EUROPEAN FORUM ON
NATURE CONSERVATION
AND PASTORALISM

Permanent Pastures and Meadows under the CAP: the situation in 6 countries

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Acknowledgements: Thanks for invaluable input to Marc Dimanche (France), Katrina Marsden (RSPB Scotland), Sofia Blom and Jörgen Wissman (Sweden), Aleksei Lotman, Pille Koorberg, Eike Lepmets and Iiri Selge (Estonia), Miles King (UK), James Moran (Ireland), Alvaro Picardo, Jesús Bachiller and Alfonso San Miguel (Spain)

Sources and funding: This report draws on six country case studies – Bulgaria, Estonia, France, Northern Ireland, Scotland and Sweden – produced by EFNCP with the help of national experts and supported by the Swedish Rural Development Network and the Swedish Society for Nature Conservation.

The present report was informed by a seminar organised in Brussels on 19th May 2011 with the support of the Swedish Society for Nature Conservation and The Grasslands Trust, and part-funded by DG ENV (European Commission). The seminar involved a range of government and non-government representatives
http://www.efncp.org/events/seminars-others/permanent-pastures-brussels

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1 Introduction

Some types of farmland are exceptionally rich in environmental public goods. Permanent pasture[1] in particular has been highlighted by the Commission for its positive environmental effects. Under Pillar 2, agri-environment measures are widely used for incentivising the maintenance of environmentally appropriate farming on permanent pasture. In 2003 new Pillar 1 instruments were introduced in an attempt to safeguard the positive effects of permanent pasture.

There are many types of permanent pasture, and great variations in their agronomic usage. A significant part of Europe's permanent pastures are in a broadly "semi-natural" condition, meaning that they have not been recently reseeded or heavily fertilised. These semi-natural permanent pastures are of exceptional biodiversity importance compared with intensively managed permanent pasture. They are also an extremely important carbon store. Reseeding and fertilisation result in more grass production, but cause biodiversity to be greatly reduced and carbon storage to be reversed.

The present report was prompted by rising concern that certain Pillar 1 rules are not working well for semi-natural pastures. Some pastures of exceptional environmental value are excluded from Pillar 1 direct payments, thus increasing the threat of abandonment of these pastures, with consequent loss of active farming and environmental values. In some cases, farmland features associated with permanent pastures are excluded from the eligible area for direct payments, sometimes leading farmers to clear semi-natural habitats in order to ensure eligibility.

One consequence of these apparent failings of Pillar 1 mechanisms is to place a heavier burden on Pillar 2 measures, particularly agri-environment. Farming on considerable areas of semi-natural permanent pasture that are excluded from Pillar 1 payments is being supported through agri-environment measures, leading to a situation where Pillar 1 is effectively cross-subsidised by the Pillar 2 budget. In cases where farmland features, such as patches of scrub or large hedges, are excluded from the eligible area for Pillar 1, it is again agri-environment that steps in to promote positive management which might have been incentivised by well-adapted Pillar 1 mechanisms.

Could more effective mechanisms under Pillar 1, better adapted to the needs of semi-natural permanent pastures, relieve agri-environment of some of the burden of maintaining environmental values on this farmland, and provide a more robust foundation for targeted Pillar 2 measures?

The report examines how the current CAP, especially Pillar 1 and including Pillar 2 where appropriate, works for permanent pastures and associated farmland features. We present six brief country studies, produced by EFNCP with input from national experts. The case studies are: Bulgaria, Estonia, France, Northern Ireland, Scotland, Sweden.

The aim was to identify areas of policy needing improvement and to propose possible solutions. For some issues the solutions appear relatively straightforward, others are more complex and require deeper investigation and consideration.

The main CAP instruments examined in the case studies are:

- CAP definition of Permanent Pasture

[1] The term "permanent pastures" is used in this paper to include permanent meadows, as under CAP rules.

- Rules and Commission guidance on eligibility for Pillar 1 direct payments
- GAEC[2] mechanisms for controlling the extent of Permanent Pasture
- GAEC rules at holding level on minimum maintenance and deterioration of habitats
- Pillar 1 "greening" options, including application of a possible top-up premium for Permanent Pastures under low-intensity management
- Pillar 2 support for Permanent Pastures under low-intensity management as a possible EU-wide measure.

This report begins by reviewing the main issues and possible solutions emerging from the case studies. This review is followed by the six country reports.

According to the CAP definition of permanent pasture, these ligneous heather pastures in the North Yorkshire Moors (England) should not be eligible for Pillar 1 payments. National rules are more realistic and have always allowed them. © Copyright Anthony Parkes and licensed for reuse under Creative Commons Licence

[2] Good Agricultural and Environmental Condition – Regulation 73/2009

2 The range of permanent pastures under active farming

Permanent pastures include a range of vegetation types. Some are largely grass (herbaceous pasture), while others are dominated by shrubs (e.g. heather moorland). Tree cover is present on many types of permanent pasture, and in some cases is an integral part of the farming system, the leaves and fruits providing an important seasonal forage (e.g. dehesas, wooded meadows). Shrubs and trees (ligneous forage, as distinct from herbaceous) have been an integral part of actively-farmed permanent pastures for centuries.

The CAP has supported farming on the full range of permanent pastures for several decades in countries such as France, UK and Spain. When support was paid per head of livestock, there was no question of an active farmer not receiving CAP support because his pastures had the wrong type of vegetation. The farmer and his stock could and did receive support while using any legally available grazing land (in some cases this led to over-grazing). But with the move away from coupled payments per head of livestock to decoupled area payments, the delineation of eligible land has becomes a far more significant issue.

Now, decisions need to be taken about what land is eligible to claim support. Clearly delimitations and rules are needed, and should be implemented on the ground in such a way that public funds are used efficiently and in accordance with agreed policy aims. Land that is not being used or managed for farming should not be eligible for payments. But how this is determined is of crucial importance for permanent pastures, in all their European diversity.

The case studies find that there are major inconsistencies between Member States in the way that pastures with shrubs and trees are treated in relation to Pillar 1 payments. Some take an inclusive approach, and include large areas of actively-farmed ligneous pastures in their eligible areas, while very large areas of similar farmland are excluded from Pillar 1 support, especially in more recent Member States. These inconsistencies in the CAP have important implications for the achievement of EU goals for biodiversity and ecosystems, because many of the excluded types of pasture are habitats of European importance that require continued farming use for their conservation (for example, see photo below).

Spain. Variations of Natura 2000 Priority Habitat 6220 Pseudo-steppe with grasses and annuals (Thero-Brachypodietea). This type of permanent pasture covers approximately 400,000 ha within Natura 2000 sites in Spain. The Commission conservation guidance for this habitat states that "maintaining extensive grazing or restoring it where it is no longer present is necessary for preserving 6220 habitat type communities"[3]. As the photos illustrate, livestock make use of ligneous forage where this is present. Source: Alfonso San Miguel Ayanz

[3] http://ec.europa.eu/environment/nature/natura2000/management/habitats/pdf/6220_Pseudo_steppe.pdf

3 Permanent pasture decline and the loss of ecosystems dependent on farming

Semi-natural permanent pastures under active farming use cover many millions of hectares of EU farmland, typically in more marginal farming situations. However, they are suffering a general process of decline. It is notable that the CAP mechanisms introduced in 2003 to maintain permanent pasture was in order to prevent "a massive conversion to arable land". Yet this is not the main threat to the permanent pastures of highest environmental value. The main threats are intensification (especially reseeding and heavy fertilisation of meadows) while remaining in the CAP permanent pasture category, and increasingly abandonment and afforestation.

At a farm and local landscape level, the clear tendency observed in many regions is to abandon the semi-natural pastures (especially the least accessible) and to concentrate stock on more productive land, with increased intensification on this land, for example in Ireland (Kramm et al.2010), in Spain (Iragui Yoldi et al., 2010) and in Sweden (Jordbruksverket, 2010). Extensive livestock systems have gone into severe decline in some areas as shown by recent studies, for example in Scotland (SAC, 2008; McCracken et al., 2011). In Sweden the real threat of land abandonment is illustrated by the fact that 25% of surveyed farmers were doubtful about re-applying for Pillar 1 or RDP support.

Halting and reversing this decline of semi-natural permanent pastures, including ligneous pastures, is one of the biggest challenges for the maintenance of European biodiversity and wider ecosystem services. It is also vital for the social fabric of some of Europe's most marginal rural areas. The Commission's 2011 Consultation Document on CAP reform highlighted the abandonment threat faced by extensive grasslands.

The farmland habitats on Annex 1 of the Habitats Directive consist entirely of various types of semi-natural permanent pasture that require continued farming use for their conservation (some 40 of the approximately 200 habitats on Annex 1). Commission data show that these farmland habitats generally are in worse condition and are declining faster than other habitats types, such as forests. They extend far beyond designated Natura 2000 sites. The latest EU biodiversity targets include maintaining all of these habitats, not only within Natura 2000, as well as maintaining, enhancing and restoring ecosystem services (EC, 2011).

In drier regions of Europe, and more widely with future climate change projections, wild fires cause considerable loss of human life, environmental and property damage, and carbon release. Extensive grazing is an essential tool for reducing fire risk on semi-natural pastures with shrubs and trees. This activity also maintains landscapes accessible to tourists, and highly valued by the tourism industry.

Lack of economic returns from the market is the major factor driving the threat of abandonment of semi-natural pastures. Maintenance therefore cannot be achieved by imposing additional restrictions, either on all permanent pastures or specifically on these pastures. Experience with GAEC rules in several countries (e.g. see Bulgaria report) shows this. Such an approach is not only counter-productive but contradicts the principle of rewarding the delivery of public goods.

Halting and reversing the decline of semi-natural permanent pastures is essentially a socio-economic challenge - it is a question of providing sufficient support for the specific farming systems, and incentives for continued extensive use of the land.

4 Role of the CAP

The CAP is central to addressing this challenge. A greener CAP, more focused on public goods, should be well adapted to the needs of semi-natural permanent pastures. But how should it work in practice, and what should be the roles of the different elements of policy?

It is reasonable to expect that CAP Direct Payments should aim to ensure continued active farming use of semi-natural permanent pastures across the EU, as for farmland in general. For this to occur, the case studies show that special care must be taken to ensure that rules and regulations are not biased against their continued use, or against the maintenance of their special environmental values and features. The reports illustrate several issues that need to be resolved, and that are summarised below.

A robust system is needed for deciding which land is eligible for direct payments. The approach currently promoted by the Commission is to use criteria such as vegetation type and quantitative rules, e.g. on tree numbers and size of shrub patches. The alternative approach is to require a minimum level of farming or maintenance activity, for example minimum livestock density and/or grazing pressure, without dictating the vegetation characteristics of pastures.

Decoupling of CAP payments has increased the abandonment threat for economically marginal farming types that have less opportunity to be viable from the market. In these circumstances, the linking of direct payments to a minimum level of activity becomes even more relevant. The Commission is also retaining the option of using coupled payments in certain situations as a more direct measure of support for productive activity.

For the country case studies, authors considered the feasibility of introducing a Pillar 1 top-up premium to be offered to farmers with permanent pastures who wish to maintain these under non-intensive use (no ploughing or reseeding, no fertilisation except within defined limits). Such a scheme could be compulsory for Member States to implement, but voluntary for farmers to join.

Pillar 1 direct payments are complemented by measures under Pillar 2. Agri-environment schemes are used in many regions to incentivise management systems that maintain the exceptional values of semi-natural pastures, while other measures stimulate investment aid and bottom-up actions to support long-term sustainability. There seems to be no question that all types of pastures are eligible for Pillar 2 measures, regardless of the vegetation type.

Pillar 2 payments for extensive pasture management exist in several countries, with payment variations according to the country and the conditions applied, for example 100 euros/ha under ELS low-intensity grassland option in England, 124 euros/ha for HNV grasslands in Romania, 70 euros/ha for mountain grasslands in the Basque Country, 99 euros/ha in France combining the main Pillar 2 scheme with the existing special grassland premium under Pillar 1.

If considered at the EU level these schemes are inadequate in scale and cohesion at present – some regions are doing a lot, some very little. Several countries (Bulgaria, Estonia, Sweden) are having to use scarce Pillar 2 funds to support farming activity on permanent pastures that are *excluded* from Pillar 1, thus greatly exacerbating the budgetary challenges of Pillar 2.

An EU-wide scheme under Pillar 2 for the maintenance of semi-natural permanent pastures would require a considerable transfer of funds from Pillar 1 to achieve the necessary scale of application across the EU.

5 Permanent pastures definition under CAP

The current CAP definition of Permanent Pasture includes only "herbaceous" forage, basically grass - pastures of shrubs and trees are not included. There is no agronomic justification for this. In fact many Member States have always counted non-herbaceous pastures as eligible for CAP support, and many millions of hectares such pastures under active grazing use are currently in receipt of Pillar 1.

The problem is that some Member States have taken a more restrictive approach and have excluded considerable areas of pasture with shrubs and trees from support, probably influenced by a combination of the CAP definition of permanent pasture and its focus on "herbaceous pasture", plus the Commission guidance on eligibility (see next section). In Bulgaria for example, it seems that the focus of the CAP definition on herbaceous pastures was a key factor in making national authorities think that direct payments were intended primarily for more productive pastures, rather than for low-productivity types.

The Scotland report finds that the current definitions make no clear distinction between intensively managed grasslands and the more extensive, semi-natural types. From an agronomic and environmental point of view, there is too much overlap between temporary grassland and the more intensive permanent grasslands. This leads to confusion on the ground and in the LPIS data base in many countries, with parcels often put into the wrong category.

6 Eligibility criteria for Pillar 1 direct payments

The problem created by the permanent pasture definition (excluding non-herbaceous pastures) is compounded by the direct payment eligibility criteria, Commission guidance concerning allowable shrub and tree cover, and the way these are applied by Member States and by Commission auditors. A particular problem is the Commission recommendation that a parcel with more than 50 trees per hectare should be considered ineligible "as a general rule" (see Annex 1).

This is affecting over 1 million hectares across Sweden, Bulgaria and Estonia for example, mostly on pasture that requires grazing to maintain its exceptional biodiversity value. Much of the excluded pasture corresponds to Annex 1 habitats from the Habitats Directive that require grazing or mowing for their maintenance, including Alvar pastures, Fennoscandian wooded pastures and Fennoscandian lowland species-rich dry to mesic grasslands.

In some other cases, payments are reduced pro-rata in proportion to the coverage of shrub and tree canopies as EC guidance recommends, which fails to recognise that these may be part of the forage resource, just as grass is, or that herbaceous and shrubby fodder can and does grow under the tree canopy. In some other cases, trees and shrubs are removed by farmers to achieve eligibility and avoid heavy fines, resulting in loss of biodiversity.

A report on the Pillar 1 Single Payment Scheme by the European Court of Auditors (2011) confirms the point that: *In some Member States marginal land and wooded areas traditionally used for occasional grazing are accepted as being eligible while, in other Member States, such land is excluded from SPS aid.* The current inconsistency of approaches is thus made clear.

The same report states that *Such marginal land can quickly become overgrown with shrubs and forest, making it unsuitable for agricultural purposes.* In other words, by excluding such land from CAP direct payments, abandonment is made more likely.

Rules on including hedges as part of the eligible area are also causing problems, for example in Northern Ireland. Under Article 34(3) of Reg 1122/2009 (see Annex 1), a hedge >4m wide (or >2m wide if internal to the parcel) must be subtracted from the farm's eligible area. Hedges in High Nature Value (HNV) farming landscapes are often well over 4m in width (e.g. in Germany HNV hedges may be 5-10m in width, D. Fuchs, pers. com.), and in some cases these rules are leading farmers to destroy large hedges of great environmental value in order to avoid eligibility problems. Farmers who maintain environmental value on their land in the form of large hedges are penalised by having to deduct these features from their payment area.

However, as with many of these troublesome rules, Member States have had the *option* to make exceptions, and to allow hedges of *any* width to be counted in a farm's eligible area, if they inform the Commission that such hedges are explicitly treated as "landscape features" which a farmer must retain under GAEC. This option has been taken up by the Republic of Ireland, for example. This situation, where ill-conceived Commission rules cause problems that can only be solved by Member States making exceptions, seems to plague the system of eligibility for direct payments. The case studies suggest that the system should be designed to foster good practice, not to make good practice more difficult to achieve.

The Estonia report stresses that the way rules are designed and implemented has brought a lot of confusion to farmers – they were told they had to declare all their agricultural land for the purpose of GAEC, but what is agricultural land? Is it land they are actually using for grazing or for other agricultural purposes, however many trees it has per hectare, or just land eligible for direct payments according to the 50 tree and other rules?

It is essential to get all these rules right at the time when area payment systems are established, and authorities decide what is eligible and what is not. This is a difficult process for authorities and farmers, and flexible mechanisms are needed to enable corrections to be requested by farmers and adjustments to be made. In some countries (e.g. Estonia, Bulgaria) large areas of semi-natural permanent pasture were excluded by a top-down application of rigid rules, from the moment when direct payments were introduced. This difficult process will affect many more countries when the historic system of direct payments is replaced with regionalised area payments under the current reform.

The existing errors need to be corrected, and avoided in other countries as we move to a universal area payment system. Countries such as Sweden, Estonia and Bulgaria have made some adaptations to their rules in recent years (in Bulgaria, low-productivity pastures can now be eligible with up to 75 trees per ha, rather than 50 as previously) but serious problems and exclusions remain. These problems should have been avoided at the outset with more intelligent rules and guidance from the Commission, and with a more flexible and effective system of governance and dialogue.

Rules in some Member States seem well-adapted to realities on the ground. For example, local rules in France explicitly allow as eligible forage *areas of low productivity (extensive and rough grazing, moorland, woodland) including those with more than 50 trees per hectare if they show a resource of grass, shrubs or fruit (chestnuts, acorns) that are consumable, accessible and actually grazed/browsed by the flock*.

In Spain, there are specific LPIS categories for *shrub pasture* and *tree pasture*. In the region of Castilla y León (larger than Netherlands, Belgium and Luxembourg combined), approximately 40% of all farmland eligible for Pillar 1 support is in these categories, and may be in danger of losing support in the transition to a new area-payments system if Commission auditors take a strict approach to implementing permanent pasture eligibility rules.

Examples of well-adapted rules should be encouraged by the Commission services. The case studies suggest that basic Pillar 1 eligibility rules should be revised, and the governance at EU level improved, to ensure that permanent pastures and other farmland features of highest public-goods value are universally included in the basic Pillar 1 support scheme in all Member States.

The type of vegetation that is farmed or the presence of certain types of vegetation or patches and features of a certain size should not *a priori* be criteria for inclusion or exclusion of land from CAP direct payments. Detailed EU rules are not needed on the type of vegetation that counts as pasture, on the acceptable size of scrub patches or width of hedges, or the number of trees that a pasture can have.

The "50 tree rule" appears increasingly meaningless, as many Member States either do not apply the rule or have introduced higher thresholds and numerous other exceptions (e.g. France, Spain, UK, Sweden, Estonia, Bulgaria). The hedge-width rule is also not useful. A better approach would be for Member States to determine which landscape features are covered by GAEC and counted in the eligible area, and to determine any quantitative rules in a way that fits national circumstances.

The primary eligibility criterion for CAP direct payments should be that land is subject to a minimum level of farming use and maintained in GAEC, and this should be defined by national and regional authorities in a way that is adapted to local conditions and ensures maintenance of public goods.

In a significant clarification, the European Court of Justice (ECJ) has recently ruled that land where the overriding objective is landscape management and nature conservation *should not* be excluded from Pillar 1, if there is activity such as sheep grazing http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62009J0061:EN:HTML This case arose (Niedermair-Schiemann) from a farmer in Germany being excluded from Pillar 1 payments because the land was within a Natura 2000 area and was under a conservation management agreement (DVL et al., 2009).

Significantly, ECJ found that classification of land as "'permanent pasture' and, consequently, as 'agricultural area', depends on the actual use of the land in question. Thus, an area must be classified as agricultural where is it used as permanent pasture..."

7 GAEC minimum maintenance and preventing encroachment of unwanted vegetation

GAEC rules under Regulation 73/2009 address the important issue of how to "ensure a minimum level of maintenance and avoid the deterioration of habitats". Member States are *required* to define standards on "avoiding encroachment of unwanted vegetation on farmland". They also have the *option* to define standards for "minimum livestock stocking rates or/and appropriate regimes".

The GAEC term "unwanted vegetation" (combined with the term "herbaceous" in the permanent pasture definition) has been interpreted in some cases as a blanket assumption that the presence of shrubs on permanent pastures constitutes a "deterioration of habitat". This makes no sense - many Habitats Directive Annex 1 grasslands are mosaics of herbaceous and woody vegetation by definition, for example the widespread Habitat 6210 "Semi-natural dry *grasslands* and *scrubland facies* on calcareous substrates 'Festuco-Brometalia'". Clearly shrub encroachment cannot be considered a deterioration of habitat for all pasture types.

National standards on "unwanted vegetation" have created many problems in the case of semi-natural permanent pastures, including excessive clearance of shrubs resulting in biodiversity losses. In other cases, these rules can drive abandonment of land because the payments offered through the CAP are not sufficient for the farmer to justify clearance.

Farmers need to be encouraged to prevent abandonment and reverse neglect, so where GAEC rules on encroachment are applied, the emphasis should be on preventing gradual encroachment over time, rather than regarding the presence of a particular quantity of shrubs or trees as a breach of GAEC. Farmers should be advised of any corrective action that is needed, and given sufficient time (1 year) to adapt their management. This is the approach applied in Scotland, for example.

The case studies suggest that the preferred approach to defining "minimum maintenance" should be through minimum standards of positive management, such as the currently optional "minimum livestock stocking rates or/and appropriate regimes". As recommended by the European Court of Auditors (2011): *GAEC standards should require concrete and regular activities to be carried out by farmers for them to receive the full amount of the aid.* It should be made clear that *minimum* stocking rates on pastures (or visible evidence of grazing, as used in some French *départements)* are not a breach of the principle of payment decoupling.

The interplay between eligibility criteria and GAEC is crucial. Currently in some countries there seems to be excessive use of the eligibility rules where shrubs and trees are present, accompanied by exclusion of land from payments and heavy penalisation for incorrect claims. A pragmatic application of GAEC would be preferable. In other words, if a field appears to be invaded by unfarmed vegetation, the farmer should be advised of the changes in management required to comply with GAEC by the following inspection, rather than being immediately penalised for not meeting eligibility criteria and for making a false claim.

Under Article 13.8 of Regulation 1122/2009, farmers are required to declare all their land, including ineligible areas, and to comply with GAEC on this land in spite of not receiving direct payments on this land. This is a confusing situation for the farmer. All land and landscape features that are subject to GAEC should also be eligible for direct payments.

8 Rules to prevent decline of the extent of permanent pasture

In 2003, a mechanism intended to encourage the maintenance of existing permanent pasture was introduced to Pillar 1 of the CAP. This mechanism applies to land which was under permanent pasture in a reference year (2003, 2004 or 2007, depending on the Member State). If the ratio of this land to other farmland declines by 10%, authorities must take steps to reverse the decline. The mechanism is potentially valuable but weaknesses are apparent in the system.

A key problem is that the data on total area of permanent pasture are fundamentally flawed for some Member States, making the current "10% reduction" rules meaningless. Some of the most extensive and ecologically valuable permanent pastures are excluded from the data sent to the Commission by some countries because they have shrub and tree cover, even though they are under active grazing use (e.g. Bulgaria).

The data supplied to the Commission by Member States on hectares of permanent pasture refers to the land on which direct payments are claimed, rather than the total "area under permanent pasture" as stated in Regulation 1782/2003. This creates a distortion of the baseline in countries where farmers are using a lot more land than they need to claim their entitlements for direct payments – in other words, the hectares of permanent pasture in active use are more than the hectares counted in farmers' applications for direct payments.

Some areas of permanent pasture have been recorded by farmers on LPIS as “temporary grassland”, and thus are also excluded from the controls. The fact that the EU definition includes regularly reseeded grass as permanent pasture makes the distinction between temporary and permanent grassland unclear and difficult to control through LPIS. Significant areas, some of high biodiversity value, are known to have been ploughed up since the controls were introduced, e.g. in Normandie (France).

The control mechanism is also significantly weakened by the inclusion within the permanent pasture definition of land that is regularly reseeded. This means that even if all the EU’s permanent pasture is ploughed and reseeded, the total extent of permanent pasture shown by the Commission’s data will remain the same and the policy objective will appear to have been achieved. Yet in this situation, the environmental benefits of permanent pasture (carbon storage, biodiversity) will have been lost.

A further weakness is that fact that the mechanism monitors the ratio of permanent pasture to other farmland, rather than the total extent of permanent pasture. If there is generalised abandonment, and arable land declines at the same rate as permanent pasture, these losses trigger no response.

For this instrument to be effective, the full range of permanent pastures used in all Member States should be counted in the baseline area, including those with shrubs and trees. The control should be on the total amount of permanent pasture, not only on the area claimed for direct payments, and not only the ratio to other farmland, since the policy should aim to guarantee at least the maintenance of a certain absolute level of public goods.

9 Country reports

9.1 BULGARIA

Prepared by Vyara Stefanova and Yanka Kazakova (EFNCP).

Defining permanent pastures and meadows in Bulgaria

The most recent (and supposedly improved) definition of permanent pasture is provided in the legislative act regulating the area-based payments and the related eligibility criteria (Ordinance 5/10.03.2010).

Permanent pastures are therein defined as utilized agricultural area used permanently for 5 or more years through cultivation (sowing) of grass fodder crops or through natural regeneration and is not included in the farm crop rotation. This area can be used for either grazing or mowing.

All grass species that are traditionally found on natural pastures or are usually included in the grass mixtures for pastures and meadows in Bulgaria are considered 'grass fodder crops' irrespective of whether used for grazing or not.

The LPIS handbook[4] from 2007 in its clarification of the EU Regulation definitions of permanent pastures notes that these are 'usually areas which either have never been cultivated (arable land) or have not been included in crop rotation for more than 20-40 years'.

However, Ordinance 5 states in article 13 that permanent pastures can be:

1. Land that is not included in the crop rotation for five or more than five years
   OR
2. Land that is not going to be included in crop rotation for at least five years after the date of change of permanent land use (newly created pastures).

This article de facto undermines the meaning of permanent pastures and 'opens the door' for all recently and newly created pastures. Furthermore, the definitions of two of the four main types of permanent pastures requiring 'dense grass cover' indicate that priority is given to intensively managed grasslands as opposed to extensive permanent pastures.

Overall, four main types of permanent pastures are recognized in the act (art.14/Ord.5), namely productive pastures, meadows, 'meri' (commons) and low productivity pastures.

Productive pastures are defined as permanent pastures on soils from first (best) to seventh soil category with dense grass cover used for grazing of livestock. They can also be mown as an alternative to grazing or as a method for environmental conservation or weed control.

Meadows are permanent pastures on soils from first (best) to seventh soil category with dense grass cover used for silage or hay making by mowing or by livestock grazing.

Meri (commons) are permanent pastures near settlements used for livestock grazing or mowing as a method for environmental conservation or weed control.

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[4] MoAF, 2007, Handbook for interpreting colour digital orto-photo maps during the establishment of complete land cover of physical blocks in the country, November 2007, page 15.

Low productivity pastures are permanent pastures (including meadows and meri (commons)) on soils from 8th to 10th category (poorest) which usually are not fertilised, cultivated, reseeded or drained. They can be used for extensive grazing (up to 1 LU/ha). Such pastures are usually not mowed or are mowed extensively.

Expert assessments[5] reveal that as much as 66% of the pastures (out of 1.8 m ha) in Bulgaria are classified as low productivity ones.

Permanent pasture and CAP support

A. The LPIS Handbook indicates that all land should be included in the systems in compliance with the EU Regulations. Therefore, the development of LPIS aims to provide a complete land cover of physical blocks[6] which are divided in three broad groups:

Group 1 – Agricultural land in which the registered physical blocks are eligible for SAPS support. Pastures, 'meri' and meadows fall within this group with the following categories:

- Natural pastures and meadows;
- Pastures and meadows in arable land (secondary vegetation);
- Forest meadows and pastures.

Thus, in principle forest meadows and pastures are eligible for support as long as they meet the eligibility conditions presented below (article 16) and have the needed grazing permissions from the responsible forest management bodies.

Group 2 – Non-agricultural land in which agricultural activity is possible. It includes the following sub-groups: non-arable land, forest territories, urban areas, water areas and wetlands, transport infrastructure, bare and eroded terrains, etc.

The registered physical blocks in this group are normally not eligible for support. If they are managed, they can be potentially recognized as eligible for support after on-the-spot checks.

Depending on a desk-based decision using orthophotos, the category of shrubs and grass-covered territories can fall within the sub-group of non-arable land and thus be considered not eligible for support by definition. In practice, this category can include three key Corine Land Cover classes (page 17, LPIS Handbook) which are considered of High Nature Value throughout the country:

321 – Natural grasslands
322 – Moors and heathland
323 – Sclerophyllous vegetation

Additionally, potential HNV farmlands as registered by Corine Land Cover classes 333 Sparsely vegetated areas and 411 Inland marshes fall within sub-groups 'Bare and eroded terrains' and 'Water areas and wetlands' respectively both of which are also in Group 2 Lands ineligible for support.

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[5] Ramesh Kumar, Dimitar Pavlov, Ivan Stankov et al, Grassland management, Stara Zagora, 2006, page 3

[6] Physical block is a continuous area of land bounded by permanent topographic features.

Agricultural physical block is a continuous area bounded by permanent topographic features which has an identical dominating land use and may comprise one or more parcels of farmers.

There is also Group 3 – Other land in which agricultural activities are not allowed (and is even prohibited). The registered physical blocks are not eligible for support.
If a farmer complains that his land has been excluded incorrectly, the authorities are required to undertake an on-the-spot check. In the 2009 campaign 6000 farmers were penalized, making it almost impossible to carry out the necessary checks.

B. The "50 trees rule" is applied to the land in Group 1 which is eligible for support. There is a special section five in the Ordinance regulating the area-based payments specifying the eligibility conditions for support of permanent pastures.

Ironically, it begins with the **ineligible pastures (article 15)** divided into permanently unsuitable for support and ineligible for support.

(1) Permanently unsuitable for support is the area in the permanent pastures covered with trees or bush vegetation, buildings, equipment, rock, rock sections, eroded or bare areas.

(2) Not eligible support are pastures or those parts thereof, in which areas under para 1 together or separately cover more than 100 square meters. These pastures or their parts are not claimed for support. If claimed they are excluded from the total area of the pasture and subject to Regulation (EC) № 1122/2009 their application is sanctioned."

The **permanent pastures eligible for support (article 16)** are used for grazing of animals or mowing (for silage or hay) or as a method of environmental protection or weed control and have to meet the following conditions:

1. There are not more than 50 trees and/or shrubs per hectare with a height over 50 cm (for dwarf pine and juniper - regardless of the height) that are not compactly situated (mosaic landscape);
2. Tree and/or bush vegetation density allows free grazing of farm animals;
3. Buildings, facilities, rocks, rocky areas, eroded or bare areas are mosaicly dispersed and occupy not more than 10% of the total area of pasture, after the exclusion of the ineligible areas (under Art. 15, para 2).

The low productivity grasslands may have up to 75 trees and/or shrubs per hectare and the dispersed buildings, equipment, rocks, rocky areas, eroded or bare areas may be up to 20% of the total area of the pasture.

The pastures claimed for support but not meeting the above requirements are excluded from support and under the conditions of Regulation (EC) № 1122/2009 their claim is sanctioned. The sanctions for "Over-declaration" are severe.

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C. Landscape features are eligible for support when they are a result of human activity and are a part of the claimed agricultural area and are not more than 2 m wide. Some of the eligible linear elements (art.17) comprise:

- Green hedgerows – comprising rows of bushes sometimes with tree lines in the middle;
- Tree belts – uninterrupted lines of trees defining the parcel boundaries or situated along roads or watercourses;
- Stone walls – manmade structures;
- Terraces and irrigation channels, etc.

Protecting permanent pastures

A. The statutory management requirements for cross compliance are almost fully transposed in the Bulgarian legislation. Although they are still not required for the SAPS payments, farmers have to comply with them. At the same time, the control system under the national legislation is very weak or not existing at all, thus, the overall compliance is very limited.
The GAEC standards were first adopted in 2007 and have undergone three modifications since then (first one in December 2007, then in 2009 and 2010).

The current GAEC standards (last official version Ordinance RD09-616/21.07.2010) related to permanent pastures comprise:

National standard 4.1: Farmers using permanent grassland (pastures and meadows) should maintain minimum stock density 0.15 LU/ha or mow grasslands at least once per year (till 15 July in the lowlands or till 15 August in mountain LFAs).

National standard 4.2: Permanent pastures should be cleaned from unwanted vegetation. Aggressive and resistant plant varieties, such as bracken (Pteridium aquilinum), hellebore (Veratrum album), Ailanthus altissima and Rubus fruticosus must be kept under control.

In HNV farmlands, Natura 2000 sites or protected areas, it is allowed to leave mosaic trees and bushes (or groups of them) up to 25% of the total grassland area, depending on the previous status of the grassland.

The MoA handbook to farmers suggests that control of unwanted vegetation can be done either mechanically or using chemicals: “In natural meadows herbicides are best used 3 to 4 weeks before mowing, while in natural pastures – 3 to 4 weeks after first grazing takes place.” It further encourages the use of N-P-K fertilizers or manure as well as reseeding of “poor” grasslands.

National standard 4.3: Keeping the existing arable land boundaries within a farms block and/or within the agricultural parcel is obligatory.
National standard 4.4: The protection of agricultural areas nearby/bordering forests from the invasion of trees and bushes is obligatory.

B. The biggest issue arising from the national implementation of the GAEC standards is arising from the obvious prioritization and leading mindset of agronomic productivity. It leads to severe discrimination between the good agriculture conditions and good environmental conditions.

A statement by the Ministry of Agriculture on art.6(2) Regulation 73/2009 in the 2009 campaign year says that the area of permanent pastures defined in good agriculture conditions was 738,145 ha in 2007.

In 2007 according to MAF statistical department the grasslands in BG were 1 876 292 ha. Out of them 1 138 247 were declared to be in ‘bad condition’ – not eligible for SAPS. Thus the figure of 738 145ha grassland was reached and declared before the campaign. When the farms under 1ha/0,5ha and parcels under 0,1 ha were excluded the area became 715 145 ha.

In 2009 the grassland area was “corrected” and reduced from 715 145 ha to 435 597 ha. The reduction by 279 548 ha was due to:

- On the spot checks performed by MAF or PA Technical Inspectorate revealing eroded areas or areas with bushes and trees that are ineligible for support

- Excluding Natura 2000 areas or protected areas with restrictions for grazing and/or mowing and removal of bushes and trees.

In the same year (2007) during RDP preparation, the preliminary areas of High Nature Value farmlands were identified using the same LPIS data base. The total area of the physical blocks under permanent pasture identified as HNV farmland covered as much as 1,138,981 ha. (RDP version 4, July 2010).
This indicates that 400,836 ha of permanent grasslands (and identified as HNV) were not eligible for support under SAPS already in 2007 due to failing to meet the good agriculture conditions.

Additionally, in 2009, the area of permanent pastures in good agriculture conditions was reduced to 435,597 ha which the MoA says is purely on the basis of lack of interest among farmers. Surprisingly, this important decision was not discussed at all with the farming community in the country.

Thus, in total there are 703,384 ha of HNV permanent pastures which are not eligible for SAPS support. Some of these areas are however eligible for agri-environmental support as of 2010. Considering the eligibility conditions presented above we believe that the key areas of permanent pasture for delivering public goods are de facto not eligible for SAPS support.

Maintaining permanent pasture

Already in 2008, Bulgarian environmental NGOs detected and reported[7] to the MoA that national standards 4.1 and 4.2 are causing serious problems for priority Natura 2000 habitats on the ground:

A. The controls on national standard 4.1 consider that a grazing or mowing should be carried out on 100% of the area. At the same time, a number of protected species in permanent grasslands such as *Lilium rhodopaeum, Artemisia chammaemelifolia*, *Salix rosmarinifolia*, *Ophris sp., Orchis sp., etc.* are threatened by extinction or displacement by such intensive intervention.

The NGOs proposal was to allow 30% of these areas to be left without mowing or grazing each year but it was not adopted.

Furthermore, this standard for minimum management was initially set in a way that in practice represented maximum levels of management. It was changed in an early stage (2007) but continues to be the guiding principle for distribution of 'meri':

"*4.1 Minimum livestock stocking rates or/and appropriate regimes - the availability of permanent grassland (pastures and meadows) is obligatory when bovines, small ruminants and equines are bred on pastures and in stables and pastures. The ratio then is a minimum of 0,5 hectares for an adult bovine animal (over 24 months), a minimum of 0,1 hectares for a young bovine animal (2 8 months), a minimum of 0,2 hectares for a young bovine animal (8 24 months), a minimum of 0,05 hectares for a small ruminant and a minimum of 0,5 hectares for an equine animal*."

B. The most problematic implementation was related to the standard 4.2 which originally stated: "Permanent pastures should be obligatory kept clean of unwanted vegetation".

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[7] Kazakova, Y. on behalf of Balkani Wildlife Society, Bioselena Foundation, BSPB and WWF DCP, 2008, Position Paper on the need to change National GAEC standards 4.1 and 4.2 in order to achieve their aims for securing minimum habitats management, sent to the MoA, Agriculture Commission in the Bulgarian Parliament and DG Agri.

Initially, in the period 2007 – 2009, the standard did not include the allowance of up to 25 per cent bush or tree cover in HNV farmlands, protected areas and Natura 2000 sites. Thus, in order to receive the area-based payments farmers started cleaning shrubs and bushes (sometimes even cutting trees).

This led to destruction of some valuable and protected species and habitats:

- Under Birds Directive: *Crex crex*, *Lanius collurio*, *Lanius minor*, *Sylvia nisoria*, *Emberiza hortulana*, *Hippolais olivetorum*.
- Under Habitats Directive: *Testudo graeca*, *Testudo hermanni*, *Elaphe quatrolineata quatrolineata*, *Elaphe quatrolineata sauromates* = *Elaphe sauromates*, *Elaphe situla* = *Zamenis situla; and* Habitats:
  4090 Endemic oro-Mediterranean heaths with gorse,
  40AO* Subcontinental peri-Pannonic scrub,
  40CO* Ponto-Sarmatic deciduous thickets,
  5130 *Juniperus communis* formations on heaths or calcareous grasslands,
  5210 Arborescent matorral with *Juniperus* spp.

In this period, farmers were having the difficult 'choice' between being sanctioned for the amount of their SAPS payment and RDP payments or paying penalties for non-compliance with the Biodiversity Protection Act.

The NGOs proposal was to allow between 20 and 60% of dispersed shrubs depending on the most recent grassland status as well as to specify the aggressive and resistant plant varieties. This proposal was partially adopted thus allowing 25% of mosaic bushy vegetation depending on the grasslands status.

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Photo 1: Clearance of 'unwanted vegetation" in Ponor Mountains Natura 2000 site, BSPB

The respective role of national authorities and the EU auditors

From our perspective, the root cause of the eligibility issues is the definition in EU Reg.796/2004 stating that permanent pasture is "land used to grow grasses or other herbaceous forage naturally (self-seeded) or through cultivation (sown)" which excludes shrubs and trees.

Additionally, the translation to national languages often contributes to the understanding. In the Bulgarian case, the LPIS handbook translates the EU definition (p.15) as "areas covered

with dense, dominated by natural grass cover comprised of varied and specific for the region grass species…". This translation is then used in Ordinance 5 setting the eligibility conditions.

A very serious issue is also the 'interpretation' of the definition by EU auditors. National staff involved in the EU auditing missions indicate in discussions that the rule of thumb is 'land needs to be fit for immediate agricultural production'. If they cannot prove that – it means that land is not eligible for SAPS. In most cases, scrub vegetation is considered as an impediment to productive agriculture. Only recently it was accepted (see point 3.B and 4.B. above) that this type of land use is beneficial to nature and thus, the land was made eligible for Agri-environmental payments but not SAPS. Thus, the land was made eligible for agri-environmental schemes only but the AE payment rate does not include the part that is being lost as a direct payment.

Having in mind that farmers normally prefer to receive both payments under Pillar 1 and Pillar 2 (Axis 2 of RDP) many of them are therefore cutting all shrubs and bushes on their land that might also be valuable habitats.

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Photo 2: Grazing areas in Pirin National Park under active farming use (they are used for seasonal rotational grazing 3-5 months) which are not eligible for SAPS payments but are eligible for AE payments, Source: Agri-environmental Handbook

Relevance and applicability of a permanent pasture premium

The premium for truly permanent pastures and meadows is highly needed for the farmers who still maintain them.

The low productivity pastures as defined by Ordinance 5 on the eligibility rules for permanent pastures seem to be an immediate eligible category for this premium. The other types of permanent pastures will require an inventory to identify their true permanent character as well as to include currently ineligible types such as scrub vegetation.

Overall, implementing this scheme in Bulgaria is possible and will require the following national preparation:

- Address the change in PP definition and thus include areas of HNV pastures that are currently considered non-eligible for SAPS (Pillar I) support;

- Separate conceptually productive grasslands (called semi-permanent pastures in the proposal) from the low productivity grasslands. While this can be potentially done on LPIS, its current categories do not reflect it and may require longer adaptation accompanied by on-the-ground checks. Hence, the farmers' decisions on the pastures management as semi-permanent or permanent should have an equal weight in the initial eligibility of the pasture land.
- The reference 2010 year might turn out to be problematic since most of the truly permanent pastures are currently not eligible for SAPS support. A mechanism is needed for farmers to enter land into the scheme even if it was not registered as permanent pasture in 2010.
- The GAEC rules and guidance will require change as the current guidance actually encourages chemical control of weeds, fertilization and re-seeding.

Possible solutions

Key issues are:

- Official permanent pasture baseline area is several hundred thousand hectares below the real figure on the ground, so the GAEC control mechanism at national level is made ineffective.
- Similarly large areas of permanent pasture of high public goods value are excluded from the eligible area for SAPS, because of decisions taken in 2007 and 2009, mainly on the basis of presence of bushes and trees, even though these areas may be under active farming and also eligible for agri-environment.
- Eligibility and GAEC rules on shrubs and trees have been modified since 2007, to make more allowance for environmental value of shrubs and trees, but this does not correct the exclusions already made previously.

Proposals for an improved system:

- Update LPIS and permanent pasture data to reflect real situation on the ground, bringing all permanent pasture that is in farming use into the baseline permanent pasture area and SAPS eligible area.
- Change eligibility criteria for SAPS further – The leading eligibility conditions should be if land is used for grazing and/or mowing irrespective of the number or share of trees, shrubs, stones, rocks, etc.
- Change GAEC rules further – The GAEC rules should allow certain percentage of the pasture to be purposefully unmanaged each year – eg. The 2008 Bulgarian NGOs proposal was for 30% of pasture area.

9.2 ESTONIA

Prepared by Gwyn Jones (EFNCP) from material provided by Iiri Selge, Pille Koorberg, Eike Lepmets, Aleksei Lotman and Tambet Kikas. Additional information and all the figures are from the website http://www.hak.edu.ee/materjalid/puisniit4/ courtesy of Kristiina Hellstrom.

Permanent pastures and meadows in Estonia

Estonia falls into the Nemoral and Boreal biogeographical zones – regions naturally dominated by coniferous forests, with extensive mires. Farmers in at least certain parts in Estonia, as in other countries in these zones, traditionally made use of all the possible forage resources available to them to tide their animals over the long winter, whether on the shore, in rocky areas, on floodplains or in forests. This holistic approach to using the landscape for agriculture had the added benefit of freeing up the limited area of good land for arable production, while at the same time enabling the transfer of nutrients from the *saltus*[8] to replace those removed in the cropping of the *ager*.

In the case of wooded land, these forage resources would traditionally have included not only grasses and sedges in the ground layer, but branches from deciduous trees. Although some of these practices have died out, the idea of a black and white division of the landscape into ungrazed forest on the one hand and treeless agricultural land on the other does not reflect the reality of farming in Estonia: the grey area of wooded farmland is still of significance for farming, even if less so than in former times, and keeping this land in farming use is fundamentally important for biodiversity and other environmental public goods.

Figure 1. Wood pastures support both cattle and sheep and occur in a variety of woodland types

[8] Land which is neither cultivated (*ager*) nor forest (*silva*) in the Roman view of the countryside; the land from which nutrients were transferred to maintain fertility

Semi-natural habitats which are farmed in the present day include not only floodplains, alvars[9], alvar meadows, coastal meadows, fens and paludified meadows, boreal meadows, boreal heath meadows and boreo-nemoral meadows (most of which can contain bushes and occasional trees), but also wooded meadows and wooded pastures. It is estimated that there are approximately 100,000ha of semi-natural habitats in Estonia, as determined by ecological criteria; most of these are listed in Annex 1 of the Habitats Directive and are known to be suffering reductions of conservation status due to the abandonment of traditional management practices, with many areas being lost altogether to the forest (since they are *semi*-natural, their conservation status will decline without active farming management). About 73,000ha are covered by the Natura 2000 network.

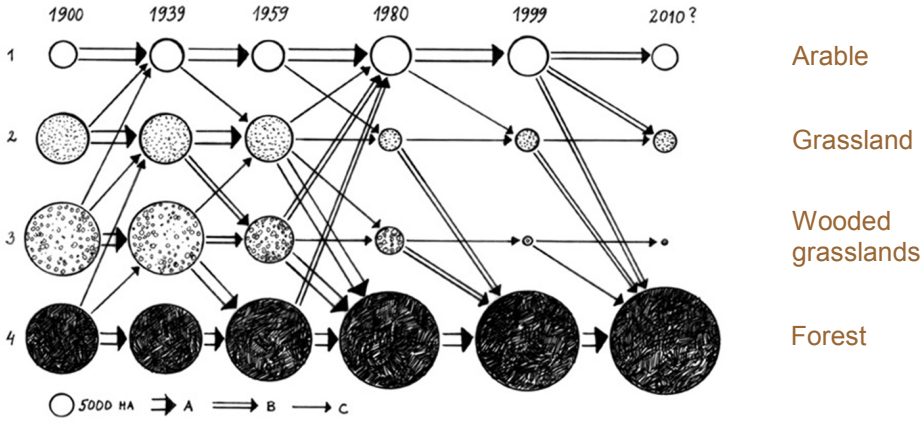

Figure 2. Land use statistics for Hiiumaa illustrate the former importance of wooded meadows and pastures in the farm economy and how rare these habitats have now become.

Figure 3. Wooded meadows are some of Europe's most biodiverse habitats. Vahenurme (top left) has up to 74 plant species.m^{-2}; Laelatu (bottom left) up to 76, including Cephelanthera longifolia (bottom right) and the Annex II species Cypripedium calceolus

[9] Limestone plain with little soil

Defining permanent pastures and meadows in Estonia

Estonia applies the same general legal definition of permanent grassland as the other members of the EU (>5 years in grass). For practical purposes however there is an important second element to defining the permanent pasture which is recorded in statistics and which falls in the purview of the CAP – in Estonia, as in other Member States implementing the SAPS, the land must have been in good agricultural condition and registered as agricultural at the reference date at which the base area was set (30th June, 2003, in this case).

The base map reference area for permanent pasture, established using these criteria, was 287,642ha. (In comparison, 251,565 ha were declared in the 2009 IACS). Except in the important cases described below, there has been no revision of this figure to include permanent pastures which were excluded in error or have come (back) into use since the reference year (and valuable landscape features currently excluded). However, doing this revision would involve its own political difficulties, since any increase in the base area implies reducing the payment per hectare on previously-claimed agricultural land. This de facto fixing of the base area in many of the Member States who operate SAPS thus gives a predictability to direct payments analogous to that provided by the one-off establishment of entitlements in SPS countries. The scale of the problem is illustrated by the 2011 IACS – 870,000ha were claimed, but the payments are calculated on the basis of the reference area of 800,000ha.

As in all countries, some of the base area of permanent pastures are not semi-natural or of particular environmental value (heavily fertilised grasslands, for example). But very significantly for Estonia, some valuable semi-natural habitats were excluded from this permanent pasture figure.

Although the wording of the Regulation is relatively unambiguous[10], that land is to be considered agricultural for the purpose of eligibility for support if the agricultural production can be carried out in a similar way as on parcels without trees in the same area, the situation was complicated by the Commission's working document (AGRI/60363/2005). This sets out a 'clarification' that goes way beyond the Regulation: land which has more than 50 trees per hectare should not be considered as eligible for support in principle, although exceptions can be made for environmental reasons.

The result was that a 'significant' area of land used as permanent pasture or meadow was not declared in the reference year or was subsequently excluded with penalty from payment eligibility on inspection, especially in the western four counties, where over 400 producers were affected. This rule brought a lot of confusion to farmers - they had to declare all their agricultural land for the purpose of cross-compliance. But what is agricultural land – land they are actually using for grazing or for other agricultural purposes, however many trees it has per hectare, or just land eligible for SAPS?

As a result of court cases and widespread political concern, a series of adjustments were made in 2007-8. Firstly, wood pastures and wood meadows in the four westernmost counties which have >50 stems.ha^{-1} but <50% canopy cover and which were registered in 2004 are now considered permanent pastures from a CAP perspective. From 2011 onward county level pro-rata forage area reduction co-efficients will be applied on the parcels in those areas in afore-mentioned 4 counties. In other words, the tree canopy will be excluded from the eligible area. Nevertheless, it remains the case that there are other valuable wooded meadows and pastures outwith these counties where this adjustment for >50 stems.ha^{-1} but the <50% canopy cover rule has not been applied.

[10] Regulation 1122/2009(EC), Art. 34

Secondly, areas participating in the new agri-environment measure for semi-natural habitats (SNH) in Natura 2000 sites in any part of Estonia, introduced in 2007, are now considered permanent pastures, whether or not they were registered in 2004. A similar, but slightly different, canopy cover rule applies (with no stem density restriction) – areas on which agricultural production is not possible (groups of trees, piles of stones, etc.) and which are >0.01 ha in extent, as well as linear landscape features >2m wide (walls, ditches, etc.) are deducted from the eligible area in accordance with the Commission guidelines, except where their presence is associated with traditional agricultural activity or necessary for the achievement of targets set in the RDP (ensuring the favourable conservation status of semi-natural habitats within the Natura 2000 network, for example).

Permanent pasture and CAP support

It will be clear by now that the issue of how to support the management of farmed semi-natural habitats is inextricably linked with what one might have thought is the rather more 'objective' question of what exactly constitutes permanent pasture; rules which seem clear from an office on the intensively-farmed, densely-populated plains of Flanders do not fit the reality in Estonia and have caused massive problems for farmers and administrators alike.

The situation at present is that the land which was declared in 2003-2004 and which is kept in GAEC is eligible for SAPS and other CAP payments. In those 4 western counties, part of the declared land was considered as ineligible as the crown cover density exceeded 50%. Wood pastures and wood meadows with >50 stems.ha^{-1} but having a crown cover density of up to 50% were considered as eligible, subject to the adjustment coefficient. Some forage adjustments are also applied in other cases, for example, where there are oak trees and in areas with bushes.

Figure 4. Succession leads to a rapid loss of biodiversity; the bottom photos show the change in a wooded meadow in just 9 years (1993-2002).

In 2008 the Government introduced a new agri-environment measure aimed squarely at SNH on Natura 2000 sites, many of which would still have been unable to avail themselves of SAPS payments. Available throughout the country, it was introduced in a way which at the time seemed the simplest to implement: land on which this payment is paid was made

ineligible for receipt of any other CAP (including RDP) support. At the time, payments were roughly equivalent to those on comparable SAPS-eligible land (if SAPS support and some RDP area-based supports are taken into account), but whereas SAPS payments are rising gradually as 2013 approaches, the level of the SNH scheme payments have remained static.

It can be seen that these adjustments do not cover all possible cases. Land in the western 4 counties not declared in 2004 cannot be used to claim SAPS and gets no support unless in a Natura 2000 site and participating in the SNH scheme. Any land outwith these counties can only apply for SNH support – no support is available for non-Natura 2000 land, even if it is actively farmed; this land does not show up in any statistics.

Protection of permanent pasture

The rule for maintaining the area of permanent pasture is implemented at a national scale, although a farmer has to notify the authorities of a change of use if he wishes to reduce the area of permanent grassland or change of its use. In the event of Estonia needing to act as a result of a significant reduction in the net area of permanent pastures, the area the farmer had 24 months previously will be taken as the basis for mandatory reinstatement. In 2005, the reference years for Estonia, there were 223,080.59 ha of permanent grassland. In 2010 the total was higher (268,435.61 ha), but since the retention of permanent grasslands is no longer encouraged by the basic level agri-environment scheme, it is quite possible that the threshold will be approached in future as the area within the crop rotation expands.

Maintaining permanent pasture

Under GAEC, grasslands must be grazed adequately or mown (with the cut grass removed or mulched) by the 31st of July, or 20th of August in the case of certain semi-natural grasslands covered by a conservation designation. No mulching is to take place before the 1st of July, unless the grassland is not used for fodder.

A producer claiming a CAP area-based scheme may have agricultural land on which he is not claiming payments (because it was not registered at the reference date of 30/06/2003, for example). GAEC demands that this land should also be maintained, preventing the spread of undesirable vegetation to the extent that the land could be used for agriculture (in the real sense) in the next growing season without the need to incur any additional costs. Management does not need to occur every year if this outcome can be achieved. In addition to a general requirement to control the spread of woody plants, certain herbaceous species are specifically mentioned in the rules, including *Arcticum* (burdock), *Cirsium* (thistles), *Artemisia* (mugwort), and certain Apiaceae (e.g. *Heracleum sosnowskyi*).

These rules seem sufficiently flexible to allow for management that is environmentally favourable. However the rules outlined above mean that there is neither legal requirement nor incentive for a farmer to declare non-Natura 2000 land which is ineligible for SAPS support, since he gets no financial support to enable him to deliver the requirements of cross-compliance (which in such a case might prove onerous). This creates a vicious spiral on land currently de facto used for grazing but ineligible for SAPS support, which is likely to lead to abandonment.

The respective role of national authorities and the EU auditors

In Estonia as in many other countries, the very specific nature of the Commission 'guidance' seems to be a fundamental issue. General guidance admitting as eligible areas with trees where the forage is similar to those without had to be set alongside very specific aspects of the same documents such as the 50 tree rule in the old guidance or the pro rata exclusion of areas under the canopy in the current version. It is not unreasonable to interpret the specific as having a higher status than the general.

Figure 5. This bizarre "restoration" (2006) aimed to meet Paying Agency requirements for SAPS (tree & shrubs cover <50%).

However, having made their decisions, it seems clear also that the Estonian Paying Agency were extremely loathe to change them. Whether this reflects their apprehension at the reaction of the auditors or mere obstinacy can only be a matter of speculation, but in their defence it should be pointed out that accepting significant areas of wood pasture for SAPS is not without its costs. Inspection costs would undoubtedly rise, since the newly-admitted areas are precisely the ones which would pose the most difficult issues and require most checking. GAEC rules would need to be re-examined: an example is the definition of well-grazed pasture as 'looking the same as if it had been mown', possibly requiring the re-examination of existing cases.

In the background to the eligibility issue there is also the political difficulty which the redistribution of support might occasion. A large increase in the eligible area (not possible under the current rules) without a change in the budget would mean the 'dilution' of the current payment rate. However, the current period of reform provides a chance both to rationalise the eligibility criteria *and* to adjust the budget. Taking advantage of this opportunity is a political, not an administrative, issue. Part of the current problem seems to be that eligibility is primarily a matter between the Paying Agency and the auditors, both of which are concerned with the *implementation* of the rules, whereas the rules themselves need to be changed.

Relevance and applicability of a permanent pasture premium

The proposed pasture premium is meant to focus particular attention on permanent pasture and meadows within the First Pillar as a top-up to SPS/SAPS. In Estonia, even this starting point is problematic! The main issue at present is that these areas are or have been *ineligible* for direct payments and a range of other area-based support. This is therefore the first thing that needs to be changed. *All* land used for agriculture should be eligible for First Pillar payments, irrespective of the number of trees per ha or its status in a reference year. And all land under GAEC should receive direct payments.

One difficulty is that underuse of these pastures (the 'deterioration of habitats', to use the EAFRD Regulation's phrase) is very difficult to separate from the actual status of these lands as agricultural. At the margin, they can only be identified as agricultural by the fact that they are *used*. Approaches such as a pro rata livestock density adjustment at the very lowest stocking densities seem to be essential to guard against such problems. National standards are crucial – some pastures should *not* have bushes, for example.

It is important that a new baseline year during this current CAP is *not* set – in the SAPS countries (except BG and RO), an increase in the eligible area, is not possible. It is not realistic therefore to expect that any IACS application year in the current period will provide a 'realistic' picture of areas grazed in reality. Should a new baseline be set, it should be made clear that this is only a matter of definition for the *initial* targeting of the new payment. It should not be a mechanism for setting a new reference area or establishing once and for all an unchangeable inclusion/exclusion criterion for particular parcels or physical blocks.

Possible solutions

1. The concept of a reference year and fixed baseline area should be removed from SAPS, with the financial envelope adapted accordingly, allowing farmers to add agricultural land, including valuable landscape elements, to their claims, as long as they are willing to keep the additional land and landscape elements in Good Agriculture and Environmental Condition.
2. For SAPS eligibility, in certain valuable habitat types (like semi-natural habitats) more trees and bushes could be accepted when they are part of the traditional farming practices and duly justified. In some other more specific cases exceptions could be made on the basis of expert opinion (for example, when trees and bushes play an important role of maintaining the favourable conservation status of an area). Current EU rules allow hedges of more than 2m width, individual trees, etc to be part of eligible area as landscape features, if protected under national GAEC rules.
3. In those areas ProRata system for calculating payments should not be applied – the whole grazeable area should be eligible for payment.
4. The reference area of permanent pasture that is the basis for controlling a decline at national level should be revised to reflect reality on the ground.
5. An essential step in preparing the ground for this is to carry out a full mapped inventory of semi-natural pastures.
6. GAEC should apply only to land receiving direct payments.
7. GAEC rules should be realistic as regards the qualitative aspects of the pastures, with rules set nationally which are appropriate to the various habitats.

9.3 FRANCE

Prepared by Xavier POUX (EFNCP) with input from Marc DIMANCHE (SUAMME)

Technical definition and approach of permanent pastures in France – the environmental services

Proposing a coherent and unified definition of permanent pastures in France is not easy in the detail neither from technical nor from administrative point of view.

Starting from usual and specialised dictionaries, the definition of a “pasture” shows a certain blur between a general definition in which a pasture is for some (i) an area which biomass – fodder - is eaten by cattle directly (grazing) or indirectly (mown = “*pâture de fauche*”) and for others (ii) grassland. Thus even in common language, a certain logical mistake can be found while if grasslands undoubtedly are pastures – and at national level the dominant one —, reciprocally all pastures are not grassland.

This statement is supported by many studies in different part of France. Probably the most documented use of non herbaceous fodder can be found in the pastoral areas of the South of France (Mediterranean area). In such context, the “fodder area” is mainly composed of rangeland, grazed area. Indeed, rangeland are not only composed of “grass and other herbaceous fodder plants” but also, and mainly in some places, consist in “ligneous fodder plants” (scrubs and tress). Animals might eat the leaves but also the fruits/nuts and young stems. Depending on climatic condition (dry season in summer) and biomass productivity (autumn growth of biomass), the use of such diversified fodder might occur all year long, with seasonal variations.

Figure 1 shows the different uses of rangeland in Languedoc-Roussillon, some being herbaceous (e.g. « pelouse riche » [rich sward] , « pelouse clairsemée » [light sward], « lande herbacée » [herbaceous heathland] …), other scrubby (e.g. « lande ligneuse » [ligneous heathland]) and other woody (e.g. « bois clair avec herbe » [light wood with grass],…).

Figure 5 Different uses of rangeland in Languedoc-Roussillon according to time and animal physiological requirements (production, maintenance, complementary diet)

Such rangeland show a great variety in terms of:

- vegetation aspect (semi-natural vegetation) and structure (low-medium-high plants);
- composition and species richness;
- grazing systems (individual/collective; seasons; shepherded/fenced; near/far from farm,…).

The following figure shows the different types of vegetation found in pastoral areas in the South of France. It should be noted that the presence of tree frequently enables the growth of grass due to the protection offered against sun and drought.

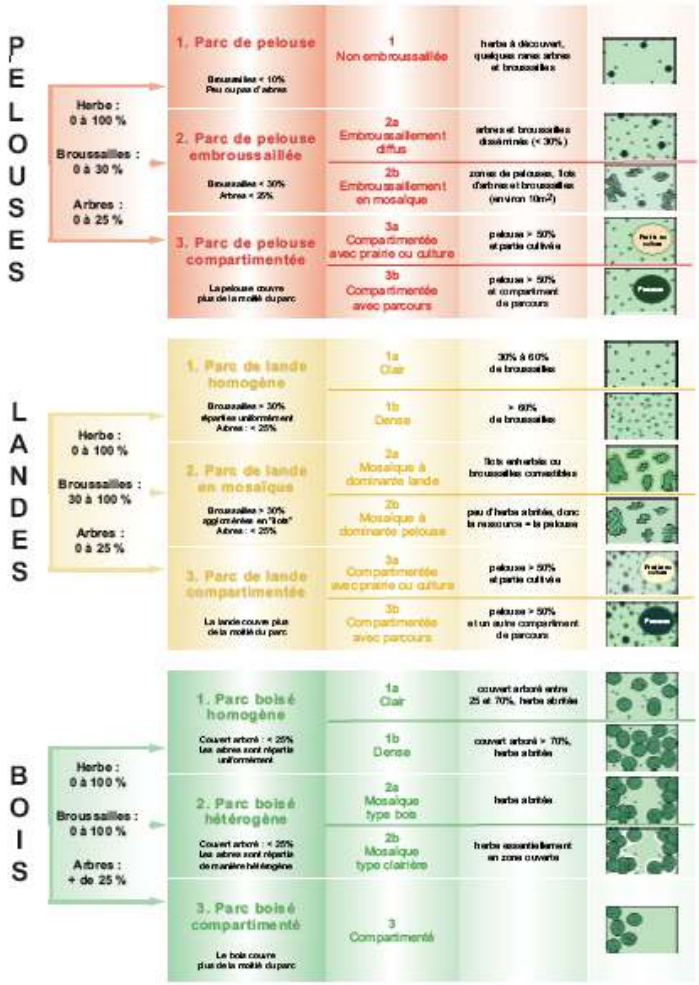

Figure 6: a structural typology of different pastures (source ?)

While Mediterranean areas are those where the extensive use of non herbaceous forage will be met, one should notice that scattered use of such forages might be found in other situations, while rapidly declining. In Western France and in some places of Eastern France, heathlands were (are) traditional rangeland. The use of tree-leaves for complementing animal fodder in dry season might occur in some *bocage* farming systems.

If we mostly insist here on the non herbaceous side of permanent pastures, it should be reminded that grass is a key component of such pastures in many situations, alone and/or in combination with other types of vegetation (see Figure 6).

Without going into a too detailed analysis in this note, the services rendered by the use of such permanent pastures are numerous:

- Biodiversity. Most agropastoral habitats (under N2000 scheme) are indeed permanent pastures, herbaceous or not. This statement in terms of biodiversity contribution of PP goes beyond designated areas under N2000 and will be correlated to the presence of extensively managed permanent pastures.
- Landscape quality. Permanent pastures maintain open landscapes which, at the same time, are not uniform.

- Fire prevention. Animals clear from scrubs. The impact in Mediterranean areas is major. This service goes along carbon storage (prevention of fire prevents from CO2 emission).
- Animal welfare and productivity. Is has been shown that animals using diversified pastures are less subject to diseases (medical plants) and have a better productivity.
- Economic autonomy. Forage produced from extensive pastures have reduced input cost, though it requires labour force and some investments.
- Adaptation to climate change. A variety of types of vegetation and stratum offers a better resilience and overall average productivity in a context of climate variability. Deep rooted vegetation leaves can be used in order to go through the dry season.
- Water quality and soil erosion. While permanent pastures are barely not receiving pesticides and are able to grow without use of fertilisers, they are *per se* safe for water quality. In addition, they might play a positive role as buffer strip and soil protection.

Official definitions of permanent pastures

Considering the CAP landuse categories, the following types of surfaces are listed in the overall "grassland" heading in the LIPS (code between brackets):

- permanent grassland devoted to hay sold off farm [F1]
- permanent grassland [PN]
- temporary grassland devoted to hay sold off farm [F2]
- temporary grassland more than 5 years devoted to hay sold off farm [F3]
- temporary grassland more than 5 years [PX]
- alpine and summer mountain pastures ("*alpages et estives*") [ES]
- heather and rangeland ("*landes et parcours*") [LD]
- ligneous rangeland (for Corsica only) [C6]

The situation should take into consideration two levels of implementation of the CAP landuse categories:

- the national level, which defines the general rules for admissible land use categories and GAEC. These rules are applied by default;
- the *départemental* level (nuts 3), at which are set the "local uses" dealing with the local rules for admissible land use categories and the minimum maintenance GAEC. This level is the reference one, used for control. There are 95 *départements* in France.

National rules

Permanent pastures are "areas devoted to grass production or other herbaceous fodder crops, in place for 5 years or more (except fallow lands). These permanent pastures are named whether permanent grasslands, temporary grassland more than 5 years old, moorland, heath and rangelands."

The category "temporary grassland of more than 5 years" [F3 and PX] logically overlaps with and contradict the permanent pasture definition: such grasslands are at the same time temporary by name and permanent by definition. They should be understood as the recognition of grasslands which are ploughed every 6-8 years in some grassland regions which used to be mixed farming, with a larger share of crops, 60 years ago. Normandy and Burgundy are regions in which such grasslands are frequent. This category is set in order to help a farmer who would have such a grassland to tick the right box (i.e. for him it is indeed temporary — ploughed and reseeded — and more than 5 years old).

The national definition explicitly encompass heathlands and rangeland in herbaceous land use. Notwithstanding, the national rules sets that the rules are to be locally defined and adapted at *département* level, by order of the prefect (decree).

One should note that this herbaceous definition of heathlands contradicts the usual and scientific definitions of such land use (which insist on the contrary on the ligneous characteristic of heathlands). The habitat directive official handbook clearly states that heathlands are dominated with ligneous vegetation and are (were) pastoral areas.

Département rules

The département level sets the rules in a "local norms" document:

(i) for admissible areas

(ii) for GAEC dealing with good maintenance of the permanent pastures (for those getting CAP payments)

Admissible areas

It is prior to have in mind that this level is the most important for our discussion, which does not help for a simple and overall analysis. It is indeed difficult to have an overview of the 95 *départements*, as it would imply examination of the 95 decrees. Nevertheless, interviews and studies show that there is a great variety of situations:

- some départements stick with the "grass" definition and exclude non herbaceous fodder while others counts scrubs and schrubs in permanent pasture area;
- the acceptable level of wood development also varies.

As far as we know, a synthesis document does not exist and we can only give some outlooks on contrasted approaches. A research conducted on result-oriented AEM shows that adaptation of local norms in order to address the actual use of non herbaceous fodder stands on detailed argumentations proposed and supported by environmental/pastoral bodies. Local visions of agriculture, dominant livestock systems, farmers organisation will have a huge impact on the will of the Préfet – and its administration – to move the line or not. It can be assumed that in départements were grass systems are dominant, little changes will be made to a standard definition of permanent pastures.

Good maintenance of permanent pastures

The maintenance of permanent pastures implies two general criteria:

- a minimal livestock density, generally accepted as 0.2 LU/ha (national reference). This threshold can be adapted in regions were forage area is composed of low productive pastures.
- and/or a minimal productivity set at departemental level (for mowed pastures).

Moreover, a crucial criteria linked to the definition of admissible area is the actual use of permanent pastures for livestock feeding.

Note that other GAEC are dealing with the management of ecological landscape features ("*particularités topographiques*"). We will not discuss them in this note, as they are of less importance for our topic.

Examples of 3 *département* interpretations

We give three examples of local norms, going from a "grass" definition of forage area to a wider definition, inclusive of shrubs and pastured woods. When the photographic technical reference book (an official document accompanying the decree) is available, we give some examples of what is admissible and not.

Example 1: Saône et Loire : grass

In this lowland humid semi-intensive grassland *département* of Bourgogne 'forage area must be usable and managed in such a way that it enables the actual feeding of livestock through grazing and/or mowing. Fields covered with broom, brambles, bracken, ligneous species are, for instance, excluded from forage area.' [11].

Figure 7: admissible area in Saône-et-Loire, showing grazing under the tree (no breach of GAEC) [Source: DDT 71]

Figure 8: non admissible area in Saône-et-Loire: no evidence of grazing/mowing; encroachment is several years old [Source: DDT 71]

[11] — Translation is ours and should not be understood as a word by word, having any legal value. It is a synthesis of the different decrees used as examples.

Figure 9: admissible area in Saône-et-Loire : no breach of GAEC as the vegetation aspect is due to the wetland characteristic [Source: DDT 71]

Figure 10: admissible area in Saône-et-Loire but breach of GAEC as the grass characteristic might be lost if not mowed soon [Source: DDT 71]

Example 2: Ariège: mainly grass – but with some derogations

This *département* is located in the Pyrénées, with lowland, hills and mountains. The humid climate enables grass production.

Admissible area: 'Generally speaking, admissible forage areas are those that can be accessed by livestock and whose feeding purpose is justified by a grass layer spread all over the considered area.

In some cases, this grass layer can be discontinuous.

As for moorland and heath, under extensive management, it is tolerated that this grass layer includes elements such as bracken heathland, small wood used as shelters by livestock and might show emerged rocks. Such features should not exceed 5% in lowlands, 10% in hills and 15% in Pyrenean area.

Pastured woods are accepted if they have less than 50 stems/ha. In particular and documented cases, it can reach 200 stems but the grass layer, even if discontinuous, must be grazed.' Grazing in such pastured woods is recognized as crucial for fire prevention.

Good maintenance: adaptations deal with lower stocking rates up to 0.05 LU/ha in mountainous areas. Indeed, studies showed that some used forage areas in dry condition might yield only 100 kg of dry matter/ha, supporting 0.01 LU/ha.

A minimum % of grass is also set in the good maintenance rules; grass should cover 95% of area in lowlands, 90% in hills and 85% in mountains.

Figure 11: admissible area in Ariège no breach of GAEC [Source: DDT 09]

Figure 12: admissible area in Ariège no breach of GAEC, as evidence of grazing is visible [Source: DDT 09]

Figure 13: admissible area in Ariège breach of GAEC, as refusals are visible [Source: DDT 09]

Figure 14: non admissible area in Ariège, no trace of grazing [Source: DDT 09]

Example 3 Gard: the wider definition of permanent pastures, adapted to the local forage systems

Gard is a Mediterranean *département,* showing a great variety of situations from dry lowlands to high and relatively humid plateaus (though summer dry season is marked). It is a typical pastoral sheep/goat livestock area.

Admissible areas: Alongside definitions of grass forage areas, the decree states that 'areas of low productivity (for example, moorland, heath, summer pastures, woods) including those with >50 trees per hectare are to be considered as forage areas if they provide a resource in the form of grazable or browsable fodder or of fruit (for example, chestnuts, acorns) which is consumable, accessible and actually used by livestock.'

Maintenance: the general national rules are applied by default (i.e. 0.2 LU/ha and minimum productivity of pastures). In listed areas corresponding to dry conditions, the minimum livestock density is lowered to 0.05 LU/ha and production of pasture to 100 kg of DM/ha. As for other *départements*, the main criteria however is the actual use of area for grazing.

No photographic reference book is available for Gard.

Discussion and issues

Implications of definition of admissible pastures and GAEC should be considered with regards of the different threats which are well documented on permanent pastures.

Threats to permanent pastures

Threats on permanent pastures are well documented. They are of four types:

- Replacement by artificial land-use (housing, infrastructure,…)
- Replacement by crops (ploughing up), with huge impact on C de-storage. Temporary grassland (short rotation) can fall in this category.
- Intensification and loss of semi-natural attributes: fertilisation and/or regular ploughing (under a grass-rotation) and/or re-seeding.
- Abandonment.

It must be noted that the balance on permanent grassland is fragile and the share of genuinely extensively managed permanent pasture is declining in France.

All the categories of permanent pastures are not facing the same threats, accordingly to their situation and characteristics. The following types can be proposed.

Type of threat	***Type of permanent pasture likely to be concerned***	***Typical regions in France***
Pastures ➔ built-up land use	PP close to cities and touristic areas. Not linked to agronomic characteristics though the best pastures are frequently near villages and/or in valleys.	Everywhere, but major impacts in the Alps, coastal areas (e.g. Normandy and Pays de Loire), populated hills (e.g. area of Lyon).
Pastures ➔ Planted forest (artificial woods)	PP in regions where livestock is declining; no economic use of pasture any longer.	Everywhere.
Pastures ➔ crops	PP on medium and good land able to mechanisation (flat, not too rocky, minimum soil depth).	Plain regions in Northern France (e.g. Normandy, Lorraine, Pays de la Loire,…) and deep soil plains/valleys in Southern France (e.g. Aquitaine)
Intensification of permanent pastures	Mostly in humid context (Atlantic, mountainous) and on fields with limited constraints (slope, access, distance, humidity,…)	All parts of France (but with different magnitude), including grassland regions (hills and mountains)
Abandonment (PP ➔ scrubs and woods)	All PP not “improvable”: - PP on fields with constraints in humid context. - PP in dry context (low productivity)	Large scale: Mediterranean regions, high mountains. Small scale: in same regions as in “pastures➔crops” box

We should now discuss only the last three, as the policy issues dealing with the loss of pastures (and more generally agricultural land) towards built-up land is over the scope of discussion of this document. It deals with land use planning and authorizations delivered at the commune level. The question of pastures towards wood plantation has some links with the CAP (regionalisation of livestock production), but the discussion goes beyond the scope of this note, again.

Pastures vs. crops: maintenance of permanent grassland surface at farm level

With regards to CAP declaration, France has lost nearly 160,000 ha of permanent grassland in 2009, thus degrading the reference 2005 ratio by 2.26%. This has been caused both by actual ploughing of grassland in mixed farming areas and by changes of category as declared by farmers. Those fearing strictest rules applied to permanent pastures compared to temporary grassland would have ploughed previously permanent pastures declared — mainly grassland as other permanent pastures as those described above are not suitable for ploughing — in order to have more freedom in the future.

Thus France has implemented the rule of maintenance of permanent pastures surface at the farm level from 2011 onwards. The decree sets some possible derogations in some cases (e.g. young farmers) and clearly states that would the decline of PP continue, stricter rules would be implemented, including obligation of setting new surfaces of PP.

The rules in the GAEC maintenance of the ratio of permanent grassland distinguishes the two types of grassland:

- temporary grassland more than 5 years old;
- permanent grassland.

The area of each category should be maintained in the future: no possible trade-off between categories. Area of temporary grassland (< 5 years) should not be decreased by more of 50%.

Beside its apparent strength (farm level), this GAEC suffers from two major weaknesses:

- Due to pressures from farmers' unions, the reference year has been shifted from 2009 to 2010, thus after the ratio degradation.
- What must maintained are not actual designated areas (fields) but an overall surface at the farm level (except for areas under AE contracts). Rules state that a farmer ploughing up a permanent grassland in 2011 a replacing it with an equivalent surface in grass declared as permanent from the first year – though it will be proved to be permanent in 2016 only.

The regulation does not tell about other permanent pastures not classified in the two above categories, as they would logically fall in the "permanent grassland" category. Nevertheless, it is unlikely that the GAEC does concern such pastures.

Intensification of permanent grassland

This trend is noticeable on largest share of the territory. The % of non fertilised grassland (all types) rose from 40% in 1982 to 66% in 1998. In 2006, 67% of permanent grassland was fertilised; if we assume that a great majority of temporary grassland is fertilised, the ratio is quite high.

Moreover, the livestock density is regularly increasing in most livestock regions with grass (and maize) while some decline might be noticed in dry and mountainous areas (mostly in sheep and goat systems).

It mainly affects grassland, while low productive permanent pastures are not subject to intensification (no return on the fertiliser applied).

This background and gradual intensification of what can be called "regular" permanent grasslands is not really addressed by policy instruments, though it causes a widespread loss of what is called "ordinary" biodiversity (i.e. not protected nor designated species, but the species richness measured by the variety of plants as a whole is declining). It takes two forms:

- In lowlands, it occurs almost everywhere, leaving extensive grassland in very specific areas (e.g. wetlands, dry swards).
- In more difficult context, typically mountains and hills, it occurs in most favourable areas (e.g. flat areas in valleys) while more difficult parts are abandoned (see § below).

The main policy schemes concerned by this issue are:

- Under pillar 2, the agri-environment grassland premium (PHAE II) and LFA payments. They both set a maximum 1.4 LU/ha[12] that farmers tend to reach in order to optimize both gross production/ha and the premium received. This stocking rate indeed is high enough to go along intensified grassland management. In absence of degressivity in payments, there is no signal for extensification. On the contrary, the PHAE II on extensive grasslands is less than on regular ones (49€/ha against 76 €/ha).
- Under pillar 1, the "productive grassland premium" grants higher stocking rates:
    - over 0.8 LU/ha: 80€/ha for the first 50 ha, 35 €/ha from the 51st ha onwards;
    - between 0.5 and 0.8 LU/ha: 50 €/ha, 20 €/ha from the 51st ha onwards;
    - below 0.5 LU/ha: *pro rata* of LU (0.5=100; 0.25=50), capped to 50 ha and/or 2500 €.

As a whole, payments favour a relative intensification, 0.8 - 1.4 LU/ha being an optimum from CAP payments.

Land abandonment – encroachment

This issue mainly deals with the two pieces of legislation described in the main part of the document: GAEC maintenance of permanent pastures in good conditions and definition of admissible areas.

From a policy point of view, the issue is to grant the area which is actually used for grazing, all the more on extensive pattern as it is at the same time the more under threat and the more valuable from an environmental point of view. What counts is the actual use of land for livestock feeding, the type of vegetation being of minor significance.

Admissibility

Excluding actually used areas on the basis of the grass criteria would have a major impact on land abandonment. Not only because the breeder would not be encouraged to manage

[12] — It can even be higher in some départements.

such areas, but also because he/she would be discouraged while the livestock found on such land would be deduced from the one counted in the CAP declaration (with impact on stocking rate and coupled payments – beef, sheep, goat).

It is then likely that definitions of admissible land not adapted to actual practices might lead to two different strategies:

- For those breeders who have the possibility to restructure their holding on good lands (i.e. non grass forage is marginal), they will abandon the share of the farmed area non consistent with the criteria. This share will be abandoned while the other part might be intensified (and/or higher use of purchased feed).
- For the others, simply abandonment of the activity.

GAEC

The GAEC on maintenance of permanent pastures in good condition is not really a problem when the minimum stocking rate (0.2 LU/ha) is lowered in due conditions.

Though the management of ecological features dealing with width of hedges, removal of brambles and scrubs… has not described in detail above it has some impacts on farm management.

Combined with the admissibility criteria (e.g. removal of the surface of woody area in a larger pastoral block), such GAEC might have a contradictory effect:

- On the one hand, they indeed allow a good management of land, avoiding encroachment and deterioration — though the rules set are not consistent with the functioning of agro-ecosystem; but it is clear that some limits and thresholds have to be defined for practicability.
- On the other hand, they might discourage the farmer simply to declare and then actually use some areas too complicated to comply with the rules. This is all the more likely to happen that low stocking rates are not granted (see above).

Possible solutions - some improvements at different levels

Some clear overall conclusion can be drawn from this document:

- Actually used forages go much beyond grassland/herbaceous envelope;
- It is crucial to recognise this in regulation, as losing ligneous forage would have major environmental and socio-economic impacts, notably in Mediterranean areas.
- Intensification on grassland has to be better addressed and prevented.
- Maintenance of the area permanent grassland has to be strengthened.

This being said, the question of practicability of alternative approaches must be addressed. Focusing on the issue of non herbaceous pasture, one risk is to count as admissible areas which are not actually used for livestock. This criteria is prior though it brings to difficulty in setting limits while use of pastoral areas is not a black/white issue but shows a gradient between an occasional use of some areas to a frequent one. The balance depends on climatic variability.

A technical paper set by DDT de l'Aude, can be used to define indicators showing such use. It could be (alone or in combination):

- paths of livestock, presence of dung/dropping;
- grazed grass;
- evidence of intake from shrubby/woody vegetation (shape of young trees, browsing of trees visible on lower branches,…);
- presence of fences or declaration from the shepherd.

Though is variability should be taken into account and understood, one need to set limits and threshold. The approach in France is interesting as it leaves the room for local adaptation in *département* decrees. The issue is to assess the technical quality of criteria (vegetation cover, livestock density). It must be reminded that a recognised expertise from technical institutes has been be mobilized to set the criteria, but further analysis needs to be undertaken to better assess the criteria.

France. Sheep in Cotentin (Manche, Normandie) grazing an intensive permanent pasture.
© Jean-Baptiste Narcy

9.4 NORTHERN IRELAND

Prepared by Patrick McGurn (EFNCP).

Defining permanent pastures and meadows in Northern Ireland
The cross-compliance booklet for Northern Ireland states "Permanent pasture is defined as permanent grassland which is over five years old which has been declared on the Area Aid application in 2003. Land which has been ploughed and reseeded within the same year may be defined as permanent pasture". In the "Guide to land eligibility" issued to all farmers in 2011 Permanent Pasture is further defined as:

- Land used to grow grasses, clover, lucerne, sainfoin or forage vetches; and
- Land which has not been used to grow an arable crop for five years or more so even swards reseeded to forage legumes are included.

Heather moorland is not classed as permanent pasture but under IACS it is included in the definition of forage area as FR1 Grass (grass for grazing, hay and silage, rough grazing, grazed heather, sainfoin, clover, lucerne and forage vetches) and eligible for claiming Single Farm Payment (SFP). Therefore grazed heather and rough grazing are included when determining the total area of Permanent Pasture in Northern Ireland

Taken together, permanent grassland and rough grazings account for 83% of agricultural land in Northern Ireland (65% and 18% respectively). It is little wonder that they cover the whole range of management intensity from high-yielding short-term leys and sown forage legumes at one end of the spectrum to blanket bogs and other semi-natural vegetation at the other.

Permanent pasture and CAP support
In Northern Ireland eligible land under Single Farm Payment (SFP) includes any land that is used for permanent pasture, as rough grazings and "in some circumstances, forage land that forms part of woodland". In general woodland with more than 50 trees/ha is not eligible; however, there are exceptions:

1. Grazed woodland or grazed orchards with more than 50 trees per hectare may be considered eligible if
   - There has been a history of acceptable grazing practice and there continues to be sufficient forage and evidence of acceptable grazing
   - Grazing is not damaging the ecological value of the site. Where the grazing is available right up to the tree trunks, no deduction is required

2. Land originally claimed under SFP but recently planted under a forestry grant scheme or agri-environment scheme remains eligible for the duration of the scheme. This land is no longer counted as permanent pasture however.

3. Land managed as agro-forestry where the tree density is in excess of 50 trees/ha but the planting has taken place in such a way that the area of the field is utilised for agricultural activity in the years of tree establishment.

Northern Ireland is the one of the least wooded areas of Europe and therefore the eligibility of woodland is a minor issue in terms of land area. Some grazed woodlands exist on the old estates and during the 1980/1990s there was a move towards agro-forestry so these areas are covered by the present rules.

Scrub within a field is not part of the eligible area. In line with the Commission rules, all areas within a field which are covered by dense scrub and are greater than 0.01ha in area

must be deducted from the claim. Furthermore, areas which are smaller than 0.01ha but which add up to 0.01ha within a field must also be deducted.

Hedges, banks, fenced off hedges and stonewalls are eligible provided their width does not exceed two metres from the centre (measured at the base). Where the whole width of these boundaries exceeds two metres from the centre, the entire area becomes ineligible. The excluded area is still covered by GAEC.

Heather is considered eligible if it is:

- Accessible to grazing livestock and
- Has significant forage value and
- Is used for agricultural purposes, that is, grazed by livestock.

A general rule is that the height of the heather should not exceed 50cm.

The last three issues scrub, hedges and heather are causing the most concern within the farming community and leading to much environmental damage. With the dry spring this year there were reports of large areas of heather (one report of over 30ha) flailed down in April to comply with the 50cm rule.

Parts of N. Ireland particularly in the west of the province are dominated by wide hedges (Plate 1) some of which are reminiscent of native woodlands.

Plate 1: The thick hedges between fields in the N Ireland landscape, important wildlife corridors between a range of habitats, are classed as ineligible area under SFP.

In Northern Ireland and the Republic of Ireland hedges have been declared a landscape feature. However in the Republic of Ireland, the 2m rule mentioned earlier does not apply - there is no maximum width, providing the hedge isn't encroaching into the field. The result in Northern Ireland has been widespread 'hedge reduction' on many farms, where any 'excess' vegetation is removed usually by mechanical means to leave a very narrow ecologically poor hedgerow strip (Plate 2+3).

Plate 2 and 3. Reducing the width of hedges to ensure the field is fully eligible for SFP.

Patches of scrub are also being removed throughout the countryside due to fear among farmers of heavy penalties under SFP. Often these small areas of scrub are the only semi-natural feature on a relatively intensive farm. Small pockets of scrub that have grown in the corners of fields and around outcrops of rocks are being removed throughout the countryside (Plate 4+5). Under the Department of Agriculture and Rural Development (DARD) rules, removal of individual areas of scrub up to 0.1ha is permitted without written permission from DARD, for larger areas written permission from DARD is required.

Plate 4 and 5. Small areas of dense scrub removed from farms as a result of concerns over eligibility.

Protection of permanent pasture
The area of permanent pasture is established each year on the basis of IACS submissions. DARD monitor the area of permanent pasture as a proportion of the total agricultural area to ensure the national area of permanent pasture is not reduced by more than 5%. If there is a 5% decrease then DARD will put in place a control mechanism to ensure that the 10% tolerance level is not breached. No details presently available from DARD of any changes in permanent pasture. There may be concerns that the recent tightening of rules means that the original area of permanent pasture was over estimated as it included many features that are now deemed as ineligible. Farmers in NI have found that eligible areas on previous inspections do not match more recent inspections, suggesting a narrower definition of eligible land and implying that the base year area of permanent pasture is inaccurate.

Under cross compliance, GAEC6 (the Protection of Habitats (Wildlife Areas), Archaeological Sites and Permanent Pasture) states, "You must retain and not damage semi-natural habitats, including broadleaved woodland, scrub, moorland, wetlands and species-rich grasslands. Reclamation of semi-natural habitats is only permitted where prior written permission has been obtained by DARD." However, under the Department of Agriculture and Rural Development (DARD) rules removal of individual areas of scrub up to 0.1ha is permitted without written permission from DARD.

In addition the EIA for uncultivated land and semi-natural pasture is in operation and there are examples where it has prevented the destruction of species rich grassland. The lack of a detailed grassland inventory for farms will always limit the effect of maintaining "true" permanent pasture. Where a field has been reseeded, the inspecting officer has no information on the previous vegetation state and therefore is not in a position to breach a landowner for the destruction of semi-natural habitat. In addition inspecting staff have such a difficult job when it comes to declaring eligible land with all the above issues of ineligibility that it may be suspected they would be quite content to see a clean newly-reseeded grass sward which raises no questions of eligibility.

As N. Ireland adopts a whole country approach in reducing the decline of permanent pasture, individual farm inspections do not measure the ratio of permanent pasture and arable, only that the correct code is used on the IACS form (FR1 for grassland, AR1 for arable). Based on DARD census figures cereal production has not increased (37761ha in 2003 and 37779ha in 2010). However it has increased on individual farms in the West of the province. (See Irish Farmers Journal 26-4-2008 (http://www.farmersjournal.ie/site/farming.php?newsid=7415).

Maintenance of permanent pastures
Farmers inspected for Cross-Compliance purposes are selected mainly using a risk analysis methodology with a smaller element chosen on a random basis. Complaints and referrals from members of the public and other Government Bodies will also be investigated. In Northern Ireland, compliance with the Cross-Compliance requirements is checked by four Competent Control Authorities. **Department of Agriculture and Rural Development (DARD) Service Delivery Group are responsible for** Good Agricultural and Environmental Condition Requirements (GAEC) inspections. The majority of farmers subject to inspection in 2010 were found to be compliant. Full details of cross-compliance requirements are supplied to the farmer (http://www.dardni.gov.uk/cross-compliance-summary-2010.pdf).

The major problem with farm inspections in N Ireland is that land eligibility is the main issue during the inspection. Encroaching scrub is usually classed as ineligible land rather than the encroachment of unwanted vegetation where the farmer could be advised to sensitively remove the area of vegetation and the land would be then deemed to be eligible the following year.

In the DARD publication "Guide to land eligibility ", a scorecard system is advised on determining land eligibility (http://www.dardni.gov.uk/guide_to_land_eligibility_-_notes_for_guidance.pdf) using the pro rate method, as shown below.

From an aerial photograph, the scattered scrub might look like this.

Scrub scorecard

	%Density/Cover of feature	Examples	% reduction in area required
1	5% or less	Isolated single bushes with grazing accessible on all sides and which cause no impact on the amount of grazing available. Note: Where there are patches of scrub of more than 0.01 ha (defined as dense scrub), these need to be deducted.	0%
2	6 – 20%	Scattered bushes may form clumps of scrub. Some grazing beneath and between. You are required to make a 10% deduction to the area containing the scattered scrub.	10%
3	21 – 50%	Numerous clumps of scrub with restricted grazing. Accessible between clumps. You are required to make a 35% deduction to the area containing the scattered scrub.	35%

Encroaching gorse (*Ulex europaeus*) is a particular problem for species rich grasslands still present on many farms and some control is required, preferably by cutting. By excluding areas of gorse from the claim does not get over the problem of gorse encroachment, a more targeted approach requiring the sensitive removal of such vegetation under GAEC would be a more successful tool at meeting environmental requirements under SFP.

The respective role of national authorities and the EU auditors

Based on reports from public meetings by DARD, the issues concerning Single Farm Payment (SFP) are as a result of a set of EU rules that national governments must enforce.

"*It was indicated clearly from the outset by the meeting Chairman, Professor Eric Long and the main speaker, Aidan McEvoy, a senior inspector involved in cross compliance rules, that it was officials from the European Commission who set the rules over Single Farm Payment eligibility and that DARD had to enforce them*." Impartial Reporter 1st April 2011.

The main issues arise as a result of the imposition of £30m (c. €34m) disallowance fine from the EU because of discrepancies in the 2004-2006 scheme years. Fear of another fine and implications for individual members of DARD staff on the ground may be resulting in strict

national interpretation and enforcement and many farmers feel that they are being over-regulated as a consequence.

The eligibility of heather is a good example, DARD's explanatory booklet states "the European Commission has advised that heather can be considered on a case-by-case basis, providing it is capable of sustaining agricultural activity, for example, grazing livestock, and is maintained in good agricultural and environmental condition." DARD's interpretation is outlined above; 'as a general rule is that the height of the heather should not exceed 50cm'. This means that many areas of heather managed under strict agri-environment rules will be ineligible for SFP (Plate 6). Active management of the moorland would be a better indicator of eligibility than arbitrary height requirement.

Plate 6: A managed raised bog on a farm in N. Ireland. Under an agri-environment scheme the bog is grazed at a low stocking rate (0.25LU/ha) only during the months June/July/August. Scrub encroachment by birch is actively controlled by hand. Under N. Ireland's interpretation of heather eligibility the area is classed as ineligible. The area therefore receives much lower subsidies than a field of perennial ryegrass despite the higher public goods it delivers.

Differences in land eligibility between the Republic of Ireland and Northern Ireland also indicate that national interpretation creates problems. In the Republic of Ireland, there is no maximum width set for a hedge whilst in Northern Ireland once the width of an internal hedge exceeds 4m, the complete area of the hedge is deemed as ineligible. For a small traditional farmer, particularly in the west of the province, this could mean deducting an area out of every field or it could lead to a severe penalty both for this year and for previous years.

To improve the situation requires a change in the definition of permanent pasture and an acceptance of landscape features as part of the farming system. Greater emphasis is required on the management of habitats on the farm. The present situation takes a production agriculture view of eligibility, which could be summarised as, "clean grassland with no inherent features". This discriminates against large parts of Northern Ireland and specifically the farms with the highest nature value. The maintenance of these high nature value habitats is therefore dependent on their agriculture output which is low, or on agri-environment schemes which in N. Ireland's case are under-funded and which, in the years they are available, are over-subscribed.

Possible solutions

For N Ireland the Pillar 1 Premium proposal by EFNCP and other NGOs would be easy to implement. Plate 7 shows an aerial view of a N. Ireland farm that is a mixture of semi-natural grassland and improved grassland. The areas of improved grassland are easily recognised in fields 4, 5,6A, 9,10 and 11.

Plate 7. An aerial photograph of a farm in N Ireland. Areas of improved pasture can clearly be identified.

On the present IACS form the farmer could indicate which fields are eligible for the Pillar 1 Premium similar to the method of claiming Less Favoured Area Compensatory Allowances or Area Aid for Organic Farming Scheme. Annual inspections will determine whether improved grassland is being claimed in error or fraudulently. This would also create an accurate inventory of the extent of semi-natural habitat in the country. DARD is already planning to classify land using aerial photography for agri-environment schemes this year, this will be more detailed than simply classifying the land as semi-natural or improved pasture but illustrates that aerial photography could also be used in administering a Pillar 1 premium payment.

Whilst determining semi-natural vegetation may present some initial difficulties it will be less than the present system of determining ineligible areas. (The present guide on land eligibility is 40 pages long). Areas of bog, woodland and scrub are all easy to classify. Semi-natural grassland can be described as areas that have not been reseeded for a long number years, traditionally have received very low levels of fertility, usually grazed or cut for hay or a late cut of silage.

Specific recommendations:
Redefine the definition of eligible land under Single Farm Payment so it embraces the traditional farming system of an area, including areas ancillary to the agricultural activity, rather than taking a totally production orientated agricultural view of eligibility. The redefined

eligible area would include wide hedges, patches of scrub, parkland trees managed moorland and landscape features.

GAEC should become the main emphasis for on farm inspections. In cases of excessive encroachment of hedges and scrub, apply GAEC by advising the farmer of the changes in management required to comply with GAEC by the following inspection, rather than immediately penalising for not meeting eligibility criteria. This would prevent the present reactionary approach taken by farmers of removing areas of scrub to avoid penalties.

Introduce a Premium for permanent pasture that is not reseeded or heavily fertilised.

9.5 SCOTLAND

Prepared by Katrina Marsden (RSPB Scotland) and Gwyn Jones (EFNCP).

Defining permanent pastures and meadows in Scotland
Permanent pastures (PP) of various types dominate the Scottish agricultural landscape. Recent census-based statistics show that permanent pastures in the widest sense account for 82% of Scotland's farmland, making up an estimated 75% of all land claimed in IACS.

In the Scottish IACS a distinction is made between the following types of grassland:

- Rough grazing (RGR)
- Grass over 5 years (PGRS)
- Grass under 5 years (TGRS)
- Open woodland (grazed) (WDG)

Rough grazing includes the most unintensively-used pastures which have not been reseeded, and encompasses a range of both herbaceous and non-herbaceous vegetation types - machair and dunes; calcareous, mesotrophic and Alpine grasslands; Alpine heaths; fens and flushes - but especially acid and wet grasslands, Atlantic wet heaths, European dry heaths and blanket bogs. Rough grazings account for around 66% of total agricultural area and 80% of all recorded PP (c. 53% of IACS claimed area and c. 70% of all IACS claimed permanent pastures).

While the most extensive hill ground falls clearly into the rough grazings category, in some situations the distinction between grass over 5 years and rough grazings will be more unclear. This can cause some problems when agri-environment measures seem appropriate to particular land types, but only "in-bye" (non-rough grazing) land is eligible; in the context of this report, there are no issues raised by this complication however.

Another forage code which could in some cases overlap with rough grazing is open grazed woodland. But again, both fall within the wider definition of 'permanent pasture', for example in the context of the overall total area to be maintained under CAP rules.

In the Scottish Government guidance to farmers the standard EU definition of permanent pasture is given:

Permanent pasture is land that is used to grow grasses or other herbaceous forage either naturally (self-seeded) or through cultivation (sown) and has not been included in the crop rotation of the holding for 5 years or longer i.e. from 16 May 1998. This includes grassland that has been ploughed and reseeded with grass.

It is therefore be possible to include grass that is reseeded so long as it had remained as grass and has not been sown to an arable crop.

Permanent pasture and CAP support
The Scottish Government guidance notes provide as follows:

Trees

- *Parcels with grazed woodland with less than 50 trees per hectare are eligible under SFPS.*

- *Parcels of grazed woodland with more than 50 trees per hectare may also be considered eligible if you can demonstrate that:*
    - *there has been a history of acceptable grazing practice (for example, through previous grazing practice, previous scheme applications, or the presence of trees with features caused by browsing – such as basal swelling); and*

  - *grazing is not damaging the ecological value of the site, for example, by significantly reducing the number of existing tree seedlings and saplings or by reducing the occurrence of grazing sensitive plants such as bramble.*

- *Close-canopied woodland, where no grazing can take place is ineligible for the purposes of SFPS and LFASS.*

- *Land used for woodland creation will lose its eligibility for LFASS payments. Whilst there is an option to declare grazed woodlands and claim LFASS, in general, as soon as the land ceases to be classed as forage, it ceases to be LFASS eligible.*

- *The changes to the SFPS brought about by the mid-term review of CAP included the introduction of a facility to activate SFPS entitlements on land used for the creation of a woodland. Previously, except in specific circumstances, like woodland grazing, land used for forestry was ineligible as far as SFPS was concerned.*

- *To benefit from this new provision, you must meet the following conditions:*
  - *The land used for the new woodland must have generated or been capable of generating an SFPS payment for you under the 2008 scheme;*
  - *The land used for the new woodland must have been afforested for the first time after 31 December 2008, and*
  - *You must be in receipt of a payment or participating in Scottish Government or EU funded afforestation schemes*

Scrub

- *The key message is that where vegetative cover (scrub, gorse or density of bracken or bracken litter, etc) prevents the availability of viable forage, the area is not eligible for SFPS or LFASS.*

- *Any distinct area or areas within a parcel which clearly cannot be grazed (that is, the vegetative cover is too dense) should be excluded, even if such areas are adjoined to other eligible areas. You must deduct areas within the parcel where the vegetative cover is taller and/or denser (in comparison to an area with light cover) and that animals cannot graze. You should do this by assessing the ineligible area and deducting it from the gross eligible area of the field. It is not necessary to deduct aggregated areas of less than 100 sq mtrs (0.01ha).*

- *Some land parcels may have gorse and bracken within them. If the cover is light and can clearly be grazed (that is, the gorse is not too dense or the density of the bracken and bracken litter does not prevent the growth of viable forage) the land is eligible for SFPS. It may also be eligible for LFASS depending upon other factors.*

- *The growth cycle of bracken means that it dies back each year. This can lead to a build up of dense litter so, without remedial action, the ineligible areas will increase over time. You need to remember, therefore, that eligible areas within a field will change from year-to-year and you should assess the eligible area each time you make a land declaration.*

Boundary features

- *You can use the total parcel area to activate entitlements for payment, providing you make an allowance for any ineligible areas, and/or excessively wide boundary features. Traditional environmental boundary features are hedges, ditches and dykes (not fences) and how these should be treated are covered in the following sub-paragraphs.*
  - *Where these features form the boundary of the field and the width of the hedge, dyke, ditch (width of water bed) in that field does not exceed 2 metres, then the gross area of that field can be claimed provided there are no ineligible areas to be deducted.*
  - *If the traditional boundary feature exceeds 2 metres from its centre, it should be assessed. If the feature is a hedge not under management then the whole area from*

the centre point to hedge edge should be deducted as an exclusion area for that field. If the feature is a ditch, only the width of water is deducted if in excess of 2 metres from its centre for that field.

- *If a traditional environmental field boundary has a protecting fence erected next to it and the FIS boundary of the field remains on the environmental feature, then the protecting fence can be ignored with regards the boundary of the field.*
- *If there is any land between the protecting fence and the environmental field boundary, this land is eligible to be claimed for SFPS but should be assessed for LFASS activity (i.e. does stock have access for grazing purposes?).*

The guidance provided by Scottish Government takes a reasonable line stating that if an area is grazable it is eligible. In practice, however, the strong concentration on ineligible land just before IACS forms were due to be submitted in 2010 has had negative impacts in that farmers have been burning scrub and draining wet areas as a precaution. Farmers have been approached by Government staff pointing out areas which for example could become ineligible in the future judging from aerial photography.

Boundary features and areas of scrub over a certain size are excluded and are not included in IACS.

The guidance notes contain photographs to assist the farmer, but these illustrate extreme cases where no pasture resources are visible (and one positive example of a forest with no intermediate layers and a complete grassy ground layer).

Protection of permanent pasture
Once more, the Scottish Government has produced extensive guidance for the claimant:

- *Member States must make sure that there is no significant decrease in the area of permanent pasture declared in 2003.*

- *Permanent pasture is land that is used to grow grasses or other herbaceous forage either naturally (self-seeded) or through cultivation (sown) and has not been included in the crop rotation of the holding for 5 years or longer i.e. from 16 May 1998. This includes grassland that has been ploughed and reseeded with grass. It does not include land claimed as set-aside whether in grass and/or in long term (e.g. over 5 years set-aside) which will remain classed as arable land.*

- *If the area of permanent pasture in Scotland or the UK declines compared with 2003 figures, we may have to take steps to prevent any further loss of permanent pasture, especially when this decline approaches 5%. If the area declines by more than 10%, farmers who converted pasture in the three years prior to the 10% level being exceeded will be required to reconvert an area of land to permanent pasture (other than areas converted to woodland) and retain that land as permanent pasture for five years.*

- *We do not expect to have to take any action to prevent the loss of permanent pasture.*

- *Please note that while you may plough up permanent pasture for another agricultural purpose, you must be aware that The Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (Scotland) Regulations 2002 apply to uncultivated land and semi-natural areas. If proposed land improvements falls within the EIA Regulations you will require approval before going ahead. Additional requirements may apply if the land is within a Site of Special Scientific Interest (SSSI), Special Protection Area (SPA) or Special Area of Conservation (SAC). For further information and guidance on EIAs contact your local SEERAD Area Office or visit the Scottish Executive website www.scotland.gov.uk/about/ERADRA/LURP3/00016808/page835780516.aspx*

There are therefore no farm level rules on maintaining permanent, pasture though the Scottish Government retains the power to enforce reinstatement of permanent pasture if the national ratio declines to an extent that Scotland risks breaching the 10% rule. When filling out the SAF, the codes which together make up the area of permanent pasture (WDG, RGR and PGRS) are the only codes where the form is pre-populated with the number of hectares from the previous year. It is possible to change the number on the form, but retaining the land in these categories thus has the added advantage of ensuring that the form remains easy to complete in future years.

There are also GAEC measures linked to some of the agricultural EIA requirements (see below). There were 8 breaches of these three GAEC measures in 2008 and 1 in 2009. For the EIA regulations, the public register shows that two environmental statements have been required since the regulations were introduced.

GAEC 12 Ploughing pasture of a high environmental or archaeological value
Any proposal to plough up pasture of high environmental or archaeological value e.g. species-rich grassland, Machair habitats, pastoral woodland and heather moorland will require the consent of the relevant authority (e.g. SNH for land in SSSIs, SPAs or SACs; SEERAD for land in an agri-environment agreement) or approval under the Environmental Impact Assessment
(Uncultivated Land and Semi-Natural Areas) (Scotland) Regulations 2002 (SSI 2002/6).

GAEC 13 Protection of rough grazings/semi natural areas
To ensure the protection of rough grazings and other semi-natural areas you must not undertake new drainage works, ploughing, clearing, levelling, reseeding or cultivating unless approved under the Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (Scotland) Regulations 2002 (SSI 2002/6).

GAEC 14 Application of lime and fertiliser on rough grazings/semi natural areas
To ensure the protection of rough grazings and other semi-natural areas, pesticides, lime or fertiliser must not be applied except in the situations specified below or as approved under the Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (Scotland) Regulations 2002 (SSI
2002/6).

Exceptions are allowed in the following circumstances:

- *Herbicides may be applied to control injurious weeds as defined in the Weeds Act 1959, and with the prior written approval of SEERAD for the control of other plants e.g. Japanese Knotweed and Giant Hogweed.*
- *For the control of bracken with Asulam or other approved herbicides; or*
- *The application of lime or fertiliser where no conservation damage will result e.g. holding fields adjacent to hill livestock pens.*

GAEC 13 raises interesting issues. Firstly, the wording does not cover the whole scope of the uncultivated land and semi-natural areas provisions of the EIA, nor of the Regulations which implement them in Scotland. Rather than referring to '*any* plan or project', it specifies certain operations, while omitting others which are also likely to lead to intensification of management, such as some cases of enclosing areas of rough grazings. Secondly, there is no baseline which can be used by the authorities to establish the previously uncultivated or semi-natural character of land, except in the case of land declared as rough grazings. This is a particular issue in the case of the ploughing of semi-natural inbye permanent pastures which could, according to the wider definitional rules, have been reseeded every other year, for example.

Maintaining permanent pasture
The guidance on the GAEC rules which relate to the maintenance of permanent pasture reads as follows:

GAEC 10 Undergrazing
Avoid undergrazing at a level where the growth of scrub or coarse vegetation is detrimental to the environmental or agricultural interest in the field.

Land will not be considered to be undergrazed provided it is capable of recovering by anytime during the growing season in the calendar year that follows the date that the problem first occurred.

Where undergrazing is identified, a management regime to be observed on that site must be approved by SEERAD.

GAEC 11 Overgrazing
Avoid overgrazing with livestock and other species in such numbers as to adversely affect the growth; structure; or species composition of vegetation on the land. The only exception to this is where vegetation is normally grazed to destruction to a significant degree (i.e. land that is to be cultivated immediately after grazing by livestock, which remove the entire crop).

Land will not be considered to be overgrazed provided it is capable of recovering by anytime during the growing season in the following calendar year.

Where overgrazing is as a result of an unexpected and unpredictable incursion of wild deer or geese and it can be shown that appropriate action had been taken to deal with the problem (including for deer, taking advice from the Deer Commission for Scotland (DCS)), then you will not be held accountable for overgrazing caused as a result of this infringement.

Where overgrazing is attributable to rabbits you will be expected to provide evidence of the use of available control methods.

Where overgrazing is identified, a management regime to be observed on that site must be approved by SEERAD.

GAEC 18 Encroachment of unwanted vegetation
You must avoid the encroachment of unwanted vegetation which degrades the agricultural and environmental value of the land to the extent that the land is not capable of returning to agricultural production by any time during the growing season in the following calendar year.

Taking the above into account, the encroachment of native species is allowed in the following instances:
• recolonisation of trees across the boundary line from native woodland.
• recolonisation of scrub species such as gorse, birch and juniper as part of a mosaic of habitats.
• reversion of land to wet grassland or wetland.
Where environmental gain is to be achieved this must be declared on the IACS return using the data sheet code for Positive Environmental Management (PEM).

In 2008-9 there was one breach for undergrazing, none for overgrazing and 2 for encroachment of unwanted vegetation. On the other hand, the guidance's flexibility on 'desirable' encroachment, properly authorised, seems very enlightened, and some encroachment (for example, of noxious weeds) are not desirable in any sense.

The current rules allow a calendar year for restoration of condition of the land. For this reason, breaches are extremely rare as land managers will not be in breach immediately and are advised as to how they can restore the area. The auditors have raised questions with the Scottish Government about this provision. If removed, this could potentially result in very large numbers of breaches from farmers with extensive grazing in cases where damage has occurred due to circumstances outside the farmer's control (such as weather conditions) and

where damage is easily restored. In addition, there are concerns that this would mean that arable farmers, leaving small areas uncropped (as not agronomically-profitable to use) could find themselves in breach of the undergrazing measure.

There is no guidance on the best time of year to remove scrub or methods of doing so.

The European Court of Auditors' recent report on the SPS[13] illustrates some of the issues arising from the flexibility of interpretation of 'undergrazing'. It estimates that 150,000 ha of land used for claiming SPS is entered under the 'maintained in GAEC' clause of the definition of agricultural area and is not in fact used for any agricultural production. In 2007 and 2008 40 % of the payment entitlements transferred without land had been activated on rough grazing land. Almost all the additional land that has been declared in Scotland for SPS since 2007 (ca. 58 000 ha) was rough grazing land (ca. 50 000 ha). The implication drawn by the Court is that this land has not been in agricultural use in recent years. Yet on the other side of the coin EFNCP estimates[14] that there are at least 150,000 ha of *actively*-used common grazing forage area where the graziers cannot claim area payments because they can only declare their share of the area grazed, not the whole area under active use.

The respective role of national authorities and the EU auditors

Eligibility

In general, the EU rules have been interpreted with a reasonable degree of flexibility. The provisions are open to include an interpretation which allows for land included in environmental management. More flexibility should be given for the size of field boundaries but in most other cases exceptions can be granted for environmental reasons. Problems arise because these are viewed as exceptions and not the rule. Farmers are tending to take a precautionary approach by getting rid of scrub, for example.

Problems are caused by auditors' overly strict interpretation of the guidance, combined with concerns from the Scottish Government about having to include collect more information on environmental features if environmental exceptions are made (this may be a reason that larger landscape features are not eligible for support as these features are currently not included in LPIS). There appears to be some pressure on Scottish Government to increase the coverage of LPIS which would be helpful in terms of more effective implementation of GAEC rules.

GAEC

The auditors are questioning Scotland's interpretation of some of the GAEC measures and whether land is really in agricultural management in areas where grazing is extensive. While there may be cases in which abandonment really is occurring, this should be picked up through follow up visits and livestock numbers. It is also clear from the large difference between the land declared as agricultural in the census and the land which is used to claim SPS entitlement – almost 28% of all census agricultural land or 1.58 million ha - suggests that farmers were mostly conservative when establishing their entitlements in 2005. Excluded land includes not only deer forest but rocks, lochs and other non-forage land and this land has, in general, been excluded not only since the advent of SPS but since the introduction of IACS in 1993 (Gwyn Jones, pers. comm.).

Scotland has some useful GAEC measures for protection of high quality pasture. However, only select parts of EIA requirements have been included (rather than including the

[13] http://eca.europa.eu/portal/pls/portal/docs/1/8096819.PDF

[14] http://www.efncp.org/download/Trends-in-Common-Grazing3.pdf

regulations as a whole) and there is no baseline for semi-natural areas. It is therefore likely that the few breaches recorded for these measures under-represent the true situation.

Permanent Pasture
Having separate codes for rough grazing and grassland over 5 years is useful as it is clear that most rough grazing is generally not ploughed and few inputs are likely to be applied. Grassland over 5 years is less clear and may range from biodiversity-rich (normally lowland) grasslands to grass that is reseeded and fertilised but has merely remained in the same place for over five years. Furthermore, the specific guidance on permanent pasture suggests that 'over 5 years' refers to the number of years in grass (i.e. that the land has not been used for arable cropping in that period), not the number of year since the land was last ploughed or otherwise reseeded.

Relevance and applicability of a permanent pasture premium
The introduction of a permanent pasture payment would be beneficial in terms of redistributing support to some of the areas likely to be of High Nature Value. The main problem would be that most of the agricultural area in Scotland is rough grazing and permanent pasture and there would be little to distinguish between the highest quality areas and those that have been overgrazed for long periods and are of little biodiversity interest or areas which are largely unmanaged. It would also not be desirable to prevent all ploughing of grassland over 5 years old. In parts of Scotland, large areas of grassland are managed intensively and small areas of arable within such a grassland area are likely to be beneficial, particularly for farmland birds. Having a higher level premium together with a basic GAEC measure with some inbuilt flexibility is therefore desirable.

Recommendations

Permanent Pasture
A clearer delimitation of permanent pasture into an intensively-farmed category (frequently reseeded, heavily fertilised) and a broadly semi-natural category would facilitate policies for maintaining pastures of greatest environmental value. The recording of different categories on LPIS should be more closely monitored to ensure the data set reflects reality on the ground and better guidance should be provided on which category to use.

Eligibility
Existing eligibility rules as included in the guidance in Scotland are relatively flexible, pragmatic and well-adapted to the maintenance of public goods. Pressure from Brussels for a tighter and more rigid system has had negative consequences for the environment. After recent inspections, staff from local SGRPID (Scottish Government Rural Payments and Inspections Division) offices have been warning farmers that if they have scrub on their land they may be at risk of incurring penalties. This has encouraged the removal of semi-natural habitats even in cases where farmers clearly would be in line with the Scottish Government guidance. Local SGRPID staff should be given clearer guidance on the potential environmental benefits of semi-natural habitats and should advise farmers on how they can maintain them (e.g. marking Positive Environmental Management on their IACS forms) rather than encouraging them to get rid of any unfarmed habitat.

However there will be areas which, under the tighter implementation now being enforced, are deemed ineligible (dense bracken, for example). It seems very unjust for the producers in question to be penalised when the guidance (and inspections) in the past, specifically during the SPS reference period and in 2005, when entitlements were established, did *not* penalise their inclusion. Had Scotland 'done it properly' at that time, then there would have been no reduction in SPS support – they would have received the same historically-based payment over a smaller area.

Meanwhile, if the intention of the eligibility/GAEC combination is to encourage remedial action – improving the environmental condition of the grazings by controlling bracken, for

example – the level of SPS for these areas needs to be significantly higher. At present any clamping down will lead to effective abandonment of these areas, while significant reductions in SPS payments as a result of penalties applied might even lead to a complete cessation of agricultural activity on the unit.

GAEC

GAEC rules in Scotland are also in theory well adapted to maintaining public goods. A lack of data in LPIS/IACS on location of semi-natural pasture and landscape features limits the effectiveness of some rules. Some countries have incorporated such data in LPIS, and this should be done in Scotland.

The guidance to inspectors does not provide them with enough information to access some breaches accurately e.g. what constitutes damage to a boundary feature. The Scottish Government is currently linking different types of inspections, which is to be welcomed. However, there are still gaps e.g. Scottish Natural Heritage's assessments of the condition of SSSIs and Natura sites should be linked to cross compliance and where necessary, this should be used as a mechanism to ensure agricultural sites are brought into favourable condition.

The application of EIA should be made more effective for the protection of semi-natural farmland. EIA (Agriculture) regulations should be included as a whole in GAEC rather than just a part of them. Data needs to be collected on the current extent of semi-natural land to provide a baseline against which changes can be measured.

(above) Gorse burnt in May 2010 – This might be considered in breach of SMR 1 (Birds and Habitats Directive) since it took place during the bird breeding season. It is also outwith the time that muirburn is allowed. In some cases, farmers are being advised to remove even small patches of gorse by local SGRPID officers in order to ensure their land is eligible and this is a common site across the country. While gorse is not a rare habitat, bird species such as whitethroat and yellowhammer nest in it in high densities.

(above) Grubbing up of gorse for burning. The gorse was dug up towards the end of March and burnt mid April. It would be debatable whether this breaches current GAEC rules.

(above) Wet area of an arable field drained. The farmer reported that he sent aerial photos by the local SGRPID office which highlighted this area as something that might become ineligible in the future. Small wet hollows like this are essential habitat for breeding waders such as the lapwing which has declined by around a third since the late 80s in Scotland. The farmer will have to repeatedly drain this area to keep it dry. It is unlikely that it would breach any cross compliance rule.

9.6 SWEDEN

Prepared by Gwyn Jones (EFNCP) from material provided by Sofia Blom, Swedish Board of Agriculture and Jörgen Wissman, Swedish Biodiversity Centre.

Defining permanent pastures and meadows in Sweden
Sweden has a tradition of managing semi-natural pastures with a relatively high amount of trees and bushes. Some of the typical habitats also have low fodder value, but it is often not correlated with tree density. These pastures are mainly alvar grazing (habitat type 6280, Nordic alvar and Pre-Cambrian calcareous flatrocks) as well as forest pasture (partly habitat type 9070, Fennoscandian wooded pastures) and mountain pasture. These pastures cover a total of over 50 000 ha, approximately 10 % of all semi-natural pasture in Sweden.

Nevertheless these pasture types, which are the focus of the difficulties outlined below are formed by and are totally dependent of agricultural activities. Most of these nutrient-poor, tree-rich or relatively low-productivity open semi-natural grasslands and pastures have been used as a very important part of the agricultural system for centuries, or even millennia – a clear indication in itself that they are suitable for agriculture! As well as being very important for nature conservation, they are considered a significant and valued element of the cultural heritage in Sweden, as in many other European countries.

Sweden applies the same general legal definition of permanent grassland as the other members of the EU (>5 years in grass).

Permanent pasture and CAP support
From a nature conservation perspective, the most interesting pastures and meadows within the overall 'permanent pasture' definition are semi-natural. Before 2007, when Sweden changed its eligibility rules after EU audits, there were 531 000 ha of semi-natural pastures receiving Pillar 1 support. The total semi-natural pasture area receiving Pillar 1 support is now reduced to 454,000 ha – a reduction of 77,000 ha.

Since 2007, some habitat and or pasture types have been excluded from eligibility for reasons of tree/scrub growth or insufficient forage production, including alvar grazings (Annex 1: 6280 Nordic alvar and Pre-Cambrian calcareous flatrocks), extending to 28,000 ha and forest and summer mountain pastures (a mixture of grazed forest and Annex 1 9070 Fennoscandian wooded pastures), covering to 15,000 ha and 17,000 ha respectively. These areas are now only eligible for support within the Rural Development Program.

Additionally an LPIS update has been conducted where all parcels have been controlled, mainly in-field controls for semi-natural pastures. About 60,000 ha have then been deducted from LPIS as a result of all the criteria outlined below. It is important though to note here that the entire area deducted has not *formerly* had support as producers would commonly not claim the total area of each parcel.

Semi-natural pastures and meadows are currently eligible for SPS support under the following criteria:

- *The land is [not suitable for ploughing and] is used for grazing.* To receive payment, the land [which is classed as pasture because is it not suitable for ploughing with modern techniques] must be used for grazing. The area will be considered abandoned if there has been no grazing for two years or more.

- *The land is covered with grass or herbs that are suitable as fodder.* If the overgrowth makes the grass and herbs disappear or if these are replaced by other species of grass and herbs not suitable for grazing the area is considered abandoned. (Even alvar which is not significantly covered by scrub is excluded under this rule)

- *Woods and areas where measures have been taken essentially to encourage the tree growth are not considered as pasture.* Even if the land is covered with suitable grass and herbs it can be considered as ineligible if the tree density is too high and/or if the disposition and variety of the trees is a consequence of forestry practices (see below).

Areas larger than 0.01 ha where bushes or scrubs are so dense that the ground is hardly accessible for the grazing animals are not pasture regardless of the type of vegetation. Those areas are removed from the parcel (and block). The total area of patches of bushes and scrubs that are each less than 0.01 ha individually may not in total exceed 5 % of the area of the parcel.

Similarly, areas with impediments (rocks, stones, areas with sand and other permanently ineligible areas and features) larger than 0.01 ha are not to be considered as pasture and are therefore withdrawn from the parcel (and block). The total area of impediments that are each less than 0.01 ha individually may not in total exceed 5 % of the area of the parcel.

In wetland areas, that part of the water's edge which contains grass and herbs that is suitable as fodder and accessible for the animals is considered pastureland.

Regarding trees, a limit of 60 trees/ha is used in general, with a higher limit of 100 trees/ha being used in certain cases, as described below. These stem/ha figures are higher than that given in the Commission guidelines and were discussed and accepted by the Commission services in connection with the Health Check decision.

Within a parcel, the rules are similar to those for scrub and rocks, but with a threshold area of 0.1 ha - areas of at least 0.1 ha with similar tree-density and which have more than 60 trees/ ha are not eligible for support. Trees with trunks that emerge from a shared area of maximum 1 m^2 are to be considered as one tree. The trunk has to have a diameter of more than 10 cm at breast-height to be considered a tree. Dead and ring-barked trees are exempted.

Pastures with trees that in advance has been established by the County Administrative Board as pastures with special biodiversity values and that are included in a commitment to be maintained in certain traditional ways are treated separately. Such areas can have a tree density of up to 100 trees/ha and still be considered pasture eligible for SPS. The commitment of maintenance is also connected to support for environmentally friendly farming in the Rural Development Program.

Pre-established pastures that have more than 100 trees per ha (i.e. not included in the 454,000 ha total which is in principle eligible for SPS) can still be supported within RDP and are partly compensated for the loss of SPS support through a higher level RDP payment. In 2010 about 8,000 ha received this higher compensation, mainly Fennoscandian wooded pastures (9070) and Fennoscandian lowland species-rich dry to mesic grasslands (6270).

Landscape features such as stone-walls in semi-natural pasture are considered as being traditionally part of good agriculture cropping or utilization practices. They may be included in the eligible area provided that they have a width not exceeding 2 meters. Furthermore features with particularly high natural or cultural value such as certain natural impediments and bushes may be included in the eligible area even if they do not comply with the limitations described above. These elements must be subject to a specific plan or decision drawn up by the competent authority.

All land within the LPIS should be agricultural land. Land outside the LPIS at a given time can be accepted as eligible if the farmer reports to the County Administrative Board (CAB) that previously abandoned land will be reinstated as pasture land. The CAB will examine the land on the LPIS orthophotos and, if necessary, perform a field visit. If the land fulfils the conditions outlined stated above, it will be included in the LPIS and considered eligible.

At the same time, however, the obligation in article 13.8 of Reg. No. 1122/2009 is to declare *all* land, including ineligible areas, combined with the threat of reduction on payments according to cross-compliance on maintenance and deterioration creates an uncertainty among farmers about how to deal with land which may or may not be eligible depending on how many trees, bushes or solid rocks the control authority counts. It would be easier to inform farmers that only areas for which the farmer claims payment should be declared.

The majority of the Swedish pastures adjoin woodland. Hence the problem of judging where the borders should be drawn between areas that are not agricultural land and areas that are pastures just overgrown with unwanted vegetation and pasture which completely complies with the regulations is very common.

Study of environmental impacts
The authorities are in the process of assessing in detail what areas have been excluded from LPIS and what might be the implications for their management, not least in the context of Natura 2000 commitments. A study has been done on arease not eligible for SPS and not included in RDP. It is possible that some of these areas would be eligible for RDP, but since the farmer has not applied for such support, they are not at present included in LPIS. But it does *not* include those alvars, mountain pasture, forest pastures or areas with >100 trees/ha which, though ineligible for SPS, *are* claimed under the RDP with a higher payment level, since these areas are included in LPIS (and identified as a special parcel type).

Preliminary results show that in some parts of the country up to 24% of the area deducted from LPIS is made up of Annex 1 habitats that need at least some agricultural maintenance (9070, 6270, 8230, 4030, 6410). Nationally, the average figure is 8 %. There will need to be particular attention given to 9070 and 6270 pastures and to specific parts of the country if Sweden is to ensure compliance with its Habitats Directive obligations.

Turning to detailed management needs, the study, which is based on a sample survey, suggests (see Figure 1) that the majority of the excluded area would benefit from being grazed or mowed but a large area (around 44% of the total excluded area) is also in need of restoration (mainly the clearance of trees and bushes). It is ironic that these are the very areas where a combination of inclusion in the scope of direct payments and encouragement by GAEC rules should have ensured their sustainable management; the result has been the exact opposite!

15 % of the deducted area would benefit most from being maintained by sustainable forest management – exclusion of these areas from LPIS is reasonable. Some areas lack conservation values or need other types of management. 10% of the excluded pastures surveyed were found to have no environmental or cultural value. However this does not mean that they are not 'farmland' with an agronomic value to the producer.

Interestingly, 20% of the excluded land needs grazing or mowing but does *not* require restoration efforts. Further investigations are being carried out to assess precisely which element of the rules (fodder value, canopy cover etc.) is responsible for its exclusion.

Further work, covering a wider sample area, is also being carried out to investigate the effect of compliance with GAEC rules on the biodiversity values of land which *is* included in LPIS and to assess in more detail the value of the ‘lost’ lands, including land which farmers themselves decided not to include, possibly out of confusion regarding the rules or fear of cross-compliance costs or penalties. As shown diagrammatically in Figure 2, it is very likely that there will be interesting and important pastures which are not taken into account by any part of the current system, whether supportive or punitive.

In fact, half the respondents to the questionnaire survey had done more thinning/clearing since the rules came in. In the field survey, 17% of pastures were cleared; in general this

had had beneficial effects - a limited success for GAEC/eligibility rules, but one which must be placed in a much less positive wider context.

In this context, it is noteworthy that while 3/4 of farmers receiving the agri-environment payment for semi-natural habitats intended to reapply for it at the end of their present contract, farmers with smaller grazing activity overall were disproportionately represented in the group not intending to renew. Many cited reasons of business flexibility or of discontent with the rules of the agri-environment measure, though an even greater number of farmers cited fear of penalties as a factor. Indeed, some said that they intended, at least in the short-term, to continue grazing without any payment, but this makes the habitats very vulnerable to changes in socio-economic conditions.

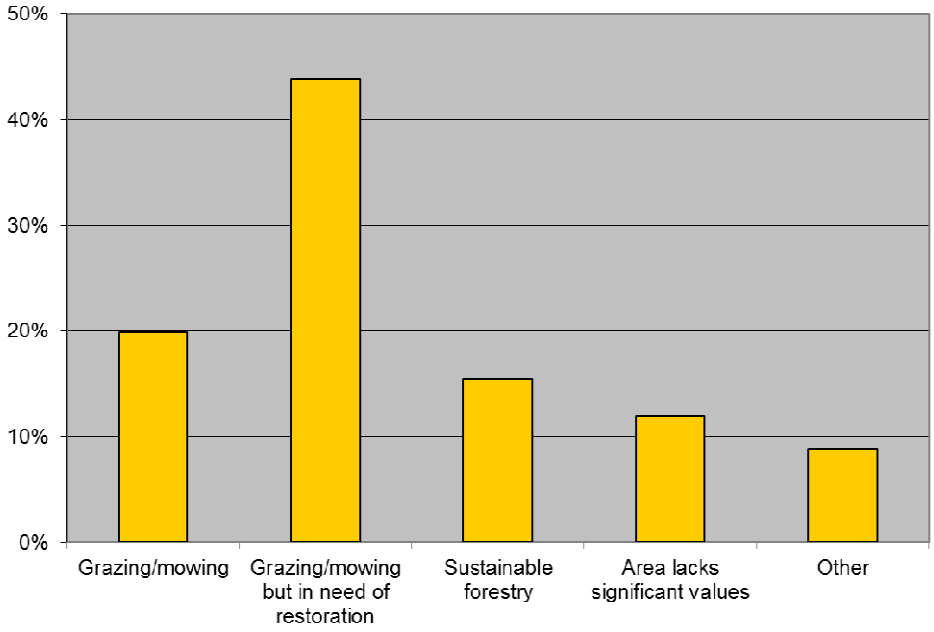

Figure 1: Analysis of the area excluded from LPIS after 2007. The graph shows the maintenance that would be recommended in order to best benefit the values of eareas excluded. (Swedish Board of Agriculture)

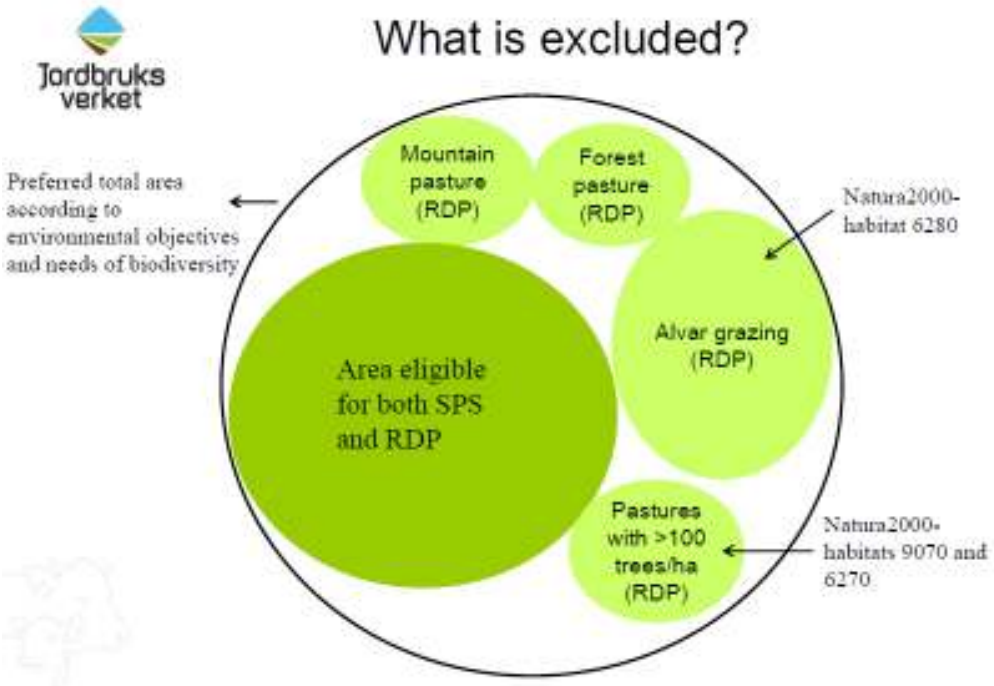

Figure 2. Diagrammatic representation of CAP engagement with the population of semi-natural farmland in Sweden (Swedish Board of Agriculture)

Protection of permanent pasture
The rule for maintaining the area of permanent pasture is implemented at a national level. There are some national regulations that prohibit activities that directly would harm semi-natural pastures or features within such pastures from a nature and cultural history conservation perspective. But there are no regulations that require maintenance of pastures at the farm level.

Maintaining permanent pasture
Under GAEC, minimum maintenance means that the land is either mowed or grazed to the extent that the vegetation is obviously affected. For biodiversity reasons, the competent authority can require that pastures or parts of pastures are not mowed or grazed for single seasons. That is only possible in pastures with special biodiversity values that are included in an RDP commitment that they be maintained in certain traditional ways.

Regarding unwanted vegetation, a number of different criteria are used. Old and/or traditionally managed trees must not be obviously crowded by unwanted vegetation. Considerable amounts of unwanted trees or bushes must not appear in areas that have previously been open land. Trees and bushes cannot grow to be so dense that the normal ground vegetation starts to disappear, or so that the ground is hardly accessible for the grazing animals.

The Habitat Directive aims to preserve, among others, certain habitats that require agricultural maintenance such as mowing or grazing, e.g. alvar pastures. It is inconsistent that they are not considered agricultural land in accordance with the regulations of EU's most basic support scheme for farmers, SPS. The agricultural reality is that the most economically-rewarding type of grasslands to farm in Swedish conditions are sown leys, which provide a lower level of benefit in terms of biodiversity and other public goods, but are key areas when it comes to reducing loss of nutrients, binding carbon etc. In many areas, grazing animals are already scarce – it is rational for the farmer, for purely economic motivations to shift his livestock from species-rich pastures to these temporary grasslands. This simplification of land use has been going on for years in Sweden and is widely regarded as a major threat to biodiversity.

To slow down or reverse this trend Sweden has had for many years an ambitious Pillar 2 program for semi-natural grasslands, a measure which has been improved over time in collaboration with researchers; a large proportion of RDP funding is devoted to this purpose. Now the SFP rules in effect *further* rewards farmers for limiting their animals to totally open, homogenous, grasslands rather keeping them on heterogeneous tree-rich pastures and meadows, despite the unquestionably fact that the later promotes higher species richness, and higher cultural and aesthetical values. Rather than encouraging multi-functionality, the new rules are putting pressure even on semi-natural habitats which farmers still consider worth grazing.

There is a strong case for believing that the present eligibility rules, which exclude traditional farmland in many countries, violate clauses 8j and 10c of the Convention for Biological Diversity[15]. The CBD provides that people shall be able to continue with the traditional

[15] 8j: Each Contracting Party shall, as far as possible and as appropriate, subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;

10c: Each Contracting Party shall, as far as possible and as appropriate protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements

management of the landscape. It also regulates our obligation to manage biological diversity to preserve it. Ironically, these two provisions are wholly mutually compatible on the 'problem' pastures. An impact assessment on CBD implementation should be a part of the development process for a reformed CAP.

The Board of Agriculture work found examples where protected open-grown trees had been cut to enable compliance with the 60-tree rule. However, the overall impression created by the survey was not that one rule says "Save these particular trees" while another says "Cut them". The conflict is rather at the level of policy objectives. For example, one set of rules requires consideration of old growth trees that are favoured by traditional silvo-pastoral management, while another encourages clearance – not necessarily *aimed* at old growth farming-dependent trees, but not explicitly exempting them from clearance either.

The respective role of national authorities and the EU auditors

The adjustments to the eligibility rules were undertaken after some claimed parcels on which payments had been made were discovered, on inspection by the EU auditors to have received insufficient management to comply with GAEC, in some cases apparently no management at all. These cases were clearly in breach of the *existing* rules and should not have been in receipt of payment.

However, the Swedish Biodiversity Centre believes that the response of changing the eligibility rules in the way that was done constitutes an over-reaction which does not consider the whole spectrum of policy goals on these areas in a holistic way. Work carried out in association with the Mid-Term Evaluation of the Swedish RDP put the problems down to 3 main causes:

- EU policy not adapted to the variation in character of actual agricultural land both within and between EU Member States. This has 2 aspects: definitions which are inaccurate or out of kilter with reality and inflexible implementation of rules
- The application of overlapping but not always consistent or even mutually-compatible set of rules relating to (e.g.) SPS, LFA, agri-environment, on the same area of land
- Specific difficulties relating to the extremely detailed and so bureaucratic and non-holisitic way the 50 (in Sweden 60) tree/ha 'rule' is implemented

Sweden's negotiations with the Commission on tree density rules were outlined about. Interestingly, despite the Commission insistence that the guidelines are no more than that, the Swedish deviations from the 50 tree/ha 'rule' are described by Swedes involved as '*exceptions'*, suggesting that the negotiations did not to start from the long-established Swedish definitions and procedures, appropriate to and workable in the Swedish situation, but from a norm set out in the Commission documents. Before 2008, Sweden had a definition of pastures and meadows that both biologists, farmers and the Swedish department of agriculture agreed about; now they have one which makes little sense to anyone, whether ecologically, agriculturally or administratively.

When Sweden was forced to change the definition of pasture and meadow to comply (with minor adjustments) to the "50-tree" rule, farmers often had two different and frequently contradictory sets regulations operating in the same area, not seldom with contradictory content. Sweden was not able to convince the Commission that these regulations were couter-productive and, therefore, was forced to change the agri-environmental definitions and rules to fit the SFP.

Relevance and applicability of a permanent pasture premium

Semi-natural pastures are eligible for support in the SPS and in a way that works like a premium for genuinely permanent pastures. Although the payment is never higher than it is for arable land in Sweden and in some parts of the country the payment is considerably higher for arable land than for permanent pasture.

A premium would seemingly work better than cross-compliance rules based on reference levels. But since a premium is likely to affect the possibilities to give support within pillar 2, it is not evident that such a solution would benefit public goods. It is Sweden's experience that support systems with nationally adapted regulations, such as environmental payments within RDP, results in more environmental impact (less negative or more positive) than do payments with more general rules, such as payments within pillar 1. It would be a concent if regulations aimed at 'greening' the CAP result in an additional layer of rules for grasslands and further incompatibilities with Pillar 2.

Possible solutions

1. An amendment to the Regulation setting out the cross-compliance rules (Reg. (EC) 1782/2003) and its implementing Commission Regulation (Reg. (EC) 796/2004) so that the standards for good agricultural and environmental conditions should be explicitly applicable only to areas for which the farmer claims payments would be preferable. Such a change in the Regulation could be combined with a new article specifying how to deal with serious and obvious cases of non-compliances with statutory management requirements on non-declared agricultural land.
2. Both level of accuracy required with regard to ineligible elements (0.01 ha) and the tree-counting rules promote the development of *uniform* pastures, not consistent with biodiversity and cultural objectives, including, in some case EU obligations. A lower precision would allow a more comprehensive view of each pasture and reduced the number of polygons to be administered and controlled and increase their 'stability' over time. That would benefit environmental values as well as decreasing the administrative burden for farmers and authorities, in line with the stated aim of the EU to reduce simplify the CAP from a farmer's perspective and to eliminate necessary additional costs associated with its implementation. It would be a classic win-win situation.
3. In the case of pastures and meadows knowledge about conservation biology and the likely environmental and cultural effects should be considered when CAP regulations are being designed. The rules themselves should *promote* multi-functionality and respect traditional knowledge. This does not necessarily imply the strict use of old management methods, but loss of the understanding which underlies those methods will lead inexorably to a loss of the landscapes rich in species, cultural and aesthetical values which it created. This should be central to the European Model of Agriculture, but in practice is missing.
4. Finally, if that the new rules were introduced primarily not because of problems with the old rules per se, but to breaches of GAEC and fraudulent or mistaken claims under those old rules, and if the result of introducing these new rules has been to cause new problems, both in practice and in terms of policy integration, it is surely worth asking whether the right 'solution' was found? Is it out of the question to go back to the old rules but to look again at their implementation and how weaknesses could be remedied? If the problem was fraud, then could it be solved with stiffer fines? If it was a case of erroneous claims, as seems more likely, might better guidance to producers and a more proactive approach to farm advice for the more difficult borderline cases not be a better way forward? "If a thing ain't broke, don't fix it", goes an old saying. Perhaps this was a case in point – if so, administrative pride should not stand in the way of a tactical retreat in order better to reach Sweden and the EU's shared policy objectives.

Sweden. Wooded pastures with possibly the largest populations of Gentianella campestris, Euphrasia rostkoviana ssp. fennica and Succisa pratensis in Sweden. A product of history and late onset of grazing. Source: Jörgen Wissman

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11 ANNEX – extracts from relevant EU regulations

Regulation 73/2009 Article 6 (GAEC) on encouraging the maintenance of permanent pasture for its positive environmental effects:

The Member States other than the new Member States shall ensure that land which was under permanent pasture at the date provided for the area aid applications for 2003 is maintained under permanent pasture. The new Member States other than Bulgaria and Romania shall ensure that land which was under permanent pasture on 1 May 2004 is maintained under permanent pasture. Bulgaria and Romania shall ensure that land which was under permanent pasture on 1 January 2007 is maintained under permanent pasture.

Eligibility rules set out in Regulation 73/2009 (establishing common rules for direct support schemes):

For the Single Payment Scheme, eligible hectares are "*the agricultural area of the holding... used for an agricultural activity or... predominantly used for agricultural activities*" (art 34(2)(a)) i.e. arable land, permanent pasture or permanent crops and used for production or kept in GAEC. There are additional rules for the Single Area Payment Scheme which require that the area under the scheme should have been "*maintained in good agricultural condition on 30 June 2003*". For Bulgaria and Romania where there is no reference date set (Art 124 (1) and (2)). There is no legal definition of "good agricultural condition".

Regulations 1120/2009 and 1122/2009 lay down detailed rules for the implementation of 73/2009. 1122/2009 Art 34 describes what landscape features can be included. Member states may choose to include those that are part of "*good agricultural cropping or utilisation practices*" a term which is not defined anywhere. Those covered by cross compliance must be included.

Guidance is provided on the Wiki-CAP website hosted by JRC which gives the Commission Services views on the regulations. This includes the Commission services interpretation of the rules and introduces stricter criteria e.g. if there are over 50 trees per ha, the areas should be excluded, although this is not obligatory and Member States can make an environmental case for not applying it.

Regulations 1122/2009 Art 34 is crucial for determination of eligible area, as follows:

2. *The total area of an agricultural parcel may be taken into account provided that it is fully utilised in accordance with the customary standards of the Member State or region concerned. In other cases the area actually utilised shall be taken into account.*

In respect of the regions where certain features, in particular hedges, ditches and walls, are traditionally part of good agriculture cropping or utilisation practices, the Member States may decide that the corresponding area is to be considered part of the fully utilised area on condition that it does not exceed a total width to be determined by the Member States. That width must correspond to a traditional width in the region in question and shall not exceed 2 metres.

However, where Member States notified to the Commission, inconformity with third subparagraph of Article 30(2) of Regulation (EC) No 796/2004, prior to the entry into force of this Regulation, a width greater than 2 metres, this width may still be applied.

3. Any features referred to in the acts listed in Annex II to Regulation (EC) No 73/2009 or which may form part of the good agricultural and environmental condition as referred to in

Article 6 of that Regulation and Annex III thereto shall form part of the total area of an agricultural parcel.

4. Without prejudice to Article 34(2) of Regulation (EC)No 73/2009, an agricultural parcel that contains trees shall be considered as eligible area for the purposes of the area-related aid schemes provided that agricultural activities or, where applicable, the production envisaged can be carried out in a similar way as on parcels without trees in the same area.

5. Where an area is used in common, the competent authorities shall notionally allocate it between the individual farmers in proportion to their use or right of use of it.

EC guidance on Wiki-CAP website marswiki.jrc.ec.europa.eu

The total area of the agricultural parcel, in accordance with Art.34(2) and 34(3) of R.1122/2009, should be measured. However, areas not taken up by agricultural activities such as buildings, woods, ponds and paths are to be excluded from this area (Art.34 of R.73/2009).

Art.34(4) of R.1122/2009 states that, without prejudice to Art.34(2) of R.73/2009 (parcels with permanent crop trees or parcels afforested under a 2nd pillar scheme), "an agricultural parcel that contains trees shall be considered as eligible area for the purposes of the area-related aid schemes provided that agricultural activities or, where applicable, the production envisaged can be carried out in a similar way as on parcels without trees in the same area".

In this context, the Commission services view is that woods (in parcels not declared as short rotation coppice) should be interpreted as areas within an agricultural parcel with tree-cover (including bushes etc.) preventing growth of vegetative under-storey suitable for grazing.

- With regard to **parcels containing trees**, the commission services are of the view that, as a result, areas of trees inside an agricultural parcel with density **of more than 50 trees/ha** should, as a general rule, be considered as ineligible. Exceptions, justified beforehand by the Member States, may be envisaged for tree classes of mixed-cropping such as for orchards and for ecological/environmental reasons.

- With regards to **shrubs, rocks** etc, the conditions under which these elements can be considered as part of the agricultural parcel should be defined on the basis of the customary standards of the Member State or region concerned (e.g. land cover type, maximum area percentage).

To assess the eligibility of / eligible area within an agricultural parcel of (permanent) pasture, Member States can use a **reduction coefficient**, which can take the following forms:

- a *pro rata* system whereby the eligible area taken into account is determined according to different thresholds applied at the level of each parcel. For instance, if the crown cover determined on the ortho-imagery and recorded as such in the LPIS-GIS ranges between 25% and 75%, the parcel is considered as 50% eligible.

– a percentage reduction applied at agricultural parcel level based on an assessment of the parcel using scorecards differentiating the reduction to be applied according to the type of ineligible feature, its predominance within the parcel etc.

In the application of either option, the Member States should consider the exclusion of the ineligible area according to its proportion within the geographical area of the encompassing parcel.

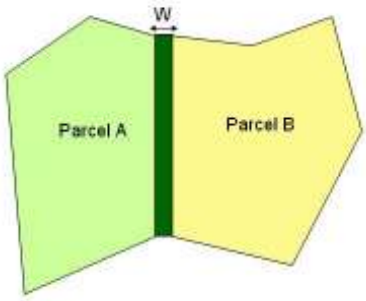
- With regards to **ponds**, only permanent ponds are to be excluded (if not falling under Art.34(3)).
- **Paths**, other than those created by animal access, are to be excluded.

Member States shall define **beforehand** the criteria and procedure used to delimit the (in)eligible part of the parcel in order to ensure that these criteria are communicated to farmers, where necessary, correctly transposed in the LPIS and adequately included in the instructions for the on-the-spot checks; this all with the view to ensure that the land declared and accepted for payment complies with all legislative requirements (e.g. agricultural activity).

In accordance with the first subparagraph of **Art.34(2) of R.1122/2009**, the area to be measured can be the total area of the reference parcel provided that it is fully utilized according to the customary standards of the Member State or region concerned.

Where, in accordance with the second subparagraph of Art.34(2) of R.1122/2009 **features of up to 4m wide** (walls, ditches, hedges) serve as **boundaries** between agricultural parcels and are traditionally part of good agricultural practice in the region concerned (e.g. terrace walls, drainage ditches), such features may be considered as being included; half of their width up to a maximum of 2m being attributed to each adjacent agricultural parcel. **Internal features** are, under the same conditions, accepted as forming part of the agricultural parcel where their width is less than or equal to 2m. Where the feature is >4m wide (or >2m wide if internal to the parcel), the feature should be removed from the area to be measured (see figures below), unless the feature has been recognized under Article 34(3) of R.1122/2009.

Internal feature of width W: if W≤2m include the feature in the agricultural parcel; otherwise exclude the feature



Boundary feature of width W: if W≤4m include 50% of the feature area in parcel A and 50% in parcel B; otherwise exclude the whole feature from both parcels

Where, under **Art.34(3) of R.1122/2009**, features that are part of the good agricultural and environmental condition obligations or the statutory management requirements (e.g. hedges, drainage ditches, small woods according to the local regulations) have been specifically recognised and defined as (landscape) features eligible for area payment, it is recommended that during the on-the-spot checks (i.e., remote sensing or otherwise) such features should be digitized as points, lines or polygons with their corresponding attributes in the LPIS, this way making possible the control of their maintenance (cf. the respect of the GAEC obligations).

NB: Such features are also eligible for coupled payments.