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COMMON AGRICULTURAL POLICY: IS THE SPECIFIC SUPPORT PROVIDED UNDER ARTICLE 68 OF COUNCIL REGULATION (EC) NO 73/2009 WELL DESIGNED AND IMPLEMENTED?

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(pursuant to Article 287(4), second subparagraph, TFEU)

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GLOSSARY

Administrative controls/on-the-spot checks: Title III of Commission Regulation (EC) No 1122/2009[1] establishes the general principles for controls that apply to all direct aid measures. In particular, all aid applications are to be subject to administrative controls, supplemented by on-the-spot checks based on sampling. From Article 29 of the regulation: 'For each measure under the specific support for which administrative controls are technically possible, all applications should be checked.'

AEM/MAET: Agri-environment measure/Agri-environment measure in a specified geographical area (France).

CAP: Common agricultural policy.

Coupled/decoupled direct aid: Until 2003, farming support under Pillar I was largely granted in the form of direct payments linked to the production of specific agricultural products ('coupled' direct aid). Payments of this sort mainly came as 'area' aid by hectare, aid by crop type or 'livestock' aid per eligible animal. After the CAP reform in 2003, most Pillar I aid measures were 'decoupled', meaning that they are no longer dependent on the output of the beneficiary.

Deadweight: Deadweight occurs where a measure is used to support beneficiaries who would have made the same choice in the absence of aid. In such cases, the payment of aid produces no impact. By definition, therefore, the share of expenditure which generates deadweight is ineffective, because it does not contribute to the objectives set.

Integrated Administration and Control System (IACS): IACS is defined in Chapter 4 of Title II of Council Regulation (EC) No 73/2009[2] and further developed by Regulation (EC) No 1122/2009. It comprises a computerised database of farms and aid applications, an identification system for parcels of agricultural land (LPIS) and an animal identification and registration system (AIRS), and provides for a series of administrative controls and on-the-spot checks.

Pillar I/Pillar II: The Agenda 2000 reform established two main pillars for the CAP. Pillar I (European Agricultural Guarantee Fund — EAGF) provides for market measures and income support in the form of direct payments. Pillar II (European Agricultural Fund for Rural Development — EAFRD) co-finances rural development measures in areas such as agri-environment, the promotion of food quality, higher technical standards and animal welfare.

Single Payment Scheme (SPS): The SPS is the system of decoupled aid under Pillar I which has applied since the 2003 CAP reform in Member States which joined the European Union before 2004. A simplified transitional version, known as the Single Area Payment Scheme (SAPS) applies in the newer Member States.

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[1] Commission Regulation (EC) No 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 (OJ L 316, 2.12.2009, p. 65).

[2] 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 (OJ L 30, 31.1.2009, p. 16).

EXECUTIVE SUMMARY

I.
When the Single Payment Scheme (SPS) was introduced in 2003, Member States were allowed to retain up to 10 % of their national ceilings for 'specific types of farming which are important for the protection or enhancement of the environment or for improving the quality and marketing of agricultural products'. This specific support was later extended by Article 68 of Regulation (EC) No 73/2009, which increased the number of objectives for which aid could be granted.

II.
Twenty-four Member States have decided to make use of Article 68, through a patchwork of 113 extremely varied measures. The total budget for the 2010–13 period is 6,4 billion euros. Although the measures are each subject to their own individual rules, most of them are based on classic mechanisms for coupled direct payments[3].

III.
The audit focused on the design of the specific support provided for in Article 68 and the way this was implemented in 2010 and 2011 (management and control arrangements) and in particular whether specific support satisfactorily proves to be consistent, relevant and properly controlled. The audit was conducted at the Commission's services and in four Member States representing approximately 70 % of the budgetary allocation for the relevant measures.

[3] Please refer to the ***Glossary*** for explanations about coupled/decoupled direct aid and the Single Payment Scheme.

EXECUTIVE SUMMARY

IV.
The SPS was based on the principles of decoupling direct payments from production and simplifying the payment regime ('single payment'). As a derogation, Article 68 allows Member States to maintain direct coupled payments 'in clearly defined cases'. However, the Court found that the Commission had little control over the justification for such cases and that Member States had a large degree of discretion in introducing direct coupled payments. As a result, the implementation of Article 68 provisions was not always fully aligned with the general principles of decoupling and simplification now governing the common agricultural policy.

V.
The Court also found that there is insufficient evidence in the Member States that the measures introduced under Article 68 are necessary or relevant and this in terms of the need for them, the effectiveness of their design and the levels of aid made available. Insufficient objectives and indicators will hinder the future assessment of the measures.

VI.
Lastly, the Court pointed out weaknesses in the administrative and control systems set up to ensure that existing measures were correctly implemented. Such weaknesses were sometimes noted despite management and control burdens that are already heavy but might need to increase further still if they are to meet the requirements of the regulations.

VII.
In the context of the introduction of the 'post-2013' CAP, the Commission proposal now under discussion would allow specific support to be maintained in the form of coupled payments, but without sufficiently defining precise limits. In this regard, the Court has the following main recommendations:

(a) Specific support for certain agricultural activities should be based on a strict understanding of the provisions of Article 68 and the granting of such coupled support should be adequately justified to the Commission and checked by it.

   — To be able to assume its ultimate responsibility under the system of shared management, the Commission should play a more active role in establishing the criteria governing the implementation of the measures.

   — Member States should be required to demonstrate that each specific support measure which they intend to introduce is necessary (in terms of the need for and added value of an approach based on derogations), relevant (in terms of implementation arrangements, award criteria and aid levels), and that it satisfies the criteria of sound financial management.

(b) Account being taken of the variety of possible measures an appropriate system of monitoring should be established to facilitate subsequent evaluation.

(c) Once measures have been introduced, the Member States should establish suitable and comprehensive management and control systems to ensure that all the requirements of the regulation can be satisfied. In order to avoid generating disproportionate costs on the limited scale of a specific support measure, the requirement for controls should already be taken into account during the measure's design phase (simplicity of implementation, 'controllability' of criteria, etc.) or, possibly, even in the decision on whether or not to introduce a given measure.

INTRODUCTION

1. When the Single Payment Scheme (decoupling of direct support to farmers from production)[4] was introduced in 2003, Member States were allowed to continue to apply certain production-linked support measures for farmers. Following Article 69 of Regulation (EC) No 1782/2003)[5], Member States were entitled to earmark up to 10 % of their national ceilings for 'specific types of farming which are important for the protection or enhancement of the environment or for improving the quality and marketing of agricultural products'.

2. This specific support was later extended by Article 68 of Regulation No 73/2009 (period 2010–13). Article 68 increased the number of objectives or activities for which aid could be granted (See ***Table 1)***.

3. Detailed rules for implementing the support provided for in Article 68 are notably laid down in Commission Regulation (EC) No 1120/2009[6] (Articles 37 to 49) and Regulation (EC) No 1122/2009 (Articles 29 and 46). The management and control systems for the various kinds of support granted under Article 68 are broadly based on the Integrated Administration and Control System (IACS).

[4] See ***Glossary***.

[5] Council Regulation (EC) No 1782/2003 of 29 September 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) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ L 270, 21.10.2003, p. 1).

[6] Commission Regulation (EC) No 1120/2009 of 29 October 2009 laying down detailed rules for the implementation of the single payment scheme provided for in Title III of Council Regulation (EC) No 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers (OJ L 316, 2.12.2009, p. 1).

TABLE 1

OBJECTIVES OR ACTIVITIES ELIGIBLE FOR ARTICLE 68 SPECIFIC SUPPORT

Protection or enhancement of the environment	68(1)(a)(i)
Quality of agricultural products	68(1)(a)(ii)
Marketing of agricultural products	68(1)(a)(iii)
Animal welfare	68(1)(a)(iv)
Agri-environment benefits	68(1)(a)(v)
Address specific disadvantages in vulnerable or sensitive areas or affecting vulnerable types of farming	68(1)(b)
Prevent farmland from being abandoned	68(1)(c)
Crop, animal and plant insurance	68(1)(d)
Mutual funds for diseases and environmental incidents	68(1)(e)

4. Twenty-four Member States have decided to make use of Article 68 through a patchwork of 113 measures that differ widely, both in kind and in budget.

5. For the 2010–13 period, a total envelope of 6,4 billion euros was allocated from the EU budget to Article 68 (see ***Annex I***). The following diagrams show the distribution of funding by Member State (***Diagram 1***) and by type of measure (***Diagram 2***).

6. Form of support (coupled/decoupled) used for the various measures set up under Article 68(1) as classified in the EU budget is presented in ***Table 2***.

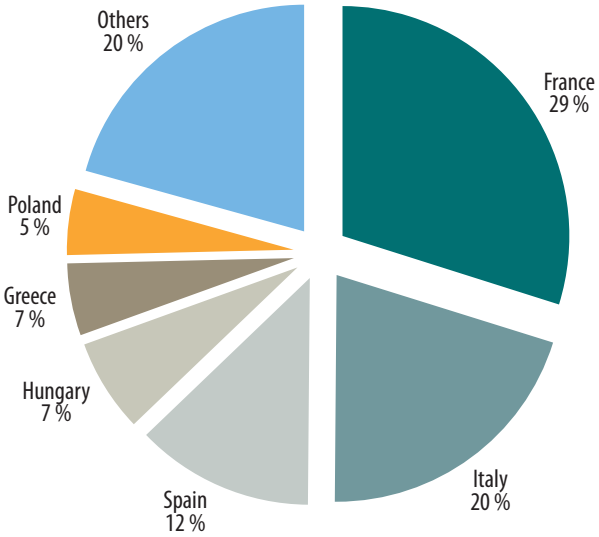
TABLE **2**

FORM OF SUPPORT (COUPLED/DECOUPLED) USED FOR THE VARIOUS MEASURES SET UP UNDER ARTICLE 68(1)

	Coupled direct aid	Decoupled direct aid
Protection or enhancement of the environment (68(1)(a)(i))	√	
Quality of agricultural products (68(1)(a)(ii))	√	
Marketing of agricultural products (68(1)(a)(iii))	√	
Animal welfare (68(1)(a)(iv))	√	
Agri-environment benefits (68(1)(a)(v))		√
Specific disadvantages and vulnerable farming types (68(1)(b))	√	
Preventing farmland being abandoned (68(1)(c))		√
Crop, animal and plant insurance (68(1)(d))		√
Mutual funds (68(1)(e)) (insurance)	√	

DIAGRAM 1

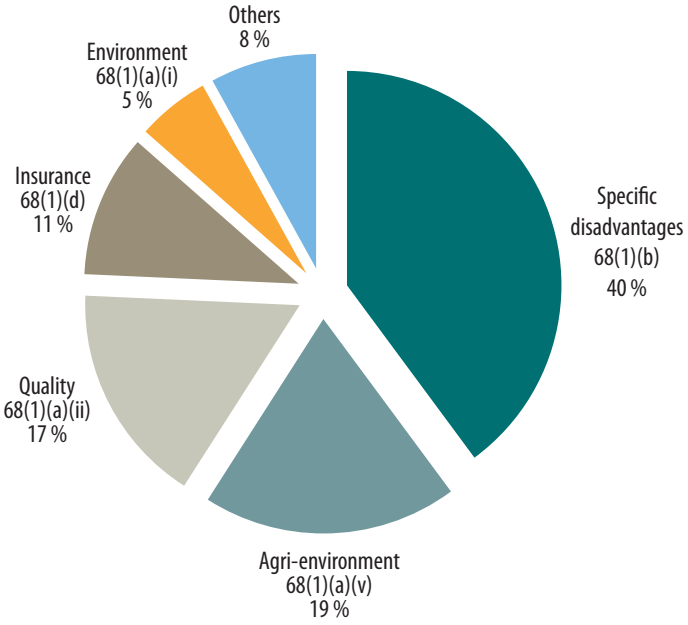
DISTRIBUTION OF BUDGETED FUNDS FOR THE PERIOD 2010–13 BY MEMBER STATE



Source: Budgetary forecasts communicated by the European Commission.

DIAGRAM 2

DISTRIBUTION OF BUDGETED FUNDS FOR THE PERIOD 2010–13 BY TYPE OF MEASURE



Source: Budgetary forecasts communicated by the European Commission.

AUDIT SCOPE AND APPROACH

7. The audit focused on the introduction of the support provided for in Article 68 and the way it was implemented in 2010 and 2011 (management and control arrangements). In order to address the main audit question of whether the support provided was well designed and implemented, the audit addressed the following three sub-questions:

(a) Is the implementation framework of specific support measures conceived in such a way as to ensure consistency with the general orientation of Pillar I of the CAP?

(b) Is there sufficient evidence that the measures introduced under Article 68 are necessary and relevant?

(c) Are these measures implemented in conjunction with a satisfactory control system?

8. The audit was conducted at the Commission' s services and in Greece, Spain (Aragón, Galicia, Castilla la Mancha), France and Italy (Emilia Romagna, Lazio), Member States representing 68 % of the budgetary allocation for the 2010–13 period and 73 % of the expenditure budgeted for the first 2 years.

9. Work focused on a selection of 13 measures (see brief descriptions in ***Annex II***):

- Aid for durum wheat (Greece — 68(1)(a)(ii))
- Aid for sheep/goats in less favoured areas (Greece — 68(1)(b))
- New single payment entitlements in less favoured or mountain areas (Greece — 68(1)(c))
- Aid for crop rotation in unirrigated areas (Spain — 68(1)(a)(v))
- Aid for the dairy sector in less favoured areas (Spain — 68(1)(b))
- Aid for sheepmeat/goatmeat (Spain — 68(1)(b))
- Additional aid for protein crops (France — 68(1)(a)(i))
- Aid for maintaining organic farming (France — 68(1)(a)(v))

- Aid for sheep/goats (France — 68(1)(b))
- Crop insurance (France — 68(1)(d))
- Crop rotation (Italy — 68(1)(a)(v))
- Improving the quality of agricultural products in the bovine sector (Italy — 68(1)(a)(ii))
- Insurance (Italy — 68(1)(d))

10. These 13 measures had been allocated 2 686 million euros for the 2010–13 period, representing just over 40 % of the total budget for Article 68 (50 % in the first 2 years).

11. The audit approach consisted of an evaluation of the work done to prepare the regulations in force[7] and, for the selected measures:

(a) a review of the measures' design (e.g. needs, eligibility criteria and aid rates) and of the documentation available in support of the choices made;

(b) an analysis of management and control systems;

(c) compliance tests, on a documentary basis, on a random sample of around 10 beneficiary files per measure; most of the beneficiaries concerned had already been visited for on-the-spot checks by national authorities;

(d) on-the-spot visits for a subsample of the files mentioned above and, where necessary, to any other party considered relevant to the measure[8].

12. Altogether, the auditors examined documentary records for 141 files (applications, checks and payments for 2010 and 2011)[9] and made 29 on-the-spot visits.

[7] Including an analysis of the assessments which were available concerning the implementation, previously, of Article 69 of Regulation (EC) No 1782/2003 or other equivalent measures.

[8] An insurance company in France and Consorzi di Difesa in Italy (type of producers' organisations acting as middlemen).

[9] Some of the beneficiaries selected for 2010 had not renewed their aid applications in 2011; in addition, some beneficiary files for 2011 were not yet available at the time of the audit.

OBSERVATIONS

WEAKNESSES IN THE IMPLEMENTATION FRAMEWORK OF THE SPECIFIC SUPPORT UNDER ARTICLE 68 AFFECT ITS ALIGNMENT WITH THE GENERAL PRINCIPLES OF THE CAP

13. The CAP reform, introduced in 2003, was based on the principles of decoupling direct payments from production and simplifying the payment regime. As an exception, Article 68 allows Member States to maintain specific support 'in clearly defined cases'. The audit assessed whether such derogations were aligned with the general principles of decoupling and simplification now governing the common agricultural policy.

SPECIFIC SUPPORT UNDER ARTICLE 68 IS A PARTIAL DEROGATION FROM THE GLOBAL DECOUPLED ORIENTATION OF THE DIRECT PAYMENT SCHEME

14. Most of the measures[10] that could be introduced under Article 68 are comparable to (or, in some cases, exactly identical to) other previous schemes[11]. To a large extent, therefore, Article 68 of Regulation (EC) No 73/2009 (and its forerunner Article 69 of Regulation (EC) No 1782/2003) is essentially the legal basis needed to ensure continuation of existing measures, in particular in the form of coupled aid already long available.

15. Thus, the coupled livestock measures which were audited are comparable to the direct aid measures for animals, such as premiums for suckler cows and ewes and goats[12], which they have complemented or supplemented[13]. Most of the area aid measures which were introduced are essentially a continuation of aid measures already available under Rural Development or of previously existing coupled aid schemes[14], which the Council had already decided to decouple.

16. However, decoupling was the key theme of the 2003 CAP reform, and this orientation was confirmed by the 2008 Health Check[15].

[10] Only the risk management measures (subparagraphs (d) and (e)) were innovative compared with the forms of support already available.

[11] All agri-environment measures are available under Pillar II for far larger amounts (Measure 214, for which 22,2 billion euros was allocated for 2007–13). For more on this subject, see the Court's Special Report No 7/2011 'Is agri-environment support well designed and managed?' (http.//eca.europa.eu). In particular, aids to organic farming in France under Article 68 are identical to those which already existed under rural development measure 214.

[12] See the Court's Special Report No 11/2012 'Suckler cow and ewe and goat direct aid under partial implementation of SPS arrangements' (http.//eca.europa.eu).

[13] For example, Spain had opted to decouple the existing ewe and goat premiums; however, it immediately reintroduced a comparable measure to provide aid for sheepmeat/goatmeat under Article 68.

[14] For example, French aid for protein crops introduced under Article 68 is titled 'additional' because it was superimposed in 2010 and 2011 on an equivalent existing measure maintained until 2011.

[15] From the second recital to Regulation (EC) No 73/2009: 'In particular, the decoupling of direct support should be extended and the functioning of the single payment scheme should be simplified.' The intention was that Member States which had initially opted to maintain a certain percentage of production support under the SPS would withdraw it before 2013. Moreover, specific support schemes that were still coupled were gradually removed and incorporated into the SPS (with the notable exception of the suckler cow and ewe/goat premiums, which Member States may retain as coupled schemes).

17. What Article 68 (and, before that, Article 69, its 'forerunner') foresees is therefore a number of derogations to the objective of extending and simplifying decoupling. By maintaining or even creating forms of coupled support, it departs from the general orientation of Pillar I. For this reason, the regulation states that derogations should apply restrictively 'in clearly defined cases'[16]. Consequently, the purpose of this article is not to maintain some form of partial coupling or to introduce 'recoupling', but merely to provide tailored solutions to a handful of specific problems.

18. In 2010, an evaluation of the market impact of partial decoupling already concluded that Article 69 of Regulation (EC) No 1782/2003 had been misused in order to maintain a form of partial coupling[17]. Since then, this risk has increased due to a high number of possible measures offered by Article 68 of Regulation (EC) No 73/2009, which takes the options for specific support further than the above Article 69 did.

19. Therefore, whether or not the specific supports are consistent with the Council's general orientation for Pillar I is now depending on the interpretation given to the concept of 'clearly defined cases' in which specific support is to be granted, and on the way it is verified.

CONSIDERABLE ROOM FOR MANŒUVRE BY THE MEMBER STATES, WHILE THE COMMISSION HAS LIMITED CONTROL

20. The regulations on specific support do not provide sufficient framework to ensure that this support would only be provided 'in clearly defined cases'. Indeed, the regulations allow Member States to act, when designing their measures, with considerable room for manœuvre.

21. Approval by the Commission is only formally required for agri-environment measures under paragraph 1(a)(v). For all other types of measure, the Commission can take no legally binding action, and the Member States' only obligation is to notify the Commission of the decisions they take.

[16] Recital 35 to Regulation (EC) No 73/2009, which continues: 'Member States should be allowed to use […] for granting specific support in clearly defined cases. [...] With a view to respecting the Community's international obligations, the resources that could be used for any coupled support should be limited to an appropriate level'.

[17] Agrosynergie, *Assessment of the effects on markets of partial decoupling*, October 2010 (http://ec.europa.eu/agriculture/eval/reports/decoupling/short_sum_en.pdf): '[…] in most cases, the implementation conditions distorted the nature of Article 69, which has been seen in the Member States as a form of partial decoupling in response to the introduction of decoupling.'

22. Furthermore, the regulations set very few constraints with regard to the measures that may be introduced. And the few rules that do exist apply to just one category of measures, but it is not always clear why they should not apply to others. Therefore, as there is not always a clear distinction between the different types of measures, Member States can, depending on the stated objective, sidestep the few existing rules by using one classification in preference to another. (see ***Box 1***).

23. Despite this, the Commission has examined the measures notified to it with a view to ensuring that each Member State supplies a certain amount of standardised information. In the course of that work, there have been frequent exchanges which have at times resulted in amendments to the measures initially proposed.

BOX 1

AN EXAMPLE OF UNCLEAR DISTINCTION BETWEEN THE DIFFERENT TYPES OF MEASURES AND HOW MEMBER STATES CAN USE IT TO SIDESTEP THE FEW EXISTING RULES

No clear distinction exists between measures to be set up under paragraph 1(a)(i) (environment) and paragraph 1(a)(v) (agri-environment). For example, the French aid for protein crops was set up under paragraph 1(a)(i), whereas in Spain and Italy fairly similar measures supporting crop rotation[18] were introduced under paragraph 1(a)(v) with fairly similar objectives. See also example in paragraph 26.

Such choices had a direct impact on the applicable rules:

— 'environmental' measures are conditional on 'non-negligible and measurable [...] benefits'[19] (criterion which does not apply to 'agri-environmental' measures);

— whereas 'agri-environmental' supports have to be pre approved by the Commission and must be limited to 'the coverage of the additional costs actually incurred and income foregone in order to fulfil the objective' (restrictions which do not apply to the other categories, including 'environmental' support).

[18] As explained in ***Annex II***, the Spanish measure referred to does not actually include any crop-rotation conditions but takes the form of area aid that is conditional above all on certain percentages of oilseed and protein crops.

[19] Although in the case mentioned, the fulfilment of this condition was not demonstrated.

24. Nonetheless, the Commission lacks the legal mandate for a broader role, and the examination and exchanges are not always acted upon. The degree of detail given in the decisions which the Commission receives from Member States varies widely and in certain cases, the in-country audit revealed significant clauses that were not in the description sent to the Commission. Finally, the audit provided clear illustration of the limits to the Commission's powers of control over the choice and design by Member States of the measures.

25. Thus, in the course of the examination of (other than agri-environment) measures reported by some Member States[20], questions raised by the Commission went unanswered. As it did not have the necessary powers, the Commission was compelled to close those cases without having been able to decide whether the measure in question was legal. The files were marked with the following conclusion: 'the process of assessing the notification […] shall be closed […] the compliance of the measure notified shall be considered as not fully nor clearly demonstrated'.

26. In another Member State[21], a measure was reformulated to be introduced under paragraph 1(a)(i) after the Commission had refused to approve it as an agri-environment measure (paragraph 1(a)(v)).

THE FUTURE OF CAP SPECIFIC SUPPORT MEASURES AFTER 2013: RISKS OF LACK OF ALIGNMENT WITH THE CAP PERSIST

27. In the context of its proposal relating to the CAP 2014–20, the Commission has proposed[22] maintaining the possibility of specific support in the form of coupled payments, a proposal on which the Court issued an opinion in April 2012[23]. Taking into account amendments currently under discussion[24], this proposal would lead to the following main changes:

(a) the list in Article 68 of products concerned would be extended;

(b) the available budget would be fixed at 8 % of the ceiling, with a possibility, by derogation, of up to 13 %;

[20] Ireland and Portugal.

[21] Denmark.

[22] COM(2011) 625 final of 12 October 2011, Articles 38 to 41.

[23] Opinion No 1/2012 on certain proposals for regulations relating to the common agricultural policy for the period 2014–20 (http://eca.europa.eu).

[24] B7-0079/2013, Proposal for a European Parliament decision on the opening of, and mandate for, interinstitutional negotiations on the 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 (COM(2011) 625 — C7-0336/2011 — COM(2012) 552 — C7-0311/2012 2011/0280(COD) — 2013/2528(RSP)). (http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+MOTION+B7-2013-0079+0+DOC+PDF+V0//EN)

(c) coupled support would be granted:

(i) 'to sectors or to regions of a Member State where specific types of farming or specific agricultural sectors undergo certain difficulties and are particularly important for economic and/or social and/or environmental reasons'; and

(ii) 'to the extent necessary to create an incentive to maintain current levels of production in the regions concerned'.

28. As the list of products and the budget ceiling available for specific support would increase and the conditions for support depend on the interpretation given in future to the very vague concepts used ('difficulties', 'particularly important for economic and/or social and/or environmental reasons'), most coupled aid measures currently in place could well be maintained.

INSUFFICIENT EVIDENCE TO DEMONSTRATE THAT MEASURES INTRODUCED UNDER ARTICLE 68 ARE NECESSARY OR RELEVANT

29. The Court audited whether, given the limited requirements to which Member States are subjected, enough evidence and tools exist to demonstrate that measures introduced under Article 68 are necessary or well tailored.

30. The Court checked whether evidence of needs and of the relevance of the aids' form and level were provided *ex ante* and whether proper monitoring systems would allow the measures' effectiveness to be confirmed *ex post*.

INSUFFICIENT EVIDENCE OF NEED IN A NUMBER OF CASES

31. The audit revealed that in a number of cases there was no evidence[25] for a need for specific support besides qualitative arguments of a general nature. It also revealed that the examined documents were not sufficient to justify key aspects of the measures[26]. Moreover, it was impossible to document the reasons for budget allocation decisions, either among the various measures implemented or in relation to other needs for which specific support has not been granted.

32. For example, in one Member State (Greece) no documentation was available to specifically justify any of the measures.

33. In another case (Spain) surface aid was justified by 'the need to combat a recent trend towards cereal monocultures'; however, the documents obtained were not enough to demonstrate any such trend in the areas targeted by the measure. Neither of the two Member States which targeted specific areas with their agri-environment measures had statistics to demonstrate the relevance of the choices made.

34. In France, reductions in livestock numbers, which the measure aims to combat, were only substantiated in the case of suckler ewes (no reduction in milk ewes and no statistics supplied for goats); the aid measure adopted, however, is applicable to the whole sheep/goat sector.

35. As far as the measure to maintain organic farming is concerned (France), the Court found that statistics or studies were not available to substantiate the risk of a 'return to conventional agriculture' by organic farmers. Thus the need for support to maintain organic farming was not properly justified.

[25] 3 measures out of 13.

[26] 6 measures out 10; see examples in the following paragraphs.

INSUFFICIENT EVIDENCE THAT THE MEASURES ARE WELL TAILORED

INSUFFICIENT EVIDENCE THAT COUPLED PAYMENTS ARE APPROPRIATE

36. Specific support is largely granted in the form of coupled payments[27], although there is no conclusive evidence that coupled aid is the most appropriate means of achieving the objectives being pursued. For at least some of the objectives pursued (eg. improvements to quality, marketing of agricultural products, animal welfare, etc.), other forms of aid than coupled payments, such as investment co-financing or promotion of quality produce, that are more in line with the CAP's objectives are also available and should have been considered when designing these measures.

37. Thus, the lack of conclusive evidence that coupled payments are the most appropriate form of support has been already raised on several occasions in connection with coupled livestock aid[28]. Furthermore, this risk of coupled payments being unsuited to the competitiveness objective was raised in the 2010 evaluation of the market impact of partial decoupling in connection with Article 69 support.

38. Moreover, the detailed criteria of the measures implemented are not always directly justified by the stated objectives or needs. And, although Article 68 allows aid to be targeted, most of the supports in place are not discriminate or targeted enough.

39. For example, measures under paragraph 1(a)(i) and (v) are implemented on the basis of environmental objectives. Their relevance thus depends on whether a causal link is clearly established between the subsidised activities and these environmental objectives. Nevertheless, for the measures which were audited, this causal link was an underlying hypothesis for which there was no specific evidence[29].

[27] According to the general budget breakdown, coupled payments under Article 68 account for 66 % of all expenditure (73 % of the measures implemented in 2010). Some measures under paragraph 1(a)(v) also make use of coupled payments, while paragraph 1(e) measures could equally be considered decoupled.

[28] '[...] the question arises of whether it is appropriate to use [...] an instrument of the first pillar of the CAP, to pursue an objective which is more closely related to rural development. [...] in line with the principles underlying the reform of the CAP, it would be appropriate to incorporate this remaining coupled aid into the single payment scheme and to confine the role of supporting local agricultural economies to the instruments of the second pillar.' (Agrosynergie, *Assessment of the effects on markets of partial decoupling*). 'The Court did not find conclusive evidence to demonstrate that the audited schemes [direct aid for suckler cows and for sheep and goats] are in general a more effective tool than decoupled aid, allied with other EU and nationally funded measures, to maintain production and thus sustain economic activity in regions with few economic alternatives and generate environmental benefits.' (Special Report No 11/2012).

[29] Special Report No 7/2011 develops this point further: 'specific quantified evidence was used only in a minority of cases to design and manage agri-environment sub-measures. [...] For 24 % of the contracts reviewed, Member States reported that the causal relationship between the farming practices and the anticipated environmental benefits were not demonstrated.''[...] management decisions [...] did not focus payments at specific environmental problems.'

40. The Greek aid measures for less-favoured areas (sheep/goats and new single payment entitlements) were designed on the basis of an old definition of Less Favoured Areas covering around 80 % of the country's usable agricultural land. Apart from the fact that this lack of targeting serves to dilute the available funds, some areas considered to be less favoured in the past may no longer be so today[30].

41. Lastly, the aid was granted without any criteria for changing or improving previous practices[31]. For the measures audited, a large proportion of beneficiaries therefore benefit from a deadweight effect in the form of aid that, at best, maintains an existing practice. Whilst this arrangement is consistent with the terms set for 'maintenance of production' in respect of measures introduced under Article 68(1)(b)[32], for those measures that targeted improvement it is inherently inefficient and insufficient for the purpose of changing the existing situation[33].

42. For the crop-rotation measure (Italy, Spain), although the national authorities targeted specific regions or areas, the aid is available to all farmers in these areas, regardless of what they were doing before. As an illustration, one Italian beneficiary visited during the audit claimed that he did not change his crop rotation practices.

43. In Greece, the stated objective of aid for durum wheat is to improve quality. To that end, it imposes certain conditions in that respect (certified seed, AGRO 2 production method), but there is no stipulation that the crop grown or the production method must have changed compared with previous practice.

44. In France, the Article 68 subsidy replaced an equivalent national insurance measure, almost doubling the subsidy rate. The data reveal that the very steep increase in the level of aid from 2010 only had little impact, with no more than a slight rise in both the percentage of land insured and the number of contracts. Essentially, therefore, the near-doubling of aid produced deadweight in the form of contracts that already existed and land that was already insured.

[30] See the Court's Special Report No 4/2003 concerning rural development: support for less-favoured areas (OJ C 151, 27.6.2003): 'the Commission has insufficient evidence to show that the classification of less-favoured areas is valid […].This may lead to a classification that is no longer justified, [...] and thus to an unjustified allocation of aid.'The Commission subsequently drew up a proposal for the period 2014–20 (COM(2009) 161 final of 21 April 2009), but this is still under discussion.

[31] Of all the measures which were audited, the only exception was the French supplement for new fodder legume producing areas; however, this represented a total annual budget of only 1 million euros.

[32] 'The support referred to in paragraph 1(b) (...) may only be granted to the extent necessary to create an incentive to maintain current levels of production.'

[33] For example, 'improving the quality of agricultural products' (Article 68(1)(a)(ii)) and 'improving the marketing of agricultural products' (Article 68(1)(a)(iii)).

INSUFFICIENT JUSTIFICATION FOR THE CHOSEN AID RATES

45. The regulation only requires a partial justification of the chosen aid rates in the case of agri-environment measures, for which a ceiling is set[34]. In addition to the difficulty, highlighted by the audit, of setting this limit reliably, the risk of the aid being set too low to be effective is not adressed[35]. For other measures, the regulation does not impose any specific obligation to justify the chosen rates.

46. However, setting aid at an appropriate level (neither too high nor too low) is a key stage in sound financial management.

47. In most cases[36] no documentation was available to permit an understanding of the choices made or an evaluation of their likely effectiveness. On the contrary, the levels of aid were not the result of a study, even a cursory one, which would make it possible to justify their relevance. Rather, they were often arrived at by a simple distribution of the budget allocation (itself the result of political negotiations) among the likely beneficiaries.

48. For example, two of the three sheep/goat measures (Greece and France) under review did not document rates at all. Depending on the Member State, the rates ranged from 3 euros to 24 euros per animal, yet no information was found to rationally explain the difference in order of magnitude or the likely difference in impact.

49. For one crop-rotation measure (Italy) which was one of the cases found where a needs analysis had been made to determine the necessary rate of aid, the level ultimately chosen was lower than the one initially estimated.

[34] '[…] only for the coverage of the additional costs actually incurred and income foregone in order to fulfil the objective concerned' (Article 68(2)(a)(i)).

[35] See also Special Report No 7/2011: 'considerable problems were identified concerning the aid amounts, ranging from shortcomings in their calculation to a lack of differentiation according to regional or local site conditions'.

[36] 8 measures out of 11; for insurance measures, the level of aid has been fixed to the maximum percentage (65 %) allowed by the regulation.

INSUFFICIENT TOOLS TO ASSESS THE EFFECTIVENESS OF THE MEASURES

50. The Financial Regulation[37] provides that specific, measurable, achievable, relevant and timed (SMART) objectives shall be set for all sectors of activity covered by the budget and that achievement of those objectives shall be monitored by performance indicators for each activity. And according to generally accepted sound financial management standards, these performance indicators should be relevant, accepted, credible, easy and robust (RACER).

51. Given that Article 68 is just a budgetary framework designed to meet various needs and a range of objectives, SMART objectives and RACER performance indicators cannot be feasibly set at the level of Article 68 taking into account the scale and diversity of the different measures.

52. The Court found that the lack of proper systematic monitoring (setting SMART objectives and monitoring RACER indicators) would hinder the possibilities for evaluating the performance of most of the measures under review at a variety of levels (see ***Box 2***)[38].

53. In that context, the Court notes that DG Agriculture and Rural Development's multiannual plan provides for an evaluation of Article 68 measures in 2016/2017. However, as explained above, such an evaluation will be relevant only if based on a proper monitoring framework using SMART objectives and RACER performance indicators.

[37] Article 27(3) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248, 16.9.2002, p. 1).

[38] Where these agri-environment measures are concerned, Special Report No 7/2011 concluded 'that the objectives determined by the Member States are numerous and not specific enough for assessing whether or not they have been achieved. […] Nevertheless, considerable problems existed as regards the relevance and reliability of management information. In particular, very little information was available on the environmental benefits of agri-environment payments.' With regard to coupled livestock aid, Special Report No 11/2012 concluded: 'there are weaknesses in the monitoring of key performance indicators and in assessing the ultimate social and environmental impacts of the schemes by the Commission and Member States […].'

BOX **2**

EXAMPLES OF WEAKNESSES IN TERMS OF OBJECTIVES AND INDICATORS

Examples of non-SMART objectives

— **Durum wheat aid**: 'This action aims to improve the quality of durum wheat and thus safeguard the production of high-quality flour for pasta production […].'

— **Sheep/goat aid**: 'To support the role of sheepmeat and goatmeat as regards stemming the decline in rural populations, territorial structuring and maintaining biodiversity.'

— **Crop rotation**: 'To increase levels of organic substances in the soil, because the repeated deep tilling typical of monoculture causes the mineralisation of organic substances […], reducing soil fertility and causing large amounts of CO_2 to be released into the atmosphere […] Reducing soil erosion […] Maintaining biodiversity.'

Examples of no or inadequate indicators

— **Organic farming maintenance aid**: In the decision it notified to the Commission, France reported that the indicator used for this measure was the number of hectares under cultivation for organic production. However, even if the relevance of such an indicator is accepted within the wider framework of the French plan 'Organic Farming in 2012', it is not specific enough in relation to the actual objectives of this measure (risk of returning to conventional agriculture), which is merely a small part of the plan.

— **New single payment entitlements in less-favoured or mountain areas**: No indicator was provided for assessing the impact of this measure.

— **Protein crop aid/Crop-rotation aid**: The only element available for these measures is the number of hectares for which aid is being claimed and/or paid out. This element increases in proportion with expenditure, yet without providing any information on the actual impact of the measures as far as the stated final objectives are concerned (e.g. input requirements, soil fertility/erosion).

INAPPROPRIATE OR INSUFFICIENT CONTROLS OF THE IMPLEMENTED MEASURES AT MEMBER STATE LEVEL

54. Within the general legal framework set by Regulation No 73/2009 and Regulation (EC) No 1120/2009, a set of specific eligibility criteria has been established by each Member State for each measure. The Integrated Administration and Control System (IACS, developed in Regulation (EC) No 1122/2009) provides standards of controls to ensure compliance with both general and specific rules, notably via administrative controls and on-the-spot checks. Thus, effective control of Article 68 support presupposes that IACS is operating effectively (see paragraph 3). However, since IACS is already subject to regular checks by the Court[39], the audit was not geared towards providing an opinion on it and only the aspects specific to Article 68 measures are developed below.

WEAKNESSES IN THE ADMINISTRATIVE CONTROL AND MANAGEMENT SYSTEMS

55. The Court's audit revealed various weaknesses in the administrative control and management systems:

56. In France and Italy, the national authorities were not able to document the existence of procedures to avert the risk of duplicate financing with some other schemes. Moreover, weaknesses in the audit trails made it impossible for certain automatic administrative checks to be re-verified. Finally, the documents made available in some of the files examined did not provide sufficient support for the payments made or explanation for anomalies found, such as abnormal payment dates.

57. Although fodder legume aid (France) is reserved for new areas previously planted with COP[40], no provision is made for any administrative controls on compliance with this condition and, even in the case of on-the-spot checks, document inspections were not systematically carried out. However, the errors found in this respect, together with the aid application form's lack of clarity, point to a high rate of undetected errors for this sub-measure.

[39] Paragraph 3.15 of the Annual Report concerning the financial year 2011 (OJ C 344, 12.11.2012).

[40] Cereals, oilseeds and protein crops.

58. One of the aids for sheep (France) is conditional on compliance with a productivity ratio, yet no administrative checks are performed on this condition, which is therefore only verified during on-the-spot checks. In one case of aid for goats, support had been granted 2 years running on the basis of a supporting document which showed that the beneficiary did not meet the required conditions.

59. In one of the Spanish regions, a misinterpretation of the dairy sector aid meant that the beneficiaries had been refused payment for a number of eligible animals. At the same time, an error in the configuration of the management system resulted in the additional land area component of aid being paid on the basis of a criterion at odds with the terms of the national measure, although the overall financial impact was limited.

60. Furthermore, the audit of the sample of selected beneficiaries highlighted errors in the database that was used to calculate aid to the cattle sector (Italy).

61. In the specific case of measures to provide insurance support, the French control system relies heavily on the insurers' data and checks. This approach, which is justified by the insurers' direct financial interest in checking the contractual data that provides the basis for the aid calculation[41], allows a mainly automated form of centralised control. In particular, it has made it possible to reduce the number of on-the-spot checks significantly.

62. By contrast, no equivalent system relying on insurers' data has been introduced in Italy. In addition to an increased administrative workload, the audit highlighted several dysfunctions, such as the subsidising of premiums corresponding to insured values set by the beneficiary with no reference to actual past production or any form of justification. Moreover, because aid was paid before the beneficiary had paid the insurance premium, there were recoveries.

[41] In specific cases where the basis for calculating aid differs from the terms of the beneficiary's contract with the insurer, this system may prove to be less effective. However, even in this particular scenario the residual risk was found to be very small.

63. The existing arrangements to provide insurance support in France are not sufficient to monitor insurers' margins and, therefore, to monitor the financial implications of aid for the final beneficiary (a crucial part of evaluating the likely longer-term impact). When the insurance group that provides around 80 % of subsidised contracts increased its rates in 2010, it absorbed for itself a significant portion of the permissible subsidy under Article 68 support.

WEAKNESSES IN THE ON-THE-SPOT CHECKS

64. On-the-spot checks carried out by national authorities suffer from various weaknesses as the Court' s audit revealed:

65. In Greece, in 2010 the national authorities only carried out half of the on-the-spot checks for the sheep/goat measure that are required by the regulation. Moreover, some three quarters of these checks were non-compliant, since they had not been conducted during the compulsory animal retention period[42].

66. In Italy, the minimum rate of on-the-spot checks was not achieved in the case of the insurance measure (chiefly because of the total lack of checks in one of the regions under review). Even when the stipulated checks were carried out, they were confined to producer associations acting as intermediaries and there was no verification of insurers or final beneficiaries. Moreover, the statistics supplied for the dairy sector to show compliance with this obligation include veterinary inspections, yet the checks carried out during these inspections were neither clearly defined nor reviewed. Lastly, the information needed to verify the minimum number of on-the-spot checks could not be obtained for the crop rotation measure.

67. In two Member States (Spain and Italy), it was found that the dates of some on-the-spot checks on area aid had come too late to allow some of the key verifications required for the crop rotation measure to be completed. In one of the two cases, it was also found that some checks were being conducted on the basis of old satellite images when more recent images were available.

[42] By contrast, another Member State visited got around this requirement by making no provision for a compulsory retention period when devising its animal measures, thus rendering the obligation to conduct all or some of its checks during that period of the year inapplicable.

68. Weaknesses were found (Greece and Spain) with regard to the document inspections carried out during on-the-spot checks on animal aid and the reductions to apply in cases where important supporting documents were missing [43].

69. Finally, it was noted (in France) that when an on-the-spot check identifies a structural problem which makes it likely that the beneficiary would have been ineligible over previous years there is no procedure for extending the scope of the check and attempting to identify and recover the full amount unduly paid.

HEAVY MANAGEMENT AND CONTROL BURDEN

70. The introduction of specific measures entails a specific burden in terms of management (setting up ad hoc systems) and control (notably, number of controls, how they have to be organised and what verifications should be carried out), which has to be taken into account from the beginning.

71. In 2011, the Commission's internal audit had found that Article 68 presented inherent risks and that there was a need to verify upfront that measures implemented would be controllable[44].

72. Problems such as those identified in the case of the sub-measure for new fodder legumes (paragraph 57) and dairy sector aid (paragraph 59), illustrate the risks involved in improperly setting up an ad hoc system for measures that are allocated a small budget (especially when they are intended to be provisional). By contrast, for the durum wheat aid measure (Greece), systematic administrative checks had been introduced[45] which, although seen as more efficient, entail a heavy workload both for the national administration and for the beneficiaries.

[43] Where livestock measures in particular are concerned, the many audits carried out by DG Agriculture and Rural Development's clearance-of-accounts units have brought conclusions that, in substance, are reasonably similar to the Court's in the following respects: (a) the number and timetable of on-the-spot checks (Greece, Italy, Lithuania, Romania, United Kingdom); (b) insufficient on-the-spot checks of documentation (Bulgaria, Greece, Spain, Poland); (c) poor recording of the specific verifications made in the course of on-the-spot checks (Bulgaria, Spain, Lithuania); (d) shortcomings in the updating of animal databases (Greece, Italy, Lithuania, Poland, Romania). Despite the amount of work already done by the Commission, it was found that more systematic use of the data at its disposal could have drawn attention to other deficiencies in the Member States' control systems.

[44] The audit concluded that 'the regulation does not specify how the Commission sees verifiability and controllability articulated and no guidelines have been issued. We understand that it was a deliberate choice (...) to leave as much discretion as possible to the Member States. Nonetheless (...) in the absence of clear guidance effective control may not be ensured. In addition it may be difficult to assess (...) whether controls are operated as intended. We therefore invite (...) to explore possibilities to better ensure controllability and verifiability of the proposed Article 68 measures, for instance by adapting the terms of the current or future post-2013 legislation or by issuing additional guidelines.'

[45] Automatic capping of aid in accordance with a seed ratio per hectare, with systematic control of seed invoices and labels for all the 65 000+ applicants.

73. Quantitatively speaking, maintaining coupled support necessitates a great many on-the-spot checks, which are extremely expensive for the Member States — even if the cost is seldom assessed. Article 68 is responsible for over 1,43 million aid applications in all Member States[46]. Even though the regulatory requirements were not met in certain cases, around 110 000 on-the-spot checks were carried out in respect of these measures in 2011.

74. Although some controls would still be necessary if there were no specific support (SPS verifications, veterinary checks, etc.), a large part of today's workload is directly linked to the scheme.

75. Qualitatively speaking, the finding that some area checks were poorly timetabled with regard to the verifications required by coupled support (paragraph 67) illustrates, on the one hand that specific supports generate constraints compared to single payments, and on the other hand that these constraints are not always given due consideration.

76. Moreover, the various control weaknesses found, for example regarding inadequate documentary verification in the course of livestock aid on-the-spot checks, demonstrate that, to be effective, many such checks would currently need to be improved at an additional cost or burden (see ***Box 3***).

[46] As beneficiaries can apply under more than one measure, the total number of beneficiaries is not immediately available.

BOX 3

COMPARING THE LEVEL OF AID WITH THE ASSOCIATED COSTS: GREEK AID FOR SHEEP/GOATS

The basic aid amount is just 3 euros per animal. Beneficiaries of this measure receive an average of around 550 euros.

With nearly 2 600 on-the-spot checks carried out in 2010, Greece fell far short of its obligations under the regulation in this respect (4 800 checks required). See paragraph 65.

Shortcomings were discovered with regard to the inspection of documents in the course of these checks. In particular, it was found that certain documents simply did not exist although, in theory, they had to be verified for the checks to be valid. The beneficiary justified the absence of proof of the animals' deaths by means of veterinary certificates on the basis of costs which was considered by him out of all proportion to the aid received.

CONCLUSIONS AND RECOMMENDATIONS

77. The Court' s audit revealed that the design and implementation of the support measures under Article 68 are affected by various shortcomings which should be addressed in the context of the new CAP.

78. The Single Payment Scheme (SPS), introduced in 2003, was based on the principles of decoupling direct payments from production and simplifying the payment regime ('single payment'). As a derogation, Article 68 allows for Member States to maintain direct coupled payments 'in clearly defined cases'. However, the Court's audit disclosed that the Commission had little control over the justification for such cases and that Member States had a large degree of discretion in introducing direct coupled payments. As a result, the implementation of Article 68 provisions was not always fully aligned with the general principles of decoupling and simplification now governing the common agricultural policy (see paragraphs 14 to 26).

79. The Court also found that there is insufficient evidence in the Member States that the measures introduced under Article 68 are necessary or relevant and this in terms of the need for them, the effectiveness of their design and the levels of aid made available (see paragraphs 31 to 49). Insufficient objectives and indicators will hinder the future assessment of the measures (see paragraphs 50 to 53).

80. Lastly, the Court pointed out weaknesses in the administrative and control systems that had been set up to ensure that existing measures were correctly implemented. This was equally true of the systems of management, administrative controls and on-the-spot checks (see paragraphs 55 to 69). Such weaknesses were sometime noted despite management and control burdens that are already heavy but might need to increase further still if they are to meet the requirements of the regulations (see paragraphs 70 to 76).

81. In the context of the introduction of the 'post-2013' CAP, the Commission proposal now under discussion would allow specific support to be maintained in the form of coupled payments, but without sufficiently defining precise limits (see paragraphs 27 to 28)[47]. In this regard, the Court has the following main recommendations:

[47] See also Court Opinion No 1/2012.

RECOMMENDATION 1

Specific support for certain agricultural activities should be based on a strict understanding of the provisions of Article 68 and the granting of such coupled support should be adequately justified to the Commission and checked by it.

(a) To be able to assume its ultimate responsibility under the system of shared management, the Commission should play a more active role in establishing the criteria governing the implementation of the measures.

(b) Member States should be required to demonstrate that each specific support measure which they intend to introduce is necessary (in terms of the need for and added value of an approach based on derogations), relevant (in terms of implementation arrangements, award criteria and aid levels), and that it satisfies the criteria of sound financial management.

RECOMMENDATION 2

Account being taken of the variety of possible measures, an appropriate system of monitoring (through the definition of relevant indicators that can be gauged against an established starting point and sufficiently specific objectives) should be established to facilitate subsequent evaluation.

RECOMMENDATION 3

Once measures have been introduced, the Member States should establish suitable and comprehensive management and control systems to ensure that all the requirements of the regulation can be satisfied.

In order to avoid generating disproportionate costs on the limited scale of a specific support measure, the requirement for monitoring and control should already be taken into account during the measure's design phase (simplicity of implementation, 'controllability' of criteria, etc.) and even at the time of the decision on whether or not to introduce a given measure.

This Report was adopted by Chamber I, headed by Mr Ioannis SARMAS, Member of the Court of Auditors, in Luxembourg at its meeting of 25 September 2013.

For the Court of Auditors

Vítor Manuel da SILVA CALDEIRA
President

ANNEX I

ENVELOPE ALLOCATED TO ARTICLE 68 FOR 2010–13, BY MEMBER STATE AND ACTIVITY (WITHOUT EX. ARTICLE 69 MEASURES)

(million euros)

	Protection or enhancement of the environment 68(1)(a)(i)	Quality 68(1)(a)(ii)	Marketing 68(1)(a)(iii)	Animal welfare 68(1)(a)(iv)	Agri-environment benefits 68(1)(a)(v)	Specific disadvantages affecting vulnerable types of farming 68(1)(b)	Preventing farmland from being abandoned 68(1)(c)	Insurance 68(1)(d)	Mutual funds 68(1)(e)	TOTAL	
France	176	50			424	790		350	84	**1 874**	29 %
Italy		601			396			280		**1 277**	20 %
Spain		126			270	402				**798**	12 %
Greece		152				160	120			**432**	7 %
Hungary						185	218	15		**417**	7 %
Poland	82	58				155				**295**	5 %
Finland	27	3				167				**196**	3 %
Portugal	8	35			53	37				**133**	2 %
Romania		14				118				**133**	2 %
Czech Republic	4	19				104				**127**	2 %
Netherlands	27			55		8		32		**122**	2 %
Denmark	18				65	26				**109**	2 %
Ireland	4					96				**100**	2 %
Bulgaria		15				73				**88**	1 %
United Kingdom						60				**60**	1 %
Austria						52				**52**	1 %
Slovenia						29	20			**50**	1 %
Slovakia						45				**45**	1 %
Lithuania						36				**36**	1 %
Belgium		4			8	18				**30**	0 %
Latvia		1				20				**21**	0 %
Sweden		6	1							**7**	0 %
Estonia						5				**5**	0 %
Germany						4				**4**	0 %
TOTAL	**344**	**1 085**	**1**	**55**	**1 216**	**2 589**	**358**	**677**	**84**	**6 409**	**100 %**

Source: DG Agriculture and Rural Development.
Note: The figures may not add up to the totals due to rounding.

ANNEX II

SUMMARY OF THE MEASURES SELECTED IN THE MEMBER STATES VISITED

GREECE

Aid for durum wheat (introduced under Article 68(1)(a)(ii))

General description: Per hectare area aid for the production of durum wheat meeting certain quality requirements.

Main conditions for eligibility

- Use of certain certified varieties of durum wheat seed.
- Use of a minimum quantity of seed per ha (80 kg/ha in 2010, 100 kg/ha in 2011).
- Not in receipt of funding from the equivalent rural development measure (132).

Aid rates *(euro per hectare)*

	Indicative estimate[1]	Actual
2010	90 euro/ha	69 euro/ha
2011		80 euro/ha

[1] The measure was introduced on the basis of an indicative estimate calculated according to the available budget and participation forecasts. As the budget is a fixed maximum amount, the rate actually paid can vary with actual participation.

Aid for sheep/goats in less-favoured areas (Article 68(1)(b))

General description: Coupled aid for sheep and goats granted for flocks located in or migrating to less-favoured or mountain areas. In addition to the basic aid, a supplement is provided for 'native breed' animals and a higher rate is paid for transhumant flocks.

Main conditions for eligibility

- Ewes and she-goats over 1 year old on 31 December.
- Compulsory retention period from 15 May to 31 December.
- Hold at least 50 eligible females (sheep or goats).
- Basic aid: be located in a less-favoured or mountain area.
- 'Native breed' supplement: female animals belonging to a specific breed native to Greece and appearing in a stud register (the 'native breed' supplement cannot be combined with transhumance aid).
- Transhumance aid: transhumance of more than 90 % of the animals for at least 90 days from an area which is not less-favoured to a less-favoured area.

Aid rates *(euro per eligible animal)*

Basic aid	3 euro/eligible female
Native breed supplement	2 euro/eligible female
Transhumance aid	4 euro/eligible female

In practice, approximately 95 % of payments consist of basic aid.

New single payment entitlements in less-favoured or mountain areas (Article 68(1)(c))

General description: Allocation of up to 4 additional single payment entitlements (SPEs) for farms in less-favoured or mountain areas covered by the 2007–13 Rural Development Programme.

Main conditions for eligibility

- Located in an area classified as less-favoured or mountainous.
- Hold at least 1 ha of eligible land without associated SPEs.
- In practice, given the restricted budget, aid was granted to a limited number of applicants, based on a points system giving priority to new and/or smaller farms.

Aid rate: New single payment entitlements are paid at a rate of 300 euro/ha.

SPAIN

Aid for crop rotation in unirrigated areas (Article 68(1)(a)(v))

General description: This is a per-hectare area aid which is made available for declared land (up to 100 ha) that includes certain percentages of arable crops as alternatives to cereals and set-aside. Contrary to its title, the measure does not directly impose crop-rotation conditions.

Main conditions for eligibility

- Beneficiary must have been listed in 2007 as a grower of arable crops with withdrawal or set-aside rights.
- Plots of arable crops must be located in an unirrigated area, classified as yielding less than 2 t/ha.
- Grow at least 20 % of non-cereal crops (oilseed crops, protein crops and legumes listed in the national legislation) and comply with a 10–25 % set-aside rate, depending on the area involved.
- Supplement 1: a minimum of 25 % of non-cereal crops to be grown.
- Supplement 2: a minimum of 25 % of legumes to be grown.

Aid rates *(euro per hectare)*

Basic aid	60 euro/ha
Supplement 1	20 euro/ha
Supplement 2	20 euro/ha

Aid for the dairy sector in less-favoured areas (Article 68(1)(b))

General description: Coupled direct aid for dairy cows in less-favoured areas. Payment is capped at 100 animals per farm. Additional support is granted to farmers with a minimum area of forage land.

Main conditions for eligibility

- Farm with milk quotas and making sales, located in an area classified as mountainous, depopulated or with specific limitations.
- Dairy cows more than 24 months old, correctly identified and owned on 30 April (no compulsory retention period).
- Additional land area component: minimum of 0,4 ha of forage area per eligible cow.

Aid rates *(euro per eligible animal)*

		Indicative amounts	Actual amounts	
			2010	2011
Basic aid — mountains and areas with specific limitations	First 40 Next 60	60 48	59,15 47,32	59,41 47,52
Basic aid — depopulated areas	First 40 Next 60	49 40	48,57 38,56	47,85 38,28
Additional land area component	First 40 Next 60	55 44	38,88 27,22	38,55 26,98

Aid for sheepmeat/goatmeat (Article 68(1)(b))

General description: Coupled aid for ewes or she-goats granted to meat producers participating in group actions (e.g. infrastructure, marketing, training).

Main conditions for eligibility

- **Non-dairy** ewes and she-goats over 1 year old (or which have already given birth) owned on 1 January (no compulsory retention period).
- Belong to a producer grouping which meets certain criteria (e.g. infrastructure, marketing, training), represents at least 5 000 breeding animals and is committed to retaining 90 % of this flock for 3 years.

Aid rates *(euro per eligible animal)*

	Indicative estimate	Actual
2010	4,30 euro	5,03 euros
2011		4,58 euros

FRANCE

Additional aid for protein crops (Article 68(1)(a)(i))

General description: Aid per hectare to encourage farming involving a large proportion of protein crops, which are considered to provide significant environmental advantages. Another form of aid was later introduced for new areas of fodder legume crops which were not shown in the planning documents initially sent to the Commission.

Main conditions for eligibility

- Eligible production/varieties: protein crops (peas, field beans, sweet lupins) and fodder legumes (lucerne, clover, sainfoin).
- Growing conditions: sow before 31 May; maintain crops in a normal state of growth and care, the protein crops to be harvested after the stage of lactic ripeness.
- Specific criteria for fodder legumes: plant on a plot sown the previous year with cereals, oilseeds and protein crops; no aid received under a MAET.

Aid rates *(euro per hectare)*

	Protein crops		Legume crops	
	Estimated	**Actual**	**Estimated**	**Actual**
2010	150 euro/ha	100 euro/ha	-	13,5 euro/ha
2011	125 euro/ha	140 euro/ha	-	16 euro/ha
2012	100 euro/ha	n/a	-	n/a

Aid for protein crops is described as 'additional' because, in 2010 and 2011, the rates shown above were paid in addition to an amount of 56 euro/ha under an existing coupled measure which was not withdrawn until 2012.

The 'forage legume crops' sub-measure only represents 1 million euros of the 40 million euros budgeted for the protein crops measure in 2010 and 2011.

Aid for maintaining organic farming (Article 68(1)(a)(v))

General description: Area aid to support organic farmers by compensating them for the extra costs and shortfalls not adequately covered by market prices.

Since the 2011 crop year, a second measure, 'Conversion to organic farming' (***not selected as part of the audit***), has been available. This is also a type of area aid, with higher rates for land being converted.

Main conditions for eligibility

- Meet the organic farming specifications for each plot of land for which aid is requested (it is not necessary for all plots to be used for organic farming).
- No aid received under an AEM.

Aid rates *(euro per hectare)*

Market gardening and arboriculture	590 euro/ha
Vegetables, vines and perfumed, aromatic and medicinal plants	150 euro/ha
Annual crops (cereals, etc.)	100 euro/ha
Grasslands and chestnut groves	80 euro/ha
Heathland, summer pastures and runs	25 euro/ha (from 2011)

Aid for sheep/goats (Article 68(1)(b))

General description: Coupled aid for ewes or she-goats (meat or milk). In addition to the basic aid, a supplement is available for sheep on the basis of marketing criteria and for goats based on health criteria.

Main conditions for eligibility

- Ewes and she-goats over 1 year old (or which have already given birth) at the end of the compulsory retention period (may be replaced, under certain conditions, by female lambs/kids during their compulsory retention period, up to a maximum of 20 % of the total flock declared).
- Compulsory retention period of 100 days from 1 February.
- Minimum of 50 eligible ewes or 25 eligible she-goats (in the case of goats, aid is capped at 400 animals).
- For sheep, have complied with the minimum productivity ratio (number of lambs born/ewes present) in year n-1.
- Supplement for sheep: breeders who are members of a commercial producers' organisation or have signed marketing contracts.
- Supplement for goats: breeders who have signed up to the guide to good health practices or the mutual code.

Aid rates *(euro per eligible animal)*

	Indicative estimate	Actual 2010	Actual 2011
Sheep			
basic aid	21,00	20,58	20,76
supplement	-	3,00	3,00
Goats			
basic aid	13,00	8,93	8,75
supplement	-	3,00	3,00

Crop insurance (Article 68(1)(d))

General description: Financial contribution to the payment of crop insurance premiums to cover economic losses caused by adverse climatic events.

Main conditions for eligibility

- The measure is limited to crop insurance premiums (plants).
- The main conditions are laid down in Article 70 of Regulation (EC) No 73/2009 and Article 47 of Regulation (EC) No 1120/2009.

Aid rate: 65 % of the eligible part of the premium, which is the maximum permitted under EU legislation.

ITALY

Crop rotation (Art 68(1)(a)(v))

General description: Area aid granted to farmers who practise crop rotation every 2 years on the same plot, alternating between cereals and protein or oleaginous soil-improving crops.

Eligibility criteria

- Eligible regions: Abruzzo, Basilicata, Calabria, Campania, Lazio, Marche, Molise, Puglia, Sardinia, Sicily, Tuscany and Umbria.
- Eligible varieties: legumes and cereals as defined in national law.
- To be eligible, areas must measure at least 500 m^2.
- The biennial crop rotation must respect the following cycles:

Crop rotation first 2-year period		Crop rotation second 2-year period		Eligible
Year 1	Year 2	Year 3	Year 4	
cereal	legumes	cereal	legumes	Yes
cereal	legumes	legumes	cereal	Yes
legumes	cereal	legumes	cereal	Yes
legumes	cereal	cereal	legumes	No

Aid rates (*euro per hectare*)

	Maximum rates	Actual rates	Hectares claimed	Eligible hectares
2010	100 euro/ha	100 euro/ha	902 490	888 877
2011	100 euro/ha	*92 euro/ha*[1]	n/a	n/a

[1] Rate still provisional at the start of 2012, set on the basis of an expected increase in the number of applicants.

ANNEX II

Improving the quality of agricultural products in the bovine sector (Article 68(1)(a)(ii))

General description: Direct aid per head granted for the calves of beef or dual-purpose (meat and milk) suckler cows. The measure comprises an additional slaughter premium for cattle reared in accordance with quality labelling protocols or on farms participating in a recognised PDO (protected designations of origin) or PGI (protected geographical indication) labelling scheme.

Eligibility criteria:

- The calves must either have been born out of suckler cows belonging to specific breeds that appear in the stud register or suckler cows of specific dual-purpose breeds that are used only for meat and recorded in the national register of breeds.

- To obtain the slaughter premium, farmers must have reared the animals in accordance with an approved voluntary code or be participants in a quality meat-labelling scheme approved by MIPAAF[1]. Slaughtered animals must be between 12 and 24 months old and have been reared by the beneficiary for at least 7 months.

Aid rates *(euro per eligible animal)*

		Budget (thousand euro)	Maximum indicative rate (euro/head)	Final rate (euro/head)
Calves of suckler cows	Primiparous[1] beef cattle appearing in the stud register	24 000	200	172,30
	Multiparous beef cattle appearing in the stud register		150	129,23
	Mixed breeds appearing in the register		60	55,93
Beef calves	Compliant with voluntary labelling specifications	27 250	50	42,63
	Certified PDO/PGI under Council Regulation (EC) No 510/2006[2]		90	76,73

[1] Primiparous cows have given birth once; multiparous cows have given birth at least twice.

[2] Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ L 93, 31.3.2006, p. 12).

[1] Ministry of Agriculture, Food and Forestry Policies.

Insurance (Article 68(1)(d))

General description: Subsidies for crop insurance premiums paid to cover climate risks (hail, high winds, heavy rain, etc.) or animal or plant diseases in the event of losses exceeding 30 % of annual production.

Eligibility criteria

- Insurance policies lasting no more than 1 calendar year and taken out with an authorised insurance company (this is usually done through producers' associations (Consorzi di Difesa)).
- Insure all the production of a specific product on one or more parcels in the same municipality.
- The insured value of each product may not exceed the reference prices published every year in the Ministry's national insurance plan.
- Support is calculated as the lower of the insurance premiums paid and the notional insurance cost calculated by ISMEA[2] on the basis of losses recorded in the same municipalities in the previous 5 or 6 years.

Aid rate: 65 % of the eligible part of the premium, which is the maximum permitted under the EU regulation.

Until 2010, a national measure had provided equivalent aid at a subsidy rate of 80 %.

[2] ISMEA (Istituto di Servizi per il Mercato Agricolo Alimentare — Services Institute for the Farming and Food Market) is a public entity responsible for statistics, studies and analyses in the agricultural sector.

REPLY OF THE COMMISSION

EXECUTIVE SUMMARY

I.
Although Article 68 increased the number of objectives for which aid could be granted within a maximum limit of 10 %, it also introduced a stricter limitation for coupled aids (maximum 3.5 % of the national ceilings of the MS).

IV.
The Commission considers that the implementation of the specific support scheme which includes a possibility of granting coupled payments does not call into question the general orientation of the direct payments scheme towards decoupling as this possibility is limited (3.5 % of the national ceiling) and is compatible with WTO rules.

V.
The legislator considered it to be the exclusive responsibility of the Member States to identify types of farming or agricultural sectors to be supported by measures under Article 68. They were thought to be best placed to identify regions or sectors with difficulties on their territory and to fix priorities among various needs for targeted support.

The Commission's proposal for post-2013 PAC includes the establishment of a common monitoring and evaluation framework in cooperation with the Member States with a view to measuring the performance of the common agricultural policy, including first and second pillar measures.

VI.
As acknowledged by the Court in its footnote 44, the Commission had already identified several weaknesses in the framework of the clearance of accounts procedure. Some of the weaknesses concern a very limited number of beneficiaries and do not point to general systemic weaknesses.

REPLY OF THE COMMISSION

VII.
The Commission's 'post-2013' CAP proposal as regards voluntary coupled support is subject to a number of limits: a list of eligible sectors and productions, defined quantitative limits, limited percentage of the Member State's national ceiling for direct payments, Commission's approval above a certain level of such percentage, conditions for granting the support (still to be specified by delegated acts).

VII. (a)
In the post-2013 CAP, the Member States will have to inform the Commission on the regions targeted, the selected types of farming or sectors and the level of support to be granted. In doing so, they will describe the reasons why the coupled support is envisaged and what the expected effects are.

Where the decision taken by the Member State triggers the derogation from the basic percentage of the national ceiling, a detailed description of the particular situation in the region targeted and of the particular characteristics of the types of farming or specific sectors which justify the increased level of support will be required. Where the Member State's decision is subject to approval, specific constraints such as the lack of alternatives or the need to provide stable supply to local processing industry shall be demonstrated.

VII. (a) First indent
According to the political compromise (preliminary agreement with the co-legislators) in the context of the post-2013 CAP reform, the Commission has empowerment to define the conditions for granting the aid through delegated acts.

The Commission's objective is to introduce a clear simplification in comparison with the current specific support as the voluntary coupled support will refer only to one of the nine measures existing under Article 68. This means that despite the list of sectors eligible being more extended than before, the number and the diversity of the objectives of the support are restricted to one category (i.e. the economic vulnerability of certain types of farming). The Commission considers that this will reduce the risk of overlapping and accumulation of support.

VII. (a) Second indent
Under the powers the Commission has been given through delegated acts, notably the conditions for granting the support will be defined.

As a general rule, the Member States will have to inform the Commission on the regions targeted the selected types of farming or sectors and the level of support to be granted. In doing so, they will describe the reasons why the coupled support is envisaged and what the expected effects are.

Where the decision taken by the Member State triggers the derogation from the basic percentage of the national ceiling, a detailed description of the particular situation in the region targeted and of the particular characteristics of the types of farming or specific sectors which justify the increased level of support will be required. Where the Member State's decision is subject to approval, specific needs like the lack of alternatives or the need to provide stable supply to local processing industry shall be demonstrated.

REPLY OF THE COMMISSION

VII. (b)
The implementing rules to be adopted by the Commission will provide for obligations for the Member States to periodically inform on the actual uptake of the measures implemented. Such obligations are necessary for the Commission in order to comply with its own obligation to regularly report to the WTO since coupled support is concerned as derogation from the global decoupled orientation of the direct payments schemes.

Minimum information will be required on the number of applications lodged under each kind of support measure and on the amounts actually paid as well as the number of beneficiaries per region, sector and/or type of farming in every Member State.

Such communications will allow the Commission to follow the actual implementation of the scheme for all the support measures implemented irrespective of the sector concerned as well as the compliance with the budgetary ceilings fixed.

More generally, the political compromise includes the establishment of a common monitoring and evaluation framework in cooperation with the Member States with a view to measuring the performance of the common agricultural policy, including first and second pillar measures.

VII. (c)
Member States are responsible for deciding and designing the support measures to be implemented and will have to ensure that such measures are verifiable and controllable. Therefore, they shall take into account the costs for management and control resulting from the possible implementation of coupled support measures and the possible need of setting up ad hoc control systems.

OBSERVATIONS

15.
Coupled livestock measures are available under Article 68(1)(b), which covers a limited list of sectors including the beef and veal and the sheep and goat sectors for vulnerable types of farming. The introduction of such support is not automatic as the Member States which decide to introduce such support have to identify a need and target vulnerable types of farming in those sectors. In this framework nothing prevents a Member State to continue implementing the support measure considered appropriate to the objective defined.

Common reply to paragraphs 16 and 17
The possibility offered to Member States to introduce coupled payments does not call into question the general orientation of the 2003 CAP reform towards decoupling, as it is limited to a maximum of 3.5 % of their national ceiling for direct payments.

18.
The risk of an increased use of the partial decoupling has been mitigated as the conditions established for specific support under Article 68-72 of Regulation (EC) No 73/2009 are more restrictive than the ones applicable in the context of previous Article 69, and the agri-environmental measures are subject to the Commission's approval.

REPLY OF THE COMMISSION

19.
The margin of appreciation with regard to the concept of 'clearly defined cases' referred to in Recital 35 of Council Regulation (CE) No 73/2009 is restricted by Articles 68, 70, 71 and 72 of the Regulation as well as in Articles 37 to 49 of Commission Regulation (CE) No 1120/2009 and in Regulation (EC) No 1122/2009 as regards its verification.

Common reply to paragraphs 20 and 21
The Commission points out that the Member States are obliged to notify it of the decision to implement specific support measures. On this basis, the Commission fixes the yearly applicable budgetary ceiling. Furthermore, apart from the specific Commission approval required for the agri-environment measures, the Commission carries out an assessment of all the measures notified in order to detect major possible problems of compatibility with the applicable legal framework.

22.
See reply to Box 1.

Box 1
The Commission considers that the support measures for 'environment' and 'agri-environment' are clearly distinct.[1] The 'agri-environment' measures are subject to specific requirements and a ceiling of 10 % of the MS national ceiling; they are also approved by the Commission. Such requirements are similar to the ones applicable to equivalent agri-environment measures included in the rural development programmes. The 'environment' measures give the Member States more flexibility, as they are not subject to the same requirements while they are subject to a more limited ceiling[2].

[1] As laid down respectively in Article 68(1)(a)(i) and (v) of Regulation (EC) No 73/2009 and Articles 40,44 and Annex IV to Regulation (EC) No 1120/2009.

[2] 3.5 % of the MS national ceiling, as foreseen in Article 69(4) of Regulation (EC) No 73/2009.

24.
Eight out of nine kinds of measures are not subject to any Commission approval.

Notifications are made in accordance with Annex IV to Regulation (EC) No 1120/2009, which means that they do not contain all detailed information concerning the measures. In general, national implementing rules are more detailed than the information notified to the Commission. This has been noticed during the audits carried out by the Commission in the Member States in the context of the clearance of accounts.

26.
Denmark initially notified the measure concerned under Article 68 (1) (a) (v) of Regulation (EC) No 73/2009 providing compensation for agri-environmental commitments. However, during the assessment of the measure it appeared that the envisaged measure was in fact an investment measure aiming at the planting of energy crops and not an agri-environmental measure. Consequently, Denmark reformulated the measure so as to make it compatible with Article 68 (1) (a) (i).

27. (a)
The Commission's objective is to introduce a clear simplification in comparison with the current specific support as the voluntary coupled support will refer only to one of the nine measures existing under Article 68. This means that despite the list of sectors eligible being more extended than before, the number and the diversity of the objectives of the support are restricted to one category (i.e. the economic vulnerability of certain types of farming). The Commission considers that this will reduce the risk of overlapping and accumulation of support.

REPLY OF THE COMMISSION

27. (c) (i)
Subject to the conditions established by the Commission, it is the exclusive responsibility of the Member States to identify types of farming or agricultural sectors that undergo certain difficulties which should be supported. They are thought to be best placed to identify regions or sectors with difficulties on their territory and to fix priorities among various needs for targeted support, taking also into account the sector specialisation of the regions.

27. (c) (ii)
In addition, support shall be granted within defined quantitative limits and based on fixed areas and yields or on a fixed number of animals.

28.
The concept of 'difficulties' will be specified by means of delegated acts.

Furthermore, the fact that most coupled aid measures currently in place could be maintained cannot be criticised in principle, as long as they are considered appropriate to reach a specific objective identified by the Member State.

Common reply to paragraphs 31 and 32
It is up to the Member States to decide where coupled or decoupled support is the most appropriate means of reaching the objective defined. They shall notify the measures they intend to implement to the Commission, describing in particular the need identified on their territory and the reasons for granting the support.

These measures are not subject to the Commission's approval.

33.
In Spain there is no official statistical data available related specifically to the trend of the surface on cereal, oleaginous, protein and leguminous crops in the areas where the measure is applicable (zones with a cereal yield lower than 2 tons/ha). Nevertheless, the measure as such, which aims at the promotion of alternative crops to cereals, respecting a certain rate of set-aside, represents a benefit for the environment as it contributes positively to the sustainable management of natural resources (water and soil).

34.
These measures are not subject to the Commission's approval.

35.
As organic farming is less profitable and technically more demanding, some operators are returning to conventional agriculture (for instance, in 2005/2006 there was a decrease of 1 % in the certified 'organic surfaces' — from 504,536 ha to 499,589 ha — and 0.5 % in 2006/2007 — from 499,589 ha to 497,314 ha). The figures may seem low, but the risk is very real, especially in view of the trend of increasing prices in agricultural products. Meanwhile, both measures of conversion to and maintenance of organic farming have started been very successful. From 2008, there was a real take-off of the maintenance measure. In 2008/2009 the certified organic surfaces increased by 4,7 %, while the organic surfaces in the conversion phase increased by 86,2 %. However, this does not imply that the risk of abandonment has disappeared.

Common reply to paragraphs 36 and 37 (including footnote 27)
On the basis of their analysis of the needs for a specific support, the Member States select, among the measures offered by the scheme, the ones allowing to better address the objective set and to grant the appropriate level of support taking into account the various limits set up by the legislation for each type of measure as well as the coupled or the decoupled character of the payment (3,5 % or 10 % ceiling). It is up to them to consider which type of support is more appropriate to addressing the need identified and the objective defined.

REPLY OF THE COMMISSION

38.
In a number of cases, in the framework of its assessment of the measures, the Commission asked the Member States to improve and specify the targeting of the support.

39.
For measures under Article 68(1)(a)(i) the responsibility of identifying the need, fixing the objective and designing the measure accordingly belongs to the Member State. For measures under Article 68(1)(a)(v), the same responsibility of the Member State is subject to a Commission assessment, including on the causal link between support and objectives, in view of the approval.

40.
These measures are not subject to the Commission's approval.

41.
Only measures under Article 68(1)(a),(ii),(iii),(iv) and (v) specifically refer to an objective of increasing or improving a particular factor, i.e. 'changing existing situation' as stated by the Court. The Commission reminds that EU legislation set up the principle that specific support shall not compensate for the respect of mandatory requirements. More specifically, practices for enhancing animal welfare standards shall go beyond the minimum requirements laid down in the applicable EU or national legislation. A similar precondition applies to agri-environment measures. For quality, the farmer shall join existing EU or national schemes to be selected or defined by the Member States. Requirements for marketing are defined by the EU legislation on information and promotion. The Commission did not detect a priori, in the Member States notifications, cases where support was granted without any reference to a change in the existing situation. For the purpose of measuring that change, the Commission required the Member States to fix appropriate baselines for the support measure to be implemented.

42.
In the case of the Italian crop rotation measure, an analysis of normal agricultural practice in the regions concerned was requested by the Commission prior to the approval of the measure. Following this analysis, the initial Italian proposal for a triennial crop rotation was changed into a biennial one.

The measure proposed by Spain contributes to the maintenance of some traditional cultural practices which are good for the environment. In the absence of the aid proposed in the agri-environmental measure there is a risk of abandonment of those cultural practices. As a consequence farmers would follow the monoculture of cereal crops which are less beneficial for the environment.

43.
As regards the lack of a stipulation that the crop grown or the production method must have changed compared with previous practice, the Commission points out that it is not necessarily a shortcoming, but may result from the requirements of the quality scheme defined as eligible by the Member State.

Common reply to paragraphs 45 and 46
The fixing of the level of support was left by the legislator to the Member States, which were thought to be best placed to determine the level of support appropriate to address the need identified and the objective defined. The level of support calculated by the Member State for the purpose of the notification is indicative.

REPLY OF THE COMMISSION

Common reply to paragraphs 47 and 48
These measures are not subject to the Commission's approval.

49.
In the Italian case, the calculations have been revised following the Commission's assessment.

The Commission's decision was taken on the basis of the changes notified by Italy to the measure in which the certified calculations of additional costs and income foregone amounted to €101 and €100 respectively for the two Italian macro-regions for which the measure had been proposed.

52.
Overall, the fact that there are no RACER indicators does not mean that there is no information available that can be used for the evaluation of the policy. Moreover, while indicators can contribute to the evaluation of a policy, they need to be carefully interpreted against the context. In this sense, the costs and benefits for a detailed indicator framework need to be carefully assessed, since other approaches (e.g. more qualitative techniques or mixed methods) might offer better value for money.

Box 2 — Examples of no or inadequate indicators
See Commission's reply to paragraph 52.

Box 2 — First indent
The objective of this measure is to support farmers practicing organic farming by the compensation of additional costs and loss of earnings, since they are insufficiently supported by market prices. However, this measure basically addresses environmental issues, and for this reason, the indicator of 'number of hectares under cultivation for organic production' is most appropriate.[3]

Moreover, this indicator is consistent with the Common Indicators for Monitoring and Evaluation of Rural Development Programmes 2007–13 CMEF.

[3] There are two kind of indicators in French statistics used in organic farming: 'number of hectares under cultivation for organic production' (whose transition period is over), and 'number of hectares in transition'.

Box 2 — Third indent
Since crop rotation and protein crops are beneficial from environmental perspective, the number of hectares referred to by the Court is essential data. However, to evaluate the impact of the CAP on the environment, additional information is needed. This is foreseen in the Monitoring and Evaluation system for the post-2013 CAP.

53.
At the time of the evaluation, the Commission will establish the relevant evaluation questions. Monitoring information is one element on which the evaluator can base his analysis; however, there are also other information sources and tools such as targeted questionnaires, surveys or statistical data the evaluator can use to evaluate the impact of the policy.

55.
As acknowledged by the Court in its footnote 44, the Commission had already identified several weaknesses in the framework of the clearance of accounts procedure. Some of the weaknesses concern a very limited number of beneficiaries and do not point to general systemic weaknesses.

56.
The Member States shall, pursuant to the legislation, ensure that the specific support measures they implement are verifiable and controllable.

In order to address the risk of duplicate financing, the Member States shall ensure that a farmer receive support for a given operation under only one measure. The Commission considers that the French and Italian authorities have in place demarcation criteria for avoiding duplicate financing from both Article 68 and Rural Development. For instance, more than 10 % of the applications for 'conversion to organic farming' were rejected in France in 2011 because applicants were already beneficiaries of a Rural Development measure.

Several weaknesses have already been identified by the Commission and are subject to ongoing audits. Specifically, in relation to the crop rotation in Italy, the Court's observation will be assessed by the Commission in a forthcoming audit.

REPLY OF THE COMMISSION

57.
This weakness has already been identified by the Commission and is subject to an ongoing audit AA/2011/010/FR.

58.
The absence of administrative checks of the productivity ratio in relation to the aid for sheep in France has been identified and is followed up by the Commission in the framework of the clearance procedure.

59.
The Court's observations on the dairy sector aid in Spain concern a limited number of applicants in one region. The configuration error regarding the additional land area component of the aid concerned equally a very limited number of applicants.

60.
The Member State has already taken corrective actions for the identified files.

62.
The Commission takes note of the dysfunctions identified by the Court in Italy in relation to insurance measures. These will be followed up during a forthcoming clearance of accounts audit on this measure.

63.
These measures are not subject to the Commission's approval.

64.
The Commission considers that the work done in the context of clearance of accounts covers appropriately the risk to the Funds posed by the weaknesses identified by the Court.

In this context, the Commission welcomes the Court's remark in footnote 44.

65.
The Court's observations concerning on-the-spot checks for the sheep/goat measure in Greece in 2010 are already the subject of an audit by the Commission. Furthermore, the Member State has already taken corrective actions for the subsequent years.

66.
The Commission takes note of the Court's findings and will assess them during forthcoming clearance of accounts audits.

67.
According to the Spanish authorities, the verifications are carried out by means of remote sensing (95 %) and by classic on-the-spot visits (5 %). Regarding remote sensing, photointerpretations are made four times: in autumn of the previous year, in the beginning and at the end of spring, and in summer; while these are completed by rapid on-the-spot field visits. The measures taken by the Spanish authorities seem to reduce the risk for the Fund. However, the Commission will take into account the remarks of the Court in the framework of its audit activity.

The Court's remarks for Italy will be assessed during a forthcoming clearance of accounts audit.

68.
The Court's observations on the weaknesses concerning document inspections during the on-the-spot checks for the sheep/goat measure in Greece are already subject of an audit by the Commission. As regards Spain, the Commission will follow-up this observation in the clearance of accounts audit.

REPLY OF THE COMMISSION

69.
The Commission will follow this observation and take appropriate measures.

Common reply to paragraphs 70–75
The Member States take into account the costs for management and control resulting from the implementation of specific support measures and the possible need of setting up ad hoc control systems.

76.
See Commission replies to 70–75.

Box 3 — Third paragraph
An administrative certificate can be issued by the competent public authorities without cost for the beneficiaries. The possible burden falls on the authorities for issuing the certificates in time.

As regards the Court's observations on the number of on-the-spot checks carried out and the weaknesses concerning document inspections see Commission replies to paragraphs 65 and 68.

CONCLUSIONS AND RECOMMENDATIONS

77.
The subsidiarity principle will apply to the coupled support scheme foreseen in the Commission's proposal. Therefore, the Member States will have to design and implement the support measures according to the objective they will have identified.

78.
The Commission considers that the implementation of the specific support scheme which includes a possibility of granting coupled payments does not call into question the general orientation of the direct payments scheme towards decoupling as this possibility is limited (3.5 % of the national ceiling) and is compatible with WTO rules.

79.
The legislator considered it to be the exclusive responsibility of the Member States to identify types of farming or agricultural sectors to be supported by measures under Article 68. They were thought to be best placed to identify regions or sectors with difficulties on their territory and to fix priorities among various needs for targeted support.

The Commission's proposal for post-2013 PAC includes the establishment of a common monitoring and evaluation framework in cooperation with the Member States with a view to measuring the performance of the common agricultural policy, including first and second pillar measures.

80.
As acknowledged by the Court in its footnote 44, the Commission had already identified several weaknesses in the framework of the clearance of accounts procedure. Some of the weaknesses concern a very limited number of beneficiaries and do not point to general systemic weaknesses.

REPLY OF THE COMMISSION

81.
The Commission's 'post-2013' CAP proposal as regards the voluntary coupled support is subject to a number of limits: a list of eligible sectors and productions, defined quantitative limits, limited percentage of the Member State's national ceiling for direct payments, Commission's approval above a certain level of such percentage, conditions for granting the support (still to be specified by delegated acts).

Recommendation 1
In the post-2013 CAP, the Member States will have to inform the Commission on the regions targeted, the selected types of farming or sectors and the level of support to be granted. In doing so, they will describe the reasons why the coupled support is envisaged and what the expected effects are.

Where the decision taken by the Member State triggers the derogation from the basic percentage of the national ceiling, a detailed description of the particular situation in the region targeted and of the particular characteristics of the types of farming or specific sectors which justify the increased level of support will be required. Where the Member State's decision is subject to approval, specific constraints such as the lack of alternatives or the need to provide stable supply to local processing industry shall be demonstrated.

Recommendation 1 (a)
According to the political compromise (preliminary agreement with the co-legislators) in the context of the post-2013 CAP reform, the Commission has empowerment to define the conditions for granting the aid through delegated acts.

The Commission's objective is to introduce a clear simplification in comparison with the current specific support as the voluntary coupled support will refer only to one of the nine measures existing under Article 68. This means that despite the list of sectors eligible being more extended than before, the number and the diversity of the objectives of the support are restricted to one category (i.e. the economic vulnerability of certain types of farming). The Commission considers that this will reduce the risk of overlapping and accumulation of support.

Recommendation 1 (b)
Under the powers the Commission has been given through delegated acts, notably the conditions for granting the support will be defined.

As a general rule, the Member States will have to inform the Commission on the regions targeted the selected types of farming or sectors and the level of support to be granted. In doing so, they will describe the reasons why the coupled support is envisaged and what the expected effects are.

Where the decision taken by the Member State triggers the derogation from the basic percentage of the national ceiling, a detailed description of the particular situation in the region targeted and of the particular characteristics of the types of farming or specific sectors which justify the increased level of support will be required. Where the Member State's decision is subject to approval, specific needs like the lack of alternatives or the need to provide stable supply to local processing industry shall be demonstrated.

Recommendation 2
The implementing rules to be adopted by the Commission will provide for obligations for the Member States to periodically inform on the actual uptake of the measures implemented. Such obligations are necessary for the Commission in order to comply with its own obligation to regularly report to the WTO since coupled support is concerned as derogation from the global decoupled orientation of the direct payments schemes.

Minimum information will be required on the number of applications lodged under each kind of support measure and on the amounts actually paid as well as the number of beneficiaries per region, sector and/or type of farming in every Member State.

REPLY OF THE COMMISSION

Such communications will allow the Commission to follow the actual implementation of the scheme for all the support measures implemented irrespective of the sector concerned as well as the compliance with the budgetary ceilings fixed.

More generally, the political compromise includes the establishment of a common monitoring and evaluation framework in cooperation with the Member States with a view to measuring the performance of the common agricultural policy, including first and second pillar measures.

Recommendation 3

Member States are responsible for deciding and designing the support measures to be implemented and will have to ensure that such measures are verifiable and controllable. Therefore, they shall take into account the costs for management and control resulting from the possible implementation of coupled support measures and the possible need of setting up ad hoc control systems.

European Court of Auditors

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AS A DEROGATION TO THE GENERAL PRINCIPLES OF DECOUPLING AND SIMPLIFYING THE PAYMENT REGIME FOR FARMERS, ARTICLE 68 ALLOWS MEMBER STATES TO RETAIN PART OF THEIR NATIONAL CEILINGS TO PROVIDE SPECIFIC SUPPORT TO CERTAIN ACTIVITIES, NOTABLY THROUGH DIRECT COUPLED PAYMENTS, IN CLEARLY DEFINED CASES.

IN THIS REPORT, THE COURT NOTES THAT THE COMMISSION HAS LITTLE CONTROL OVER THE JUSTIFICATION FOR SUCH CASES AND THAT MEMBER STATES HAVE A LARGE DEGREE OF DISCRETION. THERE IS INSUFFICIENT EVIDENCE THAT THE MEASURES INTRODUCED UNDER ARTICLE 68 ARE NECESSARY OR RELEVANT IN TERMS OF NEEDS, EFFECTIVENESS OF THEIR DESIGN AND THE LEVELS OF AVAILABLE AID. THE COURT ALSO POINTED OUT WEAKNESSES IN THE ADMINISTRATIVE AND CONTROL SYSTEMS, SOMETIMES DESPITE MANAGEMENT AND CONTROL BURDENS ALREADY HEAVY.

EUROPEAN COURT OF AUDITORS

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