

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⁽¹⁾, 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- (1) Regulation (EU) No 1307/2013 has repealed and replaced Council Regulation (EC) No 73/2009⁽²⁾. 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⁽³⁾ and (EC) No 1121/2009⁽⁴⁾.
- (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⁽⁵⁾.

Status: Point in time view as at 23/02/2021.

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

- (4) In line with the case-law of the Court of Justice of the European Union⁽⁶⁾, 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⁽⁷⁾, 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

Status: Point in time view as at 23/02/2021.

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

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⁽⁸⁾ 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⁽⁹⁾, payment entitlements should be allocated to the person enjoying decision-making power, benefits

Status: Point in time view as at 23/02/2021.

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

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

Status: Point in time view as at 23/02/2021.

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

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⁽¹⁰⁾ 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

Status: Point in time view as at 23/02/2021.

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

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

Status: Point in time view as at 23/02/2021.

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

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⁽¹¹⁾, 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.

Status: Point in time view as at 23/02/2021.

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

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.

Status: Point in time view as at 23/02/2021.

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

- (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

Status: Point in time view as at 23/02/2021.

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

be compatible with the objectives of Council Directive 91/676/EEC⁽¹²⁾ and Directive 2000/60/EC of the European Parliament and of the Council⁽¹³⁾ 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⁽¹⁴⁾, 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⁽¹⁵⁾. 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.

Status: Point in time view as at 23/02/2021.

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

- (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⁽¹⁶⁾, 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

Status: Point in time view as at 23/02/2021.

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

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

Status: Point in time view as at 23/02/2021.

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

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:

Commencement Information

- II** Regulation as it has effect for the claim year 2020 brought into domestic law on exit day by virtue of [Direct Payments to Farmers \(Legislative Continuity\) Act 2020 \(c. 2\)](#), ss. 1, 4, 9(3)

Status: Point in time view as at 23/02/2021.

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

- (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.](#)

Status:

Point in time view as at 23/02/2021.

Changes to legislation:

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