

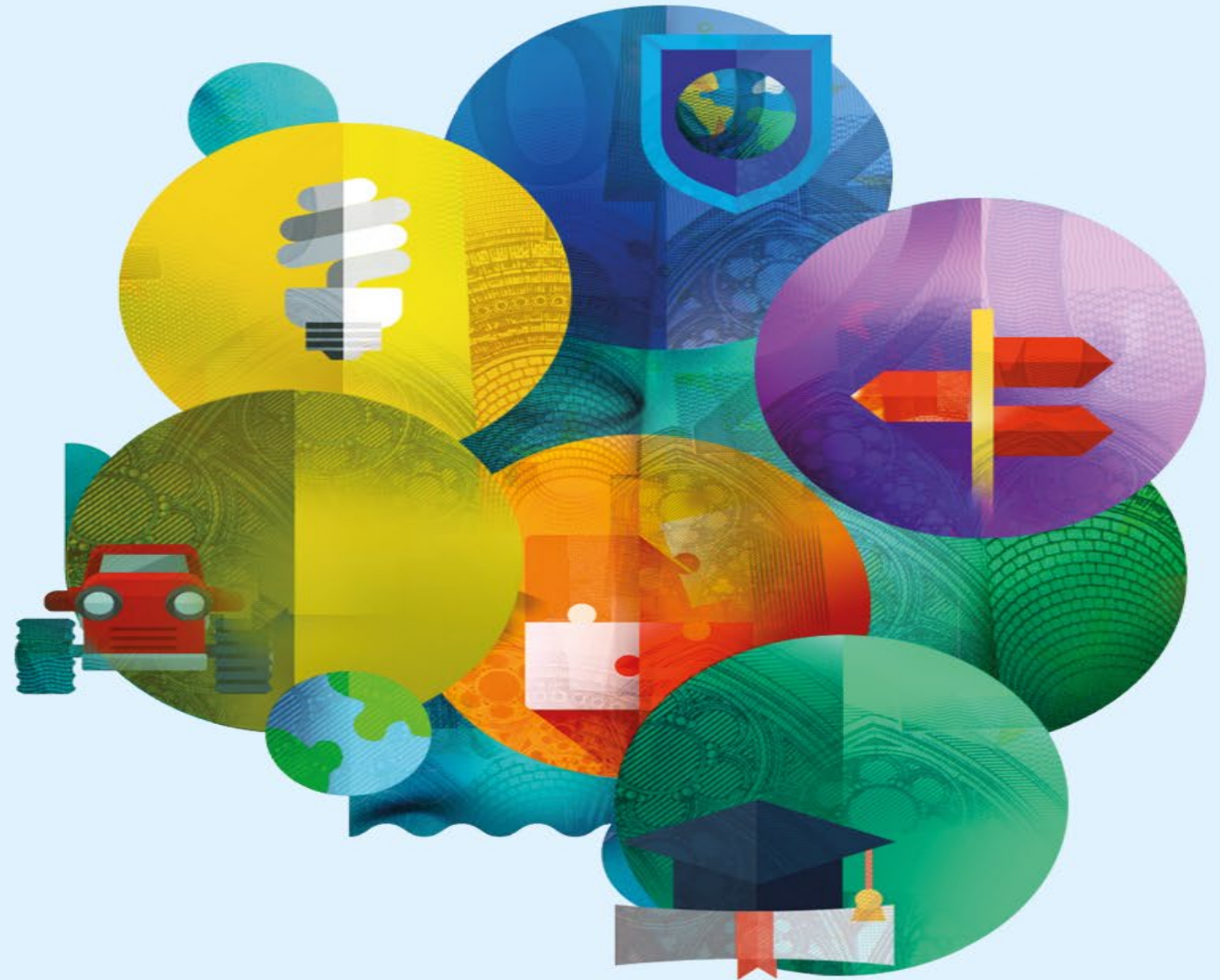
Definitions under the CAP Strategic Plan Regulation

Application in the CAP Strategic Plans in Member States

*CDG CAP STRATEGIC PLANS AND
HORIZONTAL MATTERS*

21.06.2023

DG AGRI, Unit B.1



Highlights of changes in land-related eligibility rules – more flexibility for Member States to address local specificities and needs

2014-2022		2023-2027	
The rule	Legal reference	The rule	Legal reference
No explicit rules on agro-forestry (AFS) - maximum of 100 scattered trees per ha	<ul style="list-style-type: none"> Art. 9(3) of Regulation 640/2014 	Agroforestry systems on agricultural areas (as defined by MS) are part of agricultural area	<ul style="list-style-type: none"> Art. 4(3) of the SPR
landscape features (LF) under retention obligation (GAEC 7) are eligible	<ul style="list-style-type: none"> Art. 9(2) of Regulation 640/2014 	LF under retention obligation (GAEC 8) are eligible (no change)	<ul style="list-style-type: none"> Art. 4(4)(b)(i) of the SPR
EFA LF – could be outside of eligible area and include adjacent LF; included detailed limits	<ul style="list-style-type: none"> Art. 46(2) of Regulation 1307/2013 Art. 45(4) of Regulation 639/2014 	GAEC 8 LF to be used to attain minimum share of arable land under <u>non-productive use</u> - are eligible; no detailed limits	<ul style="list-style-type: none"> Art. 4(4)(b)(ii) of the SPR Annex III of the SPR
-	-	LF under Eco-scheme - are eligible	<ul style="list-style-type: none"> Art. 4(4)(b)(iii) of the SPR
Other LF – could be included if not wider than 2 m and not bigger than 100 m2	<ul style="list-style-type: none"> Art. 9(3) of Regulation 640/2014 LPIS guidelines 	Other LF could be included under conditions to be defined by MS (not predominant and not significantly hampering the agricultural activity)	<ul style="list-style-type: none"> Art. 4(4)(b) second sub-para of the SPR

Highlights of changes in farmer-related eligibility rules – more targeting possibilities to address local specificities and needs

2014-2022		2023-2027	
The rule	Legal reference	The rule	Legal reference
'Farmer' is a natural or legal person <..> exercising an agricultural activity, i.e. production (of <u>Annex I</u> products) or maintaining land in a state suitable for production	<ul style="list-style-type: none"> • Art. 4(1)(a) of R1307/2013 • Art. 4(1)(c) of R1307/2013 	'Farmer' is a natural or legal person <..> exercising an agricultural activity, i.e. production (<u>Annex I</u> products) or maintaining land in a state suitable for production (no change)	<ul style="list-style-type: none"> • Art. 3(1) of the SPR • Art. 4(2) of the SPR
Active farmer: <ul style="list-style-type: none"> - Optional (after 'Omnibus') negative list: No direct payments for farmers operating airports, real estate services, etc., unless farmers 'rebut'; - Optional further exclusion based on income test, and/or principal activity/company object. 	<ul style="list-style-type: none"> • Art. 9 of R1307/2013 • Further details in R639/2014 	Only active farmers , engaged in at least minimum level of agricultural activity, as defined by MS, can receive support	<ul style="list-style-type: none"> • Art. 4(5) of the SPR
Minimum requirements: No direct payments to <u>a farmer</u> , if area claimed or amount to be granted is less than 1 ha or EUR 100 or adjusted within EU defined limits.	<ul style="list-style-type: none"> • Art. 10 of R1307/2013 • Annex IV of R1307/2013 	Minimum requirements: No direct payments to <u>a farmer</u> , if area claimed or amount to be granted is below area/monetary threshold, as defined by MS.	<ul style="list-style-type: none"> • Art. 18 of the SPR

Overview of Member States' decisions in their CSPs (land –related rules)

- Overall, Member States tend to continue applying the land-related eligibility rules from previous EU legislation, with a **relatively small uptake of flexibilities**, available to them under the SPR;
- However – there is **an increase in environmental ambition** of the CAP in a number of Member **States' decisions regarding eligibility for support** (more balance between agricultural activity and environment/climate/biodiversity);
- E.g. Member States' decisions to tolerate **more/bigger landscape features and/or more trees in the agricultural parcels (possible increase of eligible areas)**:
 - Agro-forestry on agricultural areas: different approaches, but **no CSP requests that trees are scattered and in most cases the limit of 100 trees/ha is increased or not set at all**;
 - Other LF not under GAEC: several MS (DE, DK, ES, HU, IE, NL, PT, SK) allow **more/bigger LF in the agricultural parcels**;
 - Definition of Permanent grassland: **more tolerance with 'productive trees and shrubs'** in case of non-predominance or absence of grass (CY, IE, BE-W).

Overview of Member States decisions in their CSPs (rules related to eligibility of farmers)

- **Status-quo dominates** in Member States' farmer-related eligibility rules;
- **New active farmer definition** – overall, **relatively low effort by Member States** to improve the targeting of CAP support. Most commonly used criteria (applied also before 2023) include:
 - The inclusion in official registers (social security, farmer register, VAT);
 - Income test;
 - Setting minimum farm size (either physical or in economic terms).
- An example of ambitious **targeting** – BE-FL (**compliance with cumulative criteria requested**).
- **Minimum requirements** to receive direct payments – carry-over of the old limits:
 - No changes on **area thresholds** (varies per Member State between 0,3 and 4 ha);
 - Few changes on **monetary thresholds** (varies per Member State between EUR 100 and 500): FI, HR, MT, RO – increased, while EL – decreased it.

Specific focus: Eligibility of areas under paludiculture

Paludiculture – in short – productive use of wet areas.

2014-2022		2023-2027	
The rule	Legal reference	The rule	Legal reference
In principle, only eligible if crops are within Annex I to the TFEU (or short rotation coppice - SRC).	Art. 4(1)(c) of Regulation 1307/2013	Continuation of Annex I products (and SRC) eligibility	Art. 4(2) of the SPR
		New rule: coverage of cultivation of non-Annex I products when under:	
		<ul style="list-style-type: none"> • EU interventions (Pillar II) under IACS or national schemes (limited to previously eligible areas) 	- Art. 4(4)(c)(ii) of the SPR
		- Eco-schemes (Pillar I).	- Art. 4(4)(c)(ii) of the SPR

Specific focus: Eligibility of areas under agri-photovoltaic (Agri-PV)

Agri-PV – in short – agriculture and energy production on the same land at the same time.

2014-2022		2023-2027	
The rule	Legal reference	The rule	Legal reference
Land eligible when agri activities can be exercised without being significantly hampered by the intensity, nature, duration and timing of non-agri activities	Art. 32(2)(a) and 32(3)(a) of Regulation 1307/2013	Land eligible when it is predominantly used for agricultural activities based on conditions to be defined by MS	Art. 4(4)(a) of the SPR
Possibility to draw a negative list of areas predominantly used for non-agri activities	32(3)(b) of Regulation 1307/2013	-	-
The jurisprudence of the ECJ (Case C-61/09 - Landkreis Bad Dürkheim; C-422/13 – Were and C-684/13 – Demmer) tend to accept any situation where the agricultural activity is/can be performed			

Eligibility of areas under paludiculture (Non-Annex I) in Member States' CSP

- Under the (optional) section on 'National schemes on paludiculture' (section 4.1.3.7) of the CSP:
 - 4 MS (DE, IE, DK, IT) confirmed **to use national schemes to maintain eligibility** of agricultural areas allowing for the production of non-Annex I products **via paludiculture**;
 - 1 MS (NL) provided a link to the established Eco-scheme thanks to which agricultural areas converted to the cultivation of non-Annex I products via paludiculture can be granted CAP support (limited to areas which were eligible to DP before).
- **Support for paludiculture** of non-Annex I products may be provided **via different EU interventions (e.g. investments, AECC, cooperation, etc. linked with peatlands and wetlands)**;
- Around half of CSPs have interventions for restoration / maintenance of peatlands and wetlands *beyond the requirements under GAEC 2* (could encompass paludiculture), but only 3 of them (NL, DE and IT) specifically mentions it.

Eligibility of areas under Agri-PV in Member States' CSP

- Under the section on '**Predominance of agricultural activity**' (section 4.1.3.1) of the CSP:
 - 2 MS (DE, FR) provided explicit indications regarding the eligibility of agricultural areas with Agri-PV systems (detailed implementation rules – at national level);
 - In most cases MS request that non-agricultural activities do not adversely affect the soil, crop vegetation, etc. and/or set the maximum duration of the non-agricultural activity.
- Support for the establishment of Agri-PV systems may be provided via different EU interventions (e.g. investments, diversification, cooperation);
- Most of Member States (21) provide for EU interventions in relation to renewable energy production in general (without necessarily specifically indicating Agri-PV);
- In case PV deployment is supported – own-use restriction dominates, deployment on agricultural land usually allowed, but it rarely requests that it is an Agri-PV (e.g. SK, LV).

Your views are welcome

- Are there observed difficulties regarding the land and the farmer related eligibility rules under the new CAP?
- Any specific issues to raise regarding paludiculture (non-Annex I products) and Agri-PV?