EUROPEAN
COMMISSION

Brussels, 7.12.2018
COM(2018) 817 final

2018/0414 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulations (EU) No 1305/2013 and (EU) No 1307/2013 as regards certain rules on direct payments and support for rural development in respect of the years 2019 and 2020

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

This proposal aims at providing certainty and continuity in the granting of support to European farmers in the years 2019 and 2020 by adapting two legislative acts of the Common Agricultural Policy (CAP).

In relation to rural development, certain amendments of Regulation (EU) No 1305/2013 (Rural Development Regulation) are needed to ensure the continuity of the policy in the final years of the programming period and a smooth passage to the next programming period. These amendments concern a new degressivity schedule for phasing out payments to areas facing natural constraints other than mountain areas (ANC) and the use of EAFRD technical assistance at the initiative of the Commission for actions preparing the implementation of the future CAP.

In relation to direct payments, some of the provisions in Regulation (EU) No 1307/2013 (Direct Payment Regulation) do not cover calendar year 2020 since expenditure relating to calendar year 2020 is made in financial year 2021, which is the first year of the new Multiannual Financial Framework (MFF) 2021-2027. At the time of adoption of the Regulation, it was therefore not possible to make commitments relating to the future MFF. In the absence of an amendment of Regulation (EU) No 1307/2013, some Member States would face disruptive financial implications as regards direct payments in calendar year 2020, going beyond those related to the new MFF (MFF 2021-2027). Those Member States would be faced with important changes in their direct payments and rural development envelopes with considerable effects on the payments to farmers under both pillars. In addition, other technical elements are added, as they would facilitate implementation of the current legislative framework.

• Consistency with existing policy provisions in the policy area

The proposed amendments are consistent with the Rural Development Regulation and Direct Payment Regulation, therefore the proposal is consistent with the existing policy provisions of the CAP.

• Consistency with other Union policies

Not applicable

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

Articles 42 and 43(2) of the Treaty on the Functioning of the European Union (TFEU).

• Subsidiarity (for non-exclusive competence)

The TFEU provides that the competence for agriculture is shared between the Union and the Member States. The Union exercises its competence through the adoption of various legislative acts, thereby defining and implementing an EU common agricultural policy as provided for in Article 38 to 44 of the Treaty on the Functioning of the European Union. Regulations (EU) No 1305/2013 and (EU) No 1307/2013 set up a system for support for rural development and for direct payments to farmers. According to Article 39 of the TFEU, a treaty objective of the CAP is inter alia to ensure a fair standard of living for farmers and the proposed initiative fits within this objective. Accordingly, with the European Agricultural Guarantee Fund (EAGF), the CAP funds direct payments and Regulation EU (No) 1307/2013 regulates the payments at Union level. Rural development support is an integral part of the CAP and contributes to the CAP objectives as laid down in the Treaty on the Functioning of the European Union. The added value of the proposal is to ensure certainty and stability of direct income support for European farmers in the year 2020 and of support for rural development in the final years of the current programming period. These objectives can only be achieved through an amendment of Regulations (EU) No 1305/2013 and (EU) No 1307/2013 by the EU co-legislators.

• **Proportionality**

The proposal does not entail any new policy developments compared to the legislative acts it intends to amend. The proposal modifies the existing Regulations only to the extent necessary to achieve the objectives outlined above.

• **Choice of the instrument**

Since the original legislative acts are regulations of the European Parliament and the Council, the amendments must also be introduced as a European Parliament and Council regulation by means of the ordinary legislative procedure.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

The proposal deviates from standard practice as set out in the Better Regulation guidelines and in the Toolbox. A derogation to the standard practice is necessary for the following reasons:

- the proposal is highly technical in its scope;

- the initiative is confined to the final years of the current programming period;

- it does not introduce new political commitments.

An impact assessment, public consultation and a roadmap are therefore not suitable for this proposal. Moreover, as the legislation needs to be in place in 2019, adoption by the co-legislators is urgent.

• **Ex-post evaluations/fitness checks of existing legislation**

Not applicable

• **Stakeholder consultations**

Not applicable

• **Collection and use of expertise**

Not applicable

• **Impact assessment**

Not applicable

- **Regulatory fitness and simplification**

Not applicable

- **Fundamental rights**

The proposal respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

4. BUDGETARY IMPLICATIONS

The proposed option for Member States to continue the current flexibility between direct payments and rural development in calendar year 2020 (financial year 2021), and the transfer of the estimated product of reduction from direct payments to rural development in that year, may, subject to Member States' decisions, affect the allocation between direct payments and rural development. However, any such transfer will be neutral in terms of overall budgetary commitments.

Further details on the financial implications of the present proposal are provided in the financial statement attached to the proposal.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Not applicable

- **Explanatory documents (for directives)**

Not applicable

- **Detailed explanation of the specific provisions of the proposal**

- Rural development

The proposal makes it possible for the Member States to modify the degressivity schedule for payments to areas, which had received such payments in the previous programming period, while in the ongoing period, not being classified anymore as areas facing natural constraints other than mountain areas pursuant to Article 31(5) of Rural Development Regulation. This modification follows the extension of the deadline for the new delimitation of such areas to 2019 introduced by Regulation (EU) 2017/2393, which implies, by the end of the ongoing programming period, a shorter adaptation period for farmers who are no longer eligible for these payments. This modification would allow calculating transitional payments for the years 2019 and 2020 based on payment levels of the 2014-2020 period. Furthermore, the degressivity of the transitional payments shall be less steep as it shall be established by MS so that the end level is half of the starting level.

The proposal extends the use of the technical assistance at the initiative of the Commission funded by the European Agricultural Fund for Rural Development (EAFRD) to actions related to the preparation of the future CAP. The proposal concerns exclusively the scope of technical assistance without modifying the financial support.

- Flexibility between pillars in year 2020 and transfer of the product of reduction of direct payments to Rural development

The proposal includes provisions regarding the possibility for Member States to transfer funds between pillars in calendar year 2020 (corresponding to financial year 2021). For the period 2015-2019, Member States had the possibility to transfer amounts from direct payments to rural development and vice versa. Such flexibility for calendar year 2020/financial year 2021 is not laid out under the rules in force. This financial mechanism is an important mechanism for providing Member States with flexibility in managing their financial envelopes, and optimizing the use of available funds. Experience shows this mechanism has proven an effective tool for Member States and therefore certain Member States transfer a significant amount between the two pillars. An absence of flexibility between pillars in calendar year 2020/financial year 2021 would likely create serious financial disruptions for farmers in some Member States, as the effect on their envelopes could be significant. Accordingly, the proposal calls for a transfer between pillars to remain possible in calendar year 2020 under the same conditions as currently standing and that the estimated product of reduction continues to be transferred from direct payments to rural development.

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 42 and Article 43(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[1],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Regulation (EU) No 1305/2013 of the European Parliament and of the Council[2] is the current legal framework for the support for rural development. It provides for support to areas facing natural constraints other than mountain areas. Taking into account the extension to 2019 of the deadline for the new delimitation of areas facing natural constraints other than mountain areas through Regulation (EU) 2017/2393 of the European Parliament and of the Council[3] and the shorter adaptation period for farmers who will no longer be eligible for payments, degressive transitional payments that only start in 2019 should start at no more than 80% of the average payments fixed in the 2014-2020 programming period. The payment level should be established in such a way that the end level in 2020 is half of the starting level.

(2) In order to provide assistance to Member States and stakeholders for the timely preparation of the future Common Agricultural Policy (CAP) and to ensure a smooth passage to the next programming period, it should be clarified that it is possible to finance activities linked to the preparation of the future CAP through technical assistance at the initiative of the Commission.

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1 OJ C , , p. .

2 Regulation (EU) No 1305/2013 of the 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 (OJ L 347, 20.12.2013, p. 487).

3 Regulation (EU) 2017/2393 of the European Parliament and of the Council of 13 December 2017 amending Regulations (EU) No 1305/2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), (EU) 1306/2013 on the financing, management and monitoring of the common agricultural policy, (EU) 1307/2013 establishing rules for direct payment to farmers under support schemes within the framework of the common agricultural policy, (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products and (EU) No 652/2014 laying down provisions for the management of expenditure relating to the food chain, animal health and animal welfare, and relating to plant health and plant reproductive material (OJ L 350, 29.12.2017, p. 15).

(3) Regulation (EU) No 1307/2013 of the European Parliament and of the Council[4] is the current legal framework for direct payments. While most of its provisions can apply as long as that Regulation remains in force, other provisions explicitly refer to calendar years 2015 to 2019 covered by the Multiannual Financial Framework 2014-2020. For some other provisions, their applicability beyond calendar year 2019 was not explicitly envisaged. In June 2018, the Commission has submitted a proposal for a new Regulation aiming to replace Regulation (EU) No 1307/2013, but only from 1 January 2021. Therefore, it is appropriate to proceed to some technical adjustments of Regulation (EU) No 1307/2013 so that it can be smoothly applied in calendar year 2020.

(4) The obligation set out in Article 11 of Regulation (EU) No 1307/2013 to reduce the part of the amount of direct payments to be granted to a farmer for a given calendar year exceeding EUR 150 000 continues to apply as long as that Regulation is in force. However, currently, that Article only provides a notification obligation for Member States as regards their decisions and the estimated product of this reduction for years 2015 to 2019. With a view to ensuring a continuation of the existing system, it should be set out that Member States are also to notify their decisions concerning year 2020 and the estimated product of reduction for that year.

(5) Flexibility between pillars is an optional transfer of funds between direct payments and rural development. Under current Article 14 of Regulation (EU) No 1307/2013, Member States may make use of this flexibility as regards calendar years 2014 to 2019. In order to ensure that Member States may keep their own strategy, the flexibility between pillars should be made available also for calendar year 2020, corresponding to financial year 2021.

(6) As a consequence of the amendment of Article 14 of Regulation (EU) No 1307/2013 in respect of calendar year 2020, it is appropriate to adjust the references to that Article in the context of the obligation of the Member States to linearly reduce or increase the value of the payment entitlements due to fluctuations in the annual national ceiling resulting from their notifications of the application of flexibility between pillars.

(7) Regulations (EU) No 1305/2013 and (EU) No 1307/2013 should therefore be amended accordingly.

(8) In order to promptly provide the necessary flexibility to the Member States and to ensure the continuity of the rural development policy in the final years of the 2014-2020 programming period, this Regulation should apply from 1 March 2019,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) No 1305/2013

Regulation (EU) No 1305/2013 is amended as follows:

(1) in Article 31(5), the following second subparagraph is inserted:

[4] 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).

‘By way of derogation from the first subparagraph, where degressive payments start only in the year 2019, those payments shall start at no more than 80% of the average payment fixed in the 2014-2020 programming period. The payment level shall be established in such a way that the end level in 2020 is half of the starting level.’;

(2) in Article 51(1), the following second subparagraph is inserted:

‘The EAFRD may finance activities preparing the implementation of the CAP in the subsequent programming period.’.

Article 2

Amendments to Regulation (EU) No 1307/2013

Regulation (EU) No 1307/2013 is amended as follows:

(1) in Article 7, paragraph 2 is replaced by the following:

‘2. For each Member State and for each calendar year, the estimated product of the reduction of payments referred to in Article 11 (which is reflected by the difference between the national ceiling set out in Annex II, to which is added the amount available in accordance with Article 58, and the net ceiling set out in Annex III) shall be made available as Union support financed under the European Agricultural Fund for Rural Development (EAFRD).’;

(2) in Article 11(6), the following third subparagraph is added:

‘For the year 2020, Member States shall notify the Commission of the decisions taken in accordance with this Article and of any estimated product of reductions by 31 December 2019.’;

(3) Article 14 is amended as follows:

(a) in paragraph 1, the following sixth subparagraph is added:

‘By 31 December 2019, Member States may decide to make available, as additional support financed under the EAFRD in financial year 2021, up to 15 % of their annual national ceilings for calendar year 2020 set out in Annex II to this Regulation. As a result, the corresponding amount shall no longer be available for granting direct payments. This decision shall be notified to the Commission by 31 December 2019 and shall set out the percentage chosen.’;

(b) in paragraph 2, the following sixth subparagraph is added:

‘By 31 December 2019, Member States may decide to make available as direct payments up to 15 % or, in the case of Bulgaria, Estonia, Spain, Latvia, Lithuania, Poland, Portugal, Romania, Slovakia, Finland and Sweden up to 25 % of the amount allocated to support financed under the EAFRD in financial year 2021 by Union legislation adopted following the Regulation adopted by the Council pursuant to

Article 312(2) of the Treaty on the Functioning of the European Union. As a result, the corresponding amount shall no longer be available for support financed under the EAFRD. This decision shall be notified to the Commission by 31 December 2019 and shall set out the percentage chosen.';

(4) in Article 22, paragraph 5 is replaced by the following:

'5. If the ceiling for a Member State set by the Commission pursuant to paragraph 1 is different from that of the previous year as a result of any decision taken by that Member State in accordance with paragraph 3 of this Article, Article 14(1) or(2), Article 42(1), the second subparagraph of Article 49(1), the second subparagraph of Article 51(1), or Article 53, that Member State shall linearly reduce or increase the value of all payment entitlements in order to ensure compliance with paragraph 4 of this Article.'.

Article 3

Entry into force and application

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

It shall apply from 1 March 2019.

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

Done at Brussels,

For the European Parliament *The President*	*For the Council* *The President*

LEGISLATIVE FINANCIAL STATEMENT

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<tr><td colspan="5">FINANCIAL STATEMENT</td><td colspan="2">FS/18/CS/pl 5249450
6.15.2018.1
DATE: 13/09/2018</td></tr>
<tr><td>1.</td><td colspan="4">BUDGET HEADING: current MFF: Heading 2, proposal for the MFF 2021 – 2027: heading 3
Draft Budget 2019:
05 03 Direct payments after financial discipline:
05 04 60 European Agricultural Fund for Rural development (EAFRD) (2014 – 2020)</td><td colspan="2">APPROPRIATIONS:
in EUR million
40 981.6
14 673.6</td></tr>
<tr><td>2.</td><td colspan="6">TITLE:
Proposal for a regulation of the European Parliament and of the Council amending Regulations (EU) No 1305/2013 and (EU) No 1307/2013 as regards the application of direct payments and support for rural development in respect of the years 2019 and 2020</td></tr>
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Article 42 and 43(2) of the Treaty on the Functioning of the European Union</td></tr>
<tr><td>4.</td><td colspan="6">AIMS:
This proposal aims at providing continuity in the granting of support to European farmers in the years 2019 and 2020 by adapting two legislative acts of the Common Agricultural Policy (CAP): rural development under Regulation (EU) No 1305/2013 and direct payments under Regulation (EU) No 1307/2013.</td></tr>
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(EUR million)</td><td colspan="2">CURRENT FINANCIAL YEAR 2018
(EUR million)</td><td>FOLLOWING FINANCIAL YEAR 2019
(EUR million)</td></tr>
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- NATIONAL AUTHORITIES
- OTHER</td><td colspan="2"></td><td colspan="2">n.a.</td><td>n.a.</td></tr>
<tr><td>5.1</td><td>REVENUE
- OWN RESOURCES OF THE EU (LEVIES/CUSTOMS DUTIES)
- NATIONAL</td><td colspan="2"></td><td colspan="2"></td><td></td></tr>
<tr><td></td><td></td><td>2017</td><td colspan="2">2018</td><td>2019</td><td>2020</td></tr>
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5.1.1</td><td>ESTIMATED EXPENDITURE
ESTIMATED REVENUE</td><td></td><td colspan="2"></td><td></td><td></td></tr>
<tr><td>5.2</td><td colspan="6">METHOD OF CALCULATION:
See observations</td></tr>
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<tr><td>6.1</td><td colspan="5">CAN THE PROJECT BE FINANCED BY TRANSFER BETWEEN CHAPTERS OF THE CURRENT BUDGET?</td><td>n.a.</td></tr>
<tr><td>6.2</td><td colspan="5">WILL A SUPPLEMENTARY BUDGET BE NECESSARY?</td><td>NO</td></tr>
<tr><td>6.3</td><td colspan="5">WILL APPROPRIATIONS NEED TO BE ENTERED IN FUTURE BUDGETS?</td><td>YES (see observations)</td></tr>
<tr><td colspan="7">OBSERVATIONS:</td></tr>
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As regards support for rural development under Regulation (EU) No 1305/2013 (EAFRD), the proposal relates to financial years 2019 – 2021, whereas the proposed modifications for direct payments under Regulation (EU) No 1307/2013 relate to calendar year 2020/financial year 2021.

The proposal does not have any financial implications in terms of increased expenditure.

The effect of the proposed provisions giving Member States an option to transfer amounts between direct payments allocations in calendar year 2020/financial year 2021 and EAFRD in financial year 2021 as well as the transfer of the estimated product of reduction from direct payments in calendar year 2020 to EAFRD in financial year 2021 will depend on Member States' implementation and can therefore not be quantified at present.

Such transfers will in any case remain neutral with regard to overall commitment appropriations in the way that any deductions from the direct payments allocations will be off-set by a corresponding increase in the EAFRD allocations and vice versa.

With regard to payment appropriations, if Member States' implementation of these provisions would lead to a net transfer to EAFRD, it could lead to a slight postponement of payments from financial year 2021 to the following years, compared to the situation where Member States' implementation would imply a net transfer towards direct payments allocations or no re-allocation at all.

This effect can however not be quantified at this stage and is in any case expected to remain minimal.

As an example, without prejudging Member States' choices for calendar year 2020/financial year 2021, the flexibility in financial years 2018 and 2019 implies net transfers to EAFRD of respectively EUR 612 million and EUR 920 million. The transfer to EAFRD of the estimated product of reduction in the same financial years is respectively EUR 110 million and EUR 111 million.

Given the past experience and the budgetary envelopes proposed for 2021-2027, a net transfer to the EAGF seems unlikely; however, it cannot be fully excluded at this stage. In such a case, in order to comply with the applicable ceilings, differentiated expenditure, such as the payments under the EAFRD, may need to be given a lower priority.