

WORKING DOCUMENT**DELEGATED ACT FOR DIRECT PAYMENTS**

Legal draft of the Articles related to the **payment for agricultural practises beneficial for the climate and the environment (crop diversification – permanent grassland)**

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

Recitals

- 1) Chapter 2 of Title III of Regulation (EU) No [DPR] establishes the conditions for the granting of the payment for agricultural practices beneficial for the climate and the environment.
- 2) Article 30 of Regulation (EU) No [DPR] lays down obligations with respect to the number of crops and the relative shares of crops on arable land and empowers the Commission to establish the rules concerning the application of the precise calculation of shares of different crops.
- 3) In order to take account of the practical timing of crop cultivation activities and to allow a simple administration, rules on the period that will be taken into account for the purpose of the calculation of the relative share of crops need to be set.
- 4) For the sake of clarity for farmers and Member States and to contribute to the protection of landscape elements situated within arable fields, it is necessary to clarify the rules with respect to the area occupied by landscape features.
- 5) For the specific case of mixed cropping and the use of seed mixtures, it is necessary to define detailed rules allowing calculating the shares of the different crops.
- 6) Article 31(1) of Regulation (EU) No [DPR] lays down obligations which aim at preserving the areas that contribute most to the protection of the environment and in particular carbon sequestration, biodiversity and soil erosion. In order to have an efficient protection, the framework to be set for Member States in the designation of sensitive grassland areas should allow them to take account of conditions in the Member State and should build on the synergy with existing environmental directives.
- 7) In order to provide for the protection of such areas over the years, rules should be established on the re-conversion of such areas in case of a breach of the strict protection by the farmer.
- 8) Article 31(2) of Regulation (EU) No [DPR] provides for the protection of the share of permanent grassland compared to the total agricultural area. In order to achieve this

goal and to allow Member States to monitor the evolution of the share of permanent grassland, it is justified to establish a system of prior authorisation in case the ratio decreases and individual reconversions in case of a decrease beyond 5%. For the sake of clarity and in order to have a proportionate implementation, detailed rules should be established on the farmers and areas that should be subject to authorisations and reconversions.

Article 1

Calculation of shares of different crops for crop diversification

1. The period to be taken into account for the precise calculation of the shares of different crops as provided for in Article 30(1) of Regulation (EU) No [DPR] shall be the period between 15 May and 15 September. The shares of different crops provided for in that Article shall be complied with at any time during that period. However, in the case of Estonia, Latvia, Lithuania, Finland and Sweden the period shall be between 15 June and 15 September.
2. For the purpose of the calculation of the shares of different crops as defined in Article 30(1) of Regulation (EU) No [DPR], the area covered by a crop may include landscape features that do not need to be deducted from the eligible area in accordance with Article 77(2) of Regulation (EU) No [HZR *reference to be checked*] and that are fully surrounded by that crop.
3. On agricultural parcels with mixed cropping (the practice of growing simultaneously two or more crops in the same field), where the crops are grown in distinct rows, and where each crop accounts for at least 25% coverage of the cultivated area, the crops shall be counted as different crops. The share of the different crops of the mixed cropping shall be calculated by dividing the agricultural parcel covered by the mixed cropping by the number of crops, irrespective of the actual share of a crop in the mixed cropping.

Agricultural parcels covered with mixed crops as a result of the sowing of a seed mixture shall be considered as covered with one single crop for the purpose of calculating the shares of different crops.

Article 2

Framework for the designation of further environmentally sensitive grassland area

Environmentally sensitive areas outside the areas covered by Directives 92/43/EEC or 2009/147/EC as referred to in the second sub-paragraph of Article 31(1) of Regulation (EU) No [DPR] shall be designated on the basis of one or more of the following criteria:

- a. Covering organic soils with a high percentage of organic carbon, such as peat land or wetlands;

- b. Hosting habitats listed in Annex I of Directive 92/43/EEC or protected under national legislation;
- c. Hosting plant species listed in Annex II of Directive 92/43/EEC or protected under national legislation;
- d. Being of significant importance for wild bird species listed in Annex I of Directive 2009/147/EC.
- e. Being of significant importance for wild animal species protected under Directive 92/43/EEC or protected under national legislation.
- f. Covering permanent grassland of high nature value as defined by objective criteria to be established by the Member State.

Member States may decide every year to add new designated areas.

Article 3

Reconversion in case of non-respect of the obligation on environmentally sensitive permanent grassland areas

Where a farmer has converted or ploughed permanent grassland that is subject to the obligation referred to in Article 31(1) of Regulation (EU) No [DPR], and without prejudice to Directive 2004/35/CE, the Member State concerned shall provide for the obligation to reconvert the area into permanent grassland without delay and may, on a case by case basis issue precise instructions to be respected by the concerned farmer on how to reverse the environmental damage caused in order to restore the environmentally sensitive status. The farmer should be informed of this obligation without delay after the non-compliance has been established.

By way of derogation from the definition laid down in Article 4(1)(h) of Regulation (EU) No [DPR], the land reconverted shall be considered as permanent grassland as of the first day of reconversion and be subject to the obligation referred to in Article 31(1) of Regulation (EU) No [DPR].

Article 4

Maintenance of the ratio of permanent grassland

1. At the latest when it is established that the ratio referred to in Article 31(2) of Regulation (EU) No [DPR] has decreased beyond 2,5% relative to the reference ratio referred to in that Article, the Member State concerned shall, without delay and in any case before 31 July of the same year, provide for the individual obligation of farmers not to convert land under permanent grassland without prior individual authorisation. This obligation shall apply to farmers that are subject to the obligations under Title III

Chapter 2 of Regulation (EU) No [DPR] with respect to areas under permanent grassland that is not subject to Article 31(1) of Regulation (EU) No [DPR].

If the authorisation referred to in the first subparagraph is subject to the condition that another area of land is to be established as permanent grassland, such land shall, as of the first day of conversion, be considered as permanent grassland by way of derogation from the definition laid down in Article 4(1)(h) of Regulation (EU) [DPR]. Those areas shall be used to grow grasses or other herbaceous forage at least for the five consecutive years following the date of conversion.

2. Where it is established that the ratio referred to in Article 31(2) of Regulation (EU) [DPR] has decreased beyond 5% relative to the reference ratio referred to in that Article, the Member State concerned shall, without delay and in any case before 31 July of the same year, provide for the obligation to reconvert land into land under permanent grassland.

Member States shall determine the range of farmers subject to the reconversion obligation from farmers that:

- a) are subject to the obligations under Title III Chapter 2 of Regulation (EU) No [DPR] with respect to areas under permanent grassland that is not subject to Article 31(1) of Regulation (EU) No [DPR]; and
- b) have land at their disposal which was converted from land under permanent grassland or permanent pasture into land for other uses during the 24-month period preceding the date at which the applications had to be submitted at the latest in accordance with Article [...] of Regulation (EU) No [HZR] in the Member State concerned.

By way of derogation from point b) of paragraph 2, in 2015 a 36-month period shall apply.

If the periods mentioned above extend before 2015, the reconversion obligation shall apply to land that was converted into land for other uses from land under permanent pasture that was subject to the obligation referred to in Article 6(2) of Regulation (EC) No 73/2009 or Article 93(3) of Regulation (EU) [HZR].

When determining which farmers shall reconvert land into land under permanent grassland, Member States shall impose the obligation first on farmers who converted an area under permanent grassland in breach of the authorisation requirement referred to in paragraph 1 of this Article or Article 4(1) of Regulation (EC) No 1122/2009. Such farmers shall reconvert the whole converted area.

If the method laid down in the previous sub-paragraph does not lead to the increase of the ratio referred to in Article 31(2) of Regulation DPR above the threshold set in the first subparagraph of this paragraph, in addition, Member States shall impose that

farmers that have converted permanent grassland or permanent pasture during the periods mentioned in the second and third subparagraph of this paragraph shall also reconvert a percentage of that converted area into land under permanent grassland or shall establish another area corresponding to that percentage as land under permanent grassland. The percentage shall be calculated on the basis of the area converted by the farmer during the indicated period and the area needed to increase of the ratio referred to in Article 31(2) of Regulation DPR above the threshold set in the first subparagraph of this paragraph.

By way of derogation from Article 4(1)(h) of Regulation (EU) [DPR], areas reconverted or established as land under permanent grassland shall, as of the first day of the reversion or establishment, be considered as permanent grassland. Those areas shall be used to grow grasses or other herbaceous forage at least for the five consecutive years following the date of their conversion.