

Eligibility for CAP Direct Payments of parcels containing trees

A guide on how agroforestry areas may be viewed in Pillar 1 of the reformed CAP

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The new Common Agricultural Policy regulations have changed the rules for eligibility of parcels containing trees for Direct Payments. This is described below in terms of a) **higher-level Regulations** agreed between the Parliament, the Commission and the Council, b) the **intermediate-level Delegated Regulations** (produced by the Commission), and c) the **lower-level Recommendations**³ (not compulsory, but providing guidelines for applicants).

Higher-level Regulations

Regulation 1307/2013

[Regulation 1307/2013](#), on direct payments to farmers, includes a new definition of “permanent grasslands” in **Article 4 H**:

*"Permanent grassland and permanent pasture" (together referred to as "permanent grassland") means land used to grow grasses or other herbaceous forage naturally (self-seeded) or through cultivation (sown) and that has not been included in the crop rotation of the holding for five years or more; it may include other species such as shrubs and/or trees which can be grazed provided that the grasses and other herbaceous forage remain **predominant**⁴ as well as, where Member States so decide, land which can be grazed and which forms part of established local practices where grasses and other herbaceous forage are traditionally not predominant in grazing areas;*

Implications: any land considered “permanent grassland” is eligible by definition. Therefore, all grazing land where grass is predominant, will be eligible. This seems to imply that grasslands with trees (such as the Spanish *dehesa* in Fig. 1) are fully acceptable as permanent grassland if crown cover is below 50%, which is frequent in silvopastoral systems. Member States could

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³ “Recommendations” are produced by the Commission after discussion with Member States. They are much more open to revision than Regulations. Even if they are not of compulsory application, in practical terms they are usually perceived as such by Member States.

⁴ A further definition of ‘grassland’ based on **canopy cover** is given in Regulation 1307/2014, which relates to two Bioenergy Directives, and says that ‘grassland’ means *terrestrial ecosystems dominated by herbaceous or shrub vegetation at least 5 years continuously. It includes meadows or pasture that is cropped for hay but excludes land cultivated for other crop production and cropland lying temporarily fallow. It further excludes continuously forested areas as defined in Article 17(4)(b) of Directive 2009/28/EC unless these are **agroforestry systems** which include land-use systems where trees are managed together with crops or animal production systems in agricultural settings. The dominance of herbaceous or shrub vegetation means that their combined ground cover is larger than the **canopy cover** of trees”*

locally specify that higher crown covers are acceptable as wooded grassland, but recent experience in Estonia suggests that the Commission auditors will not be keen to accept this.

The word 'predominant' (related to the herbaceous component) was in previous definitions of permanent grassland, but the underlined section above is new for the CAP 2014-2020. It opens the way for grasslands to contain a higher proportion of trees or shrubs, provided that they "can be grazed" (more details below).



Figure 1 - Despite being the keystone of dehesas, oak trees that provide acorns and fodder for livestock risk not being considered "grazable trees" by the Commission, and farmers will be penalised by reduction (or elimination) of their direct payments for such silvopastoral parcels. (photo - G. Moreno)

Regulation 1307/2013 Article 33 (b) (ii) confirms that direct payments will be made to "any area which gave a right to payments in 2008 under the single payment scheme..." AND ... (ii) for the duration of the relevant commitment by the individual farmer, is afforested pursuant to Article 31 of Regulation (EC) No 1257/1999 or to Article 43 of Regulation (EC) No 1698/2005 or to Article 22 of Regulation (EU) No 1305/2013 or under a national scheme the conditions of which comply with Article 43(1), (2) and (3) of Regulation (EC) No 1698/2005 or Article 22 of Regulation (EU) No 1305/2013.

This therefore mentions Article 22 (afforestation) but NOT Article 23 (new agroforestry). Further, it could be possible for a Member State to consider that new afforestation is eligible "under a national scheme the conditions of which comply with Article 22 of Regulation 1305/2013".

Regulation 1306/2013

In [Regulation 1306/2013](#), on financing, management and monitoring of the CAP, we find:

Article 22 (b) says ... *ensure agri-economic and agri-environmental monitoring of agricultural land, including **agro-forestry**, and monitoring of the condition of crops so as to enable estimates to be made, in particular as regards yields and agricultural production;*
Note this recognition that ‘agro-forestry’ is regarded as a type of ‘agricultural land’.

Article 76.2 indicates that the Commission is empowered to adopt ‘delegated acts’ concerning *inter alia: rules on the inclusion of landscape features located adjacent to a parcel, and rules on how to deal with cases in which eligible areas contain landscape features or trees*

This Regulation also includes many mentions of Cross Compliance rules and penalties. **Annex II** lists the Statutory Management Requirements (SMR) and Good Agricultural and Environmental Conditions of land (GAEC) which together comprise Cross Compliance. While the most important of these for agroforestry is GAEC-7 (*Retention of landscape features, including where appropriate, hedges, ponds, ditches, trees in line, in group or isolated, field margins and terraces*) there are others where the environmental role of agroforestry trees could be invoked⁵⁻⁶.

Implications: as GAECs override the rules used to reduce direct payments based on tree numbers or on tree (and shrub) cover, governments can choose to protect by GAEC, and thus make fully eligible, landscape features such as trees or hedges.

Intermediate-level Regulations

Commission Delegated Regulation 640/2014

[Commission Delegated Regulation 640/2014](#) (supplementing and interpreting Regulation 1306/2013) devotes its Chapter II to “**Agricultural parcels with landscape features and trees**”. There are two Articles in the Chapter:

Article 9 “Determination of areas where the agricultural parcel contains landscape features and trees”:

1. *Where certain landscape features, in particular **hedges**, ditches and walls, are traditionally part of good agriculture cropping or utilisation practices on agricultural area*

⁵ SMR1 - protection of soil water against pollution from nitrates, GAEC1 - buffer strips along water courses, GAEC3 - protection of groundwater against pollution, GAEC4 - minimum soil cover; GAEC5 - minimum land management reflecting site specific conditions to limit erosion; GAEC6 - maintenance of soil organic matter content; Biodiversity (SMR 2 and 3); and, most notably, GAEC7 protection of landscape features - including trees and hedgerows.

⁶ A [Guidance Note](#) 20/06/2014 Working Document on the implementation by Member States of certain provisions of the direct payments (Regulation (EU) No 1307/2013 gives further information on the Landscape Features which may qualify for Ecological Focus Areas.

in certain regions, **Member States may decide that the corresponding area shall be considered part of the eligible area** of an agricultural parcel within the meaning of Article 67(4)(a) of [Regulation \(EU\) No 1306/2013](#) **provided that it does not exceed a total width to be determined by the Member State concerned. That width shall correspond to a traditional width in the region concerned and shall not exceed 2 metres.**

2. **Any landscape features subject to the requirements and standards listed in Annex II to Regulation (EU) No 1306/2013 which form part of the total area of an agricultural parcel shall be considered part of the eligible area** of that agricultural parcel.
3. An agricultural parcel that contains scattered trees shall be considered as eligible area provided that the following conditions are fulfilled:
 - a) **agricultural activities can be carried out in a similar way** as on parcels without trees in the same area; and
 - b) the **number of trees per hectare** does not exceed a maximum density.

The maximum density referred to in point (b) of the first subparagraph **shall be defined by Member States** and notified on the basis of traditional cropping practices, natural conditions and environmental reasons. **It shall not exceed 100 trees per hectare.** However, that limit shall not apply in relation to the measures referred to in Articles 28 and 30 of Regulation (EU) No 1305/2013⁷

This paragraph **shall not apply to scattered fruit trees** which yield repeated harvests, to **scattered trees which can be grazed in permanent grassland** and to permanent grassland with scattered landscape features and trees where the Member State concerned has decided to apply a pro-rata system in accordance with Article 10.

Article 10, Pro-rata system for permanent grassland containing landscape features and trees. Note: this is an alternative to the above (Article 9) but is only applicable to permanent grasslands.

1. As regards permanent grassland with **scattered ineligible features, such as landscape features and trees**, Member States may decide to apply a pro-rata system to determine the eligible area within the reference parcel.
The pro-rata system referred to in the first subparagraph shall consist of **different categories of homogeneous land cover types for which a fixed reduction coefficient based on the percentage of ineligible area** is applied.
2. Any landscape features subject to the requirements and standards listed in Annex II to [Regulation \(EU\) No 1306/2013](#) which form part of the total area of an agricultural parcel shall be considered part of the eligible area.

⁷ These are exemptions for agri-environment-climate and nitrate-sensitive zone payments. As a result, the “eligible area” for these payments may be greater than for direct payments. Additionally, agricultural land afforested with EAFRD funds remains eligible for direct payments for the duration of the maintenance aids.

3. *This article shall not apply to permanent grassland containing fruit trees which yield repeated harvests.*

Implications: This Delegated regulation makes it clear that for arable crop areas (Fig. 2) a limit of up to 100 trees will be applied⁸, whereas in permanent grassland MS may choose between using the same limit, or applying the pro-rata system, which does not contain a specific tree density limit.

It is also very relevant that trees or other landscape features protected by the Cross Compliance do not restrict eligibility in any way: e.g., **such trees will not count towards the 100 tree/ha limit or the pro-rata reductions**, and such hedgerows do not have to comply with the 2-m-wide limitation to remain eligible.



Figure 2 - To remain eligible, silvo-arable systems must have a tree density below 100 trees per hectare, unless Member States decide to protect tree rows under GAEC7 (photo - C. Dupraz)

This does not mean that all trees or hedges are protected by Cross-Compliance. It is the Member States choice, and different countries may apply this differently. For instance:

- In France, the [Minister of Agriculture announced on 1st December 2014](#), and ratified in [this press release](#), that hedges will be protected by GAEC7. A similar protection will be offered for silvopastoral systems of pigs grazing in oak or chestnut forests (see last slides in [this presentation](#)).
- In Spain, [the Ministry has offered protection by GAEC](#) to: i) hedges and boundaries up to 10-m wide, ii) groups of trees with a surface area below 3000 m², iii) patches of rock or natural vegetation below 1000 m².

⁸ Member States could choose to allow herbaceous tree-rows within silvo-arable plots to be considered as 2 m wide hedges (there is ample evidence that they have high biodiversity value)

Lower-level Regulations

The [Guidance Document on the Land Parcel Identification System](#) (LPIS) provides details to Member States on how to implement Articles 5, 9 and 10 of the aforementioned Commission Delegated Regulation (EU) No. 640/2014.

This “LPIS Guidance” defines the rules for delineating the three types of ‘agricultural land’ (arable land, permanent grassland and pasture, permanent crops (including SRC)). Also has a restricted view of the eligibility of “**scattered trees which can be grazed in permanent grassland**”, which can be included in a parcel in addition to the normal thresholds in Article 9 (100 trees) for non-grazable trees. The interpretation says that the tree should be “*actually accessible to farm animals for grazing for their full area*”, and therefore excludes trees which contribute valuable fruit and fodder.

EURAF has written to the EU asking that tree species that produce edible nuts (e.g., oaks) or where branches are traditionally cut for fodder (e.g., ashes) should be considered “grazable” and remain fully eligible, even if their crowns are beyond the reach of livestock.

Example of how all this is being applied

SPAIN

Pro-rata applied to permanent pastures, e.g., *Dehesa* systems.

- Grouped trees:
 - Surface area > 2500 m²: these areas are identified as woodland in the LPIS and excluded from direct payments.
 - Surface area < 2500 m²: fully eligible, with the backup of GAEC protection.
- Isolated trees:
 - “Grazable”: eligible. (full direct payments)
 - “Non-grazable”: discounted through a “Coeficiente de Admisibilidad de Pastos”, in application of the pro-rata system. (partial direct payments)
- Thick shrubby areas:
 - Surface area > 400 m²: excluded by delineation (no direct payments) as it is considered to prevent livestock from accessing (thus grazing) the area
 - Surface area < 400 m²: fully eligible, with the backup of GAEC protections
- Isolated shrubs:
 - “Grazable”: eligible (full direct payments) in theory.
 - “Non-grazable”: discounted through a “Coeficiente de Admisibilidad de Pastos”, in application of the pro-rata system. (partial direct payments)

Deadlines: Pro-rata coefficients ready by May 2015 (National Government initiative). Then, discussion and agreement with Regional Governments. Whole process needs to be finalised by November 2015.

Conclusion

It is likely that the rules imposed in the Delegated Regulation 640/2014 (Pillar I), together with the interpretations of the Guidance Document on the LPIS, will greatly reduce the uptake of Article 23 (Establishment of agroforestry systems) in Regulation 1305/2013 (Pillar II), and will have a negative impact on many traditional agroforestry systems. Indeed, Article 9 of the Delegated Regulation sets a threshold of 100 trees/ha as the limit above which **no Direct Payments will be made to farmers for their arable land**. In silvicultural terms it is nonsense to set a threshold using numbers of trees rather than percentages of crown cover, and in several other pieces of EU Legislation “grassland” is defined as having more herbaceous (or shrub) cover than tree cover (e.g., [Regulation 1307/2014](#)). This could have been a better approach to use in the Delegated Regulation - and it is not clear what consultation took place before this arbitrary limit was announced?

How can 100 seedlings, 100 saplings or 100 mature trees be treated equally? In almost all agroforestry systems 100 mature trees/ha is likely to be an acceptable upper limit of final **crop trees**, but in agroforestry, as in forestry, it is necessary to plant more than this to allow for selection of young trees with good form, and removal of those which are badly shaped or damaged.

Furthermore, the narrow interpretation of **the Guidance document on LPIS** regarding what to consider “trees that can be grazed” **is technically flawed**. Nuts fall seasonally to the ground and branches can be cut to feed livestock on leaves, so **such fodder trees should remain fully eligible for direct payments** as an integral part of permanent pastures.

Considering how restrictive the rules are on agroforestry features, **EURAF advises member states to consider using GAEC7 to create exemptions to these rules and make large hedges (over 2 m wide) and agroforestry trees (in line, in group or isolated) fully eligible.**