II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2022/1317

of 27 July 2022

providing for derogations from Regulation (EU) 2021/2115 of the European Parliament and of the Council as regards the application of the standards for good agricultural and environmental conditions of land (GAEC standards) 7 and 8 for claim year 2023

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 ([1]), and in particular Article 148(1) thereof,

Whereas:

(1) Pursuant to Article 13 of Regulation (EU) 2021/2115 Member States are to ensure that all agricultural areas, including land which is no longer used for production purposes, are maintained in good agricultural and environmental condition and are to set, at national or regional level, minimum standards for farmers and other beneficiaries for each standard of good agricultural and environmental conditions of land (GAEC standard) listed in Annex III to that Regulation in line with the main objective of those standards as referred to in that Annex. GAEC standards are applicable from claim year 2023, except for GAEC 2 which may only be applicable as from claim year 2024 or 2025, if duly justified.

(2) In its Communication 'Safeguarding food security and reinforcing the resilience of food systems' ([2]) the Commission presented the serious consequences of Russia's invasion of Ukraine for global food security. Russia's invasion of Ukraine has triggered a sharp commodity price surge and has an impact on the supply and demand for agricultural products at global level. In particular, global wheat output is at risk both from the supply shock stemming from the size of Ukraine's and Russia's share in wheat markets and from the shock in input costs, especially in natural gas, nitrogen fertiliser and oxygen. The level of uncertainties with regard to the global food supply situation is high, which raises concerns about global food security. In order to contribute to addressing this situation in a timely manner by maintaining food supply, the Union's agricultural food production potential should be maintained, while ensuring the medium- and long-term sustainability of food supply by continuing the transition to sustainable food production as laid out in the Farm to Fork and Biodiversity Strategies.

([1]) OJ L 435, 6.12.2021, p. 1.
([2]) COM(2022) 133 final.

(3) Both GAEC standard 7 'crop rotation in arable land, except for crops growing under water' and the first requirement under GAEC standard 8 'minimum share of agricultural area devoted to non-productive areas or features', listed in Annex III to Regulation (EU) 2021/2115, which are applicable as from claim year 2023, impact the use of arable land for production purposes. By setting minimum requirements with regard to the diversity over time and space in the growing of different crops, with a view to preserve soil potential and enhance soil fertility to ensure long-term productivity, GAEC standard 7 potentially impacts the farmers' choices of crops. By requiring a minimum share of arable land to be devoted to non-productive areas or features in order to improve on-farm biodiversity necessary for healthy and productive ecosystems, pursuant to the first requirement under GAEC standard 8, farmers may, in addition to the presence of landscape features, also leave a certain share of arable land fallow for biodiversity purposes.

(4) In view of the need to address the food security concerns related to global food availability and affordability dimensions and to maintain the Union food production potential, while contributing to the goals of the EU Green Deal, especially the Farm to Fork and Biodiversity Strategy, it is therefore appropriate to exceptionally allow farmers flexibility to make use of their available arable land for food production, while mitigating the negative impacts of these choices on the environment and climate change. Member States should therefore be authorised to derogate from the application, for claim year 2023, of GAEC standard 7 and the first requirement under GAEC standard 8 listed in Annex III to Regulation (EU) 2021/2115 as defined by them in their CAP Strategic Plan. Given that the derogation aims at contributing to addressing food security concerns in the short-term, it is appropriate to establish that the arable land which would not be devoted to non-productive areas as a result of the derogation from the first requirement under GAEC standard 8 listed in Annex III to Regulation (EU) 2021/2115 as defined by Member States in their CAP Strategic Plan, should not be used for growing maize and soya beans, considering that these crops are mostly not destined for food production. Moreover, Member States making use of any of the derogations from GAEC standards 7 or 8 should, generally, promote the use of crops for food production, as well as the use of eco-schemes and agri-environment-climate measures programmed in their CAP Strategic Plans which have the objective of improving on-farm biodiversity and preserving the soil potential.

(5) In view of the importance of the aforementioned GAEC standards 7 and 8 for the objectives to preserve soil potential and improve on-farm biodiversity as part of the long term sustainability of the sector and to maintain the food production potential, the derogation shall be limited to claim year 2023, and not affect the rules in years beyond 2023, and should be restricted to what is strictly necessary to address the global food security concerns. Therefore, the other three requirements under GAEC standard 8 listed in Annex III to Regulation (EU) 2021/2115, including the requirement for retention of landscape features, remain applicable for claim year 2023 as a safeguard towards the main objective of the standard to improve on-farm biodiversity.

(6) The possibility to derogate from the application of those GAEC standards as defined by Member States in their CAP Strategic Plans is without prejudice to the obligation pursuant to Article 109(2), point (a)(i), of Regulation (EU) 2021/2115 for Member States to include in their CAP Strategic Plans the description of the implementation and related elements of each GAEC standard listed in Annex III to that Regulation.

(7) As GAEC standards are part of the baseline conditions of eco-schemes and agri-environmental, climate-related and other management commitments, it is appropriate to lay down rules on the respect of the baseline where a Member State makes use of the derogations for the application of GAEC standard 7 or the first requirement under GAEC standard 8. In order to ensure the stability of the CAP Strategic plans and to safeguard the ambition of the interventions, which form part of the green architecture of the common agricultural policy (CAP) as from 2023, the baseline should remain unchanged regardless of the application of the derogation. In particular, it is appropriate that baseline requirements of GAEC standard 7 or the first requirement under GAEC standard 8 should still be respected for the sake of receiving support under interventions where the commitments include or build upon these baseline requirements.

(8) It is essential to monitor the impacts of these derogations on global food security and on the environment and climate change, Member States should thus assess and report to the Commission the implementation of these derogations.

(9) To ensure that the derogations authorised by this Regulation are effective in view of their purpose, and given that farmers take their sowing decisions for the 2023 harvest as from summer 2022, the decision to make use of the derogations should be taken rapidly. Therefore, Member States should take their decisions and notify the Commission thereof within 30 days from the day of entry into force of this Regulation by means of the information-technology-based system made available by the Commission pursuant to Commission Implementing Regulation (EU) 2017/1185 ([3]). The decisions should be included in the CAP Strategic Plans at the first occasion, either when resubmitting the CAP Strategic Plan in accordance with Article 118(3), second subparagraph, of Regulation (EU) 2021/2115 or in the first request for amendment of the CAP Strategic Plan in accordance with Article 119 of that Regulation. In view of the need to ensure timely implementation, the decisions should not be subject to Commission approval.

(10) Given the need for Member States' decisions to be taken in due time before sowing decisions of farmers, this Regulation should enter into force as a matter of urgency on the day following that of its publication in the *Official Journal of the European Union*.

(11) The measures provided for in this Regulation are in accordance with the opinion of the Common Agricultural Policy Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Decisions derogating from the application of certain standards for good agricultural and environmental conditions of land for claim year 2023

1. By way of derogation from Article 13(1) of Regulation (EU) 2021/2115, Member States may decide to derogate for claim year 2023 from the application of one or both of the following GAEC standards listed in Annex III to that Regulation as defined by the Member States in their CAP Strategic Plans:

(a) GAEC 7 'Crop rotation in arable land, except for crops growing under water';

(b) GAEC 8, the first requirement 'Minimum share of agricultural area devoted to non-productive areas or features:

— Minimum share of at least 4 % of arable land at farm level devoted to non-productive areas and features, including land lying fallow.

— Where a farmer commits to devote at least 7 % of his/her arable land to non-productive areas or features, including land lying fallow, under an enhanced eco-scheme in accordance with Article 31(6), the share to be attributed to compliance with this GAEC standard shall be limited to 3 %.

— Minimum share of at least 7 % of arable land at farm level if this includes also catch crops or nitrogen fixing crops, cultivated without the use of plant protection products, of which 3 % shall be land lying fallow or non-productive features. Member States should use the weighting factor of 0,3 for catch crops'.

Member States making use of the derogation referred to in point (b) of the first subparagraph shall ensure that it applies exclusively to land lying fallow and does not apply to other non-productive features.

Member States shall ensure that the arable land which will not be devoted to non-productive areas as a result of the derogation referred to in the first subparagraph, in point (b) shall not be used to grow maize, soya beans, or short rotation coppice.

Member States making use of any of the derogations referred to in the first subparagraph shall promote the cultivation of crops for food production.

([3]) Commission Implementing Regulation (EU) 2017/1185 of 20 April 2017 laying down rules for the application of Regulations (EU) No 1307/2013 and (EU) No 1308/2013 of the European Parliament and of the Council as regards notifications to the Commission of information and documents and amending and repealing several Commission Regulations (OJ L 171, 4.7.2017, p. 113).

Member States making use of any of the derogations referred to in the first subparagraph shall promote the eco-schemes and agri-environment-climate measures programmed in their CAP Strategic Plans that have the objective of improving on-farm biodiversity and preserving the soil potential.

2. For the purpose of the eco-schemes referred to in Article 31 of Regulation (EU) 2021/2115 and of the agri-environmental, climate-related and other management commitments referred to in Article 70 of that Regulation, and established by Member States in their CAP Strategic Plans, for claim year 2023, the baselines referred to in Articles 31(5), first subparagraph, point (a), and 70(3), first subparagraph, point (a), of that Regulation with regard to GAEC 7 and the first requirement under GAEC 8, shall remain unchanged by the decisions of the Member State referred to in paragraph 1 of this Article.

Article 2

Time limit, notification of decisions and their application

1. Within 30 days from the date of entry into force of this Regulation Member States who decide to make use of the derogations referred to in Article 1(1), shall notify the Commission of the decisions taken pursuant to that paragraph by means of the information-technology-based system made available by the Commission pursuant to Implementing Regulation (EU) 2017/1185.

2. Member States shall include the decisions taken pursuant to Article 1(1) of this Regulation in Section 3.10 on Conditionality and GAEC standard of CAP Strategic Plans either as part of a resubmission of the CAP Strategic Plan in accordance with Article 118(3), second subparagraph, of Regulation (EU) 2021/2115, or as part of the first request of amendment of the CAP Strategic Plan in accordance with Article 119 of that Regulation.

3. The decisions taken pursuant to Article 1(1) of this Regulation shall not be subject to the Commission approval referred to in Article 118(6) or in Article 119(10), respectively, of Regulation (EU) 2021/2115.

4. The decisions taken pursuant to Article 1(1) shall apply for claim year 2023.

5. Member States making use of any of the derogations referred to Article 1(1), shall include in the annual performance report referred to in Article 134 of Regulation (EU) 2021/2115 due on 15 February 2024, an assessment of the effects of the application of such derogations on global food security, on the preservation of the environment and the fight against climate change.

Article 3

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 27 July 2022.

For the Commission
The President
Ursula VON DER LEYEN