

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

TITLE II

THE INTEGRATED ADMINISTRATION AND CONTROL SYSTEM

CHAPTER IV

CALCULATION OF AID AND ADMINISTRATIVE PENALTIES RELATING TO DIRECT PAYMENTS SCHEMES AND RURAL DEVELOPMENT MEASURES IN THE SCOPE OF THE INTEGRATED SYSTEM

SECTION 1

General rules

Article 15

Exceptions from the application of administrative penalties

1. The administrative penalties provided for in this Chapter shall not apply with regard to the part of the aid application or payment claim as to which the beneficiary informs the competent authority in writing that the aid application or payment claim is incorrect or has become incorrect since it was lodged, provided that the beneficiary has not been informed of the competent authority's intention to carry out an on-the-spot check and that the authority has not already informed the beneficiary of any non-compliances in the aid application or payment claim.
2. The information given by the beneficiary as referred to in paragraph 1 shall have the effect that the aid application or payment claim is adjusted to the actual situation.

Article 16

Non-declaration of all areas

1. If, for a given year, a beneficiary does not declare all the agricultural parcels related to the areas referred to in Article 72(1) of Regulation (EU) No 1306/2013 and the difference between the overall area declared in the single application and/or payment claim on the one hand and the area declared plus the overall area of the parcels not declared, on the other, is more than 3 % of the area declared, the overall amount of area-related direct payments and/or support under area-related support measures payable to that beneficiary for that year shall be reduced by up to 3 % depending on the severity of the omission.

The penalty calculated in accordance with the first subparagraph shall be reduced by the amount of any administrative penalty applied in accordance with Article 28(2).

2. Paragraph 1 shall also apply to payments related to the schemes provided for in Articles 46 and 47 of Regulation (EU) No 1308/2013, where the beneficiary is subject to cross-compliance obligations in accordance with Article 92 of Regulation (EU) No 1306/2013. The reduction percentage shall apply to the total amount of payments related to measures under Articles 46 and 47 of Regulation (EU) No 1308/2013 divided by 3 for restructuring and conversion.

3. Paragraph 1 shall not apply to payments under the small farmers scheme provided for in Title V of Regulation (EU) No 1307/2013.

SECTION 2

Area-related aid schemes, except the payment for agricultural practices beneficial for the climate and the environment, or area-related support measures

Article 17

General principles

1. For the purposes of this Section, the following crop groups shall be distinguished as appropriate:

- (a) areas declared for the purposes of activation of payment entitlements under the basic payment scheme or for the purpose of being granted the single area payment;
- (b) a group for each of the areas declared for the purpose of any other area-related aid scheme or support measure, for which a different rate of aid or support is applicable;
- (c) areas declared under the heading 'other uses'.

2. Where the same area serves as the basis for an aid application and/or payment claim under more than one area-related aid scheme or support measure, that area shall be taken into account separately for each of those aid schemes or support measures.

Article 18

Basis of calculation in respect of area-related payments

1. With regard to aid applications under the basic payment scheme, the small farmers scheme, the re-distributive payment, the payment for areas with natural constraints and, where applicable, the young farmer scheme and where the Member State applies the basic payment scheme, the following shall apply:

- (a) if the number of payment entitlements declared exceeds the number of payment entitlements at the beneficiary's disposal, the number of payment entitlements declared shall be reduced to the number of payment entitlements at the beneficiary's disposal;
- (b) if there is a difference between the number of payment entitlements declared and the area declared, the area declared shall be adjusted to the lowest figure.

This paragraph shall not apply in the first year of allocation of payment entitlements.

2. In case of the payment for young farmers and where the Member State opts for the payment method laid down in Article 50(6), (7) and (8) of Regulation (EU) No 1307/2013; if the area declared under the basic payment scheme or the single area payment scheme exceeds the limit set by the Member State in accordance with Article 50(9) of that Regulation, the area declared shall be reduced to that limit.

3. In case of the re-distributive payment, if the area declared under the basic payment scheme or the single area payment scheme exceeds the limits set by the Member State in accordance with Article 41(4) of Regulation (EU) No 1307/2013, the area declared shall be reduced to that limit.

4. In case of the payment for areas with natural constraints and where the Member State opts for the payment method laid down in Article 48(4) of Regulation (EU) No 1307/2013, if the area declared under the basic payment scheme or the single area payment scheme exceeds the maximum number of hectares set by the Member State, the area declared shall be reduced to that number.

5. In case of aid applications and/or payment claims under area-related aid schemes or support measures, if the area of a crop group determined is established to be greater than the area declared in the aid application, the area declared shall be used for the calculation of the aid.

6. Without prejudice to administrative penalties in accordance with Article 19, in the case of aid applications and/or payment claims under area-related aid schemes or support measures, if the area declared exceeds the area determined for a crop group as referred to in Article 17(1), the aid shall be calculated on the basis of the area determined for that crop group.

However, without prejudice to Article 60 of Regulation (EU) No 1306/2013, if the difference between the total area determined and the total area declared for payment under the direct aid schemes established in Titles III, IV and V of Regulation (EU) No 1307/2013 or the total area declared for payment under an area-related support measure is less than or equal to 0,1 hectare, the area determined shall be set equal to the area declared. For this calculation only over-declarations of areas at the level of a crop group as referred to in Article 17(1) shall be taken into account.

The second subparagraph shall not apply where that difference represents more than 20 % of the total area declared for payments.

7. For the purpose of calculating the aid under the basic payment scheme, the average of the values of different payment entitlements in relation to the respective area declared shall be taken into account.

Article 19

Administrative penalties in cases of over-declaration

1. If, in respect of a crop group as referred to in Article 17(1), the area declared for the purposes of any area-related aid schemes or support measures exceeds the area determined in accordance with Article 18, the aid shall be calculated on the basis of the area determined reduced by twice the difference found if that difference is more than either 3 % or two hectares, but no more than 20 % of the area determined.

If the difference is more than 20 % of the area determined, no area-related aid or support shall be granted for the crop group concerned.

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

2. If the difference is more than 50 %, no area-related aid or support shall be granted for the crop group concerned. Moreover, the beneficiary shall be subject to an additional penalty equal to the amount of aid or support corresponding to the difference between the area declared and the area determined in accordance with Article 18.

3. If the amount calculated in accordance with paragraphs 1 and 2 cannot be fully off-set in the course of the three calendar years following the calendar year of the finding, in accordance with the rules laid down by the Commission on the basis of Article 57(2) of Regulation (EU) No 1306/2013, the outstanding balance shall be cancelled.

Article 20

Administrative penalties concerning the crop specific payment for cotton

Without prejudice to the administrative penalties applicable in accordance with Article 19 of this Regulation, where it is established that the beneficiary does not respect the obligations resulting from Article 61(1) and (2) of Commission Delegated Regulation (EU) No 639/2014⁽¹⁾, the beneficiary shall lose the right to the increase of the aid provided for in Article 60(2) of Regulation (EU) No 1307/2013. Moreover, the aid for cotton per eligible hectare pursuant to Article 57 of Regulation (EU) No 1307/2013 shall be reduced by the amount of the increase that the beneficiary would otherwise have been granted in accordance with Article 60(2) of that Regulation.

Article 21

Administrative penalties, other than over-declarations of areas, concerning the payments for young farmers under Chapter V of Title III of Regulation (EU) No 1307/2013

1. Without prejudice to the administrative penalties applicable in accordance with Article 19, where it is established that the beneficiary does not comply with the obligations referred to in Article 50(2) of Regulation (EU) No 1307/2013 and Article 49 of Delegated Regulation (EU) No 639/2014, the aid for young farmers shall not be paid or shall be withdrawn in full. Moreover, where it is established that the beneficiary provided false evidence for the purpose of proving compliance with the obligations, a penalty corresponding to 20 % of the amount the beneficiary has, or would otherwise have received as a payment for young farmers pursuant to Article 50(1) of Regulation (EU) No 1307/2013 shall be applied.

2. If the amount of the undue payments and the administrative penalties referred to in paragraph 1 cannot be fully off-set in the course of the three calendar years following the calendar year of the finding, in accordance with the rules laid down by the Commission on the basis of Article 57(2) of Regulation (EU) No 1306/2013, the outstanding balance shall be cancelled.

SECTION 3

Payment for agricultural practices beneficial for the climate and the environment

Article 22

General principles

1. For the purposes of this Section, the following crop groups shall be distinguished as appropriate:
 - (a) each group of areas declared as a certain crop as referred to in Article 44(4) of Regulation (EU) No 1307/2013;
 - (b) areas declared as permanent grassland and which are environmentally sensitive as referred to in Article 45(1) of Regulation (EU) No 1307/2013;
 - (c) other areas than those referred to in point (b) declared as permanent grassland; and
 - (d) areas declared as ecological focus area as referred to in Article 46(1) of Regulation (EU) No 1307/2013.
2. Where the same area is declared for more than one crop group, that area shall be taken into account separately for each of those crop groups.

Article 23

Basis of calculation of the payment for agricultural practices beneficial for the climate and the environment in respect of the eligible hectares declared under the basic payment scheme or the single area payment scheme

1. Where the Member State applies the basic payment scheme, the following shall apply:
 - (a) if the number of payment entitlements declared exceeds the number of payment entitlements at the beneficiary's disposal, the number of payment entitlements declared shall be reduced to the number of payment entitlements at the beneficiary's disposal;
 - (b) if there is a difference between the number of payment entitlements declared and the area declared, the area declared shall be adjusted to the lowest figure.
2. Without prejudice to the administrative penalties applicable in accordance with Article 28, if the area declared in a single application for the basic payment or the single area payment exceeds the area determined, the area determined shall be used for the calculation of the greening payment for agricultural practices beneficial for the climate and the environment hereinafter referred to as 'the greening payment'.

However, if the area determined for the basic payment scheme or the single area payment scheme is found to be greater than the area declared in the aid application, the area declared shall be used for the calculation of the greening payment.

Article 24

Reduction of the greening payment in case of non-compliance with crop diversification

1. Where Article 44 of Regulation (EU) No 1307/2013 requires that the main crop shall not cover more than 75 % of the total area of arable land, but the area that has been determined for the main crop group covers more than 75 %, the area to be used for the calculation of the greening payment in accordance with Article 23 of this Regulation shall be reduced by 50 % of the total area of arable land determined multiplied by the ratio of difference.

The ratio of difference referred to in the first subparagraph shall be the share of the area of the main crop group that goes beyond 75 % of the total arable land determined in the total area required for the other crop groups.

2. Where Article 44 of Regulation (EU) No 1307/2013 requires that the two main crops shall not cover more than 95 % of the total area of arable land determined, but the area that has been determined for the two main crop groups covers more than 95 %, the area to be used for the calculation of the greening payment in accordance with Article 23 of this Regulation shall be reduced by 50 % of the total area of arable land determined multiplied by the ratio of difference.

The ratio of difference referred to in the first subparagraph shall be the share of the area of the two main crop groups that goes beyond 95 % of the total area of arable land determined in the total area required for the other crop groups.

3. Where Article 44 of Regulation (EU) No 1307/2013 requires that the main crop shall not cover more than 75 % of the total area of arable land determined and the two main crops shall not cover more than 95 %, but the area that has been determined for the main crop group covers more than 75 % and the area that has been determined for the two main crop groups covers more than 95 %, the area to be used for the calculation of the greening payment in accordance with Article 23 of this Regulation shall be reduced by 50 % of the total area of arable land determined multiplied by the ratio of difference.

The ratio of difference referred to in the first subparagraph shall be the sum of the ratios of difference calculated under paragraph 1 and 2. However, the value of this ratio shall not exceed 1.

4. Where a beneficiary has been found non-compliant with crop diversification as described in this Article for three years, the area by which the area to be used for the calculation of the greening payment is to be reduced in accordance with paragraphs 1, 2 and 3 for the subsequent years shall be the total area of arable land determined multiplied by the applicable ratio of difference.

Article 25

Reduction of the greening payment in case of non-compliance with the permanent grassland requirements

1. If a non-compliance with the third subparagraph of Article 45(1) of Regulation (EU) No 1307/2013 has been determined, the area to be used for the calculation of the greening payment in accordance with Article 23 of this Regulation shall be reduced by the area determined as non-compliant with the requirements in the third subparagraph of Article 45(1) of Regulation (EU) No 1307/2013.

2. If a non-compliance with the obligations as referred to in Article 44 of Delegated Regulation (EU) No 639/2014 has been determined, the area to be used for the calculation of the greening payment in accordance with Article 23 of this Regulation shall be reduced by the area determined as non-compliant with the obligations as referred to in Article 44 of Delegated Regulation (EU) No 639/2014.

3. Non-compliances shall be deemed to be ‘determined’ if they are established as a consequence of any kind of checks carried out in accordance with Article 74 of Regulation (EU) No 1306/2013 or after having been brought to the attention of the competent control authority or paying agency in whatever other way.

Article 26

Reduction of the greening payment in case of non-compliance with the ecological focus area requirements

1. The ecological focus area required in accordance with Article 46(1) of Regulation (EU) No 1307/2013, hereinafter referred to as ‘the ecological focus area required’, shall be calculated on the basis of the total area of arable land determined and including, if applicable pursuant to Article 46(2) of Regulation (EU) No 1307/2013, the areas determined as referred to in points (c), (d), (g) and (h) of the first subparagraph of Article 46(2) of that Regulation.

2. If the ecological focus area required exceeds the ecological focus area determined taking account of the weighting of ecological focus areas provided for in Article 46(3) of Regulation (EU) No 1307/2013, the area to be used for the calculation of the greening payment in accordance with Article 23 of this Regulation shall be reduced by 50 % of the total arable land determined and including, if applicable pursuant to Article 46(2) of that Regulation (EU) No 1307/2013, the areas determined as referred to in points (c), (d), (g) and (h) of the first subparagraph of Article 46(2) of that Regulation, multiplied by the ratio of difference.

The ratio of difference referred to in the first subparagraph shall be the share of the difference between the ecological focus area required and the ecological focus area determined in the ecological focus area required.

3. Where a beneficiary has been found non-compliant with the ecological focus area requirements as described in this Article for three years, the area by which the area to be used for the calculation of the greening payment is to be reduced in accordance with paragraph 2 for the subsequent years shall be the total area of arable land determined and including, if applicable pursuant to Article 46(2) of Regulation (EU) No 1307/2013, the areas determined as referred to in points (c), (d), (g) and (h) of the first subparagraph of Article 46(2) of that Regulation, multiplied by the ratio of difference.

Article 27

Maximum reduction of the greening payment

1. The sum of the reductions calculated in accordance with Articles 24 and 26 expressed in hectares shall not exceed the total number of hectares of arable land determined including, if applicable pursuant to Article 46(2) of Regulation (EU) No 1307/2013, the areas determined as referred to in points (c), (d), (g) and (h) of the first subparagraph of Article 46(2) of that Regulation.

2. Without prejudice to the application of administrative penalties applicable in accordance with Article 28, the total reduction calculated in accordance with Articles 24 to 26 shall not exceed the greening payment calculated in accordance with Article 23.

Article 28

Administrative penalties as regards the greening payment

1. If the area to be used for the calculation of the greening payment in accordance with Article 23 differs from the area to be used for the calculation of the greening payment after application of Articles 24 to 27, the greening payment shall be calculated on this later area reduced by twice the difference established if that difference is more than either 3 % or two hectares, but no more than 20 % of the area to be used for the calculation of the greening payment after application of Articles 24 to 27.

If the difference is more than 20 %, no aid shall be granted.

If the difference is more than 50 %, no aid shall be granted. Moreover, the beneficiary shall be subject to an additional penalty equal to the amount of aid corresponding to the difference between the area to be used for the calculation of the greening payment in accordance with Article 23 and the area to be used for calculation of the greening payment after application of Articles 24 to 27.

2. If the beneficiary does not declare all his area under arable land with the result that he would have been exempted from the obligations provided for in Articles 44, 45 and 46 of Regulation (EU) No 1307/2013, and/or he does not declare all his permanent grassland which is environmentally sensitive in accordance with Article 45(1) of that Regulation and the non-declared area is more than 0,1 ha, the area to be used for the calculation of the greening payment after application of Articles 24 to 27 of this Regulation shall be further reduced by 10 %.

3. In accordance with Article 77(6) of Regulation (EU) No 1306/2013, the administrative penalty calculated in accordance with paragraphs 1 and 2 of this Article shall not be applied in claim years 2015 and 2016. The administrative penalty calculated in accordance with paragraph 1 and 2 shall be divided by 5 and limited to 20 % of the amount of the greening payment to which the farmer concerned would have been entitled in accordance with Article 23 in claim year 2017, and divided by 4 and limited to 25 % of the same amount for claim years 2018 and onwards.

4. If the amount of the administrative penalties calculated in accordance with paragraphs 1, 2 and 3 cannot be fully off-set in the course of the three calendar years following the calendar year of the finding, in accordance with the rules laid down by the Commission on the basis of Article 57(2) of Regulation (EU) No 1306/2013, the outstanding balance shall be cancelled.

Article 29

Applicable rules for equivalent practices

This Section shall apply *mutatis mutandis* to the equivalent practices referred to in Article 43(3) of Regulation (EU) No 1307/2013.

SECTION 4

Voluntary coupled support based on livestock aid applications under animal aid schemes or rural development support based on payment claims under animal-related support measures

Article 30

Basis of calculation

1. In no case aid or support shall be granted for a number of animals greater than that shown in the aid application or in the payment claim.
2. Animals present on the holding shall only be considered as determined if they are identified in the aid application or in the payment claim. Identified animals may be replaced without the loss of the right to payment of the aid or support, provided that the beneficiary has not yet been informed by the competent authority of a non-compliance in the application or claim or has not yet been given notice of the authority's intention to carry out an on-the-spot check. Where a Member State does not make use of the possibility of having a claimless system, in accordance with the rules laid down by the Commission on the basis of Article 78(b) of Regulation (EU) No 1306/2013, it shall ensure by any means that there are no doubts as to which animals are covered by the beneficiaries' applications or claims.
3. Without prejudice to Article 31, if the number of animals declared in an aid application or payment claim exceeds that determined as a result of administrative checks or on-the-spot checks, the aid or support shall be calculated on the basis of the animals determined.
4. Where cases of non-compliances with regard to the system for the identification and registration for bovine animals are found, the following shall apply:
 - (a) a bovine animal present on the holding which has lost one of the two ear tags shall be considered as determined provided that it is clearly and individually identified by the other elements of the system for the identification and registration of bovine animals referred to in points (b), (c) and (d) of the first paragraph of Article 3 of Regulation (EC) No 1760/2000;
 - (b) where one single bovine animal present on the holding has lost two ear tags it shall be considered as determined provided that the animal can still be identified by the register, animal passport, database or other means laid down in Regulation (EC) No 1760/2000 and provided that the animal keeper can provide evidence that he has already taken action to remedy the situation before the announcement of the on-the-spot check;
 - (c) where the non-compliances found relate to incorrect entries in the register or the animal passports, the animal concerned shall only be considered as not determined if such errors are found on at least two checks within a period of 24 months. In all other cases the animals concerned shall be considered as not determined after the first finding.

The entries in, and notifications to, the system for the identification and registration of bovine animals may be adjusted at any time in cases of obvious errors recognised by the competent authority.

5. An ovine or caprine animal present on the holding which has lost one ear tag shall be considered as determined provided that the animal can still be identified by a first means of identification in accordance with Article 4(2)(a) of Regulation (EC) No 21/2004 and provided

that all other requirements of the system for the identification and registration of ovine and caprine animals are fulfilled.

Article 31

Administrative penalties in respect of declared animals under the animal aid schemes or animal-related support measures

1. Where, in respect of an aid application under an animal aid scheme or in respect of a payment claim under an animal-related support measure, a difference is found between the number of animals declared and that determined in accordance with Article 30(3), the total amount of aid or support to which the beneficiary is entitled under that aid scheme or support measure for the claim year concerned shall be reduced by the percentage to be established in accordance with paragraph 3 of this Article, if no more than three animals are found with non-compliances.

2. If more than three animals are found with non-compliances the total amount of aid or support to which the beneficiary is entitled under the aid scheme or support measure referred to in paragraph 1 for the claim year concerned shall be reduced by:

- (a) the percentage to be established in accordance with paragraph 3, if it is not more than 10 %;
- (b) twice the percentage to be established in accordance with paragraph 3, if it is more than 10 % but not more than 20 %.

If the percentage established in accordance with paragraph 3 is more than 20 %, no aid or support to which the beneficiary would have been entitled pursuant to Article 30(3) shall be granted under the aid scheme or support measure for the claim year concerned.

If the percentage established in accordance with paragraph 3 is more than 50 %, no aid or support to which the beneficiary would have been entitled pursuant to Article 30(3) shall be granted under the aid scheme or support measure for the claim year concerned. Moreover, the beneficiary shall be subject to an additional penalty of an amount equal to the amount corresponding to the difference between the number of animals declared and the number of animals determined in accordance with Article 30(3). If that amount cannot be fully off-set in the course of the three calendar years following the calendar year of the finding, in accordance with the rules laid down by the Commission on the basis of Article 57(2) of Regulation (EU) No 1306/2013, the outstanding balance shall be cancelled.

3. In order to establish the percentages referred to in paragraphs 1 and 2, the number of animals declared under an animal aid scheme or animal-related support measure and found with non-compliances shall be divided by the number of animals determined for that animal aid scheme or support measure in respect of the aid application or payment claim for the claim year concerned.

Where a Member State makes use of the possibility of having a claimless system, in accordance with the rules laid down by the Commission on the basis of Article 78(b) of Regulation (EU) No 1306/2013, potentially eligible animals found not to be correctly identified or registered in the system for identification and registration for animals shall count as animals found with non-compliances.

Article 32

Exceptions from the application of administrative penalties in cases of natural circumstances

The administrative penalties provided for in Article 31 shall not apply in cases where the beneficiary is unable to comply with the eligibility criteria, commitments or other obligations as a result of natural circumstances affecting the herd or flock, provided that he has informed the competent authority in writing within ten working days of finding any reduction in the number of animals.

Without prejudice to the actual circumstances to be taken into account in individual cases, the competent authorities may recognise natural circumstances affecting the herd or flock consisting of

- (a) the death of an animal as a consequence of a disease; or
- (b) the death of an animal following an accident for which the beneficiary cannot be held responsible.

Article 33

Additional penalties and measures

1. Member States may provide additional national penalties to be applied to intermediaries, involved in the procedure of obtaining aid or support, in order to ensure the compliance with control requirements including the respect of notification obligations.

2. As regards the evidence provided by services, bodies or organisations other than the competent authorities in accordance with the rules laid down by the Commission on the basis of Article 78(c) of Regulation (EU) No 1306/2013, if it is found that incorrect evidence has been provided as a result of negligence or intentionally, the Member State concerned shall apply appropriate penalties in accordance with national legislation. Where such non-compliances are found a second time, the service, body or organisation involved shall be excluded for a period of at least one year from the right to provide evidence valid for support purposes.

Article 34

Amendments and adjustments of entries in the computerised database for bovine animals

In respect of declared bovine animals, Article 15 shall apply to errors and omissions in relation to entries in the computerised database for bovine animals made from the moment the aid application or payment claim is submitted.

- (1) 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 (see page 1 of this Official Journal).