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ANNEX 2E

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ANNEX 2E: TECHNICAL ANNEX ON CROSS COMPLIANCE

1. BACKGROUND

CAP payments are linked to the respect of basic requirements for agricultural activity through the so called system of cross compliance. These basic requirements stem from some EU legislation taken from a wider body of EU legislation on environment, food safety, animal and plant health and animal welfare (Statutory Management Requirements - SMRs), but also include standards on keeping land in Good Agricultural and Environmental Conditions (GAEC) which are specific to cross compliance.

In the case of SMRs, the legal obligations applying at farm level stem from Directives and Regulations developed at EU level. These legal acts apply to all concerned physical or legal persons whether they receive or not CAP support. These legal instruments have their own sanctions systems to deal with infringements, and Member States implement management and control systems for them as provided for in the legal acts.

It has to be stressed that regardless of whether EU environmental or other legislation is included in cross compliance, it is nevertheless applicable and automatically forms part of the baseline for the payment of agri-environmental support as soon as they have been implemented by Member States. Cross compliance does not substitute either the legal source of obligations for farmers for SMRs or the obligations for Member States to implement a management, control and sanctions system. What cross compliance adds is that, if a farmer benefiting from CAP payments does not respect the listed basic requirements on all his land, his CAP 1st pillar payments and some RD measures can be reduced or, in exceptional cases, entirely cancelled. The purpose of cross compliance is two-fold: first to raise farmers' awareness of their legal obligations, in particular through a higher financial risk; and secondly to meet society's expectations, by not providing full public support to beneficiaries who do not fully respect the law. For cross compliance to usefully complement the implementation by Member States of the Directives and Regulations, the legal provisions chosen for inclusion in cross compliance should result in clear and controllable obligations for farmers. These should also be underpinned by effective management and control systems.

In the context of an in-depth review of the cross compliance system with the perspective of the discussion on the post 2013 CAP one must reflect on a possible evolution of the scope of cross compliance (SMRs and GAECs). This reflection should be carried out with a view that both certain provisions could be withdrawn from the scope of cross compliance if they proved not to be adapted to this scope in the light of experience and other provisions could be added if they appear necessary to face new challenges, in particular climate change. DG AGRI established a Joint Working Group with other relevant Commission Services for initiating the reflection on this field.

2. STREAMLINING/SIMPLIFICATION OF CROSS COMPLIANCE

It is important to carefully consider the scope of cross compliance, including to what extent it focussed on the most important provisions applying to farmers in the areas of environment, public health, animal health, plant health, animal welfare and good agricultural and environmental condition of land. The focus on important legislation was justified by the fact that the inclusion into the scope of cross compliance of provisions stemming from the sectoral legislation (Directives or Regulations) implies a certain supplementary degree of administration since cross compliance is a CAP instrument managed in the Integrated Administration and Control System (IACS). For instance the inclusion of these provisions into cross compliance implies to set up an exchange of information and coordination between the specific management and control bodies (e.g. veterinary services, environmental services, etc) and the Paying Agencies responsible for CAP payments. Moreover the provisions under the sectoral legislation must be controllable to be included in the scope of cross compliance. Indeed, since there are financial consequences to take on the payment of the year in case of possible infringement, it is important that the farmer knows at any time when he/she complies with this provision and the controller must be able to take a decision without delay after any control in which a failure to apply the rules is detected.

In this respect the provisions under the sectoral legislation must fulfil certain criteria to be included in the scope of cross compliance should this inclusion bring a real added value. These criteria are the following:

- (1) The provisions must be relevant and with high priority relative to the objectives of cross compliance.
- (2) The provisions must have a direct link with the agricultural activity and/or the agricultural land.
- (3) The provisions must only relate to actions or omissions directly attributable to individual farmers.
- (4) The provisions must be controllable at reasonable costs and quantifiable (or at least allowing to define reduction rates).
- (5) The provisions must not create undue discrepancies between concerned farmers, beyond what is required to take into account local needs. However, in certain cases, the implementation in different ways by Member States of a provision in a Directive does not in itself constitute an ‘undue discrepancy’ between farmers if it is appropriate and duly justified by the local circumstances.

Moreover the following other elements should also be taken into consideration for the inclusion into the scope of cross compliance of SMRs:

- The definition of clear requirements at farm level is a prerequisite for correctly applying the cross compliance system. Therefore it is important to assess the various provisions of Directives and Regulations for their ability to be translated into clear obligations for farmers and to assess the way Member States have implemented these legal acts at farm level.
- The implementation of effective controls and sanctions on the basis of the sectoral legislation is also important to ensure that cross compliance will bring its

own added value. These legal acts must have indeed their own enforcement tools and cross compliance does not aim at providing an alternative to these tools. Instead cross compliance relies primarily on existing sectoral enforcement tools. Finally it is important to take account, where this was possible without undermining the policy objectives, of the Council's conclusion on the 2007 Commission report on cross-compliance that "the overall administrative burden for farmers and public administration should not be increased and where possible, should be reduced".

In this respect a number of provisions currently under the scope of cross compliance are being reviewed against these criteria, including the following:

Natura 2000: SMR 1 (Birds Directive¹) and SMR 5 (Habitats Directive²)

Certain provisions raise questions in term of control in the context of cross compliance. This is the case of measures for which an infringement may be found only if the farmer is caught "red handed". The controls under cross compliance, by nature systematic, are not necessarily always adapted to this kind of infringement,

Certain other provisions refer to obligations applying to the Member State, e.g. impact assessment and by nature do not necessarily concern cross compliance which concern farmers.

Pesticides: SMR 9 (Regulation on placing on the market of pesticides³)

Directive 91/414/EC has been repealed and its Article 9 has been replaced by Article 55 of Regulation (EC) N° 1107/2009. This latter Article makes a link with Directive 209/128/EC on the sustainable use of pesticides. The main obligations for farmers under this later Directive will be implemented gradually in the future, including the principles of Integrated Pest management to be implemented at farm level as from 2014 at the latest. It is therefore not possible to assess the clarity of farmers' obligations as applied by Member States and the efficiency of control systems before the implementation of the various provisions of the Directive. The situation will be carefully monitored in the meantime in view of a smooth integration of these provisions under the scope of cross compliance. In this regards more details will be brought by the national action plans for the sustainable use of pesticides that Member States will communicate to the Commission by December 2012.

Hormones: SMR 10 (Directive on hormone ban)

Provisions on hormone ban raise questions in term of control in the context of cross compliance. The fact that these provisions are included in the systematic

¹ Directive 79/409/EEC

² Directive 92/43/EEC

³ Regulation (EC) N° 1107/2009

cross compliance control scheme implies extra efforts and costs, while very few or no infringement cases are found. .

Animal diseases: SMR 13, 14 and 15 (Directives on notifications of animal diseases⁴)

Provisions on notifications of animal diseases raise also questions in term of control in the context of cross compliance. For these measures an infringement may be found at farm level only if the farmer is caught "red handed". In the absence of outbreaks of animal diseases, the systematic cross compliance controls are not relevant. Against this background it could be considered to withdraw these Directives from the scope of cross compliance.

The Good Agricultural and Environmental Condition (GAEC) framework

The Council discussions on GAEC standards made during the Health Check resulted in certain standards being classified as optional. Certain limitations were introduced to this optional nature (no backward changes relative to the pre-Health Check situation, and a link with national legislation). This increased the heterogeneity of national standards implemented by MSs because the difference of constraints faced by farmers could reflect more the ambition of national authorities rather than real local needs.

In order to promote a more even implementation of GAEC by Member States, a possibility could be to abolish the optional nature of certain standards. The current optional standards could be withdrawn from the framework or be made compulsory. Another possibility could be to further specify the content of the standard by quantifying or qualifying it.

The development of the eligibility conditions for direct payments, and in particular the direct payments linked to environmental purposes ('1st Pillar greening'), entails also that certain adaptations need to be brought to the GAEC so that the consistency between these various instruments is ensured. This concerns, inter alia, the issue of protection of permanent pastures and grasslands and the issue of the minimum level of maintenance of agricultural land. Once the final shape of the 1st pillar 'green' criteria is determined, it will be necessary to ensure the GAEC rules are adapted to fit this new framework.

3. TAKING NEW CHALLENGES INTO ACCOUNT IN CROSS COMPLIANCE

3.1. Strengthening of the Good agricultural and Environmental Condition (GAEC) framework

There is no plan of short term evolution of the EU sectoral legislation in the area of climate change. Therefore any statutory measure to propose under cross compliance in the context of the post 2013 CAP should be worked out through the GAEC instrument. The Commission services are currently reflecting on proposals which could be made in this respect. There is a clear

⁴ Directives 85/511/EC, 92/119/EC and 2000/75/EC

case for a better protection of valuable (biodiverse) grassland, wetlands and carbon rich soils, a general minimum cover obligation and measures aiming at maintaining the soil organic matter level and the management of stubble and vegetation residues. This evolution of the GAEC instrument should however be considered in a broader context, in conjunction with the development of the environmental legislation and concerns as biodiversity and with the definition of green direct payments. Some GAEC have been reported to have unintended environmental negative effects and should be better defined.

3.2. Inclusion of the Water Framework Directive

Pursuant to the Water Framework Directive (WFD) the measures must be implemented by Member States through River Basin Management Plans, to be defined at the latest in 2009 (article 13.6 of the WFD) and operational at farmers level at the latest in January 2013 (article 11.7 of the WFD). Moreover the WFD foresees that Member States shall implement administrative arrangements for the management and controls and a penalties system in order to allow a proper application of this Directive. The Commission shall submit a report on the implementation of the WFD by December 2012. This report will present the result of the assessment of the River Basin Management Plans delivered by the Member States and contribute to the 2012 Blueprint to safeguard Europe's waters.

The inclusion of the WFD into the scope of cross compliance is being considered since a number of measures under this Directive will apply to farming activity. The precise nature of the requirements defined by Member States is unknown at the time of finalising this document since the deadline for defining the measures at farm level is December 2012. The same is true for the details of the management, control and penalty systems to be set up by Member States. The assessment of these elements of the WFD will be of paramount importance for the inclusion of the WFD into the scope of cross compliance. Indeed, obligations must be clear at farm level since under cross compliance a decision must be taken to reduce CAP support if the obligations are not met. Moreover cross compliance by principle relies on the management and control systems established by Member States to implement the sectoral legislation. The systems must therefore be established before the provisions are introduced into the scope of cross compliance.

The inclusion of the Water Framework Directive into the scope of cross compliance will be considered once the Directive has been implemented and the operational obligations for farmers have been identified.

4. ANALYSIS OF OPTIONS

Two options could be considered as regards the evolution of the cross compliance system in the post 2013 CAP.

4.1. Option 1: Focus on streamlining/simplifying the scope of cross compliance while however increasing its contribution to climate change mitigation as well as to biodiversity objectives

This option includes a significant withdrawal of provisions from the scope of cross compliance to concentrate this scope to the essential elements of farming activity. The mitigation of climate change in a some extend biodiversity concerns are addressed by a certain degree of strengthening of the GAEC however leaving a significant leeway to define green direct payments commitments going beyond this baseline.

Pros:

- The request by certain stakeholders for simplification of cross compliance will be met. More farmers may be willing to take ownership of the system, which would facilitate its implementation.
- The cross compliance system will be able to demonstrate that it takes climate change concerns into account.
- The key role of farmers with respect to biodiversity, water quality and use will be better defined ensuring that farmers take more account of these areas which are vital to their long-term survival.
- The balance will be respected between increasing the scope for fulfilling the society expectations and the need to keep cross compliance as simple as possible.

Cons:

- Withdrawing certain provisions currently under the scope of cross compliance could send a negative signal to farmers, suggesting that these areas are not a priority, and could therefore lead to environmental damage and animal health and welfare problems.
- Withdrawing these provisions could lead to a perception that cross compliance is being downgraded.
- The public at large could see this withdrawal as a signal that the CAP takes less into consideration the concerns for environment, public health, animal health and animal welfare. However this could be counterbalanced by the introductions of the green component of direct payments.

4.2. Option 2:

Focus on increasing the scope of cross compliance to address climate change and biodiversity issues in priority through this instrument and to respond to the reality that the full implementation of the Water Framework Directive is obligatory and has been carried out since 2012.

In this option climate change and biodiversity issues will be in priority dealt with under cross compliance through a strengthening of the GAEC and the of

the inclusion of the Water Framework Directive into the scope of cross compliance will take place after its full implementation in 2012.

Pros:

- The signal will be very positive towards the environmental stakeholders and wider public concerned by environment. This will give to the taxpayers a serious justification that farmers are paid to produce public goods.
- The fact that cross compliance obligations apply broadly throughout the EU territory would enhance the impact of the measures.
- The impact of these measures would be enhanced by the implementation of the management and control system of cross compliance.
- The gradual improvement of water, biodiversity and climate protection aspects of the CAP standards would allow the dedication of rural funds to very high level environmental gains.

Cons:

- The cross compliance system would be likely to be more criticised than at present e.g. on the grounds of complexity. This could jeopardise the system as a whole in the long run but would also jeopardise public acceptance of direct payments.
- There would not be a lot of room left to define the green direct payments, which must go beyond the cross compliance requirements but may be complemented by rural development measures.
- The cross compliance system might be perceived as the enforcement tool of the Water Framework Directive.