of organisms harmful to plants or plant products in the French overseas departments and the Azores and Madeira respectively. The programmes shall specify in particular the objectives to be achieved, the measures to be carried out, their duration and their cost. The programmes submitted pursuant to this Article shall not concern the protection of bananas.
2. The Union shall contribute to the financing of the programmes provided for in paragraph 1 on the basis of a technical analysis of the regional situations.
3. In order to implement these programmes, the Commission shall establish, by means of delegated act, the Union's financial participation as referred to in paragraph 2, the measures eligible for EU financing and the amount of the aid.

¹¹ OJ L 214, 4.8.2006, p. 7.

Such contribution may cover up to 60% of eligible expenditure in the French overseas departments and up to 75% of eligible expenditure in the Azores and Madeira. Payment shall be made on the basis of documentation provided by the French and Portuguese authorities. If necessary, checks may be organised by the Commission and conducted on its behalf by the experts referred to in Article 21 of Council Directive 2000/29/EC¹².

Article 24

Wine

1. Measures referred to in Articles 103v, 103w, 103x and 182a of Regulation (EC) No 1234/2007 shall not apply to the Azores and Madeira.
2. Notwithstanding the second subparagraph of Article 120a(2) of Regulation (EC) No 1234/2007, grapes from the vine varieties referred to in point b) of that subparagraph, and harvested in the Azores and Madeira, may be used for the production of wine which must remain within those regions.

Portugal shall gradually cease harvesting the parcels planted using the vine varieties referred to in Article 120a(2), second subparagraph, point b) of Regulation (EC) No 1234/2007 with, if necessary, the supports provided for in Article 103q of that Regulation.

3. The measures referred to in Articles 103v, 103w and 103y of Regulation (EC) No 1234/2007 shall not apply to the Canary Islands.

Article 25

Milk

1. For the purposes of distributing the surplus levy referred to in Article 79 of Regulation (EC) No 1234/2007, only producers who, within the meaning of Article 65(c) of that Regulation, established and producing in the Azores, market quantities exceeding their reference quantity increased by the percentage referred to in the third subparagraph of this paragraph shall be deemed to have contributed to the overrun.

The surplus levy shall be due on quantities exceeding the quota thus increased by the percentage referred to in the third subparagraph, after reallocation of the unused quantities within the margin resulting from this increase among all the producers within the meaning of Article 65(c) of Regulation (EC) No 1234/2007 established and producing in the Azores, and in proportion to the reference quantity available to each producer.

The percentage referred to in the first subparagraph shall be equal to the ratio between the quantity of 23 000 tonnes from the 2005/2006 year onwards and the

¹² OJ L 4, 7.1.2000, p. 11.

total of the reference quantities available on each holding on 31 March 2010. It shall apply only to the quota available on 31 March 2010.

2. The quantities of milk or milk equivalent marketed which exceed the quota but which comply with the percentage referred to in the third subparagraph of paragraph 1, after the reallocation referred to in that same paragraph, shall not be taken into account in establishing any overrun by Portugal as calculated in accordance with Article 66 of Regulation (EC) No 1234/2007.
3. The surplus levy scheme applicable to producers of milk provided for in Regulation (EC) No 1234/2007 shall not apply in the French overseas departments or, within the limit of local production of 4 000 tonnes of milk, in Madeira.
4. Notwithstanding Article 114(2) of Regulation (EC) No 1234/2007, the production in Madeira and in the French overseas department of Réunion of UHT milk reconstituted from milk powder originating in the Union shall be authorised within the limits of local consumption requirements, in so far as this measure does not hinder that locally produced milk is collected and finds outlets. This product shall be used for local consumption only.

The method by which the UHT milk thus reconstituted has been obtained shall be clearly indicated on the sales labelling.

Article 26

Cattle farming

1. Until the local numbers of young male bovines reach a level sufficient to ensure the maintenance and development of local beef production in the French overseas departments and Madeira, the possibility shall be introduced of importing bovine animals from third countries for fattening and consumption in the French overseas departments and Madeira, without applying import duties under the Common Customs Tariff. The Commission shall adopt, by means of an implementing act, the measures necessary to implement this subparagraph and more specifically the means for introducing the exemption from import duties in respect of the young male bovines introduced into the French overseas departments and Madeira.

Article 12 and 13(1) shall apply to animals qualifying for the exemption referred to in the first subparagraph of this paragraph.

2. The numbers of animals qualifying for the exemption referred to in paragraph 1 shall be determined in the POSEI programmes, if the need to import is justified, in view of developments in local production. Priority for such animals shall be given to producers keeping animals for fattening at least 50% of which are of local origin.

In order to take into account the specific local features of the beef sector and industry, the Commission shall establish by means of a delegated act the conditions to which the exemption from import duties is subject.

3. Where Article 52 and Article 53(1) of Regulation (EC) No 73/2009 are applied, Portugal may reduce the national ceiling for sheep and goat payment and suckler cow

premium rights. In this case, by means of an implementing act by the Commission, the relevant amount shall be transferred from the ceilings established in accordance with Article 52 and Article 53(1) of Regulation (EC) No 73/2009 to the financial allocation referred to in the second indent of Article 29(2) of this Regulation.

Article 27

State aid for tobacco production

Spain is authorised to award aid concerning the production of tobacco in the Canary Islands. The granting of this aid may not result in discrimination between producers in the islands.

The amount of the aid may not exceed EUR 2 980.62 per tonne. The additional aid shall be granted for up to 10 tonnes each year.

Article 28

Exemption of tobacco from customs duties

1. No customs duties shall be applied to direct imports into the Canary Islands of raw and semi-manufactured tobacco falling, respectively, within:
 - (a) CN code 2401; and
 - (b) the following subheadings:
 - 2401 10 Tobacco, not stemmed/stripped,
 - 2401 20 Tobacco, partly or wholly stemmed/stripped,
 - ex 2401 20 Outer coverings for cigars presented on supports, in reels for the manufacture of tobacco,
 - 2401 30 Tobacco waste,
 - ex 2402 10 Unfinished cigars without wrapping,
 - ex 2403 10 Cigarette rag (finished mixtures of tobacco for the manufacture of cigarettes, cigars, cheroots and cigarillos),
 - ex 2403 91 Homogenised or reconstituted tobacco, whether or not put up in sheets or strips,
 - ex 2403 99 Expanded tobacco.

The exemption provided for in the first subparagraph is granted by means of the certificates referred to in Article 11.

This exemption applies to the products referred to in the first subparagraph, meant to be processed in the Canary Islands in order to produce manufactured products ready

for smoking, subject to an annual import limit of 20 000 tonnes of raw stripped tobacco equivalent.

2. The Commission shall adopt by means of an implementing act the measures necessary to implement paragraph 1 and more specifically the measures for introducing the exemption from import duties in respect of tobacco in the Canary Islands.

CHAPTER VI

FINANCIAL PROVISIONS

Article 29

Financial resources

1. The measures provided for in this Regulation, with the exception of Article 21, shall constitute intervention intended to stabilise the agricultural markets within the meaning of Article 3(1)(b) of Council Regulation (EC) No 1290/2005¹³.
2. In respect of each financial year, the Union shall finance the measures provided for in Chapters III and IV, up to an annual sum equivalent to:
 - in the Overseas Departments of France: EUR 278.41 million
 - Azores and Madeira: EUR 106.21 million
 - Canary Islands: EUR 268.42 million
3. The sums allocated for each financial year to finance the measures provided for in Chapter III may not exceed the following amounts:
 - in the Overseas Departments of France: EUR 24.8 million
 - Azores and Madeira: EUR 21.2 million
 - Canary Islands: EUR 72.7 million

The Commission shall establish by implementing act the uniform conditions under which Member States may amend the allocation of resources allocated each year to the various products benefiting from the specific supply arrangements.
4. In order to ensure a reasonable and proportional allocation of the finance measures with regard to studies, demonstration projects, training and technical assistance measures, the Commission shall establish by delegated act an annual maximum amount which may be allocated to these measures.

¹³ OJ L 209, 11.8.2005, p. 1.

CHAPTER VII

GENERAL AND FINAL PROVISIONS

Article 30

National measures

Member States shall take the measures necessary to ensure compliance with this Regulation, particularly as regards checks and administrative penalties, and shall inform the Commission thereof.

Article 31

Communications and reports

1. Member States shall communicate to the Commission not later than 15 February each year the appropriations made available to them which they intend to spend in the following year on implementation of the forecast supply balance and for each measure promoting local agricultural production included in the POSEI programmes.
2. Member States shall submit to the Commission, not later than 31 July each year, a report on the implementation of the measures provided for in this Regulation over the previous year.
3. Not later than 30 June 2015, and thereafter every five years, the Commission shall submit a general report to the European Parliament and the Council showing the impact of the action taken under this Regulation, including in the banana sector, accompanied if applicable by appropriate proposals.

Article 32

Commission powers

When powers are granted to the Commission, it shall act in accordance with the procedure referred to in Article 33, in the case of delegated acts, and in accordance with the procedure referred to in Article 34, in the case of implementing acts.

Article 33

Delegated acts

1. The power to adopt the delegated acts referred to in this Regulation shall be conferred on the Commission for an indeterminate period of time.

As soon as it adopts a delegated act, the Commission shall provide simultaneous notification thereof to the European Parliament and to the Council.

2. The delegation of power referred to in paragraph 1 may be revoked at any time by the European Parliament or by the Council.

The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall inform the other legislator and the Commission at the latest one month before the final decision is taken, stating the delegated powers which could be subject to revocation and the reasons for a revocation.

The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the *Official Journal of the European Union*.

3. The European Parliament and the Council may object to the delegated act within a period of two months from the date of notification. At the initiative of the European Parliament or the Council this period shall be extended by one month.

If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act, or if, before that date, the European Parliament and the Council have both informed the Commission that they have decided not to raise objections, the delegated act shall enter into force at the date stated in its provisions.

If the European Parliament or the Council objects to a delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.

Article 34

Implementing acts - committee

[To be completed following the adoption of the regulation on control mechanisms, as referred to in Article 291(2) of the TFEU, currently the subject of discussion by the European Parliament and the Council].

Article 35

Repeal

Regulation (EC) No 247/2006 is hereby repealed.

References made to the repealed Regulation shall be construed as being made to this Regulation and shall be read in accordance with the correlation table set out in the Annex.

Article 36

Entry into force

This Regulation shall enter into force on the [...] day following that of its publication in the *Official Journal of the European Union*.

[It shall apply from 1 January 2012.]

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at [], [date]

For the European Parliament
The President

For the Council
The President

ANNEX

CORRELATION TABLE

Regulation (EC) No 247/2006	This Regulation
Article 1	Article 1
Article 2	Article 8
Article 3(1) and (2)	Article 9(1) and (2)
	Article 9(3)
	Article 9(4)
Article 3(3)	Article 10
Article 3(4)	Article 12
Article 4(1) and (2)	Article 13(1) and (2)
	Article 13(3)
	Article 13(4)
Article 4(3)	Article 13(5)
Article 5	Article 14
Article 6	Article 15
Article 7	Article 16
Article 8 last sentence	Article 11
Article 9(1) and Article 10	Article 18(1)
Article 9(2) and (3)	Article 3
Article 11	Article 4
Article 12 (a), (b) and (c)	Article 18(2)(a), (b) and (c)
Article 12(d), (e), (f), (g)	Article 5
Article 13	Article 7
Article 14	Article 20
Article 15	Article 21
Article 16	Article 22
Article 17	Article 23
Article 18	Article 24
Article 19	Article 25
Article 20	Article 26
Article 21	Article 27
Article 22	Article 28
Article 23	Article 29

Article 24	Article 6
Article 27	Article 30
Article 28	Article 31
Article 29	Article 35
Article 33	Article 36