

Special Report

Has the Commission effectively managed the integration of coupled support into the single payment scheme?



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Special Report**Has the Commission effectively managed the integration of coupled support into the single payment scheme?**

(pursuant to Article 287(4), second subparagraph, TFEU)

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Reply of the Commission

CAP: common agricultural policy

EAGF: European Agricultural Guarantee Fund

EAFRD: European Agricultural Fund for Rural Development

ha: hectare

IACS: Integrated Administration and Control System

MS: Member State

SPS: single payment scheme

TFEU: Treaty on the Functioning of the European Union

Clearance of accounts procedure: Two-stage procedure by which the Commission ensures the compliance of expenditure with the applicable financial and sector-specific regulations. The two stages consist of an annual financial decision and multiannual conformity decisions. While the financial decisions concern the annual accounts and internal control system of each accredited paying agency (certification of the Member State paying agencies' accounts and annual review of the fulfilment of the accreditation criteria), the conformity clearance decisions have the objective of ensuring that Member States apply the EU legal framework and that expenditure that infringes these rules in one or several financial years is excluded from EU financing.

Decoupling: Process of separation of direct aid payments from the actual agricultural production.

Health check: 2008 review of the 2003 CAP reform. Adoption of Commission proposals for further decoupling of direct payments, higher transfers of expenditure to rural development measures, modifications to the intervention system, increase of milk quotas and other sector-specific measures.

Modulation: Mandatory reduction of all annual direct payments above 5 000 euro introduced by the 2003 reform to finance rural development measures.

National reserve: Each Member State operates a national reserve that incorporates the difference between the respective national SPS ceiling and the total value of all allocated payment entitlements. The national reserve must be primarily used to grant payment entitlements to farmers in special situations. Member States may also use these funds to allocate payment entitlements to farmers who commence an agricultural activity or who are located in areas subject to restructuring or development programmes.

Payment entitlement: Entitlement giving a farmer the right to the payment of the amount of SPS aid fixed therein if declared together with one hectare of eligible agricultural land.

Principle of non-discrimination: The principle of non-discrimination is laid down in Article 40 of the Treaty on the Functioning of the European Union and requires that comparable situations should not be treated differently and different situations should not be treated alike unless this treatment is objectively justified. Different treatment of farmers therefore has to be objectively justified.

Principle of proportionality: The principle of proportionality is a general principle of EU law and requires that measures adopted by Community institutions should not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by the legislation in question.

2003 reform: CAP reform ('mid-term review') which aimed to reduce price support and compensate for this reduction by direct income aid continuing a process that had begun in 1992 (MacSharry reform), and was confirmed in 1999 ('Agenda 2000' reform). The 2003 reform introduced the decoupling of direct payments to farmers and linked support to respecting land and animal management standards on each farm (cross-compliance) while reinforcing rural development assistance.

I

The single payment scheme (SPS) is financially the most important direct support scheme financed by the EU budget for agriculture. It was a key feature of the 2003 reform of the common agricultural policy (CAP). The SPS replaced most of the former direct payments coupled to land cultivated or number of animals. The SPS is independent ('decoupled') from actual agricultural production and farmers must have payment entitlements and eligible land in order to receive SPS aid.

II

In 2008 the Council decided in the framework of the 'health check' of the common agricultural policy (CAP) to integrate into the SPS, as from 2010 and until 2012, coupled support payments for those sectors which were at that time still excluded from the SPS or which Member States had decided to decouple only partially. Member States integrated into the SPS an amount of 4,2 billion euro that had previously been available for support.

III

The integration of coupled support into the SPS gave Member States considerable discretion as regards the criteria for distributing the available amounts among farmers. However, the Commission retains final responsibility for the consistent implementation of the EU budget and compliance with the general principles of EU legislation in the agricultural sector.

IV

As from 2015, the SPS will be replaced by a new basic payment scheme which takes up some key elements of the SPS. Member States will have the option to take into account the value of SPS payment entitlements for payments under the new scheme until the financial year 2021.

V

The Court audited whether the Commission effectively managed the integration of coupled support into the SPS. More specifically, the Court examined whether the Commission adequately supervised and verified the calculation of payment entitlements in the Member States, whether Member States' legislation complied with the conditions and principles set out in EU legislation and whether the competent authorities had put up effective checks ensuring correct calculation and allocation of payment entitlements.

VI

The Court concludes that the Commission's management of the integration of coupled support into the SPS was only partially effective.

VII

The Court found that the Commission did not ensure that the criteria applied for the distribution of the available amounts were always consistent with EU principles, notably those of non-discrimination of farmers and proportionality. In this context, the integration of coupled support into the SPS was implemented in an inconsistent manner and farmers in some sectors realised windfall benefits. Furthermore, there were weaknesses in the way the Commission monitored the respect of applicable ceilings, checked Member States' compliance with the applicable EU legislation and enforced the correction of errors.

VIII

Although Member States had for the most part correctly used the reference data of farmers, the Court found significant weaknesses in the correct application of the calculation rules, the respect of ceilings and the use of the national reserve. The framework set up by the Commission also did not clarify in a sufficient manner which checks Member States have to carry out to ensure the correct calculation of payment entitlements and Member State control systems varied in quality. This resulted in sometimes incorrectly calculated values of payment entitlements and subsequent undue payments of SPS aid to farmers.

IX

The Court recommends that the Commission:

- (a) in order to ensure a consistent implementation of CAP measures in a common market for the future new direct payment schemes, establishes at the appropriate level clear guidelines and requires Member States to demonstrate that the criteria adopted are objective and non-discriminatory, thereby avoiding market or competition distortion;
- (b) effectively supervises compliance with applicable ceilings and takes a more comprehensive approach for conformity clearance inspections which pays attention to the specific risks associated with an entitlement-based support scheme and accelerates follow-up of cases of non-conformity;
- (c) enforces the correction of payment entitlements whose values have not been calculated in accordance with the applicable rules and recovery of unduly allocated payment entitlements and undue SPS payments, notably systematic errors;
- (d) provides for the adoption of clear procedures by paying agencies to include effective checks on the reliability of the data underlying the calculations and on the accuracy of payment entitlements allocated by Member States.

Background

01

The decoupling of direct support for farmers from production and the introduction of the SPS were essential elements in the process of reforming the CAP in 2003. The main objective of the SPS was to shift policy orientation from market support to decoupled income support to farmers, thus enhancing farmers' market orientation and avoiding market distortion.

02

The SPS is based on the allocation of payment entitlements to each farmer. The SPS is financially the CAP's most important support scheme. It is entirely financed from the European Agricultural Guarantee Fund (EAGF). In the 2013 budget, payments for the SPS accounted for 70 % of EAGF expenditure and 54 % of the entire EU budget for agriculture and rural development.

03

Between 2005 and 2007, 17 Member States introduced the SPS¹, replacing most of the direct payment schemes coupled to areas cultivated or number of animals.

04

However, Member States were allowed to keep a certain percentage of the aid coupled to agricultural production or not to include certain types of direct payment into the SPS². Also, in some agricultural sectors, direct payments were still excluded from the SPS³.

The single payment scheme after the 'health check' of the common agricultural policy in 2008

The integration of coupled support into the SPS

05

In 2008 the Commission and the Council undertook a review of the CAP, known as the 'health check'⁴. For the coupled support which was still excluded from the SPS or where Member States had decided to leave it fully or partially coupled to production, the Council followed the Commission's proposal to further decouple it by the year 2012. Member States were however authorised to keep premiums for suckler cows, sheep and goats coupled to production⁵.

- 1 Belgium, Denmark, Germany, Ireland, Greece, Spain, France, Italy, Luxembourg, Malta, Netherlands, Austria, Portugal, Slovenia, Finland, Sweden and United Kingdom. Ten other Member States which joined the EU in 2004 and 2007 decided to introduce a transitional decoupled area related scheme – single area payment scheme – which is not based on payment entitlements.
- 2 All Member States, except those that joined the EU in 2004 and 2007, had to introduce the SPS and Member States could decide on the decoupling level by maintaining some coupled payments either at full level or only partially. These were, for example, area payments for arable crops, premiums for bovine, ovine and caprine animals and aid for hops, which Member States could only partially decouple or not decouple at all. The EU's outermost regions and aid for the production of seeds could also be excluded.
- 3 These were, for example, the specific quality premium for durum wheat, payments for protein crops, rice, nuts, energy crops, starch potatoes and potato starch, cotton, sugar, grain legumes aid and the premium for dried fodder.
- 4 Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (OJ L 30, 31.1.2009, p. 16).
- 5 In addition, coupled support for cotton was maintained. Member States could also maintain coupled support in the EU's outermost regions.

06

In the same year, the Council adopted the reform of the common market organisation in wine⁶. Member States could transfer EU funds from national support programmes in the wine sector and provide payment entitlements to vine growers. In addition, Member States could allocate payment entitlements in relation to the areas for which farmers had received EU support for grubbing up their vineyards.

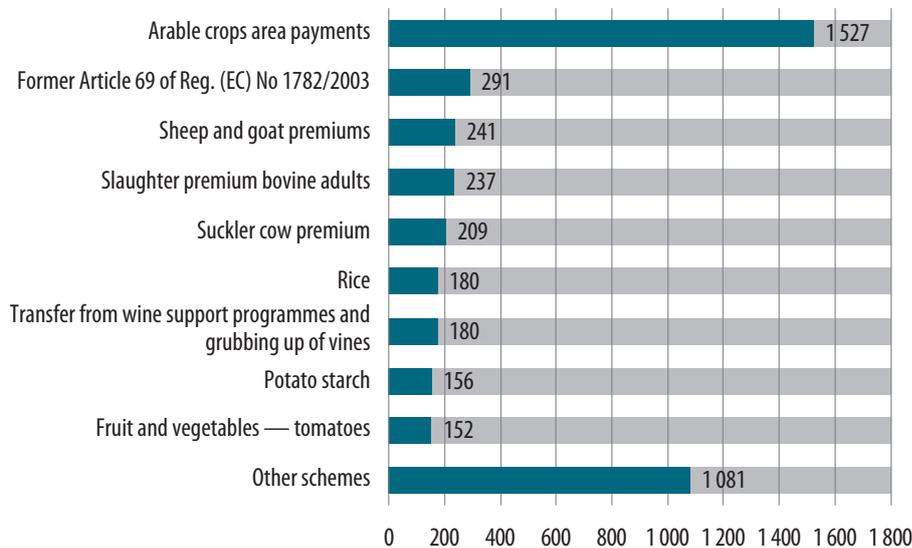
07

With their integration into the SPS between 2010 and 2012, coupled payments mostly ceased to exist. Member States could therefore distribute among farmers, in the form of payment entitlements, an additional amount of 4,2 billion euro that had formerly been available for the coupled support or had been transferred from the wine sector⁷. A breakdown of the available amounts per scheme is displayed in **Figure 1**⁸.

- 6 Council Regulation (EC) No 479/2008 of 29 April 2008 on the common organisation of the market in wine, amending Regulations (EC) No 1493/1999, (EC) No 1782/2003, (EC) No 1290/2005, (EC) No 3/2008 and repealing Regulations (EEC) No 2392/86 and (EC) No 1493/1999 (OJ L 148, 6.6.2008, p. 1).
- 7 The overall net increase of the SPS in this period amounts to 3,5 billion euro, because Member States could use a part of the available amounts at a later stage for the financing of specific support pursuant to Article 68 of Regulation (EC) No 73/2009.
- 8 A more detailed overview can be found in **Annex I**.

Figure 1

Amounts available for integration into the SPS by scheme 2010–12 (in million euro)



08

The available amounts are divided between Member States as shown in **Figure 2**.

Figure 2 Distribution of support available for integration by Member State 2010–12



National ceilings and national reserves

09

Like all direct payments, SPS expenditure is limited to an annual budgetary ceiling per Member State. The ceilings should ensure that the total level of payment entitlements does not exceed current budgetary constraints⁹.

10

Under the arrangements for the integration of coupled support into the SPS, Member States may allocate payment entitlements to farmers or increase the value of existing payment entitlements while respecting the sector-specific ceilings. The total value of all payment entitlements allocated to farmers in a given Member State must not exceed the national budgetary ceiling for the SPS.

11

Each payment entitlement, when declared together with a hectare of eligible agricultural land, gives the holder the right to the amount of SPS aid stated in that entitlement. This is called 'activation'. For almost all Member States that have introduced the SPS, more than 95 % of the value of payment entitlements allocated to farmers gives rise to the payment of SPS aid.

⁹ The budgetary ceilings apply to calendar year n when farmers have to submit their annual single applications for payment of support. Support payments are charged to the budget of the following financial year $n + 1$. The amounts eventually paid to farmers are, however, lower than the budgetary ceiling, as not all farmers necessarily claim support on all their payment entitlements. Moreover, notably until 2012, annual payments above 5 000 euro were subject to a reduction (known as 'modulation') to finance rural development measures. Aid payments may also be reduced by administrative sanctions.

Introduction

12

Member States must operate a national reserve that corresponds to the difference between the respective national SPS ceilings and the total value of all allocated payment entitlements. The national reserve must be primarily used to grant payment entitlements to farmers in special situations¹⁰. Member States may also use these funds to allocate payment entitlements to farmers who commence an agricultural activity or who are located in areas subject to restructuring or development programmes.

Payment entitlements after 2014

13

The SPS remains in force until the end of 2014. As from application year 2015 it will be replaced by a new basic payment scheme which will also be based on payment entitlements¹¹. The value of these payment entitlements will, in principle, be based on national or regional flat rates per hectare. However, Member States will have the option to take into account the value of SPS payment entitlements until the end of 2018 by gradually adjusting them to the regional average (convergence). Thus the calculation of SPS payment entitlements may have an effect on future payments to farmers until the financial year 2021.

The roles of the Commission and Member States in the implementation of SPS expenditure

The Commission's responsibility for ensuring that SPS expenditure complies with EU rules and principles

14

According to the EU financial regulation, the Commission implements the expenditure from the EAGF under a system of shared management with the Member States¹². This means that the general rules for the calculation of the values of the payment entitlements and the payment of SPS aid are set out in EU regulations¹³, but Member States must take all the legislative, regulatory, administrative or other steps needed to protect the EU's financial interests.

15

While the Commission has the final responsibility for the implementation of the budget and is accountable for the legality of payments and the sound financial management of expenditure, the Member States are responsible for the calculation of the payment entitlements and the subsequent payment of SPS aid to farmers by accredited paying agencies. According to the regulatory arrangements on financing expenditure under the EAGF, the Commission must monitor the Member States' application of the EAGF-financed measures and ensure compliance with the applicable EU regulations and principles¹⁴. The breakdown of responsibilities for integration of coupled support into the SPS is illustrated in **Figure 3**.

¹⁰ See paragraph 36.

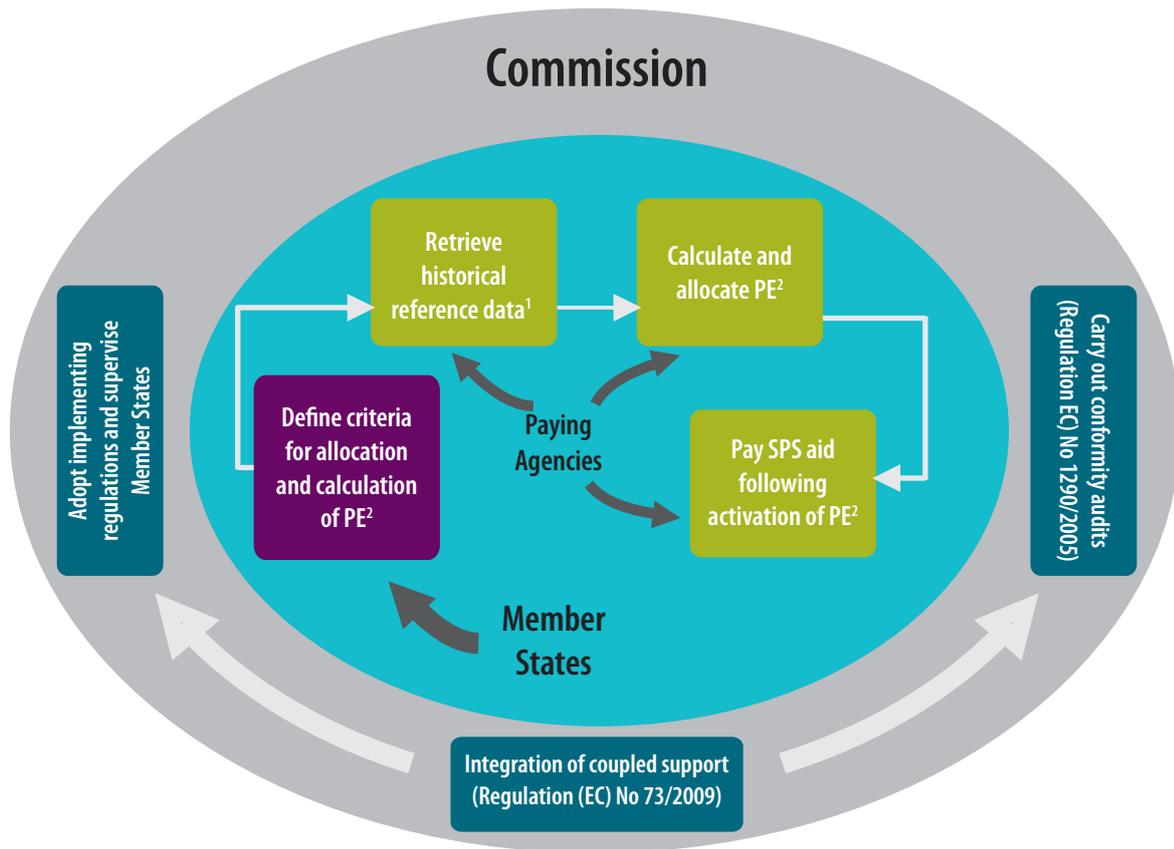
¹¹ European Parliament and Council Regulation (EU) No 1307/2013 of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ L 347, 20.12.2013, p. 608).

¹² Article 53b and Title I of Part Two of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the financial regulation applicable to the general budget of the European Communities (OJ L 248, 16.9.2002, p. 1). The same applies also under the new financial regulation which entered into force as from 1 January 2013 (Regulation (EU, Euratom) No 966/2012 of the European Parliament and the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1)).

¹³ Regulation (EC) No 73/2009 and Commission Regulation (EC) No 1120/2009 of 29 October 2009 laying down detailed rules for the implementation of the single payment scheme provided for in Title III of Council Regulation (EC) No 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers (OJ L 316, 2.12.2009, p. 1).

¹⁴ Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ L 209, 11.8.2005, p. 1).

Figure 3 Responsibilities for integration of coupled support into the SPS under Regulation (EC) No 73/2009



1 Historical model only. The regional model takes into account the regional average.

2 PE — payment entitlements.

Member States had significant discretion in establishing criteria for the distribution of available support in line with policy objectives

16

With the introduction of the SPS in 2005 Member States could choose to calculate the payment entitlements either on the basis of the coupled support which farmers had received in a specific reference period (known as the 'historical model') or on the basis of regional flat rates per hectare (the 'regional model'). There were also mixed forms which combined elements of both models ('hybrid models').

17

According to the principles which the Council adopted for the integration of coupled support into the SPS in the 2008 health check, Member States had significant discretion as regards the distribution of the available amounts across farmers¹⁵. Thus they could decide, for the agricultural sectors concerned, to calculate a reference amount on the basis of objective and non-discriminatory criteria, taking into account, in particular, the support that those farmers had received, directly or indirectly, under the relevant support schemes in a specific reference period¹⁶. Alternatively, Member States could establish types of agricultural activities performed by farmers during one or more years in a reference period and distribute the support on the basis of this type of activity¹⁷.

15 Articles 63 to 67 of Regulation (EC) No 73/2009.

16 Articles 64 and 65 of Regulation (EC) No 73/2009.

17 Article 63(2)(a) of Regulation (EC) No 73/2009. In this case Member States had to ensure that the farmers having benefited from the coupled support in the past received at least 75 % of the average annual support they had received under all the direct payments during the relevant reference period. Member States that introduced a regional form of the SPS could also use all or part of the available support to increase the value of payment entitlements for all farmers in the region by a supplementary uniform amount per payment entitlement.

Audit scope, objectives and approach

18

In view of the significant amounts included under the SPS after the 2008 CAP health check and the specific risks associated with the calculation of the reference amounts for each farmer, notably in the Member States which had opted for the historical SPS model, the Court decided to carry out a compliance audit on the calculation of payment entitlements in the years 2010 to 2012.

19

The Court asked the following main audit question: has the Commission effectively managed the integration of coupled support into the SPS? The audit addressed the following sub-questions.

- (a) Did the Commission adequately supervise and verify the calculation of payment entitlements?
- (b) Did Member States' legislation comply with the conditions and principles set out in EU legislation and did the competent authorities calculate and allocate the farmers' payment entitlements correctly?
- (c) Did the competent authorities in the Member States effectively check that the calculation and allocation of payment entitlements was correct?

20

The audit was conducted at the Commission and in Greece, Spain, France, Italy and the Netherlands. These Member States account for 92 % of the amounts integrated into the SPS between 2010 and 2012. All of those Member States had implemented the historical SPS model in 2005 or 2006.

21

The audit approach consisted of an assessment of the Commission's role in supervising the calculation and allocation of payment entitlements, in particular in the context of the integration of coupled support into the SPS adopted in the 2008 health check. The Court's work also included a review of the national implementing acts, an analysis of management and control systems and compliance tests, on a documentary basis, on a sample of 377 files for beneficiaries who had received an increase in the value of their payment entitlements or who had received new payment entitlements between 2010 and 2012.

Weaknesses in the Commission's supervision and in Member States' implementation adversely affected consistent application of the principles adopted under the 2008 CAP health check

22

On the basis of its analyses described above, the Court found that, due to a lack of supervision by the Commission, Member States had integrated coupled support into the SPS and calculated payment entitlements in a way which did not always comply with the general principles of EU legislation, as is further explained below.

The Commission has not adopted implementing provisions and not properly assessed the Member States' criteria for the distribution of available amounts ...

23

As pointed out above, Member States had significant discretion in establishing the criteria for the distribution of the amounts of coupled support that were available for integration into the SPS, but the criteria had to be objective and non-discriminatory and had to take, in particular, account of the support which farmers had directly or indirectly received in one or more years of the reference period. These were as a rule the years from 2005 to 2008. For schemes which had already been decoupled in 2005 but which the Member State had opted to leave partially coupled, similar principles applied. Here, the support had to be proportional to what farmers received in the original reference periods¹⁸, but Member States could also decide to choose a more recent representative period.

24

In spite of the obligation set out in Regulation (EC) No 73/2009, to adopt detailed rules¹⁹, the Commission did not lay down any implementing rules for integration of coupled support into the SPS, apart from some technical provisions regarding fruit and vegetables and the wine sector²⁰. The Commission also did not request Member States to report on in detail and justify the criteria which they had adopted. Consequently, it did not carry out an *ex ante* assessment as to whether Member States adopted an overall consistent approach and distributed the available support in accordance with EU principles.

... in this context some criteria defined by Member States did not always comply with EU legislation or principles

25

The Court found that the Member States visited had, as a rule, adopted criteria which either took into account the amounts of direct support which the farmers had received in one or more of the reference years or the number of eligible hectares or animals subsidised. For aid schemes such as the aid for processing dried fodder or aid for potato starch where in the past support had been paid to the processors, farmers received a reference amount on the basis of their deliveries of raw material or quantities covered by a delivery contract with the manufacturer.

18 Usually the years from 2000 to 2002.

19 Article 142(d) of Regulation (EC) No 73/2009.

20 Regulation (EC) No 1120/2009.

Observations

26

EU legislation requires the reference periods be representative. However, Member States could not always justify why they had chosen a specific period as being ‘representative’ and made inconsistent interpretations of the principles to be applied for the integration of the coupled support into the SPS. This sometimes resulted in different treatment of farmers in comparable situations.

27

Accordingly, in Italy and Greece the national authorities applied a prudent approach by calculating payment entitlements based on the amount which farmers in the sectors concerned had received in direct payments during the reference period. In Spain however,

the authorities decided to multiply the coupled support which each farmer had annually received in the reference period by a coefficient in order to use the available support to the full. In some sectors these revised amounts, however, significantly exceeded what farmers had received in the reference period. As a result, farmers in those sectors were granted payment entitlements whose total value amounted to 32,6 million euro more than what they had annually received in coupled payments in the reference period. The Court estimates that by this, farmers in the sectors concerned realise globally a windfall benefit of approximately 29 million euro in SPS payments per year. The excess of the value of the payment entitlements over the amounts received in the reference period is illustrated in **Table 1**.

Table 1 Percentage increase in value of payment entitlements in excess of the level of coupled payments received in the reference period in Spain

Scheme integrated into the SPS	Excess value of payment entitlements
Specific quality premium for durum wheat	12,2 %
Durum wheat supplementary payment	18,1 %
Aid for olive groves	1,4 %
Sheep and goat premium	7,6 %
Sheep and goat supplementary premium	4,4 %
Protein crop premium	31,5 %
Seed aid	76,8 %

28

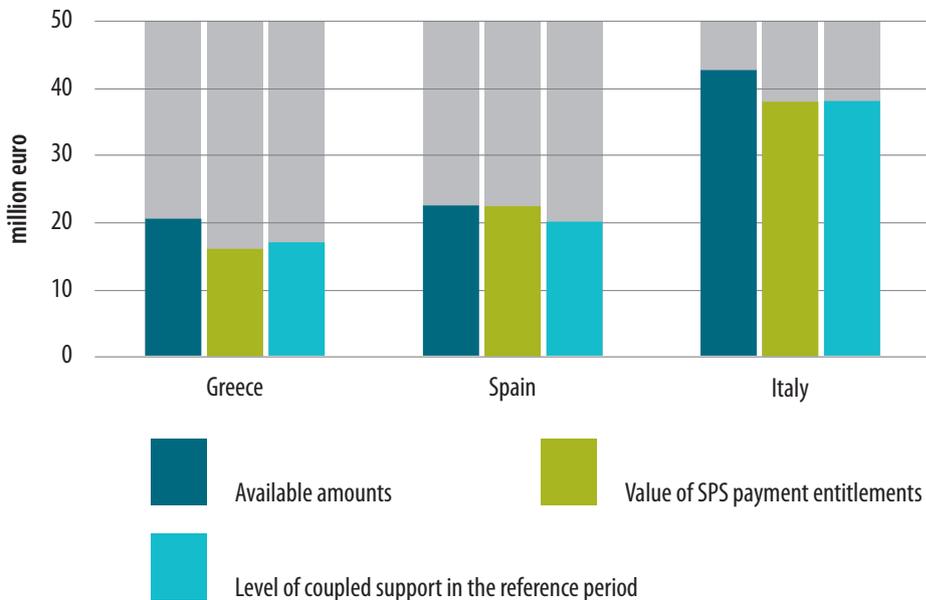
The Dutch authorities had a similar approach as the authorities in Spain. They decided to distribute all the support available on the basis of hectares farmed or animals slaughtered in the reference period rather than on the basis of the amounts of aid farmers had actually received, thus creating a risk of windfall benefit. However, this had little or no impact, as, in the sectors concerned, applications for aid in the reference period had usually exceeded the available budget. Only in the seed sector did beneficiaries receive payment entitlements whose value exceeded the coupled payments in the reference period by 46 %.

29

The different treatment of farmers in comparable situations which followed in some sectors from the inconsistent approaches taken is shown in **Figure 4** for the specific quality premium for durum wheat.

Figure 4

Integration of the specific quality premium for durum wheat



30

While, for most schemes integrated, Italy had chosen the average annual coupled payments of the years from 2005 to 2008, Greece, Spain and the Netherlands choose shorter periods of between 2 and 3 years or, for the integration of the sheep and goat premium in Spain, only 1 year. The Court noted in the latter case that this had allowed the authorities to concentrate the available amounts on a smaller population of farmers. France decided for the schemes integrated in 2010 that the individual reference year should be the year of the period from 2005 to 2008 during which the farmer had received the highest amount of coupled support.

31

Member States were also sometimes found to have distributed the available amounts in breach of the principles of non-discrimination and proportionality (see **Box 1**).

Box 1**Examples of discriminatory treatment of farmers**

Unlike in other Member States visited by the Court, in Greece the authorities reduced the reference amounts for farmers in the sectors of rice, durum wheat, protein crops and nuts by 5 %. They explained this reduction as being the application of the 'modulation' whereby all direct payments in the reference period (2007 and 2008) had been reduced in order to finance expenditure for rural development measures²¹. However, as the modulation procedure had been applied to all direct payments and had affected only amounts exceeding 5 000 euro per year, the value of the payment entitlements was lower than the contributions that many farmers had actually received in coupled support in the reference period. As the SPS aid which the authorities had paid out since 2010 was also subject to reductions for modulation, the farmers affected by the integration of coupled support received less support overall and were discriminated against as compared with those who were not.

In Italy the authorities calculated the payment entitlements for beneficiaries of the quality premium for durum wheat, the crop-specific payment for rice and the aid for nuts on the basis of the coupled support which they had actually received before modulation. There were however farmers whose payments in the reference period had been subject to reductions and exclusions, because the national authorities had determined that they had planted smaller areas with these crops than they had declared. By using as a basis the amount actually paid rather than the amount corresponding to the area determined, the Italian authorities permanently reduced the farmers' reference amounts and therefore their SPS payments. In doing so the authorities punished the affected beneficiaries more than once for the same infringement and farmers suffered financial consequences that were disproportionate to the aims of the penalty initially imposed on them.

²¹ See Title II Chapter 2 of 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 (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ L 270, 21.10.2003, p. 1).

Furthermore, side-effects of the integration of coupled support into the SPS were not treated consistently

32

Under the legislation in force²², Member States had the option not to increase the value of payment entitlements or not to allocate payment entitlements in cases where farmers had sold or transferred their holding or premium rights or where a lease had expired for all or a part of it before the farmers concerned were made aware of the decoupling and of the relevant conditions and thus the increase or the allocation would have led to a windfall profit for the farmer in question.

33

Of the Member States visited only France had as a general rule used this mechanism but clawed back all reference amounts corresponding to reductions of activities in terms of area farmed or eligible animals slaughtered after the reference period. However, this also went beyond the scope of the cases of sale, transfer or the expiry of lease mentioned in the EU legislation.

34

Italy had not applied the windfall profit clause, so that farmers having substantially reduced the number of hectares farmed between the reference period and the year when the support was integrated into the SPS could concentrate the support on very small areas. In one case audited by the Court, this procedure had led to a situation where a farmer who had cultivated in the reference period around 70 ha with rice, and thus received 30 425 euro in coupled support, needed only 0,41 ha of eligible land to be entitled to the same amount of SPS aid.

The applicable rules were sometimes implemented incorrectly by the Member States

35

The Court's audit found that, due to a lack of supervision by the Commission, Member States had integrated coupled support into the SPS in a way which did not always comply with EU legislation, as is further explained below.

The Commission did not clearly set out the conditions under which farmers could have access to payment entitlements from the national reserve ...

36

Farmers in certain special situations to be defined by the Commission are entitled to receive payment entitlements from the national reserve. In its implementing provisions, the Commission included, for example, cases where farmers made investments in a sector which would have entitled them to a higher level of coupled support if the sector had not been decoupled. However, contrary to the rules in force before the health check²³, the Commission neglected to define what was meant by an 'investment'. As a consequence, cases occurred where it was either doubtful whether farmers had actually made an investment or whether they would actually have benefited from a specific higher level of coupled support if the sectors concerned had not been integrated into the SPS (see **Box 2**):

22 Article 41(6) of Regulation (EC) No 73/2009.

23 Article 21 of Commission Regulation (EC) No 795/2004 of 21 April 2004 laying down detailed rules for the implementation of the single payment scheme provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ L 141, 30.4.2004, p. 1).

Examples of payment entitlements granted for investment

In France the national authorities allocated payment entitlements for 'investment' to slaughter-premium beneficiaries who had slaughtered more cattle in 2009 than in the reference period. The authorities did not, however, know if these farmers had actually invested in production capacities, bought animals for breeding or simply reduced their farming activities by slaughtering their animals (destocking). The rates per animal established by the national authorities were also significantly higher than the coupled support received per animal by farmers who had not invested.

Also, the Court found cases in France where the authorities had granted payment entitlements for investment in land, although the applicants had undergone only a simple change in their legal status.

37

In Greece farmers received payment entitlements from the national reserve on the grounds of investments where in 2010 they happened to cultivate more areas of a crop in a sector integrated into the SPS than in 2008, the last year of the reference period. However, land cultivation in 2010, as in 2008, was a mere annual production decision based on market demand and was not necessarily associated with an actual investment in productive capacity such as the acquisition of additional land. The Commission also failed to establish a maximum amount per hectare for the value of payment entitlements from the national reserve. This led to situations which are not in line with the principle of equal treatment. As an example, the Court found that, in France, farmers in the bovine and ovine sectors could receive payment entitlements from the national reserve worth up to 9 010 euro per hectare, even though for farmers who benefited from the integration of coupled support into the SPS in the same sectors outside the national reserve, EU legislation limits the value of a payment entitlement to 5 000 euro per hectare.

... and in some cases Member States allocated payment entitlements without a legal basis in EU legislation ...

38

Member States may also allocate payment entitlements from the national reserve to farmers who are starting an agricultural activity and farmers in areas subject to public intervention or to restructuring and/or development programmes.

39

In the present audit the Court found measures adopted by Member States which either had no legal basis in EU legislation or were in breach of the respective EU legal provisions (see **Box 3**).

... or calculated unit values of payment entitlements according to non-transparent criteria

40

For certain categories of farmers Italy, France and Greece had defined a fixed unit value per hectare of the payment entitlements from the national reserve. However, in France and Greece the criteria for the calculation of the amounts fixed per hectare were rather arbitrary, while in Italy there was no audit trail allowing for verification of the correctness of the calculations.

Box 3

Allocation or increase of value of payment entitlements without legal basis

In France the authorities allocated payment entitlements to farmers who had no payment entitlements or increased the value of payment entitlements that were significantly under the regional average value. They justified this in terms of a general risk of the abandonment of farming. However, under the EU legal provisions in force, this is only possible in areas subject to restructuring and/or development programmes. The French authorities had, however, neither drawn up a specific programme nor identified areas where the risk of abandonment of farming was considered likely. They could also not provide evidence that the increase of the value of those payment entitlements was an effective instrument for avoiding land abandonment, or that farmers suffered specific disadvantages for which they needed compensation.

Under another measure, the French authorities allocated payment entitlements amounting to 2 million euro to certain veal farmers on the ground that the specific sector had suffered a decline while they also specifically supported newcomers to this sector. This measure had the objective of buffering cyclical effects in a specific agricultural sector but was not related to a specific restructuring or developing programme.

Unclear procedures at the Commission level for monitoring compliance with SPS ceilings ...

41

Under the rules in force, the Commission establishes the applicable national budgetary ceiling for the SPS annually, taking into account the various options which Member States have chosen for granting coupled payments or specific support. This ceiling is the maximum value of all payment entitlements allocated to farmers in a Member State and the amount of the national reserve.

42

Member States must inform the Commission regularly of the total value of existing SPS payment entitlements in the given year, whether activated or not, the number of hectares required for activation and the amounts remaining in the national reserve. The Court noted that Member States did not always submit this information on time and that the Commission had not introduced a fully effective system for verifying whether the Member States complied with the applicable SPS ceilings²⁴. The Commission has also not clarified for what purpose it ultimately uses the information provided by Member States.

... and instance of non-compliance with the applicable ceilings resulting in an overstatement of the values of payment entitlements

43

EU legislation determines that the total value of payment entitlements allocated to farmers must not exceed the national budgetary ceiling applicable for the SPS. Likewise, for each sector integrated into the SPS, Member States could not distribute among farmers in the sectors concerned more than was annually available in the sector-specific component of the national ceiling²⁵.

44

Contrary to EU legislation²⁶, the French authorities had not reduced the value of all payment entitlements in order to finance the specific support for farmers under Article 68 of Regulation (EC) No 73/2009²⁷. Consequently, the value of all payment entitlements in France was overstated by 4,61 % which corresponds to 357,3 million euro. 74 million euro of this amount concerned the support integrated into the SPS in 2010. By the time of the Court's audit in the spring 2013, the French authorities had still not corrected the value of the payment entitlements.

24 See paragraph 44.

25 See Annex XII of Regulation (EC) No 73/2009.

26 Article 69(6)(b) of Regulation (EC) No 73/2009. Member States had the option to generate the necessary funds by making a linear reduction in the value of the payment entitlements allocated to farmers. In such cases the Commission reduced the national budgetary ceilings for the SPS accordingly.

27 For application year 2010 the French authorities reduced all SPS payments by flat rates of 3,92 %, for 2011 by 3,4 % and for 2012 by 3,31 %. See also annual report concerning the financial year 2011, paragraph 3.12 and annual report concerning the financial year 2012, paragraph 3.13.

Weaknesses in supervision and control affected the calculation of payment entitlements and subsequent SPS payments

45

The correct calculation of payment entitlements is essential for the legality of the subsequent SPS payments. An error in the calculation of the value of a payment entitlement results as a rule in an incorrect payment of SPS aid in subsequent financial years and for the entire duration of the SPS, unless the error is corrected.

46

EU legislation requires Member States to set up a system for the identification and registration of payment entitlements that allows for the verification of those entitlements and for cross-checks with the aid applications and the identification system for agricultural parcels. This database is a cornerstone of the integrated administration and control system (IACS) under which Member States are required to manage all direct payments.

The authorities of the Member States visited had for the most part correctly used the farmers' reference data, but several errors that occurred were systematic

47

The Member States which had decided to integrate the amounts available for coupled support into the SPS on the basis of the support received by farmers in the reference period had to retrieve for each scheme and for each farmer the individual reference data. These data came either from the paying agencies' own databases or from the databases of bodies to which the administration of the former schemes had been delegated.

48

The Court found that the national authorities had for the most part correctly used farmers' reference data. Nevertheless, the audit identified several systematic errors in Italy, where coupled payments in the nuts sector had been partly incorrectly calculated in the reference period. Furthermore, the national authorities also did not comply with the calculation rules, which require that the amounts integrated into the SPS must be distributed across all payment entitlements held by a given farmer²⁸. This affected around 86 000 farmers and payment entitlements of a value of 107,9 million euro. In Spain areas set for the establishment of payment entitlements in the citrus sector did not match the reference areas in the farmers' files or the authorities did not have updated information on areas planted with citrus trees in the reference period.

28 Article 64(2) of Regulation (EC) No 73/2009.

49

For the most part, the national authorities also adhered to the specific ceilings for the sectors integrated into the SPS between 2010 and 2012. However, in Spain the authorities exceeded the ceiling for the integration of the tomato sector by 1,3 million euro. In Greece the amounts retained in 2006 for the additional payment for specific types of farming²⁹ did not match the amounts authorised by the Commission in the bovine, sheep and goat and the olive oil sectors. As a result, the amounts integrated in 2010 exceeded the amounts available by 2,6 million euro.

Member States' control systems were of varying quality and did not detect all calculation errors

50

Under EU legislation, Member States should only authorise EAGF expenditure after sufficient checks have been made to verify that it complies with EU rules³⁰.

51

The Court assessed the specific checks which Member States visited had introduced for the correct calculation of payment entitlements. Although these Member States had accumulated considerable experience with the management of payment entitlements since their introduction, the quality of the checks which the national authorities carried out on the reliability of reference data and the correctness of the calculation of payment entitlements varied significantly. This is partly due to a lack of clear guidance from the Commission.

52

In the Netherlands the Court identified only minor weaknesses in the checks on transfers of reference data between farmers and in the application of the specific calculation rules for the number of payment entitlements to be allocated to certain farmers.

53

In France the national authorities had clearly set out the procedures for the calculation of payment entitlements in their national instructions but there was no comprehensive verification approach among the administrative bodies involved and the Court found individual errors at the local level.

54

In Greece the national authorities used unreliable data from the vineyard register to calculate payment entitlements for farmers in the wine sector and farmers could have received payment entitlements for land that was not concerned by the measure. The Greek authorities also granted payment entitlements to new farmers, although they had no assurance that the applicants had not carried out an agricultural activity in their own name and at their own risk in the 5 years preceding the start of the new agricultural activity as required by EU legislation.

29 Article 69 of Regulation (EC) No 1782/2003.

30 This is among the criteria for the accreditation of paying agencies. See Annex I of Commission Regulation (EC) No 885/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the accreditation of paying agencies and other bodies and the clearance of the accounts of the EAGF and of the EAFRD (OJ L 171, 23.6.2006, p. 90).

55

In Italy the calculation of payment entitlements was not performed by paying agencies themselves but by a central coordination body which outsourced the work to a service provider. Due to a lack of supervision several systematic errors in the calculation of the payment entitlements went undetected and reference amounts could be allocated to beneficiaries who were not entitled to them, because they had not been farmers in the sectors concerned. There were significant weaknesses in the checks for access to the national reserve from which, since 2010, the authorities had allocated payment entitlements for a value of 78,5 million euro to new farmers. The Court, however, found cases where farmers had created legal entities (companies) under their control that received payment entitlements from the national reserve as 'new farmers', although they were ineligible. The Court also identified a high number of new farmers over the age of 65 (the normal retirement age in Italy), but the authorities failed to check whether such applicants had actually started an independent agricultural activity or whether the conditions had been created artificially.

56

In Spain the national authorities also outsourced the calculation of the reference amounts to a service provider. They could not provide evidence that they had properly supervised the work and reperformed the calculations. The Spanish authorities also did not effectively check farmers who claimed that their level of support in the reference period had been affected by *force majeure* and accepted claims without legal basis or committed calculation errors.

Reduced effectiveness of the Commission's conformity clearance

57

Under the system of shared management, the Commission reimburses on a monthly basis the SPS aid which Member States granted to farmers. The Commission ensures the compliance of SPS expenditure with the applicable financial and sector-specific regulations through a two-stage procedure called the clearance of accounts procedure.

58

The Commission had inspected Member States in order to review the conformity of the calculation of payment entitlements. It highlighted several potential infringements against EU legislation and informed the national authorities. Nevertheless, financially important schemes that were integrated in Spain and Italy have so far not been covered and, in France, several significant shortcomings highlighted by the Court were not discovered. Also, the Commission had not carried out an exhaustive review of the consistency of the criteria which Member States had established for the distribution of the available amounts and the conformity of Member States' implementing regulations with the EU legal framework and principles.

59

The Court observed delays in the clearance of accounts procedure on several occasions³¹. With regard to the audits of payment entitlements which the Commission has carried out since the entry into force of Regulation (EC) No 73/2009, the time limits imposed by the regulations were adhered to. Nevertheless, the Commission has not yet finalised a conformity clearance decision, even though in the case of audits in France and Italy more than 2 years have elapsed since the inspections took place in 2011. At the time of the Court's audit in September 2013, the Commission presented no evidence as to the extent to which the national authorities had adjusted incorrectly calculated payment entitlements. Payments on irregularly calculated SPS entitlements are however repeated every year unless the payment entitlements are adjusted.

31 See paragraph 71 of Special Report No 7/2010 'Audit on the clearance of accounts procedure', and paragraph 82 of Special Report No 5/2011 'Single payment scheme (SPS): issues to be addressed to improve its sound financial management' (<http://eca.europa.eu>).

60

The integration of coupled support which the Council adopted in the 2008 CAP health check gave Member States considerable discretion as regards the criteria for distributing the amounts available for coupled support among farmers. However, the Commission retains overall responsibility for the consistent implementation of the EU budget under the system of shared management and compliance with the general principles of EU legislation in the agricultural sector.

61

The Court concludes that the Commission's management of the integration of coupled support into the SPS was only partially effective.

62

The audit showed that the Commission did not adequately supervise the calculation of payment entitlements. More specifically, the Commission has not duly adopted detailed implementing provisions in order to clarify the framework set by the Council. The Commission therefore could not ensure that the criteria established by the Member States were always consistent with EU principles, notably those of equal treatment of farmers and proportionality. It has also not assessed whether the criteria adopted by Member States potentially affected market conditions. Furthermore, Member State criteria did not always follow the principle of sound financial management and side effects were not treated consistently. As a consequence, the integration of coupled support into the SPS was implemented in an inconsistent manner and farmers in some sectors realised windfall benefits (see paragraphs 22 to 34).

63

The Commission also did not clearly enough set out the situations in which farmers had access to the national reserve (see paragraphs 35 to 37)

64

The new rules governing direct payments to farmers after 2014 again grant significant discretion to Member States and entrust the Commission with the responsibility for adoption of delegated acts or implementing acts in relation to eligibility of farmers, access to direct support and value of payment entitlements.

Recommendation 1

In order to ensure the consistent implementation of CAP measures in a common market for the future new direct payment schemes, the Commission should establish at the appropriate level clear guidelines and require Member States to demonstrate that the criteria adopted are objective and non-discriminatory, thereby avoiding market or competition distortion.

Conclusions and recommendations

65

The Commission had not introduced an effective system for verifying whether the Member States complied with the applicable SPS ceilings (see paragraphs 41 and 42).

66

There were weaknesses in the way the Commission conducted conformity inspections in Member States. The follow-up for cases of non-compliance found in the conformity clearance procedure is slow and as yet incomplete. Incorrectly calculated payment entitlements identified during Commission inspections had not been corrected at the time of the Court's audit. This reduces the effectiveness of the Commission's conformity clearance (see paragraphs 57 to 59).

Recommendation 2

The Commission's procedures should ensure the effective supervision of compliance with applicable ceilings. Conformity clearance inspections should take a more comprehensive approach which pays attention to the specific risks associated with an entitlements-based support scheme and the procedures for following up cases of non-conformity should be accelerated.

67

Member States' national legislation was not always in line with EU legislation and principles, and the national authorities sometimes allocated payment entitlements without a sufficient legal basis in EU legislation (see paragraphs 38 to 40).

68

The Court also found that while for the most part the Member State authorities correctly used the farmers' reference data, the competent authorities had not always correctly calculated and allocated the farmers' payment entitlements and had sometimes not respected applicable ceilings (see paragraphs 43 to 49).

69

The payment entitlements allocated remain valid for the duration of the SPS and incur annual SPS expenditure, unless they are recalculated. Therefore incorrect payment entitlements will continue to lead to incorrect payments. As from 2015 the SPS will be replaced by a new basic payment scheme, which will again be based on payment entitlements, but Member States may choose to pay, up to 2021, a part of the future aid on the basis of the current level of SPS aid.

Recommendation 3

The Commission should ensure compliance of national legislation with the conditions and principles in EU legislation and that Member States correct payment entitlements whose values have not been calculated in accordance with the applicable rules, notably in the case of systematic errors. Payment entitlements that have been unduly allocated and undue SPS payments arising from such entitlements should be recovered.

70

The competent authorities in the Member States did not always effectively check that the calculation and allocation of payment entitlements was correct. This was due to the varying quality of the control systems and weaknesses in the reliability of reference data. This meant that the competent authorities in the Member States could not always ensure that errors in the calculation of payment entitlements were detected (see paragraphs 50 to 56).

71

The new support system which enters into force in 2015 will involve the calculation of new payment entitlements, which must be based on individual data on beneficiaries and areas.

Recommendation 4

The Commission should ensure that paying agencies adopt clear procedures to include effective checks on the reliability of the data underlying the calculations and on the accuracy of payment entitlements.

This report was adopted by Chamber I, headed by Mrs Rasa BUDBERGYTĖ, Member of the Court of Auditors, in Luxembourg at its meeting of 9 April 2014.

For the Court of Auditors



Vítor Manuel da SILVA CALDEIRA
President

Amounts integrated into the SPS from 2010 to 2012

Member State	SPS start	Model	Support scheme or sector integrated	Year of integration	Amounts available (thousand euro)
Belgium	2005	historical	Slaughter premium for calves	2012	6 384
			Aid for flax and hemp grown for fibre (Regulation (EC) No 1234/2007)	2012	2 954
			Seeds	2010	1 397
			Protein crop premium	2012	84
			Area payment for nuts	2010	12
			Sub-total		10 831
Denmark	2005	dynamic hybrid moving to nearly full regional model	Special male bovine premium	2012	33 085
			Potato starch premium and aid for starch potato growers	2012	14 899
			Aid for processing dried fodder (Regulation (EC) No 1234/2007)	2012	2 779
			Sheep and goat premiums	2012	855
			Protein crop premium	2010	843
			Aid for flax and hemp grown for fibre (Regulation (EC) No 1234/2007)	2012	3
Sub-total		52 464			
Germany	2005	dynamic hybrid moving to full regional model	Potato starch premium and aid for starch potato growers	2012	64 800
			Aid for processing dried fodder (Regulation (EC) No 1234/2007)	2012	8 475
			Protein crop premium	2012	7 231
			Raw tobacco (Annex VII.I of Regulation (EC) No 1782/2003)	2010	3 548
			Hops payments	2010	2 277
			Aid for flax and hemp grown for fibre (Regulation (EC) No 1234/2007)	2012	244
			Area payment for nuts	2012	181
			Grubbing-up scheme in the wine sector (2009/10)	2011	13
			Grubbing-up scheme in the wine sector (2010/11)	2012	13
			Grubbing-up scheme in the wine sector (2008/09)	2010	4
Sub-total		86 786			
Ireland	2005	historical	Protein crop premium	2012	216
			Aid for processing dried fodder (Regulation (EC) No 1234/2007)	2012	132
			Sub-total		348

Member State	SPS start	Model	Support scheme or sector integrated	Year of integration	Amounts available (thousand euro)
Greece	2006	historical	Payments under former Article 69 of Regulation (EC) No 1782/2003	2010	101 460
			Durum wheat specific quality premium	2010	20 301
			Fruit and vegetables — others	2010	17 920
			Transfer from wine support programmes	2010	13 000
			Crop specific payment for rice	2010	11 407
			Fruit and vegetables — tomatoes	2011	10 720
			Area payment for nuts	2010	4 963
			Transfer from wine support programmes	2011	3 000
			Seeds	2010	1 400
			Aid for processing dried fodder (Regulation (EC) No 1234/2007)	2012	1 238
			Grubbing-up scheme in the wine sector (2008/09)	2010	293
			Protein crop premium	2010	242
			Grubbing-up scheme in the wine sector (2009/10)	2011	210
			Grubbing-up scheme in the wine sector (2010/11)	2012	191
			Sub-total		
Spain	2006	historical	Arable crops area payments	2010	372 670
			Sheep and goat premiums	2010	239 294
			Transfer from wine support programmes	2010	123 242
			Aid for olive groves	2010	103 140
			Fruit and vegetables — others	2010	93 733
			Area payment for nuts	2012	68 610
			Crop specific payment for rice	2012	49 993
			Slaughter premium bovine adults	2012	47 175
			Aid for processing dried fodder (Regulation (EC) No 1234/2007)	2012	43 725
			Durum wheat suppl. payment	2010	42 025
			Fruit and vegetables — tomatoes	2011	28 117
			Durum wheat specific quality premium	2010	22 372
			Raw tobacco (Annex VII.I of Regulation (EC) No 1782/2003)	2010	11 767
			Protein crop premium	2012	10 905
			Grubbing-up scheme in the wine sector (2008/09)	2010	10 395
			Seeds	2012	10 347
			Grubbing-up scheme in the wine sector (2010/11)	2012	6 067
			Grubbing-up scheme in the wine sector (2009/10)	2011	5 987
			Slaughter premium calves	2012	560
			Potato starch premium and aid for starch potato growers	2012	172
Aid for flax and hemp grown for fibre (Regulation (EC) No 1234/2007)	2012	138			
Sub-total					1 290 434

Member State	SPS start	Model	Support scheme or sector integrated	Year of integration	Amounts available (thousand euro)
France	2006	historical	Arable crops area payments	2010	1 154 046
			Suckler cow premium	2010	208 794
			Slaughter premium bovine adults	2010	101 248
			Sheep premiums	2010	86 027
			Slaughter premium calves	2010	79 472
			Aid for processing dried fodder (Regulation (EC) No 1234/2007)	2012	35 752
			Potato starch premium and aid for starch potato growers	2012	23 502
			Protein crop premium	2012	17 635
			Durum wheat suppl. payment	2010	14 820
			Aid for flax and hemp grown for fibre (Regulation (EC) No 1234/2007)	2012	13 592
			Fruit and vegetables — others	2011	10 127
			Durum wheat specific quality premium	2010	8 320
			Raw tobacco (Annex VII.I of Regulation (EC) No 1782/2003)	2010	8 036
			Crop specific payment for rice	2012	7 844
			Fruit and vegetables — tomatoes	2012	4 017
			Grubbing-up scheme in the wine sector (2008/09)	2010	2 374
			Seeds	2012	2 310
			Grubbing-up scheme in the wine sector (2009/10)	2011	2 130
			Area payment for nuts	2012	2 089
			Grubbing-up scheme in the wine sector (2010/11)	2012	1 754
Hops payments	2010	98			
				Sub-total	1 783 987
Italy	2005	historical	Payments under former Article 69 of Regulation (EC) No 1782/2003	2010	189 931
			Crop specific payment for rice	2012	99 473
			Fruit and vegetables — tomatoes	2011	91 984
			Durum wheat specific quality premium	2010	42 457
			Aid for processing dried fodder (Regulation (EC) No 1234/2007)	2012	22 605
			Raw tobacco (Annex VII.I of Regulation (EC) No 1782/2003)	2010	22 016
			Area payment for nuts	2012	15 710
			Seeds	2012	13 321
			Fruit and vegetables — others	2011	8 850
			Protein crop premium	2012	5 009
			Grubbing-up scheme in the wine sector (2008/09)	2010	3 698
			Grubbing-up scheme in the wine sector (2009/10)	2011	3 489
			Grubbing-up scheme in the wine sector (2010/11)	2012	2 774
			Aid for flax and hemp grown for fibre (Regulation (EC) No 1234/2007)	2012	50
				Sub-total	521 367

Member State	SPS start	Model	Support scheme or sector integrated	Year of integration	Amounts available (thousand euro)
Luxembourg	2005	static hybrid	Transfer from wine support programmes	2011	110
			Protein crop premium	2010	21
			Transfer from wine support programmes	2010	18
			Area payment for nuts	2010	12
			Transfer from wine support programmes	2012	-8
			Sub-total		153
Malta	2007	regional	Transfer from wine support programmes	2011	78
			Transfer from wine support programmes	2010	11
			Transfer from wine support programmes	2012	-6
			Sub-total		83
Netherlands	2006	historical	Slaughter premium bovine adults	2010	62 200
			Slaughter premium calves	2010	40 300
			Potato starch premium and aid for starch potato growers	2012	38 269
			Aid for processing dried fodder (Regulation (EC) No 1234/2007)	2012	5 202
			Aid for flax and hemp grown for fibre (Regulation (EC) No 1234/2007)	2012	1 111
			Seeds	2012	726
			Protein crop premium	2010	67
			Area payment for nuts	2010	12
			Sub-total		147 887
Austria	2005	historical	Slaughter premium — bovine adults	2010	17 348
			Slaughter premium — calves	2010	5 085
			Potato starch premium and aid for starch potato growers	2012	4 224
			Protein crop premium	2010	2 051
			Durum wheat specific quality premium	2010	280
			Grubbing-up scheme in the wine sector (2009/10)	2011	69
			Aid for processing dried fodder (Regulation (EC) No 1234/2007)	2012	64
			Grubbing-up scheme in the wine sector (2008/09)	2010	58
			Grubbing-up scheme in the wine sector (2010/11)	2012	55
			Hops payments	2010	27
			Aid for flax and hemp grown for fibre (Regulation (EC) No 1234/2007)	2012	20
			Area payment for nuts	2011	12
			Sub-total		29 293

Member State	SPS start	Model	Support scheme or sector integrated	Year of integration	Amounts available (thousand euro)
Portugal	2005	historical	Fruit and vegetables — tomatoes	2012	16 667
			Crop specific payment for rice	2012	11 193
			Slaughter premium — bovine adults	2012	8 657
			Area payment for nuts	2012	4 987
			Slaughter premium — calves	2012	946
			Grubbing-up scheme in the wine sector (2008/09)	2010	312
			Seeds	2012	272
			Protein crop premium	2012	214
			Grubbing-up scheme in the wine sector (2009/10)	2011	180
			Grubbing-up scheme in the wine sector (2010/11)	2012	97
			Durum wheat specific quality premium	2010	80
			Aid for processing dried fodder (Regulation (EC) No 1234/2007)	2012	69
Sub-total					43 674
Slovenia	2007	regional	Special beef premium	2012	10 077
			Sheep and goat premiums	2010	697
			Hops payments	2010	149
			Protein crop premium	2012	81
			Area payment for nuts	2012	33
			Grubbing-up scheme in the wine sector (2010/11)	2012	21
			Grubbing-up scheme in the wine sector (2009/10)	2011	12
			Grubbing-up scheme in the wine sector (2008/09)	2010	5
Sub-total					11 075
Finland	2006	dynamic hybrid moving to full regional model	Special male bovine premium	2010	24 420
			Potato starch premium and aid for starch potato growers	2012	4 710
			Seeds	2012	1 150
			Protein crop premium	2011	303
			Aid for processing dried fodder (Regulation (EC) No 1234/2007)	2012	10
			Aid for flax and hemp grown for fibre (Regulation (EC) No 1234/2007)	2012	5
			Sub-total		

Member State	SPS start	Model	Support scheme or sector integrated	Year of integration	Amounts available (thousand euro)
Sweden	2005	static hybrid	Special beef premium	2012	37 446
			Potato starch premium and aid for starch potato growers	2012	5 497
			Protein crop premium	2010	2 147
			Aid for processing dried fodder (Regulation (EC) No 1234/2007)	2012	180
			Sub-total		45 270
United Kingdom	2005	historical in Scotland and Wales; static hybrid in Northern Ireland; dynamic hybrid moving to full regional model in England	Protein crop premium	2012	9 991
			Aid for processing dried fodder (Regulation (EC) No 1234/2007)	2012	1 478
			Protein crop premium	2010	509
			Aid for flax and hemp grown for fibre (Regulation (EC) No 1234/2007)	2012	83
			Transfer from wine support programmes	2011	57
			Area payment for nuts	2012	12
			Transfer from wine support programmes	2010	6
			Transfer from wine support programmes	2012	-4
			Sub-total		12 132
Total					4 252 727

Situation of payment entitlements as notified by Member States as at 15.9.2013 pursuant to Article 51(3)(a) of Regulation (EC) No 1120/2009 (application year 2012)

(in euro)

Member State	Total value of payment entitlements allocated	Budgetary ceiling ¹
Belgium	517 711 630	517 901 000
Denmark	1 009 708 019	1 035 927 000
Germany	5 825 933 206	5 852 938 000
Ireland	1 335 255 223	1 339 769 000
Greece	2 147 583 749	2 225 227 000
Spain	4 901 216 444	4 913 824 000
France	7 814 161 875	7 586 247 000
Italy	3 965 484 068	4 202 085 000
Luxembourg	37 338 679	37 671 000
Malta	5 069 270	5 137 000
Netherlands	881 670 732	891 551 000
Austria	677 190 906	679 111 000
Portugal	473 199 375	476 907 000
Slovenia	127 053 724	129 221 000
Finland	521 941 024	523 455 000
Sweden	757 824 892	767 437 000
United Kingdom ²		3 958 242 000

1 Annex V of Commission Implementing Regulation (EU) No 564/2012 of 27 June 2012 establishing budgetary ceilings for 2012 applicable to certain direct support schemes provided for in Council Regulation (EC) No 73/2009 (OJ L 168 28.6.2012, p. 26).

2 The information from the MS has not yet been obtained by the Commission.

Executive summary

III

Under the shared management overall responsibility is also with the Member States, who shall check the compliance of operations financed by the EAGF (cf. Article 9 of Regulation (EC) No 1290/2005). The Commission retains responsibility for controlling and auditing the consistent implementation of the EU budget and compliance with the general principles of EU legislation in the agricultural sector. In addition, according to Article 317(1) TFEU, the budget is implemented by the Commission in cooperation with the Member States.

Considering the discretion provided to the Member States in Regulation (EC) No 73/2009 and the different options available to the Member States to adjust implementation to their national particularities, it was not deemed appropriate, in that legal framework and in view of the policy objectives to be achieved, for the Commission to impose more uniform implementation across the Member States.

However, in the context of the CAP reform and the direct payments system which will apply from 2015, the Commission is going to increase its monitoring capacity to enhance its supervision over the implementation of the relevant EU regulations before the start of the clearance of accounts procedures.

IV

For the purposes of establishing the initial unit value of the new entitlements, the Member States have an option to take into account the value of entitlements held by a farmer in 2014. However, considering convergence of the value of entitlements, these will not carry the same value until claim year 2020. Moreover, the introduction of the new schemes is reflected in the basic payment scheme ceiling that will be available for payment entitlements, which will be in general lower than the current single payment scheme ceiling.

Common reply to paragraphs VI and VII

The integration of coupled support into the SPS was implemented under the shared management of the Commission and the Member States. Moreover, Regulation (EC) No 73/2009 provided modalities with a certain level of discretion to the Member States.

As long as the different modalities of implementation respect the framework of the rules laid down in Regulation (EC) No 73/2009, the Member States may choose different implementation modalities, reflecting the variety of situations and characteristics in the European Union. Besides, it is settled case-law that the Member States, when adopting measures to implement EU legislation, must exercise their discretion in compliance with the general principles of EU law and fundamental rights (see e.g. case C-313/99 *Mulligan*, paragraphs 35 and 36).

It should further be noted that windfall benefits in individual cases are not necessarily in breach of the general principles of EU law.

Where weaknesses in the implementation of the EU regulations by the Member States are observed, these are followed under the clearance of accounts procedure.

VIII

Under the shared management, the Member States shall adopt legislative, regulatory and administrative provisions to ensure effective protection of the EU's financial interests and in particular to set up an efficient control and management system within the framework of the Integrated Administration and Control System (IACS).

The EU regulations provide clear rules on the establishment of payment entitlements and their value, and it is for the Member States to apply the EU regulations correctly.

Considering the level of discretion provided to the Member States in Regulation (EC) No 73/2009, the Commission provided guidance upon Member States' requests for clarifications on the correct implementation of the regulations. Besides, in the framework of the rules laid down in Regulation (EC) No 73/2009, the Member States may choose different implementation, reflecting the variety of situations and characteristics in the European Union.

Nevertheless, undue payments and payment entitlements are to be recovered as provided for in Article 80 and 81 of Regulation (EC) No 1122/2009. Similar provisions are considered for the CAP reform implementing rules.

IX (a)

The Commission has already taken action in this respect. In the context of the legitimate policy choices entrusted to Member States by the legislator in order to pursue the policy objectives of the reform, the Commission has proposed in the implementing rules applicable from 2015 more detailed notification requirements on those choices. For example, the decisions made regarding the allocation of payment entitlements, or the decisions taken in the framework of the voluntary coupled support, would have to be notified and justified.

The Commission has also proposed more detailed rules on the use of the national or regional reserves, providing that allocations related to the increase of the unit value of payment entitlements shall be made in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion.

Besides, according to Article 30(10) of Regulation (EU) No 1307/2013 an increase of the value of payment entitlements for a farmer may not exceed the national or regional unit value of entitlements.

IX (b)

The Commission is already using tools to ensure effective supervision of compliance with applicable ceilings. In particular, the transmission of information by the MS regarding the use of the ceilings is digitalised. Where errors are detected in the transmission from MS, the notification concerned is rejected or the MS is contacted for further clarification. One of the controls performed is whether the sum of the value of entitlements and the amount in the reserves is within the SPS ceiling.

The Commission has also foreseen to address these issues with the conformity clearance procedure under the CAP reform.

Also, from 2014, resources within the Commission will be especially dedicated to supporting Member States, in particular as regards the implementation of the IACS in the context of the reform.

The Commission is currently engaged in streamlining the conformity clearance procedure with a view to reducing its duration to 2 years in standard cases. Firstly, the new CAP horizontal regulation (Regulation (EU) No 1306/2013) describes precisely the nature, scope and sequence of the successive steps, as well as the different types of financial corrections. Secondly, provisions in the delegated act (method and criteria for calculating the financial correction) and implementing acts (details of the conformity procedure, with deadlines for each step of the procedure) are intended to further streamline the legal framework and limit the risk of unnecessary delays. Thirdly, on that stronger basis, the Commission will intensify its monitoring of the progress of the conformity procedures to ensure strict respect of the deadlines.

IX (c)

In the context of the CAP reform and the direct payments system applicable from 2015, the Commission has dedicated specific resources to increase its monitoring capacity to enhance its supervision over the implementation of the relevant EU regulations before the start of the clearance of accounts procedures.

Cases of incorrectly calculated payment entitlements are already being followed up.

Undue payments and payment entitlements are recovered as provided in Articles 80 and 81 of Regulation (EC) No 1122/2009. Similar provisions are being discussed in the framework of the elaboration of the CAP reform implementing rules.

In addition, under Article 54(2) of Regulation (EU) No 1306/2013, 50 % of any amount not recovered by the Member State from the final beneficiaries at the expiry of a 4-year delay (8 years in case of judicial proceedings) from the recovery request are charged to the Member State concerned, which is a strong incentive to complete the recovery procedure in a timely manner (the so-called 50/50 rule, which has existed since 2007).

Under Article 54(5) of the same regulation, the Commission has the possibility, in the context of the conformity clearance procedure, to exclude from Union financing certain amounts if the Member State has not been diligent in the recovery procedure.

It is important to note that the recovery of an undue payment could be affected by delays due in particular to the Member States' limited enforcement procedures. In addition, when beneficiaries lodge an appeal, an enforcement action is initiated, sometimes involving legal action. Consequently, it could be difficult for the Commission to demonstrate that the Member State in question has not taken the adequate measure ensuring the recovery of the undue amount. In cases dealt with under Article 258 TFEU, the burden of proof would be particularly difficult when national cases are pending.

IX (d)

From 2014 the Commission is strengthening its monitoring capacity and is dedicating resources to supporting Member States.

Nevertheless, it is worth noting that the calculation of payment entitlements is based on data derived from the identification and registration system of payment entitlements referred to in Article 7 of Regulation (EC) No 1122/2009. Such a provision is to be provided also for the payment entitlements system applicable from 2015.

Member States have to ensure that requirements set out in the chosen information systems meet the security standards referred to in Annex I to Regulation (EC) No 885/2006. These standards require the establishment of special controls to safeguard the confidentiality, reliability and integrity of data.

In addition, the Commission specified in the new guidelines for the certification bodies that their checks should include an assessment of the 'Procedures in place to ensure the correct attribution of entitlements'. Moreover, the next version of the guidelines will contain an explicit reference to the accuracy of the calculation.

Introduction

13

In 2015, payment entitlements will be allocated and their value will be set either as a national or regional flat rate or as a converging value towards a national or regional flat rate. For the convergence towards a flat rate, historical reference (e.g. the value of the entitlements held by a farmer in 2014) will be taken into account, but considering convergence of the value of entitlements, it cannot be regarded as carrying over the same value. Due to the convergence, the value of the entitlements for some farmers will gradually decrease, but for some others it will increase to reach convergence objectives towards a national or regional flat-rate payment. Moreover, the introduction of the new schemes is reflected in the basic payment scheme's ceiling that will be available for payment entitlements, which will be in general lower than the current single payment scheme's ceiling.

Moreover, undue payments and payment entitlements would also have to be recovered under the future basic payment scheme.

14

It is in line with the principle of shared management that certain discretion is left to the Member States.

15

The Commission considers that for the integration of coupled support the overall responsibility is shared between the Commission and Member States. The respective responsibilities of Member States and the Commission are clearly laid down by the legislator in Regulation (EU) No 73/2009 and further applicable EU legislation. This reflects the principle of shared management, where it is for Member States to implement the relevant rules, while the Commission retains responsibility for controlling and auditing the consistent implementation of EU legislation.

17

The level of discretion provided to Member States as regards modalities of decoupling is justified by the diversity of national and regional specificities and by the necessity to facilitate the way forward towards decoupling.

Observations

22

Regulation (EC) No 73/2009 provided a certain level of discretion to Member States and such discretion was provided to facilitate the way forward towards decoupling.

As long as the different modalities of implementation respect the framework of the rules laid down in Regulation (EC) No 73/2009, Member States may choose different implementation modalities, reflecting the variety of situations and characteristics in the European Union. Besides, it is settled case-law that Member States, when adopting measures to implement EU legislation, must exercise their discretion in compliance with the general principles of EU law and fundamental rights (see e.g. case C-313/99 *Mulligan*, paragraphs 35 and 36).

24

The Commission considers that Articles 63 to 65 of Regulation (EC) No 73/2009 provided a common framework for the implementation of the measure which contained a sufficient level of detail, therefore it was not deemed necessary to adopt further detailed rules in the Commission's implementing regulation. The Member States were deemed to be in a better position, in line with the subsidiarity principle, to judge the relevant implementation modalities according to their specificities, in the framework of the rules existing in the basic act adopted by the legislator (Council).

The level of discretion provided to the Member States as regards modalities of decoupling is justified by the diversity of national and regional specificities and by the necessity to facilitate the way forward towards decoupling.

There is no formal approval required from the Commission on the choices made under Articles 63 to 67 of Regulation (EC) No 73/2009. Member States are responsible for the implementation of the regulation.

However, in accordance with Article 140 of Regulation (EC) No 73/2009, Member States shall inform the Commission in detail of the measures taken to implement this regulation. In 2010, the Commission used this legislative tool and sent a questionnaire to Member States on the implementation of the given regulation.

See also reply to paragraph 22.

26

Where weaknesses in the implementation of the regulations by Member States are observed, these are followed under the clearance of accounts procedure.

See also reply to 22.

27

Article 64(1) of Regulation (EC) No 73/2009 provides that the relevant amounts shall be distributed by the Member States amongst farmers in the sectors concerned in accordance with objective and non-discriminatory criteria, taking account, in particular, of support that those farmers received, directly or indirectly, under the relevant support schemes during one or more years in the period 2005 to 2008. Article 65 of Regulation (EC) No 73/2009 provides that the relevant amounts shall be distributed by Member States amongst the farmers in the sectors concerned in proportion to the support that those farmers received under the relevant support schemes during the relevant reference periods. Spain allocated reference amounts up to the ceiling available as laid down in Annex XII of Regulation (EC) No 73/2009.

Article 64(1) and Article 65 of Regulation (EC) No 73/2009 did not oblige Member States to limit the respective amounts at individual level. Furthermore, the list of criteria in Article 64(1) of Regulation (EC) No 73/2009 which is to be taken into account is not exhaustive (see the words 'in particular'), in line with the discretion of Member States. As long as the different modalities of implementation respect the framework of the rules, Member States may choose different implementation modalities, reflecting the variety of situations and characteristics in the European Union.

28

See reply to paragraph 27.

30

This is in compliance with the provisions of Article 64 of Regulation (EC) 73/2009.

See also reply to paragraph 27.

31

A difference in treatment between farmers is not as such discriminatory, but may be justified on the basis of objective criteria in line with the policy objectives pursued by the legislation. In addition, discrimination issues are from the outset prevented from arising where farmers are not in comparable situations.

See also replies to paragraphs 22 and 26.

Box 1

See reply to paragraph 31.

Common reply to paragraphs 32–34

As the Court also rightly points out, Article 41(6) of Regulation (EC) No 73/2009 is optional and it was for Member States to judge whether it is appropriate to apply it or not.

Where weaknesses in the implementation of the regulations by Member States are observed, these are followed under the clearance of accounts procedure.

See also reply to paragraph 27.

35

See replies to paragraphs 22 and 26.

36

As regards the absence of a definition of ‘investment’ in the European implementing regulation, it should be noted that, in case the European legislation does not specify the definition, the context of the provision and the objective of the relevant legislation need to be taken into account, given the need for a uniform application of European Union law and the principle of equality (see e.g. case 327/82 *Ekro*, paragraph 11). Furthermore, when adopting measures to implement EU legislation, Member States must exercise their discretion in compliance with the general principles of EU law and fundamental rights (see e.g. case C-313/99 *Mulligan*, paragraphs 35 and 36).

As regards the detailed operation of the national reserve, flexibility was given to the Member States, in line with the subsidiarity principle, as they are best placed to decide the relevant implementation options in the frame of the rules laid down in Section 2 of Chapter 2 of Regulation (EC) No 1120/2009.

In this context, the Member States are to ensure equal treatment between farmers and that market and competition distortion is avoided when operating the national reserve.

However, where weaknesses in the implementation of the regulations by Member States are observed, these are followed up by DG Agriculture and Rural Development. Where such weaknesses give rise to undue payments this may be followed under the clearance of accounts procedure.

Box 2

As regards investments in animals the regulatory provisions do not require proof of the investment.

37

As regards a limit on the maximum value of entitlements, in the context of the health check discussions, it was deemed necessary to give Member States more flexibility, in line with the subsidiarity principle, as regards the establishment of payment entitlements from the reserve, in particular for the allocation of entitlements to farmers in a special situation. It should be noted that in the context of the health check, with the further decoupling, the limitation to the national/regional average had not the same relevance compared to the previous period, as the national reserve was used in particular in the first years of implementation of the SPS.

Regulation (EU) No 1307/2013 from 2015 provides for a new system of direct payments and for value of payment entitlements to converge towards a national or regional flat rate, in this context it is provided that the maximum value of the payment entitlements allocated from the national reserve is limited to the national/regional average.

See also reply to paragraph 36.

39

Where weaknesses in the implementation of the regulations by Member States are observed that give rise to undue payments, these are followed under the clearance of accounts procedure.

Box 3

This is followed up in the clearance procedure (enquiry NAC/2011/201/FR).

40

See reply to paragraph 37.

42

Member States have to submit their notifications by electronic means via official channels (in the past either to the functional mailbox or AMIS, from September 2012 (regarding claim year 2012) to the ISAMM). Where the Member States do not respect the notification deadline, the Commission sends reminders requesting that they submit missing information. Also, in the framework of the meetings of the Management Committee for direct payments, Member States are reminded about the notification requirements. Moreover, where errors are detected in the transmission from Member States, the concerned notification is rejected or the Member State is contacted for further clarification. One of the checks performed is whether the sum of the value of entitlements and the amount in the reserves is within the SPS ceiling.

Based on the monthly payment declarations, the Commission verifies whether the expenditure declared by the Member States exceeds the financial ceilings as laid down in the legislation. Where this is the case, a reduction is applied in conformity with the procedure laid down by Article 17 of Council Regulation (EC) No 1290/2005. Detailed procedures are also in place to ensure a correct follow-up of all financial ceilings laid down in the legislation, ensuring the expenditure reimbursed by the EAGF always respects these ceilings.

Regulation (EU) No 1306/2013 provides under Article 42 a deterrent for late submission of the control statistics. On this basis, from 2014, the Commission may suspend part of the monthly or interim payments in respect of which the relevant statistical information has not been sent in time.

44

Where weaknesses in the implementation of the regulations by the Member States are observed that give rise to undue payments, these are followed under the clearance of accounts procedure (enquiry NAC/2012/010/FR and NAC/2014/001/FR).

In that context the Commission maintains the view that the values of entitlements were overstated, which eventually led to undue payments and a risk to the fund corresponding to 0,69 % for 2010.

The corrective measures to be taken (recalculation of the values of entitlements) are included in the action plan for France. The French authorities have notified that the correction of values of entitlements will be in place for claim year 2014.

See also reply to paragraph 42.

Common reply to paragraphs 48 and 49

The Italian authorities confirmed that they have taken into account the entitlements initially owned by farmers when proceeding to the allocation of the decoupled amounts. This concerned a population of 86 000 farmers out of 500 000 farmers concerned by decoupling over the 3 years 2010–12.

The total amount allocated to that specific population of farmers over the 3 years is 107,9 million euro. The amount per farmer is not in question, it is the split of the amount over entitlements that is. However, the number of entitlements that were not taken into account is unknown.

Where weaknesses in the implementation of the regulations by Member States are observed that give rise to undue payment, these are followed under the clearance of accounts procedure.

51

The Commission considers that the EU regulations provide clear rules on the establishment of payment entitlements and their value and it is for Member States to apply the EU regulations correctly. Considering the level of discretion provided to the Member States in Regulation (EC) No 73/2009, the Commission provided guidance upon Member States' requests for clarifications on the correct implementation of the regulations.

Common reply to paragraphs 54–56

Where weaknesses in the implementation of the regulations by Member States are observed that give rise to undue payment, these are followed under the clearance of accounts procedure.

58

The Commission notes that the Court refers primarily to weaknesses observed in the integration of coupled support measures into the SPS. With reference to the CAP reform this element will no longer be present.

Following a reorganisation, from 2014 the Commission is strengthening its monitoring capacity to enhance its supervision over the implementation of the relevant EU regulations before the start of the clearance of accounts procedures.

59

The Commission is currently engaged in streamlining the conformity clearance procedure with a view to reducing its duration to 2 years in standard cases. Firstly, the new CAP horizontal regulation (Regulation (EU) No 1306/2013) describes precisely the nature, scope and sequence of the successive steps, as well as the different types of financial corrections. Secondly, provisions in the delegated act (method and criteria for calculating the financial correction) and implementing acts (details of the conformity procedure, with deadlines for each step of the procedure) are intended to further streamline the legal framework and limit the risk of unnecessary delays. Thirdly, on that stronger basis, the Commission will intensify its monitoring of the progress of the conformity procedures to ensure strict respect of the deadlines.

Conclusions and recommendations

Common reply to paragraphs 60 and 61

Under the shared management overall responsibility is also with the Member States, who shall check the compliance of operations financed by the EAGF (cf. Article 9 of Regulation (EC) No 1290/2005). The Commission retains responsibility for controlling and auditing the consistent implementation of the EU budget and compliance with the general principles of EU legislation in the agricultural sector. In addition, according to Article 317(1) TFEU, the budget is implemented by the Commission in cooperation with the Member States.

Considering the discretion provided to the Member States in Regulation (EC) No 73/2009 and the different options available to the Member States to adjust implementation to their national particularities, it was not deemed appropriate, in that legal framework and in view of the policy objectives to be achieved, for the Commission to impose more uniform implementation across the Member States.

However, in the context of the CAP reform and direct payments system which will apply from 2015, the Commission is going to increase its monitoring capacity to enhance its supervision over the implementation of the relevant EU regulations before the start of the clearance of accounts procedures.

The integration of coupled support into the SPS was under the shared management of the Commission and the Member States.

62

See reply to paragraphs 22 and 60.

Regulation (EC) No 73/2009 provided a certain level of discretion to the Member States.

As long as the different modalities of implementation respect the framework of the rules laid down in Regulation (EC) No 73/2009, the Member States may choose different implementation modalities, reflecting the variety of situations and characteristics in the European Union. Besides, it is settled case-law that the Member States, when adopting measures to implement EU legislation, must exercise their discretion in compliance with the general principles of EU law and fundamental rights (see e.g. case C-313/99 *Mulligan*, paragraphs 35 and 36).

It should further be noted that windfall benefits in individual cases are not necessarily in breach of the general principles of EU law.

Where weaknesses in the implementation of the EU regulations by the Member States are observed, these are followed under the clearance of accounts procedure.

63

For the CAP reform and the direct payments system which will apply from 2015, the Commission has proposed more detailed rules on the allocation of entitlements from the national reserve regarding both the number and the value of entitlements to be allocated.

See also reply to paragraph 60.

64

See reply to paragraph 63.

Recommendation 1

The recommendation is accepted.

The Commission has already taken action in this respect. In the context of the legitimate policy choices entrusted to Member States by the legislators to pursue the policy objectives of the reform, the Commission has proposed in the implementing rules that will apply from 2015 more detailed notification requirements on those choices. For example, the decisions made regarding the allocation of payment entitlements or the decisions taken in the framework of the voluntary coupled support would have to be notified and justified.

The Commission has also proposed more detailed rules on the use of the national or regional reserves, providing that allocations related to the increase of the unit value of payment entitlements shall be made in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion.

Besides, according to Article 30(10) of Regulation (EU) No 1307/2013, an increase of the value of payment entitlements for a farmer may not exceed the national or regional unit value of entitlements.

65

In the context of the CAP reform and direct payments system which will apply from 2015, the Commission is going to increase its monitoring capacity to enhance its supervision over the implementation of the relevant EU regulations before the start of the clearance of accounts procedures.

See also reply to paragraph 42.

66

The review of the conformity clearance procedure under the new CAP addresses specifically the length of the procedure.

Recommendation 2

The recommendation is accepted.

The Commission is already using tools to ensure effective supervision of compliance with applicable ceilings. In particular, the transmission of information by the Member State regarding the use of the ceilings is digitalised. Where errors are detected in the transmission from Member States, the notification concerned is rejected or the Member State is contacted for further clarification. One of the controls performed is whether the sum of the value of entitlements and the amount in the reserves is within the SPS ceiling.

The Commission will further address these issues in the conformity clearance procedure under the CAP reform.

Also, from 2014, resources within the Commission will be especially dedicated to supporting the Member States, in particular as regards the implementation of the IACS in the context of the reform.

The Commission is currently engaged in streamlining the conformity clearance procedure with a view to reducing its duration to 2 years in standard cases. Firstly, the new CAP horizontal regulation (Regulation (EU) No 1306/2013) describes precisely the nature, scope and sequence of the successive steps, as well as the different types of financial corrections. Secondly, provisions in the delegated act (method and criteria for calculating the financial correction) and implementing acts (details of the conformity procedure, with deadlines for each step of the procedure) are intended to further streamline the legal framework and limit the risk of unnecessary delays. Thirdly, on that stronger basis, the Commission will intensify its monitoring of the progress of the conformity procedures to ensure strict respect of the deadlines.

67

See reply to paragraph 65.

68

Where weaknesses in the implementation of the EU regulations by Member States are observed, they are followed up by the Commission. Where such weaknesses are considered to give rise to undue payments this may be followed under the clearance of accounts procedure.

69

See reply to paragraph 13.

Recommendation 3

The recommendation is accepted.

In the context of the CAP reform and direct payments system applicable from 2015, the policy choices entrusted to Member States by the legislators will be accompanied by strengthened obligations in the implementing rules in terms of justification and notifications of such choices.

Also, the Commission has dedicated specific resources to increase its monitoring capacity to enhance its supervision over the implementation of the relevant EU regulations before the start of the clearance of accounts procedures.

Cases of incorrectly calculated payment entitlements are already being followed up.

Undue payments and payment entitlements are recovered as provided for in Articles 80 and 81 of Regulation (EC) No 1122/2009. Similar provisions are being discussed in the framework of the elaboration of the CAP reform implementing rules.

In addition, under Article 54(2) of Regulation No 1306/2013, 50 % of any amount not recovered by the Member State from the final beneficiaries at the expiry of a 4-year delay (8 years in case of judicial proceedings) from the recovery request are charged to the Member State concerned, which is a strong incentive to complete the recovery procedure in a timely manner (the so-called 50/50 rule, which has existed since 2007).

Reply of the Commission

Under Article 54(5) of the same regulation, the Commission has the possibility, in the context of the conformity clearance procedure, to exclude from Union financing certain amounts if the Member State has not been diligent in the recovery procedure.

It is important to note that the recovery of an undue payment could be affected by delays due in particular to the Member States' limited enforcement procedures. In addition, when beneficiaries lodge an appeal, an enforcement action is initiated, sometimes involving legal action. Consequently, it could be difficult for the Commission to demonstrate that the Member State in question has not taken adequate measures to ensure the recovery of the undue amount. In cases dealt with under Article 258 TFEU, the burden of proof would be particularly difficult when national cases are pending.

70

Where the incorrect entitlements give rise to undue payments, financial corrections may apply.

See also reply to paragraphs 51 and 60.

Recommendation 4

The recommendation is accepted.

From 2014 the Commission is strengthening its monitoring capacity and is dedicating resources to support the Member States.

Nevertheless, it is worth noting that the calculation of payment entitlements is based on data derived from the identification and registration system of payment entitlements referred to in Article 7 of Regulation (EC) No 1122/2009. Such a provision is to be provided also for the payment entitlements system applying from 2015.

The Member States have to ensure that requirements set out in the chosen information systems meet the security standards referred to in Annex I to Regulation (EC) No 885/2006. These standards require the establishment of special controls to safeguard the confidentiality, reliability and integrity of data.

In addition, the Commission specified in the new guidelines for the certification bodies that their checks should include an assessment of the 'Procedures in place to ensure the correct attribution of entitlements'. Moreover, the next version of the guidelines will contain an explicit reference to the accuracy of the calculation.

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The single payment scheme (SPS) is financially the most important direct support scheme financed by the EU budget for agriculture. It provides for the decoupling of aid for farmers from production.

Following the 'health check' of the common agricultural policy (CAP) in 2008, most of the amounts that had been formerly available for coupled support were integrated into the SPS.

The Court observed that the Commission's management of the integration of coupled support into the SPS was only partially effective. With a view to the new EU farm support system that will be introduced in 2015, the Court recommends that the Commission ensures a consistent implementation of CAP measures in the Member States and better enforces compliance with applicable rules and ceilings. Member States' paying agencies should adopt clear procedures to include effective checks on the reliability of the data underlying the calculations and on the accuracy of payment entitlements.



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