

COMMISSION IMPLEMENTING DECISION (EU) 2019/1389**of 4 September 2019****authorising 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 2019 in Belgium, Spain, France, Lithuania, Poland and Portugal***(notified under document C(2019) 6438)***(Only the Dutch, French, Lithuanian, Polish, Portuguese and Spanish, texts are authentic)**

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 73/2009 ⁽¹⁾, and in particular Article 69(1) thereof,

Whereas:

- (1) Chapter 3 of Title III of Regulation (EU) No 1307/2013 provides for a payment for agricultural practices beneficial for the climate and the environment ('greening payment'). Those practices include crop diversification and ecological focus areas. Further rules on those practices are laid down in Chapter 3 of Commission Delegated Regulation (EU) No 639/2014 ⁽²⁾.
- (2) Pursuant to Article 44(4) of Regulation (EU) No 1307/2013, 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) Pursuant to Article 45(2) of Delegated Regulation (EU) No 639/2014, land lying fallow may be qualified as ecological focus area for the purposes of point (a) of the first subparagraph of Article 46(2) of Regulation (EU) No 1307/2013 provided that there is no agricultural production on it.
- (4) Pursuant to Article 45(9) of Delegated Regulation (EU) No 639/2014, areas under catch crops or green cover may be qualified as ecological focus area for the purposes of Article 46 of Regulation (EU) No 1307/2013 on the condition that they were established by sowing a mixture of crop species and provided that the conditions set in Article 46 of Regulation (EU) No 1307/2013 are met. Member States are to set up the list of mixtures of crop species to be used and fix the period at national, regional, sub-regional or farm level during which areas under catch crops or green cover declared as ecological focus areas have to be in place. That period shall not be less than eight weeks. In addition, areas under catch crops or green cover shall not include areas under winter crops which are sown in autumn normally for harvesting or for grazing.
- (5) Belgium, Spain, France, Lithuania, Poland and Portugal have decided that areas under land lying fallow meeting the criteria laid down in Article 45(2) of Delegated Regulation (EU) No 639/2014 and areas under catch crop or green cover complying with Article 45(9) of that Regulation may be considered to be ecological focus areas in accordance with points (a) and (i) of the first subparagraph of Article 46(2) of Regulation (EU) No 1307/2013.
- (6) Belgium, Spain, France, Lithuania, Poland and Portugal informed the Commission that the severe drought they had experienced in spring and summer had cumulative effects to the detriment of agricultural activity, putting pressure on the yields of vegetation used for animal feed, especially grasslands and pastures.
- (7) The severe drought made the livestock sectors run low on fodder and prevented them from stocking reserves. Those developments raised concerns, in particular due to increasing costs as a result of the shortage of production, putting at risk the viability of the holdings concerned.

⁽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).

- (8) In order to allow farmers on the affected areas to make use as much as possible, of their available areas for the purpose of feeding animals, Belgium, Spain, France, Lithuania, Poland and Portugal have requested to be authorised to derogate from certain conditions relating to the greening payment 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 point (a) of the first subparagraph of Article 46(2) of Regulation (EU) No 1307/2013, respectively.
- (9) For the same reasons, Belgium, France, Lithuania and Poland have requested to be authorised to derogate from certain conditions relating to the greening payment as regards areas under catch crops or green cover which have been declared to meet the ecological focus area requirements in accordance with point (i) of the first subparagraph of Article 46(2) of Regulation (EU) No 1307/2013.
- (10) Besides, some farmers in France, Lithuania and Poland were not able to sow catch crops or green cover in the right time due to the extreme weather conditions that made the soil condition unsuitable to preparatory work. Consequently, without shortening the duration of the period during which areas with catch crops have to be in place, implementing their crop plan will be difficult, in particular where they subsequently plan to sow a winter crop. Having passed this optimum time, farmers risk being obliged to sow winter crops in bad conditions, thus jeopardising the future yield of the crops concerned.
- (11) In view of the severity of the drought in 2019 in the areas affected and its consequences, it is appropriate to provide for derogations from Article 44(4) of Regulation (EU) No 1307/2013 as regards land laying fallow for the purpose of crop diversification, from Article 45(2) of Delegated Regulation (EU) No 639/2014 as regards land laying fallow for the qualification as ecological focus areas pursuant to point (a) of the first subparagraph of Article 46(2) of Regulation (EU) No 1307/2013, and from Article 45(9) of Delegated Regulation (EU) No 639/2014 as regards areas under catch crops or green cover for the qualification as ecological focus areas pursuant to point (i) of the first subparagraph of Article 46(2) of Regulation (EU) No 1307/2013.
- (12) However, in order to comply with the requirements set out in Article 69(1) of Regulation (EU) No 1307/2013, 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. For that reason, the derogations provided for in this Decision should be applicable to farmers established in areas formally recognised by the competent authorities of the Member States concerned as having been affected by that drought, resulting in a significant shortage of fodder resources. Further conditions should also be laid down to target the derogation.
- (13) Taking into account the availability of other instruments and the specific characteristics of the affected areas, including existing farming systems and land use, Belgium, Spain, France, Lithuania, Poland and Portugal should have the possibility to decide which of these derogations apply in the areas affected and to which extent, provided the conditions laid down in this Decision are complied with. When deciding on the application of the derogations in the affected areas, 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.
- (14) In order to ensure that the derogations authorised by this Decision are effective, Belgium, Spain, France, Lithuania, Poland and Portugal should take their decisions within 14 days after the date of notification of this Decision, and should notify the Commission of their decisions within 7 days after the date on which that decision was taken.
- (15) In order to enable the Commission to monitor the correct application of the relevant rules and the impact of the derogations, Belgium, Spain, France, Lithuania, Poland and Portugal should provide information on the number of hectares covered with a view to assessing the impact of the derogations on the environmental objectives of crop diversification and ecological focus areas established by Regulation (EU) No 1307/2013. That information should be made available to the Commission by 15 December 2019 using the existing management instruments. By the same date Belgium, Spain, France, Lithuania, Poland and Portugal should provide the Commission with an assessment of the impact of the derogation on the environment, biodiversity and climate objectives linked to ecological focus areas, catch crops and crop diversification, and where appropriate with a description of the measures to mitigate any identified negative impact.
- (16) 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

Scope of the derogations

1. By way of derogation from Article 44(4) of Regulation (EU) No 1307/2013, for claim year 2019 Belgium, Spain, France, Lithuania, Poland and Portugal may decide that land lying fallow is considered as a distinct crop even though such land has been grazed or harvested for production purposes.
2. By way of derogation from Article 45(2) of Delegated Regulation (EU) No 639/2014, for claim year 2019 Belgium, Spain, France, Lithuania, Poland and Portugal may decide that land lying fallow is considered as ecological focus area pursuant to point (a) of the first subparagraph of Article 46(2) of Regulation (EU) No 1307/2013 even though such land has been grazed or harvested for production purposes.
3. By way of derogation from Article 45(9) of Delegated Regulation (EU) No 639/2014, for claim year 2019 Belgium, France, Lithuania and Poland may decide any of the following for the qualification as ecological focus areas in accordance with point (i) of the first subparagraph of Article 46(2) of Regulation (EU) No 1307/2013:
 - (a) that areas under catch crops or green cover may be established without sowing a mixture of crop species, provided the crops sown are grasses or other herbaceous forage;
 - (b) that areas under catch crops or green cover may include areas under winter crops which are sown in autumn normally for harvesting for forage or for grazing.
4. By way of derogation from the second subparagraph of Article 45(9) of Delegated Regulation (EU) No 639/2014, for claim year 2019 France, Lithuania and Poland may shorten the minimum mandatory period during which areas under catch crops or green cover have to be in place as set in that provision, provided a winter crop is sown afterwards.

Article 2

Areas concerned by the derogations

The decisions referred to in Article 1 shall apply only to areas where the affected livestock is located or in the case of Article 1(4) where the soil condition was made unsuitable for preparatory work before sowing at the relevant time therefore preventing compliance with Article 45(9) of Delegated Regulation (EU) No 639/2014, and which are formally recognised by the competent authorities of Belgium, Spain, France, Lithuania, Poland and Portugal as having been affected in 2019 by the severe drought.

Article 3

Time limit

The decisions referred to in Article 1 shall be taken within 14 days after the date of notification of this Decision.

Article 4

Notification

1. Within 7 days after the date on which the decisions referred to in Article 1 were taken, Belgium, Spain, France, Lithuania, Poland and Portugal shall notify the Commission of:
 - (a) the areas formally recognised by their competent authorities as having been affected in 2019 by the severe drought;
 - (b) the decisions taken pursuant to Article 1, including the nature of the derogations applied at NUTS 3 level and the justification for using the derogations in the areas concerned.
2. By 15 December 2019 at the latest, Belgium, Spain, France, Lithuania, Poland and Portugal shall notify the Commission of the number of holdings which used the derogations provided for in Article 1 and the number of hectares where the derogations provided for in Article 1 have been applied. That information shall be provided at NUTS 3 level. By the same date Belgium, Spain, France, Lithuania, Poland and Portugal shall provide the Commission with an assessment of the impact of the derogation on the environment, biodiversity and climate objectives linked to ecological focus areas, catch crops and crop diversification, and where appropriate with a description of the measures to mitigate any identified negative impact.

*Article 5***Addressees**

This Decision is addressed to the Kingdom of Belgium, the Kingdom of Spain, the French Republic, the Republic of Lithuania, the Republic of Poland and the Portuguese Republic.

Done at Brussels, 4 September 2019.

For the Commission

Phil HOGAN

Member of the Commission
