



FACE infonote: Land eligibility rules under the new CAP Version: December 2022

Introduction

Eligibility rules under the new CAP provide more flexibility to Member States to ensure that a farmer can receive CAP payments even if there are non-productive features present in his farm. This is a key element to reverse the current biodiversity crisis that has affected small game over the last decades. In the past, farmers in many Member States cleared important habitats for small game (trees, hedgerows, riparian woody vegetation, stone walls and terraces, ditches, ponds) to avoid losing their CAP payments because these features were not recognised as “eligible”.

1. Land eligibility rules

Below is a list of crucial elements for biodiversity and small game, depending on Member States’ decisions within the flexibility provided by [Regulation \(EU\) 2021/2115](#). In other words, farmers will continue to receive CAP payments if the following elements are present:

- **Agroforestry system**¹: the whole agroforestry system presented on the agriculture area will be eligible for direct payments, which is not the case under the current system (in force until 31/12/22). It is up to each Member State to define elements of agroforestry systems taking into account local conditions.
- **Permanent grassland**²: Member States have to lay down the definition of grass. It is also possible for Member State to include in the definition of grassland productive trees/shrubs even if grass is not predominant or absent.
- **Landscape features (not under GAEC no 8 on minimum share of agricultural area devoted to non-productive areas or features and retention of landscape features)**³: If Member States so decide, ‘eligible hectare’ may contain other landscape features, provided they are not predominant and do not significantly hamper the performance of the agricultural activity due to the area they occupy on the agricultural parcel. In implementing that principle, Member States may set a maximum share of the agricultural parcel covered by those other landscape features.

Derogations from the so-called standard eligibility rules

In particular, we want to draw your attention to the paludiculture option, which could open the doors to several activities beneficial to waterbirds.

- **Paludiculture**⁴: Agricultural areas should not become ineligible for direct payments when cultivated with non-agricultural products (not included in [Annex I of TFEU](#)) by way of paludiculture under either Union or national schemes which contribute to achieving one or more environmental or climate-related objectives of the Union⁵. The list of current derogations have been further extended to include rewetted agri areas used for paludiculture.

¹ Under the current system, there are no explicit rules on agroforestry, the limit was 100 scattered trees per ha.

² Under the current system, there are Limits on the inclusion of ‘productive’ shrubs.

³ Under the current system, maximum limits were 100 trees per ha; 2 m width of hedges, ditches; 100 m² per feature (LAND PARCEL IDENTIFICATION SYSTEM “LPIS” guidelines).

⁴ Under the current system, list of directives and commitments enabling the farmer to maintain eligibility without agriculture activity.

⁵ Please note that paludiculture to produce agriculture products listed in ANNEX I of TFEU is already recognised under the definition of agriculture activity.

2. State of play

It is important to keep in mind that the new CAP Regs. provide flexibility, **but it is up to Member States to use it**. According to the information provided by DG AGRI (September 2022), so far there has been “a relatively modest uptake of flexibility”. Further, “some flexibility has been more exploited than others (e.g., agroforestry).”

3. Land eligibility rules in Member States: overview

The slides below are taken from the EC presentation at the FACE event on CAP, which took place on 7th September 2022. The full presentation is available [here](#) and the webinar can be re-watched [here](#).

➤ AFS on agricultural area:

- Often limits of 100 trees (or even less) per ha remain, but it no longer needs to be scattered;
- Some MS set no limit to the number of trees (AT, BG, EE, FR, FI, RO, SE) or go above 100 trees (DE: <200, IE: <1000, HU: <250 trees or <4000 units of SRC, EL: up to 40% of the area, SK: 80-120, IT <250, BE-F: 30-200, DK >100 of broad leaf trees);
- Some MS (PL) request AFS to meet the same requirements necessary for the establishment of AFS systems under PII, others (PT, DK) define a minimum number of trees, while ES allows different derogations from the general 100 trees limit.

➤ PG definition:

- Majority of MS use the same definition of grass as under the current rules;
- Few MS (IE, CY, FR (in some regions), ES, EL) further extend the definition by including areas covered by trees and shrubs which produce animal feed when the grass is not predominant or is absent;
- Few MS (BE-W, DE, SE, PT, IT) accept as PG areas with no predominance of grass only in case of PG-ELP (it was also possible under the current rules).



➤ Inclusion of other LF (not protected under GAEC) into the eligible area:

- Majority of MS either use principally the same limits as in the current regulation (2m width, 100 trees per ha, max 100 m2) or do not include these features at all;
- Only few MS tolerate LF of bigger size (e.g. DK: < 1 ha and < 20% of the parcel; IE, HU: no limit, but < 30% (HU) and < 50% (IE) of the parcel; DE: < 500 m2 and < 25% of the parcel, NL: up to 1,5 ha).

➤ Pro-rata on PG:

- Continuation of the current rules prevail;
- Only few MS (DK, IE, EL) increase the ‘tolerance’ threshold (for full eligibility) above 10%

➤ Derogations from ‘standard’ eligibility rules:

- 5 MS (DE, IE, DK, NL, IT) decided to maintain eligibility of rewetted agri areas used for the cultivation of non-Annex I products via paludiculture in accordance with a national scheme (new possibility in the EU legislation).



4. Recommendations

Eligibility rules under the new CAP provide more flexibility to Member States to ensure that farmers can receive direct payments even if they have non-productive features present in the eligible hectare. This means that important habitats for small game can be preserved.

Hence, it is important for hunters' associations to approach relevant authorities at national level to discuss if your country has made full use of this new flexibility in its Strategic Plan.

Since CAP Strategic Plans are a new tool Member States are using for the first time, adjustments will be allowed after CAP Strategic Plans will enter into force on 1 January 2023.

We encourage you to also approach national farmers' associations and other nature conservation NGOs to understand their interest in these new eligibility rules.

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