WORKING DOCUMENT

Draft Commission delegated Regulation (EU) .../... of XXX 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

DISCLAIMER

This working document has been prepared by DG AGRI staff in order to facilitate the discussion in the joint Expert Group for Direct Payments and Rural Development. It has not yet been subject of an inter-service consultation nor revised by the Legal Service

Recitals

1) [Identification and registration of PE] According to Article 7(1) of Commission Delegated Regulation (EU) No 640/2014\(^1\), 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\(^2\) 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) [Determination of areas where the agricultural parcel contains landscape features and trees] 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) [To fill-in a gap regarding the calculation of reduction of the greening payment in case of non-compliance with a particular crop diversification (CD) requirement (cases of holdings where grasses or other herbaceous forage or land laying fallow cover more than 75% of the arable land)] 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 rule should be included in order to cover the cases of non-compliance with Article 44(2) of Regulation (EU) No 1307/2013.

4) [Individual ceiling] Article 63(1) of Commission Regulation (EC) No 1122/2009\(^3\) was based on the principle that a beneficiary of livestock premia should not be subject to penalties for over-declaration in cases where there is no possible advantage to be gained because a maximum number of animals applies. It is appropriate to introduce such a rule also in Delegated Regulation (EU) No 640/2014 for the calculation of the basis for the payment of the voluntary coupled support based on livestock aid applications under animal aid schemes and rural development support based on payment claims under animal-related support measures.

5) [Temporal scope of application of Regulations 640/2014, 809/2014 and 65/2011 for RD] 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 Regulation (EC) No 1122/2009 and Commission Regulation (EU) No 65/2011\(^4\) 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 and applications for support relating to 2014 and earlier years.

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\(^3\) Commission Regulation (EC) No 1122/2009 of 30 November 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector (O.J. L 316, 02.12.2009, p. 65).

Identification and registration of payment entitlements

1. The system for the identification and registration of payment entitlements provided for in Article 71 of Regulation (EU) No 1306/2013 shall be an electronic register at Member State level and shall, in particular with regard to the cross-checks provided for in paragraph 1 of that Article, ensure effective traceability of the payment entitlements as regards the following elements:

(a) the holder;
(b) the annual values;
(c) the date of establishment;
(d) the date of last activation;
(e) the origin, in particular with regard to its attribution, original, national or regional reserves, as well as purchase, lease and inheritance;
(f) where Article 21(3) of Regulation (EU) No 1307/2013 is applied, the entitlements maintained by virtue of that provision;
(g) where applicable, regional restrictions.

That electronic register shall contain all information necessary to conduct the replenishment of the national reserve or regional reserve in application of Article 31 of Regulation (EU) No 1307/2013.
Article 9(3)

Determination of areas where the agricultural parcel contains landscape features and trees

3. An agricultural parcel that contains scattered trees shall be considered as eligible area provided that the following conditions are fulfilled:

(a) agricultural activities can be carried out in a similar way as on parcels without trees in the same area; and

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

The maximum density referred to in point (b) of the first subparagraph shall be defined by Member States and notified on the basis of traditional cropping practices, natural conditions and environmental reasons. It shall not exceed 100 trees per hectare. However, that limit shall not apply in relation to the measures referred to in Articles 28 and 30 of Regulation (EU) No 1305/2013.

This paragraph shall not apply to scattered fruit trees which yield repeated harvests, to scattered trees which can be grazed in permanent grassland and to permanent grassland with scattered landscape features and trees where the Member State concerned has decided to apply a pro-rata system in accordance with Article 10.
Article 24

Reduction of the greening payment in case of non-compliance with crop diversification

3a. Where Article 44(2) of Regulation (EU) No 1307/2013 requires that the main crop on the remaining arable land shall not cover more than 75% of that remaining arable land, but the area that has been determined for the main crop group on the remaining arable land covers more than 75%, the area to be used for the calculation of the greening payment in accordance with Article 23 of this Regulation shall be reduced by 50% of the remaining area of arable land determined multiplied by the ratio of difference.

The ratio of difference referred to in the first subparagraph shall be the share of the area of the main crop group on the remaining arable land that goes beyond 75% of the remaining arable land determined in the total area required for the other crop groups on that remaining arable land.

4. Where a beneficiary has been found non-compliant with crop diversification as described in this Article for three years, the area by which the area to be used for the calculation of the greening payment is to be reduced in accordance with paragraphs 1, 2 and 3 for the subsequent years shall be the total area of arable land determined multiplied by the applicable ratio of difference.
**Article 30**

**Basis of calculation**

1. In no case aid or support shall be granted for a number of animals greater than that shown in the aid application or in the payment claim.

1a. In case aid or support is subject to a limit applicable at the level of the farmer, if the number of animals declared exceeds such a limit, the number of animals declared shall be reduced to that limit.

2. Animals present on the holding shall only be considered as determined if they are identified in the aid application or in the payment claim. Identified animals may be replaced without the loss of the right to payment of the aid or support, provided that the beneficiary has not yet been informed by the competent authority of a non-compliance in the application or claim or has not yet been given notice of the authority’s intention to carry out an on-the-spot check. Where a Member State does not make use of the possibility of having a claimless system, in accordance with the rules laid down by the Commission on the basis of Article 78(b) of Regulation (EU) No 1306/2013, it shall ensure by any means that there are no doubts as to which animals are covered by the beneficiaries’ applications or claims.

3. Without prejudice to Article 31, if the number of animals declared in an aid application or payment claim exceeds that determined as a result of administrative checks or on-the-spot checks, the aid or support shall be calculated on the basis of the animals determined.

4. Where cases of non-compliances with regard to the system for the identification and registration for bovine animals are found, the following shall apply:

   (a) a bovine animal present on the holding which has lost one of the two ear tags shall be considered as determined provided that it is clearly and individually identified by the other elements of the system for the identification and registration of bovine animals referred to in points (b), (c) and (d) of the first paragraph of Article 3 of Regulation (EC) No 1760/2000;

   (b) where one single bovine animal present on the holding has lost two ear tags it shall be considered as determined provided that the animal can still be identified by the register, animal passport, database or other means laid down in Regulation (EC) No 1760/2000 and provided that the animal keeper can provide evidence that he has already taken action to remedy the situation before the announcement of the on-the-spot check;

   (c) where the non-compliances found relate to incorrect entries in the register or the animal passports, the animal concerned shall only be considered as not determined if such errors are found on at least two checks within a period of 24 months. In all other cases the animals concerned shall be considered as not determined after the first finding.

The entries in, and notifications to, the system for the identification and registration of bovine animals may be adjusted at any time in cases of obvious errors recognised by the competent authority.

5. An ovine or caprine animal present on the holding which has lost one ear tag shall be considered as determined provided that the animal can still be identified by a first means of identification in accordance with Article 4(2)(a) of Regulation (EC) No 21/2004 and
provided that all other requirements of the system for the identification and registration of ovine and caprine animals are fulfilled.
Article 43

Repeal

Regulations (EC) No 1122/2009 and (EU) No 65/2011 are repealed with effect from 1 January 2015.

However, those Regulations shall continue to apply to:

(a) aid applications for direct payments lodged in respect of premium periods starting before 1 January 2015;

(b) payment claims made in relation to the year 2014 and earlier years; and

(c) the control system and administrative penalties as regards cross-compliance obligations of farmers under Articles 85t and 103z of Council Regulation (EC) No 1234/2007.

Article 44

Entry into force and application

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

It shall apply to aid applications, applications for support and or payment claims relating to claim years or premium periods starting as from the 1 January 2015.

This Regulation shall be binding in its entirety and directly applicable in all Member States.