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From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 23.6.2021 amending Delegated Regulation (EU) No 640/2014 as regards penalty rules under animal aid schemes or animal-related support measures

Delegations will find attached document C(2021) 4462 final.

Encl.: C(2021) 4462 final



Brussels, 23.6.2021
C(2021) 4462 final

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

of 23.6.2021

**amending Delegated Regulation (EU) No 640/2014 as regards penalty rules under
animal aid schemes or animal-related support measures**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

This delegated act, in the field of direct payments and Integrated Administration and Control System (IACS), concerns the area of administrative penalties for animal related direct payment schemes and rural development measures. The change addresses the exclusion of all animal species other than bovine, ovine and caprine from the requirement of individual identification for the applicability of the derogation as regards the application of administrative penalties as well as the legal uncertainty regarding the penalties for up to three non-determined bovine, ovine and caprine animals that are non-identifiable under the animal identification and registration requirements.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The initiative is an addition to the previous efforts to improve and simplify the delegated rules related to the management and control of the Common Agricultural Policy. It was built upon internal screening exercise and ongoing consultations with Member States on the possible simplification of the administrative penalty system under Voluntary Coupled Support animal related measures where an exception for the maximum of three non-determined (non-compliant) animals was introduced. The draft legal act was presented to the Expert Group on Direct Payments on 28 April 2021 and on 26 May 2021.

Article 31 deals with administrative penalties in respect of animals under animal aid schemes or animal related support measures and was amended by Commission Delegated Regulation (EU) 2021/841. Article 31(1) stipulates that if no more than three animals are found to be non-determined, but are individually identified, the beneficiary shall not be paid for those three animals but no penalty shall apply under the condition that these three animals are individually identified by any means laid down in Regulation (EC) No 1760/2000 or Regulation (EC) No 21/2004. However, the wording of the condition contained in Article 31(1)(b) of Delegated Regulation (EU) No 640/2014 limited the derogation from the application of administrative penalties to bovine, ovine and caprine animals, thereby excluding all other animals species that are to be covered by this legislation. Moreover the amendment introduced legal uncertainty because Article 31 (2) does not provide a clear legal basis to impose penalty where up to three non-determined bovine, ovine and caprine animals cannot be individually identified and should not fall under the derogation. There is a need to provide such a rule to ensure fair treatment of farmers and offer legal certainty to Member States who are responsible for preventing and pursuing irregularities.

With effect from 21 April 2021, the rules for identification and registration of bovine animals laid down in Title I of Regulation (EC) 1760/2000, as well as Regulation (EC) No 21/2004 have been repealed and replaced by Regulation (EU) 2016/429, Commission Delegated Regulation (EU) 2019/2035 and Commission Implementing Regulation (EU) 2021/520.

The amendment addresses the legal uncertainty regarding the penalty applicable in case of up to three non-determined bovine, ovine and caprine animals that are not individually identified by any means provided for in the system for the identification and registration of animals and regarding the scope of the obligation of individual identification of animals.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 31(1)(b) shall be amended in such a manner that the requirement of individual identification applies only to bovine, ovine and caprine animals. Article 31(2) shall be

amended to provide for penalties in the case where there are up to three bovine, ovine and caprine animals that are non-determined and cannot be individually identified by any means provided for in the system for the identification and registration of animals.

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

of 23.6.2021

amending Delegated Regulation (EU) No 640/2014 as regards penalty rules under animal aid schemes or animal-related support measures

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 485/2008¹, and in particular Articles 63(4), 64(6) and 77(7) thereof,

Whereas:

- (1) Article 31(1) of Commission Delegated Regulation (EU) No 640/2014², as amended by Commission Delegated Regulation (EU) 2021/841³, provides that the total amount of aid or support to which the beneficiary is entitled should be paid based on the number of animals determined in accordance with Article 30(3) of Delegated Regulation (EU) No 640/2014, provided that no more than three animals are found non-determined and that the non-determined animals can individually be identified by any means provided for in the system for the identification and registration of animals as defined in Article 2(1), point (7), of that Regulation. However, the individual identification of animals does not concern animal species other than bovine, ovine and caprine animals. Moreover, Article 31(2) of Delegated Regulation (EU) No 640/2014 provides that the administrative penalty is only applied if more than three animals are non-determined, without referring to the case of three non-determined bovine, ovine and caprine animals, or less, that cannot be individually identified by any means provided for in the system for the identification and registration of animals.
- (2) As a result, the second condition contained in Article 31(1), point (b), of Delegated Regulation (EU) No 640/2014 excludes from the derogation as regards the application of administrative penalties all animal species other than bovine, ovine and caprine animals that are to be covered by Delegated Regulation (EU) No 640/2014.

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 Commission Delegated Regulation (EU) 2021/841 of 19 February 2021 amending Delegated Regulation (EU) No 640/2014 as regards the rules on non-compliances in relation to the system for the identification and registration for bovine, ovine and caprine animals and on the calculation of the level of administrative penalties in respect of declared animals under animal aid schemes or animal-related support measures (OJ L 186, 27.5.2021, p. 12-15).

- (3) Therefore, it is appropriate to reformulate Article 31(1), point (b), of Delegated Regulation (EU) No 640/2014 in such a way that the requirement of individual identification applies only to bovine, ovine and caprine animals.
- (4) Article 31(2) of Delegated Regulation (EU) No 640/2014 does not provide any penalty for cases where up to three non-determined bovine, ovine and caprine animals cannot be individually identified, meaning that those animals have lost their identity and traceability from whatever source of the system for the identification and registration of animals. This leads to a situation where less serious non-compliances, merely based on the number of non-determined animals, would result in penalties, while non-compliances that are more serious because they concern animals (bovine, ovine and caprine) that cannot be identified, would not have consequences.
- (5) Therefore, it is also appropriate to provide for administrative penalties for the more serious non-compliances where the non-determined bovine, ovine and caprine animals cannot be individually identified by any means provided for in the system for the identification and registration of animals, regardless their number.
- (6) Delegated Regulation (EU) No 640/2014 should therefore be amended accordingly.
- (7) By analogy with Delegated Regulation (EU) 2021/841, this Regulation should apply in relation to aid applications, applications for support and payment claims submitted for claim years or premium periods starting as from 1 January 2021,

HAS ADOPTED THIS REGULATION:

Article 1

Article 31 of Delegated Regulation (EU) No 640/2014 is amended as follows:

in paragraph 1, point (b) is replaced by the following:

“(b) non-determined bovine, ovine and caprine animals can be individually identified by any means provided for in the system for the identification and registration of animals.”;

in paragraph 2, first subparagraph, the introductory phrase is replaced by the following:

“In case of more than three non-determined animals or in case of non-determined bovine, ovine and caprine animals that cannot be individually identified by any means provided for in the system for the identification and registration of animals, 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:”.

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 in relation to aid applications, applications for support and payment claims submitted for claim years or premium periods starting as from 1 January 2021.

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

Done at Brussels, 23.6.2021

For the Commission
The President
Ursula VON DER LEYEN