Commission Delegated Regulation (EU) No 639/2014 of 11 March 2014 supplementing Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and amending Annex X to that Regulation

COMMISSION DELEGATED REGULATION (EU) No 639/2014

of 11 March 2014

supplementing Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and amending Annex X to that Regulation

THE EUROPEAN COMMISSION,

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 4(3), 8(3), 9(5), 35(1), (2) and (3), 36(6), 39(3), 43(12), 44(5), 45(5) and (6), 46(9), 50(11), 52(9), 57(3), 58(5), 59(3), 67(1) and (2) thereof,

Whereas:

(1) Regulation (EU) No 1307/2013 has repealed and replaced Council Regulation (EC) No 73/2009[(2)]. Regulation (EU) No 1307/2013 lays down a new legal framework consisting of a new system of direct support, including a basic payment for farmers and further support schemes. It empowers the Commission to adopt delegated and implementing acts. In order to ensure the smooth functioning of the schemes in the new legal framework, certain rules have to be adopted by means of such acts. In order to reduce administrative burden, these rules should be simple and easy to control. Those acts should replace the rules laid down in Commission Regulations (EC) No 1120/2009[(3)] and (EC) No 1121/2009[(4)].

(2) It is necessary to supplement that framework by means of this Regulation in relation to certain general provisions, the basic payment scheme, the single area payment scheme, the payment for farmers observing agricultural practices beneficial for the climate and the environment, the payment for young farmers commencing their agricultural activity, voluntary coupled support, the crop-specific payment for cotton and in relation to the notifications necessary with regard to each support scheme.

(3) For the purpose of ensuring the correct application of the adjustments of direct payments with respect to financial discipline, it is necessary to lay down general rules on the sequence for the calculation of such reductions in relation to reductions under Regulation (EU) No 1306/2013 of the European Parliament and of the Council[(5)].

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(4) In line with the case-law of the Court of Justice of the European Union[(6)], it is appropriate to clarify that Member States, when adopting measures to implement Union law, should exercise their discretion in compliance with certain principles, including in particular the principle of non-discrimination.

(5) Support other than coupled support should respect the requirements to be considered as decoupled income support in the meaning of the 'Green Box' of the Agreement on Agriculture concluded during the Uruguay Round of multilateral trade negotiations[(7)], and coupled support should respect the requirements to be considered as falling within the 'Blue Box' of that Agreement.

(6) In accordance with Article 4(1)(c) of Regulation (EU) No 1307/2013, an 'agricultural activity' does not require production, rearing or growing of agricultural products. Farmers may instead maintain an agricultural area in a state which makes it suitable for grazing or cultivation without preparatory action going beyond usual agricultural methods and machineries or, on agricultural areas naturally kept in a state suitable for grazing or cultivation, carry out a certain minimum activity. As the latter two activities both require a certain action on the part of the farmer, it is necessary to establish a Union framework within which Member States are to establish the further criteria for those activities.

(7) For environmental reasons, the definition of 'permanent grassland' in Article 4(1)(h) of Regulation (EU) No 1307/2013 also includes non-herbaceous species such as shrubs and/or trees, which can be grazed, provided that the grasses and other herbaceous forage remain predominant on the relevant land. It is therefore necessary to determine a criterion for establishing in which cases grasses and other herbaceous forage remain predominant.

(8) That definition of 'permanent grassland' allows Member States to consider as permanent grassland also land which can be grazed and which forms part of established local practices where grasses and other herbaceous forage are traditionally not predominant in grazing areas. For that purpose, it is necessary to lay down criteria on the basis of which such established local practices can be determined.

(9) In accordance with the second subparagraph of Article 4(2) of Regulation (EU) No 1307/2013, Member States may consider as permanent grassland land which can be grazed and which forms part of established local practices where grasses and other herbaceous forage are traditionally not predominant in grazing areas. Such permanent grassland may be subject to a reduction coefficient according to Article 32(5) of Regulation (EU) No 1307/2013. In order to ensure the proportionate application of that provision, it is appropriate to provide for a possibility to distinguish between different categories of areas in order to apply different reduction coefficients to such categories.

(10) Article 9(1) of Regulation (EU) No 1307/2013 requires that no direct payments are granted to natural or legal persons, or to groups of natural or legal persons, whose agricultural areas are mainly areas naturally kept in a state suitable for grazing or cultivation and who do not carry out on those areas the minimum activity defined by Member States. For this purpose, it is necessary to determine when such areas are to

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be considered as the main part of a farmer's agricultural land and to clarify the scope of application of that provision.

(11) According to Article 9(2) of Regulation (EU) No 1307/2013, entities falling within the scope of the so-called negative list are to be considered active farmers if they are able to prove that they meet one of the criteria listed in that provision. One of these criteria consists of demonstrating that the annual amount of direct payments is at least 5 % of the total receipts obtained from non-agricultural activities. It is therefore necessary to lay down provisions for establishing whether receipts stem from agricultural or non-agricultural activities.

(12) Furthermore, it is necessary to lay down rules on how the annual amount of direct payments is to be determined for the purposes of Article 9(2) and, where appropriate, of Article 9(3), as well as for the purposes of Article 9(4) of Regulation (EU) No 1307/2013, which exempts certain farmers from the application of Article 9(2) and (3) of that Regulation. In order to ensure the equal treatment of farmers in Bulgaria, Croatia and Romania, where direct payments are subject to phasing-in, in those Member States the annual amount of direct payments should be based on the final amounts to be granted at the end of the phasing-in process.

(13) In accordance with Article 9(2) and, where applicable, Article 9(3) of Regulation (EU) No 1307/2013 farmers may be excluded from support where their agricultural activities are insignificant or where their principal business or company objects do not consist of exercising an agricultural activity. It is necessary to define certain criteria in this respect, while giving Member States a possibility to establish alternative criteria to target agricultural activities which are only marginal.

(14) Regulation (EU) No 1307/2013 provides for several possibilities for the allocation of payment entitlements to farmers. For the sake of legal certainty, it should be provided that, in case of an actual or anticipated inheritance, or revocable anticipated inheritance, mergers or scissions of a holding, the number and value of payment entitlements to be received are established under the same conditions as would have applied for the farmer originally managing the holding. It is further necessary to provide rules on how to establish the number of payment entitlements to be allocated in case of holdings resulting from a scission where those holdings are situated in Member States applying Article 24(4) or (5) of Regulation (EU) No 1307/2013. For the sake of legitimate expectations of farmers, changes of the legal status of a farmer should not have an impact on the number or value of payment entitlements the farmer may receive where such a farmer remains in control over the holding in terms of management, benefits and financial risks.

(15) For the sake of legal certainty and in order to ensure the proper management of payment entitlements, it is necessary to clarify that only those eligible hectares which are determined pursuant to point (23)(a) of the second subparagraph of Article 2(1) of Commission Delegated Regulation (EU) No 640/2014[(8)] should be considered for allocation and activation of payment entitlements.

(16) In line with the case-law of the Court of Justice of the European Union[(9)], payment entitlements should be allocated to the person enjoying decision-making power, benefits

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and financial risks in relation to the agricultural activity on the land for which such allocation is requested. It is appropriate to clarify that this principle applies in particular where an eligible hectare is subject to an application for allocation of payment entitlements by more than one farmer.

(17) Article 24(6) of Regulation (EU) No 1307/2013 allows Member States to apply a reduction coefficient to certain eligible hectares under permanent grassland located in areas with difficult climate conditions, especially due to the altitude and other natural constraints. In order to ensure the proportionate application of that provision, it is appropriate to establish a framework for the application of such a reduction coefficient, in particular as regards the limits for such reduction.

(18) Article 9 of Regulation (EU) No 1307/2013 lays down the basic principle that only active farmers may receive direct payments. Furthermore, Article 24(9) of that Regulation allows Member States to fix a minimum size per holding for the allocation of payment entitlements. It is appropriate to take these provisions into account also in the context of the determination of the value of payment entitlements.

(19) When support granted for calendar year 2014 is taken into account pursuant to Article 26 of Regulation (EU) No 1307/2013 to determine the initial unit value of payment entitlements, it should be clarified that Member States may decide not to take account of all measures listed in that provision. In order to avoid any undue penalisation of farmers, the reference amounts relevant for the determination of the value of payment entitlements should not include any reductions or exclusions established pursuant to Chapter 4 of Title II of Regulation (EC) No 73/2009. It is appropriate to specify how that support is to be taken into account and to lay down further criteria necessary in order to respect the decoupled nature of certain schemes which may be taken into account.

(20) Furthermore, for the purpose of determining the initial unit value of payment entitlements, it is necessary to clarify that in Article 26(3) of Regulation (EU) No 1307/2013, payment entitlements held by a farmer include also those payment entitlements which are leased out to another farmer on the date of submission of the lessor's application for 2014.

(21) In order to allow for a prediction of income support for farmers, it is appropriate to set a deadline by which Member States need to establish and communicate to farmers the definitive value and number of payment entitlements where farmers were informed on the basis of provisional data.

(22) For the purposes of Article 26 or Article 40(3) of Regulation (EU) No 1307/2013, where a farmer was affected by *force majeure* or exceptional circumstances during the reference year referred to in those Articles, it is appropriate to establish the value of the payment entitlements on the basis of the last year not affected by *force majeure* or exceptional circumstances. Member States should however be allowed to set a certain threshold in terms of impact of *force majeure* or exceptional circumstances on the direct support received in the reference year in order to reduce the administrative burden.

(23) For the sale or lease of a holding or part of it that took place in the period before the date for lodging an application for allocation of entitlements in the first year of application

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of the scheme, it should be provided that Member States may decide that farmers may transfer by contract the payment entitlements to be allocated together with the holding or part of it. Under such a private contract clause, the payment entitlements should be allocated to the seller or lessor, respectively, and directly transferred to the buyer or lessee respectively, who will benefit where applicable from taking the payments which the seller or the lessor, respectively, received for 2014 or from the value of the entitlements that the seller or lessor owned in 2014 as referred to in Article 26 of Regulation (EU) No 1307/2013 as a reference for the initial unit value of payment entitlements. It should further be clarified that Article 34(4) of Regulation (EU) No 1307/2013 is not to be applied to such transfers.

(24) As regards the calculation of the unit value of the payment entitlements, clear rules should be laid down concerning the rounding-up of figures, the possibility to split existing payment entitlements where the size of the parcel which is declared or transferred with the entitlement only amounts to a fraction of hectares, and the possibility to merge entitlements and fractions.

(25) For the sake of legal certainty, it is appropriate to set a deadline by which the regions referred to in Article 34(3) of Regulation (EU) No 1307/2013 are to be set up.

(26) Specific provisions for the management of the national or regional reserves should be laid down.

(27) It is necessary to lay down criteria and maximum percentages for the application of Article 34(4) of Regulation (EU) No 1307/2013 in order to prevent that any reduction under that provision results in a substantial obstacle or prohibition of transfer of payment entitlements.

(28) For reasons of legal certainty, it is appropriate to clarify the determination of the amount that may be reverted to the national or regional reserve pursuant to Article 28 or 40(5) of Regulation (EU) No 1307/2013 when establishing payment entitlements in the first year of implementation of the basic payment scheme.

(29) Article 30 of Regulation (EU) No 1307/2013 provides for compulsory and optional cases of allocation of payment entitlements from the national or regional reserve. It is appropriate to lay down rules for the calculation of the number and value of the payment entitlements to be allocated in such a way and to provide that priorities established in Article 30(6) of that Regulation are not undermined by the decisions Member States are allowed to take under Article 30(7) and (10) of Regulation (EU) No 1307/2013. Similarly, application of Article 30(6) of Regulation (EU) No 1307/2013 should be coherent with Article 24(6) and (7) of that Regulation and with the rules on hardship in this Regulation. In order to ensure the decoupled nature of the basic payment scheme, the calculation of the number and value of the payment entitlements under the national or regional reserve should not be based on sector-specific criteria after the date fixed by the Member State in accordance with Article 11(2) of Commission Regulation (EC) No 1122/2009[(10)] for claim year 2013.

(30) For the sake of legal certainty and in order to ensure equal treatment of farmers commencing their agricultural activity, it is appropriate to clarify the notion of ‘farmers