COMMISSION STAFF WORKING DOCUMENT

Review of greening after one year
Annex 1

Presentation of the green direct payments scheme

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<th>Acronym</th>
<th>Description</th>
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<tr>
<td>BPS</td>
<td>Basic Payment Scheme</td>
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<tr>
<td>CAP</td>
<td>Common agricultural policy</td>
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<tr>
<td>CSWD</td>
<td>Commission Staff Working Document</td>
</tr>
<tr>
<td>EFA</td>
<td>Ecological Focus Area(s)</td>
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<tr>
<td>ESPG</td>
<td>Environmentally Sensitive Permanent Grassland</td>
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<tr>
<td>GAEC</td>
<td>Good Agricultural and Environmental Conditions (of land)</td>
</tr>
<tr>
<td>IACS</td>
<td>Integrated Administration and Control System</td>
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<tr>
<td>LPIS</td>
<td>Land Parcel Identification System</td>
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<td>RDP</td>
<td>Rural Development Programme</td>
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<tr>
<td>SMR</td>
<td>Statutory Management Requirement</td>
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<td>SAPS</td>
<td>Single Area Payment Scheme</td>
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1. **PRESENTATION OF THE GREEN DIRECT PAYMENTS SCHEME RATIONALE AND OBJECTIVE OF THE GREEN DIRECT PAYMENT SCHEME**

The green direct payment scheme (also referred to as ‘greening’) was introduced in December 2013 under the reformed common agricultural policy (CAP).

The reform aimed to better address environmental pressures that modern farming is putting on water, the soil, farmland habitats and related biodiversity. This also puts the agricultural sector’s long-term production potential at risk. To this end, and supplementing the existing environment-focused CAP instruments (see section 4), green direct payments support the adoption and maintenance of farming practices that are beneficial to the environment and protect the climate. They also recognise that farmers need to be helped in these practices because market prices do not reflect the effort involved in providing the resultant environment- and climate-friendly public goods.

Green direct payments account for 30 per cent of EU Member States’ annual ceilings for direct payments. They take the form of an annual payment per eligible hectare. This green payment is conditional on farmers respecting three simple, generalised, non-contractual and annual actions: crop diversification, maintenance of permanent grassland and dedicating five per cent of arable land to ecologically beneficial areas (ecological focus areas, EFAs). These practices should go beyond cross-compliance requirements and can be supplemented by voluntary rural development measures which, among other things, should finance more demanding activities targeted at specific environmental and climate-related needs (see section 4).

The measures are simple in the sense that they reflect standard sustainable agricultural practices. They are generalised since the target population in principle includes all farmers benefiting from CAP direct payments. They are non-contractual in contrast to rural development measures and they are annual to conform to the managing principles of direct payments.

Under the new rules, farmers receiving payments contribute to preserving the environment and addressing climate change by: making soil and ecosystems more resilient by growing different crops; conserving soil carbon and grassland habitats associated with permanent grassland; and protecting biodiversity and water by establishing EFAs.

2. **LEGAL FRAMEWORK**

The basic rules of greening are set out in Regulation (EU) No 1307/2013 on direct payments (‘the basic regulation’ / ‘the basic act’). This Regulation lays down the objectives of greening, defines its basic concepts and terms, establishes the three standard greening obligations with some differentiation depending on a farmer’s production profile and location (see section 3.3), and creates a mechanism of equivalence (alternatives) to the standard greening obligations (see section 3.2).

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1 Green direct payments come on top of direct payments dedicated to income support under the basic payment scheme (BPS) or the single area payment scheme (SAPS). Application by a farmer for BPS/SAPS support automatically entails the obligation to comply with ‘greening’ requirements subject to defined exemptions.

2 For details read the Explanatory Memorandum of COM(2011) 625 final.

Article 43(12) and (13) of the basic regulation empowers the Commission to specify certain technical parameters and implementing arrangements via delegated and implementing acts. This has been done in Delegated Regulation (EU) No 639/2014 (‘delegated regulation’)\(^4\) and Implementing Regulation (EU) No 641/2014 (‘implementing regulation’)\(^5\).

The administration, financing, management and control requirements are laid down in Regulation (EU) No 1306/2013\(^6\), while Delegated Regulation (EU) No 640/2014\(^7\) and Implementing Regulation (EU) No 809/2014\(^8\) specify the rules on the integrated administration and control system (IACS).

In addition, Commission services have developed technical guidance documents for Member State authorities, e.g. relating to the EFA Layer and to the Land Parcel Identification System that explain and put into context the relevant obligations.

3. **GREENING MEASURES**

3.1. **Standard greening measures**

3.1.1. **Crop diversification**

On the basis of Article 44 of the basic regulation, the requirement to diversify crops applies to farmers with over 10 ha of arable land. Farmers having up to 30 ha must grow at least two crops and the main crop cannot cover more than 75 per cent of the land. Farmers having over 30 ha must grow at least three crops, with the main crop covering at most 75% of the land and the two main crops covering at most 95%. Several exemptions take account of the individual situation of farmers, notably farmers with a large proportion of grassland which in itself is deemed environmentally beneficial (see also section 3.3). What is considered a separate crop for the purpose of crop diversification is also established. Annex 2 to the Commission Staff Working Document ‘Review of greening after one year’ (CSWD) provides data on the uptake of crop diversification across Member States.

Article 40(1) of the delegated regulation specifies that the obligation has to be complied with during the ‘crop diversification period’, i.e. the most relevant part of the cultivation period in a national context and selected by Member States. Additional aspects that are specified relate to the calculation of arable land shares where areas cover landscape features and mixed cropping. It therefore follows that crop diversification periods may differ across Member States. This issue is explored further in Annex 3 to the CSWD.

3.1.2. **Permanent grassland**

According to Article 45 of the basic regulation, the obligations are twofold:

- Member States must designate environmentally sensitive permanent grasslands (ESPG) in Natura 2000 areas. They may also designate environmentally sensitive

\(^8\) OJ L 227, 31.7.2014, p. 69.
permanent grasslands outside such areas. Farmers cannot plough or convert these environmentally valuable grasslands (Article 45(1));

- Member States must maintain a ratio of permanent grasslands to the total agricultural area, having also decided whether they calculate (and then monitor) this ratio at national or regional level. The annual ratio which Member States calculate each year must not decrease by more than 5 % on the reference ratio (Article 45(2)). Individual farmers are in general not affected unless the 5 % threshold is reached. In such a case, Member States’ authorities must impose on farmers who have previously converted permanent grassland to other uses to reconvert the land to the previous use (grassland). Furthermore, Member States must provide for rules to avoid further conversion of permanent grasslands.

The delegated regulation:

- stipulates criteria that Member States have to respect when they want to designate ESPG outside the Natura 2000 areas (Article 41);
- lays down detailed rules on reconversion where ESPG has been ploughed or converted to other uses (Article 42);
- and stipulates how Member States must calculate the ratio (Article 43) and the actions that Member States and farmers have to take when it is nearing (authorisations for farmers to convert) or has exceeded the 5 % threshold (individual obligations for farmers to reconvert and bans on further conversions) (Article 44).

Annex 2 to CSWD provides data on the coverage by and development of the ratio across Member States. In addition, Annex 3 to CSWD explores level playing field issues related to the optional designation of ESPG outside Natura 2000 areas by Member States.

3.1.3. Ecological focus areas

Article 46(1) of the basic regulation requires farmers with arable land exceeding 15 ha to ensure that at least 5 % of such areas is an ecological focus area. This regulation defines (Article 46(2)) what an EFA may comprise (the ‘EFA types’): land lying fallow, terraces, landscape features, buffer strips, agroforestry, strips along forest edges, a short rotation coppice with no use of fertilisers and/or plant protection products, catch crops/green cover and nitrogen-fixing crops. As specified in recital (44) of the basic regulation, the list consists of areas impacting biodiversity directly or indirectly (through reduced use of inputs on the farm).

Elements falling under the EFA type of landscape features are further categorised in the delegated regulation (Article 45) into: hedges/wooded strips, isolated trees, trees in line, trees in group/field copses, field margins, ponds, ditches and traditional stone walls. Various management, control and size-related requirements are also established for each EFA type (e.g., no production, limitation of agro-chemical inputs, maximum and/or minimum dimensions).

On the basis of the common EFA list, Member States draw up a list of EFA types in line with national priorities and farming systems, from which their farmers can choose (see also section 5). Member States may add some requirements for certain EFA types (e.g., establish additional production methods). According to Article 45(3), (4) and (5) of the
delegated act, terraces, landscape features and buffer strips which Member States protect under cross-compliance rules can also be selected (GAEC, SMR, see section 4).

Several exemptions from the EFA rule are also defined in the basic regulation, notably for farmers with a large proportion of grassland (Article 46(4)) but also for farmers in predominantly afforested areas in certain Member States (Article 46(7)), as they are deemed to be already environmentally beneficial (see also section 3.3).

Based on Article 46(5) and (6) of the basic regulation, Member States may decide to implement the EFA requirement regionally or collectively in order to concentrate EFA areas at territorial level. Under this approach, farmers are required (regional implementation, Article 46(5), or allowed to (collective implementation, Article 46(6)) organise themselves, so as to attain half of their EFA percentage requirements through adjacent EFAs, also when these are located on the land of only some of them, as this is considered more beneficial for the environment. The delegated regulation specifies rules and criteria to be met in this respect (Articles 46 and 47).

To calculate the EFA, the basic regulation established a system according to which each EFA type is assigned specific conversion and weighting factors, the values of which were subsequently established in Annex II to the delegated regulation (which amended Annex X to the basic regulation):

- Conversion factors simplify the measurement of some EFA types such as trees and ponds, and their use is optional for Member States.

- Differentiation of weighting factors reflects the fact that individual EFA types have different ‘characteristics’ and consequently a different impact on/importance for biodiversity in respect of EFA’s objective ‘to safeguard and improve biodiversity on farms’ (Recital 44 of the basic regulation). Accordingly, lower weighting factors (below 1) are assigned to elements that are productive compared with elements that are not productive and whose function, in principle, is only environmental (max. 2), and whose existence is therefore not warranted from a farmer’s perspective. Weighting factors below 1 are mandatory.

According to the third paragraph of Article 46(1) of the basic regulation, the Commission must present, by 31 March 2017, an evaluation report on the implementation of the EFA obligation, accompanied, where appropriate, by a proposal to increase the EFA percentage from 5 to 7 per cent.

Annex 2 to CSWD provides data on the uptake of EFA types across Member States while Annex 3 details the possible differences in implementing this requirement and explores whether these have an impact on a level playing field.

3.2. Equivalent greening measures

According to Article 43(3) of the basic regulation, Member States may allow farmers to meet one or more greening requirement through equivalent (alternative) practices. These equivalent practices must be carried out either under agri-environment-climate schemes within Member State rural development programmes (RDPs), or in accordance with national or regional certification schemes, and must yield an equivalent or higher level of benefit for the climate and the environment. A closed-ended list of equivalent practices is provided in Annex IX to the basic regulation.
According to Article 43(8) of the basic regulation, it is for the Commission to decide whether a practice notified by a Member State can be recognised as being covered by Annex IX while Article 10 of the implementing regulation establishes the procedure for assessing these notifications and the applicable deadlines *(See also section 5)*.

Annex 2 to CSWD presents data on the uptake of these practices by farmers across Member States while Annex 3 looks into the possible consequences of equivalence for a level playing field.

### 3.3. Exemptions from the greening rules

Exemptions from the standard greening obligations are defined in the basic regulation and fall under three categories:

- **Exemptions for farmers who are ‘green by definition’ because their practices are considered to at least yield the same environmental benefit:**
  - completely exempt from all standard greening obligations: farmers complying with organic farming rules (Article 43(11));
  - partially exempt from specific standard greening obligations:
    - farmers whose holdings are fully or partly located in areas covered by the Birds and Habitats Directives or the Water Framework Directive where the greening practices in the holding concerned are not compatible with the objectives of these directives (Article 43(10) of basic regulation);
    - farmers managing a certain share of their farm as grassland, fallow land or crops under water (Articles 44(2) and 44(3) for crop diversification and 46(4) for EFA);
    - farmers in areas with natural constraints in countries with an important forest area (‘EFA forest exemption, Article 46(7));
    - farmers in Nordic regions i.e. above 62nd parallel (Article 44(3)(d) for crop diversification).

- **Exemptions driven by proportionality (cost/benefit) of the obligations:**
  - exempt from specific standard greening obligations: farms with less than a certain area of arable land (Article 44(1) for crop diversification and Article 46(1) for EFA);

- **Exemptions for farmers participating in the small farmer scheme (SFS) for the sake of simplification; these farmers do not receive the green direct payment (Article 61(3)) but a payment (replacing all direct payments). It is optional for Member States to decide to establish a SFS.**

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9 Directives 2009/147/EC, 92/43/EEC, and 2000/60/EC, respectively
4. RELATIONS BETWEEN GREENING, CROSS-COMPLIANCE AND RURAL DEVELOPMENT PROGRAMMES

The greening component of direct payments builds upon cross-compliance requirements that have been in place since 2005. Together with cross-compliance, it forms the basis for payments from RDPs:

- The cross-compliance mechanism\(^{10}\) links CAP payments to observance by farmers of a set of statutory management requirements (SMRs) based on the EU environment legislation on biodiversity, water, etc.\(^{11}\). It is supplemented by several standards for the good agricultural and environmental condition of land (GAEC), which are defined by Member States\(^{12}\). The compliance costs of all requirements falling under cross-compliance have to be borne by farmers.

Cross-compliance rules represent part of the ‘baseline’/‘reference level’ for voluntary agri-environment-climate measures financed under RDPs. Financial support for such voluntary measures cannot compensate practices equal or similar to greening requirements to avoid the risk of double funding (between agri-environment-climate (AEC) payments and green direct payments). Payments for these AEC measures are calculated on the basis of income foregone and costs incurred for practices going beyond the ‘baseline’. It is the responsibility of Member States to ensure that there is no duplication of funding.

To support the implementation of CAP instruments, a Farm Advisory System\(^{13}\) requires national authorities, where appropriate, to advise farmers and other beneficiaries on the proper implementation of the various obligations, including greening, and the conditions which apply to them.

5. MEMBER STATES’ CHOICES UNDER GREENING AND NOTIFICATION REQUIREMENTS

The legislation requires Member States to notify the Commission of a number of greening-related policy choices according to a specific schedule.

Table 1: Member States’ notifications on greening choices

<table>
<thead>
<tr>
<th>Greening obligation</th>
<th>Type</th>
<th>Deadline</th>
<th>Legal reference</th>
<th>Content</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Use of equivalent practices (optional)</td>
</tr>
<tr>
<td>Equivalence</td>
<td>Decision on implementation</td>
<td>1 August 2014, 1 July following years</td>
<td>Basic regulation Article 43(8) Implementing regulation Article 10</td>
<td></td>
</tr>
<tr>
<td>Permanent grassland</td>
<td>Decision on implementation</td>
<td>1 August 2014</td>
<td>Basic regulation Article 45(2) 5(^{th}) subparagraph</td>
<td>- Geographical level (national or regional) for checking the ratio - Application of individual obligation at holding level (optional)</td>
</tr>
<tr>
<td></td>
<td>Decision on implementation</td>
<td>15 December each year</td>
<td>Delegated regulation Article 65(1)(a)(ii) and (b)</td>
<td>Designation of ESPG inside and outside (optional) Natura 2000 areas</td>
</tr>
</tbody>
</table>
Permanent grassland (cont.)

| Assessment of the ratio | 15 December each year | Delegated regulation Article 65(1)(d) | - 2015: Reference and annual ratio
- Following years: annual ratio or adaptation of the reference ratio
- Prior authorisation and reconversion obligation |

| Decision on implementation | 1 August 2014 (annual review possible) | Basic regulation Article 46(8) Delegated regulation Article 65(2) | Activation of EFA types
Activation of conversion and weighting factors |
| Delegated regulation Article 65(3) | Regional and collective implementation |
| Delegated regulation Article 65(4) | Forest exemption |

| Decision on implementation | 15 December 2014 | Delegated regulation Article 65(1)(a)(i) | Flat rate or individual greening payment (the latter only for BPS; otherwise the flat rate applies) |

| Monitoring output indicators | 15 December each year | Delegated regulation Article 65(1)(c)14 | Implementation data for all greening obligations and exemptions |

6. FAILURE TO COMPLY WITH GREENING RULES

Farmers who fail to comply with the greening rules do not receive the full payments.

In order to identify areas that are not compliant with the rules, Member States have to carry out inspections in line with the principles and rules set out in the legislation on the integrated administration and control system (IACS).

- A reduction that reflects the number of hectares identified as non-compliant is applied to these areas, taking into account the specific nature of the requirement concerned.
- As of 2017, according to the third subparagraph of Article 77(6) of Regulation (EU) No 1306/2013, the reductions of the greening payment should be accompanied by administrative penalties. These administrative penalties consist in a further reduction of the greening payment (up to 25%) which may be recovered from any other payments made under the basic regulation. In line with the proportionality principle, the amount of the penalty depends on: the severity and scope of non-compliance; whether it has a lasting impact; and whether it recurs.

Details of reductions and administrative penalties are laid down in Articles 24 – 29 of Delegated Regulation (EU) No 640/2014.

Article 31 of Regulation (EU) No 809/2014 is of particular importance for on-the-spot-checks on greening; several other provisions in that regulation are also linked to greening, e.g. Article 26(4) which stipulates additional visits for certain EFA types.

14 The notification on implementation data under Article 65(1)(c) of the delegated regulation is also referred to in Regulation (EU) No 834/2014, where these indicators are part of the Common Monitoring and Evaluation Framework, and in this context are qualified as output indicators in Section 3 of the Annex to the Regulation.