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EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Directorate B – Sustainability

Brussels

Dear [REDACTED],

I would like to thank you for your question regarding the requirements concerning grazing on organic land/common land, which you raised in the Organic Production Committee of 8-9 March 2022 as a point under any other business<sup>1</sup>. Please accept my apologies for the late reply.

In your email, you ask how to implement the provisions of Regulation (EU) 2018/848<sup>2</sup> regarding grazing on organic land/common land since regulation (EU) 1305/2013<sup>3</sup> on support for rural development will be changed and the EAFRD support will be programmed under the National CAP Strategic Plan starting as of 1 January 2023 . From then onwards, the rural development objectives will still be allocated to interventions to support climate, biodiversity, environment and animal welfare. However, the cross-references to, respectively, Articles 23, 25, 28, 30, 31 and 34 of Regulation (EU) 1305/2013 used in Regulation (EU) 2018/848 will no longer apply directly.

I confirm that the provisions of point 1.4.2 of Part II of Annex II Regulation (EU) 2018/848 related to grazing contain cross-references to several Articles of Regulation (EU) 1305/2013. These provisions read as follows:

*“1.4.2. Grazing*

*1.4.2.1. Grazing on organic land*

*Without prejudice to point 1.4.2.2, organic animals shall graze on organic land. However, non-organic animals may use organic pasturage for a limited period each year, **provided that they have been raised in an environmental friendly way on land supported under Articles 23, 25, 28, 30, 31 and 34 of Regulation (EU) No 1305/2013 and that they are not present on the organic land at the same time as organic animals.***

<sup>1</sup> Ares(2022)1707311

<sup>2</sup> [EUR-Lex - 02018R0848-20220101 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/eur-lex.do?uri=CELEX%3A02018R0848-20220101-EN-EUR-Lex)

<sup>3</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013R1305-20210625&qid=1654262743422>

#### 1.4.2.2. Grazing on common land and transhumance

##### 1.4.2.2.1. Organic animals may graze on common land, provided that:

(a) *the common land has not been treated with products or substances not authorised for use in organic production for at least three years;*

(b) *any non-organic animals which use the common land have been raised in **an environmental friendly way on land supported under Articles 23, 25, 28, 30, 31 and 34 of Regulation (EU) No 1305/2013** and that they are not present on the organic land at the same time as organic animals.*”

Hence, the objective of these cross-references is to ensure that only non-organic animals raised on lands managed by environmental friendly methods can graze on organic pasturage or on common land used by organic animals.

I would like to start by highlighting that the date of repeal of Regulation (EU) 1305/2013 is set for 1 January 2023 by Article 154 of Regulation (EU) 2021/2115<sup>4</sup>. This Article foresees a continuity of the application of on-going rural development programmes under certain conditions. Indeed, Article 154 of Regulation (EU) 2021/2115 reads as follows: “*Regulation (EU) No 1305/2013 is repealed with effect from 1 January 2023. However, it shall, subject to Regulation (EU) 2020/2220 of the European Parliament and of the Council, continue to apply to the implementation of rural development programmes pursuant to Regulation (EU) No 1305/2013 until 31 December 2025. It shall, under the same conditions, apply to expenditure incurred by the beneficiaries and paid by the paying agency in the framework of those rural development programmes until 31 December 2025.*”

Second, Article 31<sup>5</sup> on schemes for the climate, the environment and animal welfare, Article 70 on environmental, climate-related and other management commitments<sup>6</sup>, Article 71 on natural or other area specific constraints<sup>7</sup>, Article 72 on area specific

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<sup>4</sup> [Publications Office \(europa.eu\)](https://publications.europa.eu)

<sup>5</sup> Under Article 31 of Regulation (EU) 2021/2115, 1. Member States shall establish, and provide support for, voluntary schemes for the climate, the environment and animal welfare (‘eco-schemes’) under the conditions set out in this Article. 2. Member States shall support under this Article active farmers or groups of active farmers who make commitments to observe agricultural practices beneficial for the climate, the environment and animal welfare and combatting antimicrobial resistance. 3. Member States shall establish a list of the agricultural practices beneficial for the climate, the environment and animal welfare and combatting antimicrobial resistance referred to in paragraph 2. Those practices shall be designed to meet one or more of the specific objectives set out in Article 6(1), points (d), (e) and (f) and, as regards improving animal welfare and combatting antimicrobial resistance, in Article 6(1), point (i). and as further specified in their CAP Strategic Plans with the view of contributing to the achievement of one or more of the specific objectives set out in Article 6(1) and (2).

<sup>6</sup> Under Article 70 of Regulation (EU) 2021/2115, Member States shall include agri-environment-climate commitments among the interventions in their CAP Strategic Plans [...]. Member States shall grant payments only to farmers or other beneficiaries who undertake, on a voluntary basis, management commitments which are considered to be beneficial to achieving one or more of the specific objectives set out in Article 6(1) and (2).

<sup>7</sup> Under Article 71 of Regulation (EU) 2021/2115 Member States may grant payments for natural or other area-specific constraints under the conditions set out in this Article and as further specified in their CAP Strategic Plans with the view of contributing to the achievement of one or more of the specific objectives set out in Article 6(1) and (2).

disadvantages resulting from certain mandatory requirements<sup>8</sup> and the investments improving the resilience and environmental value of forest ecosystems which will be programmed under Article 73 on Investments of Regulation (EU) 2021/2115 provide the possibility to Member States to program similar or new interventions as the measures under Regulation (EU) 1305/2013, notably: Article 23 on the establishment, regeneration or renovation of agroforestry system, Article 25 on investments improving the resilience and environmental value of forest ecosystems, Article 28 on agri-environment-climate, Article 30 on Natura 2000 and Water Framework Directive payments, Article 31 on payments to areas facing natural or other specific constraints and Article 34 on forest-environmental and climate services and forest conservation of Regulation (EU) No 1305/2013 of the current programming period.

Indeed the Articles of Regulation (EU) 2021/2115 referred to above aim to manage the lands to achieve the CAP specific objectives as outlined under Article 6(1). I would like to bring to your attention in particular subparagraphs “(d) to contribute to climate change mitigation and adaptation, including by reducing greenhouse gas emissions and enhancing carbon sequestration, as well as to promote sustainable energy; (e) to foster sustainable development and efficient management of natural resources such as water, soil and air, including by reducing chemical dependency; (f) to contribute to halting and reversing biodiversity loss, enhance ecosystem services and preserve habitats and landscapes; ....(i) to improve the response of Union agriculture to societal demands on food and health, including high-quality, safe and nutritious food produced in a sustainable way, to reduce food waste, as well as to improve animal welfare and to combat antimicrobial resistance.”

Hence, in relation to the implementation of the rules related to grazing under organic production where cross-references are made to Articles 23, 25, 28, 30, 31 and 34 of Regulation (EU) 1305/2013, I can confirm that there is continuity in 2022 and starting as from 1 January 2023, each Member State will have to assess whether the interventions put in place in their national CAP strategic plans under Articles 31, 70, 71, 72 or 73 of Regulation (EU) 2021/2115 ensure a sufficiently environmental-friendly way of management of lands and are designed in a way which can justify that non-organic animals raised on such lands can graze on organic pasturages or common land used by organic animals<sup>9</sup> without undermining the organic certification.

My services are of course at the disposal of the national authorities to clarify the situation in case they have a doubt as whether their intervention is equivalent to the previous provisions of Regulation (EU) 1305/2013.

The present opinion is provided on the basis of the facts as set out in your email of 3 March 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

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<sup>8</sup> Under Article 72 of Regulation (EU) 2021/2115, Member States may grant payments for area-specific disadvantages imposed by requirements resulting from the implementation of Directives 92/43/EEC, 2009/147/EC or 2000/60/EC under the conditions set out in this Article and as further specified in their CAP Strategic Plans with the view of contributing to the achievement of one or more of the specific objectives set out in Article 6(1) and (2).

<sup>9</sup> In accordance with point 1.4.2.1 and 1.4.2.2 of Part II of Annex II Regulation (EU) 2018/848, non-organic animals are not present on organic land at the same time as organic animals.

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,

