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Subject: Proposal for a Regulation of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural development (EAFRD)
- Working Document from the Commission services

Delegations will find attached a Working Document submitted by the Commission Services.

CAP-REFORM

Fiche No 21

Areas with constraints

Brussels, 11 May 2012

Commission Proposal	Relevant Article
EAFRD Regulation [COM(2011) 627/3]	32-33

This paper has been drawn up on the basis of the proposals for regulations adopted by the European Commission on 12 October 2011. It neither prejudices the position which may be taken by the Council and the European Parliament, nor does it anticipate the possible content of any delegated or implementing acts that may be drawn up by the Commission.

Delimitation of the areas

As it has been the case since 1975 when the scheme was established, there are three types of areas (although bearing different names) – mountain areas, areas with significant natural constraints and areas with specific constraints.

The present delimitation of the three categories of areas will need to be reconfirmed in the framework of the second Pillar's rural development programmes. Very few changes can be expected for the mountain areas as the delimitation criteria will remain the same. However, MS may proceed to a revision of the delimitation in cases where e.g. better data are available. As regards the areas with significant natural constraints, MS will be obliged to delimit these areas with the use of the biophysical criteria listed in Annex II of the legal proposal for the rural development regulation. They will also be obliged to exclude those areas where the documented constraint has been overcome (= fine tuning).

The last category is the areas with specific constraints of which the extent is limited by maximum 10% of the entire territory of the MS in question. This shall comprise farming areas which are homogeneous from the point of view of natural protection conditions and may include e.g. islands and non continental territories, as long as they are administratively considered as a part of the MS in question. The delimitation of these areas is left up to MS as, by definition, the constraints will be specific. The delimitation of these areas must be, however, based on clear criteria which lay ground to a quantification of income loss and/or additional cost, resulting from the constraint.

The WTO Marrakesh Agreement for Agriculture stipulates in its Annex II, Point 13 a) that: *“Eligibility for such payments shall be limited to producers in disadvantaged regions. Each such region must be a clearly designated contiguous geographical area with a definable economic and administrative identity, considered as disadvantaged on the basis of neutral and objective criteria clearly spelt out in law or regulation and indicating that the region’s difficulties arise out of more than temporary circumstances.”* For that purpose, the delimitation of the areas with significant natural constraints should be carried out LAU2 level. For the other two categories of areas, the level of an administrative unit is not prescribed. This, however, does not remove the obligation for MS to delimit these areas on a unit that will comply with the WTO definition, as above.

The delimitation of all three categories will be a part of the rural development programmes. The Commission will not approve the delimitation as such. However, MS should demonstrate that the application of the prescribed methodology has been done correctly.

As the delimitation of the areas with significant natural constraints can be costly, MS have the possibility to use technical assistance to finance the related works. This possibility is also extended to the period 2014-2020. The guidance for the correct application of the biophysical criteria is available here: <http://agrienv.jrc.ec.europa.eu/Updated%20Common%20Criteria%20Fact%20sheets.pdf>

The delimitation gives a theoretical access to the payment for constraints in both pillars of the CAP (this payment is optional in both pillars). There is no other mechanism of adding areas, there is no possibility of homogenization (including areas which have not been delimited but are surrounded by areas which are affected by constraints).

The present delimitation will remain valid until the end of 2013, and will be replaced with the new delimitation as of 1/1/2014, being subject to a possible transitional period (see section on transition).

Eligibility criteria

We are in a situation where about 56% of UAA in EU27 has been identified as constrained but only about a half of the delimited area receives some payment (related to constraints). This is because MS often apply eligibility criteria by which they e.g. exclude certain types of areas and/or beneficiaries.

There are two principles that are in function in this case, both based on the WTO Marrakesh Agreement. Point 13 of the Annex II to the Agreement for Agriculture is the basis for the payments to areas with natural or other specific constraints. Point d) stipulates that "*payments shall be available only to producers in eligible regions, but generally available to all producers within such regions*". However, point f) stipulates that "*the payments shall be limited to the extra costs or loss of income involved in undertaking agricultural production in the prescribed area.*" This means that once an area is delimited as constrained, the MS has to pay the additional cost and income loss. It is obvious, though, that certain types of farming will not register an income loss and additional costs of more than 25 EUR/ha (=the minimum payment). MS must prevent overcompensation and thus they can apply, in a limited way, additional eligibility criteria. However, the exclusion can refer to farm types and not relate to e.g. specific crops. In any case, the farm types excluded should represent a minority in the total delimited area as most areas where the constraint does not play a role should be excluded during the fine-tuning exercise.

Constitution of the payment

The payment reflects the sum of the income loss and the additional cost due to the constraint, as required by WTO. The quantification should be made in comparison to the non-constrained area. Those MS which are delimited as constrained on their entire territory, may use estimating studies instead. In order to improve the verifiability of these calculations, they must be certified by a body independent of the authorities and the certificate needs to be provided with the rural development programme.

It is possible to have different levels of payments, expressing a different degree of the constraint. This is particularly the case for mountain areas where different altitudes represent a different impact on agriculture. The same may be true for other criteria.

The sum of income loss and additional cost must be at least € 25. If it is lower, the payment cannot take place (as the administrative burden would be disproportionate to the benefit, as well as any amount lower than € 25 is unlikely to make a difference).

If the farmer benefits from the payment under Article 34 of the direct payments regulation (top-up for farmers in NC areas), the latter has to be deducted from the second pillar payment. It has to be borne in mind that if the resulting amount (after the deduction) is lower than 25 €/ha, no payment can be granted in the second pillar.

Annex I of the legal proposal for the rural development regulation gives the maxima for the payment. That is 300 €/ha in mountain areas and 250 €/ha in the other two categories. These amounts can be increased in exceptional cases and the justification must be provided in the rural development programmes. Such justification should be documented by the (certified) calculation of income loss and additional cost and it should also be demonstrated that the area is at a genuine risk of land abandonment.

Degressivity

The payment shall be digressive above a threshold level of area per holding, in order to be compliant with the WTO requirements (Point 13 e) of Annex II of the WTO Agreement for Agriculture). The most logical example which is already used by a number of MS, is that 100% of the payment is granted on the first 0 - X hectares in the holding, 80% of the payment is granted on the next X - Y hectares, 50% is granted on Y - Z hectares and no payment is granted on the remainder of the holding's area. The payment must not drop under 25 €/ha. In cases where the payment amounts to 25 €/ha, the (pseudo) degressivity also needs to be applied, however, only in two steps – 0 – X hectares will receive 25 €/ha, the area > X will not receive a payment.

As regards the thresholds (X, Y and Z – or more or fewer), they should be set up by MS and their choice should be justified and backed by evidence.

Conditions of payments

The obligation to pursue farming for five years after the first payment has been abandoned for the period 2014 – 2020. Nevertheless, payments can only be granted to those farmers who undertake to pursue their farming activity in the delimited area (this payment aims to prevent land abandonment).

The obligation to comply with cross compliance is embedded in Article 92 of the legal proposal for regulation on financing, management and monitoring of the CAP.

Transition

The new delimitation of areas with significant natural constraints means that there will be some areas which will no longer be a part of the delimitation, and the land in such areas will lose access to the related payment. In such areas, MS will have the possibility to pay a certain amount to enable farmers to adapt to the new situation. The first payment in 2014 will equal to maximum 80% of the 2013 payment. The next years' payments will have to be digressive so that the 2017 payment is at 20% of the 2013 payment. No payments in these outgoing areas are possible beyond that date.

Those MS which are not ready with the new delimitation in 2014 may also use this phasing out payment in the same way. Once the delimitation is completed, the areas which will have been confirmed (i.e. areas delimited under the present system and with the biophysical criteria) may start receiving the full payment, while those areas leaving will continue with the phasing out payment.

It is also possible to use a partial new delimitation – e.g. to have a "new" delimitation in mountain areas and in the areas with specific constraints which will receive full payments, while the areas with significant natural constraints will be subjected to the phasing out payment. Similarly, it is also possible to delimit the country territory in several phases, i.e. it is possible to complete the delimitation only in some regions, while works will continue in the remainder of the MS. In such case, the areas where the delimitation has been completed may benefit from the scheme in full while the areas where works are ongoing will be subjected to the transitional payment (see section on transition). It is also possible to e.g. apply only selected biophysical criteria and to complete the delimitation with the remaining criteria at a later stage. In that case, all areas which have been delimited with the biophysical criteria can use the system in full.

As regards the bridge between the two programming period, it will be necessary to introduce the degressivity element for the phasing out payment into the anticipated legal proposal on transition rules. Such provision will ensure that MS funding these payments in 2014 and in 2015 from the 2007 – 2013 envelope will implement the same rules (on degressivity) as those MS funding the payments from the 2014 – 2020 envelope.

Demarcation and synergy with pillar I support to farmers in NCA

A new scheme for farmers in NCA is proposed under Article 34 of the Regulation for direct payments. The scheme is optional for Member States, which may use up to 5% of their annual ceiling for direct payments for this purpose. The areas eligible need to be designated as areas with natural constraints in accordance with Article 33(1) of the rural development regulation.

The rationale behind the new 1st pillar scheme is to allow Member States to achieve a more equitable distribution of direct payments throughout their agricultural area and to target income support to farmers most in need, because their income from farming is permanently limited by natural constraints.

The possibility to mobilise support from different sources will allow Member States to better address the risks of land abandonment, which are extremely diversified throughout the EU.

MS can grant the 1st pillar payment only to some of the NC areas as defined under rural development. They may apply the NC scheme at regional level, by dividing the NC ceiling between regions fixed according with objective and no discriminatory criteria, such as their natural constraints characteristics and agronomic conditions.

The payment per hectare is a flat rate, calculated by dividing the budget available by the number of eligible hectares.

The 1st pillar payment cannot be granted to areas whose classification as NCA has not been confirmed for the rural development's programming period 2014-2020 (no phasing out since the aid scheme is new).

The table in Annex provides an overview of the two schemes.

Overview NCP in pillar I and pillar II

	<i>Pillar I</i>	<i>Pillar II</i>
<i>Budget</i>	Up to 5% of DP envelope (the use of this instrument is not obligatory)	A RD measure, no ring-fencing (though part of the 25% allocation on environment and climate). The use of this instrument is not obligatory.
<i>Eligible Area</i>	Paid only on UAA in NCA under Article 33(1) of the RD Regulation – MS can restrict the eligible area to some of their NCAs	Paid only on UAA in NCA under Article 33(1) of the RD Regulation
<i>Payment calculation</i>	Unit payment = NC budget ceiling/number of NC eligible hectares	Based on loss of income and additional cost.
<i>Beneficiaries</i>	Payments to all farmers entitled to the basic payment scheme in NCA or in sub-NC-areas defined by MS	Further but limited eligibility criteria possible (with the rationale as described in the section on the eligibility criteria).
<i>Transition</i>	No payments to areas leaving the delimitation	Phasing out of payments in areas leaving the delimitation