

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

## 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.

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.

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*Status: This is the original version (as it was originally adopted).*

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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.

#### *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.

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.

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.

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.

2. Where a farmer, after having declared parcels corresponding to all his available payment entitlements under Article 33(1) of Regulation (EU) No 1307/2013 which are expressed in whole numbers, still disposes of a parcel which amounts to a fraction of a hectare, he may declare a further whole-number payment entitlement which shall give right to a payment calculated pro rata to the size of the parcel. The payment entitlement shall be deemed as fully activated for the purposes of Article 31(1)(b) of that Regulation.

#### *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.

##### *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 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.

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 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, 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 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.