



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Deputy Director General, in charge of Directorates B, C and D

Brussels
AGRI.B.2/EP

Dear Ms Ripepi,

Thank you for your inquiries on the application of the derogations laid down in Commission Implementing Decision (EU) 2022/484¹, specifically as regards the conditions for the land lying fallow declared for crop diversification purpose in accordance with Article 44(4) of Regulation (EU) No 1307/2013², where a Member State makes use of the derogation provided for in Article 1(1) of the Implementing Decision.

Before replying to your concrete questions, let me recall that if a Member State decides to make use of the derogation provided for in Article 1(1) of the Implementing Decision, as a consequence, the farmers will be allowed to declare land lying fallow as a distinct crop for crop diversification purpose even though such land is grazed or harvested for fodder production or is cultivated.

Please find below a reply for each question that you raised:

Question 1

We consider, for example, that in the case of a holding which declares that it cultivates maize on 75 % of the land and that 25 % of the land is left fallow, there is nothing to prevent the holding from also cultivating maize on the 25 % part of the land lying fallow, in implementation of the derogation.

Reply: Indeed, where a Member State makes use of the derogation, the farmer could use the area declared under land lying fallow (25 % of the land) to also cultivate maize and still be considered a distinct crop for crop diversification purpose.

¹ Commission Implementing Decision (EU) 2022/484 of 23 March 2022 authorising derogations from Regulation (EU) 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 2022 (OJ L 98, 25.3.2022, p. 105).

² 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 ([OJ L 347, 20.12.2013, p. 608](#)).

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Question 2

Similarly, it is considered that in the case of a holding which declares that 85 % of the land is set aside, there is nothing to prevent the holding from cultivating maize on the whole of that area, precisely pursuant to the derogation.

Reply: These are the same considerations as expressed above for question 1.

Question 3

Furthermore, also taking into account the aims set out in the Decision, it is considered that the derogation applies under the same conditions to land lying fallow with melliferous plants.

Reply: If the question continues to refer to the derogation provided for in Article 1(1) of the Implementing Decision (land laying fallow for crop diversification purposes), Article 44(4) does not make a distinction between land laying fallow and land laying fallow with melliferous plants.

If the question refers to the derogation provided for in Article 1(2) of the Implementing Decision (land laying fallow for ecological focus area purpose), the provision clearly refers to land lying fallow referred to in Article 46(2), first subparagraph, point (a), of Regulation (EU) No 1307/2013. Thus, land laying fallow for melliferous plants (pollen and nectar rich species) referred to in Article 46(2), first subparagraph, point (m), of Regulation (EU) No 1307/2013 is excluded.

Question 4

The maintenance of the status of fallow land, even if cultivated with a crop under the derogation in question, may still allow the receipt of aid in the context of coupled support for direct aids and rural development measures for such areas.

The derogation provided for in Article 1(1) of the Implementing Decision is only applicable for land lying fallow declared for the purpose of the greening payment, i.e. for crop diversification and EFA purposes. Crop cultivated on this fallow land could be eligible to Voluntary Coupled Support pursuant to Articles 52 and 53 of Regulation (EU) No 1307/2013, depending on Member States' choice and selection as regards sectors and production and provided that the eligibility conditions for coupled support measures set by the Member State include these areas and controllability is ensured. Conversely, crop cultivated on fallow land cannot be eligible for rural development management commitments focusing on the maintenance and management of fallow land pursuant Article 28 of Regulation (EU) No 1305/2013, since these areas are no longer fallow land on the ground³.

In other words, the real use of the land declared as "Land Laying Fallow – with derogation" does not matter for the greening payment, but should be taken into account for possible obligations farmers have under rural development (e.g. a commitment to maintain this area as land laying fallow should not be broken by cultivating this area), and could be taken into account for granting voluntary coupled support - as long as Member States can ensure the controllability of the area for the purpose of these payments.

³ Regulation (EU) No 1305/2013 of European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005

The present opinion is provided on the basis of the facts as set out in your letter of 1 April 2022 and expresses the view of the Commission services and does not commit the European Commission. In the event of a dispute involving Union law it is, under the Treaty on the Functioning of the European Union, ultimately for the European Court of Justice to provide a definitive interpretation of the applicable Union law.

Yours faithfully,

Mihail DUMITRU