

**WORKING DOCUMENT****DELEGATED ACT FOR DIRECT PAYMENTS**

Legal draft of the Articles related to the **provisions on active farmer**

**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) Article 9(1) of Regulation (EU) No [DPR] requires that no direct payments are granted to natural or legal persons, or to groups of natural or legal persons, whose agricultural areas are mainly areas naturally kept in a state suitable for grazing or cultivation and who do not carry out on those areas the minimum activity defined by Member States. For this purpose, it is necessary to determine when such areas are to be considered as the main part of a farmer's agricultural land
- 2) According to Article 9(2) of Regulation (EU) No [DPR], entities falling within the scope of the so-called negative list are to be considered active farmers if they are able to prove that they meet one of the criteria listed in that provision. One of these criteria consists of demonstrating that the annual amount of direct payments is at least 5 % of the total receipts obtained from non-agricultural activities. It is therefore necessary to lay down provisions for establishing whether receipts stem from agricultural or non-agricultural activities.
- 3) Furthermore, it is necessary for the purposes of Article 9(2) of Regulation (EU) No [DPR] to lay down rules how the annual amount of direct payments is to be determined. Similar rules should be set out for Article 9(4) of Regulation (EU) No [DPR] which exempts certain farmers from the application of Article 9 of Regulation (EU) No [DPR].
- 4) In accordance with Article 9(2) and, where applicable, Article 9(3) of Regulation (EU) No [DPR] farmers may also demonstrate that they are active on the basis of the criteria that their agricultural activities are not insignificant and/or that their principal business or company objects consist of exercising an agricultural activity. Member States should further implement these criteria on the basis of their national or regional characteristics. In this regard, with a view to respect the Union's international obligations, it is imperative that any such criteria that farmers are to meet are not linked to type or volume of production of agricultural products, to production factors

employed by a farmer in a given year for exercising agricultural activities or to requirements for production, rearing or growing of agricultural products.

## SECTION 1

### ACTIVE FARMER

#### *Article 1*

#### **Cases where agricultural areas are mainly areas naturally kept in a state suitable for grazing or cultivation**

1. For the purposes of Article 9(1) of Regulation (EU) No [DPR], a natural or legal person, or a group of natural or legal persons, shall be considered as having agricultural areas which are mainly areas naturally kept in a state suitable for grazing or cultivation, where such areas represent more than 50% of all agricultural area declared in accordance with Article 73(1)(a) of Regulation (EU) No [HZR].

~~2. For the purposes of paragraph 1, agricultural areas shall only be considered as areas naturally kept in a state suitable for grazing or cultivation if such areas are not overgrown with vegetation in the absence of grazing or human intervention.~~

#### ~~{Article 2~~

#### **Receipts obtained from non-agricultural activities**

1. For the purpose of point (a) of the third subparagraph of Article 9(2) of Regulation (EU) No [DPR], receipts obtained from non-agricultural activities shall be receipts other than those received by a farmer from his agricultural activity within the meaning of Article 4(1)(c) of Regulation (EU) No [DPR], including as the Union support under the EAFG and the EAFRD, ~~as well as any receipts he has received in connection with the production of his agricultural products within the meaning of Article 4(1)(d) of that Regulation.~~

Receipts obtained from the provision of services shall be deemed as receipts from non-agricultural activities.

2. For the purposes of paragraph 1, 'receipts' means gross receipts from sales before deduction of related costs and taxes. †

#### ~~[Article 3~~

#### **Annual amount of direct payments referred to in Article 9(2) of Regulation (EU) No [DPR]**

1. For the purposes of point (a) of the third subparagraph of Article 9(2) of Regulation (EU) No [DPR], the annual amount of direct payments shall be ~~the total amount of direct payments to be granted to a farmer before the application of Article 65 of Regulation (EU) No [HZR] for the relevant year.~~

~~2. In the year 2015, the total amount of direct payments shall be established by multiplying the national average direct support payment per hectare by the number of eligible hectares declared by a farmer in accordance with Article 73(1)(a) of Regulation (EU) No [HZR] in that year~~

The national average direct support payment per hectare referred to in the first subparagraph shall be established by dividing the national ceiling for the concerned year 2015 set out in Annex II to Regulation (EU) No [DPR] by the total number of eligible hectares declared in that Member State for the concerned year ~~2015~~ in accordance with Article 73(1)(a) of Regulation (EU) No [HZR]. ]

#### *Article 4*

#### **Amount of direct payments referred to in Article 9 (4) of Regulation (EU) No [DPR]**

1. The annual amount of direct payments of a farmer referred to in Article 9(4) of Regulation (EU) No [DPR] shall be the total amount of direct payments granted to that farmer in accordance with that Regulation before the application of Article 65 of Regulation (EU) No [HZR] for the previous year.

2. In respect of a farmer who, for the previous year, did not submit an aid application for direct payments in accordance with Regulation (EU) No [DPR], Member States shall establish the total amount of direct payments for the previous year by multiplying the number of eligible hectares declared by that farmer in the year of submitting the aid application with the national average direct support payment per hectare for the previous year.

The national average direct support payment per hectare for the previous year referred to in the first subparagraph shall be established by dividing the national ceiling for the previous year set out in Annex II to Regulation (EU) No [DPR] by the total number of eligible hectares declared in that Member State for the previous year in accordance with Article 73(1)(a) of Regulation (EU) No [HZR].

3. By way of derogation from paragraph 1, for in the year 2015 the annual amount of direct payments of a farmer shall be the total amount of direct payments granted to that farmer for the year 2014 pursuant to Regulation (EC) No 73/2009 before the reductions and exclusions provided for in Articles 21 and 23 of that Regulation.

4. By way of derogation from paragraph 2, where a farmer did not submit an aid application for direct payments for the year 2014 in accordance with Regulation (EC) No 73/2009, Member States shall establish, for the year 2015, the annual amount of direct payments of that farmer by multiplying the number of eligible hectares declared by that farmer for the year 2015 in accordance with Article 73(1)(a) of Regulation (EU) No [HZR] by the national average direct support payment per hectare for the year 2014.

The national average direct support payment per hectare for the year 2014 referred to in the first subparagraph shall be established by dividing the national ceiling for the year 2014 set out in Annex VIII to Regulation (EU) No 73/2009 by the total number of eligible hectares declared in that Member State for the year 2014 in accordance with Article 19(1)(a) of that Regulation.

#### *Article 5*

#### **Criteria for proving that agricultural activities are not insignificant and that principal business or company object consist of exercising an agricultural activity**

1. For the purposes of Article 9(2) and (3) of Regulation (EU) No [DPR], the criteria that farmers are to meet in order to prove that their agricultural activities are not insignificant and that their principal business or company objects consist of exercising an agricultural activity shall not be linked to type or volume of production of agricultural products, to production factors employed by a farmer in a given year for exercising agricultural activities or to requirements for production, rearing or growing of agricultural products.

2. Member States shall establish further criteria necessary for the implementation of points (b) and (c) of the third subparagraph of Article 9(2) and, where applicable, for the implementation of points (i) and (ii) of Article 9(3) of Regulation (EU) No [DPR].

~~3. For the purposes of point (c) of the third subparagraph of Article 9(2) and of point (ii) of Article 9(3) of Regulation (EU) No [DPR], an agricultural activity shall be considered to be the principal business or company object of a legal person if so recorded as a principal business or company object in the official business register of a Member State. In case of a natural person, equivalent evidence shall be required.~~