

TOWARDS SUSTAINABLE FARMING: AN ANALYSIS AND REVIEW OF THE EUROPEAN UNION'S AGRICULTURAL SUBSIDY POLICY

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ABSTRACT

This paper provides an overview of the most important European agricultural subsidies, which aim at promoting a more sustainable way of farming. The European Union has put these subsidies into place in order to create a better balance between agriculture and the environment. Through these 'green' subsidies agro-biodiversity can be protected, which is a very important goal since approximately 50% of all species in Europe depend on agricultural habitats or landscapes. The major pressures on biodiversity in agricultural land result from changes in the type and intensity of farming, which generate changes in agricultural landscapes. Such changes can result either from intensification or abandonment, both of which can be detrimental to biodiversity.

Each and every single one of the discussed subsidies has its own goals and purposes. (1) Cross compliance, (2) agro-environmental measures, (3) less favoured area payments and (4) subsidies for organic farming have different objectives, which will be addressed in this paper. I will aim at analysing their overall contributions to the goal of fostering sustainable farming within the EU, through highlighting the benefits, strengths and contributions of these four types of subsidies.

This paper will examine their key contents and provisions, their current level of implementation and practical measures that could be put in place to further enhance their successful implementation.

1. INTRODUCTION

The world is rapidly changing, unfortunately not always in a good way. The impacts of humankind on the environment have never been more detrimental. Worldwide water shortage, desertification, and climate change, are only a few examples of human induced environmental problems. Although it might not be so obvious, agriculture plays a major part in all of this. As a matter of fact, it happens quite often that harvest is being destroyed because of water shortage, floods, desertification, storms, war, amongst others. Food supply and the existence of some populations might be threatened. However, as the environment influences agriculture, agriculture also influences the environment. Sometimes this influence generates positive effects: some traditional farming methods support the survival of the typical agro-biodiversity. Regrettably agriculture also often generates negative effects. The mechanisation of agriculture has facilitated the elimination of many landscape features such as hedgerows, the drainage of wetlands and the ploughing of semi-natural grasslands. Species richness and habitat diversity have declined due to increased pesticide and fertiliser use and the simplification of crop rotations.¹ Due to a worldwide growing population production levels had to

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rise and intensification of farming was stimulated. For a long time subsidies were given out in industrialised countries, only to stimulate this intensification process. However, during the last two decades Europe has changed its policy course towards stimulating more environmentally friendly production methods. The EU policymakers realised that agriculture provides much more than just food.

This paper attempts to provide an overview of some subsidies that the EU has put into place through regulations and directives, to promote sustainable farming methods. Each and every one these subsidy policies try to lower the impact of agriculture on the environment, through its own way. Unfortunately there are also quite a lot of subsidies promoting intensive livestock farming², though these will be disregarded here.

This paper is divided into seven parts, the introduction being the first. Part two discusses some relevant definitions while part three examines the cross-compliance scheme. In part four I analyse agri-environmental measures, whereas part five concerns support for less-favoured areas. In part six subsidies for organic farming will be analysed. The last part will comprise the conclusion.

2. DEFINITIONS

In the following paragraphs I will provide some definitions of certain terms or concepts used in this paper, in order to ensure that there are no linguistic or substantive misunderstandings with regard to the scope of these terms:

i) *Agriculture*: According to the European Landowners' Organisation (ELO), agriculture is "the utilization of (national) resource systems to produce commodities which maintain life, including food, fibre, forest products, horticultural crops and their related services".³ This definition is broad and has a wide scope that recognises the many functions agriculture fulfils.

ii) *Agro-biodiversity*: The European Learning Network on Functional Agro Biodiversity defines agro-biodiversity in the following terms:

...biodiversity on the scale of agricultural fields or landscapes, which provides ecosystem services that support sustainable agricultural production and can also have a positive spin-off to the regional and global environment and society as a whole.⁴

iii) *Subsidy*: In 2005 the Organisation for Economic Co-operation and Development (OECD) defined subsidies in the following terms:

in general, a subsidy is a result of a government action that confers an advantage on consumers or producers, in order to supplement their income or lower their costs.⁵

With these three important terms elucidated, we can now proceed to the essence of this paper. In underlying paragraphs five different subsidy measures

¹ EEA, Report No 5/2006, *Progress towards halting the loss of biodiversity by 2010*, Copenhagen, 2006, 34.

² Such as suckler cows subsidies.

³ European Landowners' Organization (ELO), *Agriculture and Biodiversity*, June 2010, 7.

⁴ The network is composed of many various European organisations and institutions. For more information:

<http://www.eln-fab.eu/>.

⁵ OECD, 'Environmentally Harmful Subsidies. Challenges for Reform' 2005 OECD Publications <http://www.oecd-ilibrary.org/agriculture-and-food/environmentally-harmful-subsidies_9789264012059-en> accessed 2 Augustus 2013.

will be set out and clarified. These measures are one of the EU's many attempts at making the Common Agricultural Policy (CAP) more green and sustainable.

3. CROSS COMPLIANCE – HARD CORE OF SUSTAINABLE FARMING?

3.1. Introduction

The Mid Term Review (2003) established cross compliance obligations which farmers must meet in order to receive full financial aid (direct payment). Cross compliance is a mechanism used to improve the environmental impacts of farm management. It is a policy tool implemented in the Common Agricultural Policy (CAP) and sets out environmental and other standards that farmers must adhere to in order to receive subsidies. It ensures that support granted contributes to promoting sustainable agriculture and, thereby, responds positively to concerns of citizens at large. Member States had to set farming standards in relation to 18 European Union (EU) regulations and directives, define Good Agricultural and Environmental Conditions and ensure compliance with those standards on farms.⁶ European law created the immense legal framework around it.⁷

Cross compliance implies that the amount of direct payments (direct support given from the EU or the member states to the farmers) depends on whether or not the farmer complies with certain conditions.⁸ These conditions concern (1) statutory management requirements⁹, in the following areas: public, animal and plant health, environment and animal welfare and (2) Good Agricultural and Environmental Conditions.¹⁰ The statutory management requirements are a set of conditions and demands, which result from eighteen different European directives and regulations.¹¹ Good Agricultural and Environmental Conditions comprise minimum demands concerning erosion, organic dust in the soil, soil structure, minimum level of maintenance, protection and management of water,....¹² However, if a farmer negligently fails to meet a standard or requirement, his Single Payment Scheme (SPS) payments and other direct payments can be reduced by a certain

⁶ IEEP, *Cross Compliance in the CAP - Conclusions of a Pan-European Project 2002-2005*, Brussels, IEEP, 1 en <www.ieep.eu/assets/248/conclusionsenglish.pdf> accessed 20 August 2013.

⁷ Council Regulation (EC) 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No. 2019/93, (EC) No. 1452/2001, (EC) No. 1453/2001, (EC) No. 1454/2001, (EC) No. 1868/94, (EC) No. 1251/1999, (EC) No. 1254/1999, (EC) No. 1673/2000, (EEC) No. 2358/71 and (EC) No. 2529/2001 [2003] OJ L270 replaced by Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 [2009] OJ L 30.

⁸ Article 4 Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 [2009] OJ L 30.

⁹ Article 5 Regulation 73/2009.

¹⁰ Article 6 Regulation 73/2009.

¹¹ Annex III Regulation 1782/2003 or Annex II Regulation 73/2009.

¹² Annex IV Regulation 1782/2003 – Annex III Regulation 73/2009.

percentage.¹³ This means that cross-compliance is not an eligibility condition for payments but triggers reductions when not respected.

3.2. REQUIREMENTS FOUND IN 18 DIRECTIVES OR REGULATIONS

The conditions or requirements which farmers need to comply with in order to get subsidies were gradually put into place. The conditions were introduced in three different phases (1st of January 2005, 1st of January 2006 and 1st of January 2007). Here, we will discuss some of the most ecologically important directives.

a. 'Birds' directive¹⁴

The requirements can be found in articles 3, 4, 5, 6, 7 and 8. In general member states need to take the requisite measures to preserve, maintain or re-establish a sufficient diversity and area of habitats for all the species of birds referred to in the directive. Article 5 however contains stringent obligations, also aimed at farmers. The article states that it is forbidden to deliberately kill or capture the birds, deliberately destroy or damage their nests and eggs and deliberately disturb them during the period of breeding.

b. Groundwater pollution¹⁵

Article 4 and 5 contain obligations for farmers, since they prohibit all direct discharge of substances in list I (organophosphorus compounds, organotin compounds, mercury and its compounds, cadmium and its compounds and mineral oils and hydrocarbons).

c. Sewage Sludge¹⁶

Pursuant to this directive, sludge may only be used for specific agricultural purposes. Member States shall prohibit the use of sludge or the supply of sludge for use on:

- grassland or forage crops if the grassland is to be grazed or the forage crops to be harvested before a certain period has elapsed. This period, which shall be set by the Member States taking particular account of their geographical and climatic situation, shall under no circumstances be less than three weeks;
- soil in which fruit and vegetable crops are growing, with the exception of fruit trees;
- ground intended for the cultivation of fruit and vegetable crops which are normally in direct contact with the soil and normally eaten

¹³ Commission Regulation (EC) 1122/2009 of 30 November 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross compliance under the support scheme provided for the wine sector [2009] OJ L 316/65.

¹⁴ Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds [1979] OJ L103 amended by Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds [2010] OJ L20/7.

¹⁵ Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances [1980] OJ L20.

¹⁶ Council Directive 86/278/EEC of 12 June 1986 on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture [1986] OJ L181.

raw, for a period of 10 months preceding the harvest of the crops and during the harvest itself.

d. Nitrate directive¹⁷

This directive aims at providing a general level of protection against pollution for all waters. The member states of the EU need to establish a code or codes of good agricultural practice, to be implemented by farmers on a voluntary basis and set up where necessary a programme, including the provision of training and information for farmers, promoting the application of the code(s) of good agricultural practice. This means that the obligations for the farmers derive from national legislation, instead of European rules.

e. Habitats directive¹⁸

This directive aims at protecting the biological diversity by conserving natural habitats and wild flora and fauna in the European territory.¹⁹ Article ten of the directive states that member states shall endeavour, where they consider it necessary, in their land-use planning and development policies to encourage the management of features of the landscape which are of major importance for wild fauna and flora. Such features are those which, by virtue of their linear and continuous structure (such as rivers with their banks or the traditional systems for marking field boundaries) or their function as stepping stones (such as ponds or small woods), are essential for the migration, dispersal and genetic exchange of wild species. For the farmer this means that he needs to conserve the natural vegetation and landscape elements around his fields and grasslands.

f. Other directives

Some of the other important Directives that have been made applicable since the first of January 2005 are:

- Directive identification and registration of animals²⁰
- Regulation ear tags, registers and passports²¹
- Regulation identification and registration of bovine animals²²

Applicable since the first of January 2006 (norms with regard to human health, animal health and plant protection):

- Directive plant protection²³
- Hormones directive²⁴

¹⁷ Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources [1991] OJ L375/1.

¹⁸ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [1992] OJ L206.

¹⁹ Article 2, 1 Habitats directive.

²⁰ Council Directive 92/102/EEC of 27 November 1992 on the Identification and Registration of Animals [1992] OJ L355.

²¹ Commission Regulation (EC) 2629/97 of 29 December 1997 laying down detailed rules for the implementation of Council Regulation (EC) 820/97 as regards eartags, holding registers and passports in the framework of the system for the identification and registration of bovine animals [1997] OJ L354.

²² Regulation (EC) 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) 820/97 [2000] OJ L204.

²³ Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market [1991] OJ L230.

- Food law regulation²⁵
- TSE regulation²⁶

Applicable since the first of January 2006 (norms relating to diseases)

- Directive foot-and-mouth²⁷
- Directive disease control²⁸
- Bluetongue directive²⁹

Applicable since the first of January 2007 (norms concerning animal welfare)

- Directive minimum standards (calves)³⁰
- Directive minimum standards (pigs)³¹
- Directive protection farm animals³²

3.3. GOOD AGRICULTURAL AND ENVIRONMENTAL CONDITIONS

“Good Agricultural and Environmental Conditions” are specific minimum conditions demanding extra effort from the farmer. The measures are divided in four subtitles: erosion, organic dust in the soil, soil structure and a minimum level of maintenance. Article 6, 1 of regulation 73/2009 states that member states shall ensure that all agricultural land, especially land which is no longer used for production purposes, is maintained in good agricultural and environmental condition.³³ Member States had to define, at national or regional level, minimum requirements for good agricultural and environmental condition on the basis of the framework established in Annex III, taking into account the specific characteristics of the areas concerned, including soil and climatic condition, existing farming systems, land use, crop rotation, farming practices, and farm structures.

²⁴ Council Directive 96/22/EC concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of β -agonists, and repealing Directive 81/602/EEC, 88/146/EEC and 88/299/EEC [1996] OJ L125.

²⁵ Regulation (EC) 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety [2002] PB L31.

²⁶ Regulation (EC) 999/2001 of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies [2001] OJ L147.

²⁷ Council Directive 85/511/EEG of 18 November 1985 introducing Community measures for the control of foot- and-mouth disease [1985] PB L315.

²⁸ Council Directive 92/119/EEG of 17 December 1992 introducing general Community measures for the control of certain animal diseases and specific measures relating to swine vesicular disease [1993] PB L62.

²⁹ Council Directive 2000/75/EG of 20 November 2000 laying down specific provisions for the control and eradication of bluetongue [2000] OJ L337.

³⁰ Council Directive 91/629/EEG of 19 November 1991 laying down minimum standards for the protection of calves [1991] OJ L340.

³¹ Council Directive 91/630/EEG of 19 November 1991 laying down minimum standards for the protection of pigs, *PB L 340*, 11 December 1991.

³² Council Directive 98/58/EG of 20 July 1998 concerning the protection of animals kept for farming purposes [1998] OJ L 221.

³³ Article 6 Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 [2009] OJ L30.

Annex III states that to protect the soil from erosion, farmers need to take appropriate measures, such as taking into account minimum soil cover, minimum land management reflecting site-specific conditions and retain terraces. A minimum level of maintenance includes avoiding the deterioration of habitats through the retention of landscape features including, where appropriate, hedges, ponds, ditches trees in line, in group or isolated and field margins.

These are the only provisions in the regulation relating to Good Agricultural and Environmental Conditions. The practical implementation rests completely on the shoulders of the member states.

3.4. AN EVALUATION OF CROSS COMPLIANCE

In 2007 the European Commission assessed the implementation of the 2003 Common Agricultural Policy reform, aiming at the introduction of some essential adjustments. This in order to prepare the EU agriculture to adapt better to a rapidly changing environment.³⁴ With respect to cross compliance, the European Commission aimed to quality the statutory management requirements by excluding provisions which were not directly relevant to the stated objectives of cross-compliance.

On the 20th of November 2008 the EU agriculture ministers reached a political agreement on the CAP "Health Check". The aim of the Health Check is to modernise, simplify and streamline the CAP and remove restrictions on farmers, thus helping them to respond better to signals from the market and to face new challenges. Legislative reform followed soon.³⁵ Specifically with regard to cross compliance the initiatives stated that the cross compliance will be simplified, by withdrawing standards that are not relevant or linked to farmer responsibility.

On the 9th of December 2008 the European Court of Auditors carried out a special report concerning the cross compliance policy ("Is Cross-compliance an effective policy?").³⁶ The Court's audit took place in seven Member States³⁷ and had to determine whether cross compliance is effective by analysing its setting up and the first years of its implementation by the Commission and the Member States. The audit aimed at, *inter alia*, answering the following questions:

³⁴ Communication from the Commission to the European Parliament and the Council - Preparing for the "Health Check" of the CAP reform /* COM/2007/0722 final */

³⁵ Council Regulation (EC) 72/2009 of 19 January 2009 on modifications to the Common Agricultural Policy by amending Regulations (EC) 247/2006, (EC) 320/2006, (EC) 1405/2006, (EC) 1234/2007, (EC) 3/2008 and (EC) No 479/2008 and repealing Regulations (EEC) 1883/78, (EEC) 1254/89, (EEC) 2247/89, (EEC) 2055/93, (EC) 1868/94, (EC) 2596/97, (EC) 1182/2005 and (EC) 315/2007 [2009] OJ L 30.

Council Regulation (EC) 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 [2009] OJ L 30.

Council Regulation (EC) No 74/2009 of 19 January 2009 amending Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) [2009] OJ L 30.

³⁶ European Court of Auditors, *Is Cross Compliance an Effective Policy?*, Special Report No 8, December 2008 <
http://www.groupedebruges.eu/pdf/ECA_report_on_cross_compliance.pdf> accessed 15th of September 2013.

³⁷ Finland, France, Greece, the Netherlands, Poland, Portugal, and Slovenia.

- 1) Are the objectives and the scope of cross compliance well defined, and can results be expected at farm level?
- 2) Can the legal framework defining cross compliance be effectively implemented?
- 3) Are the control and sanction systems effective?
- 4) Is reporting and monitoring adequate?

The audit concluded that the objectives of the policy have not been defined in a specific, measurable, relevant, and realistic way.³⁸ The objectives set out by the Council are fairly general and were not further developed and detailed in the operative paragraphs of the Council Regulation or in its annexes. Annex III of Regulation 1782/2003 lists Statutory Management Requirements which, in effect, consist in a series of articles pertaining to pre-existing Regulations and Directives that were not established in the context of cross compliance.³⁹ This concern is a frequently recurring comment: the cross-compliance requirements do not have a large added value, since they are derived from pre-existing legislation which have been in place for a long time. As a result, at farm level many obligations are still only for form's sake and therefore have little chance of leading to the expected changes or improvements.⁴⁰

Consequently, at farm level, almost all obligations introduced under cross compliance policies were already included in existing usual practices. For instance, in Portugal, around 75 % of the farmers receiving direct payments did not have to fulfill any cross compliance requirement to respect the environmental Statutory Management Requirements. Their farming practices were thus not affected. More generally, farmers in the Member States were usually not required to change their existing practices.⁴¹ Based on the results of the audit the Court concluded that the objectives and the scope of cross compliance are not well defined, making it unclear what cross compliance is designed to achieve. The legal framework poses considerable difficulties, notably because it is too complex (18 directives and regulations).

Considering the fact that cross-compliance is not an eligibility condition for receiving payments but only triggers reductions when not respected means that control systems have to be effective and efficient. However figures demonstrate that the percentage of control is very low: for example in 2005, only 240,898 on-the-spot checks were carried out on 4.92

³⁸ European Court of Auditors, *Is Cross Compliance an Effective Policy?*, Special Report No 8, December 2008 < http://www.groupedebruges.eu/pdf/ECA_report_on_cross_compliance.pdf> accessed 15th of September 2013, 12 and 64.

³⁹ European Court of Auditors, *Is Cross Compliance an Effective Policy?*, Special Report No 8, December 2008 < http://www.groupedebruges.eu/pdf/ECA_report_on_cross_compliance.pdf> accessed 15th of September 2013, 64.

⁴⁰ European Court of Auditors, *Is Cross Compliance an Effective Policy?*, Special Report No 8, December 2008 < http://www.groupedebruges.eu/pdf/ECA_report_on_cross_compliance.pdf> accessed 15th of September 2013, 64.

⁴¹ European Court of Auditors, *Is Cross Compliance an Effective Policy?*, Special Report No 8, December 2008 < http://www.groupedebruges.eu/pdf/ECA_report_on_cross_compliance.pdf> accessed 15th of September 2013, 16.

percent of farmers affected by Cross Compliance. Reductions in payments were applied for 11.9 percent of farmers subject to on-the-spot checks.⁴² The Court of Auditors indeed stated that the Member States did not take their responsibility to implement effective control and sanction systems. As a consequence the control system provides insufficient assurance on farmer compliance. On top of this, the data provided by the Member States on checks and infringements is not reliable. Even though in 2009 new legislation entered into force the minimum control rate (art. 50 regulation 1122/2009) is still only 1%: “the competent control authority shall, with regard to the requirements and standards for which it is responsible, carry out on-the-spot checks on at least 1 % of all farmers submitting aid applications under support schemes for direct payments within the meaning of Article 2(d) of Regulation (EC) No 73/2009 and for which the competent control authority in question is responsible. The competent control authority shall also, with regard to the requirements and standards for which it is responsible, carry out checks on at least 1 % of all farmers subject to cross compliance obligations.”

Even though the Court overall considers that cross compliance is a vital element of the CAP, the conclusions of the audit were negative. According to the Court the cross compliance mechanism is not effective as currently managed and implemented, therefore the court recommended that the applicable rules should be simplified, clarified and prioritized.⁴³ Unfortunately, the report was adopted by the ECA at a meeting on the 6th of November, only two weeks before the political agreement on the Commission’s Health Check proposals. This makes it disappointing that the Health Check has been decided without taking into consideration the Courts report.

4. AGRO-ENVIRONMENTAL MEASURES – SUBSIDIES FOR MORE BIODIVERSITY?

Agro-environmental measures are objectives, which the farmer can commit to for a period of minimum five consecutive years. Farmers will in this way commit to putting in a bigger environmental effort so that they exceed the minimum demands set by the cross-compliance measures⁴⁴ and go further than the demands of good agricultural and environmental conditions. The goal of these agro-environmental measures is to reconcile agricultural production with certain environmental objectives, so that a sustainable level of production can be achieved. If farmers reach their environmental objectives, they will receive support under the form of subsidies. Every farmer, even if farming is only a secondary activity, is eligible to receive this kind of support. These subsidies were considered necessary to cover the extra costs and the potential loss of income resulting from a lower production level due to compliance with the agro-environmental measures.

⁴² <http://europa.eu/rapid/press-release_IP-07-440_en.htm> ‘accessed 16 September 2013.

⁴³ European Court of Auditors, *Is Cross Compliance an Effective Policy?*, Special Report No 8, December 2008 < http://www.groupepedebruges.eu/pdf/ECA_report_on_cross_compliance.pdf> accessed 15th of September 2013, 64.

⁴⁴ Cross-compliance is a mechanism that links direct payments to compliance by farmers with basic standards concerning the environment, food safety, animal and plant health and animal welfare, as well as the requirement of maintaining land in good agricultural and environmental condition < http://ec.europa.eu/agriculture/envir/cross-compliance/index_en.htm> accessed 4 August 2013.

Article 39 of Regulation 1698/2005 poses the legal basis of the agro-environmental measures and states that agro-environment payments shall be granted to farmers who make on a voluntary basis agro-environmental commitments.⁴⁵ Agro-environment payments however, only cover those commitments going beyond the relevant mandatory standards established pursuant to Articles 4 and 5 of and Annexes III and IV to Regulation (EC) 1782/2003 as well as minimum requirements for fertiliser and plant protection product use and other relevant mandatory requirements established by national legislation and identified in the programme. Regulation 1974/2006 is implementing regulation 1698/2005.⁴⁶ It contains provisions with regard to the monitoring, the control and the evaluation of the agro-environmental measures.

The regulation also states that the different agro-environmental measures can be combined together, as long as they work complementary. An example of an agro-environmental measure is the commitment of a farmer to use less manure in order to improve water quality. This commitment is expressed in an agreement between the farmer and for example the local government. Another commitment might be the construction and maintenance of a small pond on farmland in order to restore bird or insect biodiversity.

The regulation was seen as a flexible instrument and is based on the principle that the European Union member states need to make the support available throughout their territories, deciding on the implementation in accordance with their specific needs.⁴⁷ The site specific approach of the agro-environmental measures poses in that way a great solution since there are few activities that always have beneficial effects on all land-types. This flexibility however also has one major downside: the policy lacks coherence and causes a lot of interstate differences with regard to the implementation. One member state can have a strong focus on the agro-environmental measures, whereas the other one can lack interest. This showed even in practice. In countries such as Finland, Sweden, Luxemburg, Austria and Germany agro-environmental measures are widely spread and commonly used. In Belgium, the Netherlands, Spain, Italy and Greece they rarely use this possibility.⁴⁸ In Belgium for example this indifference could be explained by the fact that farmers themselves are not really interested in the schemes. In 2011 almost 90% of respondents to a survey admitted that they would stop their protection of field and meadow birds if subsidies were to be removed. Many of the farmers did not want to participate simply because they 'lack interest'.⁴⁹ So in general it is difficult and rather ineffective to compare the requirements between different countries, since the circumstances vary greatly across the EU.

⁴⁵ Council Regulation (EC) 1698/2005 of 20 September on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) [2005] OJ L277/1.

⁴⁶ Commission Regulation (EC) 1974/2006 of 15 December 2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) [2006] OJ L368/15.

⁴⁷ Article 36(a)(iv) Regulation 1698/2005.

⁴⁸ EEA, Report No 1/2004, High Nature Value Farmland, Copenhagen, 2004, 12.

⁴⁹ E MAERTENS, *Agro-environmental measures: what do farmers think about it?*, Department L&V, Monitoring and Studies, Brussels, 2011.

5. LESS FAVOURED AREAS - COMPENSATORY ALLOWANCES

Directive 75/268 made it possible for farmers to get additional support if their farms were located in a problematic area (*less favoured area*).⁵⁰ The support was deemed necessary because farmers struggled to make their production and activities profitable due to the natural handicaps of certain areas.⁵¹

Natural handicaps are climatological circumstances, steep slopes in mountainous areas, poor soil, ... Initially, the compensatory allowances had a mere social role: the EU wanted to avoid that farmers were to be forced to stop their productions due to difficult environmental and geographical circumstances. The subsidies had to make sure that life and production was viable in the 'less favoured areas'. Technically, the policy focused on creating a viable production level and not on the creation of a more environmentally sustainable farming method. Later however, the emphasis moved, from the social to the environmental side of things.

European policy makers started to realise that the less favoured areas were mostly a part of 'High Nature Value Farmland'.⁵² These are areas with a high ecological value. Unfortunately they are also very receptive to (mild) changes. High Nature Value Farmland consists for example of unfertilised natural grassland, wetlands, moorland, wet peat areas, dune grasslands, ... If these areas are abandoned by farmers, they will lose their status of semi-natural agricultural landscape and risk losing their important biodiversity.

This positive attitude towards the environment of the less favoured areas made it possible that in the nineties policy changes were made so that the negative impact on the environment could be limited. In 1991 a regulation went into force which had to make sure that the farmer could only get subsidies if the stock density wasn't higher than 1,4 cattle-units per hectare. This measure was mostly taken for budgetary reasons but had as a side-effect that overgrazing was countered.⁵³ Research however showed that – taken strict nature conservation protection into account – the limits or thresholds were still too high.⁵⁴

In 1999 regulation 1257/99 went into force. Article 13 (Chapter five) provided support - compensatory allowances - for less favoured areas and areas with environmental restrictions. Compensation for naturally less-favoured areas was put into place in order to ensure continued agricultural land use and thereby contribute to the maintenance of a viable rural community, to maintain countryside, to maintain and promote sustainable farming systems which in particular take account of environmental protection requirements. Compensation for areas with environmental restrictions was put into place in

⁵⁰ Council Directive 75/268/EEC of 28 April 1975 on mountain and hill farming and farming in certain less-favoured areas [1975] OJ L128/8.

⁵¹ For an overview <http://ec.europa.eu/agriculture/rurdev/lfa/index_en.htm>

⁵² EEA, Report No 1/2004, High Nature Value Farmland, Copenhagen, 2004.

⁵³ Jack Brian, *Agriculture and EU Environmental Law* (Surrey, Ashgate, 2009).

⁵⁴ EEA, Report No 1/2004, High Nature Value Farmland, Copenhagen, 2004, 14. Until 1994, farmers got extra support based on the total amount of animals. This resulted in situations where farmers raised the amount of cattle up to the maximum allowed amount of animals, just to get a higher subsidy. In less favoured areas farmers could get a yearly subsidy for up to 1000 sheep. In other areas, this limit was set to only 500 sheep. [J. BRIAN, 100]. There is no doubt that this subsidy was leading to overgrazing, causing major damage to biodiversity and the habitats of many types and species.

order to ensure environmental requirements and safeguard farming in areas with environmental restrictions.

Compensatory allowances shall be granted per hectare of areas used for agriculture to farmers who farm a minimum area of land, undertake to pursue their farming activity in a less-favoured area for at least five years from the first payment of a compensatory allowance, and apply usual good farming practices compatible with the need to safeguard the environment and maintain the countryside, in particular by sustainable farming.⁵⁵

This last condition (good farming practices compatible with the need to safeguard the environment and maintain the countryside) was criticised because of the fact that the terms were unclear and not well defined.⁵⁶ Regulation 1698/2005 solved this problem by scratching the last condition and replacing it with the cross compliance conditions.

Article 15 states that the compensatory allowances shall be fixed at a level which is sufficient in making an effective contribution to compensation for existing handicaps, but on the other hand also avoids overcompensation. In other words, the allocation of the payments needs to be fair, reasonable and equitable.

Compensatory allowances are being differentiated, taking into account the situation and development objectives peculiar to a region, the severity of any permanent natural handicap affecting farming activities, the particular environmental problems to be solved where appropriate and the type of production and, where appropriate, the economic structure of the holding.

The most used criteria for differentiating the allowances is the size of the company, which means that the means are mostly being spread under the small to medium sized farms. However, in between the member states of the EU there are big differences in the size and the extent of the allowances. For example, in Spain, Estonia, Sweden, Poland, Lithuania and the UK farmers only get 15 up to 55 euros, whereas in Austria and Finland it can be 175 up to 250 euros.⁵⁷

This means in general that - taking into account the average income of the farmers - the support is very minimal. In countries such as Spain, Greece and Italy the support is not even 10% of their income. Again, there are exceptions: in Germany, Ireland, Luxemburg and Sweden the support can be 20 up to 30% of the income. In Finland even 50%.⁵⁸ These figures show that the member states have reasonably large discretionary competences when it comes to the implementation of the regulation.

The regulation divides the less favoured areas in four categories:

⁵⁵ Article 14 of the Council Regulation (EC) 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulation [1999], OJ L160/80.

⁵⁶ Jack Brian, *Agriculture and EU Environmental Law* (Surrey, Ashgate, 2009).

⁵⁷ IEEP, An Evaluation of the Less Favoured Area measure in the 25 member states of the European Union,

A report prepared by the Institute for European Environmental Policy for DG Agriculture, 2006 <http://ec.europa.eu/agriculture/eval/reports/lfa/full_text_en.pdf> accessed 20 August 2013.

⁵⁸ IEEP, An Evaluation of the Less Favoured Area measure in the 25 member states of the European Union,

A report prepared by the Institute for European Environmental Policy for DG Agriculture, 2006 <http://ec.europa.eu/agriculture/eval/reports/lfa/full_text_en.pdf> accessed 20 August 2013.

- Article 16 - areas with environmental restrictions
- Article 18 - mountain areas
- Article 19 - other less-favoured areas
- Article 20- areas affected by specific handicaps

Article 20 concerns areas affected by specific handicaps, in which farming should be continued, where necessary and subject to certain conditions, in order to conserve or improve the environment, and maintain the countryside. Natural handicaps are often causing technical difficulties for the farmers, especially with regard to the use of big machinery. This means that the agricultural system is often extensive - hence more sustainable - rather than intensive. The use of more traditional agricultural methods make sure that in these remote areas the semi-natural agricultural valuable landscape can remain to exist. Meaning that the agro-biodiversity has a high nature value. This however means that there is an overlap between High Value Nature Farmland and less favoured areas under the compensation scheme. The biggest threats for High Value Nature Farmland are intensification, specialisation and mechanisation of the farming methods. This is why it is important to make sure that the compensatory allowances don't stimulate the use of these methods. Excessive livestock and overgrazing were dealt with by putting a threshold of allowed cattle per hectare. This measure seems effective, but unfortunately research showed that the thresholds were often too high not to cause damage.

A critical report of the European Court of Auditors in 2003 showed that the rules around less favoured areas drastically needed to change.⁵⁹ The Court stated that the designation of the less favoured areas was all too often based on dated socio-economic data.⁶⁰ The Court also clearly criticised the lack of clear evaluation concerning the efficiency and the impact of the policy. A report from the Institute for European Environmental Policy (IEEP 2006)⁶¹ stated that to improve efficiency, the wide scope of the measure should be reduced to focus more on areas where the benefits of continued agricultural land use are most evident or at greatest risk from abandonment. In addition, greater clarity could be sought about the relationship between the intensity of the handicaps faced and the level of payments.

To address these critics a new regulation came into force in 2005.⁶² Regulation 1698/2005 put the emphasis on the environment, instead of on the declining population and the social aspect of the less favoured areas.⁶³

⁵⁹ Jack Brian, *Agriculture and EU Environmental Law* (Surrey, Ashgate, 2009).

⁶⁰ Jack Brian, *Agriculture and EU Environmental Law* (Surrey, Ashgate, 2009).

⁶¹ IEEP, An Evaluation of the Less Favoured Area measure in the 25 member states of the European Union, A report prepared by the Institute for European Environmental Policy for DG Agriculture, 2006 and <http://ec.europa.eu/agriculture/eval/reports/lfa/full_text_en.pdf> accessed 20 August 2013.

⁶² Council Regulation (EC) No 1698/2005 of 20 September on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) [2005] OJ L277/1. The LFA scheme is part of Axis 2 of the Rural Development Policy for 2007-2013, which aims at improving the environment and the countryside by supporting sustainable land management. Council Regulation (EC) No 1698/2005 describes the objective of the LFA scheme as follows (Recital 33): "Natural handicap payments in mountain areas and payments in other areas with handicaps should contribute, through continued use of agricultural land, to maintaining the countryside, as well as to maintaining and promoting sustainable farming systems."

⁶³ Jack Brian, *Agriculture and EU Environmental Law* (Surrey, Ashgate, 2009).

Regulation 1257/1999, although not all articles are still in force, remains however the main instrument concerning less favoured areas.

6. SUBSIDIES FOR ORGANIC FARMING

Organic farming is definitely a form of sustainable farming, considering the fact that organic farmers don't use chemical pesticides, growth stimulators or hormones. They however do work with compost and organic fertilizers. During the last decade consumers and policymakers have been more and more interested in biological methods of production and organic farm products. The reason is that biological or organic farming has more *intrinsic* benefits than intensive farming. Organic farming poses an adequate answer to the rising demand of costumers for a more sustainable food chain. Environmental impact and animal welfare for example are two aspects, which have been given a higher priority by the consumers. This sustainable development is being carried out and supported by the bio-farmers. Not only for consumers bio-products have lots of advantages, also for the farmers. Although they are being confronted with lower production levels, they can compensate this with higher selling prices.

With a farmer selling his own products - a thing that seems to be happening more and more - he can shorten the production chain, which results in more personal revenues. Also, with producing biological products they food often gets a sustainability certificate which results in higher prices. The consumer on the other hand, seems to be willing to pay more, in return for this higher quality and sustainability characteristics. Last but not least, organic farming has another benefit: it is much more labour intense which means that the employment rate in the sector might go up.

Organic farming is regulated by a relatively broad legal framework. Regulation 834/2007 carries out a number of principles with regard to organic farming.⁶⁴ The regulation, for example, states that genetically modified organisms (GMOs) and products produced from or by GMOs are incompatible with the concept of organic production and consumers' perception of organic products.⁶⁵ They should therefore not be used in organic farming or in the processing of organic products. Organic plant production should also contribute to maintaining and enhancing soil fertility as well as to preventing soil erosion. Plants should preferably be fed through the soil ecosystem and not through soluble fertilisers added to the soil.⁶⁶ Organic farming should also primarily rely on renewable resources within locally organised agricultural systems.⁶⁷

6.1. LEGAL FRAMEWORK

The first legislation concerning organic farming was only put into place in the nineties. Regulation 2092/91 offered for the first time a broad framework concerning organic production of agricultural products .⁶⁸ However the

⁶⁴ Council Regulation (EC) 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 [2007] OJ L189/1.

⁶⁵ Recital 9 Regulation 834/2007.

⁶⁶ Recital 12 Regulation 834/2007.

⁶⁷ Recital 11 Regulation 834/2007.

⁶⁸ Council Regulation (EEC) 2092/91 of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs [1991] OJ L198.

regulation only applies on products explicitly stating that they are organic and that refer to organic production methods (art.1). However, a product cannot be qualified as organic purely because the label states so. In order to be recognised as organic, the product must meet the standards and the production rules found in article 6 of the regulation. Only then the product is a result from true organic farming and be certified as such. So article 6 determines the conditions, article 1 the scope. Through this regulation organic farming was finally recognised in Europe.

In 2004 the European Commission published the 'European Action Plan for Organic Food and Farming'.⁶⁹ The Action Plan provides a basis for the 'organic farming' policy for the coming years and presents a comprehensive strategic vision on the contribution of organic farming to the common agricultural policy. The Action Plan provides 21 actions ranging from (1) launching a multi-annual EU-wide information and promotion campaign over several years to inform consumers and other key actors in the food chain about the merits of organic farming up to (2) strengthening research on organic agriculture and production methods or (3) improving the performance of the inspection bodies and authorities etc. The European Action Plan however, is based on the premise that the *markets* (supply and demand) will set the price of organic products.⁷⁰ These 'markets' can even request a higher price, considering the fact that consumers have higher quality expectations. The EU Commission analysis showed that more emphasis needed to be put on facilitating the development of the market. The current market share in 2004 was on average about 2% in EU-15. In order to increase this percentage more focus on consumer expectations was (is) needed. According to the EU Commission consumers need better information on the principles and objectives of organic farming as well as the positive impact on, for example, the environment.

Unfortunately, due to many changes, additions and revisions, regulation 2092/91 was one big inextricable clew of rules, making it a complex instrument. The regulation was therefore replaced by a new regulation, Regulation 834/2007, which went into force on the first of January 2009.⁷¹ The new regulation contains objectives, general and specific principles and global rules concerning organic production. Article 3 states that organic production shall pursue the following general objectives:

- (a) establish a sustainable management system for agriculture that:
 - (i) respects nature's systems and cycles and sustains and enhances the health of soil, water, plants and animals and the balance between them;
 - (ii) contributes to a high level of biological diversity;
 - (iii) makes responsible use of energy and the natural resources, such as water, soil, organic matter and air;
 - (iv) respects high animal welfare standards and in particular meets animals' species-specific behavioural needs;
- (b) aim at producing products of high quality;

⁶⁹ Communication from the EU Commission to the Council and the European Parliament COM(2004)415 final, *European Action Plan for Organic Food and Farming*, 10 June 2004.

⁷⁰ "The development of organic farming will, in this respect, be governed by market rules".

⁷¹ Article 42 Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 [2007] OJ L189/1.

(c) aim at producing a wide variety of foods and other agricultural products that respond to consumers' demand for goods produced by the use of processes that do not harm the environment, human health, plant health or animal health and welfare.

The first recital of the regulation emphasises that organic production is an overall system of farm management and food production that combines best environmental practices, a high level of biodiversity, the preservation of natural resources, the application of high animal welfare standards and a production method in line with the preference of certain consumers for products produced using natural substances and processes. The organic production method thus plays a dual societal role, where it on the one hand provides for a specific market responding to a consumer demand for organic products, and on the other hand delivers public goods contributing to the protection of the environment and animal welfare, as well as to rural development.

More than ever before the regulation clearly emphasizes the need for the protection of the environment, biodiversity and animal welfare combined with specific production rules found in Title III.

6.2. Subsidies

Through the legal definition and recognition of organic farming in 1991 it became legally possible, under the agri-environmental measures and the programmes for rural development, to give out financial support to farmers. Regulation 1698/2005 however does not explicitly mention any *specific* support mechanisms for organic farming.⁷² However, it is generally believed that support for organic farming is possible under the agri-environmental measures (as mentioned earlier).⁷³

The European Action plan stated already in 2004 that member states support should become more efficient and effective. The member states should be encouraged to take action and to coherently use the multiple rural development measures available. In order to make this happen, member states need to work out National or Regional Action Plans.⁷⁴ Specifically with regard to support measures the European Action Plan states the following:

The Commission strongly recommends Member States to make full use within their rural development programmes of the instruments available to support organic farming, focussing on:

- stimulating the demand side by using the new quality schemes;
- actions in order to preserve the benefits for the environment and nature protection on the long term;
- developing incentives to organic farmers to convert the whole instead of part of the farm;
- organic farmers having the same possibilities for receiving investment support as non-organic farmers;

⁷² Council Regulation (EC) 1698/2005 of 20 September on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) [2005] OJ L277/1.

⁷³ Article 36, a, iv Council Regulation (EC) No 1698/2005 of 20 September on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) [2005] OJ L277/1.

⁷⁴ Communication from the EU Commission to the Council and the European Parliament COM(2004)415 final, *European Action Plan for Organic Food and Farming*, 10 June 2004.

- developing incentives to producers to facilitate the distribution and marketing by integrating the production chain by (contractual) arrangements between the actors;
- support to extension services;
- training and education for all operators in organic farming, covering production, processing and marketing;
- targeting organic farming as the preferred management option in environmentally sensitive areas (without restricting organic farming to these areas).

With regard to incentivising farmers to convert their farms into organic farms, ‘conversion plans’ were introduced in the member states.⁷⁵ These plans are linked to subsidies and offer the farmer the possibility to convert his farm to his needs. The farmer gets subsidies for drafting a plan.⁷⁶

In the U.K. farmers can get financial assistance for converting to organic farming under the Organic Entry Level Stewardship. Agreements under this stewardship are normally for five years and include also pays for organic management of land and for environmental management.⁷⁷

In Belgium and other EU countries⁷⁸ biological farmers can get support for their organic production method - up to 1.650 euros per hectare - depending on the crops. In 2011, 899.825 euros was paid out under this scheme.⁷⁹

Considering the fact that the member states get quite a lot of freedom implementing financial aid or support for organic farming, modalities may differ between these countries.⁸⁰ This ‘freedom’ granted by the EU is the result of the principle of subsidiarity: the national or regional level is best equipped to address the matters and to take necessary measures. Consequently, there are a lot of different support schemes in the various EU countries. According to a report of 2010, Belgium – together with France and Finland - is one of the top distributors for conversion support. This is probably caused by the fact that the scope of the support scheme in Belgium is very wide.

Organic farmers can even recuperate 38 per cent of their investments relating to the organic farming methods. This support was put into place in order to compensate investments for building, rebuilding and equipping farm buildings and fences for the breeding of biologic livestock.

7. CONCLUSION

It is clear from the foregoing that the EU has taken a reasonable amount of legal initiatives in order to foster a more sustainable farming policy. The second Pillar of the EU agricultural policy (“Rural Development”) contains quite a lot of efforts with regard to the protection of biodiversity in farming. One of the measures with the highest potential when it comes to raising the

⁷⁵ For example in Belgium, the Netherlands, United Kingdom, Austria, Sweden.

⁷⁶ In Belgium around 868 euros.

⁷⁷ For more information see <http://www.naturalengland.gov.uk/ourwork/farming/funding/es/oels/default.aspx>

⁷⁸ Such as France, the Netherlands, Finland, Latvia, UK,...

⁷⁹ V. SAMBORSKI en L. VAN BELLEGEM, *De biologische landbouw in 2011 [Organic Farming in 2011]*, Brussels, Departement of Agriculture and Fisheries, Monitoring and studies, 2012.

⁸⁰ Following paper gives an overview of public policies addressing organic farming in the different EU Member States http://ec.europa.eu/agriculture/external-studies/2012/organic-farming-support/full_text_en.pdf accessed 20 August 2013.

level of biodiversity is the agri-environmental measure. The elaboration of these measures is however mostly in hands of the member states which results in a non-coordinated and very different approached in the various member states. This provides on the one hand flexibility and adjustability to the different land-types, but lacks on the other hand structure, efficiency and effectiveness. It would be recommended that the EU would impose strict quantitative goals⁸¹ so that thresholds or targets can be met. In this way progression might be measurable and a “duty to achieve a specific result” might be put in place instead of a “duty of best efforts”.

A next remark can be made on the question whether or not the Birds Directive and the Habitats Directive are the correct instruments to protect the specific agro-biodiversity. It is recommended that Europe should draft a new regulation that specifically meets the requirements that agriculture and the agro-biodiversity need. It is however never easy to regulate the agricultural sector because of the different lobby and interest groups, especially when restrictions might be put into place.

It is also clear that the EU will have to be more ambitious in the future to stop agro-biodiversity loss and to reverse the damage caused. Considering the fact that the EU will invest € 100 billion between 2014 and 2020 to help farming meet the challenges of soil and water quality, biodiversity and climate change, makes reinforcement of existing measures certainly possible. For example the agro-environmental measures and the support for organic farming can be reinforced and eco-friendly investments can be stimulated. These sustainable forms of farming will hopefully help agro-biodiversity to recover.

4. Another measure with large ecological potential that might be made possible in the future⁸² is “the area of ecological interest”. If definitive legislation will be put in to place, farmers will have to conserve 5 up to 7% of their land as an area of ecological interest (consisting of land left fallow, terraces, landscape features, buffer strips and afforested areas).

⁸¹ For example specific thresholds for types of birds, hamsters, hedges, ponds.

⁸² The European Parliament, the EU Council of Ministers and the European Commission have only just reached an agreement (26th of June 2013) on reforming the common agricultural policy (CAP) post 2013. More information with regard to definitive legislative proposals should be available later, but was at the time of this article not yet the case. However for more information see: COM(2011) 625 final, Proposal for a Regulation of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy, 12 October 2011 < <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0625:FIN:EN:PDF>> accessed 16 September 2013.