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Belgium

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WP HAQ

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1. Art. 6, 7, 11, 12 and 13: written questions – proposal

Belgium

Article 6 (Degressive area-based income support)

Art. 6 (1):

- Will Member States still have the possibility to continue working with 'historical and tradable' payment entitlements after 2027 or are they forced to switch to payments per eligible hectare or lump sums?

Art. 6 (2):

- How should Member States interpret the concept 'groups of farmers or geographical areas' or the purpose of payment differentiation, given that such differentiation must be based on farmers' income from agricultural activity during a representative reference period? What methodology should be used to identify which groups or areas are most in need, and are there any examples or best practices available?
Can a geographical area be interpreted as an individual plot with a constraint (for example all parcels with grasslands)? Can a combination be made of groups of farmers and geographical areas?

Belgium

- Should the Member State in any case differentiate the aid under Article 6 for all the groups listed in paragraph 2 of paragraph (2)? Or can it choose to differentiate only for a few of them, and e.g. not apply differentiation to women? And can the Member State choose to differentiate between other groups as well?
- How does the Commission guarantee that the principle of non-discrimination is respected in case of these mandatory differentiation according to the specific groups mentioned?
 - o What if, based on farmers income from agricultural activity during a representative reference period, a Member State is unable to demonstrate a specific need for women, young farmers or for family farmers, does that mean it cannot apply differentiated support for these groups?
 - o Why should women/small farmers receive higher income support?
- If it is not possible for a Member State to continue working with payment entitlements, and given that entitlement convergence is not yet completed in some Member States, can a Member State differentiate payments based on the historical value of payment entitlements?
- Is it possible to target the DABIS to organic farmers, conservation agriculture or farmers who implement environmental actions? Should these differentiations then be justified based on needs or farmers' income, by justifying the difficulties faced by these types of agriculture?
- Is it possible to provide a different rate of aid for permanent grassland / arable land / permanent crops? Art 6§5 states the following: 'The Member States shall ensure that the support under this Article is primarily directed towards farmers who exercise an agricultural activity on their holding and actively contribute to food security.' How does the need to actively contribute to food security need to be interpreted for permanent grasslands? Does this mean that member states may make support for permanent grassland conditional on a minimum livestock density in order to support food production?
- It is possible that specific target groups listed do not have a lower income and that the difference in income is rather due to differences between the different sectors. Do you have to differentiate? Can you set a priority in the differentiation?
- Should there be a differentiation for DABIS to small farmers? Simultaneously the differentiation of payments for DABIS may take the form of an annual lump sum instead of per eligible hectare. What, then, is the added value of obliging the Member State to offer Article 7 to farmers in this case?
- What is meant by 'family farmer'?
- What is the motivation for differentiating DABIS according to farmers who combine crop production and livestock farming? What definition is used for this? (What about companies that only have a few animals?)
- Can the Member State also choose to offer only lump sums under Article 6 and make a differentiation in these lump sums according to the size of the farm?
- Can a young farmer receive more than 240 euro/ha if the Member State can guarantee that - at Member State level - the average of the DABIS paid per ha remains below 240 euro/ha in accordance with art. 35(3) of the NRP Regulation?

Article 6 (3)

- The differentiation of area-based income support according to specific target groups and the proposed degressivity increase the risk of creating artificial conditions (such as splitting up farms, etc.). Will the Commission provide guidelines for this?

Belgium

- Why does the Commission not allow degressivity to take into account the number of natural persons involved in a holding? Furthermore, why was the provision set out in Article 17(4) of Regulation (EU) 2021/2115 not retained, which allows Member States to apply the reduction at the level of individual members of legal persons or groups, provided that national law grants them rights and obligations comparable to those of individual farmers acting as head of holding? This provision is very relevant not only to prevent the artificial splitting of farms, but also to support family farmers.

Art. 6 (4):

- The examples included in the presentation of the Commission on the WP HAQ, are clear. However, could the commission also add examples illustrating the application of the following provision (art 6): *'The total amount of area-based income support shall not be higher than maximum EUR 100 000 per farmer per year. In the case of a legal person or groups of legal persons, the capping shall cover all holdings under the control of one legal or natural person'*.
Can the Commission clarify how Member States are expected to apply the rule stating that, to avoid circumvention, capping must be applied to all holdings under the control of a single legal or natural person?
Can the Commission explain how Article 6 paragraphs (3) and (4) should be applied in the following situation where several farms are run by several farmers? Suppose two farms 1 and 2. Person A has 40% voting rights in each of them. The other person in company 1 has 20% voting rights. In company 2, the other person has 60% voting rights. And what if person A has 60% voting rights in a third farm? Is it expected that the 'ultimate beneficial owner' register will be looked at for this? How should control by a 'natural person' be interpreted? And how should control by 'legal person' be interpreted? Can the Commission illustrate this with examples? Will the Commission provide guidance to be used in such cases? It must be possible for the member states to use the existing data in the Member states.

Art. 6 (5):

- What is the difference between paragraph 5 of Article 6 of the CAP Regulation and the definitions of farmer and agricultural activity in Article 4 of the NRP Regulation?
How has a minimum level of agricultural activity to be determined? Do the Member States themselves determine the criteria for 'minimum level of agricultural activity'? Can the Commission confirm that Member States can integrate the definition of active farmer from the current CAP into the implementation of the new provisions for DABIS?
- How should we interpret and monitor 'actively contributing to food production'? Will the agricultural activity for DABIS be limited to food production? Are farmers who do not contribute to food security excluded from DABIS? What about the floriculture sector, bioeconomy, biofuels, etc.?

Art. 6 (6):

- Should both conditions, reaching retirement age and receiving a pension, be fulfilled at the same time in order to be excluded from DABIS or is it sufficient to meet one of these conditions? If so, when the retirement age is set at 67, a 66-year-old farmer who is already receiving retirement under the legal provisions of the Member State can still receive DABIS because both conditions are not met. Another farmer is 67 years old and also receives a retirement pension but cannot receive DABIS because both conditions are met. How can we justify that the conditions set are not discriminatory?

Belgium

Can a Member State introduce specific criteria, such as allowing farmers to continue receiving support if their pension amount is too low or if they belong to a specific sector at risk of abandonment or facing particular difficulties?

- How has this paragraph to be handled if only one person within a company has a retirement pension? In this case, is the Member State free to see how it deals with this?

Art. 6 (7):

- Farmers' disposal consists today of right to use and actual land use (=decision-making power, benefits and financial risk). How do they relate to each other in the text proposal (or in other words: do they have the same weight according to the text proposal)?
- The Flemish legislation for 'land at disposal' requires that the farmer uses the land, bears the benefits and the risks of the cultivated crop and has autonomy over the parcel in the sense that he can make decisions about the parcel. Is that what is to be understood under 'management'? We also have situations where a landowner, who owns a lot of land, 'manages' his land by allowing farmers to cultivate it. Though the agreements between landowner and farmer go beyond a simple lease of the land, the financial benefit and risk lies with the farmer. With this type of management, we do not consider the landowner to have the land at his disposal. Can this still be interpreted as such?
- Why is 'at the farmers' disposal' included in the definition of eligible hectare in the text proposal? Today, we have two definitions (at the farmers' disposal and eligible hectare) and both need to be fulfilled to get support. In the CAP 2023-2027 a parcel can be eligible, but no support will be given when the parcel is not at the farmers' disposal. It seems not necessary to include two complex definitions in 1 definition.
- Will the European Commission's 2021 note entitled 'note on the requirement of 'eligible hectares at the farmer's disposal' with reference DS/CDP/2021/08) continue to apply under these proposals?
- Paragraph 7(c): Is a parcel with small landscape elements located in but not along the parcel, such as a group of trees within a parcel, fully eligible for DABIS as in the CAP 2023-2027? In this regard, currently, the landscape elements covered by GAEC 8, 1st indent, are currently included in the eligible area. In the future, how do the proposals on the new CAP (with Annex 1, Part C, protection of landscape features) ensure that we do not have to redesign all the surfaces, which would be far from being a simplification?
- The definition of the eligible hectare is already included in the NRP regulation in Article 4, point 22(c) of the definitions. The terms used appear identical in both texts. However, it is not advisable to have the same definition present in two different texts. This situation again argues in favor of gathering all provisions related to the CAP in a single sectoral regulation.

Article 7 (Payment for small farmers)

It is not clear if the payment for small farmers shall be subject to national contribution of at least 30%.

In regulation NRPP, support for small farmers is set out in point (g) of article 35.1.

- article 35.4 stipulates that the national contribution shall be at least 30% for interventions listed in points (d) to (k) of article 35.1, so **included point (g) payment for small farmers**
- article 20.4 (national contribution to estimated costs) stipulates that no national contribution shall be requested for interventions referred to in article 35.1 (a), (b), (c) **and (g) payment for small farmers**

Belgium

Art. 7 (1):

- The definition of small farmer is not clear. Are the Member States themselves defining small farmers and is it necessary to set a definition? Or is the definition that they do not receive more than 3000 Euro/year.
- Following the proposal of sectoral CAP-regulation, the Commission proposal offers a choice for small farmers to participate either to the DABIS-Scheme, either to the payment for small farmers. DABIS payments are based on the eligible hectares to farmers, while the payment for small farmers is a lump sum approach. However, the proposal indicates that a lump sum approach may also be applied within DABIS. What is the rationale for offering mandatory a small farmers payment scheme while it is also possible to offer possibility for small farmers in DABIS?

Article 11 + Annex II (Coupled income support)

Art. 11 (1):

- (1st paragraph)
Coupled income support may be provided for the specific agricultural sectors and products, where relevant as defined in accordance with Annex I of Regulation (EU) No 1308/2013, which contains a list of crops.
 - o Can the Commission explain what is meant by 'where relevant'? Can the Commission give examples where support can also be given outside Annex I of this Regulation 1308/2013?
 - o Can the Commission explain why this Regulation of 2013 is specifically referred to? Is it correct that the list referred to in this proposal is more extensive than the list explicitly included in Regulation (EU) 2021/2115? Are all the products on this list eligible for coupled support?
 - o Is it true that there is no provision for a nominative list for specific agricultural sectors within which coupled support can be given to farmers?
 - o In the Commission's presentation, it was stated: "The aid targets specific agricultural sectors or products (or specific types of farming therein) (unchanged) → CMO definitions apply, where relevant (Annex I to Regulation 1308/2013)." Is the list of agricultural sectors or products identical to those in Article 33 of Regulation 2115/2021, or is it broader?
- (1st paragraph)
Can the Commission indicate how the 'difficulties' for the specific types of agriculture must be demonstrated in order to grant Coupled Support? All sectors, both plant and animal, have 'difficulties' in certain years. Can this coupled support be used to respond to this when a new period of difficulties arises?
- What happens if we want to grant coupled support to a sector for which we lack sufficient data to prove it is in difficulty?
- In Regulation 2021/2115, there was an exception for protein crops (Member States are not required to demonstrate the difficulties they face regarding protein crop cultivation). Could you clarify the rationale behind eliminating this exemption in the current framework?
- Does the proposed regulation imply that Member States are no longer obliged to justify how the aid will improve the sector's resilience or performance in terms of competitiveness, sustainability, or product quality?

Belgium

- (3rd paragraph)
Can the Commission confirm that coupled income support can be given for grasslands? If so, are there specific conditions that must be demonstrated in order to be able to provide coupled support for grasslands?
- Why are Member States obliged to grant coupled support? And if so, what is the minimum budget to be allocated for this intervention?
- How should the coupled income support be provided for mixed farms? Will they be eligible for different coupled support schemes (as suckler cows, dairy cows or protein crops), or for only one specific scheme within the intervention 'article 11 Coupled income support'? Can a mixed farm receive CIS in the form of payment per animal as well as a payment per hectare?
- Do we have to add identification and registration as condition for coupled support for cattle?
- Which WTO category will the coupled income support be?

Art. 11 (2):

- What is meant by 'The Coupled income support shall, on the basis of objective and non-discriminatory criteria, address additional income needs'? Which criteria should be used to demonstrate the 'additional income needs'?
- Will the Blairhouse Agreement between the United States and the European Union for soybeans, rape seeds and sunflower seeds be taken into account in article 11 ? Does the Blairhouse Agreement still apply and how will it be handled on Union level?

Art. 11 (3):

- Can the Commission clarify Article 11(3) What test does the Commission expect from the Member States in this regard? How will the Commission assess that the potential impact of the support on the internal market is minimal?

Art. 11 (4):

- What is meant by 'to take into account environmental impacts'? Should this be an eligibility criterium? Or should there be a geographical differentiation in the coupled support?
- On what basis/criteria should the MS define the maximum density 'in nitrate vulnerable zones? How is this density calculated? Is it the total number of LUs (simplified livestock unit Annex II)? In the case of coupled support for beef cattle, should only the density of cattle be considered, or all animals present on the farm (total density, including poultry and pigs)?
- When calculating livestock density, does the denominator (in hectares) refer to the total eligible area of the farm, or only to grassland and forage surfaces?
- If a farmer exceeds the maximum density set by the member state in nitrate vulnerable zones, can he not receive coupled support at all? Or should the support be reduced proportionally?
- Can a Member State also lay down other conditions that minimise environmental impacts in order to be eligible for coupled support for livestock farming?
Can a Member State introduce alternative conditions that are appropriate in nitrate vulnerable zones instead of the maximum livestock density criteria mentioned in nitrate vulnerable zones?
- Can a Member State set both a minimum and maximum number of animals per farm that are eligible for coupled support?

Belgium

- Can a Member State design a coupled support scheme per animal that takes into account the number of farm managers within a holding, in order to support family-type farms?
- Under the new CAP framework, will a Member State be allowed to continue to linking coupled support for livestock to the number of farm holders within groups of natural persons and to the number of managing partners in agricultural companies (based on the distribution of contributions)? The objective being to support the model of family farmers.

Annex II:

- Why can't Member States choose between simplified LUs and Eurostat LUs?

Artikel 12 (Support for participation in risk management tools)

Art. 12 (1):

- Is it correct that, if a risk management tool for farmers exists at national level, the obligation to put risk management instruments in place does not apply under the CAP? When are these national instruments sufficient to apply the derogation, can some examples be given? Do they have to comply with the same requirements as those of article 12? Can the derogation also be applied if only private national instruments and no public national instruments are available?
- Which production loss can be compensated exactly? Is it the full loss, once the damage threshold of 20% has been exceeded, or is it only the production loss above this 20% that can be compensated?
- Can the aid also be paid to the insurance company, which will deduct the subsidy amount from the insurance premium paid by the farmers?

Art. 12 (2):

- What is meant by 'sectoral production risk management tools' in the first sentence of Article 12(2) and what is the difference between this term and the term 'risk management tools' in the title and paragraph 1 of Article 12? Does the word 'sectoral' refer to the risk management tools for the sectors listed in Title X of Regulation (EU) No 1308/2013?
- Can the method for calculating losses at the level of the farm, the farming activity or the insured area (mentioned in the first sentence of Article 12(2)) differ depending on the production sector? Can this method also be applied to permanent crops?
- The first sentence of Article 12(2) does not mention the type of losses. Could this refer to loss of income or to loss of production as mentioned in Article 11(1) or in the second sentence of Article 11(2)?
- What justifies the possibility of extending to eight years the period on which the calculation of income or production losses for permanent crops is based?

Art. 12 (3):

- What does this alternative method for calculating the losses for young or new farmers involve? Is this an adjustment of the reference period or are other adjustments also possible? In the case of the latter, can examples be given?

Belgium

- Does the 20% threshold also apply to young and new farmers for whom an alternative method of calculating losses can be applied?

Art. 12 (4):

- Can income losses be compensated for up to 100% by combining different tools within and outside the CAP?

Artikel 13 (Support for investments for farmers and forest holders)

- Does the use of simplified costs options apply to the costs of investments or to the public support granted for these investments? Could we have more details on the methodology for applying simplified cost options? Are the rules the same as Regulation 2021/2115?

Art. 13 (1):

- Why are “productive” and “non-productive” investments mentioned in this paragraph while this distinction is not addressed elsewhere? For example, we do not see any differentiation in the support rates in the NRP regulation (see Article 35, paragraph 4), nor any possibility of a support rate higher than 75%. Furthermore the 100 % support rate for purely non-productive investments as it is the case in the current CAP is an important criterion for promoting interest in non-productive investments. As these investments are not profitable for the farmers, there will be very few claims with a lower support rate even with 100% support rate today the take up is very limited.
- How does this article relate to the investments mentioned in Article 21 (1) of the NRP Regulation?
- Should support under Article 13 be made available by the Member State for all themes mentioned in Article 13 (1) and all the environment and climate priority areas mentioned in Article 4 (1)? If so, can aid under Article 13 also be granted to beneficiaries other than farmers, given that Article 4(3)(c) of the NRP Regulation limits beneficiaries for the CAP to farmers?
- Are member states also allowed to support investments in other environmental areas and outside environmental areas besides those related to climate and water resilience under this article?
- With regards to the possible beneficiaries, what about cooperatives of farmers for the use of machinery in common or cooperatives of farmers who work together for the processing or commercialisation of food products? Those cooperatives are legal entities but not with “agricultural production” as the main activity and may include companies that are not farms? Could these legal entities benefit from support under art. 13? This is important to stimulate cooperation amongst farmers in order to reduce the cost of machinery.

Art. 13 (2):

- Is the Member State obliged to offer support for the forestry sector on the basis of Article 13(2)?
- The proposed NRP Regulation provides a definition for farmer (art. 4 paragraph (3) c)), but there is no definition for 'forest holder' while forest holders can be beneficiaries within this intervention according to the title of the article. Is this correct? Why there is no definition of forest holders?
- Currently, in Wallonia, the forest management plan only applies to public landowners who have forest land of more than 20 hectares, in accordance with the guidelines on sustainable forest management in Europe. According to Article 13.2 and to the guidelines as applied in Wallonia, do we understand correctly that a forest management plan is not mandatory for private land?

Belgium

Art. 13 (3):

- Is the Member State obliged to offer support for investments within Article 13 (3) for 'restoration of agricultural or forestry production potential damaged by natural disasters, adverse climate events or catastrophic events'?
- How do we have to calculate the loss of potential production?

Art. 13 (5):

- Why is there a derogation to the list of ineligible investments mentioned in Article 13 (4) when the support is provided through financial instruments?

Art. 13 (6):

- Can the mentioned EU legislation from which new obligations arise be both directives and regulations? and is this also applicable to transposition into national legislation from which obligations arise?
- Art. 13 (6) states that the payments for these new obligations to comply with EU law may only be granted through compensation of the 'additional cost'. Does this mean that a simplified cost option as stated in Article 36 paragraph 3 of the NRP Regulation cannot be used for this? What is the reference against which these additional costs are calculated? Can it be explained with examples how these additional costs have to be determined?
- What is the difference between the 'additional costs' mentioned in Article 13(6) and 'additional costs incurred' in Regulation (EU) 2021/2115)?
- Most of the articles of this draft regulation talk about 'to *provide* support'. However, article 13(1) and (6) use the terms '*grant* support' and '*grant* payments'. What is the difference between these different wordings?
- Regarding the exception for young farmers in Article 13 (6) last paragraph, how should the 36 months from installation for young farmers be interpreted for investment support in order to comply with the requirements of Union law? Is it correct that 10 years after the entry into force of the requirement, support can still be given to farmers who meet the criteria for young farmers for an investment that was already mandatory 10 years ago because of EU regulations?