

**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**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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<sup>(1)</sup>, and in particular Articles 63(4), 64(6) and 72(5), Article 76, Articles 77(7), 93(4) and 101(1), and Article 120 thereof,

Whereas:

- (1) Regulation (EU) No 1306/2013 repeals and replaces, among others, Council Regulation (EC) No 1290/2005<sup>(2)</sup>. Regulation (EU) No 1306/2013 empowers the Commission to adopt delegated and implementing acts. In order to ensure the smooth functioning of the system in the new legal framework, certain rules have to be adopted by means of such acts. Those acts should replace in particular the rules laid down in Commission Regulation (EC) No 1122/2009<sup>(3)</sup>.
- (2) In particular, rules should be established to supplement certain non-essential elements of Regulation (EU) No 1306/2013 in relation to the functioning of the integrated administration and control system (integrated system), the time limits for the submission of aid applications or payment claims, the conditions for the partial or total refusal of aid and the partial or total withdrawal of undue aid or support and the determination of administrative penalties to deal with non-compliances related to conditions for receiving aid under schemes established by Regulation (EU) No 1307/2013 of the European Parliament and of the Council<sup>(4)</sup> and conditions for receiving support under rural development measures established by Regulation (EU) No 1305/2013 of the European Parliament and of the Council<sup>(5)</sup>, and rules on the maintenance of permanent pasture and calculation of administrative penalties as regards the cross-compliance obligations.
- (3) Supplementary definitions are needed to ensure a harmonised implementation of the integrated system, in addition to the definitions provided for in Regulations (EU) No 1305/2013 and (EU) No 1307/2013. Furthermore, it is necessary to define certain terms applicable to cross-compliance rules.
- (4) The application of administrative penalties and the refusals or withdrawals of aid or support provided for in this Regulation should not prevent Member States from applying national criminal penalties, if national law so provides.

<sup>(1)</sup> OJ L 347, 20.12.2013, p. 549.

<sup>(2)</sup> Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ L 209, 11.8.2005, p. 1).

<sup>(3)</sup> 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).

<sup>(4)</sup> 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 (OJ L 347, 20.12.2013, p. 608).

<sup>(5)</sup> 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).

- (5) Article 2(2) of Regulation (EU) No 1306/2013 defines certain cases of *force majeure* and exceptional circumstances to be recognised by the Member States. Supplementary rules should be laid down enabling Member States to recognise cases of *force majeure* and exceptional circumstances in relation to direct payments, rural development support and cross-compliance. A deadline within which such cases are to be notified by the beneficiary should be fixed.
- (6) Supplementary rules are also needed with regard to the system for the identification of agricultural parcels to be operated by the Member States in accordance with Article 70 of Regulation (EU) No 1306/2013. According to that provision, use has to be made of computerised geographical information system (GIS) techniques. It is necessary to clarify which are the basic requirements and quality targets to be met by the system and which particular information is to be available in the GIS to ensure effective administrative cross-checks. Therefore, the identification system for agricultural parcels should be regularly updated to exclude clearly ineligible features and area. However, in order to avoid instability of the system, flexibility should be given to the Member States in view of small changes in the maximum eligible area due to the uncertainty of photo-interpretation, inter alia, caused by the outline and condition of reference parcels.
- (7) In order to allow Member States to identify pro-actively possible weaknesses in the system and to take remedial action when required, the quality of the identification system of agricultural parcels should be annually assessed.
- (8) In order to ensure a proper implementation of the basic payment scheme and related payments as provided for in Title III of Regulation (EU) No 1307/2013, Member States should establish an identification and registration system for payment entitlements which ensures that the payment entitlements are traceable and which allows, inter alia, to cross-check areas declared for the purposes of the basic payment scheme with the payment entitlements available to each farmer and between the different payment entitlements as such.
- (9) In order to allow effective control and to prevent the submission of multiple aid applications to different paying agencies within one Member State, Member States should provide for a single system to record the identity of farmers submitting aid applications subject to the integrated system.
- (10) Experience has shown that certain landscape features of the fields, in particular hedges, ditches and stonewalls, should be considered part of the eligible area for area-related direct payments. It is necessary to define the acceptable width of landscape features in the field. In view of specific environmental needs, it is appropriate to provide Member States with some flexibility as regards the limits to be taken into account when the regional yields were fixed for the purpose of former area payments for crops. However, Member States should be allowed to apply a different method for permanent grassland with scattered landscape features and trees where this option does not apply.
- (11) Given their importance for sustainable agriculture, any landscape features subject to the requirements and standards listed in Annex II to Regulation (EU) No 1306/2013 which form part of the total area of an agricultural parcel should be considered eligible.
- (12) As regards agricultural parcels taken up by arable land or by permanent grassland containing trees, conditions should be established for the presence of trees on these areas and their impact on the eligibility of such areas. For the sake of legal certainty, a maximum density of trees should be laid down, which is to be defined by Member States on the basis of traditional cropping practices, natural conditions and environmental reasons.
- (13) For reasons of simplification and to favour observability and controllability of direct payments, Member States should be allowed to apply a pro-rata system in order to establish the eligible area of permanent grassland with scattered ineligible features, such as landscape features and trees, other than landscape features subject to the requirements and standards listed in Annex II to Regulation (EU) No 1306/2013. The eligible area is determined for each reference parcel according to pre-established thresholds applied at the level of the homogeneous land cover type. Scattered features which cover up to a certain percentage of the reference parcel can be considered as being part of the eligible area. Therefore, it should be provided that no deductions need to be made for the area of scattered features in the first category representing the lowest percentage of ineligible area.

- (14) Rules should be established to deal with the situations where the latest date for the submission of various applications, claims, documents or amendments is a public holiday, a Saturday or a Sunday.
- (15) Respecting the time limits for the submission of aid applications, payment claims and other declarations, for the amendment of area-related aid applications or payment claims and for any supporting documents or contracts is indispensable to enable the national authorities to program and, subsequently, carry out effective controls on the correctness of the aid applications, payment claims or other documents. Rules should, therefore, be laid down regarding the time limits within which late submissions are acceptable. In order to encourage beneficiaries to respect the time limits, a dissuasive reduction should be applied in case of late submission, unless the delay is due to cases of *force majeure* or exceptional circumstances.
- (16) The timely submission of applications for allocation of payment entitlements or, where applicable, the increase of the value of payment entitlements by beneficiaries is essential for the Member States with a view to the timely establishment of the payment entitlements. Late submissions of those applications should therefore only be permitted within the same additional time limit as for the late submission of any aid applications. A dissuasive reduction should also be applied, unless the delay is due to cases of *force majeure* or exceptional circumstances.
- (17) Beneficiaries who give notice to the competent national authorities at any time of incorrect aid applications or payment claims should not be subject to any administrative penalties irrespective of the reason of the non-compliance, unless the beneficiary has been informed of the competent authority's intention to carry out an on-the-spot check or the authority has already informed the beneficiary of any non-compliance in the aid application or payment claim.
- (18) Supplementary rules for the basis of calculation of area-related aid schemes and area-related support measures, and for the basis of calculation of 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 should be laid down.
- (19) Administrative penalties should be established having regard to the principles of dissuasiveness and proportionality and the specific problems linked to cases of *force majeure* as well as exceptional circumstances. Administrative penalties should be graded according to the seriousness of the non-compliance committed and should go as far as the total exclusion from one or several area-related aid schemes or area-related support measures for a specified period. They should take into account the particularities of the various aid schemes or support measures with regard to the eligibility criteria, commitments and other obligations or the possibility that a beneficiary might not declare all his areas to artificially create the condition to be exempted from the greening obligations. The administrative penalties under this Regulation should be considered dissuasive enough to discourage intentional non-compliance.
- (20) In order to enable Member States to carry out checks effectively, with particular respect to controls of cross-compliance obligations, it is necessary to provide for the obligation of beneficiaries to declare all the areas at their disposal, whether or not they claim aid for such areas in accordance with Article 72(1)(a) of Regulation (EU) No 1306/2013.
- (21) For the sake of determining the eligible areas and to calculate the applicable reductions, it is necessary to define the areas falling within the same crop group. An area should be taken into account several times if it is declared for aid or support under more than one aid scheme or support measure. For the purpose of greening, however, it is necessary to distinguish between crop groups.
- (22) Payment of aid under the basic payment scheme requires an equal number of payment entitlements and eligible hectares. For the purpose of this scheme it is therefore appropriate to provide that the calculation of the payment in the case of discrepancies between the number of payment entitlements declared and the area declared should be based on the lower figure. To avoid that the calculation is based on non-existing entitlements, it should be provided that the number of payment entitlements used for the calculation should not exceed the number of payment entitlements at the beneficiary's disposal.

- (23) In relation to area aid applications and/or payment claims, non-compliances usually affect parts of areas. Over-declarations in respect of one parcel may, therefore, be off-set against under-declarations of other parcels of the same crop-group. Within a certain margin of tolerance, it should be provided that administrative penalties only become applicable once this margin has been exceeded.
- (24) Furthermore, in relation to aid applications and/or payment claims for area-related payments, differences between the total area declared in the aid application and/or payment claim and the total area determined as eligible are often insignificant. To avoid a high number of minor adjustments of applications it should be provided that the aid application and/or payment claims do not have to be adjusted to the area determined unless a certain level of differences is exceeded.
- (25) Given the particularities of the aid scheme for cotton, special provisions for administrative penalties in relation to that scheme should be established.
- (26) Administrative penalties in case of intentional or negligent non-compliance with eligibility requirements should be established having regard to the principles of dissuasiveness and proportionality for cases where a beneficiary applying for the young farmer scheme, does not comply with his obligations.
- (27) Administrative penalties should be established for animal aid schemes and animal-related support measures having regard to the principles of dissuasiveness and proportionality and the special problems linked to cases of natural circumstances. The administrative penalties should be graded according to the seriousness of the non-compliance committed and should go as far as the total exclusion from one or several aid schemes or support measures for a specified period. With regard to the eligibility criteria, they should take into account the particularities of the various aid schemes or support measures. The administrative penalties under this Regulation should be set at a sufficiently dissuasive level so as to discourage intentional over-declaration.
- (28) As far as aid applications under animal aid schemes or payment claims under animal-related support measures are concerned, non-compliances lead to the ineligibility of the animal concerned. Reductions should be provided for as from the first animal found with non-compliances but, irrespective of the level of the reduction, there should be a less harsh administrative penalty where three animals or less are found with non-compliances. In all other cases the severity of the administrative penalty should depend on the percentage of animals found with non-compliances.
- (29) As a general rule, Member States should take any further measures necessary to ensure a proper functioning of the integrated system. Member States should be allowed to impose additional national penalties where necessary.
- (30) The possibility to make corrections without leading to the administrative penalty provided for the aid application and payment claim should also apply in relation to incorrect data contained in the computerised database in respect of declared bovine animals for which such non-compliances constitute a breach of an eligibility criterion, unless the beneficiary has been informed of the competent authority's intention to carry out an on-the-spot check or the authority has not already informed the beneficiary of any non-compliance in the aid application or payment claim.
- (31) Refusals and withdrawals of support and administrative penalties should be established for rural development support measures having regard to the principles of dissuasiveness and proportionality. Refusals and withdrawals of support should be graded on the basis of the severity, extent, duration and reoccurrence of the non-compliance found. Refusals and withdrawals of support and administrative penalties should, with regard to the eligibility criteria, commitments and other obligations, take into account the particularities of the various support measures. In the case of serious non-compliance or in the case the beneficiary provided false evidence for the purpose of receiving the support, the support should be refused and an administrative penalty should be imposed. Administrative penalties should go as far as the total exclusion from one or several support measures or types of operations for a specified period.

- (32) For rural development support measures the administrative penalties should be without the prejudice to the possibility of temporarily suspending the support affected by non-compliance. Rules should be laid down to define cases where the non-compliance can be expected to be addressed by the beneficiary within a reasonable time.
- (33) Article 93(3) of Regulation (EU) No 1306/2013 provides, as regards the years 2015 and 2016, that the rules on cross-compliance also comprise the maintenance of permanent pasture. In this regard, it is necessary to specify that Member States should continue to fulfil their obligations in 2015 and 2016 according to the ratio established in 2014.
- (34) For the sake of clarity and in order to establish a harmonized basis for the assessment of non-compliances and calculation and application of administrative penalties due to cross-compliance, it is necessary to provide indications on the meaning of the terms reoccurrence, extent, severity and permanence of a non-compliance. In addition it is necessary to explain when a non-compliance is deemed to be determined.
- (35) As regards the non-compliance with cross-compliance obligations, administrative penalties should be established having regard to the principle of proportionality. They should only be applied where the farmer acted negligently or intentionally and should be graded according to the seriousness of the non-compliance committed.
- (36) With regard to cross-compliance obligations, apart from grading administrative penalties in view of the principle of proportionality, it should be provided that starting from a certain moment, repeated infringements of the same cross-compliance obligation should, after a prior warning to the farmer, be treated as an intentional non-compliance.
- (37) Furthermore, where in particular conditions the possibility not to apply any administrative penalties for non-compliances pursuant to Articles 97(3) and 99(2) of Regulation (EU) No 1306/2013 is applied by a Member State, requirements regarding the remediation of the relevant non-compliance should be established.
- (38) As regards in particular the early warning system, as referred to in Article 99(2) of Regulation (EU) No 1306/2013, in case the beneficiary does not fulfil the obligation to take remedial action the reduction should be applied retroactively in respect of the year for which the early warning system was applied. The calculation of the administrative penalties should also take into account the reoccurrence of the non-compliance in question in the year of the subsequent check, if applicable. In order to give legal certainty to beneficiaries, a time limit for the retroactive application of administrative penalties should be established.
- (39) With regard to beneficiaries of multiannual operations started under rural development programmes approved pursuant to Council Regulation (EC) No 1698/2005<sup>(1)</sup> and who are under the cross-compliance obligations, it should be established that the new control system and administrative penalties apply, in order to reduce the administrative burden of the national authorities in charge of checking their compliance and ensure simplification of procedures.
- (40) With regard to non-compliances with cross-compliance obligations, for which an administrative penalty was not applied since they were falling under *de minimis* rule provided for by Council Regulation (EC) No 73/2009<sup>(2)</sup> or Regulation (EC) No 1698/2005, but for which Member States had to ensure that beneficiaries remedy the non-compliance, transitional rules should be established to ensure consistency between the obligation of follow-up existing prior to the entry into force of Regulation (EU) No 1306/2013 and the new rules in that respect in that Regulation.

<sup>(1)</sup> Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ L 277, 21.10.2005, p. 1).

<sup>(2)</sup> 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).

- (41) For reasons of clarity and legal certainty, Regulation (EC) No 1122/2009 should be repealed. Commission Regulation (EU) No 65/2011<sup>(1)</sup> should also be repealed.
- (42) Having regard to the second subparagraph of Article 119(1) of Regulation (EU) No 1306/2013, this Regulation should apply to aid applications or payment claims relating to marketing years or premium periods starting as from 1 January 2015,

HAS ADOPTED THIS REGULATION:

#### TITLE I

### GENERAL PROVISIONS

#### Article 1

#### Scope

This Regulation lays down provisions supplementing certain non-essential elements of Regulation (EU) No 1306/2013 in relation to:

- (a) conditions for the partial or total refusal or withdrawal of the aid or support;
- (b) identifying the administrative penalty and determining the specific rate to be imposed;
- (c) identifying the cases in which the administrative penalty is not applied;
- (d) rules applicable to periods, dates and time limits where the final date for submission of applications or amendments is a public holiday, a Saturday or a Sunday;
- (e) specific definitions needed to ensure a harmonised implementation of the integrated system;
- (f) basic features and technical rules for the identification system for agricultural parcels and identification of beneficiaries;
- (g) basic features, technical rules and quality requirements of the system for the identification and registration of payment entitlements;
- (h) the basis for the calculation of aid, including rules on how to deal with certain cases in which eligible areas contain landscape features or trees;
- (i) additional rules for intermediates such as services, bodies and organisations, which are involved in the procedure for granting the aid or support;
- (j) the maintenance of permanent pasture in relation to cross-compliance;
- (k) a harmonised basis for the calculation of administrative penalties related to cross-compliance;
- (l) conditions for the application and calculation of the administrative penalties related to cross-compliance;
- (m) an addition to the rules provided for in Regulation (EU) No 1306/2013 in order to ensure a smooth transition from repealed rules to the new rules.

#### Article 2

#### Definitions

1. For the purposes of the integrated system referred to in Article 67(1) of Regulation (EU) No 1306/2013, the definitions in Article 4(1) of Regulation (EU) No 1307/2013 and in Article 67(4) of Regulation (EU) No 1306/2013 shall apply.

<sup>(1)</sup> Commission Regulation (EU) No 65/2011 of 27 January 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures (OJ L 25, 28.1.2011, p. 8).

The following definitions shall also apply:

- (1) 'beneficiary' means a farmer as defined in Article 4(1)(a) of Regulation (EU) No 1307/2013 and referred to in Article 9 of that Regulation, the beneficiary subject to cross-compliance within the meaning of Article 92 of Regulation (EU) No 1306/2013 and/or the beneficiary receiving rural development support as referred to in Article 2(10) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council <sup>(1)</sup>;
- (2) 'non-compliance' means:
  - (a) for eligibility criteria, commitments or other obligations relating to the conditions for the granting of the aid or support referred to in Article 67(2) of Regulation (EU) No 1306/2013, any non-respect of those eligibility criteria, commitments or other obligations; or
  - (b) for cross-compliance, non-compliance with the statutory management requirements under Union legislation, with the standards for good agricultural and environmental condition of land defined by the Member States in accordance with Article 94 of Regulation (EU) No 1306/2013, or with the maintenance of permanent pasture referred to in Article 93(3) of that Regulation;
- (3) 'application for support' means an application for support or to enter a measure under Regulation (EU) No 1305/2013;
- (4) 'payment claim' means an application by a beneficiary for payment by the national authorities under Regulation (EU) No 1305/2013;
- (5) 'other declaration' means any declaration or document, other than applications for support or payment claims, which has to be submitted or kept by a beneficiary or a third party in order to comply with specific requirements of certain rural development measures;
- (6) 'rural development measures in the scope of the integrated system' means the support measures granted in accordance with Article 21(1)(a) and (b) and Articles 28 to 31, 33, 34 and 40 of Regulation (EU) No 1305/2013 and where applicable Article 35(1)(b) and (c) of Regulation (EU) No 1303/2013, with the exception of measures referred to in Article 28(9) of Regulation (EU) No 1305/2013, and measures under Article 21(1)(a) and (b) of that Regulation as far as the establishment cost is concerned;
- (7) 'system for the identification and registration of animals' means the system for the identification and registration of bovine animals established by Regulation (EC) No 1760/2000 of the European Parliament and of the Council <sup>(2)</sup> and/or the system for the identification and registration of ovine and caprine animals established by Council Regulation (EC) No 21/2004 <sup>(3)</sup> respectively;
- (8) 'ear tag' means the ear tag to identify bovine animals individually referred to in Article 3(a) and Article 4 of Regulation (EC) No 1760/2000 and/or the ear tag to identify ovine and caprine animals individually referred to in point A.3 of the Annex to Regulation (EC) No 21/2004 respectively;
- (9) 'computerised database for animals' means the computerised database referred to in Article 3(b) and Article 5 of Regulation (EC) No 1760/2000 and/or the central register or computerised database referred to in Article 3(1)(d), Article 7 and Article 8 of Regulation (EC) No 21/2004 respectively;
- (10) 'animal passport' means the animal passport referred to in Article 3(c) and Article 6 of Regulation (EC) No 1760/2000;

<sup>(1)</sup> Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).

<sup>(2)</sup> Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97 (OJ L 204, 11.8.2000, p. 1).

<sup>(3)</sup> Council Regulation (EC) No 21/2004 of 17 December 2003 establishing a system for the identification and registration of ovine and caprine animals and amending Regulation (EC) No 1782/2003 and Directives 92/102/EEC and 64/432/EEC (OJ L 5, 9.1.2004, p. 8).

- (11) 'register' in relation to animals means the register kept by the animal keeper referred to in Article 3(d) and Article 7 of Regulation (EC) No 1760/2000 and/or the register referred to in Article 3(1)(b) and Article 5 of Regulation (EC) No 21/2004 respectively;
- (12) 'identification code' means the identification code referred to in Article 4(1) of Regulation (EC) No 1760/2000 and/or the codes referred to in point A.2 of the Annex to Regulation (EC) No 21/2004 respectively;
- (13) 'animal aid scheme' means a voluntary coupled support measure provided for in Chapter 1 of Title IV of Regulation (EU) No 1307/2013 where the annual payment to be granted within defined quantitative limits is based on a fixed number of animals;
- (14) 'animal-related support measures' means rural development measures or types of operations for which support is based on the number of animals or number of livestock units declared;
- (15) 'livestock aid application' means the applications for the payment of aid where the annual payment to be granted within defined quantitative limits is based on a fixed number of animals under the voluntary coupled support provided for in Chapter 1 of Title IV of Regulation (EU) No 1307/2013;
- (16) 'declared animals' means animals subject to a livestock aid application under the animal aid scheme or subject to a payment claim for an animal-related support measure;
- (17) 'potentially eligible animal' means an animal that could a priori potentially fulfil the eligibility criteria for receiving the aid under the animal aid scheme or support under an animal-related support measure in the claim year in question;
- (18) 'animal determined' means:
- (a) for an animal aid scheme, an animal for which all conditions laid down in the rules for granting the aid have been met; or
  - (b) for an animal-related support measure, an animal identified by means of administrative or on-the-spot checks;
- (19) 'animal keeper' means any natural or legal person responsible for animals whether on a permanent or on a temporary basis, including during transportation or at a market;
- (20) 'area-related aid schemes' means the area-related direct payments within the meaning of Article 67(4)(b) of Regulation (EC) No 1306/2013, excluding specific measures for agriculture in the outermost regions of the Union as referred to in Chapter IV of Regulation (EU) No 228/2013 of the European Parliament and of the Council<sup>(1)</sup> and specific measures for agriculture in favour of the smaller Aegean islands as referred to in Chapter IV of Regulation (EU) No 229/2013 of the European Parliament and of the Council<sup>(2)</sup>;
- (21) 'area-related support measures' means rural development measures or type of operations for which support is based on the size of the area declared;
- (22) 'use' in relation to area means the use of area in terms of the type of crop as referred to in Article 44(4) of Regulation (EU) No 1307/2013, type of permanent grassland as defined in Article 4(1)(h) of that Regulation, permanent pasture referred to in Article 45(2)(a) of that Regulation or areas of grassland, other than permanent grassland or permanent pasture, or ground cover or the absence of a crop;

<sup>(1)</sup> Regulation (EU) No 228/2013 of the European Parliament and of the Council of 13 March 2013 laying down specific measures for agriculture in the outermost regions of the Union and repealing Council Regulation (EC) No 247/2006 (OJ L 78, 20.3.2013, p. 23).

<sup>(2)</sup> Regulation (EU) No 229/2013 of the European Parliament and of the Council of 13 March 2013 laying down specific measures for agriculture in favour of the smaller Aegean islands and repealing Council Regulation (EC) No 1405/2006 (OJ L 78, 20.3.2013, p. 41).

(23) 'area determined' means:

- (a) for area-related aid schemes, the area for which all eligibility criteria or other obligations relating to the conditions for the granting of the aid have been met, regardless of the number of the payment entitlements at the beneficiary's disposal; or
- (b) for area-related support measures, the area of plots or parcels as identified by means of administrative or on-the-spot checks;

(24) 'Geographical Information System' (hereinafter referred to as 'GIS') means the computerised geographical information system techniques referred to in Article 70 of Regulation (EU) No 1306/2013;

(25) 'reference parcel' means a geographically delimited area retaining a unique identification as registered in the identification system for agricultural parcels referred to in Article 70 of Regulation (EU) No 1306/2013;

(26) 'geographical material' means maps or other documents used to communicate the contents of the GIS between the applicants for aid or support and the Member States.

2. For the purpose of Title IV of this Regulation, the definitions in Title VI of Regulation (EU) No 1306/2013 shall apply.

In addition, 'standards' means any of the standards as defined by the Member States in accordance with Article 94 of Regulation (EU) No 1306/2013 as well as the obligations in relation to permanent pasture as laid down in Article 93(3) of that Regulation.

#### Article 3

##### **Application of criminal penalties**

The application of the administrative penalties and the refusal or withdrawal of aid or support as provided for in this Regulation shall be without prejudice to the application of criminal penalties, should national law so provide.

#### Article 4

##### **Force majeure and exceptional circumstances**

1. As regards direct payments, if a beneficiary has been unable to comply with the eligibility criteria or other obligations as a result of *force majeure* or exceptional circumstances he shall retain his right to aid in respect of the area or animals eligible at the time when the case of *force majeure* or the exceptional circumstance occurred.

As regards rural development support measures under Articles 28, 29, 33 and 34 of Regulation (EU) No 1305/2013, if a beneficiary has been unable to fulfil the commitment as a result of *force majeure* or exceptional circumstances, the respective payment shall be proportionally withdrawn for the years during which the case of *force majeure* or exceptional circumstances occurred. The withdrawal shall concern only those parts of the commitment for which additional costs or income foregone did not take place before the *force majeure* or exceptional circumstances occurred. No withdrawal shall apply in relation to the eligibility criteria and other obligations and no administrative penalty shall apply.

As regards other rural development support measures, Member States shall not require the partial or full reimbursement of the support in case of *force majeure* or exceptional circumstances. In case of multiannual commitments or payments, reimbursement of the support received in previous years shall not be required and the commitment or payment shall be continued in the subsequent years in accordance with its original duration.

When the non-compliance resulting from such *force majeure* or exceptional circumstances concerns cross-compliance, the corresponding administrative penalty as referred to in Article 91(1) of Regulation (EU) No 1306/2013 shall not be applied.

2. Cases of *force majeure* and exceptional circumstances shall be notified in writing to the competent authority, with relevant evidence to the satisfaction of the competent authority, within fifteen working days from the date on which the beneficiary or the person entitled through him, is in a position to do so.

## TITLE II

## THE INTEGRATED ADMINISTRATION AND CONTROL SYSTEM

## CHAPTER I

## SYSTEMS REQUIREMENTS

## Article 5

**Identification of agricultural parcels**

1. The identification system for agricultural parcels referred to in Article 70 of Regulation (EU) No 1306/2013 shall operate at reference parcel level. A reference parcel shall contain a unit of land representing agricultural area as defined in Article 4(1)(e) of Regulation (EU) No 1307/2013. Where appropriate, a reference parcel shall also include areas as referred to in Article 32(2)(b) of Regulation (EU) No 1307/2013 and agricultural land as referred to in Article 28(2) of Regulation (EU) No 1305/2013.

Member States shall delimit the reference parcel in such a way as to ensure that the reference parcel is measurable, enables the unique and unambiguous localisation of each agricultural parcel annually declared and as a principle, is stable in time.

2. Member States shall also ensure that agricultural parcels that are declared are reliably identified. They shall in particular require the aid applications and payment claims to be furnished with particular information or accompanied by documents specified by the competent authority that enable each agricultural parcel to be located and measured. For each reference parcel, Member States shall:

- (a) determine a maximum eligible area for the purpose of the support schemes listed in Annex I to Regulation (EU) No 1307/2013;
- (b) determine a maximum eligible area for the purpose of the area-related measures referred to in Articles 28 to 31 of Regulation (EU) No 1305/2013;
- (c) locate and determine the size of those ecological focus areas listed in Article 46(1) of Regulation (EU) No 1307/2013 for which the Member State has decided that they shall be considered as ecological focus area. For that purpose, Member States shall apply the conversion and/or weighting factors set out in Annex X to Regulation (EU) No 1307/2013, where appropriate;
- (d) determine whether provisions for mountain areas, areas facing significant natural constraints and other areas affected by specific constraints as referred to in Article 32 of Regulation (EU) No 1305/2013, Natura 2000 areas, areas covered by Directive 2000/60/EC of the European Parliament and of the Council<sup>(1)</sup>, agricultural land authorised for cotton production pursuant to Article 57 of Regulation (EU) No 1307/2013, areas naturally kept in a state suitable for grazing or cultivation as referred to in Article 4(1)(c)(iii) of Regulation (EU) No 1307/2013, areas designated by Member States for the regional and/or collective implementation of ecological focus areas in accordance with Article 46(5) and (6) of Regulation (EU) No 1307/2013, areas which have been notified to the Commission in accordance with Article 20 of Regulation (EU) No 1307/2013, areas covered with permanent grasslands which are environmentally sensitive in areas covered by Council Directive 92/43/EEC<sup>(2)</sup> or Directive 2009/147/EC of the European Parliament and of the Council<sup>(3)</sup> and further sensitive areas referred to in Article 45(1) of Regulation (EU) No 1307/2013 and/or areas designated by the Member States in accordance with Article 48 of that Regulation apply.

3. Member States shall ensure that the maximum eligible area per reference parcel as referred to in paragraph 2(a) is correctly quantified within a margin of maximum 2%, thereby taking into account the outline and condition of the reference parcel.

<sup>(1)</sup> 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).

<sup>(2)</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7).

<sup>(3)</sup> Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26.1.2010, p. 7).

4. For the measures referred to in Article 21(1)(a) and Articles 30 and 34 of Regulation (EU) No 1305/2013, Member States may establish appropriate alternative systems to uniquely identify the land subject to support where that land is covered by forest.

5. The GIS shall operate on the basis of a national coordinate reference system as defined in Directive 2007/2/EC of the European Parliament and of the Council<sup>(1)</sup> which permits standardised measurement and unique identification of agricultural parcels throughout the Member State concerned. Where different coordinate systems are used, they shall be mutually exclusive and each of them shall ensure the consistency between items of information which refer to the same location.

#### Article 6

##### Quality assessment of the identification system for agricultural parcels

1. Member States shall annually assess the quality of the identification system for agricultural parcels for the purpose of the basic payment scheme and the single area payment scheme as referred to in Chapter 1 of Title III of Regulation (EU) No 1307/2013. That assessment shall encompass two conformance classes.

The first conformance class shall cover the following elements in order to assess the quality of the identification system for agricultural parcels:

- (a) the correct quantification of the maximum eligible area;
- (b) the proportion and distribution of reference parcels where the maximum eligible area takes ineligible areas into account or where it does not take agricultural area into account;
- (c) the occurrence of reference parcels with critical defects.

The second conformance class shall cover the following quality elements in order to identify possible weaknesses in the identification system for agricultural parcels:

- (a) the categorisation of reference parcels where the maximum eligible area takes ineligible areas into account, where it does not take agricultural area into account or reveals a critical defect;
- (b) the ratio of declared area in relation to the maximum eligible area inside the reference parcels;
- (c) the percentage of reference parcels which have been subject to change, accumulated over the years.

Where the results of the quality assessment reveal deficiencies in the system, the Member State shall take appropriate remedial action.

2. Member States shall perform the assessment referred to in the paragraph 1 on the basis of a sample of reference parcels to be selected and provided by the Commission. They shall use data allowing to assess the current situation on the ground.

3. An assessment report and, where appropriate, the remedial actions and the timetable for their implementation shall be sent to the Commission by 31 January following the calendar year in question.

#### Article 7

##### Identification and registration of payment entitlements

1. The system for the identification and registration of payment entitlements provided for in Article 71 of Regulation (EU) No 1306/2013 shall be an electronic register at Member State level and shall, in particular with regard to the cross-checks provided for in paragraph 1 of that Article, ensure effective traceability of the payment entitlements as regards the following elements:

- (a) the holder;
- (b) the annual values;

<sup>(1)</sup> Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) (OJ L 108, 25.4.2007, p. 1).

- (c) the date of establishment;
- (d) the date of last activation;
- (e) the origin, in particular with regard to its attribution, original, national or regional reserves, as well as purchase, lease and inheritance;
- (f) where Article 21(3) of Regulation (EU) No 1307/2013 is applied, the entitlements maintained by virtue of that provision;
- (g) where applicable, regional restrictions.

2. Member States having more than one paying agency, may decide to operate the electronic register at paying agency level. In that case, the Member State concerned shall ensure that the different registers are compatible with each other.

#### Article 8

##### Identification of beneficiaries

Without prejudice to Article 72(3) of Regulation (EU) No 1306/2013, the single system for recording the identity of each beneficiary provided for in Article 73 of that Regulation shall guarantee a unique identification with regard to all aid applications and payment claims or other declarations submitted by the same beneficiary.

#### CHAPTER II

##### AGRICULTURAL PARCELS WITH LANDSCAPE FEATURES AND TREES

#### Article 9

##### Determination of areas where the agricultural parcel contains landscape features and trees

1. Where certain landscape features, in particular hedges, ditches and walls, are traditionally part of good agriculture cropping or utilisation practices on agricultural area in certain regions, Member States may decide that the corresponding area shall be considered part of the eligible area of an agricultural parcel within the meaning of Article 67(4)(a) of Regulation (EU) No 1306/2013 provided that it does not exceed a total width to be determined by the Member State concerned. That width shall correspond to a traditional width in the region concerned and shall not exceed 2 metres.

However, where Member States notified to the Commission before 9 December 2009 of a width greater than 2 metres in conformity with the third subparagraph of Article 30(2) of Commission Regulation (EC) No 796/2004<sup>(1)</sup>, that width may still be applied.

The first and the second subparagraph shall not apply to permanent grassland with scattered landscape features and trees where the Member State concerned has decided to apply a pro-rata system in accordance with Article 10.

2. Any landscape features subject to the requirements and standards listed in Annex II to Regulation (EU) No 1306/2013 which form part of the total area of an agricultural parcel shall be considered part of the eligible area of that agricultural parcel.

3. An agricultural parcel that contains scattered trees shall be considered as eligible area provided that the following conditions are fulfilled:

- (a) agricultural activities can be carried out in a similar way as on parcels without trees in the same area; and
- (b) the number of trees per hectare does not exceed a maximum density.

<sup>(1)</sup> Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in of Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ L 141, 30.4.2004, p. 18).

The maximum density referred to in point (b) of the first subparagraph shall be defined by Member States and notified on the basis of traditional cropping practices, natural conditions and environmental reasons. It shall not exceed 100 trees per hectare. However, that limit shall not apply in relation to the measures referred to in Articles 28 and 30 of Regulation (EU) No 1305/2013.

This paragraph shall not apply to scattered fruit trees which yield repeated harvests, to scattered trees which can be grazed in permanent grassland and to permanent grassland with scattered landscape features and trees where the Member State concerned has decided to apply a pro-rata system in accordance with Article 10.

#### Article 10

##### **Pro-rata system for permanent grassland containing landscape features and trees**

1. As regards permanent grassland with scattered ineligible features, such as landscape features and trees, Member States may decide to apply a pro-rata system to determine the eligible area within the reference parcel.

The pro-rata system referred to in the first subparagraph shall consist of different categories of homogeneous land cover types for which a fixed reduction coefficient based on the percentage of ineligible area is applied. The category representing the lowest percentage of ineligible area shall not exceed 10 % of ineligible area and no reduction coefficient shall apply to that category.

2. Any landscape features subject to the requirements and standards listed in Annex II to Regulation (EU) No 1306/2013 which form part of the total area of an agricultural parcel shall be considered part of the eligible area.

3. This Article shall not apply to permanent grassland containing fruit trees which yield repeated harvests.

#### CHAPTER III

##### **AID APPLICATIONS AND PAYMENT CLAIMS**

#### Article 11

##### **The single application**

The single application shall at least cover the application for direct payments referred to in Article 72(1) of Regulation (EU) No 1306/2013 in respect of the basic payment scheme or the single area payment scheme and other area-related aid schemes.

#### Article 12

##### **Derogation for the final date for submission**

By way of derogation from Article 5(1) of Council Regulation (EEC, Euratom) No 1182/71<sup>(1)</sup>, where the final date for the submission of an aid application, application for support, payment claim or other declarations or any supporting documents or contracts, or the final date for amendments to the single application or to the payment claim, is a public holiday, a Saturday or a Sunday, it shall be deemed to fall on the first following working day.

The first paragraph shall also apply to the latest possible date for late submission referred to in the third subparagraph of Article 13(1) and to the latest possible date for late submission referred to in the second subparagraph of Article 14 for the submission of applications by beneficiaries for allocation or increase of payment entitlements.

#### Article 13

##### **Late submission**

1. Except in cases of *force majeure* and exceptional circumstances as referred to in Article 4, the submission of an aid application or payment claim pursuant to this Regulation after the final date for such submission as fixed by the Commission on the basis of Article 78(b) of Regulation (EU) No 1306/2013 shall lead to a 1 % reduction per working day of the amounts to which the beneficiary would have been entitled if the application or claim had been submitted within the time limit.

<sup>(1)</sup> Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1).

Without prejudice to any particular measures to be taken by the Member States with regard to the need for the submission of any supporting documents in due time to allow effective controls to be scheduled and carried out, the first subparagraph shall also apply with regard to applications for support, documents, contracts or other declarations to be submitted to the competent authority where such applications for support, documents, contracts or declarations are constitutive for the eligibility for the aid or support in question. In that case, the reduction shall be applied on the amount payable for the aid or support concerned.

If such delay amounts to more than 25 calendar days, the application or claim shall be considered inadmissible and no aid or support shall be granted to the beneficiary.

2. Except in cases of *force majeure* and exceptional circumstances as referred to in Article 4, where the beneficiary of the schemes provided for in Articles 46 and 47 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council<sup>(1)</sup> who is also subject to cross-compliance obligations in accordance with Article 92 of Regulation (EU) No 1306/2013 does not submit the single application form within the final date as referred to in the first subparagraph of paragraph 1 of this article, a 1 % reduction per working day shall apply. The maximum reduction shall be limited to 25 %. 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. Except in cases of *force majeure* and exceptional circumstances as referred to in Article 4, the submission of an amendment to the single application or payment claim after the final date for such submission as fixed by the Commission on the basis of Article 78(b) of Regulation (EU) No 1306/2013 shall lead to a 1 % reduction per working day of the amounts relating to the actual use of the agricultural parcels concerned.

Amendments to the single application or payment claim shall only be admissible until the latest possible date for late submission of the single application or payment claim as specified in the third subparagraph of paragraph 1. However, where that date is earlier than, or the same as the final date for the submission of an amendment to the single application or payment claim as referred in the first subparagraph of this paragraph, amendments to the single application or payment claim shall be considered inadmissible after that date.

#### Article 14

##### **Late submission of an application related to payment entitlements**

Except in cases of *force majeure* and exceptional circumstances referred to in Article 4, the submission of an application for allocation or, when applicable, increase of the value of payment entitlements after the final date fixed for this purpose by the Commission on the basis of Article 78(b) of Regulation (EU) No 1306/2013, shall lead in that year to a 3 % reduction per working day of the amounts to be paid in respect of the payment entitlements or, when applicable, in respect of the increase of the value of payment entitlements to be allocated to the beneficiary.

If such delay amounts to more than 25 calendar days, the application shall be considered inadmissible and no payment entitlements or, when applicable, no increase of the value of payment entitlements shall be allocated to the beneficiary.

#### 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.

<sup>(1)</sup> Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671).

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 an aid applications under the basic payment scheme, the small farmers scheme, the redistributive 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.

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<sup>(1)</sup>, 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;

<sup>(1)</sup> 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).

(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.

#### TITLE III

### **SPECIFIC PROVISIONS FOR RURAL DEVELOPMENT SUPPORT MEASURES**

#### Article 35

### **Non-compliance with the eligibility criteria other than the size of area or number of animals, commitments or other obligations**

1. The support claimed shall be refused or withdrawn in full where the eligibility criteria are not complied with.

2. The support claimed shall be refused or be withdrawn in full or in part where the following commitments or other obligations are not complied with:

- (a) commitments established in the rural development programme; or
- (b) where relevant, other obligations of the operation established by Union or national law or established in the rural development programme, in particular public procurement, State aid and other obligatory standards and requirements.

3. When deciding on the rate of refusal or withdrawal of support following the non-compliance with the commitments or other obligations referred to in paragraph 2, the Member State shall take account of the severity, extent, duration and reoccurrence of the non-compliance related to conditions for support referred to in paragraph 2.

The severity of the non-compliance shall depend, in particular, on the importance of the consequences of the non-compliance, taking into account the objectives of the commitments or obligations that were not met.

The extent of the non-compliance shall depend, in particular, on its effect on the operation as a whole.

The duration shall depend, in particular, on the length of time for which the effect lasts or the possibility of terminating this effect by reasonable means.

The reoccurrence shall depend on whether similar non-compliances have been found earlier during the last four years or during the whole programming period 2014-2020 in case of the same beneficiary and the same measure or type of operation or in the case of the programming period 2007-2013, the similar measure.

4. In case of multiannual commitments or payments, withdrawals based on the criteria referred to in paragraph 3 shall also apply to the amounts already paid in the previous years for the same operation.

5. In case the overall assessment based on the criteria referred to in paragraph 3 leads to establishing a serious non-compliance, the support shall be refused or withdrawn in full. Furthermore, the beneficiary shall be excluded from the same measure or type of operation for the calendar year of the finding and for the following calendar year.

6. Where it is established that the beneficiary provided false evidence for the purpose of receiving the support or failed to provide the necessary information due to negligence, the support shall be refused or withdrawn in full. Furthermore, the beneficiary shall be excluded from the same measure or type of operation for the calendar year of finding and for the following calendar year.

7. If the withdrawals and administrative penalties referred to in paragraphs 1, 2, 4, 5 and 6 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 36

### Suspending the support

The paying agency may suspend the support relating to certain expenditure where a non-compliance resulting in an administrative penalty is detected. The suspension shall be lifted by the paying agency as soon as the beneficiary proves to the satisfaction of the competent authority that the situation has been remedied. The maximum period of suspension shall not exceed three months. The Member States may also set shorter maximum periods depending on the type of operations and the effects of the non-compliance in question.

The paying agency may only suspend support where the non-compliance does not prejudice the achievement of the overall purpose of the operation concerned, and if it is expected that the beneficiary is able to remedy the situation during the maximum period defined.

#### TITLE IV

### CONTROL SYSTEM AND ADMINISTRATIVE PENALTIES IN RELATION TO CROSS-COMPLIANCE

#### CHAPTER I

#### MAINTENANCE OF PERMANENT PASTURE

#### Article 37

### Permanent pasture obligations

1. Where it is established that the ratio referred to in Article 3(3) of Regulation (EC) No 1122/2009 has decreased in 2014 at national or regional level, the Member State concerned may provide for the obligation of beneficiaries applying for any aid under the direct payment schemes in 2015 not to convert land under permanent pasture without prior authorisation.

Where it is established that that ratio has decreased by more than 5 % in 2014, the Member State concerned shall provide for such obligation.

If the authorisation referred to in the first and second subparagraphs is subject to the condition that an area of land is established as permanent pasture, such land shall, as of the first day of conversion, be considered as permanent pasture by way of derogation from the definition laid down in point (2) of the second paragraph of Article 2 of Regulation (EC) No 1122/2009. That area shall be used to grow grasses or other herbaceous forage for the five consecutive years following the date of conversion.

2. The obligation for beneficiaries set out in paragraph 1 shall not apply where beneficiaries created land under permanent pasture in accordance with Council Regulations (EEC) No 2078/92<sup>(1)</sup>, (EC) 1257/1999<sup>(2)</sup> and (EC) No 1698/2005.

3. Where it is established that the obligation referred to in Article 3(2) of Regulation (EC) No 1122/2009 cannot be ensured in 2014, the Member State concerned shall, further to the measures to be taken in accordance with paragraph 1 of this Article, provide, at national or regional level, for the obligation of beneficiaries applying for aid under any of the direct payment schemes in 2015 to re-convert land into land under permanent pasture.

The first subparagraph shall only apply to beneficiaries having land at their disposal which was converted from land under permanent pasture into land for other uses.

The first subparagraph shall apply with regard to an area of land thus converted since the date of the start of the 24-month period preceding the last date at which the single applications had to be submitted at the latest in accordance with Article 11(2) of Regulation (EC) No 1122/2009 in the Member State concerned.

<sup>(1)</sup> Council Regulation (EEC) No 2078/92 of 30 June 1992 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside (OJ L 215, 30.7.1992, p. 85).

<sup>(2)</sup> Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations (OJ L 160, 26.6.1999, p. 80).

In such case, farmers shall re-convert a percentage of that area into permanent pasture or establish such an amount of area as permanent pasture. That percentage shall be calculated on the basis of the amount of area thus converted by the farmer and the amount of area needed to re-establish the balance.

However, where such area was subject to a transfer after it had been converted into land for other uses, the first subparagraph shall only apply if the transfer took place after 6 May 2004.

Areas re-converted or established as permanent pasture shall, as of the first day of the re-conversion or establishment, be considered as 'permanent pasture' by way of derogation from point (2) of the second paragraph of Article 2 of Regulation (EC) No 1122/2009. Those areas shall be used to grow grasses or other herbaceous forage for the five consecutive years following the date of conversion.

4. Paragraphs 1 and 3 shall apply only during the year 2015.
5. Member States shall carry out checks in 2015 and 2016 to ensure that paragraphs 1 and 3 are complied with.

## CHAPTER II

### CALCULATION AND APPLICATION OF ADMINISTRATIVE PENALTIES

#### Article 38

##### **General rules concerning non-compliance**

1. The 'reoccurrence' of a non-compliance means the non-compliance with the same requirement or standard determined more than once within a consecutive period of three calendar years, provided that the beneficiary has been informed of a previous non-compliance and, as the case may be, has had the possibility to take the necessary measures to terminate that previous non-compliance. For the purpose of determining the reoccurrence of a non-compliance, non-compliances determined in accordance with Regulation (EC) No 1122/2009 shall be taken into account and, in particular, GAEC 3, as listed in Annex II to Regulation (EU) No 1306/2013, shall be considered equivalent to SMR 2 of Annex II to Regulation (EC) No 73/2009 in its version in force on 21 December 2013.
2. The 'extent' of a non-compliance shall be determined taking account, in particular, of whether the non-compliance has a far-reaching impact or whether it is limited to the farm itself.
3. The 'severity' of a non-compliance shall depend, in particular, on the importance of the consequences of the non-compliance taking account of the aims of the requirement or standard concerned.
4. Whether a non-compliance is of 'permanence' shall depend, in particular, on the length of time for which the effect lasts or the potential for terminating those effects by reasonable means.
5. For the purposes of this Chapter, non-compliances shall be deemed to be 'determined' if they are established as a consequence of any kind of controls carried out in accordance with this Regulation or after having been brought to the attention of the competent control authority or, where applicable, the paying agency, in whatever other way.

#### Article 39

##### **Calculation and application of administrative penalties in the case of negligence**

1. Where a non-compliance determined results from the negligence of the beneficiary, a reduction shall be applied. That reduction shall, as a general rule, be 3% of the total amount resulting from the payments and annual premiums indicated in Article 92 of Regulation (EU) No 1306/2013.

However, the paying agency may, on the basis of the assessment of the importance of the non-compliance provided by the competent control authority in the evaluation part of the control report taking into account the criteria referred to in Article 38(1) to (4), decide either to reduce that percentage to 1% or to increase it to 5% of the total amount referred to in the first subparagraph or, in the cases where provisions relating to the requirement or standard in question leave a margin not to further pursue the non-compliance found or in the cases for which support is granted according to Article 17(5) and (6) of Regulation (EU) No 1305/2013, not to impose any reductions at all.

2. Where a Member State decides not to apply an administrative penalty pursuant to Article 97(3) of Regulation (EU) No 1306/2013 and the beneficiary has not remedied the situation within a deadline set by the competent authority, the administrative penalty shall be applied.

The deadline set by the competent authority shall not be later than the end of the year following the one in which the finding was made.

3. Where a Member State makes use of the option provided for in the second subparagraph of Article 99(2) of Regulation (EU) No 1306/2013 and the beneficiary has not remedied the situation within a deadline set by the competent authority, a reduction of at least 1% as provided for in paragraph 1 of this Article shall be applied retroactively in relation to the year of the initial finding when the early warning system was applied, if the non-compliance is found not to have been remedied during a maximum period of three consecutive calendar years calculated from and including that year.

The deadline set by the competent authority shall not be later than the end of the year following the one in which the finding was made.

A non-compliance which has been remedied by the beneficiary within the deadline set shall not be considered as a non-compliance for the purpose of establishing reoccurrence in accordance with paragraph 4.

4. Without prejudice to cases of intentional non-compliance, the reduction to be applied in respect of the first reoccurrence of the same non-compliance in accordance with paragraph 1 shall be multiplied by the factor three.

In case of further reoccurrences, the multiplication factor three shall be applied each time to the result of the reduction fixed in respect of the previous reoccurrence. The maximum reduction shall, however, not exceed 15% of the total amount referred to in paragraph 1.

Once the maximum percentage of 15% has been reached, the paying agency shall inform the beneficiary concerned that if the same non-compliance is determined again, the beneficiary shall be considered to have acted intentionally within the meaning of Article 40.

#### Article 40

##### **Calculation and application of administrative penalties in cases of intentional non-compliance**

Where the non-compliance determined has been committed intentionally by the beneficiary, the reduction to be applied to the total amount referred to in Article 39(1) shall, as a general rule, be 20% of that total amount.

However, the paying agency may, on the basis of the assessment of the importance of the non-compliance provided by the competent control authority in the evaluation part of the control report taking into account the criteria referred to in Article 38(1) to (4), decide to reduce that percentage to no less than 15% or to increase that percentage to up to 100% of that total amount.

#### Article 41

##### **Cumulation of administrative penalties**

Where a case of non-compliance within the meaning of point (2)(b) of the second subparagraph of Article 2(1) also constitutes a non-compliance within the meaning of point (2)(a) of the second subparagraph of Article 2(1), the administrative penalties shall be applied in accordance with the rules laid down by the Commission on the basis of Article 77(8)(a) of Regulation (EU) No 1306/2013.

#### TITLE V

##### **TRANSITIONAL AND FINAL PROVISIONS**

#### Article 42

##### **Transitional rules as regards cross-compliance**

1. As regards cross-compliance obligations of beneficiaries of measures implemented pursuant to Regulation (EC) No 1698/2005, the rules on the control system and administrative penalties laid down in this Regulation and in the implementing acts adopted by the Commission on the basis of Regulation (EU) No 1306/2013 shall apply.

2. For non-compliances with cross-compliance obligations for which administrative penalties were not applied since they were falling under *de minimis* rule referred to in Article 23(2) of Regulation (EC) No 73/2009 or in Article 51(2) of Regulation (EC) No 1698/2005 respectively, the second subparagraph of Article 97(3) of Regulation (EU) No 1306/2013 shall apply as regards the obligation on the control authority to take actions necessary to verify that the beneficiary has remedied the findings of non-compliance.

*Article 43***Repeal**

Regulations (EC) No 1122/2009 and (EU) No 65/2011 are repealed with effect from 1 January 2015.

However, those Regulations shall continue to apply to:

- (a) aid applications for direct payments lodged in respect of premium periods starting before 1 January 2015;
- (b) payment claims made in relation to the year 2014; and
- (c) the control system and administrative penalties as regards cross-compliance obligations of farmers under Articles 85t and 103z of Council Regulation (EC) No 1234/2007 <sup>(1)</sup>.

*Article 44***Entry into force and application**

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

It shall apply to aid applications or payment claims relating to claim years or premium periods starting as from the 1 January 2015.

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

Done at Brussels, 11 March 2014.

*For the Commission*

*The President*

José Manuel BARROSO

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<sup>(1)</sup> Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ L 299, 16.11.2007, p. 1).