



## Direct Payments

### Eligibility for direct payments of the Common Agricultural Policy

*This fiche summarises the basic definitions and eligibility conditions for Direct Payments under Regulation (EU) No 1307/2013 and presents in graphical format some of the main policy choices that Member States have made in this respect. It reflects the content of the notifications available to the Commission services to date. It is made available without prejudice to any finding in respect of their compliance with the regulatory framework. It is provided on the understanding that in the event of a dispute involving Union law it is, under the Treaty on the Functioning of the European Union, ultimately for the Court of Justice of the European Union to provide a definitive interpretation of the applicable Union law.*

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Direct payments are granted to farmers in the form of a per-hectare basic income support (the [Basic Payment Scheme](#)), complemented by a series of other supports targeting specific objectives or types of farmers (the "green" direct payment, the redistributive payment, the voluntary coupled support, the payment to young farmers and the payments for areas with natural constraints)<sup>1</sup>. They are meant to provide a safety net acting as a buffer to farmers' income stemming from sales on the markets, which are subject to volatility, and to compensate for the low profitability of the sector.

This note summarises the basic provisions which beneficiaries need to respect each year in order to be eligible for direct payments<sup>2</sup>:

- ⇒ comply with the so-called "minimum requirements",
- ⇒ be active farmers,
- ⇒ have agricultural land at their disposal that is used for agricultural activity.

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<sup>1</sup> For more information on the 2015-2020 direct payment schemes, please see: [http://ec.europa.eu/agriculture/direct-support/direct-payments/index\\_en.htm](http://ec.europa.eu/agriculture/direct-support/direct-payments/index_en.htm)

<sup>2</sup> Regulation (EU) No 1307/2013

In Member States implementing the Basic Payment Scheme, farmers must also hold **payments entitlements** which give right to a predetermined amount per hectare. For more information on the conditions to receive such payment entitlements, please see the informative note on the ['Basic Payment Scheme'](#).

In order to access the payments, farmers have to **submit an aid application** declaring, inter alia, all the agricultural parcels on the holding every year. Member States help farmers with a draft (pre-established) aid application, in a graphical format such as maps or satellite imagery, indicating the areas determined in the previous year.

Other conditions have to be respected by farmers benefiting from direct payments (such as [cross-compliance](#)) but these are not *per se* eligibility conditions. They trigger penalties when they are not fully respected.

## **1. TO COMPLY WITH THE "MINIMUM REQUIREMENTS"**

Direct payments can only be granted above certain thresholds defined by Member States and designed as the "minimum requirements"<sup>3</sup>. The decisions taken by the Member States on minimum requirements for receiving direct payments are summarised in the Annex (Table 1). Generally, direct payments are not granted where the amount of direct payments to be granted is less than an amount between €100 and €500 and/or where the claimed eligible area is less than an area ranging from 0.3 ha to 5 ha.

Those minimum requirements are meant to avoid the excessive administrative burden caused by managing payments of small amounts.

## **2. TO BE AN ACTIVE FARMER**

In order to be eligible to receive direct payments, applicants have to be active farmers.

- **Definition of farmer**

According to Regulation (EU) No 1307/2013, a **farmer** is a natural or legal person, or a group of natural or legal persons, whose holding is situated within the territory of the European Union and who exercises an agricultural activity (see next section)<sup>4</sup>. No particular legal status is required.

- **Who are active farmers?**

Further to meeting the definition of farmer, candidates also have to be **active farmers**. In the context of the latest CAP reform, the co-legislators indeed adopted the active farmer provision which aims at preventing individuals and companies from receiving support from the CAP when their business is not agricultural or is only marginally so.

The key element of the active farmer provision is a negative list of businesses/activities<sup>5</sup>, which includes airports, waterworks, real estate services, railway services and permanent sport and recreational grounds. Generally speaking, entities with activities on the negative list are not usually farms. They just happen to have some farmland. Entities operating an activity on the "negative list" are not considered "active farmers" unless they can prove that their farming

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<sup>3</sup> Article 10 of Regulation (EU) No 1307/2013

<sup>4</sup> Article 4 (1)(a) of Regulation (EU) No 1307/2013

<sup>5</sup> Article 9(2) of Regulation (EU) No 1307/2013

activity is not marginal, using one of the 3 possibilities to rebut the negative presumption (see figure 1 below).

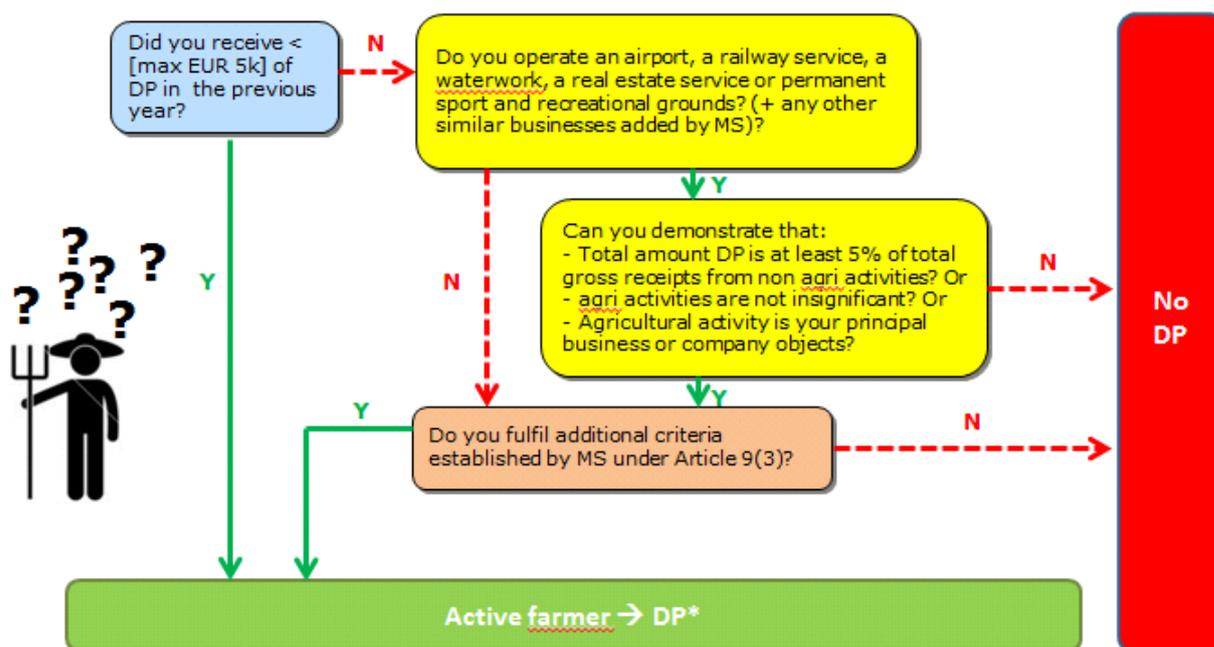
If Member States want to, they can apply a stricter definition of active farmer<sup>6</sup>:

- ⇒ they can enlarge this negative list to include other similar activities (see Figure 2 in Annex),
- ⇒ they can apply a test on all claimants, so that claimants with a marginal agricultural activity are excluded (even if they do not perform an activity of the negative list)<sup>7</sup>.

However, those who received less than a certain amount of direct payments in the previous year are considered *de facto* active farmer. This amount is set by Member States but may not be higher than € 5000 (see Figure 3 in the Annex).

Finally, those farmers who have mainly areas which do not need any intervention to remain in a state suitable for grazing or cultivation and who do not perform a minimum activity on those areas, whatever the level of direct payments they were granted in the previous year, are considered non-active and may not receive support<sup>8</sup>.

**Figure 1. Summary of the active farmer provisions<sup>9</sup>**



<sup>6</sup> Summary of all implementation choices related to the active farmer provisions: [http://ec.europa.eu/agriculture/direct-support/direct-payments/docs/implementation-decisions-ms\\_en.pdf](http://ec.europa.eu/agriculture/direct-support/direct-payments/docs/implementation-decisions-ms_en.pdf)

<sup>7</sup> Article 9(3) of Regulation (EU) No 1307/2013

<sup>8</sup> Article 9(1) of Regulation (EU) No 1307/2013

<sup>9</sup> This graph does not cover Article 9(1) of Regulation (EU) No 1307/2013

### **3. TO PERFORM AN AGRICULTURAL ACTIVITY ON ELIGIBLE AGRICULTURAL LAND**

To receive direct support, an active farmer should have agricultural land at his/her disposal and the agricultural land should be used for an agricultural activity.

- **Definition of an agricultural area<sup>10</sup>**

As a general rule only land suitable to produce agricultural products is considered as agricultural area. Forests are in principle not eligible.

Agricultural area is thus defined as one of the following:

- ⇒ Arable land: land cultivated for crop production or areas available for crop production but lying fallow, including areas set aside in accordance with certain Rural Development measures. Greenhouses are considered eligible provided the land maintains the characteristics of an agricultural area. However, in specific situations, e.g. cultivation of plants in pots with no interaction of the plants roots with the soil, or greenhouses where the soil is concrete (e.g. hydroponic cultivation), the areas are considered not eligible because the soil is not contributing to the development of the crop.
- ⇒ Permanent crops: non-rotational crops other than permanent grassland and permanent pasture that occupy the land for five years or more and yield repeated harvests, including nurseries and short rotation coppice.
- ⇒ Permanent grassland and permanent pasture: land used to grow grasses or other herbaceous forage naturally (self-seeded) or through cultivation (sown) and that has not been included in the crop rotation of the holding for five years or more. Other species such as shrubs and/or trees which can be grazed are considered part of the area provided that the grasses and other herbaceous forage remain predominant.

In addition, as to recognise the ecological and agricultural value of some areas with extensive traditional pastoral/agricultural systems, Member States may decide to include in the category of permanent grassland any land which can be grazed and which forms part of established local practices even though grasses and other herbaceous forage are traditionally not predominant in grazing areas. The national administrations duly identify those areas in their Land Parcel Identification System (LPIS). So far 9 Member States decided to implement this extension of the definition of permanent grassland (PG), which may be justified by any or a combination of the following practices<sup>11</sup>:

- (a) practices for areas for livestock grazing which are traditional in character and are commonly applied on the areas concerned;
- (b) practices which are important for the conservation of habitats<sup>12</sup>

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<sup>10</sup> Article 4(1)(e) of Regulation (EU) No 1307/2013

<sup>11</sup> See Article 7 of Commission Delegated Regulation (EU) No 639/2014

<sup>12</sup> Covered by Annex I to Council Directive 92/43/EEC, and of biotopes and habitats covered by Directive 2009/147/EC of the European Parliament and of the Council

Member States having extended the definition of PG in case of established local practices								
a) (traditional practices) and/or b) (conservation of habitats)								
DE	EL	ES	FR	IT	CY	PT	SE	UK
a+b	a	a+b	a	a	a	a	a+b	a

- **What is an eligible hectare<sup>13</sup>?**

First, for the purpose of establishing eligibility on an annual basis, the farmer needs to declare the **parcels at his/her disposal**. He/she must have decision making power and bear the benefits and financial risks in relation to the agricultural land for which direct support is requested. There is no provision that stipulates that the farmer should own the land, neither the exact nature of the legal relationship on the basis of which the area concerned is held by the farmer. In fact, the farmer should have a factual possession of the land and a degree of autonomy over the area that is sufficient for the carrying-out of his/her agricultural activity.

As a general rule, in the context of direct payments, **eligible hectare** means any agricultural area of the holding **that is used for agricultural activity<sup>14</sup>**. The agricultural area can also be used for non-agricultural activities, as long as the agricultural activities are predominant over the non-agricultural ones, i.e. the agricultural activities can be exercised on the area without being significantly hampered by the intensity, nature, duration and timing of the non-agricultural activities. This is to be assessed by the national administrations in charge of assessing the eligibility to direct support on a case-by-case basis. However, Member States may draw a list of areas which are deemed ineligible without further assessment because of the fact that they are typically not predominantly used for agricultural activities. Examples of areas included in their lists by Member States are: natural and recreational areas, parks, airport strips, playgrounds.

Member States having drawn a list of areas predominantly used for non-agricultural activities								
BE (FL)	DE	IE	LV	NL	AT	PL	SI	

- **Scope of the agricultural activity<sup>15</sup>**

In order to be considered eligible to payments, any single part of the agricultural area should be utilised for an agricultural activity each year. However areas which may no more be used for an agricultural activity as a result of specific commitments (e.g. afforested, set aside, or converted in the framework of Directives Natura 2000) may also be eligible to direct payments under certain conditions<sup>16</sup>.

<sup>13</sup> Article 32(2) of Regulation (EU) No 1307/2013

<sup>14</sup> Point (b) of Article 32(2) of Regulation (EU) No 1307/2013 stipulates other cases of eligibility.

<sup>15</sup> Article 4(1)(c) of Regulation (EU) No 1307/2013

<sup>16</sup> Article 32(2)(b) of Regulation (EU) No 1307/2013

In the framework of direct support, agricultural activity is defined as:

(i) production, rearing or growing of agricultural products, including harvesting, milking, breeding animals, and keeping animals for farming purposes

(ii) maintaining an agricultural area in a state which makes it suitable for grazing or cultivation without preparatory action going beyond usual agricultural methods and machineries. This applies to land which farmers decide not to use for production. It is for Member States to set the criteria that farmers are to meet in order to fulfil the obligation to "maintain the agricultural area in a state suitable for grazing or cultivation". The criteria may be based on either or both of the following ways<sup>17</sup>: by requiring the farmer to carry out at least one annual activity, or by setting the characteristics to be met by the land. Moreover, Member States may decide that those criteria are differentiated depending on the type of agricultural areas. In doing so, most Member States opted for the agronomical distinction between arable land, permanent crop and permanent grassland. Some of them used other criteria (e.g. altitude).

For arable land available for crop production but lying fallow, most Member States introduced requirements in terms of mowing the vegetation, avoid encroachment of any woody plant, tilling (ploughing, disking).

For permanent crops not used for production, usually orchards, Member States often request that the vegetation between the rows is mowed, and that the plants are maintained in good vegetative conditions (e.g. pruned).

For permanent grassland most Member States request farmers to mow at least once a year and avoid encroachment of woody plants.

(iii) carrying out a minimum activity, defined by Member States<sup>18</sup>, on agricultural areas naturally kept in a state suitable for grazing or cultivation, where relevant. The Member States which have identified this type of areas on their territory are the following:

Member States having notified to have areas naturally kept							
BE (FL)	CY	FR	DE	IT	RO	SK	UK (SC-WA)

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<sup>17</sup> Article 4 of Commission Delegated Regulation (EU) No 639/2014

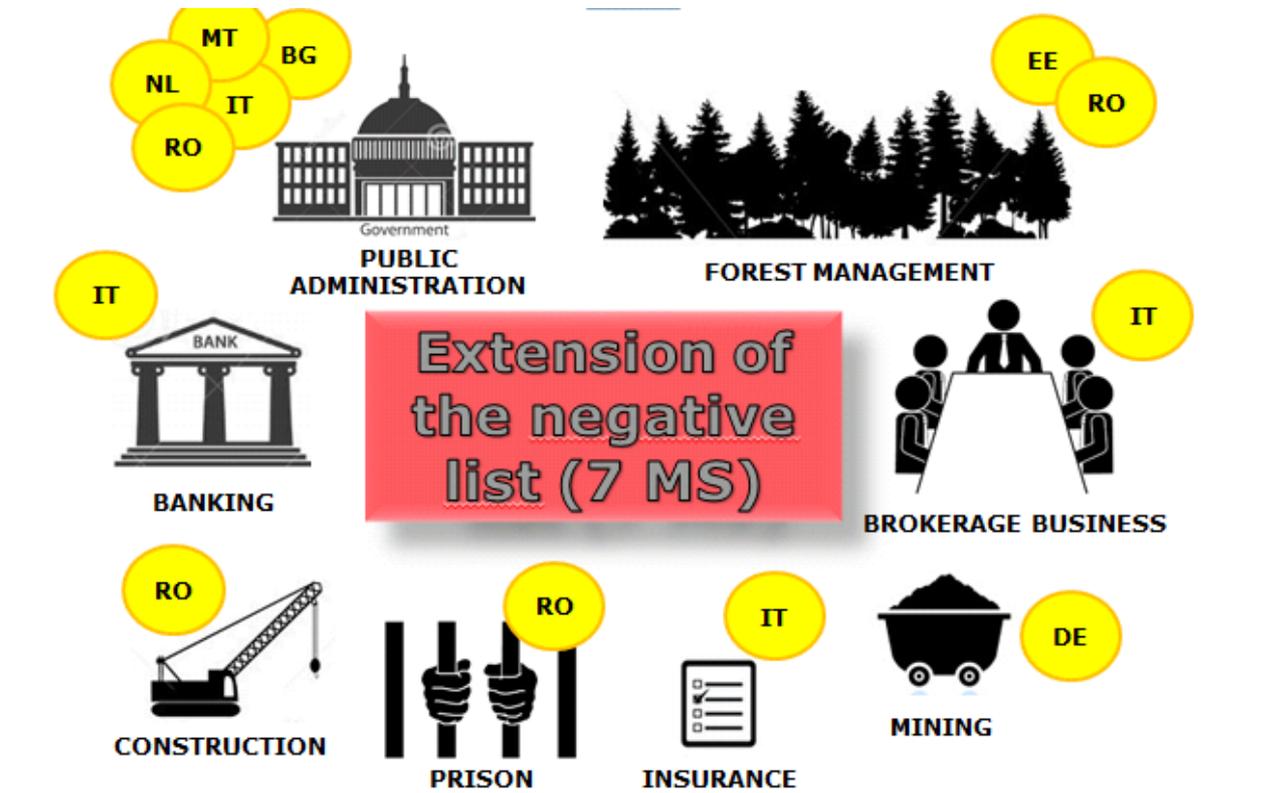
<sup>18</sup> On the basis of the framework set in Article 5 of Commission Delegated Regulation (EC) 639/2014

**Annex****Table 1. Minimum requirements**

MS/Region	Amount threshold - EUR	Area threshold - ha	
			Farmers implementing animal related VCS, with less than area threshold (EUR)
Belgium Flanders	€ 400		
Belgium Wallonia	€ 100		
Bulgaria		0.5	€100
Czech Republic		1	
Denmark		2	€300
Germany		1	
Estonia		1	€100
Ireland	€ 100		
Greece	€ 250		
Spain	€ 100-200-300		
France	€ 200		
Croatia		1	€100
Italy	€ 250		
Cyprus		0.3	€100
Latvia		1	€100
Lithuania		1	€100
Luxembourg	€ 100		
Hungary		1	€100
Malta		0.3	€100
Netherlands	€ 500		
Austria		1.5	€150
Poland		1	€200
Portugal		0.5	€100
Romania		1	€100
Slovenia		1	€100
Slovakia		1	€100
Finland	€ 200		
Sweden		4	€100
United Kingdom England		5	
United Kingdom Northern Ireland		3	
United Kingdom Scotland		3	€100
United Kingdom Wales		5	

**Figure 2. Active farmer provision: extending the negative list**

This graph shows which Member States have chosen to extend the negative list and which additional non-agricultural activities are included in that extended negative list.



**Figure 3. Threshold of direct payments level below which the active farmer provision is not applied**

