

WORKING DOCUMENT**DELEGATED ACT FOR INTEGRATED ADMINISTRATION AND CONTROL SYSTEM**

Legal draft of the Articles related to the **calculation of aid and administrative penalties for BPS, SAPS and other area-related aid schemes or area-related support measures**

DISCLAIMER

This working document has been prepared by DG AGRI staff in order to facilitate the discussion in the Expert group for direct payments. It has not yet been subject of an inter-service consultation nor revised by the Legal Service

Whereas:

- (1) Administrative penalties should be established having regard to the principle of proportionality and the specific problems linked to cases of force majeure as well as exceptional and natural circumstances. Administrative penalties should be graded according to the seriousness of the non-compliance committed and should go as far as the total exclusion from one or several aid schemes or support measures for a specified period. They should, with regard to the eligibility criteria, commitments and other obligations, take into account the particularities of the various aid schemes or support measures. The administrative penalties under this regulation are considered proportional enough to discourage intentional over-declaration.
- (2) In order to enable Member States to carry out controls effectively, in particular controls on the respect of cross-compliance obligations, beneficiaries shall, in accordance with Article 73(1)(a) of Regulation (EU) No [...] [HZR], declare all the areas at their disposal whether or not they claim aid for such areas. It is necessary to provide for a mechanism to ensure that beneficiaries comply with that obligation.
- (3) For the sake of determination of areas and calculation of reductions, it is necessary to define the areas falling within the same crop-group. An area should be taken into account several times if it is declared for aid under more than one aid scheme or support measure. For the purpose of greening, however, it is necessary to distinguish the areas falling within different crop groups.
- (4) In order to harmonise the implementation of the integrated system, rules need to be established for the basis of the calculation in respect of areas declared under direct payment aid schemes and/or under area-related support measures.
- (5) Payment of aid under the basic payment scheme requires an equal number of payment entitlements and eligible hectares. For the purpose of this scheme it is therefore appropriate to provide that the calculation of the payment in the case of discrepancies between the number of payment entitlements declared and the area declared should be based on the lower figure. To avoid that calculation be based on non-existing entitlements, it should be provided that the number of payment entitlements used for the calculation should not exceed the number of payment entitlements at the beneficiary's disposal.
- (6) In relation to area aid applications and/or payment claims, non-compliances usually affect parts of areas. Over-declarations in respect of one parcel may, therefore, be offset against under-declarations of other parcels of the same crop-group. Within a

certain margin of tolerance, it should be foreseen that aid applications and/or payment claims are only adjusted to the area actually determined while administrative penalties only become applicable once this margin has been exceeded.

- (7) Furthermore, in relation to aid applications and/or payment claims for area related payments, differences between the total area declared in the aid application and/or payment claim and the total area determined as eligible are often insignificant. To avoid a high number of minor adjustments of applications it should be provided that the aid application and/or payment claims should not be adjusted to the area determined unless a certain level of differences is exceeded.
- (8) Given the particularities of the aid scheme for cotton, special provisions for administrative penalties should be established.
- (9) Administrative penalties should be established having regard to the principle of proportionality for cases where a) the beneficiary divides his holding or his holding results from that division with the sole purpose of benefiting from the redistributive payment or payment under the small farmer scheme, b) the beneficiary, applying for the young farmer scheme, does not comply with his obligations or c) the beneficiary artificially created the conditions to avoid the effects of progressive reductions and capping.

SECTION I

NON-DECLARATION OF AREAS

Article 1

Non-declaration of all areas

1. If, for a given year, a beneficiary does not declare all the areas referred to in Article 13(8) of Regulation (EU) No [...] [IA on IACS] and the difference between the overall area declared in the single application and/or payment claim on the one hand and the area declared plus the overall area of the parcels not declared, on the other, is more than 3 % of the area declared, the overall amount of direct payments and/or support under area-related support measures payable to that beneficiary for that year shall be reduced by up to 3 % depending on the severity of the omission.
2. Paragraph 1 shall also apply to payments related to schemes provided for in Articles 44 and 45 of Regulation (EU) No [...] [sCMO], where the beneficiary is subject to cross-compliance obligations in accordance with Article 92 of Regulation (EU) No [HZR]. The reduction percentage shall apply to the total amount of payments related to measures under Articles 44 and 45 of the Regulation (EU) No [...] [sCMO] divided by 3 for restructuring and conversion.
3. Paragraph 1 shall not apply to payments under the small farmers scheme according to Title V of Regulation (EU) No [...] [DPR].

SECTION II
BASIC PAYMENT SCHEME, SINGLE AREA PAYMENT SCHEME AND OTHER AREA-RELATED AID SCHEMES OR AREA-RELATED SUPPORT MEASURES

Article 2
General principles

1. For the purposes of this Section, the following crop groups shall be distinguished as appropriate:
 - (a) areas declared for the purposes of activation of payment entitlements under the basic payment scheme or for the purpose of being granted the single area payment scheme;
 - (b) a group for each of the different categories of areas declared as permanent grassland for which the concerned Member State decided to apply a reduction coefficient in accordance with the *x*th subparagraph of Article 25(2) of Regulation (EU) No [...] [DPR], for which a different reduction coefficient is applicable;
 - (c) a group for each of the areas declared for the purpose of any other area-related aid scheme or area-related support measure, for which a different rate of aid is applicable;
 - (d) areas declared under the heading 'other uses'.
2. Where the same area serves as the basis for an aid application and/or payment claim under more than one area-related aid scheme or area-related support measure, that area shall be taken into account separately for each of those aid schemes or support measures.

Article 3
Basis of calculation in respect of area-related payments

1. With regard to an application for aid under the basic payment scheme and, in Member States that apply the basic payment scheme, with regards to an aid applications for aid under the small farmers scheme, the re-distributive payment, the payment for areas with natural constraints and the young farmer scheme:
 - if there is a discrepancy between the number of payment entitlements declared and the area declared, the calculation of the payment shall be based on the lower figure;
 - if the number of payment entitlements declared exceeds the number of payment entitlements at the beneficiary's disposal, the number of payment entitlements declared shall be reduced to the number of payment entitlements at the beneficiary's disposal.

This paragraph shall not apply in the first year of allocation of payment entitlements.

2. In the case of aid applications and/or payment claims under area-related aid schemes or area-related support measures, if the area of a crop group determined is established to be greater than the area declared in the aid application, the area declared shall be used for the calculation of the aid.

3. Without prejudice to undue payments and administrative penalties in accordance with Article 4, in the case of applications for aid or payment claims under area-related aid schemes or area-related support measures, if the area declared exceeds the area determined for a crop group as referred to in Article 2(1), the aid shall be calculated on the basis of the area determined for that crop group.

However, without prejudice to Article 62 of Regulation (EU) No [...] [HZR], if the difference between the total area determined and the total area declared for payment under the direct aid schemes established in Titles III, IV and V of Regulation (EU) No [...] [DPR] or the total area declared for payment under an area-related support measure is less than or equal to 0.1 hectare, the area determined shall be set equal to the area declared. For this calculation only over-declarations of areas at the level of a crop group as referred to in Article 2(1) shall be taken into account.

The second subparagraph shall not apply where that difference represents more than 20 % of the total area declared for payments.

4. As regards to areas under permanent grassland for which the concerned Member State decided to apply a reduction coefficient according to Article 25(2) of Regulation (EU) No [...] [DPR], the area determined per category of permanent grassland after application of the relevant reduction coefficient shall be used for calculation of the aid.
5. In case of the payment for young farmers and where the Member State opts for the payment method laid down in Article 36(5) of Regulation (EU) No [...] [DPR]; if the area declared under the basic payment scheme or the single area payment scheme exceeds the limit set by the Member State, the calculation of the payment shall be based on that limit.
6. In case of the re-distributive payment, if the area declared under the basic payment scheme or the single area payment scheme exceeds the limits set by the Member State in accordance with Article 28g(4) of Regulation (EU) No [...] [DPR], that limit shall be used for the calculation of the payment.
7. In case of the payment for areas with natural constraints and where the Member State opts for the payment method laid down in Article 34(4) of Regulation (EU) No [...] [DPR], if the area declared under the basic payment scheme or the single area payment scheme exceeds the maximum number of hectares set by the Member State, the calculation of the payment shall be based on that number.
8. For the purpose of calculating the aid under the basic payment scheme, the average of the values of different payment entitlements shall be taken into account.

Article 4

Administrative penalties in cases of over-declaration

If, in respect of a crop group as referred to in Article 2(1), the area declared for the purposes of any area-related aid schemes or area-related support measures exceeds the area determined in accordance with Article 3, the aid shall be calculated on the basis of the area determined reduced by twice the difference established if that difference is more than either 3 % or two hectares, but no more than 20 % of the area determined.

If the difference is more than 20 % of the area determined, no area-related aid or area-related support shall be granted for the crop group concerned.

If the difference is more than 50 %, the beneficiary shall be excluded once again from receiving aid or support equal the amount corresponding to the difference between the area

declared and the area determined in accordance with Article 3 of this Regulation. That amount shall be off-set in accordance with Article 10 of Commission Regulation (EU) No [...] [HZR]. If the amount cannot be fully off-set by applying that provision in the course of the three calendar years following the calendar year of the finding, the outstanding balance shall be cancelled.

Article 5

Administrative penalties concerning the crop specific payment for cotton

Without prejudice to any administrative penalties to be applied in accordance with Article 4 of this Regulation, where it is established that the beneficiary does not respect the obligations resulting from Articles 6(1) and (2) of Regulation (EU) No [...] [DA on cotton] [former Article 29(1) and (2) of Regulation (EC) No 1121/2009], the beneficiary shall lose the right to the increase of the aid provided for in Article 46(2) of Regulation (EU) No [...] [DPR]. Moreover, the aid for cotton per eligible hectare pursuant to Article 43 of Regulation (EU) No [...] [DPR] shall be reduced by the amount of the increase that the beneficiary would have otherwise been granted in accordance with Article 46(2) of that Regulation.

Article 6

Administrative penalties [other than over-declarations of areas] concerning the payments under Title III and V of Regulation (EU) No [DPR]

1. Without prejudice to any administrative penalties to be applied in accordance with Article 4, where it is established that the beneficiary divided his holding with the sole purpose of benefitting from the redistributive payment as referred to in Article 28g(5) of DPR, this annual payment shall not be made or shall be withdrawn in full. Moreover, a penalty corresponding to 20% of the amount the beneficiary has, or would have otherwise, received as a redistributive payment pursuant to Article 28g of Regulation (EU) No [DPR] shall be applied.
2. Without prejudice to any administrative penalties to be applied in accordance with Article 4, where it is established that the beneficiary does not comply with the obligations referred to in Article 36(2) of Regulation (EU) No [DPR] and Article [...] of Regulation (EU) No [...] [DA on YFS], the aid for young farmers shall not be paid or shall be withdrawn in full. Moreover, where it is established that the beneficiary provided false evidence for the purpose of proving compliance with the obligations, a penalty corresponding to 20% of the amount the beneficiary has, or would have otherwise, received as a payment for young farmers pursuant to Article 36(1) of Regulation (EU) No [DPR] shall be applied.
3. Without prejudice to any administrative penalties to be applied in accordance with Article 4 Regulation, where it is established that the beneficiary artificially created the conditions to benefit from the small farmer scheme under Title V of Regulation (EU) No [DPR] as referred to in Article 47(4) of Regulation (EU) No [DPR], the aid for small farmers shall not be paid or shall be withdrawn in full. Moreover, a penalty corresponding to 20% of the amount the beneficiary has, or would have otherwise, received as a payment under the small farmer scheme pursuant to Article 49 of Regulation (EU) No [DPR] shall be applied.

*Article 7**Administrative penalties concerning the reduction of payments*

Without prejudice to any administrative penalties to be applied in accordance with Article 4, where it is established that the beneficiary artificially created the conditions to avoid the effects of the reduction of payments as referred to in Article 11(4) of Regulation (EU) No [DPR], the amount of direct payments pursuant to Chapter 1 of Title III [BPS and SAPS] of Regulation (EU) No [DPR] shall not be paid or shall be withdrawn in full. Moreover, a penalty corresponding to 20% of the amount the beneficiary has, or would have otherwise, received pursuant to Article 11(1) of Regulation (EU) No [DPR] shall be applied.

SECTION III**PAYMENT FOR AGRICULTURAL PRACTICES BENEFICIAL FOR THE CLIMATE AND THE ENVIRONMENT***Article 8**General principles*

1. For the purposes of this Section, the following crop groups shall be distinguished as appropriate:
 - (a) each group of areas declared as a certain crop in accordance with Article 30(1b) of Regulation (EU) No [...] [DPR];
 - (b) areas declared as permanent grassland and which are environmentally sensitive in accordance with Article 31(1) of Regulation (EU) No [...] [DPR];
 - (c) the remaining areas declared as permanent grassland in accordance with Article 4(h) of Regulation (EU) No [...] [DPR] and
 - (d) areas declared as ecological focus area in accordance with Article 32(1) of Regulation (EU) No [...] [DPR].
2. Where the same area is declared for more than one crop group, that area shall be taken into account separately for each of those crop groups.

*Article 9**Basis of calculation of the payment for agricultural practices beneficial for the climate and the environment in respect of the eligible hectares declared under the basic payment scheme or the single area payment scheme*

1. If the area determined for the basic payment scheme or the single area payment scheme is found to be greater than the area declared in the aid application, the area declared shall be used for the calculation of the payment for agricultural practices beneficial for the climate and the environment hereinafter referred to as "the green payment".
2. Where the Member State applies the basic payment scheme, if there is a discrepancy between the number of payment entitlements declared and the area declared, the calculation of the green payment shall be based on the lower figure.
3. For the purpose of calculating the green payment, where the Member State applies the basic payment scheme, if the number of payment entitlements declared exceeds the number of payment entitlements at the beneficiary's disposal, the number of payment

entitlements declared shall be reduced to the number of payment entitlements at the beneficiary's disposal.

4. Without prejudice to administrative penalties in accordance with Article 13, if the area declared in a single application for the basic payment scheme or the single area payment scheme exceeds the area determined, the green payment shall be calculated on the basis of the area determined for those schemes.

Article 10

Basis of calculation of the payment for agricultural practices beneficial for the climate and the environment in respect of crop diversification

1. If the area that has been determined for the main crop group covers more than 75% of the total area of arable land determined, the area to be used for the calculation of the green payment in accordance with Article 9 shall be reduced by the total area of arable land determined multiplied with the ratio of difference.

The ratio of difference referred to in the previous sub-paragraph shall be the share of the main crop group going beyond 75% of the total arable land determined in the total area required for the other crop groups.

2. If the area that has been determined for the two main crop groups covers more than 95% of the total area of arable land determined, the area to be used for the calculation of the green payment in accordance with Article 9 shall be reduced by the total area of arable land determined multiplied with the ratio of difference.

The ratio of difference referred to in the previous sub-paragraph shall be the share of the two main crop groups going beyond 95% of the total area of arable land determined in the total area required for the other crop groups.

3. If the area that has been determined for the main crop groups covers more than 75% of the total area of arable land determined and the area that has been determined for the two main crop groups covers more than 95% of the total area of arable land determined, the area to be used for the calculation of the green payment in accordance with Article 9 shall be reduced by the total area of arable land determined multiplied with the ratio of difference.

The ratio of difference referred to in the previous sub-paragraph shall be the sum of the ratios of difference calculated under paragraph 1 and 2. The value of this ratio shall not exceed 1.

4. The total reduction expressed in a number of hectares as calculated in accordance with this Article shall be multiplied by the share of the total area of arable land determined in the total area to be used for the calculation of the green payment in accordance with Article 9.

Article 11

Basis of calculation of the payment for agricultural practices beneficial for the climate and the environment in respect of maintaining existing permanent grassland

1. If a non-compliance with the requirements in the third sub-paragraph of Article 31(1) of Regulation (EU) No [...] [DPR] has been determined, the area to be used for the calculation of the green payment in accordance with Article 9 shall be reduced by the sum of the total area determined as permanent grassland which are environmentally sensitive in accordance with Article 31(1) of Regulation (EU) No [...] [DPR] and the

area determined as non-compliant with the requirements in the third sub-paragraph of Article 31(1) of Regulation (EU) No [...] [DPR] multiplied with the ratio of difference.

The ratio of difference referred to in the previous sub-paragraph shall be the share of the area determined as non-compliant with the requirements in the third sub-paragraph of Article 31(1) of Regulation (EU) No [...] [DPR] in relation to the sum of the total area determined as permanent grassland which are environmentally sensitive in accordance with Article 31(1) of Regulation and the area determined as non-compliant.

2. If a non-compliance with the obligations as referred to in Article 31(2) of Regulation (EU) No [...] [DPR] has been determined, the area to be used for the calculation of the green payment in accordance with Article 9 shall be reduced by the sum of the total area determined as permanent grassland in accordance with Article 4(h) of Regulation (EU) No [...] [DPR] and the area determined as non-compliant with the obligations as referred to in Article 31(2) of Regulation (EU) No [...] [DPR] multiplied with the ratio of difference.

The ratio of difference referred to in the previous sub-paragraph shall be the share of the area determined as non-compliant with the obligations as referred to in Article 31(2) of Regulation (EU) No [...] [DPR] in relation to the sum of the total area determined as permanent grassland in accordance with Article 4(h) of Regulation (EU) No [...] [DPR] and the area determined as non-compliant.

3. Non-compliances shall be deemed to be 'determined' if they are established as a consequence of any kind of controls carried out in accordance with Article 75 of Regulation (EU) No [...] [HZR] or after having been brought to the attention of the competent control authority or paying agency in whatever other way.
4. The sum of the reductions expressed in a number of hectares as calculated in accordance with paragraphs 1 and 2 shall be multiplied by the share of the total permanent grassland determined in relation to the total area to be used for calculation of the green payment in accordance with Article 9.

Article 12

Basis of calculation of the payment for agricultural practices beneficial for the climate and the environment in respect of having ecological focus area

1. The ecological focus area required in accordance with Article 32(1) of Regulation (EU) No [...] [DPR], hereinafter referred to as "the ecological focus area required", shall be calculated on the basis of the total area of arable land determined and including, if applicable pursuant to the fourth subparagraph of Article 32(1) of Regulation (EC) No DPR, the areas determined mentioned in points (c), (d), (j) and (k) of the fourth subparagraph of Article 32 of Regulation (EU) No [...] [DPR].
2. If the ecological focus area required exceeds the ecological focus area determined taking account of the weighting of ecological focus areas provided for in Article 32(1a) of the same Regulation, the area to be used for the calculation of the green payment in accordance with Article 9 shall be reduced by the total arable land determined and including, if applicable pursuant to the fourth subparagraph of Article 32(1) of Regulation (EC) No DPR, the areas determined mentioned in points (c), (d), (j) and (k) of the fourth subparagraph of Article 32 of Regulation (EU) No [...] [DPR], multiplied with the ratio of difference.

The ratio of difference referred to in the previous sub-paragraph shall be the share of the difference between the ecological focus area required and the ecological focus area determined in relation to the ecological focus area required.

3. The total reduction expressed in a number of hectares as calculated in accordance with this Article shall be multiplied by the share of the total arable land determined and including, if applicable pursuant to the fourth subparagraph of Article 32(1) of Regulation (EC) No DPR, the areas determined mentioned in points (c), (d), (j) and (k) of the fourth subparagraph of Article 32 of Regulation (EU) No [...] [DPR] in relation to the total area to be used for the calculation of the green payment in accordance with Article 9.

Article 13

Administrative penalties as regards the payment for agricultural practices beneficial for the climate and the environment

1. If the area to be used for the calculation of the green payment in accordance with Article 9 differs from the area to be used for the calculation of the green payment after application of Articles 10, 11 and 12, the green payment shall be calculated on this later area reduced by twice the difference established if that difference is more than either 3 % or two hectares, but no more than 20 % of the area to be used for the calculation of the green payment after application of Articles 10, 11 and 12.

If the difference is more than 20 %, no aid shall be granted.

If the difference is more than 50 %, the beneficiary shall be excluded once again from receiving the green payment equal to the amount corresponding to the difference between the area to be used for the calculation of the green payment in accordance with Article 9 and the area to be used for calculation of the green payment after application of Articles 10, 11 and 12.

2. If the farmer does not declare all his area under arable land in accordance with Article 4(1)(f) and/or all his permanent grassland which is environmentally sensitive in accordance with Article 31(1) of Regulation (EU) No [...] [DPR], and the non-declared area is more than 0.1ha, the area to be used for the calculation of the green payment after application of Articles 10, 11 and 12 shall be further reduced by 10%.
3. In accordance with Article 77a(5a) of Regulation (EU) No [...] [HZR], administrative penalty calculated in accordance with paragraph 1 and 2 shall not be applied in claim years 2015 and 2016. The administrative penalty calculated in accordance with paragraph 1 and 2 shall be limited to 20% of the amount of the green payment to which the farmer concerned would have been entitled in accordance with Article 9 in claim year 2017, and to 25% of the same amount for claim years 2018 and onwards.

Article 14

Applicable rules for equivalence practices

The articles in this Section shall apply *mutadis mutandis* to the equivalent practices referred to in Article 29(1b) of Regulation (EU) No [...] [DPR].