



Legal advice on a gradual reform of the CAP ‘active farmer’:

Towards a strong argumentation for the CAP reform (period 2028 – 2034)

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Executive Summary

Under the European Union’s Common Agricultural Policy (CAP), income support is reserved for “active farmers,” a concept that determines eligibility for direct payments across Member States. Regulation (EU) 2021/2115, adopted under the CAP reform for the 2023–2027 programming period, introduced increased subsidiarity by granting Member States greater discretion in defining this status. While this approach aims to accommodate diverse agricultural structures, it has resulted in divergent national interpretations and uneven allocation of support. Consequently, the current framework does not consistently ensure that subsidies benefit those actively engaged in agricultural activities or contributing to environmental sustainability objectives.

In this context, Access to Land commissioned a legal analysis assessing the extent to which the EU legal definition of “active farmer” could be adapted to better support the agroecological transition. The analysis identifies two principal limitations. First, the existing definition does not systematically prioritise farmers who directly cultivate agricultural land, as opposed to landowners with no, limited, or indirect involvement in farming activities. Second, it does not provide sufficient instruments to prioritise sustainable land management practices.

The report presents five incremental reform scenarios. These range from administrative measures, including greater harmonisation of eligibility criteria, to more structural options (paradigm shifts), such as the introduction of an “agroecological farmer” category linked to long-term sustainability commitments.

In view of the preparation of the post-2027 CAP framework (2028–2034 programming period), the analysis highlights critical lobbying priorities: maintaining a common EU definition of “active farmers,” introducing clearer exclusion criteria to limit access for non-farming beneficiaries, and strengthening the link between income support and coherent agroecological transition pathways. Such adjustments could contribute to improving the coherence between the CAP’s environmental and climate objectives and the distribution of financial support.

Introduction

1. Only active farmers may obtain CAP financial supports. This notion therefore defines the personal scope of all aids available under this policy.

Entered into force on 7 December 2021 and applied as from 1 January 2023, EU Regulation 2021/2115¹ (hereafter: the CAP Regulation) brought about a strong degree of decentralisation in the implementation of the CAP by, amongst others, putting Member States in the driving seat to designate farmers as ‘active farmers’, according to their own criteria (provided that they respect the framework definition of ‘active farmers’ set at EU level).

2. In this context, Access to Land instructed deprevnet to analyse the legal framework concerning the notion of “active farmer” under the CAP Regulation to determine whether there are legal arguments to ensure or permit that aids are granted (i) to farmers who ‘actually work the land’ (rather than to landowners) and/or (ii) to farmers engaged in sustainable land management (such as maintenance or agroecological practices).
3. The **first part** of this advice sets out and examines the concept of ‘active farmer’ in the CAP Regulation, together with its legal implications.

Our analysis shows that, on the one hand, the concept does not ensure that aid is granted to farmers who ‘actually work the land’. On the other hand, we find that the concept does not prioritize farmers engaged in sustainable land management.

The concept of ‘active farmer’ thus appears ill-designed to achieve the goals identified above.

4. The **second part** addresses this diagnosis. To this end, we develop a scale of five gradual solutions – ranging from the softest to the most radical in terms of policy change. These solutions are summarized in the graph in annex.

The first three solutions (**steps 1 to 3**) gather a series of progressive measures aimed at strengthening the concept of ‘active farmers’ at Union level. These three solutions do not change the current CAP approach of supporting the whole agricultural sector.

By contrast, the last two solutions (**steps 4 and 5**) propose a change of paradigm: aid would only be granted to farmers who present a consistent agroecological plan, detailing long-term sustainable practices that protect and restore ecosystems. These last two stages introduce into the EU legal terminology the concept of ‘agroecological farmer’, meaning farmers who (plan to) adopt consistent and environmentally sustainable practices and move away from a short-term, productivist, approach.

We developed this scale based on the current CAP Regulation, which is the legal text currently governing the CAP. On 16 July 2025, the **European Commission published its proposal for a regulation for the next programming period of the CAP (2028–2034)**². This proposal

¹ Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 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, OJ L 435, 6 December 2021.

² See Proposals COM(2025) 560 for a Regulation establishing the conditions for the implementation of the Union support to the CAP for the period from 2028 to 2034 (the “Proposal for the CAP 2028-2034”), and COM(2025) 565 for a Regulation establishing the European Fund for economic, social and territorial cohesion, agriculture and rural, fisheries and maritime, prosperity and security for

marks the beginning of the legislative process, and many political and opportunistic choices remain to be made by the Council and the European Parliament. Reference to this proposal should therefore be treated with caution, as it may be subject to substantial amendments.

This explains why, although we highlight which steps are most compatible with the Commission's proposal, the detailed options remain based on the current regulation.

The notion of 'active farmer' under the current CAP Regulation

5. Our analysis must start from the normative content (A) and purpose (B) of the notion of 'active farmer' in EU law. We then relate our findings in this respect to the climate and environmental objectives of the CAP to assess the consistency of the latter (C).

From the outset, it must be stressed that from the perspective of Union law, within the CAP context, the terms 'farmer' and 'active farmer' overlap. This has been confirmed by the Court of Justice of the European Union (CJEU)³. The notion of active farmer is also used indistinctively in both Pillar I (direct payments, including eco-schemes) and Pillar II (support to rural development, including environmental and climate-related commitments), rendering this structural concept transversal, and revealing the underlying conception of farmers in EU law.

6. Before highlighting the shortcomings of the CAP in this matter (E), we discuss the EU parliamentary debates that have preceded the adoption of the current CAP regulation (D). These debates revolved around the definition of the category of 'farmers' to be targeted by the CAP. While the Commission advocated the category of 'genuine farmers' – a notion centred on productive agricultural activity – the Parliament insisted on a narrower notion of 'family farming', thereby promoting a specific model of production.

This debate remains relevant for those seeking to influence the current CAP reform. One of the distinctive features of the European Union's institutional system is indeed that legislative initiative is concentrated in the hands of the Commission, with the Parliament only able to request the latter to take action⁴. Consequently, its legislative power is manifested through the tabling of amendments and the promotion of these amendments in the ordinary legislative procedure. This stage of the legislative process has not yet taken place with respect to the current CAP reform.

A) Normative content of the framework definition of 'active farmer'

7. Technically, the notion of 'active farmer' in EU law takes the form of a framework definition. This has concrete implications for the distribution of competences between the EU and the Member States as to the delineation of who is entitled to receive CAP support (1).

the period 2028-2034 (the "Proposal for the Fund").

³ Judgment of 31 January 2024, *U.K. v. European Commission*, T-56/22, EU:T:2024:51 para. 96, stating that: *The existence of a link between the concept of 'active farmer', within the meaning of Article 9(2) of Regulation No 1307/2013, and that of 'farmer', within the meaning of Article 4(1)(a) of that regulation, is confirmed by the case-law, which states that, in order to be granted the status of active farmer, a person must first satisfy the requirements referred to in Article 4(1)(a) of Regulation No 1307/2013 concerning the concept of farmer (see, to that effect, judgment of 7 April 2022, Avio Lucos, C-176/20, EU:C:2022:274, paragraph 54.)*

⁴ TFEU, Article 225.

Once this division of competences has been clarified, we elucidate the normative content of the EU framework definition of ‘active farmer’ (2).

What is a ‘framework definition’ in EU law?

8. A framework definition implies that, while the EU legislature delineates the boundaries and objectives of a notion, it refrains from prescribing detailed substantive criteria, leaving their determination to Member States⁵. Accordingly, each of the twenty-seven Member States is free to establish its own criteria, provided that these remain within the parameters of the framework definition set at the EU level.

For instance, in Germany, recognition as an active farmer is based on insurance criteria: farmers must be affiliated with agricultural accident insurance, as must their farms/undertakings where applicable. In addition, farmers receiving less than 5,000 euros in direct payments are automatically considered active. In Denmark, the approach is based more on actual agricultural activity: any applicant who farms at least 0.3 hectares of agricultural land on an annual basis and/or has a professional cattle herd on the reference date is recognised as active.

In a nutshell, this comparison shows that Germany favours a social affiliation approach, while Denmark relies on production and area criteria⁶.

9. The concept of ‘active farmer’ is therefore not defined in a uniform manner across the Union, even though certain minimum requirements laid down by the EU legislature must be observed in every national system. In other words, while the EU legislature sets the goalposts and marks the rugby field, Member States are left to decide how the game is played within those limits.

What is the normative content of the ‘active farmer’ framework definition?

10. The framework definition of the ‘active farmer’ is found in Article 4(5) of the CAP Regulation.

This provision is of dual importance. First, by laying down the framework definition of ‘active farmer’, it delimits the personal scope of all direct payments granted under the CAP. Second, from a substantive standpoint, it provides guidance on who should be considered active farmer, stating that:

*Active farmer shall be determined in such a way as to ensure that support is granted only to natural or legal persons, or to groups of natural or legal persons, **engaged in at least a minimum level of agricultural activity**, while not necessarily precluding the granting of support to pluri-active or part-time farmers.*

*When determining who is an ‘active farmer’, Member States **shall apply objective and non-discriminatory criteria, such as income tests, labour inputs on the farm, company object and inclusion of their agricultural activities in national or regional registers.***

⁵ Barents, R. (2022), *The Agricultural Law of the EU*, Wolters Kluwer (2nded), pp.131 and 263-264.

⁶ See the analysis made by Coordination Rurale, comparing the multiple active farmer’s definitions established by Member States: Coordination Rurale, *Être agriculteur actif dans l’UE: autant de définitions que de pays*, 18 October 2022.

Such criteria may be introduced in one or more forms chosen by Member States, including through a negative list disqualifying a farmer from being considered to be an active farmer.

If a Member State considers to be 'active 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.

11. Through Article 4(5), the EU legislature specifies that Member States shall grant direct payments only to natural or legal persons engaged in at least 'a minimum level of agricultural activity.' In addition, Member States should decide who is an active farmer based on 'objective' and 'non-discriminatory' criteria, those criteria including 'income tests, labour inputs on the farm, company object and inclusion of their agricultural activities in national or regional registers'.
12. Article 4(5) also specifies that each Member State enjoys discretion in determining the method through which it formulates its definition of an 'active farmer.' Member States may opt for:
 - (i) the '**positive method**', which consists of establishing a list of specific, objective and non-discriminatory criteria explaining what constitutes an active farmer;
 - (ii) the '**negative method**', which is based on a 'blacklist' identifying all non-agricultural activities; or
 - (iii) the '**hybrid method**', which is based on a combination of the positive and the exclusion lists.
13. Particularly noteworthy is the dual margin of discretion left to Member States in shaping the definition.

First, from a methodological standpoint, they are free to choose their preferred method to implement the framework notion of active farmer (positive, negative or hybrid).

Second, from a substantive point of view, Member States are granted *carte blanche* in determining who qualifies as an active farmer. They only need to make sure that their criteria are objective and non-discriminatory, and that beneficiaries demonstrate engagement in at least a minimum level of agricultural activity.

As a result, the content of the framework definition of 'active farmer' is extremely broad and transversal. This is linked to its objectives, which are analysed in the following section.

B) Purpose of the framework definition of 'active farmer'

14. When considering the framework definition of 'active farmer,' it is important to understand the context and rationale behind this category: why did the Commission propose to create the category of active farmers?
15. To grasp the underlying logic behind the classification, it is useful to delve into the Preamble to the CAP Regulation.

Recital 19⁷, sheds light on the Commission's intention behind this category and sets out the context in which the definition of active farmer is to be understood:

⁷ A recital is not a legally binding provision, but is relevant for the interpretation of the body of the CAP Regulation.

With a view to further improving the performance of the CAP, income support should be targeted towards active farmers. To ensure a common approach at Union level, a framework definition of ‘active farmer’ displaying the essential elements should be set out.

Member States should determine in their CAP Strategic Plans, on the basis of objective conditions, which farmers are considered to be active farmers.

To reduce the administrative burden, Member States should be allowed to grant direct payments to smaller farmers who also contribute to the vitality of rural areas and to establish a negative list of non-agricultural activities compared to which the agricultural activities are typically marginal.

The negative list should not be the only way in which the definition is determined but should be used as a complementary tool to help to identify such non-agricultural activities, without prejudice for the persons concerned to prove that they fulfil the criteria of the definition of ‘active farmer’.

16. Recital 19 demonstrates that, while the objective is to strengthen the performance of the CAP at the EU level, each Member State enjoys a wide discretion both in:
- (i) setting up the criteria that will shape its own category of ‘active farmer’; and
 - (ii) designing a complementary ‘blacklist’ identifying all activities that are to be considered ‘non-agricultural’ and which should therefore never be eligible for direct payments under the CAP Regulation.

For instance, in Wallonia (Belgium), a farmer is not considered an ‘active farmer’ if he is active in one of the following services: airports, rail services, water services companies, real estate services, permanent sports and leisure facilities, prison activities, companies engaged in intermediary activities in the purchase, sale and rental of property, and business and other management consulting companies⁸.

17. The framework definition set out in Article 4(5) is therefore loose, reflecting the absence of a uniform definition. The provision has been deliberately drafted with broad and transversal flexibility, which, however, results in considerable legal uncertainty and significant disparities in its application across the Member States⁹.
18. Recent CJEU case law further clarifies the purpose behind the concept of ‘active farmer.’ In its rulings, the Court emphasises that the essential purpose of this definition is twofold: to prevent fraud and to ensure that aid is reserved for those genuinely engaged in substantial agricultural activities¹⁰. The second purpose (*i.e.* being genuinely engaged in substantial agricultural

⁸ Belgium Wallonia, *CAP Strategic Plan 2023-2027*, 19 December 2024, p.422, point 4.1.4.2. See also Walloon Region, *Walloon Agriculture Portal – active farmer*, 24 August 2024.

⁹ See the analysis made by Coordination Rurale, comparing the multiple active farmer’s definitions established by Member States: Coordination Rurale, *Etre agriculteur actif dans l’UE: autant de definitions que de pays*, 18 October 2022.

¹⁰ Judgement of 9 October 2024, *Hungary vs European Commission*, T-499/22, EU:T:2024:683, para. 37 ; Judgement of 31 January 2024, *UK vs European Commission*, T-56/22, EU:T:2024:5, para. 104.; Judgement of 6 December 2022, *Czech Republic vs European Commission*, T-48/22, EU:T:2023:787, para. 91. The three cases concern the previous CAP programming period, and are

activities) raises the question of how to actually define a ‘genuine farmer’, a term initially proposed by the Commission in its draft regulation¹¹.

Such semantic change from the initial Commission proposal (‘genuine farmer’) to the final text (‘active farmer’) reflects the willingness to strike a compromise between the co-legislators and the Commission: effectively targeting direct payments’ beneficiaries while preserving Member States’ flexibility within the CAP framework, enabling the latter to designate ‘their’ active farmers vis-à-vis the Commission.

C) Connecting active farmer requirements to climate and environmental objectives in the CAP Regulation

19. Article 31(2) of CAP Regulation connects the status of ‘active farmer’ to the EU sustainability objectives, explicitly providing that active farmers using practices beneficial to the climate, the environment, animal welfare, or the fight against antimicrobial resistance, may be eligible for support from Member States.
20. This means farmers who do not produce food, but (i) are considered as active and (ii) use sustainable practices can receive direct payments and eco-schemes. The provision states that:

Article 31: Schemes for the climate, the environment and animal welfare

*1. Member States shall establish, and provide support for, **voluntary schemes for the climate, the environment and animal welfare (‘eco-schemes’)** under the conditions set out in this Article and as further specified in their CAP Strategic Plans.*

*2. Member States shall support under this Article **active farmers or groups of active farmers who make commitments to observe agricultural practices beneficial for the climate, the environment and animal welfare and combatting antimicrobial resistance.***

7. Support for a particular eco-scheme shall take the form of an annual payment for all eligible hectares covered by the commitments. Payments shall be granted as either:

(a) payments additional to the basic income support set out in Subsection 2; or

*(b) **payments compensating active farmers or groups of active farmers for all or part of the additional costs incurred and income foregone as a result of the commitments made which shall be calculated in accordance with Article 82 and taking into account the targets for eco-schemes; those payments may also cover transaction costs.***

[...]

currently under appeal before the Court of justice. However, they give a first orientation on the interpretation by the EU judiciary of the underlying goal of the notion of ‘active farmer’.

¹¹ See [European Commission Proposal](#) of 1 June 2018, recitals 9, 26 and article 4(d).

21. The CJEU has confirmed this approach, recognising that active farmers implementing agricultural practices favourable to the climate and the environment are entitled to receive direct payments, making it clear in the French-redacted version of its preliminary ruling judgement that [caution – the English version of the ruling only talk about “farmers” and not “active farmers”]:

Les agriculteurs actifs dans un État membre ayant décidé d'accorder ces dérogations ont pu, par conséquent, être éligibles au paiement direct pour les pratiques agricoles bénéfiques pour le climat et l'environnement [...].¹²

22. Reversely, a farmer who produces food without engaging into climate and environmental measures may qualify as active farmer and receive direct payments. There is currently no such category as ‘agroecological farmers’ under the CAP, that would gather certain models of agriculture. In other words, the notion of ‘active farmer’ is not employed by the EU legislature to prioritise or rank different models of agricultural production, but rather to ensure that support is granted only to those genuinely engaged in farming activities.

D) Parliamentary’s stance for family farming

23. During the first reading of the legislative proposal, parliamentary debates strongly emphasised the preservation of the European model of family farming, clearly stating that:

*Income support through the CAP is a **major contributor to the stability and sustainability of many small and family farms across Europe**, and although expectations on farmers have increased, monetary benefits have not.*

The CAP's overall share of the Union's budget is decreasing, while market crises in the sector and a falling number of active famers continue to threaten the survival of the sector.

The family farm model should be protected as a general objective of the CAP and through the Member State Strategic Plans, giving proper place to the vital role this model has in contributing to the social fabric of rural life, and the provision of a way of life for many rural dwellers.

*Family farms contribute to sustainable food production, the preservation of natural resources, diversification needs and ad ensuring food security. **The first farmers to suffer under the immense pressures of globalisation will be those that pursue the small family farm model.***

*Such a situation would be an obvious failure to meet the objectives of the CAP and would undermine the argument for support of the CAP in future. **Therefore the CAP Strategic Plans should pursue through their specific objectives keeping the protection of that farming model¹³.***

¹² Judgement of 10 July 2025, *Ligue royale belge pour la protection des oiseaux ASBL v Région Wallonne*, C-287/24, recital 36.

¹³ European Parliament, *Text adopted by Parliament, partial vote at 1st reading/single reading*, 23 October 2020, amendment 9 to recital 9, amendment 26 to recital 26, amendment 1148cp14 to article 4(1)(d), amendments 102 and 1149cp1 to Article 5(1)(a).

24. This illustrates the initial Parliament's position in favour of the stability and viability of small family farms across Europe. In this regard, the Parliament advocates for a 'EU family farming model' which should be protected and considered a general objective of the CAP.
25. The position of the European Parliament on the EU family farming model follows the Committee of the Regions' Opinion¹⁴, which emphasises that sectoral operational programmes should be established at the Union level rather than by individual Member States to prevent distortions both between Member States and across sectors. The Committee also calls for the adoption of 'strict European criteria' to guide Member States in developing their respective definitions of 'active farmer'. This illustrates the need for a more robust framework definition at EU level.
26. The terminological changes in the different draft versions of the CAP Regulation illustrate the EU institutional differences on the scope of the definition of 'active farmer'.
 - (i) By introducing the notion of '**genuine farmer**' in its initial text, the Commission emphasised the food production function¹⁵.
 - (ii) The Parliament, favouring the expression '**small and family farming**' in its amendments, emphasised a particular mode of production, hinting at the fact that the CAP should choose between different agricultural models.

The compromise finally adopted with the term '**active farmer**' aims, on the contrary, to be as inclusive as possible: encompassing both food production and ecological land management, without making an explicit choice between these objectives¹⁶.

E) Shortcomings of the notion of 'active farmer'

27. The compromise struck between the European Commission and the co-legislators on the final version of the CAP 2023-2027 can be criticised as it demonstrates a lack of ambition at the EU level to establish a strict and common understanding to all Member States of who should be integrated into the notion of active farmer. This has resulted in **legal uncertainty** across Europe in identifying the aid beneficiaries¹⁷.

In practice, such a diluted definition has facilitated the replacement of genuine farmers by landowners who exploit the economic value of the land without personally engaging in agricultural work. Some rely on short-term cultivation contracts, such as annual leases, potato contracts, or grass sales, while others operate through management companies or delegate all activities to agricultural enterprises¹⁸.

28. In addition, parliamentary debates on the **degree of selectivity** of the support granted within the CAP shows that selectivity could be increased. To this end, the notion of 'active farmer' could be used to rank different models of agricultural production.
29. The following part of this advice outlines five gradual solutions to address these shortcomings.

¹⁴ European Committee of the Regions, Opinion on the CAP reform, 7 March 2019, proposals n°12 & 13.

¹⁵ See European Commission Proposal of 1 June 2018, article 4(d).

¹⁶ Barents, R. (2022), *op. cit.*, p. 266.

¹⁷ Mestre, C. (2024). La révision de la PAC : un renoncement à la hâte aux ambitions environnementales? *Revue de droit rural*, (8-9). BIANCHI, D. (2022) Souveraineté alimentaire : les outils juridiques au niveau européen à la lumière de la récente réforme de la PAC et du Green Deal, *RDUE*, pp. 184-187. See also BIANCHI, D. (2023), Reverdir la PAC ou alimenter le Green Deal ?, *R.J.E.*, 2023, vol. 48, pp. 813-821.

¹⁸ Petit, Y. (2020), Pacte Vert, PAC et biodiversité : la nécessité d'une entente plus cordiale, *Revue de droit rural*, n°486.

A Five-steps transformation of the 'active farmer' definition

30. Building up on the CAP environmental and sustainable imperatives, Access to Land's goal for the reconsideration of the concept of active farmer is twofold: first, to re-centre financial support on genuine farmers, *i.e.* those who actually carry out agricultural activities, rather than just landowners, and second, to take greater account of land management and sustainable farming practices.
31. For that purpose, we have developed a **gradual methodology** proposing **five distinct scenarios**, ranked from the most moderate to the most radical in terms of transformation of the CAP.

We developed this scale based on the current CAP Regulation, which is the legal text currently governing the CAP. As noted in the introduction, on 16 July 2025, the European Commission published its proposal for a regulation for the next programming period of the CAP (2028–2034)¹⁹. We highlight which steps of our methodology are in line with the Commission's proposal. However, for the reasons detailed in the introduction, the scale remains based on the current regulation.

32. Each scenario bears advantages and drawbacks, whether in terms of its impact on the coherence of the internal market, the degree of exclusion it entails for certain actors, or its compatibility with the national competences of Member States.

Furthermore, this comparative presentation makes it possible to anticipate the legal consequences of each scenario: from simply imposing the methodology to follow in the framework definition (step 1) to solely grant aid to genuine, forward-looking farmer committed to ecological and durable practices through a consistent agroecological plan (step 5).

These five gradual solutions are divided into **two groups**. The first group, comprising the first three scenarios (steps 1-3), is based on a **measurement approach**: farmers receive direct payments if they satisfy the 'active farmer' requirements, with the definition becoming progressively more demanding from step 1 to step 3. These steps primarily aim to tackle the first shortcoming of the definition, namely its lack of uniformity and precision.

The second group comprises steps 4 and 5. Unlike the measurement-based approach, these solutions adopt a **systemic approach**: the creation of a forward-looking agricultural system, incorporating a long-term, consistent, plan in order to be considered as an agroecological farmer, becomes a prerequisite to receive aid. However, as explained below, there are nuances between stages 4 and 5 in terms of the implementation and scope of this system. These steps address the second shortcoming of the definition by increasing its selectivity.

F) Step 1 – Making the hybrid method mandatory for Member States

33. A first option would be not to allow Member States to choose the method for identifying active farmers²⁰. In this scenario, the framework definition would require all Member States to establish, cumulatively, a positive list setting out the specific criteria that all beneficiaries must

¹⁹ See the Proposal for the CAP 2028-2034, and Proposal for the Fund. For full legislative references, see above, footnote 2.

²⁰ On the three methods currently available to Member States, see above, §12.

meet in order to be classified as 'active,' and a negative list specifying the activities or situations excluded from this category.

✓ **Advantages:** This scenario is easy to implement. It would enhance harmonisation among Member States and reduce the risk of divergent national approaches to the notion of active farmers. The definition method would be the same for every Member States, although the content of the definition could thereafter vary.

↑ **Drawbacks:** This scenario would entail an administrative burden for national authorities, which would have to manage and update two lists simultaneously, potentially resulting in additional management costs and regulatory rigidity. This drawback was the reason why this approach, which was applied in the CAP 2013-2018, was dropped in 2018²¹.

The lack of flexibility for Member States could also limit the ability to take into account the specific local and regional characteristics of agricultural activities, lands, and ecosystems with the risk of creating unjustified situations of exclusion.

Compatibility with the Proposals for the next CAP programming period: Low. Article 4(3)(c)(I) of the Proposal for the Fund replaces the notion of “active farmer” by the simpler notion of “farmer”, and delegates to Member States the task of defining it in their “National and Regional Partnership Plans” (the NRP Plans), a new instrument, of which the current CAP national strategic plans are to form a part. Except for natural and small legal persons, the criteria set out in NRP Plans shall ensure that agricultural activity is the principal activity of the CAP beneficiaries. The Proposal does not impose any methodology (positive, negative, or hybrid) to this end.



G) Step 2 – Strengthening the content of the EU framework definition

34. Step 2 would be to propose that the Commission supplement the existing framework definition with stricter and more specific criteria, in order to narrow the scope of beneficiaries and possibly refocus the CAP on positive environmental practices.

²¹ Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009, Article 9(2).

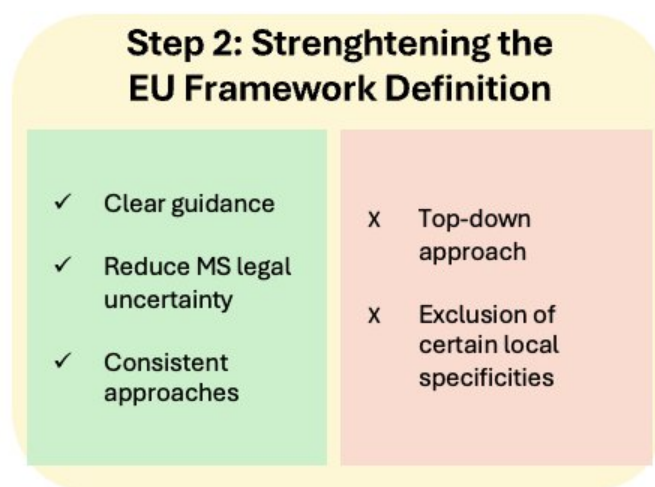
As the current definition is relatively broad, this approach would go beyond the requirement for Member States to just establish ‘objective’ and ‘non-discriminatory’ criteria, such as those listed in the current framework (*i.e.* income tests, hours worked on the farm, the social purpose of the business or the registration of agricultural activities in national or regional registers). Some criteria would be set at EU level and be mandatory for all Member States.

- ✓ **Advantages:** This approach would reduce Member States’ legal uncertainty by providing them with clearer guidance on the implementation of the definition, establishing explicit and consistent criteria at the European level and promoting greater consistency across Europe. It could better target aid towards the desired environmental and sustainable practices.

These advantages explain why this option has been supported by the Committee of the Regions, which called out the Commission to adopt ‘strict European criteria’ to assist Member States in developing their respective definitions of ‘active farmer’²².

- ⚠ **Drawbacks:** This scenario carries the risk of a ‘levelling down’ of a ‘top-down’ approach, with Member States satisfying themselves with the criteria set by the Commission without seeking to go further. In addition, an overly standardised definition may not reflect all the local or regional specificities of agricultural systems.

Compatibility with the Proposals for the next CAP programming period: Low. Same reasons than for Step 1.



H) Step 3 – Imposing a fully harmonized EU definition

35. A third scenario would be to abandon the framework definition and establish a common and binding definition at Union level. Member States would then no longer have any leeway in implementing this concept, as the European definition would be imposed on them in its entirety.

- ✓ **Advantages:** First, this scenario would reduce administrative costs of national authorities. Leaving each Member State to draw up its own definition of active farmer indeed entails a considerable administrative burden. With the framework approach, national authorities must establish, monitor, enforce and implement criteria and control structures. Adopting a ‘one-

²² European Committee of the Regions, Opinion on the CAP reform, 7 March 2019, proposals n°12 & 13.

stop shop' common definition at Union level would overcome these difficulties, paving the way for a level-playing field between all EU farmers. The interpretation of the notion of 'active farmer' would be centralised at the level of the CJEU. A *rationale* for such harmonisation can therefore be based on the imbalance between costs and benefits: the administrative costs of applying the active farmer clause often outweigh the limited benefit of excluding a small number of non-active beneficiaries.

Second, a common definition would send a clear message of European unity in terms of agricultural practices. The strategic goal is to create a European regulatory model that aims to raising national and international standards and fostering convergence between norms²³.

Finally, a harmonised definition applicable in all 27 Member States would promote the free movement of persons and the consistency of rules, in accordance with EU objectives and the CJEU case-law. It would indeed ensure more transparency towards and equality among farmers across the EU.

↑ **Drawbacks:** Imposing a uniform definition at EU level could risk overlooking the specific national, regional and local characteristics of agricultural systems, and could therefore be perceived as overly rigid. It could reduce the ability of agricultural policies to adapt to the economic, social and environmental realities specific to each territory.

Furthermore, such centralisation could be criticised as encroaching on the shared competences of the EU and Member States, fuelling political tensions²⁴.

Finally, the lack of flexibility could lead to the unintended exclusion of certain categories of farmers who are essential to the vitality of rural areas, generating a sense of injustice and risking undermining the social and political acceptability of the CAP.

²³ BIANCHI, D. (2022), *Souveraineté alimentaire : les outils juridiques au niveau européen à la lumière de la récente réforme de la PAC et du Green Deal*, *RDUE*, pp.184-187

²⁴ TFEU, Article 39.

Compatibility with the Proposals for the CAP programming period 2028-2034: Low. Same reasons than for Steps 1 and 2.



I) Step 4 – Introducing the concept of ‘agroecological farmer’ in the CAP reform, next to the notion of ‘active farmer’

36. A fourth scenario would consist of supplementing the common definition of ‘active farmer’ (step 3) by introducing a specific category of ‘agroecological farmer’ into the next CAP. This sub-category would include farmers who adopt a mid- and/or long-term plan of consistent agri-environmental measures for their land.

A source of inspiration for this scenario could be found in a state aid scheme put in place in Wallonia (Belgium) and approved by the Commission. This aid is aimed at supporting the adoption by farmers of an agroecological action plan, justifying the choice of a consistent set of eco-schemes and/or agri-environmental measures under the CAP. The Wallon Government justified the introduction of this aid scheme by the lack of consistency requirement at EU level for the choice by farmers among available eco-schemes and agri-environmental measures²⁵.

The rationale of our fourth scenario would be to set as a prerequisite to all optional environment-related CAP aids the adoption by farmers of such an agroecological plan. As a consequence, only beneficiaries having adopted a plan would be eligible for agri-environment-climate payments under Pillar II²⁶. The same logic could be applied to eco-schemes available under Pillar I²⁷. This will come on top of direct payments available to any ‘active farmer’ as defined in the EU common definition.

37. Step 4 adopts a **systemic approach**: active farmers will have to submit a consistent, forward-looking agroecological plan, incorporating a mid- and/or long-term vision, in order to be considered agroecological farmers, which becomes a prerequisite for receiving environment-related aid.
- ✓ **Advantages:** This solution would enable a differentiated two-tier approach to be established: on the one hand, a common definition of active farmer, ensuring uniformity and fairness of access to basic CAP payments; on the other hand, a more demanding and

²⁵ [Decision of the Commission SA.107688](#), 2023/N of 19 March 2024, §§14-16, OJ 24 April 2024.

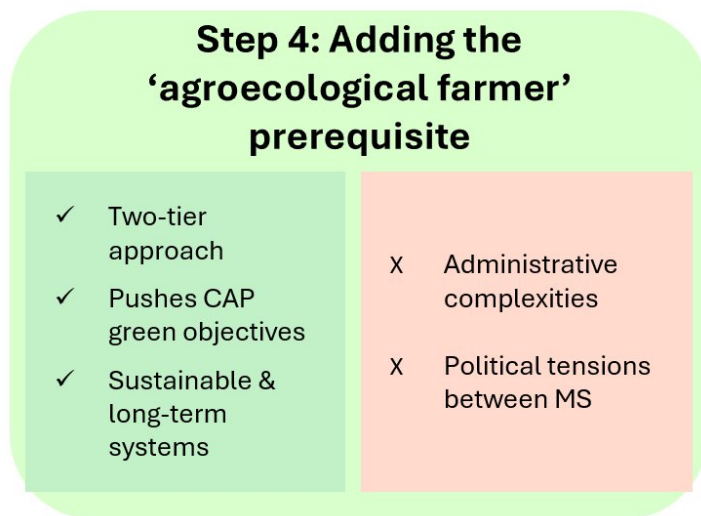
²⁶ Article 70 of the current CAP Regulation.

²⁷ Article 31 of the current CAP Regulation.

targeted definition of agroecological farmers, offering enhanced and additional support to farmers who present and design a long-term environmental system. It would strengthen the credibility of the CAP in pursuing the objectives of the Green Deal, the Farm to Fork Strategy and the Biodiversity Strategy²⁸ by promoting farmers who are pioneers in the ecological transition. Finally, it would create a clear and understandable incentive at European level for farmers to set up long-term and sustainable systems, while avoiding penalising farmers who have not yet made the transition.

↑ **Drawbacks:** This approach could introduce additional administrative complexities, requiring Member States to monitor two separate schemes of beneficiaries. The coexistence of two definitions could cause political tensions between Member States, with some considering that such differentiation undermines the unity of the CAP and leads to perceived unfair competition between categories of farmers.

Compatibility with the Proposals for the next CAP programming period: High. While the Proposal for CAP 2028-2034 embraces a more decentralized approach, its explanatory memorandum repeatedly emphasizes the need for a more targeted CAP. Article 10(4) specifies that agri-environmental and climate transition actions (including current eco-schemes) shall be granted on the basis of a transition plan drawn up by a farmer and approved by the Member State. This plan is intended to guide the holding, or part of it, towards “resilient production systems”²⁹. However, as currently drafted, the Proposal does not require any substantive consistency in the content of these transition plans. Consequently, it does not ensure that the interactions between different transition actions, nor the cumulative ecosystem effects of these measures, are systematically considered by Member States.



J) Step 5 – Scrapping the notion of 'active farmer' to impose the 'agroecological farmer' definition in the CAP

38. A fifth (and most radical) scenario would involve abandoning the concept of 'active farmer' in favour of a single category of 'agroecological farmer.' In this context, CAP payments would no

²⁸ European Commission (2020), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU biodiversity strategy for 2030 – Bringing nature back into our lives, COM/2020/380 final.

²⁹ Article 10(1)(b), of the Proposal for the CAP 2028-2034.

longer be conditional on the sole exercise of an effective agricultural activity, but on the adoption of an agroecological plan, as described above, in step 4.

This scenario would mark a **paradigm shift**: the CAP would move away from its traditional cross-cutting sectorial support model to a system of state aids targeted at the ecological transition of the agricultural sector.

✓ **Advantages:** This would send a strong signal in favour of the sustainable transformation of European agriculture, directly aligning the CAP with the EU and international green and sustainable imperatives. Standardisation around clear agroecological criteria would concentrate European funding on farmers committed to the transition, thereby improving the environmental efficiency and transparency of the system.

↑ **Drawbacks:** This shapeshifter approach could run the risk of undermining the political and social acceptability of agricultural policy among Member States, and farmers who are seen as less committed to the transition. As this may lead to the exclusion of several actors, this approach will probably not be welcomed with open arms by farmers and actors who are currently not in a position to comply with agroecological criteria.

From a legal standpoint, the introduction of a single category of ‘agroecological farmer’ could be challenged by farmers excluded from the scheme, on the ground that it represents direct discrimination and infringes Article 39 TFEU. It may be argued that such a model fails to ensure a fair standard of living for the agricultural community as a whole and thereby deprives Article 39 of its substantive meaning. Member States could also contend that such a fundamental reform encroaches upon the principle of subsidiarity and disregards the shared competences between the Union and the Member States in the field of agriculture³⁰.

Compatibility with the Proposals for the next CAP programming period: Low. For the reasons explained in Step 4, it is likely that a concept close to that of “agroecological farmer” will emerge in the next CAP programming period. However, it is likely also to remain confined to agri-environmental and climate transition actions (in line with Step 4).

Step 5: Imposing the ‘agroecological farmer’ definition	
✓ Green transformation	X Paradigm shift - unlikely to happen
✓ Sustainable common standards	X Administrative & legal challenges
✓ Sustainable & long-term systems	X Political/legal tensions MS vs EU institutions

³⁰ TFEU, Article 5(3). Within the framework of the Union's non-exclusive competences, the principle of subsidiarity defines the conditions under which the Union has priority over Member States in taking action.

Conclusion

39. The first part of this advice highlighted the inadequacy of the current framework definition of ‘active farmers’, to achieve Access to Land’s goals of a focus of the CAP on genuine farmers and addressing environmental and climate challenges. This diluted definition, which leaves Member States excessive leeway in terms of both content and method, does not allow for the effective targeting of key players in the ecological transition.
40. To strengthen this concept, five gradual solutions were proposed in the second part. They are summarized in the graph annexed to this advice.

The first three solutions (steps 1 to 3) are based on a measurable approach: they consist of a series of progressive measures to consolidate the concept of “active farmer” at EU level.

In the Proposals for the next CAP programming period, the notion of “active farmer” is replaced by the simpler notion of “farmer”. The definition of this notion is left to the Member States and aims to target CAP support to farmers whose principal activity is agriculture. This would further reinforce the decentralized approach underpinning the current CAP. Accordingly, if the CAP follows this line, the debate on the notion of “farmer” would take place at Member State level during implementation. The compatibility of steps 1 to 3 with the Proposals is therefore assessed as low.

The last two solutions (steps 4 and 5) introduce a paradigm shift into the CAP. Access to aid (in whole or in part) would be conditional on the adoption of an agroecological plan by farmers. These last two steps would mark a conceptual turning point by introducing the concept of the ‘agroecological farmer’ into the CAP.

In the Proposals for the next CAP programming period, agri-environmental and climate transition actions are granted based on a transition action plan drawn up by a farmer and approved by the Member State. This aligns with step 4. However, the Proposal may impose more stringent requirements regarding ecosystem consistency for these transition action plans.

41. Based on the gradual methodology developed in this legal advice and the analysis of the Proposals for the next CAP programming period, we identified with Access to Land **three lobbying priorities**:
 - i. Maintaining, at EU level, a common definition of the notion of active farmer.
 - ii. Introducing, at EU level, a negative list specifying who cannot be considered an active farmer, while requiring Member States to adopt in their national legislation a positive definition of who qualifies as such.
 - iii. Establishing, at EU level, clear criteria for what constitutes a transition action plan, with a particular focus on ensuring the coherence of the agri-environmental measures chosen by farmers.

* * *

Annex - Gradual solutions to reform the concept of active farmer at EU level

From imposing a methodology (step 1) to the EU notion of agroecological farmer (step 5)

