

Direct Payments

Below the consolidated text for the Direct Payments Regulation reflecting the overall compromise package agreed at the trilogue on 12 October 2017, now incorporating some technical drafting changes, particularly to the recitals.

New text compared to the Commission proposal is set out in ***bold italics***. Deletions in the Commission proposal are indicated in **~~bold strikethrough~~**.

DRAFT

Regulation of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union and amending Regulation (EC) No 2012/2002, Regulations (EU) No 1296/2013, (EU) 1301/2013, (EU) No 1303/2013, EU No 1304/2013, (EU) No 1305/2013, (EU) No 1306/2013, (EU) No 1307/2013, (EU) No 1308/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, (EU) No 652/2014 of the European Parliament and of the Council and Decision No 541/2014/EU of the European Parliament and of the Council

[...]

- (226a) Certain Member States operate national fiscal or social security registers in which farmers are registered for their agricultural activities. Those Member States should be able to exclude from eligibility for direct payments farmers who are not registered accordingly.*
- (227) As experience acquired in the past showed that support was in a number of cases granted to natural or legal persons whose business purpose was not, or was only marginally, targeted at an agricultural activity, the previous reform introduced the active farmer clause. Thereby, Member States should refrain from granting direct payments to certain natural and legal persons unless such persons can demonstrate that their agricultural activity is not marginal. However, experience gained since the reform ~~so far~~ shows that ~~through~~ implementing the three criteria for being regarded an active farmer, listed in the third subparagraph of Article 9(2) of Regulation (EU) No 1307/2013 of the European Parliament and of the Council, has proven difficult for many Member States. In order to reduce the administrative burden associated with the implementation of the three criteria, Member States should have the possibility of making available only one or two of them.*

(227a) Moreover, some Member States experienced that the difficulties and the administrative costs of implementing the active farmer clause, in particular the elements relating to the list of negative activities as provided for in Article 9(2) of Regulation (EU) No 1307/2013, outweighed the benefit of excluding a very limited number of non-active beneficiaries from the direct support schemes. When a Member State considers this to be the case, it should be able to discontinue the application of Article 9 in relation to the list of negative activities in Article 9(2) of Regulation (EU) No 1307/2013. ~~The experience further shows that in some Member States the administrative costs of implementing the active farmer clause as a whole outweighs the benefit of excluding a very limited number of non-active beneficiaries from the direct support schemes. In order to allow Member States to address such situations in future claim years, the application of Article 9 as a whole should become optional for them.~~

(227b) In order to accommodate the diversity of agricultural systems across the Union, it is justified to allow Member States to consider ploughing up, which is relevant for the agronomic and environmental aspects, as a criterion to be used for the classification of permanent grassland .

(227c) Certain shrubs or trees which are not directly grazed by animals may nevertheless produce animal feed. Member States should be allowed to include those shrubs or trees in permanent grassland where the grasses and other herbaceous forage remain predominant, in the whole or in part of their territory.

(227d) In order to clarify the classification prior to 2018 of land lying fallow as arable land, where it had been in place five years or more, and provide certainty to the farmers concerned, it is justified that Member States be enabled to maintain its classification as arable land in 2018.

(227e) Land which can be grazed, where grasses and other herbaceous forage are not predominant or are absent, and where the grazing practices are neither traditional in character, nor important for the conservation of biotopes and habitats may nevertheless have relevant grazing value in certain areas. Member States should be allowed to consider those areas as permanent grassland in the whole or in part of their territory.

(228) The experience gained in the first years of implementation of Regulation (EU) No 1307/2013 has shown that certain Member States applying the single area payment scheme did not use the entire amount of the funds available under the budgetary ceilings laid down in the Commission Implementing Regulation (EU) No 2015/1089. Member States applying the basic payment scheme have already the possibility, within certain limits, of distributing payment entitlements for a higher value than the amount available for their basic payment scheme in order to ensure a more efficient use of the funds. Member States applying the single area payment scheme should also be allowed, within the same common limits and without prejudice to the respect of the net ceilings for direct payments, to calculate the necessary amount by which their single area payment scheme ceiling may be increased.

~~***(229) In order to ensure a maximum outreach of the young farmer payment under Regulation (EU) No 1307/2013, it is appropriate for Member States to limit the number of payment entitlements or eligible hectares but only in cases where this limitation serves to ensure respecting the relevant provisions on financing the young farmer payment.***~~

(229) Article 11 of Regulation (EU) No 1307/2013 allows Member States to review, on an annual basis, their decisions on the reduction of the part of the basic payment to be granted to farmers which exceeds EUR 150 000, provided that such review does not lead to a reduction of the amounts available for rural development. It is therefore appropriate that this possibility be reflected in the relevant provisions.

- (229a) To allow Member States to adapt support under the CAP to their specific needs they should be given appropriate opportunities to review their decision on transferring funds from their direct payments ceiling to their rural development programmes and vice versa. They should therefore be given the possibility to review their decision also with effect from calendar year 2019, provided that any such decision does not entail any decrease in the amounts assigned to rural development.*
- (229b) In addition to using a linear reduction of the value of payment entitlements under the basic payment scheme to replenish national or regional reserves to facilitate the participation of young farmers and farmers commencing their agricultural activity in the support scheme, Member States should also be allowed to use the same mechanism to finance measures taken to prevent land from being abandoned and to compensate farmers for specific disadvantages.*
- (229c) To simplify and improve consistency between the rules applicable to greening measures, the exemption from ecological focus area obligation applicable to holdings cultivating leguminous crops as a sole crop or in combination with grasses or other herbaceous forage or land lying fallow on more than 75 % of arable land pursuant to Article 46 (4) (a) of Regulation (EU) No 1307/2013 should be extended to the obligation of crop diversification.*
- (229d) To ensure consistency in the way several types of crops are considered, on account of their substantial share in areas, in relation to the crop diversification requirement, the flexibility in applying the rules of crop diversification under Article 44 (2) of Regulation (EU) No 1307/2013 should be extended to include the cultivation of crops under water for a significant part of the year or for a significant part of the crop cycle.*

- (229e) In order to streamline the existing exemptions from the crop diversification obligation set out in Article 44(3)(a) and (b) of Regulation (EU) No 1307/2013, land predominantly used for the production of grasses or other herbaceous forage, for cultivation of leguminous crops or the cultivation of crops under water, or which is predominantly land lying fallow or permanent grassland, and so as to provide for equal treatment of all farmers with the same land use proportions, the condition linked to the upper limit of 30 hectares of arable land should no longer be applicable.*
- (229f) For the same reasons as mentioned in recital (229e), as regards the existing exemptions from the ecological focus area obligation set in Article 46(4)(a) and (b) of Regulation (EU) No 1307/2013, applicable to land predominantly used for the production of grasses or other herbaceous forage, for cultivation of leguminous crops or the cultivation of crops under water, or which is predominantly land lying fallow or permanent grassland, the condition linked to the upper limit of 30 hectares of arable land should no longer be applicable.*
- (229g) In order to take account of the agronomic specificity of Triticum spelta, it should be considered as a distinct crop for the purpose of Article 44 of Regulation (EU) No 1307/2013.*
- (229h) Given the potential for indirect environmental benefits for biodiversity that may be provided by certain permanent crops, the list of ecological focus area types set in Article 46 of Regulation EU) No 1307/2013 should be extended to include Miscanthus and Silphium perfoliatum.*
- (229i) Considering that the type of vegetation coverage may positively affect the biodiversity contribution of land lying fallow, land lying fallow for melliferous plants should be recognised as a distinct ecological focus area type.*

- (229j) *Weighting factors need to be established for the newly created ecological focus area types of Miscanthus, Silphium perfoliatum and land lying fallow for melliferous plants. Weighting factors should be established in such a way as to reflect their different importance for biodiversity. The introduction of additional ecological focus area types requires the existing weighting factors for areas with nitrogen-fixing crops and for areas with short rotation coppice to be adapted so as to reflect the new balance between all ecological focus area types.*
- (229k) *Experience gained with the application of the support scheme for young farmers under Article 50 has shown that in some cases young farmers cannot benefit from the full five years of support. While the focus of this support remains on new economic activity by young people starting their farming activities, Member States should facilitate the access of young farmers to the full five years of young farmer payment also in cases where the young farmers have not applied for support immediately after setting up.*
- (229l) *Some Member States have assessed that the payment provided to young farmers under Article 50 is insufficient to adequately respond to the financial challenges of the initial establishment and the structural adjustment of agricultural holdings set up by young farmers. To further enhance the prospects for participation of young farmers in farming, Member States should have the possibility to decide to increase the percentage applied to calculate the amount of the payment for young farmers in the range of 25% to 50% and irrespective of the calculation method applied. Such decision is without prejudice to the 2% limit of their national ceiling for direct payments to finance the payment for young farmers.*
- (230) *In order to enhance clarity with regard to the responsibilities of Member States as far as the production limiting character of voluntary coupled support is concerned, it appears appropriate to reformulate Article 52(5) and (6) of Regulation (EU) No 1307/2013. As this reformulation reflects the current practice since 1 January 2015 with regard to the provisions concerned, it is appropriate that it should apply from claim year 2015.*

~~(230a) Pursuant to Article 52 of Regulation (EU) No 1307/2013, Member States may grant, under certain conditions, coupled support to farmers in specific agricultural sectors or types of farming, to the extent necessary to create an incentive to maintain current levels of production in the sectors or regions concerned. In order to avoid that the levels of production are to be maintained where this is not appropriate due to structural market imbalances, the Commission should be empowered to adopt delegated acts allowing that voluntary coupled support can continue to be paid until 2020 on the basis of the production units for which such support was granted in a past reference period. In the context of the current crisis this temporary derogation aims at attaining in the long term the objective of voluntary coupled support of maintaining the level of production in the areas concerned. In order to ensure the largest possible consistency between EU schemes targeting sectors that, in certain years, are marked by structural market imbalances, the Commission should be empowered to adopt delegated acts allowing that voluntary coupled support can continue to be paid until 2020 on the basis of the production units for which such support was granted in a past reference period.~~

(230b) In order to enhance the flexibility with regard to voluntary coupled support, annual review by the Member States of their support decisions should be allowed with effect from claim year 2019. Article 53(6) of Regulation (EU) No 1307/2013 should therefore be amended accordingly.

[...]

Article 269
Amendments to Regulation (EU) No 1307/2013

Regulation (EU) No 1307/2013 is amended as follows:

0. in Article 4

(a) paragraph 1(h) is modified as follows:

"(h) permanent grassland and permanent pasture" (together referred to as "permanent grassland") means land used to grow grasses or other herbaceous forage naturally (self-seeded) or through cultivation (sown) and that has not been included in the crop rotation of the holding for five years or more, as well as, where Member States so decide, that has not been ploughed up for five years or more; it may include other species such as shrubs and/or trees which can be grazed and, where Member States so decide, other species such as shrubs and/or trees which produce animal feed, provided that the grasses and other herbaceous forage remain predominant. Member States may also decide to consider as permanent grassland:

- (i) land which can be grazed and which forms part of established local practices where grasses and other herbaceous forage are traditionally not predominant in grazing areas, and/or***
- (ii) land which can be grazed where grasses and other herbaceous forage are not predominant or are absent in grazing areas;***

- (b) *the following subparagraph is added at the end of paragraph 1:*

"Notwithstanding the definitions in points f) and h) of paragraph 1, Member States which, prior to 1 January 2018, have accepted parcels of land lying fallow as arable land may continue to accept them as such after that date. From 1 January 2018 parcels of land lying fallow which have been accepted as arable land under this paragraph in 2018 shall become permanent grassland in 2023 or thereafter if the conditions set out in the definition in point (h) are met.

- (c) *the following subparagraphs are added at the end of paragraph 2:*

"Member States may decide that:

- (i) land that has not been ploughed up for five years or more shall be considered permanent grassland as referred to in point (h) of paragraph 1, provided that the land is used to grow grasses or other herbaceous forages naturally (self-seeded) or through cultivation (sown) and that it has not been included in the crop rotation of the holding for five years or more;*
- (ii) permanent grassland may include other species such as shrubs and/or trees which produce animal feed, in areas where grasses and other herbaceous forage are predominant and/or*
- (iii) land which can be grazed where grasses and other herbaceous forage are not predominant or are absent in grazing areas be considered permanent grassland as referred to in point (h) of paragraph 1.*

Member States may decide, on the basis of objective and non-discriminatory criteria, to apply their decision in accordance to points (ii) and/or (iii) of the third subparagraph to the whole or a part of their territory.

Member States shall notify the Commission by 31 March 2018 of any decision taken pursuant to the third and fourth subparagraphs."

1. in Article 6(~~12~~), ~~in~~ the following subparagraph is added:

"Where a Member State makes use of the option provided for in the second subparagraph of Article 36(4), the national ceiling set out in Annex II for that Member State for the respective year may be exceeded by the amount calculated in accordance with that subparagraph.";

2. in Article 9:

(a) the following paragraph 3a is added:

"3a. In addition to paragraphs 1, 2 and 3, Member States may decide that no direct payments are to be granted to farmers who are not registered, for their agricultural activities, in a national fiscal or social security register.";

(b) paragraph 4 is replaced by the following:

"4. Paragraphs 2, 3 and 3a shall not apply to farmers who only received direct payments not exceeding a certain amount for the previous year. Such amount shall be decided by Member States on the basis of objective criteria such as their national or regional characteristics, and shall not be higher than EUR 5000.";

(c) paragraph 6 is replaced by the following:

"6. Member States shall notify the Commission by 1 August 2014 of any decision referred to in paragraphs 2, 3 or 4, and by 31 March 2018 of any decision referred to in paragraph 3a. In the case of amendments thereto, Member States shall notify the Commission within two weeks of the date on which any decision to amend was taken.";

(d) the following paragraphs 7 and 8 are added:

"7. Member States may decide from 2018 or from any subsequent year that only one or two of the three criteria listed in the third subparagraph of paragraph 2 may be invoked by persons or groups of persons falling within the scope of the first and second subparagraphs of paragraph 2, in order to demonstrate that they are active farmers. Member States shall notify the Commission of such a decision, if applied from 2018, by **31 March 2018 or, if applied from a subsequent year, by 1 August of the year preceding its application.**

8. Member States may decide to stop applying **paragraph 2** from 2018 **or any subsequent year**. They shall notify the Commission of such a decision, **if applied from 2018, by 31 March 2018 or, if applied from a subsequent year, by 1 August of the year preceding its application.**";

3. in Article 11, paragraph 6 is replaced by the following:

"6. **Member States may review their decisions on a reduction of payments in accordance with this Article on an annual basis, provided that such review does not lead to a reduction of the amounts available to rural development.**

Member States shall notify the Commission of the decisions taken in accordance with this Article and of any estimated product of reductions for the years until 2019 by 1 August of the year preceding the application of such decisions, the last possible date for such notification being 1 August 2018.";

4. in Article 14:

(a) the following subparagraph is added to paragraph 1:

"Member States may decide to review the decisions referred to in this paragraph with effect from calendar year 2019 and shall notify the Commission of any decision based on such review by 1 August 2018. Any decisions based on such review shall not result in a decrease of the percentage notified to the Commission in accordance with the first, second, third and fourth subparagraphs.";

(b) the following subparagraph is added to paragraph 2:

"Member States may decide to review the decisions referred to in this paragraph with effect from calendar year 2019 and shall notify the Commission of any decision based on such review by 1 August 2018. Any decisions based on such review shall not result in an increase of the percentage notified to the Commission in accordance with the first, second, third and fourth subparagraphs."

5. in Article 31, paragraph 1(g) is replaced by the following:

"(g) where Member States consider it necessary, a linear reduction of the value of payment entitlements under the basic payment scheme at national or regional level to cover cases referred to in Article 30(6) of this Regulation. In addition, Member States already making use of this possibility may in the same year also apply a linear reduction of the value of payment entitlements under the basic payment scheme at national or regional level to cover cases referred to and in Article 30(7) letter a) and b) of this Regulation;"

6. in Article 36, in paragraph 4, the following subparagraphs are added:

"For each Member State, the amount calculated in accordance with the first subparagraph of this paragraph may be increased by a maximum of 3 % of the relevant annual national ceiling set out in Annex II after deduction of the amount resulting from the application of Article 47(1) for the relevant year. When a Member State applies such an increase, that increase shall be taken into account by the Commission when setting the annual national ceiling for the single area payment scheme pursuant to the first subparagraph of this paragraph. For that purpose, Member States shall notify the Commission by 31 January 2018 of the annual percentages by which the amount calculated pursuant to paragraph 1 of this Article is to be increased each calendar year from 2018.

Member States may review their decision referred to in the second subparagraph on an annual basis and shall notify the Commission of any decision based on such review by 1 August of the year preceding its application.";

7. **in Article 44:**

(a) paragraph 2 is replaced by the following:

"2. Without prejudice to the number of crops required pursuant to paragraph 1, the maximum thresholds set out therein shall not apply to holdings where grasses or other herbaceous forage or land lying fallow or cultivated with crops under water for a significant part of the year or for a significant part of the crop cycle cover more than 75 % of the arable land. In such cases, the main crop on the remaining arable area shall not cover more than 75 % of that remaining arable land, except where this remaining area is covered by grasses or other herbaceous forage or land lying fallow.";

(b) in paragraph 3, points (a) and (b) are replaced by the following:

"(a) where more than 75 % of the arable land is used for the production of grasses or other herbaceous forage, is used for cultivation of leguminous crops, is land lying fallow or is subject to a combination of these uses;

(b) where more than 75 % of the eligible agricultural area is permanent grassland, is used for the production of grasses or other herbaceous forage or for the cultivation of crops under water for a significant part of the year or for a significant part of the crop cycle, or is subject to a combination of these uses;"

(d) in paragraph 4, the second subparagraph is replaced by the following:

"Winter crop and spring crop shall be considered to be distinct crops even if they belong to the same genus. Triticum spelta shall be considered to be a distinct crop from crops belonging to the same genus."

8. in Article 46:

(a) in paragraph 2, the following points are added:

"(ja) areas with Miscanthus;"

"(jb) areas with Silphium perfoliatum;"

"(jc) land lying fallow for melliferous plants (pollen and nectar rich species);"

- (b) the last subparagraph of paragraph 2 is replaced by the following:**

With the exception of the areas of the holding referred to in points (g), (h), (ja) and (jb) of the first subparagraph of this paragraph, the ecological focus area shall be located on the arable land of the holding. In the case of areas mentioned in points (c) and (d) of the first subparagraph of this paragraph, the ecological focus area may also be adjacent to the arable land of the holding the farmer declared in accordance with point (a) of the first subparagraph of Article 72(1) of Regulation (EU) No 1306/2013.

- (c) in paragraph 4, points (a) and (b) are replaced by the following:**

"(a) where more than 75 % of the arable land is used for the production of grasses or other herbaceous forage, is land lying fallow, is used for cultivation of leguminous crops, or is subject to a combination of those uses;

"(b) where more than 75 % of the eligible agricultural area is permanent grassland, is used for the production of grasses or other herbaceous forage or for the cultivation of crops under water either for a significant part of the year or for a significant part of the crop cycle, or is subject to a combination of those uses;"

9. in Article 50:

- (a) paragraph 5 is replaced by the following:**

"5. The payment for young farmers shall be granted per farmer for a period of five years, starting from the first submission of the application for the payment for young farmers as long as this submission takes place within the five years following the setting up referred to in point (a) of paragraph 2. This period of five years shall also apply for farmers who have received payment for young farmers in respect of claims before claim year 2018.

By way of derogation from the second sentence of the first subparagraph, Member States may decide that, for those young farmers who set up in accordance with point (a) of paragraph 2 in the period 2010-2013, the five-year period shall be reduced by the number of years elapsed between the setting up referred to in point a) of paragraph 2 and the first submission of the application for the payment for young farmers.";

(b) *in paragraph 6, points (a) and (b) are replaced by the following:*

"(a) between 25% and 50% of the average value of the owned or leased-in payment entitlements held by the farmer; or

(b) between 25% and 50 % of an amount calculated by dividing a fixed percentage of the national ceiling for the calendar year 2019 set out in Annex II by the number of all eligible hectares declared in 2015 in accordance with Article 33(1). That fixed percentage shall be equal to the share of the national ceiling remaining for the basic payment scheme in accordance with Article 22(1) for 2015".

(c) *paragraph 7 is replaced by the following:*

"7. Member States applying Article 36 shall each year calculate the amount of the payment for young farmers by multiplying a figure corresponding to a value between 25% and 50% of the single area payment calculated in accordance with Article 36 by the number of eligible hectares that the farmer has declared in accordance with Article 36(2)."

- (d) in paragraph 8, the first subparagraph is replaced by the following:

"By way of derogation from the paragraphs 6 and 7, Member States may calculate each year the amount of the payment for young farmers by multiplying a figure corresponding to a value between 25% and 50% of the national average payment per hectare by the number of entitlements that the farmer has activated in accordance with Article 32(1), or by the number of eligible hectares that the farmer has declared in accordance with Article 36(2).

~~4. in Article 50, paragraph 9 is deleted;~~

- (e) in paragraph 10, the first paragraph is replaced by the following:

"Instead of applying paragraphs 6 to 9, Member States may allocate an annual lump sum amount per farmer calculated by multiplying a fixed number of hectares by a figure corresponding to a value between 25% and 50% of the national average payment per hectare, as established in accordance with paragraph 8.;"

~~5. in Article 51, paragraph 3 is replaced by the following:~~

~~"3. Where the total amount of the payment for young farmers applied for in a Member State in a particular year exceeds the maximum of 2% laid down in paragraph 1 of this Article, Member States shall set a maximum limit applicable to the number of payment entitlements activated by the farmer or to the number of eligible hectares declared by the farmer in order to comply with the maximum of 2% laid down in the paragraph 1 of this Article. Member States shall respect that limit when applying Article 50(6), (7) and (8).~~

~~Member States shall notify the Commission of any limits applied pursuant to the first subparagraph at the latest by 15 September of the year following the year in which the aid applications in respect of which the limits were applied were lodged."~~

10. in Article 52:

(a) *paragraph 5 is deleted;*

(b) *paragraph 6 is replaced by the following:*

"6. Coupled support is a production-limiting scheme that shall take the form of an annual payment based on fixed areas and yields or on a fixed number of animals and shall respect financial ceilings to be determined by Member States for each measure and notified to the Commission.";

(c) the following paragraph 10 is added:

"10. The Commission is empowered to adopt delegated acts in accordance with Article 70. *Such delegated acts may supplement this Regulation as regards measures to avoid that beneficiaries of voluntary coupled support suffer from structural market imbalances in a sector by allowing Member States to decide that such support may continue to be paid until 2020 on the basis of the production units for which voluntary coupled support was granted in a past reference period.*";

11. in Article 53, paragraph 6 is replaced by the following:

"6. Member States may, by 1 August of any given year, review their decision pursuant to this Chapter and decide, with effect from the following year:

(a) *to leave unchanged, increase or decrease the percentage fixed pursuant to paragraphs 1, 2 and 3, within the limits laid down therein where applicable, or to leave unchanged or decrease the percentage fixed pursuant to paragraph 4;*

(b) *to modify the conditions for granting the support;*

(c) to cease granting the support under this Chapter.

Member States shall notify the Commission of any such decision by the date referred to in the first subparagraph."

12. in Annex X:

(a) the line "Areas with short rotation coppice" is replaced by the following:

"Features: Areas with short rotation coppice (per 1 m²)

Conversion factor: n.a.

Weighting factor: 0.5

Ecological focus area: 0.5 m²"

(b) the line "Areas with nitrogen fixing crops" is replaced by the following:

"Features: Areas with nitrogen fixing crops (per 1 m²)

Conversion factor: n.a.

Weighting factor: 1

Ecological focus area: 1 m²"

(c) *the following lines are added:*

"Features: Areas with Miscanthus

Conversion factor: n/a

Weighting factor: 0.7

Ecological focus area: 0.7 m²"

(d) *"Features: Areas with Silphium perfoliatum*

Conversion factor: n/a

Weighting factor: 0.7

Ecological focus area: 0.7 m²"

(e) *"Features: Land lying fallow for melliferous plants (pollen and nectar rich species)*

Conversion factor: n/a

Weighting factor: 1.5

Ecological focus area: 1.5 m²"

[...]