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D.2. Greening, cross-compliance and POSEI

GUIDANCE DOCUMENT ON THE IMPLEMENTATION BY MEMBER STATES OF PERMANENT GRASSLAND PROVISIONS IN THE CONTEXT OF THE PAYMENT FOR AGRICULTURAL PRACTICES BENEFICIAL FOR THE CLIMATE AND THE ENVIRONMENT (GREENING)

CLAIM YEAR 2015 ONWARDS

This working document has been prepared by DG AGRI staff in order to facilitate the discussion in the Experts Group on Greening. This document is under technical and legal review and needs to be completed.

This document is referred to as "permanent grassland guidance"

This document provides guidance on the management of permanent grassland areas referred to in Article 45 of Regulation (EU) No 1307/2013 in the framework of the payment for agricultural practices beneficial for the climate and the environment (greening payment). The objective of the maintenance of these areas is established in Recital (42) and (43).

The definition of permanent grassland is set in Article 4(1)(h) of the same Regulation.

Other provisions on permanent grassland are set in Articles 41 to 44 of Regulation (EU) No 639/2014, Article 9, 10, 25 and 37 of Regulation (EU) No 640/2014 and Article 11 of Regulation (EU) No 641/2014.

The purpose of this guidance is to give the Commission views on how to best apply the above legal provisions, it is not to repeat what is in the legislation. This guidance is either derived directly from the mentioned legal provisions or, whilst not expressing straightforward legal obligations, it constitutes recommendations by the Commission services to the Member States.

The considerations in this document are without prejudice to any further position taken by the Commission, nor to any future judgement of the European Court of Justice, which alone is competent to hand down legally binding interpretations of the Union law.

1. INTRODUCTION

The maintenance of permanent grassland is one of the three greening agricultural practices, as defined in Article 43 of Regulation (EU) No 1307/2013.

The relevant obligations for farmers are established in Article 45 of the same Regulation. Article 45(1) defines environmentally sensitive permanent grassland (ESPG) areas which shall be designated by Member States in Natura 2000 areas (first subparagraph) and may be designated in other areas outside Natura 2000 areas (second subparagraph). On these areas, Article 45(1) third subparagraph establishes a ban of ploughing and converting. .

More general maintenance rules are established in Article 45(2) which defines a ratio of permanent grassland in relation to the total agricultural area. This takes from the similar provisions applying for the period before 2015 in Article 3 and 4 of Regulation (EC) No 1122/2009 on the ratio of permanent pastures.

2. ACRONYMS USED / TERMINOLOGY FOR THE PURPOSE OF THIS DOCUMENT

AEC: Agri-environmental-climate measure or commitment in the context of Rural Development programmes.

“Afforestation that is compatible with the environment”: reference to Article 45(4) of Regulation (EU) No 1307/2013. The MS can define criteria to better specify these areas, where a good practice can be afforestation which complies with the criteria set in Article 6 of Regulation (EU) No 807/2014, regardless if the area is financed or not under Rural Development.

“Conversion into agricultural area”: conversion of permanent grassland into another type of agricultural area, namely arable land or permanent crop. Agricultural area is defined in Article 4(1)(e) of Regulation (EU) No 1307/2013 and it is related to further definitions under Article 4(1)(f) to (k).

“Conversion into non-agricultural area”: conversion of permanent grassland into non-agricultural area, such as afforestation, buildings, infrastructure (roads, railways), former PG that no longer adheres to the definition set in Article 4(1)(h) of Regulation (EU) No 1307/2013 and is not anymore eligible due to the growth of natural vegetation (abandoned land), etc.

“Declared areas”: the area that the beneficiary has declared in his/her aid application or payment claim. Reference to point (a) of the first subparagraph of Article 72(1) of Regulation (EU) No 1306/2013.

“Determined areas”: area for which all eligibility criteria or other obligations relating to the conditions for the granting of the aid have been met pursuant to Article 2(23) of Regulation (EU) No 640/2014.

EFA: Ecological Focus Areas.

ESPG: Environmentally Sensitive Permanent Grassland.

ISAMM: Information System for Agricultural Market Management and Monitoring.

Natura 2000 areas: areas designated under Council Directive 92/43/EEC (Article 4) on the conservation of natural habitats and of wild fauna and flora or Council Directive 2009/147/EC on the conservation of wild birds.

“Organic farms”: reference to Article 43(11) of Regulation (EU) No 1307/2013, in particular with regard to the second subparagraph, where it is specified that the provision on organic farms that are entitled ipso facto to the greening payment is applied only to the units of a holding that are used for organic production.

PG: “Permanent grassland” as defined in Article 4(1)(h) of Regulation (EU) No 1307/2013 referring further to point (i) of the same Article.

PP: “Permanent pastures” as defined in Article 2(c) of Regulation (EC) No 1120/2009.

Ratio (in general): ratio of permanent grassland to total agricultural areas as defined in Article 45(2) of Regulation (EU) No 1307/2013, where is also specified the methodology for the calculation. The ratios have to be notified pursuant to Article 65(1)(d) of Regulation (EU) No 639/2014.

Annual ratio: ratio of permanent grassland to total agricultural areas calculated every year by the MS.

Reference ratio: ratio of permanent grassland to total agricultural areas calculated by the MS in 2015.

RD: Rural Development.

3. DEFINITION OF PERMANENT GRASSLAND

The definition of “permanent pasture” was introduced in the EU legislation for direct payments in 2004¹.

From 2015, as provided by Article 4(1)(h) of Regulation (EU) No 1307/2013 the category of “permanent grassland” takes over from the previous category of “permanent pasture” with certain changes to its definition, in particular by including in its scope other species such as shrubs and/or trees which can be grazed; and, where Member States so decide, land which can be grazed and forms part of established local practices, even though when forage is not predominant.

The key elements for the classification of agricultural land under this definition are:

- the classification of the plant species as grasses or other herbaceous forage as provided in Article 4(1)(i) of Regulation (EU) No 1307/2013;
- the succession of five years outside crop rotation.

The Court judgment of 2 October 2014 in the case C-47/13, further specifies the interpretation of the definition of permanent pasture and clarifies the succession of forage species in the grassland.

¹ Regulation (EC) No 795/2004 replaced by Regulation (EC) No 1120/2009

“The definition of ‘permanent pasture’ set out in Article 2(2)(c) of Commission Regulation (EC) No 1120/2009 [...] must be interpreted as covering agricultural land which is currently, and has been for five years or more, used to grow grass and other herbaceous forage, even though that land has been ploughed up and seeded with another variety of herbaceous forage other than that which was previously grown on it during that period.”

The judgment reinforces the fact that the continuity of grass and all other herbaceous forage is a determining factor for the classification of permanent pasture. In addition, by accepting the possibility of ploughing and reseeded the grassland, even with other varieties of herbaceous forages, it gives flexibility in terms of management.

The Court judgement refers to the permanent pasture definition as stipulated in the former Regulation (EC) No 1120/2009. However, its conclusions are also applicable to the definition of permanent grassland in Article 4(1) (h) and (i) of Regulation (EU) No 1307/2013, which mirrors - for the elements relevant for the judgement - the previous definition of permanent pastures. The new additional elements provided for in the second sentence of Article 4(1)(h) are not relevant with regard to the Court conclusions, as they concern the plant varieties which fall under permanent grassland and not the activities on permanent grassland.

The sections below explain a number of key factors that have to be considered in order to correctly classify the land as permanent grassland.

3.1. Type of plants

Following the definitions provided in Article 4(1) of Regulation (EU) No 1307/2013, forage crops can be classified as “grasses or other herbaceous forage” following Article 4(1)(i), which concerns all herbaceous plants traditionally found in natural pastures or normally included in mixtures of seeds for pastures and meadows in the Member State.

It is therefore up to the MS to classify crops in the category “grasses and other herbaceous forage”, taking in account the national agricultural practices for such kind of cultivation.

However, in case on a parcel a crop, which is traditionally not found pure in natural pastures, is seeded pure, it should not be classified as grass, even if the crop in question can be found in mixtures of seeds for pastures and meadows.. On the basis of the agricultural practices, it refers to species belonging to the botanical family of *leguminosae* like clover (*Trifolium spp.*) and alfalfa (*Medicago sativa*), which can be cultivated as pure crops or as a mixture of *leguminosae*: those species cultivated as monoculture should be classified as a crop and not under the category “grasses or other herbaceous forage”, since it cannot be as a pure crop found in natural pastures.

When species belonging to the botanical family of *leguminosae* are sown in mixture with species from other botanical families, the area should be classified as “grasses or other herbaceous forage”

In case herbaceous plants are naturally (self-seeded) introduced on a parcel initially sown as a pure leguminous crop, the land should be still declared by the farmer as arable crop as long as the quantity of these herbaceous plants is marginal (as far as they do not

exceed the quantity found on the basis of normal cultivation practices in the area concerned)..

Areas cultivated with species belonging to the botanical family of *graminae*, such as forage maize (*Zea mais*), barley (*Hordeum vulgare*), oats (*Avena sativa*) and triticale, sown as a monoculture, should be always classified as arable land for crop production and not as “grasses or other herbaceous forage”. This classification is due to the fact that those species, as pure crops, are normally cultivated for grain or annual fodder, either for human or animal consumption and are not traditionally found in natural pastures. Moreover, even if they could be included in mixtures of seeds for pastures and meadows, they do not comply with the definition of grasses, when those crops are sown on a parcel as a monoculture and not in a mixture and thus, are not considered to fall under the definition of “grasses or other herbaceous species” pursuant to Article 4(1)(i) of Regulation (EU) No 1307/2013. Other *graminae* species normally found in natural pastures as ryegrass (*Lolium spp.*) and timothy-grass (*Phleum pratense*), should be however classified as “grasses or other herbaceous forage”.

Areas with species cultivated for seed production should always be classified as arable land for crop production.

3.2. Meaning - duration of rotation

The guidance document on LPIS, at the end of Chapter “2.1. Distinction of the agricultural area / land cover within the reference parcels” already clarifies the criteria for the classification of permanent grassland in relation to the duration of the succession of grasses and other herbaceous forage on the same parcel.

3.3. Management of permanent grassland

In terms of management, as underlined by the Court judgement, ploughing the land and seeding it with the same or another variety of herbaceous forage which fall under Article 4(1)(i) of Regulation (EU) No 1307/2013, has no impact on the classification of the area as permanent grassland.

3.4. Connection with Rural Development commitments

The relationships between the permanent grassland obligations and commitments in the framework of RD programmes, and their implications for the status of the land at the end of the RD commitment can be specified as follows:

- In accordance with Article 4(1)(f) of Regulation (EU) No 1307/2013, where farmers have undertaken a commitment under the agri-environment measure or will undertake under the agri-environment-climate a measure in the form of converting their arable land into grassland for a commitment period, at the end of this period their land will not be directly classified as permanent grassland under Article 4(1)(h) but it will maintain its status from before starting the commitment. This applies to every commitment undertaken on grassland, regardless if production is possible or not.

- The presence of the grassland before the start of the commitment has to be taken into account. At that time, a parcel could be already a permanent grassland or be in a different land use (e.g. arable land as provided in the previous bullet point).

The above can result in following cases²:

Land use before the AECM commitment period	Status of the land after the AECM commitment period
Arable land, not classified as grasses or other herbaceous forage	The land remains classified as arable land, even if covered by grass The five years' calculation starts the year following the commitment period (year 1).
Arable land, classified as grasses or other herbaceous forage or land lying fallow	The land remains classified as arable land, even if covered by grass Nevertheless, on the year following the end of commitments, the five years' calculation does not start from zero. The succession of grasses before the AECM period, when the land was classified as grasses or land lying fallow, has to be taken into account. The 5 years' calculation "frozen" for the period of the commitment, restarts following its completion. E.g. land classified as grasses for 2 years before the commitment, will turn into PG 3 years after the end of the commitment
Permanent grassland	As there is no conversion from arable land to permanent grassland, at the end of the commitment the area is still to be considered as permanent grassland

Where a parcel was declared as arable land (regardless of its classification in grasses or other herbaceous forage, land laying fallow or other crop) and is subject to agri-environment commitment on conversion from arable land to grassland during a first commitment period and to the commitment on maintaining such grassland during a second commitment period, at the end of the second commitment period the land remains classified as arable land, even if covered by grass. The five years' calculation starts the year following the second commitment period (year 1).

The same rules for classifying permanent grassland as described above applies when a MS implement agri-environment-climate operations through state aid and in case other contractual situations are undertaken by farmers on a voluntary basis, provided that those commitments have similar purpose to those foreseen under agri-environment-climate

² In case of commitments which last more than 10 years, on the parcels concerned the land remains classified as arable land, even if covered by grass. The five years' calculation starts the year following the commitment period (year 1).

The threshold of 10 years relates to the fact that the first year of application for the provisions on maintenance of permanent pasture under Cross Compliance is 2005,

measures, are performed in similar conditions and subject to the same rules of the RD Regulation. For example, this could be related to some measures undertaken by a farmer on a voluntary basis in the context of the Water Framework Directive and based on a national program.

3.5. Connection with management of land lying fallow qualifying as EFA

In case a parcel with land lying fallow and covered by grasses has been declared as Ecological Focus Area following the provisions in Article 45(2) of Regulation (EU) No 639/2014, the following applies.

The derogation provided in this Article allows classifying the parcel concerned as arable land as long as it is declared as land lying fallow for the specific purpose of fulfilling the EFA requirement. That means that after 5 years this EFA fallow land remains arable land and can still be used to fulfil the EFA obligation.

Even if in general a farmer may declare more EFA than what is required to fulfil the 5% requirement, in order to avoid to circumvent the rules on classification of permanent grassland and following Article 60 of Regulation (EU) No 1306/2013 (circumvention clause), no farmer can declare land lying fallow as EFA only for the purpose of obtaining the advantage of preventing the land lying fallow from becoming PG. This would be a case of circumventing the rules related to the use of land pursuant to Article 4(1)(h) of Regulation (EU) No 1307/2013.

After the end of the period of EFA declaration, the five years' calculation does not start from zero. The classification of land lying fallow before the EFA period, when the land was classified as grasses or land lying fallow, has to be taken into account. The 5 years' calculation "frozen" for the period of EFA, restarts following its completion. E.g. land classified as land lying fallow for 2 years before the EFA period, will turn into PG 3 after the end of the EFA period.

4. ENVIRONMENTALLY SENSITIVE PERMANENT GRASSLAND

Article 45(1) third subparagraph of Regulation (EU) No 1307/2013 specifies that farmers shall not convert or plough ESPG.

This provision is limited to conversion and ploughing. It is without prejudice to the requirements of other relevant legal frameworks such as Natura 2000 and, in particular, it does not preclude other requirements linked to conservation objectives and conservation measures of the designated sites under Natura 2000 directives.

The greening requirements are not affected by any other additional control obligation regarding Natura 2000.

In Natura 2000 areas, the provisions of Article 6 of Directive 92/43/EEC, the detailed conservation measures (which are often indicated in management plan rules) set up by the Member States and the criteria to avoid the deterioration of habitats and disturbance of species shall be respected in any case. Accordingly, the areas shall be managed

following detailed management plans or equivalent instruments put in place by the competent authorities for the relevant Natura 2000 site in order to protect its habitats and species. For any project to be undertaken in these areas, an environmental assessment pursuant to paragraph 3 of the same Article 6 shall also be implemented where relevant.

The above legal framework applies to both converting and ploughing, explained below, where an ESPG is located in Natura 2000.

4.1. Meaning of conversion of ESPG

Considering the environmental objective set in Recital 42 of Regulation No 1307/2013, the term “conversion of ESPG” in Article 45 of the same Regulation has to be understood as conversion to all possible land uses in broad sense, either to agricultural area (arable land, permanent crops) or to non-agricultural area such as afforestation, building constructions, infrastructures (like roads and rails), abandoned land etc.

This is applicable also with regard to Article 42 of Regulation (EU) No 639/2014, which establishes rules for reconversion in case of non-respect of the obligation for maintenance of ESPG.

Limited cases of conversion are possible only in exceptional situations and MS may allow it in case the environmental benefits of these areas, in particular carbon sequestration as set in Recital 42 of Regulation (EU) No 1307/2013, are still achieved. An example can be afforestation, possible if carried out in the framework of RD measures. Another example can be where a farmer ceases the agricultural activity, doesn't claim for direct payments anymore and its land is not transferred to any other farmer.

In case of conversion to non-agricultural areas not imputable to the decision of the farmer (e.g. infrastructure approved by a national administration for public utility), the ban of converting do not apply to the farmer concerned.

In the above mentioned limited cases, the MS may withdraw the designation of the parcels concerned as environmentally sensitive. In view of the objective of designation of ESPG laid down in Article 45(1) of Regulation (EU) No 1307/2013, a withdrawal of the designation has to be justified accordingly (e.g. by showing that there is no more need to ensure the protection of ESPG; or in case the environmental benefits of these areas are still achieved after the un-designation; or by reasons of overriding public interest) whereby the criteria set out in Article 41 of Regulation (EU) No 639/2014 used for the designation are to be taken into account.

The withdrawal of the designated ESPG is to be defined in an explicit administrative act or decision from the responsible authority. Such withdrawal should be properly updated in the identification system for agricultural parcels, pursuant to Article 5(2)(d) of Regulation (EU) No 640/2014. In case of areas designated outside Natura 2000 under Article 45(1) second sub-paragraph, the undesignation is to be notified to the Commission on the basis of Article 65(1)(b) of Regulation (EU) No 639/2014.

According to Article 42 of Regulation (EU) No 639/2014, where a farmer, who is not subject to the above mentioned exceptions to the conversion ban, has converted an ESPG in other agricultural or non-agricultural area, the Member State has to provide for the obligation to reconvert the area into ESPG.

As regards the possible reconversion obligation after having leased or sold to another farmer a converted ESPG, reference is made to the penultimate paragraph of chapter 5.2.3.

Agricultural practices which do not harm the environmental value of ESPG are in general not interpreted as a conversion. Such practices, however, (e.g. creating new ditches), have to be carefully assessed depending on the environmental conditions of the designated area, as the environmental benefit shall not be harmed (e.g. in case of draining of wetlands).

4.2. Meaning of ploughing ESPG

Ploughing is understood as a tillage which destroys or alters the grassland cover (e.g. where the land is turned over, and/or the tillage is deep). This operation reduces carbon sequestration and harm the habitats of an environmentally valuable site, in particular if permanent grassland constitutes these habitats. It can also cause disturbances to animal species or change the floristic composition of the grassland.

As a principle, the ban of ploughing should be strictly maintained. The use of light tillage on the designated sensitive permanent grassland, could be accepted provided it is with the only purposes of preparing the soil to restore the grass, (see the "OTSC guidance" document (*DSCG-2014-32-FINAL*, paragraph 2.4.4.4. third indent)).

5. RATIO OF AREAS OF PERMANENT GRASSLAND AND RELATED OBLIGATIONS

5.1. Calculation of the ratio

5.1.1. Definition and geographical level of data for the calculation

After the lodging of the aid applications for a given year, the MS shall manage the data of permanent grasslands and total agricultural area at national/regional/sub-regional level concerned, as chosen in the ISAMM form "*10. Permanent grassland obligation level*", in order to assess the evolution of the ratio.

All the data used for the calculation of the ratio shall be consistent with the choice on the geographical level of obligation, with the formula specified in Chapter 5.1.3 and 5.1.5, as well as with the obligations on reconversion and the individual obligations referred to in Chapter 5.2, where relevant.

Considering the data collected in the aid applications, the MS shall use the following methodology for calculation of both areas under permanent grassland and total agricultural areas.

In principle, the permanent grassland area is a subset of the total agricultural area. According to Article 4(1)(e) of Regulation No (EU) 1307/2013 and to the LPIS guidance document, Chapter "*2.1 - Distinction of the agricultural area / land cover within the reference parcels*" the total agricultural area is the sum of permanent grassland (or permanent pasture), arable land and permanent crops.

5.1.1.1. Eligible areas concerned

Pursuant to Article 43(1) of Regulation (EU) No 1307/2013, farmers entitled to a payment under the basic payment scheme or the single area payment scheme shall observe the greening obligations on all eligible hectares within the meaning of Article 32(2) to (5). Therefore, only the eligible areas shall be used.

Considering the minimum size of agricultural parcels set in Article 72(1) second subparagraph of Regulation (EU) No 1306/2013, for the purpose of the calculation of the ratio the parcels below this threshold shall be included in the calculation.

On parcels where a pro-rata system pursuant to Article 10 of Regulation (EU) No 640/2014 is applied, the area to be used for the calculation of the ratio is the eligible area of the parcel.

5.1.1.2. Declared/determined areas

The data for the calculation of the ratio are based on declared areas, as specified in Article 45 of Regulation (EU) No 1307/2013.

For the calculation of the annual ratio, the area of permanent grassland declared in the aid applications of the same year shall be used.

Nevertheless the applications, including data concerning permanent grassland, will be subject to controls on eligibility criteria and other obligations. As a result, the determined area will be defined and will also be pre-established for the following year in the aid-application.

This requirement ensures that in following years the declared areas by the beneficiaries will be based on the pre-established determined areas and consequently the determined permanent grassland areas will be covered in the ratio. It is recommended to consider the available determined area as far as possible for the calculation of the ratio, in order to be more precise.

For the calculation of the reference ratio, the area to be used stemming from applications of year 2012 should be based on the determined area and the area to be used stemming from applications of 2015 should be based on the declared area. Where MS need to adapt the reference ratio it should be based on determined area

“Annex 1 – Practical cases for the calculation of the ratio” provides specific cases with regard to the different ratios. Where the declared areas for a given year are used in the calculation of reference or annual ratio, the resulting figures will be the basis for the possible reconversion obligation pursuant to Article 44(2) of Regulation (EU) No 639/2014 and for the notifications of the ratio pursuant to Article 65(1)(c)(v) and (d) of the same Regulation, with deadline by 15 December of each year. Therefore there is no need to update the data based on these declared areas with the results of the controls done during the same year.

5.1.2. Meaning of conversion of grassland subject to the ratio

The definition of conversion applicable to the permanent grassland subject to the management of the ratio is the same as specified for ESPG in Chapter 4.1.

5.1.3. Calculation of the reference ratio

Article 45(2) of Regulation (EU) No 1307/2013 and Article 43 of Regulation (EU) No 639/2014 lays down the details of the calculation of the reference ratio.

Concerned by the calculation of the reference ratio are “*the farmers subject to the obligations under greening*” as specified in Article 45(2) second subparagraph, point a) and b). Those farmers can be identified as subject to the obligation in Article 43(1) of the same Regulation, including farms exempted from crop diversification (Article 44) and EFA (Article 46), organic farms, farms with only permanent crops etc.

Taking into account the specifications given in these guidelines on the definition of permanent grassland (Chapter 3) and of the data for the calculation of the ratio (Chapter 5.1), this calculation is summarised as follows.

- For all MSs excluding Croatia:

(PP declared 2012 + PG declared 2015 not declared 2012) – PG declared by SFS 2015 – PG declared in organic farms 2015 – PP declared 2012 converted into other uses subject to the limit set in Article 43(2)

**Reference ratio = -----
Total agricultural area declared 2015 – Agricultural areas declared by SFS 2015 – Agricultural areas declared in organic farms 2015**

PP declared 2012	"Land under permanent pasture declared by the farmers in 2012": Article 45(2) second subparagraph point (a) of Regulation (EU) No 1307/2013.
PG declared 2015 not declared 2012	"Land under permanent grassland declared in 2015 that was not declared as land under permanent pastures in 2012": Article 45(2) second subparagraph point (a) of Regulation (EU) No 1307/2013. <i>Between different possible cases, this term may concerns areas that became permanent grassland due to the changed definition in Regulation (EU) No 1307/2013 compared to Regulation (EC) No 1120/2009.</i>
PG declared by SFS 2015	"Land under permanent grassland declared in 2015 by farmers participating in the small farmers scheme": Article 43(1) of Regulation (EU) No 639/2014. <i>This area <u>shall</u> not be included in the reference ratio</i>
PG declared in organic farms 2015	"Land under permanent grassland declared in 2015 by organic farms": Article 43(1) of Regulation (EU) No 639/2014. <i>This area <u>shall</u> not be included in the reference ratio</i> <i>As stated in chapter 5.1.6, organic farmers can decide to opt out from the exemption and to respect greening obligations. In this case the PG of the farm concerned shall not be included in this term but treated in the formula as PG declared in a non-organic farm.</i>

<p>PP declared 2012 converted into other uses subject to the limit set in Article 43(2)</p>	<p><i>"Land under permanent pasture declared by the farmers in 2012 that has been converted into land for other uses": Article 43(2) of Regulation (EU) No 639/2014.</i></p> <p><i>In practical terms, these areas were declared as permanent pastures in 2012 and are not declared as permanent grassland in 2015, This term concerns both PP areas which were converted in agricultural areas and are normally declared with a different use in 2015 (either arable land, permanent crop etc.) and PP not declared as subject to a conversion into non-agricultural areas.</i></p> <p><i>Limit of land converted after 2012: land concerned by this term may be deducted up to the number of hectares of PP or PG that farmers established after 2012 and declared in 2015.</i></p> <p><i>In practical terms, this provision introduce a limit to the areas converted after 2012 that can be subtracted in the formula:</i></p> <ul style="list-style-type: none"> <i>• In case the PP area converted in other uses after 2012 is higher than the area established as PP after 2012, the deduction is limited to the number of hectares established.</i> <i>• In case the PP area converted in other uses after 2012 is lower than the area established as PP after 2012, there is no limitation to be applied, therefore the deduction is equal to the area converted into land for other uses</i> <p><i>When calculating the area established as PP after 2012, two conditions shall be fulfilled:</i></p> <ul style="list-style-type: none"> <i>• Only hectares which were declared as PP or PG in 2015 declared as an agricultural area in 2012, 2013 or 2014 in accordance with Article 34(2) of Regulation (EC) No 73/2009 (eligible hectares) shall be taken into account. The base of calculation in this case is the declaration in the Single Application as any kind of agricultural land for at least one year, in any year of the period 2012-2014.</i> <i>• The rules on maintenance of permanent pastures as laid down in Article 6(2) of Regulation (EC) No 73/2009 and in Article 93(3) of Regulation (EU) No 1306/2013 have been met. That means that hectares reconverted after 2012 due to the obligation to reconvert in case the PP ratio has decreased by more than 10%, cannot be taken into account.</i> <p><i>Is useful to underline that the areas established as PP after 2012 for the purpose of Article 43(2) can be different from the term "PG declared 2015 not declared 2012", for instance this latter term can include areas introduced due to the enlarged PG definition in Regulation (EU) No 1307/2013 or PG established from land that was not agricultural area in 2012, 2013 or 2014. These cases are excluded by the conditions set in Article 43(2).</i></p> <p><i>See the second part of Annex 2 – Graphical examples of calculation of numerator of reference ratio (permanent grassland) for graphical explanation</i></p>
<p>Total agricultural area declared 2015</p>	<p><i>"The total agricultural area declared by the farmers in 2015": Article 45(2) second subparagraph point (b) of Regulation (EU) No 1307/2013.</i></p> <p><i>By definition, areas converted to other non-agricultural area are not included under this term.</i></p>
<p>Agricultural areas declared by SFS 2015</p>	<p><i>Agricultural areas declared in 2015 by farms participating in the small farmers scheme: Article 43(1) of Regulation (EU) No 639/2014.</i></p>
<p>Agricultural areas declared in organic farms 2015</p>	<p><i>Agricultural areas declared in 2015 by organic farms: Article 43(1) of Regulation (EU) No 639/2014.</i></p>

See a graphical exemplification of the permanent grassland term of the formula in “Annex 2 – Graphical examples of calculation of numerator of reference ratio (permanent grassland)”.

- For Croatia: the same formula and the same terms apply, but the references to year 2012 are substituted with year 2013.

5.1.4. Adapting the reference ratio

Article 43(3) of Regulation (EU) No 639/2014 establishes that MS shall adapt the reference ratio if they assess that there is a significant impact on the evolution of the ratio due to changes which affect the consistency of the calculations, for instance in case of findings during controls or audits, significant increase/decrease of areas in small farmers scheme or organic farming (as specified in Article 43(3)), significant conversions to non-agricultural areas (e.g. following works for public utility), significant conversions into afforested areas compatible with environment as referred to in Article 45(4) of Regulation (EU) No 1307/2013, significant increase/decrease of total agricultural areas due to other reasons not related to PG evolution, future possible changes in eligibility rules etc.

As the reference ratio is established for the first time in 2015, any adaptation should be taken into account only after the closure date for the aid application in 2015.

In case a MS decides to adapt the reference ratio, it shall inform the Commission through a dedicated ISAMM form, justifying the need to update the ratio.

5.1.5. Calculation and check of the annual ratio

Article 45 of Regulation (EU) No 1307/2013 and Article 43 of Regulation (EU) No 639/2014 lays down the details of the calculation of the annual ratio.

Concerned with the calculation of the annual ratio are “*the farmers subject to the obligations under greening*” as specified in Article 45(2) second subparagraph, point a) and b). Data concerning these farmers in year n should be used for the calculation of the annual ratio.

Taking into account the specifications given in these guidelines on the definition of permanent grassland (Chapter 3) and of the data for the calculation of the ratio (Chapter 5.1), this calculation is summarised as follows.

$$\text{Annual ratio} = \frac{\text{PG declared in year n} - \text{PG declared by SFS in year n} - \text{PG declared in organic farms in year n}}{\text{Total agricultural area declared in year n} - \text{Agricultural areas declared by SFS in year n} - \text{Agricultural areas declared in organic farms in year n}}$$

PG declared in year n	<i>"Land under permanent grassland declared by the farmers in year n": Article 45(2) fourth subparagraph of Regulation (EU) No 1307/2013.</i>
PG declared by SFS in year n	<i>"Land under permanent grassland declared in year n by farmers participating in the small farmers scheme": Article 43(1) of Regulation (EU) No 639/2014.</i>
PG declared in organic farms in year n	<i>"Land under permanent grassland declared in year n by organic farms": Article 43(1) of Regulation (EU) No 639/2014.</i>
Total agricultural area declared in year n	<i>"The total agricultural area declared by the farmers in year n": Article 45(2) fourth subparagraph of Regulation (EU) No 1307/2013.</i> <i>By definition, parcels converted to other non-agricultural areas are not included under this term. This concerns even areas afforested pursuant to Article 45(4) of Regulation (EU) No 1307/2013 and present in year n.</i>
Agricultural areas declared by SFS in year n	<i>Agricultural areas declared in year n by farms participating in the small farmers scheme: Article 43(1) of Regulation (EU) No 639/2014.</i>
Agricultural areas declared in organic farms in year n	<i>Agricultural areas declared in year n by organic farms: Article 43(1) of Regulation (EU) No 639/2014.</i>

After the calculation, the annual ratio for year n is compared with the reference ratio using the following formula:

Annual ratio year n – Reference ratio

Reference ratio

The threshold of 5% is applied on the resulting percentage and the outcome can be the following:

- In case the annual ratio does not decrease by more than 5%, for year n the maintenance of permanent grassland obligation is complied with. This case can occur also after having adjusted the reference ratio pursuant to Article 43(3) of Regulation (EU) No 639/2014 (see chapter 5.1.4).
- In case the annual ratio has decreased by more than the threshold of 5%, the MS shall apply Article 44(2) of Regulation (EU) No 639/2014.

5.1.6. Particular cases for the calculation of the ratio

Organic farmers are entitled ipso facto to the greening payment, as established in Article 43(11) of Regulation (EU) 1307/2013. However, organic farmers can decide to opt out of the exemption and to respect greening obligations: in this case they have to fully respect the three obligations, including maintenance of permanent grassland. Therefore the areas (permanent grassland and agricultural areas) belonging to an organic holding which has to respect the obligation, shall be included in the calculation of reference and annual ratio as any other farm.

Other cases specifically related to the calculation of the reference ratio, are reported in the following table.

Case	Example	Effect on the reference ratio
PP in 2012 which is not declared by any farm subject to greening obligations in 2015 still in place.	Parcels that are not declared for direct payments even if the PG is still eligible and in place in 2015.	The PP declared in 2012 is not taken in consideration in the calculation of the ratio.
PP in 2012 which is leased or sold to another farmer subject to greening in 2015.	Farmers that declared PP in 2012 which was sold or rented to other farmers: the PP is still in place in 2015.	As the farmer which acquired the PP is subject to greening obligation in 2015, the PG is counted both in the numerator and in the denominator of the ratio.
PP in 2012 which is leased or sold to a farmer which is under SFS or organic farming in 2015.	Farmers that declared PP in 2012 which was sold or rented to other farmers: the PP is still in place in 2015.	The PP declared in 2012 is subtracted from the calculation of the ratio in the term SFS - organic.
PP which was part of an organic farm in 2012, where the farm is not anymore organic in 2015	Organic farmers that declared PP in 2012 which came back to ordinary production: the PP is not belonging to an organic farm in 2015	The area concerned has to be counted both in the numerator (PP declared 2012) and in the denominator of the ratio (included in the total agricultural area).

5.1.7. Amount of areas in absolute terms

Article 45(3) of Regulation (EU) 1307/2013 provide for the case where the amount of areas of permanent grassland in absolute terms does not decrease beyond a certain limit. Article 11 of Regulation (EU) No 641/2014 set this limit at 0.5%.

The practical meaning of this provision refers to the case where the PG area remains stable (within the limit provided by the Regulations) but the total agricultural area increases: sometimes this trend can lead to a reduction of the ratio by more than 5%, not due to a reduction of grassland areas.

Based on the formulas for the ratios:

Amount of areas in absolute terms = Numerator annual ratio in year n – Numerator reference ratio

See “*Annex 1 – Practical cases for the calculation of the ratio*” for a practical example.

5.2. Obligations linked to the ratio of areas of permanent grassland

Article 44 of Regulation (EU) No 639/2014 provides details regarding the obligations for the maintenance of the ratio.

5.2.1. Individual obligations at holding level and on prior authorisation

Article 45(2) fifth subparagraph of Regulation (EU) 1307/2014, establishes that the Member State may decide to apply an obligation to maintain permanent grassland at a holding level. This decision is communicated to the Commission through the ISAMM form “10. Permanent grassland obligation level”.

Even if the MS decides to apply this individual obligation, the maintenance of the ratio at national/regional level still has to be respected.

The meaning of this obligation can be different depending on the rules defined by the MS, e.g. a reference area of permanent grassland in a given year is established for each farm and the conversion is possible as long as it remains within a threshold or respecting some criteria.

Following Article 44(1) of Regulation (EU) No 639/2014, Member States may provide for the individual obligation of farmers not to convert areas of permanent grassland without prior individual authorisation. The Member States shall inform farmers of the decision to put in place a system of prior individual authorisation before 15 November of each year.

In practical terms, the MS will put in place an administrative procedure where any conversion of permanent grassland has to be requested by the farmers and authorised by the MS following the criteria specified in Article 44(1) second subparagraph.

In case the MS applies a prior individual authorisation, it may also apply the condition that another area of a corresponding number of hectares is to be established as PG, as stated in Article 44(1) second subparagraph. In this case, grassland newly established has to be considered and declared, by way of derogation of the five-year rule, as PG as from the first day of establishment.

This provision applies regardless of the trend of the ratio, therefore the MS can decide to put it in place any time, in particular at the beginning of the programming period in 2015.

If the ratio decreases by more than 5%, the MS shall interrupt the use of this procedure, as the conversion is not possible anymore following Article 44(2).

The obligation at holding level and the prior authorisation can be linked or not, depending on the decision of the MS.

5.2.2. *Timing for calculating the ratio and require possible reconversion*

Just after the closure of the applications, the MS is already able to calculate the figure for the ratio and assess the trend of the areas. Considering that the MS may need to put in place corrective measures (e.g. a procedure for prior authorisation), it is suggested to check the ratio as soon as possible.

The possible cases are:

- **No reduction:** following the trend of the areas, there is no decreasing and the ratio remains within the limit of 5%. The MS can just keep the data obtained from the applications and notify it through the ISAMM form by the deadline of 15 December, following Article 65(1)(c)(v) and (d) of Regulation (EU) No 639/2014.
- **Reduction within the limit:** the areas of PG decrease and the ratio decreases but remains within the limit of 5%. The MS might decide to put in place a procedure of prior authorisation before 15 November. Calculating the figure for the ratio as soon as possible, will help the Member State to assess the trend of the areas and support a possible decision to put in place such an obligation in order to avoid further decreasing of the ratio.
- **Reduction by more than the limit:** the areas of PG decrease and the ratio decreases by more than the threshold of 5%. Article 44(2) applies and the MS concerned shall put in place corrective actions. The operations requested by Article 44(2) and (3) imply that the MS shall:
 - Avoid new conversion: article 44(2) first paragraph establishes that MS shall provide for rules to avoid new conversion. These rules should be established and communicated to farmers as soon as possible. If a procedure for prior authorisation pursuant to Article 44(1) is in place, it has to be interrupted as conversion is not possible anymore.
 - Reconvert areas into areas of permanent grassland: article 44(2) and (3) establish that MS shall determine the range of farmers subject to the reconversion obligation following these steps by tracing back the converted parcels:
 1. Include only areas of PG that are not environmentally sensitive areas - 44(2) first subparagraph point a.
 2. Identify applications with agricultural areas at their disposal which were converted from PG into areas for other uses for the preceding 2 or, for year 2015, for the preceding 3 years - 44(2) first subparagraph point b.
 3. Establish an order of priority for farmers identified in step 2:
 - i. Farmers with areas subject to authorisation (Article 44(1) or Article 4(1) of Reg. 1122/2009): reconversion of the whole converted area - 44(2) third subparagraph.

- ii. Other farmers: reconversion of a percentage of the converted area (to be calculated following the steps below) or establish another area of PG – 44(3) first subparagraph.
 - a. Calculation of the percentage based on area converted and area needed to reach 5%.
 - b. Possible exclusion of areas which became PG after 31 December 2015.
 - c. Exclusion of area of PG that farmers created in the framework of RD commitments³.
4. Communicate to concerned farmers before 31 December of the same year.
5. The obligation to reconvert shall be complied with before the date for the submission of the single application for the next year, with a specific derogation for SE and FI.

At step 2 of this procedure, the MS establish a group of farmers, based on the applications with agricultural areas at their disposal, which were converted from PG into areas for other uses for the preceding 2 or 3 years. When establishing the order of priority for the reconversion obligation inside this group of farmers, the MS shall follow the provisions set in Article 44, but within these limits it can establish own criteria to define the order of priority and practically target the farmers.

5.2.3. *Reconversion of permanent grassland subject to the ratio*

The obligation to reconvert specified in Article 44(2) of Regulation (EU) No 639/2014, shall be applied at the same geographical level chosen by the Member State for the management of the ratio, as referred to in Chapter 5.1.1.

Concerning Article 44(2), and in particular subparagraph (b), the meaning of conversion is from areas of permanent grassland or permanent pasture into area for other uses as specified in Chapter 5.1.2. See also Annex 1 – Practical cases for the calculation of the ratio for a practical example on the effect on the ratio.

An obligation to reconvert is applied in any case where the conversion has been done into another type of agricultural area (i.e. arable land and permanent crops) in the meaning of Article 4(1)(e) of Regulation (EU) No 1307/2013.

In principle, as stated in Article 44(2) second subparagraph point b (step 2 of the procedure described in chapter 5.2.2), the reconversion applies only for farmers who

³ Considering the interpretation and the cases given in Chapter 3.4, grassland created in the framework of RD commitments will not be classified as PG, therefore in any case there is no need to apply a reconversion obligation after the end of the commitments. This doesn't preclude that the areas concerned can be classified as PG afterwards under the conditions explained in Chapter 3.4: in this case, the normal rules on permanent grassland applies.

have agricultural areas at their disposal which were converted from PP or PG into agricultural areas in the relevant period mentioned in the same Article.

Therefore, in case of the conversion of PG into non-agricultural areas (e.g. buildings or infrastructures), as after the conversion the area is not anymore an agricultural area, the farmer concerned will not be obliged to reconvert.

Moreover, this applies in case of conversion to non-agricultural areas not imputable to the decision of the farmer (e.g. for the public use and in the public interest, requested by the national authorities and generally anticipated by an expropriation of the PG).

In case a farmer has converted a PG both in agricultural and non-agricultural area, following the provision in Article 44(2) second subparagraph point b, the reconversion obligation shall be imposed only to the agricultural area. When the MS have provided for the individual obligation of farmers not to convert PG without prior individual authorisation as set in 44(1) of Regulation (EU) No 639/2014, a farmer which converts without complying with this authorisation is subject to the obligation to reconvert both in case of conversion into agricultural and into non-agricultural areas. This follows from the last sentence of the 4th subparagraph of Article 44(2), according to which those farmers have to "reconvert the whole converted area", provided it is at their disposal⁴. The situation is not different from that related to ESPG as described under Chapter 4.1.

Article 44(3) first subparagraph establishes the rules to increase the ratio above the threshold of 5% through reconversion. "*Above the threshold of 5%*" means that the Member State has to impose reconversion for farmers at least for a minimum area needed to reach the threshold of 5% in the following year. The Member States, depending on a possible procedure for prior authorization in place or on the trend of the ratio in previous years, may decide to reconvert more grassland to ensure the maintenance of the ratio in the following years.

Article 44(3) first subparagraph states that it is possible to establish another area as areas of permanent grassland, corresponding to the percentage set in the same subparagraph: this could be useful in case the area has been converted into areas entailing stable structures (building, infrastructures) or permanent uses as permanent crops or afforestation.

In case the PG was converted and afterwards leased or sold to another farmer, regardless if was ESPG or PG subject to the ratio system, where the second farmer is subject to the greening obligations, s/he will have to respect the reconversion obligations under Article 42 for ESPG and Article 44(2) and (3) for other PG. In case the acquiring farmer is not subject to greening obligations, is an organic farmer or under the Small Farmers Scheme, there is no obligation for him to reconvert. This also applies in the opposite case where a parcel which is covered by PG, is owned by an organic farmer or is in a farm subject to Small Farmers Scheme, is converted by this farmer and afterwards transferred with a different land use to another farm subject to greening obligation. The second farmer will

⁴ Regarding the procedure for establishing the group of farmers that are subject to the obligation to reconvert, pursuant to Article 44(2) and explained in chapter 5.2.2, the case where the PG has been converted into non-agricultural areas in breach of a prior individual authorisation, brings the concerned farmer and the related areas to be included as well in the group of farmers which are subject to the reconversion obligation.

not be obliged to reconvert the land converted by the previous owner, while s/he will have to follow the normal rules for other PG possibly present in the holding.

Regarding afforestation that is compatible with the environment as specified in Article 45(4), in case the annual ratio has decreased beyond the threshold of 5%, it is considered that on the concerned areas the environmental objective of PG is still achieved, therefore there is no obligation to reconvert.

6. NON COMPLIANCES OF THE PERMANENT GRASSLAND OBLIGATION

In cases of non-compliance with the permanent grassland obligation, there can be different cases of area found as non-compliant.

- Where ESPG areas are converted or ploughed.
- Where the MS decided to apply a prior individual authorisation to convert areas of permanent grassland pursuant to Article 44(1) of Regulation (EU) No 639/2014, the farmers which converted PG into other uses had to be authorised by the MS. If the farmer has converted PG without asking the authorisation, the area to be considered as non-compliant is the area which has been converted without authorisation.
- Where the ratio has decreased by more than 5% and therefore the MS applies Article 44(2) of the same Regulation:
 - As stated in the same article 44(2) first subparagraph, the MS shall ensure that new conversion of areas of PG is avoided. Farmers who still convert other areas of PG do not comply with this obligation: the area to be considered as non-compliant is the area converted from an area of PG into an area for other uses.
 - According to Article 44(2) fourth subparagraph and, if applicable, Article 44(3), Member States shall identify the farmers subject to the obligation to reconvert the land into PG. If the farmer does not comply with the obligation to reconvert, the area to be considered as non-compliant is the area which has not been reconverted into PG whilst it should have been.

ANNEX 1 – PRACTICAL CASES FOR THE CALCULATION OF THE RATIO

DECLARED AREAS (CHAPTER 5.1.1.2)

With regard to practical cases of the different ratios to be calculated by the MS, the following applies.

- Calculation of the reference ratio - first calculation in 2015: data related to year 2015 has to be based on the declared areas after the use of the available pre-established information. Data related to previous years (2012, 2103, 2014) where relevant, shall be based on determined areas.
- Calculation of the reference ratio - following years: when the Member State decides to adapt the reference ratio following Article 43(3) of Regulation (EU) No 639/2014, the data related to year n has to be based on the declared areas after the use of the available pre-established information. Data related to previous years, where relevant, shall be based on determined areas.
- Calculation of the annual ratio: the data related to year n has to be based on the declared areas after the use of the available pre-established information. Data related to previous years, where relevant, shall be based on determined areas.

TREND OF AREAS FOR THE CALCULATION OF THE RATIOS

CONVERSION TO NON-AGRICULTURAL AREA

In case of conversion to non-agricultural area, the effect on the ratio can be as follows.

In a MS, in 2015 the reference ratio is based on a permanent grassland area of 50.000 ha and a total area of 100.000 ha. The calculation of the reference ratio is

$$50.000/100.000 = 0,5$$

A conversion to non-agricultural area takes place and 5.000 ha are converted. This area is deducted from the permanent grassland and the total area, as the converted area is not anymore an agricultural area. The change in the annual ratio in 2017 is:

$$45.000/95.000 = 0,473 \text{ after the conversion}$$

The reduction of the annual ratio is $(0,473 - 0,5) / 0,5 = -0,054$ (-5,4%) therefore it has decreased by more than 5%.

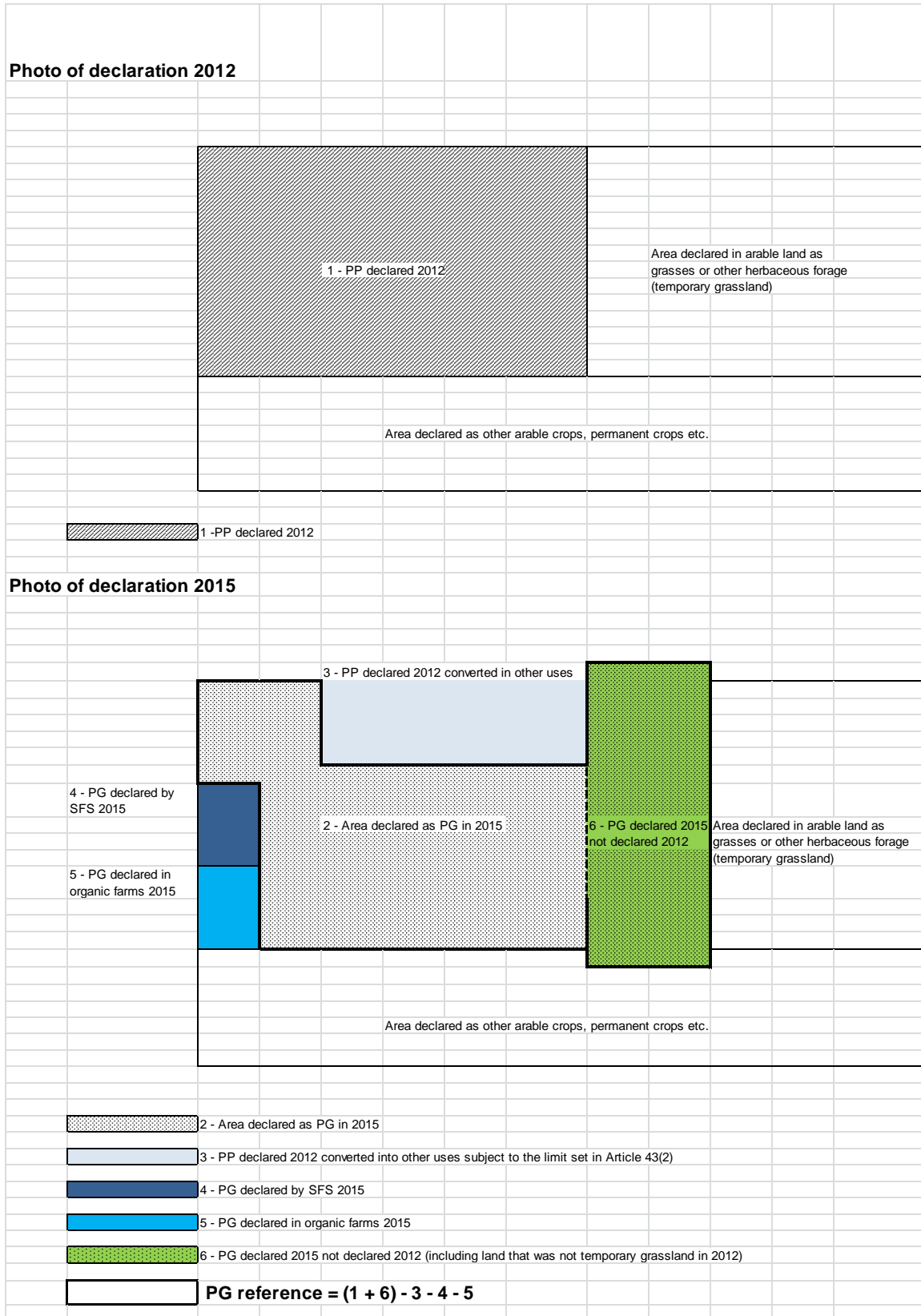
Even if both terms of the ratio are reduced by the conversion, in this case the effect on the ratio is significant and the reduction of permanent grassland may leads to a reduction of the ratio by more than 5%.

AMOUNT OF AREAS IN ABSOLUTE TERMS

In case of application of the amount of areas in absolute terms, the following example applies.

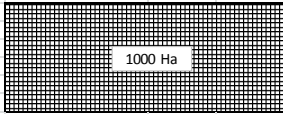
The reference ratio is 10%, given by the amount of permanent grassland at 100.000 ha and the total agricultural areas at 1.000.000. The limit in absolute terms of the areas of permanent grassland is therefore 500 ha (0,5% of 100.000 ha of permanent grassland). In case of changes of the areas, the obligation is complied with if the permanent grassland doesn't decrease above 500 ha, even if the total agricultural area increases.

ANNEX 2 – GRAPHICAL EXAMPLES OF CALCULATION OF NUMERATOR OF REFERENCE RATIO (PERMANENT GRASSLAND)

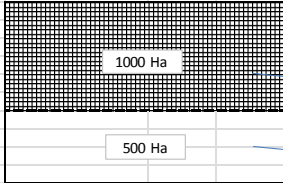


Further specifications of term "3 - PP declared 2012 converted into other uses subject to the limit set in Article 43(2)"

Case where the limit in Article 43(2) is applied



PG established after 2012 and declared in 2015 - 1000 ha
(only eligible hectares declared in 2012-2013-2014 as agricultural areas)

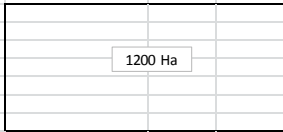


PP declared in 2012 converted into other uses - 1500 ha in total

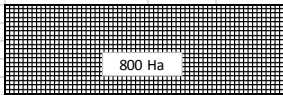
→ Area up to PG established after 2012 and declared in 2015 - 1000 ha:
become the term
3 - PP declared 2012 converted into other uses subject to the limit set in Article 43(2)

→ Area above PG established after 2012 and declared in 2015 - 500 ha:
this area shall not be part of the term
3 - PP declared 2012 converted into other uses subject to the limit set in Article 43(2)

Case where the limit in Article 43(2) is not applied



PG established after 2012 and declared in 2015 - 1200 ha
(only eligible hectares declared in 2012-2013-2014 as agricultural areas)



PP declared in 2012 converted into other uses - 800 ha
become the term
3 - PP declared 2012 converted into other uses subject to the limit set in Article 43(2)