WORKING DOCUMENT

Draft Commission Delegated Regulation (EU) .../... of XXX amending Delegated Regulation (EU) No 640/2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance

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

SECTION 3
PAYMENT FOR AGRICULTURAL PRACTICES BENEFICIAL FOR THE CLIMATE AND THE ENVIRONMENT

Article 22
General principles

1. For the purposes of this Section, the following crop groups shall be distinguished as appropriate:
   (a) each group of areas declared as a certain crop as referred to in Article 44(4) of Regulation (EU) No 1307/2013;
   (b) areas declared as permanent grassland and which are environmentally sensitive as referred to in Article 45(1) of Regulation (EU) No 1307/2013;
   (c) other areas than those referred to in point (b) declared as permanent grassland; and
   (d) areas declared as ecological focus area as referred to in Article 46(1) of Regulation (EU) No 1307/2013.

2. Where the same area is determined declared for more than one greening practice as referred to in Article 43(2) of Regulation (EU) No 1307/2013 crop group, that area shall be taken into account separately to of those crop group assess the compliance for each greening practice in view of calculating the greening payment.
Article 23
Basis of calculation of the payment for agricultural practices beneficial for the climate and the environment in respect of the eligible hectares declared under the basic payment scheme or the single area payment scheme

1. Where the Member State applies the basic payment scheme, the following shall apply:
   (a) if the number of payment entitlements declared exceeds the number of payment entitlements at the beneficiary's disposal, the number of payment entitlements declared shall be reduced to the number of payment entitlements at the beneficiary's disposal;
   (b) if there is a difference between the number of payment entitlements declared and the area declared, the area declared shall be adjusted to the lowest figure.

2. Without prejudice to the administrative penalties applicable in accordance with Article 28, if the area declared in a single application for the basic payment or the single area payment exceeds the area determined, the area determined shall be used for the calculation of the greening payment for agricultural practices beneficial for the climate and the environment hereinafter referred to as "the greening payment".

   However, if the area determined for the basic payment scheme or the single area payment scheme is found to be greater than the area declared in the aid application, the area declared shall be used for the calculation of the greening payment.

Article 24
Reduction of the greening payment in case of non-compliance with crop diversification

1. Where the first subparagraph of Article 44(1) of Regulation (EU) No 1307/2013 requires that the main crop shall not cover more than 75% of the total area of arable land at least two different crops, but the area that has been determined for the main crop group covers more than 75%, the area to be used for the calculation of the greening payment in accordance with Article 23 of this Regulation shall be reduced by 2 times the area of the main crop in excess of the 75% of the total arable land determined multiplied by the ratio of difference.

   The ratio of difference referred to in the first subparagraph shall be the share of the area of the main crop group that goes beyond 75% of the total arable land determined in the total area required for the other crop groups.

2. Where the second subparagraph of Article 44(1) of Regulation (EU) No 1307/2013 requires at least three crops that the main crop shall not cover more than 75% of the total area of arable land determined and the two main crops shall not cover more than 95%, but the area that has been determined for the main crop group covers more than 75% and the area that has been determined for the two main crop groups covers more than 95%, the area to be used for the calculation of the greening payment in accordance with Article 23 of this Regulation shall be reduced by 50% of the total area of arable land determined multiplied by the ratio of difference.

   The ratio of difference referred to in the first subparagraph shall be the sum of the ratios of difference calculated under paragraphs 1 and 2. However, the value of this ratio shall not exceed 1.
3. Where the second subparagraph of Article 44(1) of Regulation (EU) No 1307/2013 requires at least three different crops that the two main crops shall not cover more than 95% of the total area of arable land determined, but the area that has been determined for the two main crops groups covers more than 95%, the area to be used for the calculation of the greening payment in accordance with Article 23 of this Regulation shall be reduced by 5 times the area of the main crops in excess of the 95% of the total arable land determined multiplied by the ratio of difference.

The ratio of difference referred to in the first subparagraph shall be the share of the area of the two main crop groups that goes beyond 95% of the total area of arable land determined in the total area required for the other crop groups.

3a. Where Article 44(2) of Regulation (EU) No 1307/2013 requires that the main crop on the remaining arable land shall not cover more than 75% of that remaining arable land, but the area that has been determined for the main crop group on the remaining arable land covers more than 75%, the area to be used for the calculation of the greening payment in accordance with Article 23 of this Regulation shall be reduced by 2 times the area of the main crop in excess of the 75% referred to above 50% of the remaining area of arable land determined multiplied by the ratio of difference.

The ratio of difference referred to in the first subparagraph shall be the share of the area of the main crop group on the remaining arable land that goes beyond 75% of the remaining arable land determined in the total area required for the other crop groups on that remaining arable land.

4. Where a beneficiary has been found non-compliant with crop diversification as described in this Article for three years, the area by which the area to be used for the calculation of the greening payment is to be reduced in accordance with paragraphs 1, 2, 3 and 3a for the subsequent years shall be the total area of arable land determined multiplied by the applicable ratio of difference multiplied by 2.

Article 25
Reduction of the greening payment in case of non-compliance with the permanent grassland requirements

1. If a non-compliance with the third subparagraph of Article 45(1) of Regulation (EU) No 1307/2013 has been determined, the area to be used for the calculation of the greening payment in accordance with Article 23 of this Regulation shall be reduced by the area determined as non-compliant with the requirements in the third subparagraph of Article 45(1) of Regulation (EU) No 1307/2013.

2. If a non-compliance with the obligations as referred to in Article 44 of Delegated Regulation (EU) No [DA DPR] has been determined, the area to be used for the calculation of the greening payment in accordance with Article 23 of this Regulation shall be reduced by the area determined as non-compliant with the obligations as referred to in Article 44 of Delegated Regulation (EU) No [DA DPR].

3. Non-compliances shall be deemed to be 'determined' if they are established as a consequence of any kind of checks carried out in accordance with Article 74 of Regulation (EU) No 1306/2013 or after having been brought to the attention of the competent control authority or paying agency in whatever other way.
**Article 26**

**Reduction of the greening payment in case of non-compliance with the ecological focus area requirements**

1. The ecological focus area required in accordance with Article 46(1) of Regulation (EU) No 1307/2013, hereinafter referred to as "the ecological focus area required", shall be calculated on the basis of the total area of arable land determined and including, if applicable pursuant to Article 46(2) of Regulation (EU) No 1307/2013, the areas determined as referred to in points (c), (d), (g) and (h) of the first subparagraph of Article 46(2) of that Regulation.

2. If the ecological focus area required exceeds the ecological focus area determined taking account of the weighting of ecological focus areas provided for in Article 46(3) of Regulation (EU) No 1307/2013, the area to be used for the calculation of the greening payment in accordance with Article 23 of this Regulation shall be reduced by 10 times the ecological focus area not found missing 50% of the total arable land determined and including, if applicable pursuant to Article 46(2) of Regulation (EU) No 1307/2013, the areas determined as referred to in points (c), (d), (g) and (h) of the first subparagraph of Article 46(2) of that Regulation, multiplied by the ratio of difference.

   For the purpose of the first subparagraph the ecological focus area determined shall not exceed the share of the ecological focus areas declared in the total area arable land declared.

3. Where a beneficiary has been found non-compliant with the ecological focus area requirements as described in this Article for three years, the area by which the area to be used for the calculation of the greening payment is to be reduced in accordance with paragraph 2 for the subsequent years shall be the total area of arable land determined and including, if applicable pursuant to Article 46(2) of Regulation (EU) No 1307/2013, the areas determined as referred to in points (c), (d), (g) and (h) of the first subparagraph of Article 46(2) of that Regulation, multiplied by the ratio of difference multiplied by 2.

**Article 27**

**Maximum reduction of the greening payment**

1. The sum of the reductions calculated in accordance with Articles 24 and 26 expressed in hectares shall not exceed the total number of hectares of arable land determined including, if applicable pursuant to Article 46(2) of Regulation (EU) No 1307/2013, the areas determined as referred to in points (c), (d), (g) and (h) of the first subparagraph of Article 46(2) of that Regulation.

2. Without prejudice to the application of administrative penalties applicable in accordance with Article 28, the total reduction calculated in accordance with Articles 24 to 26 shall not exceed the greening payment calculated in accordance with Article 23.

**Article 28**

**Administrative penalties as regards the greening payment**

1. If the area to be used for the calculation of the greening payment in accordance with Article 23 differs from the area to be used for the calculation of the greening payment after application of Articles 24 to 27, the greening payment shall be
calculated on this later area reduced by twice the difference established if that difference is more than either 3 % or two hectares, but no more than 20 % of the area to be used for the calculation of the greening payment after application of Articles 24 to 27.

If the difference is more than 20 %, no aid shall be granted.

If the difference is more than 50 %, no aid shall be granted. Moreover, the beneficiary shall be subject to an additional penalty equal to the amount of aid corresponding to the difference between the area to be used for the calculation of the greening payment after application of Article 23 and the area to be used for calculation of the greening payment after application of Articles 24 to 27.

2. If the beneficiary does not declare all his area under arable land with the result that he would have been exempted from the obligations provided for in Articles 44, 45 and 46 of Regulation (EU) No 1307/2013, and/or he does not declare all his permanent grassland which is environmentally sensitive in accordance with Article 45(1) of that Regulation and the non-declared area is more than 0.1ha, the area to be used for the calculation of the greening payment after application of Articles 24 to 27 of this Regulation shall be further reduced by 10%.

3. In accordance with Article 77(6) of Regulation (EU) No 1306/2013, the administrative penalty calculated in accordance with paragraphs 1 and 2 of this Article shall not be applied in claim years 2015 and 2016. The administrative penalty calculated in accordance with paragraph 1 and 2 shall be divided by 5 and limited to 20% of the amount of the greening payment to which the farmer concerned would have been entitled in accordance with Article 23 in claim year 2017, and divided by 4 and limited to 25% of the same amount for claim years 2018 and onwards.

4. If the amount of the administrative penalties calculated in accordance with paragraphs 1, 2 and 3 cannot be fully off-set in the course of the three calendar years following the calendar year of the finding, in accordance with Article 28 of Implementing Regulation (EU) No 908/2014, the outstanding balance shall be cancelled.

Article 29
Applicable rules for equivalent practices

This Section shall apply mutatis mutandis to the equivalent practices referred to in Article 43(3) of Regulation (EU) No 1307/2013.