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

[Identification and registration of PE] According to Article 7(1) of Commission Delegated Regulation (EU) No 640/2014, 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 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.

[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.


**Latest possible date for notification of the results of the preliminary checks**] Article 11(4) of Commission Implementing Regulation (EU) No 809/2014 provides that the results of the preliminary checks should be notified to the beneficiary by the competent authority within a period of 26 calendar days after the final date of submission of the single application, aid application or payment claim referred to in Article 13 of that Regulation. Article 12 of Commission Delegated Regulation (EU) No 640/2014 provides for derogations from Article 5(1) of Council Regulation (EEC, Euratom) No 1182/71 for the final dates for submission. For consistency purposes, it appears appropriate to introduce the same provision for the latest possible date for notification of the results of these preliminary checks. It should also be clarified that, in any case, the period of 26 calendar days for the notification of the results of these preliminary checks will expire one day after the latest possible date for late submission of an aid application or payment claim or of an application related to payment entitlements.

**Maximum limit or ceiling**] Article 18 of Commission Delegated Regulation (EU) No 640/2014 sets out, for the redistributive payment, the payment to young farmers and the payment for areas with natural constraints, the principle that a farmer should not be subject to penalties of over declarations in cases where there is no possible advantage to be gained due to a maximum limit in terms of hectares on which a payment may be granted. A similar provision was existing for livestock premiums in Article 63(1) of Regulation (EC) No 1122/2009 and, for the agricultural area-related measures in Article 16(3) paragraph 5 of Commission Regulation (EU) No 65/2011. To ensure continuity and fairness in the treatment of farmers and for reason of simplification, it is appropriate to introduce such a rule in Commission Delegated Regulation (EU) No 640/2014 for the calculation of the basis for the payment for all area-related and animal-related aid schemes and area-related and animal-related rural development measures, where relevant.

**Administrative penalties in cases of over-declaration of areas for the basic payment scheme, the single area payment scheme, the redistributive payment, the young farmers scheme, the payment for areas with natural constraints, and the small farmers scheme, Natura 2000 and Water Framework Directive payments and payments to areas facing natural or other specific constraints.**] Taking into account the evolution of the integrated administration and control system and for reasons of simplification it is appropriate to adapt the administrative penalties in respect of the schemes or support measures where effective administrative cross-checks with the LPIS can be carried out and where retro-active recovery is possible, namely the area-related aid schemes referred to in Chapters 1, 2, 4, 5 of Title III and in Title V of Regulation (EU) No 1307/2013 and the area-related support measures referred to in Articles 30 and 31 of Regulation (EU) No 1305/2013. This should take account of the principles of dissuasiveness and proportionality to respect the sound financial management of the Common Agriculture Policy.

**Introduction of a system of yellow cards**] Where effective administrative cross-checks with the LPIS can be carried out and where retro-active recovery is possible for those

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schemes or support measures, namely the area-related aid schemes referred to in Chapters 1, 2, 4, 5 of Title III and in Title V of Regulation (EU) No 1307/2013 and the area-related support measures referred to in Articles 30 and 31 of Regulation (EU) No 1305/2013, it is appropriate to introduce a system of reduced penalties for a first offender in respect of small over-declarations. In accordance with the principles of sound financial management and to prevent abuse of the system and to stimulate correct declarations in the future, the outstanding amount should be paid back in case the beneficiary makes again an administrative penalty for the concerned area-related aid scheme(s) or support measure(s) over-declaration in the following claim year.

[Administrative penalties for animal related rural development measures and operations] Administrative penalties to be applied for animal-related support measures are laid down in Article 31 of Commission Delegated Regulation (EU) No 640/2014 and are defined at the level of the measure. This does not take into account the fact that operations under the measure can concern different animal breeds and species, which may be subject to different rates of support and eligibility conditions in the rural development programs. It is appropriate to take this situation into account.

[Crop group for ANC, YFS and VCS] Within the Integrated Administration and Control System, the calculation of aid to which the beneficiary is entitled is based on the concept of crop group. Under the re-distributive payment as defined by Article 41 of Regulation (EU) No 1307/2013, Member States may decide to graduate the number of hectares to be paid differently. Introducing a specific crop group for the redistributive payment would contribute to simplifying the application made by the beneficiary in case of graduation of the redistributive payment, as he would not have to indicate which agricultural parcel belongs to which part of the graduated number of hectares. For consistency purposes, it appears appropriate to introduce the same provision for the young farmers scheme and the voluntary coupled schemes.

[To clarify the provisions as regards the payments to areas facing natural or other specific constraints where degressive aid amounts are used] Article 17 (1)(b) of Commission Delegated Regulation No (EU) 640/2014 stipulates that for area-related aid schemes or support measures other than the Basic Payment Scheme or the Single Area Payment Scheme, crop groups shall be distinguished as a group for each of the areas declared for which a different rate of aid or support is applicable. Article 31(4) of Regulation (EU) No 1305/2013 specifies that for the payments to areas facing natural or other specific constraints, except in some specific cases, Member States shall provide for degressivity of payments above a threshold level of area per holding, to be defined in the programme. For the purpose of this payment, it should be clarified, as it used to be in Article 16(2) of the repealed Regulation 65/2011, that where degressive aid amounts are used, the average of these amounts in relation to the respective areas declared shall be taken into account.

[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.
[Status of animals that have been moved to another location than declared in the application during the period determined by the Member State] Article 21 of Regulation (EU) No 809/2014 provides that, where applicable, the beneficiary should undertake to keep animals on his holding during a period determined by the Member State and indicate, in the livestock aid application or payment claims under animal-related support measures, the location or locations where the animals will be held during that period. It is appropriate to lay down provisions to cover cases where animals which, during that period, have been moved to another place than the ones notified can be considered as determined, provided that they can immediately be localized within the holding during the on-the-spot checks.

[Non-compliances related to incorrect entries in the register, the animal passports and/or the computerised database for bovine animals] Article 53(4) of Regulation (EU) No 639/2014 provides that Member States should define as an eligibility condition the requirement to identify and register bovine animals according to the rules in Regulation (EC) No 1760/2000. According to Regulation (EC) No 1760/2000, the system for the identification and registration of bovines shall comprise inter alia computerised databases, animal passports and individual registers kept on each holding. The purpose of designating these provisions on identification and registration of bovine animals as a systematic eligibility condition is to ensure an unambiguous identification of animals eligible for aid or support. In this regard, it should be clarified in Article 30(4)(c) of Commission Delegated Regulation (EU) No 640/2014 provides that where non-compliances found relate to incorrect entries in the register, or the animal passports and/or the computerized database for bovine animals of elements such as for instance gender, race, colour or date are only considered as non-compliances after the first finding if the information is essential for the assessment of the animals' eligibility under the concerned aid scheme or support measure. Otherwise, the animal concerned should 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. It should be clarified that where non-compliances found relate also to incorrect entries in the computerised database, 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.

[Administrative penalties for animals other than bovine, ovine and caprine] The degree of administrative penalties to be applied for animal aid schemes and animal-related support measures as laid down in Article 31 of the Commission Delegated Regulation (EU) No 640/2014 is linked to a threshold of three animals found with non-compliances. In the case of short-production cycle species, with a high turnover of animals, this threshold might not lead to an equivalent level of penalties as for species such as bovines, ovines and caprines. It is therefore appropriate that for these short-production cycle species, the Member States establish an adapted threshold that is in substance equivalent to this defined number of three animals. The system of administrative penalties itself remains unchanged.

[To clarify the rules applying for calculating administrative penalties in case where a non-compliance with I&R is found and it is remedied no later than the first day of the retention period or the date chosen by the MS] To ensure that data used for the purpose of the claimless system as referred to in Article 21(4) of Commission Implementing Regulation (EU) No 809/2014 are reliable, potentially eligible animals for aid or support should be subject to on-the-spot checks. Administrative penalties as laid down in Article 31 of Commission Delegated Regulation (EU) No 640/2014 should apply in case non-compliances are found. Without prejudice to other eligibility
conditions, such potentially eligible animals will nevertheless still be deemed eligible for
payment provided that non-compliances as regards identification and registration
requirements are remedied no later than the first day of the retention period or no later
than the date chosen by the Member State, in accordance with Article 53(4) of
Commission Implementing Regulation (EU) No 639/2014. It should therefore be
clarified in Article 31(3)(e) that potentially eligible animals found not to be correctly
identified or registered shall count as animals found with non-compliances, irrespectively
of their status as regards the fulfilment of the eligibility requirements as laid down in

[Taking into account cases of Member States in which the calculation of aid or
support is based on the number of eligible/ ineligible days the animals spent on the
holding for the calculation of administrative penalties: Article 31 of Regulation (EU)
No 640/2014 lays down the methodology for the calculation of the administrative
penalties in respect of declared animals under the animal aid schemes or support
measures. This methodology is based on the number of individual animals found with
non-compliances, regardless of the number of days these animals stayed on the holding.
Some Member States have set up a system in which the calculation of the aid or support
is not based only on the number of individual animals that meet the eligibility criteria,
but also on the number of days on the holding for which animals meet the eligibility
criteria. For the sake of proportionality, these Member States should adjust their
methodology for the calculation of the administrative penalties accordingly.

[Application of "regret clause" for other animals covered by a computerised
database] Regulation (EC) No 21/20045 provides that the Member States shall establish
a system for the identification and registration of ovine and caprine animals which shall
comprise a central register or a computer database. It is therefore appropriate to extend to
these animal species the scope of Article 34 of the Commission Delegated Regulation
(EU) No 640/2014, which stipulates that administrative penalties shall not apply with
regard to the part of the aid application or payment claim for which the beneficiary
informs the competent authority in writing that the aid application or payment claim
contains errors and omissions in relation to entries in the computerised database for
bovine animals since it was lodged.

[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 65/20116 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 relating to 2014 and earlier years.

[RD issue on technical assistance] For the sake of clarity, it is appropriate to state in
Article 43 of Commission Delegated Regulation (EU) No 640/2014 that with regard to

5 COUNCIL REGULATION (EC) No 21/2004 of 17 December 2003 establishing a system for the
identification and registration of ovine and caprine animals and amending Regulation (EC) No

implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control
procedures as well as cross-compliance in respect of rural development support measures (OJ L 25,
28.1.2011, p. 8).
the payment claims for expenditures relating to technical assistance as referred to in Article 66(2) of Council Regulation (EC) No 1698/2005\(^7\) made in relation to the year 2015, Regulations (EC) No 1122/2009 and (EU) No 65/2011 should continue to apply.

[Cleaning issues] Certain provisions of Commission Delegated Regulation (EU) No 640/2014 referring to the Commission's implementing powers should be updated and reference to the relevant implementing act should be made.

Article 7

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.
Derogation for the final date for submission and notification

By way of derogation from Article 5(1) of Council Regulation (EEC, Euratom) No 1182/71, where the final date for the submission of an aid application, application for support, payment claim or other declarations or any supporting documents or contracts, or the final date for amendments to the single application or to the payment claim, is a public holiday, a Saturday or a Sunday, it shall be deemed to fall on the first following working day.

The first paragraph shall also apply to the latest possible date for late submission referred to in the third subparagraph of Article 13(1) and to the latest possible date for late submission referred to in the second subparagraph of Article 14 for the submission of applications by beneficiaries for allocation or increase of payment entitlements.

The first paragraph shall also apply to the latest possible date for notification of the results of the preliminary checks to the beneficiary referred to in Article 11(4) of Commission Implementing Regulation (EU) No 809/2014. However, where the latest possible dates for late submission referred to in the second subparagraph are already deemed to fall on the first following working day, the latest possible date for notification of the results of these preliminary checks shall be deemed to fall on the second following working day.

CHAPTER IV

CALCULATION OF AID AND ADMINISTRATIVE PENALTIES RELATING TO DIRECT PAYMENTS SCHEMES AND RURAL DEVELOPMENT MEASURES IN THE SCOPE OF THE INTEGRATED SYSTEM

SECTION 1

General rules

Article 15a

Maximum limit or ceiling

Where an individual limit or individual ceiling is applicable under a scheme or support measure and the area and/or the number of animals declared by the beneficiary exceeds the individual limit or individual ceiling, the area declared and/or the number of animals declared corresponding thereto shall be adjusted to the limit or ceiling set for the beneficiary concerned.

Article 17

General principles

1. For the purposes of this Section, the following crop groups shall be distinguished as appropriate:

   (a) areas declared for the purposes of activation of payment entitlements under the basic payment scheme or for the purpose of being granted the single area payment;

   (b) areas entitled to the re-distributive payment;

   (c) areas entitled to the young farmers scheme;
(d) areas declared per voluntary coupled scheme;

(b) a group for each of the areas declared for the purpose of any other area-related aid scheme or support measure, for which a different rate of aid or support is applicable. However, for the purpose of the payments to areas facing natural or other specific constraints as referred to in Article 31 of Regulation (EU) No 1305/2013, where degressive aid amounts are used, the average of these amounts in relation to the respective areas declared shall be taken into account;

(e) areas declared under the heading ‘other uses’.

2. Where the same area serves as the basis for an aid application and/or payment claim under more than one area-related aid scheme or support measure, that area shall be taken into account separately for each of those aid schemes or support measures.

Article 19

Administrative penalties in cases of over-declaration

3. If the amount calculated in accordance with paragraphs 1 and 2 cannot be fully offset in the course of the three calendar years following the calendar year of the finding, in accordance with Article 28 of Commission Implementing Regulation (EU) No 908/2014 the rules laid down by the Commission on the basis of Article 57(2) of Regulation (EU) No 1306/2013, the outstanding balance shall be cancelled.

Article 19a

Administrative penalties in cases of over-declaration of areas for the basic payment scheme, the single area payment scheme, the re-distributive payment, the young farmers scheme, the payment for areas with natural constraints, the small farmers scheme, Natura 2000 and Water Framework Directive payments and payments to areas facing natural or other specific constraints

1. If, in respect of a crop group as referred to in Article 17(1), the area declared exceeds the area determined in accordance with Article 18, the aid shall be calculated on the basis of the area determined reduced by 1.5 times the difference found if that difference is more than either 3% of the area determined or 2 hectares.

The administrative penalty shall not exceed 100% of the amounts based on the area declared.

2. Where the beneficiary as from claim year 2016 did not yet receive an administrative penalty for over-declaration of areas for that given aid scheme or support measure the administrative penalty referred to in paragraph 1 shall be reduced by 50% if the difference between the area declared and the area determined does not exceed 10% of the area determined.

3. Where a beneficiary who has benefitted from a reduced administrative penalty in accordance with paragraph 2 is facing again an administrative penalty for that given aid scheme or support measure in the following claim year, the administrative penalty calculated in accordance with paragraph 1 shall be supplemented by the outstanding amount of the reduced penalty in accordance with paragraph 2.

4. If the amount calculated in accordance with paragraphs 1, 2 and 3 cannot be fully offset in the course of the three calendar years following the calendar year of the finding, in
accordance with Article 28 of Commission Implementing Regulation (EU) No 908/2014, the outstanding balance shall be cancelled.

Article 21

Administrative penalties, other than over-declarations of areas, concerning the payments for young farmers under Chapter V of Title III of Regulation (EU) No 1307/2013

2. If the amount of the undue payments and the administrative penalties referred to in paragraph 1 cannot be fully off-set in the course of the three calendar years following the calendar year of the finding, in accordance with Article 28 of Commission Implementing Regulation (EU) No 908/2014 the rules laid down by the Commission on the basis of Article 57(2) of Regulation (EU) No 1306/2013, the outstanding balance shall be cancelled.

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, 3 and 3a for the subsequent years shall be the total area of arable land determined multiplied by the applicable ratio of difference.

Article 28

Administrative penalties as regards the greening payment

4. If the amount of the administrative penalties calculated in accordance with paragraphs 1, 2 and 3 cannot be fully off-set in the course of the three calendar years following the calendar year of the finding, in accordance with Article 28 of Commission Implementing Regulation (EU) No 908/2014 the rules laid down by the Commission on the basis of Article 57(2) of Regulation (EU) No 1306/2013, the outstanding balance shall be cancelled.

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.

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.

3a. Where animals have been moved to other locations than notified in accordance with point (d) of the first paragraph of Article 21 of Regulation (EU) No 809/2014 during the period determined by the Member State referred to under the same point, they shall be regarded as determined if an immediate localisation of these animals within the holding was made during the on-the-spot check.

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, the animal passports and/or the computerized database for animals, but are not of relevance for the verification of the respect of the eligibility conditions others than the one referred to in Article 53(4) of Regulation (EU) No 639/2014 under the considered aid scheme or support measure, 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 31**

*Administrative penalties in respect of declared animals under the animal aid schemes or animal-related support measures*

1. Where, in respect of an aid application under an animal aid scheme or in respect of a payment claim under an animal-related support measure or type of operation, a difference is found between the number of animals declared and that determined in accordance with Article 30(3), the total amount of aid or support to which the beneficiary is entitled under that aid scheme or support measure or type of operation for the claim year concerned shall be reduced by the percentage to be established in accordance with paragraph 3 of this Article, if no more than three animals are found with non-compliances.

2. If more than three animals are found with non-compliances the total amount of aid or support to which the beneficiary is entitled under the aid scheme or support measure or type of operation referred to in paragraph 1 for the claim year concerned shall be reduced by:

   (a) the percentage to be established in accordance with paragraph 3, if it is not more than 10 %;

   (b) twice the percentage to be established in accordance with paragraph 3, if it is more than 10 % but not more than 20 %.

If the percentage established in accordance with paragraph 3 is more than 20 %, no aid or support to which the beneficiary would have been entitled pursuant to Article 30(3) shall be granted under the aid scheme or support measure or type of operation for the claim year concerned.

If the percentage established in accordance with paragraph 3 is more than 50 %, no aid or support to which the beneficiary would have been entitled pursuant to Article 30(3) shall be granted under the aid scheme or support measure or type of operation for the claim year concerned. Moreover, the beneficiary shall be subject to an additional penalty of an amount equal to the amount corresponding to the difference between the number of animals declared and the number of animals determined in accordance with Article 30(3).

If that amount cannot be fully off-set in the course of the three calendar years following the calendar year of the finding, in accordance with Article 28 of Commission Implementing Regulation (EU) No 908/2014 the rules laid down by the Commission on the basis of Article 57(2) of Regulation (EU) No 1306/2013, the outstanding balance shall be cancelled.

For other species than those referred to in paragraphs 4 and 5 of Article 30 of this Regulation, Member States may decide to determine a number of animals different from the threshold established in paragraphs 1 and 2. When determining this number, Member States, shall ensure that it is equivalent in substance to the mentioned threshold, by inter alia taking into account the livestock units and/or the amount of aid or support granted. This number shall be communicated to the Commission and to other Member States.

3. In order to establish the percentages referred to in paragraphs 1 and 2, the number of animals declared under an animal aid scheme or animal-related support measure or type of operation and found with non-compliances shall be divided by the number of animals determined for that animal aid scheme or support measure in respect of the aid application or payment claim for the claim year concerned.
For the purpose of this paragraph, where a Member State makes 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, potentially eligible animals found not to be correctly identified or registered in the system for identification and registration for animals shall count as animals found with non-compliances irrespectively of their status as regards the fulfilment of the eligibility requirements as laid down in Article 53(4) of Commission Implementing Regulation (EU) No 639/2014.

4. When, in the Member States, the calculation of the total amount of aid or support to which the beneficiary is entitled under an aid scheme or support measure for the claim year concerned is based on the number of days the animals fulfilling the eligibility conditions are present on the holding, the calculation of the number of animals found with non-compliances as referred to in paragraphs 1 and 2 shall also be based on the number of days these animals are present on the holding.

For potentially eligible animals as referred to in the second subparagraph of paragraph 3, the calculation of the number of animals found with non-compliances shall be based on the number of days in which the animals may qualify for the payment or support.

Article 34

Amendments and adjustments of entries in the computerised database for bovine animals

In respect of declared bovine animals, Article 15 shall apply to errors and omissions in relation to entries in the computerised database for bovine animals made from the moment the aid application or payment claim is submitted.

Article 35

Non-compliance with the eligibility criteria other than the size of area or number of animals, commitments or other obligations

1. The support claimed shall be refused or withdrawn in full where the eligibility criteria are not complied with.

2. The support claimed shall be refused or be withdrawn in full or in part where the following commitments or other obligations are not complied with:

(a) commitments established in the rural development programme; or

(b) where relevant, other obligations of the operation established by Union or national law or established in the rural development programme, in particular public procurement, State aid and other obligatory standards and requirements.

3. When deciding on the rate of refusal or withdrawal of support following the non-compliance with the commitments or other obligations referred to in paragraph 2, the Member State shall take account of the severity, extent, duration and reoccurrence of the non-compliance related to conditions for support referred to in paragraph 2.

The severity of the non-compliance shall depend, in particular, on the importance of the consequences of the non-compliance, taking into account the objectives of the commitments or obligations that were not met.
The extent of the non-compliance shall depend, in particular, on its effect on the operation as a whole.

The duration shall depend, in particular, on the length of time for which the effect lasts or the possibility of terminating this effect by reasonable means.

The reoccurrence shall depend on whether similar non-compliances have been found earlier during the last four years or during the whole programming period 2014-2020 in case of the same beneficiary and the same measure or type of operation or in the case of the programming period 2007-2013, the similar measure.

4. In case of multiannual commitments or payments, withdrawals based on the criteria referred to in paragraph 3 shall also apply to the amounts already paid in the previous years for the same operation.

5. In case the overall assessment based on the criteria referred to in paragraph 3 leads to establishing a serious non-compliance, the support shall be refused or withdrawn in full. Furthermore, the beneficiary shall be excluded from the same measure or type of operation for the calendar year of the finding and for the following calendar year.

6. Where it is established that the beneficiary provided false evidence for the purpose of receiving the support or failed to provide the necessary information due to negligence, the support shall be refused or withdrawn in full. Furthermore, the beneficiary shall be excluded from the same measure or type of operation for the calendar year of finding and for the following calendar year.

7. If the withdrawals and administrative penalties referred to in paragraphs 1, 2, 4, 5 and 6 cannot be fully off-set in the course of the three calendar years following the calendar year of the finding, in accordance with Article 28 of Commission Implementing Regulation (EU) No 908/2014 the rules laid down by the Commission on the basis of Article 57(2) of Regulation (EU) No 1306/2013, the outstanding balance shall be cancelled.

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 and application for support in relation relating to the year 2014 and earlier years and payment claims relating to the year 2015 under Article 66(2) of Regulation (EC) No 1698/2005; 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.