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COMMISSION IMPLEMENTING REGULATION (EU) 2024/587

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providing for a derogation from Regulation (EU) 2021/2115 of the European Parliament and of the Council as regards the application of the standard for good agricultural and environmental conditions of land (GAEC standard) 8, dates of eligibility of expenditure for contribution from the EAGF and rules concerning amendments of CAP Strategic Plans for modifications of certain eco-schemes for claim year 2024

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.

(2) The first requirement of the GAEC standard 8 provides that farmers shall devote a minimum share of their arable land to non-productive areas and features. Annex III to Regulation (EU) 2021/2115 provides three options which Member States can propose to farmers for fulfilling this obligation. The main objective of GAEC standard 8, including also the second, third and possible fourth requirement is the maintenance of non-productive features and area to improve on-farm biodiversity.

(3) In parallel to an increase of the environmental ambition in the green architecture which was part of the recent reform of the Common Agricultural Policy, farmers are facing an exceptional range of difficulties and uncertainties. In particular, the last year has been characterised by an important number of extreme meteorological events, including amongst other droughts and floodings in various parts of the Union. These events affect output and revenue as well as the execution and calendar of normal agronomic practices, which entails a heavy pressure on farmers for adaptation. The high energy and input prices resulting from Russia's aggression against Ukraine, costs of living/inflation, changed international trade flows and the need to support Ukraine have created further uncertainties and market pressure.

(4) Lately, farmers have been facing a fall in income and there has in particular been a sharp decline in prices for cereals compared to 2022. The EU27 value of production of cereals decreased from EUR 80,6 billion in 2022 to EUR 58,8 billion in 2023, a reduction of 27% spurred by the fall in cereal prices.

(5) Because of the recent combination of simultaneous geopolitical events and extreme weather events farmers are facing difficulties to respect the requirement to devote a minimum share of arable land to non-productive areas and features, which, in certain cases can have a significant short-term impact on their revenue and put at risk the viability of their activities.

([1]) OJ L 435, 6.12.2021, p. 1, ELI: http://data.europa.eu/eli/reg/2021/2115/oj.

(6) Consequently, Member States should be allowed to decide that farmers may exceptionally and temporarily fulfil the first requirement of GAEC standard 8 in an alternative way in so far as claim year 2024 is concerned. This option, allowing farmers and other beneficiaries to fulfil the first requirement of that standard by devoting a minimum share of at least 4 % of arable land at farm level to non-productive areas and features, including land lying fallow and/or; nitrogen fixing crops; and/or catch crops, would improve farmers' viability by giving them more flexibility concerning the areas which can be used to fulfil the obligation to devote a certain share of arable land to biodiversity benefits. It would put less restrictions on how they can use the arable land and would reduce the income losses while still ensuring some environmental benefits.

(7) The use of nitrogen-fixing crops and catch crops brings a range of environmental benefits for soil health, including for soil biodiversity and avoid nutrient leaching. Further benefits for biodiversity stem from the requirement that the crops are to be grown without plant protection products. In the case of cultivation of a catch crop without the use of plant protection products following a main crop on the area designated to comply with the first requirement of GAEC standard 8, Member States should apply a weighting factor of 1 to take into account the management and sowing decisions already taken by farmers in respect of claim year 2024, that cannot be modified without incurring additional costs.

(8) The derogation should be limited to claim year 2024, and not affect the rules in years beyond 2024, and should be restricted to what is strictly necessary to address the difficulties farmers are facing as explained in the above, to avoid unduly compromising the objective of the GAEC standard 8 to improve on-farm biodiversity as part of the long-term sustainability of the sector. The other three requirements under the GAEC standard 8 listed in the Annex III to Regulation (EU) 2021/2115, including the requirement concerning the retention of landscape features, should remain applicable for claim year 2024.

(9) 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 the first requirement under the GAEC 8. In order to ensure the respect of the general principle that payments are only provided for commitments going beyond the GAEC standards, and to safeguard the ambition of the interventions, which form part of the green architecture of the common agricultural policy (CAP), it should be laid down that payments under eco-schemes and agri-environmental, climate-related and other management commitments for claim year 2024 should only be made for the commitments which go beyond the new option for fulfilling the first requirement of GAEC 8, laid down in this Regulation.

(10) The possibility to derogate from the application of the GAEC standard 8 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.

(11) To ensure that the derogations authorised by this Regulation are effective in relation to their purpose and given that farmers need to make their sowing decisions for the 2024 spring crops, 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 15 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 ([2]). The decisions should be included in the CAP Strategic Plans together with the first request for amendment of the CAP Strategic Plan in accordance with Article 119 of Regulation (EU) 2021/2115. In view of the need to ensure timely implementation, the decisions should not be subject to Commission approval.

([2]) 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, ELI: http://data.europa.eu/eli/reg_impl/2017/1185/oj)

(12) It is essential to monitor the uptake of the derogations. Member States should therefore report the relevant data and a qualitative assessment of the effect of the derogation on the purpose of the derogation and on the main objective of the first requirement of GAEC 8 to the Commission.

(13) The first requirement of GAEC standard 8 is a baseline for certain eco-schemes set out in Member States' CAP Strategic Plans. Farmers taking up commitments under eco-schemes need to comply with the baseline requirements for those eco-schemes in order to benefit from the corresponding payments. However, the eco-schemes currently set out in Member States' CAP Strategic Plans may not in all cases be designed in a way which allows farmers to take into account the new option to meet GAEC standard 8, first requirement, provided for by this Regulation as a baseline for the eco-scheme. Such outcome may prevent farmers from taking up commitments under these eco-schemes, because they would not be able to combine them with the new option to comply with GAEC standard 8, first requirement, laid down in this Regulation and therefore could further impact the viability of their activities.

(14) To ensure that farmers wishing in 2024 to subscribe to commitments under eco-schemes based on GAEC standard 8, first requirement, as a baseline, as set out in the CAP Strategic Plans, may fully benefit from the derogations set out in this Regulation and that, as a consequence, that derogation can fully deploy its effects in contributing to improve to the viability of farmers activities, Member States should be enabled to make and apply modifications to those eco-schemes in due time for applications in the 2024 claim year. For that purpose, Member States should be allowed to make and apply such modifications in the CAP Strategic Plans without a prior approval of those modifications by the Commission. This derogation from Article 119 of Regulation (EU) 2021/2115 should be limited to modifications that are strictly necessary to adjust the eco-schemes concerned, as set out in the CAP Strategic Plans, to the derogations from GAEC standard 8 set out in this Regulation.

(15) To ensure that the notifications to the Commission of the modifications to the eco-schemes submitted under the derogation provided for in this Regulation are submitted through the same electronic data exchange system as requests for amendments of CAP Strategic Plans referred to in Article 119 of Regulation (EU) 2021/2115, Member States should submit such notifications through the electronic data exchange system 'SFC2021' referred to in Article 3 of Commission Implementing Regulation (EU) 2021/2289 ([3]).

(16) The modifications to echo-schemes made and applied by Member States under this Regulation should be subject to subsequent approval by the Commission to ensure legal certainty and the proper functioning of performance framework referred to in Title VII of Regulation (EU) 2021/2115. The Member States making use of the derogation from Article 119 of Regulation (EU) 2021/2115 should therefore seek the approval of the Commission of the modifications to the eco-schemes made and applied under this Regulation by including those modifications in the next request for amendment of the CAP Strategic Plan in accordance with Article 119(1) of that Regulation.

(17) To ensure legal certainty for farmers concerned by modifications to the eco-schemes based on GAEC standard 8, first requirement, as a baseline, in claim year 2024, made and applied as a result of the derogations laid own in this Regulation, rules should be laid down on the timing and content of the notifications of modifications to those eco-schemes to the Commission.

(18) As the modifications to the eco-schemes based on GAEC standard 8, first requirement, as a baseline, as set out in the Member States' CAP Strategic Plans, may affect eligibility of expenditure for contribution from the EAGF, it is necessary, in order to ensure the full effectiveness of the derogation from Article 119, to also derogate to the rules laid down in Article 86(2) of Regulation (EU) 2021/2115 concerning the date from which such expenditure would be eligible as a result of those modifications.

([3]) Commission Implementing Regulation (EU) 2021/2289 of 21 December 2021 laying down rules for the application of Regulation (EU) 2021/2115 of the European Parliament and of the Council on the presentation of the content of the CAP Strategic Plans and on the electronic system for the secure exchange of information (OJ L 458, 22.12.2021, p. 463, ELI: http://data.europa.eu/eli/reg_impl/2021/2289/oj).

(19) Given the need for Member States' decisions to be taken in due time before sowing decisions of farmers are taken in spring 2024, 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.

(20) The Common Agricultural Policy Committee has not delivered an opinion within the time limit laid down by its chair.

HAS ADOPTED THIS REGULATION:

Article 1

Derogation from the first requirement of GAEC standard 8 for claim year 2024

1. By way of derogation from the first requirement of good agricultural and environmental conditions of land (GAEC) standard 8, Member States may decide that for claim year 2024 farmers and other beneficiaries subject to that standard may fulfil the first requirement of that standard by devoting a minimum share of at least 4 % of arable land at farm level to:

— non-productive areas and features, including land lying fallow; and/or

— nitrogen fixing crops; and/or

— catch crops.

Catch crops and nitrogen fixing crops shall be cultivated without the use of plant protection products. Member States shall use a weighting factor of 1 for catch crops.

Decisions taken by Member States in application of paragraph 1 shall apply as from 1 January 2024.

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 2024, Member States taking the decisions referred to in paragraph 1 of this Article shall ensure that where a farmer decides to comply with the GAEC standard 8, first requirement, based on the requirement referred to in paragraph 1, payments shall be made only for commitments that go beyond that requirement, as laid down in Articles 31(5), first subparagraph, point (a), and 70(3), first subparagraph, point (a), of that Regulation.

Article 2

Time limit, notification of decisions and their application

Member States which decide to make use of the derogation referred to in Article 1(1), shall notify the Commission of the decision taken pursuant to that Article by means of the information-technology-based system made available by the Commission pursuant to Implementing Regulation (EU) 2017/1185 within 15 days from the date of entry into force of this Regulation.

Member States shall include the decision taken pursuant to Article 1(1) of this Regulation in Section 3.10 on Conditionality and GAEC standard of CAP Strategic Plans as part of the first request of amendment of the CAP Strategic Plan in accordance with Article 119 of Regulation (EU) 2021/2115 after the notification according to the first subparagraph.

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

Member States which make use of the derogation referred to in Article 1(1), shall include in the annual performance report referred to in Article 134 of Regulation (EU) 2021/2115, which is due on 15 February 2025, data on the uptake of the derogation.

Article 3

Derogations from Articles 86(2) and 119 of Regulation (EU) 2021/2115 for claim year 2024

1. By way of derogation from Article 119 of Regulation (EU) 2021/2115, and without prejudice to Article 1(2), Member States, which decide to make use of the derogation referred to in Article 1(1), may, without prior approval of the Commission, make and apply modifications to eco-schemes referred to in Article 31 of Regulation (EU) 2021/2115, set in the CAP Strategic Plans, which are based on the first requirement of GAEC standard 8, as a baseline, in respect to claim year 2024.

These modifications shall be limited to those elements of the eco-schemes referred to in the first subparagraph, which are strictly necessary to ensure that farmers taking up commitments under those eco-schemes may combine those commitments with the options for fulfilling the first requirement of GAEC standard 8 laid down in Article 1(1).

2. Member States shall set the starting date for the application of the modifications referred to in paragraph 1 so as to give farmers sufficient time to take those modifications into account.

3. Member States shall notify the Commission of the modifications referred to in paragraph 1 by the time they start applying them.

The notification shall be submitted by means of the electronic data exchange system 'SFC2021'. The notification shall contain a description of the modifications made to the eco-schemes referred to in the first paragraph and an explanation of the reasons why those modifications are strictly necessary as required by paragraph 1.

4. Member States may make use of the derogation referred to in paragraph 1 only once.

5. Member States shall include the modifications referred to in paragraph 1 in the next request for amendment of the CAP Strategic Plan in accordance with Article 119(1) of Regulation (EU) 2021/2115.

6. By way of derogation from Article 86(2) of Regulation (EU) 2021/2115, expenditure that becomes eligible as a result of the modifications to the CAP Strategic Plans referred to in the first paragraph shall be eligible for contribution from the EAGF from the date of the notification referred to in paragraph 3.

Article 4

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, 12 February 2024.

For the Commission
The President
Ursula VON DER LEYEN