

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

Legal draft of the Articles related to the **eligibility**

**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) Experience has shown that certain landscape features of the fields, in particular hedges, ditches and stonewalls, should be considered part of the eligible area for area-related direct payments. It is necessary to define the acceptable width of landscape features of the field. In view of specific environmental needs, it is appropriate to provide Member States with some flexibility as regards the limits to be taken into account when the regional yields were fixed for the purpose of former area payments for crops. However, permanent grassland with scattered landscape features and trees shall not fall under this rule.

(2) Given their importance for sustainable agriculture, any landscape features subject to the requirements and standards listed in Annex II to Regulation (EU) No [HZR] which form part of the total area of an agricultural parcel should be considered part of the eligible area for area-related direct payments.

(3) As regards agricultural parcels taken up by arable land or by permanent grassland containing fruit trees, conditions should be established for the presence of trees on these areas and their impact on the eligibility of such areas. For the sake of legal certainty, a maximum density of trees should be laid down, which is to be defined by Member States on the basis of traditional cropping practices, natural conditions and environmental reasons.

(4) For reasons of simplification and controllability, a pro-rata system should be applied in order to establish the eligible area of permanent grassland with scattered landscape features and trees. The eligible area to be taken into account is determined for each reference parcel according to pre-established thresholds applied at the level of the homogeneous land cover type. This pro-rata system should take into account the grazable edges of shrubs and trees that can be grazed as referred to in Article 4(1)(h) of Regulation (EU) No [DPR] and is to be applied in the form of a simplified 10% reduction of the determined ineligible area. Scattered landscape features and trees up to a certain percentage of the reference parcel can be considered as being part of the eligible area. Therefore, no deductions need to be made for the area of scattered landscape features and trees in the first category representing the lowest percentage of ineligible area.

(5) In accordance with the second subparagraph of Article 4(1a) of Regulation (EU) No [DPR], Member States may consider as permanent grassland land which can be grazed and which forms part of established local practices where grasses and other herbaceous forage are traditionally not predominant in grazing areas. Such permanent grassland may be subject to a reduction coefficient according to the last subparagraph of Article 25(2) of Regulation (EU)

No [DPR]. In order to ensure the proportionate application of that provision, it is appropriate to provide for a possibility to distinguish between different categories of areas in order to apply different reduction coefficients to such categories.

(6) In order to ensure the correct application of the rules set out in Regulation (EU) No [DPR] and for the purpose of evaluating policy implementation, it is necessary to specify certain notification obligations of Member States.

*Article 1 (to be inserted in general Chapter, section eligibility)*

***Eligibility of areas with landscape features and trees***

[Legal basis: Article 77(2)c HZR]

1. Where certain landscape features, in particular hedges, ditches and walls, are traditionally part of good agriculture cropping or utilisation practices on agricultural area in certain regions, Member States may decide that the corresponding area is to be considered part of the eligible area referred to in Article 25(2) of Regulation (EU) No [DPR] provided that it does not exceed a total width to be determined by the Member State. That width must correspond to a traditional width in the region concerned and shall not exceed 2 metres.

However, where Member States notified to the Commission by 9 December 2009 a width greater than 2 metres in conformity with the third subparagraph of Article 30(2) of Regulation (EC) No 796/2004, this width may still be applied.

The first and the second subparagraph shall not apply to permanent grassland with scattered landscape features and trees.

2. Any landscape features subject to the requirements and standards listed in Annex II to Regulation (EU) No [HZR] which form part of the total area of an agricultural parcel within the meaning of Article 68(4)a of Regulation (EU) No [HZR] shall ~~are to~~ be considered part of the eligible area referred to in Article 25(2) of Regulation (EU) No [DPR].
3. An agricultural parcel within the meaning of Article 68(4)a of Regulation (EU) No [HZR] ~~taken up by arable land~~ that contains scattered trees shall be considered as eligible area referred to in Article 25(2) of Regulation (EU) No [DPR] for the purposes of the area-related direct payments schemes provided that the following conditions are fulfilled:

a) agricultural activities can be carried out in a similar way as on parcels without trees in the same area; and

b) the number of trees per hectare shall not exceed a maximum density.

That maximum density shall be defined by Member States on the basis of traditional cropping practices, natural conditions and environmental reasons. It shall not exceed 100 trees per hectare.

This paragraph does not apply to permanent grassland with scattered landscape features and trees, with the exception of permanent grassland containing fruit trees which yield repeated harvests.

*Article 2*

**Pro-rata system for permanent grassland containing landscape features and trees**

[Legal basis: Article 77(2)c HZR]

1. In case of permanent grassland with scattered landscape features and trees, Member States shall apply a pro-rata system to determine the eligible area within the reference parcel as defined in Article [...] of Regulation (EU) No [...] [DA on IACS].

The pro-rata system shall consist of different categories of homogeneous land cover types for which a fixed reduction coefficient based on the average percentage of ineligible area is applied. Each of these categories shall not exceed a range of 20%. The category representing the lowest percentage of ineligible area shall not exceed 10% of ineligible area and no reduction coefficient shall apply to that category. The category representing the highest percentage of ineligible area shall not exceed 50% of ineligible area.

The classification of a reference parcel in one of these categories shall be based on the percentage of ineligible area of that parcel which encompasses the canopy cover of landscape features and trees and the surface area of other ineligible features. This percentage shall be determined on the basis of ortho-imagery. If shrubs and trees which can be grazed are present in the ineligible area, the percentage of ineligible area shall be reduced by a maximum of 10 percentage points.

2. Any landscape features subject to the requirements and standards listed in Annex II to Regulation (EU) No [HZR] which form part of the total area of an agricultural parcel within the meaning of Article 68(4)a of Regulation (EU) No [HZR] shall be considered part of the eligible area referred to in Article 25(2) of Regulation (EU) No [DPR].

3. This Article does not apply to permanent grassland containing fruit trees which yield repeated harvests.

*Article 32 (to be inserted in BPS Chapter, section eligibility)*

***Reduction coefficient according to Article 25(2) of Regulation (EU) No [DPR]***

[Legal basis Art 28(1)(ga) DPR]

When applying the last subparagraph of Article 25(2) of Regulation (EU) No [DPR] for permanent grassland which can be grazed and which forms part of established local practices where grasses and other herbaceous forage are traditionally not predominant in grazing areas, Member States may distinguish between different categories of areas in order to apply different reduction coefficients to such categories.

*Article 4*

*Notifications*

A Member State shall notify the Commission of its decisions pursuant to Articles 1, 2 and 3 of this Regulation by 31 January 2015. Such a notification shall include the details of such

decisions, their justification and the objective criteria on the basis of which those decisions have been made.