

3. Agroforestry and CAP Direct Payments

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Comments to policy@euraf.net



Many farmers are concerned that if they plant trees on farmland that it will be considered as “forest” and they will lose land value and basic payments. If this doesn’t happen immediately, they worry that it may happen in the future. So what is the background? Are these fears justified? What follows is a little dry, but hang-in there!

The current CAP there are three levels of EU policy deciding the rules of eligibility of farmers to claim full Direct Payments for parcels containing trees. At the **highest level**, rules are set in two Regulations.

Regulation 1306/2013 (The so-called “basic act”) sets the rules for “financing, management and monitoring of the CAP”. Article 12 & Annex I describe the Farm Advisory Service, and indicates that information should be collected on the impact of “farming and agroforestry practices” on climate change mitigation and adaptation, biodiversity and protection of water. Article 22b confirms that “agroforestry” is seen as a type of agricultural land, subject to the same conditions for agri-economic and agri-environmental monitoring as other lands. Article 91-101 & Annex II describe the rules for “cross-compliance” - i.e. the Good Agricultural And Environmental Conditions (GAEC) and Statutory Regulations which farmers must comply with to gain eligibility for Direct Payments. Crucial for agroforestry is GAEC7 which involves the “retention of landscape features, including where appropriate, hedges, ponds, ditches, trees in line, in group or isolated, field margins and terraces ...” Member States vary greatly in the degree and accuracy with which landscape features are monitored in their Land Parcel Information Systems ([European Court of Auditors, 2016](#)).

Regulation 1307/2013 sets the “rules for direct payments” to farmers and governs the “greening” payments, whereby 30% of the payments to larger arable farmers are withheld until they can demonstrate compliance with rules relating to crop diversification, maintaining permanent grassland and dedicating 5% of their arable land to “areas beneficial to biodiversity” - i.e. so-called Ecological Focus Areas (EFA). “Hectares of agroforestry” and “Landscape Features” are included within the options which Member States can make available to their farmers in their annual IACS/LPIS returns. However less than 3% of the total EFA Area has so far consisted of these EFAs, despite the fact that they consistently demonstrate the highest biodiversity value in scientific studies ([European Commission, 2016](#); [European Court of Auditors, 2017](#); [Tziliyakis et al., 2016](#)). Article 4b of this Regulation includes a flexible definition “permanent grasslands” - which “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; 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”.

At an intermediate level comes [Delegated Regulation 640/2014](#) (“supplementing and interpreting Regulation 1306/2013 with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties ...”) - which devotes its Chapter II to “Agricultural parcels with landscape features and trees”. There are two relevant Articles.

- **Article 9** “Determination of areas where the agricultural parcel contains landscape features and trees” This article first clarifies that any area declared as “landscape features” (including hedges wider than 2 meters if the MS has requested this) can be considered as fully eligible. Trees which are not declared as “landscape features” can be considered fully eligible if 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

¹(1) [Agroforestry in the New CAP Green Architecture](#); (2) [Agroforestry in the EU Forest Strategy](#) (3) [Agroforestry & Direct Payments](#); (4) [Agroforestry & Enhanced Conditionality](#); (5) [Agroforestry & Ecoschemes](#); (6) [Agroforestry in Pillar II](#); (7) [Agroforestry & Monitoring of Strategic Plans](#); (8) [Agroforestry for Carbon Farming](#); (9) [England Clarifies its Agroforestry BPS Rules](#).

maximum density - to be defined by MS, but not to exceed 100 trees/ha².

- **Article 10**, Pro-rata system for permanent grassland containing landscape features and trees. This is an alternative to the above (Article 9) but is only applicable to permanent grasslands. It does not apply to trees which have been recorded as "landscape features" or "permanent crops" (e.g. fruit trees which "yield repeated harvests").

Lower Level EU "Guidance Documents" give further advice to member states on the interpretation of the above Regulation, but the guidance is not mandatory.

- The "LPIS-Guidance" ([DSCG2014-33](#)) advises on how to implement Articles 5, 9 and 10 of the Commission Delegated Regulation (EU) No. 640/2014 (see above). It clarifies the rules for delineating the three types of 'agricultural land' (arable land, permanent grassland, permanent crops (including Short Rotation Coppice), and limits the interpretation of "grazable trees" in Regulation 640/2014 to trees which are "actually accessible to farm animals for grazing for their full area". This therefore excludes many valuable agroforestry trees which are cut and fed to animals for their fruit and fodder - often in times of drought.
- The "Geo-spatial Aid Applications Guidance" ([DSCG2014-39](#)) indicates that MS should provide annually to farmers a copy of relevant information held for their farm in a GIS format.
- The EFA Layer Guidance ([DCSG2013-31](#)) shows the size and position on a farm of all EFA types chosen by the Member State. EFAs should be "stable in time and/or expected to remain for at least 3 years". This layer can therefore include hectares of agroforestry and landscape features like hedges, tree lines, groups of trees and isolated trees.
- Agricultural Commissioner letter to Paul Brannen MEP ([A4075022](#)) This letter was written in October 2016 in response to a EURAF [Report](#) highlighting the contradictory messages towards agroforestry in Pillar I and Pillar II rules. EURAF made it clear that a degree of selection and thinning was needed in Pillar II agroforestry planting schemes, and that at least 400 seedlings/ha should be permitted, rather than the 100 mentioned above. The response from Phil Hogan made clear that the age and size of a "tree" in the "100 tree rule" in Pillar I is entirely for Member States to determine, and that it was not intended to relate to "seedlings" in relation to the initial tree-planting density of Pillar II agroforestry schemes.
- For the new CAP (2021-2027) a Council working paper ([2018/0216-COD](#)) on "eligibility of agricultural areas, which contain ineligible features such as landscape features and trees, for direct payments" has been published which contains the following wording.
 - An example of what this flexibility will allow is the case of agroforestry. Currently, situations of conflict between this type of agricultural practices and rules on the eligibility of trees set in the EU legislation were often denounced by Member States and stakeholders. In the future, according to the proposal, Member States would have the leeway to ensure agricultural area under agroforestry is fully eligible when justified based on the local specificities (e.g. density/species/size of the trees and pedo-climatic conditions) and the value added of the presence of trees to ensure sustainable agricultural use of the land. It is also important that this encompasses all possible agricultural land uses, avoiding to include trees only on arable land, as agroforestry systems are present also on permanent grassland and permanent crops.

Which leads to our next recommendation

- 4. Member States should clarify to farmers that they will have complete flexibility in the next CAP to make full Direct Payments on fields containing agroforestry. In the present CAP they have this flexibility too, since they can rule that only trees above a certain size (e.g. 4m crown diameter) count towards the 100 tree/ha threshold.**

² If the trees are fruit trees or if the parcel is subject to Pillar II ([Regulation 1305/2013](#)) Article 28 (agri-environment-climate) or Article 30 (Natura 2000 and Water Framework Directive) Payments the threshold tree density does not apply.

References

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- European Court of Auditors, 2016. The Land Parcel Identification System: a useful tool to determine the eligibility of agricultural land - but its management could be further improved (No. Special Report 25/2016).
- Tzilivakis, J., Warner, D.J., Green, A., Lewis, K.A., Angileri, V., 2016. An indicator framework to help maximise potential benefits for ecosystem services and biodiversity from ecological focus areas. *Ecol. Indic.* 69, 859–872.