

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2016/1393

of 4 May 2016

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

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 ⁽¹⁾, and in particular Articles 63(4), 64(6) and 72(5), Article 76, Articles 77(7), 93(4) and 101(1), and Article 120 thereof,

Whereas:

- (1) According to Article 7(1) of Commission Delegated Regulation (EU) No 640/2014 ⁽²⁾, 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 ⁽³⁾ on the replenishment of the national reserve or regional reserve under the basic payment scheme do no longer require this specific information as long as the total number of payment entitlements per farmer can be established.
- (2) Article 9 of Delegated Regulation (EU) No 640/2014 sets out rules on the determination of areas where the agricultural parcel contains landscape features and trees. It is appropriate to clarify the wording of that provision by making a reference to eligible hectares.
- (3) Article 11(4) of Commission Implementing Regulation (EU) No 809/2014 ⁽⁴⁾ provides that the results of the preliminary checks are to 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 Delegated Regulation (EU) No 640/2014 provides for derogations from Article 5(1) of Council Regulation (EEC, Euratom) No 1182/71 ⁽⁵⁾ for the final dates for submission. For consistency reasons, it is appropriate to introduce the same derogation for the latest possible date for notification of the results of those preliminary checks and the latest possible date for the beneficiary to notify the competent authority of the modifications following those preliminary checks. It should also be clarified that, in any case, the period of 26 calendar days for the notification of the results of those 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.

⁽¹⁾ OJ L 347, 20.12.2013, p. 549.

⁽²⁾ Commission Delegated Regulation (EU) No 640/2014 of 11 March 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 (OJ L 181, 20.6.2014, p. 48).

⁽³⁾ 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 73/2009 (OJ L 347, 20.12.2013, p. 608).

⁽⁴⁾ 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).

⁽⁵⁾ Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1).

- (4) For the re-distributive payment, the payment to young farmers and the payment for areas with natural constraints, Article 18 of Delegated Regulation (EU) No 640/2014 sets out the principle that a farmer should not be subject to penalties of over-declarations 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 existed for livestock premiums in Commission Regulation (EC) No 1122/2009 ⁽¹⁾ and for the agricultural area-related measures in Commission Regulation (EU) No 65/2011 ⁽²⁾. To ensure continuity and fairness in the treatment of farmers and for reasons of simplification, it is appropriate to introduce such a rule in 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.
- (5) Within the integrated administration and control system, the calculation of the aid to which the beneficiary is entitled is based on the concept of crop group. Under the re-distributive payment provided for in 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 re-distributive payment would contribute to simplifying the application made by the beneficiary in case of graduation of the re-distributive payment, as the beneficiary would not have to indicate which agricultural parcel belongs to which part of the graduated number of hectares. For consistency reasons, it is appropriate to introduce the same provision for the young farmers scheme and the voluntary coupled support measures.
- (6) For area-related aid schemes or support measures other than the basic payment scheme or the single area payment scheme, Article 17(1)(b) of Delegated Regulation (EU) No 640/2014 distinguishes crop groups as a group for each of the areas declared for which a different rate of aid or support is applicable. As regards payments to areas facing natural or other specific constraints, Article 31(4) of Regulation (EU) No 1305/2013 of the European Parliament and of the Council ⁽³⁾ requires Member States, except in some specific cases, to provide for degressivity of payments above a threshold level of area per holding, to be defined in the programme. In respect of that payment, it should be clarified that where degressive aid amounts are used, the average of those amounts in relation to the respective areas declared is to be taken into account, as previously provided for in Article 16(2) of Regulation (EU) No 65/2011.
- (7) 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 aid schemes or support measures where effective administrative cross-checks with the land parcel identification system can be carried out and where retro-active recovery is possible, namely the area-related aid schemes provided for in Chapters 1, 2, 4 and 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.
- (8) For those aid schemes or support measures 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 in order to prevent abuse of the system and to stimulate correct declarations in the future, the amount by which the administrative penalty had been reduced should be paid where another administrative penalty for the area-related aid scheme or support measure concerned is imposed on the beneficiary in the following claim year.
- (9) 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 provision should be included in order to cover the cases of non-compliance with Article 44(2) of Regulation (EU) No 1307/2013.

⁽¹⁾ Commission Regulation (EC) No 1122/2009 of 30 November 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector (OJ L 316, 2.12.2009, p. 65).

⁽²⁾ Commission Regulation (EU) No 65/2011 of 27 January 2011 laying down detailed rules for the 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).

⁽³⁾ Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (OJ L 347, 20.12.2013, p. 487).

- (10) Pursuant to Article 21 of Implementing Regulation (EU) No 809/2014 the beneficiary has to undertake, where applicable, to keep animals on his holding during a period determined by the Member State and to indicate the location or locations where the animals will be held during that period in the livestock aid application or payment claims under animal-related support measures. It is appropriate to lay down provisions on the basis of which animals that during that period have been moved to another place than the ones notified can be considered as determined, provided that they can immediately be localised within the holding during the on-the-spot checks.
- (11) Article 53(4) of Commission Delegated Regulation (EU) No 639/2014 ⁽¹⁾ provides that Member States are to define as an eligibility condition the requirement to identify and register bovine animals in accordance with Regulation (EC) No 1760/2000 of the European Parliament and of the Council ⁽²⁾. The purpose of referring to that Regulation 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 Delegated Regulation (EU) No 640/2014 that incorrect entries in the register, the animal passports and/or the computerised database for bovine animals of elements such as for instance gender, breed, colour or date should be considered as non-compliances after the first finding if the information is essential for the assessment of the animals' eligibility under the aid scheme or support measure concerned. Otherwise, the animal concerned should be considered as not determined if such incorrect entries are found on at least two checks within a period of 24 months.
- (12) Administrative penalties to be applied for animal-related support measures are laid down in Article 31 of Delegated Regulation (EU) No 640/2014 and they are designed to be applied at the level of the measure. That Article does not take into account the fact that operations under a 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. Therefore, it is appropriate to refer to the type of operation in that Article.
- (13) In addition, Article 31 of Delegated Regulation (EU) No 640/2014 refers to a threshold of three animals found with non-compliances. In the case of short-production cycle species, with a high turnover of animals, that threshold might not lead to an equivalent level of penalties as for species such as bovines, ovines and caprines. In respect of those short-production cycle species, Member States should therefore be allowed to establish an adjusted number of animals that is in substance equivalent to the threshold of three.
- (14) In order to ensure that data used for the purpose of the claimless system as referred to in Article 21(4) of Implementing Regulation (EU) No 809/2014 are reliable, potentially eligible animals should be subject to on-the-spot checks. The administrative penalties laid down in Article 31 of Delegated Regulation (EU) No 640/2014 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 Delegated Regulation (EU) No 639/2014. It should therefore be specified in Article 31(3) of Delegated Regulation (EU) No 640/2014 that potentially eligible animals found not to be correctly identified or registered count as animals found with non-compliances, irrespectively of their status as regards the fulfilment of the eligibility requirements laid down in Article 53(4) of Delegated Regulation (EU) No 639/2014.
- (15) Furthermore, Article 31 of Delegated Regulation (EU) No 640/2014 lays down the methodology for the calculation of the administrative penalties in respect of declared animals under animal aid schemes or support measures. That methodology is based on the number of individual animals found with non-compliances, regardless of the number of days those animals stayed on the holding. Some Member States have set up a system in which the calculation of the aid or support is not only based 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, those Member States should adjust their methodology for the calculation of the administrative penalties accordingly.

⁽¹⁾ 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).

⁽²⁾ Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97 (OJ L 204, 11.8.2000, p. 1).

- (16) Pursuant to Council Regulation (EC) No 21/2004 ⁽¹⁾ Member States are to establish a system for the identification and registration of ovine and caprine animals that comprises a central register or a computer database. It is therefore appropriate to extend the scope of Article 34 of Delegated Regulation (EU) No 640/2014 to those animal species.
- (17) 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 Regulations (EC) No 1122/2009 and (EU) No 65/2011 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.
- (18) In addition, it is appropriate to specify in Article 43 of Delegated Regulation (EU) No 640/2014 that with regard to the payment claims for expenditure relating to technical assistance as referred to in Article 66(2) of Council Regulation (EC) No 1698/2005 ⁽²⁾ made in relation to the year 2015, Regulations (EC) No 1122/2009 and (EU) No 65/2011 continue to apply.
- (19) Finally, for reasons of clarity it is appropriate to replace references to a legal basis in Regulation (EU) No 1306/2013 by a reference to Article 28 of Commission Implementing Regulation (EU) No 908/2014 ⁽³⁾.
- (20) Delegated Regulation (EU) No 640/2014 should therefore be amended accordingly.
- (21) The amendments which clarify Articles 43 and 44 of Delegated Regulation (EU) No 640/2014 should for the sake of continuity apply in relation to claim years and premium periods starting as from the same date as provided in Regulation (EU) No 640/2014,

HAS ADOPTED THIS REGULATION:

Article 1

Amendment of Delegated Regulation (EU) No 640/2014

Delegated Regulation (EU) No 640/2014 is amended as follows:

(1) Article 7(1) is amended as follows:

(a) point (d) is deleted;

(b) the following second subparagraph is added:

‘That electronic register shall contain all information necessary to carry out the replenishment of the national reserve or regional reserve pursuant to Article 31 of Regulation (EU) No 1307/2013.’;

(2) in the first subparagraph of Article 9(3), point (b) is replaced by the following:

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

⁽¹⁾ 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 1782/2003 and Directives 92/102/EEC and 64/432/EEC (OJ L 5, 9.1.2004, p. 8).

⁽²⁾ Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ L 277, 21.10.2005, p. 1).

⁽³⁾ 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).

(3) Article 12 is replaced by the following:

Article 12

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 one of the following dates is a public holiday, a Saturday or a Sunday, it shall be deemed to fall on the first following working day:

- (a) 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;
- (b) the latest possible date for late submission referred to in the third subparagraph of Article 13(1) and 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;
- (c) 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 (**).
- (d) the latest possible date for the beneficiary to notify the competent authority of the modifications following the preliminary checks as referred to in Article 15(2a) of Implementing Regulation (EU) No 809/2014.

However, where the latest possible dates for late submission referred to in point (b) of the first paragraph are already deemed to fall on the first following working day, the latest possible date for notification referred to in point (c) of that paragraph shall be deemed to fall on the second following working day.

(*) Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1).

(**) 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).'

(4) the following Article 15a is inserted:

Article 15a

Individual limit or ceiling

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

(5) in Article 17, paragraph 1 is replaced by the following:

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

- (a) areas declared for the purpose of activation of payment entitlements under the basic payment scheme or for the purpose of being granted the single area payment;
- (b) areas giving right to the re-distributive payment;

- (c) areas giving right to payments under the young farmers scheme;
- (d) areas declared per voluntary coupled support measures;
- (e) 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;
- (f) areas declared under the heading "other uses".

For the purposes of point (e) of the first subparagraph, in respect of payments for 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 those amounts in relation to the respective areas declared shall be taken into account.;

- (6) in Article 19, paragraph 3 is replaced by the following:

'3. If the amount calculated in accordance with paragraphs 1 and 2 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 outstanding balance shall be cancelled.

(*) 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).;

- (7) the following Article 19a is inserted:

'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 for the aid schemes provided for in Chapters 1, 2, 4 and 5 of Title III and in Title V of Regulation (EU) No 1307/2013 and the support measures referred to in Articles 30 and 31 of Regulation (EU) No 1305/2013 exceeds the area determined in accordance with Article 18 of this Regulation, the aid or support 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 no administrative penalty has been imposed on the beneficiary under paragraph 1 for over-declaration of areas for the aid scheme or support measure concerned, the administrative penalty referred to in that paragraph 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 had his administrative penalty reduced in accordance with paragraph 2 and another administrative penalty as referred to in this Article and in Article 21 is to be imposed on that beneficiary for the aid scheme or support measure concerned in respect of the following claim year, he shall pay the full administrative penalty in respect of that following claim year and shall pay the amount by which the administrative penalty calculated in accordance with paragraph 1 had been reduced in accordance with paragraph 2.

4. If the amount 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 Implementing Regulation (EU) No 908/2014, the outstanding balance shall be cancelled.;

(8) in Article 21, paragraph 2 is replaced by the following:

‘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 Implementing Regulation (EU) No 908/2014, the outstanding balance shall be cancelled.’;

(9) Article 24 is amended as follows:

(a) the following paragraph 3a is inserted:

‘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.’;

(b) paragraph 4 is replaced by the following:

‘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.’;

(10) in Article 28, paragraph 4 is replaced by the following:

‘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 Implementing Regulation (EU) No 908/2014, the outstanding balance shall be cancelled.’;

(11) Article 30, is amended as follows:

(a) the following paragraph 3a is inserted:

‘3a. Where animals have been moved to other locations than those notified in accordance with point (d) of Article 21(1) of Implementing Regulation (EU) No 809/2014 during the period determined by the Member State referred to in that point, they shall be regarded as determined if an immediate localisation of those animals within the holding was made during the on-the-spot check.’;

(b) in the first subparagraph of paragraph 4, point (c) is replaced by the following:

‘(c) where the non-compliances found relate to incorrect entries in the register, the animal passports or the computerised database for animals, but are not of relevance for the verification of the respect of the eligibility conditions other than that referred to in Article 53(4) of Delegated Regulation (EU) No 639/2014 under the aid scheme or support measure concerned, the animal concerned shall only be considered as not determined if such incorrect entries are found during 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.’;

(12) Article 31 is replaced by the following:

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 a type of operation under such support measure, 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 under such support measure 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 under such support measure 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 under such support measure 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 under such support measure 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 Implementing Regulation (EU) No 908/2014, the outstanding balance shall be cancelled.

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

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 or type of operation under such support measure in respect of the aid application or payment claim or type of operation under such support measure 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 Article 21(4) of Implementing Regulation (EU) No 809/2014 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 Delegated Regulation (EU) No 639/2014.

4. Where the calculation of the total amount of aid or support to which the beneficiary is entitled under an aid scheme or support measure or type of operation under such 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 those 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 on which the animals may qualify for the aid or support.;

(13) Article 34 is replaced by the following:

'Article 34

Amendments and adjustments of entries in the computerised database for animals

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

(14) in Article 35, paragraph 7 is replaced by the following:

‘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 Implementing Regulation (EU) No 908/2014, the outstanding balance shall be cancelled.’;

(15) in the second paragraph of Article 43, point (b) is replaced by the following:

‘(b) payment claims made and application for support 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’;

(16) in Article 44, the second paragraph is replaced by the following:

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

Article 2

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*.

It shall apply to aid applications, applications for support and payment claims relating to claim years or premium periods starting as from 1 January 2016.

However points (15) and (16) of Article 1 shall apply to aid applications, applications for support and payment claims relating to claim years or premium periods starting as from 1 January 2015.

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

Done at Brussels, 4 May 2016.

For the Commission
The President
Jean-Claude JUNCKER