

WORKING DOCUMENT**DELEGATED ACT FOR DIRECT PAYMENTS**

Legal draft of the Articles related to the **Basic Payment Scheme**

DISCLAIMER

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CHAPTER 1**BASIC PAYMENT SCHEME***Article 1**Subject matter and scope*

This Chapter lays down detailed rules for the implementation of the basic payment scheme provided for in sections 1-3 and 5 of Title III of Regulation (EU) No [DPR].

SECTION 1**FIRST ALLOCATION OF PAYMENT ENTITLEMENTS***Article 2**Cases of inheritance, changes in legal status or denomination and mergers and scissions*

1. Where a farmer received the holding, or part of the holding, by way of actual or anticipated inheritance, he shall be entitled to claim, in his name, the number and the value of payment entitlements to be allocated for the holding or part of the holding received under the same conditions as the farmer originally managing the holding.

2. A change of denomination shall have no impact on the number and the value of payment entitlements to be allocated.

A change of the legal status shall have no impact on the number and the value of payment entitlements to be allocated if the farmer who was in control of the original holding in terms of management, benefits and financial risks also manages the new holding.

3. A merger or scission shall have no impact on the total number and the value of payment entitlements to be allocated to the holding(s).

4. For the purposes of this Article, the following definitions shall apply:

(a) ‘merger’ means the merger of two or more separate farmers within the meaning of Article 4(1)(a) of Regulation (EU) No [DPR] into one new farmer within the meaning

of that Article controlled in terms of management, benefits and financial risks by the farmers originally managing the holdings or one of them;

(b) 'scission' means the scission of one farmer within the meaning of Article 4(1)(a) of Regulation (EU) No [DPR] into at least two new separate farmers within the meaning of that Article at least one of which remains controlled, in terms of management, benefits and financial risks, by at least one of the legal or natural persons originally managing the holding.

Article 3

First allocation of payment entitlements under Articles 21(2) and 28e(2) of Regulation (EU) No [DPR]

1. In cases where eligible hectares declared for the purposes of allocation of payment entitlements are at the disposal of an applicant on the basis of a lease, payment entitlements shall be allocated to the applicant if he enjoys decision making power in relation to the agricultural activities exercised on that land and bears benefits and financial risks related to these activities
2. For the purpose of establishing the number of payment entitlements to be allocated, only those eligible hectares shall be taken into account which are determined pursuant to Article [IACS DA, corresponding to Art 2(23) of Reg 1122/2009].

Article 4

Limitations under Article 21(2) of Regulation (EU) No [DPR]

Any reduction pursuant to Article 21(2)(b) of Regulation (EU) No [DPR] shall not exceed 75% of the number of payment entitlements corresponding to the eligible hectares of permanent grassland located in areas with difficult climatic conditions .

For the purpose of applying the reduction coefficient provided for in the previous subparagraph, Member States may, on the basis of the criteria referred to in Article 21(2)(b), distinguish between categories of areas with difficult climatic conditions in order to apply different reduction coefficients to such categories.

Article 5

Determination of the value of payment entitlements under Articles 22 and 28f of Regulation (EU) No [DPR]

1. For the purpose of determining the relevant direct payments relating to the year 2014 as referred to in Article 22(3) of Regulation (EU) No [DPR], account shall be taken only of the payments to those farmers which are entitled to be granted direct payments in accordance with Article 9 of Regulation (EU) No [DPR] in the year 2015.

For the purpose of determining the relevant direct payments relating to the year preceding the application of the basic payment scheme as referred to in Article 28f(3) of Regulation (EU) No [DPR], account shall be taken only of the payments to those farmers which are entitled to be granted direct payments in accordance with Article 9 of Regulation (EU) No [DPR] in the year preceding the application of the basic payment scheme.

2. For the purpose of applying the third and fourth subparagraphs of Article 22(3) of Regulation (EU) No [DPR], the support granted to a farmer for calendar year 2014 under one or more of the support schemes referred to in those provisions shall be calculated without taking into account any reductions or exclusions provided for in Chapter 4 of Title II of Regulation (EC) No 73/2009.

The reference to the specific support measures in Articles 68(1)(a), 68(1)(b) and 68(1)(c) of Regulation (EC) No 73/2009 in the third and fourth subparagraph of Article 22(3) of Regulation (EU) No [DPR] shall be without prejudice to the possibility for Member States to consider only one or several measures implemented under those specific support measures.

[3. The reference in Article 22(3)(b) of Regulation (EU) No [DPR] to payment entitlements held by a farmer shall also include those payment entitlements that are leased out by the farmer to another farmer on the date of submission of his application for 2014.]

Article 6

Definitive establishment of the value and number of payment entitlements

The value and number of payment entitlements shall be established at the latest by 1 April of the year following the first year of application of the basic payment scheme by the relevant Member State, after all necessary checks pursuant to Article 75 of Regulation (EU) No [HZR] have been carried out.

Article 7

Establishment of the value and number of PE in hardship cases

1. If the number of eligible hectares declared by a farmer pursuant to Articles 21(2) or 28e(2) of Regulation (EU) No [DPR] is lower than [85%] of the number of eligible hectares at his disposal in the preceding year due to force majeure or exceptional circumstances as referred to in Article 2(1) of Regulation (EU) No [HZR], the number of payment entitlements to be allocated to that farmer shall be based on the number of eligible hectares he would have had at his disposal without force majeure or exceptional circumstances.

2. If one or several of the direct payments referred to in Articles 22(3) or 28f(3) of Regulation (EU) No [DPR] relating to 2014 or, respectively, to the year preceding the application of the basic payment scheme are lower than [85%] of the corresponding amounts in the preceding year due to force majeure or exceptional circumstances as referred to in Article 2(1) of Regulation (EU) No [HZR], the initial unit value shall be established on the basis of the amounts received by that farmer in the previous year.

*Article 8**Application of Article 21(3) of Regulation (EU) No [DPR] in the case of sale*

Where a sales contract concluded or modified no later than at the date set out in Article [IACS DA, i.e. date for lodging an application for allocation of entitlements in the first year of application of the basic payment scheme] stipulates that all or part of a holding is sold together with the corresponding payment entitlements to be allocated according to Articles 21 and 22 of Regulation (EU) No [DPR], such sale shall allow the buyer to receive payment entitlements under Articles 21 and 22 of Regulation (EU) No [DPR] under the same conditions as if the seller would have applied.

Such a sale shall not be considered as a transfer without land within the meaning of Article 27(2b) of Regulation (EU) No [DPR].

*Article 9**Application of Article 21(3) of Regulation (EC) No [DPR] in the case of lease*

Where a lease contract concluded or modified no later than at the date set out in Article [IACS DA, i.e. date for lodging an application for allocation of entitlements in the first year of application of the basic payment scheme] stipulates that all or part of a holding is leased out together with the corresponding payment entitlements to be allocated according to Articles 21 and 22 of Regulation (EU) No [DPR], the payment entitlements shall be established under the same conditions as if the lessor would have applied for the allocation of the payment entitlements, provided that the lease contract expires later than at the last date for lodging an application under the basic payment scheme.

A lease fulfilling these conditions shall not be considered as a transfer without land within the meaning of Article 27(2b) of Regulation (EU) No [DPR].

*Article 10**Beneficiaries according to Article 21(1) of Regulation (EC) No [DPR]*

For the purposes of point (a)(i) of the third subparagraph of Article 21(1) of Regulation (EU) No [DPR], ‘ware potatoes and seed potatoes’ shall mean potatoes of CN code 0701 other than those intended for the manufacture of potato starch.

SECTION 2

ACTIVATION OF ENTITLEMENTS

*Article 11**Calculation of the value of payment entitlements*

1. Payment entitlements shall in a first step be calculated up to three decimals and in a second step rounded up or down to the nearest second decimal [*Example: 120,658 EUR is rounded to*

120,66 EUR]. If the calculation gives a result which is exactly half-way, the sum shall be rounded up to the nearest second decimal [*Example: 120,655 EUR is rounded to 120,66 EUR*].

2. Where the size of a parcel which is transferred with an entitlement in accordance with Article 27 of Regulation (EU) No [DPR] amounts to a fraction of a hectare, the farmer may transfer the part of the entitlement concerned with the land at a value calculated to the extent of the same fraction. The remaining part of the entitlement shall remain at the disposal of the farmer at a value calculated proportionally.

If a farmer transfers a fraction of an entitlement without land the value of those fractions shall be calculated proportionally.

3. Member States may modify payment entitlements by merging fractions of entitlements owned by a farmer.

Article 12

Requirements for activation of payment entitlements

1. Payment entitlements may only be declared for payment once per year by the farmer who holds them (owned or leased-in) at the latest date for lodging the single application in accordance with Article [IACS IA, current Art 11 of R1122/2009].

However, where a farmer uses the possibility to amend the single application in accordance with Article [IACS IA, current Art 14 of R1122/2009], he may also declare payment entitlements which he holds (owned or leased-in) at the date of his notification of the amendments to the competent authority provided that the payment entitlements concerned are not declared by another farmer in respect of the same year.

Where the farmer acquires payment entitlements by way of a transfer from another farmer and where that other farmer had already declared those payment entitlements, the additional declaration of those payment entitlements shall only be admissible if the transferor has already informed the competent authority of the transfer in accordance with Article [transfers – DP IA] and withdraws those payment entitlements from his own single application, within the applicable time-limits set out in Article [IACS IA, current Art 14 of R1122/2009].

2. Where a farmer, after having declared parcels corresponding to all his available payment entitlements under Article 26(1) of Regulation (EU) No [DPR] which are expressed in whole numbers, still disposes of a parcel which amounts to a fraction of a hectare, he may declare a further whole-number payment entitlement which shall give right to a payment calculated pro rata to the size of the parcel. The payment entitlement shall be deemed as fully activated for the purposes of Article 24(1)(b) of that Regulation.

Article 13

[Provision might later be moved to a more general chapter on eligibility, applying for support schemes]

Production of hemp

For the purposes of Article 25(3) of Regulation (EC) No [DPR], 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.

SECTION 3

TRANSFER OF ENTITLEMENTS

*Article 14**Transfer of entitlements*

1. Payment entitlements may be transferred at any time of the year.
2. Where a Member State uses the option provided for in Article 27(2a) of Regulation (EU) No [DPR], it shall define the regions referred to in that provision at the latest one month before the date referred to in Article [IACS IA, i.e. the date until when the single application can be amended] in the first year of application of the option provided for in Article 27(2a) of Regulation (EU) No [DPR].

SECTION 4

NATIONAL OR REGIONAL RESERVES

*Article 15**Reversion to the national or regional reserve due to retention on transfer of payment entitlements*

Where a Member State uses the option provided for in Article 27(2b) of Regulation (EU) No [DPR], the Member State may decide, in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion, that it shall revert to the national or regional reserve up to 30 % of the unit value of each payment entitlement transferred without the corresponding eligible hectares within the meaning of Article 25(2) of Regulation (EU) No [DPR], or the equivalent amount expressed in number of payment entitlements.

By way of derogation from the first subparagraph, Member States may foresee a reversion up to 50% during the first 3 years of application of the basic payment scheme.

*Article 16**Application of the windfall profit clause*

For the purpose of applying Articles 22(4) and 28f(5) of Regulation (EU) No [DPR], the increase of the value of payment entitlements referred to in those Articles shall be determined by comparing the values of the farmer's payment entitlements resulting from the application of Article 22(3) and (5a) or Article 28f(3) of that Regulation, respectively, before and after the sale or lease referred to in Article 22(4) or, respectively, Article 28f(5).

*Article 17**Establishment of payment entitlements from the national or regional reserve*

1. For the purpose of Article 23(4) and (5) of Regulation (EU) No [DPR], where new payment entitlements are allocated as provided for in Article 23(8) of that Regulation, they shall be allocated in accordance with the conditions laid down in this Article and in Article 21 and in accordance with the objective criteria laid down by the Member State concerned.
2. When a farmer who does not own any payment entitlement applies for payment entitlements from the national or regional reserve, he shall receive a number of payment entitlements equal to the number of eligible hectares he holds (owned or leased-in) at that time.
3. When a farmer who owns payment entitlements applies for payment entitlements from the national or regional reserve, he shall receive a number of payment entitlements equal to the number of eligible hectares he holds (owned or leased-in) for which he does not own any payment entitlement.
4. When increasing the unit value of payment entitlements as referred to in Article 23(8) of Regulation (EU) No [DPR], Member States shall increase the entitlements the farmer already owns at the date of application for the allocation of entitlements from the national or regional reserve in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion.
5. For the purpose of paragraphs 1 and 4, Member States shall not lay down sector-specific criteria on the basis of data relating to a period after the date fixed by the Member State according to Article 11(2) of Regulation (EC) No 1122/2009 for the claim year 2013.

*Article 18**Hardship cases*

1. In case a farmer was prevented by reasons of force majeure or exceptional circumstances from making an application for allocation of payment entitlements in accordance with Articles 21(1) or 28e(1) of Regulation (EU) No [DPR], Member States shall be required to allocate payment entitlements to that farmer pursuant to Article 23(5)(aa) of Regulation (EU) No [DPR]. Member States shall establish the value of the payment entitlements to be

allocated on the basis of the national or regional average as referred to in the second subparagraph of Article 23(6) of that Regulation.

2. Where the application of one or several limitations pursuant to Article 21(2) of Regulation (EU) No [DPR] limits the number of payment entitlements allocated to a farmer to less than a fixed percentage of his eligible hectares, such a farmer shall be considered in a situation of 'specific disadvantage' under Article 23(5)a of Regulation (EU) No [DPR]. In that case, Member States shall use the national or regional reserve in order to allocate a number of payment entitlements to that farmer corresponding to a share in the total number of his eligible hectares declared in 2015 pursuant to Article 21(2) of that Regulation.

The fixed percentage referred to in the first subparagraph shall be calculated as the total number of payment entitlements allocated in the Member State in 2015 after application of the limitations foreseen in Article 21(2) of Regulation (EU) No [DPR] divided by the total number of eligible hectares declared in the Member State in 2015 pursuant to Article 21(2).

The share of the total number of eligible hectares of the farmer referred to in the first subparagraph shall be calculated as half of the difference in percentage points between the fixed percentage referred to above and the share of payment entitlements of the farmer in his eligible hectares declared in 2015 pursuant to Article 21(2) of Regulation (EU) No [DPR].

For the purpose of determining the threshold in the first subparagraph, the land acquired or leased-in by the farmer after 19 October 2011 shall not be taken into account.

SECTION 5

MEMBER STATES APPLYING ARTICLE 18(3) OF REGULATION (EU) No [DPR]

Article 19

Implementation in Member States applying Article 18(3) of Regulation (EU) No [DPR]

The provisions of this Chapter shall apply to the Member States applying Article 18(3) of Regulation (EU) No [DPR] *[To be reconsidered later on]*.

CHAPTER 2

SINGLE AREA PAYMENT SCHEME

Article 20

Calculation of direct payments in Member States applying concerning the single area payment scheme

For the purpose of the single area payment scheme provided for in section 4 of Chapter 1 of Title III of Regulation (EU) No [DPR], including any reference in Regulation (EU) No [DPR] to 'eligible hectares declared under the single area payment scheme', 'eligible hectares which are declared under the single area payment scheme' or to 'eligible hectares the farmer has

declared in accordance with Article 28c(1a)', only those eligible hectares shall be taken into account which are determined within the meaning of Article [IACS DA, corresponding to Art 2(23) of Reg 1122/2009].

Article 21

Further provisions applicable to the single area payment scheme

The provisions in [Articles on production of hemp] shall apply *mutatis mutandis* as regards the single area payment scheme.

CHAPTER 3

NOTIFICATIONS RELATING TO THE BASIC PAYMENT

Article 22

Notifications of decisions

1. Where a Member State notifies to the Commission its decisions pursuant to Articles 18(3), 19(1), 20(5), 21(3b), 22(7), 28c(1) and 28f(4) of Regulation (EU) No [DPR] such a notification shall include the details of such decisions, their justification and the objective criteria on the basis of which these decisions have been made.

2. Where a Member State uses the options provided for in Articles 23(5), 23(9), 28c(1b) and in the second and the last subparagraph of Article 25(2) of Regulation (EU) No [DPR], it shall notify the Commission by 31 January 2015 of the details of these decisions as well as of the justification and objective criteria on the basis of which these decisions have been made.

In case of a review of the decision referred to in Article 23(5) of Regulation (EU) No [DPR], the information referred to in the first subparagraph shall be notified to the Commission by 1 August of the year preceding the first year of application.

3. Where a Member State uses the option provided for in Article 27(2b) of Regulation (EU) No [DPR], it shall notify its decision to the Commission by 1 August of the year preceding the first year of application of such a decision.

4. Where a Member State uses the options provided for in Articles 28e(1) and 28f of Regulation (EU) No [DPR], it shall notify the Commission by 1 August of the year preceding the year of first application of such a decision of the details of these decisions as well as of the justification and objective criteria on the basis of which these decisions have been made.