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Directorate D. Sustainability and income support

**D.2. Greening, cross-compliance and POSEI**

**QUESTIONS AND ANSWERS**  
**ECO-SCHEMES**  
**ARTICLE 28 OF THE SPR PROPOSAL AND RELATED PROVISIONS**  
**V3**  
**Expert Group for Direct Payments**  
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***Disclaimer***

*The purpose of this document is to explain the provisions of the Regulation on support for CAP Strategic Plans (SPR proposal) on the basis of the political compromise reached in June 2021. The references to legal provisions (articles, recitals) might not correspond to the final legal text. This document is only intended to facilitate the work of the MS on the preparation of eco-schemes interventions.*

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## INTRODUCTION: PURPOSE AND STRUCTURE

The purpose of this document is to provide replies to the numerous questions addressed by Member States to the European Commission about the design and implementation of eco-schemes. It covers Article 28 of the CAP Strategic Plans regulation (SPR) and related provisions agreed end June 2021 (political compromise).

This document has **no legal value** and is only distributed to Member States to provide guidance on the understanding of the SPR provisions related to eco-schemes. It will be subject to further consolidation when the legal text of SPR is finalized.

The questions are organized into **8 topics**:

- A. General questions (beneficiaries, eligible areas)
- B. Commitments (definitions, types of commitments)
- C. Targeting of eco-schemes
- D. Types of eco-schemes and practices that can be included
- E. Links with other agri-environmental interventions (Article 65)
- F. Level of payments and management of eco-scheme envelope
- G. WTO rules applying to eco-schemes
- H. Controls and penalties
- I. Budget allocation (ring-fencing)<sup>1</sup>

Main changes compared to previous version are:

- the replies to several questions have been revised to be in line with Regulation on the CAP Strategic plans that has been agreed by co-legislators end June 2021.
- additional questions of general interest have been included<sup>2</sup>. A number of questions have been raised by Member States at the ENRD workshop on “Preparing the CAP Strategic Plans: Designing Eco-Schemes” (25 February 2021) while other questions have been discussed at the bilateral meetings between the Member States and the Commission within the context of Geohubs.

As a complement, the European Commission has published on 14<sup>th</sup> January 2021 a **list of farming practices** that would be suitable for receiving EU support under eco-schemes<sup>3</sup>. The purpose of this list is to illustrate the possibilities that eco-schemes offer to support a wide-range of farming practices. Actions cover: agronomic/cropping practices, transition to new farming systems, technological options that improve

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<sup>1</sup> This document does not include yet questions on the budget allocation (ring-fencing), as we don't have receive any from MS before the Expert group on DP scheduled the 2th July 2021. The Commission is working on the legal text that reflects the political compromise of end June.

<sup>2</sup> The new questions are: C5, D10 (that replaces the previous question that has been moved to block G, as G2), D12 and D13, E3 and E4, F10 to F14 and H4.

<sup>3</sup>[https://ec.europa.eu/info/news/commission-publishes-list-potential-eco-schemes-2021-jan-14\\_en#:~:text=The%20list%20of%20potential%20agricultural,extensive%20use%20of%20permanent%20grassland.](https://ec.europa.eu/info/news/commission-publishes-list-potential-eco-schemes-2021-jan-14_en#:~:text=The%20list%20of%20potential%20agricultural,extensive%20use%20of%20permanent%20grassland.)

environmental performance, and environmental certification approaches. These wide-range of actions can be combined in different ways by MS. MS can also propose other practices relevant and tailored to their context and needs as the list is not exhaustive.

## A. ECO-SCHEMES – GENERAL QUESTIONS

### A1. Are beneficiaries other than genuine farmers eligible for support under eco-schemes?

Following inter-institutional negotiations, the notion of “genuine farmers” has not been retained in the final SPR and has been replaced by “active farmers”. Eco-schemes can support only **active farmers or groups of active farmers** who make commitments to observe, on eligible hectares, agricultural practices beneficial for the climate, environment and animal welfare. In other words, for a beneficiary to be eligible under eco-schemes:

- S/he has to be an active farmer in the meaning of Article 4(1)(d) of the SPR and, in addition,
- S/he has to “make commitments” on eligible area, i.e. choose on a voluntary basis to respect practices defined by MS for the eco-schemes for which S/he submits an application (cf. Article 28(2) of the SPR).

**A2. Can farmers who are not entitled to the Basic Income Support for Sustainability (BISS), e.g. active farmers with eligible area but not payment entitlements, receive support under eco-schemes?** An area is eligible for eco-schemes if it meets the definition of eligible hectare as laid down by the MS, as referred to in Article 4, paragraph 1, point c) of the proposed CAP strategic plan regulation. Please note that the criteria of eligible hectare in Article 4(1) will be defined in detail by the MS.

The number of available payment entitlements (PE) is irrelevant for declaring the eligibility of areas to eco-schemes. However, receiving the basic income support (BISS with or without payment entitlements) is needed in the case of eco-schemes payments based on Art 28(6)a.

We have to distinguish two cases: payments based on compensation (additional costs and loss of income) in line with Art 28(6)b and payments in the form a supplement to the basic income support (BISS or SAPS) based on Art 28(6)a.

#### *1) Payments additional to basic income support (Art 28.6.a))*

For payments that are set in line with Article 28(6)a, in the form of a supplement to the basic income support, the beneficiaries have to necessarily receive the basic income support (BISS with or without payment entitlements) on the eligible area.

In such case, eco-schemes payments are linked to basic income support to ensure the Green Box compatibility (allow notification to the WTO under para 6 of the Agreement of Agriculture). Please see also Article 10 and the related Annex II of the SPR.

However, the farmer should not necessarily receive the income support payments on all the hectares on which she/he receives eco scheme payments. For the MS that decide to grant the basic income support on the basis of PE, an area is eligible for eco-schemes if

it meets the definition of “eligible hectare” referred to in Article 4, paragraph 1, point c) as defined by MS and if the farmer receives the basic income support, even if the farmer does not have “rights to basic payment” for the all the area enrolled in eco-schemes.

Example: a farmer with 100 ha fulfilling the eligibility conditions set for basic income support, receiving the basic income support 20 ha for which farmer has PE, should receive support from eco-schemes “incentive” payments for up to 100 ha (if this the entire the eligible area of the farm is engaged into eco-schemes).

## 2) “Compensatory” payments (Art 28.6.b))

In case of “compensatory payments”, **receiving the basic income support is not a precondition for eco-schemes**, as laid down in Article 28(6)b. However, in all cases the beneficiary must be an active farmer and the area has to be eligible to direct payments according to provisions of Article 4, paragraph 1, point c) as defined by MS.

Example: a farmer with 100 ha fulfilling the eligibility conditions set for basic income support but not receiving the basic income support, can receive “compensatory” eco-schemes payments for 100 ha (if this the area engaged into eco-schemes). However, the reasons for not receiving the BISS should not be related to irregularities, but to the non-availability of PE.

In both cases, within the overall eligible area it is possible to target specific areas for applying eco-schemes by adding eligibility requirements that are justified in line with the objectives pursued by eco-schemes.

## A3. Can eco-schemes be paid to a group of farmers?

Article 28(2) lays down that Member States can support active farmers or groups of active farmers who make commitments to observe agricultural practices beneficial for the climate, the environment, animal welfare and combatting antimicrobial resistance. Article 3(a) of the SPR provides the definition of farmer that includes groups of natural or legal persons regardless of the legal status granted to such group and its members by national law.

## A4. Which areas can be paid for in eco-schemes?

Any type of agricultural area (arable land, permanent crops, permanent grassland, pastures) can receive eco-schemes payments according to the conditions set up by Member States in the CSP.

Article 28, paragraph 6 provides that support for a particular eco-scheme shall take the form of an annual payment for all the **eligible hectares covered by the commitments**.

Agricultural areas (hectares) eligible under eco-schemes need to meet two conditions:

- The agricultural area, as defined in Article 4(1)(b), has to be an eligible hectare in the meaning of Article 4(1)(c) of the SPR and, in addition,
- The area needs to be concerned by the commitments to carry out practices beneficial for the climate, the environment, animal welfare and combatting antimicrobial resistance.

*See question A2 for an explanation of the link between the eligible area for eco-schemes and the BISS and question A5 for an example on eligible area.*

**A5. Can the payment in an eco-scheme be made only for eligible hectares on which practices beneficial for the climate and the environment are carried out or can payments be made for all eligible hectares of a farmer? For instance, if an eco-scheme requirement was ‘minimum x% of melliferous plants’, can the payment be paid for all eligible hectares of the farmer or does the payment have to be based only on the eligible hectares that are used to fulfil this requirement?**

Pursuant to Art. 28(6), eco-schemes should be paid on **eligible hectares covered by the commitments** to carry out agricultural practices aiming at the objectives mentioned in Art. 28(3) and the areas of actions listed in Art. 28(4). MS should decide the area concerned by the practices committed according to the specific nature and definition of the practice and its potential environmental, climatic and animal welfare impact.

Example 1: eco-scheme including the practice to deliver X % of non-productive areas and landscape elements over the total eligible agricultural area of the holding on top of the minimum share for arable land under GAEC 8. In this case, MS may decide to grant the payment to the total eligible area of the holding as this is the area that might be concerned by the commitment (defined as a share of the total eligible area of the farm).

Example 2: eco-scheme including a practice to dedicate a certain area to melliferous plants. In this case, the granting of the payment to the entire eligible area of the farm or to the parcels where the melliferous crops are cultivated depends on the precise definition of the practice (e.g. fallow areas with melliferous species, melliferous productive crops, the related agricultural practices) and its environmental justification. The decision should obviously be taken into account when setting the unit amount.

**A6. Article 28(1) of the SPR proposal appears to require MS to finance eco-schemes (‘shall provide support’). The same provision, however, stipulates that schemes are ‘voluntary’. Can the Commission clarify the intention of the provision?**

Article 28(1) indeed requires MS to set up **at least one eco-scheme** under their CAP Strategic Plans (‘MS shall provide support’). Moreover, the basic act will include requirements obliging Member States to ring-fence a certain minimum allocation for the eco-schemes.

The political compromise reached end June foresees to broaden the scope of eco-schemes to support actions to improve **animal welfare and address antimicrobial resistance** (AMR). While MS must set at least one eco-scheme covering environment or climate objectives, the legal framework does not provide that MS must define eco-schemes for animal welfare and AMR. Pursuant to Art. 28(4), each eco-scheme must cover **at least two areas of actions** of those listed in Art. 28(4) which give MS flexibility to define the eco-schemes’ objectives.

As stated in recital 31<sup>4</sup>, **eco-schemes are voluntary for farmers**; farmers should have the choice whether to commit to observe agricultural practices beneficial for the environment, climate, animal welfare and AMR required under an eco-scheme.

**A7. Eco-schemes are voluntary for farmers. However, farmers who choose to participate in eco-schemes have to ‘make commitments’ to observe practices beneficial for the climate and the environment (cf. Article 28(2) of the SPR proposal). Can the Commission clarify in which form commitments have to be made (e.g. contracts, applications for payment ...)?**

Neither the SPR nor the Horizontal Regulation (HZR) specify in which form farmers are expected to make commitments to observe practices beneficial for the environment, climate and animal welfare/AMR. MS can choose the forms that best suit the design of an eco-scheme and the national implementation modalities. For instance, should an eco-scheme include multi-annual commitments, MS could decide to formalise the commitment by means of a contract with the farmer previous to introducing the CAP application. In any case, **MS have to clearly inform farmers about the commitments and all the conditions of the eco-schemes**. In the CAP SP, MS are requested to describe the main features of eco-schemes (according to Art. 99 of the SPR), such as: commitments, eligibility conditions (areas and beneficiaries), targeting, premia amounts and related financial provisions. MS might also provide some specific details on national implementation documents.

**A8. What is the relation between the terms ‘eco-schemes’, ‘list of practices beneficial for climate and the environment’ and ‘commitments’ in the context of Article 28 of the SPR?**

Eco-schemes are interventions aimed at achieving the specific objectives (SO) linked to environment, climate and animal welfare and antimicrobial resistance (AMR) (SO4-SO6 and SO 9). An eco-scheme can consist of **one or several agricultural practices beneficial for the climate, the environment, animal welfare and antimicrobial resistance**. All the practices foreseen under the eco-schemes of a certain MS will form the “list of agricultural practices” beneficial for climate and the environment, animal welfare and antimicrobial resistance.

Finally, each practice might include one or more commitments (= specific requirements, see the following question) that farmers must commit to carry out on the eligible area (as specified in paragraph 2 of Article 28).

**A9. Can “small farmers” apply for eco-schemes?**

According to Art. 25 of SPR, the “simplified scheme for small farmers” payment that MS may introduce **replaces all direct payments** (coupled and decoupled) including the eco-scheme payment. Hence farmers who choose to apply for the “simplified scheme” cannot apply for eco-schemes. The simplified payment for small farmers will be optional for farmers.

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<sup>4</sup> Provisional legal reference.

However, farmers who choose to apply for the “simplified” scheme for small farmers can apply for agri-environmental-climate commitments within the rural development within the conditions set by the MS.

## **B. COMMITMENTS UNDER ECO-SCHEMES**

### **B1. Can the Commission clarify the meaning of the word ‘commitment(s)’ in the context of Article 28 of the SPR?**

The term ‘commitment’ is used three times in Article 28 of the SPR:

- in paragraph 2, the wording ‘active farmers or groups of active farmers who make commitments’ is used to indicate that farmers have the choice to commit (or not) to observe practices beneficial for the climate, the environment, animal welfare and AMR. The emphasis is on the action of making a commitment.
- In paragraph 5 and 6, the emphasis shifts to the content of those commitments: the agricultural practices committed under eco-schemes; the term ‘requirements’ could be used to clarify the meaning of “commits” in this provision.

The notion of “practices” can be interpreted in a broader way. Eco-schemes can be design as whole farm approaches (e.g. organic farming, scoring-based systems), as covering a specific farm system (e.g. forage-based livestock, arable cropping) or at parcel level (e.g. soil management).

### **B2. Do commitments in eco-schemes have to be annual or can they be multi-annual?**

While payments have to be annual, the legal framework does not preclude a situation in which an eco-scheme is designed on the basis of multi-annual commitments. The MS have the flexibility to design the type, duration, and overall management provisions of the multi-annual eco-schemes as well as the legal form this can take. However, in such cases, the control and penalty system has to be designed to support such a design.

*See question A7 and block H.*

### **B3. Is it allowed to include the same commitment in different eco-schemes?**

There is no legal provision preventing MS to design eco-schemes where some of the requirements are included in several eco-schemes for the same area. In this case, however, the MS will need to address the issue of double funding to ensure that farmers are not paid twice for the same practice (see also question E1). MS should also take into account the simplification objective for the future CAP.

**B4. Can the areas of interventions under schemes for climate and environment overlap, i.e. can there be more eco-schemes declared in relation to the same area (e.g. a parcel)? Would it be acceptable? For example, if there were two eco-schemes (A – organic fertilization (manuring) and B – growing catch crops) designed under Article 28 of the SPR, what would happen if a farmer applied for both within the same parcel? Consequently, how should the payment be calculated? How should the**



**situation be evaluated, monitored and reported, knowing that areas of output indicators must not overlap?**

MS have significant flexibility in the design of practices within their eco-schemes on the condition that they are designed to address the environmental, climatic and animal welfare needs identified, they are in line with the overall intervention strategy of the CAP plan, they go beyond the baseline, and they follow the rules on financing and avoiding double funding. This means that on the same parcel different practices could be supported separately under two eco-schemes. In the case of **different eco-schemes** (no overlapping), the amount can be calculated as the sum of the unit amount per hectare foreseen for each eco-scheme.

As regards the area monitoring and reporting, it has to follow the guidance set in the relevant output and result indicator fiches, including the rules on no double-counting.

*See also reply to question E1.*

**B5. In order to ensure a higher level of compliance with practices beneficial for environment and climate, can some requirements currently defined under cross-compliance be moved to eco-schemes. This would incentivise farmers to respect these obligations instead of penalising them for their non-respect under the future enhanced conditionality. Is this possible?**

Through the future CAP, MS have to make a **greater overall contribution** to the achievement of the specific environmental and climate-related objectives in comparison to the current CAP (cf. Article 92 of the SPR). The future CAP will also have to contribute to the objectives and targets of the European Green Deal and its Farm to Fork and Biodiversity Strategies. The eco-schemes should hence be used to foster the transition towards a more sustainable way of farming rather than remunerating for standard agricultural practices such as current cross-compliance baseline requirements.

The system of conditionality for the period 2023-2027 encompasses current cross-compliance as well as some of the practices included in the green payment, putting the baseline bar higher for supported interventions. Hence, MS should develop the standards required for the GAECs (as defined in Annex III of SPR) and the elements included under current cross-compliance should not be moved to eco-schemes.

In order to ensure a better respect of requirements covered by conditionality, MS should consider modifying their control approaches by e.g. using the area monitoring system or increasing control samples where a sample-based approach is maintained. This does not necessarily mean an overall increase in the control burden as checks for different interventions can be combined, e.g. they can cover at the same time requirements under conditionality, and those under eco-schemes. This approach has been explicitly introduced on Article 28(5a) where MS may establish eco-schemes that build upon one or more of the requirements of standard under Annex III.

**B6. Can MS give farmers the possibility to make (or change) their commitments every year?**

This depends on the nature of commitments under eco-schemes.

Where requirements are annual and the benefit for the climate and the environment does not depend on the continuity over time of a certain practice beneficial for the climate and the environment, the choice will be annual. In this case, the farmer should have the choice to apply/not to apply for an eco-scheme each year.

Where the respect of requirements over a number of years is key to obtaining benefits for the climate and the environment, multiannual eco-schemes can be envisaged. In this case, the choice to apply should be given only at the beginning of the commitment and changes to multi-annual commitments should not be possible.

*See question B7 as regards changes in area committed.*

**B7. Could the multi-annual commitment commit the farmer to a specific practice for a specific number of years, but not commit Member States to grant a specific unit amount in the same number of years? This relates to the problem of making commitments going further than 2027 on part of the Member State. It also relates to the difficulties of guaranteeing a specific unit amount during the commitment period, as the unit amount paid may deviate from the planned unit amount in order to prevent an excess of the financial allocations; does the area in year 5 have to be the same as in year 1, parallel to AECM in Pillar II or could there be some flexibility?**

The possible variations of annual amounts according to Art. 89 the SPR (minimum/maximum amount) need to be included into the provisions of multi-annual commitments in the framework of the CAP SP.

In the case of annual eco-schemes, in principle the area committed can vary annually. In practice, if an eco-scheme requests the enrolment of the total area of the farm, the annual changes of the area committed will be limited.

As regards the area committed in the case of multi-annual eco-schemes (e.g. conversion to organic farming), in the framework of the CAP SP, MS can consider some flexibilities on adequately justified cases. .

*See question F13.*

## **C. TARGETING OF ECO-SCHEMES**

**C1. Can MS choose to have eco-schemes only in some regions (e.g. administrative regions) or specific areas (e.g. high natural value or Natura 2000) meaning that not all farmers in a MS will have access to all eco-schemes? Is a combination of the two possible, i.e. targeting specific areas within administrative regions?**

MS may choose to target eco-schemes to specific areas (territories) if this is justified by the SWOT analysis and the needs assessment. Hence, targeting to specific territories is possible provided that the choice is justified by specific environmental and climate needs of that territory. Bearing that in mind, targeting according to purely administrative areas would not be relevant given that environmental-climate needs are not distributed according to administrative entities at regional or sub-regional level; the needs are however likely to be similar in areas facing similar challenges in terms of biodiversity, water quality, soil erosion, etc.

**C2. Can MS choose to target eco-schemes to specific groups of farmers?, for instance can an eco-scheme be targeted to young farmers ?**

Similarly to the previous question, the starting point has to be the SWOT analysis and the needs assessment: if the analysis shows that targeting eco-schemes to specific groups of farmers would lead to the best results in terms of environmental-climate performance, MS can choose to design eco-schemes in such a way.

However, targeting eco-schemes to young farmers does not appear to have a clear link with the objectives pursued by eco-schemes. Targeting conditions need to be linked to the eco-schemes objectives and ensure an effective contribution to these objectives.

In addition, where an eco-scheme targets specific crops (e.g. a payment for Integrated Pest Management targeted to potato growers), the payments should be set on the basis of costs incurred or income foregone to remain compliant with Art. 10 (WTO Green Box).

**C3. Can MS apply additional eligibility conditions for eco-schemes beyond those defined in the SPR?**

In principle yes, the SPR or “Horizontal regulation” (HZR) provisions do not prevent MS from defining requirements additional to eligibility conditions for eco-schemes provided that this is done to ensure an effective contribution to the specific objectives on environmental, climate and animal welfare (e.g. targeting specific territories, agricultural land types) The additional conditions have to be set out and justified in the CAP Strategic Plan. In addition, they have to be non-discriminatory, proportionate and set in advance and communicated to possible beneficiaries (legitimate expectations of farmers), and be Green Box compatible (particularly relevant for eco schemes under Article 26(6)(a) of the SPR).

**C4. Could the Commission confirm that flat-rate incentive payments (based on Article 28.6-a) are possible even if specific regions/territories are targeted by eco-schemes if the definition of these regions has no relation to volume or type of production?**

Eco-schemes based on Article 28.6(a) can be targeted to specific territories provided this is justified by relevant criteria stemming from the SWOT and needs analysis of the CSP. However, eligibility conditions should be used with care to avoid restrictive criteria that may lead to large areas becoming ineligible for support if these face environmental challenges. Examples of relevant targeting territorial criteria are: Natura 2000 areas, national/regional natural reserves and other agricultural areas covered by national/regional programs of actions plans, mountain areas, areas at risk of soil erosion.

**C5. Is it possible to limit the number of hectares than can be committed and supported by an ES based on Art. 28.6.b) ?; for instance, would the condition “this support can be granted to a maximum of % of the agricultural area of the farm/maximum X ha” be possible ?**

In principle this is possible. The legal framework does not set any specific limit to the size of the agricultural area that can be enrolled in and supported by eco-schemes. MS could set a minimum and a maximum area to be enrolled into an eco-scheme. However,

these options must be carefully assessed in view of the objectives pursued in terms of areas committed and expected results.

## **D. TYPES OF ECO-SCHEMES AND PRACTICES**

### **D1. Can result-based schemes be financed under eco-schemes?**

In principle yes. The Commission cannot however confirm *a priori* that all result-based schemes can be financed by eco-schemes. This is due to the differences in design that such schemes can have (no uniform model exists); a case-by-case assessment may therefore be necessary. In particular, the result-oriented schemes have significant challenges with verifying the requirements set as results (instead of practices), particularly if there is a long-time span before results can be observed. Suitable and reliable indicators are needed to manage this type of interventions. The annual control for the annual payment would also imply a high administrative effort.

### **D2. Can eco-schemes be used to finance pilots (pilot studies)?**

No. Financing pilot actions is only possible in EAFRD interventions (e.g. innovation projects of EIP Operational Groups under Article 114 of the SPR) or through available funding under the EU's research and innovation programme if a specific call is open for such projects.

### **D3. Can eco-schemes be used to support farmers in subscribing to national certification schemes? Can eco-schemes cover costs of certification?**

#### *Certification schemes*

For the purpose of assessing acceptability of a certification scheme as an eco-scheme, the content of the certification scheme, i.e. the practices/commitments, will be the main point to be considered. The same assessment as for other interventions has to be done, based on the same criteria.

Certification schemes focused on environment and climate and animal welfare/AMR can be supported by eco-schemes. COM cannot however confirm *a priori* that all certification schemes can be financed by eco-schemes. This is due to the differences in design that such schemes can have; a case-by-case assessment is therefore necessary to ensure that certified schemes are sufficiently demanding on environmental, climate and animal welfare/AMR objectives and are aligned with the identified needs in a given MS/region.

Certification schemes targeting other objectives, such as quality of agricultural products, with only minor focus on improving the environmental and climate impact of farm practices could not be supported by eco-schemes.

#### *Costs of certification*

Depending on MS arrangements, national authorities can recognize some certification schemes managed by private bodies. In this case, supervision of the performance of the certification scheme will be ensured by a third party replacing national authorities,

although national authorities bear the ultimate responsibility for ensuring protection of financial interests of the Union.

In the case of eco-schemes payments based on Art. 28(6)b (compensatory), the premia calculation is based on costs incurred, income foregone and may also cover transaction costs. Certification costs (or a part) can be considered as transaction costs.

**D4. Is it possible to design eco-schemes as a payment per livestock unit?**

According to Article 28(6), second paragraph, support for a particular eco-scheme shall take the form of an annual payment for all eligible hectares covered by the commitments. Payments granted in accordance with Article 28.6(b) (compensation) for animal welfare and AMR commitments **may also take the form of an annual payment for livestock units (LU)**. The SPR provides also for the possibility to set unit amounts per LU for commitments beneficial for climate action. However, in this case, a justification for a payment for LU is necessary and it will be essential to ensure such schemes do not give rise to undesirable rebound effects – i.e. leads to an increase in livestock numbers.

*See also question D12.*

**D5. Can MS design an eco-scheme that would pay farmers for monitoring certain environmental or climate indicators (e.g. number of pollinators or plant species) on their holdings? Results could be used to feed certain context or impact indicators at EU level**

Collecting data for policy monitoring purposes (e.g. soil data, biodiversity) related to the practices included in the eco-schemes can be associated to the “agricultural practice”. The efforts that farmers make at field and farm-level will improve the data collected by MS for the purpose of managing eco-schemes. This data will also be useful for compiling context or impact indicators at EU level (monitoring EU policies).

However, eco-schemes designed *solely* for the purpose of collecting data necessary to feed common EU-level indicators would not be in line with the SPR.

Please note that data collected by MS for the purpose of managing eco-schemes and which is useful for context or impact indicators at EU level (monitoring EU policies), can be used to feed context or impact indicators at EU level. MS have the obligation to share such IACS data (cf. Article 65(3) of the HZR) and provide the institutions and bodies of the EU with access to these datasets.

**D6. Our MS is considering defining as eligibility condition the obligation for farmers to provide or give access to certain data necessary for the correct management of eco-schemes or to assess the environmental impact of eco-scheme(e.g. geo-tagged photos, machinery data or individual data from Farm Management Information Systems as e.g. crop yield). Is this possible?**

Yes, it is possible provided that such eligibility condition is *additional* to the requirement of carrying out agricultural practices beneficial for climate and the environment (see also question D5). In other words, while eco-scheme payments have to be linked to eligible hectares on which certain agricultural practices are observed, defining the need to provide or give access to certain data that is necessary for the management of eco-

schemes or to assess its environmental-climate impact could be foreseen as an eligibility condition which would however not be compensated by eco-scheme payments.

**D7. a) Can the introduction or use of precision farming be covered by an eco-scheme?; b) what are the eligible hectares?, c) can we pay this ES under the provisions of Article 28.6.b which allows aid to be granted for loss of income, additional costs and transaction costs?, d) How can we evaluate these income losses in precision farming, if in this type of farming the beneficiary needs fewer resources and therefore can have on the one hand an economic saving and in the other hand a production sometimes similar to the production expected when using traditional farming practices?**

Precision farming is a management concept focusing on observation, measurement and responses to inter and intra-variability in crops, fields and animals; it usually entails using ICT-based sensor technologies and software, designing and applying a nutrient management plan and the use of tools for nutrient management.

- a) Precision farming can be supported by eco-schemes insofar as it is a beneficial agricultural practice contributing to an efficient management of natural resources (e.g. minimize nutrient release or reduce some inputs) primarily water and soil. The eco-scheme will have to be designed in a way that respects the legal requirements laid down in the SPR: it has to go beyond the “baseline” as defined in Art.28(5), has to cover eligible hectares and has to be WTO Green Box compatible.
- b) Eligible hectares are those hectares on which the farmer has used precision farming (*see also reply to questions A2 and A4*).
- c) Eco-schemes including practices related to the concept of “precision farming” can be paid with payments based on additional costs and income loss calculation. Income losses can be envisaged depending on the yield impact of the reduction of input use following precision farming.
- d) When analysing the need for a management practice, the MS should identify the cost structure of the change towards a new practice. The costs can be primarily investment costs or management costs. If the main costs are investments (e.g., machinery, equipment), then other CAP interventions might be more appropriate to support the transition to new practices.

**D7bis. Can ES pay for the ecosystem services provided by the establishment of non-productive elements that count for GAEC 9?; can ES pay for the maintenance of landscape elements (such as hedges, trees, groves, bushy islands)?**

Art. 28.5.a) sets that eco-scheme commitments go beyond relevant statutory management requirements (SMR) and good agricultural and environmental conditions (GAEC). As regards landscape elements, eco-schemes can reward:

- the establishment/creation of landscape features (e.g. plantation of hedges) beyond the minimum requirement the MS specifies in their rules to implement GAEC 8,

- the ecosystem services provided by the preservation (maintenance) of landscape elements (e.g. fallow land, field margins) beyond the minimum requirements of GAEC 8, and the
- ecological management (e.g. appropriate pruning of hedgerows) of all landscape features, included those foreseen by GAEC 8.

**D8. Can eco-schemes be used to pay for liming of acidic soils?**

An eco-scheme including solely the *practice* of liming of acidic soils would not be considered sufficiently justified as would not ensure sufficient environmental benefits. However, liming could be potentially foreseen within a more comprehensive eco-scheme to improve nutrient management and soil quality.

**D9. Is it acceptable to have an ES to support protein crops (integrating protein cultivation in the farm's cropping plan) on which the farmer can use phytosanitary products in order to obtain an acceptable yield?**

Eco-schemes aim at supporting farm practices that reduce pressure on natural resources, improve the state of the environment, and reduce GHG and other pollutants emissions. The practices supported need to be coherent as regards the overall environmental impact and the eco-schemes should provide a lever for an **overall positive environmental impact**. Eco-schemes can support and reinforce crop diversification on the farm in combination with crop rotation by introducing protein crops provided that this practice does not prevent achieving overall environmental benefits on soil and water quality and biodiversity.

In addition, eco-schemes targeting the introduction of specific crops such as protein crops can only be supported with a compensatory payment based on Art. 28(6)b.

**D10<sup>5</sup>. Could eco-schemes support the transition (conversion) to organic farming, permanent grasslands and pasture rehabilitation?**

Yes, eco-schemes can support conversion to organic farming as well as maintenance. Eco-schemes can also support actions related to the maintenance, management and restoration of grasslands and pastures. This types of actions are specifically mentioned in the recital on eco-schemes of SPR. For conversion to organic farming, a multi-annual approach requesting the farmer to enrol into the eco-scheme for the number of years set for conversion might be more appropriate.

**D11. A key question is whether eco-schemes should require *additional* actions or if farmers who are currently engaging in positive environmental practices can be supported to continue those. Could the Commission give any advice on how Member States can best consider this to avoid criticism regarding possible lack of impact while also recognising those that are already engaging in appropriate environmental practices?**

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<sup>5</sup> The question D10 in previous version of this document has been moved to Section G related to WTO requirements as G2.

Eco-schemes can cover two general types of actions; they either aim to encourage farmers to a) **modify** their management practices to become more environmentally friendly or b) **maintain** environmentally friendly operations and farming systems (e.g. maintenance of extensive grassland management).

Support to preserve existing beneficial practices could be justified by a significant risk of abandoning (or going back to previous practice) beneficial practices or farming systems in the absence of support and the risk of harming environmental and climate goals. Eco-schemes could cover the opportunity costs arising from preserving environmentally-friendly farming practices and systems (e.g. maintenance of organic farming). The MS will be requested to justify the ES targeting at maintenance of practices.

**D12. Which kind of actions related to animal welfare can be supported under eco-schemes?, could you provide examples of possible eco-schemes?**

The list of practices that eco-schemes can support include some examples of actions concerning the husbandry and care of animals, such as:

- feeding plans: suitability of and access to feed and water, feed and water quality analyses (e.g. mycotoxins), optimised feed strategies
- friendly housing conditions: increased space allowances per animal improved flooring (e.g., solid floor, natural light, straw bedding provided on a daily basis), free farrowing, provision of enriched environment (e.g. rooting for pigs, perching, nest-building materials, etc.), shading/sprinklers/ventilation to cope with heat stress
- practices and standards as set under organic farming rules
- practices that prevent or mitigate the pain to animals due to routine procedures such as dehorning, beak trimming, tooth clipping, tail docking and castration, when such procedures are allowed by the legislation.
- practices that prevent the need for culling male chicks of laying hens breeds.
- practices increasing animal robustness, longevity and adaptability, e.g. lifespan of dairy cows; breeding lower emission animals, or promoting genetic diversity and resilience
- elaboration of animal health plans: overall plan for reducing risk of infections that require antimicrobials and covering all relevant husbandry practices, e.g. crawl space between two rearing belts, enhanced vaccination and treatments, enhanced biosecurity, separation of animals, use of feed additives, etc.
- Providing access to pastures and increasing grazing period for grazing animals
- Provide and manage regular access to open air areas

On the basis of Art. 28(6), second paragraph, some of these practices can be supported with an annual payment for livestock units (e.g., friendly housing conditions, practices that prevent or mitigate the pain to animals, practices increasing animal robustness).

The Commission cannot however confirm a priori that all these potential practices would be accepted as these should be assessed on a case by case by relevant Commission services within the context of the approval of the CSP.



*See also question D4*

### **D13. Could eco-schemes be designed in the form of point-based schemes ?**

Yes. Article 28(6a) states that MS shall use a rating or scoring system or any other appropriate methodology to ensure the effectiveness and efficiency of the eco-schemes to deliver on the targets set in the CAP SP.

Points-based (or score-based) approaches usually encompass a package of actions that are each allocated a score according to their contribution for the environment and climate, from which a farmer can select up to a certain level. The payments for the measures covered can be calculated according to the compensation principles or in the form of a reward of the environmental services provided (according to conditions set out in G2).

Eco-schemes encompassing a variety of different management practices leave flexibility to farmers to choose those they want to carry out and might encourage a high uptake. The variety of actions, including the management of crops and livestock, and the management of landscape features allows for an integrated farming approach.

However, a drawback of this approach is that farmers might mostly choose the practices demanding the lower effort, those with a lower economic cost or those that he/she already carries out in the farm. In this case, a scoring method accompanied by the setting of a minimum number of points (or alternatively/complementarily a bonus for selecting a minimum number of actions) allows to tackle this “adverse selection” and encourage farmers selecting those practices more appropriate and that work in synergy. Final payment will be calculated by adding up the payment for each practice taken into account by the weighting factor set in the score system.

## **E. ECO-SCHEMES AND ARTICLE 65 INTERVENTIONS (AGRI-ENVIRONMENT AND OTHER MANAGEMENT COMMITMENTS)**

### **E1. Can the Commission clarify how to interpret the requirement that commitments in Article 28(5)d have to be different than commitments in Article 65 of the SPR?**

Articles 28 and 65 of the Proposal for the CAP Strategic Plan Regulation go beyond the provision on ‘no double funding’ set out in Article 34 of the Proposal for a Horizontal Regulation. While the latter provides a general principle to be respected, the provisions in Articles 28(5)(d) and 65(5)(d) **do not allow** Member State planning **identical commitments** under Article 28 and Article 65.

The following **scenarios** could be envisaged to comply with Articles 28(5)(d) and 65(5)(d):

- *Scenario 1 – no overlap in areas or practices foreseen by commitments.*

In this scenario, a strict approach has been chosen to implement the provisions of Articles 28(5)(d) and 65(5)(d) that allow avoiding the need to calculate deductions for no double funding.

Example: a commitment on buffer strips in eco-schemes and a commitment on biological pest control in agri-environmental-climate commitments (AECC).

- *Scenario 2 – no overlap in practices but overlap in areas foreseen by commitments.*

In this scenario, practices foreseen under the commitments have to be respected on the same area, but they are of a different nature.

Example: a commitment to set-aside a certain area of arable land under an eco-scheme and a commitment to establish a specific cover beneficial for biodiversity under agri-environmental-climate commitments on that same area.

- *Scenario 3 – no overlap in areas but overlap in the practices foreseen by commitments.*

In this scenario, practices included in eco-schemes and EAFRD interventions (e.g. AECC) are of the same nature. In this case, the level of the practices needs to be quantitatively different in both commitments.

Example: commitment to set-aside 15% of arable land under AECC and a commitment to set aside areas on additional 5% of arable land under eco-schemes where the areas used to fulfil the 5% eco-scheme commitment have to be different from those used to fulfil the 15% agri-environment-climate commitment. In that case, there is no double financing within the meaning of Articles 28(5)d and 65(5) as the level of the requirement of the practice required in the eco-scheme and the AECC is quantitatively different.

However, Member States have the flexibility to program commitments that are partially overlapping regarding the level of requirement of practices and the areas. In the case that partially overlapping eco-schemes and agri-environment-climate commitments can be granted to the same area, deductions should be planned to avoid supporting the same requirement twice. For instance, a commitment to leave fallow 15% of the arable area can be included in an eco-scheme and in an EAFRD management commitment, with farmers having the possibility to enrol in both. In this case an overlapping exists independently of the fact that the eco-scheme is supported with an “incentive” payment or a “compensatory” payment.

The Commission proposal does not contain provisions on the method to avoid double funding. The implementation of the current CAP shows the **high complexity of implementing the ‘no double funding’ provision** and the principle of not paying twice for the same practice on the same area. Hence, to limit administrative burden of the future CAP, the Commission services invite MS to carefully reflect on the definition and design of eco-schemes and EAFRD management commitments (in particular AECC) in light of the above considerations and the simplification objective.

**E2. Currently, cross-compliance is the baseline for Pillar II measures and commitments under AECC have to be more ambitious than greening practices Can the Commission confirm that this will change in the future? Can in the future commitments under Article 28 be more ambitious than those under Article 65 (Pillar I would pay for commitments that are more ambitious than those programmed under Pillar II ACM)?**

The Commission confirms that it is possible to design eco-schemes that go beyond commitments programmed under Article 65 or the other way round. This depends on the articulation between Article 28 and Article 65 chosen by Member States. Eco-schemes is a new CAP tool that MS can use to support practices to address the scale of the environmental and climate challenges facing agriculture sector, including the provision of both global and local public goods.

Whatever the choice of Member States, it is essential to ensure a good complementarity between all the elements of the 'green architecture' and that the CAP as a whole makes a coherent and meaningful contribution to EU environmental and climate objectives. Simplification objectives should also be carefully considered.

Please note that it would not be possible for MS to request to implement an AECC as an "entry condition" for enrolling in an eco-scheme as it would not be in line with WTO Green Box requirements imposed by Article 10 and Annex II of the SPR.

**E3. Can eligibility conditions be included in an AECC requesting the need to engage in one/several eco-schemes?**

Yes, provided this condition is needed to set a coherent link between the two types of interventions and improve the effectiveness of the AECC. Recital 31 of SPR sets that eco-schemes "may also include 'entry level schemes' which may be a condition for taking up more ambitious rural development commitments".

**E4. Is it possible to plan the same intervention under both pillar I and II, e.g. eco-scheme and the identical intervention under AECC, and to exhaust the financial allocation of the eco-scheme before absorbing the financial allocation of the corresponding intervention under II pillar?**

If one intervention with identical commitments is planned under both eco-scheme and AECC on a multi-annual basis, this would lead de facto to the same intervention. This would be against Art. 28(5)d) that sets that commitments within Art. 28 are different from those of Art. 65.

If the same practices are programmed as annual commitments under eco-schemes and multi-annual commitments under AECC, this could be compliant with SPR. However, according to the Commission, this approach should ordinarily be avoided and would have to comply with at least the following conditions to be acceptable:

- MS would need to provide a clear justification for this approach on the basis of the consistency of the overall green architecture and intervention strategy and not based on reasons linked to financial management.
- MS should set clear management and control rules to avoid that beneficiaries apply for both the eco-scheme and for the AECC, which would lead to double funding. This would entail complexity and potentially important administrative burden for managing application and carrying out controls, particularly if the two schemes are programmed at different administrative level (national and regional).

## **F. LEVEL OF PAYMENTS AND MANAGEMENT OF THE ECO-SCHEME ENVELOPE**

**F1. Is it possible to set a limit to the number of applications/ beneficiaries applying to an eco-scheme if the unit amount is decreasing below the minimum level foreseen in the CAP Strategic Plan?**

Yes, MS could set a limit to the number of farmers' applications selected for getting an eco-scheme payment. The process should however ensure that the criteria used to select farmers are non-discriminatory and criteria are communicated to farmers previous to the application period. Member States could prioritize access to eco-schemes if the potential enrolment would led to unit payment values that vary by more than provided for in the CAP SP. The criteria set out to select farmers should be **coherent with the objectives of the eco-schemes and clearly spelt out before farmers apply.**

*See also question F10.*

**F2. Can the payment additional to the BISS (cf. Article 28(6)(a) of the SPR) be defined as a percentage of the BISS?**

MS have to design the annual payment and have to justify its level in relation to needs identified, the ambition of targets set in their CAP strategic plans as well as the ambition of the practices proposed under eco-schemes. The view of the Commission is that it appears difficult to justify a payment for well-defined agricultural practices beneficial for the environment and climate that would be based solely on the value of individual entitlements or payments per eligible hectare under the BISS payments.

**F3. Article 28(6)(a) of the SPR gives the possibility to MS to set the level of payment as an incentive for the delivery of public goods. Is there a maximum limit in the rate of payment or can it be set freely and pursue a stimulating/incentive policy?**

For payments referred to in Article 28(6)(a) of the SPR MS shall set the amount of the additional payment for such eco-schemes keeping in mind that they have to ensure that "allocation of financial resources to the interventions of the CAP Strategic Plan is justified and adequate to achieve the targets set" (cf. Article 97(1)d of the SPR). The level of payment should correspond to the ambition of targets set under the CAP Strategic Plan and the practices foreseen under eco-schemes; it should also be consistent with the prioritisation of needs. Pursuant to Article 99(g) of the SPR, MS shall also describe in the Plan the annual planned uniform or average unit amounts of support, its justification and, where applicable, a justified minimum or maximum variation of that unit amount as referred to in Article 89.

The setting of a payment on the basis of Article 28(6)(a) ("top up" payment to basic income support) does not require to provide a calculation. MS need instead to provide an explanation and, pursuant to Art. 28(6a), show that the level of the payment reflects the level of ambition of the practices included into the eco-schemes.

When designing the CAP's green architecture in general and the eco-schemes in particular, MS should consider that the environmental performance depends on three factors:

- The practices included in eco-schemes are proved to be effective
- The overall implementation level of eco-schemes is sufficient to induce a change on an aggregate scale.
- The payment levels are adequately related to the environmental and climate output provided.

The payment levels should be adequately related to the environmental output expected to be provided by the eco-schemes in relation to the environmental challenges, the needs identified and the **targets set** in the CSP. The Commission sees this justification in the form of a plausibility assessment of payment levels, for instance by comparing between different eco-schemes, current AECM or future AECC. Eventually, the aim of “incentive” payment is to provide enough incentives to farmers for encouraging uptake of specific beneficial practices. In addition, the payments will have to be designed in compliance with WTO Green Box provisions.

**F4. Art.28(6)(a) - Payment calculation - Possibility to design a unitary payment (e.g. if a farmer selects one measure from the list approved by the Member State, the payment could be e.g. EUR 20 and, if a farmer selects two measures, the payment could be e.g. EUR 40?)**

MS have flexibility to design and combine the eco-schemes provided SPR provisions are complied with and the double funding avoided. If two eco-schemes have different practices and/or relate to different agricultural areas, MS may decide that a farmer can apply for both interventions and can receive the two unit amounts.

*See question G2 related to conditions that eco-schemes based on Art.28(6)(a) need to fulfil to be in line with Art. 28 and Art. 10 of SPR.*

**F5. Article 28(6) of the SPR – is it possible to design a “phasing in” payment (support increasing year after year, when effective for climate or environment)?**

Yes, it would be possible to design eco-scheme payments with increasing unitary payment per hectare (incremental payments) if this is justified by increasing environmental results. For eco schemes under Article 28(6)(b) (“compensatory payments”), the incremental payment must remain limited to the cost incurred and income foregone related to the practices.

**F6. When the payment for an eco-scheme is established in line with Article 28(6)(b) (costs incurred and income foregone), is Article 76 of the SPR proposal applicable?**

Article 76 of the SPR (adequacy and accuracy of payment calculation) apply to all SPR interventions for which payment calculations are based on costs incurred and income foregone. Final drafting of Art. 28.6.b) specifies that payments compensating farmers for all or part of additional costs and income loss as a result of the eco-scheme’s commitments must be calculated according to Art. 76. In addition, these payments will have to be designed in compliance with WTO Green Box provisions as laid down in paragraph 12 (payments under environmental programmes) of Annex 2 to the WTO Agreement on Agriculture.

**F7. For payment rates established pursuant to Article 28(6)(b) of the SPR, can the payment cover only a part of costs incurred and income foregone?**

Yes, a partial compensation is possible on the basis of Art. 28(6)b that sets out that payments can compensate farmers **for all or part** of additional costs and income loss. Member States are invited to carefully weight this option against the risk of low uptake of eco-schemes, which increases if not all costs/income loss of the commitments are covered.

**F8. Is Article 34 of the HZR (no double funding) applicable to eco-schemes?**

Yes. See question E1.

**F9. Is it possible to differentiate amounts for the same practice according to predefined zones, on the basis of a justification demonstrating that the practice does not provide the same environmental service according to the zone in which it is carried out?**

Differentiating the payment for a practice according specific zones would be possible if it is adequately justified. Arguments related to the different costs/income foregone (opportunity cost) of applying the same practice in different zones could be relevant in the case of payments based on Art. 28(6)b (compensation). Arguments related to the different environmental service provided by the same practice in specific zones (e.g. water catchments facing severe nitrates/pesticides pollution, biodiversity-rich areas) could also explain different levels of payments based on Art. 28(6)a (incentives).

*See also question C4.*

**F10. Is it possible to differentiate the payment/ha (set according to Art. 28(6)b, compensatory) according to size of the holding (ranges of agricultural areas)**

Yes, the payment can be modulated according to ranges of area, as long as the calculation respects Article 76. The economies of scale that the biggest farms have for the implementation of different practices could justify the differentiation (modulation) of payments amounts according to the area engaged into the eco-schemes. MS should explain in the CSP how this provision could help achieving the targets set and does not undermine the uptake of the eco-schemes concerned.

**F11. May Member States provide in their CAP SP a maximum amount of support from eco-schemes per holding?**

The proposed SPR regulation does not include any specific provision on “capping” the amount of payments a farmer can receive from eco-schemes by setting a maximum amount per holding. The European Council of July 2020, that approved the multiannual financial framework (MFF) for 2021-2027, explicitly limited the direct payment capping provision of Article 15 to the basic income support. However, as explained in the question above, the payments can be differentiated according to the area engaged into the eco-schemes.

**F12. How should the "incentive" premia be calculated and used? Should the same premia be applied to all farmers independently from the type of production/crop? Should a link to the ambition of commitments be established? Can support be differentiated by farming system?**

Payments based on Art. 28(6)a (payments additional to BISS) do not necessarily need a calculation. The new provision Art. 28(6)a sets out that Member States shall take into account the level of sustainability and ambition of each practice committed under eco-schemes, based on objective and transparent criteria, when establishing the level of "top up" payments.

To be compatible with WTO rules on "green box" support, in principle "top up" payments cannot be related to specific types of production. However, the payments can be differentiated according to criteria not linked to types/categories of crops such as biophysical (e.g. topography) or agronomic factors.

*See questions F3, G1 and G2.*

**F13. Could different types of payment models be used per different eco-schemes?**

Yes, a MS can plan eco-schemes with different payment types.

**F14. In the case there are more beneficiaries than planned, can we decrease the payment (unit amount) for all beneficiaries?**

The indicative annual financial allocation for an intervention is not a binding ceiling in itself. The legal text provides a certain flexibility to use the under-executed funds in one intervention to finance a higher than expected uptake in another intervention, provided certain conditions are respected, such as the minimum financial allocations (ring-fencings) established in Art. 86 of SPR. In addition, Art. 89 of the SPR allows Member States to lay down in their CAP plan minimum unit amounts, reflecting the minimum units amounts expected to be paid. This allows Member States to decrease the payment for all beneficiaries of the specific eco-scheme in the case of higher than expected uptake.

## **G. ECO-SCHEMES AND WTO RULES**

**G1. Payments under eco-schemes have to be WTO Green Box compliant. Annex II links the eco-schemes to paragraph 5, 6 or 12 of Annex 2 of the WTO agreement. How does compliance of individual eco-schemes with WTO rule have to be checked?<sup>6</sup>**

Art. 10 of SPR sets that eco-schemes shall qualify under the relevant criteria of the paragraphs of Annex 2 to the WTO Agreement on Agriculture (Green Box criteria), which are indicated in Annex II of the SPR. The following provisions apply for the two types of eco-schemes established in Art. 28(6).

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<sup>6</sup> The Commission services have provided a presentation (wk13418.en20) on the WTO rules applicable to ES at the **Council WP held on 25.11.2020**. We invite MS to refer to wk13418.en20 and to the extensive clarifications provided at this WP.

**1. The payment is a “top-up” of a decoupled payment (BISS).**

The amount of payments in any given year needs to comply with paragraphs 5 or 6 of Annex 2 to the WTO Agreement on Agriculture. In particular, it shall not be related to, or based on the type or volume of production (including livestock units) undertaken by the producer in any year after a base period. More precisely, the relevant provisions of Annex 2 to the WTO Agreement on Agriculture (AoA) are :

- paragraph 5 (direct payments to producers) for basic income support (BIS) systems without payment entitlements and
- paragraph 6 (decoupled income support) for BIS systems with payment entitlements.

In either case, the essential applicable provisions are points (b) to (e) of paragraph 6<sup>7</sup>.

**2. The payment is based on cost incurred/income foregone.**

In this case the payment needs to meet the criteria under paragraph 12 of Annex 2 to the WTO Agreement on Agriculture.

a payment which is so directly linked with a specific crop would not be compatible with the WTO Green Box requirements, and, more specifically with point (b) of paragraph 6 of Annex 2 to the WTO Agreement on Agriculture (AoA).

Eco-schemes **targeting** crops/categories of land (e.g. arable, grassland or permanent crops) or **differentiating** payments according to crops/land type would not be compatible with the WTO Green Box requirements, and, more specifically with point (b) of paragraph 6 of Annex 2 to the WTO AoA. These eco-schemes can only receive a payment in the form of compensation of additional costs/income foregone (Article 28.6(b)).

The legal framework provides **several options** to design eco-schemes under Article 28.6(a) compatible with the WTO Green Box criteria. These are:

**1. Broad eco-schemes not targeted to land uses**

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<sup>7</sup> 6. Decoupled income support

- (a) Eligibility for such payments shall be determined by clearly-defined criteria such as income, status as a producer or landowner, factor use or production level in a defined and fixed base period.
- (b) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the base period.
- (c) The amount of such payments in any given year shall not be related to, or based on, the prices, domestic or international, applying to any production undertaken in any year after the base period.
- (d) The amount of such payments in any given year shall not be related to, or based on, the factors of production employed in any year after the base period.
- (e) No production shall be required in order to receive such payments.



Under this option, support would be available for all beneficiaries of basic income support as long as they comply with the set of requirements concerning agricultural practices beneficial for the climate and the environment.

2. *Land-use based eco-scheme with a requirement of non-production (please note this is different from non-requirement of production!)*

Under this option, the eco-scheme addresses a specific land use (e.g. arable land) but includes a requirement of non-production. As the payment under this approach would be entirely disconnected from any production, it would not seem to raise concerns from the WTO Green Box perspective. This is the case of commitments related to, for instance: buffer strips, field/riparian margins around parcels, islands of biodiversity in the parcels.

3. *Land-use-based eco-schemes with a land use requirement or farming/production type for the reference period only*

Such option would be available for Member States, which base their BISS payments on a differentiation of land use in the base (reference) period. Point (b) of paragraph 6 (of Annex 2 of AoA) only covers payments based on type of production “in any year after the base period”. An eco-scheme targeting a land use (e.g., arable land) would be compatible with the WTO Green Box rules as long as the “base period” is clearly defined and fixed prior to the application period and there is no requirement to produce in the application period.

4. *Land-use based eco-schemes with a requirement concerning the presence of non-productive features (landscape features and fallow land)*

Eco-schemes with requirements only for land on which non-productive landscape features are present or for fallow land (i.e. land on which no production takes place and land stays fallow for the entire year) should not raise concerns from the WTO Green Box perspective.

Please note also that eco-schemes under Article 28.6(a) based on agronomic requirements/practices that can be applied only to some types of crops or types of production would not be acceptable. Point (b) of paragraph 6 provides that “The amount of such payments should not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the base period”<sup>8</sup>.

A section in SFC will be planned for reporting on WTO compliance of eco-schemes. MS will be requested to select the relevant paragraph of WTO Annex 2 applying to the specific eco-scheme and to justify the compliance.

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<sup>8</sup> In case of a scheme based on an agronomic requirement, which implies a specific type of crop, the WTO jurisprudence (e.g. the Upland Cotton panel brought against the US by Brazil) suggests that there would be significant risks as regards Green Box compatibility.

**G2. Eco-schemes designed as “package of practices”: calculation of unit amounts, WTO-compatibility. Example: a “package” eco-scheme, the amount of which takes the form of a “lump-sum” incentive payment (article 28.6-a) and which would apply to all the agricultural areas of the holding, with criteria specific to be respected according to the characteristics of the areas (type of soil, etc.) and / or according to the cover in place, for example: - on arable land: criterion A; - on permanent crops: criterion B; - on permanent grasslands: criterion C. Would this be ES compatible with WTO green box rules?**

*Previous question D10 in the V2 of this document*

The “Green Box” rules of the WTO Agreement of Agriculture set that eco-scheme implying support to specific crops or categories of crops can only receive a payment in the form of compensation of additional costs/income foregone (Article 28(6)-b) (see *question G1*).

Eco-schemes including a bundle of practices and rewarded with an “incentive” payment based on Art. 28(6)a can be considered as compatible with the WTO green box rules provided its design fulfil the following conditions:

- the practices need to address **all types of agricultural areas** (mainly arable land, grassland and pastures, and permanent crops) and cannot be targeted to specific crop categories; the eco-schemes should be designed following a whole farm-approach;
- the **basic payment per hectare should be identical for all practices and farmland categories included in the eco-scheme**; this implies that the aid amount is justified in all cases. However, the modulation of the support according to criteria not linked to types/categories of crops is possible (e.g., topographical criteria or agronomic factors);
- farmers should be required to **enrol all the eligible agricultural areas of the holding into the eco-scheme or an equal minimum share of each land category**. For instance, in the case of a holding with vineyards, arable land and pastures, the farmer would need to engage into the eco-scheme all the area or at least a minimum share of the three farmland types (e.g. 25% of vineyards, arable land and pastures) and comply with the practices set for each of the land types.

The main issue at stake is that the practices foreseen and rewarded with an incentive payment should have a comparable level of ambition, according to the extent to which environmental and climate goals are achieved or according to the effort involved to apply them.

In relation to eco-schemes under 28(6)a, when establishing the level of payments Member States shall **take into account the level of sustainability and ambition** of each practice committed under eco-schemes, based on objective and transparent criteria.

## **H. CONTROLS AND PENALTIES FOR ECO-SCHEMES**

**H1. How much leeway do MS have in setting the type and level of administrative penalties for eco-schemes? If a MS designs very ambitious schemes, e.g. when action**

**towards more sustainable management practices are associated to significant risk for farmers, is it possible to foresee only reductions of payment without additional penalties for cases of non-compliance?**

The proposal for a “horizontal” Regulation (HZR) on Financing, management and monitoring of the CAP leaves **substantial leeway** to MS to design appropriate control and sanction system. Ensuring that farmers comply with the eco-schemes requirements is critical to supporting the achievement of the environmental and climate objectives of the eco-schemes as well as ensuring a sound use of EU public money. Controls and sanctions systems take into account the extent and severity of the non-compliance; the penalty system could also be designed according to the objectives pursued by eco-schemes.

**H2. Eco-schemes can be based on multi-annual commitments. Does the Commission expect a specific design of the penalty system for such commitments?; can the Commission clarify whether the MS should also provide for a recovery system if the beneficiary interrupts the ongoing ES?.**

As said in question B2, Member States have the flexibility to design the type of eco-schemes (annual/multiannual), the duration and the legal form of the multi-annual eco-schemes. Multi-annual eco-schemes could be formalised by means of a multi-annual contract with the beneficiary as for AECC (see questions A7 and B2).

A multi-annual eco-scheme entails that the practices have to be complied over the total duration of the commitment. The Commission would expect that the system of non-compliance and sanctions is coherent with the annual or multiannual nature of the ES.

In a multi-annual setting, retroactive recovery of payments from previous years in case of non-compliance with commitments is a possible option. Infringements of one (several) requirement(s) in a year (y) can lead to a reduction in the payments (and/or sanctions) from the precedent year (y-1) and/or from the previous years (y-2, etc.). In this case, differences with the AECC relate to the different budgeting rules of EAGF (unspent funds during a financial year cannot be used for following years) and EAFRD.

Another option would be to foresee a payment reduction and penalty limited to the year of non-compliance but that takes into account the likely non-compliance of precedent/previous years. The competent authority might apply a proportional reduction in line with its appreciation of the severity, extent, duration and reoccurrence of the non-compliance found.

**H3. Article 101(c)(i) and (iii) provides for the obligation for MS to include the description of the governance and coordination systems including the control systems and penalties for eco-schemes and other interventions covered by IACS. How detailed should the description be? What are the essential data to be submitted?**

For IACS-based interventions, MS need to describe the control and penalties systems that they will put in place and how these target the risk of errors (cf. Article 58 of the HZR). It is up to the MS to decide on the level of details that will be included in their CAP Plan. However, the information should be sufficient for the Commission to understand if the management and control system (cf. Article 57(2) of the proposed HZR) includes

systematic checks which also target areas where the risk of errors is the highest and that the level of checks ensures an effective management of the risks (cf. Article 58(1) of the proposed HZR).

Concerning penalties, the information provided should enable the Commission to have an insight into the penalties foreseen by MS for non-compliance with the eligibility conditions and commitments (in the case of ES) for interventions defined in the CSP. For IACS, if different penalty systems are applied for different interventions (e.g. one penalty system for the BISS and another for an eco-scheme), information on each of the penalty systems should be provided.

**H4. Can the controls of an eco-scheme going beyond a specific GAEC be used for complying with control obligations of conditionality?; can an unique sampling control be used for the GAEC and the ES?**

Yes, controls can be streamlined if the GAEC standard(s) and the practice(s) of the eco-regime are of the same nature. A new provision on “enhanced eco-schemes” has been added to Article 28. Art. 28(5a) provides that an eco-scheme can be designed as “package” including commitments which go beyond one or several GAEC. In such a case, Member States will ensure that the management and control systems do not duplicate checks where the same requirements and standards apply both under those eco-schemes and the obligations set in Annex III.

## **I. BUDGET ALLOCATION (RING-FENCING)**

No questions received prior to the expert group of 20 July.