

GUIDANCE DOCUMENT

TECHNICAL ELEMENTS OF AGRI-ENVIRONMENT-CLIMATE MEASURE IN THE PROGRAMMING PERIOD 2014 – 2020

Version November 2014

Foreword:

- *This document is based on the text of Regulation (EU) No 1305/2013[EAFRD] and, where relevant, on Regulation (EU) No 1303/2013 [CPR]. The Delegated and Implementing Acts supplementing these Regulations have also been considered in this guidance document.*
- *This guidance does not represent a binding legal interpretation of Regulation 1305/2013. It is therefore essentially non-binding in nature and complements the related legal acts.*
- *It should also be noted that the final guidance document on rural development programming will be complemented by a number of other guidance documents in relation to issues of relevance for programming. Cross-references to those documents*
- *This guidance document also includes three annexes among which: annex I on the support for local breeds in danger of being lost to farming, plant varieties under threat of erosion and genetic resources and annex II on methods to calculate rural development premia to exclude double funding. They should be read as a complement to the main content of this guidance document.*

1. INTRODUCTION

The objective of this document is to provide clarification to Member States for programming and implementing the agri-environment-climate measure (AECM) through their rural development programmes (RDPs).

This document complements and develops the general paper on rural development strategic programming for the period 2014 – 2020¹.

The document is based on the legal provisions of the Regulation of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) 1305/2013 and refers also to content of the related delegated and implementing acts. It also takes into account relevant experience gained in the implementation of agri-environment measures in the previous programming periods as well as recommendations made on this measure by the European Court of Auditors (ECA).

2. LEGAL BASIS AND OBLIGATORY CHARACTER OF THE MEASURE

Regulation of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) 1305/2013 – Article 28(1):

Member States shall make support under this measure available throughout their territories (...). Inclusion of this measure in rural development programmes shall be compulsory at national and/or regional level.

Member States (MS) / regions must make AECMs available throughout the territory covered by the RDP concerned in function of the needs identified. However, the exact types of operation to be available in a given part of that territory will depend on the particular environmental / climate needs identified in the SWOT analysis with regard to that area, as detailed in section 2 of the document on strategic programming as well as in the description of the current situation and the presentation of the results of the previous programming periods.

3. IDENTIFICATION OF THE CONCEPT OF THE MEASURE

The regulation cited above – henceforward referred to as the Rural Development Regulation (RDR) - sets out a small number of basic principles / conditions which MS / regions must respect when designing specific AECMs.

Those AECMs must reflect MS' / regions' particular needs and opportunities and contribute to achieving the priorities of rural development policy.

¹ Working paper on "Elements of strategic programming for the period 2014 – 2020"

3.1. Analysis of the situation and identification of needs

The starting-point in designing AEC types of operation² is the analysis of strengths, weaknesses, opportunities and threats ("SWOT") – which of course will contain analysis in relation to the environmental and climate-related focus areas of the EAFRD, especially:

- restoring, preserving and enhancing biodiversity, including in Natura 2000 areas and in areas facing natural or other specific constraints, and high nature value farming, as well as the state of European landscapes (focus area 4a);
- improving water management, including fertiliser and pesticide management (4b);
- preventing soil erosion and improving soil management (4c);
- reducing greenhouse gas and ammonia emissions from agriculture (5d);
- fostering carbon conservation and sequestration in agriculture and forestry³ (5e).

As its name implies, the **SWOT** analysis must identify not only the problems but also the opportunities existing in the territory to be covered by the programme.

To provide a complete picture of the initial situation, its assessment must be both quantitative and qualitative. The quantitative assessment should be built on the common context indicators and appropriate programme-specific context indicators, as detailed in the section 9 in the document on strategic programming. *(Among other things, these relate to: biodiversity, the Natura 2000 network, high-nature-value farming, water (quality and availability), soil, climate change adaptation and mitigation, forestry and land abandonment.)*. The qualitative assessment should also present the existing environmental assets and the specific needs for their protection by the RDP.

The SWOT analysis must identify environmental problems and opportunities at various geographical levels - not only at the national / regional level but also at sub-regional level if specific conditions exist at this level which may need to be addressed by specific AEC types of operation.

In many MS / regions, a large number of areas could be identified as likely to benefit from an AECM. Given that funding is finite, managing authorities may have to make choices, finding the right balance between breadth of coverage on the one hand and focusing resources on the most sensitive cases on the other hand.

² A "type of operation" should be understood as a set of requirements forming a distinct unit within an AECM and for which a distinct premium is calculated. For example, a MS may offer € 200 / ha to arable farmers who undertake a demanding and beneficial crop rotation and € 250 / ha to dairy farmers who reduce their stocking density. One would say that the MS is offering two types of operation, one on crop rotation and the other on extensification. Together, these two types of operation make up the full AECM.

³ Carbon sequestration in forest areas is part of focus area 5e but is not addressed by AECMs.

3.2. Determination of appropriate AEC types of operation

The description of each AEC types of operation must make a clear link between the priorities / focus areas of rural development policy (and thus also the thematic objectives for the Common Strategic Framework Funds⁴), the relevant environmental need / opportunity identified in the SWOT analysis and the type of operation's expected outcome, as detailed in section 2 of the document on Strategic Programming (see Table A in Annex of that document). (The lack of such links in some of the RDPs of 2007-2013 has been strongly criticised by the European Court of Auditors (ECA) in its report on the agri-environment measure⁵.)

If an important environmental need identified is not addressed by an AECM, the RDP must explain why it is not addressed and whether other RD measure(s) or other instruments / funds will address it. (The reason could be that another rural development measure or another policy instrument will address it.) This is necessary to ensure that such problems are not simply ignored.

AECMs should be coherent with related EU / national strategies and legislation and existing country specific recommendations (e.g. the EU Biodiversity Strategy, the Water Framework Directive, the Soil Thematic Strategy etc.) and others, this list not being exhaustive.

Finally, AECMs should also be consistent with Pillar I of the CAP – and where possible, should capitalise on synergies with it. For instance, AECM could be used to enhance the management for biodiversity of buffer strips required under cross-compliance.

In determining the climate-related content of AECM, findings of OSCAR project (Optimal Strategies for Climate Change Action in Rural Areas) as well as Commission Working document on recommendations for integrating climate change adaptation and mitigation considerations under the rural development programmes⁶ can be of relevance. In choosing appropriate AECM for Natura 2000 areas, Member States' Prioritised Action Programmes can also have an important role to play.

⁴ Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1083/2006

⁵ European Court of Auditors, Is agri-environment support well designed and managed?, Special Report No 7/2011

⁶ Commission Staff Working Document, Principles and recommendations for integrating climate change adaptation considerations under the 2014 – 2020 rural development programmes, Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions An EU Strategy on adaptation to climate change, SWD(2013) 139 final

3.2.1. AECMs' role in improving the environment, maintaining good status of the environment and contributing to climate change mitigation and adaptation

The measure is now called "agri-environment-climate". However, this name change has no practical implications in itself for the workings of the measure. It emphasises the potential of this measure in promoting operations that would address climate objectives. As in the period 2007-2013, an operation supported under an AECM may contribute to climate change mitigation / adaptation, or to other forms of care for the environment, or to both at the same time.

AECMs can support not only environmentally beneficial improvements to farming practice but also the maintenance of existing beneficial practices where these are otherwise likely to be abandoned.

Support for improvement to practices is more common. Beneficiaries of AEC support are rewarded for committing themselves for a time to practices which provide greater environmental benefit than their current practices. Those beneficiaries are paid for income losses and additional costs arising from the new practices – more precisely, from those elements of the practices which go beyond a "baseline" of legal obligations, and beyond other elements such as the usual farming practices of the area.

However, as already stated, AEC support can also be granted for the maintenance of existing farming practices. Such support should be subject to two conditions:

- the environmental benefits of the practice are clear;
- there is a clearly proved risk that the practice would be abandoned if no AEC support was provided.

(Example: in a given area, traditionally dominated by extensive farming with a high nature value, there is a trend towards intensification because of economic pressures. An AEC payment could be used to help maintain the beneficial extensive approach by covering the opportunity costs arising from this approach.

However, if in another area with the same traditional methods of farming there is no trend towards intensification (or abandonment), no AEC support should be paid for maintenance of the methods concerned).

See more on this issue in sections 4.4 and 4.7.5 of this document.

4. OTHER RELEVANT COMPONENTS OF THE MEASURES' DESIGN

4.1. Basic vs. targeted measures

Regulation of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) N° 1305/2013 – Article 28(1):

Member States shall make support under this measure available throughout their territories, in accordance with their national, regional or local specific needs and

priorities.

Article 8(1)(c)(iv):

The rural development programme shall demonstrate that (...) specific needs linked with specific conditions at regional or sub-regional level are taken into account and concretely addressed through adequately designed combinations of measures (...).

With regard to the current period, a common rough categorisation divides up agri-environment measures as follows:

- "basic" measures contain relatively unambitious requirements which could be met by large numbers of farmers in many areas (they are therefore sometimes referred to as "broad and shallow") – *example: maintenance of grassland*;
- "targeted" measures are more closely tailored to particular areas or objectives and therefore often have a lower uptake – *example: maintenance of a wetland habitat for particular plant species.*

In the future, it will still be possible to support basic AECMs – provided that the RDP concerned clearly demonstrates that these will genuinely respond to the related needs / opportunities identified and deliver additional environmental public goods (in comparison to the baseline and to the usual practices).

However, as the ECA has noted, targeting of AECMs is an important tool for delivering environmental benefits efficiently – and efficient delivery is becoming more important as pressure on funding increases. (See also Table 1 of the document on Strategic Programming.). The ECA also found that in the period 2007 – 2013 MS had not considered the desirable degree of targeting for their needs.

Therefore, for the post-2013 period MS / regions will need to see how they can make greater use of targeting – overcoming any practical challenges of implementing and administering more targeted AECMs. While Member States will no doubt wish to take into account the associated cost/benefit ratio (e.g. whether a critical mass in terms of the area and/or number of beneficiaries can be ensured to deliver the expected benefits), they will also need to recognise cases where the implementation of the targeted AEC interventions is the only way to address the identified problem despite their possible high cost and/or complexity.

4.1.1. Possible methods of targeting

AEC types of operation can be targeted in various ways. For example, a type of operation could be based on commitments which:

- are linked by their nature to areas with specific natural features;
 - *(example: commitments linked to mountainous regions, wetlands, dehesas, peatland);*

- are linked by their nature to specific types of production;
 - *(example: commitments linked to vines / olive trees growing on slopes, intensive livestock production leading to water pollution);*
- could be applied broadly but would have to be adjusted to specific local conditions;
 - *(example: commitments linked to biodiverse permanent grassland, with varied dates of mowing from one part of the territory to another);*
- respond to a very specific need in a specific location only (a "particular case");
 - *(example: commitments designed to halt the decline in the population of a certain bird species on agricultural land along a specified river)*
 - *(example: conservation of rich organic soils vulnerable to loss of organic matter due to soil erosion or compaction).*

4.2. Identification of beneficiaries

Regulation of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) N° 1305/2013 – Article 28(2)

AEC payments shall be granted to farmers, groups of farmers or groups of farmers and other land managers (...) who undertake to carry out operations (...) on agricultural land (...). Where duly justified (...), AEC payments may be granted to other land managers or groups of other land managers.

The description of an AEC type of operation must clearly state the eligible types of beneficiary.

According to the rules of AECMs as set out in the RDR, while farmers are the primary beneficiaries of AECM support, other types of land manager can also contribute to the achievement of AEC objectives (e.g. by managing land no longer cultivated by farmers) and may therefore receive support if this is appropriate for a given particular AEC type of operation.

Such "other land managers" may include NGOs, environmental associations, municipalities etc.

Where it is intended to offer AEC support to "other land managers", the RDP should justify this on environmental grounds. *(For example: a certain environmentally valuable area is being abandoned by farmers but an NGO is prepared take over their activity on this land with appropriate support.)*

4.2.1. *Collective beneficiaries*

The RDR offers the possibility to pay support not only to individual beneficiaries but also to groups – made up of farmers, other land managers or a mixture of the two.

Such "collective beneficiaries" will often have an important role to play in achieving environmental objectives (e.g. in ensuring better connectivity between environmentally important spots through establishing so called ecological corridors).

Indeed, in many cases a "collective approach" will deliver much stronger results than one based on individual beneficiaries (e.g. in connection with ecological connectivity or with water quality in a river basin, or application of biological pest control throughout a large area). In some cases it could even be the only viable type of approach.

4.2.1.1. Forms of collective beneficiaries

The RDR does not define eligible forms of collective beneficiaries and thus offers flexibility in this respect.

Groups with a joint legal status would be eligible for support, but so would other types of group – formed on a more "ad hoc" basis. Otherwise, the uptake of AECMs by collective beneficiaries might be too low and environmental benefits would thus be limited.

4.2.1.2. Nature of application for support

A key difference between a collective beneficiary and a number of individual beneficiaries would logically be that the collective beneficiary submits a single, common application for support.

Indeed, this approach holds several advantages, namely:

- administrative simplification (fewer applications mean less paperwork);
- a stronger sense of joint commitment among group members;
- a clear basis for allowing higher transaction cost payments, as provided for in Art. 29 (6) of the RDR⁷.

4.2.1.3. Internal organisation of collective beneficiaries

Collective beneficiaries' method of operating and implementing AECMs together will have to be specified in:

- contracts between the Managing Authority and the group of beneficiaries;
- internal arrangements between members of the group (e.g. rules ensuring that each member knows his rights and obligations).

⁷ It is recommended that the higher rate of transaction cost payment be permitted only where a single application is made.

These contracts and other arrangements are a matter for the MS / region. They will not be subject to the Commission's approval and should therefore not be set out in the RDP.

4.3. Eligibility of land

Regulation of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) N° 1305/2013 Article 28(2):

Agri-environment-climate payments shall be granted to (...) who undertake (...) agri-environment-climate commitments on agricultural land to be defined by Member States, including but not limited to the agricultural area defined under Article 2 of this Regulation.

The notion of "agricultural land" is more flexible / open than the concept of "agricultural area" used in the Direct Payments Regulation⁸: MS / regions will have discretion in defining it.

For example, it could include "potential" agricultural land (such as abandoned land). However, it should not include land such as post-industrial degraded land; the nature of the land considered as "agricultural" is a necessary criterion here.

This flexibility will make it possible to implement AECMs on land which is valuable for the environment even though it is not "agricultural area" for the purposes of direct payments (e.g. semi-natural habitats).

4.4. Baseline

Regulation of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) N° 1305/2013 – Article 28(3):

Agri-environment-climate payments cover only those commitments going beyond the relevant mandatory standards established pursuant to Chapter I of Title VI of Regulation (EU) No 1306/2013, the relevant criteria and minimum activities as established pursuant to the second and third indents of point (c) of Article 4(1) of Regulation (EU) No 1307/2013, and relevant minimum requirements for fertilisers and plant protection products use as well as other relevant mandatory requirements established by national law. All such mandatory requirements shall be identified in the programme.

⁸ As defined in the Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy, Article 4(e)

It is indispensable that an RDP clearly sets out the baseline for a given AECM. The following principles must be followed.

- **There must be a brief, clear, relevant description of the baseline.**
 - It is not adequate simply to refer to a source of rules.
 - Nor is it useful to reproduce in the description the entire content of national rules, including material not relevant to the AEC type of operation in question.
- **All relevant elements of the baseline must be identified.** The elements predefined in legislation are as follows:
 - relevant mandatory standards in cross-compliance (both Statutory Management Requirements and Good Agricultural and Environmental Conditions);
 - relevant criteria and minimum activities as established pursuant to the second and third indents of point (c) of Article 4(1) of Regulation (EU) No 1307/2013 ;
 - relevant minimum requirements for use of fertilisers and plant protection products;
 - other relevant mandatory requirements established by national law .
- The description of the baseline should be **presented as a table with additional information in annex** (the elements of the baseline which are relevant to a given type of operation have to be included in the main text of the RDP while the complete description of e.g. all minimum requirements for fertilisers and plant protection products use, cross-compliance standards should be included in the annex):
 - A table is an excellent way of setting out the commitments for a number of AEC type of operations and showing how each of them relates to their respective baselines.
 - The RDP's annexes should include a full list / description of minimum requirements for use of fertilisers and plant protection products and it may also include other relevant information which does not have to be included in the above table but which may help to better understand the baseline's content.

4.5. Commitments

The "commitment" of an AEC type of operation is essentially what the beneficiary is required to do in order to receive a premium.

A type of operation's commitments thus determine its very nature and its potential contribution to achieving priorities of rural development policy.

4.5.1. *Key elements of the definition of a commitment*

To ensure the maximum efficiency of AECMs, the design of commitments must respect certain principles.

- **Commitments must be clear – in terms of objectives and content.**
 - Among other things, the description of the objectives should indicate whether improvement to farming practices or maintenance of existing practices is sought (this issue is important with regard to the baseline and the calculation of premia – see sections 3.2.1 and 4.7.5).
 - Vagueness / ambiguity of content⁹ must be avoided as this could lead to errors in payments.
 - A reference to a set of rules defined in another act / document is not adequate.
 - Other legal documents should not make "hidden changes"¹⁰ to the commitments set out in the RDP.
- **The content of commitments should be justified by evidence¹¹ of likely environmental benefits.**

⁹ Examples of vague commitments: "maintenance of hedges" without specifying whether it means that hedges cannot be removed or that they need to be kept in good conditions; "leave some square metres around bird's nests", where it is not clear what should be measured; "to minimise to maximum the use of residual compounds" without providing any figures neither on baseline nor result sides concerning the reduction in the use.

¹⁰ "Hidden changes" refer to any changes made to the measure's commitments outside of the framework of the RDP modification and which can modify the nature of commitments in quantitative and qualitative terms.

¹¹ The ECA states in its report that "hard" evidence (test plots, case studies, quantified impact models, surveys etc.) is especially relevant for more demanding types of operation as their effects depend on the characteristics and specific requirements of the areas where they are implemented. If the impact of given practices in given areas is not known, it is impossible to decide whether an AEC type of operation will be effective.

- Where evidence is available, the RDP should state what this evidence is (e.g. case studies, pilot projects, surveys etc.).
- Where no hard evidence is available, the RDP must explain why the commitment can plausibly be expected to deliver benefits.

- **Commitments must be verifiable / controllable.**

Regulation of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) N° 1305/2013 – Article 62(1):

Member States shall ensure that all the rural development measures that they intend to implement are verifiable and controllable.

- Quite simply, if it is clear that a commitment cannot be verified and controlled, it cannot be approved as part of an AECM.
- MS / regions will have to carry out an ex-ante analysis of the verifiability / controllability of all commitments presented in the RDP, in order to provide assurances on this point:

Regulation of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) N° 1305/2013 – Article 62(1):

(...) the Managing Authority and the paying agency of each rural development programme shall provide an ex ante assessment of the verifiability and controllability of the measures to be included in the rural development programme

- A table format might be useful for presenting the results of this analysis. Each row would show how a given commitment would be verified / controlled. It would also set out the risk of errors and their likely seriousness.

- **The content of commitments must be clearly distinguished from eligibility criteria¹².**

¹² The eligibility criteria of an AEC type of operation are the "yes-no" conditions which must all be met in their entirety in order for a beneficiary to receive any payment at all under the type of operation. Non-compliance with an eligibility criteria leads to a 100 % reduction in payment, while partial compliance or non-compliance with an AECM commitment leads to a proportional reduction. See section 9.2 for more detail.

- The eligibility criteria of a given type of operation must be clearly described in the RDP before the list of commitments.
- (It is worth mentioning at this point that eligibility criteria should be kept to a strict minimum and should be clearly relevant to the commitment concerned, except in the case of purely "administrative" conditions such as minimum size. Doing so should limit the errors caused by non-compliance with eligibility criteria. See also section 9.2 of this document.)

4.5.2. *Issues to be taken into account when defining certain problematic types of commitment*

In the programming period 2007 – 2013 some AE commitments turned out to be defined in a manner which made implementation and /or controls difficult. Examples include:

- climate-dependent commitments (especially those which are date-dependent – e.g. mowing must be carried out on a specific date);
- commitments requiring a visual check (e.g. a visual check on the mowing techniques applied);
- commitments concerning reduction of input use;
- "result-oriented commitments" (i.e. commitments for which failure to achieve a certain result means a financial penalty, even if the predicted income losses and additional costs have indeed been incurred).

Certain steps should be taken to make such commitments as easy to implement and verify as possible. More detail is set out below.

4.5.2.1. Climate-dependent (especially date-related) commitments

Changeable weather can sometimes make it difficult to respect AEC commitments. Certain types of commitment which must be fulfilled within a narrow timeframe are especially vulnerable to this problem.

(Example: a commitment involving delayed mowing to allow birds to nest and breed. If spring arrives late in a given year, mowing would have to be delayed even further.)

To avoid penalties when problems of this sort arise because of factors beyond the beneficiary's control:

- the AEC payment (or part of it in case some commitments are met prior to occurrence of the adverse weather conditions) could be suspended in years when the weather simply made it impossible to meet the commitment(s) corresponding to that (part of) payment. In this case, no aid received in previous years would have to be repaid. Payments related to those commitments which are carried out should be provided. However, the beneficiary would not have an automatic "right" to extend his contract by a year as a result i.e. the commitment shall be continued in the subsequent years in accordance with its original duration;

- the timing of date-related commitments could be set as a range of dates in the RDP to accommodate the weather's unpredictability; the managing authority would set a more precise range or single date each year, based on the opinion of a relevant for the commitment scientific body.

4.5.2.2. Visual check as the only method of control

Commitments to be checked by visual inspection only should be allowed only if:

- such inspections will be feasible in practice; and
- the considerable difficulty of organising such inspections is merited by the potential benefits of the commitment.

Visual inspections might be more feasible if carried out by bodies which know the local conditions well (e.g. nature conservation bodies). Even then, a particular level of co-ordination with beneficiaries might be necessary (to establish the dates on which key activities would be carried out).

Given the complexity of verifying commitments' respect through visual inspections only, commitments of this sort should be very "targeted" commitments which deliver strong environmental benefits justifying the control effort/cost undertaken.

4.5.2.3. Input reduction commitments

AEC commitments concerning input reduction (fertiliser, plant protection products) are considered as one of the most difficult categories of commitment to control/verify.

When commitments refer to a quantitative action (e.g. reduction of input), they must always be expressed in a specific figure (kg per ha or %) and compared to the current use within the same type of farming practices in the area concerned. For such commitments, it is especially important to establish clearly in advance that they can be verified.

In the programming period 2007-2013, a general rule was applied that input reduction measures should cut input use by at least 33 % compared to the baseline situation. However, compliance with this requirement turned out to be difficult to verify and control.

In order to address this problem – while still allowing AEC commitments to be eligible for support, especially for the sake of water quality - it is recommended that in the programming period 2014 – 2020 input reduction commitments either:

- are implemented with a strict link to advisory services which develop the concept of the reduced use of input (input-minimising method) and which help to establish a pertinent method of ensuring the reliable measurement of the results. (As such an approach might be resource-intensive, input reduction commitments operating on this basis should be targeted at the specific areas characterised by significant problems of water quality); or
- concern a 100% reduction in use of the input.

N.B. In the case of partial reductions, it is essential to measure the level of input use at the start of the contract as well as regularly during the commitments implementation in order to determine reductions during the contract period.

4.5.2.4. Result- vs. practice-oriented commitments

The term "result-oriented commitment" has been commonly used to refer to commitments for which only results - not "effort" / management practices – are verified and rewarded with payment.

(Example: a farmer undertakes to create a wildlife sanctuary for certain endangered plant species. Whatever costs and income loss are involved in this, he and the managing authority agree in his contract that he will receive payment only if the types of animal concerned actually choose to live there.)

This type of commitment is often considered as offering more flexibility to beneficiaries than commitments for which farming practices are prescribed and verified. However, there is also added risk because results often depend partly on external factors (e.g. the weather – see also section 4.5.2.1 climatic conditions). The rules on *force majeure* can alleviate the financial aspects of this risk but do not cover all circumstances.

A further aspect relates to the relevant WTO rules as laid down in paragraph 13 (payments under environmental programmes) of Annex II to the WTO Agreement on Agriculture. These rules require the following:

- *Eligibility for such payments shall be determined as part of a clearly defined government environmental or conservation programme and be dependent on the fulfilment of specific conditions under the government programme, including conditions related to production methods or inputs.*
- *The amount of payment shall be limited to the extra costs or loss of income involved in complying with the government programme.*

As result-oriented sub-measures are not defined in terms of production methods or inputs, in their case additional information will be needed for the purpose of premium calculation.

Premiums for result-oriented commitments should be based on the additional costs incurred and income foregone as a result of the farming practices which are in general necessary to achieve the results expected from these commitments.

With regard to monitoring and control of result-oriented sub-measures, the checks should concern delivery of the expected results and not the practices undertaken by the beneficiary to achieve these results.

If a MS decides to offer result-oriented AEC types of operation, these must be clearly labelled as such in the RDP. In each case, the description must set out:

- the result to be delivered;
- evidence that the practices defined for the purpose of calculating the premiums can indeed lead to the expected outcome.

4.6. Length of commitments

Regulation of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) N° 1305/2013 – Article 28(5):

Commitments under this measure shall be undertaken for a period of five to seven years. However, where necessary in order to achieve or maintain the environmental benefits sought, Member States may determine a longer period in their rural development programmes for particular types of commitments, including by means of providing for their annual extension after the termination of the initial period. For new commitments directly following the commitment performed in the initial period, Member States may determine a shorter period in their rural development programmes.

The RDP must explicitly state the duration of a commitment even if this reflects the basic rule of the duration of 5 - 7 years.

Any exceptions to the rule of between 5 and 7 years must be stated and well justified on environmental grounds. *(For instance, in the case of sub-measures aimed at restoring and maintaining wetland habitats, support could be granted for more than 7 years given the complexity of meeting these objectives.)*

If an RDP will allow annual extension of commitments after the termination of the initial period, it must clearly indicate this. The same applies to the possibility of signing shorter contracts for new commitments that follow directly those carried out in the initial period.

4.7. Payments/premiums

Regulation of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) N° 1305/2013 – Article 28(6):

Payments shall be granted annually and shall compensate beneficiaries for all or part of the additional cost and income foregone resulting from the commitments made. Where necessary, they may also cover transaction costs (...) and

Article 62(2):

Where aid is granted on the basis of standard costs or additional cost and income foregone, Member States shall ensure that the relevant calculations are adequate and accurate and established in advance on the basis of a fair, equitable and verifiable calculation.

4.7.1. Normal farming practice and its role in setting premiums

To calculate AEC premia (which compensate for additional costs incurred and income foregone as a result of the commitment made) Member States have to compare the income and costs of a farmer undertaking the AEC commitment concerned with the income and costs of a farmer applying normal farming practice in the same area.

This implies that AEC payments must not be granted for normal farming production methods (practices) applied by farmers in the area concerned (with the exception for the maintenance of environmentally beneficial existing farming practices as outlined in point 3.2.1 of this document).

4.7.2. General methodology of calculations

The RDP must describe the method used to calculate the premia.

In most cases AEC payments are based on standard costs calculations (which are often based on standard gross margin) and assumptions for income foregone resulting from the commitments made. As mentioned above, these costs and assumptions must be based on reliable, representative data. (Updating of cost and income loss assumptions is possible in RDP modifications; see section 4.7.3. with regard to updates affecting contracts in force.)

The calculations must take into account variable costs - such as those related to the use of production means (e.g. seeds, fertilisers, pesticides) and labour - as well as yields and product prices. The costs must be relevant to the commitments concerned and must be as recent as possible (for more details see below).

Cost / income loss calculations must make clear which elements they include and which elements are compensated by the premium - even though the detail of the calculations is not subject to approval by the Commission (in contrast to the aid levels resulting from the calculations).

Beyond these general principles, the following particular requirements must be fulfilled (and the RDP must state that this has been done):

- Calculations must be made or approved / certified by a body (to be defined) independent from the body which implements the measures (e.g. scientific institutes, relevant universities). This approval must be included in the RDP.

Regulation of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) N° 1305/2013 – Article 62(2):

(...) a body that is functionally independent from the authorities responsible for the programme implementation and possesses the appropriate expertise shall perform the calculations or confirm the adequacy and accuracy of the calculations. A statement confirming the adequacy and accuracy of the calculations shall be included in the rural development programme.

- The certification of the correctness of the premia calculations, as indicated in the point above, shall include a specific references confirming that the proposed premia avoids double funding.
- Sources and dates of the figures used for calculations must be indicated and must be as recent as possible. As far as is feasible, all data used should refer to the same year(s). The use of an average for the most recent years is recommended to avoid basing the calculations on a year with an extreme data (in terms of cost and income). Data used for calculations for several types of operations (e.g. cost of a working hour or cost of fuel) should remain consistent across these calculations unless the differences can be justified by regional or climatic variations.
- The premiums for a given type of operation should be differentiated where this becomes necessary as a result of significant differences in regional / sub-regional conditions and in production practices.
 - If an RDP does not propose such a differentiation, it must demonstrate that no such differentiation is necessary because conditions are sufficiently similar. This is necessary to avoid excessive under- / over-compensation.
- Investment costs should be covered by the investment measures, not by AECMs.
- The ceilings for annual payments per hectare as indicated in Annex II of the RDR must be respected. This also applies in cases of a combination of types of operations and/or commitments on the same land.

Note that, as in the period 2007-2013, it will be possible to calculate payments on the basis of units other than hectares where the commitments concerned would normally be expressed in such units. (*Example: length of maintained hedges, expressed in metres.*) The maximum annual payments set out in Annex II of the RDR would still apply.

It is not possible to fix maximum global payment amount per beneficiary (per holding) for a given operation. This would be against the logic of the measures concerned. These measures compensate additional costs and income losses resulting from the commitments made, which are in principle proportional to the number of ha under commitments.

4.7.3. *Changes in premium calculation for a contract in force*

In principle, an AEC premium for a given beneficiary as set in his contract should not change during the contract period. This is because the system of AEC commitments lasting five years or more is designed to limit administrative burden and provide predictability – with regard to the level of environmental benefit delivered and the funding paid in return for this benefit. It is accepted that the costs and income losses covered by the premium will fluctuate to some extent; this fact is not sufficient to justify habitual alteration of premia.

However, this principle need not be an absolute rule. Where key elements considered in the premium calculation change significantly, revision of premia for running contracts could be permitted if this is clearly important for the measure concerned – especially in terms of likely future uptake. The subject will not be treated in detail here, but in any case

the most important conditions to be fulfilled would be the following (the list is not exhaustive):

- beneficiaries' contracts should contain a review clause;
- once a revision of premia had been undertaken, subsequent revision(s) would be carried out a maximum of once every two years;
- the revision system would have to operate downwards as well as upwards to minimise over-compensation.

4.7.4. Transaction costs

If the measure provides support for transaction costs, its description must set out:

- the types of cost to be covered;
- the amount;
- the payment method (i.e. as a one-off payment or as part of each annual payment).

Support for transaction costs, calculated as x % of the premium paid for AEC commitments, may be provided for activities directly linked to the supported AEC commitments.

(Examples include: information collection and knowledge acquisition necessary for the efficient implementation of the operation; preparation of specific plans of activities for such implementation; fees related to registration / permits etc.)

4.7.5. Opportunity costs in the calculations

If a measure has as its objective to maintain an existing environmentally favourable practice / production type which is at risk of disappearance, the concept of opportunity costs can be used.

The premium calculation would then compare the income offered by the potential alternative practice with that provided by the ongoing environmentally beneficial practice (needless to say, the costs in each scenario would also have to be taken into account).

However, in order to offer support for opportunity costs, an RDP must clearly demonstrate that:

- alternative production choices / farming practices are possible;
- there is a genuine risk that these will indeed replace the existing choices / practices.

The evidence used for such a demonstration must be solid; in particular, it must be appropriate for the area concerned.

In its recommendations the ECA also requires from MS *to better justify cases when the objective is to maintain environmentally friendly farming practices.*

In exceptional cases when nature conservation objectives are at stake, the costs calculation - based on the opportunity cost concept - could include the total costs (and value) of the production linked to the farming practices which are at risk of being abandoned. However, such cases must be based on very solid evidence demonstrating the risk of the total abandonment of the environmentally sound farming activities necessary for nature conservation.

See also sections 3.2.1 and 4.4 of this document.

4.7.6. Premia covering less than 100 % of additional costs incurred and income foregone

Regulation of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) Regulation N° 1305/2013 – Article 28(6):

Payments (...) shall compensate beneficiaries for all or part of the additional costs and income foregone (...).

AEC payments are based on standard costs and income assumptions which between them reflect an average cost / income situation. Clearly, some farmers incur lower additional costs and income losses than those identified in the calculation and others farmers incur higher costs and losses. This is due to differences in the efficiency of individual farms. The first group of farmers will have a higher benefit from applying the AEC type of operation than the second group of farmers, as the costs and income loss of the second group will be covered by the premium to a lesser extent.

MS / regions may fix the premium at a lower level than the average additional costs and income loss calculated. This might be appropriate only if they ensure that the type of operation will still achieve its objectives because sufficient farmers will still become involved.

In this case, the RDP must clearly show how the premium offering partial compensation is set and how it relates to full compensation.

4.7.7. One-off payments for the permanent renunciation of commercial use of a given area

The standard approach to AECM payments – i.e. annual payments made via contracts of 5-7 years – holds several advantages. However, it will be possible to make one-off AECM payments to beneficiaries who permanently give up commercial use of a given area, in order to achieve environmental goals (e.g. for the permanent preservation of peatland).

An essential condition to be met in such cases is that the renunciation of commercial use must be clearly legally binding (e.g. in a cadastre). (This would usually involve, among other things, changes to the related entry in the land registry of the MS concerned.)

The value of the one-off payment would be clearly based on a calculation of additional costs incurred and income foregone as a result of the change in land use, as in the case of "standard" AECM payments with this difference that the premia based on the calculation of additional costs and income foregone is to cover a longer period (than 5-7 years) and is not paid annually.

4.8. Relating commitments / type of operations to standard categories of schemes

Finally, the RDP should contain a table (see annex III of this document) which relates the type of operation / commitments proposed to standard categories of scheme / commitment.

This information will make it possible to better describe, in a synthetic way, the types of commitments planned over the EU territory and will simplify their monitoring.

5. RELATED TRAINING AND ADVISORY MEASURES

As in the case of certain other measures, in order to implement AECMs well (and therefore achieve the expected results), beneficiaries need a particular level of knowledge (including clear information about what is expected of them and how to meet their commitments effectively).

This assertion is borne out by experience. In the past, the provision of guidance, advice and training has improved the delivery of AEC-related benefits and reduced errors in implementation.

Particularly useful practices in this respect have been a link to compulsory use of training or advice, and the involvement of nature protection bodies (which support understanding of the commitments concerned).

Regulation of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) N° 1305/2013 – Article 28(4):

Member States shall endeavour to ensure that persons undertaking to carry out operations under this measure are provided with the knowledge and information required to implement such operations. They may do so through, inter alia, commitment-related expert advice and/or by making support under this measure conditional on obtaining relevant training.

In practical terms, the MS could provide knowledge / information through rural development measures or through other arrangements (including the Farm Advisory System). The essential obligation is that, if knowledge transfer or information is needed, the MS concerned must take steps to meet that need.

AECMs could be offered as part of "packages" of measures or "integrated measures" which include support for training / use of advice (under articles 15 and 16 of the RDR). However, the rules of the respective measures must be respected.

If necessary, access to an AECM could even be conditional on accepting training.

In any case, the description of a given AECM in the RDP should clearly set out how the obligation cited in the box above will be met.

6. REVISION CLAUSES

6.1. Changes to the elements of the baseline

As in the current period, in the period 2014 – 2020 MS / regions will be obliged to include in their AEC contracts a revision clause requiring the adjustment of AEC commitments if amendments are made to the baseline and the legal framework in general.

Regulation of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) N° 1305/2013 – Article 48:

A revision clause shall be provided for operations undertaken pursuant to Articles 28, 29, 33 and 34 in order to ensure their adjustment in the case of amendments to the relevant mandatory standards, requirements or obligations referred to in those Articles beyond which the commitments have to go. The revision clause shall also cover adjustments needed to avoid double funding of the practices referred to in Article 43 of Regulation (EU) No 1307/2013 in case of amendment of the latter.

Operations undertaken pursuant to Articles 28, 29 and 34 which extend beyond the current programming period shall contain a revision clause in order to allow for their adjustment to the legal framework of the following programming period.

The first part of the revision clause ensures that every time there is a modification to any relevant element of the baseline for AECMs, the AEC commitments are modified accordingly – i.e. to continue to support only voluntary commitments going beyond mandatory requirements. It also refers to the cases where adjustments to the greening obligations, as defined in the 1st pillar, are introduced (e.g. an increase of the area under EFA from 5 to 7%) to adapt the relevant AEC commitments to avoid double funding.

The second part of the revision clause ensures the adaptation of AEC commitments which extend into the next period to the new conditions and rules of that period. These conditions and rules concern the entire new legal framework.

The adjustments resulting from the applications of these revision clauses do not have to be accepted by the AEC beneficiaries. If the latter do not accept the changes to the

commitments, the commitments expire and the beneficiary does not need to reimburse the payments already received.

7. GENERAL RULES FOR AREA RELATED PAYMENTS

The rules on AEC commitments contain a certain flexibility to accommodate particular circumstances which may prevent beneficiaries from complying with the commitments.

This flexibility is set out partly in the text of Article 47 itself of the RDR. Paragraph 6 of the same article also provides an empowerment to adopt delegated acts concerning the partial transfer of a holding and the definition of other situations where the reimbursement of aid received will not be required.

7.1. Transfer of the holding

Regulation of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) N° 1305/2013 – Article 47(2):

Where all or part of the land under commitment or the entire holding is transferred to another person during the period of that commitment, the commitment, or part thereof corresponding to the land transferred, may be taken over for the remainder of the period by that other person or may expire and reimbursement shall not be required in respect of the period during which the commitment was effective.

7.2. Force majeure

Member States may recognise, in particular, the following categories of force majeure or exceptional circumstances as listed in Article 2(2) of the Horizontal Regulation¹³:

- the death of the beneficiary,
- long-term professional incapacity of beneficiary,
- a severe natural disaster gravely affecting the holding,
- the accidental destruction of livestock buildings on the holding,
- an epizootic or a plant disease affecting part or all of the beneficiary's livestock or crops respectively,

¹³ As defined in the Regulation (EU) No 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the Common Agricultural Policy

- expropriation of all or a large part of the holding if that could not have been anticipated on the day of lodging the application.

Cases of force majeure or exceptional circumstances must be notified in writing to the competent authority, together with relevant evidence to the satisfaction of the competent authority, within 15 working days from the date on which the beneficiary or the person entitled through him, is in a position to do so.

7.3. Cases of re-parcelling or public land consolidation

When a beneficiary is unable to continue to comply with commitments given because of re-parcelling, public land consolidation measures or land-consolidation measures approved by the competent public authorities, MS / regions must take the measures necessary to allow the commitments to be adapted to the new situation of the holding.

If the adaptation proves impossible, the commitment expires without a need for reimbursement for the period during which it was effective.

7.4. Variability of land under AEC commitments

AEC commitments may be "adjusted" in the sense of varying the area under them from year to year if certain conditions are met.

Regulation of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) N° 1305/2013 – Article 47(1):

The number of hectares to which a commitment pursuant to Articles 28, 29, and 34 applies may vary from year to year where:

- a) this possibility is provided for in the rural development programme;*
- b) the commitment in question does not apply to fixed parcels;*
- c) the achievement of the commitment's objective is not jeopardised.*

This provision should only be used to accommodate fluctuations which are necessary from an agronomic point of view and environmentally justified from year to year - for instance as a result of crop rotation.

The RDP must specify for which types of operation this variability is being permitted – always taking account of the provision of point 1(b).

For the sake of controllability, for each of these types of operations the RDP must define the scope of the allowed annual variability in terms of % of area covered by the type of operation for a given beneficiary at the start of his contract. The value chosen must not undermine environmental results.

7.5. Increases in the area of the holding

Complications arising from increases in the area of the holding are addressed in the Delegated Acts (Art.15). The principles are as follows.

When the area of the holding is increased during the commitment period, Member States may provide that the commitment can be extended to cover the additional area for the remainder of the period, or else original commitment can be replaced by a new one.

"Extension" has to fulfil certain conditions:

- it must be of benefit to the measure concerned;
- it must be justified in terms of its environmental impact, the length of the remaining period and the size of the additional area;
- and it must not impede the effectiveness of controls.

The extension of the existing commitment respects the original duration of the commitment.

"Replacement", in the meaning of setting a "new" commitment, has to take place under terms at least as strict as those of the original commitment. In terms of duration, replacement requires a new period for which the new commitment is undertaken i.e. a new commitment period of 5 years or more begins (on a larger area).

8. OTHER ISSUES

8.1. Selection criteria

Regulation of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) 1305/2013 – Article 49(2):

The Member State authority responsible for the selection of operations shall ensure that operations, with the exception of operations under Articles 28 to 31, 33 to 34 and 36 to 39, are selected in accordance with the selection criteria (...).

Article 49(3):

Where appropriate, the beneficiaries may be selected on the basis of calls for proposals, applying economic and environmental efficiency criteria.

Article 28(7):

Where required in order to ensure the efficient application of the measure, Member States may use the procedure referred to in Article 49(3) for the selection of beneficiaries.

It is assumed that all beneficiaries of this measure provide the environmental benefits. The latter are the same or very similar among those beneficiaries who are subject to the same commitments; therefore there is no need to undertake any selection of beneficiaries. And for this reason Regulation (EU) No 1305/2013 does not require establishing selection criteria for agri-environment-climate measure.

However, the implementation of the measure may bring particularly important environmental benefits in certain areas, or where such benefits are particularly important considering the specific problems in these areas, and Member States may wish to give a preferential access to the support under this measure to those areas.

See also point 5.6 of the guidelines on eligibility conditions and selection criteria¹⁴.

8.2. Financing old commitments in the new RDP

If the RDP is to finance ongoing AE commitments from the previous programming period, the RDP must state:

- which types of operation are concerned;
- for how long the "old" commitments will be financed;
- how much funding will be needed to do this for each type of operation (estimate).

9. ISSUES RELATED TO ERROR RATE EXERCISE - CONTROLLABILITY, VERIFIABILITY AND AVOIDANCE OF UNDUE RISK OF ERRORS

9.1. Legal basis

According to Article 69 of the RDR, Member States must ensure that all the rural development measures they intend to implement are verifiable, controllable and designed in a way that does not create undue risk of error.

To this end the Managing Authority and the Paying Agency of each RDP must provide an ex-ante assessment of the verifiability, controllability and error risk of the measures to be included in the RDP.

The Managing Authority and Paying Agency must continue the assessment of measures during the implementation period. Both the ex-ante and on-going assessments must take into account the results of controls in the previous and on-going programming period.

¹⁴ Draft guidelines on eligibility conditions and selection criteria for the programming period 2014 – 2020.

Where the assessment reveals that the requirements of verifiability, controllability and not creating undue risk of error are not met, the measures concerned must be adjusted accordingly.

9.2. "Eligibility criteria" and "commitments" and their impact on the error rate

The concept of the baseline of AECMs has already been discussed in section 4.4.

In addition, RDPs often set additional requirements or conditions which a beneficiary must meet in order to be admitted to a measure. (*Examples: a farmer must fill in a farm register about his farming activities; the overall livestock density on the farm may not exceed 2.0 LU/ha.*)

Such "entry" conditions are not part of the premia calculation and are not paid for. In legal terms they are considered as an "eligibility criteria". Such additional conditions may be useful for the competent authority as they make it possible to reduce the number of potential beneficiaries or to establish conditions which cannot easily be included in a premium calculation.

It is extremely important to understand three points about eligibility criteria:

- Fulfilment of eligibility criteria is a "yes-no" issue: either the criterion is met, or it is not.
- In order for a beneficiary to be eligible for payment, all stated eligibility criteria must be met.
- Therefore, if a beneficiary receives payment under a measure but is then shown not to have met one or more of the eligibility criteria, **the reduction or withdrawal of payment is 100 %.**

Therefore, eligibility criteria are fundamentally different from "commitments" (see section 4.5). If a beneficiary does not fully respect his AEC commitments, **the competent authority applies a proportional reduction** (in line with the severity, extent, duration or reoccurrence of the non-compliance found;).

There is evidence that in some cases eligibility criteria are mixed up with commitments or other obligations and thereby inherently raise the error rate as the non-respect of eligibility criteria normally leads to 100% reduction. One example is a requirement of having a minimum of 60 olive trees per ha as eligibility criteria where the farmer would encounter a 100% reduction in case only 59 trees are found on the spot, whereas if the same requirement were part of the commitment, a more proportional reduction would apply.

This demonstrates that it is essential to set eligibility criteria, commitments and other obligations appropriately in order to limit unnecessary errors.

9.3. Commitments creating implementation difficulties (see also section 4.5.2)

Certain commitments are difficult to implement and control by respectively the beneficiaries and the authorities. This concerns in particular commitments which may conflict with the variability of the farmer's production programme.

Commitments related to input reduction are more difficult to verify. Therefore, they were addressed in a Commission guidance document on the verifiability of measures. In particular, the partial reduction of input or an input reduction which only concerns parts of a farm need specific control efforts.

Further difficulties come up with commitments which must be fulfilled at a particular moment that cannot be precisely defined in advance (e.g. 'before harvest'), where the beneficiary should notify the timing of the activity.

Also commitments related to stocking densities are difficult to implement and to control, in particular if e.g. the livestock density threshold has to be respected each moment in time. This type of commitment creates obligations for precise reporting.

Commitments which are based on a whole farm approach or average values are already easier to verify. The implementation of those commitments has to be embedded in a specific, more complex and consequently more expensive control system in order to ensure that the beneficiaries deliver the commitments they have signed up for. In this context, sufficient advice for beneficiaries should be provided for.

9.4. Unclear content of the commitment and control problems

In certain cases the commitment is not established in a clear manner. Example of this is 'Maintenance of hedges' without further specifying it, so it is unclear if it means just that hedges cannot be removed or also they need to be kept in good condition. Another example is 'Leave some square metres around bird's nests', where it is not clear what should be measured.

Other examples are deadlines for grazing or cutting the hay for maintenance of specific biotopes. These deadlines can either be by a certain date or not before a certain date (e.g. 'not mowing the hay before 15 August'). In most cases the beneficiary does not need to inform the authorities on the exact time he carries out the grazing or cutting activity. This leads to control problems as it is difficult to see when the activity took place if the on-the-spot check is not carried out just before or just after the deadline. In these particular cases, the use of a farm book could be helpful in forming a clear picture of what action was taken by a farmer at a given specific moment.

9.5. Update of the LPIS system is not reflected in applications

MS must regularly update their LPIS (Land Parcel Identification System) to keep it efficient (agricultural land used for other activities, construction of buildings, roads, development of forests, land abandonment, etc.).

Updates of the LPIS can lead to situations where the reference areas of parcels change compared to the initial area under commitment.

Some beneficiaries may not be aware of the change in the size of their eligible area and make an application for payment which is identical to previous applications. This issue is particularly relevant for multiannual commitments such as AEC commitments. There is a risk that beneficiaries send payment claims for the area for which they have signed the 5- or 7- year contract without verifying each year the status of the area claimed in the LPIS system.

Competent authorities should provide better training and information to beneficiaries so that these check that the area for which they claim each year is accurate.

Competent authorities should also provide beneficiaries with updated parcel maps. This is even more important if a simplified application system is in force, where the payment claim needs only to indicate changes compared to previous years.

9.6. Small commitment areas

AEC types of operation might be implemented in only a part of the holding, on small parcels difficult to measure owing to natural conditions, and where a relatively small difference in the area measured leads to high percentage of payment reduction.

However, these considerations should not rule out allowing types of operation on small plots if, for example:

- certain specific and easily recognisable landscape elements make it easier to implement the type of operation on small plots; or
- practical difficulties are outweighed by high environmental value (e.g. where the type of operation protects important endangered plant species).

Therefore, defining a useful minimum size threshold at EU level does not seem possible.

Instead, such thresholds should be defined in RDPs at type of operation level, taking into account the nature of the commitment and the available control and advisory framework.

9.7. Lack of information for the beneficiary

Where errors occur in AECM implementation, this is often because the eligibility criteria and various components of an AEC commitment are not clearly described. (This problem can also discourage potential beneficiaries from participating in the measure.)

This makes clear description all the more important. Beneficiaries must know "what they have to do".

The benefit of a clear initial could be reinforced by:

- offering training related to a given type of operation– or even making it mandatory (especially for more complex types of operations);
- reminding beneficiaries of their obligations every year.

9.8. Proportionality of the system of reductions

As stated in section 9.2, if a beneficiary does not fully respect an AEC commitment, a proportional reduction to payment should be made – according to severity, extent, duration and reoccurrence.

This point must be emphasised, as in some past cases the competent authorities have made a 100 % reduction when this was clearly inappropriate.

The competent authorities should keep the following points in mind when deciding on reductions:

- The severity of the non-compliance depends, in particular, on the magnitude of the consequences in terms of meeting the commitment's objectives.
- The extent of the non-compliance depends, in particular, on its effect on the operation as a whole.
- The duration depends, in particular, on the length of time for which the effect lasts or the possibility of terminating this effect by reasonable means.

Annex I – Clarifications on the provisions concerning the rural development support for genetic resources and local breeds

1. LEGAL BACKGROUND

The support for endangered local breeds and the plant varieties under threat of erosion as well as for agricultural genetic resources is foreseen under Art.28 of the Rural Development (RD) Regulation. The RD Delegated acts (DA) further specify, in Articles 7 and 8, the relevant provisions for such support.

2. BENEFICIARIES AND ELIGIBLE FARM ANIMAL SPECIES UNDER ART.28

The support for preserving on farm endangered breeds and plant varieties under threat of erosion is eligible under the rules of Art.28 (1-8) of the RD Regulation. The beneficiaries of such support are those defined in Art.28 (2) of that Regulation and include farmers, groups of farmers, groups of farmers and other land managers and in duly justified cases other land managers and groups of other land managers.

The DA further specify in Art.7(2) which farm animals species shall be eligible for this support and limit it to cattle, sheep, goats, equidae, pigs and birds. There is no such list for plant varieties. However, both the eligible animal species and plant varieties must fulfil all the respective eligible conditions mentioned in Art.7 of the DA.

3. ART.28(9) – ELIGIBILITY CONCERNING ACTIVITIES, BENEFICIARIES AND ANIMAL SPECIES

Article 28(9) of the RD Regulation stipulates that support under Art.28 can also "be provided for the conservation and for the sustainable use and development of genetic resources in agriculture for operations not covered by the provisions under paragraphs 1-8. Those commitments may be carried out by beneficiaries other than those referred to in paragraph 2".

The support for genetic resources under Art.28(9) concerns activities as defined in the DA in Art.8 regarding the conservation of genetic resources in agriculture and in forestry. These activities have more gene preservation-oriented nature and are more focused, although not exclusively, on research-like activities linked to genetic resources' protection.

As mentioned in Art.28(9) of the RD Regulation, this support can be provided also to other beneficiaries than those identified in Art.28(2) and these may include, among others, also national scientific institutions and research centres. The beneficiaries under Art.28(9) do not need to rear the farm animals but they conserve and develop genetic resources.

The provisions of the paragraphs 1 to 8 of Article 28 do not apply to the support under the paragraph 9.

Furthermore, this support may concern also other farm animal species than those defined in Art.7(2) of the DA for the purpose of the support under Article 28(1-8). In other words, both endangered breeds and plant varieties eligible under Art.28(1-8) and other

farm animal species and plant varieties (which are not under threat) can be subject to the support under Art.28(9).

4. COMBINATION AND DEMARCATION BETWEEN ART.28(1-8) AND ART.28(9)

It is necessary, when planning the support for the endangered breeds and plant varieties under threat of erosion, to remember the provision in Art.7(4) of the DA: "activities covered by the type of agri-environment-climate commitments referred to in paragraphs 1 to 4 of this Article [on endangered breeds and plant varieties under threat of erosion] shall not be eligible for support under Art.28(9) of Regulation (EU) No 1305/2013".

This provision implies that operations/activities supported under Art.28(1-8) and concerning the endangered breeds and plant varieties under threat of erosion cannot be supported under Art.28(9). In other words, the latter cannot be used for granting multiannual (5-7 years) agri-environment-climate support in form of annual payments based on income foregone/additional costs for endangered breeds and plant varieties under threat of genetic erosion.

However, other beneficiaries than those defined in Art.28(2) of the RD Regulation can get support for actions eligible under Art.8 of the DA for all farm animals, including those mentioned in Art.7(2) of the DA, and the beneficiaries of the support under Art.28(1-8) can be granted support for those farm animals which are not mentioned in Art.7(4) of the DA.

5. SUMMARY TABLE

Issues	Art.28(1-8) of RD & Art.7 of DA	Art.28(9) of RD & Art.8 of DA
Beneficiaries	farmers, groups of farmers, groups of farmers and other land managers and in duly justified cases other land managers and groups of other land managers	Those mentioned in Art.28(2) + other beneficiaries e.g. national scientific institutes, research centres etc.
Eligible activities	To rear endangered breeds and preserve plant varieties under threat of genetic erosion	Actions defined in Art.8 of the DA
Eligible farm animal species	cattle, sheep, goats, equidae, pigs and birds	Those mentioned in Art.7 + other farm animal species which do not need to be endangered
Eligible plant varieties	No specific list	No specific list

EXPLANATORY DOCUMENT: METHODS OF THE RURAL DEVELOPMENT PREMIA CALCULATION TO EXCLUDE DOUBLE FUNDING (ART.28-30)

1. THE PRINCIPLE OF NON- DOUBLE FUNDING – AND ITS IMPLICATIONS

Rural development provides for a possibility to pay farmers and other land managers for (voluntary) commitments. The premia paid for taking up these commitments are calculated as a sum of income lost and costs incurred, resulting from the commitment

All three regulations, rural development (RD), direct payments (DP) and horizontal regulation (HZR), as well as draft common provision regulation (CPR) include **provisions forbidding double funding** (see also annex I).

Non-double funding is a general principle of the ESI Funds (Art.65 of the Common Provisions Regulation) and of the CAP (Art.30 of the Horizontal Regulation). For rural development, three articles mention explicitly the obligation to exclude double funding: Articles 28, 29 and 30 of the RD regulation. These articles refer to **agri-environment-climate** (AEC), **organic farming**, and compensation payments for extra cost resulting from **Natura 2000 and the Water Framework Directive (WFD)** respectively.

Non-double funding is also an essential principle in maintaining rural development payments including AECM green-box compatible. Paragraph 12 of Annex 2 of the WTO Agreement on Agriculture requires the amount of payments under environmental programmes to be limited to the "extra costs or loss of income involved" in complying with the "government programme" (including both EU and national programmes).

The non-double funding principle has practical implications for the premia calculated for these three measures. In these calculations the relationship between the nature of commitments associated with the above-mentioned measures and the greening practices required in the 1st pillar is primordial.

There are **three possible types of relationships between these commitments and greening practices**:

- Commitments may have no link to greening obligations
- Commitments may be technically of a similar type as the greening obligations in the 1st pillar (regardless whether the commitments are used as equivalent or not)
- Commitments may be considered as equivalent to greening practices, while being technically different (points 3 and 4 of Section I and point 7 of Section III of Annex IX to DP regulation).

In the case of the commitments referred to in the second and third of the afore-mentioned bullet points, the calculations of the premia must ensure that **the same practices are not paid twice under the 1st and 2nd pillar**. In other words, these calculations can only

cover commitments which go beyond the relevant greening practices and beyond all relevant mandatory requirements.

2. HOW TO MAKE PREMIUM CALCULATIONS TO AVOID DOUBLE FUNDING

2.1. Principles of calculations to respond to non-double funding

With respect to the afore-mentioned three different types of relationships between the relevant commitments and greening practices, the following considerations concerning double funding apply:

- Case 1: The commitments (AEC, WFD, or Natura 2000) have **no direct link to the greening practices** of the 1st pillar:
- *There is no risk of double funding. Member States calculate the **premium as usual**: they shall identify the income loss and additional costs linked to the specific practices included under commitments.*
- Case 2: The commitments (AEC, WFD, or Natura 2000) are of a **similar nature** as the greening practices but **not** used for the purpose of equivalence or the commitment concerns organic farming:
- *There is a risk of double funding. Therefore, the **premium calculation** related to the commitments in the 2nd pillar **must cover only those income losses and additional costs** which correspond to the activities under the commitments **which go beyond the compulsory greening practices**¹⁵.*
- Case 3: The commitments (under rural development measure of agri-environment-climate) which are used for the purpose of **equivalence** and for replacing the greening obligations. Among these commitments two categories have to be considered:
- a) Commitments of a nature similar to the greening practices in the 1st pillar (mentioned in Annex IX of the DP regulation with no asterisk):
 - *There is a risk of double funding. To avoid double funding, the **premium calculation** related to the commitments in the 2nd Pillar **must identify only those income losses and additional costs** which correspond to the activities under the commitments **which go beyond the compulsory greening practices**.*
 - b) Commitments of a nature different from the greening practices in pillar I (commitments marked by an asterisk in Annex IX and any further equivalent practices added in the future to that Annex):

¹⁵ The case of EFA-related AEC commitments, the full premium can be paid only for commitments on an area going beyond the 5% of the arable land under EFA obligations (taking into account conversion and weighting factors) or going beyond EFA obligation in qualitative terms .

- *There is a risk of double funding.* However, as direct comparability is difficult, **double funding is to be avoided through application of a lump sum** reduction corresponding to a part of the greening payments in the Member States or region for each greening practice, as defined in the framework of the delegated act of Regulation 1307/2013.

Note: This lump-sum deduction shall only apply on the area necessary for fulfilling the requirement of equivalence for the green direct payment. In case the area coverage of the commitment goes beyond the equivalent area, the AEC premia on the additional area shall be paid without applying the lump-sum deduction.

Member States may apply equivalence through a restrictive or a flexible approach. In a restrictive approach, the Member State decides upfront whether greening will be implemented through greening obligations or through equivalent AEC commitments. In a flexible approach, individual beneficiaries in a given area can choose to implement greening either by fulfilling greening obligations provided for in the DP Regulation or by carrying out an agri-environment-climate commitment considered equivalent to greening. In case beneficiaries are allowed to choose the method of complying with greening, then the rural development programmes should include two premia levels:

- A reduced premia for farmers who use AEC commitments (including asterisk-marked commitments) in order to fulfil their greening obligations under the equivalence approach;
- A full premium for farmers who carry out the same AEC commitments (asterisk-marked commitments) as above but who do not opt for equivalence (such farmers implement both the greening obligations as provided for in the DP regulation and the AEC commitments). A full premium may also apply to the areas under AEC commitments which go beyond the area required under the 1st pillar, i.e. EFA obligation.

2.2. Practical aspects related to premia deductions

2.2.1. General approach to premia deduction

The most pragmatic way to premia deduction would be to compare the income and cost situation of a farmer applying greening with the income and cost situation of a farmer carrying out AEC commitments or converting to or maintaining organic farming or being beneficiary of the support under Art.30 of the RD regulation¹⁶.

¹⁶ Should an AEC premia actually applied compensate beneficiaries only for parts of the additional costs and income foregone resulting from a certain commitments, the calculation of reductions should be made on the full calculated premium.

2.2.2. Organic farms as beneficiary of AEC support

If the beneficiary of organic farming support in the 2nd pillar also carries out agri-environment-climate commitments under Art.28 of the RD Regulation, such beneficiary shall receive the same premia as any other beneficiary undertaking the same commitments under Art.28 (with exceptions defined in point 3.4 of this document) irrespective of whether the organic farming beneficiary actually applies all greening practices or not. In other words, the AEC-related premia for organic farmers shall only be granted for commitments going beyond the greening practices.

3. SPECIFIC CASES

3.1. Farms subject to pillar I greening but to which one or more greening obligations do not apply

There are categories of farms, others than those eligible to the small farmers scheme, to which, due to their characteristics, one or more greening practices of the 1st pillar do not apply (e.g. arable land up to 15ha and 10ha in case of EFA and crop diversification respectively) or which are entitled ipso facto to the greening payment (organic farmers).

The greening practices do not apply to organic farms. Fulfilling the condition of producing in accordance with Art.11 of Regulation (EC) No 834/2007 is enough for them to receive full Direct Payments, including the green payment. However, according to the provisions concerning double funding, payments under Art. 29 of Reg. 1305/2013 are subject to reductions if they concern commitments similar to the greening practices.

In the case of farms to which one or more greening obligations do not apply solely on the basis of their size (arable land up to 15ha and 10ha in case of EFA and crop diversification obligations respectively), double funding provisions do not apply.

Double funding requirement does not apply in the case of farms that are derogated from EFA greening obligation in accordance with Art.46(7) of Regulation 1307/2013. Member States can grant full AEC payments for this type of farms for AEC commitments related to EFA. Double funding requirement does not apply in the case of farms that are derogated from greening obligations in accordance with Art.44(3) and 46(4) of Regulation 1307/2013. However, as explained in recitals 41 and 44 of that Regulation, those farms are considered as fulfilling the objectives of the relevant greening obligations as a result of their characteristics described in the above-mentioned articles. Therefore Member States can grant AEC payments, for these types of farms, only for AEC commitments related to crop rotation and permanent grassland which go beyond the conditions giving raise to those derogations.

Conclusion: Double funding does not apply to farmers to whom one or more greening obligations do not apply purely because of their size.

Holding situated in forest dominated areas designated as areas facing natural constraints in territories concerned by Art.46(7) of Regulation 1307/2013 are not subject to non-double funding provisions.

Farms to which one or more greening obligations do not apply because of their characteristics (those concerned by Art.44(3) and 46(4)) shall only receive AEC payments for commitments going beyond those characteristics as far as the conditions giving rise to those derogation are concerned.

Organic farming is fully subject to the non-double funding provisions.

3.2. Small farmers

Farmers participating in the small farmers scheme to claim payments from the direct support scheme are explicitly exempted from the obligation to observe the greening practices (Art.61(3) of the DP regulation).

For this reason, payments granted under Art.28, 29 and/or 30 of the RD regulation to farms participating in the small farmers scheme should not be considered as generating double funding. Therefore, such farmers can receive the full premia as calculated under these Articles.

As a farmer can withdraw from the small farmers scheme, the multiannual contracts for AECM and/or organic farming shall include a clause specifying that the principle of non-double funding, in line with the explanations under point 3.1 above, will be applicable to farmer/beneficiary carrying out AEC and/or organic farming commitments once he/she leaves the small farmers scheme.

Conclusion: Farmers participating in the small farmers scheme are not subject to the non-double funding principle and they may receive the full premia calculated following the rules of income foregone and additional costs without applying any reduction due to greening.

3.3. Beneficiaries of Article 28, 29, and 30 support not eligible for direct payments

Beneficiaries of the support under these articles who are not eligible for direct payments in pillar I (e.g. agricultural areas without entitlements, NGOs), under the EU or national legislation, are not subject to the greening obligations set in pillar I.

This category of beneficiaries is not entitled to receive any support related to greening (neither are they eligible for basic direct payments); therefore, there is no risk of double funding between the greening payments and the 2nd pillar payments.

Conclusion: Beneficiaries of the commitments falling under Articles 28,29, and 30 who are not entitled for direct payments under the 1st pillar may receive the full premia calculated following the rules of income foregone and additional costs without applying any reduction due to greening.

3.4. Specific case of Ecological Focus Area

According to the provision of Art.46 of Regulation 1307/2013 "*where the arable land of a holding covers more than 15 hectares, the farmer shall ensure that (...) an area corresponding to at least 5% of the arable land of the holding (...) is ecological focus area*".

Annex IX of the above Regulation provides for the list of AEC commitments which might be used as equivalent to the 1st pillar's EFA obligation.

In the case of these or similar types of commitments, there is a risk of double funding and, therefore, the payment reduction to avoid double funding shall apply to payments applied to 5% of the land of the holding subject to EFA requirements.

Premia calculation for AEC commitments on EFA must take into consideration the following aspects:

- *Quantitative aspect:* when a relevant AEC commitment is applied on, for instance, 10% of the arable land, the premia for the first 5% is reduced due to the need to avoid double funding) while for the area exceeding 5%, the full premia may be paid;
- *Qualitative aspect:* when the content of the AEC commitment goes beyond what is required for the commitment to be equivalent to a greening practice, a payment corresponding to the additional cost and income foregone resulting from this additional level of commitment can be paid in full.

If a beneficiary of AECD is subject to the EFA obligation in the 1st pillar, as long as this beneficiary receives the "greening" part of direct payments, the AEC payment for commitments of a nature similar to the EFA will be reduced on 5% (or percentage according to conversion factors) of the area where these commitments are applied. As explained in section 3.1 and 3.2, this rule does not apply to farmers that are derogated from one or more greening practices referred to in Art. 43 of Regulation 1307/2013.

In case a Member State decides, in its implementation of EFA greening practice of Pillar I, not to consider certain type(s) from the list of features as EFA, as provided for in Art.46(2) of Regulation 1307/2013, and not to use AEC commitments related to such EFA types for the purpose of equivalence, then in line with the need to ensure equal treatment between farmers in the respective Member State, no reduction to the premia for such AEC commitments applies and the full premium can be granted.

4. OTHER RELEVANT ISSUES

4.1. Certification of the calculations

In order to ensure that all the premia respect the principle of non-double funding, the certification of the correctness of the premia calculations for the relevant measures shall include a specific reference confirming that the proposed premia avoids double funding.

4.2. Relevant multi-annual commitments from the programming period 2007 – 2013

Art. 46 of Reg. (EC) No 1974/2006 obliges MS to provide a revision clause for agri-environment commitments undertaken from 2012 onwards and of 5-7 years duration and whose implementation extends beyond the end of the period 2007-2013 to allow for adjustment of those commitments to the legal framework of the following (new) programming period. Thereby, such AE commitments are also subject to the principle of non-double funding and they require adjustment to the provisions of non-double funding.

However, the AE commitments signed before 2012 (or before 2011 if a Member State decided to introduce the revision clause as of 2011), even though they are not concerned by the above-mentioned revision clause, they are also subject to the principle of non-double funding as long as these commitments are used for the purpose of equivalence (Art.43(4) of the DP regulation).

Annex I of explanatory document

Principle of non-double funding – legal provisions

The CPR text in Art.65(11) states: "An operation may receive support from one or more ESI (European Structural and Investment) Funds or from one or more programmes and from other Union instruments, provided that the expenditure item included in a request for payment for reimbursement by one of the ESI Funds does not receive support from another Fund or Union instrument, or support from the same Fund under another programme."

The HZR stipulates in Art.30 that "Expenditure financed under the EAFRD shall not be the subject of any other financing under the Union's budget".

When referring to the equivalent practices, the DPR in Art.43(4) states that "the equivalent practices (...) shall not be the subject of double funding".

The RDR stipulates in Art.28(6) – Agri-environment-climate, Art. 29(4) – organic farming and Art. 30(1) – Natura 2000 and Water Framework Directive payments: "When calculating the payments (...) (AEC and organic farming payments) / support under this measure (Natura 2000 and WFD payments), Member States shall deduct the amount necessary in order to exclude double funding of the practices referred to in Article 43 of Regulation (EU) No 1307/2013."

It further specifies, in Art.28(10), Art.29(6) and Art.30(8): "In order to ensure that double funding (...)is excluded, the Commission shall be empowered to adopt delegated acts in accordance with Article 83 laying down the calculation method to be used, including [in case of agri-environment-climate measure] in the case of equivalent measures under Article 43 of Regulation (EU) No 1307/2013."

Annex II of explanatory document

Annex IX of Regulation 1307/2013.

ANNEX IX

LIST OF EQUIVALENT PRACTICES TO GREENING referred to in Article 43(3)

I. Practices equivalent to crop diversification:

1) Crop diversification

Requirement: at least three crops, the main crop covering a maximum of 75% , and any one or more of the following applying:

- *there are at least four crops,*
- *lower maximum thresholds apply,*
- *there is a more appropriate selection of crops, such as, for example, leguminous, protein crops, crops not requiring irrigation or pesticide treatments, as appropriate,*
- *regional varieties of old, traditional or endangered crop types are included (on at least 5 % of the rotated area.*

2) Crop rotation

Requirement: at least three crops, the main crop covering a maximum of 75%, and any one or both of the following applying:

- *a more environmentally beneficial multiannual sequence of crops and/or fallow is followed,*
- *there are at least four crops*

3) Winter soil cover (*)

4) Catch crops (*)

II. Practices equivalent to maintenance of permanent grassland:

1) Management of meadows or pastures

Requirement: maintenance of permanent grassland and any one or more of the following:

- **Cutting regime or appropriate mowing (dates, methods, limits),**
- **Maintenance of landscape features on permanent grassland and control of scrub,**
- **Specified grass varieties and/ or seeding regime for renewal depending on the grassland type, with no destruction of high nature value,**
- **Evacuation of forage or hay,**
- **Appropriate management for steep slopes,**
- **Fertiliser regime,**
- **Pesticide restrictions**

2) Extensive grazing systems

Requirement: maintenance of permanent grassland and any one or more of the following:

- **Extensive grazing (timing, maximum stocking density),**
- **Shepherding or mountain pastoralism,**
- **Using local or traditional breeds for grazing the permanent grassland.**

III. Practices equivalent with ecological focus area :

Requirement: application of any of the following practices on at least the percentage of the arable land set pursuant to Article 46(1)

1) Ecological set-aside

- 2) *Creation of "buffer zones" for high nature value areas, Natura 2000 or other biodiversity protection sites, including along hedgerows and water courses*
 - 3) *Management of uncultivated buffer strips and field margins (cutting regime, local or specified grass varieties and/ or seeding regime, re-seeding with regional varieties, no use of pesticides, no disposal of manure and/or mineral fertilizers, no irrigation, no soil sealing)*
 - 4) *Borders, in-field strips and patches managed for wildlife or specific fauna (herbaceous border, protection of nests, wildflower strips, local seed mix, unharvested crops)*
 - 5) *Management (pruning, trimming, dates, methods, restoration) of landscape features (trees, hedgerows, riparian woody vegetation, stone walls (terraces), ditches, ponds)*
 - 6) *Keeping arable peaty or wet soils under grass (with no use of fertilisers and no use of plant protection products)*
 - 7) *Production on arable land with no use of fertiliser (mineral fertiliser and manure) and/or plant protection products, and not irrigated, not sown with the same crop two years in a row and on a fixed place (*)*
 - 8) *Conversion of arable land into permanent grassland extensively used*
- (*) *Practices subject to the method referred to in point (c) of Article 43(12).*

Annex III

[illegible]

Scheme 15:	...							
...	...							
...								
2- Organic farming 11 (29)								
Conversion (11.1)								
maintenance (11.2)								
3- Natura 2000 and Water framework directive payments 12 (30)								
Natura 2000 (agri land) (12.1)								
Water Framework Directive (12.3)								
4- Afforestation and agro-forestry 8 (21)								
Establishment of afforested land (8.1)								
Establishment of agro-forestry systems (8.3)								