



EUROPEAN COMMISSION
 DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT
 DEPUTY DIRECTOR GENERAL, IN CHARGE OF DIRECTORATES D, E AND F

Brussels,
 agri.ddg2.d3/LK/cj (2018) 1132302

[Art 4.1 (b) - privacy]

Thank you for your clarification request submitted on 21 December 2017 in which you seek confirmation of certain explanations given at our meeting of 06 December 2017. Please find below DG AGRI's comments.

I. Situation in 2018 and consequences for crop diversification in 2018

Further to a request from the Danish authorities, the Commission services considered the situation of farmers in Denmark caused by adverse weather conditions in late summer and early autumn of 2017 (heavy rainfalls and floods). As you will be aware, on 12 April 2018 the Commission adopted a derogation measure aimed at easing the crop diversification rules in 2018 for affected farmers.

II. Classification of permanent grassland

You ask whether Member States can reclassify grasslands into permanent grassland if they wish to do so, for example for areas that are extensive grasslands under agri-environmental schemes in pillar II.

The definition of permanent grassland in Regulation (EU) n 1307/2013 is the same for all Member States, so the basic principles (e.g. the classification of grassland after five years) are applicable to all cases. The working document on permanent grassland DS/EGDP/2015/02 FINAL at chapter 3.4 provides additional clarifications on cases where the grassland is under an agri-environment-climate measure. In order to ensure level playing field across different Member States also this interpretation applies to all cases.

III. Geospatial aid application (GSAA)

You ask whether there is a possibility to use a tolerance margin between the area indicated on a map in the GSAA and the declared alphanumerical data. The Commission aid applications guidance document¹ prepared for Member States' (MS) administrations

1) Ares(2017)6349218 Guidance document on aid applications and payment claims (DSCG/2014/39 – FINAL REV 2)

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states that the GSAA system should calculate the area based on the surface covered by the polygon of the agricultural parcel drawn by the beneficiary and display it alphanumerically to the beneficiary ("calculated area"). Based on this "calculated area" the beneficiary should either confirm this calculated area as his/her declared area or change the drawn polygon on the map or change the calculated area alphanumerically into the area s/he intends to declare.

If the difference between the calculated area and the changed area goes beyond a certain margin, the GSAA system should guide the beneficiary to draw the new or change the pre-established boundaries on the map. As regards the margin, it is recommended to use the single buffer tolerance value.

Moreover, MS may decide not to allow for the possibility to change alphanumerically the calculated area at all.

Whatever the decision of the MS on the use of the GSAA implementation, it should be consistently applied at least for all applications concerning the same aid scheme or support measure.

IV. EFA on-the-spot-checks – and replacement areas for EFA

At the meeting, you presented the following Table 1:

(ha after weighting factor) 5% EFA = 5 ha	EFA submitted in application	Summer control	Follow up fall control
Fallow land	2 ha	1 ha	1 ha
Catch crops	3 ha	Not yet established	5 ha
Result of control		1 ha EFA missing	0 ha EFA missing
Green payment		Reduction in green payment no matter of the result of the fall control	Reduction in green payment (due to 1 ha EFA missing in summer control)

You asked if the farmer will be able to identify a replacement area for EFA during a later control in the fall and thereby not have a reduction in the green payment (like illustrated below in Table 2).

(ha after weighting factor) 5% EFA = 5 ha	EFA submitted in application	Summer control	Follow up fall control
Fallow land	2 ha	1 ha	1 ha
Catch crops	3 ha	Not yet established	5 ha
Result of control		1 ha EFA missing	0 ha EFA missing
Green payment		Reduction in green payment if only summer control	No reduction in green payment

The main elements of reply given during the meeting of 06 December 2017 are:

1. Relevant legal provisions and guidance recommendations

- a. All eligibility criteria, commitments and other obligations of the scheme or measure for which a beneficiary has been selected shall be checked during the OTSC (c.f. Article 26(3) of Regulation (EU) No 809/2014);
- b. Where certain eligibility criteria, commitments and other obligations can only be checked during a specific period, the OTSC may require additional visits at a later date. Where additional visits related to certain elements declared as EFA are required, 50% of the additional controls shall cover beneficiaries already controlled in the first round of OTSC (risk based sample) and the other 50% should cover different beneficiaries additionally selected from the control population on the basis of a random selection (c.f. Article 26(4) of Regulation (EU) No 809/2014);
- c. MS shall fix the period during which areas under catch crops have to be in place at national, regional, sub-regional or farm level (c.f. Article 45(9) of Regulation (EU) No 639/2014). To control EFA catch crops effectively, visits should be carried out in this period.
- d. All EFAs found during an OTSC shall be taken into account for the purpose of determining the area compliant with the greening requirements, even area not declared as EFA in the aid application or payment claim; this principle of compensation shall be used to determine EFA up to the share of the EFA declared in the total area of arable land declared (c.f. Article 26(2) of Regulation (EU) No 640/2014 and Guidance document on OTSC for CY 2017 and onwards).

2. Comments on the examples in Table 1 and 2

- a. if the OTSC occurs at a time which does not make it possible to verify compliance with the EFA requirements (in your case prior to the time when catch crops are established), it would be considered good practice to use the principle of compensation during the summer control already, i.e.

look for additional areas compliant with the EFA requirements even if these have not been declared in the aid application or payment claim;

- b. if the beneficiary who was subject to the summer control was also selected for the additional control in fall, s/he can compensate for the 'missing' EFA, i.e. the EFA areas not found in summer (1 ha). In your example, the fall control would show that s/he established 5 ha of catch crops. No reduction of the greening payment should be applied, as you write in Table 2;
- c. if the beneficiary was not subject to additional control in fall, the EFA area should be determined by summing up EFA areas determined during the summer control with areas declared as EFA catch crops in the aid application or payment claim, in your case 3 ha. The final determined EFA area would be 4 ha and a 1 ha reduction for greening would be applied.

The present opinion is provided on the basis of the facts as set out in your email of 21 December 2017, expresses the view of the Commission services and does not commit the European Commission. In the event of a dispute involving Union law it is, under the Treaty on the Functioning of the European Union, ultimately for the Court of Justice of the European Union to provide a definitive interpretation of the applicable Union law.

Yours sincerely,

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