

EFNCP up-date on proposed CAP Delegated Acts affecting the eligibility of pastures

EFNCP met with AGRI-D1 on 10th December 2013 to seek clarification on draft Delegated Acts and to discuss the latest proposals.

D1 explained that most of these rules have been moved to Delegated Acts (DA) on IACS and therefore they will apply to Pillars 1 and 2 (although in the case of Pillar 2 the RD Regulation also has a bearing). There is a new text but this is made available only to Member States (MS). The latest version seen by EFNCP (only after the meeting unfortunately) is DS/EGDP/2013/16. Inter-service consultation will take place around Christmas. Delegated Acts should be adopted by 10th March 2014.

The texts have changed since the September Working Document. There is more flexibility and some of EFNCP concerns have been addressed by leaving decisions in the hands of MS. Some other important concerns and incoherencies remain. Some key elements will now come in Guidance rather than in Acts.

D1 explained that the system of pro-rata calculations is intended for calculating the eligible surface area of a parcel by discounting ineligible elements, including roads and buildings as well as LF. It is intended only for permanent pastures with scattered trees and/or Landscape Features (LF). It is an optional system for MS.

D1 confirmed that trees and/or shrubs that can be grazed are part of the eligible area as they are included explicitly in the permanent grassland definition. This implies that they should not be counted as “ineligible” elements in any pro-rata calculations. However, the new Delegated Acts (Article 8, para 1) clearly refer to trees as ineligible elements, thus contradicting the new CAP definition of permanent pastures. All trees are to be included as ineligible in pro-rata calculations, although the penalisation of grazable trees is reduced by 10%. EFNCP explained that studies of the best dehesas found that 40% of the forage comes from the trees, half of this from leaves and half from acorns. The idea of trees as only incidental grazing is quite wrong, they are an important part of the pasture resource, hence they are included in the permanent grassland definition.

EFNCP proposes that a much more coherent solution would be for the Article 8 para 1 wording referring to ineligible elements to be changed from “trees” to “trees that cannot be grazed”. In this way, grazable trees would not be counted as ineligible, thus achieving coherence with the new permanent grassland definition. Only non-grazable trees should be ineligible.

The new wording says that MS that apply the pro rata system can allow up to 10% of a parcel to be under non-productive elements including Landscape Features (LF) without reducing the eligibility of the parcel. Above the 10% threshold MS will choose the pro-rata reductions to eligibility in bands of 20%. Above a 50% canopy the parcel is not eligible. This upper threshold is extremely negative and would exclude very large areas of wood pasture that have always received CAP support. D1 says that this upper threshold has been deleted from the latest version but EFNCP has not seen this. There will be guidance on pro-rata approaches.

If they don't choose the pro-rata option, MS will have to apply a limit of 100 trees per hectare, including on permanent pasture. This would be an alternative to the pro-rata system. D1 recognises that the threshold of 100 trees/ha is not “scientific”, but say that it is objectively controllable by inspectors. Although only an option for MS, this threshold is extremely negative and if applied in some countries (Spain) would exclude large areas of wood pasture that have always received CAP support.

In the case of land categorised as pastures on LPIS but that also has fruit trees, there is no option to apply the 100 tree limit, because the fruit trees are also part of the farm production (the logic is that permanent crops have no limit on tree numbers, so nor do these pastures with fruit trees). It is not yet decided whether trees producing fruit as forage for livestock (acorns, chestnuts) can also be counted as producing a harvest and therefore not be subject to the 100 tree rule.

All Landscape Features (LF) that a MS includes under GAEC7 protection are counted as part of the eligible area. Any pro-rata calculations do not apply to these LF. These LF can include hedges over 2 metres in width and also trees. D1 assumes this can mean any trees, they do not have to be in lines or groups as the GAEC7 wording implies. So in principle all the trees on a wood pasture could be included under GAEC7 and be fully eligible on this basis. D1 would expect each LF to be recorded individually on LPIS. Although currently there is no legal obligation on MS to do this, the situation may change.

Hedges are ineligible in principle, although MS can choose to make hedges eligible if no more than 2m wide. Hedges cannot be included in the pro-rata system. Hedges become eligible if the MS includes hedges under GAEC7 protection.

Reduction co-efficients are an additional mechanism that can be applied after any pro-rata reductions. They are intended to reduce the payment rate on pastures that are not predominantly herbaceous. The logic explained by D1 is that these pastures are coming into CAP support for the first time and that if they had the full rate of support this would dilute the budget and thus reduce the payments for “already eligible” farmland. EFNCP explained that millions of hectares of wood pastures have been receiving CAP support for decades, including the current SPS, they are not “newly eligible”.

EFNCP explained that there is no agronomic justification for assuming that non-herbaceous pastures are indicative of a lower level of productive activity. Wood pastures are simply a different forage system from purely herbaceous pastures (and one that also happens to store more carbon, to provide improved soil protection and to be more biodiverse). Some wood pastures are more productive than some purely herbaceous pastures.

EFNCP asked how the new rules would ensure that an abandoned grassland with no trees or shrubs and no farming activity would not be able to receive Pillar 1 direct payments. D1 stated that MS would have to define criteria for maintaining such land in a state that it can be used for farming, but that these criteria cannot include minimum livestock density or any other farm production. They could include annual cutting of vegetation. EFNCP explained that this makes no sense if permanent pasture can include all types of grazable vegetation, as per the new definition. Why is there a need to cut the vegetation, if it remains grazable for many years with no intervention? This will mean that abandoned herbaceous grassland can easily claim CAP payments while wood pastures under active farming are penalised.

D1 will not propose any eligibility criteria that imply a requirement to carry out farm production, including minimum LU/ha, because they fear this is not compatible with WTO (the WTO text aims to exclude payments linked to “volume of production” but it is not clear if any country has objected to current GAEC option for minimum LU/ha). D1 also emphasise that the CAP is intended to support agriculture, not just farmers who look after some nature. There seems to be a serious contradiction in these two policy positions: D1 wants the CAP to support agriculture but they cannot propose CAP rules that require farming to be carried out; so they only require cutting the vegetation without harvesting (isn't this just looking after some nature, although not very well?).

EFNCP emphasise that wood pastures such as dehesas and montados are very real farming systems covering millions of hectares and supporting thousands of farming families, they are not just “looking after nature”. The proposed rules on trees and eligibility discriminate against these farmers.

EFNCP conclusions and proposals:

The proposed rules are convenient for the more intensive and profitable farming systems of low environmental value and will have little or no effect on these systems. The proposed rules discriminate against farming systems that predominate especially in more marginal regions of the EU with mainly agrarian economies, that provide essential employment in these regions and that are of exceptional environmental value.

The 100 trees/ha rule is potentially very damaging, it is not objective or scientific and it discriminates against wood pasture systems. It should not be included as an option for MS. The exclusion from this rule of “fruit trees” but not of trees that produce forage (e.g. chestnuts, acorns) for livestock is clearly discriminatory.

The pro-rata system is preferable and should be the only option for MS. This system has some benefits as an approach to discounting from eligibility those elements that are not part of the farmed area, such as tracks, buildings, large expanses of rock or water, large patches of impenetrable scrub, etc. Trees/shrubs that are not part of a farming system (not grazable or producing fruits used as forage, not used by livestock for shade) and not included by MS for GAEC7 protection could also be discounted through a pro-rata system.

However, it is quite wrong for trees/shrubs that are grazable and part of a farming system (as in wood pastures) to be regarded as ineligible and therefore discounted through a pro-rata system. It contradicts all the scientific evidence on wood pasture forage systems showing that trees/shrubs are an important forage resource, and also contradicts the new permanent grassland definition.

The 50% upper threshold for tree and LF canopy is potentially extremely damaging and should be deleted, and not included in any future guidance. MS should be free to set their own thresholds in accordance with local farming and environmental conditions.

The 2 metre rule on hedges is potentially very damaging and also seems unnecessary, but can be avoided in practice by MS including hedges in GAEC7 protection, and/or by applying the pro-rata system.

If the CAP is intended to support agriculture then it makes no sense to allow Pillar 1 payments on grassland that is merely cut every one or two years (“mulching”). This is not farming and is not beneficial for the environment. EFNCP believes this is a misuse of public money.

EFNCP believes the only rational and workable criterion for ensuring that permanent pastures are in active farming use is to require a minimum livestock density or minimum grazing days per hectare as occurs now under GAEC in many MS, combined with field inspections on a sample basis. This system has worked for many years. Minimum grazing days per hectare as an environmental requirement is very different from the concept of payments based on volume of production, as excluded by the WTO.

From interpretation of orthophotos there are many situations in which it is not possible to distinguish land in use from land out of use, except after several years of natural succession.