



Council of the
European Union

075204/EU XXVI. GP
Eingelangt am 17/09/19

Brussels, 17 September 2019
(OR. en)

12268/19

Interinstitutional File:
2018/0216(COD)

AGRI 442
AGRIFIN 53
AGRILEG 161
AGRISTR 50
AGRIORG 54
CODEC 1401
CADREFIN 323

NOTE

From:	Presidency
To:	Special Committee on Agriculture
No. Cion doc.:	9645/18 + COR 1 + ADD 1
Subject:	Regulation on CAP Strategic Plans - Definitions

Delegations will find in the Annex a Presidency paper on the abovementioned subject for an exchange of views at the Special Committee on Agriculture on 23 September 2019.

PRESIDENCY PROPOSAL ON DEFINITIONS ON CAP STRATEGIC PLANS REGULATION

This Presidency discussion paper on the definitions in the CAP Strategic Plan Regulation takes into account:

- the latest Romanian Presidency's drafting suggestions (10103/1/19 REV 1) and the written comments sent by Member States concerning those suggestions;
- the discussions in the Working Party of Horizontal Agricultural Questions on 4-5 July 2019.

The objective of this paper is to describe the state of play regarding the definitions in Article 3 and the definitions and conditions in Article 4, as well as to propose compromise texts for the open issues.

The modifications the Finnish Presidency is suggesting for Articles 3 and 4 are set out in the Annex, together with an explanation of the changes made.

Article 3 Definitions

Member States seem to be mainly satisfied with the definitions in Article 3 as only some individual comments were submitted on them. Therefore, no substantial changes are suggested by the Finnish Presidency. Minor technical clarifications are suggested in points (a) '*farmer*', (i) '*targets*' and (j) '*milestones*'.

Article 4 Definitions and conditions to be formulated in the CAP Strategic Plans

Member States seem also satisfied with most of the definitions and conditions set out in Article 4. The Presidency suggests that the word 'related' be deleted from the Title of the Article because it seems to be unnecessary.

A. Arable land (Article 4(1)(b)(i))

To avoid discrimination between different interventions, references to areas set aside for the purpose of eco-schemes (Art. 28) or in accordance with GAEC 9 (Annex III) have been included.

B. Permanent grassland and permanent pasture (Article 4(1)(b)(iii))

A majority of Member States could accept the wording of the Romanian Presidency on '*permanent grassland*'. Only a very limited number of Member States asked for changes or preferred either the Commission proposal or the text from the "Omnibus" Regulation.

Thus, the text of '*permanent grassland*' was mainly kept unchanged, with the exception of minor technical clarifications to ensure the quality of the legal drafting.

C. Young farmer (Article 4(1)(e))

A large majority of Member States could accept the present wording of the definition of '*young farmer*'. Only a few Member States considered that training or skills requirement should be obligatory for Member States. Therefore, the Presidency kept the definition of '*young farmer*' unchanged.

Concerning the possibility to insert a definition of "new farmer", which also emerged from the comments received, the Presidency preferred not to include it due to the limited support for this request.

D. Eligible hectare (Article 4(1)(c))

The majority of the comments received concerned the definition of '*eligible hectare*' for direct payments. Requests to redraft the text or requests to explain the wording came from many Member States. The Romanian Presidency's text specified that the definition should include landscape features whose retention is mandatory under GAEC 9; in addition, it introduced the possibility for Member States to include other landscape features up to a maximum size to be decided by themselves, and to apply a pro-rata reduction for scattered ineligible features on permanent grassland.

With regard to landscape features under GAEC 9, some Member States would not want them to be eligible obligatorily. Many other Member States, however, would prefer to broaden the definition to cover further landscape features or areas used for attaining environmental objectives. Some Member States requested that, if flexibility were increased, the further landscape features should be voluntary for Member States. A few Member States would like to have very large flexibility to define '*eligible hectare*' to take into account, for example, different biotopes.

A few Member States mentioned that a maximum size for acceptable landscape features, or minimum common parameters, should be inserted to ensure consistent implementation in the Member States. But some other Member States considered that setting an acceptable size would not be appropriate and the matter should thus be up to the Member State to decide.

Paludiculture was proposed to be included into the '*eligible hectare*' definition or to the definition of '*agricultural activity*' by some Member States. According to the Commission, paludiculture can be already eligible without further amending the text. Taking into account these different opinions, and in order to ensure consistency with environmental ambition, the Finnish Presidency proposes in the Annex certain modifications to the definition of '*eligible hectare*'.

Question to the Member States on the definition of '*eligible hectare*':

Do you agree with the suggested changes to the definition of '*eligible hectare*' as set out in the Annex?

E. Genuine farmer (Article 4(1a))

Nearly all Member States that sent comments on the definition of '*genuine farmer*' supported a voluntary application for Member States, arguing that it would be preferable if Member States could lay down the definition and the related conditions freely.

The Commission has remarked several times the importance it attributes to a more precise definition of '*genuine farmer*' compared to the drafting suggestions of the Romanian Presidency.

A few Member States would like to have a list of criteria for '*genuine farmer*', for example concerning retirement age. According to the Commission, criteria concerning age are not acceptable.

For clarification reasons, some modifications to the definition of '*genuine farmer*' were made in the drafting suggestions of the Finnish Presidency.

Question to Member States on the definition of '*genuine farmer*':

Which of the two options in the Annex could you support?

In option 1 the points are in a different order than in the suggestion of the Romanian Presidency, but the option is still very flexible for Member States.

In option 2 the history of defining 'active/genuine farmers' has been taken into account so that if the Member States wish to define 'genuine farmers', Member States would need to ensure that no direct support is granted to farmers for whom farming is an insignificant activity from an economic point of view or whose principal business activity is not agriculture.

PRESIDENCY'S EXPLANATIONS ON THE PROPOSED DRAFTING SUGGESTIONS
(CAP Strategic Plans Regulation, Articles 3 and 4)

*In the first two columns, compared to the Commission proposal, the added text is marked in **bold and underlined** and ~~strikethrough~~ is used for deleted text. In the second column, changes compared to the last drafting suggestions proposed by the Romanian Presidency are highlighted in yellow.*

Last suggestions proposed by the RO PRES (doc. 10103/19)		Revised drafting suggestions	Explanation of the proposed change(s)
Article 3(a) - "Farmer"			
(a) 'farmer' means a natural or legal person, or a group of natural or legal persons, regardless of the legal status granted to such group and its members by national law, whose holding is situated within the territorial scope of the Treaties, as defined in Article 52 of the Treaty on European Union (TEU) in conjunction with Articles 349 and 355 of the Treaty on the Functioning of the European Union (TFEU), and who exercises an agricultural activity as defined by Member States;	(a) 'farmer' means a natural or legal person, or a group of natural or legal persons, regardless of the legal status granted to such group and its members by national law, whose holding is situated within the territorial scope of the Treaties, as defined in Article 52 of the Treaty on European Union (TEU) in conjunction with Articles 349 and 355 of the Treaty on the Functioning of the European Union (TFEU), and who exercises an agricultural activity as de termined by Member States in accordance with Article 4(1)(a) of this Regulation ;		"Determined" is, from a legal point of view, more appropriate than "defined". Reference added to clarify that the determination of agricultural activity is linked to the definition set in Art. 4(1)(a).
Article 3(i) - "Targets"			
(i) 'targets' means pre-agreed values to be achieved at the end of the period in relation to the result indicators included under a specific objective;	(i) 'targets' means pre-agreed values to be achieved at the end of the period in relation to the result indicators included under a specific objective;		"Pre-established" describes better the planning and setting of intermediate targets.
Article 3(j) - "Milestones"			
(j) 'milestones' means intermediate targets	(j) 'milestones' means intermediate targets pre-established		"Pre-established" describes

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<u>values for specific financial years</u> -to be achieved at a given point in time during the CAP Strategic Plan period in relation to the <u>result</u> indicators included under a specific objective;	<u>values for a specific financial year</u> to be achieved at a given point in time during the CAP Strategic Plan period in relation to the <u>result</u> indicators included under a specific objective;	better the planning and setting of values.
Article 4 Definitions and conditions to be formulated in the CAP Strategic Plans		
Article 4(1)(b)(i) - "Arable land"		
(i) 'arable land' shall be land cultivated for crop production or areas available for crop production but lying fallow, and include areas set aside in accordance with Articles 22, 23 and 24 of Council Regulation (EC) No 1257/1999, with Article 39 of Council Regulation (EC) No 1698/2005, with Article 28 of Regulation (EU) No 1305/2013 or with Article 65 of this Regulation;	(i) 'arable land' shall be land cultivated for crop production or areas available for crop production but lying fallow, and include areas set aside in accordance with Articles 22, 23 and 24 of Council Regulation (EC) No 1257/1999, with Article 39 of Council Regulation (EC) No 1698/2005, with Article 28 of Regulation (EU) No 1305/2013 or with Article 28 or Article 65 or GAEC 9 referred to in Annex III of this Regulation;	Also the set aside areas in accordance with Article 28 and GAEC 9 are taken into account so that discrimination between different measures does not exist.
Article 4(1)(b)(iii) - "Permanent grassland"		
(iii) 'permanent grassland and permanent pasture' (together referred to as 'permanent grassland') shall be land <u>used to grow grasses or other herbaceous forage naturally (self-seeded) or through cultivation (sown) and that has not been included in the crop rotation of the holding for five years or more, as well as, where Member States so decide, that has not been filled and/or ploughed up for five years or more; it may include other species such as shrubs and/or trees which can be grazed and, where Member States so decide, other species such as shrubs and/or trees which produce animal feed, provided that the used to grow grasses or and other herbaceous forage naturally (self-seeded) or through cultivation (sown) remain predominant.</u> [...]	(iii) 'permanent grassland and permanent pasture' (together referred to as 'permanent grassland') shall be land <u>used to grow grasses or other herbaceous forage naturally (self-seeded) or through cultivation (sown) and that has not been included in the crop rotation of the holding for five years or more, as well as, where Member States so decide, that has been neither filled nor ploughed up for five years or more; it may include other species such as shrubs or trees which can be grazed and, where Member States so decide, other species such as shrubs or trees which produce animal feed, provided that the used to grow grasses or and other herbaceous forage naturally (self-seeded) or through cultivation (sown) remain predominant.</u> [...]	Because of legal clarification the words "and/or" have been replaced with another wording around "tilled" and replaced with the word "or" after "shrubs". This allows Member States to decide that land used to grow grasses or other herbaceous forage naturally (self-seeded) or through cultivation (sown) does not become permanent grassland if it (i) has been ploughed up at least once for five years or

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		more (ii) has been tilled at least once for five years or more or (iii) has been ploughed up or tilled at least once for five years or more.
Article 4(1)(c) - "Eligible hectare"		
(c) for the purpose of types of interventions in the form of direct payments, 'eligible hectare' shall be defined in a way that it includes any agricultural area of the holding :	(c) for the purpose of types of interventions in the form of direct payments, 'eligible hectare' shall be defined in a way that it includes any agricultural area of the holding consists of:	"Determined" is, form a legal point of view, more appropriate than "defined". "Includes" has been replaced by "consists of" for sake of legal certainty.
(i) <u>any agricultural area of the holding</u> that, during the year for which support is requested, is used for an agricultural activity or, where the area is also used for non-agricultural activities, is predominantly used for agricultural activities, and which is at the farmer's disposal. <u>They shall include any landscape feature subject to the retention obligation under GAEC 9 referred to in Annex III.</u> Where duly justified for environmental reasons, eligible hectares may also include certain areas used for agricultural activities only every second year.	(i) <u>any agricultural area of the holding</u> that, during the year for which support is requested, is used for an agricultural activity or, where the area is also used for non-agricultural activities, is predominantly used for agricultural activities, and which is at the farmer's disposal. <u>Where duly justified for environmental or climate-related reasons, Member States may decide that eligible hectares:</u> - may also include certain areas used for agricultural activities only every second year <u>or</u> - <u>do not include agricultural areas resulting from the conversion of land with a negative impact on the climate or environment.</u>	The previous text from the end of this point ("Member States may, for climate and environmental reasons, apply further restrictions to the eligibility of agricultural area.") is now included under this point and some changes were made to it for clarification reasons. Several Member States have requested modifications to the conditions of "eligible hectare" in order to better take into account environmental and

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As regards permanent grassland with scattered ineligible features, such as landscape features or trees, Member States may decide to apply fixed reduction coefficients to determine the area considered eligible, as referred to in Article 66(2)(b) of [HzRL].	(ia) <u>any area of the holding:</u> - <u>covered by landscape features subject to the retention obligation under GAEC 9 referred to in Annex III;</u> - <u>used to attain the minimum share of agricultural area devoted to non-productive features or areas under GAEC 9;</u> - <u>which, for the duration of the relevant commitment by the farmer, is established or maintained as a result of an eco-scheme referred to in Article 28.</u> <u>Member States may decide that eligible hectares also contain other landscape features, provided that they do not unduly hamper performing an agricultural activity. As regards permanent grassland with scattered ineligible features, Member States may decide to apply fixed reduction coefficients to determine the area considered eligible.</u>	climate ambition. Therefore, the Presidency suggests a limited widening of the definition of eligible hectare. The aim of these modifications is to find a balance between environmental concerns and rules on eligibility of land. The text referring to maximum size of landscape features was deleted because under Article 4 Member States can set further provisions on landscape features in their CAP Strategic Plans. “Trees” were deleted because it is understood that they are already part of landscape features (a reference to this could be included in the recitals - to be considered at a later stage)..
(ii) <u>any area of the holding</u> that gave a right to payments under Subsection 2 of Section 2 of Chapter II of Title III of this Regulation or under the basic payment scheme or the single area payment scheme laid down in Title III of Regulation (EU) No 1307/2013, and which no longer complies with the definition of <u>is not an</u> 'eligible hectare' set out in point (a) of Regulation (EU) No 1307/2013 <u>as determined by Member</u>	(ii) <u>any area of the holding</u> that gave a right to payments under Subsection 2 of Section 2 of Chapter II of Title III of this Regulation or under the basic payment scheme or the single area payment scheme laid down in Title III of Regulation (EU) No 1307/2013, and which no longer complies with the definition of <u>is not an</u> 'eligible hectare' set out in point (a) of Regulation (EU) No 1307/2013 <u>as determined by Member</u>	This point has been clarified in order to ensure that land, which is used to fulfill certain environmental goals, remains eligible. Some technical changes were also made to ensure consistency with previous sub-

Last suggestions proposed by the RO PRES (doc. 10103/19)	Revised drafting suggestions	Explanation of the proposed change(s)
point (a) of Regulation (EU) No 1307/2013 as defined by Member States on the basis of sub-point (i) of this point as a result of the implementation of Directives 92/43/EEC and 2009/147/EC or Directive 2000/60/EC; - for the duration of the relevant commitment by the individual farmer, is afforested pursuant to Article 31 of Regulation (EC) No 1257/1999 or to Article 43 of Regulation (EC) No 1698/2005 or to Article 22 of Regulation (EU) No 1305/2013 <u>or Articles 65 and 68 of this Regulation</u>, or under a national scheme the conditions of which comply with Article 43(1), (2) and (3) of Regulation (EC) No 1698/2005 or Article 22 of Regulation (EU) No 1305/2013 or Articles 65 and 67 68 of this Regulation-; - for the duration of the relevant commitment of the individual farmer, is set aside pursuant to Articles 22, 23 and 24 of Regulation (EC) No 1257/1999, to Article 39 of Regulation (EC) No 1698/2005, to Article 28 of Regulation (EU) No 1305/2013 or to Article 65 of this Regulation. <u>Member States may, for climate and environmental reasons, apply further restrictions to the eligibility of agricultural area.</u> Areas used for the production of hemp shall only be eligible hectares if the varieties used have a tetrahydrocannabinol content not exceeding 0,2 %;	<u>States on the basis of sub-points (i) and (ia) of this point:</u> - as a result of the implementation application of Directives 92/43/EEC, and 2009/147/EC or Directive 2000/60/EC to this area; - as a result of the implementation of a standard under GAEC 2 referred to in Annex III of this Regulation; - for the duration of the relevant an afforestation commitment by the individual farmer, is afforested pursuant to Article 31 of Regulation (EC) No 1257/1999 or to Article 43 of Regulation (EC) No 1698/2005 or to Article 22 of Regulation (EU) No 1305/2013 or to Article 65 or Article 68 of this Regulation, or under a national scheme the conditions of which comply with Article 43(1), (2) and (3) of Regulation (EC) No 1698/2005 or Article 22 of Regulation (EU) No 1305/2013 and 67 or Article 68 of this Regulation-; - for the duration of the relevant a set aside commitment of by the individual farmer, is set aside pursuant to Articles 22, 23 and 24 of Regulation (EC) No 1257/1999, to Article 39 of Regulation (EC) No 1698/2005, to Article 28 of Regulation (EU) No 1305/2013 or to Article 65 of this Regulation.	points and to improve the quality of legal drafting.

Last suggestions proposed by the RO PRES (doc. 10103/19)	Revised drafting suggestions	Explanation of the proposed change(s)
	Areas used for the production of hemp shall only be eligible hectares if the varieties used have a tetrahydrocannabinol content not exceeding 0,2 %;	
<i>Article 4(1a) - "Genuine farmer"</i>		
<u>1a. Genuine farmers may be defined by Member States according to objective and non-discriminatory criteria. Member States may consider genuine farmers the farmers who received direct payments not exceeding a certain amount for the previous year. Such an amount shall not be higher than EUR 5 000.</u> <u>In Member States that define in their CAP Strategic Plans "genuine farmer" and set applicable conditions in accordance with the first subparagraph, Articles 15a, 17(3), 21(1), 22(5), 24(1), 28(2), 29(1), 34, 66(2), 67(2) and 70(2) shall only apply to farmers that comply with this definition and fulfil the applicable conditions.</u>	<i>N.B.: For both "Option 1" and "Option 2", the first and the second subparagraphs of paragraph 1a are inverted compared to the previous drafting suggestions by the Romanian Presidency (10103/19). Changes in the second sub-paragraphs of each options are marked vis-à-vis the first subparagraph in the previous drafting suggestions.</i> Option 1: <u>1a. Member States may decide in their CAP Strategic Plans to apply Articles 15a, 17(3), 21(1), 22(5), 24(1), 28(2), 29(1), 34, 66(2) and 70(2) only to "genuine farmers" as determined in accordance with the second subparagraph.</u> <u>Member States may determine in their CAP Strategic Plans which farmers shall be considered as "genuine farmers" according to objective and non-discriminatory criteria. In case Member States consider as genuine farmers those farmers who did not receive direct payments exceeding a certain amount for the previous year, such an amount shall not be higher than EUR 5 000.</u> Option 2: <u>1a. Member States may decide in their CAP Strategic Plans to apply Articles 15a, 17(3), 21(1), 22(5), 24(1),</u>	Clarification of text. In the views expressed by Member States, it would still be appropriate to maintain the definition as voluntary. The reference to SPR Art. 67(2) (areas with area-specific disadvantages) was deleted.. It is not necessary to broaden the scope of "genuine farmer" from the Commission proposal. In option 2, following the approach taken in the previous reforms as regards active farmers, a more precise frame

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	28(2), 29(1), 34, 66(2) and 70(2) only to "genuine farmers" as determined in accordance with the second subparagraph. Member States may determine in their CAP Strategic Plans which farmers shall be considered as "genuine farmers" according to objective and non-discriminatory criteria, ensuring that no support is granted to those whose agricultural activity forms only an insignificant part of their overall economic activities or whose principal business activity is not agriculture, while not precluding from support pluri-active farmers. In case Member States consider as genuine farmers those farmers who did not receive direct payments exceeding a certain amount for the previous year, such an amount shall not be higher than EUR 5 000.	is suggested to determine "genuine farmer", including criteria mostly in continuity with the current definition of "active farmer" ..