Commission Delegated Regulation (EU) 2017/1155 of 15 February 2017 amending Delegated Regulation (EU) No 639/2014 as regards the control measures relating to the cultivation of hemp, certain provisions on the greening payment, the payment for young farmers in control of a legal person, the calculation of the per unit amount in the framework of voluntary coupled support, the fractions of payment entitlements and certain notification requirements relating to the single area payment scheme and the voluntary coupled support, and amending Annex X to Regulation (EU) No 1307/2013 of the European Parliament and of the Council

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amending Delegated Regulation (EU) No 639/2014 as regards the control measures relating to the cultivation of hemp, certain provisions on the greening payment, the payment for young farmers in control of a legal person, the calculation of the per unit amount in the framework of voluntary coupled support, the fractions of payment entitlements and certain notification requirements relating to the single area payment scheme and the voluntary coupled support, and amending Annex X to 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 Article 35(2) and (3), Articles 44(5)(b) and 46(9)(a) and (c), Article 50(11), Article 52(9)(a) and Article 67(1) and (2)(a) thereof,

Whereas:

(1) According to Article 35(3) of Regulation (EU) No 1307/2013, the Commission is empowered to adopt delegated acts making the granting of payments conditional upon the use of certified seeds of certain hemp varieties and laying down the procedure for the determination of hemp varieties and the verification of their tetrahydrocannabinol content (THC content) referred to in Article 32(6) of that Regulation. At present, Article 9 of Commission Delegated Regulation (EU) No 639/2014[(2)] only provides for the obligation to use seed of the varieties listed in the 'Common Catalogue of Varieties of Agricultural Plant Species' and to use seed certified in accordance with Council Directive 2002/57/EC[(3)]. The rules for the determination of hemp varieties and the verification of their THC content currently laid down in Article 45 of Commission Implementing Regulation (EU) No 809/2014[(4)] and the Annex to that Regulation should be included in Article 9 of Delegated Regulation (EU) No 639/2014.

(2) The rules for the determination of hemp varieties and the verification of the THC content are based on the assumption that hemp is cultivated as main crop, but they are not fully

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suitable for hemp cultivated as catch crop. As this latter cultivation method has proved to be appropriate for industrial hemp and compatible with environmental requirements, it is justified to adapt both provisions to take into account the characteristics of hemp cultivated as catch crop. In that context, it is also appropriate to provide a definition of hemp cultivated as catch crop.

(3) Article 24 of Delegated Regulation (EU) No 639/2014 lays down requirements for the activation of payment entitlements. In order to avoid any diverging interpretation, it is appropriate to clarify that for the purposes of Article 31(1)(b) of Regulation (EU) No 1307/2013, also a fraction of a payment entitlement is considered as fully activated. However, it should be stated explicitly that the payment is calculated on the basis of the corresponding fraction of an eligible hectare.

(4) Articles 38 to 48 of Delegated Regulation (EU) No 639/2014 lay down rules supplementing the provisions on standard greening practices established by Regulation (EU) No 1307/2013. On the basis of the experience gained during the first year in which those practices were applied, it is necessary to amend certain aspects of those rules in order to simplify the implementation of the greening practices for the benefit of farmers and national administrations while maintaining or improving the environment and climate impact. In particular, the modifications should contribute to address the actions identified in the conclusions of the Mid-Term Review of the EU Biodiversity Strategy to 2020 and enable progress of the coverage of agricultural area by biodiversity related measures under the common agricultural policy[(5)].

(5) In the rules on the calculation of shares of different crops for crop diversification set out in Article 40 of Delegated Regulation (EU) No 639/2014, the crop diversification period is based on traditional cultivation practices in Member States. It is appropriate to allow Member States to fix different periods at regional or sub-regional level in order to take into account possible diverse climatic conditions within a territory of a Member State. In some specific situations where a significant variety of crops on a small area exists, it should be possible, in order to simplify the declaration of crops grown, to declare them as one mixed crop.

(6) As regards land lying fallow, setting a period in Article 45(2) of Delegated Regulation (EU) No 639/2014 during which there should be no agricultural production is fundamental to ensure the environmental effectiveness of such land and to avoid any confusion with other areas such as grasslands. In order to take into account the different agro-climatic conditions across the Union, Member States should have the possibility to set such period to allow farmers to resume main crops before the end of the year. However, such period should not be shorter than 6 months in order to meet the objectives of environmental effectiveness and to avoid any confusion with other areas.

(7) The distinction between different landscape features listed in Article 45(4) of Delegated Regulation (EU) No 639/2014 is a source of uncertainty for farmers when declaring ecological focus areas. In order to reduce this uncertainty, simplify the management of the scheme for Member States' authorities and address the complexity encountered by farmers when declaring ecological focus areas, hedges and wooded strips referred to in point (a) of that provision and trees in line referred to in point (c) of that provision

should be grouped as one type of landscape feature so that one single dimension limit applies to them. Moreover, for the same reasons, the areas referred to in Article 45(4)(d) of Delegated Regulation (EU) No 639/2014 should be grouped under field copses.

(8) Furthermore, even if, as stated in recital 51 of Delegated Regulation (EU) No 639/2014, maximum dimensions of landscape features are needed to ensure that the area is predominantly agricultural, such dimension limits should not lead to the exclusion of features that exceed such dimensions but which are valuable for biodiversity. Therefore, the area which may be qualified as a landscape feature pursuant to Article 45(4) of Delegated Regulation (EU) No 639/2014 should be calculated up to the maximum dimension of the feature.

(9) Given the high environmental benefit of riparian vegetation referred to in the fifth subparagraph of Article 45(4) and in Article 45(5) of Delegated Regulation (EU) No 639/2014, it is appropriate to set out that all riparian vegetation should be taken into account for the purpose of calculating the ecological focus areas.

(10) For the same reasons as mentioned in recitals 7 and 8 in relation to Article 45(4) of Delegated Regulation (EU) No 639/2014, field margins, currently referred to in point (e) of that provision, should be merged with buffer strips in Article 45(5) of that Regulation and a single dimension limit should be set in relation to buffer strips and field margins. Such maximum dimension in relation to buffer strips and field margins should refer to the area which may be qualified as buffer strips and field margins pursuant to Article 45(5) of Delegated Regulation (EU) No 639/2014. In order to provide the maximum flexibility to farmers, the definition of buffer strips under GAEC 1, SMR 1 or SMR 10 as referred to in Annex II to Regulation (EU) No 1306/2013 of the European Parliament and of the Council[6] and field margins protected under GAEC 7, SMR 2 or SMR 3 as referred to in that Annex, should be supplemented by other buffer strips and field margins, meaning any kind of strips not covered by these two categories under cross-compliance rules.

(11) The second subparagraph of Article 46(2) of Regulation (EU) No 1307/2013 allows landscape features and buffer strips adjacent to arable land to be considered as ecological focus areas. In order to maximise the environmental benefit of landscape features and buffer strips referred to in Article 45(4) and (5) of Delegated Regulation (EU) No 639/2014 and encourage the protection and maintenance of additional elements, this provision should be supplemented with rules offering flexibility by taking into account other environmentally valuable elements which fulfil the definition of these ecological focus area types and which are not adjacent to the arable land of the holding. Therefore, where such buffer strip and field margin or landscape feature is adjacent to the ecological focus area directly adjacent to the arable land of a holding, it should also be recognised as an ecological focus area.

(12) For the same reasons as mentioned in recitals 7 and 8 in relation to Article 45(4) of Delegated Regulation (EU) No 639/2014, the maximum dimensions set in relation to strips of eligible hectares along forest edges referred to in Article 45(7) of that Regulation should refer to the area which may be qualified as such strips pursuant to that provision.

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(13) In light of the provisions of point (g) of the first subparagraph of Article 46(2) of Regulation (EU) No 1307/2013 it is appropriate to clarify that the establishment of the requirements as regards the use of mineral fertilisers and/or plant protection products is relevant only in case such input products are authorised.

(14) The existing deadline for sowing of catch crops and green cover laid down in Article 45(9) of Delegated Regulation (EU) No 639/2014 does not always fit with the agronomic and climatic conditions. With a view to better achieving the environmental objectives of this ecological focus area type, it is appropriate to replace the deadline for sowing of catch crops and green cover with a minimum period of time during which areas under catch crops and green cover have to be in place. In order to provide the necessary flexibility to take into account seasonal weather conditions, Member States should be allowed to fix that period at the most appropriate geographical level. However, since the permanence of catch crops and green cover on the ground is a key factor in ensuring an effective take up of residual nitrate and coverage of soil while the area is not covered by the main crop, the minimum length of the period should be set at Union level. In order to be consistent with the interpretation provided on the definition of grasses or other herbaceous forage laid down in Article 4(1)(i) of Regulation (EU) No 1307/2013, under-sowing leguminous crops in the main crop should also be possible. Furthermore, in order to ensure consistency between equivalent practices covered by commitments and certification schemes as referred to in Article 43(3)(a) and (b) of Regulation (EU) No 1307/2013, respectively, rules on qualifying catch crops or green cover as ecological focus areas should be aligned.

(15) Even if, as a general rule only areas with nitrogen-fixing crops grown as pure species should be qualified as ecological focus areas, given that in traditional cultivation practices such crops are often mixed with other crops, it is appropriate to allow, under Article 45(10) of Delegated Regulation (EU) No 639/2014, that areas with mixtures may also be qualified as ecological focus areas provided that the predominance of the nitrogen-fixing crops in such mixtures is ensured. In addition, based on the experience with the application of the first subparagraph of Article 45(10) of Delegated Regulation (EU) No 639/2014 and in light of the implementation of Council Directive 91/676/EEC[7] and Directive 2000/60/EC of the European Parliament and of the Council[8], it is superfluous to prescribe specific rules on the location of these nitrogen-fixing crops. Instead, and with a view to strengthening Member States efforts to address the risk of nitrogen leaching in the autumn, Member States should be allowed to establish additional conditions on nitrogen-fixing crops if necessary. Furthermore, in order to ensure consistency between equivalent practices covered by commitments and certification schemes as referred to in Article 43(3)(a) and (b) of Regulation (EU) No 1307/2013, respectively, rules on qualifying nitrogen-fixing crops as ecological focus area should be aligned.

(16) Experience with the application of Delegated Regulation (EU) No 639/2014 has proven that certain provisions relating to the ecological focus area types need to be more detailed as regards the requirement of ‘no production’ including the rules on cutting and grazing with a view to meeting the objective of biodiversity and to ensuring consistency

with other instruments of the common agricultural policy. In particular, as regards the 'no agricultural production' requirement applicable to the ecological focus area types referred to in Article 45(2), (4)(e), (5) and (7) of Delegated Regulation (EU) No 639/2014, it should be clarified that production should be understood as agricultural activity in the meaning of Article 4(1)(c)(i) of Regulation (EU) No 1307/2013, and not in the broader sense of Article 4(1)(c)(ii) and (iii) of the same Regulation, and should not affect the rules on minimum soil cover under GAEC 4 as referred to in Annex II to Regulation (EU) No 1306/2013. In addition, undertaking actions by farmers, in particular, by facilitating pollination, in order to safeguard and improve biodiversity, aiming at establishing a green soil cover and which are, for instance, covered by an agri-environment-climate commitment, should be incentivised to maximise the environmental benefits.

(17) Given that the three main types of areas declared by farmers as ecological focus areas in the first year of implementation of Article 46 of Regulation (EU) No 1307/2013 are areas which are, or may be, productive, namely land lying fallow, catch crops or green cover and nitrogen-fixing crops, plant production products are likely to be used in ecological focus areas. Therefore, in order to safeguard and improve biodiversity in line with the objectives of 'greening', it is appropriate to ban the use of plant protection products on the following ecological focus areas which are or may be productive: land lying fallow, strips of eligible hectares along forest edges with production, catch crops or green cover and nitrogen-fixing crops. Where catch crops or green cover is established by under-sowing grass or leguminous crops in the main crop, in order to avoid, for proportionality reasons, consequences for the management of the main crop, such a ban should apply from the moment of the harvesting of the main crop. In order to ensure consistency of the ban with the usual agronomic practices, ensure legal certainty and avoid administrative difficulties for farmers and national administrations it should be specified that the ban for under-sowing should apply for at least a minimum period, equal to the minimum period during which areas under catch crops or green cover have to be in place when established by sowing a mixture of crop species, or until the sowing of the next main crop.

(18) Article 49 of Delegated Regulation (EU) No 639/2014 lays down the rules under which legal persons have access to the payment for young farmers provided for in Article 50(1) of Regulation (EU) No 1307/2013. On the basis of the experience gained with the application of Article 49(3) of Delegated Regulation (EU) No 639/2014, a further clarification should be provided as to the interpretation of the requirement laid down in point (b) of Article 50(2) of Regulation (EU) No 1307/2013 in respect of the time when a young farmer who exercises effective and long-term control over a legal person has to comply with the age limit. In particular, it is appropriate to clarify that the young farmer has to comply with the age limit of 40 years in the year of the first submission of an application under the basic payment scheme or the single area payment scheme by the legal person with a young farmer in control.

(19) According to the second subparagraph of Article 53(2) of Delegated Regulation (EU) No 639/2014, the per unit amount of voluntary coupled support results from the ratio between the amount fixed for the financing of the relevant measure and either the