

REFIT Platform Opinion

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REFIT Platform Opinion on the submission by the Swedish Industry and Commerce for Better Regulation (NNR) on 'Greening'

Platform Opinion

The REFIT Platform has considered the issues raised by the Board of Swedish Industry and Commerce for Better Regulation (NNR) on the need to evaluate and review the "greening" measures within the Common Agricultural Policy (CAP).

The Stakeholder group recommends that the costs and benefits of the greening measures are examined as part of the public consultation on the CAP.

The submissions made by the Board of Swedish industry and commerce for Better Regulation on greening are only partially supported by the Government group.

The majority of Member States consider that the submissions made by the NNR require discussions at the right political level. A few Member States (MS) support the recommendation of the Stakeholder group that the Commission takes account of the suggestions as part of the ongoing revision of the CAP and also in the continued work ahead

Detailed Opinion

Contents

1	Submissions I.10.a-g by the Board of Swedish Industry and Commerce for Better Regulation (NNR)	2
1.1	Submissions I.10.a-g by the Board of Swedish industry and commerce for Better Regulation (NNR)	2
2	Policy context.....	7
3	Opinion of the REFIT Platform	10
3.1	Considerations of the REFIT Platform Stakeholder group	10
3.2	Considerations of the REFIT Platform Government group.....	10

1 Submissions I.10.a-g by the Board of Swedish Industry and Commerce for Better Regulation (NNR)

1.1 Submissions I.10.a-g by the Board of Swedish industry and commerce for Better Regulation (NNR)

I.10.a *Legislation: Article 44 and 46 (EU) No 1307/2013*

Burden on business

Different minimum hectare thresholds for the two requirements makes the rules more difficult to understand and hence more complex for the farmers. Especially for crop diversification the current thresholds are unfavourable for smaller farms and may increase their costs without any real benefit for the environment. A higher threshold would recognize the diversity that is already delivered by smaller farms.

Simplification proposal

The hectare thresholds for derogations from greening should be evaluated and the minimum threshold aligned for the two requirements. Also consider increasing the threshold. One idea is to relate the threshold to the median farm size in the MS.

Effects of the simplification proposal

Time-saving, Reduced costs, Increased investments

I.10.b *Legislation: Article 40 (EU) No 639/2004 and the proposal on control regime for greening in Article 24 and 26.4 in (EU) No 809/2014.*

Burden on business

The requirement of proving and controlling the share of different crops within the most relevant cultivation period leads to reduced flexibility for farmers and a barrier for an effective control regime for authorities. The costs and worries that are expected due to the requirement are not proportionate to the rather limited positive effects of the crop diversification rule (effects according to COM's impact assessment). The cultivation period also differs widely between crops. The requirement does not make it possible to control all eligibility criteria at the same time which is why the on-the-spot-checks have to be made at several visits. This is burdensome for both farmers and administration.

Simplification proposal

It should be possible to control crop diversification on the basis of the farmers' aid application and there must be some flexibility in what kind of evidence that is acceptable to prove the fulfilment of the requirement. Preferably the reference in Article 40 to a specific cultivation period should be deleted.

Effects of the simplification proposal

- Time-saving:* With less dates/periods the farmer has more flexibility to adjust to the current situation and can achieve a more effective and profitable production. Less "downtime" in the production, awaiting for certain dates to come or pass.
- Reduced costs:* In effect less income forgone. Increased possibilities for the farmer to optimize the production or even to include an extra crop/harvest, after the main crop or between two crops.
- Increased investments:* Increased profit would enable investment in maintenance and investments in more competitive technology for better profitability in the future.
- Reduced uncertainty:* Greening and other payments to farmers consists of a lot of separate conditions. Mistakes resulting in non-compliance with one of these conditions may invoke considerable reductions of the payment, even if there were no profit in or harm caused by the non-compliance. Every decrease in conditions will bring a much welcomed reduction of the risk (income forgone) and uncertainty for the farmer.

Article 40 (EU) No 639/204 and the proposal on control regime for greening in Article 24 and 26.4 in (EU) No 809/2014.

I.10.c Legislation: Annex X (EU) No 1307/2013

Burden on business

The many different weighting factors make a complex system for calculating the value and size of ecological focus areas. The difference in weighting between some EFAs is not possible to explain. Salix and catch crops/green cover have widely recognized positive impacts on the

environment. By giving them the same weighting factor as nitrogen fixing crops the number of factors can be reduced and the unjustified difference between EFAs eliminated.

The complexity in calculating the weighting factors demands for the larger farms to consult expertise, which increases the costs. The system with different weighting factors increases the amount of regulation and complicates the application since most farmers tries to eliminate spatial errors.

Simplification proposal

Reduce the number of weighting factors by increasing the factor for short rotation coppice and catch crops/green cover to 0,7.

Effects of the simplification proposal

Time-saving: Aligned weighting factors would increase the possibility for the farmer to directly estimate the impacts of different choices and changes, without consulting expert- or technical assistance.

Reduced costs: Less time consulting experts or using technical assistance for the management of the farm, should be considered as a reduced cost in this context.

Increased investments: More efficient farming enables better profitability which in many cases will result in investments in the farm.

Reduced uncertainty: Less complicated calculations reduces the risk for errors and makes the impact of a non-compliance more obvious, which decreases the farmers' worries and uncertainty.

I.10.d Legislation: Article 45 (EU) No 1307/2013

Burden on business

It's questionable if there actually was a general tendency that permanent grassland were plowed (resulting in sequestered carbon released), except in a few cases/regions. Sweden has experienced an opposite trend. There is a risk that the requirement to keep the share of permanent grasslands on national level actually leads to contra-productive behaviour. Since the requirement were published, there has been reports of unnecessary plowing in order to avoid that land is classified as permanent grassland, in order to preserve the possibility to include the land in crop rotation and its market value as arable land. A leaseholder might also be liable for damages, if the land goes from being arable to permanent grassland, due to decreased market value of the land. Such effects mean that the rule is unpredictable and in worst case contra productive, and might lead to undue costs and worries for farmers. The protection should be focused on environmentally sensitive permanent grasslands, removing the general requirement to maintain the ratio of permanent grassland on individual farm/holding level.

Simplification proposal

An assessment needs to be made whether the measure of keeping the share of trivial permanent

grassland at a national level is needed and efficient. Consider abolishing the requirement on trivial permanent grassland, on the basis that environmentally sensitive permanent grassland is protected by the current regulation and other directives (birds/habitat).

Effects of the simplification proposal

- Time-saving:* Abolishment, especially of contra productive requirements, will save time for farmers by increased possibilities for a rational use of the land at their disposal. No time will be needed for preventive plowing.
- Reduced costs* Less preventive plowing, more rational use of the land at their disposal and less risk for liabilities for leaseholders will reduce the costs for farmers.
- Increased investments:* Better availability of land for other crops than grass, will stimulate investments, when there is a profitable market for products from arable land.
- Reduced uncertainty:* The present requirement to preserve trivial permanent grassland is applicable retroactively, demanding that farmers restore arable land to grassland when the share drops below a certain limit. This creates uncertainty for the farmers.

I.10.e Legislation: COM guidelines on LPIS

Burden on business

The current guidance, where fallow arable land covered by grass sometimes can be used as EFAs and other times not, contribute to complexity. It will also lead to actual ploughing of permanent grassland/fallow arable land since it is the only way to be able to use them as EFAs.

Simplification proposal

Keep a clear distinction between permanent grassland and arable land by letting fallow arable land be labelled as arable land, independent of cover.

I.10.f Legislation: Article 24-28 (EU) 640/2014

Burden on business

The current rules on calculation and reduction of the greening payment are disproportionate and difficult to understand for farmers. The actual reduction or sanction is very hard to relate to the actual non-compliance. Small errors may also lead to unreasonably large reductions. Furthermore, there are no rules on how to apply reductions when farmers are close to fulfilling the exemptions, e.g. the exemption for farmers with more than 75 % grassland. The greening payment is a new system and it will be difficult for farmers to implement it exactly correct in the beginning. Therefore, appropriate tolerances for when to apply reductions

should be introduced. For example, it is not reasonable that a farmer that has 74 % grassland, hence being very close to being exempted from a greening requirement shall be punished as if he/she was required to do greening as a whole.

Simplification proposal

A more proportionate and transparent model is needed. There should be a separate set of rules for administrative penalties related to fulfilling the derogations. Introduction of suitable tolerances for when to apply reductions. Introduce a 3 year period, within which several non-compliances must have occurred in order to be regarded as repeated.

Effects of the simplification proposal

Time-saving: A support system with many conditions and an obvious risk for considerable reductions/sanctions, even for small non compliances, forces the farmers to invest unreasonable much time, effort and energy in ensuring compliance with minor details instead of using it for effective production. Also, in case of non-compliance, much effort goes into legal complaints when the reduction/sanction is considered to be out of proportion compared to the non-compliance.

Reduced costs: Income forgone by the reduction/sanction should be regarded as a cost in this context. A more proportionate system for reductions/sanctions will reduce income forgone.

Increased investments: More focus on issues that are important for efficient farming, and less costs, enables investments in maintenance and new technology for better profitability in the future.

Reduced uncertainty: There is a lack of transparency and predictability due to complicated calculations, which makes the farmers uncertain and worried, taking their focus off efficient farming.

I.10.g Legislation: Article 43-47 (EU) No 1307/2013

Burden on business

The greening requirements add substantial complexity to the Direct payments, while the effects and efficiency of the system could be questioned.

Simplification proposal

A fundamental review of greening would be welcome, evaluating the costs and benefits of the greening payment, preferable already in 2017 or at least in the view of the next CAP reform. All parts of greening should be evaluated. An evaluation should preferable also include an analysis on how environmental benefits are best achieved within the CAP framework

2 Policy context

To enhance the environmental performance of the new CAP a mandatory "greening" payment has been established to support practices beneficial for the climate and environment. Such practices take the form of crop diversification, the maintenance of permanent grassland, and dedicating 5 % of arable land to ecologically beneficial elements (Ecological Focus Areas, EFA).

Crop diversification

The crop diversification requirement stems from agronomic studies demonstrating that this practice improves considerably soil quality of arable land, while EFA obligation aims at safeguarding and improving biodiversity on farms.

Further to Article 44 of Regulation (EU) No 1307/2013, crop diversification requirement applies to farmers with over 10 ha of arable land. Up to 30 ha farmers have to grow at least 2 crops and the main crop cannot cover more than 75% of the land. Over 30 ha farmers have to grow at least 3 crops, the main crop covering at most 75% of the land and the 2 main crops at most 95%. The 15 ha threshold from which EFA requirement applies is set in Article 46 of the same Regulation.

According to Articles 44 and 46, farmers who already meet the objectives of crop diversification and EFA - because a significant amount of their overall land is grassland or fallow – are exempt. There are also exemptions from one and/or the other obligation for farmers in e.g. a specific geographical location or with specific production (crops under water).

Permanent Grassland

The current definition of permanent grassland is set in the basic act under Article 4 h of Regulation (EU) No 1307/2013 and maintains it as being land used to grow grass and herbaceous forage for more than five years. The court judgment C-47/13 confirms these rules, while it allows farmers to actively manage their grasslands even in case of renewal by ploughing up.

Article 45(1) of Regulation (EU) No 1307/2013 lays down obligations which aim at preserving the permanent grassland areas that contribute most to the protection of the environment and in particular carbon sequestration, biodiversity and soil protection.

Article 45 (1) foresees a full protection for sensitive permanent grassland. Such grasslands, which constitute areas of high environmental interest, are located within but also outside of the Natura 2000 network. For those which are located outside, it is necessary in order to secure their effective protection, to establish a framework for Member States for their designation which should allow them to take account of conditions in the Member State.

Article 45 (2) foresees that Member States will ensure the maintenance of ratio of areas of permanent grassland. This ratio does not decrease by more 5 % compared to a reference ratio.

This mechanism set at national or regional level aims to avoid a massive conversion of permanent grassland, while it allows to some extent some flexibility at farm level. Some ploughing up is possible at farm level if the ratio has not yet decreased by more than 5 %. Both obligations should be implemented in synergy.

Based on the current rules and corresponding interpretation, Land Lying Fallow (LFF) cannot be excluded from the application of permanent grassland classification. By definition when land is used to grow grass or other herbaceous forage and it has not been included in the crop rotation for five years or more, this land has to be classified as permanent grassland according Article 4 h of basic act Regulation (EU) No 1307/2013.

In order to provide incentives for the use of LLF under EFA, LLF can be subjected to derogation as soon as the parcel with LFF is declared as EFA. LLF can keep the arable land status when declared as EFA.

Ecological Focus Areas (EFA)

The obligation to dedicate at least 5% of arable land to Ecological Focus Areas (EFA) was established to safeguard and improve biodiversity on farms. The legislation (Basic Act i.e. Regulation (EU) No 1307/2013, Delegated Regulation (EU) No 639/2014) establishes a broad range of EFA types, comprising both elements productive and non-productive in nature. It is for Member States to select EFA types that farmers can use for this purpose.

Each EFA type has been assigned a weighting factor and some of them also a conversion factor. The aim of conversion and weighting factors is to reduce the burden on farmers, to facilitate the measurement of certain EFAs and to take account of different characteristics of individual EFAs. This principle was set up in Regulation (EU) No 1307/2013 while the values of the factors are set out in the annex to Delegated Regulation (EU) No 639/2014 which also established corresponding requirements per EFA type. The said Delegated Regulation, in recital (77), explains that the different weighting factors acknowledge "the differences in terms of importance for biodiversity". So the Delegated Regulation assigned lower weighting factors (below 1) to elements that are productive in nature as compared to elements that are not productive and whose function is, in principle, environmental.

Against this background and as a result of observations by both legislators during the scrutiny period after the adoption of Delegated Regulation No 639/2014, it was decided that the weighting factor for nitrogen-fixing crops initially set at 0.3 should be raised to 0.7 to better reflect its impact on biodiversity (see Recital (1) and (4) of Delegated Regulation (EU) No 1001/2014). For reasons of timing and in order not to delay the implementation of Delegated Regulation (EU) No 639/2014 this was carried out subsequently by Delegated Regulation (EU) No 1001/20.

Administrative penalties

Claim year 2015 is the first year of application of the greening scheme with no feedback yet in its implementation on the ground.

There are no administrative penalties for greening for claim years 2015 and 2016. The administrative penalty must be divided by 5 in claim year 2017 and divided by 4 for 2018 onwards. The system of administrative penalties as established by the co-legislator is thus already more favourable for greening than for other direct payments schemes.

As regards the reductions, for greening this represents a proportional way of calculating the areas which should not be paid because they do not meet the eligibility requirements. The general principle is indeed that, in case of over declaration, the farmer should only be paid for the area found compliant. However, for the greening measures, there is no 1 to 1 relation between the area declared and the area actually found compliant. For ecological focus areas in particular, the greening requirements have to be fulfilled on limited areas but they give right to the greening payment on the whole holding. For instance, for a holding of 100 hectares of arable land, having ecological focus areas on 5 hectares (= 5% of the total area of arable land) will lead to a greening payment for the 100 hectares. Therefore, the way the calculation of the reductions for greening has been established takes this into consideration.

Review of greening

The review of the greening measures after the first year of their implementation was included in the Commission Work Programme for 2016 (Annex II REFIT Initiatives).

In its Declaration of 2 April 2014 (made at the occasion of the adoption of the Delegated Regulation (EU) No 639/2014) the Commission undertook the commitment to evaluate the experience with the implementation of Ecological Focus Areas (EFA) obligation after the first year of application, and looking in particular at administrative burden, simplification of procedures, level playing field and production potential. In addition, responding to the mission letter by President Juncker to Commissioner Hogan to review within the first 12 months the potential for further simplification of the CAP, the exercise took a broader view of other elements of greening. The results of the review were published in a Commission Staff Working Document SWD(2016)218 of 22 June 2016 (CSWD). The document assessed how the system was applied in the first year, identified certain weaknesses that prevent full exploitation of its potential, and considered possible ways forward to remedy them.

As a follow-up, the Commission put forward several changes to Delegated Regulation (EU) No 639/2014 (DR) focusing mostly on EFAs¹. These aimed to streamline and clarify the relevant rules while increasing their environmental effect. They should become applicable at the latest in 2018⁷ (as of March 2017⁸ the changes are not yet in force).

The initiative came as a fourth wave/package in the ongoing CAP simplification.

Fulfilling a legal obligation set in Article 46(1) of Regulation 1307/2013 (basic act), on 29

¹ sCommission Delegated Regulation (EU) .../... of 15.2.2017 amending Delegated Regulation (EU) No 639/2014 as regards the control measures relating to the cultivation of hemp, certain provisions on the greening payment, the payment for young farmers in control of a legal person, the calculation of the per unit amount in the framework of voluntary coupled support, the fractions of payment entitlements and certain notification requirements relating to the single area payment scheme and the voluntary coupled support, and amending

March 2017 the Commission also adopted a report on the implementation of the EFA obligation (COM (2017) 152). The Commission's assessment of the implementation of EFAs was linked to the obligation for the Commission to determine whether the minimum threshold for the land reserved at farm level for EFAs should be increased from 5% to 7%. In light of the collected evidence, the Commission decided not to propose increasing the threshold limit.

3 Opinion of the REFIT Platform

3.1 Considerations of the REFIT Platform Stakeholder group

The Stakeholder group recognises the complexity of Pillar I greening, and also notes widespread concerns about the environmental benefits that the greening measures are likely to provide in the current programming period. Many of the specific proposals in these submissions may partially address this complexity, but are unlikely to improve the environmental performance of the CAP.

It is the opinion of the Stakeholder group that the proposal in Submission I.10g for a comprehensive review of greening provides the opportunity to examine these issues in more depth, whilst also addressing concerns about the effectiveness of the policy. The recently announced public consultation on the future of the CAP in 2017 should address this.

3.2 Considerations of the REFIT Platform Government group

The submissions made by the Board of Swedish industry and commerce for Better Regulation on greening are only partially supported by the Government group.

The majority of Member States consider that the submissions made by the NNR require discussions at the right political level. A few Member States (MS) support the recommendation of the Stakeholder group that the Commission takes account of the suggestions as part of the ongoing revision of the CAP and also in the continued work ahead.

Individual contributions from Member States:

I.10.a Legislation: Article 44 and 46 (EU) No 1307/2013 *Crop diversification*

Member State 1 recommends further discussing and analysing the suggestion made by the NNR.

Member State 2 supports the proposal to combine the thresholds but does not have an opinion yet on the idea of setting it to be the median farm size.

Member State 3 considers that the threshold should not be linked to the median farm size in the MS to avoid an unfair treatment of resembling farms across MS.

Member State 4 supports the proposal for an alignment of the threshold, but does not support the proposal for a higher threshold.

Member State 9 supports this proposal for uniform hectare thresholds use in greening regarding crop diversification (currently - 10 hectares and 30 hectares) and ecological focus areas (15ha), as well as consideration for increasing the threshold thus imposing fewer burdens on small farms. However, MS9 opposes the proposal to relate the threshold to the median farm size in the MS, given that for MS with fragmented farm system (with a large proportion of small farms), the median will be lower, so greening requirements would apply to a greater number of farms and the area. In case of MS9 such a threshold would be very low - approximately 7,5ha). Additionally, small farms already are supposedly more "green" than large ones.

I.10.b Legislation: Article 40 (EU) No 639/204 and the proposal on control regime for greening in Article 24 and 26.4 in (EU) No 809/2014.

Member State 1 considers that submission I.10.b should be discussed in detail.

Member State 2 supports the proposal because it would ease the controls.

Three Member States do not support the suggestion made by the NNR as it would not lead to simplifications.

Member State 9 believes that more simplification would be achieved by allowing MSs to determine a number of periods for meeting the diversification requirements in accordance with growing periods of crops cultivated.

Member State 10 considers that it would be opportune to have a period of diversification allowing for a limited time in which the requirement must be respected to allow the farmers for more flexibility for the second crops and make the controls easier.

I.10.c Legislation: Annex X (EU) No 1307/2013 *Permanent Grassland*

Member State 2 supports the proposal and is of the opinion that the weighting factor could even be 1.

Three Member States support the suggestion.

Member State 4 considers that the limited impact of these crops on the greening does not justify such a high weighting factor and therefore does not support the suggestion made by the NNR.

I.10.d Legislation: Article 45 (EU) No 1307/2013

Member State 1 considers that submission I.10.d should be discussed further as it is not fully comprehensible.

Four Member States support the proposal.

Member State 4 considers that the current rules allow Member States to monitor the share of permanent grassland instead of regulating it at the level of the individual farm and do not need to be changed. However, MS4 recommends that the Commission simplifies the calculation method for the share of permanent grassland.

I.10.e Legislation: COM guidelines on LPIS

Three Member States support the proposal.

Member State 1 considers that submission I.10.e should be discussed further as it is not fully comprehensible.

Member State 4 considers that arable land with grasses becomes permanent grassland after 5 years and deserves to be protected.

I.10.f Legislation: Article 24-28 (EU) 640/2014

Member State 1 considers that submission I.10.f is worth discussing and possibly supporting.

Member State 2 is of the opinion that greening payment and its calculation and reduction rules need to be simplified. MS2 doesn't think that adding tolerances to derogations would simplify the implementation nor the acceptance and intelligibility of the conditions but share the opinion that complicated calculations cause worry among farmers.

Member State 3 is supportive of the recommendations made.

Member State 4 considers that current rules for penalties are adequate and should not be revised.

Member State 9 supports this proposal.

I.10.g Legislation: Article 43-47 (EU) No 1307/2013

Four Member States consider that a study on the effects of greening is needed. MS4 questions the timing of the foreseen evaluation in 2017.

Member State 9 is quite reserved regarding the proposal for a fundamental review of greening particularly including an analysis on environmental performance of greening within the CAP framework (proposal I.10.g) – MS9 considers that only simplification of greening measures could be supported. Fundamental review of greening provisions could only result in complication of the current system or in introduction of new, unnecessary requirements.

General observations from Member States

Member State 1 considers that it is in everyone's interest to eliminate administrative burden both for farmers and administration and to implement more beneficial solutions without jeopardizing environmental benefits. Therefore, measures which diminish administrative burden, increase general acceptability (e.g. proportionate sanctions) and secure environmental benefits shall be supported.

Member State 5 recognises that greening rules complexity and also the need for permanent grassland preservation as an important factor of environmental protection. Permanent grassland definition should be amended as follows: "permanent grassland and permanent pasture" (together referred to as "permanent grassland") means land used to grow grasses or other herbaceous or woody forage species naturally (self-seeded) or through cultivation (sown) and that has not been tilled for seven years or more". MS5 believes that the consultation held for the Omnibus proposal and the recently announced public consultation on the CAP future will address properly all issues concerned.

Member State 6 considers that the work of the REFIT Platform should not leave aside from its objectives which support the simplification of EU legislation, reducing the administrative burden for civil society, business and public administrations. Therefore the discussion of simplification concerning policies, in our case to the CAP, and its revisions shall be carried out in meetings taking place in e.g. Council of European Union: Agriculture and Special Agriculture Committee.

The issue addressed in this draft is currently being discussed in the appropriate forums of the Commission and is in that context where need to be analysed. The Commission has just launched a public consultation on "modernization and simplification of the common agricultural policy" (https://ec.europa.eu/agriculture/consultations/cap-modernising/2017_en), in which all citizens can present their views in the form of questionnaire and in the form of open proposals. This consultation will go accompanied of an impact assessment. This will result in a Communication from the Commission, which will predictably be published next November. As indicated in the title of the public inquiry, "simplification" will be the main protagonist.

This MS considers that thee REFIT Platform might share the Swedish stakeholder's proposal of simplification, but now it is a matter of not spreading efforts but focusing them in the appropriate channels, in this case, through the procedure that the European Commission has

already opened.

Member State 7 only partly agrees with the view of the Stakeholder group and holds that, as the Stakeholder group has put it in its considerations concerning submissions I.7 a-f, the recently announced public consultation on the future of the CAP in 2017 should cover these issues as well.

Member State 8 agrees with the considerations of the REFIT Platform Stakeholder group.