



20/06/2014

Working Document

on the implementation by Member States of certain provisions of the direct payments (Regulation (EU) No 1307/2013)

This interpretation does not prejudice any decision by the European Court of Justice. In the event of a dispute involving Union law it is, under the Treaty on the Functioning of the European Union, ultimately for the European Court of Justice to provide a definitive interpretation of the applicable Union law

PAYMENTS FOR AGRICULTURAL PRACTICES BENEFICIAL FOR THE CLIMATE AND THE ENVIRONMENT

EFA: ecological focus area

1. EFA: WEIGHTING FACTORS FOR LAND LYING FALLOW, AREAS WITH SHORT ROTATION COPPICE AND AREAS WITH NITROGEN-FIXING CROPS

Article 46(3) of Regulation (EU) No 1307/2013 allows Member States using conversion and/or weighting factors for calculating the area to which elements of EFA contribute. For catch crops/green cover and any element with a weighting of less than 1, the use of the weighting factor is mandatory. The list of EFA elements is set in Annex X of the Regulation but the factors shall be defined by delegated act.

The delegated act sets a simple system with 3 tiers, which reflects the environmental value of each element qualifying for EFA (most notably for biodiversity): high value (higher than 1), medium (1) and low value (lower than 1). Land lying fallow (factor 1) has obviously a higher environmental benefit than for instance short rotation coppices (factor 0.3), which are productive areas. The whole system is therefore balanced in relation to the objective of the EFA.

2. EFA: MINIMUM DURATION OF LAND LYING FALLOW

According to Regulation (EU) No 1307/2013 (Article 46(2)(a)) fallow land may qualify as EFA. Payments under the greening scheme are granted for the claim year for which they are requested by a farmer.

Neither Regulation (EU) No 1307/2013 nor the delegated act provide for a minimum period during which land that has been declared as fallow land needs to lie fallow during the claim year concerned. This issue needs to be addressed by the Member States in the framework of their modalities for the application of greening.

In this context Member States should take into account the purpose of accepting fallow land under greening which is that fallow land contributes to biodiversity, i.e. the main objective pursued by the EFA component of greening.

At the same time Member States may also consider agronomic interest. Against this background it would appear reasonable for Member States to provide that fallow land declared for a given claim year should have lain fallow during that claim year for a certain time period adapted to the situation in the Member State, which should in no case be shorter than 6 months.

It follows that land that has been lying fallow e.g. as of autumn of the year preceding the claim year may be accepted by Member States as EFA for the claim year even though it is used for the sowing of winter crops in the autumn of the claim year.

3. EFA: QUALIFICATION OF LANDSCAPE FEATURES

Article 46(2) of Regulation (EU) No 1307/2013 lists the landscape elements which may qualify for EFA. Article 45(4) of the delegated act specifies that landscape elements under cross compliance qualify for EFA for each element chosen by the Member State. However the delegated act offers more choice to Member States, which can extend the list beyond cross compliance. In this case and for clarity for farmers and control bodies, certain specifications are needed, which are detailed in the delegated act.

4. EFA: SIZE LIMITS OF LANDSCAPE FEATURES

Pursuant to Article 46(2)(c) of Regulation (EU) No 1307/2013 Member States may list the landscape features which qualify for EFA. Article 45(4) of the delegated act specifies that ditches and ponds may be part of that list provided that ditches have a maximum width of 6 meters and ponds have a maximum area of 0.1 ha.

These limits are necessary to provide clarity to farmers on which element may qualify for EFA as well as a common and transparent framework for a harmonised implementation of the EFA obligations. Moreover, they are necessary for control purposes. These limits take into account the objective of biodiversity.

In order to enhance the efficiency and consistency between cross compliance and the greening obligations, the landscape features already protected under cross-compliance can also qualify for EFA. This includes notably landscape features protected under the standard for Good Agricultural and Environmental Condition (GAEC) 7 on the "retention of landscape features". In this context, Member States may protect ditches and/or ponds on the basis of GAEC 7 and may specify a width or area different, including higher, than other landscape features qualifying for EFA and not protected by GAEC 7. Landscape features may also be protected in the framework of Statutory Management Requirements (SMR) 2 and SMR 3 (Birds and

Habitats Directive). They would also qualify for EFA with the size specified in the national rules implementing these Directives.

5. EFA: SIZE OF THE TREES

For qualifying for EFA the trees must have a minimum crown diameter of 4 meters. The 4-meter rule allows for clarity for farmers. It allows also an efficient identification and control performance. Above 4 m such trees can be identified on areal images by remote sensing and therefore easily processed on the basis of LPIS.

Nevertheless the delegated act provides that Member States may, if they wish so, include trees recognised by them as valuable landscape features with a crown diameter below 4 meters.

Moreover the standard for GAEC 7 on retention of landscape features offers to Member States the possibility to protect other type of trees and to define other dimensions (e.g. lower diameters) if they consider these features relevant.

Newly planted trees will only start counting for that type of EFA once they reach the minimum crown diameter and/or start to provide real value for biodiversity.

The maximum distance of 5 meters for the space between trees in line has been added at the request of Member States, in order to enable an acceptable distinction between trees in line and isolated trees for clarity of the rules and controllability purposes.

When the space between tree crowns exceeds 5 meters, trees are not anymore considered as trees in line but as isolated trees with conversion and weighting factors applied to isolated trees. Therefore already existing trees can also be considered as EFAs even if they do not respect the 5 meter minimum distance between trees.

6. EFA: MAPPING

Article 70(2) of Regulation (EU) No 1306/2013 provides that Member States ensure that "*the identification system of agricultural parcels contains a reference layer to accommodate ecological focus area*"... "*in respect of claim year 2018 at the latest*". Article 5(2)(c) of the delegated act [for IACS] merely supplements the basic act and provides that this identification system "*locate and determine the size of those ecological areas (...)*".

Mapping all potential EFA land is important for facilitating the use and declaration by farmers of the elements on their farm. Indeed this helps farmers choosing what to correctly declare every year. This is also necessary for control purposes for cross-checking that what the farmer has declared as EFA exists and is of a certain size. This is an important element contributing to keep the errors at a reasonable level.

7. EFA: LIST OF SPECIES OF SHORT ROTATION COPPICE

According to Article 4(k) of Regulation (EU) No 1307/2013, short rotation coppice includes only trees species. Examples of short rotation coppice are willows, poplar,

other fast growing trees, etc. Elephant grass (*Miscanthus*) is not a short rotation coppice since it is not a tree and does therefore not qualify as EFA.

To make sure that short rotation coppice contribute to the objectives of the EFA, i.e. to safeguard and improve biodiversity, Regulation (EU) No 1307/2013 provides that no mineral fertilizer and/or plant protection products may be used on the areas with this crop. In order to ensure that biodiversity is improved, some additional rules are laid down in the Delegated Act (Article 45(8)):

- a. The first rule is that Member States must establish a list of species that can be grown as short rotation coppice on EFA, by selecting the species that are most suitable from an ecological perspective. Member States must make their own selection of the tree species based on the definition of short rotation coppice in Regulation (EU) No 1307/2013.
- b. The second rule is that Member States must exclude from this list those species which are clearly not indigenous. That would differentiate for example non-indigenous species such as eucalyptus from indigenous species such as poplar trees or willows. This rule aims at improving biodiversity through the use of species natural to the environmental and ecological context of the region or Member State.
- c. A third rule related to short rotation coppice laid down in the Delegated Act, is that Member States must also specify the requirements regarding the use of mineral fertilisers and plant protection products laid down in Regulation (EU) No 1307/2013. Again, this rule is laid down keeping in mind the environmental objectives of the greening policy.

8. EFA: MIXTURES OF CROP SPECIES FOR CATCH CROPS OR GREEN COVER

Article 46(2)(i) of Regulation (EU) No 1307/2013 provides that catch crops and green cover, established by the planting or germination of seeds, may qualify for EFA. Article 45(9) of the delegated act provides that: "*Areas under catch crops or green cover shall include such areas established pursuant to the requirements under SMR 1 as referred to in Annex II to Regulation (EU) No 1306/2013 as well as other areas under catch crops or green cover, on the condition that they were established by sowing a mixture of crop species or by under-sowing grass in the main crop.*". The catch crops or green cover shall indeed provide a clear environmental benefit for qualifying for EFA, beyond cross compliance which includes the Nitrates Directive (SMR1) and a GAEC standard on "minimum soil cover". Mixtures of species, including under-sowing grass in the main crop provides this environmental benefit which is not so clear with single crops. Moreover this allows a clear distinction between this type of EFA areas and main crops, which facilitates the implementation by farmers and the controls.

9. EFA: POSSIBILITY TO HARVEST NITROGEN FIXING CROPS

Article 46(2)(j) of Regulation (EU) No 1307/2013 provides that nitrogen-fixing crops, may qualify for EFA. Article 45(10) of the delegated act provides that, when the Member State includes N-fixing crops in the list of EFA element, "those crops shall be present during the growing season" for qualifying as EFA.

When establishing the list of N-fixing crops, Member States should take into account the purpose of contributing to the objective of improving biodiversity. However there is no provision in Article 45(10) of the delegated act that would impede harvesting the crop on this type of EFA

10. CROP DIVERSIFICATION: GENERAL

Clear rules are needed by farmers and national administration to specify the calculation of the share of crop for diversification. Certain rules need to be left to Member States to take into account the local situations. The situation of mixed cropping, which is developing, needs also to be addressed as well and this is specified in the delegated act for the benefit of farmers. For instance mixed cropping may in certain conditions qualify for 2 crops.

11. CROP DIVERSIFICATION: MIXED CROPPING

As part of the greening obligations for crop diversification, Regulation (EU) No 1307/2013 requires farmers to grow several crops on their arable land. The Delegated Act recognises that the practice of mixed cropping exists and lays down rules on how to take this into account for crop diversification in order to provide clarification through a common and transparent framework and to avoid penalising farmers with mixed crops.

Following Member States requests and after discussions in Expert Groups, three different mixed cropping practices have been identified:

- Two or more crops grown in distinct rows;
- Main crop with under-sowing;
- Fields grown with seed mixtures.

For each of these practices a rule has been established in the Delegated Act in order to determine how to take them into account for crop diversification. The rules have been specified so that they would be simple and controllable and would provide equal treatment between farmers in different situations. The rules which were extensively discussed in the Expert Groups and supported by all experts are as follows:

- As regards two or more crops grown in distinct rows: if a crop covers at least 25% of the area, it can be counted as a specific crop for crop diversification.
- A crop with under sowing is classified as a single crop for the purpose of crop diversification.
- Seed mixtures are considered as a single crop as a general rule to facilitate the controllability. However, where Member States can make a clear distinction between the species included in the different seed mixtures, Member States may recognise those different seed mixtures as distinct single crops for the purpose of crop diversification (except when one of the species in the mix is grass). As a result there is no obligation to plant these seed mixtures in rows. The farmer is therefore free to use traditional seeding techniques.

12. PERMANENT GRASSLANDS: DESIGNATION OF ENVIRONMENTALLY SENSITIVE PERMANENT GRASSLANDS

Article 45(1) of Regulation (EU) No 1307/2013 provides that environmentally sensitive permanent grassland designated by Member States may not be converted or ploughed.

Article 41, second paragraph of the delegated act states that "Member States may decide every year to add new designated areas and shall inform the farmers concerned of that decision in due time." The information provided to farmers needs at least to allow them to declare with the correct status the areas in the application form for the CAP support. This entails that farmers shall be informed at least the year preceding the reclassification of the area into environmentally sensitive areas.

Article 42 second subparagraph of the delegated act states that the reconversion obligation in case of ploughing up the environmentally sensitive permanent grassland must be respected before the date of application of the year following the infringement (or 30 June for SV and FI). This leaves enough time to the farmer for the remedial action and will allow national authorities checking that the remedial action has been undertaken.

OTHER PROVISIONS

13. ACTIVE FARMER

In view of better targeting direct payments to genuine farmers, the basic act on direct payments (Regulation (EU) No 1307/2013) foresees that no direct payments should be granted to entities falling in the scope of five categories of businesses and activities listed in Article 9(2) ("negative list"): airports, railway services, waterworks, real estate services and permanent sport and recreational grounds. This list does not in any case apply to farmers who received an amount of direct payments below a certain threshold to be fixed by Member States (with a maximum of 5000 EUR).

Even if an entity is considered as operating one of those businesses or activities, the basic act foresees the possibility to demonstrate that it can be considered as active farmer on the basis of a number of criteria. One of those criteria is that the annual amount of direct payments is at least 5% of the total receipts that it obtained from non-agricultural activities. The delegated act clarifies what falls under receipts obtained from agricultural activities in line with the definition of agricultural activities provided by the basic act.

In light of the above, receipts obtained from direct sales (including direct sales of processed products) can be considered as receipts obtained from agricultural activities, under certain conditions.

Under the basic act, the Commission has no power to further define entities listed in "negative list" of Article 9(2). Nevertheless, the Commission provides guidelines to support Member States in determining if an entity falls under one of the businesses listed in that Article, in particular as regards "real estate services" and "permanent sport and recreational grounds".

For example, the Commission does not consider that the activity of renting accommodation facilities on a farm should be considered as operating a "real estate service". The Commission understands that the co-legislators intended under this category to target professional property developers, real estate agencies and natural/legal persons managing real estate on a fee or contract basis.

14. YOUNG FARMERS SCHEME

The basic act adopted by the co-legislators foresees the payment for young farmers for young farmers setting up as a head of the holding (Article 50(2)(a) of Regulation (EU) No 1307/2013). With the delegated act, the Commission fully takes into account the concerns expressed in respect of young farmers in a partnership, within the framework laid down by the basic act.

Young farmers who are in a partnership with non-young farmers are not excluded from the payment for young farmers: the delegated act adopted by the Commission provides that the young farmer has to exercise effective and long-term control over the legal person in terms of decisions related to management, benefits and financial risks and in case of partnership such a control can be exercised by young farmer either solely or jointly together with other farmers.