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

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[(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) Regulation (EU) No 1306/2013 repeals and replaces, among others, Council Regulation (EC) No 1290/2005[(2)]. 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[(3)].

(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[(4)] and conditions for receiving support under rural development measures established by Regulation (EU) No 1305/2013 of the European Parliament and of the Council[(5)], 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

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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.

(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

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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.

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(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-

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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.