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COMMISSION DELEGATED REGULATION (EU) .../...

of 15.2.2017

amending Delegated Regulation (EU) No 639/2014 as regards the control measures relating to the cultivation of hemp, certain provisions on the greening payment, the payment for young farmers in control of a legal person, the calculation of the per unit amount in the framework of voluntary coupled support, the fractions of payment entitlements and certain notification requirements relating to the single area payment scheme and the voluntary coupled support, and amending Annex X to Regulation (EU) No 1307/2013 of the European Parliament and of the Council

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) No 1307/2013 ('basic regulation' hereafter) establishes rules for direct payments to farmers under support schemes within the framework of the common agricultural policy (CAP). The regulation empowers the Commission to adopt delegated acts amending or supplementing a number of non-essential elements of the regulation. This was done in Commission Delegated Regulation (EU) No 639/2014 ('delegated regulation' hereafter).

The present act covers several distinct amendments (Young Farmer Payment, Voluntary Coupled Support, Single Area Payment Scheme, Basic Payment Scheme, Payment for agricultural practices beneficial for the climate and the environment also referred to as 'Greening', eligibility of areas under hemp) of the respective provisions of the delegated regulation. The amendments to the greening elements of the delegated regulation follow a targeted review of the implementation of the greening after the first year of application. The remaining amendments are rather technical, aiming at simplifying or clarifying existing rules.

1.1. Greening

Green direct payments account for 30 per cent of Union Member States' annual ceilings for direct payments. They take the form of an annual payment per eligible hectare conditional on farmers respecting three simple, generalised, non-contractual and annual actions that are beneficial for the environment and the climate. These 'standard greening practices' are: ecological focus area (EFA) covering 5 % of arable area; crop diversification and maintenance of permanent grassland including a protection of environmentally sensitive permanent grassland. In certain cases, farmers may apply equivalent practices, also defined in the basic regulation, as alternatives to the standard practices. The delegated regulation specifies and supplements certain technical parameters, definitions and methods concerning greening practices.

When the delegated regulation was adopted, the Commission committed itself to review one feature of the green direct payment scheme — ecological focus areas (EFA) — in the light of the experience gained after the first year of its application and looking into administrative burden arising from the new rules; the impact on the level playing field for farmers of implementation by Member States; and the impact on production potential¹. The review, conducted in the framework of simplifying the CAP, took a broader view of other elements of greening with a double objective of facilitating the implementation of greening by farmers and public administrations and increasing its acceptance while improving the scheme's environmental performance. The Commission Staff Working Document of 22 June 2016² (CSWD) assessed how the system was applied in the first year, identified certain weaknesses that prevent full exploitation of its potential, and considered possible ways forward to remedy them. These included: better specification or clarification of what is required from farmers, eliminating certain technical requirements which proved burdensome without providing environmental value added, providing more flexibility for farmers

¹ Commission declaration of 2 April 2014; http://ec.europa.eu/agriculture/newsroom/161_en.htm

² SWD(2016) 218 final

or alternative solutions where this would increase the environmental and climate benefit of greening and a certain harmonisation of requirements and conditions.

1.2. Young Farmer Payment

The aim is to ensure clarity as to the fact that legal and natural persons applying for the young farmer payment should be treated equally.

1.3. Single Area Payment Scheme

The aim is to simplify the notification requirements of Member States.

1.4. Voluntary Coupled Support

The aim of the amendment is twofold: on one hand to simplify the notification requirements of Member States, on the other hand to clarify the rules applicable to the calculation of the 'per unit amount' of support.

1.5. Fraction of payment entitlements

The aim is to clarify that for the purpose of Article 31(1)(b) of the basic regulation a whole payment entitlement and a fraction of payment entitlement are treated equally as regards their activation on an area of a lower size than the corresponding payment entitlement or fraction of payment entitlement.

1.6. Hemp

The aim is to transfer the content of Article 45 and the Annex of Commission Implementing Regulation (EU) No 809/2014 to the delegated regulation since it rather falls under the empowerment in Article 35(3) of the basic regulation.

The aim is also to adapt those provisions to take into account the special characteristics of the hemp cultivated as catch crop.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The stakeholder consultation for the targeted review of the greening legislation began in early 2015 and continued to mid-April 2016. The consultation approach involved using available information from the CAP simplification exercise and existing discussion fora with relevant stakeholders on the one hand and activities specifically designed to fit the purpose of the targeted review of greening secondary legislation on the other. An important source of information was a set of contributions prepared by other Union institutions and Member State administrations in the context of discussions on the CAP simplification. Annex 5 to the above mentioned CSWD details these consultation activities and summarises the input received from a broad spectrum of stakeholders. The overview of the results of an online public consultation that the Commission ran from 15 December 2015 to 8 March 2016 is also available on Europa website³.

Consultation involving Member States' greening experts continued in expert group format on the basis of a draft delegated regulation (containing 'greening' elements) presented by Commission services. Three meetings have taken place: on 6 and 18 July and on 25 August 2016. Commission services clarified a number of issues and replied to questions posed by experts. The draft was then refined in light of experts' observations made in the meetings or submitted in writing.

³ 'Your voice in Europe' website: http://ec.europa.eu/yourvoice/index_en.htm

In parallel, as regards the issues other than greening elements and other than those related to hemp, the draft was presented to the Member States in the framework of the expert group for direct payments meetings held on 29 June 2016 and on 25 August 2016. The draft was welcomed by Member States, who either raised no further substantial comments or raised comments which could be addressed in the final version.

For the amendments related to the cultivation of hemp, the expert group for direct payments was consulted on 28 September 2016. The draft was welcomed by Member States, who raised no further substantial comments.

The combined version of all the amendments was presented to the expert group for direct payments on 21 October 2016.

When convening the Expert Group meetings, the draft versions of the present act (separately the greening and the non-greening related parts) were also transmitted to the European Parliament and to the Council.

On 15 December 2016 the draft delegated regulation was posted on the Commission's Better Regulation portal for a four-week feedback period. Comments were received from 205 respondents, almost half from individuals and the remainder from farmers' organisations, agricultural companies, environmental and consumer NGOs and academics. Almost all input focused on greening. Some comments on greening were also posted for a related draft delegated regulation⁴.

The feedback focused on the ban on the use of plant protection products (PPPs) on several EFAs, in particular nitrogen-fixing crops (NFCs). There were several responses from farmers' organisations and agricultural businesses questioning whether it would be technically feasible or economically viable to cultivate NFCs without PPPs. They suggested that this approach would in fact lead to a reduction in EU production of leguminous crops – undermining the goal of increasing production that they saw as a reasoning behind the EFA. The reduction in production could potentially threaten the EU's independence in production of these crops, they warned. Other responses raised concerns over pest control on land lying fallow if a ban on PPPs were introduced, while others took issue with the wording of the draft regulations on the question of undersowing, noting it could inadvertently have the effect of prolonging the ban on PPPs into the next cropping year. This, they argued, would not only be inconsistent with usual farming practices but could also prolong and complicate the control procedures and thus potentially delay payments to farmers.

A different set of responses, mainly from environmental, consumer and apiculture organisations, showed clear support for the ban. They considered it vital for protecting biodiversity within the farming sector, and for encouraging pollination, soil fertility and natural pest control. The ban, they argued, was the only way to ensure the greening ambition could be met; without a ban, the whole credibility of the greening measures would be undermined. This was supported by several responses that also underlined that the ban would concern only a limited agricultural area and that in any case greening was not meant to be about supporting production.

⁴ Feedback on COMMISSION DELEGATED REGULATION (EU) .../... 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 (as of 12 January 2017)

There was no common position among farmers' organisations with regard to the replacement of the deadline for sowing catch crops with a mandatory retention period. While many saw the change as positive, some thought it would complicate the sowing of winter crops.

There were very few responses on other aspects of the proposal, although several positive developments were highlighted, such as the proposed changes to definition of the composition of NFCs or the streamlining of various strips of land that could be considered as EFA. There was also positive feedback on the proposal to extend coverage to other adjacent EFA features, to specify the period of time in which land should lie fallow and the clarifications of the meaning of agricultural production. There was also some disappointment expressed that the changes did not go far enough; some wanted lighter controls and sanctions while others wanted greater clarity on the permanent grassland obligation.

In response to this feedback, the length of the ban on PPPs for undersowing is now clearly specified (paragraph 10c). There is also now the option to align it with the period applicable for catch crops and green cover sown with mixtures in order to ensure that it remains consistent with normal farming practices, provide legal certainty and avoid administrative difficulties for farmers and national authorities.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

3.1. Greening

3.1.1. Crop diversification

Article 40 of the delegated regulation specifies how to calculate shares of different crops for the purpose of meeting the crop diversification requirement and how to consider crops composed of different species (mixes). The requirement has to be met by farmers in the so-called 'crop diversification period' established by Member States. It is proposed to add an option for Member States to differentiate this crop diversification period at (sub-) regional level to take into account diverse climatic conditions within their territory. In addition, to simplify the declaration of crops for farmers, there should be a possibility for farmers to declare crops grown on small area as a mixed (single) crop.

3.1.2. Ecological Focus Area

Article 45(2) of the delegated regulation specifies that there shall be no agricultural production on land lying fallow for the purpose of counting it as EFA. It is proposed to state explicitly the duration of this restriction while taking into account the need to allow farmers resuming main crops before the end of year. This amendment reflects the interpretation that had already been provided to Member States.

In Article 45(4), (5) and (7) of the delegated regulation which stipulate rules for several EFA types, changes are proposed to merge their definitions and/or align the associated conditions. Within the limits of the list set in the basic regulation, it is proposed to group various strips of land on the one hand and elements containing trees on the other. It will also be clarified how to calculate elements that exceed the maximum dimensions set in the same Article. Such changes should reduce the complexity that farmers encounter in distinguishing these EFA types and will also allow them to count as EFAs environmentally valuable features so far excluded due to their exceeding dimensions.

A new paragraph (5a) in Article 45 is proposed to clarify and specify the concept of 'adjacency' of EFA landscape features and to allow counting as EFAs further environmentally valuable elements connected to farmer's areas.

In Article 45(8) concerning areas with short rotation coppice, it is proposed to clarify that Member States shall establish requirements for the use of input (fertilisers or plant protection products) where any one of these inputs is not banned.

Further to the proposed changes to Article 45(9), the 1 October 'at the latest' deadline for sowing catch crops or green cover will be replaced by a mandatory minimum duration of these crops/green cover. It will be for Member States to establish concrete timeline applicable at national or sub-national level. The reasons are twofold: better environmental effectiveness and greater flexibility for Member States to consider seasonal weather conditions.

Changes to Article 45(10) will allow for the purpose of this EFA sowing mixtures of nitrogen-fixing crops with other crops on condition of predominance of the former. So far, only pure nitrogen-fixing crops are possible but this does not reflect certain traditional cultivation practices of the nitrogen-fixing crops that require their mixing with other crops. In addition, the requirement for Member States to set up rules on where these nitrogen-fixing crops qualifying as EFA may be grown should be removed. The requirement aimed to address the risk of potential nitrogen leaching, however proved to be overlapping with Member States rules implementing Union nitrate and water legislation. Instead, it is proposed to clarify that Member States may continue addressing the issue of potential nitrate leaching by setting relevant production methods.

Other modifications to Article 45(9) and (10) on catch crops/green cover and nitrogen-fixing crops, respectively, aim to align their treatment in the context of equivalent practices in order to ensure equal treatment of farmers applying standard and equivalent practices.

A new paragraph (10a) in Article 45 will clarify the meaning of the 'no-production' requirement applicable to certain EFA types in terms of what is required from farmers and how this restriction relates to rules under other CAP instruments.

By adding new paragraphs (10b) and (10c) to Article 45 it is proposed to ban the use of plant protection products on some EFAs. It is motivated by the need to improve the environmental effectiveness of greening and, in particular, to maximise EFA's biodiversity's effect.

The table in Annex X to the basic regulation listing EFA types and applicable weighting and conversion factors should be modified to reflect the changes introduced by the present act to provisions concerning EFA types. In addition, a new table is proposed stating explicitly weighting and conversion factors for practices equivalent to EFA. This is to ensure legal certainty and equal treatment of farmers applying standard and equivalent practices.

3.1.3. Notifications relating to greening

Article 65(1)(c) of the delegated regulation requires Member States to provide the Commission by 15 December each year, for the claim year concerned, with information concerning an uptake by farmers of greening obligations. The experience from the monitoring of implementation of greening indicates that to have a better picture of greening and hence also its environmental effect information concerning farmers exempted from greening under the Small Farmers Scheme, and the area of

permanent grassland in Natura 2000 is also necessary. Article 65(c) in points (ii) and (vi) should therefore be amended accordingly. The addition of point (e) of this provision is also proposed in order to collect information on crop-diversification periods set up by Member States.

3.1.4. Entry into force and transitional provisions

In Article 3(1) it is proposed to allow flexibility for the entry into force of the changes to the greening provisions in order to allow Member States make the necessary internal arrangements.

Furthermore, Article 3(2) proposes to collect information on changes made by Member States to their national legislation based on this proposed regulation.

3.2. Young Farmer Payment

Article 49(3)(b) of the delegated regulation stipulates that "the first submission of an application to the basic payment scheme or single area payment scheme referred to in Article 50(2)(a)" is to be read as "the first application for the payment for the young farmer Payment". While Article 49(3)(b) of the delegated regulation makes no reference to point (b) of Article 50(2) of the basic regulation, the latter provision makes a reference to "the application referred to in point (a)". This may lead to the understanding that the derogation in Article 49(3)(b) applies to the entire Article 50(2) of the basic regulation, namely that the young farmer in a legal person needs to also meet the age criterion in the year he applies for the Young Farmer Payment. Such an interpretation would lead to a differentiated treatment between legal and natural persons, whereby the age criterion needs to be complied within the year of first application to the BPS/SAPS.

It is proposed to add a new sub-paragraph to point (b) of Article 49(3) to clarify that the 'entry' age limit under point (b) of Article 50(2) of the basic regulation should be respected at the time the legal body with a young farmer in control applies for BPS/SAPS for the first time.

As the change only aims at clarifying the existing rules, it is appropriate that the amendment applies from the beginning of claim year 2015.

3.3. Single Area Payment Scheme

Article 64(5) of the delegated act requires Member States applying single area payment scheme to notify the Commission by 1 September each year, for the claim year concerned, the total number of hectares declared by farmers under that scheme.

This information is available to the Commission also via the CATS⁵ database and due to later notification deadline CATS data are more reliable, therefore Article 64(5) of the delegated act can be repealed. The repeal should apply for notifications for claim year 2016 and the following years.

⁵ Article 9 of Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance (OJ L 227, 31.7.2014, p. 69).

3.4. Voluntary Coupled Support

3.4.1. Annual report

Article 67(2) of the delegated regulation stipulates that, for each coupled support measure, the Member States shall notify the Commission of the total number of beneficiaries, the amount of the payments granted as well as the total area or total number of animals for which the support was paid.

Based upon Article 67(1) of the basic regulation, with regard to requested notifications, the Commission shall take into account the data needs as well as synergies between potential data sources.

The data need in accordance with Article 67(2) of the delegated regulation can be also covered from other data sources:

On one hand, the quantitative elements of the annual report (i.e. the total number of beneficiaries and the total area or total number of animals determined for which the support will be paid) are also collected for audit purposes via Statel/eDamis and available via CATS. On the other hand, though only from claim year 2016, the financial elements of the annual report (i.e. the amount of the payments granted per measure) will also be available from the Member States' financial declarations via AGREX⁶.

Therefore, in view of simplification of the notification requirements, Article 67(2) of the delegated regulation can be repealed as from claim year 2016 (annual report due by 15 September 2017) with no risk as regards the monitoring of the implementation by Member States.

3.4.2. Calculation of the 'per unit amount'

In accordance with the second sub-paragraph of Article 53(2) of the delegated regulation, the per unit amount of support results from the ratio between the financial envelope allocated to a measure and, either the applicable quantitative limit, or the number of hectares/animals eligible for the support in the year in question. These alternatives leave substantial leeway for the Member States for calculating the per unit amount of support. However, it could be further clarified in this provision that, in line with the policy intention and in order to potentially improve the efficiency of the VCS measures, the Member States may also decide to apply a per unit amount included within the range defined by the two values above when the number of eligible hectares/animals is lower than the applicable quantitative limit.

3.5. Fractions of payment entitlements

It is appropriate to specify the rule of Article 24(2) of the delegated regulation providing that, for the purpose of Article 31(1)(b) of the basic regulation, either a payment entitlement or a fraction of payment entitlement activated on an area of a lower size than the corresponding payment entitlement or fraction of payment entitlement are considered as fully activated whilst giving right to a payment

⁶ Article 10 of Commission Implementing Regulation (EU) No 908/2014 of 6 August 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, rules on checks, securities and transparency (OJ L 255, 28.8.2014, p. 59).

calculated pro rata to the size of the area determined as defined in accordance with Article 2(1)(23) of Regulation (EU) No 640/2014.

3.6. Hemp

It is appropriate to transfer the content of Article 45 and Annex of Commission Implementing Regulation (EU) No 809/2014 to the delegated regulation since it rather falls under the empowerment in Article 35(3) of the basic regulation. At the same time, some adaptations are needed to take into account the characteristics of the hemp cultivated as catch crop.

4. BUDGETARY IMPLICATIONS

4.1. Greening

None

4.2. Young Farmer Payment

None

4.3. Single Area Payment Scheme

None

4.4. Voluntary Coupled Support

None

4.5. Fractions of payment entitlements

None

4.6. Hemp

None

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amending Delegated Regulation (EU) No 639/2014 as regards the control measures relating to the cultivation of hemp, certain provisions on the greening payment, the payment for young farmers in control of a legal person, the calculation of the per unit amount in the framework of voluntary coupled support, the fractions of payment entitlements and certain notification requirements relating to the single area payment scheme and the voluntary coupled support, and amending Annex X to Regulation (EU) No 1307/2013 of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

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

Having regard to 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 73/2009⁷, and in particular Article 35(2) and (3), Articles 44(5)(b) and 46(9)(a) and (c), Article 50(11), Article 52(9)(a) and Article 67(1) and (2)(a) thereof,

Whereas:

- (1) According to Article 35(3) of Regulation (EU) No 1307/2013, the Commission is empowered to adopt delegated acts making the granting of payments conditional upon the use of certified seeds of certain hemp varieties and laying down the procedure for the determination of hemp varieties and the verification of their tetrahydrocannabinol content (THC content) referred to in Article 32(6) of that Regulation. At present, Article 9 of Commission Delegated Regulation (EU) No 639/2014⁸ only provides for the obligation to use seed of the varieties listed in the 'Common Catalogue of Varieties of Agricultural Plant Species' and to use seed certified in accordance with Council Directive 2002/57/EC⁹. The rules for the determination of hemp varieties and the verification of their THC content currently laid down in Article 45 of Commission Implementing Regulation (EU) No 809/2014¹⁰ and the Annex to that Regulation should be included in Article 9 of Delegated Regulation (EU) No 639/2014.
- (2) The rules for the determination of hemp varieties and the verification of the THC content are based on the assumption that hemp is cultivated as main crop, but they are

⁷ OJ L 347, 20.12.2013, p. 608.

⁸ Commission Delegated Regulation (EU) No 639/2014 of 11 March 2014 supplementing Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and amending Annex X to that Regulation (OJ L 181, 20.6.2014, p. 1).

⁹ Council Directive 2002/57/EC of 13 June 2002 on the marketing of seed of oil and fibre plants (OJ L 193, 20.7.2002, p. 74)

¹⁰ Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance (OJ L 227, 31.7.2014, p. 69).

not fully suitable for hemp cultivated as catch crop. As this latter cultivation method has proved to be appropriate for industrial hemp and compatible with environmental requirements, it is justified to adapt both provisions to take into account the characteristics of hemp cultivated as catch crop. In that context, it is also appropriate to provide a definition of hemp cultivated as catch crop.

- (3) Article 24 of Delegated Regulation (EU) No 639/2014 lays down requirements for the activation of payment entitlements. In order to avoid any diverging interpretation, it is appropriate to clarify that for the purposes of Article 31(1)(b) of Regulation (EU) No 1307/2013, also a fraction of a payment entitlement is considered as fully activated. However, it should be stated explicitly that the payment is calculated on the basis of the corresponding fraction of an eligible hectare.
- (4) Articles 38 to 48 of Delegated Regulation (EU) 639/2014 lay down rules supplementing the provisions on standard greening practices established by Regulation (EU) No 1307/2013. On the basis of the experience gained during the first year in which those practices were applied, it is necessary to amend certain aspects of those rules in order to simplify the implementation of the greening practices for the benefit of farmers and national administrations while maintaining or improving the environment and climate impact. In particular, the modifications should contribute to address the actions identified in the conclusions of the Mid-Term Review of the EU Biodiversity Strategy to 2020 and enable progress of the coverage of agricultural area by biodiversity related measures under the Common Agricultural Policy¹¹.
- (5) In the rules on the calculation of shares of different crops for crop diversification set out in Article 40 of Delegated Regulation (EU) No 639/2014, the crop diversification period is based on traditional cultivation practices in Member States. It is appropriate to allow Member States to fix different periods at regional or sub-regional level in order to take into account possible diverse climatic conditions within a territory of a Member State. In some specific situations where a significant variety of crops on a small area exists, it should be possible, in order to simplify the declaration of crops grown, to declare them as one mixed crop.
- (6) As regards land lying fallow, setting a period in Article 45(2) of Delegated Regulation (EU) No 639/2014 during which there should be no agricultural production is fundamental to ensure the environmental effectiveness of such land and to avoid any confusion with other areas such as grasslands. In order to take into account the different agro-climatic conditions across the Union, Member States should have the possibility to set such period to allow farmers to resume main crops before the end of the year. However, such period should not be shorter than six months in order to meet the objectives of environmental effectiveness and to avoid any confusion with other areas.
- (7) The distinction between different landscape features listed in Article 45(4) of Delegated Regulation (EU) No 639/2014 is a source of uncertainty for farmers when declaring ecological focus areas. In order to reduce this uncertainty, simplify the management of the scheme for Member States' authorities and address the complexity encountered by farmers when declaring ecological focus areas, hedges and wooded strips referred to in point (a) of that provision and trees in line referred to in point (c) of that provision should be grouped as one type of landscape features so that one

¹¹ COM(2015) 478 final, Report from the Commission to the European Parliament and the Council – The Mid Term review of the EU Biodiversity Strategy to 2020

single dimension limit applies to them. Moreover, for the same reasons, the areas referred to in Article 45(4)(d) of Delegated Regulation (EU) No 639/2014 should be grouped under field copses.

- (8) Furthermore, even if, as stated in recital 51 of Delegated Regulation (EU) No 639/2014, maximum dimensions of landscape features are needed to ensure that the area is predominantly agricultural, such dimension limits should not lead to the exclusion of features that exceed such dimensions but which are valuable for biodiversity. Therefore, the area which may be qualified as a landscape feature pursuant to Article 45(4) of Delegated Regulation (EU) No 639/2014 should be calculated up to the maximum dimension of the feature.
- (9) Given the high environmental benefit of riparian vegetation referred to in the fifth subparagraph of Article 45(4) and in Article 45(5) of Delegated Regulation (EU) No 639/2014, it is appropriate to set out that all riparian vegetation should be taken into account for the purpose of calculating the ecological focus areas.
- (10) For the same reasons as mentioned in recitals 7 and 8 in relation to Article 45(4) of Delegated Regulation (EU) No 639/2014, field margins, currently referred to in point (e) of that provision, should be merged with buffer strips in Article 45(5) of that Regulation and a single dimension limit should be set in relation to buffer strips and field margins. Such maximum dimension in relation to buffer strips and field margins should refer to the area which may be qualified as buffer strips and field margins pursuant to Article 45(5) of Delegated Regulation (EU) No 639/2014. In order to provide the maximum flexibility to farmers, the definition of buffer strips under GAEC 1, SMR 1 or SMR 10 as referred to in Annex II to Regulation (EU) No 1306/2013 and field margins protected under GAEC 7, SMR 2 or SMR 3 as referred to in that Annex, should be supplemented by other buffers strips and field margins, meaning any kind of strips not covered by these two categories under cross-compliance rules.
- (11) The second subparagraph of Article 46(2) of Regulation (EU) No 1307/2013 allows landscape features and buffer strips adjacent to arable land to be considered as ecological focus areas. In order to maximise the environmental benefit of landscape features and buffer strips referred to in Article 45(4) and (5) of Delegated Regulation (EU) No 639/2014 and encourage the protection and maintenance of additional elements, this provision should be supplemented with rules offering flexibility by taking into account other environmentally valuable elements which fulfil the definition of these ecological focus area types and which are not adjacent to the arable land of the holding. Therefore, where such buffer strip and field margin or landscape feature is adjacent to the ecological focus area directly adjacent to the arable land of a holding it should also be recognised as an ecological focus area.
- (12) For the same reasons as mentioned in recitals 7 and 8 in relation to Article 45(4) of Delegated Regulation (EU) No 639/2014, the maximum dimensions set in relation to strips of eligible hectares along forest edges referred to in Article 45(7) of that Regulation should refer to the area which may be qualified as such strips pursuant to that provision.
- (13) In light of the provisions of point (g) of the first subparagraph of Article 46(2) of Regulation (EU) No 1307/2013 it is appropriate to clarify that the establishment of the requirements as regards the use of mineral fertilisers and/or plant protection products is relevant only in case such input products are authorised.

- (14) The existing deadline for sowing of catch crops and green cover laid down in Article 45(9) of Delegated Regulation (EU) No 639/2014 does not always fit with the agronomic and climatic conditions. With a view to better achieving the environmental objectives of this ecological focus area type, it is appropriate to replace the deadline for sowing of catch crops and green cover with a minimum period of time during which areas under catch crops and green cover have to be in place. In order to provide the necessary flexibility to take into account seasonal weather conditions, Member States should be allowed to fix that period at the most appropriate geographical level. However, since the permanence of catch crops and green cover on the ground is a key factor in ensuring an effective take up of residual nitrate and coverage of soil while the area is not covered by the main crop, the minimum length of the period should be set at Union level. In order to be consistent with the interpretation provided on the definition of grasses or other herbaceous forage laid down in Article 4(1)(i) of Regulation (EU) No 1307/2013, undersowing leguminous crops in the main crop should also be possible. Furthermore, in order to ensure consistency between equivalent practices covered by commitments and certification schemes as referred to in Article 43(3)(a) and (b) of Regulation (EU) No 1307/2013, respectively, rules on qualifying catch crops or green cover as ecological focus areas should be aligned.
- (15) Even if, as a general rule only areas with nitrogen-fixing crops grown as pure species should be qualified as ecological focus areas, given that in traditional cultivation practices such crops are often mixed with other crops, it is appropriate to allow, under Article 45(10) of Delegated Regulation (EU) No 639/2014, that areas with mixtures may also be qualified as ecological focus areas provided that the predominance of the nitrogen-fixing crops in such mixtures is ensured. In addition, based on the experience with the application of the first subparagraph of Article 45(10) of Delegated Regulation (EU) No 639/2014 and in light of the implementation of Council Directive 91/676/EEC¹² and Directive 2000/60/EC of the European Parliament and of the Council¹³, it is superfluous to prescribe specific rules on the location of these nitrogen-fixing crops. Instead, and with a view to strengthening Member States efforts to address the risk of nitrogen leaching in the autumn, Member States should be allowed to establish additional conditions on nitrogen-fixing crops if necessary. Furthermore, in order to ensure consistency between equivalent practices covered by commitments and certification schemes as referred to in Article 43(3)(a) and (b) of Regulation (EU) No 1307/2013, respectively, rules on qualifying nitrogen-fixing crops as ecological focus area should be aligned.
- (16) Experience with the application of Delegated Regulation (EU) No 639/2014 has proven that certain provisions relating to the ecological focus area types need to be more detailed as regards the requirement of 'no production' including the rules on cutting and grazing with a view to meeting the objective of biodiversity and to ensuring consistency with other instruments of the common agricultural policy. In particular, as regards the 'no agricultural production' requirement applicable to the ecological focus area types referred to in Article 45(2), (4)(e), (5) and (7) of Delegated Regulation (EU) No 639/2014, it should be clarified that production should be understood as agricultural activity in the meaning of Article 4(1)(c)(i) of Regulation

¹² Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 375, 31.12.1991, p. 1).

¹³ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1).

(EU) No 1307/2013, and not in the broader sense of Article 4(1)(c)(ii) and (iii) of the same Regulation, and should not affect the rules on minimum soil cover under GAEC 4 as referred to in Annex II to Regulation (EU) No 1306/2013. In addition, undertaking actions by farmers, in particular, by facilitating pollination, in order to safeguard and improve biodiversity, aiming at establishing a green soil cover and which are, for instance, covered by an agri-environment-climate commitment, should be incentivised to maximise the environmental benefits.

- (17) Given that the three main types of areas declared by farmers as ecological focus areas in the first year of implementation of Article 46 of Regulation (EU) No 1307/2013 are areas which are, or may be, productive, namely land lying fallow, catch crops or green cover and nitrogen-fixing crops, plant production products are likely to be used in ecological focus areas. Therefore, in order to safeguard and improve biodiversity in line with the objectives of "greening", it is appropriate to ban the use of plant protection products on the following ecological focus areas which are or may be productive: land lying fallow, strips of eligible hectares along forest edges with production, catch crops or green cover and nitrogen-fixing crops. Where catch crops or green cover is established by under-sowing grass or leguminous crops in the main crop, in order to avoid, for proportionality reasons, consequences for the management of the main crop, such a ban should apply from the moment of the harvesting of the main crop. In order to ensure consistency of the ban with the usual agronomic practices, ensure legal certainty and avoid administrative difficulties for farmers and national administrations it should be specified that the ban for undersowing should apply for at least a minimum period, equal to the minimum period during which areas under catch crops or green cover have to be in place when established by sowing a mixture of crop species, or until the sowing of the next main crop.
- (18) Article 49 of Delegated Regulation (EU) No 639/2014 lays down the rules under which legal persons have access to the payment for young farmers provided for in Article 50(1) of Regulation (EU) No 1307/2013. On the basis of the experience gained with the application of Article 49(3) of Delegated Regulation (EU) No 639/2014, a further clarification should be provided as to the interpretation of the requirement laid down in point (b) of Article 50(2) of Regulation (EU) No 1307/2013 in respect of the time when a young farmer who exercises effective and long-term control over a legal person has to comply with the age limit. In particular, it is appropriate to clarify that the young farmer has to comply with the age limit of 40 years in the year of the first submission of an application under the basic payment scheme or the single area payment scheme by the legal person with a young farmer in control.
- (19) According to the second subparagraph of Article 53(2) of Delegated Regulation (EU) No 639/2014, the per unit amount of voluntary coupled support results from the ratio between the amount fixed for the financing of the relevant measure and either the quantitative limit fixed pursuant to the first subparagraph of Article 53(2), or the number of hectares or animals that are eligible for the support in the year in question. It is appropriate to reformulate that provision in such a way that Member States may fix the per unit amount at a value within the range between those two values where the number of eligible units is lower than the quantitative limit.
- (20) Pursuant to Article 64(5) of Delegated Regulation (EU) No 639/2014, Member States applying the single area payment scheme in accordance with Article 36 of Regulation (EU) No 1307/2013 are to notify the Commission by 1 September each year of the total number of hectares declared by farmers under that scheme. However, that information is notified to the Commission annually in more detail pursuant to Article

9(1) of Implementing Regulation (EU) No 809/2014. Article 64(5) of Delegated Regulation (EU) No 639/2014 can therefore be deleted.

- (21) Based on the Commission's experience with the management of the notifications relating to greening pursuant to Article 65 to Delegated Regulation (EU) No 639/2014, some adjustments should be made as regards their content, including with respect to greening provisions of Delegated Regulation (EU) No 639/2014 as amended by this Regulation.
- (22) In accordance with Article 67(2) of Delegated Regulation (EU) No 639/2014, Member States are to notify the Commission of the total number of beneficiaries, the amount of the payments which have been granted as well as the total area and the total number of animals for which the support has actually been paid for each coupled support measure and each of the specific types of farming or specific agricultural sectors concerned.
- (23) As from claim year 2015, the total number of beneficiaries and the total area or total number of animals claimed and determined for each voluntary coupled support measure are notified by Member States in accordance with Article 9(1) and (3) of Implementing Regulation (EU) No 809/2014. Furthermore, as from claim year 2016, the amount of the payments which have been granted for each coupled support measure will be included in the communications of information by the Member States in accordance with Article 10 of Commission Implementing Regulation (EU) No 908/2014¹⁴. Therefore, Article 67(2) of Delegated Regulation (EU) No 639/2014 should be deleted.
- (24) Delegated Regulation (EU) No 639/2014 should therefore be amended accordingly.
- (25) As a consequence of the amendment of certain provisions of Delegated Regulation (EU) No 639/2014 concerning the ecological focus area types, changes to Annex X to Regulation (EU) No 1307/2013 need to be made, in particular by adapting the list of ecological focus area types and the corresponding factors, where necessary. Recital 45 of Regulation (EU) No 1307/2013 emphasises the importance of ecological focus area to be established in a coherent way. Therefore, conversion and weighting factors applicable to equivalent practices have to be consistent with the factors applicable to similar or identical standard practices. In the interest of legal certainty and equal treatment between farmers, Annex X to Regulation 1307/2013 should be amended accordingly.
- (26) This Regulation should enter into force on the third day after its publication. However, as the clarification of Article 49(3) of Delegated Regulation (EU) No 639/2014 and the reformulation of the second subparagraph of Article 53(2) of that Regulation reflect an interpretation given to those provisions since the application of that Regulation, it is appropriate that those amendments apply retroactively. Considering the time necessary for the national authorities to update their existing administrative tools and to inform farmers sufficiently in advance of the amendments of the greening provisions made by this Regulation, those amendments should only apply with respect to aid applications relating to calendar years starting as from 1 January 2018. However, Member States should be given the possibility to apply them with respect to aid applications relating to calendar year 2017 while bearing in mind that any choices in this regard should be

¹⁴ Commission Implementing Regulation (EU) No 908/2014 of 6 August 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, rules on checks, securities and transparency (OJ L 255, 28.8.2014, p. 59).

coherent from the perspective of farmers. A notification obligation as regards consequential changes to previous notifications relating to that calendar year should be provided for,

HAS ADOPTED THIS REGULATION:

Article 1

Amendment of Delegated Regulation (EU) No 639/2014

Delegated Regulation (EU) No 639/2014 is amended as follows:

(1) Article 9 is replaced by the following:

*"Article 9
Hemp*

1. For the purposes of Article 32(6) of Regulation (EU) No 1307/2013, the eligibility of areas used for the production of hemp shall be subject to the use of seed of the varieties listed in the 'Common Catalogue of Varieties of Agricultural Plant Species' on 15 March of the year in respect of which the payment is granted and published in accordance with Article 17 of Council Directive 2002/53/EC*. The seed shall be certified in accordance with Council Directive 2002/57/EC**.
2. Member States shall establish the system for determining the Δ^9 -tetrahydrocannabinol content (hereinafter referred to as 'THC content') in hemp varieties, which allows them to apply the method set out in Annex III.
3. The competent authority of the Member State shall keep the records related to findings on the THC content. Such records shall comprise for each variety at least the results in terms of THC content from each sample expressed in percentage to two decimal places, the procedure used, the number of tests carried out, an indication of the point at which the sample was taken and measures taken at national level.
4. If an average of all the samples of a given variety exceeds the THC content as laid down in Article 32(6) of Regulation (EU) No 1307/2013, Member States shall use procedure B as described in Annex III to this Regulation for the variety concerned in the course of the following claim year. That procedure shall be used in the course of the next claim years unless all the analytical results for the given variety are below the THC content as laid down in Article 32(6) of Regulation (EU) No 1307/2013.
5. If for the second year the average of all the samples of a given variety exceeds the THC content as laid down in Article 32(6) of Regulation (EU) No 1307/2013, the Member State shall notify the Commission of the request for authorisation to prohibit the marketing of such variety in accordance with Article 18 of Directive 2002/53/EC. Such notification shall be sent in accordance with Commission Regulation (EC) No 792/2009*** by 15 January of the following claim year at the latest. Starting from that claim year, the variety covered by that request shall not be eligible for direct payments in the Member State concerned.
6. For the purposes of this Regulation, 'hemp cultivated as catch crop' means crop of hemp sown after 30 June of a given year.
7. Crops of hemp shall continue to be cultivated under normal growing conditions in accordance with local practice for at least 10 days from the date of the end of flowering so that the checks necessary for the application of this Article can be made. Hemp cultivated as catch crop shall continue to be cultivated under normal growing

conditions in accordance with local practice at least until the end of the vegetation period.

However, Member States may authorise hemp to be harvested after flowering has begun but before the end of the 10-day period after the end of flowering, provided that the inspectors indicate which representative parts of each plot concerned must continue to be cultivated for at least 10 days following the end of flowering for inspection purposes, in accordance with the method set out in Annex III.

* Council Directive 2002/53/EC of 13 June 2002 on the common catalogue of varieties of agricultural plant species (OJ L 193, 20.7.2002, p. 1).

** Council Directive 2002/57/EC of 13 June 2002 on the marketing of seed of oil and fibre plants (OJ L 193, 20.7.2002, p. 74).

*** Commission Regulation (EC) No 792/2009 of 31 August 2009 laying down detailed rules for the Member States' notification to the Commission of information and documents in implementation of the common organisation of the markets, the direct payments' regime, the promotion of agricultural products and the regimes applicable to the outermost regions and the smaller Aegean islands (OJ L 228, 1.9.2009, p. 3)."

(2) In Article 24, paragraph 2 is replaced by the following:

"2. Where a farmer declares a number of payment entitlements exceeding his total eligible area declared pursuant to Article 33(1) of Regulation (EU) No 1307/2013, the payment entitlement or the fraction of a payment entitlement which is partially exceeding that eligible area shall be deemed as fully activated for the purposes of Article 31(1)(b) of that Regulation. However, the payment shall be calculated on the basis of the corresponding fraction of an eligible hectare."

(3) Article 40 is amended as follows:

(a) in the first subparagraph of paragraph 1, the following sentence is added:

"That period may be fixed at national, regional or the appropriate sub-regional level."

(b) in paragraph 3, the following fourth subparagraph is added:

"Areas on which different crops are grown next to each other, where each single crop covers an area that is smaller than the minimum size set by Member States referred to in the second subparagraph of Article 72(1) of Regulation (EU) No 1306/2013, may be considered by Member States as covered with one 'mixed crop' as referred to in the third subparagraph of this paragraph."

(4) Article 45 is amended as follows:

(a) paragraph 2 is replaced by the following:

"2. On land lying fallow there shall be no agricultural production. Member States shall fix a period during which the land must be lying fallow in a given calendar year. That period shall not be shorter than six months. By way of derogation from Article 4(1)(h) of Regulation (EU) No 1307/2013, land lying fallow for the purpose of fulfilling the ecological focus area for more than five years shall remain arable land."

(b) paragraphs 4 and 5 are replaced by the following:

"4. Landscape features shall be at the disposal of the farmer and may be those that are protected under GAEC 7, SMR 2 or SMR 3 as referred to in Annex II to Regulation (EU) No 1306/2013 and/or one or more of the following features:

- (a) hedges, wooded strips or trees in line;
- (b) isolated trees;
- (c) field copses including trees, bushes or stones;
- (d) ponds. Reservoirs made of concrete or plastic shall not be considered ecological focus area;
- (e) ditches, including open watercourses for the purpose of irrigation or drainage. Channels with walls of concrete shall not be considered ecological focus area.
- (f) traditional stone walls.

Member States may decide to limit the selection of landscape features to those under GAEC 7, SMR 2 or SMR 3 as referred to in Annex II to Regulation (EU) No 1306/2013 and/or to one or more of points (a) to (f) of the first subparagraph.

For the hedges, wooded strips and trees in line as well as ditches referred to in points (a) and (e) of the first subparagraph, respectively, the area to be qualified as ecological focus area shall be calculated up to a maximum width of 10 meters.

For the field copses and ponds referred to in points (c) and (d) of the first subparagraph, respectively, the area to be qualified as ecological focus area shall be calculated up to a maximum size of 0,3 hectare.

For the purposes of point (d) of the first subparagraph, Member States may set a minimum size for ponds. Where there is a strip with riparian vegetation along the water the corresponding area shall be included for the purpose of calculating the ecological focus area. Member States may establish criteria to ensure that ponds are of natural value, taking into account the role that natural ponds play for the conservation of habitats and species.

For the purposes of point (f) of the first subparagraph, Member States shall establish minimum criteria based on national or regional specificities, including limits to the dimensions of height and width."

"5. Buffer strips and field margins may be any buffer strips and field margins including those buffer strips along water courses required under GAEC 1, SMR 1 or SMR 10 as referred to in Annex II to Regulation (EU) No 1306/2013 or field margins protected under GAEC 7, SMR 2 or SMR 3 as referred to in that Annex.

Member States shall not limit the selection of buffer strips and field margins to those required under the cross compliance rules referred to in the first sub-paragraph.

Member States shall establish the minimum width of buffer strips and field margins which shall not be below 1 meter for ecological focus area purposes. Along water courses, riparian vegetation shall be included for the purpose of calculating the ecological focus area. There shall be no agricultural production on buffer strips and field margins.

For buffer strips and field margins other than those required or protected under GAEC 1, GAEC 7, SMR1, SMR2, SMR 3 or SMR 10 as referred to in Annex II to Regulation (EU) No 1306/2013, the area to be qualified as ecological focus area shall be calculated up to a maximum width of 20 meters."

- (c) the following paragraph 5a is inserted:

"5a. For the purposes of the second sentence of the second subparagraph of Article 46(2) of Regulation (EU) No 1307/2013, areas referred to in paragraphs 4 and 5 of this Article shall be considered as adjacent areas or features where they are adjacent to an ecological focus area directly adjacent to the arable land of the holding."

(d) paragraphs 7 to 10 are replaced by the following:

"7. As regards strips of eligible hectares along forest edges Member States may decide either to allow agricultural production or to establish a requirement of no agricultural production, or to provide the two options for farmers. Member States shall establish the minimum width of those strips, which shall not be below 1 meter.

The area to be qualified as ecological focus area shall be calculated up to a maximum width of 10 meters where Member States decide to allow agricultural production and 20 meters where Member States decide not to allow agricultural production."

"8. For areas with short rotation coppice with no use of mineral fertilizer and/or plant protection products, Member States shall establish a list of species that may be used for this purpose, by selecting from the list established pursuant to Article 4(2)(c) of Regulation (EU) No 1307/2013 the species that are most suitable from an ecological perspective, thereby excluding species that are clearly not indigenous. Member States shall also establish the requirements as regards the use of mineral fertilizers and/or plant protection products in case Member States authorise their use, keeping in mind the objective of ecological focus areas in particular to safeguard and improve biodiversity."

"9. Areas under catch crops or green cover shall include such areas established pursuant to the requirements under SMR 1 as referred to in Annex II to Regulation (EU) No 1306/2013 as well as other areas under catch crops or green cover, on the condition that they were established by sowing a mixture of crop species or by under-sowing grass or leguminous crops in the main crop.

Member States shall set up the list of mixtures of crop species to be used and fix the period at national, regional, sub-regional or farm level during which areas under catch crops or green cover when established by sowing a mixture of crop species have to be in place. This period shall not be less than eight weeks. Member States may establish additional conditions notably with regard to production methods.

Areas under catch crops or green cover shall not include areas under winter crops which are sown in autumn normally for harvesting or for grazing. They shall also not include the areas covered with equivalent practices mentioned in points I.3 and 4 of Annex IX to Regulation (EU) No 1307/2013."

"10. On areas with nitrogen-fixing crop, farmers shall grow those nitrogen-fixing crops which are included in a list established by the Member State. That list shall contain the nitrogen-fixing crops that the Member State considers as contributing to the objective of improving biodiversity and may include mixtures of nitrogen-fixing crops with other crops provided that nitrogen-fixing crops species are predominant. Those crops shall be present during the growing season. Member States may establish additional conditions notably with regard to production method, in particular with a view to taking into account the need to meet the objectives of Directive 91/676/EEC and Directive 2000/60/EC, given the potential of nitrogen-fixing crops to increase the risk of nitrogen leaching in the autumn.

Areas with nitrogen-fixing crop shall not include the areas covered with equivalent practices mentioned in points I.3 and 4 of Annex IX to Regulation (EU) No 1307/2013."

(e) the following paragraphs 10a, 10b and 10c are inserted:

"10a. For the purposes of paragraphs 2, 5 and 7, 'no agricultural production' means no agricultural activity as defined in Article 4(1)(c)(i) of Regulation (EU) No 1307/2013, without prejudice to the requirements defined under GAEC 4 as referred to in Annex II to Regulation (EU) No 1306/2013. Actions aiming at establishing a green soil cover for biodiversity purposes, including sowing mixtures of wild flower seeds, shall be allowed.

However, by way of derogation from the no production requirement, for the purposes of paragraphs 5 and 7, Member States may allow cutting or grazing on buffer strips and field margins as well as on strips of eligible hectares along forest edges without production, provided that the strip remains distinguishable from adjacent agricultural land.

10b. The use of plant protection products shall be prohibited on all areas referred to in paragraphs 2, 9 and 10 as well as on areas with agricultural production referred to in paragraph 7.

10c. On areas referred to in paragraph 9 established by under-sowing grass or leguminous crops in the main crop, this prohibition shall apply from the moment of the harvesting of the main crop for at least eight weeks or until the sowing of the next main crop."

(5) In Article 49(3), the following subparagraph is added:

"A young farmer who exercises effective and long-term control over the legal person within the meaning of point (b) of the first subparagraph of paragraph 1 of this Article shall, for the purposes of Article 50(2)(b) of Regulation (EU) No 1307/2013, be no more than 40 years of age in the year of the first submission of an application under the basic payment scheme or the single area payment scheme by that legal person with a young farmer in control."

(6) In Article 53(2), the second subparagraph is replaced by the following:

"The annual payment shall be expressed as the per unit amount of support. It may be either one of the following amounts, or, when the area or the number of animals eligible for the support does not exceed the area or the number of animals fixed as referred to in the first subparagraph of this paragraph, an amount between them:

- (a) the ratio between the amount fixed for the financing of the measure as notified according to point (3)(i) of Annex I to this Regulation and the area or the number of animals eligible for the support in the year in question;
- (b) the ratio between the amount fixed for the financing of the measure as notified according to point (3)(i) of Annex I to this Regulation and the area or the number of animals fixed as referred to in the first subparagraph of this paragraph."

(7) In Article 64, paragraph 5 is deleted.

(8) Article 65(1) is amended as follows:

(a) point (c) is amended as follows:

(i) point (ii) is replaced by the following:

"(ii) the total number of farmers exempted from one or more greening practices and the number of hectares declared by such farmers, the number of farmers exempted from all practices because they comply with the requirements of Regulation (EC) No 834/2007, the number of farmers participating in the small farmer scheme, the number of farmers exempted from the crop diversification obligation, and the number of farmers exempted from the ecological focus area obligation, and the respective number of hectares declared by such farmers;"

(ii) point (vi) is replaced by the following:

"(vi) the total number of farmers declaring environmentally sensitive permanent grassland, the total number of hectares covered by environmentally sensitive permanent grassland declared by such farmers, the total number of hectares of designated environmentally sensitive permanent grasslands and the total number of hectares of permanent grassland in areas covered by Directives 92/43/EEC or 2009/147/EC;"

(b) the following point (e) is added:

"(e) by 1 August of each year, the period to be taken into account for the calculation of the shares of different crops in accordance with Article 40(1) of this Regulation, as well as the geographical level at which that period is fixed."

(9) In Article 67, paragraph 2 is deleted.

(10) Annex III is added, the text of which is set out in Annex I to this Regulation.

Article 2

Amendment of Regulation (EU) No 1307/2013

Annex X to Regulation (EU) No 1307/2013 is replaced by the text set out in Annex II to this Regulation.

Article 3

Transitional measures

1. By way of derogation from the second paragraph of Article 4, Member States may decide to apply some or all of the amendments made by points (3), (4) and (8) of Article 1 and, as a consequence, the amendment made by Article 2 in relation to standard ecological focus area features, with respect to aid applications relating to calendar year 2017.

2. Member States shall notify the Commission and shall inform farmers of the decision referred to in paragraph 1 and of the consequential changes to the notifications made pursuant to Article 65(1) to (4) of Delegated Regulation (EU) No 639/2014 no later than one month after the entry into force of this Regulation.

Article 4

Entry into force and application

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

Points (3), (4), and (8) of Article 1 and Article 2 shall apply with respect to aid applications relating to calendar years starting as from 1 January 2018.

Points (5) and (6) of Article 1 shall apply with respect to aid applications relating to calendar years subsequent to calendar year 2014.

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

Done at Brussels, 15.2.2017

For the Commission
The President
Jean-Claude JUNCKER