

## II

(Non-legislative acts)

## REGULATIONS

## COMMISSION DELEGATED REGULATION (EU) 2017/1155

of 15 February 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**

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 73/2009 <sup>(1)</sup>, 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 639/2014 <sup>(2)</sup> 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/EC <sup>(3)</sup>. 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 809/2014 <sup>(4)</sup> 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 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.

<sup>(1)</sup> OJ L 347, 20.12.2013, p. 608.

<sup>(2)</sup> 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).

<sup>(3)</sup> 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).

<sup>(4)</sup> 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) 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) No 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 policy <sup>(1)</sup>.
- (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 6 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 feature so that one 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

<sup>(1)</sup> 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.

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 of the European Parliament and of the Council <sup>(1)</sup> and field margins protected under GAEC 7, SMR 2 or SMR 3 as referred to in that Annex, should be supplemented by other buffer 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, under-sowing 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/EEC <sup>(2)</sup> and Directive 2000/60/EC of the European Parliament and of the Council <sup>(3)</sup>, 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

<sup>(1)</sup> 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 (OJ L 347, 20.12.2013, p. 549).

<sup>(2)</sup> 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).

<sup>(3)</sup> 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).

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 (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 under-sowing 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 908/2014<sup>(1)</sup>. 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 areas 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 (EU) No 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 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 (\*\*).

<sup>(1)</sup> 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).

2. Member States shall establish the system for determining the  $\Delta 9$ -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 6 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 5 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 areas;

(e) ditches, including open watercourses for the purpose of irrigation or drainage. Channels with walls of concrete shall not be considered ecological focus areas.

(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 metres.

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 subparagraph.

Member States shall establish the minimum width of buffer strips and field margins which shall not be below 1 metre 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, SMR 1, SMR 2, 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 metres.;

(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 metre.

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

8. For areas with short rotation coppice with no use of mineral fertiliser 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 fertilisers 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 8 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 crops, 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 crop 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 crops 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 8 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 1 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 February 2017.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

---

## ANNEX I

## ANNEX III

**Union method for the quantitative determination of the  $\Delta 9$ -tetrahydrocannabinol content in hemp varieties****1. Scope**

The method set out in this Annex seeks to determine the  $\Delta 9$ -tetrahydrocannabinol (hereinafter referred to as THC) content of varieties of hemp (*Cannabis sativa* L.). As appropriate, the method involves applying procedure A or B as described in this Annex.

The method is based on the quantitative determination of THC by gas chromatography (GC) after extraction with a suitable solvent.

**1.1. Procedure A**

Procedure A shall be used for checks on the production of hemp as referred to in Article 32(6) of Regulation (EU) No 1307/2013 and Article 30(g) of Commission Implementing Regulation (EU) No 809/2014 (\*).

**1.2. Procedure B**

Procedure B shall be used in cases as referred to in Article 36(6) of Implementing Regulation (EU) No 809/2014.

**2. Sampling****2.1. Samples**

The samples shall be taken during the day following a systematic pattern to ensure that the sample is representative of the field, but excluding the edges of the crop.

**2.1.1. Procedure A:** in a standing crop of a given variety of hemp, a 30 cm part containing at least one female inflorescence of each plant selected shall be taken. Sampling shall be carried out during the period running from 20 days after the start of flowering to 10 days after the end of flowering.

Member States may authorise sampling to be carried out during the period from the start of flowering to 20 days after the start of flowering provided that, for each variety grown, other representative samples are taken in accordance with the first subparagraph during the period from 20 days after the start of flowering to 10 days after the end of flowering.

For hemp cultivated as catch crop, in the absence of female inflorescences, the top 30 cm of the plant stem shall be taken. In that case sampling shall be carried out just before the end of the vegetation period, once the leaves begin presenting the first signs of yellowing, however no later than the onset of a forecast period of frost.

**2.1.2. Procedure B:** in a standing crop of a given variety of hemp, the upper third of each plant selected shall be taken. Sampling shall be carried out during the 10 days following the end of flowering or, for hemp cultivated as catch crop, in the absence of female inflorescences, just before the end of the vegetation period, once the leaves begin presenting the first sign of yellowing, but no later than the onset of a forecast period of frost. In the case of dioecious varieties, only female plants shall be taken.**2.2. Sample size**

Procedure A: the sample shall comprise parts of 50 plants per field.

Procedure B: the sample shall comprise parts of 200 plants per field.

Each sample shall be placed in a fabric or paper bag, without crushing it, and be sent to the laboratory for analysis.

The Member State may provide for a second sample to be collected for counteranalysis, if required, to be kept either by the producer or by the body responsible for the analysis.

### 2.3. *Drying and storage of the sample*

Drying of the samples shall begin as soon as possible and, in any case, within 48 hours using any method below 70 °C.

Samples shall be dried to a constant weight and to a moisture content of between 8 % and 13 %.

After drying, the samples shall be stored without crushing them at below 25 °C in a dark place.

## 3. **Determination of THC content**

### 3.1. *Preparation of the test sample*

Stems and seeds over 2 mm in size shall be removed from the dried samples.

The dried samples shall be grinded to obtain a semi-fine powder (passing through a 1 mm mesh sieve).

The powder may be stored for 10 weeks at below 25 °C in a dark, dry place.

### 3.2. *Reagents and extraction solution*

Reagents

—  $\Delta^9$ -tetrahydrocannabinol, pure for chromatographic purposes,

— squalane, pure for chromatographic purposes, as an internal standard.

Extraction solution

— 35 mg of squalane per 100 ml hexane.

### 3.3. *Extraction of THC*

100 mg of the powdered test sample shall be weighed, be placed in a centrifuge tube and 5 ml of extraction solution shall be added containing the internal standard.

The sample shall be placed in an ultrasound bath and be left for 20 minutes. It shall be centrifuged for 5 minutes at 3 000 r.p.m. and then the supernatant THC solution shall be removed. The solution shall be injected into the chromatograph and a quantitative analysis shall be carried out.

### 3.4. *Gas chromatography*

(a) Apparatus

— gas chromatograph with a flame ionisation detector and a split/splitless injector,

— column allowing good separation of cannabinoids, for example a glass capillary column 25 m long and 0,22 mm in diameter impregnated with a 5 % non-polar phenyl-methyl-siloxane phase.

(b) Calibration ranges

At least three points for procedure A and five points for procedure B, including points 0,04 and 0,50 mg/ml THC in extraction solution.

(c) Experimental conditions

The following conditions are given as an example for the column referred to in (a):

— oven temperature 260 °C,

— injector temperature 300 °C,

— detector temperature 300 °C.

(d) Volume injected: 1  $\mu$ l.

#### 4. Results

The findings shall be expressed to two decimal places in grams of THC per 100 grams of analytical sample dried to constant weight. A tolerance of 0,03 g per 100 g shall apply.

— Procedure A: one determination per test sample.

However, where the result obtained is above the limit laid down in Article 32(6) of Regulation (EU) No 1307/2013, a second determination shall be carried out per analysis sample and the mean value of the two determinations shall be taken as the result.

— Procedure B: the result shall correspond to the mean value of two determinations per test sample.

---

(\*) 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).'

## ANNEX II

## 'ANNEX X

**Conversion and weighting factors referred to in Article 46(3)**

Features	Conversion factor (m/tree to m <sup>2</sup> )	Weighting factor	Ecological focus area (if both factors are applied)
Land lying fallow (per 1 m <sup>2</sup> )	n.a.	1	1 m <sup>2</sup>
Terraces (per 1 m)	2	1	2 m <sup>2</sup>
Landscape features:			
Hedges/wooded strips/trees in line (per 1 m)	5	2	10 m <sup>2</sup>
Isolated tree (per tree)	20	1,5	30 m <sup>2</sup>
Field copses (per 1 m <sup>2</sup> )	n.a.	1,5	1,5 m <sup>2</sup>
Ponds (per 1 m <sup>2</sup> )	n.a.	1,5	1,5 m <sup>2</sup>
Ditches (per 1 m)	5	2	10 m <sup>2</sup>
Traditional stone walls (per 1 m)	1	1	1 m <sup>2</sup>
Other features not listed above but protected under GAEC7, SMR 2 or SMR 3 (per 1 m <sup>2</sup> )	n.a.	1	1 m <sup>2</sup>
Buffer strips and field margins (per 1 m)	6	1,5	9 m <sup>2</sup>
Hectares of agro-forestry (per 1 m <sup>2</sup> )	n.a.	1	1 m <sup>2</sup>
Strips of eligible hectares along forest edges (per 1 m)			
Without production	6	1,5	9 m <sup>2</sup>
With production	6	0,3	1,8 m <sup>2</sup>
Areas with short rotation coppice (per 1 m <sup>2</sup> )	n.a.	0,3	0,3 m <sup>2</sup>
Afforested areas as referred to in Article 32(2)(b)(ii) (per 1 m <sup>2</sup> )	n.a.	1	1 m <sup>2</sup>
Areas with catch crops or green cover (per 1 m <sup>2</sup> )	n.a.	0,3	0,3 m <sup>2</sup>
Areas with nitrogen-fixing crops (per 1 m <sup>2</sup> )	n.a.	0,7	0,7 m <sup>2</sup>

**Conversion and weighting factors referred to in Article 46(3) to be applied to features included in the equivalent practices as listed in Section III of Annex IX**

Equivalent ecological focus area	Similar standard ecological focus area	Conversion factor	Weighting factor	Ecological focus area (if both factors are applied)
(1) Ecological set-aside (per 1 m <sup>2</sup> )	Land lying fallow	n.a.	1	1 m <sup>2</sup>
(2) Creation of "buffer zones" (per 1 m)	Buffer strips and field margins	6	1,5	9 m <sup>2</sup>
(3) Management of uncultivated buffer strips and field margins (per 1 m)	Buffer strips and field margins	6	1,5	9 m <sup>2</sup>
(4) Borders, in-field strips and patches:				
Borders, in-field strips (per 1 m)	Buffer strips and field margins	6	1,5	9 m <sup>2</sup>
Patches (per 1 m <sup>2</sup> )	Field copses	n.a.	1,5	1,5 m <sup>2</sup>
(5) Management of landscape features:				
Isolated tree (per tree)	Isolated tree	20	1,5	30 m <sup>2</sup>
Trees in line (per 1 m)	Hedges/wooded strips/trees in line	5	2	10 m <sup>2</sup>
Group of trees/Field copses (per 1 m <sup>2</sup> )	Field copses	n.a.	1,5	1,5 m <sup>2</sup>
Hedgerows (per 1m)	Hedges/wooded strips/trees in line	5	2	10 m <sup>2</sup>
Riparian woody vegetation (per 1m)	Hedges/wooded strips/trees in line	5	2	10 m <sup>2</sup>
Terraces (per 1m)	Terraces	2	1	2 m <sup>2</sup>
Stone walls (per 1m)	Traditional stone walls	1	1	1 m <sup>2</sup>
Ditches (per 1m)	Ditches	5	2	10 m <sup>2</sup>
Ponds (per 1 m <sup>2</sup> )	Ponds	n.a.	1,5	1,5 m <sup>2</sup>
(6) Keeping arable peaty or wet soils under grass (no use of fertilisers and no use of plant protection products) (per 1 m <sup>2</sup> )	Land lying fallow	n.a.	1	1 m <sup>2</sup>
(7) Production on arable land with no use of fertiliser and/or plant protection products, and not irrigated, not sown with the same crop two years in a row (per 1 m <sup>2</sup> )	Areas with short rotation coppice; Strips along forest edges with production; Areas with nitrogen-fixing crops	n.a.	0,3 0,7 for nitrogen-fixing crops	0,3 m <sup>2</sup> 0,7 m <sup>2</sup>
(8) Conversion of arable land into permanent grassland (per 1 m <sup>2</sup> )	Land lying fallow	n.a.	1	1 m <sup>2</sup>