

Full Research Article

## Is the question of the “active farmer” a false problem?

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**Abstract.** The “active farmer” issue has gained attention in the last CAP reforms with the increasing attention to the decoupling of the support. The 2014-2020 CAP reform has ignited the debate among stakeholders on “who” is actually entitled to receive direct payments. The analysis carried out highlights the heterogeneity in the national implementation of the rules on “active farmer” and the importance of the national legislation of some Member States in limiting the access to direct payments, regardless of EU rules. The article points out how the complexity of the rules on “active farmer” arises from the unresolved question on the nature of direct payments. The new rules do not satisfy neither who wants to grant direct payments only to “genuine” farmers nor who wants to grant support to those who, in the spirit of the new approach of direct payments, manages the agricultural land, regardless of the main activity carried out.

**Keywords.** Active farmer, first pillar, direct payments.

**JEL codes.** Q18.

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### 1. Introduction

The issue of the “active farmers” has gained attention over the last Common Agricultural policy (CAP) reforms when the shifting of the support from production to land owners and, consequently, the shifting of the burden of the support from consumers to taxpayers has disclosed the entity of the financial resources granted to the agricultural sector and the need to improve the use of public funds.

The decoupling of support provided for by the new CAP aims at giving farmers the flexibility to choose the products to be farmed on the basis of market signals (market orientation) or even not to produce. The changes of the policy from a price support to direct payments, made the support more visible and in need to be justified. According to the European Commission (2010 and 2011a), the legitimation of support comes from the fact that it is conditional on strengthening the role of agriculture in enhancing the competitiveness of the sector, the environmental protection and the development of rural areas. However, the recognition of the multifunctional role of agriculture in producing not only

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primary products, but, also public goods has resulted in the arising of the “active farmer” issue in the attempt to identify “genuine” farmers eligible for payments. The issue is moreover complicated by the fact that the CAP reforms that have followed, did not clarify the nature of direct payments, considered as an income support (to producers), but granted to all who maintain the land in good condition independently from the existence of any production.

Starting from the analysis of the choices made by the Member States under the CAP reform 2014-2020, our purpose is trying to answer to a number of questions.

First of all we will verify whether these choices tend towards a real limitation on the number of beneficiaries or if they are more formal than substantial. Another issue is to ascertain the presence of similarities or differences in the choices of the Member States in order to understand if a common ground on which European Union (EU) could introduce mandatory rules in the next CAP reform (beyond 2020) exists. Moreover, looking at the decisions made, we will try to understand how coherent is the figure of the “active farmer” with the logic behind the last CAP reform, where an important role is played by the support to the production of public goods and services. In fact, in the Member States where the rules are actually binding, the risk is that the people who run the farm, but for whom agriculture is not the main activity, are prevented from receiving support from the CAP, thus excluding a large part of people who operate in the spirit of the new functions of agriculture. Finally, we will end by highlighting the two conflicting approaches on “active farmer” arising from the different visions of the CAP and we will propose two different ways to resolve the dilemma concerning the debate on “active farmer”.

The following Section provides a summary of the debate developed around the “active farmer” figure and a detailed description of the framework envisaged in the regulation EU 1307/2013. In Section 3, the choices made by the Member States are analyzed in order to understand the aim of the decisions and the existence of differences/similarities. In Section 4, two case studies are presented in order to highlight how the apparent restrictiveness/lack of selectivity represented, respectively, by the large/low number of constraints applied is not confirmed when the actual national implementation is taken into account. Finally, some conclusions from the main results of the analysis are drawn and the future development of the rules are discussed on the “active farmer” in an attempt to reconcile the two alternative visions of the “active farmer” role: the “productivistic” active farmer vision, aiming to income support, and the “multifunctional” vision, aiming to remunerate the provision of public goods.

## **2. The “active farmer” in the CAP**

### *2.1 The debate on “active farmer”*

The debate on “active farmer” was raised for the first time by the European Court of Auditors in the Annual report on the implementation of the budget concerning the financial year 2006 (European Court of Auditors, 2006). In this report, the system to establish entitlements in the 10 Member States which introduced the Single Payment Scheme

(SPS) in 2005 has been examined<sup>1</sup>. The Court highlighted how, especially with the introduction of the regional model, railway companies, horse riding/breeding clubs and golf/leisure clubs and city council benefited of the SPS (European Court of Auditors, 2006, p. 103). Following the Court indications, the first attempt in limiting the beneficiaries of the direct payments of the First Pillar of the CAP dates back to the 2008 reform, the so-called Health Check of the CAP. This limitation was included in the overall rules regarding the “Minimum requirements for receiving direct payments” (regulation EC 73/2009, Article 28). Under this framework, Member States had the possibility to ensure that no direct payments were granted to a natural or legal person whose agricultural activities formed only an insignificant part of its overall economic activities, or whose principal business or company objects did not consist of exercising an agricultural activity. With the exception of the Netherlands, no Member State made use of these former rules to define the “active farmers” (Matthews, 2012).

The question of the active farmer was raised again in two special reports (European Court of Auditors, 2011 and 2012b), where it was highlighted how the lack of precision in rules defining farmers and agricultural activity in order to receive the decoupled payment meant that the support was received by “persons or entities having no or only marginal agricultural activity” (European Court of Auditors, 2011, p. 19). Moreover, in the case of new Member States applying Single Area Payment Scheme (SAPS), decoupled payments were received also by “public entities managing state land and not otherwise involved in farming” (European Court of Auditors, 2012b, p. 7). Taking into account the fact that no Member States made use of the option provided by the Health Check to exclude non active farmers from benefitting of direct payments, the Court, once again, identified a number of beneficiaries whose principal business is other than agricultural activities (European Court of Auditors, 2011, p. 24).

The main difficulty in dealing with the issue of the “active farmer” is that it is closely related with the definition of decoupled support, as envisaged by the commitments undertaken by the EU under the Uruguay Round of the GATT (General Agreement on Tariffs and Trade). In 1993, at the end of negotiation on agricultural trade liberalization, EU and the other contracting parties agreed commitments in the area of internal support providing for a 20% reduction of support distortive of production and trade (i.e. all forms of more or less coupled support). Domestic support with no, or minimal, distortive effect on production and trade (i.e. decoupled direct payment to producers which is not linked to production decisions) was exempted from commitments of reduction and included in the so-called “Green Box” category.

The discussion on the “active farmer” has been further developed in the last CAP reform 2014-2020, with the introduction of the new system of direct payments. The strengthening of the decoupling, on one side, and the reduction in financial resources for the CAP, both at Member State and farm level, on the other side, have fed the debate among stakeholders on “who” is actually entitled to receive CAP support, in order to prevent the payments from being granted to farmers for doing nothing<sup>2</sup>. As Matthews (2012)

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<sup>1</sup> The Member States were: Austria, Belgium (Flanders), Germany (Bavaria), Italy, Denmark, Ireland, Luxembourg, Portugal, Sweden and United Kingdom (England, Scotland and Northern Ireland).

<sup>2</sup> As result of the decisions taken in the 2014-2020 Multiannual Financial Framework (MFF), the financial resources for direct payments and market measures (the First Pillar of the CAP) was reduced by 12.9% in real

states “The dilemma at the heart of decoupled direct payments is that if farming activity is no longer required for eligibility, how to ensure that payments go only to ‘farmers’ as conventionally understood?”. The rules on “active farmer” later undertaken under the 2014-2020 CAP reform represent a more determined attempt to regulate, under a general EU framework, the issue of the competition between potential beneficiaries on scarce resources (the CAP budget).

The initial proposal of the European Commission established that people for whom (a) the annual amount of direct payments was less than 5% of the total receipts they obtained from non-agricultural activities or (b) their agricultural areas were mainly areas naturally kept in a state suitable for grazing or cultivation and they did not carry out on those areas the minimum activity established by Member State (European Commission, 2011b) were excluded from the benefit of the payments. The proposal was considered by the Court of Auditors (2012a) as a first step towards the right direction. However, the Court pointed out the difficulties in implementing and monitoring these criteria.

In the following debate, also Jambor (2012) and Matthews (2012) underlined the increasing in the bureaucracy complexity arising from the need to access to information on the non-agricultural receipts of landholders and costs associated to the calculation of the percentage of direct payments on non-agricultural receipts for each farm. Jambor, moreover, stressed the risk to exclude from the payments those farms that manage land, providing for public goods without produce for food, in the absence of a clear definition of what is intended for “non-agricultural activity”. The Author has liquidated the question of “active farmer” as a cosmetic operation, created to divert attention from the ineffectiveness of the direct payments instrument. On the same wavelength were Bureau and Mahé (2015) who questioned the legitimacy of farmers as the only suppliers of environmental services on agricultural lands as a result of the system of direct payments introduced (p. 97). They also asserted that the weakness and complexity of the “active farmer” measures are the result of the choice to point on entitlements and cross-compliance instead of focusing on contractual payments in providing environmental services “in which compensation and cost of services could be made more equal” (p. 98). The Authors, moreover, emphasized the potential nullification of the effects of the rules on “active farmers” because of the derogations at Member States disposal in reducing their strictness. On the effectiveness of the “active farmers” rules also Anania and Pupo D’Andrea (2015) were doubtful as they assert that “the decision to restrict the set of the beneficiaries of direct payments to ‘active farmers’ only will also be likely to have no tangible results” (p. 82).

## 2.2 *The “active farmer” in the 2014-2020 CAP reform*

The 2014-2020 CAP reform has introduced a new and more complex system of direct payments, moving further away from historical farm-related payments towards regional payments more evenly distributed in terms of per hectare support across farms (Anania

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terms. Moreover a “external convergence” mechanism was agreed providing for a redistribution of the financial allocation between Member States in order to achieve a more equal average direct payment per hectare at national level. Under the 2014-2020 CAP reform, instead, a mechanism of “internal convergence” was included in order to reduce the differences in the per hectare payment per farm within Member State or in each region of a Member State (Henke *et al.*, 2015).

and Pupo D’Andrea, 2015, p. 52). The new system has introduced a more selective form of support, replacing the Single Payment of the Fischler reform with a set of new payments each of which devoted to remunerate specific behaviours or specific status of the farmer. The basic payment, aiming at ensuring the income support, is the main component of this new set of payments; in fact, all other payments (the so-called green payment, the payment for young farmers, the redistributive payment, the payment for areas with natural constraints and the small farms scheme) are restricted only to farmers entitled to receive the basic payment<sup>3</sup>. However, only “active farmers” receive support under the basic payment scheme, i.e. in order to receive the most selective and targeted support the farmer must be recognized as “active farmer”.

In order to limit the rent position resulting from the fact that beneficiaries of direct payments had no longer to produce in order to receive them, the 2014-2020 CAP reform established more detailed rules for the identification of who is entitled to receive direct payments. Actually, Article 9 of regulation EU 1307/2013 specifies who is not “active farmer”, giving Member States great flexibility in making criteria more restrictive (or in some cases loosening the constraints imposed by the EU) under a common framework of reference. Most likely, the reason why it is used the definition of “active farmer” in a negative connotation (who is not an “active farmer”) is related to the fact that in this way the burden of proof is on those who are defined not active, that have to prove the opposite, i.e. being active. On the contrary, if all farmers were required to prove that they are active, this would increase administrative burdens and bureaucratic costs to them and to the Member State.

Article 9 provides a number of different kind of provisions regarding the rules for being considered “non-active farmer” and the derogations available.

In principle, no direct payment shall be granted to a person (natural or legal):

1. whose agricultural areas are mainly areas naturally kept in a state suitable for grazing or cultivation and who does not carry out on those areas the minimum activity as defined by the Member State (Article 9(1))<sup>4</sup>. This provision regards only Member States that declared to have self-maintained area<sup>5</sup>;
2. who operates in airports, railway services, waterworks, real estate services, permanent sport and recreational grounds (the so-called “black list”, or negative list, of people non-active by definition) (Article 9(2)). In order to make this provision more restrictive, Member State may decide to integrate the “black list” with other non-agricultural business. Member States may decide later to withdraw any national addition but they cannot reduce the list contained in the Article 9;

Another provision (the third) concerns the possibility for a Member State to exclude from the benefit of direct payments, the natural or legal persons whose agricultural activity is insignificant compared to their overall economic activities (Article 9(3)(a)), or whose principal activity or company objects does not consist of exercising an agricultural activity (Article 9(3)(b)) (hereinafter referred to as “professional and economic requirements”).

<sup>3</sup> For more details on the new system of direct payments see Anania and Pupo D’Andrea, 2015.

<sup>4</sup> In accordance with Article 4(2)(b) of the regulation EU 1307/2013. This provision applies when the agricultural area naturally kept in a state suitable for grazing or cultivation represents over 50% of the agricultural area declared by a farmer.

<sup>5</sup> These Member States are Belgium (Flanders), Germany, France, Italy, Cyprus, Romania, Slovakia, United Kingdom (Scotland and Wales).

However, the persons above considered as “non-active farmers” according to the second and the third provisions can receive direct payments (and thus, to be considered as “active farmers”) if they are able to prove the importance of the agricultural activity carried out in terms of ‘magnitude’ of direct payments received or in terms of non marginality of the agricultural activity. In particular, the above persons are considered “active farmers” if they demonstrate that:

- the annual amount of the direct payments is at least 5% of the annual total receipts they obtained from non-agricultural activities in the most recent fiscal year<sup>6</sup> (Article 9(2)(a)); or
- their agricultural activities are not insignificant<sup>7</sup> (Article 9(2)(b)); or
- their principal business or company objective consists of exercising an agricultural activity (Article 9(2)(c))<sup>8</sup>.

The rationale of Article 9(2) as compared to Article 9(3) is that, people who are on the negative list may qualify for direct payments if they provide evidence about the importance of their economic activity in the form required by the Member States, in accordance to the provisions contained in the third paragraph of Article 9(2) (from 9(2)(a) to 9(2)(c)). However, the same people may still be excluded from direct payments if they do not respect professional and economic requirements eventually applied by Member States in accordance with Article 9(3).

Finally, people not qualified as “active farmers”, as they are included in the “black list” or because of the marginality of their agricultural activities, are entitled to receive direct payments, and, therefore, to be considered “active farmers”, if the direct payments received in the previous year were not exceeding 5,000 Euro (Article 9(4)). Member States have the possibility to lower this threshold (also differentiating between regions) making the definition of “active farmer” even more restrictive (Henke *et al.*, 2015, p. 43). People who do not carry out a minimum activity on their agricultural lands remain “non-active farmers” even though they receive an amount of direct payment not higher than the threshold set (Table 2).

The rules for identifying the beneficiaries of the direct payments are also applied to the beneficiaries of a number of measures under the rural development policy of the CAP: payments to farmers in mountain areas or in other areas facing natural constraints, support to young farmers, support to new farmers participating to union or national quality scheme, payments to farmers for the converting to, or maintaining, organic farming, support to farmers who adopt high standards of animal welfare, support under risk management measures (regulation EU 1305/2013).

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<sup>6</sup> Receipts from non-agricultural activity are considered all the receipts except those obtained from agricultural activity, those arising from processing of agricultural products and the support received under the First and Second Pillar of the CAP (regulation EC 639/2014, Article 11).

<sup>7</sup> An agricultural activity is considered not insignificant if the related receipts represent at least one third of the total receipts. Member States may lower this threshold, thus loosening the constraint, without allowing a marginal activity to receive direct payments. Member States may establish alternative criteria (regulation EC 639/2014, Article 13).

<sup>8</sup> The agricultural activity is considered to be the principal business or company object of a legal person if recorded as a principal business or company object in the official business register or any equivalent official evidence. In case of natural person equivalent evidence shall be required (regulation EC 639/2014, Article 13).

**Table 1.** “Active farmer”: provisions and derogations.

| Derogations to be AF  | NAF   |   |   |
|---|---|---|---|
|   | No minimum activity carried out on area naturally kept<br><i>Article 9(1)<sup>1</sup></i> | Being into the negative list<br><i>Article 9(2)</i> | Not meet the (optional) additional national criteria<br><i>Article 9(3)</i> |
| DP ≥ 5% of total non-agricultural receipts <i>Article 9(2)(a)</i>                           | NAF   | AF  | AF  |
| Agricultural activity not insignificant <i>Article 9(2)(b)</i>                              | NAF   | AF  | AF  |
| Agricultural activity is the principal business or company objective <i>Article 9(2)(c)</i> | NAF   | AF  | AF  |
| DP not higher than 5,000 Euro (or below) <i>Article 9(4)</i>                                | NAF   | AF  | AF  |

NAF = Non active farmer

AF = Active farmer

<sup>1</sup> In Member States where the provision of Article 9(1) is applicable.

**Table 2.** Option at Member State disposal in order to make more or less restrictive the rules on “active farmer”.

|                       | Negative list<br><i>Article 9(2)</i>      | Agricultural activity not insignificant<br><i>Article 9(2)(b)</i>                    | Professional and economic requirements<br><i>Article 9(3)a-b</i> | Different threshold from 5,000 Euro<br><i>Article 9(4)</i> |
|-----------------------|---|--|--|--|
| Make more restrictive | Widen the list by adding other activities |  | Add additional national requirements                             | Lower the threshold below 5,000 Euro                       |
| Make less restrictive |   | Lower the ratio between agricultural receipts and total receipts less than one third |  |  |

**2.3 Some reflections on the “active farmer” rules under the 2014-2020 CAP reform**

We can read the legislation concerning the “active farmer” through two well defined perspectives: on one hand, the rules governing the use of agricultural land, as the basis for accessing to the CAP measures; on the other side, the rules concerning the farmer who exercises an agricultural activity, mainly identified by the possession of professional and economic requirements.

Analyzing in depth the rules on active farmer it emerges, as Albisinni points out (2012, p. 26), that in the new definition of agricultural activity<sup>9</sup> the emphasis is on the (“productivistic”) side of the activity in terms of its ability to perform breeding or cultivation, compared to the ‘old’ (“multifunctional”) definition<sup>10</sup> included in regulation EC 73/2009 where for agricultural activity was intended also the “maintaining the land in good agricultural and environmental condition” (Article 2(c)). These two definitions contain the ambiguity of the rules on active farmer: the shift to a more “productivistic” vision of the agricultural activity is an attempt to identify farmers towards which to address payments in order to support the income; at the same time, decoupling allows farmers to receive support a part from the production.

Moreover, the rules on “active farmer” require beneficiaries of certain measures of rural development policy to meet professional and economic requirements or land use, introducing the obligation to comply with a predetermined subjective model, thus moving away from the traditional approach of granting payments to those who operate in accordance with the objectives set (Albisinni, 2012, p. 27). Farmers involved in organic farming or in maintaining the land in mountainous areas or areas with natural constraints exert an important environmental function, that is independent of the main business of those who practice them. In this regard, it seems that the need to identify “active farmers”, in response to requests from European Court of Auditors, has been used by national stakeholders and EU key actors for concentrating the financial resources available for rural development on agriculture.

The setting of the threshold of 5,000 Euro (or lower), below which farmers are considered active by definition, it should ensure that small farmers and part-time farmers, with a significant off-farm income but a valuable activity in the provision of public goods, are not excluded from receiving direct payments (Krzyzanowski, 2013). Exclusion may occur if a Member State has made use of the possibility provided for in Article 9(3) to introduce additional professional and economic requirements that must be met by farmers; as we will see in Section 4, these rules have been applied only by 4 Member States.

When dealing with the rules for demonstrating to be an “active farmer” (for those who are above the threshold), it is introduced an element of great uncertainty and differentiation between Member States where the status of “active farmer” derives from external elements (the total non-agricultural receipts to which compare the amount of direct payments or the total income to which compare the agricultural income) rather than on what is done in a farm. Moreover, it escapes the link between the percentage of direct payments and the total non-agricultural receipts and the meaning of the percentage chosen (d'Oultremont, 2011, p. 4). In this regard we have to consider that, the amount of direct payments, in the light of the progressive move toward a flat rate payment, will be increasingly influenced by the amount of land owned rather than the agricultural activity carried out on this land (Albisinni, 2012, p. 28-29).

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<sup>9</sup> Article 4, regulation EU 1307/2013, defines as agricultural activity: i) the production, rearing or growing of agricultural products, ii) the maintaining an agricultural area in a state suitable for grazing or cultivation without preparatory action going beyond usual agricultural methods and machineries, iii) the carrying out a minimum activity, defined by Member States, on agricultural areas naturally kept in a state suitable for grazing or cultivation.

<sup>10</sup> The two definitions, “productivistic” and “multifunctional” vision of the agricultural activity, are taken from Erjavec, Lovec, Erjavec (2015) containing an interesting analysis of the 2014-2020 CAP reform that focuses on three reading keys emerged during the negotiations.

Looking the threshold of direct payment below which a person is an “active farmer” by definition, it is immediately evident that by doing so the legislator does not select the “genuine” farmers, but simply chooses to support small farms defined as such in financial terms (the amount of direct payments received). However, as the literature highlights, it is evident that small farms in terms of direct payments received not necessarily correspond to small farms from the physical point of view (in terms of labour force input or hectares of agricultural area) or small farms in terms of economic size (European Commission, 2011c; Forgacs, 2015). Thus, the aim of the threshold is related only to the need to reduce the excessive administrative burdens for farms receiving small amount of direct payments and for national governments, resulting from the enormous complexity of the Article 9.

### 3. The implementation of the “active farmer” in EU Member States

Starting from the choices made by Member States on the implementation of the rules on “active farmer” under the 2014-2020 CAP reform, in this section we will provide a picture of how this flexibility has been used and whether there is evidence of similarities in the behaviours or if differences prevail.

In Table 3, we have summarized the choices made by the Member States and communicated to the DG AGRI through the ISAMM form<sup>11</sup>. Other information were collected in the first semester of 2015 under a study carried out for the European Parliament (Henke *et al.*, 2015), then compared with the most recent information.

The regulatory framework defined by the Member States in relation to the figure of the “active farmer” is analysed taking into account four variables.

In Table 3, the first column pinpoints the countries that have areas “naturally kept in a state suitable for grazing or cultivation” and that, consequently, have defined the minimum agricultural activity that farmers have to respect in order to be considered as “active farmers”. It is worth recalling that, in this case, the minimum activity to be carried out by farmer is a compulsory and non-derogatory requirement to access direct payments, even in the case of farmer who are below the threshold identified according to Article 9(4).

The second column indicates the countries that have chosen to expand the black list of non-agricultural business.

The third column identifies the countries that have chosen to introduce additional professional and economic requirements in order to be considered as “active farmers”.

The information in the fourth column point out the countries that have chosen to lower the threshold below 5,000 Euro (the last column shows the threshold chosen). Farmers who have received direct payments below the threshold are excluded from the restrictions imposed by the provisions on the negative list and, where appropriate, by the ones on additional professional and economic requirements. However, the threshold does not exempt farmers to perform the minimum activity on areas naturally kept in a state suitable for grazing or cultivation if these areas were defined by the Member State.

In the table, a tick “V” indicates that a Member State has used the available flexibility in a scale of possibilities from 0 to 4, where 4 indicates the implementation of the all con-

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<sup>11</sup> ‘Information System for Agricultural Market Management and Monitoring’. The implementation of the rules on “active farmer” is contained in form 2.

straints available and zero indicates that no constraint has been implemented. Only Italy has chosen the implementation of all the options available and seems to qualify itself for a high degree of selectivity with respect to the access to direct payments. Thirteen countries have opted instead for applying the regulation without defining national adaptations. The rest of Member States has chosen to use the flexibility allowed, applying from 1 to 3 options.

Nine Member States have defined the minimum activity to be carried out on agricultural areas naturally kept in a state suitable for grazing or cultivation. These activities are greatly differentiated among Member States, in terms of minimum activities requested, time span within which these activities must be carried out and possibilities, for local authorities, to provide deviations from the general rules. Information about the national choices are very fragmentary. However, among the minimum activities are signalled: grazing with the maintaining of minimum stocking density in the case of permanent grassland<sup>12</sup>, mowing (with destruction or removal of the grass), avoiding deforestation, controlling the spread of unwanted vegetation, avoiding (dense) shrubs, renewing of the grass (DG AGRI, 2015b).

Eight Member States have decided to extend the black list in order to exclude from the CAP support the activities that are not considered agricultural business.<sup>13</sup>

Twelve countries opted for the lowering of the threshold below 5,000 Euro, up to 0 Euro in Belgium-Flanders and 1 Euro in the Netherlands. In the cases of France (200 Euro) and Luxembourg (100 Euro) the threshold has been set at the same level of the minimum requirement to receive direct payments (Article 10, regulation EU 1307/2013). In the case of Spain and Austria the threshold is the same of that for the access to the small farmers scheme.

Only four countries (Greece, the Netherlands, Italy and Spain) provided additional exclusions adding professional and economic requirements that a farmer must comply in order to be considered "active".<sup>14</sup> In these Member States, farmers being above the threshold have to prove to be "active". The percentage of farmers involved ranges from little less than 20% of total farmers in Greece to 100% in the Netherlands, showing a different administrative burden for national administrations (elaboration on data European Commission, 2016c). The variability of this percentage is due to the threshold chosen (1 Euro in the Netherlands, 5,000 Euro in Greece) and the structural characteristics of the agri-

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<sup>12</sup> For example, in Scotland, the minimum agricultural activity for farmers in Regions Two and Three is to undertake an average level of stocking of 0.05 livestock units per hectare for 183 days a year. As an alternative to minimum stocking levels, farmers can carry out an annual Environmental Assessment across the holding. In Italy, the minimum activity is represented by the grazing that must take place for at least 60 days a year with a minimum load of 0.2 livestock unit per hectare. Alternatively, the farmer may prove to have carried out at least one mowing a year or other operation aimed at improving pasture.

<sup>13</sup> For example they have been excluded enterprises involved in mining activity (Germany), forest management (Estonia and Romania), banking, brokerage business and insurance (Italy), construction firms (Romania), prisons (Romania), national, regional or municipal administrations (Bulgaria, Italy, Malta, the Netherlands and Romania). For further details on the activities added to the black list in the Member States concerned see European Commission, 2016a.

<sup>14</sup> Greece and the Netherlands exclude natural or legal persons whose agricultural activity represents only an insignificant part of their overall economic activity (Article 9(3)(a)) while Spain excludes persons whose principal activity or company objects does not consist of exercising an agricultural activity (Article 9(3)(b)). Italy has chosen to apply both the type of exclusion.

**Table 3.** The choices of the Member States under the legislative framework on the “active farmer”<sup>1</sup>.

| EU Member States    | Definition of minimum activity on areas naturally kept<br><i>Article 9(1)</i> | Widening of negative list<br><i>Article 9(2)</i> | Additional professional and economic requirements<br><i>Article 9(3)a-b</i> | Different threshold from 5,000 Euro<br><i>Article 9(4)</i> | Number of constraints implemented | Threshold chosen in derogation to 9(4)<br><br>Euro detail items |
|---------------------|---|--|---|--|-----------------------------------|---|
| Belgium-Wallonia    |   |  |   | ✓  | 1                                 | 350   |
| Belgium-Flanders    | ✓   |  |   | ✓  | 2                                 | 0   |
| Bulgaria            |   | ✓  |   | ✓  | 2                                 | 3,000   |
| Czech Republic      |   |  |   |  | 0                                 |   |
| Denmark             |   |  |   |  | 0                                 |   |
| Germany             | ✓   | ✓  |   |  | 2                                 |   |
| Estonia             |   | ✓  |   |  | 1                                 |   |
| Greece              |   |  | ✓ (a)   |  | 1                                 |   |
| Spain               |   |  | ✓ (b)   | ✓  | 2                                 | 1,250   |
| France              | ✓   |  |   | ✓  | 2                                 | 200   |
| Ireland             |   |  |   |  | 0                                 |   |
| Italy               | ✓   | ✓  | ✓ (a),(b)   | ✓  | 4                                 | 1,250 - 5,000 <sup>2</sup>                                      |
| Cyprus              | ✓   |  |   |  | 1                                 |   |
| Latvia              |   |  |   |  | 0                                 |   |
| Lithuania           |   |  |   | ✓  | 1                                 | 500   |
| Luxembourg          |   |  |   | ✓  | 1                                 | 100   |
| Hungary             |   |  |   |  | 0                                 |   |
| Malta               |   | ✓  |   | ✓  | 2                                 | 250   |
| Netherlands         |   | ✓  | ✓ (a)   | ✓  | 3                                 | 1   |
| Austria             |   |  |   | ✓  | 1                                 | 1,250   |
| Poland              |   |  |   |  | 0                                 |   |
| Portugal            |   |  |   |  | 0                                 |   |
| Romania             | ✓   | ✓  |   |  | 2                                 |   |
| Slovenia            |   |  |   |  | 0                                 |   |
| Slovakia            | ✓   |  |   | ✓  | 1                                 | 2,000   |
| Finland             |   |  |   |  | 0                                 |   |
| Sweden              |   |  |   |  | 0                                 |   |
| UK-Scotland         | ✓   | ✓  |   |  | 2                                 |   |
| UK-Wales            | ✓   |  |   |  | 1                                 |   |
| UK-England          |   |  |   |  | 0                                 |   |
| UK-Northern Ireland |   |  |   |  | 0                                 |   |
| Croatia             |   |  |   |  | 0                                 |   |

<sup>1</sup> In the table, the percentages of the beneficiaries over the threshold are calculated on the beneficiaries of direct payments in the financial year 2015 (European Commission, 2016c). Where the stratification does not coincide with the choice of the country, we have done a mathematical proportion (for example for the choice of a threshold equal to 250 Euro made by Malta, we have subtracted to the cumulative descending share of beneficiaries (in that case <0 i.e. 100%), the product between the percentage of the next stratification (i.e. 0-500) and 2.5 / 5 (i.e. half of range 0-500, the choice of Malta of 500 Euro).

<sup>2</sup> The threshold is fixed to 5,000 Euro if more than 50% of the agricultural surface is located in disadvantaged or mountain areas; 1,250 Euro for the other farmers.

Source: own elaboration on DG AGRI ISAMM data.

cultural system of each countries. Most of the other Member States decided to not apply the additional requirements because of the additional administrative burden (DG AGRI, 2015a). It is worth noting that three of the four countries that have opted to add professional and economic requirements have also chosen to lower the threshold, making it even harder for “non genuine” farmers to access direct payments, and two of these three countries have opted to widen the negative list, so reducing the number of people allowed to receive direct payments.

Moreover, in some Member States the implementation of the CAP reform occurred at regional level, so we have 2 different schemes in Belgium (one for Wallonia and one for Flanders) and 4 different schemes in the United Kingdom (England, Northern Ireland, Scotland and Wales).

As regard the criteria chosen to prove the importance and relevance of the agricultural activity the picture is very heterogeneous among countries. To prove that the agricultural activity is not insignificant (Article 9(2)(b)), in 19 countries the agricultural income should represent at least one third of the total income; only Finland has lowered this ratio to 5%; 9 countries opted for alternative criteria (e.g. number of eligible hectares above a certain threshold). In order to demonstrate that the principal business consists of exercising an agricultural activity, 11 countries have opted for the registration in an official business register, 4 countries opted for equivalent evidence, 6 countries for alternative criteria, 5 countries opted for a combination of criteria (DG AGRI, 2015a; European Commission, 2016a).

#### **4. The understanding of the weakness about the active farmer's rules: some case studies**

In this section we focus our attention on two selected Member States placed on opposite sides of the spectrum in terms of restrictions implemented. The aim is to highlight that the greater or lesser selectivity represented by the number of constraints implemented (cfr. Table 3) doesn't always correspond, respectively, to a greater or lesser selectivity when we take into account the implementation of national legislation. In other words, in this section we will demonstrate that a high score, in terms of number of restrictions implemented, does not necessarily correspond to a high selectivity and, conversely, a low score is not always equivalent to a low selectivity. For this purpose we consider the Czech Republic, which has not implemented any national adaptation, so as to appear non-selective (the options implemented, in Table 3, are equal to 0) and, on the other side, Italy, who has decided for a strong implementation of the possibilities offered by the CAP reform (the options implemented are 4), so as to appear highly selective.

##### *4.1 The Czech Republic case*

In the Czech Republic, stakeholders (NGOs, associations and trade unions) were strongly involved in the decision-making process. As a result of this process it has been decided not to extend the negative list. A person or a group of persons which fall under the scope of Article 9(2) (the black list) can be regarded as an active farmer if they prove

that the total receipts obtained from agricultural activities represent at least one third of the total receipts obtained in the most recent fiscal year and if these information are confirmed by an auditor’s report.

Moreover, Czech Republic decided not to implement any additional professional and economic requirement (Article 9(3)). The threshold below which a farmer is considered active by definition is maintained at 5,000 Euro. In this way, the Czech Republic seems to dispense the small farmers (the 16% of holdings with an economic size of farm lower than 4,000 Euro and an average business size of 20 hectares) from the burden of an excessive bureaucracy, preserving their role of maintaining vitality in rural areas. Looking at the decisions taken, the Czech Republic would seem “not selective at all” (Henke *et al.*, 2018).

However, the perspective changes if one takes into account the national legislation (Coll. 50/2015) requiring that the recipient of direct payments has to be an “agricultural entrepreneur” within the meaning of Statute No 252/1997 Coll. on agriculture. According to this law, it is considered agricultural entrepreneur any natural or legal person that carries out an agricultural production, understood as crop production, livestock production and the processing and selling of agricultural production. This is a much more restrictive definition than that provided for in Article 4 of the Regulation 1307/2013, where for “agricultural activity” is considered also the maintaining an agricultural area in a state suitable for grazing or cultivation or the carrying out a minimum activity on agricultural areas naturally kept in a state suitable for grazing or cultivation (see note 9). The issue of the national requirement of “agricultural entrepreneur” has been raised by the Association of Private Farming of the Czech Republic. Then it has been the object of a written question of the European Parliament to the European Commission (E-003886-16), as Czech national legislation appears to be in conflict with European legislation on direct payments, resulting in a reduction in the number of aid applications. The Commission has stated that Member States may add supplementary criteria if those rules are not contrary to Union law. In the specific case, there are no elements that show a conflict between EU legislation and Czech law. This does not alter the fact that the more restrictive definition of “agricultural entrepreneur” in Czech legislation, as compared to the broader definition of “agricultural activity” in EU legislation, makes the Czech Republic much more selective than it does at first reading. Despite the fact that the country has decided not to implement any restriction, the need to be an “agricultural entrepreneur” could be a significant factor in excluding a large portion of farmers (mainly small farmers) from access to direct payments.

#### 4.2 The Italian case

On the opposite side we find Italy, which has decided to apply all the available restrictions: a) widening the negative list to banks, brokers and insurance, and to the Public Administrations; b) adding professional and economic requirements in order to access to direct payments (the registration into the National Social Security (INPS) as Direct Farmer, Agricultural Entrepreneur; or the possession of an active VAT number for agricultural activity); c) lowering the threshold to being considered active farmer by definition to 1,250 Euro, except for farms located in disadvantaged or mountain areas for which the threshold is maintained to 5,000 Euro; d) setting minimum activity on area naturally kept in a state

suitable for grazing or cultivation. Looking at the implementation of the rules on active farmer, Italy appears to be as “highly selective” (Henke *et al.*, 2018). The debate that characterized the implementation of these rules showed two conflicting positions. From one side, those who were favorable to a strong selection of beneficiaries of the CAP, in order to focus support in the hands of those who carry out agricultural activity as their main business; on the other side, those in favor of maintaining a large number of beneficiaries in order to take into account the environmental function carried out. A compromise was reached between the two positions, that makes Italy the country with the largest number of restrictions implemented, but with a small number of farmers potentially excluded from direct payments. In fact, a high percentage of beneficiaries is considered active farmer by definition because they receive an amount of direct payments less than the threshold fixed (at least 64% of beneficiaries receive less than 1,250 Euro; however, this figure is underestimated because it does not take into account of farms located in less favored areas for which the threshold is set at 5,000 Euro). Moreover, for those who perceive an amount of direct payments above the threshold, the additional requirements are not very strict and they are such to include almost all the current beneficiaries of the direct payments of the CAP (Frascarelli, 2014a). As regard the additional economic requirements, in Italy there are many beneficiaries of direct payments who have not a VAT number, but most of them fall in the “threshold of non-compliance” (farmers with a turnover of less than 7,000 Euro are exempt from any obligation to declare and accounting). Those who are above the threshold may require the opening of the agricultural VAT number and must exercise a productive activity oriented towards the market, because in Italy is not allowed to have a VAT number “non-active”. Finally, in the case of subjects included in the black list, such as banking or insurance, the exclusion from the benefits of direct payments is mitigated by the possibility of considering “active farmers” the companies they participate. In Italy there are important agricultural companies controlled by banks and insurance companies that do not manage their agricultural activities directly but through specific subsidiary agricultural companies that don't fall in the black list (Frascarelli, 2014b).

Looking at the decisions taken by all the Member States, what emerges is a considerable bureaucratic complication, even if a country has decided not to apply any restriction. In fact, legislation concerned is difficult to understand. At the same time, the procedures implemented internally by each country in order to check the provisions on active farmer are very different and, as a consequence, different is the bureaucratic burden on national authorities and farmers. The final result is a great uncertainty about the effectiveness of the provisions in limiting and selecting CAP beneficiaries and canalizing support towards the farmers with prevailing agricultural activity. In fact the usefulness of revising the legislation is already being discussed under the Omnibus Regulation (COM(2016)605).

## 5. Discussion and conclusions

The analysis carried out in the previous sections has highlighted a picture of high heterogeneity among Member States, in terms of measures implemented, of goals pursued and farmers affected.

In terms of options implemented, only two Member States, Italy and the Netherlands, have adapted all (or almost all) the EU rules to their national constraints in order to limit

the access to direct payments. On the other side of the spectrum, thirteen Member States have applied Article 9 without any national requirement. The other Member States have applied from 1 to 3 options.

Analyzing in depth the choices made by selected Member States it is evident that the high number of options implemented does not correspond to a greater selectivity of beneficiaries. In the case of Italy, for example, that has implemented all the available options, the national application of the rules on “active farmer” did not guarantee a real limitation in the access to direct payments. This is both for the high share of farmers lying below the threshold for being considered active by definition and for the ‘non strictness’ of the additional requirements. The national implementation of the rules, moreover, is proving to be very complex, with a considerable bureaucratic burden in charge of farmers and national agency of payments and delays in payments. Conversely, the Czech Republic, where the Article 9 has been applied without national adaptations, is selective for the access to direct payments on the basis of national legislation.

The rules implemented in the Member States vary across EU also in the case of the minimum activity on the areas naturally kept in a state suitable for grazing or cultivation, which is the only constraint that would prevent the access to direct payments, without the possibility of derogations, in case of non compliance.

At the moment, after the first year of implementation, it is not known whether this complexity is compensated by a real limitation on the number of beneficiaries of the direct payments of the CAP. Nor the Member State where the rules have been implemented in the most effective way.

What is clear is the different function assigned to direct payments. In some countries, the choice was to qualify for direct payments who contributes to the vitality of rural areas not excluding *a priori* persons whose agricultural activity is marginal. In other countries the choices go in the direction of supporting those engaged in agricultural activity in the strict sense. In this latter case, the high costs associated to a strict implementation of the rules can generate effects if these rules translate in a selection of the beneficiaries in order to support the income of producers.

The final result is a distorted treatment of the farmers according to the national choices: some activities are considered not-agricultural business in some countries but they are considered agricultural business in others; in some countries the farmers must satisfy additional requirements, not requested in others; the threshold below which a farmer is active by definition is very different among countries.

Taking into account the heterogeneous distribution of direct payments between Member States and the great diversity among Member States in terms of practices and agricultural activities and in terms of legal and fiscal framework, it seems difficult to find a field on which to build common rules to define the “active farmers” and, at the same time, for planning the policies aimed to achieve adequate selectivity to access the CAP support.

Unfortunately, there is no information on how many potential beneficiaries were excluded due to the rules on active farmer in the first year of implementation. However, the high administrative costs in respect to the benefit of excluding a very limited number of non-active farmers were recognized by the Commission which, for this reason, has proposed, as part of the Omnibus Regulation (COM(2016)605), to give Member States the possibility to make optional the application of the rules on “active farmer”, starting from 2018.

As we have seen, the complexity of the “active farmer” rules arises from the unresolved issue on the nature of direct payments. In fact, the CAP reforms which have followed after the 1992 reform (the so-called MacSharry reform which first introduced the concept of decoupled payments) changed the tools to support the farmers but the philosophy itself of support remained unchanged<sup>15</sup>. Despite the move from a Single Payment Scheme to a more articulated system of payments, even in 2014–2020 CAP reform the better targeted and more selective payments are received, if and only if, a farmer receives the basic payment, i.e. the payment aimed to income support, and in turns, if and only if, she/he is an “active farmer”. So, the “active farmer” rules struggle between the “productivist” and “multifunctional” souls of the CAP. The “productivistic” vision of the CAP would circumscribe the benefits of support only to those who produce food and/or fiber, being engaged in an agricultural activity in the strict sense. Only to those farmers an income support has to be guaranteed. The “multifunctional” soul would provide support to the land managers, independently from the existence of the food/fiber production function. In this sense the direct payments are seen as a remuneration for the provision of public goods (Candel *et al.*, 2014).

The “productivistic” active farmer vision, making production mandatory, contrasts with the Green Box constraints under the WTO as well as the market orientation towards which the decoupled support aims. The “multifunctional” active farmer vision, on the opposite, suffers from the fact that the payment is irrevocably tied to income support of the farmer and not to the environmental function of land managers in allowing, for example, biodiversity.

The conciliation of the two souls of the CAP has generated the rules contained in the Article 9 which do not meet neither who would rule more strictly on “active farmer” in order to keep the payment in the hands (or the pockets) of the “genuine” farmers, nor who fears that the rules applied could exclude from the benefit of payments, potential beneficiaries who only manage the land (Kloranis and Vlahos, 2012, p. 10). For instance, the reform broadens the application of the rules on “active farmer” to organic farming or to farmers in mountainous or other areas with natural constraint. This, in Member States where additional criteria have been added could, potentially, prevent those who do not meet the requirements of the economic or professional importance of the agricultural activity from receiving support (Hart and Baldock, 2011, p. 21).

The issue is the inconsistency of the direct payments system: only those who receive direct payments need support for the environmental functions and land preservation they carry out? Being equal functions, the person who is not a farmer and receives no direct payments is therefore not entitled to receive support? The environmental issue must necessarily be limited to the CAP?

In our opinion, there are two ways, opposed, to solve this issue.

The first is to broaden the definition of “active farmer” to encompass all those who manage the land, regardless of the production function, including also those who are now excluded (those in the black list) and those for whom farming is marginal or insignificant,

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<sup>15</sup> The analysis of Erjavec and Erjavec (2015) shows that due to the path dependency in the 2014–2020 CAP reform the measures were only gradually altered and the attention towards “environment” and “greening”, proclaimed in all discourses of the EU key actors, was not proportionally integrated into measures and in the budget distribution.

provided that the support is related to the cost or loss of income resulting from land management, which must be sustainable both in environmental and social terms. This would mean not consider the status of the beneficiaries but what they do.

In the second way, it makes sense to narrow the definition of “active farmer” only to those who produce food and fiber in a sustainable way from the economic and environmental point of view, with a support truly commensurate to farm income (savings should be better targeted to farms “needy”). This would require to completely separate the two functions and allocate to the CAP, in the strict sense, only part of the current budget, allocating the rest to environmental payments as described above. This could cause problems of compatibility with the WTO, depending on how this farm income support is designed. However, taking into account the total AMS (Aggregate Measurement of Support) at EU disposal (72,378 million Euro for marketing year 2012/13)<sup>16</sup> there should be no problems to meet commitments also in the case where EU decided to go back towards fully or partially coupled payments to production. In the last reform, EU has decided to allow Member States to devote a high percentage of their financial resources to coupled support. The “new” tool differs from the coupled payment to production of the “old” CAP (the one prior the MacSharry reform) in the fact that the support is linked to the factors of production (land or head of livestock) rather than to production itself. Moreover, its purpose is to create an incentive to maintain current levels of production and must not lead to increased production. The real question is whether it is appropriate for the EU to turn back from its decisions on decoupling, strengthening coupled payments only in order to respond to the problem of the “active farmer”.

The future of the rules on “active farmer” is not obvious. The complexity of the national implementation, as well as the lack of a unique path by the Member States or of an easily interpretable behaviour, it raises serious doubts about the possibility that in the next CAP reform these rules can be made, another time, mandatory and even more restrictive, reducing the flexibility available to countries. However there is no doubt that the future of the “active farmers” issue depends on the future of the direct payments.

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