



EUROPEAN FORUM ON  
NATURE CONSERVATION  
AND PASTORALISM



## **Permanent Pastures and Meadows: adapting CAP Pillar 1 to support public goods**

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## 1 Overview and recommendations

There is a broad consensus that one of the overall aims of CAP Pillar 1 is to maintain farmland in active use and in good agricultural and environmental condition across the EU. A key reason for doing this is to ensure the on-going provision of goods produced by farming that are not rewarded by the market, particularly environmental public goods.

Some types of farmland are far richer in environmental public goods than other types, and permanent pasture<sup>1</sup> in particular has been highlighted by the Commission for its positive environmental effects. In 2003 special Pillar 1 instruments were introduced in an attempt to safeguard these positive effects, under the GAEC<sup>2</sup> mechanism. This report explains that these permanent pasture instruments have fundamental flaws that make them ineffective.

The transition of Pillar 1 from production support to area payments has increased the threat of abandonment of more marginal pastures (generally of high public goods value). At the same time, the EU's complex eligibility rules for Pillar 1 payments are having perverse effects on the ground to the detriment of these same pastures and their associated landscape features. Farmers using such land are finding themselves penalised as a result of poorly-conceived rules and their interpretation by national and EU authorities, thus increasing the abandonment pressure. Several million hectares of this farmland are excluded from Pillar 1 support entirely. Examples are provided in this report.

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, or because his hedges were too thick. 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). No-one questioned whether landscape features which his ancestors had created and which he maintained to control his stock or give them shelter were part of his farming system.

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, and the current approach is in clear conflict with real farming conditions on permanent pastures, in all their European diversity.

The current CAP reform presents an opportunity for moving from historic entitlements to a new system of regionalised area payments based on criteria in tune with present-day policy aims. This change has potentially positive features, and in principle should contribute to maintaining farming activity across the EU territory, to the benefit of environmental public goods. The Commission will also propose new "greening" mechanisms in Pillar 1, including specific measures for permanent pastures.

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<sup>1</sup> The term "permanent pastures" is used in this paper to include permanent meadows, as is the case under CAP rules.

<sup>2</sup> Good Agricultural and Environmental Condition – Reg 73/2009

But these changes are in danger of producing no significant benefits, and potentially creating even more problems, if the fundamental flaws built into the existing policies are carried over into the new CAP. Changes are needed urgently if the CAP is to deliver positive environmental outcomes for permanent pastures, and before yet another layer of new rules and bureaucracy is added to the existing problems.

The starting point must be to clarify what are permanent pastures, what are their positive environmental effects, and what needs to be done to maintain these effects. The EU has an extremely rich diversity of permanent pasture types, with a range of very different circumstances and environmental values. Very broadly, permanent pastures as currently defined by the CAP<sup>3</sup> can be divided into three types:

- Intensively managed, frequently reseeded (e.g. every 1-5 years), heavily fertilised grassland, including forage crops such as lucerne. These permanent pastures are of low environmental value, comparable with temporary grassland. It is surprising to find them included in the EU definition of permanent pasture. There may be some tendency to replace this grassland with crops such as maize in some situations.
- Medium intensity management, reseeded on longer cycles (e.g. approximately 10 years or more), fertilisation low to medium. Typically this would be considered “semi-improved” pasture. These pastures can be of some environmental value for biodiversity, carbon storage and landscape, depending very much on the specific farming system, practices and local context. Tendencies are towards intensification on better soils (more frequent reseeded and fertilisation, conversion to maize), locally some extensification, or afforestation on poorer soils.
- Low-intensity management, not reseeded, not ploughed, not fertilised except for some manure on hay meadows. Broadly these are semi-natural permanent pastures. They cover large areas of marginal farmland. Some types are dominated by shrubs and/or trees as part of the forage resource. Environmental values (biodiversity, carbon storage, landscape, water catchment, fire resistance) are high or very high depending on vegetation type, specific practices and local context. Tendencies are towards abandonment and afforestation of most marginal pastures, with some local intensification on better soils (especially hay meadows).

The tendencies affecting these different types of permanent pasture vary considerably. It is significant that the CAP mechanism 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 grassland intensification (ploughing, reseeded, fertilisation) and, increasingly, abandonment. It is essential to get the diagnosis and objectives right at the outset.

Given the great differences in environmental values and threats across different types of permanent pasture, a “one size fits all” approach through mechanisms such as GAEC and Pillar 1 “greening” does not make sense. A differentiated approach is likely to be far more effective, using different instruments to pursue appropriate objectives for the very different conditions of the main permanent pasture types.

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<sup>3</sup> Land used to grow grasses or other herbaceous forage naturally (self-seeded) or through cultivation (sown) and that has not been included in the crop rotation of the holding for five years or longer - Reg 796/2004

Pastures that are reseeded every 1-5 years are currently included in the CAP definition of permanent pasture, but in reality they are far closer in character to temporary grasslands. The policy objective should be to reduce the environmental impacts of intensive practices on water, soil and climate through GAEC. In principle, these pastures could be incorporated into the “green agronomic package” approach being considered by the Commission for Pillar 1, as part of a diversified cropping pattern, ensuring soil cover etc. But they do not fit in a scheme to “protect” permanent pasture. A total ban on ploughing or reseeding these pastures would achieve no significant environmental benefits, while constituting a major restriction on farming. The extent of these pastures does not need to be controlled at EU or national levels, from an environmental perspective.

For permanent pastures that have been improved for agricultural production and are reseeded on long intervals of ten years or so, the environmental objective should be to maintain their extent and to discourage intensification. A total ban on ploughing and reseeding probably is not appropriate, but a simple premium payment could be used to encourage low-intensity management and to reduce the frequency of ploughing and reseeding. This should bring significant benefits for biodiversity and carbon storage.

For permanent pasture of highest environmental value (broadly semi-natural, not ploughed or reseeded) the objective should be to maintain them in low-intensity farming use as an absolute environmental priority at the European scale, and often also with a social justification as they are found in more marginal areas. It is essential to ensure that these permanent pastures are fully included in mechanisms to prevent decline of permanent pastures throughout the EU, including direct payments. Currently this is not the case due to CAP rules, starting with definition of Permanent Pasture that includes only “herbaceous” forage, basically grass - pastures of shrubs and trees are not included. There is absolutely no agronomic justification for this, as shrubs and trees have been in active use for livestock forage by farmers for thousands of years and cover millions of hectares of EU farmland.

Given the increasing threat of abandonment, these CAP rules must be corrected and a premium payment or top-up should be made available for all these pastures.

This report discusses these issues in more detail and considers the ways in which current CAP rules and mechanisms affect permanent pastures, focusing particularly on those of most environmental value. At present, rules on CAP direct payments eligibility and GAEC are highly complex and sometimes contradictory. The changes we explore aim to make policy simpler and more coherent with the commitments to public goods, climate change and 2020 biodiversity targets.

The aim is to identify areas 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 CAP instruments concerned include:

- CAP definition of Permanent Pasture
- Rules and guidance on eligibility for Pillar 1 direct payments
- GAEC mechanisms for controlling the extent of Permanent Pasture
- GAEC rules at holding level minimum maintenance and deterioration of habitats, including “encroachment of unwanted vegetation”
- New Pillar 1 “greening” options, including possible premium for Permanent Pasture under low-intensity management

## 1.1 Summary of recommendations

### ***CAP definition of Permanent Pasture***

The CAP permanent pasture definition must be adapted to modern policy objectives. This is essential as an increasing number of important policy mechanisms depend on the definition, and more are planned under current reforms - Pillar 1 greening, direct payment criteria.

The CAP definition of permanent pasture should be coherent with real farming conditions and the use made by farmers of all types of forage, including shrubs and trees, and should capture the range of permanent pasture types of most environmental value across the EU. Regularly ploughed and reseeded pastures should be excluded from the definition.

The CAP definition of permanent pasture should be adapted as follows “**land used to grow grasses or other herbaceous forage (self-seeded or sown) and that has not been included in the crop rotation of the holding *ploughed or reseeded for 5 years or longer***” [this is the current definition with words deleted and those in italics added]

### ***Rules and guidance on Pillar 1 eligibility criteria***

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.

Rules and guidance at the EU level on direct payment eligibility should not include quantitative criteria on acceptable tree densities, size of shrub patches or width of hedges.

The primary eligibility criterion for CAP direct payments should be that land is subject to a minimum level of farming use and positive environmental management, defined by national authorities in a way that ensures maintenance of public goods. National authorities should design methods for checking that permanent pastures and their associated features are in use and under acceptable management.

If a farmer is complying with this management of the pastoral resource — whether herbaceous, ligneous or a combination — he should have the right to receive CAP support from Pillar 1 for all the land used, including landscape features.

EC Auditors should take full account of local farming and environmental conditions when interpreting eligibility rules and should give priority to achieving policy objectives and preventing perverse effects on the ground, such as abandonment or habitat clearance.

Land should be excluded from CAP support only if it is clearly and permanently out of farming use and is not being maintained for environmental benefit.

### ***GAEC requirements at the holding level***

GAEC requirements for minimum maintenance and non-deterioration of habitats should be defined in terms of management requirements (e.g. minimum grazing use), not in terms of the presence of particular types of vegetation.

Changes in vegetation over time may be used by authorities as indicators of insufficient management of farmland. In such cases a flexible approach to controls should be used, allowing farmers time to correct potential GAEC breaches by changing their management, rather than applying immediate penalties and/or exclusions of land from eligibility.

Where significant changes to existing farmland vegetation are desirable for environmental reasons, for example removal of shrubs, these changes normally should be incentivised through agri-environment payments.

### ***GAEC mechanism for controlling the extent permanent pasture***

To have any useful environmental effects, the scope of the mechanism must be changed, by altering the permanent pasture definition as proposed above. In this way, frequently reseeded grassland is excluded from the control (giving greater freedom to farm) while ligneous pastures of high environmental value are brought in.

Member States should report to the Commission the true extent of permanent pasture under the proposed definition, as shown by accurate landuse data, not only the extent registered by farmers to justify direct payment entitlements.

The aim of policy should be to maintain this total extent of permanent pasture, not only the ratio to all farmland as at present.

The control mechanism should be applied at regional or local level, rather than at Member State level (the latter can hide considerable shifts from extensive grassland of high environmental value to new grassland of lesser value).

### ***Greening Pillar 1 for permanent pasture***

Greening options for permanent pasture will make no sense if the permanent pasture definition is not changed, as proposed above.

Imposing new restrictions on permanent pastures that currently are regularly reseeded would be of minimal environmental benefit, while representing a major burden on farmers.

New restrictions are also inappropriate for permanent pastures under low-intensity use. The key need is for a greater level of incentive for continued low-intensity management of permanent pastures.

### ***Direct payment levels and top-up premia***

For land types that are of high public goods value and where these values depend on the maintenance of a minimum level of farming use, direct payments should be high enough to achieve this objective.

A Pillar 1 top-up is urgently required to achieve this sufficient level of support on permanent pasture under low-intensity use (not ploughed, reseeded or heavily fertilised).

This top-up should be introduced as the Pillar 1 greening measure for permanent pasture. It should be obligatory for Member States to implement, but optional for farmers to join. The top-up should be approximately 100 euros/hectare, depending on regional conditions. It should be paid on a degressive basis (higher payment for the first hectares of the farm).



## 2 Permanent pastures of high environmental value

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.

Semi-natural permanent pastures are responsible for a major part of the environmental public goods produced by European farming, and in this sense they are fundamentally different from permanent pastures that are under more intensive agricultural use. A greener CAP focusing on public goods needs to recognise this difference, rather than putting intensively managed and semi-natural permanent pastures in the same "policy box".

Semi-natural permanent pastures include a mix of vegetation types. Some are largely herbaceous, while others are dominated by shrubs (e.g. heather moorland, Alvar). Tree cover is present on many types of permanent pasture, and in some cases is an integral part of the forage system, the leaves and fruits providing an important seasonal complement to herbaceous and shrub forage (e.g. dehesas, wooded meadows). Shrubs and trees have been an integral part of actively-farmed permanent pastures for centuries.

Semi-natural permanent pastures under active farming use cover many millions of hectares of EU farmland, often in more marginal farming situations. They are declining in some cases as a result of intensification (especially reseeded and heavy fertilisation of meadows) but increasingly due to abandonment. Although decoupling of CAP payments has had some environmental benefits in agriculture, it has also increased the abandonment threat for economically marginal farming types that have less opportunity to be viable from the market. 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).

At a farm and local landscape level, there are tendencies observed in many regions 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).

Halting the decline of semi-natural permanent pastures is a key action for halting the decline of biodiversity in Europe. 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.

A greener CAP, more focused on public goods, must be well adapted to the needs of semi-natural permanent pastures. Direct payments should aim to ensure continued active farming use of these permanent pastures across the EU. Payments should be sufficient to achieve this purpose, with top-ups if necessary.

Special care should 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.

Currently, policies are not working well for these permanent pastures of exceptional environmental importance. Large areas are being excluded from the CAP mechanism to control the decline of permanent pasture, and also from receiving direct payments, due to a combination of permanent pasture definitions and direct payment eligibility rules. This is especially the case for pasture types that include shrubs and trees. In some cases, rules and their interpretation by authorities are leading to perverse effects, such as clearance of semi-natural habitats by farmers.

Meanwhile, localised intensification of semi-natural pastures, and especially meadows, is not being prevented. The EIA Directive includes a mechanism that is intended to prevent this from happening, but it is very poorly implemented in many countries and is not part of CAP cross-compliance at the EU level (King, 2010).



*The CAP definition is wrong, permanent pasture it is not only herbaceous - sheep grazing heather in the North Yorkshire Moors (England). © Copyright [Anthony Parkes](#) and licensed for [reuse](#) under [Creative Commons Licence](#)*

### 3 CAP definition of Permanent Pasture

The current CAP definition of Permanent Pasture includes only “herbaceous” forage, basically grass - pastures of shrubs and trees are not included. There is absolutely no agronomic justification for this, as shrubs and trees have been in active use for livestock forage by farmers for thousands of years and cover millions of hectares of EU farmland (for example heather moorland in the UK and Ireland, wood pastures in Spain and Portugal). Extensive grazing and browsing of these ligneous pastures generate valuable public goods (biodiversity and landscapes, fire control and carbon storage) and should be encouraged by the CAP, not discouraged.

**The term “herbaceous” should be removed from the permanent pasture definition as it does not reflect the reality of European farming and can create a bias against non-herbaceous pastures that trickles down into other CAP rules and instruments (e.g. eligibility criteria, GAEC).**

The current definition also includes pastures that are regularly reseeded, even annually reseeded, so long as they are not in an arable rotation. This means that a grass crop under intensive cultivation and of no environmental value is put in the same category as genuinely permanent pastures of the highest environmental value. These totally different pasture types are then subject to the same policy instruments, rules and regulations.

For effective greening of the CAP, and to bring the policy in line with modern concepts such as public goods and environmental integration, Pillar 1 instruments need to distinguish permanent pastures that are frequently reseeded and more akin to Temporary Grassland from those that are genuinely permanent.

The most practical way of doing this would be to change the CAP definition so that only pastures reseeded on longer intervals (e.g. 5 years at the very least, 10 years for more significant environmental benefits) are included in the permanent pastures category. Those under more intensive use could be re-defined as semi-permanent, or more simply included in the Temporary Grasslands category.

**In the permanent pasture definition, the words *that has not been included in the crop rotation of the holding for five years or longer* should be replaced by “that has not been ploughed or reseeded for five years or longer”.**

LPIS/IACS<sup>4</sup> – the system for managing CAP payments at the farm level – is a powerful tool and an essential basis for more efficient integration of agriculture and environment policies. LPIS should record the different types of permanent pasture on the holding, particularly distinguishing that which is reseeded within a 5 year period from that which is not. The task is not onerous – most countries already have more than one category of permanent pasture recorded on LPIS, some have many categories. A few countries have complete inventories of semi-natural pastures and meadows, and have integrated these with LPIS, making it possible to target payments directly on this basis (e.g. Slovakia), and to check if EU biodiversity targets for farmland are being met.

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<sup>4</sup> Land Parcel Identification System and Integrated Administration and Control System

The aim should be to adapt LPIS to present-day policy aims for permanent pastures at EU and national levels. This will make policy implementation more efficient. However, creating new categories on LPIS is not a prerequisite for implementing key proposals in this paper, including a premium payment or top-up for permanent pastures which a farmer commits to maintaining without ploughing or reseeded.

**Box 1: Sweden – EU rules lead to the specific exclusion from direct payments of Habitats Directive pastures**

Under pressure from EC Auditors, Sweden introduced strict rules about tree numbers on pastures after 2007. As a result, the extent of semi-natural pasture receiving support from Pillar 1 was reduced from 531,000 ha to 454,000 ha.

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.

For some of these excluded pastures (approximately 8,000 ha), farmers receive compensation for the loss of Pillar 1 support through special RDP measures.

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.



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

## 4 Eligibility criteria for Pillar 1 direct payments

Large areas of permanent pasture of exceptional public-goods value and in active use by farmers are being excluded from Pillar 1 payments due to current rules on land eligibility for direct payments. In addition to the rules themselves, important factors are 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. 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) makes 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. 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. 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, e.g. in Northern Ireland (see Box 4). And 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. It should not be like these. The system should be designed to foster good practice, not to make good practice more difficult to achieve.

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, 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 *pasture with scrub* and *pasture with trees*.

**These and other examples of well-adapted rules should be encouraged by the Commission services. Basic Pillar 1 eligibility rules must 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. This is in line with the European Parliament's recommendation to maintain farming at its current extent across the EU.**

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” has become increasingly pointless, as many Member States either do not apply the rule or have introduced higher thresholds and numerous other exceptions that make it meaningless as a “general rule” (e.g. France, Spain, UK, Sweden, Estonia, Bulgaria). The hedge-width rule also should be abolished, and instead Member States should be required to determine which landscape features are covered by GAEC and counted in the eligible area.

**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.**

At present there are worrying signs that Commission thinking is going in the opposite direction, and that Auditors in particular are putting pressure on national authorities to apply rules more rigidly than they have until now. The recommendations of the European Court of Auditors (2011) are symptomatic of the problem. These put great emphasis on the need to *exclude beneficiaries who have no or only insignificant agricultural activities*, but make no mention of the need to ensure that active farmers are **not** excluded from direct payments.

The reference to *beneficiaries who have no or only insignificant agricultural activities* refers in the report to extreme examples of non-farming land receiving direct payments, for example golf courses; but there is a real risk that authorities and EC auditors will interpret the phrase as including farmers whose activity is seen as marginal and not “real” farming.

In a very 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...”

Finally there is the question of very small farms and their exclusion from Pillar 1 payments. In Romania around 70% of farms are excluded from Pillar 1 and Pillar 2 payments, the majority because they are under 1ha in size. Regulation (73/2009) sets a rule for the whole EU, which says farms of less than 1 ha should not receive direct payment; but the Regulation also gives Member States the option to change the rule, reducing the threshold to 0.3ha in Romania’s case. The national government did not take up this option.

**Box 2: Bulgaria – 1.26 million ha of permanent pasture excluded from Pillar 1 support**

According to the national land-use statistics, there were 1.7 million ha of permanent pasture in Bulgaria in 2009, of which about 66% are estimated to be low-productivity types. But only 0.44 million ha of pasture were included in the area of land eligible for Pillar 1 payments on LPIS.

Thus a total of 1.26 million ha were deemed ineligible on the basis of aerial photographs, mainly low-productivity pastures. These include 703,384 ha of permanent pastures identified as of high nature value in the national RDP. Some of these pastures excluded from Pillar 1 payments are nevertheless eligible for agri-environment support as of 2010.

Some adaptation of rules has taken place, so that low-productivity pastures can now be eligible with up to 75 trees per ha, rather than 50 as previously.

However, getting land declared as eligible is not easy. If a farmer feels that his land has been excluded incorrectly, he cannot include it without the authorities undertaking an on-the-spot check. In the 2009 campaign 6000 farmers were penalised for claiming ineligible land, making it almost impossible to carry out the necessary checks.



*Bulgaria. Grazing areas in Pirin National Park under active farming use (seasonal rotational grazing for 3-5 months). They are not eligible for Pillar 1 payments but receive agri-environment. Source: Agri-environmental Handbook, Ministry of Agriculture.*

**Box 3: Estonia – 50 tree rule causes chaos for farmers and helps drive abandonment of semi-natural pastures**

The Estonian LPIS reference area for permanent pasture is 287,642 ha. Because of strict application of the 50 trees/ha eligibility rule, a significant area of semi-natural pasture was excluded from this reference area from the outset, or subsequently excluded with penalty from payment eligibility on inspection, especially in the western four counties, where over 400 producers were affected.

The total extent of semi-natural permanent pasture in the country is estimated at 100,000 ha; the proportion not included in the LPIS reference area may be as much as 70%.

This situation 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 rule?

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. $\text{ha}^{-1}$  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 coefficients 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.

There are valuable wooded meadows and pastures outwith these four counties that are still excluded from Pillar 1 because the adjustment of the 50 tree rule has not been applied there.



*Estonia. Wood pastures support both cattle and sheep and occur in a variety of woodland types.*

Source: <http://www.hak.edu.ee/materjalid/puisniit4/> courtesy of Kristiina Hellstrom.



**Box 4: Northern Ireland – hedges destroyed as too big for EU rules**

In line with EU rules, all areas within a field covered by dense scrub larger than 0.01ha must be deducted from a farmer's claim for direct payments in Northern Ireland. Patches 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, as laid down in EU rules.

Following visits by EC Auditors and resulting fines, scrub and hedges are causing great concern within the farming community and leading to much environmental damage.

There has been widespread 'hedge reduction' on many farms, where the 'excess' is removed usually by mechanical means to leave a very narrow ecologically poor hedgerow.

Patches of scrub are being removed throughout the countryside due to fear among farmers of heavy penalties under eligibility rules. Often these small areas of scrub are the only semi-natural feature on a relatively intensive farm and were usually present during the SPS reference period, so are not an indication of abandonment or a reduction in management effort.

All this rules-driven activity is a cost to the farmer and to the environment, and of no benefit to anyone.



*Northern Ireland. Reducing the width of hedges to ensure the field is fully eligible for CAP direct payments.*

## 5 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.**

**Applying standards specifically on unwanted vegetation should not be obligatory under GAEC, it should be an option for Member States. Farmers need to be encouraged to prevent abandonment and reverse neglect, so where it is 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.**

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.

**Box 5: Scotland – sensible rules are questioned by EC Auditors**

The current GAEC rules in Scotland have a sensible environmental provision that allows some natural succession of native species of trees and shrubs onto pastures from native woodland, as part of a mosaic of habitats, or as reversion of land to wet grassland or wetland.

Where the farmer is allowing this vegetation to develop for environmental benefit, this must be declared on the IACS form using the data sheet code for Positive Environmental Management (PEM).

The national rules also allow the farmer a calendar year for restoration of condition of the land in the event of, for example, under-grazing or over-grazing. The EC Auditors have raised questions with the Scottish Government about this provision. 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 under the eligibility rules. This has encouraged the removal of semi-natural habitats (e.g. patches of gorse) even in cases where farmers clearly would be in line with the Scottish Government guidance.

Decline of livestock numbers and consequent under-grazing and bracken encroachment has begun to occur on the poorest land since decoupling of Pillar 1 payments, raising fears of long-term abandonment. The danger now is that under-grazed permanent pasture with encroaching vegetation will be excluded from payments and thus “locked in” to permanent abandonment. Rather than providing an incentive to keep farmland in active use, the CAP will then have achieved the direct opposite of its claimed objectives.

The EC Auditors seem to see only two paths – use every bit of land for production, with removal of semi-natural habitats that might get in the way; or there is no farming. Unlike the existing national rules, they do not recognise that farmland can be managed for multiple benefits, including environmental public goods. Ironically the Court of Auditors recently recognised that the historically-based direct payments areas are often insufficient to compensate for the costs of farming and maintaining land in good environmental condition in marginal areas – this analysis needs to be reflected in the audit visits to control the administration of direct payments.



*Scotland. Grubbing up of gorse for burning, just in case.*

## 6 Rules preventing decline of the extent of permanent pasture, and future “greening” options

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 there are major weaknesses in the system, which discredit the CAP and the EU's ability to design and implement effective policies. Specific changes are needed to make the mechanism work.

A key problem that undermines the mechanism is that the data on total area of permanent pasture are fundamentally flawed for many 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. See Box 2 for the example of 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. See Box 6 for the example of Spain.

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) - see for example [http://www.agreste.agriculture.gouv.fr/IMG/pdf\\_R2511A02.pdf](http://www.agreste.agriculture.gouv.fr/IMG/pdf_R2511A02.pdf)

The control mechanism is also significantly weakened by this 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.

It also means that the entire area of Habitats Directive grasslands could be destroyed by reseeded without the change being even registered (or prevented) by the permanent pasture controls at the EU level.

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 must 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.**

A control at national level is very crude, as it allows valuable permanent pastures to be abandoned in more marginal regions, while new and less environmentally valuable pastures are created from arable land in other regions, with potentially no statistical change for the country. A control at regional or local level would be more effective.

Mechanisms are required to control the reseeded of semi-natural permanent pastures. An important gap in cross-compliance is the EIA Directive. This Directive includes a mechanism for preventing the intensification and conversion of semi-natural farmland which is poorly implemented in most Member States. The Commission is currently reviewing the EIA Directive to improve its biodiversity proofing. The EIA Directive should be included in the legislation that farmers should comply with under cross-compliance. This involves no additional rules for farmers, just better regulatory integration.

**A blanket ban on ploughing and/or reseeded all permanent pastures as currently defined by the CAP is not recommended. Many of these pastures have been under intensive use, sometimes including ploughing, for many years and in these cases a ban on ploughing would produce minimal environmental gains, but would be a major restriction on the livestock sectors that use them.**

**As explained in the next section, a far more useful approach to greening Pillar 1 for permanent pasture is not to apply new restrictions, but rather to introduce a premium payment for pastures that are not ploughed and reseeded.**



*Spain. Variations of Natura 2000 Priority Habitat 6220 Pseudo-steppe with grasses and annuals (Thero-Brachypodietea). This type of permanent pasture covers approximately 700,000 ha within Natura 2000 sites in southern Europe, of which 400,000 ha 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”<sup>5</sup>. As the photos illustrate, livestock make use of ligneous forage where this is present. Source: Alfonso San Miguel Ayanz*

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<sup>5</sup> [http://ec.europa.eu/environment/nature/natura2000/management/habitats/pdf/6220\\_Pseudo\\_steppe.pdf](http://ec.europa.eu/environment/nature/natura2000/management/habitats/pdf/6220_Pseudo_steppe.pdf)

**Box 6: Spain – permanent pasture data sent to the Commission is a massive under-estimate of the true extent**

Permanent pastures in Spain are mainly on land classed as “monte”, or forest. Of the total 26 million hectares of “monte”, only about 26% are under exclusively forestry use. For the remainder, over 19 million hectares, livestock grazing is one of the main uses according to the National Forest Strategy. Much of this is common grazing land. Approximately half of this grazed “monte” has tree cover, the remainder consists of grass and/or shrubs without tree cover.

The notion that pastures can only be herbaceous is nonsensical in a Spanish context. In fact Spanish implementation of Pillar 1 direct payments is well-adapted to the realities of the pasture types in the country. Permanent pasture is broken down into several categories on the Spanish LPIS, including pastures, pastures with shrubs, and pastures with trees.

For example, the region of Castilla y León shows the importance of pastures with shrubs and trees – on the LPIS these categories make up 90% of the permanent pasture total of 3.63 million hectares:

Pasture with shrubs	2,440,871 ha
Pasture with trees	816,264 ha
Pasture	370,958 ha
<b>Total permanent pasture</b>	<b>3,628,093 ha</b>

Keeping these pastures with shrubs and trees in active grazing use is a priority for the regional government of Castilla y León, in its fight against forest fires.

However, compared with the 19.6 million ha of grazing land estimated in the forest strategy, the official extent of permanent pasture in Spain as sent to the Commission by the Spanish authorities in compliance with the GAEC mechanism is only 7.12 million ha (2010). This is based on farmers' claims for Pillar 1 direct payments. This enormous difference in statistics suggests that some categories of pasture may have been excluded, perhaps those with trees.

Another explanation is that many farmers have access to more grazing land than they need to justify their Pillar 1 direct payments. This is especially the case where there are large expanses of common grazing land. For this reason, the extent of permanent pasture in farmers' declarations is considerably less than the area of permanent pasture in actual use.

Either way, it is clear that large-scale abandonment and/or conversion of permanent pasture can take place in Spain, without registering on the Commission's control system.



## 7 Pillar 1 Permanent Pasture top-up premium

A key environmental aim of the CAP across the EU should be to maintain semi-natural permanent pastures in a model of farming use that guarantees public goods. This means preventing their abandonment and preventing their intensification. New mechanisms are needed to achieve this.

Lack of economic returns from the market is the major factor driving the threat of abandonment of semi-natural pastures, and it also encourages intensification. Maintenance therefore cannot be achieved by imposing additional restrictions, either on all permanent pastures or specifically on these pastures. Experience in countries such as Bulgaria proves this beyond reasonable doubt. Such an approach is not only counter-productive but contradicts the principle of rewarding the delivery of public goods. A positive economic mechanism is required that rewards their maintenance through a targeted payment.

GAEC rules are already especially demanding for the more marginal permanent pastures, as they require complete maintenance and non-deterioration of the habitat. Basically this means continuing with a farming system that is often completely uneconomic in the returns it generates from private goods. It is clear that current levels of direct payment are an insufficient incentive for the maintenance of semi-natural permanent pastures in many regions, especially, as the Court of Auditor points out, where direct payment entitlements were calculated on a historic basis:

*There is no direct link between SPS aid and the costs incurred by farmers for complying with compulsory standards for farming practices under cross-compliance nor have such costs been quantified. It is therefore possible that farms in high-yield areas receive a high level of aid without particularly exacting GAEC obligations while, on the other hand, a farm in a low-yield area with heavy GAEC obligations will receive only a low level of aid.* (European Court of Auditors, 2011)

A simple system is needed that allows farmers with permanent pastures who wish to maintain these under non-intensive use (no ploughing or reseeded, no fertilisation except within defined limits) to receive a top-up premium from Pillar 1 on the basis of simple "greening" conditions. Reseeding and ploughing are the principal causes of loss of environmental value, and are relatively simple to verify by inspection and aerial photography.

The Permanent Pasture Premium that we propose will be outside the measures of the so called "agronomic greening package" (crop rotation, green infrastructure, soil cover...) proposed by the Commission. It should be an additional top-up payment, compulsory for Member States to implement, but voluntary for farmers to join.

Expenditure on the scheme should be self-regulating if the payment level is set wisely - the more productive and intensively managed permanent pasture is unlikely to be entered in the scheme by farmers due to the insufficient incentive compared with the limitations. Less productive permanent pasture under more extensive use (and hence of higher environmental value) is more likely to enter the scheme, as the incentive should be sufficient to continue this extensive use and to compensate for not intensifying.

For these more extensively used permanent pastures, there is an environmental benefit in preventing intensification, and also in providing an incentive for continued use. The

premium we propose will provide an incentive to farmers to continue to manage the most extensive and marginal permanent pasture that is threatened with abandonment.

Between the more extensive and more intensive permanent pasture, there are grasslands that are reseeded only occasionally (e.g. every 10 years or so) and that have not been heavily fertilised, and therefore are less productive and have high potential to increase in environmental value through some “extensification” of use. The premium we propose would encourage farmers with grassland of this type towards more extensive use without ploughing and reseeded, to the benefit of environmental public goods.

The scheme needs to be implemented in a consistent manner across millions of hectares of EU farmland, and should be 100% funded from the EU budget. Pillar 2 schemes with very similar conditions currently exist in several countries, but if considered at the EU level these schemes are totally inadequate in scale and cohesion – some regions are doing a lot, some very little or nothing. Several countries are using scarce Pillar 2 funds to support farming activity on permanent pastures that are *excluded* from Pillar 1, a situation that makes no sense. The Pillar 1 Premium proposed here will replace some measures under broad-and-shallow Pillar 2 schemes, freeing up funds for more targeted agri-environment measures.

There is no reason to use Pillar 2 for this simple annual payment. However, if this were the approach chosen, it would require a considerable transfer of funds from Pillar 1 to achieve the necessary scale of application across the EU. As a Pillar 2 scheme, the measure would have to be obligatory for all Member States to implement, and should be 100% funded from the EU budget.

As an average across the EU, we estimate that the Pillar 1 Permanent Pasture Premium should be at least 100 euros/ha to achieve objectives. Pillar 2 measures for maintaining permanent pasture under low-intensity use vary 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. A degressive payment (higher for the first hectares on a farm) will ensure far greater efficiency - sufficient incentive for smaller farms, avoiding over-compensation where economies of scale exist.

The budget envelope allocated to this Premium should be sufficient to respond to the scale of the challenge on the ground. Member States should allocate a minimum budget for the Premium in accordance with an estimated area of semi-natural permanent pasture, drawn from existing data bases. In some countries this can be done from agricultural data, in others from habitat inventories.

For the reasons explained above, the true extent of permanent pasture in farming use across the EU is not known with accuracy at present. This situation must be corrected. The extent of permanent pasture eligible for Pillar 1 direct payments and on which farmers are claiming these payments is approximately 45 million ha, but the true extent in farming use is undoubtedly much more. The proportion of total permanent pasture that is under extensive use and likely to take up the proposed Premium will vary considerably from country to country.



## OVERVIEW OF PROPOSED PILLAR 1 TOP-UP FOR PERMANENT PASTURES UNDER LOW-INTENSITY MANAGEMENT

1. A **Pillar 1 top-up**, obligatory for Member States to implement but optional for farmers, should be introduced for Permanent Pasture under low-intensity management. The conditions should be as follows (national variations should be possible within this framework, so long as these are favourable to the maintenance of environmental public goods):
  - No ploughing or reseeded (light surface harrowing may be allowed to control weeds and pests)
  - No inorganic fertiliser application (possible derogations e.g. up to 50kg N/ha for meadows)
  - Minimum management requirement to maintain environmental value to be defined by Member State (minimum livestock stocking rates, minimum grazing/cutting, may vary according to type of vegetation)
  - Option for Member States to apply maximum livestock density per hectare of forage
  - All permanent vegetation in active use as pasture or/and meadow is eligible (no EU rules about number of shrubs or trees), including orchards with a permanent grass under-storey
2. A mechanism is needed to encourage farmers to keep land in the scheme year after year, otherwise land could be withdrawn, ploughed and reseeded, and then re-entered in the scheme. As a minimum safeguard, land that is withdrawn from the scheme should not be eligible to re-enter without a field inspection to ensure it has not been ploughed or reseeded.
3. Farmers choosing to participate in the scheme should register the land receiving the premium on LPIS. The area of this Premium permanent pasture should be monitored as a separate category from other permanent pasture. This will provide an extremely valuable biodiversity indicator at EU level.
4. There should be a mechanism for farmers to apply to have currently excluded pastures (e.g. with trees and shrubs, or wrongly classified on LPIS) correctly registered on LPIS as permanent pasture in order to participate in the scheme, if they comply with minimum management conditions.
5. The approximate average amount of the proposed premium should be 100 euros/ha. The budget envelope allocated to this Premium should be sufficient to respond to the scale of the challenge on the ground. Member States should allocate a minimum budget for the Premium in accordance with an estimated area of semi-natural permanent pasture, drawn from existing data bases.
6. Member States should have the option to offer a smaller premium for permanent pasture that is not reseeded more frequently than, for example, ten years. Permanent pasture of this type is of less environmental value than semi-natural pasture, though still important compared with the most intensive grassland. A smaller incentive should be sufficient for its maintenance.

**Box 7: France – farm-level GAEC controls on the extent of permanent pastures plus a Pillar 1 grassland premium, but intensification is not addressed**

According to statistics from farmers' Pillar 1 claims, France lost nearly 160,000 ha of permanent pasture in 2009, thus reducing the 2005 reference ratio by 2.26%. This was caused both by actual conversion of permanent pasture in mixed farming areas and by changes of category to temporary grassland by farmers fearing strict rules applied to permanent pastures

In response, the French authorities put in place rules on the maintenance of the extent of permanent pastures surface at the farm level from 2011 onwards. The decree provides some possible derogations in some cases (e.g. young farmers) but clearly states that should the decline of permanent pasture continue, stricter rules will be implemented.

From a reference level determined from their 2010 claims, farmers are required to maintain 100% of the extent of permanent pastures at the holding level, and 50% of the extent of temporary grassland.

This scheme does not exclude in principle the ploughing up of a permanent pasture, but each ha lost (i.e. going to crop) should then be replaced by a permanent pasture (i.e. taken from a former crop sown into grass — note that the “permanent” character starts from the 1<sup>st</sup> year though the proof will be made after 5 years. In such changes, a 5% margin of error is accepted in order to take into account different shapes of parcels (a parcel of 1 ha in permanent grassland can go to crops while reversely another parcel of 0.95 ha of crops shall go to a –future- permanent grassland).

These GAEC measures do not prevent intensification of permanent pastures through reseeding and increased fertilisation.

Gradual intensification of “ordinary” permanent grasslands is causing a widespread loss of what can be 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). In lowlands, it occurs almost everywhere, leaving grassland under low-intensity use only in very specific areas (e.g. wetlands, dry swards). In more marginal farming situations, typically mountains and hills, it occurs on the most favourable land (e.g. flat areas in valleys) while more difficult parts are abandoned.

France is also unique in implementing a national “grassland premium” under Pillar 1. This has some positive features, such as degressive payments (higher for the first hectares of the holding). However, the payments for more productive grasslands (>0.8 LU/ha) are higher than for grasslands under low-intensity use (<0.5 LU/ha). Furthermore the conditions for receiving this premium are normal GAEC, so it does not promote environmentally favourable grassland management.

The national Pillar 2 scheme for grasslands (agri-environment grassland premium) also does not favour low-intensity grassland use.



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

## 8 Conclusions

Semi-natural permanent pastures maintained by low-intensity livestock farming are of immense value for biodiversity and wider ecosystem services, such as clean water, reduced fire risk, carbon storage and cultural and tourist values. They are increasingly threatened with abandonment across Europe, leading to potentially massive losses of public goods.

Since the 2003 CAP reforms, the decoupling of direct payments has opened the way to more rapid decline of livestock farming on semi-natural permanent pastures. At the same time, cross-compliance has added a range of burdens on this type of farming, such as livestock identification and obligatory scrub control, adding to the pressures for abandonment.

Although decoupling has weakened the role of Pillar 1 direct payments in maintaining activity, these payments continue to be the main income support mechanism under the CAP, and the most widely available.

But perversely, farmers who maintain semi-natural permanent pastures are often excluded due to ill-conceived EU rules governing eligibility for direct payments, especially rules on the presence of shrubs and trees. Several million hectares of these pastures are excluded from Pillar 1 support. To be sure of receiving payments and avoiding penalties for fraudulent claims, farmers are encouraged by these rules to remove shrubs, trees and large hedges. The system thus works directly against the most structurally diverse pastures, pushing them towards either simplification or abandonment. These are very serious problems, but easily corrected by the Commission if the will is there.

Agri-environment schemes are used in some places to good effect for halting and even reversing the decline of low-intensity livestock rearing, but not a scale commensurate to the problem on the ground, and only in certain countries and regions. Natural Handicap Payments (previously LFA) have a potentially important role, but in most countries they are not targeted on the most threatened or on the most environmentally valuable farming systems, and are not linked to particular farming activity.

Thus the current combination of Pillar 1 direct payments and Pillar 2 measures is failing to halt the decline of permanent pastures under low-intensity livestock farming.

Since 2003, attempts have been made to give permanent pasture some environmental priority in the CAP, with new aims and range of mechanisms that absorb administrative and farmers' resources. Basic flaws in these mechanisms mean that they do not work and do not achieve environmental objectives. They must be made to work. Again, the changes required are not complicated, if the will is there to make the mechanisms effective.

Now permanent pasture is being considered by the Commission as part of the "greening" of Pillar 1 direct payments, and also as a possible criterion for determining Pillar 1 payment levels at Member States level. It is essential to get the basic principles and rules for permanent pasture right before doing any of this, otherwise the outcomes will be highly questionable and the CAP will get into even deeper water with more perverse effects.

It is also especially important to get the rules right now, because there are many reports of Commission Auditors playing an increasingly prominent role in driving the rigid application of rules.

Solving the issues discussed in this paper is not helped by the fact that national authorities tend to blame EU authorities for the problems occurring on the ground, and vice versa. Authorities must focus on outcomes for farmers and for the environment, and resolve problems in a manner that avoids negative impacts on both. There are plenty of examples of good practice and pragmatic application of CAP rules in several Member States. The aim should be to spread good practice.

Ultimately it is the environment and the farmers that are suffering. It is incumbent on the various authorities to devise a system of rules and conflict resolution that avoids these negative impacts consistently across the EU.

See Section 1 for a summary of policy recommendations.

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## 10 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, in conformity 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](http://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.

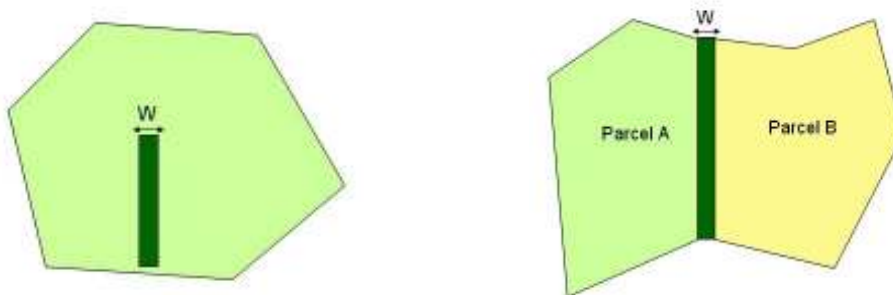
In the application of either option, the Member States should consider the exclusion of the ineligible area according to its proportion within the geographical area of the encompassing parcel.

- 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  $W \leq 2\text{m}$  include the feature in the agricultural parcel; otherwise exclude the feature

**Boundary feature** of width W: if  $W \leq 4\text{m}$  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.