GUIDANCE DOCUMENT ON THE IMPLEMENTATION BY MEMBER STATES OF PERMANENT GRASSLAND PROVISIONS IN THE CONTEXT OF THE PAYMENT FOR AGRICULTURAL PRACTICES BENEFICIAL FOR THE CLIMATE AND THE ENVIRONMENT (GREENING)

CLAIM YEAR 2015 ONWARDS

This working document has been prepared by DG AGRI staff in order to facilitate the discussion in the Experts Group on Greening. This document is under technical and legal review and needs to be completed.

This document is referred to as "permanent grassland guidance"

This document provides guidance on the management of permanent grassland areas referred to in Article 45 of Regulation (EU) No 1307/2013 in the framework of the payment for agricultural practices beneficial for the climate and the environment (greening payment). The objective of the maintenance of these areas is established in Recital (42) and (43).

The definition of permanent grassland is set in Article 4(1)(h) of the same Regulation.


The purpose of this guidance is to give the Commission views on how to best apply the above legal provisions, it is not to repeat what is in the legislation. This guidance is either derived directly from the mentioned legal provisions or, whilst not expressing straightforward legal obligations, it constitutes recommendations by the Commission services to the Member States.

The considerations in this document are without prejudice to any further position taken by the Commission, nor to any future judgement of the European Court of Justice, which alone is competent to hand down legally binding interpretations of the Union law.
1. INTRODUCTION

The maintenance of permanent grassland is one of the three greening agricultural practices, as defined in Article 43 of Regulation (EU) No 1307/2013.

The relevant obligations for farmers are established in Article 45 of the same Regulation. Article 45(1) defines environmentally sensitive permanent grassland (ESPG) areas which shall be designated by Member States in Natura 2000 areas (first subparagraph) and may be designated in other areas outside Natura 2000 areas (second subparagraph). On these areas, Article 45(1) third subparagraph establishes a ban of ploughing and converting.

More general maintenance rules are established in Article 45(2) which defines a ratio of permanent grassland in relation to the total agricultural area. This takes from the similar provisions applying for the period before 2015 in Article 3 and 4 of Regulation (EC) No 1122/2009 on the ratio of permanent pastures.

2. ACRONYMS USED / TERMINOLOGY FOR THE PURPOSE OF THIS DOCUMENT

“Afforestation that is compatible with the environment”: reference to Article 45(4) of Regulation (EU) No 1307/2013. Afforestation which complies with the criteria set in Article 6 of Regulation (EU) No 807/2014, regardless if the area is financed or not under Rural Development, can be used as guiding principle by the MS when defining afforestation compatible with environment [to be clarified].

“Conversion into agricultural use area”: conversion of permanent grassland into an agricultural use area, such as arable land or permanent crop. Agricultural area is defined in Article 4(1)(e) of Regulation (EU) No 1307/2013 and it is related to further definitions under Article 4(1)(f) to (k).

“Conversion into non-agricultural use area”: conversion of permanent grassland into non-agricultural use area, such as afforestation, buildings, infrastructure (roads, railways), abandoned land etc.

“Declared areas”: the area that the beneficiary has declared in his/her aid application or payment claim. Reference to point (a) of the first subparagraph of Article 72(1) of Regulation (EU) No 1306/2013.

“Determined areas”: area for which all eligibility criteria or other obligations relating to the conditions for the granting of the aid have been met pursuant to Article 2(23) of Regulation (EU) No 640/2014.

EFA: Ecological Focus Areas.

ESPG: Environmentally Sensitive Permanent Grassland.

ISAMM: Information System for Agricultural Market Management and Monitoring.

3. DEFINITION OF PERMANENT GRASSLAND

[Chapter to be added in a second stage]

4. ENVIRONMENTALY SENSITIVE PERMANENT GRASSLAND

Article 45(1) third subparagraph of Regulation (EU) No 1307/2013 specifies that farmers shall not convert or plough ESPG.

This provision is limited to conversion and ploughing. It does not apply to other requirements set in the framework of Natura 2000 directives, for example linked to the management of the grassland as set out in the Natura 2000 management plans. Therefore there is no need to control the compliance of Natura 2000 management plans in the context of greening obligations or eligibility for direct payments.

Nevertheless the ban set in Article 45(1) third subparagraph is without prejudice to the requirements of should take in account other relevant legal frameworks such (e.g. as Natura 2000), which should be taken in account(keeping in mind the different requirements for ESPG designated inside and outside Natura 2000 areas).

In particular, concerning Natura 2000 areas, the provisions of Article 6 of Directive 92/43/EEC, the detailed rules of the management plans set up by the Member States and the criteria to avoid the deterioration of habitats and disturbance of species shall be respected in any case. Accordingly, the areas shall be managed following detailed management plans put in place by MS and local authorities, specific for each Natura 2000 site in order to protect its habitats and species. For any project to be undertaken in these areas, an environmental assessment pursuant to paragraph 3 of the same Article 6 shall also be implemented where relevant.
The above legal framework applies to both converting and ploughing, explained below, where an ESPG is located in Natura 2000.

4.1. Meaning of conversion of ESPG

Considering the environmental objective set in Recital 42 of Regulation No 1307/2013, the term “conversion of ESPG” in Article 45 of the same Regulation has to be understood as conversion to all possible land uses in broad sense, either to agricultural land area (arable land, permanent crops) or to non-agricultural uses area such as afforestation, building constructions, infrastructures (like roads and rails), abandoned land etc.

This is applicable also with regard to Article 42 of Regulation (EU) No 639/2014, which establishes rules for reconversion in case of non-respect of the obligation on ESPG.

Some limited cases of conversion are possible under certain conditions in case the environmental benefits of these areas, in particular carbon sequestration as set in Recital 42 of Regulation (EU) No 1307/2013, are still achieved. An example can be afforestation, possible if realised under certain conditions.

Agricultural practices which don’t harm the environmental value of ESPG are in general not interpreted as a conversion. Other practices (e.g. creating new ditches) has to be carefully assessed depending on the environmental conditions of the designated area, as the environmental benefit, in particular for carbon sequestration, shall be not be harmed (e.g. in case of possible draining of wetlands).

In order to avoid difficult situations like conversion to non-agricultural areas not under the decision of the farmer (e.g. infrastructures approved by a national administration for public utility), the MS may withdraw the designation of the parcels concerned as environmentally sensitive.

4.2. Meaning of ploughing ESPG

Ploughing is understood as a tillage which destroys or alters the grassland cover (e.g. where the land is turned and/or the tillage is deep). This operation reduces carbon sequestration and harm the habitats of an environmentally valuable site, in particular if permanent grassland constitutes these habitats. It can also cause disturbances to animal species or change the floristic composition of the grassland.

As a principle, the ban of ploughing should be strictly maintained. However, the use of light tillage on parts of the designated sensitive permanent grassland, in order to maintain it with the only purposes of preparing the soil to restore the grass, could be accepted (see the "OTSC guidance" document (DSCG-2014-32-FINAL, paragraph 2.4.4.4. third indent)).
5. RATIO OF AREAS OF PERMANENT GRASSLAND AND RELATED OBLIGATIONS

5.1. Calculation of the ratio

5.1.1. Definition and geographical level of data for the calculation

After the lodging of the aid applications for a given year, the MS shall manage the data of permanent grasslands and total agricultural area at national/regional/sub-regional level concerned, as chosen in the ISAMM form “10. Permanent grassland obligation level”, in order to assess the evolution of the ratio.

All the data used for the calculation of the ratio shall be consistent with the choice on the geographical level of obligation, with the formula specified in Chapter 5.1.3 and 5.1.5, as well as with the obligations on reconversion and the individual obligations referred to in Chapter 5.2, where relevant.

Considering the data collected in the aid applications, the MS shall use the following methodology for calculation of both areas under permanent grassland and total agricultural areas.

In principle, the permanent grassland area is a subset of the total agricultural area. According to the LPIS guidance document, Chapter “2.1 - Distinction of the agricultural area / land cover within the reference parcels” the total agricultural area is the sum of permanent grassland, arable land and permanent crops.

5.1.1.1. Eligible areas concerned

Pursuant to Article 43 of Regulation (EU) No 1307/2013, farmers shall observe the greening obligations on all eligible hectares within the meaning of Article 32(2) to (5). Therefore, only the eligible areas shall be used.

Considering the minimum size of agricultural parcels set in Article 72(1) second subparagraph of Regulation (EU) No 1306/2013, for the purpose of the calculation of the ratio the parcels below this threshold shall be included in the calculation.

On parcels where a pro-rata system pursuant to Article 10 of Regulation (EU) No 640/2014 is applied, the area to be used for the calculation of the ratio is the eligible area of the parcel.

5.1.1.2. Declared/determined areas

The data for the calculation of the ratio are based on declared areas, as specified in Article 45 of Regulation (EU) No 1307/2013.

For the calculation of the annual and reference ratio, the area of permanent grassland declared in the aid applications of the same year shall be used.
Nevertheless, these data, including data concerning permanent grassland, will be subject to controls on eligibility criteria and other obligations. As a result, the determined area will be defined and will also be pre-established for the following year in the aid-application should be based on the determined area.

This requirement ensures that in following years the declared areas by the beneficiaries will be based on the pre-established determined areas and consequently the determined permanent grassland areas will be covered in the ratio. It is recommended to consider the available determined area as far as possible for the calculation of the ratio, in order to be more precise.

For the calculation of the reference ratio, the area to be used stemming from applications of year 2012 should be based on the determined area and the area to be used stemming from applications of 2015 should be based on the declared area. Where MS need to adapt the reference ratio it should be based on determined area.

“Annex 1 – Practical cases for the calculation of the ratio” provides specific cases with regard to the different ratios. Where the declared areas for a given year are used in the calculation of reference or annual ratio, the resulting figures will be the basis for the possible reconversion obligation pursuant to Article 44(2) of Regulation (EU) No 639/2014 and for the notifications of the ratio pursuant to Article 65(1)(c)(v) and (d) of the same Regulation, with deadline by 15 December of each year. Therefore there is no need to update the data based on these declared areas with the results of the controls done during the same year. This refers in particular to the notifications pursuant to Article 65(1)(c)(v) and (d) of Regulation (EU) No 639/2014, with deadline by 15 December of each year.

5.1.2. Meaning of conversion of grassland subject to the ratio

The definition of conversion applicable to the permanent grassland subject to the management of the ratio is the same as specified for ESPG in Chapter 4.1.

5.1.3. Calculation of the reference ratio

Article 45(2) of Regulation (EU) No 1307/2013 and Article 43 of Regulation (EU) No 639/2014 lays down the details of the calculation of the reference ratio.

Concerned by the calculation of the reference ratio are “the farmers subject to the obligations under greening” as specified in Article 45(2) second subparagraph, point a) and b). Those farmers can be identified as subject to the obligation in Article 43(1) of the same Regulation, including farms exempted from crop diversification (Article 44) and EFA (Article 46), organic farms, farms with only permanent crops etc.

Taking into account the specifications given in these guidelines on the definition of permanent grassland (Chapter 3) and of the data for the calculation of the ratio (Chapter 5.1), this calculation is summarised as follows.
– For all MSs excluding Croatia:

\[(\text{PG-PP declared 2012} + \text{PG declared 2015 not declared 2012}) – \text{PG declared by SFS 2015 – PG declared in organic farms 2015 – PG-PP declared 2012 converted into agricultural land or other uses subject to the limit set in Article 43(2) – PG declared 2012 converted into non-agricultural uses}\]

Reference ratio = Total agricultural area declared 2015 – Agricultural areas declared by SFS 2015 – Agricultural areas declared in organic farms 2015

<table>
<thead>
<tr>
<th>PG-PP declared 2012</th>
<th>“Land under permanent pasture declared by the farmers in 2012”: Article 45(2) second subparagraph point (a) of Regulation (EU) No 1307/2013.</th>
</tr>
</thead>
<tbody>
<tr>
<td>PG declared 2015 not declared 2012</td>
<td>“Land under permanent grassland declared in 2015 that was not declared as land under permanent pastures in 2012”: Article 45(2) second subparagraph point (a) of Regulation (EU) No 1307/2013. Between different possible cases, this term may concerns areas that became permanent grassland due to the changed definition in Regulation (EU) No 1307/2013 compared to Regulation (EC) No 1120/2009.</td>
</tr>
<tr>
<td>PG declared by SFS 2015</td>
<td>“Land under permanent grassland declared in 2015 by farmers participating in the small farmers scheme”: Article 43(1) of Regulation (EU) No 639/2014. This area shall not be included in the reference ratio</td>
</tr>
<tr>
<td>PG declared in organic farms 2015</td>
<td>“Land under permanent grassland declared in 2015 by organic farms”: Article 43(1) of Regulation (EU) No 639/2014. This area shall not be included in the reference ratio</td>
</tr>
</tbody>
</table>
| PG-PP declared 2012 converted into agricultural land or other uses subject to the limit set in Article 43(2) | “Land under permanent pasture declared by the farmers in 2012 that has been converted into land for other uses”: Article 43(2) of Regulation (EU) No 639/2014. In practical terms, these areas were declared as permanent pastures in 2012 and are not declared as permanent grassland in 2015. It concerns only conversion to agricultural land (arable land, permanent crops)

\[\text{Capping Limit of land converted after 2012: following Article 43 Regulation (EU) No 639/2014, this area may not be included in the reference ratio at the following conditions:}\]

\[\text{Depends on land concerned by this term may be deducted up to on the number of hectares of permanent pasture PP or permanent grassland PG that farmers established after 2012 and declared in 2015, only hectares of PP or PG on an agricultural area declared in 2012, 2013 or 2014 in accordance with Article 34(2) of Regulation (EC) No 73/2009 (eligible hectares) shall be taken into account.}\]

In practical terms, this provision introduce a limit to the areas converted after 2012 that can be subtracted in the formula:

- In case the PG area converted in other uses after 2012 is higher than the area established as PG after 2012, the deduction is limited to the number of hectares established.
- In case the PG area converted in other uses after 2012 is lower than the area established as PG after 2012, there is no limitation to be applied,
therefore the deduction is equal to the area converted into land for other uses.

When calculating the area established as PG after 2012, two conditions shall be fulfilled:

- In practical terms, these areas not declared as PP in 2012 will be PG in 2015: the base of calculation is the declaration in the Single Application as any kind of agricultural land for at least one year in any year of the period 2012-2014.

- Only hectares of PP or PG on an agricultural area declared in 2012, 2013 or 2014 in accordance with Article 34(2) of Regulation (EC) No 73/2009 (eligible hectares) shall be taken into account. The base of calculation in this case is the declaration in the Single Application as any kind of agricultural land for at least one year in any year of the period 2012-2014.

- The rules on maintenance of permanent pastures as laid down in Article 6(2) of Regulation (EC) No 73/2009 and in Article 93(3) of Regulation (EU) No 1306/2013 were have been met. That means that hectares reconverted after 2012 due to the obligation to reconvert in case the PP ratio has decreased by more than 10%, cannot be taken into account.

Is useful to underline that the areas established as PG after 2012 for the purpose of Article 43(2) can be different from the term “PG declared 2015 not declared 2012”, for instance this latter term can include areas introduced due to the enlarged PG definition in Regulation (EU) No 1307/2013 or PG established from land that was not agricultural area in 2012, 2013 or 2014. These cases are excluded by the conditions set in Article 43(2).

In practical terms, this introduce a “capping” to the areas converted after 2012:

See the second part of Annex 2 — Graphical examples of calculation of numerator of reference ratio (permanent grassland) for graphical explanation

| PG declared 2012 converted into non-agricultural uses | “Land under permanent pasture declared by the farmers in 2012 that have been converted into land for other uses” |
| Total agricultural area declared 2015 | “The total agricultural area declared by the farmers in 2015”; Article 45(2) second subparagraph point (b) of Regulation (EU) No 1307/2013. |
| Agricultural areas declared by SFS 2015 | Agricultural areas declared in 2015 by farms participating in the small farmers scheme; Article 43(1) of Regulation (EU) No 639/2014. |
| Agricultural areas declared in organic farms 2015 | Agricultural areas declared in 2015 by organic farms; Article 43(1) of Regulation (EU) No 639/2014. |
See a graphical exemplification of the permanent grassland term of the formula in “Annex 2 – Graphical examples of calculation of numerator of reference ratio (permanent grassland)”.

- For Croatia: the same formula and the same terms apply, but the references to year 2012 are substituted with year 2013.

5.1.4. Adapting the reference ratio

Article 43(3) of Regulation (EU) No 639/2014 establishes that MS shall adapt the reference ratio if they assess that there is a significant impact on the evolution of the ratio due to changes which affect the consistency of the calculations, for instance in case of findings during controls or audits, significant increase/decrease of areas in small farmers scheme or organic farming (as specified in Article 43(3)), significant conversions to non-agricultural areas (e.g. following works for public utility), significant increase/decrease of total agricultural areas due to other reasons not related to PG evolution, future possible changes in eligibility rules etc.

In case a MS decides to adapt the reference ratio, it shall inform the Commission through a dedicated ISAMM form, justifying the need to update the ratio.

5.1.5. Calculation and check of the annual ratio


Concerned with the calculation of the annual ratio are “the farmers subject to the obligations under greening” as specified in Article 45(2) second subparagraph, point a) and b). Data concerning these farmers in year n should be used for the calculation of the annual ratio.

Following Article 45(4) of Regulation (EU) No 1307/2013, “Paragraph 3 [i.e. case where the ratio decreases by more than 5%] shall not apply where the decrease below the threshold is the result of afforestation that is compatible with the environment and does not include plantations of short rotation coppice, Christmas trees or fast growing trees for energy production”.

Taking into account the specifications given in these guidelines on the definition of permanent grassland (Chapter 3) and of the data for the calculation of the ratio (Chapter 5.1), this calculation is summarised as follows.

\[
\text{Annual ratio} = \frac{\text{PG declared in year } n - \text{PG declared by SFS in year } n - \text{PG declared in organic farms in year } n}{\text{Total agricultural area declared in year } n - \text{Agricultural areas declared by SFS in year } n - \text{Agricultural areas declared in organic farms in year } n}
\]
After the calculation, the annual ratio for year n is compared with the reference ratio using the following formula:

\[
\text{Annual ratio year n} \quad - \quad \text{Reference ratio} \quad \frac{\text{-------------}}{\text{Reference ratio}}
\]

The threshold of 5% is applied on the resulting percentage and the outcome result can be the following:

- In case the annual ratio does not decrease by more than 5%, for year n the maintenance of permanent grassland obligation is complied with.

- In case the annual ratio, after the calculation of the afforested areas pursuant to Article 45(4) of Regulation (EU) No 1307/2013, has not decreased anymore by more than the threshold of 5%, for year n the maintenance of permanent grassland obligation is complied with.

- In case the annual ratio has decreased by more than the threshold of 5%, the MS shall apply Article 44(2) of Regulation (EU) No 639/2014. In this case, PG...
afforested pursuant to Article 45(4) of Regulation (EU) No 1307/2013 is subject to reconversion obligation as any other converted PG.

In order to apply Article 45(4) of Regulation (EU) No 1307/2013, it is suggested to track in the IACS system the PG areas afforested pursuant to this Article.

Those areas are not anymore considered as PG starting from the moment of their conversion into forest, therefore are to be deducted from the annual ratio formula.

5.1.6. Particular cases for the calculation of the ratio

Organic farmers are entitled ipso facto to the greening payment, as established in Article 43(11) of Regulation (EU) 1307/2013. However, organic farmers can decide to opt out of the exemption and to respect greening obligations: in this case they have to fully respect the three obligations, including maintenance of permanent grassland. Therefore the areas (permanent grassland and agricultural areas) belonging to an organic holding which has to respect the obligation, shall be included in the calculation of reference and annual ratio as any other farm.

Other cases specifically related to the calculation of the reference ratio, are reported in the following table.

<table>
<thead>
<tr>
<th>Case</th>
<th>Example</th>
<th>Effect on the reference ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>PG in 2012 which is not claimed by any farm subject to greening obligations in 2015.</td>
<td>Parcels that are not claimed for direct payments even if the PG is still in place in 2015.</td>
<td>The PG declared in 2012 is not taken in consideration in the calculation of the ratio.</td>
</tr>
<tr>
<td>PG in 2012 which is leased to another farmer subject to greening in 2015.</td>
<td>Farmers that declared PG in 2012 which was sold or rented to other farmers: the PG is still in place in 2015.</td>
<td>As the farmer which acquired the PG is subject to greening obligation in 2015, the PG is counted both in the numerator and in the denominator of the ratio.</td>
</tr>
<tr>
<td>PG in 2012 which is leased to a farmer which is under SFS or organic farming in 2015.</td>
<td>Farmers that declared PG in 2012 which was sold or rented to other farmers: the PG is still in place in 2015.</td>
<td>The PG declared in 2012 is subtracted from the calculation of the ratio in the term SFS - organic.</td>
</tr>
<tr>
<td>PG which was part of an organic farm in 2012, where the farm is not anymore organic in 2015.</td>
<td>Organic farmers that declared PG in 2012 which came back to ordinary production: the PG is not belonging to an organic farm in 2015.</td>
<td>The area concerned has to be counted both in the numerator (PG declared 2012) and in the denominator of the ratio (included in the total</td>
</tr>
</tbody>
</table>
5.1.7. Amount of areas in absolute terms

Article 45(3) of Regulation (EU) 1307/2013 provide for the case where the amount of areas of permanent grassland in absolute terms does not decrease beyond a certain limit. Article 11 of Regulation (EU) No 641/2014 set this limit at 0.5%.

The practical meaning of this provision refers to the case where the PG area remains stable (within the limit provided by the Regulations) but the total agricultural area increases: sometimes this trend can lead to a reduction of the ratio by more than 5%, not due to a reduction of grassland areas.

Based on the formulas for the ratios:

\[
\text{Amount of areas in absolute terms} = \text{Numerator annual ratio in year } n - \text{Numerator reference ratio}
\]

See “Annex 1 – Practical cases for the calculation of the ratio” for a practical example.

5.2. Obligations linked to the ratio of areas of permanent grassland

Article 44 of Regulation (EU) No 639/2014 provides details regarding the obligations for the maintenance of the ratio.

5.2.1. Individual obligations at holding level and on prior authorisation

Article 45(2) fifth subparagraph of Regulation (EU) 1307/2014, establishes that the Member State may decide to apply an obligation to maintain permanent grassland at a holding level. This decision is communicated to the Commission through the ISAMM form “10. Permanent grassland obligation level”.

Even if the MS decides to apply this individual obligation, the maintenance of the ratio at national/regional level still has to be respected.

The meaning of this obligation can be different depending on the rules defined by the MS, e.g. a reference area of permanent grassland in a given year is established for each farm and the conversion is possible as long as it remains within a threshold or respecting some criteria.

Following Article 44(1) of Regulation (EU) No 639/2014, Member States may provide for the individual obligation of farmers not to convert areas of permanent grassland without prior individual authorisation. The Member States shall inform farmers of the decision to put in place a system of prior individual authorisation before 15 November of each year.
In practical terms, the MS will put in place an administrative procedure where any conversion of permanent grassland has to be requested by the farmers and authorised by the MS following the criteria specified in Article 44(1) second subparagraph.

This provision applies regardless of the trend of the ratio, therefore the MS can decide to put it in place any time, in particular at the beginning of the programming period in 2015.

If the ratio decreases by more than 5%, the MS shall interrupt the use of this procedure, as the conversion is not possible anymore following Article 44(2).

The obligation at holding level and the prior authorisation can be linked or not, depending on the decision of the MS.

5.2.2. **Timing for calculating the ratio and require possible reconversion**

Just after the closure of the applications (May-June), the MS is already able to calculate the figure for the ratio and assess the trend of the areas. Considering that the MS may need to put in place corrective measures (e.g. a procedure for prior authorisation), it is suggested to check the ratio as soon as possible.

The possible cases are:

- **No reduction**: following the trend of the areas, there is no decreasing and the ratio remains within the limit of 5%. The MS can just keep the data obtained from the applications and notify it through the ISAMM form by the deadline of 15 December, following Article 65(1)(c)(v) and (d) of Regulation (EU) No 639/2014.

- **Reduction within the limit**: the areas of PG decrease and the ratio decreases but remains within the limit of 5%. The MS might decide to put in place a procedure of prior authorisation before 15 November. Calculating the figure for the ratio during the summer of a given year as soon as possible, will help the Member State to assess the trend of the areas and support a possible decision to put in place such an obligation in order to avoid further decreasing of the ratio.

- **Reduction by more than the limit**: the areas of PG decrease and the ratio decreases by more than the threshold of 5% even after checking the afforested PG under Article 45(4) of Regulation (EU) 1307/2014 (see chapter 5.1.5). Article 44(2) applies and the MS concerned shall put in place immediate corrective actions. The operations requested by Article 44(2) and (3) imply that the MS shall:
  - Avoid new conversion: article 44(2) first paragraph establishes that MS shall provide for rules to avoid new conversion in the same year. These rules should be established and communicated to farmers as soon as possible. If a procedure for prior authorisation pursuant to Article 44(1) is in place, it has to be interrupted as conversion is not possible anymore.
  - Reconvert areas into areas of permanent grassland: article 44(2) and (3) establish that MS shall determine the range of farmers subject to the reconversion obligation following these steps by tracing back the converted parcels:
1. **Exclude** areas of PG that are not environmentally sensitive areas - 44(2) first subparagraph point a

2. Identify applications with permanent grassland that was converted for the preceding 2 or, for year 2015, for the preceding 3 years - 44(2) first subparagraph point b

3. Establish an order of priority for farmers identified in step 2:
   
   i. Farmers subject to authorisation (Article 44(1) or Article 4(1) of Reg. 1122/2009): reconversion of the whole converted area - 44(2) third subparagraph

   ii. Other farmers: reconversion of a percentage of the converted area (to be calculated following the steps below) or establish another area of PG – 44(3) first subparagraph

      a. Calculation of the percentage based on area converted and area needed to reach 5%

      b. Possible exclusion of areas which became PG after 31 December 2015

      c. Exclusion of area of PG that farmers created in the framework of with RD commitments

4. Communicate to concerned farmers before 31 December of the same year

5. The obligation to reconvert shall be complied with before the date for the submission of the single application for the next year, with a specific derogation for SE and FI.

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### 5.2.3. Reconversion of permanent grassland subject to the ratio

The obligation to reconvert specified in Article 44(2) of Regulation (EU) No 639/2014, shall be applied at the same geographical level chosen by the Member State for the management of the ratio, as referred to in Chapter 5.1.1.

Concerning Article 44(2), and in particular subparagraph (b), the meaning of conversion is from areas of permanent grassland or permanent pasture into area for other uses as specified in Chapter 5.1.2. See also Annex 1 – Practical cases for the calculation of the ratio for a practical example on the effect on the ratio.

An obligation to reconvert is applied in any case the conversion has been done into an agricultural area (e.g. arable land, permanent crops, short rotation coppice etc.) in the meaning of Article 4(1)(e) of Regulation (EU) No 1307/2013.

In case the conversion has been done into a non-agricultural area, the reconversion applies only for farmers who have agricultural areas at their disposal which were converted from PP or PG into an area for other uses, as specified in Article 44(2) second subparagraph point b and in Article 44(3) first subparagraph.
This means that if the farmer doesn’t have any more at his disposal the converted agricultural area, he will not be obliged to reconvert. This is the case, for instance, of the conversion of PG into buildings or infrastructures for the public use and in the public interest, requested by the national authorities and generally anticipated by an expropriation of the PG of the farmer.

An obligation to reconvert should not apply if the conversion was due to works for public utility which may affect permanent grassland (e.g. construction of a road or a railway), the farmers are not obliged to reconvert or create other grassland.

Article 44(3) first subparagraph establishes the rules to increase the ratio above the threshold of 5% through reconversion. “Above the threshold of 5%” means that the Member State has to impose reconversion for farmers at least for a minimum area needed to reach the threshold of 5% in the following year. The Member States, depending on a possible procedure for prior authorization in place or on the trend of the ratio in previous years, may decide to reconvert more grassland to ensure the maintenance of the ratio in the following years.

Article 44(3) first subparagraph states that it is possible to establish another area as areas of permanent grassland, corresponding to the percentage set in the same subparagraph: this could be useful in case the area has been converted into uses-areas entailing stable structures (building, infrastructures) or permanent uses as permanent crops or afforestation.

In case the PG was converted and afterwards leased to another farmer, regardless if was ESPG or PG subject to the ratio system, the second farmer will be subject to the reconversion obligations under Article 42 for ESPG and Article 44(2) and (3) for other PG.

6. NON COMPLIANCES OF THE PERMANENT GRASSLAND OBLIGATION

In cases of non-compliance with the permanent grassland obligation, there can be different cases of area found as non-compliant.

- Where ESPG areas are converted or ploughed.
- Where the MS decided to apply a prior individual authorisation to convert areas of permanent grassland pursuant to Article 44(1) of Regulation (EU) No 639/2014, the farmers which converted PG into other uses had to be authorised by the MS. If the farmer has converted PG without asking the authorisation, the area to be considered as non-compliant is the area which has been converted without authorisation.
- Where the ratio has decreased by more than 5% and therefore the MS applies Article 44(2) of the same Regulation:
  - As stated in the same article 44(2) first subparagraph, the MS shall ensure that new conversion of areas of PG is avoided. Farmers who still convert other areas of PG do not comply with this obligation: the area to be considered as non-compliant is the area converted from an area of PG into an area for other uses.
According to Article 44(2) fourth subparagraph and, if applicable, Article 44(3), Member States shall identify the farmers subject to the obligation to reconvert the land into PG. If the farmer does not comply with the obligation to reconvert, the area to be considered as non-compliant is the area which has not been reconverted into PG whilst it should have been.
ANNEX 1 – PRACTICAL CASES FOR THE CALCULATION OF THE RATIO

DECLARED AREAS (CHAPTER 5.1.1.2)

With regard to practical cases of the different ratios to be calculated by the MS, the following applies.

- **Calculation of the reference ratio - first calculation in 2015**: data related to year 2015 has to be based on the declared areas after the use of the available pre-established information. Data related to previous years (2012, 2013, 2014) where relevant, shall be based on determined areas.

- **Calculation of the reference ratio - following years**: when the Member State decides to adapt the reference ratio following Article 43(3) of Regulation (EU) No 639/2014, the data related to year n has to be based on the declared areas after the use of the available pre-established information. Data related to previous years, where relevant, shall be based on determined areas.

- **Calculation of the annual ratio**: the data related to year n has to be based on the declared areas after the use of the available pre-established information. Data related to previous years, where relevant, shall be based on determined areas.

TREND OF AREAS FOR THE CALCULATION OF THE RATIOS

CONVERSION TO NON-AGRICULTURAL USES

In case of conversion to non-agricultural uses, the effect on the ratio can be as follows.

In a MS, in 2015 the reference ratio is based on a permanent grassland area of 50,000 ha and a total area of 100,000 ha. The calculation of the reference ratio is

\[
\frac{50,000}{100,000} = 0.5
\]

A conversion to non-agricultural uses takes place and 5,000 ha are converted. This area is deducted from the permanent grassland area and the total area, as the converted area is not anymore an agricultural area. The change in the annual ratio in 2017 is:

\[
\frac{45,000}{95,000} = 0.473 \text{ after the conversion}
\]

**The reduction of the annual ratio is** \((0.473 - 0.5) / 0.5 = -0.0526 (-5.26\%)\) **therefore it has decreased by more than 5%**.

Even if both terms of the ratio are reduced by the conversion, in this case the effect on the ratio is significant and the reduction of permanent grassland may leads to a reduction of the ratio above by more than 5%.
AMOUNT OF AREAS IN ABSOLUTE TERMS

In case of application of the amount of areas in absolute terms, the following example applies.

The reference ratio is 10%, given by the amount of permanent grassland at 100,000 ha and the total agricultural areas at 1,000,000. The limit in absolute terms of the areas of permanent grassland is therefore 500 ha (0.5% of 100,000 ha of permanent grassland). In case of changes of the areas, the obligation is complied with if the permanent grassland doesn’t decrease above 500 ha, even if the total agricultural area increases.
ANNEX 2 – GRAPHICAL EXAMPLES OF CALCULATION OF NUMERATOR OF REFERENCE RATIO (PERMANENT GRASSLAND)

Photo of declaration 2012

Area declared in arable land as grasses or other herbaceous forage (temporary grassland)

Area declared as other arable crops, permanent crops etc.

Photo of declaration 2015

PG reference = (2 + 7) - 3 - 4 - 5 - 6
Further specifications of term "3 - PG declared 2012 converted in agricultural land"

| Area up to PG established after 2012 and declared in 2015 - 1000 ha: | become the term 3 - PG declared 2012 converted in agricultural land |
| Area above PG established after 2012 and declared in 2015 - 500 ha: | this area shall not be part of the term 3 - PG declared 2012 converted in agricultural land |