

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

Legal draft of the Articles related to the **scope, definitions and related provisions**

**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) Regulation (EU) No [DPR] sets up a new system of direct support, including a basic payment for farmers and further support schemes. It is necessary to supplement this framework in relation to the basic payment scheme, the single area payment scheme, the payment for farmers observing agricultural practices beneficial for the climate and the environment, the payment for young farmers commencing their agricultural activity, voluntary coupled support, the crop-specific payment for cotton and in relation to the notifications necessary with regard to each support scheme. Furthermore, Annex VIb of Regulation (EU) No [DPR] is to be amended in order to establish conversion and weighting factors applicable for certain agricultural practices beneficial for the climate and the environment.
- 2) In line with the case-law of the Court of Justice of the European Union<sup>1</sup>, it is appropriate to clarify that Member States, when adopting measures to implement Union law, should exercise their discretion in compliance with certain principles, including in particular the principle of non-discrimination.
- 3) In accordance with Article 4(1)(c) of Regulation (EU) No [DPR], an 'agricultural activity' does not require production, rearing or growing of agricultural products. Farmers may instead maintain an agricultural area in a state which makes it suitable for grazing or cultivation without preparatory action going beyond usual agricultural methods and machineries or, on agricultural areas naturally kept in a state suitable for grazing or cultivation, carry out a certain minimum activity. As these two later activities both require a certain action on the part of the farmer, it is necessary to establish an EU framework within which Member States shall establish the further criteria for these activities. In this regard, with a view to respect the Union's international obligations, it is imperative that such criteria and minimum activities are not related to any requirement to produce, rear or grow agricultural products.
- 4) For environmental reasons, the definition of 'permanent grassland' in Article 4(1)(h) of Regulation (EU) No [DPR] also includes non-herbaceous species such as shrubs and/or trees, which can be grazed provided that the grasses and other herbaceous forage remain predominant on the relevant land. It is therefore necessary to determine

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<sup>1</sup> See judgement of the Court of 25 November 1986, Klensch, 201/85 and 202/85, point 10.

a criterion for establishing in which cases grasses and other herbaceous forage remain predominant.

- 5) The definition of 'permanent grassland' under Article 4(1)(h) of Regulation (EU) No [DPR] allows Member States to consider as permanent grassland also 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. For this purpose, it is necessary to lay down criteria on the basis of which such established local practices can be determined.
- 6) In order to ensure the correct application of the rules set out in Regulation (EU) No [DPR] and the compliance with requirements laid down in international agreements, as well as for the purpose of evaluating policy implementation, it is necessary to specify certain notification obligations of Member States.

## CHAPTER 1

### SCOPE, DEFINITIONS AND RELATED PROVISIONS

#### *Article 1*

##### *Scope*

This Regulation lays down provisions supplementing certain non-essential elements of Regulation (EU) No [DPR] in relation to:

- (a) the basic payment scheme;
- (b) the single area payment scheme;
- (c) the payment for farmers observing agricultural practices beneficial for the climate and the environment;
- (d) the payment for young farmers commencing their agricultural activity;
- (e) voluntary coupled support;
- (f) the crop-specific payment for cotton;
- (g) notification obligations of Member States.

#### *Article 2*

##### *General principles*

1. Member States shall implement this Regulation in accordance with objective criteria and in such a way as to ensure the equal treatment of farmers and to avoid distortions of the market and of competition.

2. Member States shall ensure that all conditions for support implemented under this Regulation are verifiable and controllable.

*Article 3****Framework for criteria on maintaining the agricultural area in a state suitable for grazing or cultivation***

For the purposes of the second indent of Article 4(1)(c) of Regulation (EU) No [DPR], the criteria to be established by the Member States that farmers are to meet in order to fulfil the obligation to maintain the agricultural area in a state suitable for grazing or cultivation shall require annual activities to be carried out by a farmer. Such criteria shall not ~~be related to~~ require any the production, rearing or growing of agricultural products.

Where justified for environmental reasons, an activity referred to in the first subparagraph may be carried out only every second year.

*Article 4****Framework for minimum activities on agricultural areas naturally kept in a state suitable for grazing or cultivation***

For the purposes of the third indent of Article 4(1)(c) of Regulation (EU) No [DPR], the minimum activities to be established by the Member States that are to be carried out on agricultural areas naturally kept in a state suitable for grazing or cultivation shall be annual activities to be carried out by a farmer. Such activities shall not ~~be related to~~ require any the production, rearing or growing of agricultural products.

Where justified for environmental reasons, an activity referred to in the first subparagraph may be carried out only every second year.

*Article 5****Predominance of grasses and other herbaceous forage in case of permanent grassland***

For the purposes of Article 4(1)(h) of Regulation (EU) No [DPR], grasses and other herbaceous forage shall be deemed to remain predominant where they cover more than 50% of the eligible area at the level of the agricultural parcel within the meaning of Article 68(4)(a) of Regulation (EU) No [HZR].

*Article 6****Established local practices in case of permanent grassland***

For the purposes of Article 4(1)(h) of Regulation (EU) No [DPR], established local practices shall be:

(a) ~~management practices for areas for livestock grazing in a specific region or part of a Member State which are traditional in character have already existed in the past, and are commonly applied in that locality and are adapted to specific local conditions; or~~

(b) practices which are important for maintaining habitats listed in Annex I to Council Directive 92/43/EEC<sup>2</sup> and for preserving, maintaining and re-establishing of biotopes and habitats according to Directive 2009/147/EC of the European Parliament and of the Council<sup>3</sup> on the conservation of wild birds.

*Article 7*

***Notifications***

A Member State shall notify the Commission of its decisions taken in accordance with the Article 4(1a) of Regulation (EU) No [DPR] 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.

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<sup>2</sup> Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7).

<sup>3</sup> Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds (OJ L 20, 26.1.2010, p. 7).