Regulation (EU) 2017/2393 of the European Parliament and of the Council of 13 December 2017 amending Regulations (EU) No 1305/2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), (EU) No 1306/2013 on the financing, management and monitoring of the common agricultural policy, (EU) No 1307/2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy, (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products and (EU) No 652/2014 laying down provisions for the management of expenditure relating to the food chain, animal health and animal welfare, and relating to plant health and plant reproductive material

REGULATION (EU) 2017/2393 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 December 2017

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 42, Article 43(2) and point (b) of Article 168(4) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the Court of Auditors[(1)],

Having regard to the opinion of the European Economic and Social Committee[(2)],

Having regard to the opinion of the Committee of the Regions[(3)],

Acting in accordance with the ordinary legislative procedure[(4)],

Whereas:

(1) In order to ensure legal certainty and harmonised and non-discriminatory implementation of support to young farmers, it is necessary to provide that in the context of rural development the ‘date of setting up’, referred to in Regulation (EU) No 1305/2013 of the European Parliament and of the Council[(5)] and in other relevant rules, means the date when the applicant performs or completes an action related to the setting up for the first time and that the application for support is to be submitted at

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2017/2393 of the European Parliament and of the Council. (See end of Document for details)*

the latest 24 months after that date. Moreover, experience from the negotiations of the programmes has shown that the rules for the joint setting up of young farmers and the thresholds for access to support required under Article 19(4) of Regulation (EU) No 1305/2013 should be clarified, and that the provisions on the duration of the business plan should be streamlined.

(2) In order to facilitate implementation of advisory and training services by Member States' Managing Authorities, the status of beneficiary under that measure should be extended to those authorities, while at the same time ensuring that the provider of the service is chosen by a body functionally independent from those authorities and that checks are carried out at the level of the provider of advice or training.

(3) With a view to incentivising participation in quality schemes, farmers or groups of farmers taking part in such schemes in the five years preceding the application for support should be eligible for a maximum duration of five years, while duly taking into account the time of the initial participation in the scheme.

(4) In order to be sufficiently attractive to the private sector, it is essential that financial instruments are designed and implemented in a flexible and transparent manner. However, experience has shown that certain measure-specific eligibility rules limit the uptake of financial instruments in the rural development programmes, as well as the flexible use of financial instruments by fund managers. Therefore, it is appropriate to provide that certain measure-specific eligibility rules do not apply to financial instruments. For the same reason, it is also appropriate to provide that start-up aid to young farmers under Article 19 of Regulation (EU) No 1305/2013 may also be provided in the form of financial instruments. In view of those changes, it should be provided that, where support for investments under Article 17 of Regulation (EU) No 1305/2013 is granted in the form of financial instruments, the investment must contribute to one or more Union priorities for rural development.

(5) In order to reduce administrative burden in relation to the implementation of the principle of no double funding in relation to greening, Member States should be given the possibility of applying a fixed, average deduction to all beneficiaries concerned carrying out the type of operation or sub-measure concerned.

(6) Nowadays farmers are exposed to increasing economic risks as a consequence of market developments. However, those economic risks do not affect all agricultural sectors equally. Consequently, Member States should have the possibility, in duly justified cases, to help farmers by means of a sector-specific income stabilisation tool, in particular for sectors affected by a severe income drop, which would have a significant economic impact for a specific rural area, provided that the drop in income exceeds a threshold of at least 20 %. In order to ensure that the sector-specific income stabilisation tool is effective and adapted to Member States' specific circumstances, it should be possible for them to define, in their rural development programmes, the income to be taken into account for the activation of the tool, in a flexible manner. At the same time, and in order to promote the use of insurance by farmers, the threshold for the drop in production applicable for insurance should be reduced to 20 %. In addition, in order to

monitor the expenditure made under the sector-specific income stabilisation tool and insurance, the content of the financial plan of the programme should be adapted.

(7) The specific reporting requirement for the risk management measure in 2018 referred to in Article 36(5) of Regulation (EU) No 1305/2013 is already covered by the report to the European Parliament and the Council on the monitoring and evaluation of the common agricultural policy (CAP) referred to in Article 110(5) of Regulation (EU) No 1306/2013 of the European Parliament and of the Council[(6)]. Therefore, the second subparagraph of Article 36(5) of Regulation (EU) No 1305/2013 should be deleted.

(8) With regard to mutual funds for farmers of all sectors, it appears that the prohibition of any contribution by public funds to initial capital stock laid down in Article 38(3) and Article 39(4) of Regulation (EU) No 1305/2013 hinders the effective functioning of those funds. That prohibition should therefore be deleted. It is also appropriate to expand the areas that can be covered by financial contributions to mutual funds, so that contributions can supplement the annual payments into the funds, as well as relate to their initial capital stock.

(9) Support for investments for the restoration of production potential after natural disasters and catastrophic events under point (b) of Article 18(1) and point (d) of Article 24(1) of Regulation (EU) No 1305/2013 is usually granted to all eligible applicants. Therefore, Member States should not be obliged to define selection criteria for restoration operations. Moreover, in duly justified cases, where it is not possible to define selection criteria due to the nature of the operations, Member States should be allowed to define alternative selection methods.

(10) Article 59 of Regulation (EU) No 1305/2013 defines the maximum European Agricultural Fund for Rural Development (EAFRD) contribution rates. In order to ease the pressure on the national budget of some Member States and to accelerate much-needed investments in Cyprus, the maximum contribution rate of 100 % referred to in point (f) of Article 59(4) of that Regulation should be extended until the programme closure. In addition, a reference to the specific contribution rate introduced in Regulation (EU) No 1303/2013 of the European Parliament and of the Council[(7)] for the new financial instrument referred to in point (c) of Article 38(1) of Regulation (EU) No 1303/2013 should be mentioned in Article 59(4) of Regulation (EU) No 1305/2013.

(11) Pursuant to Article 60(1) of Regulation (EU) No 1305/2013, in cases of emergency measures due to natural disasters, eligibility of expenditure relating to programme changes may start from the date when the natural disaster occurred. That possibility to make eligible expenditure made before the submission of a programme amendment should be extended to other circumstances, such as catastrophic events or a significant and sudden change in the socioeconomic conditions of the Member State or region.

(12) Pursuant to the second subparagraph of Article 60(2) of Regulation (EU) No 1305/2013, in respect of investments in the agricultural sector, only expenditure incurred after the submission of an application is eligible. In cases, however, where the investment is related to emergency measures due to natural disasters, catastrophic events or adverse climatic events or a significant and sudden change in the socioeconomic conditions of the Member State or region, Member States should be given the possibility to provide in

their programmes that expenditure incurred after the occurrence of the event is eligible, in order to ensure their flexible and timely reaction to such events. In order to provide efficient support to emergency operations undertaken by the Member States in response to events which occurred in recent years, that possibility should apply from 1 January 2016.

(13) In order to increase the use of the simplified cost options referred to in points (b) to (d) of Article 67(1) of Regulation (EU) No 1303/2013, it is necessary to limit the EAFRD-specific rules laid down in Article 62(2) of Regulation (EU) No 1305/2013 to aid granted in accordance with points (a) and (b) of Article 21(1), concerning income foregone and maintenance costs, and with Articles 28 to 31, 33 and 34 of Regulation (EU) No 1305/2013.

(14) Article 74 of Regulation (EU) No 1305/2013 requires the Member States to consult the Monitoring Committee of the rural development programme on the selection criteria within four months from the approval of the programme. This creates an indirect obligation for the Member States to have defined all the selection criteria by that date even for the calls for applications which will be launched subsequently. In order to reduce unnecessary administrative burden, whilst ensuring that financial resources are used in the best possible way, Member States should be allowed to define the selection criteria and to ask for the opinion of the Monitoring Committee at any time before the publication of the calls for applications.

(15) With a view to increasing the use of crop, animal and plant insurance, and of mutual funds and the income stabilisation tool, the maximum percentage of initial public support should be increased from 65 % to 70 %.

(16) Financial discipline is used to ensure that the budget for the European Agricultural Guarantee Fund (EAGF) complies with the respective annual ceilings of the multiannual financial framework and to establish the reserve for crises in the agricultural sector. Given the technical character of the determination of the adjustment rate for direct payments and its inherent links with the Commission's estimates of expenditure set out in its annual draft budget, the procedure for setting the adjustment rate should be simplified by authorising the Commission to adopt it in accordance with the advisory procedure.

(17) In order to harmonise the rules on automatic decommitment set out in Article 87 of Regulation (EU) No 1303/2013 and Article 38 of Regulation (EU) No 1306/2013, the date by which Member States have to send to the Commission information on exceptions to the decommitment referred to in Article 38(3) of Regulation (EU) No 1306/2013 should be adapted.

(18) In order to provide for legal clarity as regards the treatment of the recoveries generated from the temporary reductions under Article 41(2) of Regulation (EU) No 1306/2013, the latter should be included in the list of sources of the assigned revenue under Article 43 of that Regulation.

(19) In the interests of administrative simplification, it is appropriate to increase the threshold below which Member States may decide not to pursue recovery of undue

payments from EUR 150 to EUR 250 provided that the Member State applies an equal or higher threshold for not pursuing national debts.

(20) It is appropriate to ensure that the refusal or recovery of payments as a result of non-compliance with public procurement rules reflects the gravity of such non-compliance and respects the principle of proportionality, as expressed, for example, in the relevant guidelines established by the Commission for financial corrections to be made to expenditure financed by the Union under shared management for non-compliance with such rules. It is further appropriate to clarify that such non-compliance affects the legality and regularity of the transactions only up to the level of the part of the aid not to be paid or to be withdrawn.

(21) In order to reduce administrative burden for small farmers, a further derogation should be introduced, exempting small farmers from declaring parcels on which a payment application is not made.

(22) Having regard to practical and specific difficulties that the harmonisation of the payment deadlines for area-related payments between the EAGF and the EAFRD has given rise to, the transitional period should be extended by one more year. However, as regards area-related rural development measures, in order to maintain farmers' cash-flow, payments of advances before 16 October should remain possible.

(23) In order to accommodate the diversity of agricultural systems across the Union, it is appropriate to allow Member States to consider ploughing up, which is relevant for the agronomic and environmental aspects, as a criterion to be used for the classification of permanent grassland.

(24) Certain shrubs or trees which are not directly grazed by animals may nevertheless produce animal feed. Member States should be allowed to include those shrubs or trees in permanent grassland where grasses and other herbaceous forage remain predominant, in the whole or in part of their territory.

(25) In order to clarify the classification prior to 2018 of land lying fallow as arable land, where it had been in place for five years or more, and provide certainty to the farmers concerned, Member States should be able to maintain its classification as arable land in 2018.

(26) Land which can be grazed, where grasses and other herbaceous forage are not predominant or are absent, and where the grazing practices are neither traditional in character nor important for the conservation of biotopes and habitats, may nevertheless have relevant grazing value in certain areas. Member States should be allowed to consider those areas as permanent grassland in the whole or in part of their territory.

(27) The experience gained in the first years of implementation of Regulation (EU) No 1307/2013 of the European Parliament and of the Council[(8)] has shown that certain Member States applying the single area payment scheme did not use the entire amount of the funds available under the budgetary ceilings laid down in Commission Implementing Regulation (EU) 2015/1089[(9)]. Member States applying the basic payment scheme already have the possibility, within certain limits, of distributing payment entitlements for a higher value than the amount available for their basic