Eligibility of agricultural areas used for non-agricultural activities

Expert group meeting
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Carlo PAGLIACCI
DG AGRI - Unit D.1
Disclaimer

• This presentation is established 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.
Activation of payment entitlements (PE)
Article 32(1)

• Support is granted to Farmers (active farmer)
• By means of declaration
• Upon activation of a PE
• per eligible hectare
Definition of eligible hectare

Article 32(2) and (3)

2. 'eligible hectare' means:

a) any **agricultural area** of the holding, including areas not in good agricultural condition on 30 June 2003 in SAPS, that is used for an **agricultural activity** or, where the area is also used for non-agricultural activities, is predominantly used for agricultural activities.

b) ...  

3. For the purposes of point (a) of paragraph 2:

(a) where an agricultural area of a holding is also used for non-agricultural activities, that area shall be considered to be used predominantly for agricultural activities provided that those **agricultural activities can be exercised without being significantly hampered by the intensity, nature, duration and timing of the non-agricultural activities**; (ex Article 9 of Regulation 1120/2009)

(b) Member States may draw up a list of areas which are predominantly used for non-agricultural activities. (new)

**Member States shall establish criteria for the implementation of this paragraph on their territory.**
Criteria for the implementation
Article 32 (3)

Member States shall establish criteria for the implementation of this paragraph on their territory.

• There is an obligation for the MS to adopt criteria

• The criteria are not formally notified to the Commission

• Should be in line with the general principles of EU law, in particular:
  - non-discrimination: it will apply to all farmers
  - legal certainty: the rules are known by the farmer on time
Is it still an "agricultural area"?

Arable land

Land cultivated for crop production or areas available for crop production but lying fallow, including areas set aside in accordance with Articles 22, 23 and 24 of Regulation 1257/1999, with Article 39 of Regulation (EC) No 1698/2005 and with Article 28 of Regulation 1305/2013, irrespective of whether or not that land is under greenhouses or under fixed or mobile cover;

Permanent crop

"Permanent crops" means 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

(h) "permanent grassland and permanent pasture" (together referred to as permanent grassland") means 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; ....
Is the land actually used for agricultural activity?
Article 4(1)(c) of Regulation 1307/2013

- (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, based on criteria established by Member States on the basis of a framework established by the Commission
- (iii) carrying out a **minimum activity**, defined by Member States, on agricultural areas naturally kept in a state suitable for grazing or cultivation
Other conditions excluding eligibility (reminder)

- The parcel must be accessible
- The area is part of the claimant's holding (the farmer enjoys sufficient degree of autonomy)
- The parcel respects the minimum size (0,3 ha or less)
List of non-eligible areas referred to in Article 32(3)

<table>
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<tr>
<th>Member State having notified a list for 2015</th>
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<td>BE (FL)</td>
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<td>UK (EN-NI-W)</td>
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</table>
Main types of areas predominantly used for non-agricultural activities as notified by MS

Permanent activities

- Airport strips
- Natural and recreational areas, parks
- Solar panels
- Playgrounds (including Golf courses, horse riding)
Main types of non-agricultural activities as notified by MS

Temporary activities

- Car parking
- Temporary deposits
- Fairs
- Events
"an agricultural area made up of airfield safety areas surrounding runways, taxiways and stopways which are subject to specific rules and restrictions is an area eligible for the aid concerned, provided that:

(i) the farmer using that area enjoys a sufficient degree of autonomy with regard to its use for the purposes of his or her agricultural activity; and

(ii) the farmer is able to carry out the agricultural activity on that area despite restrictions arising from the pursuance of a non-agricultural activity on those same areas."
43 "...the mere contractual or legal possibility that non-agricultural activities may be pursued on the areas concerned is not by itself sufficient for a finding that those areas were actually used for non-agricultural activities. It follows that, in the present case, the fact that the lease agreement allows the lessor or a person appointed by him to have the right to enter and inspect the leased areas at any time in no way pre-determines their actual use."

Ruling: "an area which forms the cover layer of a landfill site in after-care constitutes an agricultural area within the meaning of that provision when it is actually used for permanent pasture"
Thank you for your attention!