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Is cross compliance an effective policy?

together with the Commission's replies

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INDEX OF TERMS AND ABBREVIATIONS

CAP: Common Agricultural Policy

Direct payments: Payments directly granted to farmers under an income support scheme listed in Annex I of Council Regulation (EC) No 1782/2003

EU: European Union

GAEC: Good Agricultural and Environmental Condition. This refers to sets of standards defined by the Member States for soil preservation and minimum land maintenance (on the basis of the framework defined in Annex IV to Council Regulation (EC) No 1782/2003), and obligations in relation to permanent pasture

Legal framework:

The Council Regulation: Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (OJ L 270, 21.10.2003, p. 1)

The Commission Regulation: Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross compliance, modulation and the integrated administration and control system provided for in Council Regulation (EC) No 1782/2003 (OJ L 141, 30.4.2004, p. 18)

Legislation adopted by the Member States within the provisions of the above

Permanent pasture: In the context of cross compliance, permanent pasture is defined as land used to grow grasses or other herbaceous forage which has not been included in the crop rotation of a farm for five years or longer. It is one element of GAEC

SMART: Specific – Measurable – Achievable – Relevant - Timed

SMR: Statutory Management Requirements. These are set out in selected articles pertaining to 19 Directives and Regulations (listed in Annex III to Council Regulation (EC) No 1782/2003) in the areas of environment; public health, animal and plant health; and animal welfare.

EXECUTIVE SUMMARY

I. Cross compliance, which is a vital element of the CAP, applies since 2005 and links most CAP payments to the respect of certain rules in the areas of environment, health and animal welfare.

II. Based on the results of an audit on the effectiveness of cross compliance, the Court concluded that:

- the objectives and the scope of cross compliance are not well defined, making it unclear what cross compliance is designed to achieve;
- the legal framework poses considerable difficulties, notably because it is too complex;
- cross compliance and rural development are not well adapted to one another;
- Member States did not take their responsibility to implement effective control and sanction systems. As a consequence the control system provides insufficient assurance on farmer compliance;
- data provided by the Member States on checks and infringements is not reliable and the Commission's performance monitoring was found wanting.

III. In the short run cross compliance can be improved by implementing the following recommendations :

the Community legislator may wish to consider:

- whether such elements of the rural development policy as the approval of standards by the Commission and the obligation of Member States to lay down verifiable standards should also apply to cross compliance;
- revising the principles underlying the sanction system to make reductions in payments proportional to or dependent on the seriousness of the breach of cross compliance obligations by the farmer sanctioned;

the Commission should:

- develop and detail the objectives set out in the Council regulation in order to formulate them in a “SMART” manner and organise them in a logical hierarchy;
- harmonise cross compliance and rural development policies, in particular by reinstating the rural development provisions which have been weakened following the introduction of cross compliance;
- draw a clear delineation between cross compliance and agri-environment with a view to ensuring that rural development benefits only compensate obligations going beyond cross compliance requirements and standards;
- amend the control system with a view to controlling at least 1 % of the farms applying each obligation;
- implement the key elements of a sound performance monitoring system, notably by defining relevant indicators and baseline levels;
- carry out closer verification and analysis of the data reported by Member States and be more demanding on the quality of such data;

the Member States should:

- define a complete set of verifiable requirements and standards, to be applied at farm level;
- implement effective control and sanction systems which provide sufficient assurance on farmers’ compliance and respect all legal provisions;
- submit complete and reliable data in a timely manner.

IV. If cross compliance is to achieve its potential positive effects in the long run, the policy must be improved considerably, in particular by implementing the following recommendations:

the Commission should:

- simplify the legal framework, in particular by organising it around the principal elements of farming activity where improvements are sought, by specifying the results that are expected and, by prioritizing requirements and standards;
- base the results to be achieved on needs assessments and specific studies;
- assess the quality of the requirements and standards defined by the Member States;

the Member States should:

- be required to lay down the precise obligations deriving from the legislation, taking account of the specific characteristics of the areas and farming practises concerned where appropriate.

INTRODUCTION

Cross compliance and the Common Agricultural Policy

1. Until 2005, CAP payments were linked to agricultural production, which was seen as distorting markets and having negative consequences for the landscape and for the environment, such as water pollution due to increased use of pesticides and fertilisers and impairment of biodiversity. The 2003 CAP reform, which took effect in January 2005, aims to address these issues principally through severing the link between CAP payments and agricultural production (“decoupling”).
2. The Council¹ introduced cross compliance as an element of the CAP. Cross compliance links most CAP payments to compliance with rules relating to the environment, public, animal and plant health, and animal welfare and to maintain agricultural land (especially when it is no longer used for production purposes) in good agricultural and environmental condition. These rules are set out in statutory management requirements (SMRs) and standards of good agricultural and environmental condition (GAEC). If a farmer does not respect the requirements and standards his CAP payments may be reduced or, in extreme cases, cancelled. In addition, apart from cross compliance, he may also be sanctioned under the Directives or Regulations concerned.
3. In a previous report², the Court recognised the importance of the principle of linking CAP payments to compliance with rules relating to the environment, public, animal and plant health, and animal welfare.
4. Standards for GAEC apply in all Member States from 1 January 2005³, while the introduction of SMRs into cross compliance, i.e the possibility to

¹ See Council Regulation (EC) No 1782/2003 (glossary refers).

² Special Report No 14/2000 on “Greening the CAP”(OJ C 353, 8.12.2000).

³ They applied in Bulgaria and Romania when they became Member States in January 2007.

reduce CAP payments, is gradually being phased in. Member States applying the single payment scheme (EU 15 plus Malta and Slovenia) are required to implement SMRs between 2005 and 2007, depending on the policy area considered (environment, health and animal welfare). The timetable for the implementation of SMRs in the other Member States is spread out between 2009 and 2011 for the EU 10 (minus Malta and Slovenia) and between 2012 and 2014 for Bulgaria and Romania.

5. **Tables 1** and **2** provide an overview of the provisions to be respected for cross compliance.

Table 1 – Overview of the SMRs to be respected for cross compliance

Type of provision	Reference to the Council Regulation	Applicable from	Policy area	Selected articles from the following Community legislation (see Annex III of the Council Regulation for further details)
SMRs	Article 4 Annex III	2005	Environment	Birds Directive
				Groundwater Directive
				Sewage sludge Directive
				Nitrates Directive
				Habitats Directive
		2006	Public, animal and plant health	2 Directives and 2 Regulations on the Identification and Registration of animals
				Directive on placing plant protection products on the market
				Directive on the prohibition to use certain products for stock farming
				Regulation on food and feed law
				3 Directives and 1 Regulation on the prevention, control and eradication of certain animal diseases
		2007	Animal welfare	3 Directives on the protection of animals

Table 2 – Overview of the GAECs to be respected for cross compliance

Type of provision	Reference to the Council Regulation	Applicable from	Issue of Annex IV and permanent pasture	Standards of Annex IV and obligation in relation to permanent pasture
GAECs	Article 5(1) Annex IV	2005	Soil erosion	Minimum soil cover Minimum land management Retain terraces
			Soil organic matter	Standards for crop rotation where applicable Arable stubble management
			Soil structure	Appropriate machinery use
			Minimum level of maintenance	Minimum livestock stocking rates Protection of permanent pasture Retention of landscape features Avoiding the encroachment of unwanted vegetation on agricultural land Maintenance of olive groves in good vegetative condition
	Article 5(2)	2005	Permanent pasture	Land under permanent pasture at a certain date is maintained as such

6. Cross compliance does not involve the outlay of budgetary funds per se. On the contrary, 75 % of the reductions in direct aid payments are credited to the EU budget. Although the amounts concerned (some 10 million euro in 2005) are limited, cross compliance applies to the implementation of a major part of the EU budget (around 40 billion euro) and to around 5 million farmers.

Legal framework and implementation of cross compliance

7. The legal framework for the implementation of cross compliance results from the combination of four types of pronouncements:

- (a) the SMRs and the GAECs annexed to the Council Regulation;
- (b) the Commission Regulation (see glossary) on the implementation of the Council Regulation;

- (c) further guidance documents issued by the Commission for the Member States; and
- (d) national legislation adjusting general obligations to the domestic context of each Member State.

8. Member States are thus mainly responsible for the implementation of cross compliance: first, they should “translate” SMRs and GAEC standards into operational requirements and standards which farmers have to respect and, second, they have to establish a control system under which a sample of farmers are checked with a view to detecting non-compliance. The Commission is responsible for ensuring that Member States carry out these responsibilities according to the legal provisions and for reviewing the application of cross compliance.

AUDIT SCOPE AND APPROACH

The audit objective was to assess the effectiveness of cross compliance

9. The Court’s audit was to determine whether cross compliance is effective by analysing its setting up and the first years of its implementation by the Commission and the Member States. More specifically, the audit aimed at answering the following questions:

- Are the objectives and the scope of cross compliance well defined, and can results be expected at farm level?
- Can the legal framework defining cross compliance be effectively implemented?
- Are cross compliance and rural development policy adapted to one another?
- Are the control and sanction systems effective?
- Is reporting and monitoring adequate?

10. The audit work was carried out at Commission headquarters and in a sample of seven Member States: Finland, France, Greece, the Netherlands, Poland, Portugal, and Slovenia. On-the-spot visits took place between September and November 2007.

11. Audit evidence was collected and examined by means of interviews and analysis of documents and data. In each Member State a number of farms were visited in order to review, with the farmers and the inspectors charged with carrying out the on-the-spot checks, the implementation of cross compliance at farm level.

OBSERVATIONS

The objectives and the scope of cross compliance

The objectives are not defined in a “SMART” manner

12. The global objectives are stated in the Council Regulation. They are not formulated in the operative paragraphs of the Regulation but in the “whereas” paragraphs, and are expressed as follows:

- (a) “The full payment of direct aid should be linked to compliance with rules relating to agricultural land, agricultural production and activity. Those rules should serve to incorporate in the common market organisations basic standards for the environment, food safety, animal health and welfare and good agricultural and environmental condition” (paragraph 2);
- (b) “In order to avoid the abandonment of agricultural land and ensure that it is maintained in good agricultural and environmental condition, standards should be established which may or may not have a basis in provisions of the Member States” (paragraph 3);
- (c) “Since permanent pasture has a positive environmental effect, it is appropriate to adopt measures to encourage the maintenance of existing permanent pasture to avoid a massive conversion into arable land” (paragraph 4).

13. As can be seen from the above quotation, the objectives set out by the Council are fairly general, as befits the wording of high level legislation. However, they were not further developed and detailed in the operative paragraphs of the Council Regulation or in its annexes. Annex III lists SMRs which, in effect, consist in a series of articles pertaining to pre-existing Regulations and Directives that were not established in the context of cross compliance. Similarly, Annex IV articulates very general “issues” and “standards” that are intended to define good agricultural and environmental condition but are also not directly applicable at farm level. With few exceptions (for instance the requirements deriving from the Regulation on food and feed law, see **table 1**) these legal provisions were not clarified nor more precisely defined by the Commission or the Member States. The end result of this legal framework is that the objectives to be achieved by cross compliance are nowhere defined in a “SMART” manner. The principles of sound financial management (article 27(3) of the Financial Regulation of Council specifically refers) require, in particular, that policy objectives be formulated in a specific, measurable, achievable, relevant and timed manner (in one word, they should be “SMART”) and that they be arranged into a hierarchy going down from the global to the intermediate, to the specific and the operational. Another principle which is not fulfilled is that performance indicators and baseline levels be established. Due to the absence of “SMART” objectives, performance indicators and baseline levels, achievement of objectives cannot be precisely monitored (see also paragraphs 81 to 84).

14. As an illustration of the situation outlined above, one may consider the objective of avoiding the abandonment of agricultural land. The Commission did not provide a precise definition of land abandonment and did not explain which problems (environmental and/or social) needed to be addressed nor how cross compliance could contribute to this objective amongst the different available policy instruments. The Commission did not gather data to monitor the different kinds of land abandonment such as land which is not used at all or semi-abandoned. In the absence of more precise definitions and the collection

of relevant data, it is not possible to measure whether the objective of avoiding abandonment of agricultural land is achieved.

15. In this context, the audit disclosed that, while some relevant obligations were imposed at farm level, depending on the Member State and the policy area concerned, in a significant number of cases these obligations were purely formal and could not be expected to produce the relevant results. Box 1 below provides examples of both situations.

Box 1 – The effects of cross compliance at farm level

Regarding the objective of incorporating basic environmental standards in the common market organisations, the Council Regulation refers to five Directives (see [table 1](#)), and requires Member States to define operational requirements which farmers have to respect. At farm level, the audit found that:

- In Slovenia, the only requirement checked for most farmers in respect of the two Directives aiming to protect birds and habitats is that they do not have criminal convictions for offences against certain legal provisions. There are no requirements concerning farming practices which may be harmful for birds or habitats.
- In France, for the Directive aiming to protect the soil when sewage sludge is spread, the only requirement checked is the existence of a contract with the sludge provider articulating some formal provisions. The content of the sludge (e.g. the quantity of heavy metals) or the quality of the soil are not taken into consideration to define the requirement.
- In the Netherlands, the inspection body responsible for checking cross compliance requirements deriving from the Directive aiming to protect groundwater against pollution, decided that a visit to the farm was not necessary on the grounds that “the farm was connected to a sewage system”. Agricultural practices which may cause pollution were not checked.

Regarding the objective of ensuring that agricultural land is maintained in good agricultural and environmental condition, the Council Regulation specifies the issues concerned (see [table 2](#)) and requires the Member States to define operational

standards which farmers have to respect. The audit revealed that, although Poland and the Netherlands defined some national standards, these standards could not be considered as sufficient to maintain all agricultural land in GAEC because either their scope or their nature was too limited.

Regarding the objective of avoiding massive conversion of permanent pasture into arable land, the Commission adopted a number of measures in its Regulation. However, the audit disclosed that, in Portugal for example, more than half of the permanent pasture area registered by Eurostat was not included under cross compliance (see also paragraph 36). For the area which is included (47 %), farmers do not have to meet any requirement related to this objective. The Council Regulation invokes the “positive environmental effect” of preserving permanent pasture, but neither the Commission nor the Portuguese authorities defined any indicators to measure such an effect. The same situation was found in the other Member States audited.

In contrast to the above examples, the audit also identified a small number of cases where obligations imposed on farmers under cross compliance were designed to produce positive environmental results.

- Surveys identified that the GAEC standard defined by France, which requires farmers to leave unfertilised buffer strips of 5-10 meter width along watercourses, is a good way to prevent water pollution.
- The standard applied in Greece for crop rotation aims to improve soil organic matter by requiring farmers to cultivate grain legumes and incorporate these into the soil on 20 % of the cultivated area of their farm each year.
- The detailed and strict requirement for the application of animal fertilisers established by the Netherlands is one of the main factors which has contributed to a significant reduction of greenhouse gas emissions by agricultural activity.

The scope of cross compliance is not well defined

16. The determination of the scope of cross compliance by Council was not supported by relevant studies or other forms of documentary evidence from the Commission assessing action needed as well as potential difficulties. Thus the

Commission could not provide to the auditors documented justification of the reasons why certain SMRs or GAEC standards had been included within cross compliance while others had not. For example, the initial proposals submitted by the Commission included a GAEC standard to “ensure balance of irrigation, drainage and water table replenishment”. This standard was not retained, although it addressed one of the main environmental problems in most Member States. Furthermore, certain key issues, such as air pollution, were not even included in the initial proposals.

17. Concerning the scope of GAEC, the Council Regulation stipulates that Member States shall ensure that all agricultural land, especially land which is no longer used for production purposes, is maintained in good agricultural and environmental condition. However, a significant proportion of agricultural land is not subject to GAEC rules. Examples of such situations include small olive oil producers in Greece, horticulturists (who are in some areas amongst the heaviest polluters) in the Netherlands, and parcels in Austria held by Slovenian farmers residing in Slovenia and conversely. In each of these cases, farmers did not receive direct payments and the agricultural land was not controlled in the framework of cross compliance.

18. Furthermore, the scope of the framework is rendered unclear by unresolved disagreements between the Commission and the Member States. For example, the framework for GAEC annexed to the Council Regulation consists of four “issues” (three related to soil preservation and one to land maintenance) which are detailed in eleven standards. The Commission considers that Member States should define norms for the implementation of all 11 standards, except those not relevant to the national context. However, France and Portugal consider that such norms only need to be defined for the four “issues” mentioned in the framework. With respect to SMRs, the audit revealed that the exact scope of the Regulation on food and feed law (see **table 1**) was still not clear. For example, the Portuguese authorities and the Commission disagree on which hygiene regulations should be checked as part

of cross compliance. The Commission specified in a working document⁴ that three Regulations on food and feed law, in addition to the one mentioned in Annex III to the Council Regulation, were part of cross compliance. But Portugal considers that there is no legal basis for adding to the requirements listed in Annex III.

Only limited results can be expected at farm level

19. The objective of the Council Regulation is “to incorporate basic standards into the common market organisations”. However, SMRs and in many cases also standards for GAEC, are derived from pre-existing legislation which may have been in place for a long time. For instance, the environmental SMRs are based on five legal acts (see **table 1**) which were introduced in 1979, 1980, 1986, 1991 and 1992. In cases where national legislation sets higher standards, the Commission has clarified in a working document⁵ that cross compliance should be based on the lower EU standards.

20. Consequently, at farm level, almost all obligations introduced under cross compliance policies were already included in existing usual practices. For instance, in Portugal, around 75 % of the farmers receiving direct payments did not have to fulfil any cross compliance requirement to respect the environmental SMRs. Their farming practices were thus not affected. More generally, the audit disclosed that farmers in the Member States audited were usually not required to change their existing practices.

21. For example, only one Member State visited (Greece) defined specific farming practices to protect colonies of wild fauna on agricultural parcels, e.g.

⁴ Commission working document "Guidance document of the Commission services on the hygiene provisions relevant for cross compliance", DS/2006/16-final, May 2006.

⁵ Commission working document "Concerning the statutory management requirements to be respected under cross-compliance as from 2007 - List of cases where Community law sets minimum requirements and where the Member States may set higher, more demanding, standards in national law"; AGR 022361, 8 May 2005.

by setting out requirements for mowing and grazing. In France, a national environmental institute identified that limiting the tillage depth was a change in farming practise which could improve soil structure. However, the French authorities did not include this standard under cross compliance. An advisory body in the Netherlands, which included environmental organisations and representatives of the farming sector, proposed a standard on crop rotation. This standard for GAEC was not included under cross compliance as the Netherlands made the policy choice to include only standards which were based on existing national legislation.

Implementation of the legal framework

The Member States implemented requirements and standards only partially

22. The legal framework leaves the main responsibility for detailing the obligations to be complied with by farmers to the Member States. This is consistent with the need to adapt general rules to the specific situation of a wide variety of agricultural areas. However, the Court's audit found that none of the Member States visited "translated" all elements required by the framework into operational requirements at farm level. National Authorities did not always define such requirements and standards or, when they did, did not do it fully and did not always include them in the cross compliance checks. Missing and incomplete checks were numerous, including those that should take place in key areas (environment, food safety). The reasons for this are analysed in the remainder of this section.

23. The box below provides some examples of requirements and standards which were not or only partially implemented.

Box 2 - Examples of missing and incomplete requirements and standards

Portugal did not implement the requirements applicable at farm level in the area of food and feed safety. In addition, it did not define the requirements for the groundwater Directive. These are two key areas. In Finland, several requirements resulting from the

nitrates Directive were set out in the guides distributed to farmers but there was no evidence that they were checked on the spot. These requirements, such as not spreading fertiliser within 5 meter of water courses, are of key importance for the prevention of water pollution with nitrates.

Some Member States did not define a GAEC standard for crop rotation at all. The standard defined by the Netherlands (a green cover crop between 31 May and 31 August on set-aside land) is insufficient. It has a very limited application (it only covers 0,1 % of the agricultural area) and cannot be considered as a crop rotation standard as it does not concern the growing of different series of crops in the same place in sequential seasons. The standard in Slovenia requires a triennial rotation on 50 % of the arable area of the farm. The audit could not establish the reason why the obligation is limited to 50 % of the arable land.

The SMRs farmers must comply with are numerous and complex

24. Amongst the 19 Regulations and Directives which form the framework for SMRs, there are 14 Council Directives. Directives prescribe the result to be achieved, but leave the choice of form and methods to the National Authorities. Member States must therefore transpose the Directives into national law. The Commission found that this transposition was not always complete, and when it pursued legal action the Court of Justice decided in favour of the Commission⁶. This was the case, in particular, of the three environmental Directives which require the designation of specific implementation areas, and the definition of measures to protect these areas (the birds, nitrates and habitats Directives, see **table 1**).

25. Insufficient transposition into national law means that certain requirements are not or only partly included in national legislation. In such cases the potential effects of cross compliance are reduced. In addition, farmers facing the same environmental problem are confronted with unjustified different requirements.

⁶ See for example Case C-334/04, Judgment of the Court (Second Chamber) of 25 October 2007, Commission of the European Communities v Hellenic Republic, failure of a Member State to fulfil obligations – birds Directive.

This leads to unequal treatment of farmers in different Member States. This is also the case in the same Member State when different requirements apply to areas with the same environmental problems.

26. The framework for SMRs provided by the Council Regulation contains 48 articles which refer in most cases to other legal provisions (articles, annexes, lists) pertaining to the same or other legal acts. These other legal provisions thus become part of the cross compliance framework as they are needed to make the 48 selected articles operational. In addition, the provisions to which reference is made also refer to the same or other legal texts, which, in turn, further refer to other legal provisions.

27. Member States need to identify the requirements to be checked. This results in long lists of requirements: for example, the 2007 checklist used by the Dutch inspectors for visits on the spot mentions 172 different legal provisions to be verified.

28. An additional complication results from the fact that some SMRs do not specifically relate to farming activities. This is the case of provisions relating to hunting and to the transport of livestock to the market. Articles pertaining to the birds and habitats Directives, such as those prohibiting the killing of protected species, apply to all citizens and are not targeted to specific farming practices. In some Member States, the groundwater Directive (see **table 1**) was transposed with a view to addressing the pollution originating in industrial activities rather than in agricultural ones. Difficulties arise when such requirements are transformed into conditions to be applied to farming activities.

The framework for GAEC is restricted

Sets of standards defined by the Member States

29. The framework for GAEC is more directly related to farming practices. This means that it does not suffer from the problems identified for the SMRs. However, the audit identified other problems for GAEC.

30. The first part of the GAEC framework is defined in article 5(1) of the Council Regulation which refers to Annex IV to the Regulation. This Annex consists of a table identifying 4 “issues” and 11 related standards. The scope of these four issues (and the related standards) is limited in, that they only concern soil and minimum land maintenance, while other key issues, such as water usage, are not included.

31. In July 2007, the Commission wrote to the Member States that, under cross compliance, farmers cannot be sanctioned for disregarding obligations relating to issues or standards which are not included in Annex IV. This is the case of standards which can bring positive effects such as the one defined by France for irrigation or by Portugal for renewal of pasture through burning.

32. The prohibition to define additional standards, combined with the limited set of issues considered, make the scope of the GAEC framework restricted. Moreover, problems within the scope of the four issues cannot always be addressed. For instance, soil structure is one of the four issues in the table. But damage to soil structure caused by cattle, which is an issue in Poland, for example, cannot be addressed through cross compliance because the standards mentioned in Annex IV are only concerned with damages resulting from the use of machinery.

Obligations in relation to permanent pasture

33. The second part of the GAEC framework is defined in article 5(2) of the Council Regulation that provides for land which was under permanent pasture at a certain date to be maintained as such. Derogations are allowed, but only in duly justified circumstances, and under the condition that the Member State takes action to prevent any significant decrease in its total permanent pasture area.

34. In the Commission Regulation, this derogation is granted to all Member States. By granting a general derogation, the Commission did not feel compelled to “duly justify the circumstances”, nor did it request Member States

to do so. In the same Regulation, the Commission specified that decreases would be “significant” when they exceeded 10 % of a reference ratio and that such significant decreases were not authorised. However, the Commission could not provide studies or other relevant documents to justify whether 10 % is the right level to prevent negative environmental effects.

35. The purpose of the reference ratio is to set a benchmark. But, given the mode of computation of the ratio (basically the permanent pasture area divided by the total agricultural area), simultaneous decreases in permanent pasture and arable land have no impact on the value of the ratio. Yet, such simultaneous decreases resulting from the conversion of entire areas to other forms of land use (e.g. urbanisation of rural areas) have represented a major cause (around 50 %) of the decreases in the recent past.

36. Member States had difficulties with the calculation of the reference ratio defined in the Commission Regulation, and the necessary data was not always available. This enabled some Member States (e.g. the Netherlands and Portugal) to set this reference ratio at an unrealistically low level. Eurostat data indicates that the proportion of permanent pasture (relative to total agricultural area) is much higher than the ratio retained by these two Member States. In effect, the audit established that a 10 % decrease from the reference ratio would correspond to a decrease of around 30 % of actual permanent pasture. Slovenia could not apply the Commission’s definition of the reference ratio, as the land and parcel systems had changed; the audit found that the reference ratio could not be reconciled with the underlying data.

37. The Council Regulation links the goal of maintaining permanent pasture with its positive environmental effects. However, the measures adopted by the Commission do not protect the quality of permanent pastures. Certain types of permanent pasture, in particular species-rich natural grasslands, are more important for the environment than others. The current system allows for decreases in such high nature value permanent pasture to be compensated by increases in pastures of lower environmental quality. Since data on the

environmental quality of permanent pastures is not available, it is not possible to estimate to what extent this has occurred.

More Commission guidance and control on requirements and standards was needed

38. One of the main initiatives taken by the Commission to help Member States implement cross compliance is issuing guidance documents. However, none of these documents cover GAEC standards. With respect to SMRs, the scope and the practical pertinence of the documents is limited, as they do not provide the Member States with guidance on how to define operational obligations applicable to farmers.

39. For instance, the Commission prepared a guidance document on environmental SMRs, for the purpose of defining a workable set of relevant and verifiable standards. However, the document merely copies the relevant legal texts, the only guidance given is that Member States should establish obligatory standards at farm level for each of these articles. Types and examples of farmers' practices and related control points are not detailed, which is necessary to make the legal framework operational. The audit in the Member States revealed that for some environmental Directives, notably those for birds and habitats, only general legal requirements (i.e. not specifically related to farming activities) were established.

40. The requirements deriving from the Regulation on food and feed law (see **table 1**) were applicable under cross compliance as from January 2006. The Commission published a guidance document in May 2006 to define the exact scope of certain of the provisions of food and feed law. This document was issued too late, and most Member States had already planned their cross compliance checks or started implementing them. As a result, the Court's audit

found that five out of six Member States⁷ had not performed the checks in accordance with the Commission's 2006 guidelines.

41. Concerning SMRs, Member States are not only responsible for establishing the requirements applicable at farm level, but also for checking that farmers respect all elements of the legal framework for the SMRs. A key check to ensure that the SMRs are implemented according to the legal provisions is therefore that of the completeness and quality of the requirements. In other words, the Commission must ensure that Member States have defined adequate control points for all the legal texts of the framework. The Commission did not check whether and where this was the case.

42. The Court checked the completeness and quality of a sample of requirements. This revealed significant shortcomings (missing requirements, requirements with a limited extent or scope, checks which had not been carried out) (see paragraphs 22 and 23) in all Member States audited⁷, notably in the area of the environment. Since the Commission does not systematically identify such cases, it could not take action to address these shortcomings.

43. Concerning GAEC, the Commission checked whether or not Member States had defined standards. But no systematic action was taken to address cases of unjustified missing standards until July 2007. This caused difficulties at the time of approving rural development programmes. The Commission was faced with cases where Member States proposed agri-environment measures to address environmental problems which should have been treated in the framework of GAEC. The Commission did request the Member States to define GAEC standards appropriate to these cases. However, when no agri-environment measure was proposed by the Member States, the Commission did not take any action with the result that the standards involved were left missing.

⁷ The SMRs did not apply in Poland at the time of the audit.

44. The Commission did not check whether the standards avoided the abandonment of land and ensured that land is maintained in GAEC. The legal provision that standards must take into account the specific characteristics of regions (article 5(1) of the Council Regulation) was not checked either. The audit identified problems relating to the quality of the standards for GAEC in all Member States visited. Such cases are not systematically identified and addressed by the Commission.

Cross compliance and rural development

45. According to financial plans, around one quarter of the CAP expenditure during the 2007-2013 period should go to Rural Development. The Council Regulation on Rural Development⁸ stipulates that, as from January 2007, cross compliance applies to 8 of the 42 measures established by this Regulation. These eight area or animal related measures, including the financially most important one, agri-environment, represent around 40 % of Rural Development expenditure.

46. The audit disclosed that, in reality, cross compliance would apply to around a third of Rural Development expenditure over the period. This situation results from the following oversight in the implementation of cross compliance policy. Agri-environment measures are generally implemented through five year contracts with farmers. But, in most Member States audited, the audit found that cross compliance would not apply to expenditure incurred in 2007 and subsequent years and based on contracts concluded before January 2007. These contracts were concluded for a new period of five years and therefore their execution will extend into the new financial period but they did not specify that cross compliance would apply as from January 2007.

⁸ Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)(OJ L 277, 21.10.2005, p. 1).

Certain key elements of the rural development control and sanction systems are weakened by the introduction of cross compliance

47. Before cross compliance applied to rural development, farmers benefitting from the two financially largest measures (agri-environment and compensatory allowances under less favoured areas) needed to adhere to at least the standard of “usual good farming practice” throughout the farm. This was defined as the standard which a reasonable farmer would follow in the region concerned, including compliance with mandatory environmental and animal welfare requirements. Member States had to define verifiable standards in their rural development plans, which were part of the Commission’s approval procedure. Good farming practice was an eligibility criterion to benefit from the two measures, and it was checked on at least 5 % of the farms.

48. A comparison of the standards defining usual good farming practice with requirements and standards established under cross compliance revealed that in most Member States audited many important obligations no longer applied. This resulted in a significant weakening, notably in Poland where the SMRs do not yet apply. Since January 2007, such requirements as those which existed under rural development for habitat protection, prevention of water contamination, etc. are no longer checked under cross compliance. This situation will continue until SMRs are introduced in Poland between 2009-2011.

49. The introduction of cross compliance has weakened the following rural development provisions:

- (a) there is no longer a regulatory provision that Member States must define verifiable standards;
- (b) the standards at Member State level are no longer approved by the Commission;
- (c) cross compliance conditions are no longer eligibility criteria;

- (d) good farming practise is checked on 5 % of farms and cross compliance requirements and standards are checked on 1 % of farms;
- (e) important conditions of the old system of good farming practice no longer apply;
- (f) sanctions are generally lower, even for a violation of the same requirement.

50. As noted before (see paragraph 46), most Member States audited decided to keep the old rules for current expenditure relating to agri-environment contracts concluded before 2007. Because cross compliance applies to expenditure related to contracts concluded since 2007, two control systems are in place at the same time. In view of the differences between these systems (control rates, requirements etc.) this requires additional administrative work for Member State authorities.

51. In addition, this leads to the situation of two farmers benefiting from the same agri-environment scheme having to fulfil different obligations depending on when they signed their contract, before or after 2007. Consequently, one farmer will be sanctioned for violation of an obligation, while another will not as he does not have to respect this obligation. This situation will remain until 2011, when the five year contracts concluded in 2006 will expire.

The separation between cross compliance and agri-environment measures is not always clear

52. A clear delineation between agri-environment and cross compliance is important. Firstly, this must ensure that farmers are not paid under agri-environment for what they are legally required to do under cross compliance. Secondly, cross compliance applies to all farmers receiving direct payments, whereas agri-environmental commitments are voluntary. Cross compliance requirements and standards are necessary to set a sound minimum level.

53. With respect to cross compliance, Member States have considerable room to define the obligations imposed on farmers, especially for GAEC standards.

Where cross compliance and agri-environment apply to the same objects (landscape elements, biodiversity, etc.) this means that the level of agri-environment obligations, and consequently its effects, are determined by the level of cross compliance obligations.

54. In each of the Member States visited, the audit found obligations established under agri-environment schemes which could also have been included under cross compliance. Doing so would have led to a reduction of the agri-environment payments concerned. For instance, in Portugal, there are agri-environmental schemes to retain terraces and for crop rotation, but the standards required for this by cross compliance were not applied. When these standards are included under cross compliance the amounts to be paid under agri-environment will be reduced, because farmers are only compensated for additional obligations.

55. In Greece, the main aim of the agri-environment scheme for the extensification of animal farming is to reduce stocking densities for pasture land. Limits to stocking density were also set under cross compliance by the GAEC standard for protecting permanent pasture. The Greek authorities could not explain whether the agri-environment measure was stricter than the cross compliance standard.

56. The different choices made by the Member States lead to a situation where farmers may be paid for certain obligations in one Member State, while they are required to do so without compensation in another Member State. For instance, farmers in the Netherlands are required to sow a catch crop⁹ after the maize harvest, as this is a requirement under the nitrates Directive. Across the border, in Belgium, farmers are paid for that same practice, as it is included under an agri-environmental scheme in Flanders.

⁹ Catch crops are crops that are sown to prevent minerals (e.g. nitrates) being flushed away from the soil.

57. The overlap between agri-environment and cross compliance can be illustrated by the example of buffer strips. These are strips bordering agricultural parcels where certain farming practices are prohibited. For instance, strips left untilled alongside water courses prevent soil erosion, which is a GAEC issue. The prohibition to apply manure and plant protection products on buffer strips reduces water contamination and is beneficial for biodiversity. These issues are included in the framework for cross compliance. Consequently, several Member States implemented buffer strips under cross compliance. However, not all Member States did as there is no specific obligation to do so. Some Member States decided to include buffer strips in agri-environment schemes.

58. The box below shows the different choices made by some of the Member States audited for implementing buffer strips. These choices affect the level of agri-environment payments and the environmental impacts to be achieved.

Box 3 – Examples of different use of buffer strips

In Finland, buffer strips of 0,6 meter are required by the GAEC standard for soil erosion. Agri-environment payments are made for wider buffer strips (at least 1 meter).

France requires farmers to leave unfertilised buffer strips of 5-10 meter width along watercourses under the GAEC standard for soil erosion. Wider buffer strips are compensated under agri-environment schemes.

In the Netherlands, fertilisation is not allowed on buffer strips along surface waters under a requirement deriving from the nitrates Directive. The width of the strips vary from 0,25 – 9 meter depending on the crop and the method of applying plant protection products. There are no agri-environment schemes for buffer strips.

In Poland, no obligations were set for buffer strips under cross compliance, but farmers are compensated for buffer strips under an agri-environment scheme.

In Slovenia, there are no farmer obligations for buffer strips under cross compliance, and there are also no agri-environment schemes for buffer strips relating to arable land or grassland.

The control and sanction systems

The control system provides insufficient assurance on farmers' compliance

59. As mentioned before, Member States implemented requirements and standards only partially (see paragraphs 22 and 23). As a result, the corresponding obligations are not checked under cross compliance as required. This weakness was mainly found in the areas of environment and food safety. In Finland for instance, more than 30 requirements resulting from the legal framework for SMRs (15 for the environmental Directives and 15 for the Regulation on food and feed law¹⁰) were not checked under cross compliance.

60. Farms are normally visited only once for cross compliance, but the timing of the visit does not depend on when the requirements or standards can best be checked. Cross compliance checks are concentrated in a limited period of the year, typically in the summer months. However, a significant number of environmental SMRs and GAEC standards cannot be checked in this period, as they depend on farming practices which belong to other seasons (ploughing, spreading manure, mowing of pastures). As a result, the number of checks actually carried out for the obligations concerned was low, and, in some cases, reduced to zero.

61. In all Member States visited, the audit also found examples of obligations in the areas of environment and food safety which were difficult to verify, and where clear instructions for inspectors were missing. Cases in point include obligations such as “to avoid using heavy machines on wet ground”, “food stuffs must be safe”, “agricultural installations must be in good condition”, or “it is forbidden to apply plant protection products during flowering if bees are present in the field”. Such conditions are difficult to check, especially in the

¹⁰ Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1).

absence of a definition of the underlying terms and clear instructions as to what constitutes a non-compliance.

62. However, the problems described above do not exist in all cross compliance areas. The proper identification and registration of animals, for example, can be verified throughout the year, and the related checks are more clearly defined (e.g. all animals must have ear tags or all animals on the farm must be recorded in the holding's register).

63. The weaknesses identified before that the checks carried out at farm level were often minimal (see paragraphs 39, 59 and 60) concerned in particular the birds and habitats Directives. In Finland, checks were only carried out at farms where it was known that there were protected species, and a visual check while measuring the parcels to see if "anything looked wrong" was the sole check for many of the obligations in practice. In France and the Netherlands parcels are not visited as part of the cross compliance checks for the birds and habitats Directives, even when such parcels are located in Natura 2000 areas. Requirements and checks in these areas are of key importance to protect birds and habitats.

64. Due to the limited number and extent of the checks carried out for these two Directives, only a very low number of infringements was detected in 2005 and 2006¹¹. For example, in Finland, France, Greece and Slovenia not a single infringement was detected in 11 633 cross compliance checks for the birds Directive and 14 896 checks for the habitats Directive.

65. The audit sought to compare the number and results of cross compliance checks with those of other checks. Where this information was available, it showed that comparable checks outside cross compliance resulted in significantly higher rates of non-compliance. In the Netherlands, no non-compliance was detected in 2006 for the environmental Directives. Outside the

¹¹ Data for 2007 was not yet available at the time of the audit.

cross compliance control sample, a relatively high number of cases of non-compliance was detected (101 for the nitrates Directive, for instance). The Dutch authorities could not explain the reasons for this situation. In Finland, not all cases of non-compliance were reported in the cross compliance statistics, yet in 2006 checks for milk hygiene detected 920 infringements, representing 48 % of the farms checked. It is a requirement of the regulations that non-compliances with the SMRs detected should result in cross compliance sanctions and be reported to the Commission. However, non-compliance detected in the cross compliance sample and reported to the Commission was only 6 %.

66. Certain obligations were easier to check, and resulted in higher rates of non-compliance. This was generally the case for requirements relating to the identification and registration of animals. Specific cases of checks which resulted in high rates of non-compliance were found in Slovenia, which carried out administrative controls to check whether or not farms exceeded limits for nitrates resulting from fertilisation with animal manure, and in Greece for crop rotation.

The sanction system is weak and the resulting reductions in direct payments are low

67. The Council Regulation states that if basic standards are not met, "Member States should withdraw direct aid in whole or in part on the basis of criteria which are proportionate, objective and graduated." Article 7 of the Regulation provides for such reductions to be calculated as a percentage of the aid received. This links cross compliance reductions to historical CAP payments, because the latter form the basis for the aid received. As a result, reductions in direct aid payments are not based on the cost of compliance nor on the consequences of non-compliance. Under the current system, big polluters receiving low amounts of direct aid face low reductions, while small polluters receiving large amounts face higher reductions.

68. The Commission Regulation sets the reduction, as a general rule, at 3 % of the amount granted¹². Member States may decide not to impose any reduction or to reduce the rate to 1 % or to increase it to a maximum of 5 %.

69. For many obligations, the cost of compliance is higher than the maximum reduction rate of 5 %. This means that the reductions do not have a deterrent effect. In the Netherlands, a cross compliance requirement deriving from the nitrates Directive is that the manure storage must have sufficient capacity to store the manure produced in the period September-February. A milk farmer visited estimated that constructing a storage vessel meeting the technical requirement would cost between 20 - 30 000 euro. Non-compliance with the requirement only leads to a reduction of 1 %, the average reduction in the Netherlands was 100 euro.

70. The Council Regulation provides for higher rates of reduction in case of repeated non-compliance. Although this should make the system more deterrent, data shows that this is not yet the case. For instance, in Finland, more than half of the 104 farms that had been sanctioned for non-compliance in 2005 were sanctioned again in 2006.

71. The Council Regulation requires that, within the range of 1 % to 5 %, the reduction take account of the severity, extent and permanence of non-compliance. However, the Member States audited generally did not define these terms adequately. As a result, the sanctions neither depend on the extent nor on the consequences of the non-compliance, and flat rates, typically of 1 %, were applied. For instance, a farmer in Portugal who had not complied with the identification rules for 209 animals received the same sanction (1 %) as a farmer in the same situation with only one animal. In Poland, a farmer with a higher number of cases of non-compliance may even face lower sanctions than a farmer with less cases of non-compliance.

¹² Higher rates apply to repeated cases of non-compliance (see paragraph 70) and to cases of non-compliance considered by the Member States as intentional (see paragraph 75).

72. The audit revealed that there was a variety of reasons why detected non-compliance did not result in a reduction of the payment. Some Member States give farmers the possibility to remedy the situation, or have a system of warnings. Coordination between the different control bodies did not always function properly, so that detected cases of non-compliance were not reported to the body applying the sanctions. There are obligations for which non-compliance results in a “sanction” of 0 %. Poland did not apply a sanction if the agricultural area concerned is less than 0,1 hectare. In Finland, although a case of non-compliance for groundwater requirements was detected, the sanction was set at 0 % on the grounds that the farmer was absent when his contractor used the prohibited products.

73. As a result, most sanctions were low, both in relative and absolute terms, including in cases of non-compliance with key requirements such as those relating to the environment or public health. The box below gives some examples of this.

Box 4 – Examples of low sanctions for non-compliance with key requirements

In Finland, 35,5 % of the number of sanctions in 2006 were 0 %. One of the requirements which is “sanctioned” with 0 % is the use of prohibited plant protection products which have been banned since December 2003.

France uses a calculation method which has the effect of decreasing the sanctions for the environmental Directives. Severe breaches of the nitrates Directive, such as not respecting the ceiling of 170 kg nitrate per hectare, spreading manure in forbidden periods or using a storage vessel with insufficient capacity lead in practice to a reduction of payments of 1 %.

In the Netherlands, regular controls (i.e. outside cross compliance) detected that a farmer used illegal growth hormones. Following the Dutch law implementing cross compliance this led to a cross compliance sanction of 1 %, amounting to 94,04 euro.

Non-compliance with requirements for the identification and registration of animals by a farmer in Slovenia resulted in a 1 % reduction rate, which amounted to 0,97 euro.

Another farmer in Slovenia had breached requirements deriving from three legal acts:

the nitrates Directive, the Regulation on identification and registration of animals, and the Regulation on food and feed law. The sanction applied was 3 %, the amount concerned 15,26 euro.

74. As of 1 January 2008, the Council Regulation gives Member States the possibility not to apply a reduction or exclusion amounting to 100 euro or less. While this may reduce the administrative burden, this will also significantly reduce the number of sanctions applied, also for non-compliance with key requirements. For instance, in the Netherlands the average sanction is 100 euro; in Finland, 65 % of the sanctions were below 100 euro while in Poland this rate was as high as 94 %.

75. The different interpretations given by different Member States to certain elements of the sanction system lead to a situation where farmers are not treated equally for the same infringement. For instance, in the Netherlands missing ear tags for less than 10 pigs or 5 bovines results in a warning while in Greece a single missing ear tag is sanctioned. The different calculation methods used by the Member States in the case of multiple cases of non-compliance may result in a farmer in one Member State getting twice the sanction rate as the farmer in another Member State. Intentionality is defined differently in different Member States. Some Member States consider the use of illegal substances such as hormones in stock farming as negligence, leading to a maximum sanction of 5 %. Other Member States consider this to be intentional, leading to a sanction of 20 %.

Monitoring and reporting

Data in some areas is not reliable and overestimates control and compliance rates

76. The Commission Regulation determines that Member States must report on the number and results of the cross compliance checks, the area and proportion of the land under permanent pasture, and basic elements of the control system.

77. The audit found that data pertaining to different years was not always comparable over time and that, as a consequence, trend changes could not be detected. One reason is that legislation may change. For instance, Dutch national legislation implementing the nitrates Directive was completely overhauled in 2006, so that the number of cases of non-compliance before and after the change is not comparable. Another reason is that large changes in the size and the composition of the population occurred. In Greece, the population from which the annual cross compliance control sample was selected more than doubled between 2005 and 2006.

78. The reporting format prescribed by the Commission is not precise enough. For certain elements it is unclear how they should be reported, e.g. warnings or cases of non-compliance where sanctions are not yet determined following appeals by farmers. Farmers who breach more requirements may be reported in the same way as farmers with only one breach. Also the nature of the non-compliance is not identified. A formal non-compliance such as a missing document is reported in the same manner as a substantial one such as the use of prohibited hormones. These limitations make it difficult to compare data between Member States and to aggregate them in a meaningful manner. The Commission Regulation requires that the selection of the farms controlled for cross compliance be based on a risk analysis. It is difficult to assess to what extent cases of non-compliance found in a sample of farms selected on the basis of a risk analysis are representative of all farms in a Member State. Risk factors used change in time and vary between different Member States. This is an additional complicating factor for detecting trend changes and aggregating data.

79. The audit found that data reported by the Member States suffered from serious weaknesses. The box below identifies some examples of incomplete and inaccurate reporting which affected the quality of data reported to the Commission.

Box 5 – Examples of incomplete and inaccurate reporting¹³

The audit found that data reported by Finland to the Commission was incomplete and inconsistent. For instance, the non-compliance rate reported to the Commission for GAEC was 14 %, while an audit of the underlying data showed that in reality this was almost double (27 %). The Finnish authorities were not able to explain this situation.

France reported to the Commission that 4 277 farms were checked for each of the five standards for GAEC. This figure includes farms where the standard did not apply. The real figure, i.e. the number of checks in case the standard applied, was much lower, e.g. 1 339 for the GAEC standard relating to irrigation.

The control reports used in Greece do not have a space to indicate that obligations do not apply. In such cases it is reported that the farmer complies. For example, Greece reported to the Commission that 4 784 farms were checked and complying with legislation for the sewage sludge Directive. This overestimates control- and compliance rates as none of the farms actually used sewage sludge.

The Netherlands reported that no non-compliance was found in the checking of 658 farms for the food and feed law. These figures do not take into account that a significant number of requirements, e.g. relating to milk hygiene, were not checked.

In Slovenia, three out of four requirements for the birds and habitats Directives only apply to parcels inside Natura 2000 areas. Out of the 620 farms included in the cross compliance sample, only 34 (5 %) had parcels in Natura 2000 areas. The control rate for the Natura 2000 requirements was twenty times below the one reported to the Commission.

When Poland reported the number of cases of non-compliance to the Commission, it did not include the 678 farms where cases of non-compliance had been detected but where the entire aid claim had been rejected. Non-compliance rates based on the correct figures were significantly higher.

¹³ The examples are based on the most recent available data at the time of the audit, which was 2006, except for Greece where the most recent data concerned 2005.

Portugal has defined for several SMRs a tolerance margin, below which sanctions are not applied. Non-compliance below the tolerance margin is not reported to the Commission. Tolerance margins were also defined for requirements deriving from the TSE Regulation¹⁴. If missing documents and certificates concern less than 10 % of the animals, or less than two animals for small farms, non-compliance is not reported.

80. As the above examples show, control and compliance rates are in reality lower than those reported to the Commission. Therefore, statistics reported to the Commission cannot be used to draw conclusions on compliance by farmers. This difficulty is illustrated by a report of the European Parliament's Agriculture and Rural Development Committee, which stated that, "Looking at the numbers presented by the Commission in its report, it is clear that most controlled farms do comply with set standards ..."¹⁵. The Court's audit found that the Commission's cross compliance data cannot be used to support this statement.

The Commission's performance monitoring was found wanting

81. A principle of sound financial management, set by article 27(3) of the Financial Regulation, is that achievement of objectives is monitored by performance indicators. Thus, the Commission considered that the establishment of clear objectives and indicators¹⁶ was a first requirement of a good quality monitoring system. However, such sound indicators were not established. This has hampered monitoring of cross compliance from the start.

¹⁴ Regulation (EC) No 999/2001 of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies (OJ L 147, 31.5.2001, p. 1).

¹⁵ European Parliament document 2007/0177(CNS); draft report on the proposal for a Council Regulation amending Regulation (EC) No 1782/2003; 21.9.2007.

¹⁶ Ex Ante Evaluation: A Practical Guide for Preparing Proposals for Expenditure Programmes DG BUDG, December 2001, p. 22. Indicators are defined as information that helps to monitor progress and to report on objectives.

82. Concerning indicators, the annual information reported by the Member States allows the Commission to check certain elements of the control and sanction systems. However, the Commission did not define performance indicators to monitor the achievement of the objectives set out in the Council Regulation (see paragraph 12). There are, for instance, no performance indicators for compliance with rules relating to agricultural land, the abandonment of agricultural land, or the extent to which land is maintained in good agricultural and environmental condition.

83. Baseline information, in the form of systematic data describing the situation before cross compliance became operational (e.g. 2003 and 2004), is not available. The Commission and the Member States did not use the time available since the adoption of the Council Regulation establishing cross compliance, in September 2003, to gather baseline data for monitoring and evaluating, for instance on the number of checks and the number of infringements. Due to the problems with data and reporting (see paragraphs 77 and 78) there is still no reliable baseline.

84. The Commission defines monitoring as a continuous process of examining the delivery of programme outputs, and finds that the use of indicators always needs to be complemented with an analysis of qualitative factors and with an interpretation of the data produced¹⁷. The audit found that such a continuous process or analysis and interpretation of data did not exist for cross compliance. Due to the lack of clear objectives and monitoring data, evaluations are difficult to carry out. Consequently, accountability for results and impacts is problematic¹⁸.

¹⁷ Ex Ante Evaluation: A Practical Guide for Preparing Proposals for Expenditure Programmes DG BUDG, December 2001, p. 14.

¹⁸ The Communication on Evaluation of July 2000 (point 2.3.1) states "...reliable ex post evaluation, and hence accountability for results and impacts, is largely dependent on the quality of the preparation of the intervention at its outset." DG BUDG's practical guide for the Commission services on Evaluating EU activities (July 2004) states on p.71: "The fixing of objectives when an intervention is being

CONCLUSIONS AND RECOMMENDATIONS

85. The Court considers that cross compliance is a vital element of the CAP. Where properly applied it has the potential to make EU farmers who receive CAP payments comply with rules relating to agricultural land, agricultural production and activity. To be effective it requires the relevant rules to be translated into controllable requirements at farm level. The Court's audit found that this was not yet the case. This was because the objectives and the scope of cross compliance are not well defined, making it unclear what cross compliance is designed to achieve. In particular, the global objectives set out by Council have not yet all been translated into adequate operational requirements and standards to be applied at farm level. The Court recommends that :

- the Commission develop and detail the objectives set out in the Council Regulation in order to formulate them in a "SMART" manner and organise them in a logical hierarchy;
- the Member States define a complete set of verifiable requirements and standards, to be applied at farm level.

86. The framework of cross compliance poses considerable difficulties, notably because of its complexity. In order for cross compliance to achieve its potential positive effects, the Court recommends that:

- the Commission simplify the framework, in particular by organising it around the principal elements of farming activity where improvements are sought, by specifying the results that are expected and, by prioritising requirements and standards;

designed is an essential aid to evaluation since they are an integral part of assessing an intervention directly with regard to the issues of relevance and effectiveness."

- the specific results to be achieved be based on needs assessments and specific studies;
- the Member States be required to lay down the precise obligations deriving from the legislation, taking account of the specific characteristics of the areas and farming practices concerned where appropriate;
- the Commission assess the quality of the requirements and standards defined by the Member States.

87. Cross compliance and rural development policies are not well adapted to one another. The Court recommends that:

- the Commission harmonise cross compliance and rural development policies, in particular by reinstating the rural development provisions which have been weakened following the introduction of cross compliance;
- the Community legislator consider whether such elements of the rural development policy as the approval of standards by the Commission and the obligation of Member States to lay down verifiable standards should also apply to cross compliance;
- the Commission draw a clear delineation between cross compliance and agri-environment with a view to ensuring that rural development benefits only compensate obligations going beyond cross compliance requirements and standards.

88. Member States did not take their responsibility to implement effective control and sanction systems. As a consequence, the control system provides insufficient assurance on farmers' compliance. The sanction system is also not effective as the underlying principles are not sound. The Court recommends that:

- Member States implement effective control and sanction systems which provide sufficient assurance on farmers' compliance;

- the Commission amend the control system with a view to controlling at least 1 % of the farms applying each obligations;
- the Community legislator consider revising the principles underlying the sanction system to make reductions in payments proportional to or dependent on the seriousness of the breach of cross compliance obligations by the farmer sanctioned.

89. Monitoring and reporting were found wanting as some of the basic elements of a monitoring system are missing and data reported by the Member States to the Commission is unreliable. The Court recommends that:

- the Commission implement the key elements of a sound performance monitoring system, notably by defining relevant indicators and baseline levels;
- Member States submit complete and reliable data in a timely manner;
- the Commission carry out closer analysis of the data reported by Member States and be more demanding on the quality of such data.

90. Overall, the Court concludes that cross compliance as currently managed by the Commission and implemented by the Member States is not yet effective. Significant efforts are still required from all parties concerned for it to reach its full potential. The Court considers that the implementation of the above recommendations should help in furthering the achievement of the potential benefits which are expected from cross compliance policy, as it is a vital element of the CAP.

This report was adopted by the Court of Auditors in Luxembourg at its meeting of 6 November 2008.

For the Court of Auditors

Vítor Manuel da Silva Caldeira
President

THE COMMISSION'S REPLIES TO THE SPECIAL REPORT "IS CROSS COMPLIANCE AN EFFECTIVE POLICY ?"

EXECUTIVE SUMMARY

II.

First indent : The Commission considers that the objectives of cross compliance are clear. The CAP payments received by the farmer are reduced where basic standards for the environment, food safety, animal health and welfare and good agricultural and environmental condition are not respected.

The scope of cross compliance is well defined at EU level. It consists of rules relevant for farming activity. Most of these rules come from existing Directives and Regulations.

Second indent : The Commission has proposed in its 2007 report¹ improvements of the legal framework, which have been agreed by the Member States. The Commission will continue to bring improvements as far as needed.

However, the legal framework consists of 19 Regulations and Directives, which have existed already for years independently from cross compliance. Therefore, the complexity is not a consequence of the introduction of cross compliance.

Third indent : Cross compliance is defined in the legislation and as a matter of consistency it is applied the same way both for EAGF and Rural Development. It forms a common and clear basis for Member States and provides comparative ground.

There is no conflict between cross-compliance and rural development. Cross compliance represents the demarcation line between penalising farmers for the non-compliance with mandatory requirements (the "polluter pays principle") and rewarding farmers for the voluntary provision of environmental benefits through agri-environmental or animal welfare commitments. Thus, cross-compliance and agri-environment or animal welfare measures complement each other without any possible overlap.

Fourth indent : In case of weaknesses of implementation of the control system by Member States the financial risks are covered by the audit activity of the Commission and financial corrections are applied where necessary.

As regards the reduction system under cross compliance, it is the responsibility of Member States to implement it properly and weaknesses found in this respect are also followed up by the Commission during its audit activity.

Fifth indent : The Commission is currently examining the question of monitoring. Regarding the analysis of data the Commission has made considerable efforts for analysing the cross-compliance statistics. Cases of missing or inconsistent data are followed-up. Incorrect applications of cross-compliance rules are followed-up under clearance of accounts procedure (if appropriate by desk audits), in addition to the audit mission programme.

¹ COM(2007)147.

III.

First indent : A significant degree of flexibility must be offered to Member States to allow them to adapt the obligations to the specific characteristics of the areas concerned. The Commission does not intend to approve national standards within the cross compliance system. The respect by Member States of a minimum level-playing field is however ensured by the Commission through its monitoring and audit activity.

Moreover, the rural development policy is based on programming periods and national programmes are approved, not individual standards. Therefore the comparison with cross compliance is not necessarily relevant.

The principle that Member States shall define verifiable standards is already underlying the legislation on cross compliance.

Second indent : The principle that possible reductions are proportional to or dependent on the seriousness of the breach is already laid down in the current legislation on cross compliance. The Commission does not see reasons to modify this framework at this stage.

Third indent : The Commission considers that the objectives of cross compliance are "SMART". The general objectives of cross compliance are defined in the Council Regulation. The Commission has further specified its view on the objectives of cross compliance in its 2007 report². This report was welcomed by the Council³. As early as in 2007 an evaluation study⁴ was carried out. The external evaluator has clearly identified the operational, specific and general objectives of cross compliance, as well as a set of indicators for assessing the contribution of cross compliance to its intended objectives. The Commission considers that this demonstrates the "smartness" and the logic of the objectives of cross compliance.

Fourth indent : The introduction of cross-compliance has allowed for harmonizing requirements at EU level and for aligning provisions with the EAGF, thus producing important benefits.

The Commission considers that important requirements of good farming practise still apply in cross compliance.

Fifth indent : There should be no overlap between cross compliance and agri-environmental commitments. This has been checked during the approval process of the rural development programmes. Member States had to prove that the agri-environment measures go beyond the baseline as defined by Article 39 (3) of Regulation 1698/2005.

Cross-compliance and agri-environmental measures complement each other without any possible overlap. In other words, cross compliance represents the delineation between penalising farmers for the non-compliance with mandatory requirements (in line with the "polluter pays principle") and

² COM(2007)147. This report specified the general cross compliance objective in specific objectives as follows : "(1) to contribute to the development of a sustainable agriculture [...] through the respect by the farmer of the rules relating to the relevant aspects of cross compliance and (2) to make the CAP more compatible with the expectation of the society at large [as] there is now a growing body of opinion that agricultural payments should no longer be granted to farmers who fail to comply with basic rules in certain important areas of public policy."

³ Council conclusions doc.10682/07.

⁴ Evaluation of the application of cross compliance as foreseen under regulation 1782/2003.

rewarding farmers for the voluntary provision of environmental benefits through agri-environmental commitments.

The legislator made a deliberate choice to give Member States a certain degree of discretion with respect to both the definition of mandatory requirements and the design of agri-environmental measures. This discretion allows Member States to take into account national and regional specificities.

Sixth indent : The basic principle is that at least 1% of farmers receiving CAP payments are subject to cross compliance controls each year. Following the principle of risk analysis Member States have requested a margin of flexibility in order to be able to focus the controls on the more risky obligations, however without ignoring the remaining obligations. The Commission has agreed to this request and consequently adopted new rules in 2007 allowing this flexibility.

Seventh indent : The Commission is currently examining the question of monitoring.

Eight indent : Regarding the analysis of data the Commission has made considerable efforts for analysing the cross-compliance statistics. Cases of missing or inconsistent data are followed-up. Incorrect applications of cross-compliance rules are followed-up under clearance of accounts procedure (if appropriate by desk audits) in addition to the audit mission programme.

The Commission has also reinforced the human resources in this area.

Ninth indent : The principle that Member States shall define verifiable standards is already underlying the legislation on cross compliance.

Tenth indent : The Commission ensures, through its monitoring and audit activity, that Member States respect a minimum of level-playing field.

Eleventh indent : The Commission follows up where data is missing or is inconsistent.

IV.

First indent : The simplification of the legal framework is always a priority for the Commission. Accordingly, the legal framework should be as simple as possible and focused on the elements of farming activity where improvements are sought. This is the reason why the legislator has deliberately decided to use the most relevant part of the existing legislation at EU level and to add under cross compliance a link with CAP payments.

Second indent : The proposal for changing the scope of cross compliance made in the course of the "health check" exercise is based on a full Impact Assessment.

Third indent : The Commission assesses independently from cross compliance the requirements under SMRs defined by the Member States in the framework of the implementation of the specific legislation of the concerned areas (environment, health, etc.). This assessment is carried out on the basis of the national implementing provisions communicated by Member States. As regards GAEC standards an assessment is carried out by the Commission on a regular basis however taking into account the margin of manoeuvre given to Member states by the legislator. In the more specific framework of cross compliance the practical implementation of the national provisions implementing requirements and standards is verified in the framework of the audit programme. Failures found with regards to the legal obligations of the Member States are followed up according

to the procedures available to the Commission, where appropriate (clearance of accounts and infringement procedure).

Fourth indent : The Member States are obliged pursuant to the current legislation, to define precise obligations at farm level, as well as the corresponding reduction matrices, and communicate them to farmers in a consistent manner.

INTRODUCTION

8. SMRs should have been "translated" into operational requirements at farm level in the framework of the normal implementation of the Directives and Regulations, not in the framework of cross compliance. When this was not the case cross compliance has played an incentive role for defining obligations at farm level.

OBSERVATIONS

13. The Commission considers that the objectives of cross compliance are "SMART". The general objectives of cross compliance are defined in the Council Regulation. The Commission has further specified its view on the objectives of cross compliance in its 2007 report⁵. This report was welcomed by the Council⁶. As early as in 2007 an evaluation study⁷ was carried out. The external evaluator has clearly identified the operational, specific and general objectives of cross compliance, as well as a set of indicators for assessing the contribution of cross compliance to its intended objectives. The Commission considers that this demonstrates the "smartness" and the logic of the objectives of cross compliance.

Moreover data on inspections and aid reductions are available. They were considered by the external evaluator as useful performance indicators for assessing the achievements of cross compliance against its intended objectives.

The Commission does not consider that the list of GAEC and SMRs jeopardise the "smartness" of the objectives of cross compliance.

14. The 2003 CAP reform introduced the decoupling of income support from production. In this context, GAEC standards were introduced to inter alia address the risk inherent to decoupling such as land abandonment that certain agricultural land, falling under Regulation 1782/2003, would no longer be cultivated and no longer be maintained. Moreover, cross compliance does not aim at substituting to other policies such as rural development.

15. Obligations must be defined by Member States to implement the specific legislation, part of which being included into the scope of cross compliance. The fact that Member States have sometimes defined weak obligations under this specific legislation does not mean that cross compliance objectives are not sound. Weaknesses in the implementation by Member States are followed-up in the framework of the clearance of accounts procedure as detailed below.

⁵ COM(2007)147. This report specified the general cross compliance objective in specific objectives as follows : "(1) to contribute to the development of a sustainable agriculture [...] through the respect by the farmer of the rules relating to the relevant aspects of cross compliance and (2) to make the CAP more compatible with the expectation of the society at large [as] there is now a growing body of opinion that agricultural payments should no longer be granted to farmers who fail to comply with basic rules in certain important areas of public policy."

⁶ Council conclusions doc.10682/07.

⁷ Evaluation of the application of cross compliance as foreseen under regulation 1782/2003.

Box 1 – The effects of cross compliance at farm level

- The weaknesses of implementation of these 2 directives in Slovenia are followed-up by clearance of accounts procedure.
- The implementation of cross-compliance in France is subject to ongoing clearance procedures, following 2 audits carried out by the Commission in 2005 and 2006.
- The implementation of cross-compliance in the Netherlands is subject to ongoing clearance procedures, following an audit carried out by the Commission in 2007.

The above mentioned audit in the Netherlands as well as the audit in Poland carried out by the Commission in 2007, identified weaknesses at the level of GAEC definition, which are subject to ongoing clearance procedures.

The Commission's audit carried out in 2008 has identified problems of calculation of the permanent pasture area in Portugal. This is subject to clearance of accounts procedure. This aspect is regularly covered by Commission audits. However, the fact that farmers do not have to meet any requirements is allowed by the legislation⁸ as long as the permanent ratio is not significantly decreasing.

16. The objectives of cross compliance do not lead to the inclusion of all aspects of the relevant policies (environment, public, animal and plant health, animal welfare and good agricultural and environmental condition) into the scope of cross compliance. It is only "*basic standards*" (see recital (2) of Council Regulation No 1782/2003) which are included, i.e. neither the whole concerned policies nor the whole set of obligations in selected policy elements. The list of these basic standards was made through the adoption of Annex III and IV of the Council Regulation. The Commission proposal was based initially on the main pieces of legislation relevant for farming activity in the area concerned. The further discussion at Council level developed on an assessment of the relevancy of these texts for cross compliance. The Commission is of the opinion that the main elements of the concerned policies are reflected in the final list, which fulfils the general objective of the Council regulation to "contribute" to the development of sustainable agriculture.

The Commission can however agree with the Court that the framework may evolve as is the case with any other instrument, should an assessment of different policy options find that this is the best option. In the context of the Health check the Commission has proposed to introduce requirements for water and landscape features.

17. Cross compliance itself applies by its nature only to farmers receiving CAP payments. In the absence of any payment, there is obviously no reduction possible through cross compliance. Making the GAEC applicable to all agricultural land would entail dissociating GAEC from cross compliance and setting up a general legal basis, including a specific sanction system independent from cross compliance (as for SMRs).

Moreover, the objective of cross compliance is only to "contribute" to the development of sustainable agriculture, not to address all environmental problems.

⁸ Articles 3 and 4 of Commission Regulation (EC) N° 796/2004.

18. The legal situation is clear according to the Commission and this was communicated to Member States on their request at several occasions, in particular for the GAEC framework and for the Regulation on food and feed law. The fact that some Member States disagree does not mean that the scope is unclear.

20. It was a deliberate political choice that cross-compliance would cover existing legislation. The aim was to provide a clear baseline of basic standards. These are regularly improved to take account of the last developments as the cross compliance provisions foresee that the latest version of the legal acts applies. Cross-compliance is only one instrument among others. Rural development policy is well-suited to tailor measures that address aspects not covered under cross-compliance and to encourage more beneficial farming practices that go beyond the baseline provided by cross-compliance.

With respect to Portugal, the audit missions of the Commission (2006 and 2008) found that the control system in place was not in accordance with Community legislation. The findings are followed up under the clearance of account procedure.

21. The Commission verifies the conformity of the implementation of GAECs in relation with the Community framework. It is not required to examine systematically all alternative possibilities of GAEC implementations.

22. The Commission is aware of certain weaknesses in the definition of requirements and standards by Member States. Any failure found with regard to the legal obligations of Member States is followed up according to the procedures available to the Commission (clearance of accounts, infringement procedure, etc). The risks for the CAP funds are covered by possible financial corrections as specified below.

Box 2 - Examples of missing and incomplete requirements and standards

The above-mentioned audit in Portugal covers these weaknesses.

The problem mentioned in Finland is subject to an audit carried out in October 2008.

In its audits, the Commission verifies the completeness of the implementation and control of annex IV (issues and standards) of Council Regulation No1782/2003.

25. The 19 Regulations and Directives which form the framework for SMRs exists for years independently from cross compliance. The Commission is aware of the situation of uneven implementation of these legal acts by Member States and is taking the necessary remedial actions. However this is not a consequence of the introduction of cross compliance.

26. The different legislative acts are listed in Annex III. It was a deliberate choice that Annex III would refer only to existing Community legislation and that these acts would apply, in case of Directives as implemented by the Member States. There was no intention to introduce a new framework of requirements that would be different from the obligations that apply at farm level following the implementation of the Community acts⁹.

28. The Commission can agree with the Court and the review of the current Annex III provisions carried out for preparing the Health check has led to conclude that some obligations are not relevant

⁹ Article 4(2) of Regulation 1782/2003.

to cross compliance. These includes *inter alia* provisions relating to hunting and killing protected species. The Commission has therefore proposed in the Health Check to withdraw these provisions from the scope of cross compliance.

30. The purpose of cross-compliance including GAEC was not to address all environmental problems. It is complementary to other instruments. The scope of the GAEC framework defined in 2003 is not restricted but rather targeted to address the issues identified as relevant at that time. The Commission has made a proposal of changes in the course of the "health check" exercise to introduce requirements for water and landscape features.

32. The set of issues and standards under the GAEC framework must be defined at EU level so as to ensure a minimum level playing field between farmers of different areas or different Member States. It implies that the list is closed and limited. However Member States have a broad margin of manoeuvre for defining national provisions addressing their local need within the current framework. For instance damage to the soil caused by cattle could be dealt with already on the basis of the current framework.

34. The aim of the management system of permanent pasture (recital 4 of the Council Regulation) is to avoid a "massive" conversion into arable land, thus allowing a certain margin of evolution of the ratio of permanent pasture in relation to the total agricultural area. The implementing rules have taken due account of this intention and used the margin given by the legislator to set the rule for a maximum variation at 10%, this rate being considered as the appropriate one by the Commission and Member States.

35. The preservation of the land under permanent pasture must be considered in relation to the total agricultural area and therefore the right computation is a ratio. That is the only way to take into account the evolution of farm land at Member State or regional level.

36. The calculation of the reference ratio of permanent pasture is based on the various data existing in the IACS, with a view to avoid "opportunity effects". The Commission is aware that some Member States had difficulties following their obligations as regards the calculation of the reference ratio of permanent pasture. Where necessary a follow up will be considered by the Commission.

Eurostat data is based on different definitions and timeframes which explain to a certain extent the differences.

37. The objective of the permanent pasture management system is to "avoid a massive conversion" of these pastures (recital 4 of the Council Regulation). The legislator defined it therefore as purely quantitative and not qualitative. However, the quality of permanent pasture is addressed by other cross compliance means via requirements in national legislation transposing the Habitat Directive (designation of Natura 2000 zones) or via implementation of the GAEC standard on protection of permanent pasture.

38. The Commission considers it very useful to issue guidance documents to help Member States implementing cross compliance. Most of the guidance documents were circulated on Member States' request and these have often expressed interest for this information. As far as SMRs are concerned, they derive from a legislation existing often for years and there should not be overlap or contradiction between the jurisprudence built during the past as regards these legal acts and possible guidance documents in the framework of cross compliance. However the Commission has clarified a number a useful questions in this respect, e.g. the fact that requirements to be included into cross compliance for implementing the general food law are limited to primary production. This was

welcomed by Member States. As far as GAEC is concerned there was no request for more guidance from Member States.

39. The Commission issued guidance on the request by Member States on the legal questions raised as regards practices imposed to farmers and control points. Considering the diversity of possible situations throughout the EU, the only possibility to provide guidance to Member States was sharing experience. This was allowed by the organisation of several workshops and experts group, which were welcomed by Member States. The Commission is aware that environmental Directives including birds and habitat are not always fully implemented at farm level. These cases are followed up under the clearance of accounts procedure.

40. The Commission mentioned its intention to draft a guidance document on certain of the provisions of food and feed law as early as at the meeting of Agriculture Ministers in February 2006. The Commission services presented the draft guidance document to the Member States in March 2006, allowing them to take it into account for their control programme of that year. This document was subsequently finalised in May 2006 to take into account Member States' requests. The document aims only at providing guidance and Member States shall apply their obligations under the legislation, including checking the hygiene provisions under the general food law, independently from it.

It was found, however, that Member States did perform checks that were not in conformity with the requirements deriving from the Regulation on food and feed law. Moreover some Member States did not perform checks at all in relation to this Regulation. These cases are followed up by Clearance of accounts procedures.

41. The Commission ensures an on-going monitoring of the specific legislation constituting the SMRs and a follow-up of Member States' failure to implement it. Moreover, under cross compliance, the requirements and corresponding control points are effectively checked in the framework of the Commission's audit activity. Any failure found in that respect is followed up under the procedure of clearance of accounts, including the application to Member States of possible financial corrections.

42. The audit missions are decided on the basis of a central risk analysis, in line with internationally accepted auditing standards. Therefore not every requirement in every Member States are audited every year on-the-spot and it may happen that failures to implement cross compliance are not immediately detected. However the financial risk for the agricultural funds are covered by the possibility to apply financial corrections to Member States. These financial corrections are effected as long as the shortcomings have not been addressed by the concerned Member States.

43. The Commission has closely followed the implementation of the GAEC framework by Member States. A questionnaire was sent to Member States after the start-up phase, as early as in June 2006. When unjustified missing standards have been found, they have been discussed bilaterally with Member States during the first semester of 2007 if they were relevant to the baseline for agri-environmental measures. This is not a difficulty but instead a normal exercise in the framework of the approval of rural development programmes to discuss both the baseline and the undertakings going beyond the baseline and which are financed by the agri-environmental measures. Significant progress was obtained on that occasion with regard to both the number and the quality of GAEC standards defined. Subsequently the Commission communicated in July 2007 to Member States its assesment of the GAEC situation resulting from the approval of rural development programmes. Remaining unjustified missing standards are followed up by the Commission with the available legal means. During all that period the Commission has also checked the implementation on-the-

spot of the GAEC through its audit activity and any case of missing GAEC or control failure found is followed up under the clearance of accounts. Therefore the Commission considers having taken all the necessary measures in the framework of its legal responsibilities and will continue to do so.

44. The GAEC standards defined by Member States were checked by the Commission to verify that these national standards implement a standard listed in the EU GAEC framework. However Member States, from the very legal basis, have a large flexibility to define their national standards and to adapt them to the specific characteristics of regions. The Commission would not be able to assess case by case each national standard due to the high level of detail in the standards and the many possible local conditions. This is the reason why the legislator did not foresee any approval of the national provisions.

46. As the Court points out, agri-environmental commitments are generally made for five years whereas the last programming period was seven years. The Commission did not have any legal possibilities to prevent Member States to allow committing new five-year agri-environmental commitments under the old regime which then expanded to the current programming period.

However, the Commission tried to remedy the situation by encouraging Member States first by providing them the possibility to allow transformation of old commitments to new ones¹⁰ and second by providing the possibility to extend existing commitments to the end of the last programming period¹¹. However, not all Member States chose to apply these possibilities.

Finally, legitimate expectations of beneficiaries must be respected.

47. Cross compliance is defined in the legislation and it is applied both for EAGF and Rural Development thus forming a common and clear basis for Member States.

In the case of agri-environment, cross compliance remains also as a part of the baseline for the agri-environment commitments.

48. Many important requirements of usual good farming practise were taken on board by cross compliance¹² and some others continue to apply in national legislation outside cross compliance.

As regards Poland, old Member States had a three-year transitional period for SMRs in 2005-2007 in the case of direct payments. Similarly, new Member States applying SAPS¹³ have a phasing in period in 2009-2011 and Bulgaria and Romania in 2012-2014. As cross compliance in the rural development is aligned to the EAGF, similar transitional period applies.

49.

(a) The requirement for Member States to define separate verifiable standards¹⁴ has become obsolete because they are now defined in the Community legislation for cross-compliance.

¹⁰ Article 11 of Regulation (EC) No 1320/2006 (Transitional Regulation).

¹¹ See Article 1(1) of Regulation (EC) No 1360/2005.

¹² Comparing the requirements on the coverage of Good Farming Practise issued in 1999 to the cross-compliance, Nitrates, Birds and Habitats and Ground water directives have remained as requirements as well as issues relating to animal welfare and fertiliser and plant protection product use.

¹³ Single Area Payments Scheme.

¹⁴ Second sub-paragraph of Article 35(1) of Regulation (EC) No 817/2004 with the reference to verifiable standards.

However, it is still stipulated that Member States must ensure that rural development measures are verifiable¹⁵.

(b) As cross compliance standards are now set out in Regulation (EC) No 1782/2003¹⁶, no separate approval procedure is necessary.

Member States have now to confirm that the cross compliance requirements in rural development are identical to those applied in the context of direct payments.

(c) For agri-environmental and animal welfare commitments cross compliance is part of the baseline. The full agri-environment payment is subject to the respect of cross compliance conditions¹⁷.

(d) For consistency reasons the control rate of cross compliance in rural development is aligned to the control rate of the EAGF. This alignment and the provisions of a clear legal framework have reinforced the transparency of the system and the verifiability of conditions.

Where conditions form part of the baseline, they are still subject to 5% control rate. In addition, now a higher number of Rural Development measures are subject to these conditions¹⁸.

(e) Many important conditions of good farming practice are taken on board in cross compliance¹⁹ and some others continue to apply in the national legislation outside cross compliance.

(f) For consistency reasons the rates of reductions and exclusions are aligned to those of the EAGF.

Even though there may be possible lower percentages of reduction, the reductions or exclusions now apply to both EAGF and Rural Development and also to higher number of measures in Rural Development²⁰.

50. The Commission encouraged Member States to remedy the situation by firstly allow transformation of old commitments to new ones and second to extend old commitments to the end of the last programming period.

However, not all Member States chose to apply these actions. In these cases the eligibility rules of the old programming period remain to apply and it leads to different control systems.

Finally legitimate expectations of beneficiaries must be respected.

51. The situation described by the Court is transitional due to a change in the legislation.

¹⁵ See Article 48(1) of Regulation 1974/2006 as well as Article 5 of Regulation 1975/2006.

¹⁶ See 3rd indent of point 5.2 of Annex II of Regulation (EC) No 1974/2006.

¹⁷ For agri-environment cross compliance as well as minimum requirements for fertiliser and plant protection product use and other relevant mandatory requirements established by national legislation and identified in the programme See Article 39(3) of Regulation (EC) No 1698/2005.

¹⁸ See Article 51(1) of regulation (EC) No 1698/2005.

¹⁹ Comparing the requirements on the coverage of Good Farming Practise issued in 1999 to the cross-compliance, Nitrates, Birds and Habitats and Ground water directives have remained as requirements as well as issues relating to animal welfare and fertiliser and plant protection product use.

²⁰ See Article 51(1) of regulation (EC) No 1698/2005.

52. The clear delineation is provided in the legislation: cross compliance is a part of the baseline for agri-environment²¹.

53. As the environmental situation differs between different regions and between Member States and as their respective environmental needs are different, it is justified that GAEC standards differ too. This principle that MS need to reflect national differences of agriculture and environment in their baseline rules has been applied in the past in the case of usual good farming practice and now it applies in the case of cross compliance.

In addition, most of the compulsory legislation forming the SMRs under cross-compliance is in the form of directives, which provide margin for interpretation and which are transposed into force by Member States taking into account their respective situations.

Finally, agri-environmental measures must be implemented in a spatially differentiated manner in order to respond to site-specific needs as well as agronomic and environmental circumstances.

These three factors together justify different delimitation between cross-compliance and agri-environment.

54. Cross compliance and agri-environment measures complement each other without any possible overlap. In other words, cross compliance represents the demarcation line between penalising farmers for the non-compliance with mandatory requirements (in line with the "polluter pays principle") and rewarding farmers for the voluntary provision of environmental benefits through agri-environmental commitments.

According to the Rural Development Programme for Mainland Portugal, these two standards were requested to be included within the description of the cross compliance during the programme negotiations. An audit mission carried out by the Commission found that these standards were defined but not yet published in the beginning of 2008. This is followed up under the clearance of accounts procedure.

55. The extensification scheme in Greece is based on reduction of stocking density. The maximum livestock density set by GAEC is 3 LU/ha²² and the agri-environmental aid is payable only when the reduction of the livestock density is at least 20%. Thus, the agri-environmental measure is going beyond GAEC.

56. The Dutch and Flemish situations are not comparable:

The Dutch requirement of a catch crop after maize in nitrate sensitive zones is only valid for sandy and loam soils, not for other soil types.

The "green cover" agri-environmental measure was implemented in Flanders during the last programming period it is not continued under the new programming period as the entire territory of Flanders became nitrates sensitive zone.

57. There is no overlap between agri-environment and cross compliance as they complement each other without any possible overlap. In other words, cross compliance represents the demarcation

²¹ See Article 39(3) of Regulation (EC) No 1698/2005.

²² The stocking density is expressed in the format of livestock units (LU) divided by hectares (ha).

line between penalising farmers for the non-compliance with mandatory requirements (in line with the "polluter pays principle") and rewarding farmers for the voluntary provision of environmental benefits through agri-environmental commitments.

There is no legal basis that allows the Commission to make a judgement on the need to include buffer strips in the implementation of the GAEC framework. The legislator made a deliberate choice to give Member States a certain degree of discretion with respect to both the definition of mandatory requirements and the design of agri-environment measures. This discretion allows Member States to take into account national and regional specificities.

Box 3 – Examples of different use of buffer strips

There is no Community-wide definition of the minimum width of buffer strips and such strips are not even listed as a standard in the GAEC framework.

The legislator made a deliberate choice to give Member States a certain degree of discretion with respect to both the definition of mandatory requirements and the design of agri-environment measures. This discretion allows Member States to take into account national and regional specificities.

59. The Commission ensures an on-going monitoring of the specific legislation constituting the SMRs and a follow-up of Member States' failure to implement it. Moreover, under cross compliance, the existence and completeness of requirements and corresponding control points are checked in the framework of the Commission's audit activity. Any failure found in that respect is followed up under the procedure of clearance of accounts, including the application to Member States of possible financial corrections.

A mission in Finland will be performed in the end of 2008 where the efficacy of the control system in Finland will be checked.

60. The Commission has reviewed in 2007 the management and control rules for cross compliance in order to take into account the experience of implementation by Member States. On this basis proposals for improvements were listed in the Commission report issued in March 2007 and further translated into legal provisions at the end of that year. These modifications include a specification of the timing of on-the-spot check for the various requirements at farm level. The principle is that the timing of checks should be optimised in relation to the requirements but no requirement should be ignored in the control system. This principle addresses the Court's criticism.

61. In its exchanges with Member States, the Commission regularly put the onus on the definition of obligations at farm level which are understandable for farmers, limited to the farmer's responsibility, applicable and controllable.

63. The implementation of the "birds" and "habitat" directives is part of the scope of the Commission's audits, and such weaknesses are followed up via clearance procedure.

64. Audit missions of the Commission found that the controls performed on the bird and habitat directives in both Greece and France were not in line with the legislation. These findings are followed up under the clearance of accounts procedure.

65. In principle the control system for cross compliance should be based on the control systems existing under the various specific policies. Following this principle infringements found during the

checks carried out under the specific legislations should also lead to reduction under cross compliance if the farmer benefits from CAP payments.

An audit mission by the Commission in the Netherlands found that the competent control authorities for SMR 2 and (a part of) SMR 4, contrary to the legislation, did in 2006 not perform all their obligatory controls in the framework of cross compliance. Moreover, results of findings from other checks by these competent authorities were not taken into account and, contrary to the legislation, no cross compliance reductions were applied. These findings are followed up under the clearance of account procedure.

An audit mission in Finland at the end of 2008 will check the effectiveness of the control system in place.

67. The reductions under cross compliance are not based on the cost of compliance nor on the financial consequences of non-compliance. The reasoning is different, in line with its objectives. Cross compliance is the link between CAP payments received by a farmer and the respect of basic requirements. This link is expressed in concrete terms through the possibility of a reduction of the payments received by the farmer and the reduction should be proportionate to the severity of the infringement. The reduction is therefore expressed as a percentage, proportionate to the level of infringement for these payments. The amount reduced, in absolute terms, could therefore be low if the farmer receives low amount of payments, even for severe infringements.

69. In defining the scale of reductions, Member States should take into account the extent, severity, and permanence of the non-compliance, as well as the repetition of the non-compliance the following years and a multiplication factor is applied to the percentage of reduction in case of repeated non-compliance. The reduction could therefore increase the following years making this calculation useless. Moreover the farmer would be identified as high risk in the management system leading to a higher probability to be controlled. This would have also a deterrent effect.

70. The repetition factor shall apply every year following the finding of the non-compliance if the latter is not resolved. After a number of repetitions the non-compliance is deemed intentional and the reduction is increased up to the total exclusion from the aid schemes for one or more calendar year, ensuring therefore the necessary deterrent effect.

71. The reduction matrices applied by Member States are checked in the framework of the Commission's audit activity. Any weakness found in relation to the legal obligations is followed up under the clearance of accounts' procedure and risks for the CAP funds are covered by possible financial corrections.

72. The 2007 report proposed improvements including allowing Member States to define cases of minor non-compliances where no reduction would be applied. This exemption is however allowed only with certain limitations and these cases shall be followed up the next years. Other clarifications were brought as well such as on the communication and reporting between bodies involved in the controls. If a Member State fails applying properly this new legal framework, financial corrections are applied when it is found that there is a risk for the CAP funds.

Box 4 – Examples of low sanctions for non-compliance with key requirements

The scale of calculation of reductions is systematically part of the scope of Commission audits, and is followed up by clearance of accounts procedure.

74. Applying reductions of less than €100 requires burdensome administration without a real deterrent effect. The 2007 report therefore proposed not applying such reductions however with certain limitations and the obligation to follow up the infringements the next years although the application of this rule could exclude a significant number of farmers from reductions but only for the first infringement. In case of repeated non compliance, this rule should not apply and the farmer would face a higher reduction, with a real deterrent effect.

75. The Commission has organised a number of meetings of the experts group on cross compliance as well as a number of workshops to discuss, compare and allow benchmarking of the calculation of reductions. However when Member States did not set the reduction scale at a sufficient level, this is considered as a failure to apply properly the legislation and the cases found are followed up under the clearance of accounts procedure.

77. The data communicated by Member States reflects the situation existing during the year concerned. Of course if the situation changes, e.g. a change of the legislation or the inclusion of new farmers in the system of cross compliance, the figures will evolve the following year but it does not put in question the fact that data are comparable.

78. The Commission improves the templates for the communication of statistics every year and is ready to continue, taking into account the limitation that the administrative burden at Member State level should be reasonable. The statistics are analysed by the Commission services, which if appropriate launch desk audits on this basis. In addition statistics are used for the preparation of the audits missions. However, it cannot be expected from the annual statistics to give a detailed view and quantification of all kinds of non-compliance which can occur in every Member State. As regards the representativity of the farms selected, the Commission introduced in Regulation 796/2004 the obligation to have both a risk and a random part in the sample which should ensure good representativity of the sample. However it remains necessary that the main part of the sample be risk-based, in order to make the checks more effective.

The Council Regulation does not distinguish between formal and substantial non compliances as mentioned by the Court. The level of reduction depends on the 'severity', 'extent', 'permanence' and 'repetition' of the finding.

Box 5 – Examples of incomplete and inaccurate reporting²³

All the facts mentioned will be analysed by the Commission with a view to improve the statistics for the coming period.

In general, at all audit missions Member States have to provide the Commission data in relation to all checks performed by the Member State (amongst others: kind of checks performed on requirement/standard level, reduction(s) applied). These data are analysed and it is checked if they correspond to the statistics provided. All differences should be explained by the Member State and potentially the statistics need to be adapted.

80. The first cross-compliance statistics were related to claim year 2005. The Commission considers that, through the number of reductions applied, they give a useful overview of the level of compliance of farmers throughout the EU.

²³ The examples are based on the most recent available data at the time of the audit, which was 2006, except for Greece where the most recent data concerned 2005.

In this respect, a significant improvement is already introduced from claim year 2007: the statistics will allow the calculation of the error rate in monetary terms (percentage of cross-compliance reductions relative to the payments made to the cross-compliance control sample), for each Member State.

81. As early as in 2007 an evaluation study²⁴ was carried out. In this context, available data on inspections and aid reductions were considered helpful to monitor progress and to report on achievements against the intended objectives of cross compliance.

82. Data on inspections and aid reductions are available. They were considered as useful performance indicators for monitoring the achievements of cross compliance objectives in the context of the external evaluation carried out in 2007²⁵.

83. Cross compliance was introduced in 2005. Therefore no information in relation to cross compliance may be available before that date. For instance there were no checks in the framework of the IACS for the requirements included into the scope of cross compliance. Information concerning the number of checks and the number of infringements are available only as from 2005 and this year represents the baseline level. The Commission considers that the data communicated by Member States constitutes a reliable baseline: they allow comparison between Member States and over time.

84. The Commission considers that the objectives of cross compliance are clear. An external evaluation study on cross compliance was carried out in 2007²⁶, including the definition of operational, specific and general objectives. In this context, available monitoring data were considered as useful indicators for monitoring the achievements of cross compliance against its intended objectives.

CONCLUSIONS AND RECOMMENDATIONS

85. The Commission considers that the objectives of cross compliance are clear: to make EU farmers respect standards laid down in legislation. The CAP payments received by the farmer are reduced where basic standards for the environment, food safety, animal health and welfare and good agricultural and environmental condition are not respected.

The Commission believes also that the scope of cross compliance is well defined at EU level. It consists of the relevant set of legal acts in the areas covered and a set of standards for good agricultural and environmental condition as well as for the maintenance of the amount of land under permanent pasture.

- The Commission considers that the objectives of cross compliance are “SMART”. The general objectives of cross compliance is defined in the Council Regulation. The Commission has further specified its view on the objectives of cross compliance in its 2007 report²⁷. This report

²⁴ Evaluation of the application of cross compliance as foreseen under regulation 1782/2003.

²⁵ Evaluation of the application of cross compliance as foreseen under regulation 1782/2003.

²⁶ "Evaluation of the application of cross compliance as foreseen under regulation 1782/2003".

²⁷ COM(2007)147. This report specified the general cross compliance objective in specific objectives as follows : "(1) to contribute to the development of a sustainable agriculture [...] through the respect by the farmer of the rules relating to the relevant aspects of cross compliance and (2) to make the CAP more compatible with the expectation of the society at large [as] there is now a growing body of opinion that agricultural payments should no longer be granted to farmers who fail to comply with basic rules in certain important areas of public policy."

was welcomed by the Council²⁸. As early as in 2007 an evaluation study²⁹ was carried out. The external evaluator has clearly identified the operational, specific and general objectives of cross compliance, as well as a set of indicators for assessing the contribution of cross compliance to its intended objectives. The Commission considers that this demonstrates the “smartness” and the logic of the objectives of cross compliance.

- The principle that Member States shall define verifiable standards is already underlying the legislation on cross compliance.

86. The Commission has proposed in its 2007 report³⁰ improvements of the legal framework, which have been agreed by the Member States. The Commission will continue to bring improvements as far as needed.

However, the legal framework consists of 19 Regulations and Directives, which have existed already for years independently from cross compliance. Therefore, the complexity is not a consequence of the introduction of cross compliance.

- The simplification of the legal framework is always a priority for the Commission. Accordingly, the legal framework should be as simple as possible and focused on the elements of farming activity where improvements are sought. This is the reason why the legislator has deliberately decided to use the most relevant part of the existing legislation at EU level and to add under cross compliance a link with CAP payments.
- The proposal for changing the scope of cross compliance made in the course of the "health check" exercise is based on a full Impact Assessment.
- The Member States are obliged, pursuant to the current legislation, to define precise obligations at farm level, as well as the corresponding reduction matrices, and communicate them to farmers in a consistent manner.
- The Commission assesses independently from cross compliance the requirements under SMRs defined by the Member States in the framework of the implementation of the specific legislation of the concerned areas (environment, health, etc.). This assessment is carried out on the basis of the national implementing provisions communicated by Member States. As regards GAEC standards an assessment is carried out by the Commission on a regular basis however taking into account the margin of manoeuvre given to Member states by the legislator. In the more specific framework of cross compliance the practical implementation of the national provisions implementing requirements and standards is verified in the framework of the audit programme. Failures found with regards to the legal obligations of the Member States are followed up according to the procedures available to the Commission, where appropriate (clearance of accounts and infringement procedure).

87. Cross compliance is defined in the legislation and as a matter of consistency it is applied the same way both for EAGF and Rural Development. It forms a common and clear basis for Member States and provides comparative ground.

²⁸ Council conclusions doc.10682/07.

²⁹ Evaluation of the application of cross compliance as foreseen under regulation 1782/2003.

³⁰ COM(2007) 147.

There is no conflict between cross-compliance and rural development. Cross compliance represents the demarcation line between penalising farmers for the non-compliance with mandatory requirements (in line with the "polluter pays principle") and rewarding farmers for the voluntary provision of environmental benefits through agri-environmental or animal welfare commitments. Thus, cross-compliance and agri-environment or animal welfare measures complement each other without any possible overlap.

- The introduction of cross-compliance has allowed for harmonizing requirements at EU level and for aligning provisions with the EAGF, thus producing important benefits.

The Commission considers that important requirements of good farming practise still apply in cross compliance.

- A significant degree of flexibility must be offered to Member States to allow them to adapt the obligations to the specific characteristics of the areas concerned. The Commission does not intend to approve national standards within the cross compliance system. The respect by Member States of a minimum level-playing field is however ensured by the Commission through its monitoring and audit activity.

Moreover, the rural development policy is based on programming periods and national programmes are approved, not individual standards. Therefore the comparison with cross compliance is not necessarily relevant.

The principle that Member States shall define verifiable standards is already underlying the legislation on cross compliance.

- There should be no overlap between cross-compliance and agri-environmental commitments. This has been checked during the programme approval process. Member states had to prove that the agri-environment measures go beyond the baseline as defined by article 39 (3) of Regulation 1698/2005.

Agri-environment and cross compliance complement each other without any possible overlap. In other words, cross compliance represents the delineation between penalising farmers for the non-compliance with mandatory requirements (in line with the "polluter pays principle") and rewarding farmers for the voluntary provision of environmental benefits through agri-environmental commitments.

The legislator made a deliberate choice to give Member States a certain degree of discretion with respect to both the definition of mandatory requirements and the design of agri-environment measures. This discretion allows Member States to take into account national and regional specificities.

88. In case of weaknesses of implementation of the control system by Member States the financial risks are covered by the audit activity of the Commission and financial corrections are applied where necessary.

As regards the reduction system under cross compliance, it is the responsibility of Member States to implement it properly and weaknesses found in this respect are also followed up by the Commission during its audit activity.

- The Commission ensures, through its monitoring and audit activity, that Member States respect a minimum of level-playing field.
- The basic principle is that at least 1% of farmers receiving CAP payments are subject to cross compliance controls each year. Following the principle of risk analysis Member States have requested a margin of flexibility in order to be able to focus the controls on the more risky obligations, however without ignoring the remaining obligations. The Commission has agreed to this request and consequently adopted new rules in 2007 allowing this flexibility.
- The principle that possible reductions are proportional to or dependent on the seriousness of the breach is already laid down in the current legislation on cross compliance. The Commission does not see reasons to modify this framework at this stage.

89.

- The Commission is currently examining the question of monitoring.
- The Commission follows up where data is missing or is inconsistent.
- Regarding the analysis of data the Commission has made considerable efforts for analysing the cross-compliance statistics. Cases of missing or inconsistent data are followed-up. Incorrect applications of cross-compliance rules are followed-up under clearance of accounts procedure (if appropriate by desk audits) in addition to the audit mission programme.

The Commission has also reinforced the human resources in this area.

90. The instrument of Cross Compliance, agreed by the Council and Parliament in 2003 and phased in from 2005, was completely new and obliged a number of Member States to increase and reorganise their efforts to better implement and control the relevant Directives and Regulations at farmer level.

Difficulties in the implementation of cross compliance stem from the reorganisation of control bodies, from the identification of controllable obligations relating to farming activities in the different Directives and Regulations, and from sometimes incomplete conversion of such Directives into national law.

The Commission services, together with Member States, have been very active in harmonising application at Member State level and guidelines were produced to improve identification of obligations to be respected at farm level.

Cross compliance has certainly contributed to a better respect of the relevant environment, food safety, health, and animal welfare Directives and Regulations.

However the Commission acknowledges that the effectiveness of cross compliance could be further improved and sees the best way to achieve this in pursuing and reinforcing the efforts already initiated.

INDEX OF TERMS AND ABBREVIATIONS

CAP: Common Agricultural Policy

DG AGRI: The European Commission's Directorate General for Agriculture and Rural Development

Direct payments: Payments directly granted to farmers under an income support scheme listed in Annex I of Regulation (EC) No 1782/2003

EU: European Union

GAEC: Good Agricultural and Environmental Condition. This refers to sets of standards defined by the Member States for soil preservation and minimum land maintenance (on the basis of the framework defined in Annex IV to Council Regulation (EC) No 1782/2003), and obligations in relation to permanent pasture

Legal framework:

The Council Regulation: Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations

The Commission Regulation: Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross compliance, modulation and the integrated administration and control system provided for in Council Regulation (EC) No 1782/2003

Legislation adopted by the Member States within the provisions of the above

Permanent pasture: In the context of cross compliance, permanent pasture is defined as land used to grow grasses or other herbaceous forage which has not been included in the crop rotation of a farm for five years or longer. It is one element of GAEC

SMR: Statutory Management Requirements. These are set out in selected articles pertaining to 19 Directives and Regulations (listed in Annex III to Council Regulation (EC) No 1782/2003) in the areas of environment; public health, animal and plant health; and animal welfare.