

Commission Delegated Regulation (EU) No 639/2014 of 11 March 2014 supplementing Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and amending Annex X to that Regulation

COMMISSION DELEGATED REGULATION (EU) No 639/2014

of 11 March 2014

supplementing Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and amending Annex X to that Regulation

THE EUROPEAN COMMISSION,

Having regard to Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009<sup>(1)</sup>, and in particular Articles 4(3), 8(3), 9(5), 35(1), (2) and (3), 36(6), 39(3), 43(12), 44(5), 45(5) and (6), 46(9), 50(11), 52(9), 57(3), 58(5), 59(3), 67(1) and (2) thereof,

Whereas:

- (1) Regulation (EU) No 1307/2013 has repealed and replaced Council Regulation (EC) No 73/2009<sup>(2)</sup>. Regulation (EU) No 1307/2013 lays down a new legal framework consisting of a new system of direct support, including a basic payment for farmers and further support schemes. It empowers the Commission to adopt delegated and implementing acts. In order to ensure the smooth functioning of the schemes in the new legal framework, certain rules have to be adopted by means of such acts. In order to reduce administrative burden, these rules should be simple and easy to control. Those acts should replace the rules laid down in Commission Regulations (EC) No 1120/2009<sup>(3)</sup> and (EC) No 1121/2009<sup>(4)</sup>.
- (2) It is necessary to supplement that framework by means of this Regulation in relation to certain general provisions, the basic payment scheme, the single area payment scheme, the payment for farmers observing agricultural practices beneficial for the climate and the environment, the payment for young farmers commencing their agricultural activity, voluntary coupled support, the crop-specific payment for cotton and in relation to the notifications necessary with regard to each support scheme.
- (3) For the purpose of ensuring the correct application of the adjustments of direct payments with respect to financial discipline, it is necessary to lay down general rules on the sequence for the calculation of such reductions in relation to reductions under Regulation (EU) No 1306/2013 of the European Parliament and of the Council<sup>(5)</sup>.

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- (4) In line with the case-law of the Court of Justice of the European Union<sup>(6)</sup>, it is appropriate to clarify that Member States, when adopting measures to implement Union law, should exercise their discretion in compliance with certain principles, including in particular the principle of non-discrimination.
- (5) Support other than coupled support should respect the requirements to be considered as decoupled income support in the meaning of the ‘Green Box’ of the Agreement on Agriculture concluded during the Uruguay Round of multilateral trade negotiations<sup>(7)</sup>, and coupled support should respect the requirements to be considered as falling within the ‘Blue Box’ of that Agreement.
- (6) In accordance with Article 4(1)(c) of Regulation (EU) No 1307/2013, an ‘agricultural activity’ does not require production, rearing or growing of agricultural products. Farmers may instead maintain an agricultural area in a state which makes it suitable for grazing or cultivation without preparatory action going beyond usual agricultural methods and machineries or, on agricultural areas naturally kept in a state suitable for grazing or cultivation, carry out a certain minimum activity. As the latter two activities both require a certain action on the part of the farmer, it is necessary to establish a Union framework within which Member States are to establish the further criteria for those activities.
- (7) For environmental reasons, the definition of ‘permanent grassland’ in Article 4(1)(h) of Regulation (EU) No 1307/2013 also includes non-herbaceous species such as shrubs and/or trees, which can be grazed, provided that the grasses and other herbaceous forage remain predominant on the relevant land. It is therefore necessary to determine a criterion for establishing in which cases grasses and other herbaceous forage remain predominant.
- (8) That definition of ‘permanent grassland’ allows Member States to consider as permanent grassland also land which can be grazed and which forms part of established local practices where grasses and other herbaceous forage are traditionally not predominant in grazing areas. For that purpose, it is necessary to lay down criteria on the basis of which such established local practices can be determined.
- (9) In accordance with the second subparagraph of Article 4(2) of Regulation (EU) No 1307/2013, Member States may consider as permanent grassland land which can be grazed and which forms part of established local practices where grasses and other herbaceous forage are traditionally not predominant in grazing areas. Such permanent grassland may be subject to a reduction coefficient according to Article 32(5) of Regulation (EU) No 1307/2013. In order to ensure the proportionate application of that provision, it is appropriate to provide for a possibility to distinguish between different categories of areas in order to apply different reduction coefficients to such categories.
- (10) Article 9(1) of Regulation (EU) No 1307/2013 requires that no direct payments are granted to natural or legal persons, or to groups of natural or legal persons, whose agricultural areas are mainly areas naturally kept in a state suitable for grazing or cultivation and who do not carry out on those areas the minimum activity defined by Member States. For this purpose, it is necessary to determine when such areas are to

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be considered as the main part of a farmer's agricultural land and to clarify the scope of application of that provision.

- (11) According to Article 9(2) of Regulation (EU) No 1307/2013, entities falling within the scope of the so-called negative list are to be considered active farmers if they are able to prove that they meet one of the criteria listed in that provision. One of these criteria consists of demonstrating that the annual amount of direct payments is at least 5 % of the total receipts obtained from non-agricultural activities. It is therefore necessary to lay down provisions for establishing whether receipts stem from agricultural or non-agricultural activities.
- (12) Furthermore, it is necessary to lay down rules on how the annual amount of direct payments is to be determined for the purposes of Article 9(2) and, where appropriate, of Article 9(3), as well as for the purposes of Article 9(4) of Regulation (EU) No 1307/2013, which exempts certain farmers from the application of Article 9(2) and (3) of that Regulation. In order to ensure the equal treatment of farmers in Bulgaria, Croatia and Romania, where direct payments are subject to phasing-in, in those Member States the annual amount of direct payments should be based on the final amounts to be granted at the end of the phasing-in process.
- (13) In accordance with Article 9(2) and, where applicable, Article 9(3) of Regulation (EU) No 1307/2013 farmers may be excluded from support where their agricultural activities are insignificant or where their principal business or company objects do not consist of exercising an agricultural activity. It is necessary to define certain criteria in this respect, while giving Member States a possibility to establish alternative criteria to target agricultural activities which are only marginal.
- (14) Regulation (EU) No 1307/2013 provides for several possibilities for the allocation of payment entitlements to farmers. For the sake of legal certainty, it should be provided that, in case of an actual or anticipated inheritance, or revocable anticipated inheritance, mergers or scissions of a holding, the number and value of payment entitlements to be received are established under the same conditions as would have applied for the farmer originally managing the holding. It is further necessary to provide rules on how to establish the number of payment entitlements to be allocated in case of holdings resulting from a scission where those holdings are situated in Member States applying Article 24(4) or (5) of Regulation (EU) No 1307/2013. For the sake of legitimate expectations of farmers, changes of the legal status of a farmer should not have an impact on the number or value of payment entitlements the farmer may receive where such a farmer remains in control over the holding in terms of management, benefits and financial risks.
- (15) For the sake of legal certainty and in order to ensure the proper management of payment entitlements, it is necessary to clarify that only those eligible hectares which are determined pursuant to point (23)(a) of the second subparagraph of Article 2(1) of Commission Delegated Regulation (EU) No 640/2014<sup>(8)</sup> should be considered for allocation and activation of payment entitlements.
- (16) In line with the case-law of the Court of Justice of the European Union<sup>(9)</sup>, payment entitlements should be allocated to the person enjoying decision-making power, benefits

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and financial risks in relation to the agricultural activity on the land for which such allocation is requested. It is appropriate to clarify that this principle applies in particular where an eligible hectare is subject to an application for allocation of payment entitlements by more than one farmer.

- (17) Article 24(6) of Regulation (EU) No 1307/2013 allows Member States to apply a reduction coefficient to certain eligible hectares under permanent grassland located in areas with difficult climate conditions, especially due to the altitude and other natural constraints. In order to ensure the proportionate application of that provision, it is appropriate to establish a framework for the application of such a reduction coefficient, in particular as regards the limits for such reduction.
- (18) Article 9 of Regulation (EU) No 1307/2013 lays down the basic principle that only active farmers may receive direct payments. Furthermore, Article 24(9) of that Regulation allows Member States to fix a minimum size per holding for the allocation of payment entitlements. It is appropriate to take these provisions into account also in the context of the determination of the value of payment entitlements.
- (19) When support granted for calendar year 2014 is taken into account pursuant to Article 26 of Regulation (EU) No 1307/2013 to determine the initial unit value of payment entitlements, it should be clarified that Member States may decide not to take account of all measures listed in that provision. In order to avoid any undue penalisation of farmers, the reference amounts relevant for the determination of the value of payment entitlements should not include any reductions or exclusions established pursuant to Chapter 4 of Title II of Regulation (EC) No 73/2009. It is appropriate to specify how that support is to be taken into account and to lay down further criteria necessary in order to respect the decoupled nature of certain schemes which may be taken into account.
- (20) Furthermore, for the purpose of determining the initial unit value of payment entitlements, it is necessary to clarify that in Article 26(3) of Regulation (EU) No 1307/2013, payment entitlements held by a farmer include also those payment entitlements which are leased out to another farmer on the date of submission of the lessor's application for 2014.
- (21) In order to allow for a prediction of income support for farmers, it is appropriate to set a deadline by which Member States need to establish and communicate to farmers the definitive value and number of payment entitlements where farmers were informed on the basis of provisional data.
- (22) For the purposes of Article 26 or Article 40(3) of Regulation (EU) No 1307/2013, where a farmer was affected by *force majeure* or exceptional circumstances during the reference year referred to in those Articles, it is appropriate to establish the value of the payment entitlements on the basis of the last year not affected by *force majeure* or exceptional circumstances. Member States should however be allowed to set a certain threshold in terms of impact of *force majeure* or exceptional circumstances on the direct support received in the reference year in order to reduce the administrative burden.
- (23) For the sale or lease of a holding or part of it that took place in the period before the date for lodging an application for allocation of entitlements in the first year of application

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of the scheme, it should be provided that Member States may decide that farmers may transfer by contract the payment entitlements to be allocated together with the holding or part of it. Under such a private contract clause, the payment entitlements should be allocated to the seller or lessor, respectively, and directly transferred to the buyer or lessee respectively, who will benefit where applicable from taking the payments which the seller or the lessor, respectively, received for 2014 or from the value of the entitlements that the seller or lessor owned in 2014 as referred to in Article 26 of Regulation (EU) No 1307/2013 as a reference for the initial unit value of payment entitlements. It should further be clarified that Article 34(4) of Regulation (EU) No 1307/2013 is not to be applied to such transfers.

- (24) As regards the calculation of the unit value of the payment entitlements, clear rules should be laid down concerning the rounding-up of figures, the possibility to split existing payment entitlements where the size of the parcel which is declared or transferred with the entitlement only amounts to a fraction of hectares, and the possibility to merge entitlements and fractions.
- (25) For the sake of legal certainty, it is appropriate to set a deadline by which the regions referred to in Article 34(3) of Regulation (EU) No 1307/2013 are to be set up.
- (26) Specific provisions for the management of the national or regional reserves should be laid down.
- (27) It is necessary to lay down criteria and maximum percentages for the application of Article 34(4) of Regulation (EU) No 1307/2013 in order to prevent that any reduction under that provision results in a substantial obstacle or prohibition of transfer of payment entitlements.
- (28) For reasons of legal certainty, it is appropriate to clarify the determination of the amount that may be reverted to the national or regional reserve pursuant to Article 28 or 40(5) of Regulation (EU) No 1307/2013 when establishing payment entitlements in the first year of implementation of the basic payment scheme.
- (29) Article 30 of Regulation (EU) No 1307/2013 provides for compulsory and optional cases of allocation of payment entitlements from the national or regional reserve. It is appropriate to lay down rules for the calculation of the number and value of the payment entitlements to be allocated in such a way and to provide that priorities established in Article 30(6) of that Regulation are not undermined by the decisions Member States are allowed to take under Article 30(7) and (10) of Regulation (EU) No 1307/2013. Similarly, application of Article 30(6) of Regulation (EU) No 1307/2013 should be coherent with Article 24(6) and (7) of that Regulation and with the rules on hardship in this Regulation. In order to ensure the decoupled nature of the basic payment scheme, the calculation of the number and value of the payment entitlements under the national or regional reserve should not be based on sector-specific criteria after the date fixed by the Member State in accordance with Article 11(2) of Commission Regulation (EC) No 1122/2009<sup>(10)</sup> for claim year 2013.
- (30) For the sake of legal certainty and in order to ensure equal treatment of farmers commencing their agricultural activity, it is appropriate to clarify the notion of ‘farmers

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commencing their agricultural activity' referred to in Article 30(11)(b) of Regulation (EU) No 1307/2013.

- (31) Where Member States allocate payment entitlements pursuant to Article 30(7)(c) of Regulation (EU) No 1307/2013, the value of such entitlements should be calculated in accordance with Article 25 or 40 of Regulation (EU) No 1307/2013.
- (32) Article 24(3) to (7) of Regulation (EU) No 1307/2013 provides Member States with several possibilities to limit the number of payment entitlements to be allocated to farmers. Certain farmers may thus have a high proportion of eligible hectares not covered by payment entitlements which may lead to hardship cases as certain support schemes accessory to the basic payment scheme, in particular the payment for agricultural practices beneficial for the climate and environment, are based on the eligible hectares declared for the purpose of activation of payment entitlements. Therefore, it should be clarified that Member States have the possibility to allocate payment entitlements from the national or regional reserve when a farmer is significantly affected by the limitations provided for in Article 24(3) to (7) of Regulation (EU) No 1307/2013. As certain areas are not subject to greening obligations or only involve limited costs of compliance with greening, Member States should further be allowed to decide not to include such areas when determining hardship cases.
- (33) Pursuant to Article 21(4) of Regulation (EU) No 1307/2013, payment entitlements held by a farmer (owned or leased-in) in excess of the eligible hectares at his disposal expire. For reasons of legal certainty, it is appropriate to clarify the order of priority of expiry of those payment entitlements and to define further rules on implementation. Moreover it is appropriate to give Member States the possibility to take this provision into account also in the context of the determination of the value of payment entitlements.
- (34) Regulation (EU) No 1307/2013 provides that the basic payment in certain Member States may be implemented in the form of the single area payment scheme until the year 2020 at the latest. Having regard to the fact that the single area payment per hectare is calculated every year and that the eligibility to the basic payment is a precondition for access to most of the other direct payment schemes and thus intrinsically connected with them, it is necessary to clarify that only those eligible hectares, which are determined pursuant to point (23)(a) of the second subparagraph of Article 2(1) of Delegated Regulation (EU) No 640/2014 are to be taken into account for the purposes of the relevant schemes.
- (35) Member State applying the single area payment scheme and applying the basic payment scheme as from 1 January 2018 at the latest may differentiate the single area payment per hectare taking into account certain payments granted for calendar year 2014. For the purpose of that differentiation, it is appropriate to specify how those payments should be taken into account and to lay down further criteria necessary in order to respect the decoupled nature of certain schemes. Moreover, where a farmer was affected by *force majeure* or exceptional circumstances affecting calendar year 2014, it is appropriate to establish the differentiation on the basis of the last year not affected by *force majeure* or exceptional circumstances. Member States should however be allowed to set a certain threshold in terms of impact of *force majeure* or exceptional circumstances on the direct

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support received in the reference year in order to reduce the administrative burden. In addition, for the sake of legal certainty, rules should be provided for the case of an actual or anticipated inheritance.

- (36) Chapter 3 of Title III of Regulation (EU) No 1307/2013 establishes the conditions for the granting of the payment for agricultural practices beneficial for the climate and the environment ('greening' payment). The requirements tied to the greening payment as stipulated in the basic act are generalised (applicable following the same pattern for all beneficiaries) and provide for non-contractual actions, globally ensuring that EU agriculture is based on practices going beyond the requirements of cross compliance. These principles laid down in the basic act shall be taken into account when specifying the detailed rules concerning the greening practices.
- (37) In order to have an appropriate level of assurance as regards the obligations set by Article 43(3) of Regulation (EU) No 1307/2013 relating to equivalent practices covered by national or regional certification schemes, criteria should be established as regards the designation of public or private certification authorities.
- (38) In order to respect the principle of no double funding, rules for the calculation of the payments for some specific commitments covering practices referred to in points 3 and 4 of Section I and point 7 of Section III of Annex IX to Regulation (EU) No 1307/2013 need to be provided for. As those commitments concern equivalent practices that allow farmers taking up such commitments to fulfil one or more obligations in order to receive the 'greening' payment referred to in Chapter 3 of Title III of Regulation (EU) No 1307/2013, the payments for those commitments, compared to the normal payment provided for under Article 28(6) of Regulation (EU) No 1305/2013 of the European Parliament and of the Council<sup>(11)</sup>, should be reduced by an amount that is to be calculated on the basis of the level of the greening payment in the Member State or region concerned or in specific cases based on the individual greening payment of the farmer.
- (39) Article 44 of Regulation (EU) No 1307/2013 lays down obligations with respect to the number of crops and the relative shares of crops on arable land. Rules concerning the precise calculation of the shares of different crops need to be established.
- (40) Rules on the period that will be taken into account for the calculation of the relative share of crops should be set, taking account of the practical timing of crop cultivation activities and the need to allow a simple administration.
- (41) For the sake of clarity for farmers and Member States and to contribute to the protection of landscape elements situated within arable fields, it is necessary to clarify the situation with respect to the area occupied by landscape features.
- (42) For the purpose of calculating the shares of different crops, it is also necessary to lay down supplementary rules for the specific cases of mixed cropping in distinct rows, under-sowing and the use of seed mixtures.
- (43) Article 45(1) of Regulation (EU) No 1307/2013 lays down obligations which aim at preserving the permanent grassland areas that contribute most to the protection of the environment and in particular carbon sequestration, biodiversity and soil protection.

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Such grasslands, which constitute areas of high environmental interest, are located within but also outside of the Natura 2000 network. For those which are located outside, it is necessary in order to secure their effective protection, to establish a framework for Member States for their designation which should allow them to take account of conditions in the Member State and should build on the synergy with existing environmental policies.

- (44) In order to provide for the protection of such permanent grassland areas over the years, rules should be established on the reconversion of such areas in case of a breach of the strict protection by the farmer.
- (45) Article 45(2) of Regulation (EU) No 1307/2013 provides for the protection of the share of permanent grassland compared to the total agricultural area. In order to achieve this goal, Member States should monitor the evolution of the share of permanent grassland. They should be allowed to establish a system of prior authorisation. Individual reconversions and a prohibition of further conversions should be required in case of a decrease beyond 5 %. For the sake of clarity and in order to have a proportionate implementation, rules should be established on the farmers and areas that are to be subject to authorisations and reconversions.
- (46) In order to have an effective use of the authorisation procedure for the conversion of permanent grassland, Member States should be granted the flexibility to select priority areas or groups of farmers for the granting of the authorisation based on objective criteria.
- (47) Rules should be provided for the method to determine the ratio of permanent grassland to agricultural land in order to avoid situations in which permanent grassland areas are counted twice due to the practice to have grassland in a long rotation and to avoid that the conversions by small and organic farmers, that are exempted from obligations to reconvert, have a direct impact on the reconversion obligation of other farmers. Member States should be allowed to adapt their reference ratio in justified cases.
- (48) Article 46 of Regulation (EU) No 1307/2013 lists the features and areas that can be applied as ecological focus area by Member States. Further criteria to qualify those features and areas as ecological focus areas need to be laid down. In order to meet the biodiversity objective, those criteria should ensure the safeguarding and improvement of biodiversity on farms. Those criteria should also take into account the efforts already made by farmers.
- (49) On land lying fallow, the requirement of having no production, which will result in limiting the application of pesticides or fertilisers, should not exclude voluntary actions such as the seeding of wildflower mixtures with a view to improve the biodiversity benefits. It should be clarified that the land lying fallow for more than five years for the purpose of the ecological focus area requirement is to remain arable land and does not fall under the definition of permanent grassland.
- (50) As regards terraces, given the variety in their construction across the Union, it should be up to Member States to define detailed conditions based on national or regional specificities, taking account of their value for biodiversity.



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- (51) For the sake of clarity, landscape features that count as ecological focus area should be listed and the link with features already protected in Member States under cross compliance should be clarified. For some features, a minimum or maximum size should be established in order to help their identification and help guarantee that the area is predominantly agricultural.
- (52) Buffer strips, to be located near the border of arable fields along water courses or within fields higher upon a slope, are beneficial for the purpose of reducing runoff to surface waters of pollutants. In the interest of biodiversity benefits, it should be provided that all those areas counted as ecological focus area may not be used for production, which will also avoid the application of pesticides and limit the application of fertilisers. In order to further enhance the biodiversity benefits, voluntary actions such as the seeding of wildflower mixtures should not be excluded. Member States should be able to decide whether or not on buffer strips grazing and cutting for forage is allowed.
- (53) As regards hectares of agro-forestry, it should be clarified that the areas to be taken into account are the areas of arable land that are located in an area under an agro-forestry system that is still fulfilling the conditions under which it receives or received rural development support. Member States that select those areas for the fulfilment of the ecological focus area obligation should take the biodiversity objective into account when establishing the additional conditions for receiving support for the establishment of agro-forestry systems in their rural development programmes.
- (54) As regards strips of eligible hectares along forest edges, it should be up to the Member States to decide whether to establish a requirement of no cultivation which will avoid the use of inputs on a set strip adjacent to the forest in order to create a buffering transition to the bordering forest. Such a requirement will provide a higher value of ecological focus area which should be reflected in a differentiated value for the weighting factor for this type of area.
- (55) The limited use of inputs needed for the cultivation of short rotation coppice results in indirect benefits for biodiversity. For that purpose, Member States should lay down the conditions that apply to this type of ecological focus area, by specifying the list of tree species that may be used and the rules as regards the use of inputs.
- (56) In order to allow an implementation that is adapted to national conditions and for an optimal use of the capacity of catch crops and green cover to effectively take up residual nitrogen and with a view to avoiding bare soil and diffuse pollution in groundwater, Member States should fix the dates for the sowing of such covers. Catch crops or green covers should be established by sowing of a mixture of crop species or by under-sowing of grass in order to optimise the agronomic and environmental outcome in terms of biodiversity. Member States may establish in the scope of GAEC 4 as referred to in Annex II to Regulation (EU) No 1306/2013, the dates after which mechanical destruction of the catch crops and the green cover is allowed.
- (57) As regards areas with nitrogen-fixing crop, Member States should lay down rules that will avoid that the growing of nitrogen-fixing crops on ecological focus areas would lead to increased nitrogen leaching and deteriorated water quality, which would not

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be compatible with the objectives of Council Directive 91/676/EEC<sup>(12)</sup> and Directive 2000/60/EC of the European Parliament and of the Council<sup>(13)</sup> and would compromise the biodiversity objective. Member States should also establish the list of nitrogen-fixing crops that are considered to contribute to improving biodiversity.

- (58) In order to maximise the benefits of having ecological focus area on arable land and to ensure that ecological focus areas cover the percentage provided for in Article 46(1) of Regulation (EU) No 1307/2013, it should be clearly laid down, in the interest of an efficient management, that a parcel or a landscape feature is not to be counted twice the same year for complying with the ecological focus area requirement.
- (59) Article 46(5) of Regulation (EU) No 1307/2013 allows Member States to implement up to 50 % of the individual ecological focus area requirement at regional level. In order to ensure that such regional implementation brings additional benefits from an environmental and landscape point of view and contributes to the implementation of the Green Infrastructure Strategy<sup>(14)</sup>, rules should be introduced on the features that may be used to build up adjacent ecological focus areas. Rules should also be laid down as regards the designation of areas with the aim of creating synergies in the implementation of agricultural and environmental policies of the Union.
- (60) For the purpose of the decision to be taken by Member States granting the possibility for farmers to implement collectively half of their individual ecological focus area obligation as provided for in Article 46(6) of Regulation (EU) No 1307/2013, rules should be introduced that are similar to the rules on the regional implementation as regards the features that may be used to build up adjacent ecological focus areas to guarantee added value for the environment and contribution to the enhancement of green infrastructure. Rules on the criteria to be met by the farmers should provide that their holdings need to be located in close proximity while leaving flexibility for Member States to take account of different administrative structures. For the sake of legal clarity, rules should be laid down on the content of the written agreement to be concluded between participants with the aim of setting the rights and obligations of each of them.
- (61) As regards the possibility for certain Member States to exempt farmers in heavily forested areas from the ecological focus area obligation, rules should be established which provide clarity as to the methods and the data to be used for the calculation of the ratio of forest to the total land surface area and the ratio of forest to agricultural land.
- (62) Regulation (EU) No 1307/2013 lays down eligibility conditions for the payment for young farmers. In particular, the payment is subject to the condition that the young farmer is setting up for the first time an agricultural holding as head of the holding, or has already set up such a holding during the five years preceding the first application for the payment, and that the farmer is no more than 40 years of age in the year of submitting the first application for the payment. In the case of legal persons it is appropriate that these conditions are fulfilled by all natural persons exercising effective and long-term control over the legal person as defined by the Court of Justice of the European Union<sup>(15)</sup>. It is further necessary to clarify which conditions are to be fulfilled by the legal person and the natural person(s) in control of that legal person.

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- (63) In order to avoid possible circumvention of the payment for young farmers, it should be provided that the payment is granted to a legal person only for as long as at least one of the natural persons having control over the legal person in the first year of application for payment under the scheme remains in such control. For the purposes of determining the maximum period for payment pursuant to Article 50(5) of Regulation (EU) No 1307/2013, it is necessary to set rules for cases where a legal person is controlled by more than one natural person.
- (64) With a view to avoiding discrimination between legal persons and a group of natural persons applying for the young farmers scheme, equivalent rules should be applied to a group of natural persons as referred to in Article 4(1)(a) of Regulation (EU) No 1307/2013 if the applications for the basic payment and the young farmer scheme are made by that group and not by its individual members.
- (65) Chapter 1 of Title IV of Regulation (EU) No 1307/2013 provides for the possibility to grant voluntary coupled support to farmers. The conditions for granting the support referred to in that Chapter should be laid down.
- (66) Pursuant to Article 52(3) of Regulation (EU) No 1307/2013, voluntary coupled support may only be granted to those sectors or to those regions of a Member State where specific types of farming or specific agricultural sectors undergo certain difficulties and are particularly important for economic and/or social and/or environmental reasons. Furthermore, pursuant to Article 52(5) and (6) of Regulation (EU) No 1307/2013, voluntary coupled support may only be granted to the extent necessary to create an incentive to maintain current levels of production in the regions or sectors concerned. It should take the form of an annual payment and should be granted within defined quantitative limits and based on fixed areas and yields or on a fixed number of animals. In order to ensure that measures under voluntary coupled support are well-targeted and managed whilst allowing Member States to design voluntary couple support according to their needs, provision should be made to assign Member States the responsibility of defining the regions and/or types of farming eligible for support and fixing quantitative limits, as well as the appropriate level of support. In order to avoid market distortions, the payments should not, however, be based on fluctuations of market prices or be equivalent to a deficiency payments system whereby agricultural domestic support is paid by Member States to farmers based on the difference between a target price and a domestic market price.
- (67) Pursuant to the Memorandum of Understanding between the European Economic Community and the United States of America on oil seeds within the framework of the GATT<sup>(16)</sup>, a separate base area should be fixed for producers benefiting from payments for oilseeds referred to in the Annex to that Memorandum of Understanding. Given that oilseeds are included in the list of sectors and productions eligible for the voluntary coupled support, it is appropriate to introduce in this support scheme a maximum area at Union level for oilseeds referred to in that Memorandum of Understanding for the purpose of ensuring compliance with this international commitment. In case of overshoot of this maximum area, the Member States should adjust the area notified

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by applying a reduction coefficient calculated and communicated to them by the Commission.

- (68) In accordance with Article 52(8) of Regulation (EU) No 1307/2013, consistency between voluntary coupled support granted under that Article and other Union support measures or measures financed by State aids is required. For an orderly management of the schemes and in order to avoid any double funding, similar measures should not be financed twice under both voluntary coupled support and other Union support schemes. Due to the diversity of choices available to Member States when implementing the voluntary coupled support, they should be responsible for ensuring such consistency within the framework laid down by Regulation (EU) No 1307/2013 and in conformity with the conditions laid down in this Regulation.
- (69) Pursuant to Article 55(1) of Regulation (EU) No 1307/2013, the Commission is to approve the decision referred to in Article 53(4) or, where appropriate, in Article 53(6) (a) of that Regulation, where one of certain needs in the region or sector concerned is demonstrated. In order to ensure the correct application of that Article, provision should be made for specifying the criteria applicable to those needs.
- (70) Chapter 2 of Title IV of Regulation (EU) No 1307/2013 provides for a crop-specific payment for cotton. The Commission should lay down the rules and conditions for the authorisation of agricultural land and varieties for the purposes of that payment. Furthermore, rules on eligibility requirements should be laid down. It is an objective requirement when the land is to be sown in such a way as to achieve a minimum planting density to be fixed by the Member States on the basis of soil and climate conditions and specific regional features. The establishment of specific rules on agronomic practices should be left to the Member States.
- (71) Member States should approve inter-branch cotton producing organisations on the basis of objective criteria relating to their scale and internal organisation. The scale of an inter-branch organisation should be fixed, taking into account the requirement on the member ginning undertaking to be able to take delivery of sufficient quantities of unginned cotton.
- (72) In order to avoid complications in managing the aid scheme, a producer may not be a member of more than one inter-branch organisation. For that same reason, where a producer belonging to an inter-branch organisation undertakes to supply the cotton he has produced, he should supply it only to a ginning undertaking belonging to that same organisation.
- (73) For the purpose of monitoring the correct application of the rules laid down in Regulation (EU) No 1307/2013 and of evaluating policy implementation, it is necessary to lay down notification obligations for Member States, in particular as regards the information to be notified by them on their decisions made in accordance with Titles II to V of that Regulation.
- (74) More in particular as regards voluntary coupled support, it is necessary to further specify the content of the information to be notified by the Member States for the sake of ensuring the correct application of the rules on that support and in order to make such

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notifications efficient, so as to enable the Commission to verify that Member States respect the requirements on consistency and non-cumulation of support as well as the maximum percentages of the national ceilings referred to in Article 53 of Regulation (EU) No 1307/2013 and related total amounts when designing the support measures.

- (75) Member States may decide to grant national aid under certain conditions. In order to verify that such aid is granted within the limits established, it is appropriate to lay down an obligation to submit to the Commission annual reports on certain details relating to the aid granted.
- (76) The Commission should, where appropriate, be informed of any decisions resulting from a review of decisions notified in accordance with Regulation (EU) No 1307/2013 or this Regulation, in order to enable the Commission to monitor the correct application and impact of such review. It is therefore necessary to lay down rules on notification obligations in that respect.
- (77) Annex X to Regulation (EU) No 1307/2013 contains a table intended to set out the conversion and weighing factors referred to in Article 46(3) of that Regulation for the different types of ecological focus areas. At the time of adoption of Regulation (EU) No 1307/2013 that table was left blank. Therefore, that Annex needs to be adapted. Conversion factors should be based on experience acquired with measurement and specificities of features. The weighting factors should consist of three different values, acknowledging the differences in terms of importance for biodiversity. Annex X to Regulation (EU) No 1307/2013 should therefore be amended accordingly. For the purpose of the calculation of the ecological focus area, the conversion and weighting factors should also apply to features covered by equivalent practices insofar as these are the same as the features listed in that Annex.
- (78) For the sake of clarity and legal certainty, Regulations (EC) No 1120/2009 and (EC) No 1121/2009 should be repealed.
- (79) This Regulation should apply with respect to aid applications relating to calendar years subsequent to calendar year 2014,

HAS ADOPTED THIS REGULATION:

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## CHAPTER 1

### SCOPE AND GENERAL PROVISIONS

#### SECTION 1

##### *Scope and general principles*

###### *Article 1*

###### **Scope**

This Regulation lays down provisions supplementing certain non-essential elements of Regulation (EU) No 1307/2013 in relation to:

- (a) general provisions on direct payments;
- (b) the basic payment scheme;
- (c) the single area payment scheme;
- (d) the payment for farmers observing agricultural practices beneficial for the climate and the environment;
- (e) the payment for young farmers commencing their agricultural activity;
- (f) voluntary coupled support;
- (g) the crop-specific payment for cotton;
- (h) notification obligations of Member States.

###### *Article 2*

###### **General principles**

1. Member States shall implement this Regulation in accordance with objective criteria and in such a way as to ensure the equal treatment of farmers and to avoid distortions of the market and of competition, while promoting a sustainable management of natural resources and climate action.
2. Member States shall ensure that all conditions for support implemented under this Regulation are verifiable and controllable.
3. Member States shall implement this Regulation:
  - (a) in respect of support other than coupled support, respecting the requirements set out in paragraphs 1, 5 and 6 of Annex 2 to the Agreement on Agriculture; and
  - (b) in respect of coupled support, respecting the requirements of Article 6(5) of the Agreement on Agriculture.

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### *Article 3*

#### **Reductions due to financial discipline**

Reductions due to financial discipline provided for in Article 8 of Regulation (EU) No 1307/2013 shall be applied to the sum of the payments from the different direct support schemes listed in Annex I to Regulation (EU) No 1307/2013 to which each farmer is entitled to after the application of the withdrawals and administrative penalties relating to direct payments pursuant to Chapter IV of Title II of Delegated Regulation (EU) No 640/2014 and before the application of administrative penalties in relation to cross-compliance pursuant to Chapter II of Title IV of that Delegated Regulation.

### *SECTION 2*

#### ***Provisions related to definitions in Regulation (EU) No 1307/2013***

### *Article 4*

#### **Framework for criteria on maintaining the agricultural area in a state suitable for grazing or cultivation**

1. For the purposes of the point (ii) of Article 4(1)(c) of Regulation (EU) No 1307/2013, the criteria that farmers are to meet in order to fulfil the obligation to maintain the agricultural area in a state suitable for grazing or cultivation without preparatory action going beyond usual agricultural methods and machineries shall be established by Member States in either or both of the following ways:
  - (a) Member States require at least one annual activity to be carried out by a farmer. Where justified for environmental reasons, Member States may decide to recognise also activities that are carried out only every second year;
  - (b) Member States set out the characteristics to be met by an agricultural area in order to be deemed maintained in a state suitable for grazing or cultivation.
2. When establishing criteria referred to in paragraph 1, Member States may distinguish between different types of agricultural areas.

### *Article 5*

#### **Framework for minimum activities on agricultural areas naturally kept in a state suitable for grazing or cultivation**

For the purposes of the point (iii) of Article 4(1)(c) of Regulation (EU) No 1307/2013, the minimum activity to be established by the Member States that is to be carried out on agricultural areas naturally kept in a state suitable for grazing or cultivation shall be at least one annual activity to be carried out by a farmer. Where justified for environmental reasons, Member States may decide to recognise also activities that are carried out only every second year.

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### Article 6

#### **Predominance of grasses and other herbaceous forage in case of permanent grassland**

For the purposes of Article 4(1)(h) of Regulation (EU) No 1307/2013, grasses and other herbaceous forage shall be deemed to remain predominant where they cover more than 50 % of the eligible area at the level of the agricultural parcel within the meaning of Article 67(4)(a) of Regulation (EU) No 1306/2013.

### Article 7

#### **Established local practices in case of permanent grassland**

For the purposes of Article 4(1)(h) of Regulation (EU) No 1307/2013, established local practices shall be any or a combination of the following:

- (a) practices for areas for livestock grazing which are traditional in character and are commonly applied on the areas concerned;
- (b) practices which are important for the conservation of habitats listed in Annex I to Council Directive 92/43/EEC<sup>(17)</sup> and of biotopes and habitats covered by Directive 2009/147/EC of the European Parliament and of the Council<sup>(18)</sup>.

### Article 8

#### **Reduction coefficient according to Article 32(5) of Regulation (EU) No 1307/2013**

When applying Article 32(5) of Regulation (EU) No 1307/2013 for permanent grassland which can be grazed and which forms part of established local practices where grasses and other herbaceous forage are traditionally not predominant in grazing areas, Member States may distinguish between different categories of areas in order to apply different reduction coefficients to such categories.

### <sup>F1</sup> Article 9

#### **Hemp**

1. For the purposes of Article 32(6) of Regulation (EU) No 1307/2013, the eligibility of areas used for the production of hemp shall be subject to the use of seed of the varieties listed in the 'Common Catalogue of Varieties of Agricultural Plant Species' on 15 March of the year in respect of which the payment is granted and published in accordance with Article 17 of Council Directive 2002/53/EC<sup>(19)</sup>. The seed shall be certified in accordance with Council Directive 2002/57/EC<sup>(20)</sup>.
2. Member States shall establish the system for determining the  $\Delta^9$ -tetrahydrocannabinol content (hereinafter referred to as 'THC content') in hemp varieties, which allows them to apply the method set out in Annex III.
3. The competent authority of the Member State shall keep the records related to findings on the THC content. Such records shall comprise for each variety at least the results in terms of THC content from each sample expressed in percentage to two decimal places, the procedure



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used, the number of tests carried out, an indication of the point at which the sample was taken and measures taken at national level.

4. If an average of all the samples of a given variety exceeds the THC content as laid down in Article 32(6) of Regulation (EU) No 1307/2013, Member States shall use procedure B as described in Annex III to this Regulation for the variety concerned in the course of the following claim year. That procedure shall be used in the course of the next claim years unless all the analytical results for the given variety are below the THC content as laid down in Article 32(6) of Regulation (EU) No 1307/2013.

5. If for the second year the average of all the samples of a given variety exceeds the THC content as laid down in Article 32(6) of Regulation (EU) No 1307/2013, the Member State shall notify the Commission of the request for authorisation to prohibit the marketing of such variety in accordance with Article 18 of Directive 2002/53/EC. Such notification shall be sent in accordance with Commission Regulation (EC) No 792/2009<sup>(21)</sup> by 15 January of the following claim year at the latest. Starting from that claim year, the variety covered by that request shall not be eligible for direct payments in the Member State concerned.

6. For the purposes of this Regulation, ‘hemp cultivated as catch crop’ means crop of hemp sown after 30 June of a given year.

7. Crops of hemp shall continue to be cultivated under normal growing conditions in accordance with local practice for at least 10 days from the date of the end of flowering so that the checks necessary for the application of this Article can be made. Hemp cultivated as catch crop shall continue to be cultivated under normal growing conditions in accordance with local practice at least until the end of the vegetation period.

However, Member States may authorise hemp to be harvested after flowering has begun but before the end of the 10-day period after the end of flowering, provided that the inspectors indicate which representative parts of each plot concerned must continue to be cultivated for at least 10 days following the end of flowering for inspection purposes, in accordance with the method set out in Annex III.]

#### **Textual Amendments**

- F1** Substituted by [Commission Delegated Regulation \(EU\) 2017/1155 of 15 February 2017 amending Delegated Regulation \(EU\) No 639/2014 as regards the control measures relating to the cultivation of hemp, certain provisions on the greening payment, the payment for young farmers in control of a legal person, the calculation of the per unit amount in the framework of voluntary coupled support, the fractions of payment entitlements and certain notification requirements relating to the single area payment scheme and the voluntary coupled support, and amending Annex X to Regulation \(EU\) No 1307/2013 of the European Parliament and of the Council.](#)

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### SECTION 3

#### *Active farmer*

##### *Article 10*

#### **Cases where agricultural areas are mainly areas naturally kept in a state suitable for grazing or cultivation**

1. For the purposes of Article 9(1) of Regulation (EU) No 1307/2013, a natural or legal person, or a group of natural or legal persons, shall be considered as having agricultural areas which are mainly areas naturally kept in a state suitable for grazing or cultivation, where such areas represent more than 50 % of all agricultural area declared in accordance with Article 72(1) (a) of Regulation (EU) No 1306/2013.
2. Article 9(1) of Regulation (EU) No 1307/2013 shall not apply to a natural or legal person, or a group of natural or legal persons who carry out, on areas naturally kept in a state suitable for grazing or cultivation, an agricultural activity within the meaning of the point (i) of Article 4(1)(c) of Regulation (EU) No 1307/2013.

##### *Article 11*

#### **Receipts obtained from non-agricultural activities**

1. For the purposes of point (a) of the third subparagraph of Article 9(2) of Regulation (EU) No 1307/2013 and, where appropriate, Article 13 of this Regulation, receipts obtained from agricultural activities shall be those receipts that have been received by a farmer from his agricultural activity within the meaning of Article 4(1)(c) of that Regulation on his holding, including the Union support under the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD), as well as any national aid granted for agricultural activities, except complementary national direct payments pursuant to Articles 18 and 19 of Regulation (EU) No 1307/2013.

Receipts from processing of agricultural products within the meaning of Article 4(1) (d) of Regulation (EU) No 1307/2013 of the holding shall be deemed as receipts from agricultural activities provided that the products processed remain the ownership of the farmer and that such processing results in another agricultural product within the meaning of Article 4(1)(d) of Regulation (EU) No 1307/2013.

Any other receipts shall be considered to be receipts from non-agricultural activities.

2. For the purposes of paragraph 1, 'receipts' means gross receipts before deduction of related costs and taxes.
3. The Union support referred to in paragraph 1 shall be calculated:
  - (a) in Bulgaria and Romania, for the year 2015, on the basis of the relevant amount set out in point A of Annex V to Regulation (EU) No 1307/2013;
  - (b) in Croatia, for each year referred to in Article 17 of Regulation (EU) No 1307/2013, on the basis of the amount set out in point A of Annex VI to that Regulation.

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## Article 12

### **Amount of direct payments referred to in Article 9(2) and (4) of Regulation (EU) No 1307/2013 and in Article 13(2) of this Regulation**

1. The annual amount of direct payments of a farmer referred to in point (a) of the third subparagraph of Article 9(2) of Regulation (EU) No 1307/2013 and, where appropriate, in Article 13(2) of this Regulation, shall be the total amount of direct payments to which the farmer was entitled in accordance with Regulation (EU) No 1307/2013 for the most recent fiscal year for which evidence on receipts from non-agricultural activities is available. That amount shall be calculated without taking into account the application of Articles 63 and 91(1) of Regulation (EU) No 1306/2013.

Where the most recent fiscal year referred to in the first subparagraph is 2014 or earlier, the annual amount of direct payments shall be the total amount of direct payments to which the farmer was entitled in accordance with Regulation (EC) No 73/2009 before the reductions and exclusions provided for in Articles 21 and 23 of that Regulation.

2. Where a farmer did not submit an aid application for direct payments in accordance with Regulation (EU) No 1307/2013 in the most recent fiscal year referred to in the first subparagraph of paragraph 1, Member States shall establish the total amount of direct payments referred to in the first subparagraph of paragraph 1 by multiplying the number of eligible hectares declared by that farmer in the year of submitting the aid application in accordance with Article 72(1)(a) of Regulation (EU) No 1306/2013 by the national average direct support payment per hectare for the year referred to in the first subparagraph of paragraph 1.

The national average direct support payment per hectare referred to in the first subparagraph shall be established by dividing the national ceiling set out in Annex II to Regulation (EU) No 1307/2013 for that year by the total number of eligible hectares declared in that Member State for that year in accordance with Article 72(1)(a) of Regulation (EU) No 1306/2013.

Where the year referred to in the first subparagraph of paragraph 1 is 2014 or earlier, the national average direct support payment per hectare referred to in the first subparagraph of this paragraph shall be established by dividing the national ceiling set out in Annex VIII to Regulation (EC) No 73/2009 of that year by the total number of eligible hectares declared in that Member State for that year in accordance with Article 19(1)(a) of Regulation (EC) No 73/2009.

3. The amount of direct payments of a farmer referred to in Article 9(4) of Regulation (EU) No 1307/2013 shall be the total amount of direct payments to which the farmer was entitled in accordance with Regulation (EU) No 1307/2013 before the application of Articles 63 and 91(1) of Regulation (EU) No 1306/2013 for the previous year.

Where the year referred to in the first subparagraph is 2014, the amount of direct payments shall be the total amount of direct payments for the year 2014 to which the farmer was entitled pursuant to Regulation (EC) No 73/2009 before the reductions and exclusions provided for in Articles 21 and 23 of that Regulation.

4. Where a farmer did not submit an aid application for direct payments in accordance with Regulation (EU) No 1307/2013 for the previous year as referred to in the first subparagraph of paragraph 3, Member States shall establish the total amount of direct payments referred to in the first subparagraph of paragraph 3 by multiplying the number of eligible hectares declared by that farmer in the year of submitting the aid application in accordance with Article 72(1)(a)

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of Regulation (EU) No 1306/2013 by the national average direct support payment per hectare for the previous year.

The national average direct support payment per hectare referred to in the first subparagraph shall be established by dividing the national ceiling set out in Annex II to Regulation (EU) No 1307/2013 for that year by the total number of eligible hectares declared in that Member State for that year in accordance with Article 72(1)(a) of Regulation (EU) No 1306/2013.

Where the previous year referred to in first subparagraph of paragraph 3 is 2014, Member States shall establish the annual amount of direct payments of that farmer by multiplying the number of eligible hectares declared by that farmer for the year 2015 in accordance with Article 72(1)(a) of Regulation (EU) No 1306/2013 by the national average direct support payment per hectare for the year 2014.

The national average direct support payment per hectare for the year 2014 shall be established by dividing the national ceiling for the year 2014 set out in Annex VIII to Regulation (EC) No 73/2009 by the total number of eligible hectares declared in that Member State for the year 2014 in accordance with Article 19(1)(a) of that Regulation.

5. The total amount of direct payments referred to in paragraphs 1 and 2 shall be calculated:

- (a) in Bulgaria and Romania, for the year 2015, on the basis of the relevant amount set out in point A of Annex V to Regulation (EU) No 1307/2013;
- (b) in Croatia, for each year referred to in Article 17 of Regulation (EU) No 1307/2013, on the basis of the amount set out in point A of Annex VI to that Regulation.

### *Article 13*

#### **Criteria for proving that agricultural activities are not insignificant and that the principal business or company objects consist of exercising an agricultural activity**

1. For the purposes of point (b) of the third subparagraph of Article 9(2) of Regulation (EU) No 1307/2013, agricultural activities are not insignificant if the total receipts obtained from agricultural activities within the meaning of Article 11 of this Regulation in the most recent fiscal year for which such evidence is available represent at least one third of the total receipts obtained in the most recent fiscal year for which such evidence is available.

Member States may decide to set the threshold for the total receipts obtained from agricultural activities at a level lower than one third provided that such lower threshold does not allow natural or legal persons with marginal agricultural activities to be considered as active farmers.

By way of derogation from the first and second subparagraphs, Member States may establish alternative criteria allowing an entity to demonstrate that its agricultural activities are not insignificant pursuant to point (b) of the third subparagraph of Article 9(2) of Regulation (EU) No 1307/2013.

2. For the purposes of point (a) of Article 9(3) of Regulation (EU) No 1307/2013, Member States may decide that agricultural activities form only an insignificant part of the overall economic activities of a natural or legal person, or a group of natural or legal persons, by using the following methods:

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- (a) the annual amount of direct payments is less than 5 % of the total receipts obtained from non-agricultural activities within the meaning of Article 11 of this Regulation in the most recent fiscal year for which such evidence is available;
- (b) the total amount of receipts obtained from agricultural activities within the meaning of Article 11 of this Regulation in the most recent fiscal year for which such evidence is available is lower than a threshold to be decided by Member States and not exceeding one third of the total amount of receipts obtained in the most recent fiscal year for which such evidence is available.

By way of derogation from the first subparagraph, Member States may establish alternative criteria according to which agricultural activities are to be considered insignificant pursuant to point (a) of Article 9(3) of Regulation (EU) No 1307/2013.

3. For the purposes of point (c) of the third subparagraph of Article 9(2) of Regulation (EU) No 1307/2013 and, where appropriate, point (b) of Article 9(3) of that Regulation, an agricultural activity shall be considered to be the principal business or company object of a legal person if recorded as a principal business or company object in the official business register or any equivalent official evidence of a Member State. In the case of a natural person, equivalent evidence shall be required.

Where no such registers exist, Member States shall use equivalent evidence.

By way of derogation from the first and second subparagraphs, Member States may establish alternative criteria according to which an agricultural activity is to be considered to be a principal business or company object of a natural or legal person pursuant point (c) of the third subparagraph of Article 9(2) and, where appropriate, to point (b) of Article 9(3) of that Regulation.

## CHAPTER 2

### BASIC PAYMENT SCHEME AND SINGLE AREA PAYMENT SCHEME

#### SECTION 1

##### *Rules for the implementation of the basic payment scheme provided for in Sections 1, 2, 3 and 5 of Chapter 1 of Title III of Regulation (EU) No 1307/2013*

#### Subsection 1

##### *First allocation of payment entitlements*

#### Article 14

##### **Cases of inheritance, changes in legal status or denomination and mergers and scissions**

1. Where a farmer received the holding, or part of the holding, by way of actual or anticipated inheritance, he shall be entitled to claim, in his name, the number and the value of payment entitlements to be allocated for the holding received, or part of that holding, under the same conditions as the farmer originally managing the holding.

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In cases of revocable anticipated inheritance, payment entitlements shall be allocated only to the heir designated as such at the date referred to in Article 24(1) or 39(1) of Regulation (EU) No 1307/2013.

2. A change of denomination shall have no impact on the number and the value of payment entitlements to be allocated.

A change of the legal status shall have no impact on the number and the value of payment entitlements to be allocated if the farmer who was in control of the original holding in terms of management, benefits and financial risks also manages the new holding.

3. A merger or scission shall have no impact on the total number and the value of payment entitlements to be allocated to the holding(s).

In case of scission, where a Member State applies Article 24(4) or (5) of Regulation (EU) No 1307/2013, the number of payment entitlements to be allocated to each holding resulting from the scission shall be established by multiplying the number of eligible hectares at the disposal of the relevant new holding by the average reduction in the number of entitlements that the original holding would have been subject to pursuant to Article 24(4) or (5) of Regulation (EU) No 1307/2013.

For the purposes of this paragraph, the following definitions shall apply:

- (a) ‘merger’ means the merger of two or more separate farmers within the meaning of Article 4(1)(a) of Regulation (EU) No 1307/2013 into one new farmer within the meaning of that Article controlled in terms of management, benefits and financial risks by the farmers originally managing the holdings or one of them;
- (b) ‘scission’ means the scission of one farmer within the meaning of Article 4(1)(a) of Regulation (EU) No 1307/2013 into:
  - (i) at least two new separate farmers within the meaning of that Article at least one of which remains controlled, in terms of management, benefits and financial risks, by at least one of the natural or legal persons originally managing the holding; or
  - (ii) the original farmer and at least one new separate farmer within the meaning of that Article.

#### *Article 15*

#### **Establishment of eligible hectares for the purposes of Articles 24(2) and 39(2) of Regulation (EU) No 1307/2013**

1. For the purpose of establishing the number of payment entitlements to be allocated pursuant to Articles 24(2) and 39(2) of Regulation (EU) No 1307/2013 in cases where no *force majeure* and exceptional circumstances are recognised, only those eligible hectares shall be taken into account which are determined pursuant to point (23)(a) of the second subparagraph of Article 2(1) of Delegated Regulation (EU) No 640/2014.

2. Where an eligible hectare referred to in paragraph 1 is subject to an application for allocation of payment entitlements by two or more applicants, the decision whom to allocate the payment entitlement shall be based on the criterion who enjoys the decision-making power in relation to the agricultural activities exercised on that hectare and who bears benefits and financial risks related to those activities.

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## Article 16

### **Limitation under Article 24(6) of Regulation (EU) No 1307/2013**

1. Any reduction pursuant to Article 24(6) of Regulation (EU) No 1307/2013 shall not exceed 85 % of the number of payment entitlements corresponding to the eligible hectares of permanent grassland located in areas with difficult climate conditions.
2. For the purpose of applying the reduction coefficient provided for in paragraph 1, Member States may, on the basis of the natural constraints referred to Article 24(6) of Regulation (EU) No 1307/2013, distinguish between categories of areas with difficult climate conditions in order to apply different reduction coefficients to such categories.

## Article 17

### **Determination of the value of payment entitlements under Articles 26 and 40 of Regulation (EU) No 1307/2013**

1. For the purpose of determining the relevant direct payments or value of entitlements relating to the year 2014 as referred to in Article 26 of Regulation (EU) No 1307/2013, account shall be taken only of the payments to or the value of the entitlements of those farmers who are entitled to be granted direct payments in accordance with Articles 9 and 24(9) of Regulation (EU) No 1307/2013 in the year 2015.

For the purpose of determining the relevant direct payments relating to the year preceding the implementation of the basic payment scheme as referred to in Article 40(3) of Regulation (EU) No 1307/2013, account shall be taken only of the payments to those farmers who are entitled to be granted direct payments in accordance with Article 9 of Regulation (EU) No 1307/2013 in the first year of implementation of the basic payment scheme.

2. For the purposes of Article 26(6) of Regulation (EU) No 1307/2013, the following rules shall apply:
  - (a) the reference to the specific support measures provided for in points (a), (b) and (c) of Article 68(1) of Regulation (EC) No 73/2009 shall be without prejudice to the possibility for Member States to consider only one or several measures implemented under those specific support measures;
  - (b) support granted to a farmer for calendar year 2014 under one or more of the support schemes referred to in Article 26(6) of Regulation (EU) No 1307/2013 shall be calculated without taking into account any reductions or exclusions provided for in Chapter 4 of Title II of Regulation (EC) No 73/2009;
  - (c) Member States may, in accordance with objective and non-discriminatory criteria, decide about the level of support to be taken into account for one or more of the schemes listed in Article 26(6) of Regulation (EU) No 1307/2013 applied by the Member State concerned.

When applying this paragraph, Member States shall not jeopardise the decoupled character of the support granted in accordance with Article 68(1)(c) and Articles 126, 127 and 129 of Regulation (EC) No 73/2009.

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3. For the purposes of the third subparagraph of Article 26(6) of Regulation (EU) No 1307/2013, the support granted for calendar year 2014 under Articles 72a and 125a of Regulation (EC) No 73/2009 shall be calculated without taking into account any reductions or exclusions provided for in Chapter 4 of Title II of Regulation (EC) No 73/2009.

4. The reference in Article 26(3) of Regulation (EU) No 1307/2013 to payment entitlements held by a farmer shall also include those payment entitlements that are leased out by the farmer to another farmer on the date of submission of his application for 2014.

#### *Article 18*

### **Definitive establishment of the value and number of payment entitlements**

Where the information to the farmers referred to in Article 25(10) or in the second subparagraph of Article 40(4) of Regulation (EU) No 1307/2013 is based on provisional data, the definitive value and number of payment entitlements shall be established and communicated to them after all necessary checks pursuant to Article 74 of Regulation (EU) No 1306/2013 have been carried out, and in any case by 1 April of the year following the first year of application of the basic payment scheme by the Member State concerned.

#### *Article 19*

### **Establishment of the value of payment entitlements in hardship cases**

1. If one or several of the direct payments referred to in Article 26 or 40(3) of Regulation (EU) No 1307/2013 relating to 2014 or to the year preceding the implementation of the basic payment scheme, respectively, are lower than the corresponding amounts in the year preceding the years affected by *force majeure* or exceptional circumstances, the initial unit value shall be established on the basis of the amounts received by that farmer in the year preceding the years affected by *force majeure* or exceptional circumstances.

2. Member States may decide to limit the application of paragraph 1 to cases where the direct payments relating to 2014 or to the year preceding the implementation of the basic payment scheme, respectively, are lower than a certain percentage of the corresponding amounts in the year preceding the years affected by *force majeure* or exceptional circumstances. This percentage shall not be lower than 85 %.

#### *Article 20*

### **Private contract clause in the case of sale**

1. Member States may decide that, in case of sale of a holding or part of it, farmers may, by contract signed before the latest date for application for the allocation of payment entitlements fixed by the Commission on the basis of Article 78(b) of Regulation (EU) No 1306/2013, transfer together with the holding or part of it the corresponding payment entitlements to be allocated. In that case, the payment entitlements shall be allocated to the seller and directly transferred to the buyer who will benefit, where applicable, from taking the payments which the seller received for 2014 or the value of the entitlements that he owned in 2014 as referred to in Article 26 of Regulation (EU) No 1307/2013 as a reference for setting the initial unit value of those payment entitlements.



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Such a transfer shall require that the seller complies with Article 24(1) of Regulation (EU) No 1307/2013 and that the buyer complies with Article 9 of that Regulation.

Such a sale shall not be considered as a transfer without land within the meaning of Article 34(4) of Regulation (EU) No 1307/2013.

2. Paragraph 1 shall apply *mutatis mutandis* to Member States applying Section 5 of Chapter 1 of Title III of Regulation (EU) No 1307/2013.

#### *Article 21*

##### **Private contract clause in the case of lease**

1. Member States may decide that, in case of lease of a holding or part of it, farmers may, by contract signed before the date referred to in the first subparagraph of Article 20(1), lease-out together with the holding or part of it the corresponding payment entitlements to be allocated. In that case, the payment entitlements shall be allocated to the lessor and directly leased-out to the lessee who will benefit, where applicable, from taking the payments which the lessor received for 2014 or the value of the entitlements that he owned in 2014 as referred to in Article 26 of Regulation (EU) No 1307/2013 as a reference for setting the initial unit value of those payment entitlements.

Such a transfer shall require that the lessor complies with Article 24(1) of Regulation (EU) No 1307/2013, that the lessee complies with Article 9 of that Regulation and that the lease contract expires after the last date for lodging an application under the basic payment scheme.

Such a lease shall not be considered as a transfer without land within the meaning of Article 34(4) of Regulation (EU) No 1307/2013.

2. Paragraph 1 shall apply *mutatis mutandis* to Member States applying Section 5 of Chapter 1 of Title III of Regulation (EU) No 1307/2013.

#### *Article 22*

##### **Beneficiaries pursuant to Article 24(1) of Regulation (EU) No 1307/2013**

For the purposes of the first indent of point (a)(i) of the third subparagraph of Article 24(1) of Regulation (EU) No 1307/2013, 'ware potatoes' and 'seed potatoes' shall mean potatoes of CN code 0701 other than those intended for the manufacture of potato starch.

#### *Subsection 2*

##### ***Activation and transfer of entitlements***

#### *Article 23*

##### **Calculation of the value of payment entitlements**

1. Payment entitlements shall in a first step be calculated up to three decimals and in a second step be rounded up or down to the nearest second decimal. If the calculation gives a result where the third decimal is a 5, the sum shall be rounded up to the second decimal.

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2. If a farmer transfers a fraction of an entitlement, the value of that fraction shall be calculated proportionally for each remaining relevant year as referred to in Article 25 or 40 of Regulation (EU) No 1307/2013.

3. Member States may modify payment entitlements by merging fractions of entitlements owned by a farmer. The value of the merged entitlements shall be determined for each remaining relevant year as referred to in Article 25 or 40 of Regulation (EU) No 1307/2013 by adding the value of the fractions.

#### Article 24

### Requirements for activation of payment entitlements

1. Payment entitlements may only be declared for payment once per year by the farmer who holds them (owned or leased-in) at the latest date for lodging the single application.

However, where a farmer uses the possibility to amend the single application in accordance with the rules established by the Commission on the basis of Article 78(b) of Regulation (EU) No 1306/2013, he may also declare for payment those payment entitlements which he holds (owned or leased-in) at the date of his notification of the amendments to the competent authority, provided that the payment entitlements concerned are not declared for payment by another farmer in respect of the same year.

Where the farmer acquires payment entitlements by way of a transfer from another farmer and where that other farmer had already declared those payment entitlements for payment, the additional declaration of those payment entitlements by the transferee shall only be admissible if the transferor has already informed the competent authority of the transfer in accordance with the rules established by the Commission on the basis of Article 34(5) of Regulation (EU) No 1307/2013 and withdraws those payment entitlements from his own single application, within the time-limits for amending the single application fixed by the Commission on the basis of Article 78 (b) of Regulation (EU) No 1306/2013.

[<sup>F1</sup>2. Where a farmer declares a number of payment entitlements exceeding his total eligible area declared pursuant to Article 33(1) of Regulation (EU) No 1307/2013, the payment entitlement or the fraction of a payment entitlement which is partially exceeding that eligible area shall be deemed as fully activated for the purposes of Article 31(1)(b) of that Regulation. However, the payment shall be calculated on the basis of the corresponding fraction of an eligible hectare.]

#### Textual Amendments

- F1** Substituted by [Commission Delegated Regulation \(EU\) 2017/1155 of 15 February 2017 amending Delegated Regulation \(EU\) No 639/2014 as regards the control measures relating to the cultivation of hemp, certain provisions on the greening payment, the payment for young farmers in control of a legal person, the calculation of the per unit amount in the framework of voluntary coupled support, the fractions of payment entitlements and certain notification requirements relating to the single area payment scheme and the voluntary coupled support, and amending Annex X to Regulation \(EU\) No 1307/2013 of the European Parliament and of the Council.](#)

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## *Article 25*

### **Transfer of entitlements**

1. Payment entitlements may be transferred at any time of the year.
2. Where a Member State uses the option provided for in Article 34(3) of Regulation (EU) No 1307/2013, it shall define the regions referred to in that provision in the first year of application of Article 34(3) of Regulation (EU) No 1307/2013 and at the latest one month before the date fixed by the Member State pursuant to Article 33(1) of that Regulation.

## *Subsection 3*

### ***National or regional reserves***

## *Article 26*

### **Reversion to the national or regional reserve due to retention on transfer of payment entitlements**

Where a Member State uses the option provided for in Article 34(4) of Regulation (EU) No 1307/2013, it may decide, in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion, to revert to the national or regional reserve up to 30 % of the annual unit values of each payment entitlement transferred without the corresponding eligible hectares within the meaning of Article 32(2) of Regulation (EU) No 1307/2013, or the equivalent amount expressed in number of payment entitlements.

By way of derogation from the first subparagraph, Member States may provide for a reversion up to 50 % of the annual unit value of each payment entitlement or the equivalent amount expressed in number of payment entitlements as referred to in the first subparagraph during the first three years of application of the basic payment scheme.

## *Article 27*

### **Application of the windfall profit clause**

For the purposes of Articles 28 and 40(5) of Regulation (EU) No 1307/2013, the increase of the value of payment entitlements referred to in those provisions shall be determined by comparing the value of the farmer's payment entitlements resulting from the application of Article 25(4) and Article 26 or Article 40(3) of Regulation (EU) No 1307/2013, respectively, after the sale or lease referred to in Article 28 or 40(5) of that Regulation, respectively, with the value of the farmer's payment entitlements which would result without the sale or lease.

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## Article 28

### **Establishment of payment entitlements from the national or regional reserve under Article 30(6) of Regulation (EU) No 1307/2013**

1. For the purposes of Article 30(6) of Regulation (EU) No 1307/2013, where a young farmer or a farmer who commences his agricultural activity applies for payment entitlements from the national or regional reserve while he does not hold any payment entitlement (owned or leased-in), he shall receive a number of payment entitlements equal to the number of eligible hectares he holds (owned or leased-in) at the latest date for lodging his application for the allocation or increase of the value of payment entitlements fixed by the Commission on the basis of Article 78(b) of Regulation (EU) No 1306/2013.

2. Where a young farmer or a farmer who commences his agricultural activity applies for payment entitlements from the national or regional reserve while he already holds payment entitlements (owned or leased-in), he shall receive a number of payment entitlements equal to the number of eligible hectares he holds (owned or leased-in) at the latest date for lodging his application referred to in paragraph 1 for which he does not hold any payment entitlement (owned or leased-in).

Where the value of the entitlements that the farmer already holds (owned or leased-in) is below the national or regional average referred to in the second subparagraph of Article 30(8) of Regulation (EU) No 1307/2013, the annual unit values of those entitlements may be increased up to the national or regional average as provided for in Article 30(10) of that Regulation.

However, in Member States applying the increase referred to in Article 30(10) of Regulation (EU) No 1307/2013 for the purposes of Article 30(7) of that Regulation, the increase referred to in the second subparagraph of this paragraph shall be mandatory in that Member State. Such increase should be at a level corresponding to the highest level of increase applied for the purposes of Article 30(7) of Regulation (EU) No 1307/2013.

3. In Member States applying Article 24(6) or (7) of Regulation (EU) No 1307/2013, the limitations of the allocation of payment entitlements laid down in those provisions may be applied *mutatis mutandis* for the allocation of payment entitlements pursuant to Article 30(6) of Regulation (EU) No 1307/2013.

However, Member States may decide that where the application of one or several limitations referred to in the first subparagraph limits the total number of payment entitlements which the farmer already holds and which are to be newly allocated from the reserve to less than a fixed percentage of his eligible hectares in the year in which he applies for allocation of payment entitlements from the reserve, that farmer shall be allocated an additional number of payment entitlements corresponding to a share in the total number of his eligible hectares declared in his application for that year in accordance with Article 72(1) of Regulation (EU) No 1306/2013.

The fixed percentage referred to in the second subparagraph of this Article shall be calculated in accordance with the method referred in the second subparagraph of Article 31(2) of this Regulation.

The share of the total number of eligible hectares of the farmer referred to in the second subparagraph of this paragraph shall be calculated as half of the difference in percentage points between the fixed percentage referred to in the third subparagraph of this paragraph and the share of 'payment entitlements held by the farmer' in his eligible

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hectares declared in accordance with Article 72(1) of Regulation (EU) No 1306/2013 in his application for the year referred to in the second subparagraph of this paragraph. For the purposes of this subparagraph, ‘payment entitlements held by the farmer’ means payments entitlement already held by the farmer and which are to be newly allocated from the reserve.

When calculating the number of eligible hectares referred to in the second, third and fourth subparagraphs of this paragraph, Member States may decide not to include any areas taken up by permanent crops, by permanent grassland located in areas with difficult climatic conditions as referred to in Article 24(6) of Regulation (EU) No 1307/2013 or by areas recognised as permanent grassland in accordance with the second subparagraph of Article 4(2) of Regulation (EU) No 1307/2013.

Member States using the possibility provided in Article 23 of Regulation (EU) No 1307/2013 to apply the basic payment scheme at regional level may base the calculation method referred to in the second subparagraph of this paragraph upon the total numbers allocated/declared in 2015 in the relevant region.

For the purpose of determining the threshold in the second subparagraph, the land acquired or leased-in by the farmer after 19 October 2011 shall not be taken into account.

4. For the purposes of this Article, only those farmers who commence their agricultural activity shall be considered who commenced their agricultural activity in calendar year 2013 or any later year and who submit an application for the basic payment not later than two years after the calendar year in which they commenced their agricultural activity.

#### *Article 29*

#### **Establishment of payment entitlements from the national or regional reserve under Article 30(7) of Regulation (EU) No 1307/2013**

1. For the purposes of Article 30(7) of Regulation (EU) No 1307/2013, where new payment entitlements are allocated as provided for in Article 30(10) of that Regulation, they shall be allocated in accordance with the conditions laid down in this Article and in accordance with the objective criteria laid down by the Member State concerned.

2. Where a farmer who does not hold any payment entitlement (owned or leased-in) is entitled in accordance with Article 30(7) of Regulation (EU) No 1307/2013 to receive payment entitlements from the national or regional reserve and applies for it, he shall receive a number of payment entitlements up to the number of eligible hectares he holds (owned or leased-in) at the latest date for lodging his application as referred to in Article 28(1).

3. Where a farmer who holds payment entitlements (owned or leased-in) is entitled in accordance with Article 30(7) of Regulation (EU) No 1307/2013 to receive payment entitlements from the national or regional reserve and applies for it, he shall receive a number of payment entitlements up to the number of eligible hectares he holds (owned or leased-in) at the latest date for lodging his application as referred to in Article 28(1) for which he does not hold any payment entitlement (owned or leased-in).

Where the value of the entitlements that the farmer already holds (owned or leased-in) is below the national or regional average referred to in the second subparagraph of Article 30(8) of Regulation (EU) No 1307/2013, the annual unit values of those entitlements may be increased up to the national or regional average as provided for in Article 30(10) of that Regulation.

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4. For the purposes of paragraph 1, Member States shall not lay down criteria related to production or other sector-specific data for a period after the date fixed by the Member State in accordance with Article 11(2) of Regulation (EC) No 1122/2009 for claim year 2013.

#### *Article 30*

### **Further rules on the establishment of payment entitlements from the national or regional reserve**

1. When increasing the annual unit values of payment entitlements as referred to in Article 30(10) of Regulation (EU) No 1307/2013, Member States shall increase the unit value of entitlements the farmer already holds (owned or leased-in) at the date of application for the allocation of entitlements from the national or regional reserve in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion.

2. For the purposes of paragraph 1, Member States shall not lay down criteria related to production or other sector-specific data for a period after the date fixed by the Member State in accordance with Article 11(2) of Regulation (EC) No 1122/2009 for claim year 2013.

#### *Article 31*

### **Hardship cases**

1. Where a farmer, as a result of *force majeure* or exceptional circumstances, was prevented from making an application for allocation of payment entitlements in accordance with Article 24(1) or 39(1) of Regulation (EU) No 1307/2013 and applies for payment entitlements from the national or regional reserve, he shall be allocated payment entitlements pursuant to Article 30(7)(c) of that Regulation. Member States shall establish the annual unit values of the payment entitlements to be allocated in accordance with Article 25 or 40 respectively of Regulation (EU) No 1307/2013 and the decisions taken by the Member State as regards the options in those Articles.

2. Member States may decide that where the application of one or several limitations of the allocation of payment entitlements laid down in Article 24(3) to (7) of Regulation (EU) No 1307/2013 limits the number of payment entitlements allocated to a farmer to less than a fixed percentage of his eligible hectares, and where the farmer applies for payment entitlements from the national or regional reserve, that farmer shall be considered to be in a situation of 'specific disadvantage' under Article 30(7)(b) of that Regulation. In that case, that farmer shall be allocated a number of payment entitlements in accordance with Article 30(7)(b) of Regulation (EU) No 1307/2013 corresponding to a share in the total number of his eligible hectares declared in his application for 2015 in accordance with Article 72(1) of Regulation (EU) No 1306/2013.

The fixed percentage referred to in the first subparagraph shall be calculated as the total number of payment entitlements allocated in the Member State in 2015 after application of the limitations provided for in Article 24(3) to (7) of Regulation (EU) No 1307/2013 divided by the total number of eligible hectares declared in the Member State in 2015 in accordance with Article 72(1) of Regulation (EU) No 1306/2013.

The share of the total number of eligible hectares of the farmer referred to in the first subparagraph shall be calculated as half of the difference in percentage points between the fixed percentage referred to in the first and the second subparagraphs and the

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share of payment entitlements of the farmer in his eligible hectares declared in 2015 in accordance with Article 72(1)(a) of Regulation (EU) No 1306/2013.

When calculating the number of eligible hectares referred to in the first, second and third subparagraphs of this paragraph, Member States may decide not to include any areas taken up by permanent crops, by permanent grassland located in areas with difficult climatic conditions as referred to in Article 24(6) of Regulation (EU) No 1307/2013 or by areas recognised as permanent grassland in accordance with the second subparagraph of Article 4(2) of that Regulation.

Member States using the possibility provided in Article 23 of Regulation (EU) No 1307/2013 to apply the basic payment scheme at regional level may base the calculation method referred to in the second subparagraph of this paragraph upon the total numbers allocated/declared in 2015 in the relevant region.

For the purpose of determining the threshold in the first subparagraph, the land acquired or leased-in by the farmer after 19 October 2011 shall not be taken into account.

#### *Subsection 4*

### ***Member States applying Article 21(3) of Regulation (EU) No 1307/2013***

#### *Article 32*

### **Implementation in Member States applying Article 21(3) of Regulation (EU) No 1307/2013**

Save as otherwise provided in this Subsection, the provisions of this Section shall apply to Member States applying Article 21(3) of Regulation (EU) No 1307/2013.

#### *Article 33*

### **Application of Article 21(4) of Regulation (EU) No 1307/2013**

For the purpose of establishing which payment entitlements shall expire in accordance with Article 21(4) of Regulation (EU) No 1307/2013, priority shall be given to those payment entitlements which have the lowest value.

Where payment entitlements have the same value, the number of owned payment entitlements and the number of leased-in payment entitlements shall be reduced in the same proportion.

Member States may decide to apply the first and the second paragraphs at regional level.

#### *Article 34*

### **Determination of the value of payment entitlements under Article 26 of Regulation (EU) No 1307/2013 for Member States applying Article 21(3) of that Regulation**

For the purpose of determining the initial unit value of payment entitlements, Member States applying Article 21(3) of Regulation (EU) No 1307/2013 may adjust the amount of payments for 2014 as referred to in Article 26(5) of that Regulation by deducting,

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before reductions and exclusions, the amount arising from payment entitlements which have expired pursuant to Article 21(4) of Regulation (EU) No 1307/2013.

## SECTION 2

### **Single area payment scheme**

#### *Article 35*

#### **Eligible hectares in Member States applying the single area payment scheme**

For the purposes of the single area payment scheme provided for in Section 4 of Chapter 1 of Title III of Regulation (EU) No 1307/2013, including any reference in Regulation (EU) No 1307/2013 to eligible hectares declared for the purposes of that scheme, only those eligible hectares shall be taken into account which are determined within the meaning of point (23)(a) of the second subparagraph of Article 2(1) of Delegated Regulation (EU) No 640/2014.

#### *Article 36*

#### **Application of Article 36(3) of Regulation (EU) No 1307/2013**

1. For the purpose of differentiating the single area payment as provided for in Article 36(3) of Regulation (EU) No 1307/2013, the following rules shall apply:
  - (a) the reference to the specific support measures provided for in points (a), (b) and (c) of Article 68(1) of Regulation (EC) No 73/2009 shall be without prejudice to the possibility for Member States to consider only one or several measures implemented under those specific support measures;
  - (b) Member States may, in accordance with objective and non-discriminatory criteria, decide about the level of support to be taken into account for one or more of the schemes applied by the Member State concerned in accordance with the second subparagraph of Article 36(3) of that Regulation and, where appropriate, with the third subparagraph of that provision. However, when taking into account the support granted under relevant scheme in 2014, the amount used to differentiate the single area payment may not be higher than the corresponding amount granted to an individual farmer under such a scheme in 2014;
  - (c) when taking into account the support granted in accordance with Article 68(1)(c) and Articles 126, 127 and 129 of Regulation (EC) No 73/2009, such differentiation shall not jeopardise the decoupled character of those schemes.

Such differentiation shall be available to farmers who received in 2014 the support referred to in the second, third or fourth subparagraph of Article 36(3) of Regulation (EU) No 1307/2013. The amount per hectare shall be determined each year by dividing the amount to differentiate the single area payment available for an individual farmer by the number of eligible hectares declared by the farmer in accordance with point (a) of the first subparagraph of Article 72(1) of Regulation (EU) No 1306/2013.

2. If the amount of the support under one or several of the support schemes referred to in second subparagraph of Article 36(3) of Regulation (EU) No 1307/2013 relating to 2014



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is lower than the corresponding amount or amounts in the year preceding the years affected by *force majeure* or exceptional circumstances, the Member State shall take into account the support granted under the support schemes concerned in the year preceding the years affected by *force majeure* or exceptional circumstances.

Member States may decide to limit the application of the first subparagraph to cases where the direct payments relating to 2014 are lower than a certain percentage of the corresponding amounts in the year preceding the years affected by *force majeure* or exceptional circumstances. This percentage shall not be lower than 85 %.

3. Member States may decide that in the event of actual or anticipated inheritance, the differentiation of the single area payment shall be available to the farmer who inherited the holding, on condition that this farmer is eligible under the single area payment scheme.

#### *Article 37*

### **Production of hemp under the single area payment scheme**

Article 9 shall apply *mutatis mutandis* as regards the single area payment scheme.

## CHAPTER 3

## **GREENING**

### *SECTION 1*

#### ***Equivalence***

#### *Article 38*

### **Requirements applicable to the national or regional certification schemes**

1. Member States deciding to implement equivalent practices referred to in Article 43(3) (b) of Regulation (EU) No 1307/2013 shall designate one or more public or private certification authorities certifying that the farmer observes practices on its holding which comply with Article 43(3) of that Regulation.
2. Public or private certification authorities shall fulfil the following conditions:
  - (a) they shall have the expertise, equipment and infrastructure required to carry out the certification tasks;
  - (b) they shall have a sufficient number of qualified and experienced staff;
  - (c) they shall be impartial and free from any conflict of interest as regards the exercise of the certification tasks.

Private certification authorities shall be accredited in accordance with EN ISO/IEC 17021 (Requirements for bodies providing audit and certification of management systems) or EN ISO/IEC 17065 (Conformity assessment – Requirements for bodies certifying products, processes and services) in the sector of agricultural production. Accreditation shall only be performed by a national accreditation body in a Member

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State in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council<sup>(22)</sup>.

3. The designation of a public or private certification authority shall be withdrawn where it fails to satisfy the conditions for its designation set out in paragraph 2.

#### *Article 39*

#### **Calculation of the amount referred to in Article 28(6) of Regulation (EU) No 1305/2013**

1. For farmers deciding to observe the practices referred to in points 3 and 4 of Section I and point 7 of Section III of Annex IX to Regulation (EU) No 1307/2013 and any further equivalent practices added to that Annex for which a specific calculation is needed in order to avoid double funding, as equivalent practices pursuant to Article 43(3)(a) of that Regulation, Member States shall deduct from the amount of support per hectare calculated pursuant to Article 28(6) of Regulation (EU) No 1305/2013 an amount corresponding to one third of the average greening payment per hectare in the Member State or region concerned for each greening practice that the practice is equivalent with.

The average greening payment per hectare in the Member State or region concerned shall be calculated on the basis of the percentage referred to in Article 47(1) of Regulation (EU) No 1307/2013 of the average of the national ceilings for the years 2015 to 2019 set out in Annex II to that Regulation and the number of eligible hectares declared in accordance with Article 33 or Article 36 of Regulation (EU) No 1307/2013 in 2015. Member States deciding to implement the practices referred to in the first subparagraph of this paragraph already in 2015, may estimate the number of eligible hectares declared in 2015 on the basis of the declarations made in 2014 pursuant to Article 34(2) of Regulation (EC) No 73/2009.

2. By way of derogation from paragraph 1, Member States deciding to apply the third subparagraph of Article 43(9) of Regulation (EU) No 1307/2013 may decide to apply the deduction referred to in paragraph 1 of this Article on an individual basis by an amount corresponding to one third of the average greening payment per hectare of the farmer concerned.

The average greening payment for the farmer shall be calculated on the basis of the average of the individual payment calculated in accordance with the third and fourth subparagraphs of Article 43(9) of Regulation (EU) No 1307/2013 for the years 2015 to 2019 and the number of eligible hectares declared by the farmer in accordance with Article 33 of that Regulation in 2015.

#### *SECTION 2*

#### ***Crop diversification***

#### *Article 40*

#### **Calculation of shares of different crops for crop diversification**

1. For the purpose of the calculation of the shares of different crops as provided for in Article 44(1) of Regulation (EU) No 1307/2013, the period to be taken into account shall be the most relevant part of the cultivation period taking account of the traditional cultivation practices

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*Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) No 639/2014. (See end of Document for details)*

in the national context. [F<sup>2</sup>That period may be fixed at national, regional or the appropriate sub-regional level.]

Member States shall inform farmers of that period in due time. Within the total arable land of the holding, each hectare shall be taken into account only once in one claim year for the purpose of the calculation of the shares of different crops.

2. For the calculation of the shares of different crops, the area covered by a crop may include landscape features that form part of the eligible area in accordance with Article 9 of Delegated Regulation (EU) No 640/2014.

3. On an area where mixed cropping is applied by growing simultaneously two or more crops in distinct rows, each crop shall be counted as distinct crop when it covers at least 25 % of that area. The area covered by the distinct crops shall be calculated by dividing the area where the mixed cropping is applied by the number of crops covering at least 25 % of that area, irrespective of the actual share of a crop on that area.

On areas where mixed cropping is applied by growing a main crop which is under-sown with a second crop, the area shall be considered as covered with only the main crop.

Areas on which a seed mixture is sown shall, irrespective of the specific crops included in the mix, be considered as covered with one single crop. Without prejudice to Article 44(4)(d) of Regulation (EU) No 1307/2013, such single crop shall be referred to as 'mixed crop'. Where it can be established that the species included in different seed mixtures differ from each other, Member States may recognise those different seed mixtures as distinct single crops, provided that those different seed mixtures are not used for the crop referred to in Article 44(4)(d) of Regulation (EU) No 1307/2013.

[F<sup>2</sup>Areas on which different crops are grown next to each other, where each single crop covers an area that is smaller than the minimum size set by Member States referred to in the second subparagraph of Article 72(1) of Regulation (EU) No 1306/2013, may be considered by Member States as covered with one 'mixed crop' as referred to in the third subparagraph of this paragraph.]

#### **Textual Amendments**

- F2** Inserted by [Commission Delegated Regulation \(EU\) 2017/1155 of 15 February 2017 amending Delegated Regulation \(EU\) No 639/2014 as regards the control measures relating to the cultivation of hemp, certain provisions on the greening payment, the payment for young farmers in control of a legal person, the calculation of the per unit amount in the framework of voluntary coupled support, the fractions of payment entitlements and certain notification requirements relating to the single area payment scheme and the voluntary coupled support, and amending Annex X to Regulation \(EU\) No 1307/2013 of the European Parliament and of the Council.](#)

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*Status: Point in time view as at 16/05/2018.*

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### SECTION 3

#### **Permanent grassland**

##### *Article 41*

#### **Framework for the designation of further environmentally sensitive permanent grassland areas outside of Natura 2000 areas**

Environmentally sensitive permanent grassland areas outside the areas covered by Directive 92/43/EEC or Directive 2009/147/EC as referred to in the second subparagraph of Article 45(1) of Regulation (EU) No 1307/2013 shall be designated on the basis of one or more of the following criteria:

- (a) covering organic soils with a high percentage of organic carbon, such as peat land or wetlands;
- (b) hosting habitats listed in Annex I to Directive 92/43/EEC or protected under national legislation;
- (c) hosting plant species listed in Annex II to Directive 92/43/EEC or protected under national legislation;
- (d) being of significant importance for wild bird species listed in Annex I to Directive 2009/147/EC;
- (e) being of significant importance for wild animal species protected under Directive 92/43/EEC or protected under national legislation;
- (f) covering permanent grassland of high nature value as defined by objective criteria to be established by the Member State;
- (g) covering soils with a high risk of erosion;
- (h) being located in a sensitive area designated within the river basin management plans pursuant to Directive 2000/60/EC.

Member States may decide every year to add new designated areas and shall inform the farmers concerned of that decision in due time.

##### *Article 42*

#### **Reconversion in case of non-respect of the obligation on environmentally sensitive permanent grassland areas**

Without prejudice to Directive 2004/35/CE of the European Parliament and of the Council<sup>(23)</sup>, where a farmer has converted or ploughed permanent grassland that is subject to the obligation referred to in the third subparagraph of Article 45(1) of Regulation (EU) No 1307/2013, the Member State concerned shall provide for the obligation to reconvert the area into permanent grassland and may, on a case by case basis, issue precise instructions to be respected by the farmer concerned on how to reverse the environmental damage caused in order to restore the environmentally sensitive status.

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The farmer shall be informed without delay after the non-compliance has been established of the obligation to reconvert and of the date before which that obligation is to be complied with. That date shall not be later than the date for the submission of the single application for the following year, or in the case of Sweden and Finland, 30 June of the following year.

By way of derogation from Article 4(1)(h) of Regulation (EU) No 1307/2013, the land reconverted shall be considered as permanent grassland as of the first day of reconversion and be subject to the obligation referred to in the third subparagraph of Article 45(1) of Regulation (EU) No 1307/2013.

### *Article 43*

#### **Calculation of the ratio of permanent grassland**

1. Areas declared by farmers participating in the small farmer scheme referred to in Title V of Regulation (EU) No 1307/2013, as well as the units of a holding used for organic production in accordance with Article 11 of Council Regulation (EC) No 834/2007<sup>(24)</sup> shall not be included in the ratio of the areas of permanent grassland to the total agricultural area and the reference ratio referred to in Article 45(2) of Regulation (EU) No 1307/2013.

2. Areas declared by farmers in 2012 as land under permanent pasture that have been converted into land for other uses may be deducted from the calculation of the areas of permanent grassland in accordance with point (a) of the second subparagraph of Article 45(2) of Regulation (EU) No 1307/2013, up to the number of hectares of permanent pasture or permanent grassland that farmers have established after 2012 and declared in 2015 on national, regional, sub-regional level or holding level, provided that the existing rules on maintenance of permanent pasture as laid down in Article 6(2) of Regulation (EC) No 73/2009 and in Article 93(3) of Regulation (EU) No 1306/2013 were met.

When calculating the number of hectares of permanent pasture or permanent grassland established after 2012 as referred to in the first subparagraph, only hectares of permanent pasture or permanent grassland on an agricultural area declared in 2012, 2013 or 2014 in accordance with Article 34(2) of Regulation (EC) No 73/2009 shall be taken into account.

3. Member States shall adapt the reference ratio if they assess that there is a significant impact on the evolution of the ratio due to, in particular, a change in the area under organic production or a change in the population of participants in the small farmer scheme. In such situations, Member States shall inform the Commission without delay of the adaptation made and the justification for that adaptation.

### *Article 44*

#### **Maintenance of the ratio of permanent grassland**

1. Member States may provide for the individual obligation of farmers not to convert areas of permanent grassland without prior individual authorisation. The farmers shall be informed of that obligation without delay and in any case before 15 November of the year in which the Member State concerned so provides. That obligation shall only apply to farmers who are subject to the obligations under Chapter 3 of Title III of Regulation (EU) No 1307/2013 with respect to areas of permanent grassland that are not subject to Article 45(1) of Regulation (EU) No 1307/2013.

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The issuing of an authorisation may depend on the application of objective and non-discriminatory criteria, including environmental criteria. If the authorisation referred to in the first subparagraph is subject to the condition that another area of a corresponding number of hectares is to be established as permanent grassland, that area shall, by way of derogation from Article 4(1)(h) of Regulation (EU) No 1307/2013, be considered as permanent grassland as of the first day of conversion. Such areas shall be used to grow grasses or other herbaceous forage at least for the five consecutive years following the date of conversion, or, if the Member State so decides, where farmers convert areas which were already used to grow grasses and other herbaceous forage into areas of permanent grassland, the remaining number of years needed in order to reach the five consecutive years.

2. Where it is established that the ratio referred to in the first subparagraph of Article 45(2) of Regulation (EU) No 1307/2013 has decreased beyond 5 % compared to the reference ratio referred to in that Article, the Member State concerned shall provide for the obligation to reconvert areas into areas of permanent grassland and for rules to avoid new conversion of areas of permanent grassland.

Member States shall determine the range of farmers subject to the reconversion obligation from farmers who:

- (a) are subject to the obligations under Chapter 3 of Title III of Regulation (EU) No 1307/2013 with respect to areas of permanent grassland that are not subject to Article 45(1) of that Regulation; and
- (b) based on the applications submitted in accordance with Article 72 of Regulation (EU) No 1306/2013 or Article 19 of Regulation (EC) No 73/2009 during the preceding two calendar years, or in 2015 during the preceding three calendar years, have agricultural areas at their disposal which were converted from areas of permanent grassland or land under permanent pasture into areas for other uses.

Where the periods referred to in point (b) of the second subparagraph include calendar years before 2015, the reconversion obligation shall also apply to areas that were converted into areas for other uses from land under permanent pasture that were subject to the obligation referred to in Article 6(2) of Regulation (EC) No 73/2009 or Article 93(3) of Regulation (EU) No 1306/2013.

When determining which farmers shall reconvert areas into areas of permanent grassland, Member States shall impose the obligation first on farmers who have at their disposal an area that was converted from an area of permanent grassland or land under permanent pasture into an area for other uses in breach of the authorisation requirement, if applicable, referred to in paragraph 1 of this Article or Article 4(1) of Regulation (EC) No 1122/2009. Such farmers shall reconvert the whole converted area.

3. If the application of the fourth subparagraph of paragraph 2 does not lead to an increase of the ratio referred to in the first subparagraph of Article 45(2) of Regulation (EU) No 1307/2013 above the threshold of 5 %, Member States shall provide that farmers who have at their disposal an area that was converted from an area of permanent grassland or land under permanent pasture into an area for other uses during the periods referred to in point (b) of the second subparagraph of paragraph 2 of this Article, are also to reconvert a percentage of that converted area into areas of permanent grassland or to establish another area corresponding to that percentage as area of permanent grassland. That percentage shall be calculated on the basis of the area converted by the farmer during the periods referred to in point (b) of the second subparagraph of paragraph 2 of this Article and the area needed to increase the ratio referred to in Article 45(2) of Regulation (EU) No 1307/2013 above the threshold of 5 %.

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Member States may for the calculation of the percentage referred to in the first subparagraph, exclude from the area converted by the farmer those areas which became permanent grassland after 31 December 2015, provided that they carry out administrative cross-checks of the permanent grassland annually declared in the geo-spatial aid application by means of a spatial intersection with the area declared as permanent pasture in 2015 registered in the identification system for agricultural parcels and that those areas of permanent grassland were not established as a result of an obligation to reconvert or to establish an area of permanent grassland pursuant to paragraph 2 or this paragraph. However, where such exclusion does not allow to increase the ratio referred to in the first subparagraph of Article 45(2) of Regulation (EU) No 1307/2013 above the threshold of 5 %, Member States shall not exclude those areas.

Areas of permanent grassland or land under permanent pasture that farmers created in the framework of commitments in accordance with Council Regulation (EC) No 1698/2005<sup>(25)</sup> and Regulation (EU) No 1305/2013 shall not be taken into account in the area converted by the farmer for the calculation of the percentage referred to in the first subparagraph.

The farmers shall be informed of the individual reconversion obligation and of the rules to avoid new conversion of permanent grassland, without delay and in any case before 31 December of the year in which the decrease beyond 5 % is established. The obligation to reconvert shall be complied with before the date for the submission of the single application for the following year, or in the case of Sweden and Finland, 30 June of the following year.

By way of derogation from Article 4(1)(h) of Regulation (EU) No 1307/2013, areas reconverted into or established as areas of permanent grassland shall be considered as permanent grassland as of the first day of the reconversion or establishment. Those areas shall be used to grow grasses or other herbaceous forage at least for the five consecutive years following the date of their conversion, or, if the Member State so decides, where farmers convert areas which were already used to grow grasses and other herbaceous forage into areas of permanent grassland, the remaining number of years needed in order to reach the five consecutive years.

#### SECTION 4

#### **Ecological focus area**

#### Article 45

#### **Further criteria for the types of ecological focus area**

1. For the qualification of the types of areas listed in the first subparagraph of Article 46(2) of Regulation (EU) No 1307/2013 as ecological focus areas, paragraphs 2 to 11 of this Article shall apply.

[<sup>F12</sup>2. On land lying fallow there shall be no agricultural production. Member States shall fix a period during which the land must be lying fallow in a given calendar year. That period shall not be shorter than 6 months. By way of derogation from Article 4(1)(h) of Regulation (EU) No 1307/2013, land lying fallow for the purpose of fulfilling the ecological focus area for more than 5 years shall remain arable land.]

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3. Terraces shall be terraces that are protected under GAEC 7 as referred to in Annex II to Regulation (EU) No 1306/2013 as well as other terraces. Member States may decide to consider as ecological focus area only terraces protected under GAEC 7. Member States deciding to consider also other terraces shall establish criteria for those other terraces, including the minimum height based on national or regional specificities.

[<sup>F14</sup> Landscape features shall be at the disposal of the farmer and may be those that are protected under GAEC 7, SMR 2 or SMR 3 as referred to in Annex II to Regulation (EU) No 1306/2013 and/or one or more of the following features:

- (a) hedges, wooded strips or trees in line;
- (b) isolated trees;
- (c) field copses including trees, bushes or stones;
- (d) ponds. Reservoirs made of concrete or plastic shall not be considered ecological focus areas;
- (e) ditches, including open watercourses for the purpose of irrigation or drainage. Channels with walls of concrete shall not be considered ecological focus areas.
- (f) traditional stone walls.

Member States may decide to limit the selection of landscape features to those under GAEC 7, SMR 2 or SMR 3 as referred to in Annex II to Regulation (EU) No 1306/2013 and/or to one or more of points (a) to (f) of the first subparagraph.

For the hedges, wooded strips and trees in line as well as ditches referred to in points (a) and (e) of the first subparagraph, respectively, the area to be qualified as ecological focus area shall be calculated up to a maximum width of 10 metres.

For the field copses and ponds referred to in points (c) and (d) of the first subparagraph, respectively, the area to be qualified as ecological focus area shall be calculated up to a maximum size of 0,3 hectare.

For the purposes of point (d) of the first subparagraph, Member States may set a minimum size for ponds. Where there is a strip with riparian vegetation along the water the corresponding area shall be included for the purpose of calculating the ecological focus area. Member States may establish criteria to ensure that ponds are of natural value, taking into account the role that natural ponds play for the conservation of habitats and species.

For the purposes of point (f) of the first subparagraph, Member States shall establish minimum criteria based on national or regional specificities, including limits to the dimensions of height and width.

5. Buffer strips and field margins may be any buffer strips and field margins including those buffer strips along water courses required under GAEC 1, SMR 1 or SMR 10 as referred to in Annex II to Regulation (EU) No 1306/2013 or field margins protected under GAEC 7, SMR 2 or SMR 3 as referred to in that Annex.

Member States shall not limit the selection of buffer strips and field margins to those required under the cross compliance rules referred to in the first subparagraph.

Member States shall establish the minimum width of buffer strips and field margins which shall not be below 1 metre for ecological focus area purposes. Along water courses, riparian vegetation shall be included for the purpose of calculating the



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ecological focus area. There shall be no agricultural production on buffer strips and field margins.

For buffer strips and field margins other than those required or protected under GAEC 1, GAEC 7, SMR 1, SMR 2, SMR 3 or SMR 10 as referred to in Annex II to Regulation (EU) No 1306/2013, the area to be qualified as ecological focus area shall be calculated up to a maximum width of 20 metres.]

[<sup>F25a</sup>. For the purposes of the second sentence of the second subparagraph of Article 46(2) of Regulation (EU) No 1307/2013, areas referred to in paragraphs 4 and 5 of this Article shall be considered as adjacent areas or features where they are adjacent to an ecological focus area directly adjacent to the arable land of the holding.]

6. Hectares of agro-forestry shall be arable land eligible for the basic payment scheme or the single area payment scheme referred to in Chapter I of Title III of Regulation (EU) No 1307/2013 and fulfilling the conditions for which support under Article 44 of Regulation (EC) No 1698/2005 or Article 23 of Regulation (EU) No 1305/2013 was or is granted.

[<sup>F17</sup>. As regards strips of eligible hectares along forest edges Member States may decide either to allow agricultural production or to establish a requirement of no agricultural production, or to provide the two options for farmers. Member States shall establish the minimum width of those strips, which shall not be below 1 metre.

The area to be qualified as ecological focus area shall be calculated up to a maximum width of 10 metres where Member States decide to allow agricultural production and 20 metres where Member States decide not to allow agricultural production.

8. For areas with short rotation coppice with no use of mineral fertiliser and/or plant protection products, Member States shall establish a list of species that may be used for this purpose, by selecting from the list established pursuant to Article 4(2)(c) of Regulation (EU) No 1307/2013 the species that are most suitable from an ecological perspective, thereby excluding species that are clearly not indigenous. Member States shall also establish the requirements as regards the use of mineral fertilisers and/or plant protection products in case Member States authorise their use, keeping in mind the objective of ecological focus areas in particular to safeguard and improve biodiversity.

9. Areas under catch crops or green cover shall include such areas established pursuant to the requirements under SMR 1 as referred to in Annex II to Regulation (EU) No 1306/2013 as well as other areas under catch crops or green cover, on the condition that they were established by sowing a mixture of crop species or by under-sowing grass or leguminous crops in the main crop.

Member States shall set up the list of mixtures of crop species to be used and fix the period at national, regional, sub-regional or farm level during which areas under catch crops or green cover when established by sowing a mixture of crop species have to be in place. This period shall not be less than 8 weeks. Member States may establish additional conditions notably with regard to production methods.

Areas under catch crops or green cover shall not include areas under winter crops which are sown in autumn normally for harvesting or for grazing. They shall also not include the areas covered with equivalent practices mentioned in points I.3 and 4 of Annex IX to Regulation (EU) No 1307/2013.

10. On areas with nitrogen-fixing crops, farmers shall grow those nitrogen-fixing crops which are included in a list established by the Member State. That list shall contain the nitrogen-fixing crops that the Member State considers as contributing to the objective of improving

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biodiversity and may include mixtures of nitrogen-fixing crops with other crops provided that nitrogen-fixing crop species are predominant. Those crops shall be present during the growing season. Member States may establish additional conditions notably with regard to production method, in particular with a view to taking into account the need to meet the objectives of Directive 91/676/EEC and Directive 2000/60/EC, given the potential of nitrogen-fixing crops to increase the risk of nitrogen leaching in the autumn.

Areas with nitrogen-fixing crops shall not include the areas covered with equivalent practices mentioned in points I.3 and 4 of Annex IX to Regulation (EU) No 1307/2013.]

[<sup>F2</sup>10a. For the purposes of paragraphs 2, 5 and 7, ‘no agricultural production’ means no agricultural activity as defined in Article 4(1)(c)(i) of Regulation (EU) No 1307/2013, without prejudice to the requirements defined under GAEC 4 as referred to in Annex II to Regulation (EU) No 1306/2013. Actions aiming at establishing a green soil cover for biodiversity purposes, including sowing mixtures of wild flower seeds, shall be allowed.

However, by way of derogation from the ‘no production’ requirement, for the purposes of paragraphs 5 and 7, Member States may allow cutting or grazing on buffer strips and field margins as well as on strips of eligible hectares along forest edges without production, provided that the strip remains distinguishable from adjacent agricultural land.

10b. The use of plant protection products shall be prohibited on all areas referred to in paragraphs 2, 9 and 10 as well as on areas with agricultural production referred to in paragraph 7.

10c. On areas referred to in paragraph 9 established by under-sowing grass or leguminous crops in the main crop, this prohibition shall apply from the moment of the harvesting of the main crop for at least 8 weeks or until the sowing of the next main crop.]

11. A farmer can declare the same area or landscape feature only once in one claim year for the purpose of complying with the ecological focus area requirement.

#### **Textual Amendments**

- F1** Substituted by [Commission Delegated Regulation \(EU\) 2017/1155 of 15 February 2017 amending Delegated Regulation \(EU\) No 639/2014 as regards the control measures relating to the cultivation of hemp, certain provisions on the greening payment, the payment for young farmers in control of a legal person, the calculation of the per unit amount in the framework of voluntary coupled support, the fractions of payment entitlements and certain notification requirements relating to the single area payment scheme and the voluntary coupled support, and amending Annex X to Regulation \(EU\) No 1307/2013 of the European Parliament and of the Council.](#)
- F2** Inserted by [Commission Delegated Regulation \(EU\) 2017/1155 of 15 February 2017 amending Delegated Regulation \(EU\) No 639/2014 as regards the control measures relating to the cultivation of hemp, certain provisions on the greening payment, the payment for young farmers in control of a legal person, the calculation of the per unit amount in the framework of voluntary coupled support, the fractions of payment entitlements and certain notification requirements relating to the single area payment scheme and the voluntary coupled support, and amending Annex X to Regulation \(EU\) No 1307/2013 of the European Parliament and of the Council.](#)

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## Article 46

### Rules for the regional implementation of ecological focus areas

1. Member States opting for the regional implementation provided for in Article 46(5) of Regulation (EU) No 1307/2013 shall define regions for the purposes of that Article. The regions to be defined shall consist of single and homogenous geographical areas with similar agricultural and environmental conditions. For this purpose, homogeneity shall refer to soil type, elevation, as well as to the presence of natural and semi-natural areas.
2. Within the defined regions, Member States shall designate the areas where up to half of the percentage points of the ecological focus area requirement has to be implemented.
3. In respect to the defined areas Member States shall provide for specific obligations for the participating farmers or groups of farmers. Those obligations shall ensure contiguous structures of adjacent ecological focus areas. The obligations for the participating farmers or groups of farmers shall include a requirement that each participating farmer is to have at least 50 % of the area subject to the obligation laid down in Article 46(1) of Regulation (EU) No 1307/2013 located on the land of their holdings within the region and in accordance with the second subparagraph of Article 46(2) of that Regulation.
4. The obligations for the participating farmers or groups of farmers shall ensure that the contiguous ecological focus areas referred to in paragraph 3 consist of one or more of the areas referred to in points (a), (c), (d) and (h) of the first subparagraph of Article 46(2) of Regulation (EU) No 1307/2013.
5. When designating areas and providing for obligations as referred to in paragraphs 2 and 3 respectively, Member States shall take account, if applicable, of existing national or regional biodiversity and/or climate change mitigation and adaptation strategies, river basin management plans or needs identified with a view to ensure the ecological coherence of the Natura 2000 network referred to in Article 10 of Directive 92/43/EEC or to contribute to the implementation of the Green Infrastructure Strategy.
6. Prior to providing for obligations for farmers, Member States shall consult the farmers or groups of farmers concerned and other relevant stakeholders. Following such consultation, Member States shall establish a finalised detailed plan for the regional implementation and shall inform the stakeholders who participated in the consultation and the farmers or groups of farmers concerned of that plan, including the designation of areas and the obligations for the participating farmers or groups of farmers and, in particular, the precise percentage that each individual farmer has to implement on his own holding. Member States shall transmit that information to the farmer at the latest by 30 June of the year preceding the year in which the regional implementation will apply or for the first year of application of this Regulation in due time to allow the farmer to make his application accordingly.

Without prejudice to payments to farmers referred to in Article 43(9) of Regulation (EU) No 1307/2013, Member States shall ensure that arrangements are laid down with regard to financial compensations between farmers and as regards the administrative penalties in case of non-compliance on the contiguous ecological focus areas.

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#### Article 47

##### **Rules for the collective implementation and the criteria to be met by holdings to be considered to be in close proximity**

1. Member States that decide to allow a collective implementation as provided for in Article 46(6) of Regulation (EU) No 1307/2013, shall define the criteria to be met by holdings considered to be in close proximity using any of the following:
  - (a) farmers of whom 80 % of the holding are in the same municipality;
  - (b) farmers of whom 80 % of the holding are in an area with a radius of a number of kilometres to be set by Member States with a maximum of 15 kilometres.
2. Member States that opt for designating the areas on which collective implementation is possible and that opt for imposing obligations upon participating farmers or groups of farmers, shall take account of existing national or regional biodiversity and/or climate change mitigation and adaptation strategies, river basin management plans or needs identified with a view to ensure the ecological coherence of the Natura 2000 network referred to in Article 10 of Directive 92/43/EEC or to contribute to the enhancement of green infrastructure.
3. The obligations for the participating farmers or groups of farmers referred to in paragraph 2 shall include the condition that the contiguous ecological focus areas will consist of one or more of the areas referred to in points (a), (c), (d) and (h) of the second subparagraph of Article 46(2) of Regulation (EU) No 1307/2013.
4. Farmers participating in the collective implementation shall conclude a written agreement that includes details on the internal arrangements of financial compensation and as regards the administrative penalties in case of non-compliance on the common ecological focus area.

#### Article 48

##### **Determination of the ratio of forest to agricultural land**

1. Member States deciding to implement Article 46(7) of Regulation (EU) No 1307/2013 shall establish the percentage of forests compared to the total land surface area referred to in the first subparagraph of that paragraph on the basis of the data available from Eurostat. Forest data shall refer to the definition as applied by the Food and Agricultural Organisation of the United Nations and shall exclude the area under other wooded land. The total land surface area shall exclude the area under inland water including rivers and lakes.
2. The ratio of forest to agricultural land referred to in Article 46(7) of Regulation (EU) No 1307/2013 shall be calculated using data available from Eurostat. If there are no data available from Eurostat on the land under forest and agricultural land at the required scale to assess the forest ratio on an area level equivalent to the LAU2 level or on the level of a clearly delineated unit which covers a single clear contiguous geographical area having similar agricultural conditions, other data sources may be used.

Member States shall demonstrate that they have used up to date and consistent data on land under forest and agricultural land reflecting to the extent possible the actual situation.

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3. The data and calculations referred to in paragraphs 1 and 2 shall be valid for three years. After the expiry of this period, Member States deciding to further apply the exemption provided for in Article 46(7) of Regulation (EU) No 1307/2013 and renew that three-year period shall recalculate the ratios in accordance with paragraphs 1 and 2 of this Article using the newest data available.

In case of changes in the administrative boundaries affecting the ratio mentioned in paragraph 2, the data and calculations shall be reassessed and any changes in the application of the exemption notified to the Commission.

## CHAPTER 4

### PAYMENT FOR YOUNG FARMERS

#### *Article 49*

#### **Access of legal persons to the payment for young farmers**

1. The annual payment for young farmers referred to in Article 50(1) of Regulation (EU) No 1307/2013 shall be granted to a legal person irrespective of its legal form if the following conditions are fulfilled:

- (a) the legal person is entitled to a payment under the basic payment scheme or the single area payment scheme referred to in Chapter 1 of Title III of Regulation (EU) No 1307/2013 and has activated payment entitlements or declared eligible hectares, as referred to in Article 50(4) of that Regulation;
- (b) [<sup>F3</sup>a young farmer within the meaning of Article 50(2) of Regulation (EU) No 1307/2013 exercises effective and long-term control over the legal person in terms of decisions related to management, benefits and financial risks in each year in respect of which the legal person applies for the payment under the young farmers scheme. Where several natural persons, including person(s) who are not young farmer(s), participate in the capital or management of the legal person, the young farmer(s) shall in each year in respect of which the legal person applies for the payment under the young farmers scheme be capable of exercising such effective and long-term control either solely or jointly together with other farmers, subject to paragraph 1a of this Article;]
- (c) at least one of the young farmers fulfilling the condition set out in point (b) meets the eligibility criteria established by Member States pursuant to Article 50(3) of Regulation (EU) No 1307/2013, if any, unless Member States have decided that those criteria shall apply to all such young farmers.

Where a legal person is solely or jointly controlled by another legal person, the conditions set out in point (b) of the first subparagraph shall apply to any natural person having control over that other legal person.

[<sup>F4</sup>1a. By way of derogation from point (b) of the first subparagraph of paragraph 1, Member States may decide that, as of calendar year 2016 or 2017, the young farmer(s) shall exercise the effective and long-term control referred to in that point solely. Such a decision shall be taken before the date of opening of the application period for the first year to which it applies and it shall be taken only once. No such decision shall be possible after the date of opening of the application period for calendar year 2017.

*Status: Point in time view as at 16/05/2018.*

*Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) No 639/2014. (See end of Document for details)*

Where Member States use the derogation provided for in the first subparagraph, for determining the date of setting up referred to in Article 50(2)(a) and Article 50(5) of Regulation (EU) No 1307/2013, the period in which the young farmer exercised control jointly together with other farmers in accordance with point (b) of the first subparagraph of paragraph 1 of this Article in the calendar years preceding the calendar year as of which the derogation is applied shall be taken into account.

If Member States use that derogation, they shall decide whether or not to require sole control by young farmers for those legal persons or groups of natural persons which have already received payment under the young farmers scheme in the year(s) preceding the year as of which the derogation is used while a young farmer or young farmers exercised the control jointly together with farmers who were not young farmers.]

2. The payment referred to in Article 50(1) of Regulation (EU) No 1307/2013 shall no longer be granted if all young farmers complying with the criteria set out in point (b) of the first subparagraph of paragraph 1 and, where appropriate, in point (c) of the first subparagraph of paragraph 1 have ceased control over the legal person.

3. For the purposes of this Article:

- (a) any reference in Article 50(4) to (10) of Regulation (EU) No 1307/2013 to ‘farmer’ shall be construed as a reference to the legal person referred to in this Article;
- (b) the reference to the first submission of an application to the basic payment scheme or single area payment scheme referred to in Article 50(2)(a) of Regulation (EU) No 1307/2013 shall be construed as a reference to the legal person’s first application for the payment under the young farmers scheme;
- (c) without prejudice to paragraph 4 of this Article, the reference in the second sentence of Article 50(5) of Regulation (EU) No 1307/2013 to ‘setting up’ shall be construed as a reference to the setting up by the young farmers having control over the legal person in accordance with point (b) of the first subparagraph of paragraph 1 of this Article.

[<sup>F2</sup>A young farmer who exercises effective and long-term control over the legal person within the meaning of point (b) of the first subparagraph of paragraph 1 of this Article shall, for the purposes of Article 50(2)(b) of Regulation (EU) No 1307/2013, be no more than 40 years of age in the year of the first submission of an application under the basic payment scheme or the single area payment scheme by that legal person with a young farmer in control.]

4. Where several young farmers as referred to in point (b) of the first subparagraph of paragraph 1 have acquired control over the legal person at different moments of time, the earliest acquisition of control shall be considered as the time of ‘setting up’ referred to in the second sentence of Article 50(5) of Regulation (EU) No 1307/2013.

#### Textual Amendments

- F2** Inserted by Commission Delegated Regulation (EU) 2017/1155 of 15 February 2017 amending Delegated Regulation (EU) No 639/2014 as regards the control measures relating to the cultivation of hemp, certain provisions on the greening payment, the payment for young farmers in control of a legal person, the calculation of the per unit amount in the framework of voluntary coupled support, the fractions of payment entitlements and certain notification requirements relating to the single area payment scheme and the voluntary coupled support, and amending Annex X to Regulation (EU) No 1307/2013 of the European Parliament and of the Council.

*Status: Point in time view as at 16/05/2018.*

*Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) No 639/2014. (See end of Document for details)*

- F3** Substituted by Commission Delegated Regulation (EU) 2016/141 of 30 November 2015 amending Delegated Regulation (EU) No 639/2014 as regards certain provisions on the payment for young farmers and on voluntary coupled support and derogating from Article 53(6) of Regulation (EU) No 1307/2013 of the European Parliament and of the Council.
- F4** Inserted by Commission Delegated Regulation (EU) 2016/141 of 30 November 2015 amending Delegated Regulation (EU) No 639/2014 as regards certain provisions on the payment for young farmers and on voluntary coupled support and derogating from Article 53(6) of Regulation (EU) No 1307/2013 of the European Parliament and of the Council.

## Article 50

### Access of a group of natural persons to the payment for young farmers

Article 49 shall apply *mutatis mutandis* in respect of a group of natural persons as referred to in Article 4(1)(a) of Regulation (EU) No 1307/2013 for which the requirements laid down in Article 49(1)(a) of this Regulation are met at the level of the group.

## CHAPTER 5

### COUPLED SUPPORT

#### SECTION 1

#### *Voluntary coupled support*

#### Article 51

#### **Definitions**

For the purposes of this Section, ‘coupled support measures’ means measures implementing the voluntary coupled support referred to in Article 52(1) of Regulation (EU) No 1307/2013.

#### Article 52

#### **General principles**

1. The regions referred to in Article 52(3) of Regulation (EU) No 1307/2013 shall be defined by the Member States in accordance with objective and non-discriminatory criteria such as the agronomic and socioeconomic characteristics and the regional agricultural potential, or the institutional or administrative structure. Such regions may differ from regions established under other support schemes provided for in Regulation (EU) No 1307/2013.

2. When defining the specific types of farming or specific agricultural sectors referred to in Article 52(3) of Regulation (EU) No 1307/2013, Member States shall take into account in particular the relevant production structures and conditions of the region or sector concerned.

<sup>F53</sup>. .....

*Status: Point in time view as at 16/05/2018.*

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#### Textual Amendments

- F5** Deleted by [Commission Delegated Regulation \(EU\) 2018/707 of 28 February 2018 amending Delegated Regulation \(EU\) No 639/2014 as regards the eligibility criteria for support for hemp under the basic payment scheme and certain requirements in respect of voluntary coupled support.](#)

### Article 53

#### Conditions for granting the support

1. Member States shall lay down eligibility criteria for coupled support measures in compliance with the framework set out in Regulation (EU) No 1307/2013 and the conditions laid down in this Regulation.

2. Areas and yields and number of animals referred to in Article 52(6) of Regulation (EU) No 1307/2013 shall be fixed by the Member States at regional or sector level. They shall reflect the maximum yields, area cultivated or number of animals reached in the targeted region or sector in at least one year in the period of five years preceding the year of the decision referred to in Article 53(1) of that Regulation.

[<sup>F1</sup>The annual payment shall be expressed as the per unit amount of support. It may be either one of the following amounts, or, when the area or the number of animals eligible for the support does not exceed the area or the number of animals fixed as referred to in the first subparagraph of this paragraph, an amount between them:

- (a) the ratio between the amount fixed for the financing of the measure as notified according to point (3)(i) of Annex I to this Regulation and the area or the number of animals eligible for the support in the year in question;
- (b) the ratio between the amount fixed for the financing of the measure as notified according to point (3)(i) of Annex I to this Regulation and the area or the number of animals fixed as referred to in the first subparagraph of this paragraph.]

[<sup>F6</sup>Without prejudice to Article 52(6) of Regulation (EU) No 1307/2013, for the per unit amount of support referred to in the second subparagraph of this paragraph, Member States may decide to apply modulated per unit amounts in respect of certain categories of farmers or at farm level in order to take into account economies of scale resulting from the size of the production structures in the targeted specific type of farming or specific agricultural sector, or, if the measure targets a region or an entire sector, in the region or sector concerned. Article 67(1) of this Regulation shall apply *mutatis mutandis* to the notification of such decisions.]

3. Where the coupled support measure concerns the oilseeds referred to in the Annex to the Memorandum of Understanding between the European Economic Community and the United States of America on oilseeds within the framework of the GATT, the total of the maximum areas to be supported as notified by the Member States shall not exceed a maximum area for the whole Union for the purpose of ensuring compliance with its international commitments.

Where the maximum area referred to in the first subparagraph is exceeded, the Member States concerned shall adjust the area notified by applying a reduction coefficient resulting from the ratio between the maximum area and the total of the areas notified for the support of those oilseeds referred to in the first subparagraph.



*Status: Point in time view as at 16/05/2018.*

*Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) No 639/2014. (See end of Document for details)*

The Commission shall fix the reduction coefficient referred to in the second subparagraph by means of implementing acts adopted without applying the procedure referred to in Article 71(2) or (3) of Regulation (EU) No 1307/2013.

4. Where the coupled support measure concerns bovine animals and/or sheep and goats, Member States shall define as an eligibility condition for the support, the requirements to identify and register animals provided for in Regulation (EC) No 1760/2000 of the European Parliament and of the Council<sup>(26)</sup> or Council Regulation (EC) No 21/2004<sup>(27)</sup> respectively.

[<sup>F7</sup>However, without prejudice to other eligibility conditions, an animal shall also be deemed eligible for support where the identification and registration requirements referred to in the first subparagraph are met by a date to be fixed by the Member State which shall not be later than:

- (a) the first day of the retention period of the animal, where a retention period is applied;
- (b) a date chosen on the basis of objective criteria and consistent with the corresponding measure notified in accordance with Annex I, where no retention period is applied.

By 15 September 2015, Member States shall notify the Commission of the dates referred to in the second subparagraph.]

5. Member States may not grant area-related coupled support for areas that are not eligible areas within the meaning of Article 32(2), (3) and (4) of Regulation (EU) No 1307/2013. Where Member States grant coupled support to hemp, the condition referred to in Article 32(6) of Regulation (EU) No 1307/2013 and in Article 9 of this Regulation shall apply.

#### Textual Amendments

- F1** Substituted by Commission Delegated Regulation (EU) 2017/1155 of 15 February 2017 amending Delegated Regulation (EU) No 639/2014 as regards the control measures relating to the cultivation of hemp, certain provisions on the greening payment, the payment for young farmers in control of a legal person, the calculation of the per unit amount in the framework of voluntary coupled support, the fractions of payment entitlements and certain notification requirements relating to the single area payment scheme and the voluntary coupled support, and amending Annex X to Regulation (EU) No 1307/2013 of the European Parliament and of the Council.
- F6** Substituted by Commission Delegated Regulation (EU) 2018/707 of 28 February 2018 amending Delegated Regulation (EU) No 639/2014 as regards the eligibility criteria for support for hemp under the basic payment scheme and certain requirements in respect of voluntary coupled support.
- F7** Inserted by Commission Delegated Regulation (EU) 2015/1383 of 28 May 2015 amending Delegated Regulation (EU) No 639/2014 as regards the eligibility conditions in relation to the identification and registration requirements for animals for coupled support under Regulation (EU) No 1307/2013 of the European Parliament and of the Council.

#### [<sup>F4</sup>Article 53a

#### Transfer of funds between measures

1. Without prejudice to the requirements set out in Chapter I of Title IV of Regulation (EU) No 1307/2013, Member States may decide to use the amounts notified in accordance with point (3)(i) of Annex I to this Regulation for the purpose of financing one or several other support measures under Chapter I of Title IV of Regulation (EU) No 1307/2013 in respect of the same claim year.

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A transfer of funds between support measures shall not result in a support measure notified to the Commission pursuant to Article 54 of Regulation (EU) No 1307/2013 and Article 67(1) and (2) of this Regulation becoming void.

[<sup>F62</sup> Where the area or the number of animals eligible for support under a voluntary coupled support measure in the claim year concerned equals to or exceeds the area or the number of animals referred to in Article 52(6) of Regulation (EU) No 1307/2013 as notified in accordance with point (3)(j) of Annex I to this Regulation, the support measure shall not benefit from a transfer of funds from any other support measure(s).

3. Where the area or the number of animals eligible for support under a voluntary coupled support measure in the claim year concerned is lower compared to the area or the number of animals referred to in Article 52(6) of Regulation (EU) No 1307/2013 as notified in accordance with point (3)(j) of Annex I to this Regulation, a transfer of funds shall not result in the per unit amount becoming lower than the ratio between the amount fixed for the financing as notified in accordance with point (3)(i) of that Annex and the area or the number of animals referred to in Article 52(6) of Regulation (EU) No 1307/2013.]

4. Where Member States grant coupled support for protein crops while using the possibility provided for in Article 53(3) of Regulation (EU) No 1307/2013, a transfer of funds shall not result in the support available for protein crops to be less than 2 % of the annual national ceiling set out in Annex II to that Regulation.

5. A decision to transfer funds between support measures shall be taken before the date of the first payment or payment of advances to farmers in respect of the voluntary coupled support. However, in respect of transfers from and to measures for which no payment has been made yet, such decision may be taken after that date, but no later than:

- (a) the last day of the month in which the first payment or payment of advances to farmers in respect of the voluntary coupled support is made;
- (b) 30 November where such first payment or payment of advances is made in the period from 16 to 31 October.

6. The competent authority of the Member State intending to take a decision to transfer funds between support measures shall inform farmers of a possible transfer before the date of opening of the application period.]

#### Textual Amendments

- F4** Inserted by [Commission Delegated Regulation \(EU\) 2016/141 of 30 November 2015 amending Delegated Regulation \(EU\) No 639/2014 as regards certain provisions on the payment for young farmers and on voluntary coupled support and derogating from Article 53\(6\) of Regulation \(EU\) No 1307/2013 of the European Parliament and of the Council.](#)
- F6** Substituted by [Commission Delegated Regulation \(EU\) 2018/707 of 28 February 2018 amending Delegated Regulation \(EU\) No 639/2014 as regards the eligibility criteria for support for hemp under the basic payment scheme and certain requirements in respect of voluntary coupled support.](#)

#### Article 54

#### Consistency and cumulation of support

1. For the purposes of Article 52(8) of Regulation (EU) No 1307/2013, measures provided for in Regulation (EU) No 1305/2013 and Regulation (EU) No 1308/2013 of the

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European Parliament and of the Council<sup>(28)</sup> shall be considered as ‘other Union measures and policies’.

2. Member States shall ensure consistency between:
  - (a) coupled support measures and measures implemented under other Union measures and policies;
  - (b) different coupled support measures;
  - (c) coupled support measures and measures funded by state aids.

Member States shall ensure that coupled support measures do not interfere with the proper functioning of other measures mentioned in the first subparagraph.

[<sup>F3</sup> Where support under a certain coupled support measure may also be granted under another coupled support measure, or under a measure implemented under other Union measures and policies, Member States shall ensure that the farmer concerned may receive support aiming at the objective referred to in Article 52(5) of Regulation (EU) No 1307/2013 under only one such measure per sector, region, specific type of farming or specific agricultural sector that is targeted in accordance with Article 52(3) of that Regulation.]

#### **Textual Amendments**

- F3** Substituted by [Commission Delegated Regulation \(EU\) 2016/141 of 30 November 2015 amending Delegated Regulation \(EU\) No 639/2014 as regards certain provisions on the payment for young farmers and on voluntary coupled support and derogating from Article 53\(6\) of Regulation \(EU\) No 1307/2013 of the European Parliament and of the Council.](#)

### *Article 55*

#### **Criteria for approval by the Commission**

1. For the purposes of Article 55(1)(a) of Regulation (EU) No 1307/2013, a lack of alternatives shall exist if:
  - (a) no other production than the production subject to coupled support measure can be carried out in the targeted region or sector or the continuation of such production requires significant changes in the production structures; or
  - (b) conversion towards another production is severely limited due to the unavailability of land or infrastructures adapted to that production, the consecutive significant reduction in the number of holdings, the level of investments needed resulting from the conversion or due to similar reasons.
2. For the purposes of Article 55(1)(b) of Regulation (EU) No 1307/2013, it shall be necessary to provide stable supply to the local processing industry where a suspension or reduction of the production in the targeted region or sector is expected to negatively impact the activity and the related economic viability or employment in downstream enterprises which significantly depend on such production, such as processors of raw material, slaughterhouses or food industries. Such downstream enterprises need to be located in the respective region or need to be significantly reliant on the sector for the continuation of their activity.
3. For the purposes of Article 55(1)(c) of Regulation (EU) No 1307/2013, continuing disturbances on the related market shall exist where farmers in the targeted region or sector are

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affected by economic losses resulting in particular from occurrence of pollution, contamination or degradation in the quality of the environment related to a specific event of limited geographical scope.

4. When assessing the level of coupled support resulting from the measures to be approved as notified by the Member State, the Commission shall take into account the level of coupled direct payments granted during at least one year within the reference period 2010-2014 as referred to in Article 53(4) of Regulation (EU) No 1307/2013.

## SECTION 2

### **Crop specific payment for cotton**

#### *Article 56*

#### **Authorisation of agricultural land for cotton production**

Member States shall establish objective criteria on the basis of which agricultural land is authorised pursuant to Article 57(2) of Regulation (EU) No 1307/2013.

Those criteria shall be based on one or more of the following:

- (a) the agricultural economy of those regions where cotton is a major crop;
- (b) the soil and climate in the areas in question;
- (c) the management of irrigation water;
- (d) rotation systems and cultivation methods likely to respect the environment.

#### *Article 57*

#### **Authorisation of varieties for sowing**

For the purposes of Article 57(2) of Regulation (EU) No 1307/2013, Member States shall authorise the varieties registered in the 'Common Catalogue of Varieties of Agricultural Plant Species' provided for in Directive 2002/53/EC that are adapted to market needs.

#### *Article 58*

#### **Eligibility requirements**

Sowing the areas referred to in Article 57(1) of Regulation (EU) No 1307/2013 shall be done by achieving a minimum plant density, to be fixed by the Member State concerned on the basis of the soil and weather conditions and specific regional characteristics, where appropriate.

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*Status: Point in time view as at 16/05/2018.*

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## Article 59

### **Agronomic practices**

Member States may establish specific rules on the agronomic practices needed to maintain and harvest the crops under normal growing conditions.

## Article 60

### **Approval of inter-branch organisations**

1. Each year Member States shall approve for a period of one year, starting not later than 1 March, any inter-branch organisation referred to in Article 59(1) of Regulation (EU) No 1307/2013 that applies to become such an approved organisation and which:

- (a) covers a total area of at least 4 000 ha as established by the Member State that meet the authorisation criteria laid down in Article 56 of this Regulation;
- (b) includes at least one ginning undertaking; and
- (c) has adopted internal operating rules, in particular on membership conditions and fees, in accordance with national and Union rules.

2. Where it is found that an approved inter-branch organisation does not respect the criteria for approval provided for in paragraph 1, the Member State shall withdraw the approval unless the non-respect of the criteria concerned is remedied. Where it is planned to withdraw the approval, the Member State shall notify that intention to the inter-branch organisation, together with the reasons for the withdrawal. The Member State shall allow the inter-branch organisation to submit its observations within a specified period.

Farmers who are members of an approved inter-branch organisation whose approval is withdrawn in accordance with the first subparagraph of this paragraph shall lose their right to the increase of the aid provided for in Article 60(2) of Regulation (EU) No 1307/2013.

## Article 61

### **Producers' obligations**

1. A producer shall not be a member of more than one approved inter-branch organisation referred to in Article 59(1) of Regulation (EU) No 1307/2013.

2. A producer who is a member of an approved inter-branch organisation shall deliver his cotton only to a ginner belonging to that same organisation.

3. The participation of producers in an approved inter-branch organisation shall be the result of voluntary membership.

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## CHAPTER 6

### NOTIFICATIONS

#### *Article 62*

#### **Notifications relating to definitions and related provisions**

Member States shall notify the Commission of any decisions taken in accordance with Article 4(2) of Regulation (EU) No 1307/2013 by 31 January 2015. Such notification shall include the details of such decisions, their justification and the objective criteria on the basis of which those decisions have been made.

#### *Article 63*

#### **Notifications relating to the reduction coefficient according to Article 32(5) of Regulation (EU) No 1307/2013**

Member States shall notify the Commission of any decisions pursuant to Article 8 by 31 January 2015. Such a notification shall include the details of such decisions, their justification and the objective criteria on the basis of which those decisions have been made.

#### *Article 64*

#### **Notifications relating to the basic payment**

1. Where a Member State notifies the Commission of its decisions pursuant to Articles 22(2) and (3), 24(10), 29 and 40(4) of Regulation (EU) No 1307/2013 such a notification shall include the details of such decisions. In addition, for decisions pursuant to Articles 24(10), 29 and 40(4) of that Regulation, a justification shall be included where relevant.

Where a Member State notifies the Commission of its decisions pursuant to Article 23(6) of Regulation (EU) No 1307/2013, such a notification shall include the details of such decisions, their justification and the objective criteria on the basis of which those decisions have been made, in particular the criteria used for the definition of the regions pursuant to Article 23(1) of that Regulation, the criteria used for the division of the national ceilings between the regions pursuant to Article 23(2) of that Regulation and the criteria used for any annual progressive modifications pursuant to Article 23(3) of that Regulation.

2. Where a Member State decides to use the options provided for in Articles 30(7), 30(11)(b), 32(3)(b), 32(5) and 36(3) of Regulation (EU) No 1307/2013, it shall notify the Commission by 31 January of the first year of application of such a decision of the details of those decisions as well as of the justification and, where relevant, the objective criteria on the basis of which those decisions have been made.

In case of a review of the decision referred to in Article 30(7) of Regulation (EU) No 1307/2013, the information referred to in the first subparagraph of this paragraph shall be notified to the Commission by 31 January of the first year of application of such a reviewed decision.

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3. Where a Member State decides to use the option provided for in Article 34(3) and (4) of Regulation (EU) No 1307/2013, it shall notify the Commission of its decision by 31 January of the first year of application of such a decision.

4. Where a Member State decides to use the options provided for in the second subparagraph of Article 39(1) and in Article 40(2) and (5) of Regulation (EU) No 1307/2013, it shall notify the Commission by 31 July of the year preceding the year of first application of such a decision of the details of those decisions as well as of the justification and, where relevant, the objective criteria on the basis of which those decisions have been made.

<sup>F8</sup>5. ....

#### Textual Amendments

**F8** Deleted by Commission Delegated Regulation (EU) 2017/1155 of 15 February 2017 amending Delegated Regulation (EU) No 639/2014 as regards the control measures relating to the cultivation of hemp, certain provisions on the greening payment, the payment for young farmers in control of a legal person, the calculation of the per unit amount in the framework of voluntary coupled support, the fractions of payment entitlements and certain notification requirements relating to the single area payment scheme and the voluntary coupled support, and amending Annex X to Regulation (EU) No 1307/2013 of the European Parliament and of the Council.

### Article 65

#### Notifications relating to greening

1. Member States shall notify the Commission of the following information:
  - (a) by 15 December 2014:
    - (i) if applicable, their decision to calculate the payment referred to in Article 43(9) of Regulation (EU) No 1307/2013 according to the third subparagraph of that paragraph;
    - (ii) if applicable, their decision to designate further sensitive permanent grassland areas referred to in the second subparagraph of Article 45(1) of Regulation (EU) No 1307/2013;
    - (iii) if applicable, their decision to apply the payment referred to in Article 43(9) of Regulation (EU) No 1307/2013 at regional level as provided for in the second subparagraph of Article 47(2) of that Regulation;
  - (b) by 15 December of the year concerned the decision to newly designate environmentally sensitive permanent grassland area as referred to in the second subparagraph of Article 41 of this Regulation;
  - (c) by 15 December of each year, for the claim year concerned:
    - (i) the total number of farmers who have to apply at least one greening obligation referred to in Article 43(2) and (3) of Regulation (EU) No 1307/2013 and the total number of hectares declared by such farmers;
    - (ii) <sup>F1</sup>the total number of farmers exempted from one or more greening practices and the number of hectares declared by such farmers, the number of farmers exempted from all practices because they comply with the requirements

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- of Regulation (EC) No 834/2007, the number of farmers participating in the small farmer scheme, the number of farmers exempted from the crop diversification obligation, and the number of farmers exempted from the ecological focus area obligation, and the respective number of hectares declared by such farmers;]
- (iii) the total number of farmers applying equivalent measures, distinguishing farmers applying equivalence pursuant to Article 43(3)(a) or (b) of Regulation (EU) No 1307/2013 and the respective number of hectares declared by such farmers;
  - (iv) the total number of farmers subject to crop diversification, broken down by the number of farmers subject to a diversification with two crops and the number of farmers subject to a diversification with three crops and including the respective number of hectares of arable land declared by such farmers;
  - (v) the total number of farmers taken into account for the calculation of the ratio of areas of permanent grassland to total agricultural area and the total number of hectares covered by permanent grassland declared by such farmers;
  - (vi) [<sup>F1</sup>the total number of farmers declaring environmentally sensitive permanent grassland, the total number of hectares covered by environmentally sensitive permanent grassland declared by such farmers, the total number of hectares of designated environmentally sensitive permanent grasslands and the total number of hectares of permanent grassland in areas covered by Directives 92/43/EEC or 2009/147/EC;]
  - (vii) the total number of farmers subject to the ecological focus area obligation, the total number of arable hectares declared by such farmers and the total number of hectares declared as ecological focus area before application of the weighting factors, broken down by type of ecological focus area as listed in the first subparagraph of Article 46(2) of Regulation (EU) No 1307/2013;
  - (viii) the total number of farmers implementing the ecological focus area obligation at regional or collective level and the total number of arable hectares declared by such farmers;
- (d) by 15 December of each year, the reference ratio and the annual ratio of areas of permanent grassland to total agricultural area, as well as information regarding obligations established at the level of the holding in accordance with the fifth subparagraph of Article 45(2) of Regulation (EU) No 1307/2013 and Article 44 of this Regulation<sup>[F1]</sup>;
- (e) [<sup>F2</sup>by 1 August of each year, the period to be taken into account for the calculation of the shares of different crops in accordance with Article 40(1) of this Regulation, as well as the geographical level at which that period is fixed.]
2. In their notification to be made by 1 August 2014 pursuant to Article 46(8) of Regulation (EU) No 1307/2013 Member States shall notify the Commission of the following:
- (a) their decision regarding which areas listed in the first subparagraph of Article 46(2) of Regulation (EU) No 1307/2013 are to be considered as ecological focus area, to be supplemented, by 1 October 2014, by detailed information on such decisions, including on the conditions applying on those areas as a result of decisions made by Member States;



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(b) detailed information on the use of conversion and weighting factors referred to in Article 46(3) of Regulation (EU) No 1307/2013.

3. In their notification to be made by 1 August of the year preceding the first application of the relevant decision pursuant to Article 46(8) of Regulation (EU) No 1307/2013, Member States shall notify the Commission of the following:

(a) for Member States opting for the regional implementation referred to in Article 46(5) of Regulation (EU) No 1307/2013 information on the definition of the regions, the designation of areas, the selected areas for the purposes of Article 46(4) of this Regulation, and information justifying how this regional implementation underpins the implementation of Union policies on the environment, climate and biodiversity;

(b) for Member States deciding to allow the collective implementation referred to in Article 46(6) of Regulation (EU) No 1307/2013 shall include information on the designation of areas and the selected areas for the purposes of Article 47(3) of this Regulation, if applicable.

4. In their notification to be made by 1 August of the year preceding the first application of the relevant decision pursuant to Article 46(8) of Regulation (EU) No 1307/2013, Member States fulfilling the condition referred to in Article 46(7) of that Regulation deciding to apply the exemption provided for in that provision, shall notify the Commission of the details of that decision, including the data and the calculations that demonstrate that all the conditions for the exemption referred to in Article 46(7) of Regulation (EU) No 1307/2013 are fulfilled.

The first subparagraph shall apply *mutatis mutandis* to decisions to further apply the exemption provided for in Article 46(7) of Regulation (EU) No 1307/2013 and renew the three-year period as referred to in Article 48(3) of this Regulation.

Member States shall notify the Commission immediately of any changes in the application of the exemption provided for in Article 46(7) of Regulation (EU) No 1307/2013.

#### Textual Amendments

- F1** Substituted by [Commission Delegated Regulation \(EU\) 2017/1155 of 15 February 2017 amending Delegated Regulation \(EU\) No 639/2014 as regards the control measures relating to the cultivation of hemp, certain provisions on the greening payment, the payment for young farmers in control of a legal person, the calculation of the per unit amount in the framework of voluntary coupled support, the fractions of payment entitlements and certain notification requirements relating to the single area payment scheme and the voluntary coupled support, and amending Annex X to Regulation \(EU\) No 1307/2013 of the European Parliament and of the Council.](#)
- F2** Inserted by [Commission Delegated Regulation \(EU\) 2017/1155 of 15 February 2017 amending Delegated Regulation \(EU\) No 639/2014 as regards the control measures relating to the cultivation of hemp, certain provisions on the greening payment, the payment for young farmers in control of a legal person, the calculation of the per unit amount in the framework of voluntary coupled support, the fractions of payment entitlements and certain notification requirements relating to the single area payment scheme and the voluntary coupled support, and amending Annex X to Regulation \(EU\) No 1307/2013 of the European Parliament and of the Council.](#)

Status: Point in time view as at 16/05/2018.

Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) No 639/2014. (See end of Document for details)

Article 66

Notifications relating to the payment for young farmers

1. Where a Member State decides to apply Article 50(6) of Regulation (EU) No 1307/2013 for the calculation of the payment for young farmers, it shall notify the Commission by 31 January 2015 of the method for calculating the payment chosen and the maximum limit set in accordance with Article 50(9) of that Regulation.

2. Where a Member State decides to define eligibility criteria in accordance with Article 50(3) of Regulation (EU) No 1307/2013 or to apply the calculation method referred to in Article 50(10) of that Regulation, it shall notify the Commission by 31 January 2015 of such a decision.

3. Where a Member State decides to make use of the option to recalculate the fixed number of hectares as provided for in the third subparagraph of Article 50(10) of Regulation (EU) No 1307/2013, it shall notify the Commission by 1 August of the year for which such a recalculation would apply of such a decision and provide a justification as well as the objective criteria on the basis of which the decision has been made.

[F4. Member States shall notify the Commission of any decision taken pursuant to Article 49(1a) at the latest 15 days after the date on which such decision was taken.]

Textual Amendments

F4 Inserted by Commission Delegated Regulation (EU) 2016/141 of 30 November 2015 amending Delegated Regulation (EU) No 639/2014 as regards certain provisions on the payment for young farmers and on voluntary coupled support and derogating from Article 53(6) of Regulation (EU) No 1307/2013 of the European Parliament and of the Council.

Article 67

Notifications relating to the voluntary coupled support

1. The notifications referred to in Article 54(1) of Regulation (EU) No 1307/2013 shall include the items listed in Annex I to this Regulation.

F82. ....

[F43. Member States shall notify the Commission of any decision taken pursuant to Article 53a(1) by the first day of the month following that in which the first payment or payment of advances to farmers in respect of the voluntary coupled support has been made. However, where such payment was made in the period from 16 to 31 October, that notification shall be made by 1 December. That notification shall include the following:

- (a) a list of the affected measures and the amounts transferred;
(b) for each affected measure, the eligible areas or number of animals in the relevant claim year after all checks of the submitted applications have been carried out;
(c) [F6 for each affected measure, a justification that a transfer is consistent with the production-limiting character of the scheme referred to in Article 52(6) of Regulation (EU) No 1307/2013 and that the decisions notified to the Commission pursuant to

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Article 54 of that Regulation and paragraphs 1 and 2 of this Article do not become void.]]

#### **Textual Amendments**

- F4** Inserted by Commission Delegated Regulation (EU) 2016/141 of 30 November 2015 amending Delegated Regulation (EU) No 639/2014 as regards certain provisions on the payment for young farmers and on voluntary coupled support and derogating from Article 53(6) of Regulation (EU) No 1307/2013 of the European Parliament and of the Council.
- F6** Substituted by Commission Delegated Regulation (EU) 2018/707 of 28 February 2018 amending Delegated Regulation (EU) No 639/2014 as regards the eligibility criteria for support for hemp under the basic payment scheme and certain requirements in respect of voluntary coupled support.
- F8** Deleted by Commission Delegated Regulation (EU) 2017/1155 of 15 February 2017 amending Delegated Regulation (EU) No 639/2014 as regards the control measures relating to the cultivation of hemp, certain provisions on the greening payment, the payment for young farmers in control of a legal person, the calculation of the per unit amount in the framework of voluntary coupled support, the fractions of payment entitlements and certain notification requirements relating to the single area payment scheme and the voluntary coupled support, and amending Annex X to Regulation (EU) No 1307/2013 of the European Parliament and of the Council.

#### *Article 68*

#### **Notifications concerning the minimum requirements for receiving direct payments**

Member States shall notify the Commission by 1 August 2014 of any decision taken in accordance with Article 10 of Regulation (EU) No 1307/2013.

#### *Article 69*

#### **Notifications concerning the redistributive payment**

Where a Member State decides to grant the redistributive payment pursuant to Chapter 2 of Title III of Regulation (EU) No 1307/2013, the notification referred to in the second subparagraph of Article 41(1) of Regulation (EU) No 1307/2013 shall comprise the details of such decision, including the details and justification of the calculation of the redistributive payment and, where appropriate, information on any regional application pursuant to Article 41(2) of that Regulation and on any graduation within the number of hectares pursuant to Article 41(5) of that Regulation.

#### *Article 70*

#### **Notifications concerning the payment for areas with natural constraints**

Where a Member State decides to grant the payment for areas with natural constraints pursuant to Chapter 4 of Title III of Regulation (EU) No 1307/2013 it shall notify the Commission by 1 August 2014 of any decision taken in accordance with Article 48 of Regulation (EU) No 1307/2013. Such a notification shall comprise the details of such decision including, where appropriate, information on any restriction of the payments to certain areas pursuant to Article 48(2) of Regulation (EU) No 1307/2013, on any

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application of the maximum limits referred to in Article 48(4) of that Regulation and on any regional application pursuant to Article 48(5) of that Regulation.

#### *Article 71*

##### **Notifications concerning the small farmers scheme**

Where a Member States decides to apply the small farmers scheme pursuant to Title V of Regulation (EU) No 1307/2013, it shall notify the Commission by 1 August 2014 of any decision taken in accordance with that Title.

Such a notification shall comprise the details of such decision, including the possible automatic inclusion of farmers pursuant to Article 62(2) of Regulation (EU) No 1307/2013 and the calculation of the payment pursuant to Article 63 of that Regulation.

Member States shall inform the Commission on the decision on financing referred to in Article 65(2) of Regulation (EU) No 1307/2013 without delay and no later than 1 December of the calendar year to which the payment relates.

#### *Article 72*

##### **Application of Article 8(1), 41(4) or 52(6) of Regulation (EU) No 1307/2013 to members of legal persons or groups**

Where a Member State decides to apply Article 8(4), 41(8) or 52(7) of Regulation (EU) No 1307/2013, it shall notify the Commission by 1 August 2014 of the details of those decisions.

#### *Article 73*

##### **Linear reductions of the payments**

When applying any linear reductions referred to in the second subparagraph of Article 7(1), in Article 51(2) or in Article 65(2)(c) of Regulation (EU) No 1307/2013, Member States shall inform the Commission of the reduction percentage applied without delay and no later than 30 June of the year following the calendar year in which the direct payments linearly reduced where claimed.

#### *Article 74*

##### **Request for information on measures taken by the Member States**

Where necessary in order to ensure the correct application of the rules set out in Regulation (EU) No 1307/2013 or in this Regulation, the Commission may request Member States to provide details on any measure taken to implement Regulation (EU) No 1307/2013 or any rules adopted by the Commission on the basis of that Regulation.

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## Article 75

### Reports

1. Where Bulgaria and Romania decide to grant complementary national direct payments pursuant to Article 18 of Regulation (EU) No 1307/2013, they shall submit a report to the Commission by 30 June 2016. For each complementary national direct payment the report shall contain the number of beneficiaries, the total amount of complementary national direct payment granted, the hectares for which the payment has been granted and the rate of the payment where relevant.
2. Where a Member State decides to grant transitional national aid pursuant to Article 37(1) of Regulation (EU) No 1307/2013, it shall submit to the Commission an annual report by 15 September of the year following the implementation of that transitional national aid. The report shall contain for each sector the number of beneficiaries, the amount of transitional national aid granted, the hectares, the number of animals or other units for which that aid has been granted and the rate of that aid where relevant.

## Article 76

### Notification of decision resulting from a review

Where a decision notified to the Commission in accordance with Regulation (EU) No 1307/2013 or this Regulation may be reviewed, the Commission shall be notified of the decision resulting from the review within a period of four weeks after such decision has been made, unless a different time limit for such notification is laid down in Regulation (EU) No 1307/2013.

Such a notification shall include the details of the decision and, where relevant, a justification and the objective criteria on the basis of which such a decision has been made.

## CHAPTER 7

### AMENDMENT, REPEAL AND ENTRY INTO FORCE

## Article 77

### Amendment of Regulation (EU) No 1307/2013

Annex X to Regulation (EU) No 1307/2013 is replaced by the text set out in Annex II to this Regulation.

## Article 78

### Repeal

Regulations (EC) No 1120/2009 and (EC) No 1121/2009 are repealed.

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However, they shall continue to apply with respect to aid applications relating to calendar years before calendar year 2015.

#### *Article 79*

#### **Entry into force and application**

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

It shall apply with respect to aid applications relating to calendar years subsequent to calendar year 2014.

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

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*Changes to legislation: There are currently no known outstanding effects for the  
Commission Delegated Regulation (EU) No 639/2014. (See end of Document for details)*

## [<sup>F6</sup>ANNEX I

### **Content of the information to be submitted to the Commission pursuant to Article 67(1)**

The information shall include:

- (1) the percentage of the national ceiling referred to in Article 53 of Regulation (EU) No 1307/2013 for each year until 2020;
- (2) the title of each support measure;
- (3) a description of each support measure, including at least:
  - (a) the region or sector targeted;
  - (b) the specific types of farming and/or the specific agricultural sectors selected as well as a description of the difficulties encountered and, where applicable, the criteria fixed by Member States to define the regions referred to in Article 52(1) of this Regulation;
  - (c) the related economic, social or environmental importance;
  - (d) any implementation of the derogation laid down in Article 52(4) of Regulation (EU) No 1307/2013;
  - (e) its duration;
  - (f) the applicable eligibility conditions;
  - (g) for Member States applying the third subparagraph of Article 53(2) of this Regulation, the criteria applied for the establishment of each modulated per unit amount in accordance with that subparagraph;
  - (h) the estimated per unit amount(s) of support calculated in accordance with the third subparagraph of Article 53(2) of this Regulation;
  - (i) the amount fixed for the financing;
  - (j) the fixed areas and yields or the fixed number of animals in accordance with Article 52(6) of Regulation (EU) No 1307/2013;
  - (k) where appropriate, the maximum area fixed for the purpose of implementing the support for those oilseeds referred to in Article 53(3) of this Regulation;
  - (l) any existing measures applied under other Union support schemes or under measures financed by state aids in the same region or sector as the coupled support measure and, where applicable, the criteria and administrative rules for ensuring that support aiming at addressing the same difficulty as referred to in Article 52(3) of Regulation (EU) No 1307/2013 is not also granted under other Union support schemes in accordance with Article 52(9) of that Regulation;
- (4) where appropriate, the detailed description of the particular situation in the region or sector targeted and the characteristics of the specific types of farming or specific agricultural sectors, which make the percentage referred to in Article 53(1) of Regulation (EU) No 1307/2013 insufficient to address the difficulties identified and which justify an increased level of support according to Article 54(2) of that Regulation;

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- (5) where appropriate, the demonstration of the existence of one of the needs referred to in Article 55(1)(a),(b),(c) or (d) of Regulation (EU) No 1307/2013.]

## ANNEX II

## ANNEX X

Conversion and weighting factors referred to in Article 46(3)<sup>(29)</sup>

Features	Conversion factor(m/tree to m <sup>2</sup> )	Weighting factor	Ecological focus area(if both factors are applied)
Land lying fallow (per 1 m <sup>2</sup> )	n.a.	1	1 m <sup>2</sup>
Terraces (per 1 m)	2	1	2 m <sup>2</sup>
Landscape features:			
Hedges/wooded strips (per 1 m)	5	2	10 m <sup>2</sup>
Isolated tree (per tree)	20	1,5	30 m <sup>2</sup>
Trees in line (per 1 m)	5	2	10 m <sup>2</sup>
Group of trees/Field copses (per 1 m <sup>2</sup> )	n.a.	1,5	1,5 m <sup>2</sup>
Field margin (per 1 m)	6	1,5	9 m <sup>2</sup>
Ponds (per 1 m <sup>2</sup> )	n.a.	1,5	1,5 m <sup>2</sup>
Ditches (per 1 m)	3	2	6 m <sup>2</sup>
Traditional stone walls (per 1 m)	1	1	1 m <sup>2</sup>
Other features not listed above but protected under GAEC7, SMR 2 or SMR 3 (per 1 m <sup>2</sup> )	n.a.	1	1 m <sup>2</sup>
Buffer strips (per 1 m)	6	1,5	9 m <sup>2</sup>
Hectares of agro-forestry (per 1 m <sup>2</sup> )	n.a.	1	1 m <sup>2</sup>
Strips of eligible hectares along forest edges (per 1 m)			
	Without production	6	1,5
		6	0,3
			9 m <sup>2</sup>
			1,8 m <sup>2</sup>



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	With production		
Areas with short rotation coppice (per 1 m <sup>2</sup> )	n.a.	0,3	0,3 m <sup>2</sup>
Afforested areas as referred to in Article 32(2)(b)(ii) (per m <sup>2</sup> )	n.a.	1	1 m <sup>2</sup>
Areas with catch crops or green cover (per 1 m <sup>2</sup> )	n.a.	0,3	0,3 m <sup>2</sup>
Areas with nitrogen fixing crops (per 1 m <sup>2</sup> )	n.a.	0,3	0,3 m <sup>2</sup>

## [<sup>F2</sup>ANNEX III

### **Union method for the quantitative determination of the $\Delta$ 9-tetrahydrocannabinol content in hemp varieties**

#### **1. Scope**

The method set out in this Annex seeks to determine the  $\Delta$ 9-tetrahydrocannabinol (hereinafter referred to as THC) content of varieties of hemp (*Cannabis sativa* L.). As appropriate, the method involves applying procedure A or B as described in this Annex.

The method is based on the quantitative determination of THC by gas chromatography (GC) after extraction with a suitable solvent.

##### *1.1. Procedure A*

Procedure A shall be used for checks on the production of hemp as referred to in Article 32(6) of Regulation (EU) No 1307/2013 and Article 30(g) of Commission Implementing Regulation (EU) No 809/2014<sup>(30)</sup>.

##### *1.2. Procedure B*

Procedure B shall be used in cases as referred to in Article 36(6) of Implementing Regulation (EU) No 809/2014.

#### **2. Sampling**

##### *2.1. Samples*

The samples shall be taken during the day following a systematic pattern to ensure that the sample is representative of the field, but excluding the edges of the crop.

2.1.1. Procedure A: in a standing crop of a given variety of hemp, a 30 cm part containing at least one female inflorescence of each plant selected shall be taken. Sampling shall be carried out during the period running from 20 days after the start of flowering to 10 days after the end of flowering.

Member States may authorise sampling to be carried out during the period from the start of flowering to 20 days after the start of flowering provided that, for each variety grown, other representative samples are taken in accordance with the first subparagraph during the period from 20 days after the start of flowering to 10 days after the end of flowering.

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For hemp cultivated as catch crop, in the absence of female inflorescences, the top 30 cm of the plant stem shall be taken. In that case sampling shall be carried out just before the end of the vegetation period, once the leaves begin presenting the first signs of yellowing, however no later than the onset of a forecast period of frost.

2.1.2. Procedure B: in a standing crop of a given variety of hemp, the upper third of each plant selected shall be taken. Sampling shall be carried out during the 10 days following the end of flowering or, for hemp cultivated as catch crop, in the absence of female inflorescences, just before the end of the vegetation period, once the leaves begin presenting the first sign of yellowing, but no later than the onset of a forecast period of frost. In the case of dioecious varieties, only female plants shall be taken.

## 2.2. *Sample size*

Procedure A: the sample shall comprise parts of 50 plants per field.

Procedure B: the sample shall comprise parts of 200 plants per field.

Each sample shall be placed in a fabric or paper bag, without crushing it, and be sent to the laboratory for analysis.

The Member State may provide for a second sample to be collected for counteranalysis, if required, to be kept either by the producer or by the body responsible for the analysis.

## 2.3. *Drying and storage of the sample*

Drying of the samples shall begin as soon as possible and, in any case, within 48 hours using any method below 70 °C.

Samples shall be dried to a constant weight and to a moisture content of between 8 % and 13 %.

After drying, the samples shall be stored without crushing them at below 25 °C in a dark place.

## 3. **Determination of THC content**

### 3.1. *Preparation of the test sample*

Stems and seeds over 2 mm in size shall be removed from the dried samples.

The dried samples shall be grinded to obtain a semi-fine powder (passing through a 1 mm mesh sieve).

The powder may be stored for 10 weeks at below 25 °C in a dark, dry place.

### 3.2. *Reagents and extraction solution*

#### Reagents

- $\Delta^9$ -tetrahydrocannabinol, pure for chromatographic purposes,
- squalane, pure for chromatographic purposes, as an internal standard.

#### Extraction solution

- 35 mg of squalane per 100 ml hexane.

### 3.3. *Extraction of THC*

100 mg of the powdered test sample shall be weighed, be placed in a centrifuge tube and 5 ml of extraction solution shall be added containing the internal standard.

The sample shall be placed in an ultrasound bath and be left for 20 minutes. It shall be centrifuged for 5 minutes at 3 000 r.p.m. and then the supernatant THC solution shall be

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removed. The solution shall be injected into the chromatograph and a quantitative analysis shall be carried out.

#### 3.4. *Gas chromatography*

##### (a) Apparatus

- gas chromatograph with a flame ionisation detector and a split/splitless injector,
- column allowing good separation of cannabinoids, for example a glass capillary column 25 m long and 0,22 mm in diameter impregnated with a 5 % non-polar phenyl-methyl-siloxane phase.

##### (b) Calibration ranges

At least three points for procedure A and five points for procedure B, including points 0,04 and 0,50 mg/ml THC in extraction solution.

##### (c) Experimental conditions

The following conditions are given as an example for the column referred to in (a):

- oven temperature 260 °C,
- injector temperature 300 °C,
- detector temperature 300 °C.

##### (d) Volume injected: 1 µl.

#### 4. **Results**

The findings shall be expressed to two decimal places in grams of THC per 100 grams of analytical sample dried to constant weight. A tolerance of 0,03 g per 100 g shall apply.

- Procedure A: one determination per test sample.

However, where the result obtained is above the limit laid down in Article 32(6) of Regulation (EU) No 1307/2013, a second determination shall be carried out per analysis sample and the mean value of the two determinations shall be taken as the result.

- Procedure B: the result shall correspond to the mean value of two determinations per test sample.]

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- (1) [OJ L 347, 20.12.2013, p. 608.](#)
- (2) Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 ([OJ L 30, 31.1.2009, p. 16](#)).
- (3) Commission Regulation (EC) No 1120/2009 of 29 October 2009 laying down detailed rules for the implementation of the single payment scheme provided for in Title III of Council Regulation (EC) No 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers ([OJ L 316, 2.12.2009, p. 1](#)).
- (4) Commission Regulation (EC) No 1121/2009 of 29 October 2009 laying down detailed rules for the application of Council Regulation (EC) No 73/2009 as regards the support schemes for farmers provided for in Titles IV and V thereof ([OJ L 316, 2.12.2009, p. 27](#)).
- (5) Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 ([OJ L 347, 20.12.2013, p. 549](#)).
- (6) See judgement of the Court of 25 November 1986 in joint Cases 201/85 and 202/85, *Klensch*, [1986] ECR 3477, paragraph 10.
- (7) [OJ L 336, 23.12.1994, p. 22.](#)
- (8) Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance. (See page 48 of this Official Journal).
- (9) See judgement of the Court of 14 October 2010 in Case C-61/09, *Landkreis Bad Dürkheim* [2010] ECR I-09763, paragraph 50 et seq.
- (10) Commission Regulation (EC) No 1122/2009 of 30 November 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector ([OJ L 316, 2.12.2009, p. 65](#)).
- (11) Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 ([OJ L 347, 20.12.2013, p. 487](#)).
- (12) Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources ([OJ L 375, 31.12.1991, p. 1](#)).
- (13) Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy ([OJ L 327, 22.12.2000, p. 1](#)).
- (14) Green Infrastructure (GI) — Enhancing Europe’s Natural Capital. COM(2013) 249 final, 6.5.2013.
- (15) See judgement of the Court of 25 October 2012 in Case C-592/11, *Anssi Ketelae*, not yet published in the ECR, paragraph 56.
- (16) [OJ L 147, 18.6.1993, p. 26.](#)
- (17) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ([OJ L 206, 22.7.1992, p. 7](#)).
- (18) Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds ([OJ L 20, 26.1.2010, p. 7](#)).
- (19) [<sup>F1</sup>Council Directive 2002/53/EC of 13 June 2002 on the common catalogue of varieties of agricultural plant species ([OJ L 193, 20.7.2002, p. 1](#)).]
- (20) [<sup>F1</sup>Council Directive 2002/57/EC of 13 June 2002 on the marketing of seed of oil and fibre plants ([OJ L 193, 20.7.2002, p. 74](#)).]

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Commission Delegated Regulation (EU) No 639/2014. (See end of Document for details)*

- (21) [<sup>F1</sup>Commission Regulation (EC) No 792/2009 of 31 August 2009 laying down detailed rules for the Member States' notification to the Commission of information and documents in implementation of the common organisation of the markets, the direct payments' regime, the promotion of agricultural products and the regimes applicable to the outermost regions and the smaller Aegean islands (OJ L 228, 1.9.2009, p. 3).]
- (22) Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).
- (23) Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143, 30.4.2004, p. 56).
- (24) Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 (OJ L 189, 20.7.2007, p. 1).
- (25) Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)(OJ L 277, 21.10.2005, p. 1).
- (26) Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97 (OJ L 204, 11.8.2000, p. 1).
- (27) Council Regulation (EC) No 21/2004 of 17 December 2003 establishing a system for the identification and registration of ovine and caprine animals and amending Regulation (EC) No 1782/2003 and Directives 92/102/EEC and 64/432/EEC (OJ L 5, 9.1.2004, p. 8).
- (28) Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/01 and (EC) No 1234/2007 (OJ L 347, p. 671).
- (29) The conversion and weighting factors shall also apply to features included in the equivalent practices as listed in Section III of Annex IX that are the same as the features listed in this Annex and as specified in Article 45 of Commission Delegated Regulation (EU) No 639/2014 of 11 March 2014 supplementing Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and amending Annex X to that Regulation (OJ L 181, 20.6.2014, p. 1) for the sole purpose of the calculation of the ecological focus area of the holding as referred to in Article 46(1) of this Regulation.
- (30) [<sup>F2</sup>Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance (OJ L 227, 31.7.2014, p. 69).]

#### Textual Amendments

- F1** Substituted by Commission Delegated Regulation (EU) 2017/1155 of 15 February 2017 amending Delegated Regulation (EU) No 639/2014 as regards the control measures relating to the cultivation of hemp, certain provisions on the greening payment, the payment for young farmers in control of a legal person, the calculation of the per unit amount in the framework of voluntary coupled support, the fractions of payment entitlements and certain notification requirements relating to the single area payment scheme and the voluntary coupled support, and amending Annex X to Regulation (EU) No 1307/2013 of the European Parliament and of the Council.
- F2** Inserted by Commission Delegated Regulation (EU) 2017/1155 of 15 February 2017 amending Delegated Regulation (EU) No 639/2014 as regards the control measures relating to the cultivation of hemp, certain provisions on the greening payment, the payment for young farmers in control of a legal person, the calculation of the per unit amount in the framework of voluntary coupled support, the fractions of payment entitlements and certain notification requirements relating to the single area

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**Status:** Point in time view as at 16/05/2018.

**Changes to legislation:** There are currently no known outstanding effects for the  
Commission Delegated Regulation (EU) No 639/2014. (See end of Document for details)

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payment scheme and the voluntary coupled support, and amending Annex X to Regulation (EU) No 1307/2013 of the European Parliament and of the Council.

**Status:**

Point in time view as at 16/05/2018.

**Changes to legislation:**

There are currently no known outstanding effects for the Commission Delegated Regulation (EU) No 639/2014.