Commission Delegated Regulation (EU) 2018/1784 of 9 July 2018 amending Delegated Regulation (EU) No 639/2014 as regards certain provisions on the greening practices established by Regulation (EU) No 1307/2013 of the European Parliament and of the Council

COMMISSION DELEGATED REGULATION (EU) 2018/1784

of 9 July 2018

amending Delegated Regulation (EU) No 639/2014 as regards certain provisions on the greening practices established by Regulation (EU) No 1307/2013 of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009[(1)], and in particular Articles 45(6)(b) and 46(9)(a) thereof,

Whereas:

(1) Articles 38 to 48 of Commission Delegated Regulation (EU) No 639/2014[(2)] lay down rules supplementing the provisions on greening practices established by Regulation (EU) No 1307/2013.

(2) Regulation (EU) 2017/2393 of the European Parliament and of the Council[(3)] amending several provisions on greening practices established by Regulation (EU) No 1307/2013 entered into force on 30 December 2017. The amendments concerning the greening practices apply since 1 January 2018. In order to clarify and ensure consistency between relevant obligations of the operators, these amendments require that certain provisions of Delegated Regulation (EU) No 639/2014 be adjusted.

(3) Where Member States decide that land covered by grass that has not been ploughed up for five years or more is considered permanent grassland pursuant to point (a) of the third subparagraph of Article 4(2) of Regulation (EU) No 1307/2013, as amended by Regulation (EU) 2017/2393, or, decide that the area of permanent grassland may include other species such as certain shrubs or trees pursuant to point (b) of this subparagraph, or decide that certain land which can be grazed is considered permanent grassland pursuant to point (c) of this subparagraph, they should adapt, if necessary, their reference ratio in order to take account of possible significant effects on that ratio of applying these decisions.

(4) Following the introduction in point (a) of the third subparagraph of Article 4(2) of Regulation (EU) No 1307/2013, as amended by Regulation (EU) 2017/2393, of the possibility for Member States to decide that land covered by grass that has not been

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2018/1784. (See end of Document for details)*

ploughed up for five years or more is considered permanent grassland, an area of permanent grassland may lose that qualification not only as a consequence of its conversion into arable crops but also as a consequence of ploughing. Article 44, paragraph 1, of Delegated Regulation (EU) No 639/2014 should be adapted to reflect this new possibility.

(5) Article 3(9)(b)(i) of Regulation (EU) 2017/2393 introduces three new types of ecological focus areas, extending the current list by areas with *Miscanthus*, areas with *Silphium perfoliatum* and land lying fallow for melliferous plants (pollen- and nectar-rich species). Recital (45) of Regulation (EU) No 1307/2013 emphasises the importance of ecological focus areas to be established in a coherent way. It is therefore necessary to clarify the relation between the newly introduced types of ecological focus area and the already existing ones.

(6) Firstly, as regards areas under 'land lying fallow for melliferous plants', since these areas formed part of the ecological focus area type 'land lying fallow', the existing management requirements for the latter should continue to apply. In particular, the ban on agricultural production, the minimum duration to be set by Member States and the ban on the use of plant protection products, set out as regards 'land lying fallow' should also apply as regards 'land lying fallow for melliferous plants' even if sowing melliferous plants is allowed on areas under this new ecological focus area.

(7) In addition, to remove doubts that might arise by the introduction of the new type of ecological focus area and address risks that crops normally used for production are sown on it, given the biodiversity objective of the ecological focus area, it should be clarified that in line with the non-production requirement such areas should not include areas under crops which are normally cultivated for harvesting purpose.

(8) However, since Annex X to Regulation (EU) No 1307/2013 as amended by Regulation (EU) 2017/2393 allocates a higher weighting factor for the new ecological focus area 'lying fallow for melliferous plants', referred to in Article 46(2)(m) of Regulation (EU) No 1307/2013, than to the 'land lying fallow' referred to in Article 46(2)(a) of that Regulation, the distinction between the two types of ecological focus areas should be clarified. In particular, in order to ensure legal certainty for farmers as regards the species which are considered as being pollen- and nectar-rich and, therefore, as 'melliferous plants' for the purposes of point (m) of the first subparagraph of Article 46(2) of Regulation (EU) No 1307/2013 the list of such species should be established. Considering the variety of agronomic conditions and species across the Union, the choice of the appropriate species should be left to Member States. However, invasive alien species within the meaning of Regulation (EU) No 1143/2014 of the European Parliament and of the Council[(4)] should not be used in these areas, as they pose risk to native biodiversity, inter alia, by hampering native plant-pollinator interactions.

(9) Furthermore, to maximise the biodiversity benefits of such areas, Member States should be allowed to decide on possible relevant additional management requirements such as mixtures of species. Last, given that the presence of non-predominant grass species and the use of hives do not affect the biodiversity effect of land lying fallow for melliferous plants, the presence of hives should be allowed.

(10) In order to safeguard and improve biodiversity in line with the objectives of 'greening' management requirements as regards the use of chemical inputs (mineral fertilisers and plant protection products) should be set up for the newly established ecological focus areas of *Miscanthus* and *Silphium perfoliatum*. In particular, considering their relatively more harmful impact on biodiversity, the use of plant protection products on these areas should be banned while allowing for their use only in the first year so that to help in their establishment. Delegated Regulation (EU) No 639/2014 should therefore be amended accordingly.

(11) This Regulation should apply to aid applications relating to calendar years starting as from 1 January 2018. However, given the time necessary for the national authorities and farmers to adjust to the requirements established by this Regulation concerning the ecological focus areas, the corresponding amendments should only apply with respect to aid applications relating to calendar years starting as from 1 January 2019,

HAS ADOPTED THIS REGULATION:

Article 1

Amendment of Delegated Regulation (EU) No 639/2014

Delegated Regulation (EU) No 639/2014 is amended as follows:

(1) in Article 43, paragraph 3 is replaced by the following:

3. Member States shall adapt the reference ratio if they assess that there is a significant impact on the evolution of the ratio due to, in particular, a change in the area under organic production, a change in the population of participants in the small farmer scheme or when a Member State takes a decision in accordance with point (a), (b) or (c) of the third subparagraph of Article 4(2) of Regulation (EU) No 1307/2013. In such situations, Member States shall inform the Commission without delay of the adaptation made and the justification for that adaptation.;

(2) in Article 44, paragraph 1 is replaced by the following:

1. Member States may provide for the individual obligation of farmers not to convert, including, where they apply point (a) of the third subparagraph of Article 4(2) of Regulation (EU) No 1307/2013, not to plough, areas of permanent grassland without prior individual authorisation. The farmers shall be informed of that obligation without delay and in any case before 15 November of the year in which the Member State concerned so provides. That obligation shall only apply to farmers who are subject to the obligations under Chapter 3 of Title III of Regulation (EU) No 1307/2013 with respect to areas of permanent grassland that are not subject to Article 45(1) of Regulation (EU) No 1307/2013.

The issuing of an authorisation may depend on the application of objective and non-discriminatory criteria, including environmental criteria. If the authorisation referred to in the first subparagraph is subject to the condition that another area of a corresponding number of hectares is to be established as permanent grassland or, where the Member State applies point (a) of the third subparagraph of Article 4(2) of Regulation (EU) No 1307/2013, to the condition that another or the same area is established as permanent grassland, that area shall, by way of derogation from Article