



Brussels, **XXX**
DS/CC/2013/1/ver2 TC
[...] (2013) **XXX**

DS/CC/2013/1/ver2 TC

COMMISSION DELEGATED REGULATION (EU) No .../..

of **XXX**

supplementing Regulation (EU) No XXX/XXXX of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy

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"The content of this draft is still under Commission-internal consultation and has not yet been agreed upon by other Commission Services. It will probably be subject to changes"

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) No XXX/XXXX of the European Parliament and of the Council of XX XXXXXXXX XXXX on the financing, management and monitoring of the common agricultural policy empowers the Commission to adopt delegated acts in accordance with its Articles 93(4), 101(1).

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The aim of this act is to adopt a delegated act supplementing Regulation (EU) No XXX/XXXX.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Consultations, involving experts from all the 28 Member States and from the European Parliament, have been carried within the Subgroup 'Cross-compliance and FAS' under the Expert Group for Horizontal Questions concerning the PAC. A series of meetings were organised during the months of October and November 2013 for the specific purpose of exchanging expert views on the present act. The meetings allowed for a full presentation of the Commission's draft provisions and a thorough exchange of views on all aspects of the draft. The exercise consisted in clarifying the Commission's approach, hearing experts' views and further refining the draft text accordingly.

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3. LEGAL ELEMENTS OF THE DELEGATED ACT

The Regulation sets out supplementary rules for the application of Regulation (EU) No XXX/XXXX concerning:

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- certain obligations of the Member States and individual farmers as regards the maintenance of permanent pasture (Article 93(4));
- a harmonised basis for calculation of administrative penalties due to cross-compliance (Article 101.1 (a));
- conditions for the calculation and application of the administrative penalties (Article 101.1 (b)).

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No XXX/XXXX of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy¹, and in particular Articles 93(4), 101(1) thereof,

Whereas;

- (1) Regulation (EU) No XXX/XXXX of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy in Article 93(3) provides, as regards the years 2015 and 2016, that the rules on cross-compliance shall also comprise the maintenance of permanent pasture. In this regard, it is necessary to specify that Member States should continue to fulfill their obligations in 2015 and 2016 according to the ratio established in 2014. **[ex recital 5 amended]. Back up art. 1**
- (2) For the sake of clarity and in order to establish a harmonized basis for the assessment of non-compliances and calculation and application of administrative penalties due to cross-compliance, it is necessary to provide indications on the meaning of the terms reoccurrence, extent, severity and permanence of a non-compliance. In addition it is necessary to explain when a non-compliance is deemed to be determined. **[new recital]. Back up art. 2**
- (3) Administrative penalties should be established having regard to the principle of proportionality. They may only be applied where the farmer acted negligently or intentionally and should be graded according to the seriousness of the non-compliance committed. **[ex recital 75]. Back up Art. 3, 1 and 4**
- (4) With regard to cross-compliance obligations, apart from grading administrative penalties in view of the principle of proportionality, it should be provided that as of a certain moment, repeated infringements of the same cross-compliance obligation should, after a prior warning to the farmer, be treated as an intentional non-compliance. **[ex recital 92]. Back up Article 3, 4**

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(5) Furthermore, where in particular conditions the possibility not to apply any administrative penalties for non-compliances as provided in Article 99(2) of Regulation (EU) No XXX/XXXX or as foreseen in Article 97(3) of the same Regulation is applied by a Member State, requirements regarding the remediation of the relevant non-compliance should be established. **lex 91 amended) Back up Articles 3.2 and 3.3 early warning**

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(6) As regards in particular the early warning system, in case the beneficiary does not fulfil the obligation to take remedial action the reduction should be applied retroactively in respect of the year of the finding of the non-compliance for which the early warning system was applied. The calculation of the administrative penalties should also take into account the reoccurrence of the non-compliance in question in the year of the subsequent check, if applicable. In order to give legal certainty to beneficiaries a time limit for the application of administrative penalties should be established. **New) Back up Article 3.3 early warning**

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PART III

CONTROL SYSTEM AND PENALTIES IN RELATION TO CROSS-COMPLIANCE

TITLE I

MAINTAINANCE OF PERMANENT PASTURE

Article 1 (ex 3 and 4)

Permanent pasture obligations

1. Where it is established that the ratio referred to in Article 3(3) of Regulation (EC) No 1122/2009 has decreased in 2014 at national or regional level, the Member State concerned may provide for the obligation of beneficiaries applying for aid under any of the direct payment schemes in 2015 not to convert land under permanent pasture without prior authorisation.

Where it is established that that ratio has decreased by more than 5 % in 2014, the Member State concerned shall provide for such obligation.

If the authorization referred to in the first and second subparagraphs is subject to the condition that an area of land shall be established as permanent pasture, such land shall, as of the first day of conversion, be considered as permanent pasture by way of derogation from the definition laid down in Article 2 (2) of Regulation (EC) No 1122/2009. Those areas shall be used to grow grasses or other herbaceous forage for the five consecutive years following the date of conversion.

2. The obligation for beneficiaries set out in paragraph 1 shall not apply where beneficiaries created land under permanent pasture in accordance with Council Regulation (EC) No 1698/2005.

3. Where it is established that the obligation referred to in Article 3(2) of Regulation (EC) No 1122/2009 cannot be ensured in 2014, the Member State concerned shall, further to the measures to be taken in accordance with paragraph 1 of this Article, provide, at national or regional level, for the obligation of beneficiaries applying for aid under any of the direct payment schemes in 2015 to re-convert land into land under permanent pasture. This obligation shall only apply to beneficiaries having land at their disposal which was converted from land under permanent pasture into land for other uses.

This obligation shall apply with regard to land thus converted since the date of the start of the 24-month period proceeding the last date at which the single applications

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MAINTAINANCE OF PERMANENT PASTURE

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had to be submitted at the latest in accordance with Article 78(b) of Regulation (EU) No XXX/XXXX HZR in the Member State concerned.

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In such case, farmers shall re-convert a percentage of that area into land under permanent pasture or establish such an amount of area as land under permanent pasture. That percentage shall be calculated on the basis of the amount of area thus converted by the farmer and the amount of area needed to re-establish the balance.

However, where such land was subject to a transfer after it had been converted into land for other uses, this obligation shall only apply if the transfer took place after the entry into force of Regulation (EC) No 796/2004.

By way of derogation from Article 2(2) of Regulation (EC) No 1122/2009, areas re-converted or established as land under permanent pasture shall, as of the first day of the re-conversion or establishment be considered as 'permanent pasture'. Those areas shall be used to grow grasses or other herbaceous forage for the five consecutive years following the date of their conversion.

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4. The obligations referred to paragraph 1 and 3 shall apply only during the year 2015.

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5. Member states shall carry out checks in 2015 and 2016 to ensure that obligations established pursuant to paragraph 1 and 3 are complied with.

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TITLE II

CALCULATION AND APPLICATION OF ADMINISTRATIVE PENALTIES

Article 2 (ex 47, ex 70.4)

General rules concerning non-compliance

1. The 'reoccurrence' of a non-compliance means the non-compliance with the same requirement or standard determined more than once within a consecutive period of three calendar years, provided the beneficiary has been informed of a previous non-compliance and, as the case may be, has had the possibility to take the necessary measures to terminate that previous non-compliance. For the purpose of determining the reoccurrence of a non-compliance, GAEC 3, as listed in Annex II of Regulation (EU) No XX/XXX HZR, shall be considered equivalent to SMR 2 of Annex II of Regulation (EC) No 73/2009 in its version in force on 21 December 2013;
2. The 'extent' of a non-compliance shall be determined taking account, in particular, of whether the non-compliance has a far-reaching impact or whether it is limited to the farm itself;
3. The 'severity' of a non-compliance shall depend, in particular, on the importance of the consequences of the non-compliance taking account of the aims of the requirement or standard concerned;
4. Whether a non-compliance is of 'permanence' shall depend, in particular, on the length of time for which the effect lasts or the potential for terminating those effects by reasonable means.
5. As regards this part of this Regulation, non-compliances shall be deemed to be 'determined' if they are established as a consequence of any kind of controls carried

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out in accordance with this Regulation or after having been brought to the attention of the competent control authority or, where applicable, the paying agency, in whatever other way. ~~(ex Art. 70.3)~~

Article 3 (ex 71.1, 71.2, 71.3, 71.5)

Calculation and application of administrative penalties in the case of negligence

1. Where a non-compliance determined results from the negligence of the beneficiary, a reduction shall be applied. That reduction shall, as a general rule, be 3 % of the **total amount resulting from the payments and annual premia indicated in Article 92 of Regulation (EU) No XXX/XXXX [HZR]**

However, the paying agency may, on the basis of the assessment **of the importance of the non-compliance** provided by the competent control authority in the evaluation part of the control report **taking into account the criteria referred to in Article 2 (1) to (4) of this Title**, decide either to reduce that percentage to 1 % or to increase it to 5 % of the total amount **specified in subparagraph 1, or, in the cases where provisions relating to the requirement or standard in question leave a margin not to further pursue the non-compliance found or in the cases for which support is granted according to Articles 18 (4) (a) and 18 (4) (b) of Regulation XXX RL**, not to impose any reductions at all.

2. Where a Member State makes use of the possibility not to apply a reduction or exclusion as provided for in **Article 97(3) of Regulation (EU) No XXX/XXXX [HZR]** ~~(ex Article 23(2))~~ and the beneficiary has not remedied the situation within a given deadline, the reduction or exclusion shall be applied.

The deadline shall be set by the competent authority and shall not be later than the end of the year following the one in which the finding was made.

3. Where a Member State makes use of the option provided for in the second subparagraph of **Article 99(2) of Regulation (EU) No XXX/XXXX HZR** ~~(ex Article 24(2))~~ and **the beneficiary has not remedied the situation within a given deadline**, a reduction of at least 1 % as provided for in paragraph 1 ~~(ex Article 71.1)~~ shall be applied **retroactively, within a consecutive period of three calendar years**.

The deadline shall be set by the competent authority and shall not be later than the end of the year following the one in which the finding was made.

Furthermore, a non-compliance which has been remedied by the beneficiary within the **deadline** set in the first subparagraph, shall not be considered as a non-compliance for the purpose of establishing reoccurrence in accordance with paragraph 4. ~~(ex Article 71.5)~~

4. Without prejudice to cases of intentional non-compliance, the reduction to be applied in respect of the first reoccurrence of the same non-compliance in accordance with paragraph 1 shall be multiplied by the factor three.

In the case of further reoccurrences the multiplication factor three shall be applied each time to the result of the reduction fixed in respect of the previous reoccurrence. The maximum reduction shall, however, not exceed 15 % of the **total amount** referred to in **paragraph 1**.

Once the maximum percentage of 15 % has been reached, the paying agency shall inform the beneficiary concerned that if the same non-compliance is determined

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again, it shall be considered that he has acted intentionally within the meaning of Article 45 of this Regulation.

Article 4 (ex 72.1)

Calculation and application of administrative penalties in cases of intentional non-compliance

Where the non-compliance determined has been committed intentionally by the beneficiary, the reduction to be applied to the total amount referred to in Article 3.1 shall, as a general rule, be 20 % of that total amount.

However, the paying agency may, on the basis of the assessment of the importance of the non-compliance provided by the competent control authority in the evaluation part of the control report taking into account the criteria referred to in Article 2 (1) to (4) of this Title, decide to reduce that percentage to no less than 15 % or to increase that percentage to up to 100 % of that total amount.

Article 5 (new)

Accumulation of administrative penalties

Where a case of non-compliance as defined in paragraph 2 of Article 2 of this Regulation also constitutes a non-compliance according to paragraph 1 of Article 2 of this Regulation, the administrative penalties shall be accumulated pursuant to Article XX of Regulation (EU) No XXX IA (ex Article 77).

Article [...]

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

*For the Commission
The President*

On behalf of the President

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in accordance with Article 8(1)(c) of Regulation (EU) No XXX IA (ex Article 54(1)(c))

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referred to in the second subparagraph of Article 8(1)(c) (ex Article 54(1)(c)),

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, after a subsequent check, it is established that

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Article 9(7) of Regulation No XXX (IA). (ex Article 70(8))