



## **BirdLife comments on Member States' proposals for CAP simplification (distributed at the Agriculture Council on 24 April 2009).**

August 2009

BirdLife is deeply concerned that many of the proposals submitted by Member States at the April 2009 Council are driven less by the objective of producing simpler, better regulation, and more by the desire to reduce EU Commission control and weaken environmental requirements for farmers. BirdLife believes the Common Agricultural Policy should be as simple as possible and accepts that streamlining of legislative requirements could reduce the workload of national administrations and better encourage land managers to fulfil the responsibilities they signed up for when applying for CAP payments. However, simplification must not be a cover for de-regulation, and particularly not a watering down of environmental rules built into cross compliance. If taxpayers are to accept public money going to farmers, the following principles should be adopted:

- Sustainability conditions attached to payments must be comprehensive, well-detailed, controllable and properly enforced;
- Requirements and procedures for approval by the Commission and for reporting of implementation and results must be robust and ensure EU-wide consistency;
- The impact of policy instruments must be appropriately monitored against stated objectives and targets.

Comments against specific problematic proposals are made below.

- **2: Proposal:** *Under EC agricultural law member states are obliged to submit a large number of reports on various aspects of implementation. While such reporting serves important purposes of transparency and evaluation, reporting duties in both pillars (including cross compliance) have reached critical levels of scale and complexity. They should therefore be reviewed with an eye to simplification. A sufficient transition period should always be provided if existing systems are adapted.*

**BirdLife comments:** Regular and robust reporting on aspects of CAP implementation is critically important to demonstrate the extent to which Member States are implementing correctly and appropriately. Significant sums of public money are used to finance the CAP, and EU taxpayers have the right to know, in sufficient detail, how their money is spent across the European Union.

EU solidarity will fail if not supported by transparency and accountability rules. Without strong reporting procedures, it becomes extremely difficult to assess at the EU scale whether resources are being used as efficiently and effectively as possible.

Although reporting places an administrative responsibility on national governments, the process should not be viewed as a burden, but rather an integral part of good governance. Although there may be opportunities for reporting duties to be streamlined, or made more efficient, their scope and level of scrutiny must not be reduced.

### **Cross Compliance (CC)**

- **12: Proposal:** *To significantly reduce and if possible abolish yearly CC controls of the requirements of Statutory Management Requirements (SMR) or part of SMR in case there have been no, or only very few infringements of these requirements in recent years. Alternatively the requirements could be “sleeping” and triggered for CC control, only when a similar requirement in the specific sector regulation is being infringed (73/2009, article 4 and 796/2004, article 47), as is the case for animal diseases which are not encountered in certain Member States.*

**BirdLife comments:** One of the objectives of cross compliance is to provide an incentive for farmers to respect existing legislation. If there are no, or very few infringements of SMR requirements, this could be interpreted as the fulfillment of this objective. To effectively remove a cross compliance requirement because of its successful implementation would undermine an important aspect of the system and send the wrong message to farmers.

The absence (or very low number) of infringements for particular SMRs may be explained also by the inadequate design of cross compliance requirements rather than their successful implementation. For example, the Birds Directive (which alongside the Habitats Directive has a very low number of detected infringements in Member States each year), was transposed mainly to protect species from hunting and does not adequately reflect the non-hunting threats facing birds such as those arising from intensive agriculture (e.g. habitats destruction, reduction of food resources, direct damage). As a result, cross compliance requirements concerning the Birds Directive, which specifically relate to farming practices, are lacking. The absence of SMR infringements may therefore reflect the fact that inspectors are not checking the right things.

Furthermore, in most Member States, the Birds and Habitats Directives have been poorly implemented: for example, the designation of Natura 2000 sites is incomplete, and management plans for sites which have been designated are often absent or generic. As a consequence, cross compliance requirements related to these Directives are difficult to identify for farmers and inspectors alike. This means that current cross compliance controls are inappropriate and may explain

the very low number of detected infringements for the Birds & Habitats SMRs. As a report by the Cross Compliance Network Project highlights:

*“the incomplete transposition of the [birds] Directive compromises the ability of the cross compliance policy to achieve its objectives.”<sup>1</sup>*

At the moment, only 1% of farmers receiving CAP payments are subject to cross compliance inspections each year. As highlighted by the European Court of Auditors<sup>2</sup>, this level of inspection is unsatisfactorily low and may contribute to the low levels of infringement found for some SMRs, especially if the timing of inspections does not coincide with farming activities most likely to cause infringements. BirdLife believes the rate of cross compliance inspection should be increased and the Proposal 12 rejected.

- **13: Proposal:** *To abolish the requirement for follow-up checks in relation to small infringements (triviality limit). Today there is a stronger follow up on minor infringements than on ordinary infringements (73/2009, article 24).*

**BirdLife comments:** The requirement for follow-up checks should not depend on the severity of infringements. Given the low rate of beneficiaries being inspected each year, the risk of not detecting persistent infringements would be too high if rules on follow-up checks were weakened. Further more, as most infringements are not penalised, and the threshold for withdrawing payments has been further weakened with the recent CAP Health Check, eliminating even the threat of recurring controls would mean a de facto dismantling of Cross Compliance as an enforcement enhancement tool for most cases of infringement. Proposal 13 should be rejected.

- **15: Proposal:** *Only clear and precise requirements understandable for farmers and control authorities should be used as a requirement and form the basis for CC controls (73/2009, annex 2 and 3).*

**BirdLife comments:** It is a duty of Member States to translate cross compliance provisions into appropriate, understandable and controllable technical prescriptions. As identified by the European Court of Auditors<sup>3</sup>, many Member States have failed to define operational standards applicable to farmers. Where standards have been defined, these are often vague or difficult to verify on the ground, making the task of inspection virtually impossible for inspecting authorities.

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<sup>1</sup> Swales, V. (2007) The Likely Effects of Cross Compliance on the Environment, Deliverable 20 of the CC Network Project, SSPE-CT-2005-022727.

<sup>2</sup> European Court of Auditors 2008. Is cross compliance an effective policy? Special report No 8: 27-29.

<sup>3</sup> European Court of Auditors 2008. Is cross compliance an effective policy? Special Report No 8.

Without clear and precise requirements, farmers are forced to interpret and implement cross compliance themselves: some may choose to simply ignore the requirements if it is unclear what they are supposed to do, others may implement them incorrectly with undesirable environmental outcomes. If clear requirements are absent, inspecting authorities will also be faced with difficulty in interpretation, which will inevitably lead to variability of outcome. The Commission should use its powers to ensure Member states correctly implement Cross Compliance through simple, meaningful and clear rules.

- **16: Proposal:** *to abolish or make it optional to use statutory management requirements which could not be straightforwardly controlled, for example, requirements for animal welfare (Council Regulation (EC) No 73/2009 Annex II).*

**BirdLife comments:** BirdLife objects strongly to this proposal. If certain statutory management requirements cannot be easily controlled or inspected, Member States should develop, with appropriate support from the Commission and national stakeholders, new, more straightforward prescriptions at farm level and ways of inspecting them. To argue that a requirement should be removed simply because it is difficult to control is a clear attempt to erode the cross compliance system and Proposal 16 must be rejected.

- **18: Proposal:** *To make use of the principal regarding controls already used in the IACS control, where only 50 % of the fields are inspected. The CC checks could be based on a selection of requirements based on a risk analysis. If no infringements in the CC controls of the first 50% of the requirements are found, the remaining requirements should not be checked, and the whole CC control should be regarded as OK (796/2004, article 47)*

**BirdLife comments:** As per our comments for proposal 12, the current level of cross compliance inspections is extremely low. As highlighted by the European Court of Auditors, both quantity and quality of controls are poor<sup>4</sup>. Only 1% of farmers in receipt of CAP money are currently inspected each year, which in reality means many farmers will never receive an inspection. BirdLife believes this rate should be increased to make the system of monitoring and enforcing cross compliance more robust. Proposal 15 does not explicitly suggest that fewer farms should be inspected, but it could lead to a significant reduction in both the number of cross compliance requirements being checked and the area being inspected. This would significantly undermine the system's coverage and enforcement. Proposal 18 should therefore be rejected

BirdLife does not object to the development of risk-based cross compliance checks (although a proportion of checks should remain completely random), indeed this is a sensible way to get the most out of an overstretched system. A risk-based approach should not however be used as justification to reduce the number, coverage or detail of inspections.

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<sup>4</sup> European Court of Auditors 2008. Is cross compliance an effective policy? Special report No 8: 27-29.

Furthermore, an intelligent use of tools such as remote sensing (for example to control against the destruction of landscape elements, grasslands and protected habitats) could allow for much higher control rates with no administrative burden on farmers and relatively modest burden for authorities.

- **20: Proposal:** *There has been a tendency for the number of CC requirements to increase steadily. This has reduced the acceptance of the whole concept among farmers and has created considerable burdens for national administrations. In the future, if requirements are added to address new challenges, a corresponding number of requirements could be taken out from the existing ones (“one in, one out”).*

**BirdLife comments:** The claim that cross compliance requirements have increased steadily is incorrect. The number of requirements did not increase following the system’s introduction (although a number of SMR requirements came into force in 2006 and 2007) and actually decreased following the Health Check<sup>5</sup>.

Proposal 20 is particularly worrying; as it suggests that the overall number of cross compliance requirements must remain constant (or reduce). If cross compliance is to stand a chance of encouraging more sustainable farming practices and justifying taxpayers’ money going to farmers, its requirements must reflect the issues that are important and relevant to land management. The number of issues will not remain static and cross compliance must be able to incorporate new issues when they arise (as per the Health Check). The suggestion that for every new requirement an existing one should be removed is irrational, extremely risky and should be rejected outright. It is not possible to trade soil protection for protection of wild birds for instance, both are equally important and any loss of requirements would severely erode the capacity of the system to deliver improvements to land management. Proposal 20 should therefore be rejected.

- **21: Proposal:** *to make optional those statutory management requirements, which concern only small amount of farmers in particular MS or to make possible to use very simple control system for such requirements (Council Regulation (EC) No 73/2009 Annex II).*

**BirdLife comments:** SMRs reflect existing European legislation and as such should never become ‘optional’, regardless of the amount of farmers affected by them. In many instances, great environmental damage can be done by even a small portion of a country’s farmers infringing legislation (for example, rare and endangered habitats and species almost by definition are found only the land of

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<sup>5</sup>Following the Health Check, the number of articles/sub-articles contained within Statutory Management Requirements was reduced by 15. Although the overall number of GAEC standards increased from 10 to 15 following the Health Check, 4 of the original standards became optional for Member States along with 3 of the new standards. Overall, the number of compulsory standard fell to 8.

few farmers). Proposal 21 would erode cross compliance both within Member States and across the EU and should be rejected.

- **22: Proposal:** *The advisory service (FAS) shall cover one or more statutory management requirements (SMR's) and/or good agricultural and environmental conditions (GAEC's). Because now the system requires that the FAS covers all SMR's and GAEC's, tailor made farm advice is now impossible.*

**BirdLife comments:** The FAS is extremely important to ensure farmers are properly informed about their cross compliance responsibilities and are able to obtain clarification/guidance when any queries arise. It is neither sensible nor practical for a FAS to restrict its coverage, as it would automatically exclude farmers with queries about other SMRs and GAECs from the advisory system. This would increase farmer confusion about cross compliance in general and would severely undermine attempts to secure farmer support for the system.

Proposal 22 should be rejected and Member States instead provided with improved guidance on developing effective and comprehensive FAS systems.

- **23: Proposal:** *Enable Member States generally to reduce the inspection quota to a specific lower limit, if they have a functional database and a risk analysis which has proven to be effective for the evaluation required under Community law. With regard to cross-compliance in particular, an increase of inspection quota under article 44 (2) of 796/2004 should only be implemented, if the significant irregularities are ascertained in those farms which were selected for inspection randomly; otherwise Member States will be discouraged to establish an effective risk analysis.*

**BirdLife comments:** As commented for proposals 12 and 18, current inspection rates are insufficient for a robust monitoring and enforcement of cross compliance standards. The implementation of a risk analysis should not justify a reduction in controls, especially if irregularities are being detected. The unacceptable levels of inspection effectiveness highlighted by the Court of Auditors mean that controls need to be increased in both intensity and efficacy and there is no logical trade of between the two. Proposal 23 should be rejected.

### **Single Payment Scheme (SPS)**

- **26: Proposal:** *With the introduction of the decoupled Single Payment Scheme in 2005, it was an EU requirement that Member States must ensure that the total area of permanent pasture is not reduced substantially (5-10 percent from 2003 levels). The requirement does not require that each parcel must be maintained with grass, but that the sum of permanent grassland in the country is maintained. The development so far has shown no big changes. The requirement should be reviewed and potentially abolished.*

**BirdLife comments:** BirdLife objects strongly to proposal 26. Permanent grasslands, especially extensive semi-natural grasslands, represent some of Europe's most valuable biodiversity habitats. Grasslands also represent an

important carbon stock and ploughing them up can lead to a swift and potentially enormous release of carbon from the soil and significantly contribute to climate change. BirdLife would strongly counter the suggestion that ‘no big changes’ have occurred since the system was introduced. Indeed evidence from across the EU indicates that high cereal prices and public incentives for agrofuels have led to more permanent grasslands being ploughed up by farmers extending cereal and other crop production in recent years<sup>6</sup>. Official figures on grassland loss are systematically underestimating the problem as the ploughing of biodiversity and carbon rich permanent grasslands is “offset” by the abandonment of marginal arable land elsewhere (which usually results in much poorer biodiversity habitat and can take centuries to accumulate carbon levels comparable to those of ancient grasslands). Intensification of semi-natural grassland via re-seeding and fertilisation is another critical issue for biodiversity, completely ignored by cross compliance.

Permanent grassland is not adequately protected by cross compliance, and therefore this requirement should be revised to forbid any conversion of semi-natural grassland into arable, as well as management intensification. Permanent grassland represents a hugely valuable resource for wildlife, water management and climate change mitigation, and the suggestion that protection under cross compliance is superfluous must be rejected.

## 2nd Pillar

- **37: Proposal:** *Rural Development measures and agri environment measures in particular can give rise to high error rates which do not materially affect the overall outcome or impact achieved. Instead of focusing on specific error rates, a broader long term view of control of these schemes with more emphasis on the ultimate outcome/ impact achieved would merit consideration.*

**BirdLife comments:** Overseeing implementation of rural development measures and evaluating the impact of these schemes are both important and not mutually exchangeable elements. Rural development measures are voluntary and based on explicit contracts. Robust controls on the respect of these contracts are crucial to ensure a healthy functioning of this policy and for transparency for taxpayers. Proposal 37 should be rejected.

- **38: Proposal:** *A complex evaluation system for Rural Development Programmes is provided for in the Rural Development regulation. This comprises ex ante, midterm and ex post evaluation together with ongoing evaluation on an annual basis. This is all carried out by a complex system of indicators. This generates considerable work for both Member States and the Commission. While evaluation is an essential part of Rural Development policy it is worth considering whether an equally valuable but simpler*

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<sup>6</sup> Data from Germany are reported in: Oppermann et al. 2009. *Common Agricultural Policy: cross-compliance and the effects on biodiversity*. Published by IFAB. Anecdotal evidence is also available for other Member States (e.g. Hungary, Italy, United Kingdom).

*system could be devised. At the very least, the current complex system of indicators needs to be reviewed and simplified.*

**BirdLife comments:** Independent and science-based monitoring and evaluation are the only tools to quantify the success of Rural Development policy. In the previous programming periods, nearly all Member States relied on uptake patterns to assess the effectiveness of schemes, with the perverse result that undemanding and 'business as usual' schemes were adopted significantly more than well designed and SMART ones.

The Common Monitoring and Evaluation Framework (CMEF) and its related reporting procedure represent the very minimum needed to assess the effectiveness of rural development policy. However, the CMEF indicators are not specific for particular schemes, but rather provide an aggregate measurement of the overall impact of Rural Development programmes. Elaboration, and rigorous monitoring, of scheme-specific targets and indicators are needed in current programmes.

BirdLife estimates that, in most cases, the cost of high-quality monitoring would not exceed 0.1% of the actual cost of an agri-environment scheme. If results of monitoring feed back into scheme design and implementation, monitoring enables significant savings, as assessing effectiveness is crucial to detect deadweight and waste of public money caused by ineffective or inefficient schemes.

BirdLife urges Member States to rectify the delay in defining clear impact targets (especially concerning biodiversity indicators) and establishing robust monitoring systems, for both CMEF and scheme-specific indicators.

- **39: Proposal:** *Level of details required in the Rural Development programs for approval and notification to the Commission could be decreased and therefore harmonized to approach of that in the Structural Funds programming documents. Requirement for clearance of the national aid schemes must be revised for the measures included in the national Rural Development Programs. According to the current provisions of Regulation No 1698/2005 Member State must grant the financing of certain measures under a notification procedure within axis 1 and 3 measures separate from the process of submission of the relevant amendments to the Commission. Requirement to address the same issue twice – via notification and via program amendment process must be harmonized. (Council Regulation (EC) No 1698/2005 Article 88 and Commission Regulation (EC) No 1698/2005 Article 57 paragraph 2).*

**BirdLife comments:** Approval by the Commission is a crucial step to ensure EU-wide consistency in the implementation of Rural Development policy. If the Commission is to appropriately screen the content of programmes, a sufficiently detailed level of information is needed. BirdLife believes the level of detail currently required for the approval of Rural Development programmes is appropriate, while that in Structural Funds programming is too weak to allow a real evaluation by the Commission and consistency in the implementation of the

policy across the EU. Recent work<sup>7</sup> by BirdLife has highlighted widespread bad practice which undermines the effectiveness of Rural development spending and often leads to serious environmental harm, this in spite of the process of Commission control and approval of plans. Controls on the quality of EU spending, respect of EU legislation and coherence with EU objectives should be strengthened, not weakened if the EU is to retain a measure of credibility with its citizens. Proposal 39 should be rejected.

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<sup>7</sup> BirdLife International 2009, Could do better- How is EU rural Development policy delivering for biodiversity?