REFIT Platform Opinion

Date of Adoption: 20/09/2016

REFIT Platform Opinion on the submission by the Danish Business Forum on the Cross Compliance rules under the Common Agricultural Policy.

The REFIT Platform has considered the issue raised by the Danish Business Forum regarding the administration of cross compliance rules in the Members States.

Some members of the Stakeholder group support the recommendation that the Commission examines the system of controls applying to Pillar II, but believe that any broader review of cross-compliance rules would best be dealt with as part of a more holistic evaluation, (i.e. 'fitness check') of the CAP in order to avoid detracting from the objectives of the legislation .

Some members of the Government group recommend that the Commission revises the legislation and/or introduces "soft measures" (simplification of requirements placed on farmers within the existing framework). Other members have strong reservations and consider that the Platform should not issue this recommendation because it comes soon after the last revision of the CAP and it would lead to a modification of basis acts

Those recommendations should be examined by the experts when discussing the post 2020 CAP. At this stage of the implementation of the current CAP, it is far too early to fully follow up those recommendations.

The majority of the Government group has strong reservations concerning the Stakeholder group's recommendation for a fitness check and firmly object it. There are already provisions in the CAP regulations to review the CAP. These reviews are necessary for preparing the discussion concerning the CAP for the period post-2020. There is no need for an additional Fitness Check. Furthermore, the REFIT Platform must serve, only and exclusively, to try to achieve simplification, burden reduction and regulatory improvement, and this suggestion may go beyond simplification and it is a proposal of a review of the whole CAP.

Detailed Opinion

Contents

1 Submission I.2a by the Danish Business Forum (DBF)

Farmers receiving direct aid or subsidy from the Rural Development Programme must meet a number of requirements regarding e.g. the environment, health and animal welfare (so-called cross compliance). The purpose of cross compliance (CC) is to promote sustainable agricultural production. However, cross compliance is administered in different ways in the Member States, creating an unlevel playing field and disproportionate penalties, unclear rules and disproportionately large aid reductions, which make it difficult for farmers to organise their operation appropriately.

A revision of the CC-rules should be conducted in order to create greater transparency and proportionality of the regulatory framework and to minimise the risk of differing interpretations in the Member States. Furthermore, the European Commission should ease the possibility for the Member States to learn from each other's implementation of EU rules on cross compliance by, for example, having tables of comparison.

2 Policy context

Cross compliance links CAP support to farmers (direct payments, certain rural development payments and certain wine payments) with their respect of standards of environmental care, of public, animal and plant health and of animal welfare. Before the 2003 reform, a farmer infringing the rules laid down in EU legislation in the areas of environment, public and animal health, animal welfare and management of land, did not see any consequences for the support he received. The 2003 reform introduced a radical rebuilding of the CAP, with important innovations such as the 'decoupling' of income support payments to farmers or the introduction of 'cross-compliance' and 'modulation'. Since 2005, all farmers receiving direct payments are subject to compulsory cross-compliance.

With cross compliance, this support is reduced proportionately to the extent, severity, permanence and recurrence of the infringement.

The cross-compliance system is based on two instruments listed together in Annex II Regulation (EU) No 1306/20131: the Statutory Management Requirements (SMRs) and the standards for Good Agricultural Environmental Condition (GAECs) of land. The SMRs stem from sectorial legislation in the areas of animal and public health, animal welfare and environment. These refer to basic requirements applicable to all farmers, not only CAP beneficiaries. Accordingly, no additional burden is imposed on CAP beneficiaries and requirements are harmonised in Member States as they stem directly from European legislation. From the beginning, only the relevant parts were introduced to cross-compliance but not entire Regulations or Directives. Additional stricter national requirements are not to be enforced via cross-compliance. The GAECs are to be defined by Member States achieving the set aim by taking account of local conditions. Thus reflecting the principle of subsidiarity.

[1] http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1306&rid=1

Both SMRs and GAECs serve as the baseline for certain Rural Development (RD) measures, as RD support should be calculated taking account of the cost incurred and the income foregone.

The scope of cross-compliance was already reviewed exhaustively and several times in the course of the past discussions on the CAP (in particular the 2009 Simplification exercise, the Health Check and the 2013 CAP reform).

The 2013 reform was designed to achieve continued food security and safety in Europe, whilst also ensuring a sustainable use of land and maintaining natural resources, thus preventing climate change and addressing territorial challenges. In this framework changes have also been introduced for cross compliance. The objectives have been clearly included in the text of the legislation and the legal basis has been harmonised and streamlined. The scope of cross compliance has been simplified into one single list including all Statutory Management Requirements (SMRs) and Good Agricultural Environmental Condition (GAECs) standards. Moreover, the number of SMRs was reduced from 18 to 13, clearing out cases where there are no clear and controllable obligations for farmers. The GAEC legal basis has overall been harmonized and the number of the GAEC standards has been reduced from 15 to 7 to ease their implementation in the context of agricultural activity and to ensure consistency with the "Greening"2. All of the cross compliance requirements were already applicable before the 2013 reform.

Member States have a legal obligation to inform beneficiaries in an exhaustive, understandable and explanatory way on their obligations arising from cross-compliance.

The new early warning system is voluntary for Member States. It has been incorporated in order to simplify and to ease cross compliance implementation by farmers and by competent national authorities. It offers the possibility to issue an early warning letter to first time offenders provided that the non-compliance does not constitute a direct risk to animal or public health. Beneficiaries receiving an early warning may get preferential access to the farm advisory system.

Another simplification introduced by the new CAP reform is the exemption from the cross compliance system for farmers participating in the Small Farmers Scheme.

3 Opinion of the REFIT Platform

3.1 Considerations of the REFIT Platform Stakeholder group

There is support for the recommendation made in this draft opinion for the Commission to review the complex system of controls applying to Pillar II on the grounds that they are

[2] The 2013 reform of the Common Agricultural Policy introduced several instruments to promote environmental sustainability and combat climate change. These instruments comprise a green direct payment, enhanced cross-compliance obligations, an obligation to allocate 30% of the Rural Development budget to projects and measures that are beneficial for the environment and climate change (including voluntary agri-environment-climate measures), training measures and support from the farm advisory services. http://ec.europa.eu/agriculture/glossary/index_en.htm#g

potentially acting as an unnecessary barrier to farmers wishing to enter into environmental commitments.

However on the broader recommendation relating to CAP controls and penalties the view of the Stakeholder group is that proper consideration needs to be given to the objectives of the cross-compliance framework and the significant issues that still exist in terms of inadequate implementation and enforcement of cross-compliance requirements. One member suggests that any review of cross-compliance rules and the system of controls and penalties would best be dealt with as part of a holistic evaluation (i.e. 'fitness check') of the CAP as a whole.

With respect to the recommendations made by the Government group, the Stakeholder group has considerable concerns regarding a number of the recommendations made in this draft opinion on the grounds that – contrary to the mandate of REFIT Platform – they could lead to a weakening of the existing set of standards undermining the cross-compliance system as a whole. Specific comments on the recommendations are as follows:

- Recommendation I.5. This recommendation is strongly opposed. The inclusion of the 'intentional breach' concept is essential in order to apply appropriate and proportionate penalties.
- Recommendation I.6. This recommendation is strongly opposed. It would allow for an intentional breach to take place and attract an inappropriately low penalty if it was the first occurrence. Retaining the concept of intentionality for first breaches is an important disincentive to calculated and intentional non-compliance and should be retained in order to ensure the integrity of cross-compliance.
- Recommendation IV.1. This recommendation is strongly opposed. It would undermine the uniformity of cross-compliance across the EU. A fundamental principle behind cross-compliance is that farmers in receipt of public money should not be able to breach domestic and European legislation without penalty. Removing animal welfare and safety standards in those Member States that do not use animal welfare related EAFRD measures would undermine this principle and call into question the enforcement of these important common standards across the EU.
- Recommendation IV.2. This recommendation is strongly opposed on the basis that no farmers should be exempt from cross-compliance standards.
- Recommendation V.1. Cross compliance is crucial in order to ensure maintenance of common standards, and to maintain the principle that those in receipt of public money should not be able to breach domestic and European legislation without penalty. Rather than focusing on reducing the range of cross compliance requirements, the Commission should focus on ensuring that enforcement is robust and effective.
- Recommendation VI.1. This recommendation is strongly opposed on the basis that agri-environment payments are intended to build on the common baseline provided by cross compliance. It is proportionate and appropriate that recipients of direct payments should not be able to breach cross compliance standards and still receive significant payments through Rural Development Programmes without any consequences.

3.2 Considerations of the REFIT Platform Government group

Recommendations to the Commission

General statement:

Cross compliance links CAP payments to compliance with rules related to the environment, public, animal and plant health, animal welfare and to farm land practices that meet requirements of good agricultural and environmental standards. Apart from the smallest farm holdings, for which an exemption can be applied, cross compliance applies to all CAP beneficiaries. The system of cross compliance constitutes as such a comprehensive system of requirements and standards, which affects large parts of the agricultural sector, and in particular farmers for which agricultural activity constitutes the primary activity.

The cross compliance system should, in due time, be examined with due diligence to ensure that the system does not impose unjustified administrative burdens on farmers, and to ensure that it is implemented in a sound and equitable way in Member States without causing distortive competitive effects.

Generally, unclear rules implemented with little concertation with the Commission can easily lead to differences in interpretations and distortive practices. As an example, the European Court of Auditors has criticised the lack of common standards for the GAEC 2 standard on authorisation procedures for irrigation resulting in some Member States applying weak or non-existing authorisation procedures whilst others apply procedures that are far more restrictive.

The way the cross-compliance system operates, it is the Member States that are mainly responsible for "translating" and implementing the SMRs and GAEC standards annexed in Council regulation 1306/2013 into operational requirements and standards for farmers to comply with. How to effectively operationalise and define these conditions, how many of them are required, what are the specific targets Member States are to attain under each of the areas of priority of cross compliance, are issues that are rarely discussed at EU level and that should be discussed in the perspective of the implementation of Article 110 §5 of regulation 1306/2013, i.e. first results on the performance of the CAP, to the European Parliament and the Council by 31 December 2018 and the second report including an assessment of the performance of the CAP that shall be presented by 31 December 2021.

In line with the Danish Business Forum (DBF), the Member States co-signing this initiative are of the opinion that more could be done to create greater transparency and proportionality of the regulatory framework which should be analysed in due time, by experts and in the perspective of the next financial period of CAP funding .

Different recommendations are described below which also reflect different ideas among the Member States on how to obtain greater transparency and proportionality. Those recommendations are preliminary ideas that should be examined by the experts when discussing the post 2020 CAP. At this stage of the implementation of the current CAP, it is far too early to fully follow up those recommendations.

In total, **20 recommendations** are made of which 7 could lead to regulatory amendments (with a maximum of 3 related to the basic act, Council Regulation 1306/2013 and the other 4 concerning to the technical legal implementing and delegated acts of the CAP). The remaining recommendations can be regarded as "soft" non-legislative measures and

initiatives (implementation guidance offered to Member States, clarifications of legal interpretation, facilitation of exchanges of best practices, audit results, etc.).

In general, Member States have responded favourably to the recommendations and expressed interest in examining them further at Member State expert level.

Many Member States have commented on the initiative, of which most have expressed general support to the initiative (accompanied in some cases with remarks some of the recommendations). **A few Member States** have not provided a general opinion, but commented on the recommendations individually, with **some** expressing support for the vast majority of the recommendations ***[a few Member States*** *do not support the initiative, with one suggestion that the recommendations should await discussion in the context of the 2020 CAP reform. The text below should therefore not be seen as reflecting the position by these Member States]*.

CAP simplification programme

Approximately 80% of CAP spending across the EU (€46 billion in 2014) is spent on Pillar I, and farmers need to comply with cross compliance requirements in order to receive Pillar I funds. Cross-compliance is by its very nature designed to ensure that farmers in receipt of CAP expenditure across the EU comply with national legislation and other common minimum standards. There is therefore a clear risk that differing interpretations and standards will exist across Member States. Whilst this is a natural consequence of the 'subsidiarity' principle,

- **It is recommended that the Commission should review cross-compliance rules as part of their CAP Simplification programme (*recommendation 0.1*).**

I- Platforms of discussion and sharing of experience between the Commission and Member States

In 2015, the Commission organized a series of thematic workshops and exchanges on rules on Direct Payments between the Commission and Member States. Positive reactions have emerged from that initiative. A similar approach should be envisaged for cross compliance.

Topics for discussion could include the following:

- Clarification of the scope and targets to be attained under cross compliance:

Whilst Member States are responsible for converting the SMR/GAEC provisions annexed in the EU regulation into clear and operational national cross-compliance conditions, the targets to be attained are not clearly defined in the CAP regulation.

In the absence of clear targets, there is a risk that farmers are required to do too much. The European Court of Auditors has reported in a thorough analysis of the cross compliance system, that the SMRs farmers must comply with generally are too numerous and complex.

- **We call for the Commission to clarify best practice under cross-compliance in order to avoid implementation that in scope is suboptimal and administratively inefficient, and requirements that are far reaching and impose excessive burdens on farmers as a result of unclear targets (*recommendation I.1a*).**

- **We ask the Commission to give higher priority to engaging with Member States**

when setting their SMRs. There is limited communication between the Commission and Member States in this area (*recommendation I.1.b)*

- Administrative penalties: calculation principles, criteria to assess non-compliances:

According to the regulation, where there is a case of non-compliance, as a general rule farmers are on average to have a reduction of 3 percent of the CAP payments applied.

- **We call on the Commission to evaluate, how cross compliance penalties can be calculated more evenly for the same breach. Currently it is perceived as discriminatory against larger holdings, which are penalized more severely than smaller holdings for the same breach (*recommendation I.2)*.**

No explanation is set forward in the regulation as justification for a standard 3 percent sanction rate. In contrast with cross-compliance, penalties under Direct Payment (Pillar I) and Rural Development (Pillar II) do not operate with an average sanction. It should be recalled that national sector controls performed pursuant to the EU directives relevant for cross-compliance also operate with a sanctions system of their own (with their own system of penalties, warnings, fines etc.). Thus, in case of breaches of cross-compliance, farmers are liable to have penalties imposed under several systems, with sanctions both under the national system, and under the CAP (payment deductions).

- **As an alternative, if the calculation method currently in place should continue to apply, Member States should be given discretion when applying "the 3 percent rule" to apply a maximum ceiling for amounts to be deducted (*recommendation I.3)*.**

The ceiling could be calculated taking into account what farmers on average receive in CAP payments in the Member State. For all farmers, whose total CAP payment is equal to or above that average, the same aid deduction (in nominal value) would apply (i.e. 3 percent of the average level of payments per farmer). This would allow disproportionality in penalties to be reduced but not eliminated entirely which is why recommendation I.2 should be favoured over I.3.

The CAP regulation provides the option for national administrations to reduce a penalty to 1 percent, or increase it to 5 percent based on the administration's assessment of the importance of the non-compliance:

- **We ask for the Commission to clarify what constitutes a "1, 3 or 5 percent non-compliance". Neither the CAP regulation (Reg. 1306/2013) nor any of the documents issued by the Commission to this date provide guidance on this issue. Instead of a main 3 %'s rule, it could be required that the penalty could be 1 %, 3% or 5 % (*recommendation I.4)*.**

Whether to apply 1 or 5 percent in aid deduction can have considerable impact on farmers´ disposable income. The absence of guidance is noteworthy when considering that cross compliance is first and foremost a control and sanction system. Member States are liable to financial corrections if CAP audits were to contest how administrative penalties have been applied. As a precautionary step, and in line with the principle of sound financial management, it should be in the common interest of the Commission and Member States to avoid negative audits. Guidance on how to differentiate between 1, 3 and 5 percent non-

compliances should be provided. Instead of a main rule (3 %), it would be more proportionate to state that the penalty could be 1 %, 3 % or 5 %.

Concept of intentional non-compliance:

- **The Commission should provide the clarification on the intentional non-compliance which should be applied in case of cross-compliance infringements in accordance with the Article 99(3) of R1306/2013, as well as give assessment criteria for such cases/or this concept should be deleted *(recommendation I.5*).**

Currently implementation of the concept of intentionality is up to Member States and it is very complicated for the administration to establish if the non-compliance has been committed intentionally or not, as well as these decisions in almost all cases being too subjective and incapable of being applied in a legal act. This might lead to different interpretations in similar cases, which means that farmers are even not treated equally even within one Member State, let alone that such lack of unified interpretation leads to different approaches to cross-compliance penalties in different Member States.

- **If the concept of intentionality is to be maintained, we ask for Article 40 of Regulation. 640/2014, regarding penalties in cases of intentional non-compliances, be amended so that it applies only to those cases (re-occurrences) referred to in the last sentence of Article 39 (4) of that regulation *(recommendation I.6)*.**

It is very difficult for the administration to establish if non-compliance has been committed intentionally or not. This might lead to different interpretations in similar cases, which means that farmers are not treated equally. Thus, Article 40 should only be applied to cases covered by the last sentence of Article 39(4). This amendment could be made also because the rules of intentionality in the part of IACS were deleted in the CAP reform (previous Articles 60 and 65(4) of Regulation 1122/2009).

We propose the following amendment to article 40 of Reg. 640/2014 (additions marked in **bold** and deletions with ~~overwritten~~ text):

If, based on the last sentence of Article 39(4), *~~Where~~ the non-compliance determined has been committed intentionally by the beneficiary, the reduction to be applied to the total amount referred to in Article 39(1) shall, as a general rule, be 20 % of that total amount.*

However, the paying agency may, on the basis of the assessment of the importance of the non-compliance provided by the competent control authority in the evaluation part of the control report taking into account the criteria referred to in Article 38(1) to (4), decide to reduce that percentage to no less than 15 % or to increase that percentage to up to 100 % of that total amount.

Follow-up and guidance in relation to cross compliance auditing:

Many Member States have been sanctioned as an outcome of different cross-compliance audits which in general indicates that there is no common understanding how to implement the cross-compliance system, including establishing requirements and application of sanctions, and there is a need for further discussion for future improvement of cross compliance.

Therefore;

- **It would be reasonable to invite the Commission to perform an analysis of its reports of the cross-compliance audits it has carried out in Member States in order to identify the most common problems and errors observed. Such a report would indicate where improvements are necessary in the legislation (*recommendation I.7*).**

- **There is also scope to re-evaluate the outcomes of audit findings in order to ensure the actual risk to the CAP Fund is properly reflected in audit findings and consequential correction decisions. It is therefore recommended that the Commission should be required to demonstrate that the cross-compliance penalty regime that Member States are required to operate is applied consistently and fairly across the EU; and that any penalties applied to farmers are proportionate to the severity, extent, permanence and recurrence of any infringements discovered (*recommendation I.8*).**

- **Farmers are asking why CAP controls and penalties (including cross-compliance) are so punitive for what can be very minor errors. This could be addressed by providing auditors and inspectors with more appropriate and pragmatic guidance on interpretation and discretion (*recommendation I.9*).**

II- SMR database

- **We recommend that the Commission establish a database for the statutory management requirements (SMR) *(recommendation II.1)*.**

Cross compliance is a complex system operating across rather large areas of legislation under each SMR and GAEC. Exchange of information on how to implement clear, specific and controllable cross compliance requirements and standards and best practises should be facilitated and encouraged in the EU.

The database should include an overview of the legal obligations Member States have implemented and made applicable to farmers as part of the SMRs under cross compliance. It could also include information such as guidelines made available to farmers as well as instructions to inspectors performing on-the-spot checks. The information base could be modelled after the GAEC database currently in use. The GAEC database has proven to be a successful way of sharing information on how Member States implement their GAEC standards. The positive experiences gained from the GAEC database should lead to consideration of the possibility to do the same for the SMRs.

III - Guideline documents on cross compliance

- **We invite the Commission to regularly update guideline documents on cross compliance, to ensure that they are comprehensive and cover all SMRs, and are consistent with EU sector regulations, when amended, to avoid legal uncertainties *(recommendation III.1)*.**

It is important to have guidance from the Commission in order to ensure a correct interpretation and implementation of cross compliance. Throughout the past 10 years, the Commission has published a number of working documents, however only very few in recent years even though EU sector legislation relevant for cross compliance has been revised on numerous occasions.

Commission guideline (08.09.05 AGR 022361) lays out the principles to be used to determine for which SMRs it is a breach of national law, and for which it is a breach of the minimum EU standard, that triggers aid reductions under the cross compliance. The approach of classifying requirements by "type" categories depending on whether they fall under either category is useful for the CAP administrations. The guideline (08.09.05 AGR 022361) should be reviewed and brought up to date since much of the legislation has been revised subsequently to the publication of the document in 2005. Also, the document should be widened in scope as it does not cover all SMRs currently in force (e.g. SMR 4 on food safety). The working documents on SMR 4 have provided some guidance with respect to the general provisions laid out in Regulation (EC) No 178/2002 by introducing the hygiene provisions but does not structure the legislation into "type" categories, which would help clarifying the scope of cross compliance.

The full set of guidelines should be made available for Member States along with questions for clarification and replies from the Commission. These should be organised in a logical way in a shared information system (for example CIRCA) so that they are readily accessible to Member States.

- **We invite the Commission to establish guidelines on the implementation of GAEC standards *(recommendation III.2).***

IV – Proportionality in penalties:

- **We ask the Commission to consider if a non-compliance on an animal linked requirement should lead to a penalty only for animal-related supports in those Member States where these aids are applied, and if the area linked requirement should cause a penalty only for area payments (recommendation IV.1).**

The system of cross compliance is not fair and equitable especially for farmers in different production sectors (animal husbandry/crop production). More requirements concern animal production than crop production. The sanctions relating to cross compliance are not proportionate in different production sectors. Farmers feel that it is not fair that a non-compliance of animal-related cross compliance requirement causes penalties to all area-based payments. And, vice versa, they feel it to be unfair that non-compliance of an area-based requirement leads to a reduction of the animal related payments. This especially concerns farmers with only few animals but hundreds of hectares and vice versa, farmers with just a few hectares and lot of animals. Not only these farmers who have only a few animals/few hectares feel the link between non-compliances and all animal and area-based payments unfair, as all the farmers consider the position to be unfair. So this link should be deleted, as proposed above, taking into account the structure of the direct payments and the various levels of support provided to farmers across sectors.

- **We ask the Commission to consider introducing a minimum level of livestock below which farmers would be exempted from cross-compliance animal related**

rules (<u>recommendation IV.2</u>).

The cross compliance system is difficult for farmers to understand especially since the effective reduction is more related to the size of the payment than to the severity of the infringement. Among farmers there is little acceptance for a system that sometimes implies disproportionate reductions. With the reductions under cross-compliance closely linked to the number of hectares, large farm holdings will be sanctioned more severely than smaller farms for the same non-compliance. This is a particular problem for large plant producers who are dissuaded from diversifying into establishing even small livestock to pasture their land.

The number of rules and hence the risk of a reduction differs considerably between farmers with different types of production. In cross compliance there appears to be an imbalance and overweight of animal-related requirements, plant producers are therefore not likely to diversify into livestock production – not even with a small number of livestock to grass, for instance in a relatively limited extensive area - although it would make good sense from a production and nature perspective.

The minimum level could be set relative to the average herd size or e.g. 10 bovine animals. If a farmer has fewer animals, he would be exempted from cross compliance as regards animal-related rules. The exemption would only cover animal related cross compliance rules. He would still have to respect the remaining rules on cross compliance concerning the environment, climate change and good agricultural condition of land. This de minimis would help address the problem of disproportional risk of penalties faced by large holdings involved in animal production.

<u>V) Review of the cross compliance control system</u>

At the moment there are far too many requirements in the system of cross compliance, which cause lot of bureaucracy for the farmers and for the administration.

The lack of clear targets for cross compliance also manifests itself in relation to the scope of controls under the system. The basic principle in the CAP regulation is that Member States must control cross-compliance on at least 1 percent of farm holdings. Without further justification, the regulation goes on to require that Member States perform cross compliance checks at farms selected on the basis of the minimum control rates that apply to the EU directives annexed (Council Regulation 1306/2013). And in the delegated act (Art. 38 of Regulation. 640/2014), the scope is widened to basically any type of control, even controls carried out outside of the CAP, but for which Member States are expected to oversee that cross compliance is respected.

- **We ask the Commission to analyse the system of cross compliance so that only the most important, relevant and clear SMRs would be maintained *(<u>recommendation V.1</u>)*.**

- **We urge the Commission to review the provisions on control rates on cross compliance in the interest of contributing to better cost effectiveness for national administrations and avoid excessive controls under cross compliance *<u>(recommendation V.2).</u>***

- **Non-compliances within cross compliance, which may lead to CAP aid**

deductions, should apply within the 1 percent sample of controls established for the specific purpose of cross compliance and not to other controls performed as part of other control systems *(recommendation V.3).*

VI – Review of the delineation between cross compliance and agri-environmental measures (Rural Development)

- **We urge the Commission to examine the possibility of exempting rural development from cross compliance *(recommendation VI.1)***

Cross compliance applies both to farmers receiving direct payments and agri-environmental payments provided under Rural Development. However a clear delineation is drawn in the CAP rules, hence agri-environmental payments only compensate for commitments above farmers obligations under cross compliance. Hence cross compliance will continue to form the baseline for area based payments under Pillar II. However, as long as cross compliance applies to Rural Development Policy, farmers may nonetheless still run the risk of having cross compliance penalties imposed in connection with Rural Development.

Summary: recommendations requiring regulatory actions:
The recommendations fall under the category of either "soft measures" (e.g. implementation guidance to Member States, clarifications of interpretation, facilitation of exchanges of best practices etc.) or requests for regulatory actions.

Of a total of twenty recommendations, seven recommendations could potentially - once further analysed - lead to regulatory amendments, out of which a maximum of three are related to the basic act, Council Regulation 1306/2013. The remaining four recommendations linked to the CAP provisions would require amendments of technical implementing acts, which can be initiated by the Commission on its own initiative whenever it sees fit and with limited consultation needed of the other EU institutions:

	Amendment of basic act (Council Regulation 1306/2013) needed:	Amendment of implementing acts needed:
Recommendation I.2, I.3 and I.4 on reassessing the 3 pct. sanction rule	No	Yes, art. 39, Reg. 640/2014
Recommendation I.5 on clarification or alternatively deletion of the concept of intentional non-compliances	If deleted as an alternative to clarification being provided (on applied assessment criteria etc.), yes (art. 99 (3)). Otherwise, no.	No
Recommendation I.6 on applying the concept to cases of reoccurrence	No	Yes, art. 40, Reg. 640/2014
Recommendation IV.1 on proportionality in penalties (delinking animal and area related measures)	Yes, art. 97	Yes, art. 5-6, Reg. 809/2014 on the application of reductions and penalties
Recommendation IV.2 on proportionality in penalties (minimum livestock	Most likely, yes (art. 97)	No

derogation)		
Recommendation V.2 and V.3 on review of control scope	No	Yes, art. 38 of 640/2014 and art.68-69, Reg. 809/2014.
Recommendation VI.1 on exempting Rural Development from cross compliance	Possibly (art. 92) unless empowerment exists to handle this in delegated/implementing act.	

Additional opinion by the Government group

Approximately 80% of CAP spending across the EU (€46 billion in 2014) is spent on Pillar I, and farmers need to comply with cross compliance requirements in order to receive Pillar I funds. Cross-compliance is by its very nature designed to ensure that farmers in receipt of CAP expenditure across the EU comply with national legislation and other common minimum standards. There is therefore a clear risk that differing interpretations and standards will exist across Member States. Whilst this is a natural consequence of the 'subsidiarity' principle, it is proposed that the Commission should review cross-compliance rules as part of their CAP Simplification programme.

Farmers are asking why CAP controls and penalties (including cross-compliance) are so punitive for what can be very minor errors. This could be addressed by providing auditors and inspectors with more appropriate and pragmatic guidance on interpretation and discretion.

There is also scope to re-evaluate the outcomes of audit findings in order to ensure the actual risk to the CAP Fund is properly reflected in audit findings and consequential correction decisions. It is recommended that the Commission auditors should concentrate only on most important issues and that any penalties applied to farmers are proportionate to the severity, extent, permanence and recurrence of any infringements discovered –and that any penalties applied to farmers are proportionate to the severity, extent, permanence and recurrence of any infringements discovered.

More broadly, with CAP budgetary ceilings for direct payments set at Member State level and all Member States now on a trajectory towards decoupled direct payments the scope for payments to distort the single market is greatly reduced compared to the CAP of the past. Member States should therefore be given much greater discretion over how they control that expenditure to ensure it only goes to eligible beneficiaries/land. Following the discussion in Agriculture Council in March 2016 on Audits and Controls, it is recommended that the Commission should take a fresh look and fundamentally reassess the IACS regime. In particular, the Commission should analyse whether or not the current strict CAP controls, which have their origins in the production-oriented CAP of the 1980s and 1990s, remains a proportionate and pragmatic means of protecting from risks to the fund under today's more modern CAP with its much stronger focus around de-coupled direct payments and delivery of environmental public goods.

The recent Commission report on protection of the EU Budget to end 2014 reveals at Table 7.1 that across EU Member States financial penalties (which will include, but be broader than, those relating to cross-compliance) totalled €289 million for that year alone. Given the increased complexity associated with the new CAP it is likely that this figure will increase, which is one of the reasons why a comprehensive overhaul of the IACS system is required. There is also growing evidence from farming stakeholders in particular that the complex EU controls applying to Pillar II measures are dissuading farmers from entering into environmental commitments, denying them access to an important income stream whilst

limiting the delivery of environmental public goods. Furthermore, fixed flat-rate corrections and extrapolated corrections should only be used in cases where the Member State cannot present any calculations on the risk to the fund. In cases where there is inaccuracy in the calculation, the Commission should use the calculation as the basis and determine the financial correction by adding an amount that should cover the inaccuracy (e.g. if a calculation of 100 000 euros involving inaccuracy has been presented the Commission could consider that an increase by, for example, 20% should cover this, which means that the financial correction would be 120 000 euros).

As part of the new yellow card system which is being introduced, it is also recommended that the Commission should reconsider whether or not a more proportionate and fairer approach to allowing farmers and Member States more discretion over how minor errors are handled could be found without automatically requiring an increase in the number of inspections which are required to be undertaken. At the moment there is no possibility, despite the 0,10 ha rule provided in Article 18(6) of Regulation (EU) No 640/2014, concerning eligibility criteria to avoid a reduction even if the non-compliance is only minor. An early warning system applied mutatis mutandis as provided in Article 99(2) of Regulation (EU) No 1306/2013 should be widely introduced. More proportionality is needed to the penalty system. Small over-declaration of area is usually caused by mistake, not because of fraud. The benefit for farmers of such over-declaration is minor, however the penalty and administrative work is huge.

To make the penalty system more proportionate the area in Article 18(6) should be at least 0,50 ha. Farm sizes are growing all the time and the old limit is far behind the current farm size. Administrative penalties for farmers should be tailored more closely according to the nature of the infringement. There should be a general limit (at least 5 %/ 5 animals) where no administrative penalty applies, but the payment is made up to the eligible amount only. The IACS system has proven very effective and the Court of Auditors has also noticed this, which is why the general limit should be 5 % before any administrative penalty applies. Severe penalties should be maintained for repeated breaches once the recipient has been made aware of the issue, but otherwise more proportionality is needed.

Generally Member States have expressed mixed views on this opinion. A Member State does not support looking at cross compliance under the REFIT platform and would prefer to review under CAP Reform. Another Member State does not support the opinion about reviewing the cross compliance rules.

However, they consider that the more detailed proposals included in the draft opinion on cross compliance are reasonable but should be discussed carefully because they could imply some extra costs in order to adapt the management of the system. In general, another Member State agrees with the proposal of sharing information among Member States or the European Commission (databases) and any guideline or clarification coming from the European Commission will be welcome.

Some Member States support the proposals. One Member State would like to highlight the need to re-evaluate the outcomes of audit findings in order to ensure the actual risk to the CAP Fund is properly reflected in audit findings and consequential correction decisions. According to the calculation of financial corrections guideline document C(2015) 3675 of 8.6.2015 the lack of implementation of only one of key element leads to a flat rate correction of 5%, which is a several million euros. It is difficult to say how many “key elements” cross

compliance system includes, but there could be about 700 key elements. This minimum 5% flat rate correction is a truly disproportionate penalty for the State. Flat rate correction should be used only in exceptional cases and this should not be the starting point for financial correction.

Many of the issues and proposals gathering in this draft opinion are far enough from just simplification and instead they enter into basic features of regulations which had already been subject of deep analysis and discussions within a large number of expert groups as well as the Council and Commission working groups before they could be laid down in the corresponding regulations.

Although much of the concerns voiced in this document could be shared, any modification of the regulations must be analysed, discussed and agreed within the appropriate technical groups. What is more, the most important decisions affecting to the general design of these policies should be undertaken in the future debates on the CAP to be applied from 2020 onwards.

A majority of the Government group has strong reservations concerning the Stakeholder group's recommendation for a fitness check and firmly object it. There are already provisions in the CAP regulations to review the CAP. These reviews are necessary for preparing the discussion concerning the CAP for the period post-2020. There is no need for an additional Fitness Check. Furthermore, the REFIT Platform must serve, only and exclusively, to try to achieve simplification, burden reduction and regulatory improvement, and this suggestion may go beyond simplification and it is a proposal of a review of the whole CAP.