

Brussels, XXX
[...] (2024) XXX draft

COMMISSION DELEGATED REGULATION (EU) .../...

of XXX

amending Commission Delegated Regulation (EU) 2022/126 supplementing Regulation (EU) 2021/2115 of the European Parliament and of the Council as regards the rules on the ratio for the good agricultural and environmental condition (GAEC) standard 1

[...]

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Since 1 January 2023, Member States are implementing their CAP Strategic Plans including the obligation to maintain a ratio of permanent grassland compared to agricultural area as set out as a part of Good Agricultural and Environmental Condition of Land (GAEC) Standard 1 ('GAEC 1') in Annex III to Regulation (EU) 2021/2115. Based on Article 13(3) to the mentioned Regulation, the Commission has laid down rules to ensure a level playing field as regards the ratio for GAEC 1 in Article 48 of Delegated Regulation (EU) 2022/126. This includes rules concerning the establishment of the reference ratio based on the areas declared in 2018, the annual ratio as well as rules on how and when Member States need to ensure the re-establishment of permanent grassland areas in the case of a decrease of the ratio below the threshold laid down in Annex III to Regulation (EU) 2021/2115.

Experience since the start of the implementation of GAEC 1 shows that these rules need to be amended to avoid putting a disproportionate burden on farmers in exceptional situations, notably where exceptional structural changes to farming systems caused by market reorientation and reduction in livestock substantially impact the ability of the farmers to establish permanent grasslands while maintaining their viability.

Experience has also shown that in certain situations, Member States may have to impose obligations on beneficiaries to reconvert areas into permanent grassland or establish areas of permanent grassland, while the decreases in the annual ratio are due to fluctuations in the declared areas. In particular, it can happen that areas of permanent grassland are registered in the land parcel identification system but are not declared by farmers in a given year or that the total agricultural area has increased due to additional declarations by farmers. In such situation, where the decrease of the annual ratio beyond the 5% threshold set out in Annex III to Regulation (EU) 2021/2115, does not only result from conversion of areas of permanent grassland into other uses, it could be disproportionate to impose obligations to establish additional areas of permanent grassland.

While ensuring that the main objective set out for GAEC 1 to have a "general safeguard against conversion to other agricultural uses to preserve carbon stock" is met and the ratio are respected in accordance with Annex III to Regulation (EU) 2021/2115, further flexibility therefore needs to be provided to avoid the risk of disproportionate obligations. Consequently, certain adaptations of Delegated Regulation (EU) 2022/126 are necessary.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

A consultation, involving experts from all the 27 Member States, has been carried out within the Expert Group on the implementation of the CAP Strategic Plans established under Regulation (EU) 2021/2115, during the meeting of x February 2024. This meeting allowed for a presentation of the context and justifications making the modifications necessary and the substance of the modifications of Article 48 of Regulation (EU) 2022/126, as well as an exchange of views with the experts. [The delegated act was then refined taking into account the observations and comments of the experts.]

3. LEGAL ELEMENTS OF THE DELEGATED ACT

This delegated act amends Article 48 to Regulation (EU) 2022/126 as regards the following elements:

- possibility for Member States to adjust the elements of the 2018 reference ratio where such adjustment is necessary due to exceptional structural changes in the farming systems that took place over a consecutive period of five years which shall not start earlier than 2019.
- further cases where the obligations to reconvert or establish areas of permanent grassland shall be deemed to comply with Article 48(3), first subparagraph, of Delegated Regulation (EU) 2022/126, enabling Member States to take into account an increase of the total agricultural area declared in a given year and areas of permanent grasslands that are not declared in a given year but are registered in the land parcel identification system (LPIS) as permanent grassland on agricultural area.
- possibility for Member States, in case of exceptional structural changes in the farming systems, to impose obligations to reconvert land to permanent grassland or to establish permanent grassland also for farmers who do not have areas at their disposal which were previously converted from permanent grassland to other uses.

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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 1307/2013¹, and in particular Article 13(3) thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2022/126 lays down rules on the ratio for the good agricultural and environmental condition (GAEC) standard 1. Some of these rules need to be amended with a view to ensure a level playing field for that GAEC standard.
- (2) In certain parts of the Union, farming systems were affected by exceptional structural changes consisting in particular of reduction of livestock herds and decline in the number of farmers specialised in livestock leading to reduced need for livestock fodder and production re-orientation towards other crops than those needed to feed livestock. Given that these structural changes took place gradually and incrementally since 2019, their impact on the capacity of farmers to remain economically viable while maintaining permanent grasslands have become only fully apparent after 2021.
- (3) These exceptional structural changes affect the need and demand for fodder concerned and grazing in the Member States concerned and thereby also the ability of the farmers to meet the requirements to establish or re-establish permanent grassland, which are part of GAEC standard 1, as set in the CAP Strategic Plans, while remaining economically viable. With a view to ensure a level playing field for the respect of the ratio of permanent grassland referred to in Annex III to Regulation (EU) 2021/2115, it is necessary to enable Member States to adjust once the reference ratio in the programming period 2023-2027, to take such exceptional structural changes into account. To ensure that the adjustment of the reference ratio is based on and corresponds to the developments with a structural impact on farming systems Member States seeking an adjustment of the reference ratio should take into account developments observed over a period of at least 5 consecutive years, not starting earlier than 2019. With a view to ensuring that such adjustment remains in line with the main objective of GAEC standard 1, the adjustment should be limited to the

¹ OJ L432, 6.12.2021, p. 1.

changes in the area of permanent grassland that occurred due to the exceptional structural changes in the farming systems of the Member State concerned.

- (4) While the reference and annual ratios of permanent grassland are determined based on the areas of permanent grassland declared, experience shows that there may be non-declared areas of permanent grassland, which are registered as agricultural areas in the land and parcel identification system (LPIS) established based on Article 68 of Regulation (EU) 2021/2115, in a given year. These non-declared areas of permanent grassland, contribute equally to the preservation of carbon stock, which is the main objective of the GAEC standard 1. In view of the need to ensure the proportionality of the obligations to reconvert areas into permanent grassland or to establish areas of permanent grassland, imposed on farmers by Member States, it is necessary to enable Member States to decide to impose those obligations on farmers, only to the extent that the need for reconversion of land to permanent grassland or establishment of areas of permanent grassland in a given year exceeds the area of permanent grassland registered as agricultural area in Land Parcel Identification System, established based on Article 68 of Regulation (EU) 2021/2116 but not declared in a given year in accordance with Article 48(2) of Delegated Regulation (EU) 2022/126. To ensure a correct quantification of such areas, only non-declared areas of permanent grassland that remain registered as agricultural areas in the Land Parcel Identification System should be taken into account.
- (5) In the situation where farmers have cleared abandoned areas to allow for arable crop production, the total agricultural area will increase which may lead to a decrease in the annual ratio of permanent grassland. This could bring the annual permanent grassland ratio outside the limit for the decrease of permanent grassland ratio laid down in Annex III to Regulation (EU) 2021/2115. This development, while not caused by conversions of areas of permanent grassland to other uses, would oblige Member States to impose on farmers reconversion obligations or obligations to establish an area of permanent grassland. To ensure proportionality of the obligations imposed on farmers by the Member States to reconvert areas into permanent grassland or to establish areas of permanent grassland, it is necessary to enable Member States to decide not to impose those obligations or to impose them only to the extent that the decrease of the ratio of permanent grassland in a given year by more than 5% at the level at which GAEC standard 1 is implemented is caused by circumstances other than an increase in the total agricultural area.
- (6) Article 13(1) of Regulation (EU) 2021/2115 provides that when setting the GAEC standards Member States are to take into account amongst others the existing farming systems. In certain exceptional cases of structural developments affecting the area of permanent grassland in the Member States, there could be areas which have been converted from permanent grassland in the past, but which are at the disposal of farmers who do not have livestock or where there is no demand for additional production of fodder. Considering the need to respect the development of the farming systems, in particular as regards reductions in the livestock numbers, Member States should be enabled to decide whether to impose obligations to reconvert areas into permanent grassland or to establish areas of permanent grassland on farmers irrespective whether they have at their disposal areas which were previously converted from permanent grassland to other uses. This option should however only be available in case of exceptional structural developments and only where the reconversion obligations already imposed on farmers who have at their disposal land which was converted from permanent grassland in the past are insufficient to meet the GAEC

standard 1 obligations, at the level at which the GAEC standard 1 is implemented in the Member State concerned. Member States should ensure that obligations imposed on farmers are based on objective and non-discriminatory criteria and respect legitimate expectations of farmers who do not have at their disposal land that was converted from permanent grassland in the past.

- (7) Since Member States need to apply the rules laid down in this Regulation to determine whether reconversion obligations or obligations to establish an area of permanent grassland need to be imposed on farmers in respect to claim year 2024, this Regulation should enter into force on the day following that of its publication in the Official Journal of the European Union.
- (8) Considering that the claim year 2024 started on 1 January 2024, it is necessary to ensure that Article 1(2) of this Regulation should apply in respect to from 1 January 2024, to ensure legal certainty for the farmers and other beneficiaries concerned by GAEC standard 1.
- (9) Delegated Regulation (EU) 2022/126 should therefore be amended accordingly.

HAS ADOPTED THIS REGULATION:

Article 1

Amendment to Delegated Regulation (EU) 2022/126

Article 48 of Delegated Regulation (EU) 2022/126 is amended as follows:

- (1) after paragraph 1, new paragraph 1a is inserted as follows:

“Where the area of permanent grassland has decreased due to exceptional structural changes in the farming systems of the Member State caused by a significant reduction in the production of livestock resulting in a significant reduction in the need for feed and grazing of livestock in that Member State, Member State may once in the programming period 2023-2027 adjust the area of permanent grassland used to establish the reference ratio referred to in paragraph 1, second subparagraph, point (a).

The adjustment of the area of permanent grassland used to establish the reference ratio at the level at which the GAEC standard 1 is implemented in the Member State concerned shall correspond to the decrease of the area of permanent grassland which is attributable to the exceptional structural changes in the farming systems at the corresponding level of GAEC standard 1 implementation.

Member States shall establish whether exceptional structural changes in the farming systems referred to in the first paragraph occurred and the decrease of the area of permanent grassland attributable to those exceptional structural changes over a period of at least 5 consecutive years, which shall not begin earlier than in 2019.”
- (2) in paragraph 3, the following third, fourth and fifth subparagraphs are added:

“By way of derogation from the first subparagraph, Member States may decide that the obligations to reconvert land to permanent grassland or to establish an area of permanent grassland shall be imposed only where the area to be reconverted into areas of permanent grassland or on which permanent grassland is to be established in a given year exceeds the area of permanent grassland registered as agricultural area

in the identification system for agricultural parcels referred to in Article 68 of Regulation (EU) 2021/2116 and not declared in that year by beneficiaries;

By way of derogation from the first subparagraph, Member States may decide that the obligations to reconvert land to permanent grassland or to establish an area of permanent grassland shall be imposed only where and to the extent that the decrease of the ratio of permanent grassland in a given year by more than 5% at the level at which GAEC standard 1 is implemented is caused by circumstances other than an increase in the total agricultural area declared in that year.”

Where it is established that the decrease of the ratio of permanent grassland by more than 5% in a given year at the level at which GAEC standard 1 is implemented, is due to an exceptional structural changes of farming systems referred to in paragraph 1a, Member State may where the re-conversion obligations or obligations to establish permanent grassland imposed according to the first subparagraph are not sufficient to comply with GAEC standard 1, at the level at which the that standard is implemented in the Member State concerned, decide to impose obligations to establish an area of permanent grassland on farmers who do not have at their disposal land that was converted from permanent grassland in the past. When imposing obligations to establish an area of permanent grassland on farmers who do not have at their disposal land that was converted from permanent grassland in the past Member States shall respect legitimate expectations of those farmers and shall base these obligations on objective and non-discriminatory criteria.”

Article 2

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

Article 1(2) shall apply from 1 January 2024

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

Done at Brussels,

For the Commission
The President
[\[...\]](#)