

Special Report

**Making cross-compliance
more effective and
achieving simplification
remains challenging**



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Luxembourg: Publications Office of the European Union, 2016

Print	ISBN 978-92-872-6026-0	ISSN 1831-0834	doi:10.2865/051916	QJ-AB-16-026-EN-C
PDF	ISBN 978-92-872-6021-5	ISSN 1977-5679	doi:10.2865/231491	QJ-AB-16-026-EN-N
EPUB	ISBN 978-92-872-5996-7	ISSN 1977-5679	doi:10.2865/49455	QJ-AB-16-026-EN-E

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

The ECA's special reports set out the results of its performance and compliance audits of specific budgetary areas or management topics. The ECA selects and designs these audit tasks to be of maximum impact by considering the risks to performance or compliance, the level of income or spending involved, forthcoming developments and political and public interest.

This performance audit was produced by Audit Chamber I — headed by ECA Member Phil Wynn Owen — which specialises in the sustainable use of natural resources. The audit was led by the Reporting Member Nikolaos Milionis, supported by Ioulia Papatheodorou, Head of private office, Kristian Sniter, Attaché of private office; Robert Markus, Principal Manager; Daniela Jinaru, Head of Task; Felipe Andrés Miguélez, Marius Cerchez and Michael Spang, Auditors.



From left to right: K. Sniter, I. Papatheodorou, N. Milionis, R. Markus, D. Jinaru.

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Reply of the Commission

CAP: Common Agricultural Policy

Conformity audit: On-the-spot inspections carried out by DG AGRI auditors that allow the Commission to verify whether Member States have made correct use of the funds placed at their disposal by the EAGF and EAFRD and in particular whether they have well-functioning management and control systems ensuring that payments to beneficiaries are regular.

Control points: detailed aspects resulting from the implementation of cross-compliance rules which are included in the checklists for the on the spot and administrative controls carried out or requested to other control bodies by the responsible managing authority in charge with cross-compliance in each Member State (i.e. Paying Agencies).

Cross-compliance rules: the rules on cross-compliance consist of the statutory management requirements (SMR) under Union law and the standards for good agricultural and environmental condition of land (GAEC) established at national level, as listed in Annex II of Regulation (EU) No 1306/2013, relating to environment, climate change, and good agricultural condition of land; public, animal and plant health; and animal welfare. Throughout this report the terms 'cross-compliance rules' and 'cross-compliance obligations' are interchangeable.

DG AGRI: European Commission's Directorate General for Agriculture and Rural Development, responsible for the implementation of agriculture and rural development policy.

DG ENV: European Commission's Directorate-General for Environment, responsible for the sectoral legislation on environment.

DG SANTE: European Commission's Directorate-General for Health and Food Safety, responsible for the sectoral legislation on public health, plant health, animal health and animal welfare.

EAFRD: European Agricultural Fund for Rural Development

EAGF: European Agricultural Guarantee Fund

Farm Advisory Body: Public or private body entrusted by a Member State with the operation of a system for advising farmers on land management and farm management.

Financial year: the agricultural financial year covers expenditure paid and revenue received and entered in the accounts of the Funds' budget by the Paying Agencies in respect of financial year 'N' beginning on 16 October of year 'N-1' and ending on 15 October of year 'N' (Article 39 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council).

GAEC: Standards of good agricultural and environmental condition of land aiming to contribute to preventing soil erosion, maintaining soil organic matter and structure, ensuring a minimum level of maintenance, avoiding the deterioration of habitats and protecting and managing water. These standards were introduced by the CAP legislation and are applicable only to CAP beneficiaries. They have to be defined by Member States taking account of local conditions.

Paying Agency: The body responsible within a Member State for the proper assessment, calculation, inspection and payment of CAP subsidies.

SMR: Statutory management requirements are a selected number of obligations incorporated in the scope of cross-compliance rules from existing EU directives and regulations concerning environment, public health, plant health, animal health and animal welfare (the sectoral legislation). These requirements are already applicable outside the CAP framework.

I

Cross-compliance links most CAP payments to farmers' compliance with basic rules for the environment, food safety, animal health and welfare, and good agricultural and environmental conditions. It currently applies to 7.5 million farmers who in 2015 received approximately 47 billion euro in aid¹. Expectations of society are high that farmers receiving EU subsidies comply with cross-compliance.

II

The legislator established an EU framework regarding cross-compliance. The Commission is responsible for monitoring its implementation. Member States translated the EU rules into obligations at farmer level and verified whether these obligations were respected. We examined whether the cross-compliance management and control system was effective and whether it can be further simplified.

III

We concluded that the information available did not allow the Commission to assess adequately the effectiveness of cross-compliance. Despite the changes introduced for the CAP for the period 2014–2020, the cross-compliance management and control system can still be simplified.

IV

The performance indicators used by the Commission gave a partial view of the effectiveness of cross-compliance. The indicators did not take into account the level of non-compliance by farmers. Furthermore, the Commission did not analyse the reasons for the infringements and the means of addressing them.

V

The changes in the CAP for the period 2014–2020 somewhat reduced the number of cross-compliance rules, by removing requirements which were not sufficiently relevant to the farming activity. However, control procedures remain complex. Simplification measures, such as the small farmers' scheme, relieving administrations and farmers of additional burdens need to be balanced against the necessity to achieve the objectives of cross compliance.

VI

The farming practices under the new greening payment have similarities with previous GAEC standards. Consequently, there are currently two sets of complementary agricultural practices which target the same objectives: the maintenance of land and the protection of bio-diversity. Despite their similarities, the compulsory GAEC and greening rules are checked under two control systems. This may lead to inefficiencies in the control systems and an additional administrative burden.

¹ These 7.5 million farmers represent 68 % of all farmers supported by CAP and receive 83 % of all payments. Small farmers are not included in these figures as they are not subject to administrative penalties if they do not comply with cross-compliance obligations (see paragraph 48).

VII

The costs of implementing cross-compliance are not sufficiently quantified. As long as the Commission does not have a reliable estimate of the overall cost at cross-compliance level, aggregating the figures for the stakeholders involved (EU institutions, Member State management and control authorities, and farmers) it cannot ensure that the cross-compliance system is cost-effective.

VIII

The sanction system did not ensure a sufficiently harmonised basis for calculating administrative penalties for farmers across the EU who did not comply with the rules. The application of the severity, extent, permanence and intentionality factors when calculating penalties for similar cases, varied significantly between Member States.

IX

We make the following recommendations:

- The Commission should examine as part of the impact assessment for the CAP post-2020 how to further develop its set of indicators to assess the performance of cross-compliance and how to take into account farmers' levels of compliance with the cross-compliance rules in its indicators.
- The Commission should from now on improve the sharing of the information on cross-compliance related infringements between concerned services in order to help them to identify the reasons for breaches and to take appropriate measures to address them.
- For the CAP post-2020, the Commission should propose adapting the rules regarding cross-compliance on-the-spot checks. This would allow a more effective targeting of key control points.
- The Commission should analyse as part of the impact assessment for the CAP post-2020 the experience of having two systems operating with similar environmental objectives (GAEC standards and greening) with a view to promoting further synergy between them. This analysis should take into consideration criteria such as the environmental impact of the standards and the historical level of compliance by farmers.
- After the report on the performance of the CAP due by the end of 2018, the Commission should develop a methodology to measure the costs of cross-compliance.
- For the CAP post-2020, the Commission should encourage a more harmonised application of penalties at EU level by further clarifying the concepts of severity, extent, permanence, reoccurrence and intentionality.

01

Cross-compliance links most Common Agricultural Policy (CAP) payments to farmers' compliance with rules for protecting the environment, food safety, animal health and welfare, and for maintaining land in good agricultural and environmental conditions. It currently applies to 7.5 million farmers across the EU, who during the financial year 2015 received approximately 47 billion euro in aid subject to cross-compliance rules (see **Glossary**)². If a farmer does not comply with these rules, an administrative penalty may be imposed.

02

Cross-compliance is based on two main sets of rules (see **Annex I** for the current list of these rules). The statutory management requirements (SMRs) are requirements selected from existing directives and regulations on environment, food safety, plant health, animal health and welfare. The standards for good agricultural and environmental conditions (GAECs) are additional rules applicable only to beneficiaries of CAP payments. They impose sustainable practices related to agricultural land and deal with the protection of water, of the soil and carbon stock, and the maintenance of land and landscape features.

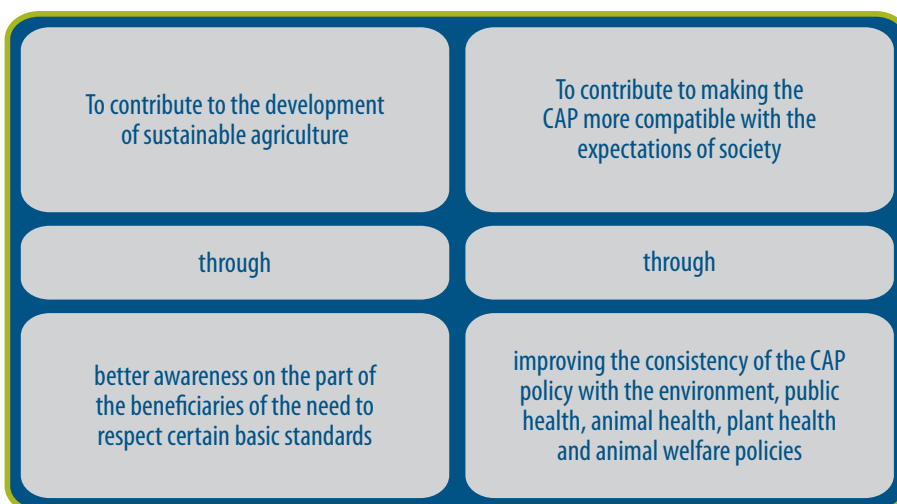
03

Cross-compliance aims to contribute to the following two objectives:

- 2 2015 DG AGRI annual activity report.
- 3 Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ L 347, 20.12.2013, p. 549).

Figure 1

The objectives of cross-compliance



Source: Recital 54 of Regulation (EU) No 1306/2013³.

04

Expectations of society are high that farmers receiving EU subsidies comply with the cross-compliance obligations. According to the latest Eurobarometer⁴ survey published in January 2016, more than four out of five EU respondents considered it is 'justified' to reduce farmers' subsidy payments if they do not respect the rules.

05

As one of the instruments of the CAP, cross-compliance is implemented through shared management, where tasks are shared between the Commission and Member States. In this context, the Commission's responsibilities are:

- to follow the general EU framework established in the regulations issued by the European Parliament and Council, as well as the recommendations received from the European Parliament during the discharge of the annual accounts related to the implementation of the EU budget;
- to set-up the detailed EU framework, through implementing and delegated regulations, as well as implementing guidelines for the Member States;
- to verify that the Member States carry out their responsibilities in accordance with the legal provisions, and to apply financial corrections when it is found that their systems are deficient;
- to check that the objectives of cross-compliance are met and to report the results⁵.

06

DG ENV and DG SANTE are responsible for monitoring the implementation and the achievement of the objectives of the sectoral legislation from which SMRs are drawn, whereas DG AGRI is responsible for GAECs. DG AGRI performs audits to verify that Member States have adequate management of and control systems for cross-compliance.

07

Member States are responsible for adopting all the legislative, regulatory and administrative provisions to set-up a national framework compliant with the EU general and detailed framework for cross-compliance, and in particular for:

- putting in place systems which prevent, detect and correct instances of non-compliance;
- carrying out on-the-spot checks of a sample of at least 1 % of farmers⁶;

4 'Special Eurobarometer 440 Europeans, Agriculture and the CAP' released on 21 January 2016, reflecting the views taken between 17 and 26 October 2015 by TNS opinion & social, at the request of the European Commission. All interviews were conducted face-to-face in the homes of randomly selected EU citizens.

5 See, for example, the 2014 DG AGRI annual activity report, Annex 10, part 6 Cross compliance.

6 As a general rule, on-the-spot checks must be performed on a sample of minimum 1 % of CAP beneficiaries. For certain requirements however, such as the identification and registration of animals, the minimum control rate is 3 % of farmers, as foreseen in the sectoral legislation. As a result, the total number of farmers checked for cross-compliance exceeds in practice the 1 % sample. For example, during the 2015 financial year the percentage of farmers checked was 2.31 %. For SMRs, Member States may decide to combine these checks with those done under the sectoral legislation in order to reach the 1 % control rate of cross-compliance.

Introduction

- applying penalties and recovering unduly paid amounts from farmers who have breached the rules;
- reporting to the Commission (audited annual accounts, financial reports, and control statistics).

08

CAP beneficiaries must respect all the cross-compliance rules as defined by the national legislation. They risk having their annual EU payment reduced if they are found to be in breach of any of these rules, as a result of an act or omission directly attributable to them.

09

In 2008 we published a special report on the effectiveness of cross-compliance⁷. The report concluded that cross-compliance had not been an effective policy, emphasising that the framework of cross-compliance posed considerable difficulties, notably because of its complexity.

10

The simplification of the scope and rules related to the cross-compliance system has been a constant subject of discussion between the Commission, the Council and the Member States, because of the complexity of the framework and the need to ensure that the rules can be checked and are sufficiently relevant for farming activity. Between 2008–2013 following a ‘health check’ of the CAP, changes were made to the cross-compliance system⁸. Additional changes made for the current period 2014–2020 aimed⁹:

- to streamline the scope of the standards by organising them into a single list, grouped by areas and issues, to make the cross-compliance system more consistent and more visible, and
- to remove from their scope a number of the requirements which were not sufficiently relevant to the farming activity or the area of the holding, or concerned national authorities rather than beneficiaries.

7 Special report No 8/2008 ‘Is cross-compliance an effective policy?’ (<http://eca.europa.eu>).

8 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) actually added two compulsory GAEC in the newly created area of protection and management of water and three new optional GAEC in the area of minimum level of maintenance of land; at the same time, four out of the existing GAEC as per Regulation (EC) No 1782/2003 were made optional. Minor changes have been noted also for SMR, whereby the requirement from Regulation (EC) No 2629/97 as regards eartags, holding registers and passports was removed.

9 See Annex II for the detailed presentation of the changes introduced for the period 2014–2020.

11

Simplification is a process that aims at streamlining rules, checks and reducing compliance costs. Simplification measures, while relieving administrations and farmers of additional burdens, need to be balanced against the necessity to achieve the objectives of cross-compliance.

12

We examined the cross-compliance management and control system put in place by the Commission and the Member States to assess whether cross-compliance is effective and to which extent simplification has been achieved under the new legal framework.

13

The overall audit question was:

'Is the cross-compliance management and control system effective and can it be further simplified?'

The present report is structured along the two main aspects of effectiveness and simplification.

14

We analysed the following evidence regarding implementation of cross-compliance to date:

- the control statistics sent by the Member States to the Commission for the financial years 2011–2014. These reports contained data related to the number of farmers checked for any given standard, the number of non-compliances found, and the level and categories of penalties applied;
- the Court's audits of legality and regularity (Statement of Assurance audits - SoA) carried out in the financial years 2011–2014;
- conformity audits carried out by the Commission's Directorate General for Agriculture and Rural Development (DG AGRI) in the financial years 2011–2014.

Audit scope and approach

15

We analysed information related to the management and control system put in place at Commission level, obtained through interviews with DG AGRI representatives and through the review of various analyses, studies and reports prepared or commissioned by DG AGRI. We also assessed the potential effects of the changes introduced for the CAP period 2014-2020, on the basis of the following documents: preparatory impact assessment, approved Regulations and Commission statements.

16

We carried out two surveys covering topics such as: awareness, compliance and simplification. The surveys were sent to Paying Agencies and Farm Advisory Bodies. We received replies from the 64¹⁰ Paying Agencies surveyed in 27 Member States¹¹, while 72 out of the 186 Farm Advisory Bodies contacted replied to the second survey.

17

We visited three regions in the Member States (Germany: Schleswig-Holstein, Spain: Catalonia and United Kingdom: Northern Ireland), where we interviewed representatives of the Paying Agencies and farmers' associations, to collect their views in relation to the impact of cross-compliance at farm level.

10 We surveyed 64 out of the 82 existing Paying Agencies, as in some Member States not all Paying Agencies have responsibilities for cross-compliance.

11 Croatia was not included in the scope of this audit because of lack of historical data, due to its accession to the EU on 1 July 2013.

The information available did not allow the Commission to assess adequately the effectiveness of cross-compliance

18

In the first part of the report, we examine whether the performance indicators used by the Commission gave a complete view of the effectiveness of cross-compliance, whether they took into account the level of compliance of farmers and whether the Commission analysed the reasons for infringements and means to address them. The standards for our examinations are set out in paragraphs 19 to 21.

19

In order to measure the achievement of the cross-compliance objectives (see paragraph 2), the Commission should define appropriate performance indicators¹². These should be in line with sound financial management principles (economy, efficiency and effectiveness)¹³. The Commission should analyse and act upon performance issues.

20

Member States should also prevent, detect and deal effectively with any irregularities or non-compliance with cross-compliance obligations by farmers¹⁴ and report back annually on the results of their checks to the Commission.

21

The effectiveness of cross-compliance should be assessed by taking into account the level of compliance by farmers with the cross-compliance rules, as a key indicator of the policy's contribution to protecting the environment, public health, animal health, plant health and animal welfare. In order to make the policy more effective, the design of the cross-compliance framework should include measures to identify and address the reasons why farmers do not comply with the rules.

12 As per Recital 2 of Commission Implementing Regulation (EU) No 834/2014 of 22 July 2014 laying down rules for the application of the common monitoring and evaluation framework of the common agricultural policy (OJ L 230, 1.8.2014, p. 1).

13 Article 30 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of 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) (Financial Regulation) provides the following definitions: The principle of economy requires that the resources used by the institution in the pursuit of its activities shall be made available in due time, in appropriate quantity and quality and at the best price. The principle of efficiency concerns the best relationship between resources employed and results achieved. The principle of effectiveness concerns the attainment of the specific objectives set and the achievement of the intended results.

14 As per Recital 39 of Regulation (EU) No 1306/2013.

The performance indicators used by the Commission gave a partial view of the effectiveness of cross-compliance

The situation for the period 2007-2013

22

For the first objective (to contribute to the development of sustainable agriculture through better awareness on the part of the beneficiaries of the need to respect the basic standards) the Commission used the indicator 'Percentage of CAP payments covered by cross-compliance', which shows the proportion of CAP payments for which farmers have to comply with cross-compliance rules. However, this indicator does not measure the farmers' awareness of those rules or their level of compliance with them.

23

To measure the second objective (to contribute to making the CAP more compatible with the expectations of society through improving the consistency of the CAP policy with the environment, public health, animal health, plant health and animal welfare policies), the indicator used was the 'Opinion expressed by the public on cross-compliance', measured by the Commission in the Eurobarometer survey. The question and answer options in the survey are shown in **Box 1**.

Box 1

Extract from the Eurobarometer survey

Question: 'Under the rules of the Common Agricultural Policy (CAP), farmers' payments are linked to the requirements to comply with rules for the environment, food safety and animal welfare (so called 'cross compliance'). To what extent do you think that it is justified or unjustified to reduce farmers' subsidy payments to farmers who do not respect Food Safety Standards, Environmental Standards, Animal Welfare Standards?'

Proposed answers: 'Totally justified; Somewhat justified; Somewhat unjustified; Totally unjustified; Don't know'.

Outcome of the survey: More than four out of five EU respondents considered it is 'justified' to reduce farmers' subsidy payments if they do not respect the rules (answering either 'Totally justified' or 'Somewhat justified'). Public opinion since the previous survey taken in November 2007 remained stable.

Source: The Commission's Eurobarometer survey.

24

This indicator does not provide any information about whether CAP consistency with the cross-compliance rules has improved or not. It merely reflects a policy choice by those surveyed, without assessing the actual results of the implementation of cross-compliance.

25

Two other result indicators: the control rate for GAEC¹⁵ and the ratio of permanent pasture are also reported by DG AGRI. The first indicator measures if Member States had complied with the minimum rate of controls. This is solely an indicator of compliance with the regulation, which, as such, does not measure the effectiveness of cross-compliance. The second indicator, which measures the percentage of land occupied by permanent pastures within a Member State in relation to its total agricultural area, had two weaknesses; it only referred to one single aspect of cross-compliance and it did not highlight the contribution of cross-compliance specifically, i.e. permanent pastures may be maintained as a result of a series of factors, only one of which is cross-compliance.

The situation for the period 2014–2020

26

For the period 2014–2020, two indicators¹⁶ directly related to cross-compliance were used: the number of hectares subject to cross-compliance and the share of CAP payments subject to cross-compliance. These are quantitative indicators which only measure the size of the populations to which they are addressed (i.e. agricultural land and CAP payments), not the effects of cross-compliance.

27

Other indicators covering areas influenced by cross-compliance rules were defined at the overall level of the CAP, such as farmland bird index, water quality, soil organic matter in arable land, soil erosion by water. However, the specific impact of cross-compliance alone on these overall indicators was unknown. Furthermore, other aspects targeted by cross-compliance, such as food safety, animal identification and registration or animal welfare, are not addressed by any impact indicators.

15 Under both the pre- and post-2014 CAP, the minimum control rate for GAEC was set at 1 % of farmers.

16 Annex to the Commission Implementing Regulation (EU) No 834/2014.

The Commission’s assessment of the effectiveness of cross-compliance did not take into account the level of non-compliance by farmers

28

The Commission also collects data on the extent to which farmers meet their cross-compliance obligations, by means of the control statistics sent by Member States. However, this information is not used as a performance indicator and monitored against pre-defined targets.

29

The results of the Court’s audits¹⁷ of legality and regularity over the past 4 years (see **Table 1**) and the statistics reported by Member State control authorities for farmers checked on-the-spot (see **Table 2**) showed high levels of infringement of cross-compliance standards.

17 As regards cross-compliance, we focused our testing on selected GAEC obligations (avoiding the encroachment of unwanted vegetation, retention of terraces, maintenance of olive groves and respect of minimum livestock stocking rates or mowing obligations) and selected SMR (requirements for the SMR regarding the Nitrates Directive and the SMR concerning the identification and registration of animals) for which evidence could be obtained and a conclusion reached at the time of the audit visits. During 2011 and 2012 the scope of testing for EAFRD was larger than for EAGF, because it included all the GAEC and the SMR related to animal welfare. Moreover, for EAGF the SMR related to the identification and registration of animals were not tested in 2011 and 2012.

Table 1 Our results regarding the testing of cross-compliance on random samples of farmers

Fund	Data	Financial Year			
		2011	2012	2013	2014
EAGF	Number of payments subject to cross-compliance	155	146	164	170
	Number of cases in which infringements were found	22	24	44	46
	Infringements (%)	14 %	16 %	25 %	27 %
EAFRD	Number of payments subject to cross-compliance	73	75	61	64
	Number of cases in which infringements were found	26	25	24	17
	Infringements (%)	36 %	33 %	39 %	27 %

Source: European Court of Auditors.

Table 2 Cross-compliance infringements reported by Member States based on checks performed on a mix of random and risk-based samples of farmers

	Financial Year				
	2011	2012	2013	2014	2015
Frequency of infringements (%)	21 %	20 %	20 %	25 %	29 %

Source: Member States’ cross-compliance statistics.

Observations

30

Farmers have become more aware over the past 5 years of their obligations to respect the cross-compliance rules, as indicated by approximately 90 % of the Paying Agencies and Farm Advisory Bodies which we surveyed. However, the non-compliance rates remain high and, both the Member State checks and our own audits show a rising trend.

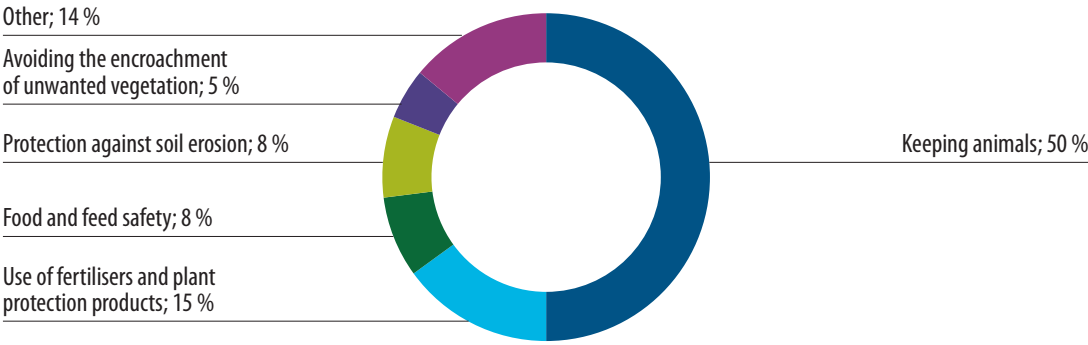
31

From 2011 to 2013 the total number of infringements identified by the Member State control authorities remained relatively constant at almost 60 000 cases/year at EU level, while in 2014 the figure increased by almost 20 % to approximately 70 000 cases of non-compliance (mainly due to an increase in infringements of the SMRs relating to the Nitrates Directive and to the identification and registration of pigs and bovines). As shown in **Figure 2**, five main areas accounted for almost 90 % of the total number of infringements and also showed the highest frequency of non-compliance¹⁸. These five areas cover a total of 10 SMRs and four GAECs.

18 Expressed as the proportion of farmers where infringements were found versus the total number of farmers controlled.

Figure 2

Areas where cross-compliance rules are most often breached



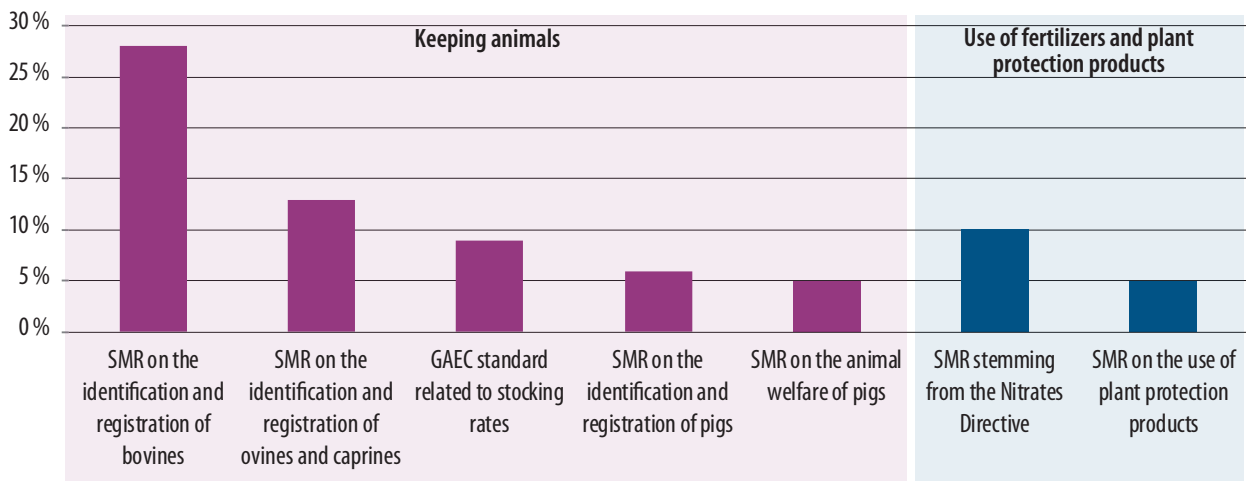
Source: European Court of Auditors.

32

For the two biggest areas, **Figure 3** shows where the frequency of infringement at the level of individual standards / requirements exceeded 5 % in the financial year 2014:

Figure 3

Frequency of infringements for the two biggest areas of non-compliances



Source: European Court of Auditors.

33

Our analysis also shows that several standards presented infringement rates of less than 1 %, such as: the SMR on the conservation of wild birds and natural habitats, the GAEC standards on soil organic matter, the maintenance of soil structure and the retention of landscape features.

The Commission did not analyse the reasons for cross-compliance infringements and the means of addressing them

34

DG AGRI analyses the information in the control statistics at the level of each reporting entity individually (province / region / central government) in order to ensure that they comply with EU requirements, such as, for example, meeting the minimum 1 % control rate set in the regulation. It also carries out conformity audits to ensure that the management and control systems put in place by Member States comply with the applicable EU rules. The purpose of such audits is to protect the funds out of which CAP payments were made, by checking if Member States’ reductions of payments to farmers are properly applied. The Commission applies net financial corrections to Member States with deficient systems.

35

DG AGRI does not analyse the figures on cross-compliance breaches at EU level, nor does it perform audits in order to identify the standards which are most often breached, the potential causes for infringements and the possible solutions for remedying the situation. The other Commission Directorates General responsible for the policies underlying the SMRs do not perform such analyses either. For example, the Directorate-General for Environment (DG ENV), which is responsible for policies such as that of the Nitrates Directive, stated that their departments did not receive the statistics on the checks carried out by Member States and, therefore, DG ENV could not, and did not, take any follow-up measures in this regard. Thus, the Commission only checks the financial aspects, without analysing the impact of cross-compliance on the underlying policy goals for the environment, food safety and animal health and welfare.

36

Until July 2016, the Commission had not carried out evaluations with regard to the reasons why rules might have been breached or the means of preventing such situations in the future¹⁹. Such evaluations might also reveal useful information about the need to simplify the cross-compliance system further. Possible reasons for not complying with cross-compliance requirements might be either due to a lack of understanding of the sometimes complex rules (see **Annex III**) or to a lack of incentive, as cost of compliance might be disproportionate in relation to the low minimum control rate of 1 % and the level of penalties applied²⁰.

The cross-compliance management and control system can be further simplified

37

In the second part of the report, we examine whether the rules and control procedures for cross-compliance had been simplified, whether the small farmers scheme achieved a balanced reduction in the administrative burden, whether there were risks that greening and cross-compliance might not be well coordinated, whether the costs of implementation were measured and whether penalties were being implemented in a consistent way across the EU. The standards for our examinations are set out in paragraphs 38 to 40.

38

In special report No 8/2008 we concluded that the cross-compliance framework posed considerable difficulties, notably because of its complexity. We recommended that the Commission simplify the framework, in particular by prioritising the requirements and standards, and organising them around the principal elements of farming activity.

19 Evaluations at the level of farmers have so far only provided information regarding elements of cost of cross-compliance, as shown in paragraph 61.

20 Penalties reached a total of 67.5 million euro in the 2014 claim year as indicated in DG AGRI's annual activity report.

Observations

39

The costs of implementing cross-compliance should be proportionate to the benefits expected from farmers' compliance with the applicable rules²¹. When presenting revised or new spending proposals, the Commission should estimate the costs and benefits of control systems²² in relation to the objectives to be achieved.

40

The Commission should also contribute to promoting a simple and harmonised system of penalties across the EU to ensure equal and proportionate treatment of farmers. The Commission is empowered²³ to adopt delegated acts to establish a harmonised basis for calculating administrative penalties due to cross-compliance breaches. It may also issue interpretative guidance to Member States.

The control procedures remain complex

41

For the period 2014–2020, the list of standards was reduced from 15 to seven GAECs (by the removal of all seven previous voluntary standards and of one compulsory standard) and from 18 to 13 SMRs (see *Annex II*). Four of the SMRs removed were those which were not considered by the Commission to be sufficiently relevant to farming activity. This is a good example of a simplification of the cross-compliance framework. However, the scope of cross-compliance is now likely to be enlarged. The 'joint statement by the European Parliament and the Council on cross-compliance'²⁴ requested that the Water Framework Directive and the Sustainable Use of Pesticides Directive become part of cross-compliance once they have been implemented in all the Member States.

42

In our opinion on the Commission's proposal regarding the changes in the CAP for the period 2014–2020²⁵, we expressed the view that the 'list of requirements is still too dispersed across too many legal texts, not focused enough on key requirements and the lower number of standards does not really correspond to a reduction in the level of complexity of this policy'.

21 Recital 57 of Regulation (EU) No 1306/2013.

22 Article 33 of the Financial Regulation.

23 According to Article 101 of Regulation No 1306/2013.

24 Joint statement attached to Regulation (EU) No 1306/2013.

25 Opinion No 1/2012 on certain proposals for regulations relating to the common agricultural policy for the period 2014–2020 (<http://eca.europa.eu>).

Observations

43

53 % of the Farm Advisory Bodies which replied to our survey considered that the CAP for the period 2014–2020 has brought about no significant changes to the cross-compliance system, while 28 % of them considered that the new system is even more complicated. Also, less than 10 % of Paying Agencies considered that the changes in cross-compliance had a moderate or very positive impact on the resources spent in areas such as: on-the-spot and administrative checks, sanctions system and providing information to farmers.

44

The Paying Agencies and the Farm Advisory Bodies replied to our survey that the main reason why farmers do not comply with cross-compliance obligations is that the requirements are too complicated. The farmers' associations visited during the audit further confirmed this analysis. Simplification could be seen as a solution to ensure increased compliance by farmers with the most relevant rules, thus contributing to the effectiveness of the system. In this context, a need for further simplification of the cross-compliance system has been put forward during our audit by the Paying Agencies, Farm Advisory Bodies and farmers' associations, together with convergent proposals (see **Annex III** for more details).

45

Complexity was also due to the level of detail of the applicable rules. **Box 2** gives an example of the detailed cross-compliance requirements in Member States. While detailed rules may be justified to take into account various environmental situations, farmers risk finding difficulties in applying them correctly and paying agencies in checking them.

46

In United Kingdom-Northern Ireland, we compared the number of control points included in the on-the-spot checklists for cross-compliance used by control authorities for the CAP until 2013 and after, and we found that the changes in the CAP for the period 2014-2020 had a limited impact on the number of control points (see **Box 3**). The authorities in the other two Member States visited confirmed during the interviews that the changes in cross-compliance for the period 2014-2020 did not trigger a significant reduction in the number of control points.

Box 2

Examples of requirements included in the cross-compliance control manual in the United Kingdom – Northern Ireland

Three of the 40 cross-compliance control points resulting from the SMR on the Nitrates Directive are captured in the inspectors’ checklist by question 3.1.12, split into three sub-questions, which read:

‘3.1.12. Has organic manure (including dirty water) been applied within: 10 m of any waterway other than lakes*; 20 m of lakes; 50 m of a borehole, spring or well; 250 m of a borehole used for a public water supply; 15 m of exposed cavernous or karstified limestone features? (*See Inspectors’ Guidance)

3.1.12a. On grassland with an average incline of greater than 15 % and on any other land with an average incline of greater than 12 % has organic manure (including dirty water) been applied within 30 m of a lake or 15 m of any waterway other than lakes (*See Inspectors’ Guidance)

3.1.12b. On grassland with an average incline of greater than 15 % and on any other land with an average incline of greater than 12 % has chemical fertiliser been applied within 10 m of a lake or 5 m of any waterway (*See Inspectors’ Guidance)’.

Source: Paying Agency of Northern Ireland.

Box 3

Limited impact of the changes in the CAP for the period 2014 – 2020 on the checklists used by the control authorities in the United Kingdom – Northern Ireland

The number of control points for a full-scope cross-compliance inspection was 257 for the CAP until 2013 and 249 for the CAP after 2014.

For GAEC, the number of control points has increased from 19 to 27 in the two periods compared.

Source: Paying Agency of Northern Ireland.

47

During on-the-spot checks, all the obligations regarding the GAEC standards and SMR requirements for which the farmers have been selected must be checked. As mentioned above, these checks often include hundreds of control points in the various checklists. Even if the control systems were effective, the legislative framework²⁶ would not allow for a more targeted risk-based approach according to which certain rules or control points could be checked more or less frequently by taking account, for example, of the level of breaches, the likelihood of a breach, or the magnitude of the effects of a potential breach.

26 See Article 71 of Commission Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance.

The Small Farmers Scheme reduced the administrative burden, but this could affect the achievement of cross-compliance objectives in some Member States

48

The CAP for the period 2014–2020 introduced the Small Farmers Scheme (SFS) as a simplified direct payment scheme granting up to 1 250 euro as direct aid to those farmers who decide to participate in the scheme. 15 Member States have decided to implement this optional scheme. For these countries, the number of farmers participating in this scheme varies between 3 % (Slovenia) and 77 % (Malta). The Commission calculated that at overall EU level, the SFS covers 4 % of the total agricultural area.

49

SFS beneficiaries are not subject to the application of administrative penalties if they do not meet cross-compliance obligations²⁷. Therefore they do not risk having their CAP payments reduced due to infringements of cross-compliance rules. This exemption from cross-compliance is justified by the fact that for ‘farmers participating in the small farmers scheme (...) the efforts to be made under the cross-compliance system might be considered to exceed the benefit of keeping those farmers under that system’²⁸.

50

This measure also has the potential of reducing the costs of implementing, managing and controlling cross-compliance: SFS was indicated as the main source of savings by 10 out of the 12 Paying Agencies which estimated that the CAP for the period 2014–2020 will lead to a reduction in costs. This message was reiterated by the Paying Agencies in the three Member States visited.

51

SFS is a step towards simplification that relieves administrations and farmers of additional burdens, leading at the same time to cost savings. However, its implementation at the level of each Member State should be guided by the need to ensure an appropriate balance between administrative simplification and achieving the objectives of cross-compliance and the sectoral legislation. Differences exist between Member States or regions. For example, in Romania small farmers represent around 71 % of the farmers and 16 % of the total area claimed. In contrast, in Slovenia, the total number of small farmers is around 3 % and the area covered by this scheme is only 1 %.

27 As per Article 92 of Regulation (EU) No 1306/2013.

28 As per Recital 57 of Regulation (EU) No 1306/2013.

52

Although not applying the SFS, Lithuania followed similar principles in excluding farmers below certain threshold from the application of specific cross-compliance rules. **Box 4** illustrates the potential risks linked to the application of such simplification measures:

Box 4

Exemption of farmers from cross-compliance obligations related to the Nitrates Directive in Lithuania

Farmers with a utilised agricultural area of 10 hectares or less do not need to declare their level of fertiliser use. Such farmers account for more than 70 % of all farmers and use 14 % of the agricultural area.

At the same time, livestock farmers who keep less than 10 livestock units in one place do not need to have manure storage of the relevant capacity. Such farmers constitute 87 % of all livestock farmers and keep 28 % of all livestock units.

The Nitrates Directive is intended to protect the environment and citizens' health. While the use of thresholds may reduce red tape for smaller farmers, excluding significant parts of the farmers' land and/or animals from cross-compliance checks may also adversely affect the achievement of the objectives of the Nitrates Directive.

Source: European Court of Auditors – 2015 annual report – Figure 7.10.

Greening introduced an additional layer of checks for mandatory environmentally friendly practices

53

One of the objectives of the new CAP is the enhancement of environmental performance through a mandatory 'greening' component of direct payments which supports agricultural practices beneficial for the climate and the environment applicable throughout the Union²⁹. Those practices include crop diversification, the maintenance of permanent grassland and the establishment of ecological focus areas. 30 % of the annual national ceiling is to be paid in the form of such a greening payment for each eligible hectare³⁰.

54

A new greening payment was introduced in the CAP for the period 2014–2020. The farming practices under greening have similarities with previous GAEC standards which covered agricultural practices such as crop rotation, the protection of permanent pastures, or the retention of landscape features. Thus, for the period 2014–2020 there are two sets of complementary agricultural practices which target the same objectives: the maintenance of land and the protection of bio-diversity.

29 Recital 37 of Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ L 347, 20.12.2013, p. 608).

30 Article 47 of Regulation (EU) No 1307/2013.

Observations

55

In its 2014 annual activity report, DG AGRI explained that both these compulsory instruments – greening and GAEC – contribute towards the same objective: ‘Therefore, the CAP will be able to improve its environmental performance by ensuring that a substantial part of the agricultural area in Europe is affected by cross-compliance requirements, ‘greening’ obligations as well as agri-environmental commitments’.

56

On-the-spot checks for greening are performed on a sample of 5 % of farmers as part of the verifications regarding the eligibility criteria for the direct payment schemes³¹, in a system outside the control framework for GAEC, which verifies a sample of 1 % of farmers subject to cross-compliance checks³². As a result, compliance with complementary mandatory environmentally beneficial practices is checked within two different frameworks.

57

Under greening, farmers have to comply with the obligation to have at least 5 % of the arable land of the holding as Ecological Focus Areas. The regulation also provides that cross-compliance protected elements (such as landscape features or buffer strips) may as well count to fulfil this obligation. These are therefore managed under two different set of rules and checks.

58

Thus, with the introduction of greening, there are now two control systems for compulsory environmentally-friendly practices which complement each other and contribute to the same objective of improving the environmental performance of the CAP. While the cross-compliance regulation states that Member States may make use of existing control systems to check cross-compliance obligations³³, there are risks of inefficiencies in the Member State control systems and of additional burdens on farmers.

31 Title III of Commission Regulation (EU) No 809/2014.

32 Title V of Commission Regulation (EU) No 809/2014.

33 Article 96 of Regulation (EU) No 1306/2013.

Observations

The specific costs associated with the implementation of cross-compliance are not sufficiently quantified

59

The Commission needs a reliable estimate of the overall cost of cross-compliance, aggregating the main stakeholders involved (EU institutions, Member State management and control authorities, and farmers) in order to ensure that the system is cost-effective.

60

DG AGRI has estimated that the total costs of managing and controlling agricultural expenditure are close to 4 billion euro or approximately 7 % of the total EU-funding³⁴. However, as far as cross-compliance is concerned, the costs are not quantified and no reliable estimate exists.

61

At Member State level, significant costs are due to the requirements of the cross-compliance control system. Firstly, checks are required for GAEC, which are an additional set of rules applicable only to farmers benefiting from CAP payments. Secondly, in relation to SMRs, which are based on existing directives and regulations ('sectoral legislation')³⁵, specialised control bodies have to check a minimum control rate of 1 % required under cross-compliance rules and have additional reporting obligations regarding these checks.

62

At farm level, the introduction of SMRs created more administrative obligations for farmers, such as record keeping and participating in cross-compliance inspections³⁶. Furthermore, compliance with GAECs, implies costs concerning the agricultural practices required (labour costs, costs of machinery, fuel and other consumables), the income forgone because the GAECs prohibit or impose certain practices (e.g. reduction in yield), but also other costs such as the use of third-party service providers (e.g. consultants for certain cross-compliance topics).

63

A report commissioned by DG-AGRI³⁷ and published in 2014 assessed the actual costs that EU farmers incurred in order to comply with selected legislation in the fields of the environment, animal welfare and food safety. The study was built on case studies from the eight most representative agricultural sectors in the EU. It gives an indication of the financial impact such obligations have on farmers (see **Box 5** for a summary of the results for the wheat sector).

34 DG AGRI 2014 annual activity report.

35 For example: Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 375, 31.12.1991, p. 1); Regulation (EC) No 1760/2000 of European Parliament and of the Council of 17 July 2000 establishing a system for the identification of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97 (OJ L 204, 11.8.2000, p. 1).

36 Recital 57 of Regulation (EU) No 1306/2013: The cross-compliance system implies certain administrative constraints for both beneficiaries and national administrations since records keeping has to be ensured, checks have to be carried out and where necessary penalties have to be applied.

37 'Assessing farmers' cost of compliance with EU legislation in the fields of environment, animal welfare and food safety' (AGRI-2011-EVAL-08). Study undertaken by: CRPA - Centro Ricerche Produzioni Animali (IT), in association with: TI - Thünen Institute of Farm Economics (DE), IFCN - International Farm Comparison Network on Dairy (DE), UGHENT - University of Ghent (BE).

Box 5

Impact of compliance with selected obligations on production costs in the wheat sector

Out of the full cross-compliance scope applicable until 2013, the study for the wheat sector took into consideration the cumulative effects of five compulsory GAECs (minimum soil cover, land management, establishment of buffer strips and avoiding the encroachment of unwanted vegetation and retention of landscape features), one optional GAEC (crop rotation) and the legislation underlying the basis of two SMRs (the Nitrates Directive and the Regulation on plant protection products). Another requirement outside the scope of cross-compliance was also taken into account: the Directive on the sustainable use of pesticides.

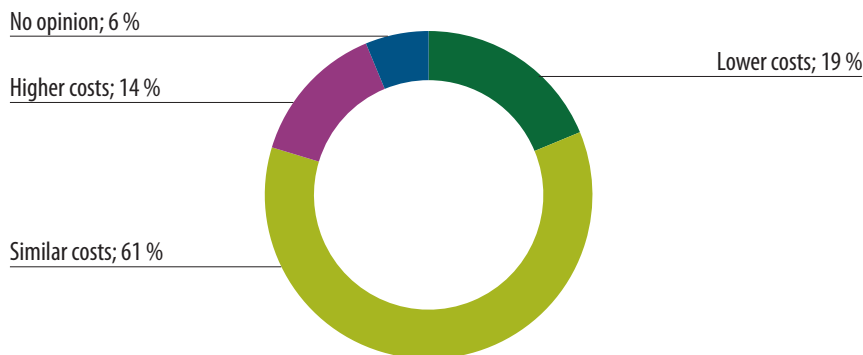
The authors of the survey concluded that the actions taken by farmers to ensure compliance with the rules listed above would increase production costs by amounts ranging from 1.97 % in Hungary to 3.42 % in Denmark.

64

Furthermore, in the view of the majority of the Paying Agencies, the changes in the CAP for the period 2014 – 2020 are not likely to lead to a decrease in costs. When asked in the survey whether these changes will lead to lower, similar or higher costs for implementing, managing and controlling cross-compliance obligations, the Paying Agencies’ replies were:

Figure 4

Paying Agencies’ estimate of the impact of the CAP 2014–2020 changes on their cross-compliance management and control system



Source: European Court of Auditors.

The basis for the calculation of cross-compliance penalties for farmers across the EU is not sufficiently harmonised

65

The EU legislation stipulates that where a farmer does not comply with the rules on cross-compliance, an administrative penalty should be imposed if the non-compliance results from an act or an omission directly attributable to that beneficiary. Such penalties should be established having regard to the principle of proportionality (graded according to the seriousness of the non-compliance committed³⁸ and calculated as a percentage on the CAP payment) and only be applied where the non-compliance is attributable to the farmer's actions, committed either negligently or intentionally.

66

When calculating those penalties, account should be taken of the severity, extent, permanence and reoccurrence of the non-compliance found. In the case of non-compliance due to negligence, the maximum reduction is 5 % and, in the case of reoccurrence, 15 %. In the case of intentional non-compliance, there is a minimum reduction of 20 % and it may go as far as total exclusion from one or several aid schemes for one or more calendar years.

67

We found that the practical application of the concept of intentional non-compliance raises significant uncertainties at Member State level. The representatives of the Paying Agencies and the farmers' associations in the three Member States visited indicated that the proof of intentionality is difficult to sustain, unless the farmer is caught 'red-handed'.

68

The review of the control statistics for cross-compliance shows that some Member States were stricter than others in applying the concept of intentional non-compliance: no farmer was penalised during the period 2011–2014 for intentional breaches in certain Member States (Czech Republic, Bulgaria), or very few were (Romania, Portugal, Hungary), while other Member States used this concept much more frequently (Lithuania, Greece, Poland, France, Ireland).

38 Recital 35 of Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance (OJ L 181, 20.6.2014, p. 48).

69

To examine how the same types of non-compliance are assessed by the Member States, the survey we sent to the Paying Agencies contained two case studies on breaches of the SMRs on cattle identification and registration and the Nitrates Directive (full text of the case studies is included in **Annex IV**). The Paying Agencies were asked to quantify the percentage of penalties that would be applied in these two case studies. **Box 6** shows a summary of the case studies presented and the replies received.

Box 6

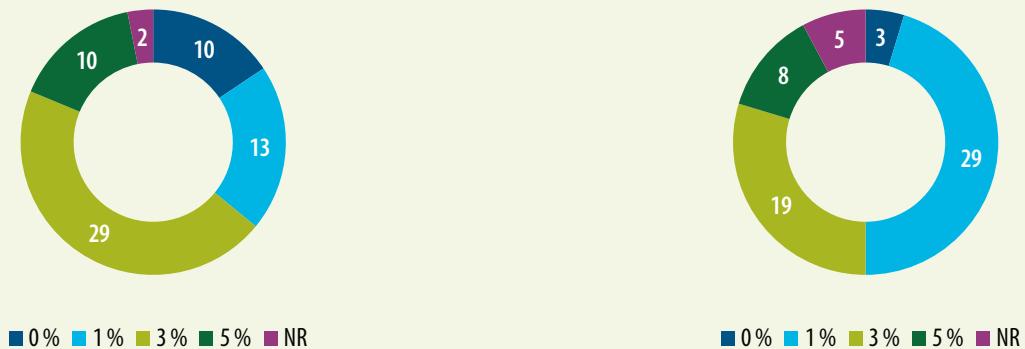
Case studies regarding the penalties applied in Member States

Summary of the case studies proposed to the Member States

During the calendar year, the farmer sent late notification of the registration of animals for 20 cattle. The farmer had an average of 75 cattle during the year.

During on-the-spot checks, the inspectors calculated that the farmer’s manure storage capacity was 10 % less than the minimum required.

Number of Paying Agencies applying each of the possible reduction percentages



NR for 'No Reply' – indicates that several Paying Agencies did not quantify the breach.

Source: European Court of Auditors.

70

Thus, for the same breach of 20 cattle not registered in due time, almost half of the Member States would apply a 3 % penalty, whereas a fifth of the Member States would apply a 1 % penalty, with the remaining ones applying either a 0 % or a 5 % reduction. An insufficient manure storage capacity would be penalised at 1 % by almost half of the Member States, while a third would apply a 3 % penalty, while a sixth of the Member states would apply either a 0 % or 5 % penalty.

71

Furthermore, the understanding of the severity of a breach varied significantly between Member States, so there is a risk that similar cases were not treated in the same way. Such a situation was confirmed by the different sanction rules put in place in the Member States visited, as shown in **Box 7**.

Box 7

Example of penalty for the late registration of animals

In Germany- Schleswig-Holstein, the Paying Agency has established that no penalty is to be applied for late registration, if the number of bovines concerned by the breach represents less than 30 % of the total number of bovines present on the holding.

On the contrary, in Spain-Catalonia, no such threshold exists.

72

Cross-compliance has been applicable since 2005, as a mechanism to link most CAP payments to farmers' compliance with the rules stemming from the environment, public health, animal health, plant health and animal welfare policies. The objectives of cross-compliance were to improve the consistency of the CAP with those policies (and thus to respond to the expectations of society) and to make farmers aware of the need to respect those rules (and thus to contribute to the development of sustainable agriculture). The purpose of the report is to assess to what extent the cross-compliance management and control system has been effective and can be further simplified, and, on that basis, to offer recommendations for improving the implementation of cross-compliance in the medium and long term.

73

We conclude that the information available did not allow the Commission to assess adequately the effectiveness of cross-compliance. Despite the changes made to the CAP for the period 2014–2020, the cross-compliance management and control system can still be simplified.

74

We found that the performance indicators used by the Commission gave a partial view of the effectiveness of cross-compliance. The indicators did not take into account the level of non-compliance by farmers (paragraphs 18 to 27).

Recommendation 1

The Commission should examine as part of the impact assessment for the CAP post 2020 how to further develop its set of indicators to assess the performance of cross-compliance and how to take into account farmers' levels of compliance with the cross-compliance rules in its indicators.

Conclusions and recommendations

75

The legislator established an EU framework regarding cross-compliance. The Commission is responsible for monitoring its implementation. Member States translated the EU rules into obligations at farmer level and verified whether these obligations were respected. However, a quarter of the farmers checked on-the-spot during the financial years 2011–2014 had breached at least one of the rules, despite the fact that the underlying purpose of cross-compliance was to ensure the consistency of the CAP with such rules. The Commission did not analyse the reasons for the infringements and the means of addressing them (paragraphs 28 to 36).

Recommendation 2

The Commission should from now on improve the sharing of the information on cross-compliance related infringements between concerned services in order to help them to identify the reasons for breaches and to take appropriate measures to address them.

76

The changes in the CAP for the period 2014–2020 somewhat reduced the number of cross-compliance rules, by removing requirements which were not sufficiently relevant to the farming activity. However, control procedures remain complex. Even if the control systems were effective, the legislative framework would not allow for a more targeted risk-based approach according to which certain rules or control points could be checked more or less frequently by taking account, for example, of the level of breaches, the likelihood of a breach, or the magnitude of the effects of a potential breach. Simplification measures, such as the small farmers' scheme, relieving administrations and farmers of additional burdens need to be balanced against the necessity to achieve the objectives of cross-compliance (paragraphs 41 to 52).

Recommendation 3

For the CAP post-2020, the Commission should propose adapting the rules regarding cross-compliance on-the-spot checks. This would allow a more effective targeting of key control points.

Conclusions and recommendations

77

A new greening payment was introduced in the CAP for the period 2014–2020. The farming practices under greening have similarities with previous GAEC standards which covered agricultural practices such as crop rotation, the protection of permanent pastures, or the retention of landscape features. Consequently, there are currently two sets of complementary agricultural practices which target the same objectives: the maintenance of land and the protection of bio-diversity. Despite their similarities, the compulsory GAEC and greening rules are checked under two control systems. This may lead to inefficiencies in the control systems and an additional administrative burden (paragraphs 53 to 58).

Recommendation 4

The Commission should analyse as part of the impact assessment for the CAP post-2020 the experience of having two systems operating with similar environmental objectives (GAEC standards and greening) with a view to promoting further synergy between them. This analysis should take into consideration criteria such as the environmental impact of the standards and the historical level of compliance by farmers.

78

The costs of implementing cross-compliance are not sufficiently quantified. However, it would be necessary to assess the aggregate costs of cross-compliance at EU, Member State and farmer level in order to design and implement a cost-effective policy. This calculation should be an important input for any policy changes, in order to ensure that disproportionate costs are not incurred in trying to achieve the intended results, or that alternative instruments which would provide a better cost-benefit ratio are considered (paragraphs 59 to 64).

Recommendation 5

After the report on the performance of the CAP due by the end of 2018, the Commission should develop a methodology to measure the costs of cross-compliance.

Conclusions and recommendations

79

Penalties for non-compliance are calculated on the basis of the severity, extent, permanence and reoccurrence of the non-compliance found, as well as depending on whether the farmer breached the rules negligently or intentionally. In practice, we observed that the application of penalties varied significantly between Member States (paragraphs 65 to 71).

Recommendation 6

For the CAP post-2020, the Commission should encourage a more harmonised application of penalties at EU level by further clarifying the concepts of severity, extent, permanence, reoccurrence and intentionality.

This Report was adopted by Chamber I, headed by Mr Phil WYNN OWEN, Member of the Court of Auditors, in Luxembourg at its meeting of 7 September 2016.

For the Court of Auditors



Vítor Manuel da SILVA CALDEIRA
President

The scope of cross-compliance rules, as per Annex II of Regulation (EU) No 1306/2013 of the European Parliament and of the Council

RULES ON CROSS-COMPLIANCE PURSUANT TO ARTICLE 93

SMR: Statutory management requirement

GAEC: Standards for good agricultural and environmental condition of land

Area	Main Issue	Requirements and standards		
Environment, climate change, good agricultural condition of land	Water	SMR 1	Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 375, 31.12.1991, p. 1)	Articles 4 and 5
		GAEC 1	Establishment of buffer strips along water courses (!)	
		GAEC 2	Where use of water for irrigation is subject to authorisation, compliance with authorisation procedures	
		GAEC 3	Protection of ground water against pollution: prohibition of direct discharge into groundwater and measures to prevent indirect pollution of groundwater through discharge on the ground and percolation through the soil of dangerous substances, as listed in the Annex to Directive 80/68/EEC in its version in force on the last day of its validity, as far as it relates to agricultural activity	
	Soil and carbon stock	GAEC 4	Minimum soil cover	
		GAEC 5	Minimum land management reflecting site specific conditions to limit erosion	
		GAEC 6	Maintenance of soil organic matter level through appropriate practices including ban on burning arable stubble, except for plant health reasons (!)	
	Biodiversity	SMR 2	Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26.1.2010, p. 7)	Article 3(1), Article 3(2)(b), Article 4(1), (2) and (4)
		SMR 3	Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild flora and fauna (OJ L 206, 22.7.1992, p. 7)	Article 6(1) and (2)
	Landscape, minimum level of maintenance	GAEC 7	Retention of landscape features, including where appropriate, hedges, ponds, ditches, trees in line, in group or isolated, field margins and terraces, and including a ban on cutting hedges and trees during the bird breeding and rearing season and, as an option, measures for avoiding invasive plant species	
Public health, animal health and plant health	Food safety	SMR 4	Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1)	Articles 14 and 15, Article 17(1) (!) and Articles 18, 19 and 20

Area	Main Issue	Requirements and standards		
		SMR 5	Council Directive 96/22/EC of 29 April 1996 concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and beta-agonists, and repealing Directives 81/602/EEC, 88/146/EEC and 88/299/EEC (OJ L 125, 23.5.1996, p. 3)	Article 3(a), (b), (d) and (e) and Articles 4, 5 and 7
	Identification and registration of animals	SMR 6	Council Directive 2008/71/EC of 15 July 2008 on identification and registration of pigs (OJ L 213, 8.8.2008, p. 31)	Articles 3, 4 and 5
SMR 7		Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97(OJ L 204, 11.8.2000, p. 1)	Articles 4 and 7	
SMR 8		Council Regulation (EC) No 21/2004 of 17 December 2003 establishing a system for the identification and registration of ovine and caprine animals and amending Regulation (EC) No 1782/2003 and Directives 92/102/EEC and 64/432/EEC (OJ L 5, 9.1.2004, p. 8)	Articles 3, 4 and 5	
	Animal diseases	SMR 9	Regulation (EC) No 999/2001 of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies (OJ L 147, 31.5.2001, p. 1)	Articles 7, 11, 12, 13 and 15
	Plant protection products	SMR 10	Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ L 309, 24.11.2009, p. 1)	Article 55, first and second sentence
Animal welfare	Animal welfare	SMR 11	Council Directive 2008/119/EC of 18 December 2008 laying down minimum standards for the protection of calves (OJ L 10, 15.1.2009, p. 7)	Articles 3 and 4
		SMR 12	Council Directive 2008/120/EC of 18 December 2008 laying down minimum standards for the protection of pigs (OJ L 47, 18.2.2009, p. 5)	Article 3 and Article 4
		SMR 13	Council Directive 98/58/EC of 20 July 1998 concerning the protection of animals kept for farming purposes(OJ L 221, 8.8.1998, p. 25)	Article 4

(1) The GAIC buffer strips must respect, both within and outside vulnerable zones designated pursuant to Article 3(2) of Directive 91/676/EEC, at least the requirements relating to the conditions for land application of fertiliser near water courses, referred to in point A.4 of Annex II to Directive 91/676/EEC to be applied in accordance with the action programmes of Member States established under Article 5(4) of Directive 91/676/EEC.

(2) The requirement can be limited to a general ban on burning arable stubble, but a Member State may decide to prescribe further requirements.

(3) As implemented in particular by:

- Article 14 of Regulation (EC) No 470/2009 and the Annex of Regulation (EC) No 37/2010,
- Regulation (EC) No 852/2004: Article 4(3) and Annex I part A (I) 4 (g, h, j, 5 (f, h), 6; III 8 (a, b, d, e), 9 (a, c)),
- Regulation (EC) No 853/2004: Article 3(1) and Annex III Section IX Chapter 1 (b-1 b, c, d, e; 1-2 a (i, ii), b (i, ii), c; 1-3; 1-4; 1-5; B-A 1, 2, 3, 4; II-B 1(a, d), 2, 4 (a, b), Annex III Section X Chapter 1(1)),
- Regulation (EC) No 1831/2003: Article 5(1) and Annex I, part A (b-4 c, g; II-2 a, b, c), Article 5(5) and Annex III (L 2), Article 5(6), and
- Regulation (EC) No 396/2005: Article 18.

Main changes in the scope of cross-compliance rules for the CAP 2014–2020

Pursuant to Article 93 and Annex II of Regulation (EU) No 1306/2013, the rules were grouped in a single list of 13 SMRs and seven GAECs. The main changes compared to the previous legislation and the justification provided by the Commission were:

- removal of the seven optional GAECs (in order to promote a more even implementation of GAECs by Member States);
- removal of the SMR on the use of sewage sludge (requirements generally applied to sewage companies rather than to farmers);
- removal of three SMRs on notification of animal diseases (the systematic cross-compliance controls were not suitable for exceptional disease occurrences);
- reducing the scope of the two SMRs on the conservation of wild birds and natural habitats (infringements could only be identified if farmers were caught 'red handed'. The cross compliance controls, by nature systematic, were not appropriate for this kind of infringement);
- converting the SMR on the protection of groundwater against pollution into a new GAEC;
- converting the GAEC standard on the protection of permanent pastures into one of the three practices of the 'green' payment;
- the GAEC standard on preventing the encroachment of unwanted vegetation has become an eligibility criterion under the basic direct payment scheme.

Stakeholders expressed a need for further simplification

During the 38th Conference of Directors of Paying Agencies held in Luxembourg in November 2015, the ad-hoc working group with the theme 'Simplification – cross-compliance' concluded that, in the long-term for the CAP post-2020, the cross-compliance system 'needs to be reformed and simplified'. Three priority areas were identified:

- limit the checks performed on-the-spot to relevant, objectively controllable cross-compliance that can be applied in a way that provides full legal certainty;
- make sure that the rules which form part of cross-compliance are relevant, by taking into account their importance for the agricultural sector, the number of farmers concerned, the frequency of the related activity and the difficulties of legal certainty when checking certain rules;
- remove the general rule on reductions for intentional non-compliance and add more proportionate rules on reductions and penalties.

One of the open-answer questions in our survey was to request suggestions for the main three measures that could help simplify the cross-compliance system and/or make it more effective. The three proposals most often mentioned by the Paying Agencies were, in frequency order:

- reducing the number of cross-compliance requirements by focusing on those which are considered to be the most important and strictly relevant to the farming activity;
- changing the sanctions system by, for example: eliminating the concept of intentional non-compliance; introducing an element of tolerance before a non-compliance is determined (for example, where animal registration and identification is involved); simplifying the method of calculating reductions and penalties (which is currently based on the concepts of extent, severity and permanence);
- reducing the extent of on-the-spot checks by: sample-based testing, for example in the case of farms with large herds; focused testing on the most risky areas, with reduced levels of checks for standards where insignificant levels of non-compliance are found; eliminating those control points which cannot always be reliably verified on-the-spot.

In addition, Farm Advisory Bodies surveyed also proposed giving farmers more help by, for example: providing training in record-keeping; practical guides and manuals; more reader-friendly information; campaigns on cross-compliance's positive effects on the environment, food safety and animal welfare.

The farmers' associations we met in the three Member States also identified priorities for simplification along the same lines: reducing the number of cross-compliance rules, changing the sanction system (eliminating the concept of intentionality, more tolerance, and simplification of the penalty calculation methodology) and better targeting of controls towards the riskiest farmers.

Case studies included in the survey sent to Paying Agencies

<p>Farmer XY was randomly selected for an on-the-spot cross-compliance check of SMR 7 for the 2014 claim year. The farmer had not been selected for on-the-spot checks in the previous 3 years. The farmer submitted a claim for the 2014 claim year, where he declared 70 ha and 80 bovines. The total amount of direct payments to which the farmer is entitled is 25 000 euro.</p> <p>During the on-the-spot check, the inspectors checked the farm register for animals and supporting documents attesting to the declaration and registration of animals (births, deaths). The inspectors found that 20 animals were registered after the deadline of 7 days (periods of 8 to 20 days were noted). The average number of animals during the 2014 calendar year was 75.</p> <p>The inspectors also found that during the 2013 calendar year the farmer had declared 10 animals after the 7 day deadline. The average number of animals in 2013 was 70. Please indicate whether you would apply a penalty for the 2014 claim year. If so, please indicate the % of penalty to be applied in accordance with national and/or regional legislation and norms. If your answer is no, please indicate 'no penalty'.</p>	<p>Farmer WZ was randomly selected for an on-the-spot cross-compliance check of SMR 4 for the 2014 claim year. The farmer had not been selected for on-the-spot checks in the previous 3 years.</p> <p>The farmer inspected owns 964.35 ha and 145 cattle, for which he needs a manure storage capacity of 4 400 cubic meters (6 months storage). The capacity found and calculated by the inspectors during the on-the-spot inspection was 10 % less than that required.</p> <p>Please indicate whether you would apply a penalty for the 2014 claim year. If so, please indicate the % of penalty to be applied in accordance with national and/or regional legislation and norms. If your answer is no, please indicate 'no penalty'.</p>
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Executive summary

II

When describing the cross-compliance system it has to be made clear that for SMRs, these basic rules incorporated in cross-compliance are anyhow already applicable in Member States due to the overlaying sectorial legislation.

III

Since 2005 the continuous process of reviewing and simplifying the cross-compliance scope provided the following results:

Control procedures were simplified during the period 2005-2013 by introducing provisions on harmonisation of control rates, advance notice, timing and elements of on-the-spot checks and selection control sample.

Furthermore, with the last CAP reform, the number of SMRs has been reduced from 18 to 13 and the number of GAEC standards was reduced from 15 to 7. The obligations included in the scope of cross-compliance were reviewed in light of the fact if they were controllable, directly attributable to farmers (and not to Member States) and if they were linked to agricultural activity.

The Commission considers that the scale of the effort already put into simplification makes it most unlikely that any further simplification can be achieved without undermining e.g. the environmental goals of cross-compliance.

IV

It is the Commission's view that the performance indicators used for measuring the effectiveness of cross-compliance in meeting its objectives are the most appropriate on the basis of the available information. The cross-compliance objectives are to contribute to the development of sustainable agriculture through awareness-raising of farmers and making the CAP more compatible with the expectations of society. The GAEC objectives are to contribute to preventing soil erosion, maintaining soil organic matter and soil structure, ensuring a minimum level of maintenance, avoiding the deterioration of habitats and protecting and managing water. In this respect cross-compliance is not the implementing tool for other policies, which have their own objectives.

Analysing the reasons for infringements is done in the context of the implementation of the sectorial legislation. However cross-compliance and the Farm Advisory System play a role in addressing the reasons for the infringements.

VI

Environmental objectives (e.g. maintenance of land and biodiversity) are pursued not only by greening payments and GAEC standards but also by environmental and climate measures under Pillar II as well as the environmental legislation. However, the nature, rationale and functioning of these various instruments are different and complementary. Their complementarity is illustrated by Figure 1 of SWD (2016) 218 final.

Both greening rules and GAEC are managed by the Integrated Administration and Control System (IACS) and this ensures the best use of resources. There are, however, reasons for the fact that GAECs and greening may not necessarily be checked together. Since greening is a criterion for eligibility it is controlled ex-ante by administrative checks and on-the spot checks for 5 % of beneficiaries. GAEC are checked under cross-compliance which is managed differently than the eligibility requirements.

VII

The SMRs stem from sectorial legislations and Member States may make use of their existing administration and control systems (Article 96 of Regulation (EU) No 1306/2013). Existing control systems can thus synergistically be used for the cross-compliance control system. GAEC should not either entail significant costs for farmers since they are meant to be basic standards. Costs of their controls are born by the IACS which serve also other CAP instruments.

The Commission quantified in its Annual Activity Report 2014 the overall costs related to control in Member States taking the reservation that 'the deterrent effect of ex-post controls' (such as cross-compliance) 'also bring unquantifiable benefits'.

VIII

While the framework is set at EU level, on-farm obligations under SMRs and GAEC are largely defined by Member States to take into account the challenges and agricultural structures in the national or regional conditions. In this respect it is important that a margin of implementation is left to Member States for the calculation of penalties for each of these on-farm obligations. The EU regulation sets the principle that sanctions are calculated on a case by case basis taking into account the severity, extent, permanence, reoccurrence or intent of the non-compliance determined. The harmonised implementation of these principles across Member States is ensured in particular through the audits carried out by the Commission. Should weaknesses be found in a particular Member State in this respect, appropriate follow-up is brought in the framework of the clearance of accounts.

IX First indent

The Commission accepts this recommendation.

IX Second indent

The Commission accepts this recommendation.

IX Third indent

The Commission does not accept this recommendation. The recommendation by the Court would not simplify cross-compliance but *de facto* reduce its scope. The simplification of the cross compliance scope has been already carried out several times in the past. Moreover Member States have now a wide margin of manoeuvre to take into account the risks in the control sampling and to optimise their control systems. The Commission considers that this recommendation might result in loosening the rules on on-the-spot checks which would ultimately undermine the effectiveness of cross-compliance.

IX Fourth indent

The Commission accepts this recommendation.

Reply of the Commission

IX Fifth indent

The Commission partially accepts this recommendation. The implementation of this recommendation will depend on the outcome of the planned study on administrative burden. The administrative costs of cross-compliance should be viewed in the context of the costs of non-compliance for society, public finances and the environment and of the potential benefits of cross-compliance.

IX Sixth indent

The Commission accepts this recommendation.

The Commission envisages organising exchanges of best practice on these issues.

Introduction

06

The sectorial legislation was already applicable in Member States before cross-compliance was introduced.

09

The Commission implemented all accepted recommendations made by the Court in its special report 8/2008.

10

The changes for 2014-2020 were implemented and the cross-compliance system underwent substantial changes with the last CAP reform.

10 Second indent

The obligations included in the scope of cross-compliance were reviewed in light of the fact if they were controllable, directly attributable to farmers (and not to Member States) and if they were linked to agricultural activity.

Observations

Common Commission's reply to paragraphs 18 to 21

The cross-compliance objectives are to contribute to the development of sustainable agriculture, making the CAP more compatible with the expectations of society and preventing soil erosion, maintaining soil organic matter and soil structure, ensuring a minimum level of maintenance, avoiding the deterioration of habitats and protecting and managing water. Cross-compliance is not the implementing tool for other policies. This was already clarified when introducing cross-compliance, as cross compliance is not an eligibility rule (see Presidency Compromise of 26 June 2003). It acts indirectly by raising the beneficiary's awareness. It is for the underlying sectorial policies and not for cross-compliance to identify and address the reasons why farmers do not comply with the sectorial legislation from which SMR are drawn.

Moreover, in accordance with Annex II of Regulation (EU) No 1306/2013 only selected articles or paragraphs stemming from sectorial legislation would be of relevance for such analysis, which should take into account the wider scope of the policies.

As far as the environmental legislation is concerned specific performance indicators have been developed for each sectorial Directive covered by SMRs and indicators are being developed as part of the EU Soil Strategy. The trends in the state of the environment under the reporting information under the Directives included in the scope of cross compliance are linked to the effectiveness of the implementing provisions of those Directives.

Outside cross-compliance, at EU level, in the policy cycle every CAP-measure, with or without budgetary impact, is subject to constant evaluation. Specific performance indicators are included in each sectorial Directive covered by SMRs and e.g. indicators are being developed in the Soil Policy.

22

The Commission considers that the result indicator 'Percentage of CAP payments covered by cross-compliance' reflects the effect of cross-compliance among the farming population. Indeed the more payments are covered by cross compliance, the higher the financial impact of possible breaches on each individual farmer, which increases the farmers' awareness to respect the rules. Cross-compliance has increased awareness among farmers and has triggered some changes in farming practices.

24

The Commission considers that the result indicator 'Opinion expressed by the public on cross-compliance' reflects the effectiveness of cross compliance in meeting the expectations of the society through improving the consistency of the CAP policy with other concerned policies. The questions of the Eurobarometer survey precisely deal with the acceptance of the link between the CAP payments and the respect of the rules. The results are in this respect to a large extent positive.

25

The Commission considers that the result indicator 'control rate for GAEC' is a good proxy of the expected environmental outcome. Provided that the national GAEC standards are properly defined by Member States, the respect of these standards by farmers should lead to a positive environmental outcome. The respect of the control rate allows ensuring to the extent possible that farmers are respecting the rules. This is the best proxy with the available information.

The Commission considers also the result indicator 'percentage of land occupied by permanent pastures' as a good proxy for the effectiveness of this instrument. This indicator is monitored to check that Member States have taken the necessary remedial actions when the ratio decreases beyond the threshold allowed. It is clear that the evolution of the ratio is driven by various factors but this is not what the indicator measures here.

26

The Commission considers its indicators appropriate for the objectives of cross-compliance. The result indicators 'number of hectares subject to cross compliance' properly reflects the effectiveness of cross compliance and is useful to complement existing result indicators. Rules covered by cross compliance are to a large extent practices to be undertaken on agricultural area (GAEC standards, practices under environmental legislation, use of pesticides, etc.). The more hectares are covered by the cross compliance system, the higher the effectiveness of the system.

Reply of the Commission

27

The indicators quoted by the Court, such as farmland bird index, water quality, etc. are impact indicators reflecting the general objective of the CAP and other EU policies. Several instruments, of which cross compliance is only one element, contribute to meeting these general objectives. The specific objectives of cross compliance, reflecting the specific contribution of this instrument to the general objectives of the CAP, are reflected by the result indicators presented in paragraphs 22 to 26.

28

The Commission does not consider the number of infringements being an appropriate indicator for the performance of cross-compliance. The cross-compliance control statistics are used in the context of the DG AGRI audits as an indicator for the performance of Member State's control systems. A high rate of non-compliance in a certain sector can also be an indicator that cross-compliance controls are effective.

29

The infringements are mainly linked to two sets of requirements (see paragraph 31 and Figures 2 and 3).

30

The rise in non-compliance rates may result from an improvement in the control system rather than an increase of non-compliant behaviour.

33

The statement e.g. regarding wild birds does not apply to all Member States. The Commission would like to comment that e.g. concerning wild birds it has to be considered that though the overall rate of infringements is as described by the Court, there are some few Member States where the Commission's audits identified serious problems with controls. Hence, low rates of infringements may also be due to lenient control system in Member States.

34

The analysis of the reasons for infringements and the means of addressing them is not a task for cross-compliance but for sectorial policies. However, regarding cross-compliance, DG AGRI analyses control statistics with a view to feeding its risk analyses in the framework of establishing its audit programme.

35

The Commission considers that cross-compliance is not an enforcement tool for sectorial policies.

In claim years 2014, concerning cross-compliance the Commission performed specific audits in certain Member States focussing on animal related issues. However, it has to be borne in mind that Commission's cross-compliance audits have as a starting point the protection of the EU's financial interests in the area of agriculture.

The DG ENV receives the audit reports and will receive the statistics from DG AGRI. DG ENV will analyse the reasons for breaches, following this up with Member States as appropriate.

36

Cross-compliance is not the implementing tool for other policies. This was already clarified when introducing cross-compliance, as cross compliance is not an eligibility rule (see Presidency Compromise of 26 June 2003). Further, the minimum control rate has to be increased in case of a significant degree of non-compliances.¹

For animal and public health, plant health and animal welfare legislation, the Commission is carrying out audits to ensure that national authorities are fulfilling their legal obligations. For environmental legislation, the Commission is working on a policy initiative to help Member States improve compliance assurance (i.e. the monitoring, promotion and enforcement of compliance on the basis of risk), while respecting the proportionality and subsidiarity principles.

39

The Commission does consider that when presenting revised or new spending proposals it should not estimate the costs and benefits of control systems because cross-compliance also includes e.g. animal and public health where costs and benefits calculations can hardly take sufficient account of e.g. public health.

40

Proportionality is already inherent, as sanctions are calculated as a percentage of the beneficiary's CAP payment flanked with the possibility not to apply sanctions or intentionality and repetition.

The EU legislation² provides a harmonised basis for the evaluation and sanctioning of non-compliances for cross compliance at EU level. However, the layout of national sanction grids must be left to Member States to take account of the variety of the rules under cross compliance. The Commission envisages organising exchanges of best practice with Member States on the issues.

While the framework is set at EU level, on-farm obligations under SMRs and GAEC are largely defined by Member States to take into account the challenges and agricultural structures in the national or regional conditions. In this respect it is important that a margin of implementation is left to Member States for the calculation of penalties for each of these on-farm obligations. The EU regulation sets the principle that sanctions are calculated on a case by case basis taking into account the severity, extent, permanence, reoccurrence or intent of the non-compliance determined. The harmonised implementation of these principles across Member States is ensured in particular through the audits carried out by the Commission. Should weaknesses be found in a particular Member State in this respect, appropriate follow-up is brought in the framework of the clearance of accounts.

41

In light of the fact that the GAEC standards were reduced by more than 50 % (from 15 to 7), DG AGRI expected that the administrative burden for farmers was reduced by the Member States.

1 Concerning 'the low minimum control rate of 1 %', as said under IX (second indent): According to Article 68(4) of Regulation (EU) No 809/2014 the number of on-the-spot checks has to be increased in case a significant degree of non-compliances with a given act or standard was revealed. In 2009, the Commission issued a working document on the issue) DS/2009/28/rev3) which is still in force. Hence the minimum control rate can be adapted if needed.

2 In particular, in Chapter II of Commission Delegated Regulation (EU) No 640/2014 and in Chapter III of Commission Implementing Act Regulation (EU) No 809/2014.

42

The list of SMRs and GAECs was shortened considerably. The SMRs and GAECs were joined in one list, the Annex 2 of Regulation (EU) No 1306/2013. Further, the SMRs were reviewed and only those provisions maintained which are directly addressed to farmers and linked to farming activity. The Commission considers that it is hard to see how any further reduction could avoid cutting into major issues linking e.g. agriculture and environment, and so result in an undermining of e.g. EU environmental objectives.

44

Based on the Commission's experience, the Paying Agencies, farmers' associations and Farm Advisory Bodies' perceptions about complexity appear to relate more to sectorial legislation than to cross-compliance. Further, the Member States have the flexibility to define the requirements which are needed to achieve the objectives of the EU Directive, so the complexity is also under their responsibility. In the context of simplification, the obligations included in the scope of cross-compliance were reviewed in several occasions in order to make them better targeted in relation to its controllability, its attribution directly to farmers (and not to Member States) and its link to agricultural activity. The relation between agriculture and the environment is complex by its nature so any implementation provision takes into account this level of complexity. The implementation of environmental legislation tends to be more complex when Member States seek to ensure that farming practices have to change as little as possible while protecting the environment. Where this is the case, the introduction of simplification could lead to stricter rules than currently apply to some farmers. Box 2 is a good example of this: rules and controls would be simpler if all the distances were increased to the longest distance, but that would place avoidable burdens on many farmers.

45

The example of the Court illustrates the level of complexity of the relation between agriculture and the environment. It is appropriate to impose more distance for applying manure around a well which is used for drinking water than around other waterways. The standardisation of these requirements would not sufficiently reflect the local environmental situations.

See also Commission's reply to paragraph 44.

Box 2 – Examples of requirements included in the cross-compliance control manual in the United Kingdom – Northern Ireland

The content of Box 2 describes the way a Member State has implemented sectorial legislation.

46

The Commission considers that the number of control points implemented by the visited Member States cannot illustrate the variety of sectorial legislation incorporated in the scope of cross compliance. Further according to Article 96 of Regulation (EU) No 1306/2013, 'Member States may make use of their existing administration and control systems to ensure compliance with the rules on cross-compliance.'

Box 3 – Limited impact of the changes in the CAP for the period 2014 – 2020 on the checklists used by the control authorities in the United Kingdom – Northern Ireland – Second alinea

The list of GAECs was shortened by more than 50 % with the last CAP reform, so it is up to the Member States' decision to increase control points.

The 'groundwater directive' was converted from an SMR (2) into a GAEC.

47

According to Article 96 of Regulation (EU) No 1306/2013 'Member States may make use of their existing administration and control systems to ensure compliance with the rules on cross-compliance.'

A low level of breach may mask an insufficient control system and may lead to a risk for the EU's financial interests in the area of agriculture. Moreover, just because there is a low level of breaches, it cannot be considered that this will remain the case if controls are further reduced: the existence of cross-compliance controls can be expected to act as a disincentive to breach the rules.

48

The proportion of farmers participating to SFS to direct payment beneficiaries (2014) varies between 3 % (Slovenia) and 77 % (Malta). The SFS covers 4 % of total EU agricultural area.³

50

Due to the exemption from cross-compliance requirements (and from greening), the costs of administration and control should logically decrease. Not only as the population subject to on-the-spot checks for cross compliance (and greening) decreases in the same proportion, but also because a simplified application process applies (less data to handle). Further, the content of on-the-spot checks for the Small Farmers Scheme is itself more limited to the eligibility conditions.

51

These differences are explained by the different national agricultural structures and potentially also by different calculation methods applied under the Small Farmers Scheme. Countries like Romania and Italy have potentially a large proportion of farmers eligible for the scheme, compared to other countries.

According to data provided by Member States, in Romania small farmers represent around 71 % of direct payment beneficiaries (2014) and 16.4 % of total agricultural land.

52

The Commission took note of the Court's observation and would like to point-out that the described exclusion does not stem from cross-compliance legislation.

Box 4 – Exemption of farmers from cross-compliance obligations related to the Nitrates Directive in Lithuania

The cross-compliance system is fundamentally a control and penalty system applying to payments received under the CAP. Therefore, exempting farms from cross-compliance rules will not exempt them from having to comply with environmental legislation, including the Nitrates Directive. The different exemption thresholds mentioned in Box 4 are related to the implementation of the Nitrates Directive in the country in question and not to the cross-compliance system. In addition, excluding farmers from cross-compliance penalties does not exclude them from control and checks stemming from environmental legislation.

³ Commission staff working document on the 'review of greening after one year' SWD(2016)218 final, p. 19.

Reply of the Commission

54

Greening and the GAECs are two mechanisms that complement each other to address the objective of improving the environmental performance of EU agriculture: The green direct payment is a payment provided to farmers applying practices beneficial for the climate and the environment (crop diversification, maintenance of permanent grassland and having 5 % of EFA).

The crop diversification, maintenance of permanent grassland and having 5 % of EFA are inherent in greening. These practices differ from the GAEC standards: a crop rotation is not a crop diversification, the protection of permanent pastures is different from the maintenance of permanent grassland as referred to in greening legislation and retention of landscape features on all agricultural lands differs from having 5 % of EFA on arable land. The last reform of the CAP led to streamline and simplify the GAEC framework removing some GAEC standards, such as those relating to crop rotation and protection of permanent pastures.

56

Member States have the possibility to select the 1 % minimum cross-compliance control rate sample from the 5 % eligibility sample. Therefore, there is a synergy between both elements. Moreover, landscape elements protected under GAEC standards may be taken into account for the ecological focus area included in greening.

57

Protecting landscape features on all agricultural land and having 5 % of arable land covered by EFA are different measures relating to biodiversity. The first requirement ensures that existing landscape features beneficial for biodiversity are retained while the second guarantees that any farmer benefiting from the green direct payment has dedicated at least 5 % of his/her arable land to EFA. These are two different objectives relating to biodiversity justifying two different sets of rules and checks.

Common Commission's reply for paragraph 59 and 60

The pure costs of cross-compliance have to be distinguished from the costs occurring to farmers and Member States applying sectorial legislation. Concerning sectorial legislation, the costs of compliance should be confronted with the costs occurring for the society in case of non-compliance due to e.g. pollution of natural resources, eradication of diseases etc.

Cross-compliance will be taken into account in a planned study on administrative burden.

61

Even if sectorial legislation already specifies minimum control rates, these are not additional controls as they may be used for cross-compliance at the same time creating cost efficient synergetic effects.

62

In practice, there are no additional records keeping obligations imposed by the Commission as the obligations under the SMRs existed before the introduction of cross-compliance under the sectorial EU legislation. Further, nor Commission Delegated Regulation (EU) No 640/2014 neither Commission Implementing Regulation (EU) No 809/2014, laying down the details of the cross-compliance system, introduced to farmers additional recording requirements.

63

The quoted study initiated by the European Parliament and commissioned by DG AGRI did not focus on cross-compliance but considered legislation outside the cross-compliance scope (Directive on the sustainable use of pesticides). Moreover, it is outdated as in the meantime certain requirements left the scope of cross-compliance (e.g. avoiding of encroachment of unwanted vegetation and crop rotation).

64

This is a statement based on assumptions made by Paying Agencies which is contrary to the fact that the list of SMRs and GAECs was considerably shortened with the last CAP reform. The Commission doubts the factual content of such statements, as the Paying Agencies do not back it up with figures.

65

The legislation already sets the framework for the calculation of penalties by defining severity, extent, and permanence as well as for the percentage to be applied for first time infringements, reoccurred infringements and infringements committed with intent. Hence, there is already a harmonised basis.

66

While the framework is set at EU level, on-farm obligations under SMRs and GAEC are largely defined by Member States to take into account the challenges and agricultural structures in the national or regional conditions. In this respect it is important that a margin of implementation is left to Member States for the calculation of penalties for each of these on-farm obligations. The EU regulation sets the principle that sanctions are calculated on a case by case basis taking into account the severity, extent, permanence, reoccurrence or intent of the non-compliance determined. The harmonised implementation of these principles across Member States is ensured, in particular, through the audits carried out by the Commission. Should weaknesses be found in a particular Member State in this respect, appropriate follow-up is brought in the framework of the clearance of accounts. Moreover, taking account of the Court's concerns, DG AGRI envisages organising best practice seminars with Member States on the issues.

67

The concept of intentionality is an element to keep cross-compliance reductions proportional, as it balanced the former minor non-compliances without sanctions and now the early warning system. The issue was largely discussed in the last CAP reform and it was finally decided by Member States to maintain it. There is judgement by the European Court of Justice of 27 February 2014 (C-396/12) providing guidance on the concept of intentionality.

68

Member States have a certain liberty to design their evaluation grids (see Commission's comments under paragraph 40, to paragraph VIII and paragraph IX 6th indent).

70

In the Commission's view, the diverse responses by Member States can be explained by several factors, including the number of animal movements that took place on the farm, the mitigation action undertaken by the farmer, the delays in notification and the location of the farm in a Nitrate Vulnerable Zone.

Reply of the Commission

Common Commission reply to paragraph 71 and Box 7

According to the evaluation grid used in Schleswig Holstein, which is based on the same grid applied in the whole of Germany, the mentioned threshold is only a recommendation to the inspector which only applies to late notifications which were already rectified before the farmers knew that s/he would be subject to an on-the-spot check. In case the farmer did not remediate before the control was announced, a sanction would be applied. Similar approaches were already observed by DG AGRI in other Member States.

Conclusions and recommendations

73

Since 2005, the continuous process of reviewing and simplifying the cross-compliance scope provided the following results:

Control procedures were simplified during the period 2005-2013 by introducing provisions on harmonisation of control rates, advance notice, timing and elements of on-the-spot checks and selection control sample.

Further, with the last CAP reform the scope of cross-compliance has been reviewed taken into account the controllability and the link with agricultural activity of farmers' obligations. Thus, the number of SMRs has been reduced from 18 to 13 and the number of GAEC standards was reduced from 15 to 7.

The Commission considers that the scale of the effort already put into simplification makes it most unlikely that any further simplification can be achieved without undermining e.g. the environmental goals of cross-compliance.

74

The cross-compliance objectives are to contribute to the development of sustainable agriculture through awareness-raising of farmers and making the CAP more compatible with the expectations of society. The GAEC objectives are to contribute to preventing soil erosion, maintaining soil organic matter and soil structure, ensuring a minimum level of maintenance, avoiding the deterioration of habitats and protecting and managing water. In this respect cross-compliance is not the implementing tool for other policies, which have their own objectives. It is the Commission's view that the performance indicators used for measuring the effectiveness of cross-compliance in meeting its objectives are the most appropriate on the basis of the available information.

Recommendation 1

The Commission accepts this recommendation.

75

Half of the infringements are linked to animal related SMRs. This was taken into account by the Commission when performing specific scope missions in 2014 focusing on animal related SMRs.

Analysing the reasons for infringements is done in the context of the implementation of the sectorial legislation. However cross-compliance and the Farm Advisory System play a role in addressing the reasons for the infringements.

Recommendation 2

The Commission accepts this recommendation.

76

The cross-compliance legislation foresees that the on-the-spot checks are targeted to the most risky farms through a selection of the sample based on a risk analysis. In this respect Member States have already flexibility to optimise their cross-compliance controls.

Recommendation 3

The Commission does not accept this recommendation. The recommendation by the Court would not simplify cross-compliance but *de facto* reduce its scope. The simplification of the cross compliance scope has been already carried out several times in the past. Moreover Member States have now a wide margin of manoeuvre to take into account the risks in the control sampling and to optimise their control systems. The Commission considers that this recommendation might result in loosening the rules on on-the-spot checks which would ultimately undermine the effectiveness of cross-compliance.

77

Environmental objectives (e.g. maintenance of land and biodiversity) are pursued not only by greening payments and GAEC standards but also by environmental and climate measures under Pillar II as well as the environmental legislation. However, the nature, rationale and functioning of these various instruments are different and complementary. Their complementarity is illustrated by Figure 1 of SWD (2016) 218 final.

Both greening rules and GAEC are managed by the IACS and this ensures the best use of resources. There are however reasons for the fact that GAECs and greening may not necessarily be checked together. Since greening is a criterion for eligibility it is controlled *ex ante* by administrative checks and on-the spot checks for 5 % of beneficiaries. GAEC are checked under cross-compliance which is managed differently than the eligibility requirements.

Recommendation 4

The Commission accepts this recommendation.

78

The SMRs stem from sectorial legislations and Member States may make use of their existing administration and control systems (Article 96 of Regulation (EU) No 1306/2013). Existing control systems can thus synergistically be used for the cross-compliance control system. GAEC should not either entail significant costs for farmers since they are meant to be basic standards. Costs of their controls are born by the IACS which serve also other CAP instruments.

The Commission quantified in its Annual Activity Report 2014 the overall costs related to control in Member States taking the reservation that 'the deterrent effect of ex-post controls' (such as cross-compliance) 'also bring unquantifiable benefits'.

Reply of the Commission

Recommendation 5

The Commission partially accepts this recommendation. The implementation of this recommendation will depend on the outcome of the planned study on administrative burden. The administrative costs of cross-compliance should be viewed in the context of the costs of non-compliance for society, public finances and the environment and of the potential benefits of cross-compliance.

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While the framework is set at EU level, on-farm obligations under SMRs and GAEC are largely defined by Member States to take into account the challenges and agricultural structures in the national or regional conditions. In this respect it is important that a margin of implementation is left to Member States for the calculation of penalties for each of these on-farm obligations. The EU regulation sets the principle that sanctions are calculated on a case by case basis taking into account the severity, extent, permanence, reoccurrence or intent of the non-compliance determined. The harmonised implementation of these principles across Member States is ensured, in particular, through the audits carried out by the Commission. Should weaknesses be found in a particular Member State in this respect, appropriate follow-up is brought in the framework of the clearance of accounts.

Recommendation 6

The Commission accepts this recommendation.

The Commission envisages organising exchanges of best practice on these issues.

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Event	Date
Adoption of the Audit Planning Memorandum/Start of audit	15.7.2015
Official sending of draft report to Commission (or other auditee)	16.6.2016
Adoption of the final report after the adversarial procedure	7.9.2016
Commission's (or other auditee's) official replies received in all languages	31.8.2016

Cross-compliance applies to 7.5 million farmers and links most CAP payments (around 47 billion euro in 2015) to farmers' compliance with basic rules for the environment, food safety, animal health and welfare, and good agricultural and environmental conditions. We concluded that the information available did not allow the Commission to assess adequately the effectiveness of cross-compliance. The performance indicators did not take into account the level of non-compliance by farmers and the Commission did not analyse the reasons for the infringements. Even though the changes in the CAP for the period 2014–2020 reduced the number of cross-compliance rules, control procedures remain complex. Furthermore, the costs of implementing cross-compliance are not sufficiently quantified.



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