

Working Paper

Background paper under Work Package 1 – Steering Group Meeting 1

At the office of IEEP, 52 Horseferry Road, London  
January 2003

The Development and Scope of Cross-compliance

**Preface**

This paper is intended to provide a summary of some of the relevant background information on cross-compliance policy that is currently available. It will be placed on the cross-compliance project webpage and will provide interested people with an overview of the subject. It is also intended to provoke some discussion on the application of cross-compliance in EU legislation.

**1 The development of cross-compliance as a policy instrument**

The concept of cross-compliance as a policy term originated in the United States of America (US). It has been used since the 1970s to refer to various conditions (environmental and other) that farmers have to meet in order to be eligible for assistance under government support schemes for agriculture, notably the commodity 'programs'. Cross-compliance was a policy response to the detrimental impacts of agricultural intensification. Farmers claiming support had to meet the rules for that programme and certain obligations of other programmes: thus making a link 'across programmes' which gave rise to the term 'cross-compliance' (Benbrook, 1994). Cross-compliance has been used in the US principally in an effort to control soil erosion, prevent the conversion of grassland to arable in areas with 'highly erodible' soils and to halt the loss of wetlands. The use of this term has since been extended to refer to linkages between environmental and agricultural policies in other parts of the world, especially Europe.

A discussion about the relevance of cross-compliance to European agriculture emerged during the 1990s, along with a growing commitment within the EC to integrating environmental considerations into agricultural policy. The introduction of 'direct payments' for Common Market Regimes was a major element of the 1992 'MacSharry' reforms of the Common Agricultural Policy (CAP). A debate was prompted on the wider purpose of agricultural support policies and the possibility of requiring farmers to provide society with tangible social or environmental benefits ('multifunctionality') in return for such payments. The MacSharry reforms also introduced a modest measure of cross-compliance on certain elements of the CAP

such as the management of compulsory set-aside in arable cropping and gave Member States (MS) scope to apply conditions to direct payments in certain Common Market Regimes. The 1999 'Agenda 2000' reform of the CAP introduced significant further options for the application of cross-compliance to CAP payments.

In common English usage the term Good Farming Practice (GFP) is used, often rather loosely and interchangeably with Good Agricultural Practice (GAP), to define farm management activities which provide a minimum level of protection for some of the following:

- natural resources (energy, soil, air, water, wild plants and animals);
- cultural resources (landscape, traditional buildings, historic and archaeological features and public access);
- farm livestock (health and welfare);
- farm labour (safety); and
- the general public (food safety and public health).

At a minimum, GAP and GFP include reference to mandatory statutory requirements<sup>1</sup> (although rarely, if ever, for all of the above list in any one instance), and may also include additional actions which the farmer can take beyond the statutory minima. The GFP/GAP requirements may be defined for farms in a particular geographical area (eg Member State), for particular sectors (eg livestock or fruit and vegetables), for methods of production (Integrated Crop Management) or for specific management activities (eg the use of pesticides).

In practice most definitions of GFP appear to rely heavily on compliance with national and local regulations, which vary significantly between and within countries. Where the definitions encompass non statutory requirements (such as overgrazing in the UK or avoiding damage to birds' nests in Spain) verification becomes more difficult because new arrangements are required to check compliance.

Section 2 of this paper provides some examples of the different ways in which Member States have fulfilled this requirement, varying from minimum statutory requirements through voluntary codes to cross-compliance measures for specific CMO regimes.

## **2 Options under the CAP and past and current implementation in the EU**

Under the First Pillar of the CAP Member States have had the option to attach environmental conditions to beef and suckler cow premia since 1993, sheep and goat premia since 1994 and any direct aid since 1999 under Article 3 of the Common Rules Regulation (1259/1999). Compulsory cross-compliance was introduced for set-aside from 2000 (Article 19,4 Regulation 2316/1999). In 2001 the Small Farmers' Scheme (Reg 1244/2001) introduced the concept of 'Good Agricultural Condition', and required farmers receiving decoupled payments under this scheme to keep their entire holding in 'GAC', as defined by their Member States.

Since 2000 cross-compliance under the Second Pillar of the CAP has been compulsory for agri-environment and LFA payments, requiring farmers receiving

---

<sup>1</sup> The relevant EU legislation is summarised in Annex I.

these payments to comply with GFP on the whole of their farm. All 15 Member States have a formal obligation to define GFP in their Rural Development Plans, and the acceding countries have also been required to define GFP for their pilot agri-environment programmes under SAPARD. The legal text of the RDR requirement allowed Member States considerable freedom of choice over the scope and level of detail of GFP requirements, and this resulted in great variation both in the practices required and the costs to the farmer of implementing them.

It should be noted, however, that there has been some lack of clarity over how the various conditions attached to First and Second Pillar measures correspond to each other.

Implementation of cross-compliance has been patchy in the EU. Some of the reasons for this are the following:

- it has been optional under Pillar One;
- farming systems, geographic conditions and environmental problems vary widely across the EU;
- Member States have different national and local regulatory baselines, which tend to be the 'floor' for cross-compliance;
- the European Commission has provided little guidance; and
- there has been little incentive for Member States to take initiatives that may disadvantage their own farmers.

Actual implementation of cross-compliance has tended to focus on relatively specific farm management activities in Member States. In the Netherlands, for example, cross-compliance applies to pesticide use in starch potato crops. In France farmers claiming premia for irrigated maize are obliged to obtain appropriate permits in relation to water abstraction. In Denmark an explicit link was made between eligibility for certain direct payments and compliance with a pollution control measure requiring appropriate field management along the banks of the streams and rivers (Petersen and Shaw, 2001). In the Netherlands it is mandatory to have biennial testing, servicing and calibration of field sprayers (Boatman et al, 1999). A summary of the implementation of cross-compliance in 2000 is provided in Table 1 below. Development have taken place since.

One of the planned aims of Seminar One is to analyse Good Farming Practice and its implementation in Member States.

The CAP Mid Term Review proposals (CEC, 2003) propose that farm audits should become a compulsory form of cross-compliance for farms receiving more than EUR 15,000 of production payments or with a turnover of more than EUR 100,000. Such audits would cover 'material flows and on-farm processes' relating to the environment, food safety and animal health and welfare as well as occupational safety, and provide 'the knowledge that producers are actively managing these processes' as a means of ensuring consumer confidence. Farmers could receive a refund up to 95 per cent of the cost of this audit, from Second Pillar funds.

**Table 1 The status of implementation of cross-compliance at the Pan-European Conference 5-7 October 2000, Madrid**

	When	Where	How	Which authority	New or additional
<b>Austria</b>	N/A	N/A	N/A	N/A	
<b>Belgium</b>	N/A	N/A	N/A	N/A	
<b>Denmark</b>	2000	Arable area payments and livestock premia in the beef sector	Arable: compulsory fertiliser plans, the maintenance of green cover over winter on arable land, and a prohibition on cultivating land equivalent to a 2m strip along rivers and streams. Livestock: legal requirements for the use of fertilisers and manure.	The Danish Plant Directorate: rules on coverage of vegetation and the use of manure and other fertilisers. Administrative districts & municipalities: rules concerning the law on streams and rules on non-cultivated strips.	Additional
<b>Finland</b>	?	Arable and livestock sectors, e.g. on all arable crops that are under 'the Horizontal Regulation', and set aside, hemp, flax, potato starch and seeds.	Arable: riparian buffer strips of 1m width, green cover on arable land, requirements to be set aside in some cases, and some regulations concerning the careful use of fertilisers and inorganic waste. Livestock: maximum stocking density, preventing overgrazing, and require farmers to maintain sufficient stock to prevent undergrazing. Ekstra measures: careful use of inorganic and organic fertilisers.		New
<b>France*</b>	2000	Arable.	Arable: compulsory authorisation to irrigate from the water authorities	Water authorities	Additional
<b>Germany</b>	N/A	N/A	N/A	N/A	N/A
<b>Greece</b>	?	Arable and livestock sectors.	Not clear.	?	?
<b>Italy</b>	2000	Arable and livestock sectors, e.g. on arable crops, grain legumes, flax, hemp, tobacco, seeds, rice, olives, sheep and cattle meat.	Arable: maintenance of the outlet rill; permanent draining ditch and creation of temporary water gullies perpendicular to the maximum slope (the latter does not apply for olives). Livestock: conditions on the storage of slurry from in-house livestock in specific facilities must be respected.		New
<b>Luxembourg</b>	N/A	N/A	N/A	N/A	Additional
<b>Netherlands</b>	2000	Arable: silage maize and starch potatoes	Maize: Integrated weed control and maximum limit on the application of herbicides and pesticides of 1kg/hectare. Potatoes: use of mechanical means for removing potato haulm and no use of chemicals for killing off potato leaves and stems on 70% of the crop area.	N/A	New
<b>Portugal</b>	N/A	N/A	N/A	N/A	N/A
<b>Ireland</b>		Livestock: sheep annual premium	Limited number of sheep in areas vulnerable to overgrazing	Irish Agricultural Authorities	Additional
<b>Spain</b>	N/A	N/A	N/A	N/A	Additional
<b>Sweden</b>	N/A	N/A	N/A	N/A	N/A
<b>UK</b>		Arable and livestock, e.g. set-aside land and beef and sheep	Arable: environmental conditions for the management of set-aside land such as restrictions on the timing of certain operations on the land, including ploughing, spraying and sowing of new crops; establishment of green cover by natural regeneration, sowing wild bird grass etc.; avoidance of pesticides and herbicides without prior approval from MAFF and restrictions on fertiliser application. Livestock: limited number of cattle and sheep to prevent overgrazing		New

\* It has been argued that the French rural development *contrat territorial d'exploitation* (CTE) was a form of cross-compliance because each farm contract had to include both an economic, employment linked element and an environmental, land-based element.

### 3 Administrative implications

It is difficult to draw conclusions from the EU experience because no analysis is yet available of the compulsory reports that Member States submitted to the Commission in Spring 2002 on the action they have taken under Article 3 of the Common Rules Regulation 1259/1999.

The demands of administering cross-compliance have acted as a major deterrent to Member States that are considering its implementation or elaboration. In addition to developing appropriate and ‘verifiable’<sup>2</sup> GAP and GFP standards, there are considerable demands on the resources of the administration body relating to the following:

- penalties (calculating and administering a penalty system for non-compliance);
- monitoring (analysing the effects of ensuring compliance and policy design);
- and
- raising awareness (informing and advising farmers).

Penalties in particular pose a complex problem for the administration. The Implementing Regulation for the RDR (445/2001) states that penalties ‘must be effective, proportionate and dissuasive’ and the Common Rules Regulation (1259/1999) states that penalties should be ‘appropriate and proportionate to the seriousness of the ecological consequences’ of a breach of conditions. Member States have taken a varied approach to calculating penalties, but the ideal approach would be to determine them individually, which would require the development and application of a complex formula.

It has proved complicated for the administering authority to check compliance across a whole farm in cases where farmers are receiving LFA or agri-environment aid due to the difficulties of establishing the extent of the whole farm (which could be a problem if the farmer uses common grazing). This approach has also been accused of causing farmers to sell off elements of their farm that would be difficult to manage according to GFP. Monitoring compliance is made much easier if communication channels are promoted between the relevant authorities (eg water management, nature conservation and agriculture) to maximise the exchange of information.

Member States have been seeking clarification of the monitoring requirements which apply to national cross-compliance rules, as these were not specified in the Common Rules Regulation or its Implementing Regulation (963/2001). There is concern among Member States over the potential for the budget allocations for direct payments to be withdrawn due to inadequate checks at farm level.

There are some options that could reduce administrative demands of cross-compliance. For instance:

- co-ordination of cross-compliance monitoring with other farm-level checks to reduce the number and frequency of visits;

---

<sup>2</sup> Member States were required to identify ‘verifiable’ standards of Good Farming Practice under the RDR. Although this distinction was significant in policy terms, it has been questioned whether it was useful in practice.

- utilisation of risk assessment techniques to target monitoring to areas or sectors where compliance is thought likely to be weakest;
- considering the scope for ‘public policing’ or enforcement by industry bodies or local authorities which already inspect farms for other purposes (eg quality assurance, health and safety).

One of the planned foci of Seminar Four is to analyse the administrative burden and efficiency of cross-compliance measures.

## **5 Potential for improvements**

The benefits of integrating environmental considerations to agricultural and rural development policy are potentially many. Cross-compliance, along with other policy measures such as agri-environment support, is recognised by the Commission as a key means to achieve such integration. The Mid Term Review of the CAP proposes making cross-compliance compulsory (CEC, 2002). Benefits could include direct, positive effects on the environment, and awareness raising and increasing knowledge of environmental issues amongst the farming population and administering authorities depending on the conditions set. However, many criticisms of the system have been made, in addition to suggestions for its improvement.

Criticisms of the general concept of cross-compliance have included the following.

- Many believe it should be purely short term because they fear that it may become a false rationale for justifying the continued use of direct payments, which they oppose.
- Making increasingly ambitious environmental standards part of cross-compliance requirements has been strongly advocated by some environmental groups, as it raises the level of GFP and, by definition, raises mandatory environmental requirements. However, developing cross-compliance conditions that are similar to those that are eligible for support under agri-environment schemes narrows the scope of agri-environment policy and increases reliance on a command-and-control, as opposed to a voluntary, system.
- Farmers are opposed to additional ‘red-tape’ surrounding agricultural production.
- It is a rather blunt instrument considering the complexity and variety of environmental problems in Europe.

Suggestions for improvements to cross-compliance policy include the following.

- The link between food production standards and the price paid by the consumer could be strengthened through labeling and farm assurance schemes (although consumers’ organisations may object to paying a premium for food that has been produced according to mandatory standards). The value of products produced on farms being subjected to cross-compliance could thus be increased, and greater awareness of environmental issues could be raised amongst the public. (It is planned that Seminar Two will address this issue further).
- Further linkages of GFP requirements could be made to other RDR measures (it is planned that Seminar Three will explore the potential of this issue more fully).
- The extension of cross-compliance to non-CMO sectors would extend its scope to address environmental issues.

- As proposed in the Mid Term Review of the CAP, there is scope to make cross-compliance compulsory for all Member States. As cross-compliance is currently optional there are built-in disincentives for Member States to penalise their own farmers or to design more ambitious cross-compliance systems.
- The variations in standards that currently exist between Member States could be reduced by setting minimum EU standards that would be related to EU legislation. This would set an 'even playing field' and would contribute to decreasing the administrative demands on Member States, as they would no longer be responsible for designing their GAP or GFP standards. The standards could relate more directly to EU legislation (and Commission should state explicitly which EU legislation is relevant in this context), which could help to promote compliance and assist with monitoring. It may, however, reduce the flexibility that currently exists to allow Member States to address local issues. For this reason, it may be preferable to set standards locally but maintain rigorous reporting standards to the Commission, accompanied by a more transparent set of procedures.
- There is a strong case for farm audits to be compulsory for all farms receiving direct payments above a certain level, to be carried out to a standard subject to approval at Community level. Such an audit could include an inventory of the farm's environmental resources, statement of key management requirements, a nutrient input-output analysis, accompanied by soil tests as appropriate (for both nitrogen and phosphates) and a review of grassland and stock management. Other factors such as a review of water management or measures to control soil erosion could be added, depending on local conditions. Such an audit would need to be established within a set period (eg two or three years) and reviewed every five years or so. The costs for such an activity need not be large and the design would need to ensure that the exercise was helpful for farm management as well as environmental purposes. One benefit of this approach would be to clarify the nature and extent of environmental concerns and pressures in a more consistent way at European level. It would add greater transparency to the wider policy debate as well as to local farm management and would be particularly relevant to the implementation of the Water Framework Directive.
- The administrative burden on Member States could be further reduced by consolidating GFP and GAP under Pillars One and Two. As funding moves into Pillar Two (perhaps via dynamic modulation, as outlined in the Mid Term Review proposals) more and more farmers will have to comply with both sets of requirements, which could become rather complicated.
- Good Environmental Condition (GAC, under the Small Farmers Scheme 1244/2001) could be more clearly specified, since the payments are not linked to future production potential but reflect the public welfare benefits of good land management. Currently, definition of GAC is left up to Member States. This implies that Member States may make provision for alternative uses which are of specific environmental benefit. Consideration of GAC will become key in the event of further decoupling, so this is an important concept to clarify.
- Cross-compliance could be further used to enhance the management of Natura 2000 sites. This could be achieved through, for instance, making the availability of agri-environment schemes compulsory in target areas.

## References

Benbrook (1994) *Environmental Stewardship through Cross-compliance: A review of the US experience in agriculture*. Report for Agriculture Canada. Benbrook Associates: Washington DC.

CEC (2002). *Mid-Term Review of the Common Agricultural Policy - COM (2002) 394 final*. CEC: Brussels.

CEC (2003) *Draft Council Regulation amending Regulation 1257/1999 – COM (2003)*. CEC: Brussels.

Dwyer J, Baldock D & Einschütz S (2000) *Cross-compliance under the Common Agricultural Policy – a report to the Department of the Environment, Transport and the Regions (DETR)*. IEEP: London.

Kugler J (2000) *Examen des Mesures AgriEnvironnementales et de l'Eco-conditionnalité des Aides de la Politique Agricole Americaine*. Ministère de l'Agriculture et de la Pêche: Paris.

Petersen J-E & Shaw K (2001) *Environmental Standards in Agriculture – proceedings of a pan-European Conference 5-7 October 2000 Madrid*. IEEP: London.

## Annex I The main EU legislation which might be considered as the basis for agricultural cross-compliance

<i>In MTR proposals?</i>	<i>Title</i>	<i>Reference</i>	<i>Relevance to ag land use (eg all farms or only those in designated areas)</i>	<i>Legislation driven at EU or MS level</i>	<i>Other relevant issues</i>
y	Birds and their habitats	79/409/EEC (OJ L103 25.4.79)	Seeks to provide a general system of protection for all species of wild birds and to protect their eggs and nests, but also requires to the provision of a sufficient diversity and areas of habitats to maintain the population of all species.	Mainly EU level.	The Commission is not yet satisfied with the implementation of these Directives in many Member States.
y	Habitats and species conservation	92/43/EEC (OJ L206 22.7.92)	Seeks to maintain a favourable conservation status of natural habitats and of wild flora and fauna. Will have an effect on farms in and around designated areas.	Mainly EU level, although transposed into national legislation.	
y	Nitrates Directive	91/676/EEC (OJ L375 31.12.91)	Seeks to reduce or prevent the pollution of water caused by the application and storage of inorganic fertilizer and manure on farmland. Will have an effect on farms in designated areas ('vulnerable zones').	The EU Directive is very prescriptive, so not much variation between MS can be expected.	
	Water Framework Directive	2000/60/EC (OJ L327 22.12.2000)	Will have an effect on a high proportion of farms, especially those near watercourses. May effect water abstraction.	The Directive allows MS to choose methods of implementation, therefore restrictions will vary.	
y	Ground Water Directive	80/68/EEC (OJ L20 26.1.80)	Will have an effect on all farms that use substances listed in the annexes to the Directive, irrespective of their location.	Mainly EU driven, although some MS have stricter	Is undergoing revision and will be repealed in



				regulations than the EU level regulations.	2013 by WFD.
	Bathing Water Directive	76/160/EEC (OJ L31 5.2.76)	Seeks to raise or maintain the quality of bathing water. Concerns mainly sewage issues, but could effect farmers.	MS could set conditions for farmers, especially if there is a danger of microbial contamination.	Is undergoing revision. Proposals expected later this year.
Y	Waste Framework Directive	75/442/EEC (OJ L194 25.7.75)	All farmers will be subject to waste disposal restrictions.	Interpretation of the Directive is left open to MS, so restrictions could vary.	
	EIA Directive	85/337 (OJ L175 5.7.85)	Assesses the effect of certain public and private projects on the environment. Depending on how the country has implemented the Directive it could have an effect on livestock farms.	Driven from EU level.	
	Pesticide Authorisation Directive.	91/414/EEC (OJ L230 19.8.91)	Seeks to control composition, marketing and use of pesticides. Will affect all farmers.	Some MS have introduced stricter national legislation.	
	National Emissions Ceilings Directive	2001/81/EC (OJ L309 27.1.2001)	Sets ceilings for total air pollutants, including for ammonia, which derives from livestock, manure and fertiliser management. Could affect all farmers.	MS may introduce ammonia management requirements.	
	Drinking Water Directive	80/778/EEC (OJ L229 30.8.80)	Applies primarily to water suppliers, but has also driven some MS to take control measures applicable to farmland, particularly in the use of pesticides.		
	IPPC Directive	96/61/EC (OJ L257 10.10.96)	Seeks to prevent or reduce emissions to air, water and land. Only relevant to intensive pig and poultry farms, so probably irrelevant.		
y	Sewage Sludge Directive	86/278/EEC (OJ L181 4.7.86)	Farmers must follow guidelines on how and when to apply sludge and when to allow grazing animals onto treated pastures. Farmers in areas with acid soils must follow stricter guidelines.	Member States have some discretion on how to apply the Directive, for instance they may limit values for metal concentrations when setting national standards.	