

## **REPLIES OF THE EUROPEAN COMMISSION TO THE EUROPEAN COURT OF AUDITORS SPECIAL REPORT:**

### **“SUSTAINABLE WATER USE IN AGRICULTURE: CAP FUNDS MORE LIKELY TO PROMOTE GREATER RATHER THAN MORE EFFICIENT WATER USE”**

#### EXECUTIVE SUMMARY

*Common Commission reply to the executive summary:*

At EU level, water is used for energy cooling, agriculture, manufacturing and construction, mining and public water supply and the relative importance of each sector depends on the economic structure of each Member State. Water is used in agriculture for livestock and irrigation, reducing the capital risk and optimising the use of other inputs (e.g. land, fertilisers, seeds and labour).

Current projections of climatic change points to the reduction in the availability of water resources and the increase of irrigation water demand. These challenges require the proper implementation of the EU water policies (e.g. the Water Framework Directive (WFD)) to make compatible the different uses of water, and ensuring that implementation of sectoral policies are in line with these objectives. The Regulation (EU) 2020/741 on minimum requirements for water reuse can alleviate the pressure and may offer an alternative and sustainable supply of irrigation water.

The WFD promotes sustainable water use because agriculture is within the uses and activities that, according to the WFD, have to be considered in the assessment of the vulnerability of water bodies. However, impacts from agriculture are amongst the most significant pressures identified by Member States as posing potential risk of deterioration or non-achievement of the environmental objectives of the WFD.

The WFD has been successful in setting up a governance framework for integrated water management for more than 110 000 water bodies in the EU, improving the status of water, or slowing down its deterioration, and reducing (mainly point source) chemical pollution. The Directive has led to a higher level of protection for water bodies than could have been expected without it. The 2019 WFD fitness check concluded that it is largely fit for purpose, with some room for improvement, and the reason for not achieving the WFD objectives yet is largely due to insufficient funding, slow implementation and insufficient integration of environmental objectives into sectoral policies.

The Commission considers that the Common Agricultural Policy (CAP) incentivises sustainable management of water in agriculture through various instruments. By linking through the cross-compliance mechanism the relevant CAP payments to the observance of the national legislation that implements the WFD and in particular the condition for water abstraction, it favours the integration and strengthening of policies. This mechanism, which applies to 90% of farm area and farmers has the potential to significantly raise farmer's awareness and sanctions may be as high as withdrawing all CAP payments for the most severe offenses. Beyond cross-compliance, the greening of direct support incentivises farmers for undertaking practices which may be beneficial for water use, such as the protection of permanent grassland and crop diversification. The CAP also finances investments related with the use of water, and investments on irrigation have to contribute to the achievement of good status (when the water body concerned is in less than good status) and prevent deterioration of the status. Numerous agri-environment-climate measures (AECM) have addressed water quantity objectives. For instance, AECM to improve soil management and prevent erosion, which have a positive impact on water retention capacity of soil, have been included in most Rural Development Programmes (RDPs) and 5% of utilized agricultural area (UAA) has been covered by such commitments. Furthermore, non-productive investments, organic agriculture and WFD payments under the RDP have also been highly relevant for the improvement of water retention and sustainable water use.

The Commission further assesses that Member State investments help to achieve the WFD objectives, through the assessment of Member State programming documents for the use of EU funds and the application of the “do not significant harm” principle in the Taxonomy Regulation and the Recovery and Resilience Programs.

III. Good ecological status of surface waters also includes quantitative aspects of water management. Good ecological status requires Member States to define and implement ‘ecological flow’ which aims at ensuring that there is sufficient water.

VII.

(1) The Commission in its 2019 assessment of the 2nd River Basin Management Plans (RBMPs) provided recommendations asking Member States to better address, in the third RBMPs, how they implement the obligation under Article 9 of the WFD to apply cost recovery to water services, and any exemption thereunder. Further, the Commission is currently enquiring with all Member States how they apply the requirements of the WFD in practice, in particular the requirement for prior authorisation for abstraction and impoundment under Article 11(3)(e) of the WFD, and exemptions therefrom.

(2) The future CAP further strengthens the coherence between the CAP and the WFD through various aspects:

It stipulates that investments in irrigation, which are not consistent with the achievement of good status of water bodies, as laid down in article 4(1) of the WFD, are not eligible for support, including expansion of irrigation affecting water bodies whose status has been defined as less than good in the relevant RBMP.

The CAP strategic plans, including support for investments in irrigation, will need to take account of the analysis, objectives and targets included in the WFD and the RBMPs (c.f. annex XI of the CAP Plan Regulation), and make an adequate contribution to them.

The Commission accepts to link all relevant CAP payments to farmers to sustainable water use, except common market organisation (CMO) payments.

The Commission accepts to link the full payment of voluntary coupled support (VCS) to the respect of relevant provisions of WFD through conditionality. The Commission does not accept the inclusion of additional safeguards in the CAP because the proper implementation of WFD ensures the sustainable use of water for crops and conditionality makes the link between CAP payments and WFD.

(3) When assessing the CAP strategic plans the Commission will ensure, in line with the provisions of the future CAP, that investments in irrigation are in line with the objective of the WFD to reach good status of water bodies. Furthermore, the Commission will assess whether the CAP strategic plans sufficiently take into account the analysis, objectives and targets included in the WFD and the RBMPs and whether they make an adequate contribution to those objectives and targets.

The Commission will carry out an evaluation of the impact of rural development funding and market support on water use in the context of the multiannual evaluation plan of the future CAP.

## INTRODUCTION

*Common Commission reply to paragraphs 1.-11.:*

Data provided by Member States, indicate a decrease of water abstraction for agriculture since the 90's in the European Union despite increased demand due to climate change, higher temperatures and lower precipitation. This has been achieved through better water planning policies such as the WFD and the improvement of irrigation management as promoted in the CAP.

For the assessment and monitoring of water scarcity and its temporal and spatial differences, the Commission proposed the use of the indicator Water Exploitation Index (WEI+) in the future CAP; this indicator is designed to evaluate the evolution of water use versus renewable freshwater resources as well as related trends in agriculture and other sectors separately.

The quantity of water used for livestock and/or irrigation depends on the structure of the agricultural sector and is very diverse across the EU. Irrigation reinforces the competitiveness of the agricultural sector and brings benefits to the society. Irrigation increases the availability, quality and variety of food products and provides valuable ecosystem services (e.g. irrigated areas have potential to contribute to agri-environmental, cultural and landscape diversity in certain scenarios, for example, maintaining supporting habitat for water birds).

Article 11 (3)(e) of the WFD included obligations to Member States to implement systems of control and prior authorisation based on the analysis of the vulnerability of water bodies to the impact of human activities. This system should ensure that the water uses authorised are congruent with the target of achieving good status in the water bodies.

The 5<sup>th</sup> implementation report of the WFD identified that impacts from agriculture are amongst the most significant pressures identified by Member States in most River Basin Districts as posing potential risk of deterioration or non-achievement of the environmental objectives, both in the form of over-abstraction or diffuse pollution. The Commission also inquired into how Member States apply the requirements of the WFD in practice, including the obligations on prior authorisation for abstraction and impoundment, and related exemptions.

The Commission recently inquired with all Member States to follow up its recommendations from the 2<sup>nd</sup> RBMPs, insisting in particular on the need for further/proper justification in the RBMPs of exemptions to the obligation to reach good status/avoid deterioration.

Further improvements are necessary in the use of water but also in the area of nutrient pollution, and the Farm to Fork strategy proposed specific targets and tools for the reduction of pollution by nutrients. The Zero Pollution Action Plan for Air, Water and Soil complements the Farm to Fork Strategy with relevant targets and actions<sup>1</sup>. The Regulation (EU) 2020/741 on minimum requirements for water reuse will contribute, in the context of integrated water management, to reduce the pressure in water bodies when water abstraction is substituted by reused water.

7. The CAP provides elements to improve water use in line with the WFD, which is the actual regulatory framework for water in the EU.

10. In its 2019 assessment of the 2<sup>nd</sup> RBMPs the Commission provided country-specific recommendations to derive and implement ecological flows in all water bodies.

11. The Commission evaluated the performance of the WFD (Fitness Check), its associated directives and the Floods Directive between the end of 2017 and mid-2019. The main conclusion was that the WFD is largely fit for purpose, with some room for improvement. The fact that the WFDs objectives have not been reached fully yet is largely due to insufficient funding, slow implementation and insufficient integration of environmental objectives in sectoral policies.

14. In the fruit and vegetables sector, producers' organisations implement approved operational programmes complying with the national environmental framework that is part of the Member States' national strategies. Those approved operational programmes may cover actions and measures aiming at water saving use.

16. The reuse of treated wastewater is one of the options envisaged to alleviate the pressure of different uses on freshwater resources and can provide significant environmental, social and economic benefits. Benefits to the environment arise where this water substitutes for fresh-water withdrawals. In the context of integrated water management, reuse of treated wastewater can be considered a reliable

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<sup>1</sup> [https://ec.europa.eu/environment/strategy/zero-pollution-action-plan\\_en](https://ec.europa.eu/environment/strategy/zero-pollution-action-plan_en)

water supply and can be beneficial for farming activities that rely on continuity of water supply during the irrigation period, reducing the risk of crop failure and income losses. The impact assessment of the Regulation (EU) 2020/741 on minimum requirements for water reuse indicated that the actual amount of water potentially reused, next to health, environmental and trade considerations, will depend on the costs to water users including farmers.

18. It is not GAEC 2 (GAEC - Good Agricultural and Environmental Condition) which assesses whether farmers abstracting water for irrigation comply with certain conditions but the national legislation implementing the WFD. GAEC 2's role is to make a link between compliance with national authorisation procedures in the Member State for abstracting water for irrigation and the full receipt of CAP payments.

#### OBSERVATIONS

27. Under Article 11 of the WFD there is a requirement for Member States to have controls on abstraction and periodically review and, where necessary, update them.

These exemptions from the authorisation systems are not permanent and Member States should establish mechanisms to revoke the exemption where this may lead to non-achievement of good status depending on the vulnerability of the water body. In its 2019 assessment of the 2<sup>nd</sup> RBMPs the Commission provided country-specific recommendations on reviewing abstraction permits and asks the Member States to take these into consideration in the 3<sup>rd</sup> management cycle.

31. The control systems established by Member States in the frame of their national legislation implementing the WFD can be used to monitor illegal water use. In its 2019 assessment of the 2<sup>nd</sup> RBMPs the Commission provided country-specific recommendations to ensure action is taken to address illegal abstractions.

In addition, in the framework of the CAP, the Member States check if farmers are compliant with the conditions established by the national legislation implementing the WFD and these results are presented in this report for all Member States. In the past, several publications have been echoing estimates of the number of illegal wells in some regions of the EU without clear insights about the original sources and the actual methodologies used in the calculation. In the sources cited in the OECD study, the figures mentioned for Spain were extracted from the Worldwide Fund for Nature's report and for Cyprus comes from a press article with no references to the original source or the methods used.

36. According to the available information, cost recovery of water in agriculture is lower than cost recovery in other sectors like water supply. Member States have a margin of discretion to take into account social, economic or environmental effects of the cost recovery.

39. Quantification of the volume used is not easy in agriculture. Water is billed by volume received in the farm or can be based for example on proxies like capacity of pumping installation or the area (and the crop) planted. Previous analyses indicated that the use of flowmeters in the 100% of the irrigated agricultural land faces economic and operational challenges<sup>2</sup>.

#### *40. Common reply to paragraph 40 and **Figure 10**:*

The comparison of water prices between sectors is challenging as it must be done in accordance with cost recovery. Abstraction fees are only a part of the water price.

48. Member States can programme investments in irrigation under focus area 2a (typically investments in increasing irrigated area / new irrigation), however, those are not subject to the ex-ante conditionality.

#### *49. Common Commission reply for paragraph 49 and 50:*

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<sup>2</sup> Díaz Mora (1999). Experiencia en la implantación de contadores en los acuíferos de la cuenca alta del Guadiana. Available at Untitled-21 (igme.es).

For reasons of simplification and in the context of the new delivery model, the future CAP will no longer include the ex-ante conditionality mechanism. However, the future CAP does strengthen the coherence with the WFD at several levels:

In their CAP strategic plans Member States will have to take into account the legislation and planning documents included in annex XI of the CAP Strategic Plans Regulation, which includes the WFD and the RBMPs. The CAP strategic plans will be required to make an appropriate contribution to the objectives and targets set out in the WFD and RBMPs (including the programmes of measures).

Furthermore the future CAP includes a new impact indicator (I.17 “Reducing pressure on water resource: Water Exploitation Index Plus (WEI+)”) which allows for assessing water use in agriculture and provides an estimate of the total water use as a percentage of the renewable freshwater resources (groundwater and surface water) for a given territory and time period.

In addition, it includes a new Statutory Management Requirement (SMR), SMR 1, on abstraction controls (required under art. 11.3(e) of the WFD) under conditionality.

53. The Commission does not fully share the ECA assessment that direct payments do not significantly encourage efficient water use.

The current CAP, including its direct payments schemes, integrates the objectives of the WFD and supports its implementation through various instruments like the link with specific conditions about water protection applicable to farmers in cross-compliance and the conditions for receiving the greening payments, such as the maintenance of permanent grassland and crop diversification, which are compulsory for farmers receiving direct payments.

The future CAP integrates the objectives of the WFD and supports the implementation of this directive through various instruments like specific conditions about water protection applicable to all farmers in enhanced conditionality (both through proposed SMR and GAECs), possibility of additional payment for management commitments beneficial for the environment in the eco-schemes and the agri-environmental and WFD payments under rural development, investments contributing to achieve the good status of water bodies and new indicators to monitor the use of water in agriculture.

*55. Common Commission reply to paragraphs 55-57:*

Decoupled payments other than greening (such as the basic payment scheme (BPS) and the single area payment scheme (SAPS)) are irrelevant as such for water use. They have indeed no environmental or water objective and other instruments such as cross-compliance and greening aim at this purpose. Moreover, differences that exist in the payment rate between territories and beneficiaries do not have any link with the water use in these areas.

Cross-compliance raises awareness of farmers on the water obligations (in particular the conditions for water abstraction set by Member States to implement the WFD) by potentially reducing the direct payments received by a farmer when these conditions are not respected. In that respect the importance of direct payments for concerned farmers strengthens the potential of cross-compliance.

The greening of direct payments aims on its side at enhancing the environmental performance of the CAP. As regards water quantities, greening is beneficial in that it promotes maintaining permanent grassland, uncultivated areas and landscape features, which are not irrigated. For farmers having already a sufficient level of these areas and features, the maintenance is expected through greening. For farmers which are not already fulfilling the greening standards (in particular in most intensive areas), a change of practice is required. The percentage of farms affected by the change of practice is different depending of the practice itself and of the area concerned.

As regards drainage of land, in particular peatland, the CAP includes no instrument which incentivise this practice. The distinction for the eligibility to direct payments is made between agricultural land, which may be supported and non-agricultural land, which may not. Agricultural land is by definition linked to the undertaking on that land of an agricultural activity, which can include environmental purposes. In this respect, a non-drained peatland may be eligible to direct payments if it remains suitable for agriculture. Rural development payments may on their side support also non-agricultural

land. As regards more particularly the protection of peatland, the Commission had proposed this protection in the GAEC framework for the 2014-2020 CAP but the co-legislators did not eventually retain this proposal.

58. The Commission does not fully share the ECA assessment that the EU supports water-intensive crops in water-stressed areas through voluntary coupled support.

Crop water requirements are different for each crop and area and the qualification “water intensive crops” requires a context for its comparison and other positive aspects of crop production have to be considered. In the EU, most of the rice production areas are within “Natura 2000 areas”, which provide supporting habitat for wild birds, particularly water birds. In addition, rice cultivated in those areas after centuries functions as a water regulator system filtering water in the soil and slowly delivering water to rivers over the dry season.

VCS does not aim at increasing production. It is in fact a 'production limiting scheme' (notified as blue box to World Trade Organisation (WTO)), which determines its most important features (payment mechanism, preconditions, limits).

Moreover, though VCS does not impose obligations about sustainable water use on farmers directly, this aspect is addressed via cross-compliance that also applies to VCS and, inter alia, includes water requirements and in the future the WFD under conditionality.

*59. Common Commission reply to paragraphs 59 to 61:*

Although VCS may have environmental benefits, it is not an ‘environmental scheme’ but an income support that targets, subject to strict preconditions and limits, agricultural sectors that undergo difficulties. Accordingly, sustainable water use, though indirectly covered via cross-compliance, is not amongst its direct objectives.

Based upon the Member States support decisions, the sweeping majority of the VCS measures pursue socioeconomic goals indeed (e.g. low profitability and thus risk for abandonment of production by farmers en masse in regions already marked with high unemployment). Moreover, shifting from these sectors to another is often difficult (e.g. prior investments into infrastructure such as irrigation, or planting of trees; etc.), or even impossible because of the lack of alternatives (e.g. rice often has no alternative crop in these regions because of the high salinity of the soil). Restriction of the support would thus be counterproductive in light of the aim to aid these sectors in difficulty in order to prevent bankruptcy of the farmers concerned.

Although the ‘consistency requirement’ is included into the EU rules for VCS indeed, it does not cover the assessment of the Member States' support decisions in light of water use. Its scope is limited consistency of the Member States' voluntary coupled support decisions with other supports under rural development, market measures and state aids. It particularly aims to prevent double funding. Besides, the Commission also disagrees that water use should be specifically assessed in light of the VCS decisions, considering that the water related requirements are horizontally covered by cross-compliance that, inter alia, includes the WFD.

It is worth also pointing out that the Commission is not empowered to approve, or reject the Member States' VCS decisions (except for those Member States that decided to exceed the 13% budgetary ceiling for VCS, i.e. Belgium, Finland and Portugal).

*62. Common Commission reply to paragraphs 62 to 68:*

Under the scope of cross-compliance, the GAEC 2 standard ensures that a link is made between compliance with the national authorisation conditions for using water for irrigation and the full receipt of CAP payments. When these conditions are not fully met, a reduction of CAP payments to be received by the farmer may be applied. GAEC 2 does not aim at imposing requirements additional to the national legislation, which primarily implements the WFD.

Cross-compliance and GAEC 2 apply to most of farmers. However, in line with simplification principle, they do not apply to beneficiaries of the small farmer scheme, which management under cross-compliance would not be cost effective. Cross-compliance also does not apply to multiannual

rural development payments because cross-compliance is basically an annual instrument. Cross-compliance finally cannot apply to CMO aid for the fruit and vegetable or olive sectors because cross-compliance is based on the principle of individual responsibility and these support schemes are not targeting individual farmers but professional organisations.

The management of cross-compliance and GAEC 2 is based on on-the-spot checks, which must be carried out on a sample of at least 1% of farmers annually. Member States should by principle make the best use of the control systems already in place for the water legislation. The sample is selected on the basis of a risk analysis and the checks cover all the requirements which can be checked at the time of the visit, which must be chosen at the most appropriate period. In case of infringement a reduction of all CAP payments received by the farmer may be applied calculated in proportion of the seriousness of the infringement, the potential percentage being up to 100%. The Commission is therefore of the opinion that the rate of targeted controls is sufficient and that penalties are potentially deterrent.

In this respect the Commission's audits covers in particular the rate and quality of checks (including the relevant farmers obligations) and penalties applied by Member States and when their legal obligation in this respect are not met, a financial correction may be applied to their CAP expenditure.

In the future CAP, the WFD is included into the scope of an enhanced conditionality including the provisions on illegal abstraction of water. This replaces the current GAEC 2 and makes a more direct and comprehensive link between the CAP and the water legislation.

67. In line with simplification principle, national authorities should primarily use the control system set for the water legislation for the purpose of GAEC 2 and there should be no difference between "GAEC 2 checks" and "other water abstraction checks". The added-value of cross-compliance as regards checks is that it ensures that a minimum rate of 1% is met for water abstraction, regardless of the rate applied to check the WFD. However, if they consider it more appropriate, Member States may apply parallel systems of checks for these water requirements.

As regards the comparison made by the ECA on the two types of checks in paragraph 67 and **Figure 15**, the Commission considers that no general conclusions can be drawn on the basis of the data used.

68. In 2011, the Commission proposed to include elements relevant to the WFD fit for the 2014-2020 cross-compliance framework through GAEC. The Commission also took the commitment, vis-à-vis the European Parliament and the Council, to monitor the implementation of the WFD and subsequently table a proposal for full inclusion, based on the experience gathered. This was done in 2018 in the Commission's legislative proposal for the future CAP.

69. Numerous RDPs have supported training and advice for farmers in the field of efficient water use. For instance, the RDP of Veneto (Italy) provided advice to farmers on the obligations under the WFD. There are also good practices linking training to investment support: e.g. the RDP of Castilla La Mancha (Spain) has made support for investments in irrigation conditional on the beneficiary participating in training for efficient use of water.

71. First indent - Most agri-environment and climate measures (M10, art. 28 of Regulation (EU) 1305/2013) to improve soil management and prevent erosion have a positive impact on water retention capacity of soil. Such measures are programmed in most of the RDPs. The respective target indicator T12 'percentage of agricultural land under management contracts to improve soil management and/or prevent soil erosion (focus area 4C)' amounts to 4,98 % of the total UAA.

**Figure 17** - The new EU Climate Adaptation Strategy highlights the important role of nature-based solutions including natural water retention measures for adaptation action.

73. WFD payments (M12) compensate beneficiaries for disadvantages due to specific requirements resulting from WFD implementation, e.g. imposing major changes in land use and/or restrictions in farming practices resulting in a significant loss of income (Article 30(4)(d) of Regulation (EU) 1305/2013). Such payments have only been programmed to a limited extent in the 2014-2020

programming period as few Member States had actually introduced such mandatory requirements under the WFD when the RDPs were being drawn up.

Furthermore, many Member States have preferred to support commitments going beyond legal requirements, as reflected by the considerable budget allocated to water-relevant priorities under the agri-environment-climate measure (M10).

74. The new EU Regulation 2020/741 on minimum requirements for water reuse may offer, in the context of integrated water management, an alternative and sustainable supply of irrigation water.

77. It is correct that article 46 of Regulation (EU) 1305/2013 does not require potential water savings to be translated into an effective reduction of water use where the water body/-ies affected by the modernised irrigation system do(es) not have less than good status for reasons related to water quantity. However, where the water body/-ies affected have less than good status, an effective reduction of water use is required.

With respect to the potential consequences of the hydrological paradox, the extension of irrigated areas without increasing the pressure on water bodies is possible when the difference between the water abstracted from and the water returned to the waterbody does not increase. This requires the improvement of infrastructures to reduce evaporation or the cultivation of crops with lower water demand. These beneficial effects have been documented in some Member States<sup>3</sup> and require the implementation of reliable monitoring systems.

78. Under the European Agricultural Fund for Rural Development (EAFRD) support, an investment resulting in a net increase of irrigated area can only be supported if a) the status of the water body has not been identified as less than good for reasons related to water quantity; and b) an environmental analysis shows that there will be no significant negative impact from the investment (see art. 46(5)(a) and (b)). Thus, such investments should not lead to an increase in pressure on freshwater resources. Specific derogations from this general rule are included in article 46(5) and (6) of Regulation (EU) 1305/2013 (possibility to use the concept of "recent past" when determining irrigated area, as well as derogations related to combined investments and reservoirs).

81. Even though in contrast to quantitative status of groundwater the WFD does not contain an equivalent "definition" of the quantitative status of surface water, the definition can still be clearly deduced from the WFD. Quantitative aspects of water management are addressed in the WFD in the definition of good ecological status, explicitly in hydro-morphological elements (i.e. flow regime) and indirectly in the biological quality elements. Member States should in particular define for each surface water body objectives of "ecological flow" (as defined in CIS guidance 31), which aim at ensuring that there is sufficient water and appropriate flow variations during the year. Once ecological flows are defined in all water bodies, Member States should implement all necessary measures to meet these objectives in order to reach good ecological status.

This has been clarified to EAFRD managing authorities at several occasions and included in the guidance document on EAFRD support for investments in irrigation.

82. The Commission considers that the legal framework (article 46 EAFRD) is unambiguous and does not allow for multiple possible interpretations. Specific derogations are clearly defined.

87. Under sectoral interventions in the fruits and vegetables sector, operational programmes are implemented by producer organizations after having been approved by Member States competent authorities. Investments on water savings must be linked to the objective of 'environmental measures'. Member States are competent for setting additional requirements in the National Framework for Environmental Actions and for verifying their compliance. Member States submit to the Commission services via their annual reports data on the implementation of the operational programmes.

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<sup>3</sup> [http://www.jcrmo.org/wp-content/uploads/2018/01/MEMORIA2013\\_vers.\\_preliminar.pdf](http://www.jcrmo.org/wp-content/uploads/2018/01/MEMORIA2013_vers._preliminar.pdf)

88. In the fruit and vegetables sector, checks refer to the approval of the operational programme through the assessment of the project specifications or other technical documents to be presented by the producer organisation demonstrating ex-ante the expected reductions. This administrative check might be complemented with on the spot checks<sup>4</sup> (OTSC).

The OTSC should confirm that the action is implemented as approved (the irrigation system is present and it is being used), but the Regulation (EU) 1308/2013 does not require the Member States confirming the reductions previously analysed during the approval stage.

90. The future CAP is aligned with the objectives of the WFD and support the implementation of this directive through various instruments (e.g. linking direct payments to the observance of national rules implementing the WFD and financing investments with beneficial effects for water sustainability).

Many Commission initiatives, adopted in the framework of the European Green Deal, aim at better mainstreaming of EU water policy in sectoral policies, e.g. the Circular Economy Action Plan, the Farm to Fork Strategy (with provisions for nutrients and pesticides), the Biodiversity Strategy, the Zero Pollution Action Plan, the new EU Strategy on Adaptation to Climate Change, complemented by the ‘Do No Significant Harm’ principle in the Taxonomy Regulation, etc..

92. The results from the WFD fitness check show that on the one hand progress has been slow and on the other hand the WFD has been successful in setting up a governance framework for integrated water management for more than 110 000 water bodies in the EU, improving water status, or slowing down its deterioration, and reducing (mainly point source) chemical pollution. The Directive has led to a higher level of protection for water bodies than could have been expected without it. The WFD fitness check concluded that it is largely fit for purpose, with some room for improvement, and the reason for not achieving the WFD objectives yet is largely due to insufficient funding, slow implementation and insufficient integration of environmental objectives into sectoral policies.

### **Recommendation 1 – Request justifications for exemptions to Water Framework Directive implementation in agriculture**

The Commission accepts recommendation 1.

The Commission in its 2019 assessment of the 2nd RBMPs provided recommendations asking Member States to better address, in the third RBMPs, how they implement the obligation under Article 9 of the WFD to apply cost recovery to water services, and any exemption thereunder. Further, the Commission is currently enquiring with all Member States how they apply the requirements of the WFD in practice, in particular the requirement for prior authorisation for abstraction and impoundment under Article 11(3)(e) of the WFD, and exemptions therefrom.

*93. Common Commission reply to paragraph 93-94:*

VCS is not an ‘environmental scheme’ but rather pursues socioeconomic benefits. Though VCS does not impose obligations about sustainable water use on farmers directly, this aspect is addressed via cross-compliance that also applies to VCS and, inter alia, includes water requirements and in the future the WDF in conditionality.

The ex-ante conditionality mechanism was not retained in the Commission’s legislative proposals for the future CAP for reasons related to simplification and the CAP’s new delivery model. However, as outlined under paragraphs 49-50, several provisions have been introduced which should significantly strengthen the integration of water policy objectives in the CAP (in particular annex XI and SMR1).

95. The Commission considers that GAEC 2 is a solid instrument to make a link between the receipt of the CAP payments and the water abstraction authorisation procedures stemming in the water legislation, thus encouraging their respects by farmers. The future CAP will make a more direct link between the WFD and the CAP through an enhanced conditionality of CAP payments. Conditionality

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<sup>4</sup> See Article 25 of Commission Delegated Regulation (EU) 2017/891.

will cover all relevant CAP payments received directly by farmers. Conditionality is based on a solid control and penalties system: Member States implementation thereof is the subject of regular audits by the Commission. Weaknesses found in this respect may lead to financial corrections of the Member State CAP expenditure.

### **Recommendation 2 – Tie CAP payments to compliance with environmental standards**

a) The Commission accepts the recommendation.

The Commission will significantly strengthen the integration of water policy objectives in the CAP and incentivise sustainable water use. The future CAP further strengthens the coherence between the CAP and the WFD through various aspects: It stipulates that investments in irrigation which are not consistent with the achievement of good status of water bodies, as laid down in article 4(1) of the WFD, are not eligible for support, including expansion of irrigation affecting water bodies whose status has been defined as less than good in the relevant RBMP.

The CAP strategic plans, including support for investments in irrigation, will need to take account of the analysis, objectives and targets included in the WFD and the RBMPs (c.f. annex XI of the CAP Plan Regulation), and make an adequate contribution to them.

b) The Commission partially accepts the recommendation. The Commission accepts to link all relevant CAP payments to farmers to sustainable water use. In the framework of the future CAP, the relevant provisions of the Water Framework Directive will be introduced into the scope of the enhanced conditionality. The Commission does not accept the part of the recommendation related to the extension of conditionality to other CAP payments not directly granted to farmers, such as CMO payments.

c) The Commission partially accepts the recommendation. The Commission accepts to link the full payment of VCS to the respect of relevant provisions of WFD through conditionality. The Commission does not accept the inclusion of additional safeguards in the CAP because the proper implementation of WFD ensures the sustainable use of water for crops and conditionality makes the link between CAP payments and WFD.

96. The EAFRD offers a wide range of possibilities to support the improvement of water retention capacity through measures such as agri-environment climate commitments, organic agriculture, non-productive investments and WFD payments, as well as support for training and innovation.

The EAFRD can only support investments in new irrigation (i.e. leading to a net increase of irrigated area) where a) the water bodies affected do not have less than good status and b) an environmental analysis shows that there will be no significant negative environmental impact from the investment. The Commission acknowledges that article 46 of Regulation (EU) 1305/2013 on investments in irrigation includes specific well-defined derogations from the general rule that irrigated area cannot be increased where water bodies have less than good status. However, the Commission considers that the legal framework is unambiguous and does not allow for multiple possible interpretations.

97. First indent - Most agri-environment and climate measures to improve soil management and prevent erosion have a positive impact on water retention capacity of soil. Such measures are programmed in most of the RDPs and are planned to cover almost 5 % of the agricultural land under respective management contracts.

Third indent - Regarding common organisation of the markets in agricultural products, the Commission audits verify the Member States control system, in particular whether they include the required verifications during the approval of the operational programmes and whether the on-the-spot checks verify that the actions are implemented as approved.

### **Recommendation 3 – Use EU funds to improve the quantitative status of water bodies**

a) The Commission accepts the recommendation.

The Commission accepts that the assessment of CAP strategic plans has to follow the principles established in the future CAP linked with WFD and the relevant planning instruments, such as the RBMPs. When assessing the CAP strategic plans the Commission will ensure, in line with the provisions of the future CAP, that investments in irrigation are in line with the objective of the WFD to reach good status of water bodies. Furthermore, the Commission will assess whether the CAP strategic plans sufficiently take into account the analysis, objectives and targets included in the WFD and the RBMPs and whether they make an adequate contribution to those objectives and targets.

b) The Commission accepts the recommendation. Such an evaluation will be addressed in the context of the multiannual evaluation plan of the future CAP.