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Agri-environment commitments and their verifiability

Content:

1. Purpose/background of this document
2. Some general principles of measure design
3. The new baseline for agri-environment measures
4. Standard assumptions and calculations
5. Non-exhaustive list of commitments, related control possibilities and remarks on verifiability

Annex 1: Extracts from the European Court of Auditors' Special Report No 3/2005 concerning rural development: the verification of agri-environment expenditure

Annex 2: Provisions in the implementing rules and control rules regarding verifiability

Annex 3: Provisions in the implementing rules on control

Annex 4: Control and sanctioning of the baseline relevant for the AEM commitments [Art.39 (3) of R.1698/2005] and relation with the control and sanctioning of cross-compliance requirements (Art.51 of R.1698/2005)

Annex 5: The relation between control of Cross compliance requirements and agri-environment measures with a particular view to new MS applying SAPS

Annex 6: Calculations in the programmes

Status of this document

The views expressed in this explanatory document are those of the Commission services and do not prejudice the position adopted by the European Court of Justice, which is the sole institution competent to interpret Community law.

1. PURPOSE/BACKGROUND OF THIS DOCUMENT

The purpose of this working document is to provide guidelines and additional explanations for the implementation of agri-environment measures ("AEM"). It serves as a basis for discussion with Member States with a view to provide assistance in the determination of control methods for examples of AEM. Its content can be applied, *mutatis mutandis*, to measures with similar design and calculations, e.g. animal welfare payments, natural handicap and Natura 2000 payments, forest-environment payments or meeting standards.

In the current programming period the Commission had verified during the examination of the Rural Development Programmes that the AEM defined by the Member State were acceptable and relevant. It refused to accept certain proposals as their added value and/or their controllability were considered to be inadequate.

However, in its Special Report No 3/2005 concerning the verification of agri-environment expenditure¹ (extracts see annex 1), the European Court of Auditors questioned the controllability of certain AEM proposed by Member States. In its reply, the Commission accepted a number of the Court's findings, but emphasised the importance of agri-environment as a policy for environmental integration. As complexity is inherent in the relationship between agriculture and environment, many measures addressing this relationship are inevitably quite complex. This could result in quite complex and costly controls, but this is justified by the importance of agri-environment policy for environmental integration. The Commission considered (quoting the Court's words) that what should be aimed at was "reasonable assurance" about compliance.

For the next programming period, Member States should make every effort to avoid, when defining the AEM in their programmes, non-verifiable commitments and overcompensation.

The Commission will only assess and approve the methodological elements as set out in annex II of the Implementing Regulation² (Commission Regulation (EC) N° 1974/2006). It is clearly the responsibility of Member states to ensure that the AEM they propose are controllable and verifiable. To this end, at several places in the Implementing Regulation and in the Implementing Regulation on Control (Commission Regulation (EC) No 1975/2006), specific provisions have been inserted³.

This working document contains a brief description of some of the principles to be applied for the design of AEM and the calculation of aid rates. Furthermore, suggestions as to verifiability are added for typical AEM commitments.

¹ "Special Report No 3/2005 concerning rural development: the verification of agri-environment expenditure, together with the Commission's replies"; OJ C 279 of 11.11.2005, p.1

² See attached annex 2 in particular under 5.3.2.1.4

³ See annex 2. E.g. in Article 53 (2): "*Member States shall ensure the following for the calculations and the corresponding support...: (a) they contain only elements that are verifiable;...*"

2. SOME GENERAL PRINCIPLES OF MEASURE DESIGN

In the current programming period, MS will continue to have the possibility to design AEM that can be implemented on a broad scale and which are regionally/locally targeted, according to the environmental challenges identified. Several aspects merit particular consideration:

- **Importance of clarity and simplicity for beneficiaries:** Lack of clarity over the specific components of an agri-environment commitment can deter potential beneficiaries from participating. The intended agri-environmental practice has to be clearly described. The beneficiary⁴ must see clearly the different components of his commitment and the obligations to be respected.
- The AEM's **environmental benefit** has to be explained and where possible quantified in the Rural Development Programme (RDP).
- **Importance** of correct and differentiated premium calculations to achieve **uptake targets:** If the compensation covers only parts of the expected losses (i.e., the possible additional costs incurred and/or income foregone), potential beneficiaries may be less inclined to participate; conversely, an unexpectedly high uptake may be due to possible overcompensation. However, it needs to be borne in mind that other factors than premium levels can affect uptake - e.g. the level of publicity, training, and farm advice, including agronomic expertise – so a high uptake does not necessarily imply overcompensation.

Example for the relevance of these aspects: Basic measures

- a) The clear description of the **environmental benefits and its quantification**, as well as
- b) **differentiation**

are of **special relevance for basic measures**. These measures are often composed of a set of obligations for which the environmental benefit is not clearly described and quantified.

a): Simple recording of management practices (recording of data on cultivation activities, fertilizing, etc.) alone doesn't constitute an environmental benefit but a basis for measuring a concrete environmental practice. The environmental benefit can be ensured only if concrete action is linked to the record-keeping. For this reason the obligation of record-keeping should always be linked to concrete action and the quantification of the expected result.

b): The absence of differentiation [e.g. according to homogeneous agricultural features (arable, permanent crops, animal husbandry etc.)] risks compensating also farmers for whom (parts of) the obligations are normal practice or to base the calculations on figures which are not representative for a specific region. This risk becomes in particular evident if an aid is calculated as (e.g. nationwide) average without taking into account different agronomic and cost structures in the regions.

⁴ Also the controller must have clear information about the commitment.

3. THE NEW BASELINE FOR AEM

For the current programming period the baseline (beyond which AEM commitments have to go) switches from good farming practices, which in some case entailed non-obligatory recommendations, to a new set of obligatory standards⁵:

- (a) **Based on EU-legislation:** The relevant **Cross Compliance** provisions according to Regulation (EC) No 1782/2003 comprising
 - (1) statutory management requirements ("SMRs", EU-legislation, as set out in annex III of that regulation),
 - (2) minimum requirements to maintain land in good agricultural and environmental conditions ("GAECs", issues related basically to the protection of soil and the maintenance of habitats and landscape features, as set out in annex IV), and
 - (3) the maintenance of land under permanent pasture at MS level [art. 5(2)].

- (b) **National legislation** identified in the programme: These concern
 - (1) minimum requirements for fertiliser use;
 - (2) minimum requirements for plant protection use;
 - (3) other relevant mandatory requirements established by national legislation.

In addition to the baseline, MS may envisage further elements/issues (which do not constitute national legislation/mandatory requirements) as entry requirements (eligibility conditions).

The elements under a) are also the baseline for most axis 2-measures other than agri-environment⁶.

A. Baseline in the programmes

Annex II to the Implementing Rules establishes three main requirements⁷:

- (a) General 5.2.: Confirmation that Cross Compliance provisions relevant for Rural Development are identical to those pursuant to Reg. (EC) No 1782/2003.

- (b) For agri-environmental measures - 5.3.2.1: Description of *"the minimum requirements for fertilizer and plant protection products use and other relevant mandatory requirements;"* Continued with the following clarification: *"minimum requirements for fertilisers must include, inter alia, the Codes of Good Practice introduced under Directive 91/676/EEC"*

⁵ As set out in Regulation (EC) No 1698/2005, Article 39 (3)

⁶ See article 51 of Reg.(EC) No 1698/2005. By derogation, for new MS applying SAPS only the GAEC-requirements are applicable.

⁷ See full text in annex 2

for farms outside Nitrate Vulnerable Zones, and requirements concerning phosphorus pollution; minimum requirements for plant protection products must include, inter alia, requirements to have a licence to use the products and meet training obligations, requirements on safe storage, the checking of application machinery and rules on pesticide use close to water and other sensitive sites, as established in national legislation".

In addition, Member States select "other relevant mandatory requirements" which should apply.

- (c) AEM specific 5.3.2.1.4: Description of the baseline requirements relevant for the individual commitments.

The information provided under c) constitutes a core element for the justification of the agri-environmental commitments.

When examining the programmes the Commission will assess the information provided under points (b) and (c); if the baseline requirements described under (b) and (c) are not considered to be appropriate then the MS concerned will be invited to improve them (including Cross-Compliance requirements, if relevant) in order to facilitate the approval of the respective RDP. The Commission will assess the necessity and feasibility of a baseline standard for each agri-environmental commitment proposed.

The respect of all the above mentioned standards, under a), b) and c), which are relevant to the commitment of the beneficiary is considered the baseline⁸ applicable in **all** MS (including those applying SAPS⁹).

Annex 4 provides further details on the control of the AEM commitments (Art. 39(3) of Reg. n° 1698/2005 and its relation with the control of cross-compliance requirements (Art. 51 of Reg. n° 1698/2005).

4. STANDARD ASSUMPTIONS AND CALCULATIONS

The general calculation principle is a comparison between a baseline practice and a **voluntary**¹⁰ agri-environmental practice. The difference (cost incurred, income foregone) is compensated under AEM.

Typically¹¹ AEM are **based on standard assumptions** for the baseline practice¹², which are quantified in economic terms.

⁸ Art 39(2): Agri-environment payments shall be granted to farmers who make on a voluntary basis agri-environmental commitments. Art 39(3): Agri-environment payments cover only those commitments going beyond the relevant mandatory standards established pursuant to Articles 4 and 5 of and Annexes III and IV to Regulation (EC) No 1782/2003 as well as minimum requirements for fertilisers and plant protection product use and other relevant mandatory requirements established by national legislation and identified in the programme.

⁹ See also annex 5 with explanations about the relation between control of Cross compliance requirements and agri-environment measures in new MS applying SAPS.

¹⁰ Mandatory obligations are not eligible under AEM!

The **assumptions for the baseline practice** (above which the AEM commitment should go) must, firstly, reflect the baseline (see under pt. 3) and should be based on realistic elements. In addition, agricultural conditions and production methods should be reflected as far as possible in a differentiated way according to the site (there are obvious differences e.g. between mountain areas and plains).

Calculation elements

Article 53 (2) of the Implementing Regulation¹³ sets out the criteria MS shall consider when calculating aid levels:

(a) *they contain only elements that are **verifiable**;*

See under details under point 5

(b) *they are based on figures established by appropriate **expertise**;*

Agronomic expertise can be provided e.g. by scientific institutes or experts and is mainly based on empirical values.

(c) *they indicate clearly the source of the figures;*

Sources can be i.a. studies, data collections established by associations of experts, official or other price statistics.

(d) *they are differentiated to take into account regional or local site conditions and actual land use as appropriate;*

Criteria can be e.g. soil quality, yield indices, climatic conditions, accessibility or average plot size. See also above on assumptions for baseline practices.

(e) *for measures pursuant to Articles 31, 37 to 40 and 43 to 47 of Regulation (EC) No 1698/2005, they do not contain elements linked to fixed investment costs.*

This entails that calculation should contain normally only the variable costs. Investments in machinery or installations needed for the specific commitment normally fall under non-productive investments with the corresponding support possibilities according to Article 41 of Reg. (EC) No 1698/2005.

Variable costs include costs associated to the use of production means (the use of which varies depending on the volume of production), such as the inputs purchased (fertilizer, pesticides) and labour; they must be realistic as well as relevant for and specific to the practice/commitment.

¹¹ There might be measures where this concept of standard assumption for fixing the aid level is not suitable, e.g. specific landscape preservation works or when applying tendering procedures – see below.

¹² See Regulation (EC) No 1698/2005, Article 39 (3)

¹³ See annex 2

Yields and sale prices should take into account the average of at least three years. The prices are those typically paid to the farmer. Premium prices (e.g. for organic produce) should be taken into account.

Opportunity costs could be accepted in certain cases as part of the aid calculations, but in this case Member States must provide evidence for a real risk of conversion to a less environmental friendly land use in the region concerned.

Transaction costs

These (up to 20 % of income foregone/cost incurred) are "related to letting the transaction take place and not directly attributable to the implementation cost of the commitment it relates to" [Regulation (EC) No 1974/2006, art.27 (10)] and **borne by the beneficiary (not public transaction cost)**. Examples: Contracting, information collection, and other intangible cost.

Typically they occur at the beginning of a commitment.

Objective evidence (mainly descriptive) for the cost elements and their financial volume is necessary since it is not about transaction cost as perceived but as effectively borne by the individual farmer. Transaction costs incurred at the beginning of the commitment may be spread over the duration of the contract.

Other possible options to fix the aid levels

Basically two cases exist where standard assumption and calculations can play a less significant role:

- (1) Specific measures where the commitments are **fixed on a quite individual level**: These may be preservation measures tailored for a specific biotope.
- (2) **Calls for tender** with two criteria for selection or a combination of both:
 - Economic: The cheapest offers for predefined commitments receive a contract. The offers can be assessed against standard assumptions.
 - Environmental: An aid level based on standard assumptions is predefined and the offers providing the biggest environmental benefit get the contract.

Calls for tender can result in the best environmental value for money provided there is real competition between the bidders and the environmental objectives to be achieved are not attached to a specific plot (e.g. a given biotope).

For calculations in the programmes see annex 6.

5. LIST OF COMMITMENTS DISTINGUISHED ACCORDING TO VERIFIABILITY

Introductory remarks

Before it comes to verification via control, there are several ways to reduce the risk of non-compliance with the obligations contained in the AEM. The beneficiaries' performance can be improved by training, provision of advisory services, and a positive

promotion by the MS administration. It is also recommended to ensure a proper follow-up of the measures (from the moment of applications) by competent agronomists.

The verifiability of AEM depends in practice on the individual control arrangements established in the MS. Factors such as the qualification of control staff, the quality and relevance of information available, the timing for specific controls on the spot, technical equipment available or the supervision system influence the quality of the control¹⁴. The Regulations set out in general terms how verifiability should be ensured. Firstly, for each commitment, Member States must set out how the respect of AEM commitments can be assessed with reasonable assurance (implementing Regulation Article 48). They must then set out how this will be controlled in practice (control Regulation Article 5).

The experience of the Commission is that a combination of control procedures will generally be needed in order to obtain reasonable assurance about the respect of AEM commitments. The following general methods of control, all of which have limitations can be considered in combinations:

- **Verification of documents** – beneficiaries may be required to keep records of agricultural operations, and will generally be required to keep invoices and accounting records. Combined with stock records these documents can be an important source of evidence. However, the level of evidence may be limited, both in terms of veracity and precision. This will particularly be the case where AEM commitments relate only to certain parcels on a holding. The nature of the beneficiary may also limit the evidence available and its reliability – for example businesses are required to meet accounting standards and are subject to national controls for tax purposes, whereas small farmers may not be. Independent evidence from suppliers (invoices for example) is also better evidence than parcel registers completed by the beneficiary himself;
- **Remote control pictures**
- **On-the-spot check** – for some commitments an on-the-spot visit may provide sufficient evidence by itself of their respect, for example a ban on spreading manure on snow. However, this assurance may be limited to the day of the visit and not give assurance about activities before and after the visit. For other commitments an on-the-spot visit may give some assurance, but will be limited in precision – for example it may be clear that certain crops subject to a nitrate reduction are less developed than conventional crops, but the level of the reduction will be difficult to assess. The assurance that can be gained will depend also on the timing of the visit and the experience and/or training of the inspector.
- **Analytical measures** – such as soil or water samples – such measures will generally give a high degree of assurance, although there may be limitations in terms of precision and cause and effect, as well as their cost. To be effective samples will need to be taken over time – for example in the first and last years of a commitment. There is, however, a risk of cross contamination from other "conventional" parcels.

For each commitment and measure, Member States should consider which source of evidence, or which sources in combination, can be used to obtain reasonable assurance

¹⁴ The European Court of Auditors had addressed i.a. these issues in its Special Report.

about their respect. They should then define how they will set about obtaining the evidence necessary and then define realistic control methods, including instructions and checklists that allow this evidence to be gathered.

Measures that can clearly not be verified shall not be approved by the Commission. Where the Commission services have serious doubts they may ask for additional information from the MS to assist in their considerations.

However, the MS has the basic responsibility for ensuring that there is reasonable assurance that commitments are respected. The Commission services cannot be expected to take a position on the verifiability on every one of the hundreds of commitments that are proposed by MS, especially as the verifiability depends on local and national legal systems, practises and traditions.

AEM entailing a higher difficulty of control should be included in the programme only if the MS takes the commitment in the programme to put in place specific control provisions.

The list below covers a broad range of (1) AEM commitments, (2) examples for control possibilities and (3) gives some ideas as to how the MS can obtain reasonable assurance about the respect of a commitment. It cannot, however, be considered as exhaustive, and may not be appropriate to every case. It is intended as a general guide only.

Commitment	Control possibilities	Remarks on verifiability
Areas contracted	a) Cross checks with the IACS database b) Visual inspection with measurement (only during 5% on-the-spot checks "OtSC")	These two methods in combination are accepted as methods giving reasonable assurance as to the area declared.
Minimum commitments regarding the use of fertilizers/pesticides which have to be applied in kind, quantity and time according to the specific needs of the crops	a) Parcel diary (best plot-wise) + checks on stored substances + checks on invoices /bookkeeping b) Visual checks with the aid of a checklist c) Chemical analysis	None of these methods is likely to provide sufficient evidence alone, but they can be effective as a combination: Bookkeeping checks can help in obtaining evidence, subject to the limitations set out above. Visual checks can be very useful, but only if carried out at the right time and by controllers with sufficient expertise. Analytical measures would generally reveal the factual nutrient balances on specific plots and provide good evidence, but the timing of sampling is important and cannot cover all the area.
Reduction of mineral or organic fertilisation by 1/3 or more	a) Parcel diary (best plot-wise) + checks on stored substances + checks on invoices /bookkeeping b) Visual inspection of the state of vegetation at a certain growth stage (only OtSC) c) Soil, plants or water analyses d) Cross-checks in combination with other measures, e.g. on livestock density limits	None of these control methods can be conclusive alone, but in combination will be able to produce reasonable assurance: Checks on documents to be held by the beneficiary have the limitation that they may not be correctly filled-in. Visual inspection must be carried out at the right time, and requires experience to compare with conventional crops. Soil analysis must be carried out at different times over a period of several years. Cross-checks with animal databases are not always

	density limits	<p>feasible and limited to the registered livestock (i.e. usually only bovines)</p> <p>Each source of evidence will be of greatest value where there is a ban on nitrate use on the whole holding and of least value where there is a reduction of a certain percentage limited to certain parcels. This must be taken into account when considering the control methods to use.</p>
Reduction of mineral or organic fertilisation by less than 1/3	Those as above under a) – d)	<p>Albeit all possible control combinations, such a measure seems almost impossible to verify at reasonable assurance, in particular if the reduction would concern only certain plots of the holding. (Even experienced) visual inspection and soil analysis do not provide reliable results.</p> <p>This type of commitments could be accepted only in exceptional cases if the Member State provides for and demonstrates reasonable assurance of its verifiability</p>
Ban on fertilisation (manure spreading) during winter	<p>a) "Parcel diary" (best plot-wise) + checks on stored substances + checks on invoices /bookkeeping</p> <p>b) Visual inspection during the relevant period (only OtSC)</p>	<p>Documentary checks suffer from the limitations set out above.</p> <p>Visual inspection will provide conclusive evidence for the day of the visit, and for the period before the visit, but not for the period after the visit. A good planning of controls is therefore important. In addition, controllers and other staff are regularly in the countryside and can identify non-compliance.</p>
Ban on growth regulators or pesticides	<p>a) Parcel diary" (best plot-wise) + checks on stored substances + checks on invoices /bookkeeping</p> <p>b) Visual inspection during the</p>	<p>Documentary checks suffer from the limitations set out above.</p> <p>The other two methods (b and c) can both be effective, under</p>

	<p>relevant period (only OtSC)</p> <p>c) Plant or soil analysis</p>	<p>certain conditions:</p> <p>Visual inspection must be carried out at the appropriate time, and requires experience to compare with conventional crops.</p> <p>Plant or soil analysis may not be effective for substances with fast degradability.</p>
No tillage (eg mulching)	<p>a) Records of farmer</p> <p>b) Visual inspection (only OtSC)</p>	<p>a) Difficult to gather sufficient evidence from this method alone, although it can complement other sources of evidence</p> <p>b) Must be at the time of preparing the seed bed</p>
Other use of specific machinery (e.g. cutter bar)	<p>a) Records of farmer</p> <p>b) Visual inspection (only OtSC)</p>	<p>a) Difficult to gather sufficient evidence from this method alone, although it can complement other sources of evidence</p> <p>b) Must be at the time of use</p>
Certain crop rotation	<p>a) Records of farmer</p> <p>b) Visual inspection (only OtSC)</p>	<p>a) Difficult to gather sufficient evidence from this method alone, although it can complement other sources of evidence</p> <p>b) Needs to be spread over rotation period</p>
Maintenance of extensive grassland	<p>a) cross checks to IACS databases</p> <p>b) Visual inspection (only OtSC)</p>	<p>a) Appropriate</p> <p>b) Appropriate</p>
Conversion of arable land to grassland	<p>a) cross checks to IACS databases</p> <p>b) Visual inspection (only OtSC)</p>	<p>a) Appropriate</p> <p>b) Appropriate</p>
Cutting date of meadows	<p>a) Records of farmer</p> <p>b) Visual inspection (only OtSC)</p>	<p>a) Difficult to gather sufficient evidence from this method alone, although it can complement other sources of evidence</p> <p>b) Only if carried out at the</p>

	OtSC)	cutting date (or just earlier)
Mowing on steep slopes	a) Records of farmer b) Visual inspection (only OtSC)	a) Difficult to gather sufficient evidence from this method alone, although it can complement other sources of evidence b) If carried out at the appropriate time
Green cover in winter	a) Records of farmer b) Visual inspection (only OtSC)	a) Difficult to gather sufficient evidence from this method alone, although it can complement other sources of evidence b) If in winter
Maximum LU/ha	a) Cross check to IACS database b) Visual inspection (only OtSC)	a) Appropriate for bovines, if registers are reliable. No assurance for other animals. b) Appropriate, but may mislead if max. LU/ha is fixed for specific area, not entire holding
Input/output record keeping	a) Check of existence and completeness of books (only OtSC)	a) But content of records (e.g. compliance with laws) probably not regularly checked
Additional check-up of machinery (e.g. sprayer for pesticides)	a) Invoices/seals	a) Appropriate
Uncultivated buffer strips along water courses	a) cross check to IACS databases b) Visual inspection plus measurement (only OtSC)	a) Appropriate b) Appropriate
Preservation of landscape elements	a) Maps (not always available) b) Visual inspection (during vegetation period; only OtSC)	a), b): Maps and GIS may support inspection
Rearing breeds in danger of being lost to farming	a) Visual inspection (only OtSC) b) Checks on records	a) Appropriate b) Appropriate, if recording system for the specific breeds has been established

Growing plant genetic resources	<p>a) Checking seed invoices</p> <p>b) Visual inspection during growth period (only OtSC)</p>	<p>a) Difficult to gather sufficient evidence from this method alone, although it can complement other sources of evidence</p> <p>b) Appropriate, but species might sometimes be difficult to identify</p>
Organic farming on part of holding	<p>a) Evidence from other extensification-related checks, e.g. visual inspection on the absence of forbidden inputs on the holding (only OtSC)</p> <p>b) soil samples</p> <p>c) Certificates issued by accredited inspection bodies</p>	<p>a) Inputs banned under organic rules may be used on the non-contracted area and be found on the holding</p> <p>b) Possible contamination from non organic areas, costs</p> <p>c) Appropriate, if related to the exact part under organic farming commitment</p>
Organic Farming	a) Control by accredited inspection bodies	a) Appropriate, with supervision.
Water-saving irrigation/drainage...	<p>a) Visual check whether system has been installed (only OtSC)</p> <p>b) Check of water consumption with counters</p>	<p>a) Appropriate</p> <p>b) Appropriate, if water provided for free, no possibility to check invoices</p>
Water-saving without obligation of counters	No appropriate control tool	Savings cannot be assessed. Measure cannot be approved.
Erosion prevention (underseed, green cover during winter...)	a) Visual checks (only OtSC)	a) Appropriate, if checked at the appropriate moment

Annex 1

Extract from the Special Report No 3/2005 concerning rural development: the verification of agri-environment expenditure

Executive Summary:

"III. The audit found that the Commission:

— only partially ensured verifiability before approving RDPs ...

IV. The audit's findings in the Member States concern the timing of the on-the-spot checks and the verifiability of certain key sub-measures:

- sub-measures are checked outside of the period of undertaking or at inopportune moments...,*
- for common sub-measures, such as reduction or limitation of inputs, checks are largely dependent on the self-declaration of beneficiaries which are difficult to corroborate...,*
- reliance is placed on inconclusive visual checks...,*
- detailed instructions are not always set out for inspectors, who often rely on their own knowledge or experience to form an opinion. There is no clear baseline with which to compare performance....*

V. The Court's audit concludes that the verification of the agri-environment measure poses particular problems and is far more resource-intensive than verification of the first pillar measure and indeed than other rural development measures. Such verification can rarely lead to even reasonable assurance at a reasonable cost¹⁵

VI. The Commission, Council and Parliament should consider, for the new programming period commencing in 2007, how to take into account the principle that if a measure cannot be adequately checked, it should not be the subject of public payment...."

Recommendations (point 119):

"119. The Commission concluded in its evaluation that, ' if a measure cannot be adequately checked, it should not be the subject of public payment' (see paragraph 31). The Court' s audit shows that this is respected to a limited extent. The Commission, Council and Parliament should consider how this principle should be put into practice in respect of proposals for AE expenditure in the 2007 to 2013 planning period, taking into account, on the one hand, the risk of non-compliance and, on the other hand, the potential benefits of this type of expenditure."

¹⁵ On this point, the Commission replied that the additional cost of controlling agri-environment measures was justified in view of the key role the policy played in environmental integration. It argued that a reasonable level of assurance was achievable, even if it had not always been achieved in the past. The Court accepted these points.

Annex 2

Provisions in the implementing Regulation regarding verifiability

Recital 23:

"Where commitments are based on input limitations, support should be granted only if such limitations can be assessed in a way providing reasonable assurance about the respect of the commitment."

Corresponding Article 27 (3):

"Commitments to limit the use of fertilisers, plant protection products or other inputs shall be accepted only if such limitations can be assessed in a way that provides reasonable assurance about compliance with those commitments."

Recital 38:

"Member States should take all the necessary steps and put in place adequate provisions to ensure that all rural development measures are verifiable and controllable. Member States should ensure that their control arrangements give reasonable assurance that eligibility criteria and other commitments are respected. In particular, for payment calculations for certain measures, Member States should substantiate the adequacy and accuracy of the calculations through appropriate expertise."

Corresponding Article 48:

- "1. For the purpose of Article 74(1) of Regulation (EC) No 1698/2005 Member States shall ensure that all the rural development measures they intend to implement are verifiable and controllable. To this end, Member States shall define control arrangements that give them reasonable assurance that eligibility criteria and other commitments are respected.*
- 2. In order to substantiate and confirm the adequacy and accuracy of the calculations of payments under Articles 31, 38, 39, 40 and 43 to 47 of Regulation (EC) No 1698/2005, Member States shall ensure that appropriate expertise is provided by bodies or services functionally independent from those responsible for those calculations. Provision of such expertise shall be evidenced in the rural development programme."*

In this context also Article 53 (2):

- 2. Member States shall ensure that the calculations and the corresponding support referred to in paragraph 1:*
 - (a) contain only elements that are verifiable;*
 - (b) are based on figures established by appropriate expertise;*
 - (c) indicate clearly the source of the figures;*
 - (d) are differentiated to take into account regional or local site conditions and actual land use as appropriate;*
 - (e) in the case of measures pursuant to Articles 31, 37 to 40 and 43 to 47 of Regulation (EC) No 1698/2005, do not contain elements linked to fixed investment costs.*

Annex II

5.2 Requirements concerning all or several measures

... - Confirmation that the cross-compliance requirements, which affect the implementation of several rural development measures, are identical to those provided for by Regulation (EC) No 1782/2003.

...-Evidence as referred to in Article 48(2) of this Regulation allowing the Commission to check consistency and plausibility of the calculations. ...

5.3.2.1 Measures targeting the sustainable use of agricultural land

Common to certain measures

Detailed description of the national implementation:

- *for the specific purposes of Article 39(3) of Regulation (EC) No 1698/2005 the minimum requirements for fertilizer and plant protection products use and other relevant mandatory requirements; minimum requirements for fertilisers must include, inter alia, the Codes of Good Practice introduced under Directive 91/676/EEC for farms outside Nitrate Vulnerable Zones, and requirements concerning phosphorus pollution; minimum requirements for plant protection products must include, inter alia, requirements to have a licence to use the products and meet training obligations, requirements on safe storage, the checking of application machinery and rules on pesticide use close to water and other sensitive sites, as established in national legislation;*
- *for the specific purposes of Article 40(2) of Regulation (EC) No 1698/2005 other relevant mandatory requirements established by national legislation.*

5.3.2.1.4 Agri-environment payments

- *description and justification of the different types of commitments, based on their expected environmental impact in relation to environmental needs and priorities,*
- *the description of the methodology and of the agronomic assumptions and parameters (including the description of the baseline requirements as stated in Article 39(3) of Regulation (EC) No 1698/2005 which are relevant for each particular type of commitment) used as reference point for the calculations justifying: (a) additional costs, (b) income foregone resulting from the commitment made and (c) level of the transaction costs; where relevant, this methodology should take into account aid granted under Regulation (EC) No 1782/2003; where appropriate, the conversion method used for other units in accordance with Article 27(9) of this Regulation,*
- *amounts of support,*
- *the measures, objectives and criteria applied in case of the selection of beneficiaries by calls for tender in accordance with the second subparagraph of Article 39(4) of Regulation (EC) No 1698/2005,*
- *the list of local breeds in danger of being lost to farming and the number of breeding females concerned. That number must be certified by a duly recognised technical body – or breeder's organisation/association – which must register and keep up-to-date the herd or flock book for the breed. Evidence that the body concerned possesses the necessary skills and knowledge to identify animals of the breeds in danger,*
- *for plant genetic resources under threat of genetic erosion, evidence of genetic erosion based upon scientific results and indicators for the occurrence of landraces/primitive (local) varieties, their population diversity and the prevailing agricultural practices at local level,*
- *for conservation of genetic resources in agriculture (Article 39(5) of Regulation (EC) No 1698/2005): types of beneficiaries, of operations and details on eligible costs.*

Annex 3

Provisions in the implementing rules on control

Article 18

Reductions and exclusions in the case of non-respect of eligibility criteria

- 1 *In case any of the commitments attached to the granting of the aid, other than those related to the size of area or number of animals declared, are not respected, the aid claimed shall be reduced or refused.*
- 2 *The Member State shall determine the amount of the reduction of the aid, in particular, on the basis of the severity, extent and permanence of the non-respect found.*
The severity of a non-respect shall depend, in particular, on the importance of the consequences of the non-respect taking into account the objectives pursued by the criteria which have not been respected.
The extent of a non-respect shall depend, in particular, on the effect of the non-respect on the operation as a whole.
Whether a non-compliance is of permanence shall depend, in particular, on the length of time for which the effect lasts or the potential for terminating those effects by reasonable means.
3. *In case the non-respect results from irregularities committed intentionally, the beneficiary shall be excluded from the measure in question for the EAFRD year concerned as well as for the following EAFRD year.*
4. *The reductions and exclusions provided for in this Article shall apply without prejudice to any additional penalties provided for under national rules.*

Annex 4

Control and sanctioning of the AEM commitments [Art.39 (3) of R.1698/2005] and relation with the control and sanctioning of cross-compliance requirements (Art.51 of R.1698/2005)

The respect of all baseline standards relevant to the commitment of the beneficiary is applicable in **all** MS (including those applying SAPS). Example for the meaning of "**relevant**": A measure "reduction of inputs" would include a maximum limit of N-application from manure application (170 kg/ha according to the Nitrates Directive in Nitrate Vulnerable Zones), but a crop rotation standard would be irrelevant.

As concerns commitments going beyond the baseline, Article 12 of the Implementing Regulation on Control foresees a minimum control sample of 5%/year and Article 18 of this Regulation provides for reduction or exclusion from the aid in case of breach of the commitment concerned.

Cross compliance

The consequences of non-respect of eligibility conditions have to be **distinguished from** those entailed in the provisions on reductions or exclusions from payments for non-respect of **cross compliance** as set out in Article 51 of Regulation (EC) No 1698/2005 and in Section II of the Implementing Regulation on Control.

Controls as regards Cross Compliance refer to the whole farm, not only to the area under AEM contract. Here, the minimum control sample is 1% year. The scope of the control is more limited: the **other relevant mandatory requirements established by national legislation** as mentioned above under point 3.A (b) (3) of this document are not covered.

Art. 51 (1), first subparagraph, of R. 1698/05 on reduction or exclusion from payments for most axis 2-measures¹⁶ stipulates as follows:

"1. Where beneficiaries receiving payments under Article 36(a)(i) to (v) and Article 36(b)(i), (iv) and (v) do not respect on the whole holding, as a result of an action or omission directly attributable to them, the mandatory requirements provided for in Articles 4 and 5 of and in Annexes III and IV to Regulation (EC) No 1782/2003, the total amount of their payments to be granted in the calendar year in which the non-compliance occurs shall be reduced or cancelled."

In practical terms this provision implies for most axis 2-measures:

- The control of the respect of the entire set of the Cross Compliance requirements on the whole holding (exactly as for the 1st pillar payments).
- In case of detected non-respect, a reduction or exclusion from **all 2nd pillar payments** the beneficiary receives under the following 8 measures:
 - Natural handicap payments to farmers in mountain areas (Article 36(a)(i) of Council Regulation (EC) N° 1698/2005);
 - Payments to farmers in areas with handicaps, other than mountain areas (Article 36(a)(ii));
 - Natura 2000 payments on agricultural land and payments linked to Directive 2000/60/EC-the Water Framework Directive-(Article 36(a)(iii));
 - Agri-environment payments (Article 36(a)(iv));
 - Animal welfare payments (Article 36(a)(v));
 - First afforestation of agricultural land (Article 36(b)(i));
 - Natura 2000 payments on forestry land (Article 36(b)(iv));
 - Forest-environment payments (Article 36(b)(v)).
- The controls of cross-compliance for the 2nd pillar are laid down on the same basis as for the 1st pillar. In this respect if selected for cross-compliance purposes, the beneficiary under the 2nd pillar shall be checked on-the-spot for all requirements and standards of cross-compliance which is possible to check at the time of the visit in the conditions laid down in Article 47 of Commission Regulation (EC) N° 796/2003, whatever rural development payment this beneficiary is granted. Indeed, cross-

¹⁶ Not all, since e.g. for some axis 2-forestry measures CC is irrelevant. These measures are:

Support for non-productive investments (in agriculture and forestry)
First afforestation (, non-agricultural land)
Restoring forestry potential/prevention measures

compliance is a whole-farm approach. This is also in line with the principle also implemented under pillar I.

Annex 5

The relation between control of Cross compliance requirements and agri-environment measures (AEM) with a particular view to new MS applying SAPS

1. General Principle for all MS: Respect of AEM commitments (Art.39(3) of R.1698/2005)

- To define agri-environmental commitments, Member States must go beyond the baseline, which is relevant mandatory standards including all relevant Annex III and IV standards (independent of whether they are subject to CC or not).

2. The situation in the new member states applying SAPS (all new Member States except Malta and Slovenia)

- There is derogation for these new MS to apply full CC and hence control the respect of only Annex IV requirements Good Agricultural and Environmental Conditions (GAECs –) and not the Annex III Requirements.
- This derogation applies to SAPS payments and most RD/axis 2-measures including AEM until the end of 2008.
- However, annex III requirements still have to be nationally implemented and controlled (but not through the CC mechanism).
- The agri-environment baseline remains the same for all MS (there is no derogation for Annex III requirements here): All standards as relevant for the commitment as Member States still have to respect national legislation contained in Annex III.

3. Practical example for a new MS applying SAPS

- AEM commitment: ban pesticides in maize. The farmer complies with it.
- The farmer does not respect the Nitrates Directive (which is part of annex III).
- CC-controls on the whole holding will be done only for GAECs.
- For the AEM-commitment only pesticide-related issues will be controlled.
- Thus non-respect of the Nitrates Directive is not controlled in the context of CC. Therefore, there is no reduction to be made under CC. However, the related infringement is subject to penalties defined in national legislation with regard to the Nitrate Directive itself (and not in the context of CC).

Annex 6

Calculations in the programmes

The Implementing Rules stipulate in its Annex II¹⁷ that i.a. the **methodology** to calculate the aid levels shall be described. This methodology contains general elements common to several measures and measure-specific elements. The individual calculation for each (sub-)measure is not required (nevertheless, the result – i.e. the individual aid levels – are a necessary information).

The general calculation principle is a comparison between a baseline practice and a voluntary agri-environmental practice. The difference (cost incurred, income foregone) is compensated under AEM.

The following information will be at least necessary for both the AEM-commitment and the (baseline) reference production method (in any case the data source should be indicated):

1. General

Cost (including transaction cost)

Cost components taken into account (e.g. labour)

Their quality specifications and value/unit (e.g. X €/hour seasonal worker)

To which extent are they considered?

Factors to differentiate these figures (e.g. according to homogeneous agricultural regions)

Reference period (e.g. average last three years)

Source of the figures (e.g. official statistics, experts' associations ...)

Income:

Income elements taken into account (e.g. crop)

Their quality specifications and value/unit (e.g. X €/to wheat with 14 % water)

To which extent are they considered? (e.g.: in full)

Factors to differentiate these figures (e.g.: according to homogeneous agricultural regions)

Reference period (e.g. average of the last three years)

Source of the figures (e.g. official statistics; experts' associations ...)

2. Measure-specific

Which cost/income elements change as a consequence of the agri-environmental commitment?

Aid levels

¹⁷ Point 5.3.2.1.4, 2nd indent; similar requirements are established for all axis 2-measures not related to investments.

3. Particular cases:

Individual aid levels: Here the criteria for calculating the individual aid are necessary.

Calls for tenders: Here the criteria for establishing the tender specifications are necessary. If economic: the environmental requirements; if environmental: the aid level and the minimum environmental requirements.

Where available, there is also the possibility to refer to data collections established by associations of experts or universities with figures for standard production methods. These can be e.g. variable margin calculations or standard cost for certain works (e.g. ploughing 1 hectare sandy soil, which includes variable machinery cost, and labour).

In the RDPs the MS should provide evidence for who made the cross check, how its necessary expertise and functional independence is ensured, and that it has confirmed the calculations.