



EUROPEAN
COMMISSION

Brussels, XXX
DS/CC/2013/1/ver1 TC
[...] (2013) XXX

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

DRAFT DOCUMENT

"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"

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 Articles 93(4), 101(1).

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 held on XX XXXXXXXX...2013 were organised 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.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

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

- 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(45), 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 clarify what is a standard and when a non-compliance is considered 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. Administrative penalties should go as far as the total exclusion from all the payments listed in Article 92 of Reg. XXXX for a specified period. (ex recital 75 amended) Back up Art. 3.1 and 4

¹ OJ L , , p. .

- (4) With regard to cross-compliance obligations, apart from grading reductions or exclusions 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 4
- (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 (early warning system) or as foreseen in Article 97(3) (de minimis) of the same Regulation is applied by a Member State, requirements regarding the remediation of the relevant non-compliance should be established. (ex 91 amended) Back up Articles 3.2 and 3.3 early warning
- ~~(4)~~(6) As regards in particular to the early warning system, the calculation and application of administrative penalties should take into account both the retroactivity of the penalty and the reoccurrence of the non-compliance in question. Administrative penalties should not be applied later than three consecutive calendar years from the year of the finding. Back up Article 3.3 early warning

HAS ADOPTED THIS REGULATION:

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) 1122/2009 has decreased by more than 5 % - is decreasing in 2014, the Member State concerned shall, at national or regional level, 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.

The prior authorization shall apply in accordance to the rules provided for the Article 4 (1) of the Regulation (EC) N° 1122/2009, only during the year 2015.

2. Where it is established that the obligation referred ratio referred to in Article 3(23) of Regulation (EC) 1122/2009 has decreased by more than 10 % 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.

The obligation of reconversion shall apply in accordance to the rules provided for the Article 4 (2) of the Regulation (EC) N° 1122/2009, only during the year 2015.

3. Member states shall carry out checks in 2015 and 2016 to ensure that obligations established pursuant to paragraph 1 and 2 are complied with.

TITLE II

CALCULATION AND APPLICATION OF ADMINISTRATIVE PENALTIES

Article 2 (ex 47 amended, ex 70.4, ex 2 def. 34)

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;

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 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 a~~Art.-70.4)
6. As regards this part of this Regulation, 'standards' mean any of the standards as defined by the Member States in accordance with Article 94 of Regulation (EU) No XXX/XXXX as well as the obligations in relation to permanent pasture as laid down in Article 93(3) of Regulation (EU) No XXX/XXXX [HZR]. (ex Art. 2 definition 34).

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 as referred to in Article 9(7) of Regulation (EU) No XXX (IA) (ex Article 70(8)).

However, the paying agency may, on the basis of the assessment provided by the competent control authority in the evaluation part of the control report in accordance with Article 8(1)(c) of Regulation (EU) No XXX IA (ex Article 54(1)(c)), decide either to reduce that percentage to 1 % or to increase it to 5 % of that total amount or, in the cases referred to in the second subparagraph of Article 8(1)(c) of Regulation (EU) No XXX IA (ex Article 54(1)(c)), 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, after a subsequent check, it is established that 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 starting from the year of the finding.

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 time limit set in the first subparagraph of this paragraph shall not be considered as a non-compliance for the purpose of establishing reoccurrence in accordance with paragraph 4. (ex Article 71.5)

As regards this part of this Regulation 'year of the finding' relates to the date when the check (administrative or on-the-spot) was carried out.

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

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 again, it shall be considered that he has acted intentionally within the meaning of Article 45 of this Regulation and Article 11 of Regulation (EU) No xx (IA). (ex Article 72)

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 9(7) of Regulation No XXX (IA) (ex Article 70(8)) shall, as a general rule, be 20 % of that total amount.

However, the paying agency may, on the basis of the assessment provided by the competent control authority in the evaluation part of the control report in accordance with Article 8(1)(c) of Regulation EU No XXX (IA) (ex Article 54(1)(c)), 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)

Administrative penalties in particular cases

Without prejudice to Articles 3 and 4 of this Regulation, where a case of non-compliance also constitutes an irregularity Article XX of Regulation (EU) No XXX IA (ex Article 77) applies.

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 all Member States.~~

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

[Position]