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

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

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 and Article 43(2) thereof,

Having regard to the 1979 Act of Accession, and in particular paragraph 6 of Protocol No 4 on cotton attached thereto,

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 opinions 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) The Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions entitled "The CAP towards 2020: Meeting the food, natural resources and territorial challenges of the future" set out potential challenges, objectives and orientations for the Common Agricultural Policy ("the CAP") after 2013. In the light of the debate on that Communication, the CAP should be reformed with effect from 1 January 2014. That reform should cover all the main instruments of the CAP, including Council Regulation (EC) No 73/2009[(5)]. In view of the scope of the reform, it is appropriate to repeal Regulation (EC) No 73/2009 and to replace it with a new text. The reform should also streamline and simplify the relevant provisions.

(2) One of the core objectives, and one of the key requirements, of the CAP reform is the reduction of the administrative burden. This should be taken firmly into account when shaping the relevant provisions for the direct support scheme.

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(3) All the basic elements pertaining to the payment of Union support to farmers should be included in this Regulation, which should also fix the conditions of access to payments which are inextricably linked to those basic elements.

(4) It is necessary to clarify that Regulation (EU) No 1306/2013 of the European Parliament and of Council[6] and the provisions adopted pursuant to it are to apply in relation to the measures set out in this Regulation. For the sake of consistency with other legal instruments relating to the CAP, some rules currently provided for in Regulation (EC) No 73/2009 are now laid down in Regulation (EU) No 1306/2013, in particular the rules to guarantee compliance with the obligations laid down by direct payment provisions, including checks and the application of administrative measures and administrative penalties in the case of non-compliance, the rules related to cross-compliance such as the statutory management requirements, the good agricultural and environmental condition, the monitoring and evaluation of relevant measures and the rules related to the payment of advances and the recovery of undue payments.

(5) In order to supplement or amend certain non-essential elements of this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(6) This Regulation should contain a list of the direct payment support schemes covered by it. In order to take into account new legislation on support schemes which may be adopted after the entry into force of this Regulation, the power to adopt certain acts should be delegated to the Commission in respect of the amendment of that list.

(7) In order to ensure legal certainty, the power to adopt certain acts should be delegated to the Commission in respect of establishing the framework within which Member States are to define the criteria to be met by farmers in order to fulfil the obligation to maintain the agricultural area in a state suitable for grazing or cultivation, and the minimum activities to be carried out on areas naturally kept in a state suitable for grazing or cultivation, as well as the criteria to determine the predominance of grasses and other herbaceous forage and to determine the established local practices as regards permanent grassland and permanent pasture ('permanent grassland').

(8) With a view to ensuring that the amounts for the financing of the CAP comply with the annual ceilings referred to in Article 16(1) of Regulation (EU) No 1306/2013, an adjustment of the level of direct support in any calendar year should be made as provided for under Article 25 of that Regulation. In order to ensure that it contributes to achieving the objective of a more balanced distribution of payments between small and large beneficiaries, the adjustment of the direct payments should only be applied to payments to be granted to farmers in excess of EUR 2 000 in the corresponding calendar year. Taking into account the levels of direct payments to farmers in Bulgaria, Croatia and Romania in the framework of the application of the phasing-in mechanism to all direct payments granted in those Member States, this instrument of financial discipline

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should only apply in Bulgaria and Romania from 1 January 2016, and in Croatia from 1 January 2022. Specific rules should be laid down in respect of that instrument of financial discipline and of certain other provisions in the case of a legal person, or a group of natural or legal persons, where national law provides for individual members' rights and obligations comparable to those of individual farmers who have the status of a head of holding, in order to strengthen the agricultural structures and promote the establishment of the legal persons or groups concerned.

(9) In order to ensure the correct application of the adjustment of direct payments with respect to financial discipline, the power to adopt certain acts should be delegated to the Commission in respect of rules on the basis for calculation of reductions to be applied by Member States to farmers pursuant to the application of the financial discipline.

(10) Experience acquired in the application of the various support schemes for farmers has shown that support was in a number of cases granted to natural or legal persons whose business purpose was not, or was only marginally targeted at an agricultural activity. To ensure that support is better targeted, Member States should refrain from granting direct payments to certain natural and legal persons unless such persons can demonstrate that their agricultural activity is not marginal. Member States should also have the possibility of not granting direct payments to other natural or legal persons whose agricultural activity is marginal. However, Member States should be allowed to grant direct payments to smaller part-time farmers, since those farmers contribute directly to the vitality of rural areas. Member States should also refrain from granting direct payments to 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 a certain minimum activity.

(11) In order to guarantee the protection of the rights of farmers, the power to adopt certain acts should be delegated to the Commission in respect of laying down criteria for determining the cases where a farmer's agricultural area is to be considered to be mainly an area naturally kept in a state suitable for grazing or cultivation, criteria to establish the distinction between receipts resulting from agricultural and from non-agricultural activities and the amount of direct payments relevant for applying the marginality test, and criteria to be met by farmers in order to prove that their agricultural activity is not marginal.

(12) To avoid the excessive administrative burden caused by managing payments of small amounts, Member States should in general refrain from granting direct payments where the amount would be lower than EUR 100, or where the eligible area of the holding for which support is claimed would be less than one hectare. However, as Member States' farming structures vary considerably and may differ significantly from the average farming structure in the Union, Member States should be allowed to apply minimum thresholds that reflect their particular situation. Due to the very specific farming structure in the outermost regions and the smaller Aegean Islands, Member States should be able to decide whether any minimum threshold should apply in those regions. Moreover, Member States should opt for the implementation of one of the two types of minimum threshold, taking account of the particularities of the structures

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of their farming sectors. Since payment could be granted to farmers with so-called 'landless' holdings, the application of the hectare-based threshold would be ineffective. The support-related minimum amount should therefore apply to such farmers. To ensure the equal treatment of farmers in Bulgaria, Croatia and Romania whose direct payments are subject to phasing-in, the minimum threshold should, in those Member States, be based on the final amounts to be granted at the end of the phasing-in process.

(13) The distribution of direct income support among farmers is characterised by the allocation of disproportionate amounts of payments to a rather small number of large beneficiaries. Larger beneficiaries, due to their ability to exploit economies of size, do not require the same level of unitary support in order for the objective of income support to be efficiently achieved. Moreover, the potential to adapt makes it easier for larger beneficiaries to operate with lower levels of unitary support. Member States should therefore reduce by at least 5 % the part of the basic payment to be granted to farmers which exceeds EUR 150 000. To avoid disproportionate effects on large farms with high employment numbers, Member States may decide to take into account salaried labour intensity when applying the mechanism. In order to make such reduction of the support level effective, no advantage should be granted to farmers who artificially create the conditions to avoid its effects. The proceeds of the reduction of payments to large beneficiaries should remain in the Member States where they were generated and should be made available as Union support for measures financed under the European Agricultural Fund for Rural Development (EAFRD).

(14) Net ceilings should be determined for each Member State in order to limit the payments to be made to farmers following the application of the reduction of payments. To take into account the specific characteristics of CAP support granted in accordance with Regulation (EU) No 228/2013 of the European Parliament and of the Council[(7)] and Regulation (EU) No 229/2013 of the European Parliament and of the Council[(8)], and the fact that these direct payments are not subject to reduction of payments, the net ceiling for the Member States concerned should not include those direct payments.

(15) In order to take account of the developments relating to the total maximum amounts of direct payments that may be granted, including those resulting from the decisions to be taken by the Member States regarding transfers between the first and second pillars and the application of the reduction and, where applicable, capping of payments, as well as those resulting from the notifications to be made by Croatia regarding the de-mined land that has returned to use for agricultural activities, the power to adopt certain acts should be delegated to the Commission in respect of adapting the national and net ceilings set out in this Regulation.

(16) It should be specified that those provisions of this Regulation which could give rise to behaviour of a Member State capable of constituting State aid are excluded from the application of the State aid rules, given that the provisions concerned include appropriate conditions for the granting of support, or envisage the adoption of such conditions by the Commission, in order to prevent any undue distortion of competition.

(17) With a view to strengthening their rural development policy, Member States should be given the possibility to transfer funds from their direct payments ceiling to their support

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assigned for rural development. Member States should also be given the possibility to transfer funds from their support assigned for rural development to their direct payments ceiling. To ensure the effectiveness of this tool, Member States should be given the possibility to review their initial decision once, with effect from claim year 2018, provided that any decision based on such review does not entail any decrease in the amounts assigned for rural development.

(18) In order to achieve the objectives of the CAP, the support schemes may need to be adapted to changing developments, if necessary within short time-limits. Therefore, it is necessary to provide for a possible review of the support schemes, in particular in the light of economic developments or the budgetary situation, with the result that beneficiaries cannot assume that support conditions remain unchanged.

(19) Farmers in Member States which acceded to the Union on or after 1 May 2004 received direct payments following a phasing-in mechanism provided for in the respective Acts of Accession. For Bulgaria and Romania, such mechanism will still be in force in 2015, and for Croatia, it will be in force until 2021. Furthermore, those Member States were allowed to grant complementary national direct payments. The possibility for granting such payments should be maintained for Croatia and, as a complement to the basic payment scheme for Bulgaria and Romania, until they are fully phased-in. As regards authorising Croatia to grant complementary national direct payments, the Commission should be empowered to adopt implementing acts without applying Regulation (EU) No 182/2011 of the European Parliament and of the Council[(9)].

(20) Regulation (EC) No 73/2009, as amended by the Act of Accession of 2011, provides for a special national de-mining reserve for Croatia in order to finance, for a period of ten years after its accession to the Union, the allocation of payment entitlements to land which is de-mined and returned to agricultural use every year. It is appropriate to set the rules for determining the amounts allotted to funding support for that land under the support schemes provided for in this Regulation and the rules for the management of that reserve. In order to take account of the amounts resulting from the notifications to be made by Croatia regarding the de-mined land that has returned to use for agricultural activities, the power to adopt certain acts should be delegated to the Commission in respect of reviewing certain financial provisions applying to Croatia.

(21) In order to ensure a better distribution of support across agricultural land in the Union, including in those Member States which applied the single area payment scheme established under Regulation (EC) No 73/2009, a new basic payment scheme should replace the single payment scheme established under Council Regulation (EC) No 1782/2003[(10)], and continued under Regulation (EC) No 73/2009, which combined previously existing support mechanisms in a single scheme of decoupled direct payments. Such a move should, in principle, result in the expiry of payment entitlements obtained under those Regulations and the allocation of new ones. That allocation of new payment entitlements should be based, as a general rule, on the number of eligible hectares at the disposal of farmers in the first year of implementation of the scheme. However, Member States which currently operate the single payment scheme on a regional or regional hybrid basis should have the possibility of keeping