Ref. Ares(2026)6204399 - 18/06/2026

EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

The Director-General

Brussels
AGRI.B.1/JT/RD D(2026) 6034819

# NOTE ON THE REQUIREMENT OF ELIGIBLE HECTARES AT THE FARMER'S DISPOSAL (UPDATE 2026)

## 1. INTRODUCTION

This note complements the Note of the Directorate-General for Agriculture and Rural Development (DG AGRI) Ares(2021)4784364 of 26/07/2021 ([1]) in light of the most recent jurisprudence and of the experience accumulated during the first years of implementation of the Strategic Plan Regulation (SPR) ([2]).

**The purpose is to provide explanations and examples in order to facilitate Member States' putting in place the provisions to implement and control the requirement of land at disposal, while ensuring that these measures are effective, proportionate, easy to control and with limited administrative burden.**

The current legal framework ([3]), in force since 2023, has not introduced new requirements compared to the previous rules ([4]). However, recital 15 of SPR explicitly suggests that Member States should set the conditions to determine whether the land is at the farmer's disposal ([5]).

Moreover, the Court of Justice has further ruled on the subject clarifying what can be sufficient to demonstrate the right to use the land claimed for support ([6]). In particular, the judgement given by the Court confirms the previous understanding (paragraphs 39 and 48 of the judgement in case C-434/24), where it held that:

*"39 According to the case-law, for the purpose of determining whether an area is 'at the farmer's disposal', within the meaning of Article 36(5) of Regulation No*

([1]) https://circabc.europa.eu/ui/group/eb2ac2f1-871b-489f-b733-f09422f188c5/library/f28b7a98-118b-476a-9a91-788e81cf93b2/details
([2]) Regulation (EU) 2021/2115 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013
([3]) Article 4(4) and recital 15 of Regulation 2021/2115- Definition of "eligible hectare"
([4]) Articles 21(4), 24(2), 30(7)(b), 33(1), 36(5) and 45(3) of Regulation 1307/2013.
([5]) See also Commission Implementing Regulation 2021/2289, Annex I, point 4.1.c (ii)
([6]) Case C-116/20 Avio Lucos, point 53 and Case C-434/24 APIA - Centrul Judeţean Bistriţa-Năsăud, point 39

Commission européenne/Europese Commissie, 1049 Bruxelles/Brussel, BELGIQUE/BELGIË – Tel. +32 22991111
Office: L130 09/022 – Tel. direct line +32 229-58629

Jessica.TRISTANO@ec.europa.eu

*1307/2013, that regulation does not require that farmer to produce a formal legal document establishing his or her 'right to use' the area in question; the demonstration of the actual use of that area and of sufficient autonomy on the part of that farmer for the purposes of carrying out his or her agricultural activity on that area are sufficient for that purpose".*

*"48. The exercise by Member States of their discretion in respect of the evidence to be provided in support of an aid application is subject to certain limits, particularly as regards the possibility of requiring the applicant to produce a valid legal document attesting to his or her right to use the areas covered by that application. In that context, the national legislation which gives effect to that discretion must be consistent with the objectives pursued by EU law on direct financial support for farmers and with the general principles of EU law, in particular the principle of proportionality, in accordance with which measures implemented through provisions must be appropriate for attaining the objective pursued and must not go beyond what is necessary to achieve it*".

## 2. GUIDANCE

**The possibility for Member States to presume that the eligible hectares are at the disposal of the applicant lodging an application for support is confirmed.** This presumption is corollary to the obligation for Member States to put in place a control system for verifying the fulfilment of the land at disposal requirement by claimants of CAP support.

**Member States have the obligation to set-up a system that covers all types of right to use legally recognised** (i.e. provided by national law) in the respective Member State, whether it is ownership, rental, (long-term) lease, oral agreement etc.

### 2.1. Right to use the land

In the Note of 26/07/2021, DG AGRI provided Member States with an overview and explanation of the control of the requirement of 'eligible hectares at the farmer's disposal', based on Regulation (EU) 1307/2013 and on case C-216/19 (WQ vs Land Berlin).

The note brought to the attention of the Member States the following understanding of the Commission:

• The eligible hectares must be at the farmer's disposal in a lawful way and asserted on a legal basis in accordance with applicable national law.

• The Member States have the discretion to require appropriate proof that the hectares declared in the aid application are at the farmer's disposal and to establish detailed rules on the matter, requiring both actual and lawful land use.

• The possibility to presume that the land is at the disposal of the farmer, when certain conditions are met, is also within the remit of the Member State.

• The Member States still have a general obligation to carry out checks, [including of the fulfilment of that requirement]. Member States may decide on the extent of those checks in the light of their national specificities.

• The control mechanism must consist of effective ways of preventing frauds and correcting irregularities: the control designed by the Member States should be targeted and not just limited to obvious cases of double or conflicting claims.

## 3. RETURN ON EXPERIENCE

### 3.1. The CAP Strategic Plans

Member States have identified the criteria to ensure that the land is at the disposal of the farmer in section 4.1.3.2 of their CAP Strategic Plans (under the definition of eligible hectare).

A few Member States require that the farmer provides documents proving right to use the land at the moment of the application; other Member States allow farmers to provide necessary documents proving the land disposal at a later stage, if requested; some Member States make first administrative checks on the declarations and, in case there is no evidence of irregularity, they presume that the land is at farmer's disposal. However, those declarations can be subject to verification if the farmer falls under the control sample (random or risk based).

Some CAP Strategic Plans identify the cases where documents should be provided, e.g. dispute, doubt, administrative check, on-the-spot-check, unused parcel, new parcel, late application, applicant falling within the risk analysis sample, etc).

Some other CAP Strategic Plans base their controls on administrative checks (registries' checks, case by case), of all applicants at the submission of application, but not explicitly requesting to have all documents at the moment of application.

From the assessment of the CAP Strategic Plans, it is evident that none of the Member States limit the control of the right to use the land just to cases of double claims.

However, the criteria indicated in the CAP Strategic Plans are often general and refer to the law of the Member State. The actual detailed implementation can often only be seen in its entirety after the Commission audits in the Member States. As described in the next point, sometimes audits reveal some discrepancies with the information provided for in the CAP Strategic Plans.

### 3.2. The Commission findings

Two types of findings from DG AGRI's and Certification Bodies' audits point to problems in practice:

1- In certain Member States the requirement to have land at disposal is checked only for certain types of land or farmers, rather than putting in place systems that potentially allows every parcel to be verified.

2- Certain Member States transfer the burden of proof to the farmer, implementing systems that can be heavy for farmers.

Falling into the first category, certain systems limit the controls to specific categories of land or farmers. Therefore, others are completely excluded from any checks on land at disposal. Other national systems rely solely on checking double claims and agricultural activity. DG AGRI considers these systems as not compliant with the obligation to have in place a system of control on land at disposal that potentially be it on risk or random samples, checks every parcel, nor is it in line with the approved CAP Strategic Plans.

Concerning the second category, some Member States ask for supporting documents on land at disposal to be submitted annually for all parcels, without identifying categories of parcels which could be stable or less risky (see for e.g. 4.1.1).

Overall, the identified issues relate mainly to the requirement of Member States to put in place a system where every beneficiary and/or parcel have the potential to be selected for a check (which does not mean 100% checks annually) and the inability of Member States to provide justifications for the risk for certain categories of beneficiaries and/or parcels, which are excluded from any checks.

## 4. BEST PRACTICES

The Commission's audits have also recognised some robust national systems and best practices, set out below, and encourages their application.

### 4.1. Possible structure of the controls

Controls are in principle to be done based on risks. The use of IT systems and technologies have proven to increase the efficiency of the controls in targeting specific problematic ("red-flag") situations.

Member States are encouraged to use existing systems and data sets for undertaking the controls in the most efficient way, without creating excessive burden to the applicants.

#### *4.1.1. Administrative controls based on information already available*

– For the parcels declared by the beneficiary where ownership can be verified by the administration via the information in the ISAP/LPIS or a reliable cadastre, the 'right to use' is tacitly considered satisfied. No further action is expected.

– For the parcels with (long term) rent or lease agreements, when the information is available via databases/registers set-up by the Member States administration, the 'right to use' is also tacitly considered satisfied. This should be always the case for State/public land that has been 'allocated' to farmers for use. Attention would have to be paid to any possible sub-letting of parcels i.e. whether this is allowed or not.

– Some Member States analyse land change based on historical data and 'lock' parcels ([7]) in ISAP/LPIS that have not been declared for 2-3 years for e.g. Some others also 'lock' parcels in ISAP/LPIS that cannot be claimed (for e.g. public and private land that is not available for allocation/claiming, for example because the owner of the land informed the Paying Agency explicitly).

#### *4.1.2. Administrative controls when information is not available*

Where no databases enable automated checks, alternative means of control should be deployed, either via administrative checks or making it part of an on-the-spot check.

#### *4.1.3. Oral contracts*

– If allowed by national law, oral agreements are typically used by farmers for several reasons, e.g temporary exchange of parcels; difficulties to reach the owner (living abroad) or all the co-owners; unwillingness of the owner to engage with a formal contract. This does not exempt the user of the land from declaring his rights

([7]) 'Locking a parcel' means that the parcel continues to be registered in the LPIS, but cannot be accepted for payments, e.g. after specific request of the legitimate owner (who is not a farmer and does not want the parcel to be used by unauthorised farmers).

on the plots of land declared for support. It also does not exempt the Member State's authorities from checking the right of use for those parcels.

- Declaration of honour annexed to the application, indicating at least the contacts of the landowner, may reduce significantly the burden for the administration when verifying the reliability of the oral contract without creating excessive burden to the applicant.
- Where the land is leased or rented for permanent pastures in a given member state, the oral agreement of lease or rental should be declared to the tax authorities by the owner, and the tenant should confirm the declaration. In this case, the condition of land at disposal would be considered fulfilled.
- The control system could consist in a sample of parcels, whose owner is contacted (e.g. by phone or e-mail), to verify that the owner indeed allowed the claimant to use the parcel.
- A proof of payment to the owner with an indication of the parcels concerned can also be considered as a confirmation that the land is at the disposal of the claimant. Attention would have to be paid in case there is sub-letting of parcels i.e. allowed or not.

#### *4.1.4. Timing for providing the proof*

There is no obligation to request supporting documents at the moment of the application. At the time of controlling a sample, the selected beneficiaries could be requested to provide evidence, in case the national authorities cannot obtain evidence through their own systems.

In one Member State, in the context of the application, the farmers have to confirm that they dispose of the land when taking up the obligations under the respective CAP intervention. In addition, random checks are carried out on holdings selected for on-the-spot checks to verify this claim made in the application. In the case of natural persons, this can be done by cross-checking with social security data on land for which contributions are made on the basis of ownership or lease; in other cases, the farmer must provide reasonable evidence of the right of disposal by means of appropriate documents and information (e.g. lease contract for legal persons, contract of use).

### 4.2. Control rate and Risk analysis

The EU legislation does not prescribe a control rate to be achieved by the Member State checks. Where a Member State considers that there is no particular risk and does not want to deploy or install a specific system, it can suffice to verify this requirement in the context of the sample of farmers subject to on-the-spot checks. In this case, the national control authorities should ensure that all possible ways for beneficiaries to demonstrate they have a right to use the land claimed for support (cf. above) are sufficiently covered.

Under this system, it is expected that, if the controls reveal a high level of non-compliances, the Member State acts by increasing the awareness with farmers, and if so needed, increasing the level of controls in the category of farmers with problems.

The above possibilities have already been implemented by certain Member States. Based on their results as regards the level of compliance, the systems have been intensified or eased.

## 5. CONCLUSION

The Commission's services confirm that, in accordance with the applicable legal framework and case law, Member States have discretion when establishing a control system for aid applications as regards the 'land at disposal' obligation.

There is no obligation that this system would imply an individual control of the legal entitlement to the land at the time of each farmer's application. It is up to the Member State to set up a system which ensures effectiveness of checks, is well targeted and not limited to obvious cases, but at the same time does not reveal too burdensome for the administration and the farmers. The possibility for Member States to presume that the eligible hectares are at the disposal of the applicant lodging an application for support is confirmed.

From the experience achieved during the first years of implementation of the SPR, the Commission has detected some issues in some Member States, but also good examples and national robust systems of controls, which make the best use of IT systems and digital technologies to increase the efficiency of the controls with regard to the land at disposal.

Therefore, Member States are encouraged to continue to share experience and best practices and to use them to inspire solutions to problems of control of the land at disposal.

This note is provided for information purposes only and is not a legally binding document. It was prepared by Commission services and does not commit the European Commission. 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.

Electronically signed

Elisabeth WERNER



Electronically signed on 18/06/2026 10:29 (UTC+02) in accordance with Article 11 of Commission Decision (EU) 2021/2121