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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	23 March 2022
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.:	C(2022) 1875 final
Subject:	COMMISSION IMPLEMENTING DECISION of 23.3.2022 providing for derogations from Regulation (EU) No 1307/2013 of the European Parliament and of the Council and from Commission Delegated Regulation (EU) No 639/2014 as regards the implementation of certain conditions relating to the greening payment for claim year 2022

Delegations will find attached document C(2022) 1875 final.

Encl.: C(2022) 1875 final



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COMMISSION IMPLEMENTING DECISION

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009¹, and in particular Article 69(1) thereof,

Whereas:

- (1) Title III, Chapter 3, of Regulation (EU) No 1307/2013 provides for payment for agricultural practices beneficial for the climate and the environment ('greening payment'). Those practices include crop diversification pursuant to Article 43(2), point (a) and ecological focus areas pursuant to Article 43(2), point (c), of that Regulation. Further rules on those practices are laid down in Chapter 3 of Commission Delegated Regulation (EU) No 639/2014².
- (2) Article 44(4) of Regulation (EU) No 1307/2013 establishes that, for the purposes of crop diversification, land lying fallow is counted as a different crop from grasses or other herbaceous forage. This implies that land that has been grazed or harvested for production purposes cannot be counted as land lying fallow.
- (3) Article 46(2), first subparagraph, point (a), of Regulation (EU) No 1307/2013, establishes that areas under land lying fallow may be considered as ecological focus areas. Article 45(2) of Delegated Regulation (EU) No 639/2014 requires an absence of agricultural production, and Article 45(10b) of that Regulation prohibits the use of plant protection products, on land lying fallow qualifying as an ecological focus area.
- (4) Russia's invasion of Ukraine on 24 February 2022 has triggered a sharp commodity price surge and has an impact on the supply and demand for agricultural products. In order to address this situation, the Union agricultural production potential both for food and feed supply should be increased.
- (5) Land laying fallow areas remain arable land areas suitable for crop production that, albeit to varying degrees depending on their conditions such as soil quality, could be used immediately to produce food and feed. Therefore, in order to allow farmers to

¹ OJ L 347, 20.12.2013, p. 608.

² Commission Delegated Regulation (EU) No 639/2014 of 11 March 2014 supplementing Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and amending Annex X to that Regulation (OJ L 181, 20.6.2014, p. 1).

make use as much as possible of their available areas for the purpose of food production and feeding animals, Member States should be authorised to derogate from conditions relating to the greening payment, including the use of plant protection products, for claim year 2022 as regards land lying fallow which has been declared to meet the crop diversification or ecological focus area requirements in accordance with Article 44(4) and Article 46(2), first subparagraph, point (a), of Regulation (EU) No 1307/2013, respectively.

- (6) This Decision should only provide for derogations to the crop diversification and ecological focus area obligations to the extent and for such a period as is strictly necessary. The derogations should be limited to claim year 2022 and aimed at addressing the impact on the supply and demand for agricultural products by allowing for an increase of the total arable land area available for the production of food and feed.
- (7) When deciding on the application of the derogations, those Member States should take due account of the objectives of the agricultural practices beneficial for the climate and the environment and, in particular, the need for sufficient protection of soil quality and quality of natural resources and biodiversity, especially during the most sensitive periods for flowering and nesting birds.
- (8) In order to ensure that the derogations authorised by this Decision are effective with a view to the objectives pursued, i.e. a mitigation of rising commodity prices and the impact on the supply and demand, Member States should take their decisions on the application of the derogations within 21 days from the date of notification of this Decision, and should notify the Commission of those decisions taken within 7 days after the date on which the decisions were taken.
- (9) In order to enable the Commission to monitor the correct application of the derogations provided hereby as well as their impact, Member States should provide information on the number of holdings and hectares covered by the derogations. That information should be made available to the Commission by 15 December 2022 using the existing notification instruments.
- (10) The measures provided for in this Decision are in accordance with the opinion of the Committee for Direct Payments,

HAS ADOPTED THIS DECISION:

Article 1

Decisions derogating from certain conditions relating to the greening payment for claim year 2022

1. By way of derogation from Article 44(4) of Regulation (EU) No 1307/2013, for claim year 2022, Member States may decide that land lying fallow is considered as a distinct crop even though such land has been grazed or harvested for production purpose or has been cultivated.
2. By way of derogation from Article 45(2) of Delegated Regulation (EU) No 639/2014, for claim year 2022, Member States may decide that land lying fallow is considered as ecological focus area pursuant to Article 46(2), first subparagraph, point (a), of Regulation (EU) No 1307/2013 even though such land has been grazed or harvested for production purpose or has been cultivated. The weighting factor set out for land lying fallow in Annex X to Regulation (EU) 1307/2013 shall apply.

By way of derogation from Article 45(10b) of Delegated Regulation (EU) No 639/2014, where Member States make use of the derogation referred to in the first subparagraph of this paragraph, they may also decide to allow for the use of plant protection products on those areas where grazed or harvested for production purpose or where cultivated.

Article 2

Time limit

The decisions referred to in Article 1 shall be taken within 21 days from the date of notification of this Decision.

Article 3

Notifications

1. Member States shall notify the Commission of the decisions taken pursuant to Article 1 within 7 days after the date on which the decisions were taken.
2. By 15 December 2022, Member States shall notify the Commission of the number of holdings which used the derogations provided for in Article 1 and the number of hectares where those derogations have been applied.

Article 4

Addressees

This Decision is addressed to the Member States.

Done at Brussels, 23.3.2022

For the Commission
Janusz WOJCIECHOWSKI
Member of the Commission