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For the attention of [REDACTED]

Subject: Audit of the single payment scheme (SPS) and the establishment of entitlements and their management under the integrated administration and control system (IACS)

Ref.: For all correspondence on this subject, please use the reference **PF-2231**

Dear [REDACTED]

Please find attached a document summarising the findings of the audit in respect of the single payment scheme (SPS) and the Establishment of entitlements and their management under the integrated administration and control system (IACS) in the Irish Republic.

The audit findings, which I would be grateful if you would keep confidential, in particular vis-à-vis all persons not belonging to the authorities and bodies concerned, are of a preparatory nature at this stage of the proceedings, and other checks may still prove necessary.

Since these findings may, where appropriate, be used as a basis for the observations that the European Court of Auditors intends to present in its Annual Report, a special report or in an opinion, I would be grateful if you would let me know any reactions that the facts and comments on them may prompt from your Institution or from the management authority.

Your attention is drawn to the fact that specific findings relating to individual transactions may eventually be used in connection with the Statement of Assurance.

The replies from the Irish authorities must be sent to me within the next two months so that the Court can take them into consideration. Please would you draw the attention of the authorities and bodies concerned to the need to abide by this deadline.

A copy of this letter has also been sent to the Budget Directorate-General of the Commission of the European Communities, in order to enable it to discharge its responsibilities in respect of implementing the Community budget. For the same purpose, the Court will likewise forward the Irish authorities' reply to the Commission.

Yours sincerely,



Annex

Note: To facilitate translation, the Court of Auditors would be grateful for a definition of any abbreviations or acronyms used in your replies.

Audit of the single payment scheme (SPS)
Establishment of entitlements and their management under the integrated
administration and control system (IACS)
in
IRELAND
Council Regulation (EC) No 1782/2003 of 29 September 2003

30th May to 01 June 2006

and

12 to 16 June 2006

Auditors:

[Redacted]
[Redacted]
[Redacted]

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INTRODUCTION

1. The Single Payment Scheme (SPS) is a central element of the June 2003 Common Agricultural Policy (CAP) Reform. The aim of the audit was to check that the initial allocation of entitlements to farmers complied with Community legislation. Furthermore, the audit aimed to gain assurance that the payment entitlements have been properly incorporated into the Integrated Administration and Control System (IACS) so that future transfers and changes of entitlements can be properly monitored by the IACS.

2. Ireland has fully decoupled from production all livestock premia schemes, the arable aid scheme and the seed production aid scheme with effect from 1 January 2005. Dairy premium scheme was equally decoupled and included in the Single payment from 31 March 2005. The dried fodder Scheme has been partly (50%) decoupled.

3. Ireland has opted for the historical model (i.e. the reference amount was calculated on the basis of the aid rates of year 2002 multiplied by the farmers' average area and animals eligible for aid and premium over the reference period (2000-2002); the number of entitlements allocated was equal to the average number of hectares used for his farming activity over the reference period.

AUDIT OBJECTIVES

4. The objectives were to assess whether:

- (a) the Irish provisions comply with EU regulation;
- (b) the Irish authorities respect the imposed ceilings;
- (c) the entitlements defined by the Irish Department of Agriculture and Food were correctly established;
- (d) the Irish authorities set up adequate administrative and control procedures for the complete and correct establishment and management of the entitlements.

AUDIT SCOPE

5. The audit was limited to the establishment of the entitlements not the activation, payment or the respect of cross compliance.

6. According to the data provided during the audit visits Ireland has allocated 4 554 736,84 entitlements to 142 267 beneficiaries for a total amount of 1 246 009 216,78 €

AUDIT APPROACH

7. The audit was carried out at the Head Office of the Single Payment Unit of the Department of Agriculture and Food in Portlaoise which effectively acts as the Paying Agency. Before the audit visit a review was carried out of the system documentation supplied by the Irish authorities.

8. During the first audit visit, walk through tests were carried out on the entitlements allocated to 24 farmers to verify the existence and operation of the system in place.

9. During the second visit 80 files were examined of which 35 files were randomly selected and 45 files were selected on a risk based analysis taking into account the various categories of entitlements. The 80 files totaled 6 919 283,51 € and made up 0.56% of total entitlements. The list of all files is given in Annex K.

SUMMARY OF AUDIT FINDINGS

10. The national authorities are invited to submit their comments and provide to the ECA auditors the information requested in paragraphs 26, 27, 44, 49, 66, 74, 86, 97 and 101.

11. The data made available to the auditors shows that the Irish National Ceiling of 1 260 142 000 € (referred to in Annex VIII of Council Regulation (EC) N° 1782/2003) was not exceeded.

12. In Ireland no official national implementing provisions have been issued, setting out the various options chosen and applied by the authorities (see Annex A).

13. All allocations from the national reserve were made after the deadline of 31st December 2005. Allocations worth 10 MIO € were made in April 2006 and national reserve applications worth some 7 MIO € were still under consideration at the time of the audit visit. (see Annex B).

14. Contrary to the provisions of article 42 (5) of Regulation (EC) No 1782/2003 consolidation of entitlements was granted upon application in all cases where land leased in or rented in during the reference period and used for the establishment of the entitlements was no longer available to the farmer in the first year of application (2005) because the lease/rental agreement had expired by 16 May 2005. In total 11 677 cases (representing an area of around 700 000 ha before consolidation) were approved for consolidation in 2005 reducing the total area after consolidation to around 550 000 ha (i.e. approximately 150.000 hectares were no longer needed for activation of entitlements (see Annex C - audit finding n° 1)).

15. The calculation method applied for determining the number of entitlements to be granted as a result of consolidation was incorrect and has protected farmers found with less area than claimed from application of reductions and penalties and from loss of entitlements (see Annex C - audit finding n° 2).

16. Information delivered to farmers subject to special conditions (livestock farmers for claiming this entitlement) was unclear so that only few farmers actually claimed their entitlements. Furthermore, the farmers that did claim had their special entitlements automatically transformed into normal entitlements; the legislation provides that the farmer has the option to keep his special entitlements under certain conditions. (see Annex D).

17. In cases of hardship the exclusion of a reference year or years was not restricted to the premium actually affected. Furthermore, the Irish authorities do not require a minimum impact for hardship cases (de minimis rules). (see Annex E).

18. Claimed animals that existed in the reference period but were disallowed for premium purposes were included in the calculation of the reference amount contrary to the EU-Regulations. (see Annex F).

19. The windfall profit clause (article 42(9) of Regulation (EC) No 1782/2003) was not applied in Ireland. As a result transfers of holdings generated entitlements for both the old and the new farmers. (see Annex G).

20. In cases where a merger of a business occurs simultaneously with a transfer of entitlements under the private contract clause, the transferred entitlements are systematically credited twice to the merged holding (see annex H).

21. The Irish authorities amalgamate entitlements in cases of transfer (mergers, inheritance, private contract clause) contrary to EU regulations (see annex I).

22. In one case examined by the auditors the system allowed a farmer to activate standard entitlements and be paid for them without having his set aside entitlements activated (see Annex J).

ABSENCE OF NATIONAL IMPLEMENTING PROVISIONS***Legal provisions***

23. In all three Regulations, Council Regulation (EC) No 1782/2003, Commission Regulation (EC) N° 795/2004 and Commission Regulation (EC) No 796/2003 Member States can choose between options, choose to implement a provision or not and decide on detailed conditions applicable.

Audit findings

24. The auditors were not provided with documentation of Ministerial or similar binding government decisions on the optional provisions that appear in Council Regulation (EC) No1782/2003, Commission Regulation (EC) No 795/2004 and Commission Regulation (EC) N° 796/2003.

25. The auditors were informed that there are no formal national implementing provisions on SPS and that the public was notified about important aspects and decisions of the SPS system by press releases made by the Minister of Agriculture. In addition, information booklets were issued for the information of farmers and information / instruction booklets were issued to staff. These booklets were provided to the auditors.

Analysis of audit findings

26. The auditors would like to be provided with a full set of the press releases made by the Minister and with any other legally binding national implementing decisions or provisions on SPS.

27. The auditors would equally like to be informed on the legal status of such decisions and press releases in the context of court proceedings and in how far they are material for a court of justice ruling an appeal regarding the application of any such national condition.

DEADLINE FOR THE ESTABLISHMENT OF ENTITLEMENTS NOT MET***Legal provisions***

28. Article 12 Paragraph 4 subparagraph 3 of Commission Regulation (EC) No 795/2004 states that "In any case, definitive payment entitlements shall be established by... but in any case not later than 31 December of the first year of application".

Audit findings

29. At the end of 2005 entitlements and top ups from the National Reserve were still not allocated. The total amount still not allocated was approximately Euro 17 Million. In April 2006 entitlements and amounts worth Euro 10 Million were allocated. Allocations for a total of Euro 7 Million were still outstanding at the time of the audit visit.

Analysis of audit findings

30. The Irish authorities did not adhere to the deadline of 31st December 2005 for the definitive establishment of all entitlements as stipulated in Article 12 Paragraph 4 subparagraph 3 of Commission Regulation (EC) No 795/2004.

31. Submission of the 2006 single application may be ineligible for the unallocated Euro 7 Million stated above. The deadline for the submission of the 2006 single application was 15th May 2006 according to Article 11 Paragraph 2 of Commission Regulation (EC) No 796/2003 and the audit started on 30th May 2006.

**CONSOLIDATION APPLIED WITHOUT THE LEGAL CONDITIONS BEING MET
AND APPLIED INCORRECTLY**

Legal provisions

32. Article 42 Paragraph 5 of Council Regulation (EC) No1782/2003 states that "Member States may use the national reserve for the purpose of establishing... reference amounts for farmers in areas subject to restructuring and/or development programs relating to one or the other form of public intervention in order to avoid abandoning of land and/or in order to compensate for specific disadvantages for farmers in those areas".

33. Article 7 of Commission Regulation (EC) No 795/2004 states that "Where a Member State makes use of the option provided for in Article 42 (5) of Regulation (EC) No 1782/2003, it may in particular allocate, upon request, in accordance with this Article, payment entitlements to farmers, in the areas concerned, who declare fewer hectares than the number corresponding to payment entitlements they would be or would have been allocated in accordance with Article 43 of that Regulation".

34. Paragraph 2 of the same article, states that " The number of payment entitlements allocated from the National Reserve shall be equal to the number of hectares the farmer declares".

35. Paragraph 3 of the preamble to Council Regulation (EC) No 1782/2003 states that "In order to avoid the abandonment of agricultural land and ensure that it is maintained in good agricultural and environmental condition, standards should be established..."

Audit finding No 1: Consolidation without the legal conditions being met

36. In the case of Herd No [REDACTED] the farmer was renting a plot of land of 6 hectares during the reference period years 2000 and 2001 and farmed his own land during the same years (18.4 in year 2000 and 18 hectares in year 2001). In 2002 he stopped renting the 6 hectares. His own land continued to be 18 hectares. Based on the above the Irish authorities calculated 22,13 entitlements. In his Single

Payment application in 2005 the farmer declared 18 hectares and applied for consolidation under Article 42 Paragraph 5 of Council Regulation (EC) No 1782/2003. The Irish administration granted consolidation. The farmer returned his 22,13 entitlements with a value of Euro 219,09 each to the National Reserve and was allocated 18,00 National Reserve entitlements with a value of Euro 269,40 each; the total value of the entitlements of Euro 4 849,20 remained unchanged.

37. Similar findings were observed in two more cases in the sample, Herd No [REDACTED] and Herd No [REDACTED].

38. The auditors were informed that the Irish authorities have interpreted Article 42 Paragraph 5 of Council Regulation (EC) No 1782/2003 to cover all cases where the farmer had less land in 2005 than entitlements due to rented or leased land available during the reference period being no longer available in 2005. Consequently such farmers could request to have the value of their established entitlements (their reference amount) divided by the land they had available in 2005.

Audit finding No 2: Wrong calculation of number of entitlements after consolidation

39. In the case of Herd No [REDACTED] the farmer applied for consolidation. The Irish authorities granted consolidation. The following table shows the difference between what was consolidated (column 2) and what should have been consolidated (column 1):

	Correct calculation	Irish Calculation
	Declared	Found at Inspection
Area for Standard entitlements	646,18	645,49
Area for Set aside entitlements	<u>97,18</u>	<u>95,69¹</u>
Total hectares	743,36	741,18
less set aside entitlements	<u>84,51</u>	<u>84,51¹</u>
Consolidation target	<u>658,85</u>	<u>656,67</u>

¹ Diff 95,69 - 84,51= 11,18 hectares in excess of the set aside entitlements established goes back to standard entitlements

40. The Irish authorities used the inspected area for the purpose of calculating the consolidation target area and allocated 656,67 entitlements.

Analysis of audit findings

Audit finding No 1

41. According to the provisions of Article 42 Paragraph 5 of Council Regulation (EC) No1782/2003 and Article 7 of Commission Regulation (EC) No 795/2004, consolidation can only occur in cases of farmers in 'areas subject to restructuring and/or development programs relating to one or the other form of public intervention in order to avoid abandoning of land and/or in order to compensate for specific disadvantages for farmers in those areas'. Land that is no longer rented or leased does not come under the above category.

42. In Ireland 11.677 cases were approved for consolidation in 2005 reducing the land by approximately 150 thousand hectares from 702 to 552 thousand hectares. The entitlements involved totaled approximately 222 MIO € in terms of value. The value of each of these entitlement rose on average by 20%.

43. By allowing this type of consolidation an area of 150.000 hectares is no longer needed for activation of entitlements and may be used for other still coupled aid schemes or abandoned and no longer covered by any obligation to be maintained in good agricultural condition. No control system has been established to maintain traceability of the parcels making up the 150 thousand hectares (whether still under agricultural use and which or whether abandoned and no longer under cross compliance obligation). This is contrary to the spirit of the EU legislation, as set out in the third "whereas" of the preamble to Council Regulation (EC) No1782/2003 which states that "In order to avoid the abandonment of agricultural land and ensure that it is maintained in good agricultural and environmental condition, standards should be established..."

44. The auditors would like to be informed on action taken by the Irish authorities in order to comply with Article 42 paragraph 5 of Regulation (EC) No 1782/2003 and on the amount of eventual recoveries made.

Audit finding N° 2

45. If calculation had been done according to the provisions of article 7, the farmer would have been allocated 658,85 entitlements (paragraph 2 of Article 7 of Commission Regulation (EC) No 795/2004 states that the declared and not the determined number of hectares is to be used).

46. As the farmer was found at inspection with less land than claimed, 2,18 entitlements would not have been correctly activated and therefore reverted back to the National Reserve if consolidation calculation had been done correctly.

47. The Irish authorities treated all consolidation cases in the same way, i.e. where the area determined after cross checks and/or inspection was less than the declared area, the determined area was used for the calculation of the number of entitlements after consolidation. This procedure systematically avoided reductions and penalties to be applied and entitlements to revert back to the national reserve.

48. In total, national inspections found area deficits of 540 hectares during on the spot inspections in cases where entitlements had been consolidated. Without consolidation 540 entitlements would not have been paid, possibly penalties applied and 540 entitlements would have reverted to the National Reserve.

49. The Irish authorities are invited to inform the ECA auditors about action taken in order to comply with Article 7 paragraph 2 of Commission Regulation (EC) No 795/2004 and on the amount of eventual recoveries made and on the number and total value of the entitlements reverting back to the national reserve.

INCORRECT TREATMENT OF ENTITLEMENTS SUBJECT TO SPECIAL CONDITIONS

Legal provisions

50. Article 47 paragraph 1 of Council Regulation (EC) N° 1782/2003 states that "By way of derogation from Articles 43 and 44, the following amounts resulting from payments granted in the reference period shall be included in the reference amount under the conditions provided for in Article 48 and point C of Annex VII:

- (a) the deseasonalisation premium provided for in Article 5 of regulation (EC) No 1254/1999;
- (b) the slaughter premium provided for in Article 11 of Regulation (EC) No1254/1999;
- (c) the special premium for male bovine animals and the suckler cow premium, where the farmer was exempted from the stocking rate requirement pursuant to Article 12(1) of Regulation (EC) No 1254/1999, provided that the farmer did not apply for the extensification payment provided for in Article 13 of that Regulation;
- (d) additional payments provided for in Article 14 of Regulation (EC) No 1254/1999 where paid in addition to aid provided for under (a), (b) and (c) of this paragraph;
- (e) the aids provided for under the sheep and goats aid scheme:
 - in the calendar years 2000 and 2001, in Article 5 of Regulation (EC) No 2467/98 and in Article 1 of Regulation (EEC) No 1323/90²,
 - in the calendar year 2002, in Articles 4, 5 and 11(1) and in the first, second and fourth indent of Article 11(2) of Regulation (EC) No 2529/2001."

² OJ L 132, 23.5.1990, p. 17. Regulation repealed by Regulation (EC) No 2529/2001 (OJ 341, 22.12.2001, p. 3).

51. Article 48 of Council Regulation (EC) N° 1782/2003 states that "When a farmer was granted payment entitlements referred to in Article 47, but had no hectares as referred to in Article 43 in the reference period, or the entitlement per hectare results in an amount higher than 5,000€ the farmer shall have right, respectively , to a payment entitlement:

- (a) equal to the reference amount corresponding to the direct payments he was granted in the three-year average period;
- (b) for each 5,000 € or fraction of the reference amount corresponding to the direct payments he was granted in the three years average period."

52. Article 49, Paragraph 2 of Council Regulation (EC) N° 1782/2003 states that "By way of derogation from Article 36(1) and 44(1), a farmer who has such payment entitlements for which he did not have hectares in the reference period, shall be authorised by the Member State to derogate from the obligation to provide a number of eligible hectares equivalent to the number of entitlements on the condition he maintains at least 50 % of the agricultural activity exercised in the reference period expressed in livestock units (LU)".

Audit findings

Audit finding N° 1: Special entitlements not allocated

53. The random sample of 35 files contained 3 cases of entitlements subject to special conditions. In the case of Herd No [REDACTED] the farmer's historical data had generated a reference amount of Euro 231,20. He had no land declared in the reference period. A Statement of Provisional Entitlements was sent to the farmer in 2004 which informed him that he was granted provisionally zero number of entitlements and a zero Single payment even though on the supporting pages his reference amount was calculated as Euro 231,20. A standard statement followed on the cover page declaring that a valid Area Aid application and an application for the Single Payment Scheme (both incorporated in one form) must be submitted to activate the entitlements. The cover page did not explain that this kind of farmer had

the option to activate his entitlements without completing an Area Aid application if he maintained at least 50 % of his agricultural activity exercised in the reference period.

54. The same type of treatment was found in the cases of Herd No [REDACTED] (reference amount Euro 33,53) and Herd No [REDACTED] (reference amount Euro 91,86). The Irish authorities decided to grant zero number of entitlements in all cases of entitlements subject to special conditions if livestock farmers did not declare any land neither in the reference period nor in any year since, with the aim of encouraging them to declare their land.

55. Approximately 6,000 such cases subject to special conditions totaling approximately Euro 3,5 Million were included in the final list of entitlements provided to the auditors. These farmers did not apply and a letter was sent to them in March 2006 informing them that their entitlements will be surrendered to the National Reserve since no single payment application form had been received from them.

Audit finding N° 2: Automatic transformation into standard entitlements

56. In the case of Herd No [REDACTED] the farmer did not declare any land in the reference period and the farmer's historical data generated a reference amount of Euro 32.839,05. The farmer declared however a forage area of 53,47 ha in 2004 and his special entitlements were converted into 53,47 normal entitlements of Euro 614,16 each totaling his historical reference amount. Where a farmer with special entitlements declared land in 2004 or 2005, his special entitlements were automatically transformed into normal entitlements irrespective of whether the farmer had applied for this transformation or not.

Analysis of audit findings

Audit finding N° 1

57. Two separate issues arise from the above finding:

- (a) Farmers that did not declare any land in the reference period but have reference amounts must be granted at least one entitlement according to Article 48 of Council Regulation (EC) No 1782/2003... the farmer shall have right,

respectively to a payment entitlement... The Irish authorities granted zero instead of one entitlement to each of these farmers in their efforts to encourage farmers to declare their land.

- (b) By granting zero entitlements and informing the farmer of a 'zero payment' the Irish authorities may have inadvertently driven farmers not to apply to the Single Payment Scheme. The option was explained adequately in the 'Help sheet / terms and conditions for the 2005 EU single payment scheme' manual issued by the Irish authorities; however this information was not transferred to the Statement of Provisional Entitlements.

Audit finding N° 2

58. The following issues arise from the above finding:

- (a) The fact that a farmer declares his land does not necessarily mean that he applies for transformation of his special entitlements into normal entitlements. He is still entitled to activate his special entitlements by maintaining at least 50 % of the agricultural activity exercised in the reference period expressed in livestock units (LU) as stated in Article 49, Paragraph 2 of Council Regulation (EC) No 1782/2003.
- (b) The Irish authorities by automatically converting special to normal entitlements did not provide the farmer with such a prerogative.
- (c) As a result of the above actions only 10 farmers were allocated special entitlements.

ANNEX E**HARDSHIP EXTENDED TO AID AND PREMIA NOT AFFECTED*****Legal provisions***

59. Article 40 Paragraph 1 of Council Regulation (EC) N°1782/2003 states that "By way of derogation from Article 37, a farmer whose production was adversely affected during the reference period by a case of force majeure or exceptional circumstances occurring before or during that reference period shall be entitled to request that the reference amount be calculated on the basis of the calendar year or years in the reference period not affected by the case of force majeure or exceptional circumstances."

60. Article 40 Paragraph 2 of Council Regulation (EC) N° 1782/2003 states that "If the whole reference period was affected by the case of force majeure or exceptional circumstances, the Member State shall calculate the reference amount on the basis of the 1997 to 1999 period. In this case paragraph 1 shall apply mutatis mutandis."

61. Article 16 Paragraph 3 of Commission Regulation (EC) N° 795/2004 states that "Article 40 of Regulation (EC) No 1782/2003 shall apply on the basis of each direct payment referred to in Annex VI of that Regulation".

Audit findings

62. The Irish authorities approved 3,983 applications for force majeure. The auditors examined the case of herd No [REDACTED]. Both animal premia and arable aid had been paid during the reference period. Because no cattle movements were allowed due to foot and mouth disease between February and June 2001 the farmer requested that year 2001 be excluded from the calculation of the reference amount. Hardship was approved and year 2001 was excluded from the calculation of the reference amount both for animal premium and for arable aid.

63. Three other farmers (owner identification numbers, [REDACTED], [REDACTED] and [REDACTED]) from the sample of hardship cases examined by the auditors were

treated in the same way, i.e. all aids and premia for the years affected were removed.

64. The initial Irish instructions did not provide for a restriction of hardship to the premia actually affected. Only a revised version provided for such a restriction. Cases dealt with prior to the revised instructions had been left unchanged.

65. No de minimis rules regarding the financial impact of hardship have been established by the authorities in cases of hardship. In the case the herd N° [REDACTED] the farmer successfully applied under the hardship scheme and was allocated an amount of 15.04€.

Analysis of audit findings

66. As stated in Article 16 Paragraph 3 of Commission Regulation (EC) N° 795/2004 allowance for hardship should only be applied to the premium or premia actually affected. The Irish authorities are invited to inform the auditors about corrective action taken on establishment of entitlements decided prior to the revised version of the national instructions, on the number and values of entitlements for the farmers concerned and eventual recoveries.

67. Certain variations in the annual premium situation are inherent to any farming activity. Only adverse effects on premia that go beyond these normal variations qualify for hardship. No such threshold has been defined.

DISALLOWED ANIMALS USED IN CALCULATING THE REFERENCE AMOUNT

Legal provisions

68. Article 37 Paragraph 1 of Council Regulation (EC) N°1782/2003 states that "The reference amount shall be the three-year average of the total amounts of payments, which a farmer was granted under the support schemes referred to in Annex VI, calculated and adjusted according to Annex VII, in each calendar year of the reference period referred to in Article 38".

69. Point C of Annex VII of Council Regulation (EC) N°1782/2003 states that "Where a farmer has received livestock premiums and/or supplements, the amounts shall be calculated by multiplying the number of determined animals for which such a payment has been granted, respectively, in each year of the reference period by..."

70. Article 2 (s) of Commission Regulation (EC) N° 2419/2001 defines an "Animal determined" : to be an animal for which all conditions laid down in the rules for granting of the aid have been met;

Audit findings

71. In the case of herd no [REDACTED] the farmer claimed 46 suckler cows in 2000. During inspection only 44 animals were established and paid. Two animals were found without ear tags and were disallowed. In the data that was migrated to the SPS data base for the determination of the reference amount 46 suckler cows were recorded. The Irish authorities included the two disallowed animals in the reference amount because they considered that the two suckler cows existed despite the fact that they were not determined.

72. This kind of allowance was made on a systematic basis where claimed animals existed (irrespective of whether they were found eligible for premia or not).

Analysis of audit findings

73. Point C of Annex VII of Council Regulation (EC) N°1782/2003 states that only determined animals can be used in the calculation of the reference amount. The conditions a claimed animal has to meet are set out in Article 25 of Commission Regulation (EC) No 2419/2001. One of the conditions for animals to be determined is to have ear tags. Consequently when animals do not have ear tags or do not fulfill any of the other necessary conditions for determination they cannot be included in the calculation of the reference amount.

74. The Irish authorities are invited to provide the auditors with a list of farmers where the reference amount included ineligible animals, i.e. animals not determined following administrative or on the spot controls. The list should contain the farmer ID, type of premia and number of animals included in the reference amount.

WINDFALL PROFIT CLAUSE NOT APPLIED***Legal provisions***

75. Article 42 Paragraph 9 of Council Regulation (EC) N°1782/2003 states that "By way of derogation from Article 33 and 43, in case of sale or lease of six or more years of the holding or part of it or premium rights in the reference period or not later than 15 May 2004, part of the entitlements to be allocated to the seller or the lessor may revert to the national reserve under conditions to be defined by the Commission, in accordance with the procedure referred to in Article 144(2)".

76. Article 10 of Commission Regulation (EC) N° 795/2004 states the following:

1. In cases referred to in Article 42(9) of Regulation (EC) No 1782/2003, the following shall revert to the national reserve:
 - (a) in case of sale, up to 90% of the reference amount to be established in accordance with Article 37 of Regulation (EC) No 1782/2003 for the seller in respect of the production units and the hectares of the holding or part of the holding transferred or premium rights transferred;
 - (b) in case of six-year lease, up to 50% of the reference amount to be established in accordance with Article 37 of Regulation (EC) No 1782/2003 for the lessor in respect of the production units and the hectares of the holding or part of the holding transferred or premium rights transferred;
 - (c) in case of a lease of more than six years, 5% per any year after the six-year period but corresponding to no more than 20% of the reference amount to be established in accordance with Article 37 of Regulation (EC) No 1782/2003 for the lessor in respect of the production units and the hectares of the holding or part of the holding transferred or premium rights transferred.
2. The payment entitlements to be established for the seller or the lessor shall be calculated in accordance with Article 43 of Regulation (EC) N° 1782/2003 on

the basis of the remaining reference amount and hectares of the reference period corresponding to that remaining reference amount.

3. Paragraph 1 shall not apply in cases where, within one year but not later than 15 May 2004 from the sale or the lease, the seller or the lessor bought or rented for six or more years another holding or part of it. In that case, the seller or the lessor shall keep a payment entitlements that the farmer may use on the next holding pursuant to Article 44 of Regulation (EC) N° 1782/2003.
4. Paragraph 1 shall not apply in cases where the farmer proves, to the satisfaction of the Member State, that the price of sale or lease corresponds to the value of the holding or, in case of partial transfer of part of the holding without payment entitlements.
5. Without prejudice to the application of paragraph 4, paragraph 1 shall not apply in cases where the contractual clause referred to in Article 17 and, where the case may be, Article 27 has been introduced in a contract before 15 May 2004.
6. Member States may fix a ceiling above which paragraph 1 shall apply.

Audit findings

77. In the case of herd No [REDACTED], farmer [REDACTED] rented land from his father [REDACTED] and took over one of his father's herds.
78. The reference amount calculated for Mr. [REDACTED] for years 2000 and 2001 was 37.939,51 €. This calculation was arrived at by adding years 2000 and 2001 and dividing by three. Examination of Mr. [REDACTED]'s premium situation in 2002 revealed that he had abandoned production.
79. Upon presentation of a rental contract for 2002 and an application, the son, Mr. [REDACTED] was treated as a newcomer during the reference period. His reference amount was calculated to be 87.079,95 € based on the premium of year 2002 only.

80. Subsequent to the reference period Mr. [REDACTED] transferred his entitlements to his son [REDACTED] who ended up owning entitlements of 125.019,46 € before reductions. If the transfer had not occurred [REDACTED] would have had a reference amount of 67.857,77 € before reductions.

Analysis of audit findings

81. The transfer of the holding from father to son coupled with the son registered as a new farmer has almost doubled the reference amount allocated for the holding. This is not within the spirit of the legislation which has a 'windfall profit clause' to eliminate extraordinary gains on transfers, as stated in Article 42 Paragraph 9 of Council Regulation (EC) N°1782/2003 and in Article 10 of Commission Regulation (EC) N° 795/2004.
82. The implementation of this "windfall profit clause" however is optional, Ireland has opted not to apply this clause to new entrants, inheritance or transfer by gift cases (within families). In such cases Ireland grants windfall profits.

SYSTEMATIC CALCULATION ERRORS

Legal provisions

83. Article 46 Paragraph 2 of Council Regulation (EC) N°1782/2003 states that "Payment entitlements may be transferred by sale or any other definitive transfer with or without land. In contrast, lease or similar types of transactions shall be allowed only if the payment entitlements transferred are accompanied by the transfer of an equivalent number of eligible hectares.

Except in case of force majeure or exceptional circumstances as referred to Article 40(4), a farmer may transfer his payment entitlements without land only after he has used, within the meaning of Article 44, at least 80% of his payment entitlements during at least one calendar year or, after he has given up voluntarily to the national reserve all the payment entitlements he has not used in the first year of application of the single payment scheme".

Audit findings

84. The auditors examined the case of farmer [REDACTED] (herd numbers [REDACTED] and [REDACTED]). He had rented 11,73 hectares of land including the respective entitlements of a total value of Euro 2.663,30 from another farmer (herd number [REDACTED]). At the same time farmer [REDACTED] merged his holding with the holding of farmer [REDACTED] (herd No [REDACTED]).

85. Examination of the entitlements allocated to the merged business showed that the 11,73 rented entitlements had been credited twice. After investigation the Irish authorities found out that this error occurred systematically in cases where a merger of businesses and the transfer of entitlements under the private contract clause occurred simultaneously.

Analysis of audit findings

86. The Irish authorities are invited to provide the auditors with a list of the cases affected by the error and to inform the auditors on the financial impact on SPS payments made in respect of the entitlements concerned and whether the entitlements credited in excess were removed and any overpayments recovered.

AMALGAMATION OF ENTITLEMENTS***Legal provisions***

87. Article 33 Paragraph 3 of Council Regulation (EC) N°1782/2003 states that "In case of mergers during the reference period or not later than 31 December of the year preceding the year of application of the single payment scheme, the farmer managing the new holding shall have access to the single payment scheme under the same conditions as the farmers managing the original holdings".

88. Article 43 paragraph 4 of Regulation 1782/2003 provides that payment entitlements per hectare shall not be modified save as otherwise provided.

89. Article 15 Paragraph 1 of Commission Regulation (EC) N° 795/2004 states that "For the purpose of the first subparagraph of Article 33(3) of Regulation (EC) No 1782/2003, 'merger' shall mean the merger of two or more separate farmers within the meaning of Article 2 (a) of Regulation (EC) No 1782/2003 controlled in terms of management, benefits and financial risks by the farmers originally managing the holding or one of them.

The number and value of the payment entitlements shall be established on the basis of the reference amount and the number of hectares relating to the original holdings".

90. Article 33 Paragraph 1 subparagraph (b) of Council Regulation (EC) N°1782/2003 states that "Farmers shall have access to the single payment scheme if they have received the holding or part of the holding, by way of actual or anticipated inheritance, by a farmer..."

91. Article 13 Paragraph 1 of Commission Regulation (EC) N° 795/2004 states that "In cases referred to in Article 33(1)(b) of Regulation (EC) No 1782/2003, the farmer who has received the holding or part of the holding shall claim, in

his name, the payment entitlements to be calculated for the holding or part of the holding received.

The number and value of the payment entitlements shall be established on the basis of the reference amount and the number of hectares relating to the production units inherited".

92. Article 49 Paragraph 2 of Commission Regulation (EC) N° 796/2004 states that "Where the area determined for the purposes of the single payment scheme is lower than the area declared, the following shall apply to determine which of the payment entitlements have to be returned to the national reserve in accordance with Article 45(1) and the second subparagraph of Article 42(8) of Regulation (EC) No 1782/2003:

- (a) the area determined shall be taken into account starting with the payment entitlements having the highest value;
- (b) the payment entitlements with the highest value shall be attributed to that area first, followed by those with the next lower value.

For the purposes of this paragraph, set-aside entitlements and other payment entitlements shall be treated separately".

Audit findings

93. The auditors examined the case of farmers [REDACTED] and [REDACTED] who shared the same herd number (herd No [REDACTED]) during the reference period and decided to merge their businesses.

[REDACTED] had been allocated 70,19 standard entitlements totaling 9 484,77 € and 0,53 set-aside entitlements totaling 203,01€.

[REDACTED] had been allocated 154,07 standard entitlements totaling 55.386,62 € and 0,69 set-aside entitlements totaling 264,30 €. Included in this were 9,61 inherited entitlements totaling 2.398,25 €

The partnership was equally allocated a reference amount of 21.288,15 € under the dairy premium scheme.

94. The Irish authorities merged the two businesses by amalgamating all entitlements and values. As a result the new partnership was allocated 224,26 standard entitlements totaling 86.159,54 € (before reductions) and 1,22 set-aside entitlements totaling 467,31 € (before reductions).

Analysis of audit findings

95. Amalgamation of inherited or transferred entitlements is contrary to the provisions of articles 43 (4) of Regulation (EC) N° 1782/2003 and to the provisions of articles 13 (1) and 15 of Regulation (EC) N° 795/2004.

96. Furthermore amalgamation of entitlements could equally have a discriminatory impact for the farmer in cases where entitlements revert back to the national reserve under the provisions of article 49(2) of Regulation (EC) N° 796/2004.

97. The Irish authorities are invited to inform the auditors on action taken in all cases of transfer (mergers, scissions, inheritance, and private contract clause) where separate entitlements have been amalgamated.

ANNEX J**NORMAL ENTITLEMENTS ACTIVATED WITHOUT ACTIVATING SET ASIDE ENTITLEMENTS*****Legal provisions***

98. Article 54 Paragraph 6 of Council Regulation (EC) N°1782/2003 states that "By way of derogation from Article 36(1) and 44(1), set-aside entitlements shall be claimed before any other entitlements".

Audit findings

99. In the case of Herd No [REDACTED] the farmer inherited 72,14 payment entitlements of a total value of 20.647,19 € from Herd No [REDACTED]. These entitlements were leased to Herd No [REDACTED] for the period 1/2/2005 - 30/10/2010. In total Herd No [REDACTED] had available 239,21 standard entitlements totaling 233.933,00 € and 0,74 set-aside entitlements of 275,01€ per hectare. He activated his standard entitlements and was paid in full although he had not activated his 0,74 set-aside entitlement.

Analysis of audit findings

100. Standard entitlements can only be claimed if all set aside entitlements are claimed.

101. The Irish authorities are invited to provide the auditors with a list of all the set-aside entitlements not claimed in the 2005 SPS claim year. This list should include the identification number of the set-aside entitlements, values and owner/user I.D. In addition, the list should also indicate for each owner/user ID the amounts of total payments.

LIST OF FILES REVIEWED**LIST OF 24 FILES OF FIRST AUDIT VISIT**

Herd Number	Total Entitlements	Gross value	Category of Entitlement
██████████	784,12	323.503,39	Normal
██████████	14,89	6.261,41	Normal
██████████	727,37	549.205,13	Normal
██████████	507,58	1.808,73	Normal
██████████	26,26	20.167,12	New entrant Art 37(2)
██████████	18,57	16.414,90	New entrant Art 37(2)
██████████	1,50	7.502,46	Special
██████████	102,35	43.510,53	Set aside
██████████	42,53	15.892,86	Set aside
██████████	38,00	21.734,20	Hardship/Force majeure
██████████	26,59	1.762,20	Hardship/Force majeure
██████████	13,35	4.209,60	Hardship/Force majeure
██████████	34,03	4.077,90	Hardship/Force majeure
██████████	16,16	4.201,24	Hardship/Force majeure
██████████	53,88	16.490,02	Nat. Res. New Farmers Art 42(3)
██████████	44,10	7.554,48	Nat. Res. New Farmers Art 42(3)
██████████	77,57	24.744,69	Nat. Res. New Farmers Art 42(3)
██████████	10,24	2.789,08	Nat. Res. Special situation Art 42(4)
██████████	67,46	31.155,42	Nat. Res. Special situation Art 42(4)
██████████	453,37	339.714,91	Nat. Res. Special situation Art 42(4)
██████████	38,07	13.974,00	Nat.Res.Restructuring or Consolidation
██████████	114,87	36.135,37	Nat.Res.Restructuring or Consolidation
██████████	42,43	18.261,51	Nat.Res.Restructuring or Consolidation

	51,58	20.371,15	Nat.Res.Restructuring or Consolidation
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LIST OF 35 FILES OF SECOND AUDIT VISIT (RANDOM)

Entitlement ID	Herd No	No of entitlements	Net amount assigned €
[REDACTED]	[REDACTED]	63,8	24367,94
[REDACTED]	[REDACTED]	9,96	3062,25
[REDACTED]	[REDACTED]	26,44	765,79
[REDACTED]	[REDACTED]	0	224,31
[REDACTED]	[REDACTED]	28,01	2559,87
[REDACTED]	[REDACTED]	6,7	1391,04
[REDACTED]	[REDACTED]	60,73	12380,01
[REDACTED]	[REDACTED]	4,93	522,26
[REDACTED]	[REDACTED]	73,18	27117,92
[REDACTED]	[REDACTED]	30,83	4670,27
[REDACTED]	[REDACTED]	36,4	30662,12
[REDACTED]	[REDACTED]	26,89	2274,9
[REDACTED]	[REDACTED]	8	2398,8
[REDACTED]	[REDACTED]	17,04	3775,12
[REDACTED]	[REDACTED]	18	4849,25
[REDACTED]	[REDACTED]	9,37	316,45
[REDACTED]	[REDACTED]	7,95	1963,71
[REDACTED]	[REDACTED]	1,53	685,16
[REDACTED]	[REDACTED]	82,86	14718,55
[REDACTED]	[REDACTED]	13,72	1274,38
[REDACTED]	[REDACTED]	13,08	1053,21
[REDACTED]	[REDACTED]	63,11	24254,3
[REDACTED]	[REDACTED]	21,48	5807,07
[REDACTED]	[REDACTED]	23,58	5435,77

		0	32,53
		28,93	7662,23
		37,02	13464,18
		39	17743,92
		14,63	1532,85
		12,74	5379,98
		7,04	1563,66
		22,88	6746
		0	89,12
		35,87	3500,68
		60,91	17539,22

LIST OF 45 FILES OF SECOND AUDIT VISIT (SELECTED)

ENTITLEMENT_ID	HERD	NO_ENTS	NET_ASSIGNED €
		144,08	356903,07
		453,37	331577,25
		490,18	236969,69
		741,18	338041,35
		535,55	200697,55
		411,78	252484,54
		405,43	170468,63
		356,33	161540,59
		312,69	128165,66
		239,95	234207,53
		449,45	205745,69
		308,85	161176,51
		442,39	151380,72
		161,7	141248,23

		165,48	131851,22
		195,8	127776,99
		249,01	123135
		59,26	121193,02
		374,62	201059,73
		318,58	150684,76
		201,33	130194,95
		229,55	53594,5
		0	23431,2
		0	21752,71
		0	19210,74
		281,11	170946,51
		169,17	84412,31
		225,48	84046,65
		152,99	80428,07
		160,53	79537,26
		151,23	135232,99
		217,43	123890,64
		121,37	104329,31
		0	11166,23
		0	4657,03
		741,18	338041,35
		239,95	234207,53
		535,55	200697,55
		161,56	179403,17
		266,82	179298,57
		518,3	167686,36
		238,52	100263,54

			250,41	93058,27
			118,2	65806,67
			94,53	55896,85