Commission Delegated Regulation (EU) 2016/1393 of 4 May 2016 amending Delegated Regulation (EU) No 640/2014 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

COMMISSION DELEGATED REGULATION (EU) 2016/1393

of 4 May 2016

amending Delegated Regulation (EU) No 640/2014 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[(1)], 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) According to Article 7(1) of Commission Delegated Regulation (EU) No 640/2014[(2)], the system for the identification and registration of payment entitlements is to ensure effective traceability of the payment entitlements as regards certain elements, *inter alia* the date of last activation. The provisions of Regulation (EU) No 1307/2013 of the European Parliament and of the Council[(3)] on the replenishment of the national reserve or regional reserve under the basic payment scheme do no longer require this specific information as long as the total number of payment entitlements per farmer can be established.

(2) Article 9 of Delegated Regulation (EU) No 640/2014 sets out rules on the determination of areas where the agricultural parcel contains landscape features and trees. It is appropriate to clarify the wording of that provision by making a reference to eligible hectares.

(3) Article 11(4) of Commission Implementing Regulation (EU) No 809/2014[(4)] provides that the results of the preliminary checks are to be notified to the beneficiary by the competent authority within a period of 26 calendar days after the final date of submission of the single application, aid application or payment claim referred to in Article 13 of that Regulation. Article 12 of Delegated Regulation (EU) No 640/2014 provides for derogations from Article 5(1) of Council Regulation (EEC, Euratom) No

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1182/71[5] for the final dates for submission. For consistency reasons, it is appropriate to introduce the same derogation for the latest possible date for notification of the results of those preliminary checks and the latest possible date for the beneficiary to notify the competent authority of the modifications following those preliminary checks. It should also be clarified that, in any case, the period of 26 calendar days for the notification of the results of those preliminary checks will expire one day after the latest possible date for late submission of an aid application or payment claim or of an application related to payment entitlements.

(4) For the re-distributive payment, the payment to young farmers and the payment for areas with natural constraints, Article 18 of Delegated Regulation (EU) No 640/2014 sets out the principle that a farmer should not be subject to penalties of over-declarations where there is no possible advantage to be gained due to a maximum limit in terms of hectares on which a payment may be granted. A similar provision existed for livestock premiums in Commission Regulation (EC) No 1122/2009[6] and for the agricultural area-related measures in Commission Regulation (EU) No 65/2011[7]. To ensure continuity and fairness in the treatment of farmers and for reasons of simplification, it is appropriate to introduce such a rule in Delegated Regulation (EU) No 640/2014 for the calculation of the basis for the payment for all area-related and animal-related aid schemes and area-related and animal-related rural development measures, where relevant.

(5) Within the integrated administration and control system, the calculation of the aid to which the beneficiary is entitled is based on the concept of crop group. Under the re-distributive payment provided for in Article 41 of Regulation (EU) No 1307/2013, Member States may decide to graduate the number of hectares to be paid differently. Introducing a specific crop group for the re-distributive payment would contribute to simplifying the application made by the beneficiary in case of graduation of the re-distributive payment, as the beneficiary would not have to indicate which agricultural parcel belongs to which part of the graduated number of hectares. For consistency reasons, it is appropriate to introduce the same provision for the young farmers scheme and the voluntary coupled support measures.

(6) For area-related aid schemes or support measures other than the basic payment scheme or the single area payment scheme, Article 17(1)(b) of Delegated Regulation (EU) No 640/2014 distinguishes crop groups as a group for each of the areas declared for which a different rate of aid or support is applicable. As regards payments to areas facing natural or other specific constraints, Article 31(4) of Regulation (EU) No 1305/2013 of the European Parliament and of the Council[8] requires Member States, except in some specific cases, to provide for degressivity of payments above a threshold level of area per holding, to be defined in the programme. In respect of that payment, it should be clarified that where degressive aid amounts are used, the average of those amounts in relation to the respective areas declared is to be taken into account, as previously provided for in Article 16(2) of Regulation (EU) No 65/2011.

(7) Taking into account the evolution of the integrated administration and control system and for reasons of simplification, it is appropriate to adapt the administrative penalties in respect of the aid schemes or support measures where effective administrative

cross-checks with the land parcel identification system can be carried out and where retro-active recovery is possible, namely the area-related aid schemes provided for in Chapters 1, 2, 4 and 5 of Title III and in Title V of Regulation (EU) No 1307/2013 and the area-related support measures referred to in Articles 30 and 31 of Regulation (EU) No 1305/2013. This should take account of the principles of dissuasiveness and proportionality to respect the sound financial management of the common agriculture policy.

(8) For those aid schemes or support measures it is appropriate to introduce a system of reduced penalties for a first offender in respect of small over-declarations. In accordance with the principles of sound financial management and in order to prevent abuse of the system and to stimulate correct declarations in the future, the amount by which the administrative penalty had been reduced should be paid where another administrative penalty for the area-related aid scheme or support measure concerned is imposed on the beneficiary in the following claim year.

(9) Article 24 of Delegated Regulation (EU) No 640/2014 provides for reductions of the greening payment in case of non-compliance with crop diversification. For the sake of clarity, a specific provision should be included in order to cover the cases of non-compliance with Article 44(2) of Regulation (EU) No 1307/2013.

(10) Pursuant to Article 21 of Implementing Regulation (EU) No 809/2014 the beneficiary has to undertake, where applicable, to keep animals on his holding during a period determined by the Member State and to indicate the location or locations where the animals will be held during that period in the livestock aid application or payment claims under animal-related support measures. It is appropriate to lay down provisions on the basis of which animals that during that period have been moved to another place than the ones notified can be considered as determined, provided that they can immediately be localised within the holding during the on-the-spot checks.

(11) Article 53(4) of Commission Delegated Regulation (EU) No 639/2014[(9)] provides that Member States are to define as an eligibility condition the requirement to identify and register bovine animals in accordance with Regulation (EC) No 1760/2000 of the European Parliament and of the Council[(10)]. The purpose of referring to that Regulation as a systematic eligibility condition is to ensure an unambiguous identification of animals eligible for aid or support. In this regard, it should be clarified in Article 30(4)(c) of Delegated Regulation (EU) No 640/2014 that incorrect entries in the register, the animal passports and/or the computerised database for bovine animals of elements such as for instance gender, breed, colour or date should be considered as non-compliances after the first finding if the information is essential for the assessment of the animals' eligibility under the aid scheme or support measure concerned. Otherwise, the animal concerned should be considered as not determined if such incorrect entries are found on at least two checks within a period of 24 months.

(12) Administrative penalties to be applied for animal-related support measures are laid down in Article 31 of Delegated Regulation (EU) No 640/2014 and they are designed to be applied at the level of the measure. That Article does not take into account the fact that operations under a measure can concern different animal breeds and species,

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which may be subject to different rates of support and eligibility conditions in the rural development programs. Therefore, it is appropriate to refer to the type of operation in that Article.

(13) In addition, Article 31 of Delegated Regulation (EU) No 640/2014 refers to a threshold of three animals found with non-compliances. In the case of short-production cycle species, with a high turnover of animals, that threshold might not lead to an equivalent level of penalties as for species such as bovines, ovines and caprines. In respect of those short-production cycle species, Member States should therefore be allowed to establish an adjusted number of animals that is in substance equivalent to the threshold of three.

(14) In order to ensure that data used for the purpose of the claimless system as referred to in Article 21(4) of Implementing Regulation (EU) No 809/2014 are reliable, potentially eligible animals should be subject to on-the-spot checks. The administrative penalties laid down in Article 31 of Delegated Regulation (EU) No 640/2014 apply in case non-compliances are found. Without prejudice to other eligibility conditions, such potentially eligible animals will nevertheless still be deemed eligible for payment provided that non-compliances as regards identification and registration requirements are remedied no later than the first day of the retention period or no later than the date chosen by the Member State, in accordance with Article 53(4) of Delegated Regulation (EU) No 639/2014. It should therefore be specified in Article 31(3) of Delegated Regulation (EU) No 640/2014 that potentially eligible animals found not to be correctly identified or registered count as animals found with non-compliances, irrespectively of their status as regards the fulfilment of the eligibility requirements laid down in Article 53(4) of Delegated Regulation (EU) No 639/2014.

(15) Furthermore, Article 31 of Delegated Regulation (EU) No 640/2014 lays down the methodology for the calculation of the administrative penalties in respect of declared animals under animal aid schemes or support measures. That methodology is based on the number of individual animals found with non-compliances, regardless of the number of days those animals stayed on the holding. Some Member States have set up a system in which the calculation of the aid or support is not only based on the number of individual animals that meet the eligibility criteria, but also on the number of days on the holding for which animals meet the eligibility criteria. For the sake of proportionality, those Member States should adjust their methodology for the calculation of the administrative penalties accordingly.

(16) Pursuant to Council Regulation (EC) No 21/2004[(11)] Member States are to establish a system for the identification and registration of ovine and caprine animals that comprises a central register or a computer database. It is therefore appropriate to extend the scope of Article 34 of Delegated Regulation (EU) No 640/2014 to those animal species.

(17) For the sake of clarity, it is appropriate to clarify in Articles 43 and 44 of Delegated Regulation (EU) No 640/2014 that the continued application of Regulations (EC) No 1122/2009 and (EU) No 65/2011 and the deferred application of Delegated Regulation (EU) No 640/2014 also concerns applications for support. It is also appropriate to clarify

that the continued application of Regulations (EC) No 1122/2009 and (EU) No 65/2011 concerns payment claims relating to 2014 and earlier years.

(18) In addition, it is appropriate to specify in Article 43 of Delegated Regulation (EU) No 640/2014 that with regard to the payment claims for expenditure relating to technical assistance as referred to in Article 66(2) of Council Regulation (EC) No 1698/2005[(12)] made in relation to the year 2015, Regulations (EC) No 1122/2009 and (EU) No 65/2011 continue to apply.

(19) Finally, for reasons of clarity it is appropriate to replace references to a legal basis in Regulation (EU) No 1306/2013 by a reference to Article 28 of Commission Implementing Regulation (EU) No 908/2014[(13)].

(20) Delegated Regulation (EU) No 640/2014 should therefore be amended accordingly.

(21) The amendments which clarify Articles 43 and 44 of Delegated Regulation (EU) No 640/2014 should for the sake of continuity apply in relation to claim years and premium periods starting as from the same date as provided in Regulation (EU) No 640/2014,

HAS ADOPTED THIS REGULATION:

Article 1

Amendment of Delegated Regulation (EU) No 640/2014

Delegated Regulation (EU) No 640/2014 is amended as follows:

(1) Article 7(1) is amended as follows:

(a) point (d) is deleted;

(b) the following second subparagraph is added:

> That electronic register shall contain all information necessary to carry out the replenishment of the national reserve or regional reserve pursuant to Article 31 of Regulation (EU) No 1307/2013.;

(2) in the first subparagraph of Article 9(3), point (b) is replaced by the following:

(b) the number of trees per eligible hectare does not exceed a maximum density.;

(3) Article 12 is replaced by the following:

Article 12

Derogation for the final date for submission and notification

By way of derogation from Article 5(1) of Council Regulation (EEC, Euratom) No 1182/71[(14)], where one of the following dates is a public holiday, a Saturday or a Sunday, it shall be deemed to fall on the first following working day:

(a) the final date for the submission of an aid application, application for support, payment claim or other declarations or any supporting documents