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Delegations will find attached document SWD(2014) 176 final.

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Brussels, 26.5.2014  
SWD(2014) 176 final

**COMMISSION STAFF WORKING DOCUMENT**

**on the assessment of main causes of errors under EAGF expenditure for non-IACS  
measures (including market measures, POSEI and promotion measures) and corrective  
actions**

## 1. INTRODUCTION

The Common Agricultural Policy (CAP) of the EU is implemented by way of shared management between the European Commission and Member States. This applies to both pillars of the CAP, i.e. market and direct support and rural development. Implementation in relation to the final beneficiaries of the measures is delegated to Member States, while the Commission is responsible for the overall legal framework, budget implementation and for supervision of the Member States.

Member States' management and control systems as well as the specific expenditure, including in the area of market measures, are subject to controls to ensure their compliance with the applicable provisions and to avoid irregular payments. An important tool in this respect is the clearance of accounts procedure which may result in the *ex post* exclusion (and recovery) of irregular expenditure from Union financing. While such financial corrections safeguard the EU's financial interests and encourage compliance with the rules, payment errors and inadequacies in management and control systems do occur.

The probable error rate affecting CAP expenditure is quantified through extrapolation resulting in a "most likely error" as established by the European Court of Auditors (ECA) and a "residual error rate" established by the DG Agriculture in the framework of the corresponding annual declarations of assurance (DAS). An error rate above 2% is considered material.

Section 2 of this document identifies the main causes for errors occurring in the area of EAGF spending for measures which are, in principle, *not* covered by the Integrated Administration and Control System (IACS).<sup>1</sup> This includes market measures under Regulation (EU) 1308/2013 ("CMO regulation")<sup>2</sup>, all measures under POSEI<sup>3</sup> and promotion measures<sup>4</sup>. It excludes Direct Payments.<sup>5</sup> It also excludes the Sugar Restructuring Scheme, which is no

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<sup>1</sup> A similar document has been issued in 2013 for the area of Rural Development, see *Commission Staff Working Document on the assessment of root causes of errors in the implementation of rural development policy and corrective action* of 27 June 2013, SWD(2013) 244 final.

<sup>2</sup> Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products has replaced Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation).

<sup>3</sup> The EU's outermost regions benefit from the POSEI arrangements ("Programme d'Options Spécifiques à l'Éloignement et l'Insularité") in the agricultural sector. Although IACS *does* apply to a large part of POSEI measures, the whole POSEI is addressed in this note as its measures under IACS contain specific eligibility conditions defined by Member States and are part of the same programmes as the non-IACS POSEI measures.

<sup>4</sup> Regulation (EU) No 3/2008 of 17 December 2007 on information provision and promotion measures for agricultural products on the internal market and in third countries.

<sup>5</sup> A separate but thematically similar Commission Staff Working Document is issued in the area of direct payments.

longer active, and the programme for food distribution to the most deprived, for which management is transferred as of 2014 to DG Employment, Social Affairs and Inclusion.

Corrective actions already implemented are listed in section 3. Section 4 specifies corrective measures for future action in the area of market measures, POSEI and promotion.

By way of a preliminary observation, it is notable that the choices in the recent reforms of the CAP aim at an improved targeting of support measures and ultimately a more effective and efficient CAP. Better targeting often implies additional eligibility conditions and thus greater complexity of support schemes, not only in direct payments<sup>6</sup> but also in the area of CMO measures where Member States are given more flexibility in their choice and design of eligible measures.

Moreover, provisions incorporated in the basic acts in the inter-institutional decision-making process sometimes give rise to diverging interpretations when implemented by Member States.

Besides the policy-related considerations which a discussion of the error rate cannot disregard, there also is a trade-off between the pursuit of certain policy objectives and the minimisation of the likelihood of payment errors. As pointed out in the 2008 *Commission Communication towards a Common Understanding of the Concept of Tolerable Risk of Error*<sup>7</sup>, the policy objective pursued, the budgetary ramifications of increased controls and the expected corresponding gains in terms of the regularity of expenditure must all be taken into account. The exclusive pursuit of a reduction in irregularities of payments can be in tension with a reduced administrative burden on Member States and beneficiaries, a policy goal in its own right.

## **2. ANALYSIS OF THE MAIN CAUSES FOR ERRORS**

The analysis of the main causes for errors in the management of non-IACS EAGF support measures is based on the 40 non-IACS cases examined by the ECA in its report on 2012<sup>8</sup> as well as DG Agriculture and Rural Development's (DG Agriculture) own audit results and the experience of DG Agriculture's market units in the shared management of EAGF expenditure.

### **2.1. Eligibility, verifiability and controllability of measures**

A common cause for errors is that the eligibility conditions of measures are not met. There are two main reasons for this: complexity of the conditions due to enhanced targeting, often at the Member State level and insufficient points of reference for the competent authorities to verify and control compliance with the conditions.

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<sup>6</sup> See also DG Agriculture Annual Activity Report 2012, section 1.2.7.

<sup>7</sup> COM(2008) 866 final

<sup>8</sup> At [http://www.eca.europa.eu/en/Pages/AR\\_2012.aspx](http://www.eca.europa.eu/en/Pages/AR_2012.aspx).

## **2.2. Non-respect of eligibility criteria**

Eligibility conditions of measures in Member States' support programmes (wine, POSEI) are sometimes formulated such as to trigger a 100% error if not respected. This has a corresponding negative impact on the overall error rate. Counting this as a 100% error may appear disproportionate where non-compliance with a given condition does not defeat the underlying policy objective.

A variant of this can be found in the Fruit and Vegetables sector, where Producer Organisations must be recognised in order to qualify for Union support. A non-respect of recognition criteria, both substantial and non-substantial, could lead to the withdrawal of the recognition of the Producer Organisation and to the loss of the entire support for that Producer Organisation from the time the given criterion was not - or no longer – met (100% error). Substantial corrections have been imposed on Member States in accordance with that approach and have triggered, in turn, Member States requests for the amendments of the rules governing recognition (the so-called "Newcastle Group" initiative).

## **2.3. Procurement rules**

In the area of procurement rules applied to promotion measures especially, the non-observance of certain criteria affects the award of a tender and hence the regularity of the whole payment. The issue concerns, in particular, the intricate demarcation between public and private bodies managing the tendering procedure as laid down in the Public Procurement Directive 2004/18/EC. Whereas public bodies must publish the call for tender in the Official Journal of the EU such a requirement does not apply to private bodies. Failure of a public body to publish in the Official Journal affects, according to the ECA, the entire support granted (100% error). The policy objective of ensuring fairness of the tendering procedure cannot be readily dissociated from an appropriate publication. The focus then must be on the clarity and predictability of rules and the requisite level of information concerning the legal status of the proposing organisation.

## **2.4. Admissibility of expenditure**

In several instances it has shown that the admissibility of certain expenditure for reimbursement may be interpreted differently by Member States. As an example, this has occurred in the area of reimbursement of staff costs in relation to specific promotion and information projects and some practices have eventually given rise to financial corrections.

Reimbursement based on invoices and claimed costs may also be a source of errors and implies a burden on the administrative management of support and the corresponding checks and controls. Errors found were due for instance to the absence of a complete audit trail including the relative invoices and the manner in which overhead costs were attributed to the eligible measures.

## **2.5. Information about Member States' management and control systems**

Member States are not required to send full information on their management and control systems together with their support programmes (POSEI). The transmission of such information along with the annual modifications of the support programmes could lead to the early identification and correction of an inadequate management or control of measures and thereby indirectly avoid the occurrence of errors.

## **2.6. Member States' application of the management and control systems**

Errors could often have been identified by the paying agencies had they executed more thorough administrative and on-the-spot controls and had they better followed internal procedures and applicable EU-law. In some cases, persistent weaknesses are shown to affect the work of paying agencies.

## **3. CORRECTIVE MEASURES ALREADY IMPLEMENTED**

An indication of DG Agriculture's serious attention to deficiencies in support payments are the resources devoted to conformity clearance. While conformity clearance does not directly impact the error rate as established by the ECA, the substantial amounts recovered from Member States encourage Member States to improve control procedures in accordance with auditors' findings so as to prevent future corrections (dissuasive effect).

Besides conformity clearance, DG Agriculture is committed to systemic adaptations of the support schemes in reaction to deficiencies encountered. In the following, corrective actions are listed that have been recently implemented.

### **3.1. Eligibility of measures**

#### *3.1.1. Wine sector*

As regards the wine sector, the reform of the Common Market Organisation in 2008 introduced national support programmes under which Member States operate assistance measures for the sector on the basis of a common Union framework but in accordance with their specific national particularities. A deliberate degree of discretion is left to Member States as regards the mix of measures they include in their programmes, a modality which is in fact deemed instrumental for achieving the policy objective.

The experience gained throughout the first programming period 2009-2013 has enabled the Commission to clarify the rules applicable.

Concretely, this has taken the form of two sets of guidelines on the application of the national support programmes issued in February and April 2013.<sup>9</sup> One set applies to restructuring and investments, the other to promotion of wine on third-country markets. The guidelines use positive and negative lists to demarcate eligible measures (e.g. restructuring and investment).

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<sup>9</sup> Made available to Member States on the CIRCABC IT tool.

They provide clarity on the eligibility of a variety of measures and costs that have been included in national support programmes in the period 2009-2013. The guidelines also clarify the applicable rules for the selection of contractors (procurement). The positive impact of these clarifications is expected to show in the new programming period 2014-2018.

### *3.1.2. Fruit and Vegetables sector*

In Fruit and Vegetables, the 2007 reform of the Common Market Organisation introduced National Strategies and National Environmental Frameworks under which Member States operate assistance measures on the basis of a common Union framework but in accordance with Member States' specific national particularities. Both the National Strategies' and the Environmental Frameworks' aim is to allow assessing the progress made towards achieving the objectives set for the operational programmes, as well as the efficiency and effectiveness in relation to those objectives.<sup>10</sup>

In this context, DG Agriculture developed in 2012 and 2013 (i) a new template for Member States' annual reports on producer organisations and producer groups<sup>11</sup>, (ii) guidelines on the proper recording of the data in those reports, (iii) a database to handle all the information coming from Member States' reports and (iv) IT applications for data quality checks of the annual reports and for extracting and processing information from the database created.

The Commission also decided to discontinue the general eligibility for support of environmental management of packaging in the Fruit and Vegetables operational programmes in August 2012 (Commission Regulation (EU) No 755/2012) after management and controllability issues occurred in particular in respect of the calculation of the eligible costs above a baseline.

## **3.2. Procurement rules**

As regards support for promotion of agricultural products, errors in the application of the rules on the selection procedures have been found in respect of the demarcation between public and private bodies managing the tendering procedure.

So as to reduce the likelihood of errors in the future, scrutiny rules have been re-enforced in September 2013 and the competent authorities are now reminded of the applicable procurement rules and requested to confirm the legal status of the proposing organisation as well as to confirm, where applicable, that the selection of the implementing bodies has been subject to a competitive procedure respecting national legislation and Directive 2004/18/EC.

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<sup>10</sup> Article 125(1) of Commission Regulation (EU) No 543/2011

<sup>11</sup> Made available to Member States on the CIRCABC IT tool.

### **3.3. Admissibility of expenditure**

#### *3.3.1. School Fruit Scheme*

In 2011, two revisions of Commission Regulation (EC) No 288/2009 concerning the School Fruit Scheme were made in order to clarify and simplify a number of provisions which caused uncertainties for Member States in the implementation of the Scheme.<sup>12</sup>

Those revisions have clarified that value added tax and personnel costs (with the exception of those falling under contractual arrangements) are not admissible for reimbursement. They have furthermore (i) provided for a list of costs related to communication eligible for Union aid, (ii) clarified the annual ceilings for equipment, monitoring, evaluation and communication activities, and (iii) specified rules for aid applications and payment of aid to entities which carry out monitoring, evaluation and communication tasks.

#### *3.3.2. Promotion*

As regards promotion for agricultural products, the approach to overhead costs for proposing organisations has recently been changed to a real flat-rate system with maximum ceilings (3-6% of actual cost of implementing a measure) instead of system in which a flat rate had to be verified on the basis of the actual expenditure related to overheads. This change, applicable as of September 2013, has simplified the control procedure for the paying agencies and eliminated a source of error relating to invoice-based overhead reimbursement.

### **3.4. Member States' management and control systems**

As part of the reform of the CAP, provisions on checks and controls to be carried out by Member States in the context of shared management have been concentrated and harmonised in the Horizontal Regulation.<sup>13</sup> Implementing rules to be adopted subsequently will contribute to improving clarity concerning the requirements applying to Member States' management and control systems.

### **3.5. Audit adaptations**

The Commission protects the Union's financial interests by means of financial corrections. While this does not directly bring down the error rate it proves effective in the longer run in triggering changes.

The audit programme for 2013 has been adapted to focus more on the error rate. Short-term action includes the follow-up under conformity clearance of the 2012 DAS cases showing an error of above 5%, which includes calling on the Member State concerned to take remedial action.

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<sup>12</sup> Commission Regulations (EU) No 34/2011 and 1208/2011

<sup>13</sup> Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy, Article 58 *et seq.*

## 4. CORRECTIVE MEASURES FOR FUTURE ACTION

### 4.1. Regulatory actions

#### 4.1.1. Eligibility of measures

Actions and expenditure *not* eligible under operational programmes in the Fruit and Vegetables sector are currently listed in Annex IX to Commission Regulation (EU) No 543/2011 (negative list). The list has in the past given rise to interpretative questions from Member States and stakeholders. The recast of the regulation scheduled for 2014/early 2015 will provide an opportunity to improve clarity. One means to do so should be the introduction of a positive list of eligible actions for the operational programmes to supplement the "negative list". This is warranted after years of experience with measures supported in Producer Organisations' operational programmes. It should lead to a lesser risk of error in managing the operational programmes within the Union framework, providing a sort of safe harbour for Member States. As regards the School Fruit Scheme, clarification of eligible costs and ceilings will be provided for the accompanying measures which are eligible for EU co-financing.

**ACTION 1:** DG Agriculture will propose introducing a list of eligible measures either in Commission Regulation (EU) No 543/2011 (Fruit and Vegetables) or in guidelines. DG Agriculture will also propose laying down eligible costs and ceilings for the accompanying measures under the School Fruit Scheme.

#### 4.1.2. Verifiability and controllability of requirements and eligibility conditions of measures

Member States should demonstrate that requirements and eligibility conditions of support measures are verifiable and controllable. Member States should include information to this end in their national support programmes.

**ACTION 2:** DG Agriculture will request Member States – where appropriate by introducing legal provisions to this effect - to demonstrate the verifiability and controllability of requirements and eligibility conditions of measures proposed in their national support programmes.

#### 4.1.3. Recognition of beneficiaries

Non-respect of recognition criteria for Producer Organisations in the Fruit and Vegetables sector often implies 100% payment errors. A progressive approach to the non-respect of substantial criteria will clarify the consequences of continued non-respect and enhance proportionality (warning letter, suspension and ultimately withdrawal of recognition). As regards the non-observance of non-substantial criteria, proportionate reductions of payments are more appropriate than the withdrawal of recognition.

**ACTION 3:** The Commission has proposed amendments to the relevant Commission Regulation (EU) No 543/2011 with a view to rendering sanctions in reaction to non-observance of non-substantial recognition criteria more proportionate as measured against the policy objective of the support. Accordingly, such non-respect will give rise to a reduction in payments but will not entail the withdrawal of the recognition. A progressive approach to the non-respect of substantial criteria is introduced, ultimately leading to withdrawal of the recognition.

#### 4.1.4. *Procurement rules*

The errors which have occurred in the past relating to the public or private nature of the proposing organisation in the area of promotion of agricultural products have, as seen above, led the Commission to require more detailed information to be supplied in the application as well as to deepen Member States' analysis. This has been done by way of modification of the requirements for the applicant's documents and the applicable handbook and will, in the interest of legal clarity, be further addressed in the relevant legal provisions in the context of the reform of the promotion policy.

**ACTION 4:** In the area of support for promotion measures for agricultural products, DG Agriculture will propose incorporating further clarifications as to the requirements for an appropriate procurement procedure in the relevant implementing rules (concerning for instance information about the legal status of the proposing body and the corresponding analysis by Member States).

## 4.2. **Cooperative actions**

#### 4.2.1. *Amendments of support programmes*

DG Agriculture is committed to working towards improved clarity regarding Member States' support programmes. One step into this direction can be enhanced interaction between the DG Agriculture and Member States in the planning phase of such programmes. Measures in Member States' support programmes, in particular in the area of POSEI, should, where possible, be rendered simpler and the eligibility requirements and conditions should be made clearer. For example, measures could be grouped so as to simplify their administration. Member States should take the principles of controllability and verifiability into account as of the early stages of the planning of their support programmes.

**ACTION 5:** The Commission will, where appropriate, work with Member States to clarify and simplify support measures and encourage them to take verifiability and controllability of measures into account at the early stages of drawing up their support programmes.

#### 4.2.2. *Information about Member States' management and control systems*

The quality of Member States' management and control systems including their practical application are important factors in the detection and prevention of errors. Member States normally have an obligation to communicate the relevant information on their systems to the Commission, ex ante and ex post (for example control statistics). The appropriate assessment

of the information received by the Commission services provides an opportunity to reduce the error rate by dint of providing informed feedback Member States can act on. To improve the information the Commission services dispose of as regards Member States' management and control systems as well as their practical application, Member States should supply updated information concerning these systems along with their annual modifications of the support programmes (currently this is not requested in the area of POSEI). This shall however not imply the re-introduction of an approval on the part of the Commission of the said systems.<sup>14</sup>

**ACTION 6:** DG Agriculture will, where appropriate,:

(a) request Member States to submit updated information on management and controls required under Article 31 of Regulation (EU) 228/2013 along with their annual modifications of the national support programmes;

(b) improve the coordination of the analysis of the annual control statistics submitted by Member States in their annual activity reports.

#### 4.2.3. *Simplified cost reimbursement options*

Member States should be encouraged to use simplified cost reimbursement systems such as flat rates where this is appropriate. Flat rates will ease the administrative burden on Member States while at the same time reducing the risk of possible errors. Such forms of reimbursement should be based on standard scales of actual costs and reviewed periodically so as to avoid over-compensation.

**ACTION 7:** DG Agriculture will, together with Member States, look into the possibility of using simplified cost reimbursement approaches wherever this is appropriate to facilitate the implementation and checking of measures and expenditure.

#### 4.2.4. *Horizontal working group*

Better and more efficient coordination can constitute one important remedy in preventing the operation of programmes that are error-prone. A horizontal group of specialists attached to the CMO Management Committee could provide a useful forum for the exchange of ideas and best practices among the Commission and Member States as well as an informal clearing house for benchmarking as regards general issues such as eligibility and recognition criteria or rules in cross-cutting areas like public procurement. Such a group could be a forum to discuss horizontal approaches as well as corrective measures in reaction to the occurrence of irregular payments identified. The ECA could be given the opportunity to present its relevant findings in the specialists' group.

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<sup>14</sup> Such implicitly perceived approval has in the past hampered DG Agriculture auditors' leeway when examining the conformity of the relevant systems.

**ACTION 8:** A specialists group made up of Commission and Member State representatives will be established to exchange views and discuss horizontal issues related to eligibility and recognition criteria as well as any other issue discussion of which is appropriate in regard of the occurrence of irregular expenditure. As appropriate, external actors like the European Court of Auditors could be invited to give presentations.

#### 4.2.5. *Monitoring procedures*

Monitoring can be an instrument to achieve enhanced bilateral cooperation in specific areas between the Commission and a given Member State, thus permitting early adjustments of programmes but also a discussion of Member States' management and control provisions. In such a framework, guidance can be provided thereby avoiding effects of inertia once programmes are submitted. Having said this, monitoring can and should not be considered to fulfil an audit function.

**ACTION 9:** DG Agriculture will make use of monitoring wherever this is appropriate in view of the experience gained so far to work with Member States to improve programmes at an early stage of planning as well as to discuss possible deficiencies in the Member States' management and controls of measures.

#### 4.2.6. *Accessibility of Commission services' guidance documents*

Member States ask questions and raise implementation issues in the CMO Management Committee. Sometimes these questions are sent in a written form and are answered by letters from the Director General of DG Agriculture. Without prejudice to the legal value of these letters, the replies should systematically be accessible to all Member States via IT tools (CIRCABC). Further explanations should, where useful, be given in the Management Committee. Thus, a structured database with answers to particular queries will be available to Member States.

**ACTION 10:** DG Agriculture will streamline the presentation of replies to Member States implementation questions in the IT system it shares with Member States so as to create a reference library for all Member States.

#### 4.2.7. *Communication of Commission key and ancillary control standards*

Key and ancillary control standards can improve the quality of controls carried out by Member States by providing a common framework and a common assessment of the risks linked to individual controls.

**ACTION 11:** DG Agriculture will provide up-dated lists of key and ancillary controls for the main support schemes in the CMO.

#### 4.2.8. *Best practices and benchmarking*

In the framework of the bi-annual conferences of the directors of the paying agencies, expert work-shops can focus on best practices concerning management and control procedures

(possibly harnessing the Learning Network). Peer-review missions in Member States and communication concerning best-practices can further improve high control standards. Such a process, once set in motion, should be dynamic and sustained over a longer time-period so as to generate positive results.

**ACTION 12:**

- (a) Encourage paying agencies to organise work-shops focused on best practices in the area of management and control procedures and participate actively in them.
- (b) Look into feasibility of pluri-annual activities including peer-review missions in Member States which result in benchmarking.

*4.2.9. Training*

It is a reality that not all management and control systems of Member States function effectively at all times.<sup>15</sup> Systemic weaknesses, in particular at the stage of operation of the controls, should be addressed. One way of doing so are specific training measures for Member States' administration staff in areas which are prone to errors. Training modules including e-training modules could be developed by DG Agriculture in cooperation with national training institutes.

**ACTION 13:**

- (a) Encourage Member States to provide adequate training for management and control officers.
- (b) Look into the possibility of developing (e-)training modules.

*4.2.10. Information and instruction of beneficiaries*

Errors may be due to inadequate claims and declarations by beneficiaries, sometimes indicating a poor understanding of the applicable support conditions. Member States should ensure that beneficiaries can efficiently obtain adequate information about the applicable support conditions. Tools to this effect can for example include information made accessible on the internet. Member States should in general be encouraged to exchange information on best practices in the area of awareness-raising initiatives targeting farmers, their associations as well as the relevant agricultural consultancies. At a future juncture, it can be pondered whether certain activities should be made mandatory for Member States.

**ACTION 14:** Member States should:

- (a) Ensure that beneficiaries can efficiently obtain adequate information about the applicable support conditions;
- (b) Include in their support programmes information on measures taken to enhance beneficiaries' understanding of the applicable support conditions.

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<sup>15</sup> See DG Agriculture Annual Activity Report 2012, section 1.2.7.

#### 4.2.11. *Audit adaptations*

The emphasis given in 2013 on the reduction of the open audit enquiries enables DG Agriculture to increase the number of audit missions as from 2014. The continued priority in ex-post audits will lead to sounder financial management and maintain awareness and understanding of the issues at stake among national administrations and beneficiaries. This, in turn, should lead to more efficient practices that comply with sound financial management.

**ACTION 15:** The errors found are taken into account in the design of the 2014 audit programme in the framework of Clearance of Accounts by DG Agriculture.

## 5. CONCLUSION

Providing flexibility to Member States to cater to the specific needs of their agricultural sectors has been a constant and deliberately pursued policy objective in the recent CAP reforms. Having said this, there is a risk that increased flexibility and improved targeting of support may lead to an increased risk of errors.<sup>16</sup>

It is against this backdrop that the 15 remedial actions are outlined in this document. They address common problems identified in the shared management of non-IACS support measures. The actions draw upon the Commission services and Member States in equal measure, cognisant of the fact that containing the error rate will depend on the cooperation between all the stakeholders in the implementation chain, that is to say the Commission, Member States and paying agencies.

DG Agriculture is committed to follow up on the actions listed, to discuss the modalities of their implementation with Member States, to monitor their application as well as to consider any further possible measures conducive to containing the error rate affecting non-IACS EAGF expenditure.

As to the timing of the implementation of the legislative actions, this will depend on the adoption of Commission regulations substantiating the CAP reform outcomes as well as the alignment to the Lisbon treaty. The cooperative actions will normally be set in motion in the course of 2014.

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<sup>16</sup> See also footnote 1, SWD(2013) 244 final, pages 5 and 18.