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REPORT FROM THE COMMISSION TO THE COUNCIL

on the application of the system of cross-compliance

(under Article 8 of Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers)

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1. INTRODUCTION

The cross-compliance system is a major component of the 2003 common agricultural policy (CAP) reform. Cross-compliance **creates a link** between the full payment of support, and compliance with certain rules relating to agricultural land and to agricultural production and activity in the areas of the environment, public, animal and plant health, animal welfare and good agricultural and environmental condition. This link is expressed in concrete terms in the possibility, if the rules are not respected, of full or partial reductions of certain EU agricultural payments. The reductions shall be based on the severity, the extent, the permanence, the repetition and the intentionality of the non-compliance.

Cross-compliance has **two objectives**. The first is to contribute to the development of sustainable agriculture. This is achieved through the respect by the farmer of the rules relating to the relevant aspects of cross-compliance. The second objective is to make the CAP more compatible with the expectations of society at large. There is now a growing body of opinion that agricultural payments should no longer be granted to farmers who fail to comply with basic rules in certain important areas of public policy. The Commission is convinced that achieving these two objectives will help to ensure the CAP's future.

Member States have now to apply this system for all direct payments – decoupled or coupled – under the first pillar of the CAP¹. They have also to apply it to eight measures of the second pillar of the CAP².

The start-up phase has given rise to discussion on a number of issues and the sensitivity of this topic is in itself an indication that cross-compliance is not just a question of presentation. This should be regarded as a positive development, as cross-compliance should lead to improve the sustainability of the CAP and the level of public support for this policy. There is therefore no question of watering down this concept. Instead, every effort should be made to improve its acceptance by all actors, for the benefit of all.

As the farmers are at the heart of the system and their acceptance of cross-compliance is central to its success, it is very important to see things from their perspective. Cross-compliance may indeed represent a challenge as it often results in a rather bulky set of rules, which were previously implemented independently of each other but are now gathered in a single list touching on areas as different as environment, public health and animal health and welfare. The crucial element, the possibility of reduced payments, is also a matter of concerns.

¹ See Annex I to Council Regulation (EC) No 1782/2003.

² See Article 51 of Council Regulation (EC) No 1698/2005.

For the national administrations, the introduction of cross-compliance has also been a challenge. They had in particular to define in detail and communicate to farmers in an understandable way the requirements and standards to be fulfilled, to set-up the management, control and reduction system and to ensure smooth coordination between all the bodies involved.

It is important to distinguish between issues arising from the Community framework and those linked to the national implementation of this framework. In this respect, it should be noted that subsidiarity is one of the underlying principles of cross-compliance. The EU framework provides that the requirements and standards should address the local risks and constraints, and this means that they differ between Member States or regions. The EU framework also encourages the wide use of pre-existing national management systems, which means that the organisation of control systems also differs between Member States. At the same time, however, there is a need to ensure a level playing-field with regard to cross-compliance for farmers across the EU. This is ensured by means of a common framework which must remain compulsory, as regards both the definition of requirements and standards farmers have to fulfil and the management, control and reduction system. Striking the appropriate balance between a common EU framework, on the one hand, and local specific situations, on the other, is one of the most important challenges faced by the system.

The Commission is aware of these sensitivities on the part of those concerned and the present report will mainly concentrate, therefore, on proposing immediate solutions to the problems identified so far. The Commission is funding a number of studies on the implementation of cross-compliance by Member States. These are still ongoing and no definitive conclusions have been reached as yet. It is therefore too early to contemplate changes to the scope of cross-compliance but these will be addressed in the context of the "health check".

2. CROSS-COMPLIANCE AS DEFINED AT EU LEVEL

The **scope of cross-compliance** (the rules with which the farmer has to comply) comprises two components: the "statutory management requirements" (SMRs) and "good agricultural and environmental condition" (GAEC). The GAEC includes two types of element: farmers' compliance with a set of standards relating to four issues, and an obligation on the Member State to maintain the proportion of its agricultural area under permanent pasture.

- The introduction of SMRs under cross-compliance does not create new obligations for farmers, since the legislation in question and its enforcement rules existed independently for some time previously and cross-compliance reductions apply without prejudice of the independent system of penalties established by the specific legislation. It may however contribute significantly to the improved implementation of this legislation, in particular by raising awareness among farmers. 14 of the 18 Community acts listed as SMRs are Directives which, by their very nature, leave discretion to Member States as to the means to apply in order to achieve the objectives laid down therein. To some extent, this influences also their enforcement through cross-compliance.
- When cross-compliance entered into force the GAEC standards, as such, were new at least to those farmers who had not, as beneficiaries of rural development agri-environmental measures or less-favoured area payments, previously to apply good farming practices. The Member States have to define minimum requirements for all standards on the basis of the framework set up in Annex IV of Council Regulation (EC) No 1782/2003, except those that are not relevant to the national context. From a survey of Member States the Commission's

services are aware of certain problems with the definition and the extent of minimum requirements by the Member States. These problems will be followed up with the Member States and solutions will have to be found.

3. OBSERVATIONS ON THE APPLICATION OF THE CROSS-COMPLIANCE SYSTEM

3.1. Summary of data on the application of the system

The lively character of the discussions on cross-compliance is not the only indication that, despite the constraints outlined above, the system is actually being implemented on the ground. The Commission also has confirmation of this in the form of data received from 23 Member States on controls and reductions. These data (for 2005) may be summarised as follows:

- on-the-spot checks (240 898 in total) were carried out on 4.92% of farmers affected by cross-compliance. The rate for the Member States applying full cross-compliance (4.4%) stems from the specific control rate for identification and registration of cattle (5 or 10% of holdings). The rate for Member States covered by the single area payment scheme (SAPS) (5.7%), which apply only the GAECs, arises from the fact that in most Member States joint checks were carried out for cross-compliance and eligibility;
- reductions were applied for 11.9% of farmers subject to on-the-spot checks: this rate is higher for Member States applying full cross-compliance (16.4%) than for the other Member States (6.1%) as the latter had only to check for respect of the GAEC. Across the EU, total reductions applied amounted to €9.84 million;
- in Member States applying full cross-compliance³, most (71%) detected instances of non-compliance related to the identification and registration of cattle, while the remaining cases mainly concern the GAEC (13%) and the Nitrates Directive (10%);
- most reductions (68% overall – up to 98% in some Member States) were applied at the minimum level of 1% of direct payments. Some 14% were applied at a 3% level and 12% at a 5% level.

3.2. Issues raised by Member States

In early 2006, Commission services and Member States had an exchange of views on cross-compliance (on the basis of a questionnaire on the subject) in the framework of the Management Committee for Direct Payments. Member States explained issues that had arisen in the first year of implementation, which can be summarised as follows:

- **General.** The management of the system was felt in general to be burdensome. It was difficult to determine the practical elements with which farmers have to comply and which have to be subsequently controlled. It was not always easy to communicate the new rules to the farmers. Historical information was also lacking.
- **Reception among farmers.** Awareness-raising among farmers was hampered by the volume and technical nature of the information on cross-compliance. Farmers were sometimes confronted with new obligations. They also were under the impression that they

³ In order not to distort the figures, this does not include Member States only applying the GAEC.

were faced with the threat of a "double sanction": one under cross-compliance and another under the specific legislation.

- **Organisation of the system.** It was sometimes difficult to reconcile the use of the existing management and control system and the EU legal provisions. Specific constraints and problems arose from decisions Member States had made as regards the organisation of controls, e.g. too many or too few competent control authorities.
- **Sampling and control rate.** The population subject to controls was known too late to allow for the checking of certain requirements. It was suggested that rules for a possible random selection should be specified. The control rate could be higher under certain circumstances (same population covered by several control authorities with a rate of 1% each, specific control rates to apply, e.g. bovines, etc.). In particular, the specific control rates to be applied under sectoral legislation could pose organisational problems.
- **On-the-spot checks and reporting.** The rules were not clear enough as regards the appropriate time to carry out on-the-spot checks, what should be checked during the visit and the number of visits required. It was felt that checks were long, especially if the farm was split over several sites, and involved the participation of the farmer. Some requirements were difficult to check. Control reports were lengthy and not always easy to understand.
- **Calculation of reductions.** The number and range of requirements meant that the calculation of reductions was difficult and not easy for the farmers to understand. It was hard to define the notions of "severity", "extent", "permanence", "repetition" and overall "intentionality". It was also felt that the application of the "repetition" was also too automatic. There were risks of discrepancies between Member States. In practice, there was little scope for exempting minor instances of non-compliance from reductions, which made those concerned less receptive to the system.

3.3. Initial assessment of the audits carried out by the Commission

In 2005 and 2006, Commission services carried out 13 audits on the implementation of cross-compliance by ten Member States. The main findings are as follows:

- **Information given to farmers.** Information was given to farmers through booklets, internet material and training sessions. Issues covered included cross-compliance obligations, controls and the calculation of reductions (the information on the latter was sometimes rather general). This information was sometimes provided too late.
- **Designation of the competent control authorities.** A small number of Member States have designated the Paying Agency as the only competent control authority (CCA) for cross-compliance. In the other cases, the Paying Agency usually plays a coordinating role. The involvement of the specialised control bodies ensures a high level of expertise but raises coordination problems. It was also found that the CCAs sometimes delegate the on-the-spot checks to other bodies (public or private).
- **Selection of the control samples and risk analysis.** Difficulties have arisen where the population covered by the CCA is too small to allow a proper risk analysis, and also where the CCA is responsible for checking compliance with many requirements. In many cases, few specific risk criteria are used even if the information is available. Finally, the existence of differing control rates under cross-compliance gave rise to certain difficulties.

- **Elements of on-the-spot checks and reports.** The main difficulties found as regards checks were with SMR 2 (groundwater), SMRs 1 and 5 (wild birds and habitat), SMR 4 (nitrates), and SMRs 6 and 8a (animal identification and registration) for sheep, goats and pigs. Problems were found in the harmonisation of reports, the description of the nature and extent of checks performed, and the evaluation of detected cases of non-compliance.
- **Application of reductions.** Some Member States had already established reduction levels, thus leaving no scope for an evaluation by the controller, while other Member States only provide guidelines for calculating the reductions. Some matrices are unlikely ever to lead to reductions of more than 1%. Also, in many of the Member States that were visited, minor instances of non-compliance are exempted from reductions. Finally, detected instances of non-compliance outside the 1% control sample are not always followed up.

These findings will be assessed in the framework of the clearance of accounts procedure for EAGF expenditure.

4. IMPROVEMENTS TO THE SYSTEM

4.1. Development and simplification of the management, control and reduction system

Issues regarding the management, control and reduction systems have been identified on the basis of the information set out above. The Commission services have already taken initiatives to help the Member States to implement cross-compliance and seven guidance documents have been issued since 2005. They have also organised exchanges to enable Member States to share "best practices" and compare their experience of cross-compliance implementation. The Commission will continue to encourage such discussions, especially on:

- the possible use of bottlenecks for controls, e.g. conducting controls at the level of dairies or slaughterhouses, which could lead to facilitate on-farm checks,
- the systems of reductions (e.g. applying points systems),
- the information provided to farmers,
- the fact that some farmers are at greater risk of reductions than others.

The Commission is prepared to take further action without delay to tackle remaining questions which can be resolved at EU level. In this connection, the following issues will be addressed in discussions at Council or Commission level.

4.1.1. Tolerance for minor cases of non-compliances, new de minimis rule

In certain cases non-compliances found during checks may not justify a reduction under cross-compliance⁴. However, the current rules do not explicitly provide for any margin of discretion for the treatment of these minor infringements. In line with the principle of proportionality Member States should be allowed not to pursue instances which would not trigger the 3%

⁴ For instance animals kept for farming purposes shall be identified in accordance with Community animal health rules. Losing an ear tag or a cattle-passport does not mean an automatic sanction provided that animals remain identified by other elements (second ear tag or holding register). In this case the national authorities may not consider it as non-compliance liable to a reduction under cross-compliance.

reduction foreseen in case of negligence, which may in certain cases be reduced to a 1% minimum reduction. Nevertheless, in these cases, a warning letter should be sent to the farmer indicating that remedial action is necessary. These cases will be followed up and would be taken into account in case of repetition of non-compliance. In order to determine a margin of tolerance for the purpose of implementing such exemptions, a generalisation of the points system, which already applies in some Member States, may be examined.

Applying reductions to very low initial amounts may also be seen as unjustified and burdensome for the administration. Therefore a *de minimis* rule should be established allowing an exemption from applying reductions under cross-compliance, which fall below a threshold of around €50. This would exempt from the immediate 1% reductions farmers receiving less than €5 000. However the warning letter and follow-up as set out above should also apply in these cases.

In both cases remedial action must be followed up outside the regular 1% control sample. However this should not lead to the introduction of a new control layer.

The application of these rules would be without prejudice to the enforcement of sanctions established under the specific legislation.

4.1.2. *Harmonisation of control rates*

Where the specific legislation for certain sectors fixes a minimum control rate, it is this rate that should be applied rather than the 1% minimum rate laid down for cross-compliance. As mentioned by certain Member States, the existence of differing control rates might be making it more difficult to organise controls for cross-compliance. The Commission intends to introduce in the relevant Commission regulation a single control rate, of 1% minimum, for on-the-spot checks for cross-compliance. Nevertheless, any instances of non-compliance detected in the course of on-the-spot checks under the sectoral legislation would have to be reported, and followed up under cross-compliance. This 1% minimum control rate is without prejudice to the follow-up checks in the context of the tolerance for minor cases of non-compliances and the *de minimis* rule.

Under current Commission legislation, if on-the-spot checks reveal a significant degree of non-compliance, the number of such checks to be carried out in the following control period is increased. These follow-up checks concern all requirements and standards for which the competent control authority is responsible and, depending on the Member State's administrative structure, the increased control rate may concern several areas of cross-compliance. It would be preferable, however, to focus the increase of controls only on the area of risk. The Commission therefore intends to change the rules so that the increase in the control rate is limited to the particular area in which a high degree of non-compliance was found.

4.1.3. *Advanced notice of on-the-spot checks*

There is no provision in the current legislation regarding the prior announcement of on-the-spot checks for cross-compliance. Nevertheless, where joint checks are carried out for eligibility and cross-compliance, the principle of unannounced checks for the former has placed a *de facto* constraint on checks for the latter. Relaxing this restriction for area eligibility checks would improve the coordination of controls without jeopardising their effectiveness. The Commission therefore will, for SPS, SAPS and cross-compliance (including the eight rural development measures), create a possibility to give notice of checks up to 14 days in

advance provided that the purpose of the checks is not jeopardized. The possibility of extending this rule to other schemes will be further examined. However, controls on the identification and registration of animals (for eligibility or for cross-compliance) and on compliance with feed and food law, animal health and animal welfare rules will remain in principle unannounced due to the mandatory requirements of EU legislation.

4.1.4. Timing and elements of on-the-spot checks and reports

The timing of on-the-spot checks is not fixed in the current legislation, and this has given rise to a number of questions from Member States. The Commission foresees to clarify the rules to make it clear that the national authorities are required to identify the period of the year during which most, or the more representative, obligations are checked. Most of the checks will be carried out during this period. The remaining obligations will be checked within the regular 1% minimum sample at different times of the year.

Furthermore the Commission envisages to make the necessary changes in order to allow on-the-spot checks (like for eligibility checks), to be carried out on only half of the parcels instead of the whole farm.

Finally, rules should be clarified to ensure that the farmer receives the control report at the latest three months after the checks.

4.1.5. Improved selection of the control sample

Current legislation on on-the-spot checks does not allow for farms to be selected partly on a random basis. As random sampling has proved useful in the context of eligibility checks, the Commission intends to modify the rules to include a random element for cross-compliance too.

4.1.6. Improved information to farmers

It is essential that farmers are properly informed of the specific, concrete requirements they have to respect under cross-compliance. The Commission intends to clarify of the current rules with regards to the information Member States are obliged to provide to farmers.

4.1.7. Timetable for implementation of new or changed requirements under the present scope of cross-compliance

Experience has shown that it is not always easy to farmers to implement new requirements introduced under cross-compliance. This has been taken into account for the current requirements with a 3-year phasing-in of the SMRs. The Commission envisages to maintain this phasing-in principle by establishing a realistic timetable for the inclusion of any new or changed requirements under cross-compliance.

4.2. Taking into account the Farm Advisory Systems

Member States had to set up, by 1 January 2007, a farm advisory system (FAS) covering at least the requirements and standards of cross-compliance. The Commission services see this advisory system as fundamental to enhancing the acceptance of cross-compliance by the farmers. Indeed, a number of the problems that arose during the start-up period are linked to difficulties that farmer had in understanding and implementing cross-compliance obligations. As a farmer receiving advice is more likely to understand and therefore comply with his cross-

compliance obligations, his participation in the FAS could be taken into account as a factor in the risk analysis. The Commission intends to clarify the rules accordingly.

4.3. Taking into account the certification systems for the management of cross-compliance

A number of farmers are currently participating in quality certification schemes which usually involve a number of audits being made by the certification body. In some cases, cross-compliance on-the-spot checks are perceived by farmers as an unnecessary new administrative burden because they cover the same issues as certain standards already certified under private schemes. It seems appropriate to look for synergies between certification schemes and cross-compliance on-the-spot checks, provided that the certification schemes are officially approved and relevant to cross-compliance. The Commission therefore envisages to adapt the rules in order to allow the competent authorities to use data concerning certified farmers for risk-analysis purposes for the sample selection of farmers to be checked.

4.4. Simplification of the "10-month rule"

The so-called "10-month rule" laid down in Article 44(3) of Council Regulation (EC) No 1782/2003 proved difficult to manage by Member States and has a disproportionate impact on the land market. This rule – which obliges the farmer to keep at his disposal for 10 months the parcels declared to activate entitlements for the single payment scheme (SPS) – poses a number of management problems. A proposal will be made to address this issue properly for both the SPS and the SAPS. In addition, the responsibility of the transferor vis-à-vis cross-compliance obligations in cases where land is transferred in the course of the year will be clarified.

4.5. Phasing-in of the introduction of SMRs for Member States applying the SAPS

Under Council Regulation (EC) No 2012/2006, Member States applying the SAPS will have to implement the SMRs as part of cross-compliance as from 2009. Experience with the other Member States has shown that setting up this element of cross-compliance was facilitated by a 3-year phasing-in period. A proposal is envisaged to apply the same 3-year phasing-in period for the Member States applying the SAPS – this period would start in 2009 for all except Bulgaria and Romania, for whom it would start in 2012.

5. CONCLUSIONS

In the light of the evaluation set out in this report, the Commission, still in 2007, intends to:

- a. provide further information on the implementation of cross-compliance by Member States;
- b. make a proposal to the Council or submit draft rules to the Management Committee for Direct Payments to:
 - provide for a phased-in introduction of the SMRs for Member States applying the SAPS,
 - introduce provisions for simplifying the "10-month rule",
 - make improvements for tolerance for minor cases of non-compliances and introduce a new *de minimis* rule,

- harmonise control rates,
- introduce advance notice of on-the-spot checks, where possible,
- clarify the timing and the elements of on-the-spot checks and reports,
- improve the selection of the control sample, also with regards to the FAS and the certification systems,
- and improve the information to farmers.