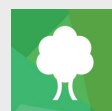


Special Report

## Integration of EU water policy objectives with the CAP: a partial success



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Luxembourg: Publications Office of the European Union, 2014

ISBN 978-92-872-0028-0  
doi:10.2865/15216

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*Printed in Luxembourg*

**Special Report****Integration of EU water  
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(pursuant to Article 287(4), second subparagraph, TFEU)

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# Terms and abbreviations

**CAP:** Common agricultural policy.

**Cross-compliance:** A mechanism that ties direct payments to farmers and a number of rural development payments to compliance with a series of rules relating to the environment, food safety, animal and plant health and animal welfare and to maintaining agricultural land in good agricultural and environmental condition. Cross-compliance rules relate to 18 statutory management requirements and 15 GAEC standards. Non-compliance with these standards and requirements can lead to a reduction in CAP payments to the farmer.

**Direct payments:** Payments granted directly to farmers under an income support scheme. Examples are the Single Payment Scheme and the Single Area Payment Scheme.

**EAFRD:** European Agricultural Fund for Rural Development. Also referred to in this report as 'rural development'.

**Eutrophication:** The process by which water bodies receive excess nutrients, especially phosphates and nitrates. These typically promote excessive growth of algae, depleting the water of available oxygen and thus causing the death of other organisms, such as fish.

**GAEC standards:** The obligation to maintain land in **good agricultural and environmental condition** refers to a range of standards related to soil protection, maintenance of soil organic matter and structure, avoiding the deterioration of habitats, and water management.

**Health Check:** In 2009, the various components of the CAP were examined and adjusted in order to direct the CAP towards balanced and environmentally friendly development. This adjustment is known as the 'Health Check'.

**Measure:**

(1) *Rural development measure:* a set of operations which can be funded from the EAFRD. Each measure sets out specific rules to be complied with;

(2) *Measure as referred to in the WFD (RBMPs and programmes of measures):* a set of operations, including legal, control and administrative initiatives, contained in the RBMP and contributing to the implementation of the WFD. In this context, an agricultural measure is a set of actions or initiatives that can be used to mitigate the effect of pressures caused by agricultural activities on water.

**Plant protection products:** Used to protect plants or crops from damaging influences such as weeds, diseases or insects.

**RBMP:** River basin management plan.

**RDP:** Rural development programme.

**River basin:** The area of land from which all surface run-off flows through a sequence of streams, rivers and, possibly, lakes into the sea at a single river mouth, estuary or delta.

## Terms and abbreviations

**River basin district:** The area of land and sea, made up of one or more neighbouring river basins together with their associated ground waters and coastal waters, which is identified in the WFD as the main unit for management of river basins.

**SMR:** Statutory Management Requirements. 18 EU legislative standards in the field of the environment, food safety, animal and plant health and animal welfare.

**Water Directors:** Directors of water policy of the various Member States and other participating countries.

**WFD:** The Water Framework Directive – Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1) – is an overarching piece of legislation that was adopted in 2000 in order to make the patchwork of existing policies and legislation more coherent. Its approach for water management is based on river basins as a natural, environmental unit rather than on administrative or legal boundaries. It refers to several related directives, such as the directives on bathing water, drinking water, urban wastewater treatment, nitrates, sewage sludge, etc. The WFD regards implementation of these other directives as a minimum requirement. The measures to implement them must be integrated into river basin management planning. It should be noted that there are no dedicated funds made available through the WFD for implementing the EU's water policy.

## I

Protecting the quality of Europe's water resources has been a high priority for the EU since it started adopting specific legal instruments in the area of water protection in the late-1970s. The Water Framework Directive (WFD) was adopted in 2000 to establish a legal framework for protecting and restoring water bodies across Europe and ensuring long-term sustainable water use. River basin management plans (RBMPs) and programmes of measures are the main instruments used by the Member States to implement the EU's water policy. Member States can implement the water policy partly using funds from other policies.

## II

Agriculture is an important source of environmental pressures. In Europe, agriculture accounts for around 33 % of total water use and is the main source of nutrient pollution in water.

## III

The common agricultural policy (CAP) represents just under 40 % of the EU budget. Through the CAP the EU seeks to influence agricultural practices affecting water. There are currently two instruments which are used to integrate the EU's water policy objectives into the CAP. These are cross-compliance, a mechanism linking certain CAP payments with specific environmental requirements, and the European Agricultural Fund for Rural Development (EAFRD, also referred to in this report as 'rural development') which provides for financial incentives for actions going beyond compulsory legislation.

## IV

The European Commission and the Council have repeatedly stressed the need for better integration of water policy with other policies, such as agriculture. The EU's water policy objectives require action in different policy areas and, consequently, intervention by a range of authorities, which may be pursuing different and potentially contradictory interests. Against this background, the Court's audit set out to answer the question: Have the EU's water policy objectives been successfully integrated into the CAP? The Court sought to reply to this question by examining the degree to which implementation of the EU's water policy has enabled it to be taken up in the CAP, and through an analysis of cross-compliance and rural development.

## V

The audit addressed the question as to whether the objectives of EU water policy had been successfully integrated into the CAP but found that to date they had only partially been so. This was due to a mismatch between the ambition of the policy objectives and the instruments used to effect change. The audit highlighted weaknesses in the two instruments currently used by the Commission to integrate water concerns into the CAP (namely cross-compliance and rural development) and pointed out delays and weaknesses in the implementation of the WFD.

## VI

The Court concludes that cross-compliance and rural development funding have thus far had a positive impact in supporting the policy objectives to improve water quantity and quality, but these instruments are limited, relative to the policy ambitions set for the CAP and the even more ambitious goals set by the CAP regulations for the 2014-2020 period.



## Executive summary

### VII

It further concludes that delays in the implementation of the WFD have, as a matter of fact, hindered the integration of water policy objectives into the CAP.

### VIII

The Court also found that monitoring and evaluation systems both directly related to the CAP and those providing more general data did not provide the information necessary to fully inform policy-making as regards pressures on water coming from agricultural activities, though noting some useful initiatives.

### IX

The Court recommends that the Commission should propose the necessary modifications to the current instruments (cross-compliance and rural development) or, where appropriate, new instruments capable of meeting the more ambitious goals with respect to the integration of water policy objectives into the CAP. The Member States should address the weaknesses highlighted in relation to cross-compliance and improve their use of rural development funding to better meet the water policy objectives.

### X

It further recommends that the Commission and Member states must address the delays in implementation of the WFD and improve the quality of their RBMPs by describing individual measures and making them sufficiently clear and concrete at an operational level.

### XI

As regards monitoring and evaluation the Commission should ensure it has information that, at the very least, is capable of measuring the evolution of the pressures placed on water by agricultural practices and the Member States themselves are requested to provide data on water in a more timely, reliable and consistent manner.

## The links between EU water policy and the common agricultural policy (CAP)

### 01

Water protection (in terms of both quality and quantity) is a priority subject on most public agendas, not only in the EU but also worldwide and at national, regional and local levels. The main overall objective of the EU's water policy is 'to ensure access to good quality water in sufficient quantity for all Europeans, and to ensure the good status of all water bodies across Europe'<sup>1</sup>. The main legal instruments used by the EU to achieve this objective are directives, adopted by the European Parliament and Council, in relation to water. A directive is a legislative act of the European Union which requires Member States to achieve a particular result, but without dictating how they are to do so.

### 02

The Nitrates Directive, adopted in 1991, sought to reduce nitrate pollution from agricultural sources in Europe's waters<sup>2</sup>. It was followed up by the more comprehensive Water Framework Directive (WFD) in 2000. The WFD requires Member States to achieve 'good status for surface and groundwater' by 2015<sup>3</sup>. Member States must draw up river basin management plans (RBMPs) and associated programmes of measures, which are the main instruments used to implement the Directive – and consequently to implement the EU's water policy. Member States can implement the water policy partly using funds from other policies. For instance, RBMP measures can in some cases be financed through the CAP.

### 03

According to the European Environment Agency's (EEA) state of water report<sup>4</sup> it is 'not likely' that Europe's water will meet the goal set by the WFD for 2015 in terms of either water quality or water quantity, despite improvements in the past decades.

### 04

Agriculture accounts for the largest share of land use in Europe (ca 50 % of overall land area). It has shaped the European landscape and has strongly increased its use of external inputs (fertilisers, pesticides and water) over the last 50 years. The sector is therefore an important source of environmental pressures<sup>5</sup>. Agriculture in Europe accounts 'for around 33 % of total water use' and is the 'largest source of nutrient pollution in water'<sup>6</sup>. As the main user of water, agriculture therefore has a major role to play in the sustainable management of water quantity and quality.

- 1 [http://ec.europa.eu/environment/water/index\\_en.htm](http://ec.europa.eu/environment/water/index_en.htm) and Article 4 WFD.
- 2 Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 375, 31.12.1991, p. 1). The Nitrates Directive requires Member States to monitor surface and ground waters and to designate Nitrates Vulnerable Zones. Member States have to establish a code of good agricultural practice to be applied in the whole territory on a voluntary basis. Moreover Member States must adopt Action Programmes compulsory in Nitrates Vulnerable Zones.
- 3 Article 4 WFD.
- 4 EEA Report No 9/2012 'European waters – current status and future challenges'.
- 5 'A Green CAP? Reform options from an environmental angle'. EEA Green CAP project, interim report first phase, 23 June 2011.
- 6 EEA Report No 1/2012 'Towards efficient use of water resources in Europe'.

## 05

The Council of the European Union has stressed the need to protect water through the CAP on several occasions<sup>7</sup>:

- In 2007 it stressed that ‘the incorporation of sustainable water use concerns into other sectoral policies (e.g. agriculture)’ was a requirement ‘for achieving water policy objectives’ and underlined ‘the need to pay special attention to the further development and, if necessary, adaptation of current agriculture policies to contribute to sustainable water management’.
- In 2009 it identified water management as a crucial new challenge for agriculture, stating that ‘water management issues, including water quality, should be further addressed in the relevant CAP instruments’.
- In 2010 the Council recognised the need for ‘more efficient and sustainable water use in agriculture’.

## 06

The need for the further integration of water management concerns into other policy areas, such as agriculture, has been clearly expressed by the European Commission, the EEA, the Council of the European Union and the Water Directors<sup>8</sup>. The integration of EU water policy objectives into the CAP is an important goal, not least with regard to Article 11 of the Treaty on the Functioning of the European Union, which states: ‘Environmental protection requirements must be integrated into the definition and implementation of the Union policies and activities, in particular with a view to promoting sustainable development.’

- 7 Council Conclusions on Water Scarcity and Drought of 30 October 2007. Council Conclusions on Water Scarcity, Drought and Adaptation to Climate Change of 11 June 2010. Recitals 1 and 4 to Council Regulation (EC) No 74/2009 of 19 January 2009 amending Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ L 30, 31.1.2009, p. 100) following the Health Check.
- 8
  - COM(2012) 673 of 14 November 2012 ‘A Blueprint to Safeguard Europe’s Water Resources’: ‘there is a need for better implementation and increased integration of water policy objectives into other policy areas, such as the common agricultural policy’.
  - Recital 16 to the WFD: ‘Further integration of protection and sustainable management of water into other Community policy areas such as energy, transport, agriculture, fisheries, regional policy and tourism is necessary.’
  - Recital 6 to Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ L 277, 21.10.2005, p. 1): ‘The activities of the European Agricultural Fund for Rural Development and the operations to which it contributes must be consistent and compatible with the other Community policies and comply with all Community legislation.’
  - EEA report No 9/2012: It ‘requires much more effort to integrate water management concerns into different sectoral policies such as agriculture and transport.’
  - Water Directors’ Declaration on WFD and Agriculture of 30 November 2006: ‘(...) the importance of water resources in social, economic and environmental terms needs to be acknowledged and integrated into all the sectoral policies.’

CAP instruments with the potential to help integrate the EU water policy objectives into the CAP

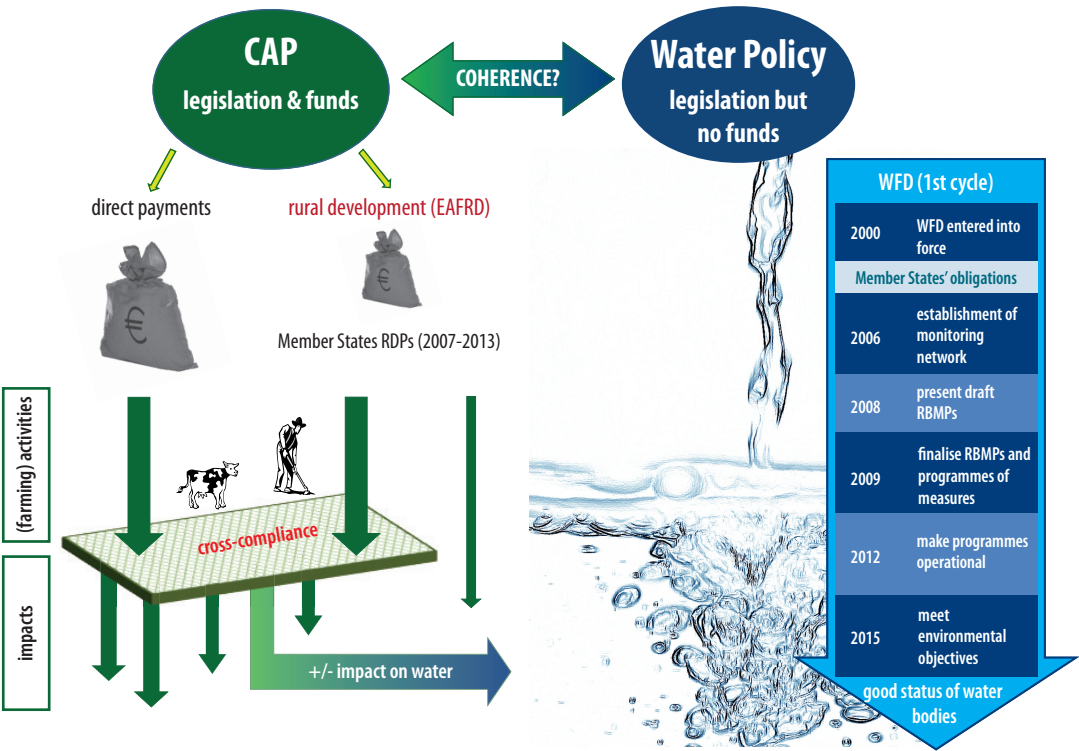
07

There are currently two CAP instruments which are being used to integrate the EU's water policy objectives into the CAP: cross-compliance and the European Agricultural Fund for Rural Development (see **Figure 1**).

These instruments have the potential to contribute to sustainable agriculture by encouraging good farming practices, promoting compliance of farming activities with environmental legislation, such as the Nitrates Directive, and providing incentives for environmentally beneficial public goods and services.

Figure 1

Linkage between the CAP and EU water policy



Note: This figure shows, on one side how CAP funds can be spent through direct payments and rural development funds. For farmers receiving direct payments and/or certain rural development funds, cross-compliance ties those payments to the compliance of certain environmental obligations. The activities financed by the CAP may have a positive or a negative impact on water. On the other side the figure shows the main milestones set up by the WFD, the main instrument to implement water policy at EU level.

## Introduction

### 08

Cross-compliance is a mechanism that ties direct payments to farmers (and a number of rural development payments<sup>9</sup>) to compliance with a series of rules relating to the environment, food safety, animal and plant health and animal welfare and to maintaining agricultural land in good agricultural and environmental condition (GAEC)<sup>10</sup>. These rules are set out in 18 statutory management requirements (SMRs) and 15 GAEC standards. Non-compliance with these standards and requirements can lead to a reduction in CAP payments to the farmer.

### 09

Six cross-compliance requirements have a direct impact on water quality and water quantity. They are listed in **Table 1**. Several other cross-compliance requirements have an indirect impact on water protection (for instance the SMRs on the conservation of wild birds and natural habitats and the GAEC standards on minimum soil cover or protection of landscape features).

- 9 Cross-compliance applies to seven rural development measures which represent approximately 40 % of planned EAFRD expenditure for the 2007-2013 period.
- 10 Cross-compliance was introduced in 2003 by Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ L 270, 21.10.2003, p. 1). Since 2005, all farmers receiving direct payments have been subject to compulsory cross-compliance provisions. For the 2007-2013 programming period, cross-compliance also applies to a number of EAFRD payments (for measures 211, 212, 213, 214, 221, 224 and 225), and since 2008 it has applied to certain wine payments.

Table 1

### Overview of water-related cross-compliance requirements

Standard	Subject
SMR2	Protection of groundwater against pollution <sup>1</sup>
SMR3	Use of sewage sludge in agriculture <sup>2</sup>
SMR4	Protection of waters against pollution caused by nitrates from agricultural sources <sup>3</sup>
SMR9	Placing of plant protection products on the market <sup>4</sup>
GAEC authorisation procedures for irrigation	Where use of water for irrigation is subject to authorisation, compliance with authorisation procedures
GAEC buffer strips	Establishment of buffer strips along water courses

<sup>1</sup> Articles 4 and 5 of Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances (OJ L 20, 26.1.1980, p. 43).

<sup>2</sup> Article 3 of Council Directive 86/278/EEC of 12 June 1986 on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture (OJ L 181, 4.7.1986, p. 6).

<sup>3</sup> Articles 4 and 5 of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 375, 31.12.1991, p. 1).

<sup>4</sup> Article 3 of Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ L 230, 19.8.1991, p. 1).

## 10

Through rural development funding, the EU contributes to Member States' investments to enhance the competitiveness of farming and forestry, protect the environment and the countryside, improve the quality of life and diversification of the rural economy and promote locally-based approaches to rural development. The EU supports the rural development programmes (RDPs) of Member States. In key rural development texts, such as the Community strategic guidelines for rural development<sup>11</sup> and Regulation (EC) No 1698/2005<sup>12</sup>, the protection and sustainable management of water are considered one of the key environmental issues to be addressed.

## 11

Through rural development measures, farmers can engage voluntarily in actions going beyond compulsory legislation in return for financial incentives or compensation (see **Box 1**).

## CAP funds with a potential impact on water

## 12

The level of EU spending on agricultural activities through the CAP is significant (58,1 billion euro for 2012, or just under 40 % of the EU budget). Farming and other activities financed by the CAP potentially have a positive or a negative impact on water (see **Figure 1**).

## 13

In some cases, CAP funds explicitly target positive effects on water; this includes the funding of rural development measures that specifically mention water protection. A detailed assessment of RDPs from the point of view of water management shows that Member States have allocated 51 % of their RDP budgets<sup>13</sup> to measures that, to a greater or lesser extent, relate to water (75 billion euro for the 2007-2013 period)<sup>14</sup>. In addition, 27 % of the extra funds agreed after the 'Health Check' (approved in 2009 and providing 4,8 extra billion euro) were allocated to the 'water management' priority area (1,3 billion euro)<sup>15</sup>.

## 14

The CAP regulations for the 2014-2020 period give greater prominence to water quality as a CAP objective. The legal provisions for 'greening' the direct payments of the CAP include practices some of which potentially have a beneficial effect on water quality. A declaration by the Council and the European Parliament also provides that certain obligations deriving from the WFD be integrated into the cross-compliance requirements. The more efficient use of water in agriculture is an explicit element ('focus area') of one of the rural development priorities established for the reformed CAP. In addition, from 2014, through the Farm Advisory System, Member States shall provide advice to beneficiaries in relation to the requirements of the WFD.

11 Sections 2.5 and 3.2 of Council Decision 2006/144/EC of 20 February 2006 on Community strategic guidelines for rural development (programming period 2007 to 2013) (OJ L 55, 25.2.2006, p. 20).

12 Recital 31 to Council Regulation (EC) No 1698/2005.

13 Total public expenditure, which thus includes national funding.

14 *Summary report on an in-depth assessment of RDPs 2007-2013 as regards water management*, Ecologic Institute and Vito, April 2009 ([http://www.ecologic.eu/download/projekte/1900-1949/1937/final\\_report.pdf](http://www.ecologic.eu/download/projekte/1900-1949/1937/final_report.pdf)).

15 According to COM press releases IP 09/1568, IP 09/1813, IP 09/1945 and IP/10/102.



## Box 1

**Examples of rural development measures**

Support for farmers that commit themselves, for a five-year minimum period, to adopt environmentally friendly farming techniques which go beyond good farming practice (**agri-environment measures**), such as extensive management of pastures (i.e. extensive grazing, no use of fertilisers or of sewage sludge, strict limitations on pesticide use, etc.).



Source: European Court of Auditors



Source: European Court of Auditors

Support for '**non-productive**' investments, such as the creation and restoration of wetlands. Wetlands preserve water quality by removing nitrogen, phosphorus and pesticides from agricultural runoff.

Support for **investments on agricultural holdings**, such as drip irrigation equipment. Drip irrigation, versus sprinkler irrigation can help reducing the volume of water abstracted for irrigation.



Source: European Court of Auditors

## Box 1

Support for **infrastructure** related to the development and adaptation of agriculture, such as the replacement of old and damaged irrigation channels.



Source: European Court of Auditors



Source: European Court of Auditors

Support for **'non-productive' investments**, such as the refurbishment of ditch banks. The less steep vegetated slope of the ditch serves as a manure and pesticide free buffer strip and plays a positive role in flood prevention.



## Audit scope and audit approach

### 15

The purpose of the audit was to examine the link between the CAP and EU water policy. The overall audit question addressed was:

**Have the EU's water policy objectives been successfully integrated into the CAP?**

### 16

The audit examined whether the EU's water policy objectives are properly and effectively reflected in the CAP, both at strategy and implementation levels (see **Annex I**). This was done through an analysis of the two instruments which are being used to integrate the EU's water policy objectives into the CAP: cross-compliance and the rural development fund (see paragraphs 7 to 11). For all aspects related to cross-compliance, the audit covered the period since 2005, when this mechanism was introduced (or 2009/2012 for the Member States that joined the EU in 2004 and 2007). For all aspects related to rural development, the audit covered the 2007-2013 programming period. Six cross-compliance requirements with a direct impact on water quality and quantity were considered during the audit (see **Table 1**).

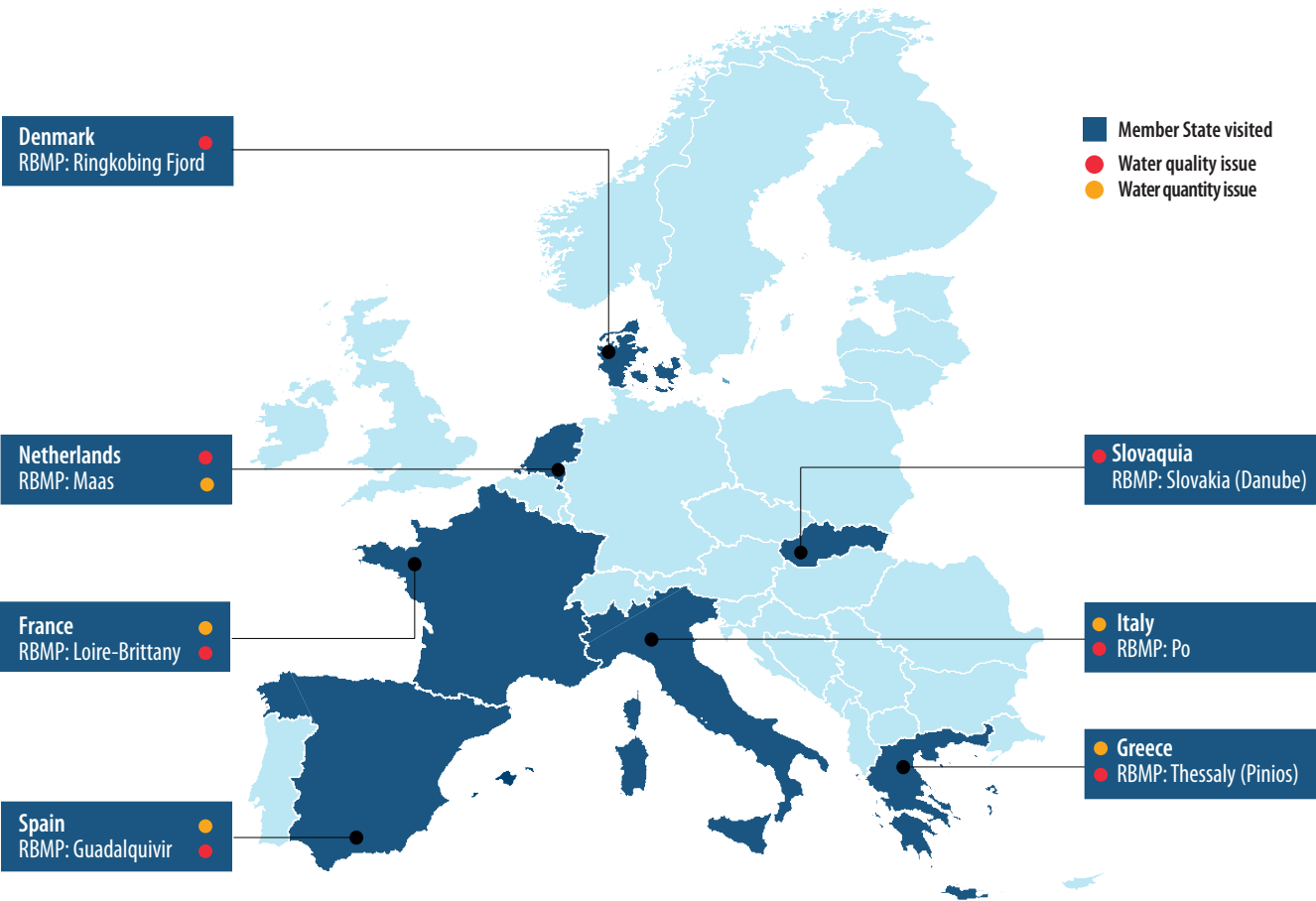
### 17

The audit was carried out from October 2012 to July 2013. Audit evidence was collected through:

- documentary reviews and interviews with Commission departments, as well as the European Environment Agency (EEA);
- audit visits to seven Member States: Denmark, Greece, Spain (Andalusia), France, Italy (Lombardy), the Netherlands and Slovakia. These Member States experience severe problems in terms of water quality (e.g. high concentrations of nutrients such as nitrates) and/or quantity (e.g. high water stress or irrigation intensity). For each Member State visited a river basin district was chosen in order to focus the audit on an area with a specific RBMP (see **Figure 2**);
- an on-line survey of 140 farm advisory bodies in the same seven Member States, and consultation meetings with agricultural umbrella organisations at EU level.

Figure 2

Selection of Member States for audit visits



## The audit

### Previous audits

#### 18

Over the last 20 years the Court has published reports that are directly or indirectly concerned with water policy and which also make some reference to the CAP but none of them has focused exclusively on the links between EU water policy and the CAP.

#### 19

In its Special Report No 8/2008 on cross-compliance, the Court raised the complex problem of the co-existence of mandatory requirements (cross-compliance) and economic incentives (agri-environment payments) in relation to, for example, buffer strips, and criticised the limited scope of cross-compliance as regards water. The report also pointed out weaknesses in the definition of requirements and standards by Member States. Special Report No 7/2011 on agri-environment support concluded that the objectives of that scheme were too vague, that there were problems in establishing aid amounts and that there was insufficient targeting. Special Report No 5/2011 on the Single Payment Scheme noted that there was no direct link between SPS aid and the costs incurred by farmers for complying with their obligations, that it was not possible to establish a direct link between SPS aid and the positive public externalities that agricultural activities generate, and that payment reductions for failure to respect cross-compliance obligations were not sufficiently dissuasive.

#### 20

In the context of its annual statements of assurance (DAS), the Court audits the fulfilment of cross-compliance requirements and of the specific rules governing rural development payments, which is checked for a sample of transactions. The observations resulting from these audits have been taken into account in this report.

## Weaknesses in the implementation of EU water policy have hindered its integration into the CAP

### 21

The WFD is a key element of EU water policy as, together with its related directives<sup>16</sup>, it addresses the main pressures on inland waters, including pollutants, hydromorphology and quantity issues. An important element of integrating the water policy objectives into the CAP is that Member States should draw up their RBMPs and associated programmes of measures at the appropriate time (see **Figure 1**) and that these programming documents should set out clearly what actions are to be taken to address significant pressures to allow WFD objectives to be met. However, so far implementation of the WFD itself has been affected by serious delays. The Court found that the quality of the programming documents developed by the Member States in relation to EU water policy is poor and that the Commission, as a matter of law, has limited influence over the quality of those programming documents.

## Delayed implementation of the Water Framework Directive

### 22

The WFD requires Member States to draft RBMPs in order to specify, among other details and for each river basin district concerned, significant pressures, objectives and concrete measures to be taken<sup>17</sup> in respect of water, as well as details about how measures will be funded. Where CAP funding is envisaged this should be clear.

### 23

RBMPs were to be published no later than 22 December 2009 and reported to the Commission no later than 22 March 2010<sup>18</sup>. However, not even half of the Member States managed to comply with the set timeframe<sup>19</sup>. As of September 2013, four countries (Denmark, Greece, Portugal and Spain) had still not adopted some of the RBMPs for which they are responsible. **Figure 3** gives an overview of RBMP adoption dates.

16 Bathing Water Directive (76/160/EEC); Birds Directive (79/409/EEC); Drinking Water Directive (80/778/EEC), as amended by Directive (98/83/EC); Major Accidents (Seveso) Directive (96/82/EC); Environmental Impact Assessment Directive (85/337/EEC); Sewage Sludge Directive (86/278/EEC); Urban Waste-water Treatment Directive (91/271/EEC); Plant Protection Products Directive (91/414/EEC); Nitrates Directive (91/676/EEC); Habitats Directive (92/43/EEC); Integrated Pollution Prevention Control Directive (96/61/EC).

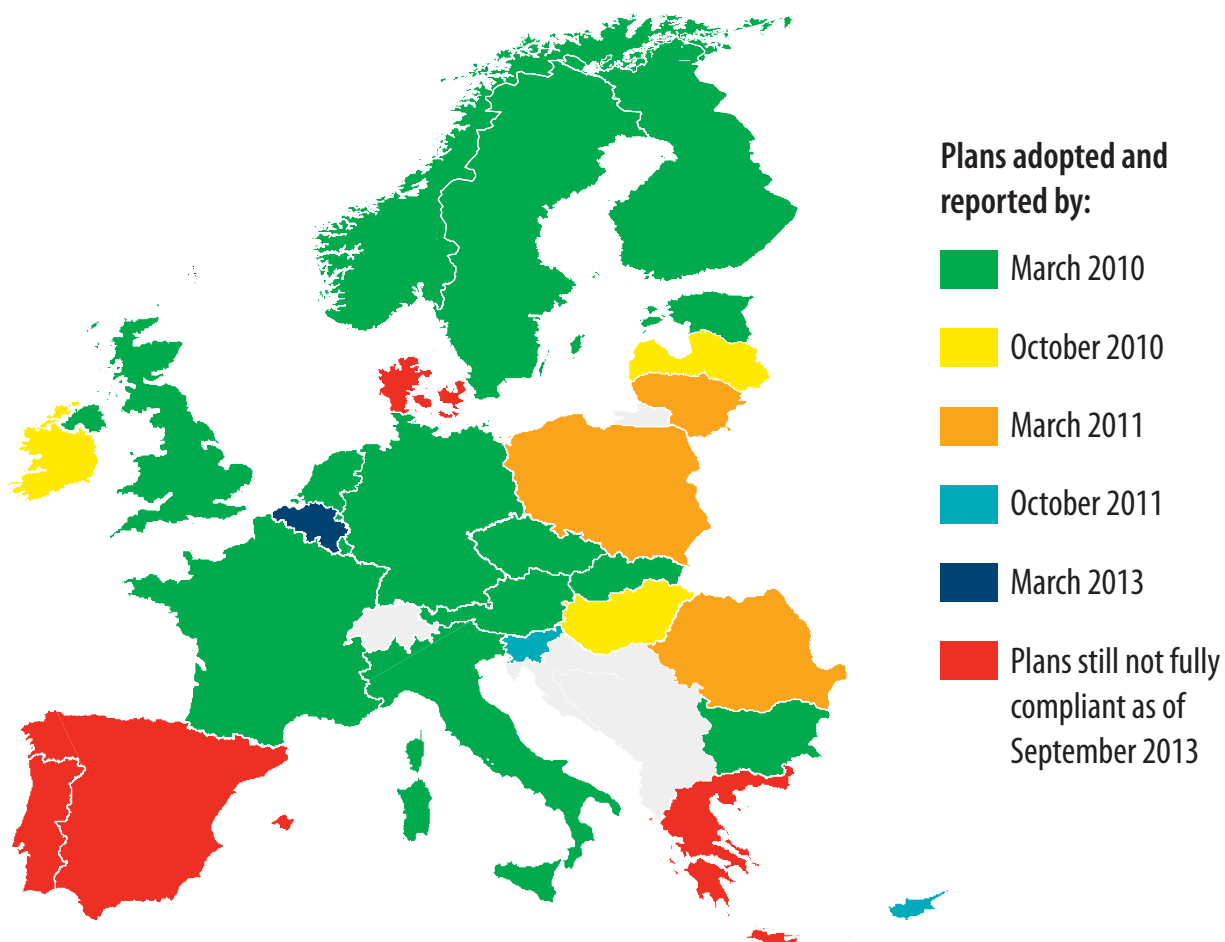
17 Full details of the mandatory content of RBMPs are given in Annex VII to the WFD.

18 Articles 13(6) and 15(1) WFD.

19 The Commission reported that, by November 2012, '25 Member States plus Norway had adopted and reported 121 RBMPs for their national parts of the river basin districts out of a total of 174'. Commission staff working document SWD(2012) 379 final 1/30, Brussels, 14.11.2012: European Overview (1/2) accompanying the Report from the Commission to the European Parliament and the Council on the Implementation of the Water Framework Directive (2000/60/EC) – River Basin Management Plans. Norway has adopted 11 pilot RBMPs. Norway is implementing the Water Framework Directive as part of the European Economic Area Agreement, with the specific timetable agreed therein.

Figure 3

### Overview map of RBMP adoption dates as of September 2013



Note: Denmark – all RBMPs adopted in December 2011 have been withdrawn and new plans are subject to consultation; Greece – 8 RBMPs adopted (out of 14); Spain – 10 RBMPs adopted (out of 25); Portugal – 8 RBMPs adopted (out of 9).

## 24

According to the WFD, each RBMP should contain a programme of measures addressing the various pressures identified locally at river basin district level, including measures related to agriculture (see **Box 2**). The measures were to have been operational no

later than 22 December 2012<sup>20</sup>. During the Court's audit visits to Member States the audit teams analysed this aspect, with a particular emphasis on measures related to agriculture, and observed that most of these measures were not yet operational (see **Box 3**).

20 Article 11(7) of WFD.

### Box 2

#### Types of measures included in the RBMPs

Annex VI to the WFD lists the types of measures to be included in programmes of measures, some of which have a direct link with agriculture. Examples are:

- measures addressed at managing water demand, including the promotion of adaptations to agricultural production such as low-water crops in areas susceptible to drought;
- measures aimed at controlling emissions, such as the soil injection of manure rather than surface application;
- efficiency and re-use measures, including water-saving irrigation techniques or the re-use of treated wastewater for irrigation.

### Box 3

#### Delayed implementation of agricultural measures in RBMPs

In Italy (Po RBMP), of the five agricultural measures to be implemented in the short term, only three measures are operational in all regions. A fourth measure is only implemented in one part of the river basin district, and the final measure is only applied in some areas owing to conflict with local legislation;

In France (Loire-Brittany RBMP), the measures are too general to be operational as they need to be further developed by local water management plans (SAGEs). By September 2013 less than half of the river basin district was covered by a SAGE; and

In Greece (Thessaly RBMP), five of the six measures examined during the Court's audit visit were not operational on 22 December 2012.

## Observations

### 25

In the absence of an RBMP defining the objectives at river basin district level, Member States are lacking an important benchmark with which to align the water-related objectives of their RDPs. This prevents the rural development funds from being spent with due regard to the criteria of EU water policy.

### The quality of programmes of measures is poor

### 26

The Commission, through one of its expert groups, has provided guidance as regards the agricultural measures programmed in the RBMPs, which need to be clear, transparent and operational at farm level<sup>21</sup>.

### 27

The Court used the criteria set in the Commission's guidance document to make a detailed analysis of six agricultural measures for each of the seven RBMPs selected for this audit (see **Table 2**). The results of this work show that most of the measures analysed are not properly conceived in terms of scope, targets, timeframe, monitoring systems and/or communication of results.

### 28




The Commission has also drawn conclusions from its own WFD monitoring exercise regarding the quality of programmes of measures. After reviewing the RBMPs submitted by mid-2012, the Commission concluded that 'what is by and large lacking in many of the river basins RBMPs, is information on how these measures will be implemented in terms of timing, financing as well as monitoring'<sup>22</sup>.

- 21 'Guidance for administrations on making WFD agricultural measures clear and transparent at farm level'. This guidance was developed through a collaborative programme involving the WFD Common Implementation Strategy (CIS) partners, and was endorsed by the Water Directors in May 2011.
- 22 Commission staff working document: European Overview (2/2) accompanying the Report from the Commission to the European Parliament and the Council on the Implementation of the Water Framework Directive (2000/60/EC) – River Basin Management Plans.

Table 2

### Detailed analysis of six agricultural measures included in the programmes of measures of seven RBMPs<sup>1</sup>

	DK	EL	ES	FR	IT	NL	SK
The measures indicate the level of uptake needed.							
The measures are identified as basic (i.e. mandatory) or supplementary							
The measures are defined at sub-basin or regional/local level. Where this is not the case, convincing reasons are given for establishing measures for the entire river basin.							
The programme of measures sets clear targets for these measures.							
The programme of measures sets a clear system for monitoring progress on these measures.							

-  all six measures analysed complied with the criterion
-  some of the measures analysed complied with the criterion
-  none of the measures analysed complied with the criterion

1 The assessment of the Danish RBMPs was carried out on the basis of the RBMPs adopted in December 2011. These RBMPs were however withdrawn and new plans are subject to consultation.

### **In practice the Commission has limited influence over the quality of WFD programming documents**

#### 29

RBMPs should ensure that the objective of good status of water bodies is reached by 2015. Although the Commission, in its role as ‘guardian of the Treaty’<sup>23</sup>, needs to see that this is done, it is not responsible for approving RBMPs. If the Commission assesses the quality of RBMPs to be insufficient, it is limited to legal action.

#### 30

In this regard, ‘the Court of Justice of the European Union (ECJ) has issued several rulings on the basis of the WFD. However, these cases dealt with provisions of the WFD which may be seen as straightforward (such as non-communication of the transposing measures, late reporting, late adoption of monitoring programmes and RBMPs), rather than with less straightforward cases concerning the interpretation of key notions such as water services or the application of exemptions under Article 4 WFD<sup>24</sup>. Legal proceedings often last many years and rulings are made a long time after the deadline to meet the obligation. Even though the Commission has organised working groups and seminars with representatives of Member States with a view to improving the quality of RBMPs, the Commission’s capacity to influence the degree of ambition shown by Member States is limited.

#### 31

The audit showed that the ambition demonstrated by the Member States’ programmes of measures varies in degree. Article 4 WFD establishes the objective of achieving good water status in all Member States by 2015. The same article allows for exemptions when justified by the Member States. Different Member States assess the circumstances used to justify an exemption in very different ways. The Commission has recognised in its assessment of RBMPs<sup>22</sup> that:

- ‘there is generally a lack of appropriate and transparent justification of the criteria applied for the use of exemptions under Articles 4(4) to 4(7),
- ‘the interpretation of the different reasons for the application of exemptions has varied significantly across the different Member States’, and
- ‘the extensive use of exemptions may reflect the low level of ambition in many of the plans as regards achieving the environmental objectives’.

23 According to Article 258 of the Lisbon Treaty, the Commission is to ensure that the provisions of the Treaty and the measures taken by the institutions pursuant thereto are applied.

24 Commission staff working document SWD(2012) 379 final 1/30, Brussels, 14.11.2012: European Overview (1/2) accompanying the Report from the Commission to the European Parliament and the Council on the Implementation of the Water Framework Directive (2000/60/EC) – River Basin Management Plans.



## 32

Similarly, when implementing the Nitrates Directive, which is an integral part of the WFD that addresses a recognised and persistent pollution problem in water bodies (see **Box 4**), Member States present nitrates action programmes with varying degrees of ambition.

These programmes do not require approval by the Commission. As a result, there are for example significant differences between the criteria used by Member States when defining vulnerable zones or the actions to be taken. In the cases examined in relation to nitrates action programmes, the length of legal proceedings shows the limits to the Commission's ability to influence the quality of Member State programmes (see **Box 5**).

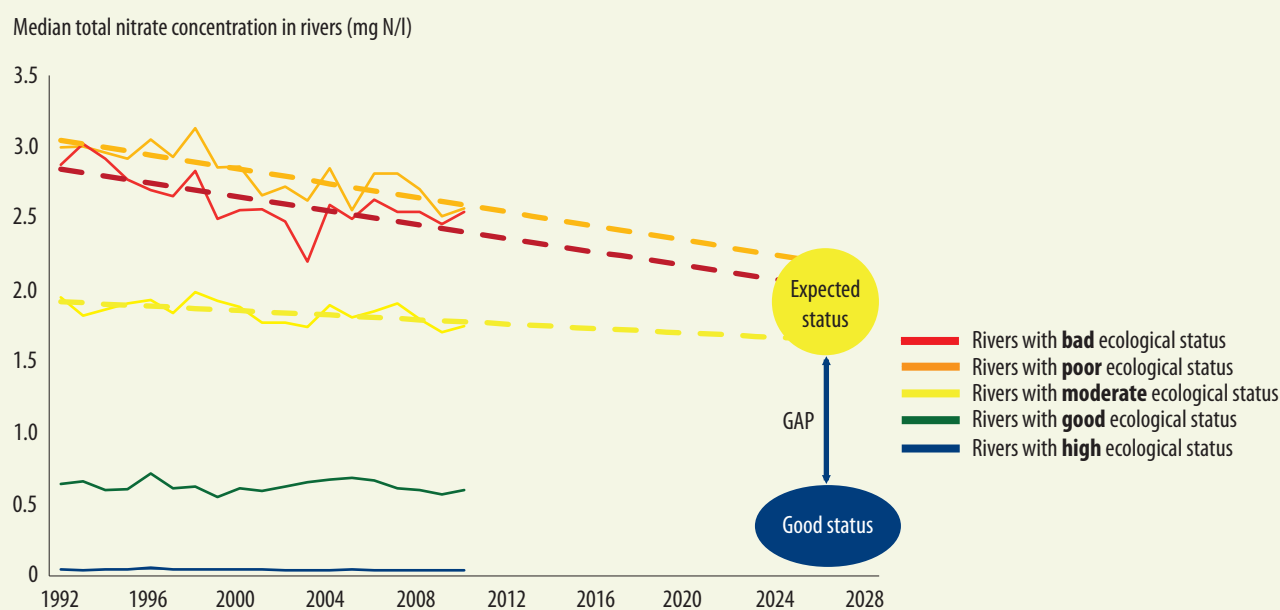
### Box 4

#### Importance of nitrate pollution

Recent EEA reports show that the current trend in nitrate levels is not sufficient to reach good status even by 2027 (see **Figure 4**). EEA report No 8/2012 recognises that the positive evolution of nitrate concentrations is partly due to measures to reduce agricultural inputs of nitrates at European and Member State level, but that 'additional measures are needed to reduce diffuse pollution if the majority of water bodies are to have nitrate levels comparable to high or good ecological status in 2027'.

### Figure 4

#### Trends in nitrates show that a gap will still exist between good status and expected status by 2027



Data for bad and poor rivers represents 29 % of the total  
Data for moderate rivers represents 48 % of the total

Source: Adapted from EEA Report No 9/2012.

### Twenty years after it came into force, there are still problems with implementation of the Nitrates Directive in some Member States

The Nitrates Directive came into force in 1991. However, infringement cases relating to its correct and complete application as well as the appropriateness of nitrates action programmes were still open in 2013 against eight Member States (Bulgaria, Germany, Estonia, Greece, France, Latvia, Poland and Slovakia).

For example, on 13 June 2013 the European Court of Justice ruled (in Case C-193/12) that France had failed to designate several areas as nitrate-vulnerable zones. In some of those areas, nitrate concentrations in ground water were above 50 mg/l (which is the maximum allowable concentration in drinking water) and in others the surface water risked eutrophication if no action plans were implemented.

### The impact of cross-compliance on water issues has so far been limited

#### 33

The Court's survey results (see paragraph 17)<sup>25</sup> demonstrate that cross-compliance has increased awareness among farmers and has triggered some changes in farming practices in relation to water. However, the impact of cross-compliance has so far been limited, both because several important water-related issues are not included in cross-compliance, and because the sanctions applied under cross-compliance are not calculated on the basis of the cost of the damage caused and thus, may represent only a portion of this cost. Moreover, weaknesses found in the application of cross-compliance in the Member States further reduce its potential impact. These matters are discussed more extensively below.

### The cross-compliance mechanism has impact but is not fully exploited

#### Survey results demonstrate increased awareness among farmers and some changes in farming practices in relation to water

#### 34

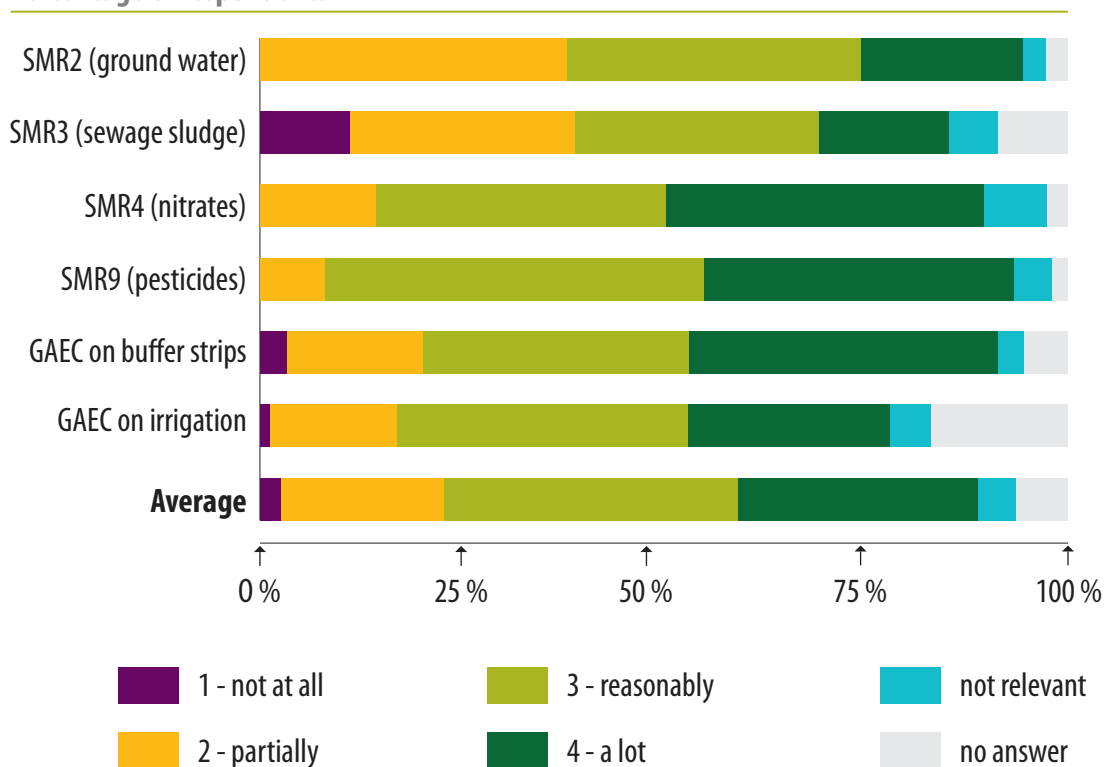
In the absence of studies at EU level on the impact of cross-compliance and rural development on farmers' awareness and farming practices in relation to water, the Court carried out a survey of 140 farm advisory bodies in seven Member States. The survey shows that, in the Member States/regions sampled, the introduction of cross-compliance has increased farmers' awareness (see **Figure 5**) and triggered changes in farming practices in relation to water, especially as regards nitrates and pesticides (see **Annex II** for further details).

25 Detailed survey results can be consulted on the Court's internet site ([www.eca.europa.eu](http://www.eca.europa.eu)).

Figure 5

**Increased awareness of farmers following the introduction of cross-compliance**

On a scale from 1 (not at all) to 4 (a lot), how much do you consider that the introduction of cross-compliance increased farmers' awareness regarding the impact of agriculture on water?

**Percentage of respondents**

### The impact of cross-compliance requirements is limited as a number of important water-related issues are not covered by cross-compliance

## 35

At the present time, requirements for farmers to limit the use of phosphorus on their land or the application of pesticides<sup>26</sup> in the immediate vicinity of water bodies are not included within cross-compliance<sup>27</sup>, even when there is agreement that these issues need to be addressed. Phosphorus is contained in fertilisers and used in animal feed. It can cause water quality problems such as eutrophication. As for pesticides, while they protect crops from damage caused by weeds, diseases and insects, they can harm people, wildlife and the environment. Only a tiny part of applied pesticides reach the target pests, leaving the bulk of the pesticides to impact the environment, such as water bodies. Some Member States have nonetheless taken the initiative to address these issues, even where not obliged to do so (e.g. by including restrictions on the use of pesticides in the GAEC on buffer strips) (see **Annex III** for more details).

- 26 Pesticides can be used to protect plants or crops from damage caused by weeds, diseases or insects. In that sense, they are also called plant protection products.
- 27 Some Member States, such as the Netherlands, have included phosphorus requirements in their nitrates action programmes, but non-compliance of these requirements is not sanctioned under cross compliance. As for pesticides, only for certain very dangerous pesticides, Member States can, when authorising their use, establish buffer zones along water courses in which spraying is prohibited.

## 36

Sustainable use of pesticides, particularly in the form of compliance with the principles of integrated pest management, was originally going to be included in cross-compliance from 2014 onwards. However, according to Regulation (EU) No 1306/2013<sup>28</sup>, the timeframe of this inclusion is now uncertain (see **Box 6**).

## 37

The expected inclusion in cross-compliance of certain requirements deriving from the WFD and from the directive on the sustainable use of pesticides ought to address the issues raised in paragraph 35.

Discussions on the Commission's proposal for the CAP reform after 2014 have resulted in the following statement: 'The Council and the European Parliament invite the Commission to monitor the transposition and the implementation by the Member States of [the WFD and the directive on the sustainable use of pesticides] and, where appropriate, to come forward, once these Directives have been implemented in all Member States and the obligations directly applicable to farmers have been identified, with a legislative proposal amending this regulation with a view to including the relevant parts of these Directives in the system of cross-compliance'<sup>29</sup>. The timing of this inclusion is therefore dependent on the progress made by Member States in implementing the Directives. This implies that the implementation of a very important policy decision could be very slow.

- 28 Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ L 347, 20.12.2013, p. 549).
- 29 Joint statement by the European Parliament and the Council on cross compliance attached to Regulation (EU) No 1306/2013.

### Box 6

## Sustainable use of pesticides: two steps forward, one step back

In 2009 the European Parliament and the Council adopted a regulation on the placing of plant protection products on the market<sup>30</sup>. One intention of the regulation was to include the sustainable use of pesticides (and in particular integrated pest management) in cross-compliance (through SMR9) from 2014 onwards.

However, in its proposal for a regulation on financing the CAP during 2014-2020<sup>31</sup> (that resulted in Regulation (EU) No 1306/2013), the Commission explicitly excluded the sustainable use of pesticides and integrated pest management from the scope of cross-compliance by omitting the sentence that specifically referred to it<sup>32</sup>.

As a result, although the sustainable use of pesticides was to be included in cross-compliance from 2014, the current regulation now makes that timeframe uncertain.

30 Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ L 309, 24.11.2009, p. 1).

31 COM(2011) 628 final/2.

32 Article 55 of Regulation (EC) No 1107/2009, third sentence: 'It shall also comply with the provisions of Directive 2009/128/EC and, in particular, with general principles of integrated pest management, as referred to in Article 14 of and Annex III to that Directive, which shall apply at the latest by 1 January 2014.'

## The GAEC on authorisation procedures for irrigation has little impact as the Commission does not request Member States to develop specific requirements

38

In contrast with SMRs, GAEC standards are used to promote good farming practices for which environmental legislation at EU level does not (yet) exist by introducing new obligations for farmers. However, the Commission has not proposed to define the GAEC on authorisation procedures for irrigation<sup>33</sup> in such a way that it promotes good farming practices. The GAEC on irrigation refers to existing national or regional legislation but does not introduce new obligations. It does not introduce an obligation to establish the elements of authorisation procedures – such as water abstraction permits, water meters and reporting on water use – where these do not already exist.

39

In a country with very weak or non-existing authorisation procedures, therefore, this GAEC will not have any impact (see **Box 7**) and this may be of particular importance in areas suffering from water scarcity (see **Box 8**).

33 'Where use of water for irrigation is subject to authorisation, compliance with authorisation procedures'.

Box 7

## An example of weak authorisation procedures

In Greece, a Ministerial Decision of June 2011 required farmers to apply for a water licence by 16 December 2011 (even those who already had a valid licence). However the obligation to apply for a licence was repeatedly extended to 16 June 2012, 17 December 2012, 15 May 2013 and, most recently, 15 January 2014. In the Pinios river basin (Thessaly), the total number of boreholes exceeds 30 000 and may be as high as 33 000, most of which are not licensed<sup>34</sup>.

The Court also found weaknesses in the checks made of those licences (see **Box 9**).

34 Thessaly RBMP, Study conducted by the Joint Venture for Thessaly, Epirus and Western Sterea Ellada's River Basin Management Plans, p. 103.

## Box 8

### Irrigated agriculture is expanding in areas with water scarcity problems

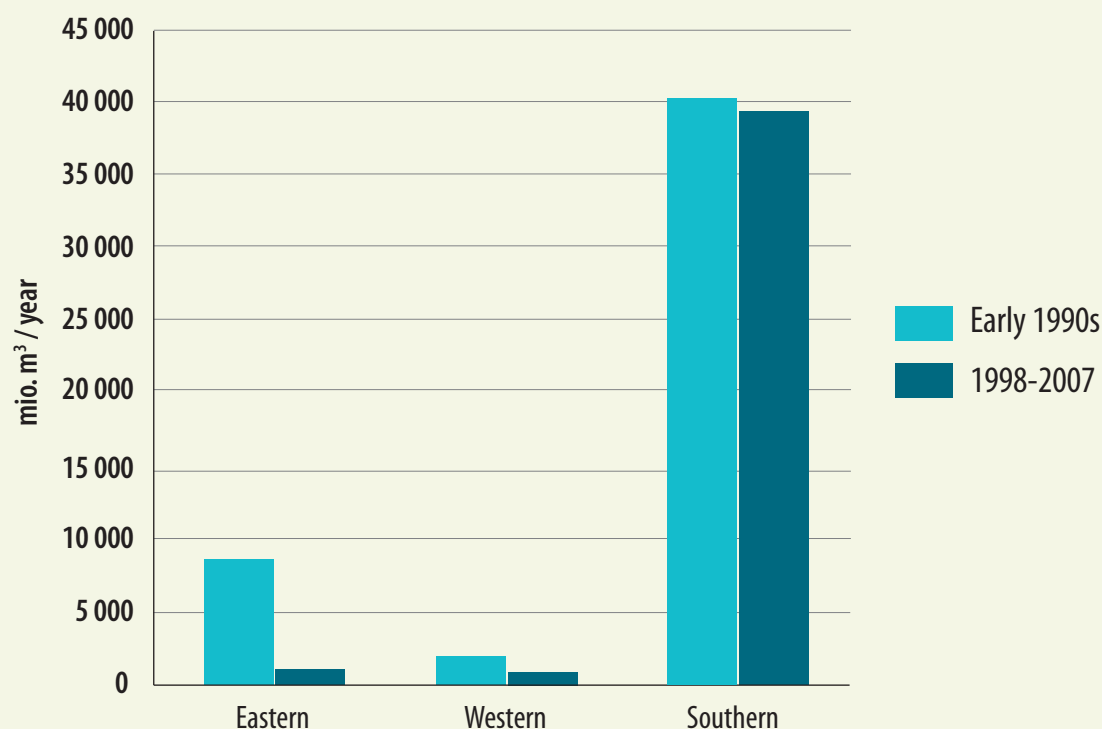
Overabstraction of water by irrigation is a recognised problem, especially in southern Europe, where irrigated agriculture has increased over the past decades<sup>35</sup>. Although water abstraction for irrigation decreased slightly between the early 1990s and the decade from 1998 to 2007 (see **Figure 6**), and despite increased irrigation efficiency through the more widespread use of drip irrigation, water resources remain under severe pressure in some areas resulting in falling aquifer levels, salt-water intrusion and the desiccation of wetlands<sup>36</sup>.

35 EEA Report No 2/2009 'Water resources across Europe - confronting water scarcity and drought'.

36 *Water resources: quantity and flows - SOER 2010 thematic assessment*, EEA State of the Environment report 2010, European Environment Agency (<http://www.eea.europa.eu/soer/europe/water-resources-quantity-and-flows>) accessed 5 October 2012.

### Water abstraction for irrigation

Figure 6



Note: Eastern: Bulgaria (1990;2007), Czech Republic (1990;2007), Hungary (1992;2006), Latvia (1991;2007), Poland (1990;2007), Romania (1990;2006), Slovakia (1990;2007), Slovenia (1990;2007), Western: Austria (1990;2002), Belgium (1994;2007), Denmark (1990;2004), England and Wales (1990;2006), Finland (1994;2005), Germany (1995;2002), Netherlands (1995;2006), Norway (1995;2006), Sweden (1990;2007), Southern: France (1991;2006), Greece (1990;2007), Portugal (1990;1998), Spain (1991;2006).

Source: <http://www.eea.europa.eu/data-and-maps/figures/water-abstraction-for-irrigation-million-m3-year-in-the-early-1990s-and-1997>.

### Weaknesses in the application of cross-compliance

#### There are weaknesses at farm level in the implementation of water-related cross-compliance requirements in Member States

#### 40

During its DAS audits in the various EU Member States, the Court frequently observes breaches of water-related cross-compliance requirements at farm level, most of them being infringements by beneficiaries of SMR4 (protection of water in nitrate-vulnerable zones): inadequate storage facilities or insufficient storage capacity for manure, incomplete or erroneous fertiliser records, absence of a nitrogen analysis, nitrate output higher than 170 kg/ha, storage of manure on land during a prohibited period, etc. Other observations relate to SMR2 (protection of groundwater), SMR9 (plant protection products) and the GAEC on buffer strips.

### The system of cross-compliance checks has weaknesses at Member State level

#### 41

Member States are responsible for the implementation of cross-compliance. For SMRs this includes introducing the relevant elements of the specific legislation into the scope of cross compliance. For GAECs this includes enacting the relevant standards in national or regional legislation and defining the practical obligations which farmers are expected to observe. Member States are also obliged to inform farmers about these requirements and establish an administration and control system that allows a sample of beneficiaries to be checked on the spot and sanctioned in the event of non-compliance.

#### 42

One intrinsic limitation of the system of cross-compliance checks is that some requirements are, by their nature, very difficult to check. As an example, one of the requirements refers to the timing and method of use of pesticides. The difficulty here lies in the fact that cross-compliance checks are usually notified in advance, and therefore it is most unlikely that an inspector will come across a farmer spraying a forbidden product or in an unlawful manner. Other requirements can only be checked during a certain period of the year or in the absence of certain meteorological conditions (e.g. strong wind, frost), which may not necessarily coincide with the timing of the on-the-spot visit.



## Observations

### 43

In the Member States visited, shortcomings were found in the system of water-related cross-compliance checks at the level of the managing authorities:

- detailed working instructions exist only for a limited number of checks, and some instructions are so general that they cannot ensure that inspectors know exactly what and how to check and that different inspectors perform the checks in the same way;
- mandatory checks were introduced at a late stage or are still missing;
- on-the-spot checks are heavily concentrated in autumn. As well as being contrary to certain regulatory requirements<sup>37</sup>, this means that a number of water-related requirements (such as the ban on spreading manure on cultivated buffer strips) cannot be verified visually in the field;
- checks in relation to the GAEC on irrigation were not complete (see **Box 9**).

### The Commission does not ensure that GAEC standards are appropriate at Member State level

### 44

The purpose of the GAECs established under the cross-compliance mechanism is to enforce basic good practice<sup>38</sup>. Member States are expected to set minimum requirements that take account of domestic agronomic, environmental and climate conditions.

### 45

At present the Commission receives only limited information, through an online database, about the implementation of GAECs in Member States. This information consists of references to the applicable domestic legislation, as well as summaries provided by each Member State. Notification is given at the geographical level which Member States themselves deem appropriate. For instance, in the case of the Member States visited during the audit, information about implementation of the GAECs at regional level (as in Italy and Spain) is not included.

37 Article 53(1) of Commission Regulation (EC) No 1122/2009 of 30 November 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector (OJ L 316, 2.12.2009, p. 65) and Article 14(1) of Commission Regulation (EU) No 65/2011 of 27 January 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures (OJ L 25, 28.1.2011, p. 8).

38 European Parliament, *Sustainable management of natural resources with a focus on water and agriculture*, Study - Final Report, May 2013 [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/488826/IPOL-JOIN\\_ET\(2013\)488826\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/488826/IPOL-JOIN_ET(2013)488826_EN.pdf)

### Box 9

### Actual volume of water abstracted not checked against the quantity authorised

The audit found weaknesses when checking the requirements of the GAEC on irrigation. This standard is worded as follows: 'Where use of water for irrigation is subject to authorisation, compliance with authorisation procedures'. The audit found several examples where, although a Member State's procedures provided for authorisation permits specifying a maximum water abstraction volume, the amount of water actually abstracted was not checked against the ceiling given in the authorisation. Such failings considerably reduce the effectiveness of checks.

According to the checklists used by cross-compliance inspectors in Greece and Spain, the actual volume of water abstracted is currently not checked against permits. In Slovakia, the Court found that the volume abstracted is not even measured. Checks can therefore only ascertain whether a permit has been granted but not whether a beneficiary is within the limits set in the permit.

## 46

The Commission assesses the implementation of the GAECs from a legal point of view through a desk review based on the information notified by the Member States and complemented by on-the-spot audits. The Commission does not assess whether the requirements established by the Member States in respect of the two water-related GAECs are adequate from the environmental point of view of the water protection objectives. In practice, the GAEC requirements vary significantly between Member States. For example, under the GAEC on buffer strips<sup>39</sup> (see **Figure 7**), the minimum width of strips ranges from 25 cm to 10 metres (see **Table 3**).

## 47

In some Member States/regions, buffer strips may be cultivated, while in others they should be grassed or left for scrub. Some Member States make exceptions for a significant number of water bodies that may be located on agricultural land (see **Box 10**).

## 48

Requirements also vary enormously between Member States - even those where there is particular pressure on water - in the case of the GAEC on irrigation. This GAEC refers to existing legislation in Member States but does not introduce new obligations. In some Member States/regions the obligation to have a water abstraction permit depends on the volume abstracted, the geographic location and the type of water abstracted (surface or groundwater). Some Member States prohibit irrigation locally during dry periods. In other countries farmers must report annually on the volume of water used for irrigation. The audit found cases where the authorisation requirements for irrigation do not encourage farmers to use less water. For example, in some countries farmers are charged according to the surface area of their holdings rather than actual water use.

<sup>39</sup> This GAEC must respect at least the requirements relating to the conditions for land application of fertiliser near water courses as defined in the Nitrates Directive.

Figure 7

### Buffer strip

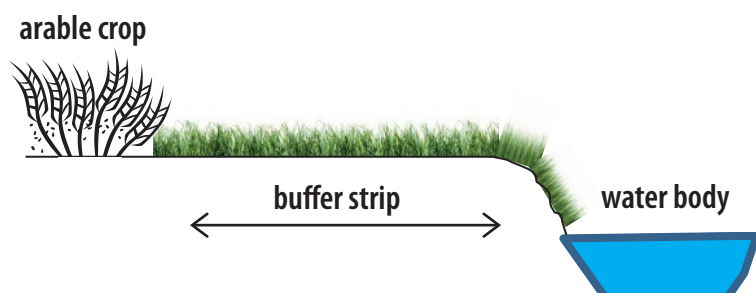


Table 3

**Wide variation in GAEC buffer strip requirements**

Country	Buffer strip width	Obligations and restrictions
Denmark	minimum 2 m	no cultivation, soil treatment or planting
Greece	between 1 m and 6 m depending on slope and type of restriction	no cultivation (1 m) or nitrogen fertilisers (2 or 6 m)
Spain (Andalusia)	2 m to 10 m	compulsory scrub no fertilisers or pesticides
France	5 m	compulsory grass cover, shrubs, bushes or trees no mineral or organic fertilisers or pesticides
Italy (Lombardy)	between 5 m and 3 m depending on the state of the water body	compulsory grass cover no tillage, no inorganic fertilisers, manure or slurry
Netherlands	between 25 cm and 9 m depending on the crop and certain technical specifications	no fertilisers
Slovakia	10 m	no industrial or organic fertilisers

Box 10

**Water bodies exempted from the GAEC on buffer strips**

Member States have exempted certain categories of water body from the GAEC on buffer strips. In Italy (Lombardy), water courses shorter than 5 km or belonging to a catchment area measuring less than 10 km<sup>2</sup> do not require buffer strips. Spain (Andalusia) exempts 'ponds, irrigation channels and ditches', though without properly defining these water bodies and justifies these exemptions with non-environmental arguments. This raises the risk that an excessive number of water courses will be excluded from the obligation to respect the buffer strip requirement, thus minimising the GAEC's impact on water quality.

### The potential of rural development funding to address water concerns is not fully exploited

#### 49

Rural development funding amounts to almost 100 billion euro for the 2007-2013 period. Regulation (EC) No 1698/2005 on rural development identifies the protection of water as one of the key issues to be addressed<sup>40</sup>. The regulation also stresses that 'the activities of the EAFRD and the operations to which it contributes must be consistent and compatible with the other Community policies'<sup>41</sup>, such as water policy. Rural development therefore has considerable potential, by making funds available and setting clear objectives in relation to water, to contribute to the integration of the EU's water policy objectives into the CAP.

#### 50

Member States mobilise rural development funds through their RDPs (see paragraphs 10 and 11), which contain sets of measures to which the target populations (e.g. farmers) can voluntarily commit. Beneficiaries of rural development measures undertake to comply with specific conditions set by their Member State.

#### 51

At present, the potential of rural development is not fully exploited. The way RDPs are currently implemented has a limited impact on water because water-related pressures are not comprehensively identified, RDPs and RBMPs are not yet aligned and negative side-effects are not always avoided. In addition considerable amounts of funding targeting water have not been spent.

40 Recital 31 to Regulation (EC) No 1698/2005: 'Support for specific methods of land management should contribute to sustainable development by encouraging farmers and forest holders in particular to employ methods of land use compatible with the need to preserve the natural environment and landscape and protect and improve natural resources. It should contribute to the implementation of the 6th Community Environment Action Programme and the Presidency conclusions regarding the Sustainable Development Strategy. Key issues to be addressed include biodiversity, Natura 2000 site management, the protection of water and soil, [...]'.  
41 Recital 6 to Regulation (EC) No 1698/2005.

## Observations

### Member States' plans for rural development spending do not always take account of the EU's water policy objectives and the Member States' needs in relation to water

### Member States' RDPs sometimes do not comprehensively identify water-related problems and are not yet aligned with RBMPs

#### 52

For each Member State/region visited during the audit, the Court examined whether the environmental assessment<sup>42</sup> carried out in the context of the *ex-ante* evaluation for the RDP, and the environmental analyses carried out in the context of RBMP, were complete and coherent.

While acknowledging that the geographical area covered by the two evaluations, as well as their timing<sup>43</sup>, nature and purpose, may be different, the Court considers that the assessment of water-related problems should be consistent in both analyses. It found, however, that the identification of water-related problems in the environmental analyses of the RDPs is sometimes incomplete, nor is it always consistent with the information available in the context of the RBMPs. The audit revealed cases of water-related problems not identified in the RDPs and therefore not addressed by any rural development measure (see **Box 11**).

#### 53

The poor quality of programmes of measures in the RBMPs (see paragraphs 27 and 28) is currently an obstacle to their alignment with RDPs. Where alignment exists, it takes the form of rural development measures integrated into an RBMP.

42 [http://ec.europa.eu/agriculture/rurdev/eval/guidance/note\\_c\\_en.pdf](http://ec.europa.eu/agriculture/rurdev/eval/guidance/note_c_en.pdf) (p. 14).

43 Whereas the environmental assessments for RDPs were drafted in 2006, the environmental analyses carried out in the context of RBMPs (comprising 'an analysis of [the] characteristics [of the river basin district], a review of the impact of human activity on the status of surface waters and on groundwater, and an economic analysis of water use' (see Article 5 WFD)) were to be completed no later than 22 December 2004.

### Box 11

### Water-related problems not comprehensively identified

- In Denmark, the issue of water abstraction is not covered by the environmental assessment for the RDP, although it is relevant in the west of the country according to the RBMP. No measures in the Danish RDP address the problem of water abstraction.
- In Spain (Andalusia), the programme of measures in the Guadalquivir RBMP includes measures aimed at completing the water register and combating illegal abstraction. However, the environmental sustainability report for the RDP and the environmental analysis carried out for the Guadalquivir RBMP overlook the problem of illegal groundwater abstraction. Apart from the rural development measures subject to cross-compliance (see paragraph 8), the RDP does not contain any mechanism for encouraging beneficiaries to comply with water authorisation procedures.
- In Slovakia, the RDP contains no measures to tackle weaknesses in relation to water quantity or address the issues of pesticide pollution, loss of wetlands or excessive local groundwater abstraction, all of which are identified in the RBMP but are not mentioned in the environmental assessment for the RDP.
- In Greece, the Thessaly RBMP mentions problems regarding hydromorphological changes and non-registered boreholes, but these are not raised in the environmental assessment for the RDP. The Greek RDP contains no measures addressing hydromorphological pressures.

## The implementation of RDPs sometimes has negative side-effects on water

### 54

Agricultural and environmental policies can have competing aims. Yet rural development funds should be used in a manner that is sustainable as regards water management, and RDPs should therefore contain safeguard clauses to avoid potential negative side-effects (see **Box 12**). Before approving an RDP, the Commission makes checks to identify the negative potential effects of the rural development measures. Despite this, the design of some, duly-approved, rural development measures does not prevent them from having substantial negative side-effects on water. Certain RDPs were approved although they did not contain adequate safeguard clauses (see **Box 12**).

### 55

In some cases, even if the RDP includes safeguard clauses to avoid negative side-effects on water, in practice the implementation of measures allows such side-effects to occur (see **Box 13**).

#### Box 12

### Examples of RDPs with and without safeguard clauses

The RDP for Italy (Lombardy) examined during the audit includes safeguard clauses in relation to the measure targeting investments for the modernisation of agricultural holdings. The RDP allows for the construction of new greenhouses for horticulture only if there are energy and water savings. Investments to expand the existing irrigation network or increase the irrigated surface area are considered to be ineligible.

However, the design of the same measure in the RDP for Spain (Andalusia) leaves room for substantial negative side-effects such as extension of the area under irrigation or the approval of projects that mean an increase in overall water consumption.

#### Box 13

### Example of negative side-effects due to weaknesses in the implementation of a rural development measure

A DAS audit by the Court in Spain found that a project under measure 125 (infrastructure related to the development and adaptation of agriculture and forestry) had been approved even though the water rights granted to the beneficiary were not sufficient to render the project economically viable and the beneficiary consumed significantly more water than his entitlement, thus breaching two eligibility criteria for this type of projects. This shows that the checks carried out in order to approve a project application were not effective, and that basic requirements that should in principle have prevented negative side-effects (such as no increase in the amount of water used) were not guaranteed.

### **Rural development funding has been under-used as a response to water concerns**

#### **The implementation rate of water-related measures is not always on track**

## 56

Rural development measures that may have a direct effect on the protection of water include those that require farmers to change their farming practices by reducing the use of pesticides or fertilisers or adapting their crops to the local hydrological situation. The way these measures are actually used is an important factor when assessing whether the EAFRD's potential as regards water protection has been fully exploited. The Court examined this aspect, firstly, through an analysis of the measures activated by Member States in their RDPs and, secondly, through an analysis of the use made by Member States of the possibilities offered by Article 38 of Regulation (EC) No 1698/2005 as regards costs related to implementation of the WFD.

## 57

The Court has analysed the implementation rate of active rural development measures identified by the Member States themselves as having a direct effect on water protection. Although this analysis has certain limitations<sup>44</sup>, the results show that in around half of all cases the implementation rates are on track.

44 As measures often have sub-measures that are not addressing water, not all projects financed under these measures in fact relate to water protection.

## 58

However, Member States have failed to take advantage of the possibilities offered by Article 38 of Regulation (EC) No 1698/2005, which specifically provides that measure 213<sup>45</sup> can be used 'to compensate for costs incurred and income foregone resulting from disadvantages in the areas related to the implementation of [the WFD]' (see **Table 4**).

## 59

At the time of the audit visits, none of the Member States except Denmark<sup>46</sup> had activated measure 213 in respect of the WFD as provided in Article 38. According to the Commission<sup>22</sup>, only 4 % of the RBMPs submitted to it indicate that they will use Article 38 to compensate farmers for the requirements of the WFD. This limited use of measure 213 was caused by, among other things, delays in the Member States' finalising their RBMPs. Another factor unfavourable to the use of measure 213 is that, for payments linked to the WFD, implementation rules were not published until February 2010<sup>47</sup> – three years and two months after the start of the rural development programming period<sup>48</sup> and more than one year after the RBMPs were to be completed under Article 13 WFD.

45 Measure 213: 'Natura 2000 payments and payments linked to Directive 2000/60/EC (WFD)'.

46 Denmark had activated measure 213 to compensate for the costs related to the implementation of 10m-wide buffer strips, but due to the suspension of the Danish RBMPs in December 2012 implementation of the measure is on hold.

47 Commission Regulation (EU) No 108/2010 of 8 February 2010 amending Regulation (EC) No 1974/2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ L 36, 9.2.2010, p. 4).

48 EAFRD 2007-2013.

Table 4

### Implementation rates for rural development measures<sup>1</sup> identified by Member States as having a direct effect on water protection (in %)

Country \ Measure	115	121	125	213	214	216	226	321
Denmark					84,1	24,2		
France (mainland)		69,7	39,8		85,8	16,9		
Greece		17,0	35,7		71,7			21,5
Italy (Lombardy)		75,8	42,4		69,0	51,9		
Slovakia		85,8			88,2		91,8	
Netherlands		51,0	30,4		95,7	9,7		
Spain (Andalusia)	9,4	70,0	27,6		73,1			



Implementation rates on track (> 60 %)



Measure 213 not activated in any of the Member States visited during the audit



Measure not identified by the Member State visited as having a direct effect on water Protection

1 Measure 115: 'setting up of management, relief and advisory services'; measure 121: 'modernisation of agricultural holdings'; measure 125: 'infrastructure related to the development and adaptation of agriculture and forestry'; measure 214: 'agri-environment payments'; measure 216: 'non-productive investments'; measure 226: 'restoring forestry potential and introducing prevention actions'; and measure 321: 'basic services for the economy and rural population'.

Source: European Commission, data as of 31 March 2013.



## Financial instruments especially conceived to address water issues have barely been used

### 60

Council Decision 2009/61/EC<sup>49</sup> indicated the need to strengthen the response to a number of 'crucial new challenges' identified in 2003<sup>50</sup>, one of which was 'water management'. In line with the Decision, the Health Check made available additional funds targeting these new challenges. The total additional budget was 3,8 billion euro. At the same time, as a response to the 2008 economic crisis, the Commission drew up the European Economic Recovery Plan<sup>51</sup> (EERP). The EERP provided an extra one billion euro to be spent on broadband in rural areas and any of the new challenges.

### 61

In 2010, under the first amendments to RDPs following the Health Check, Member States allocated 26,9 % of the additional CAP funds (1,3 billion euro) to the 'new challenge' of water management<sup>52</sup> (see **Figure 8**). The average implementation rate of these funds at the end of 2012 was 17,5 % for the EU 27, although this figure varies widely among Member States<sup>53</sup> (see **Annex IV** for more details). Although the Health Check provided an opportunity to further integrate water management issues into RDPs, in practice most Member States have made very little use of the extra funds.

49 Council Decision 2009/61/EC of 19 January 2009 amending Decision 2006/144/EC on the Community strategic guidelines for rural development (programming period 2007 to 2013) (OJ L 30, 31.1.2009, p. 112).

50 Recital 3 to Decision 2009/61/EC: 'In the assessment of the implementation of the Common Agricultural Policy reform of 2003, climate change, renewable energies, water management, biodiversity and dairy restructuring were identified as crucial new challenges for European agriculture.'

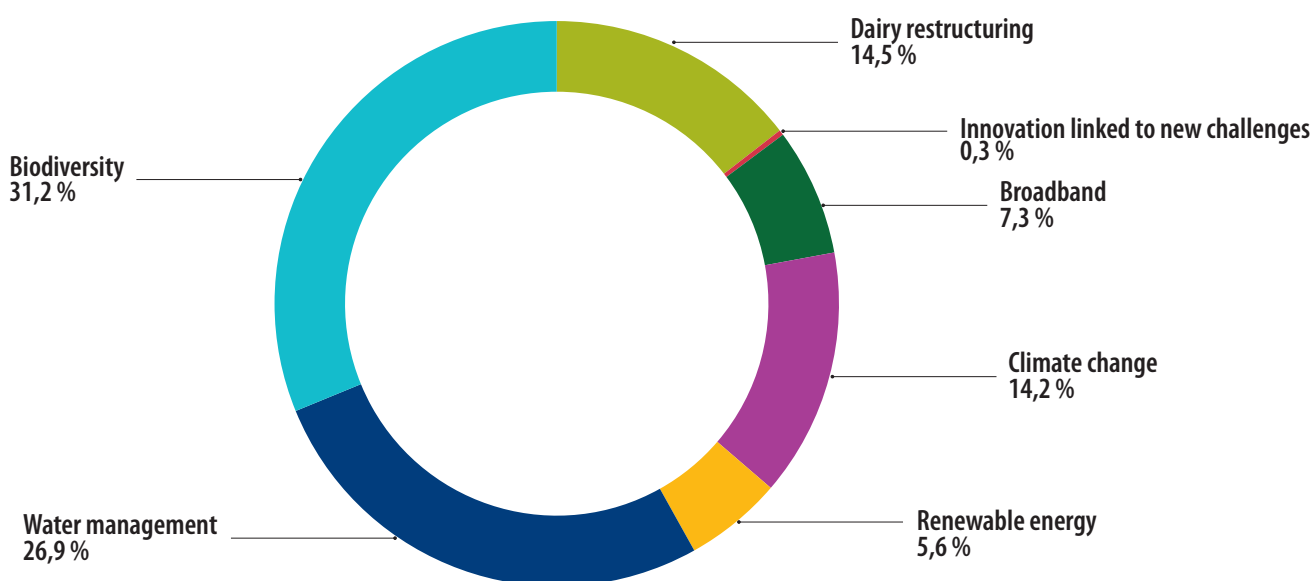
51 COM(2008) 800 final of 26 November 2008.

52 The Court acknowledges that some of the funds accounted for as addressing the 'new challenge' of biodiversity can have also a positive effect on water.

53 The Commission does not have validated figures for these implementation rates. However the figures presented by the Court are based on information supplied by the Commission.

Figure 8

## Planned distribution of Health Check and Recovery funds among 'new challenges' as at 2010



Source: European Commission.

## The polluter pays principle has not been integrated into the CAP

### 62

The polluter pays principle requires the polluter to bear the expense of preventing, controlling, and cleaning up pollution<sup>54</sup>. Nowadays the principle is a legal obligation endorsed by the EU in its Treaty<sup>55</sup> and in the Environmental Liability Directive<sup>56</sup>, and referred to explicitly in Article 9 WFD.

### 63

Agricultural practices result in both benefits to and burdens on the environment. The negative environmental effects of agriculture often include the introduction of unwanted chemicals (pollutants) into the environment. 'The diffuse nature of pollution from agriculture and the difficulty of identifying the polluter hamper enforcement of environmental laws and allocation of responsibility for damages'<sup>54</sup>. Nevertheless, 'the polluter pays principle should apply when agricultural activities impose environmental harm that affects private and public property'<sup>54</sup>. Mechanisms to enforce the polluter pays principle may exist (such as fines imposed at Member State level), but they do not influence the payments that CAP beneficiaries receive.

### 64

The penalties currently applied to farmers for not meeting the cross-compliance requirements (i.e. exceeding an acceptable regulatory level of pollution) are not calculated on the basis of the cost of the damage caused and thus, may represent only a portion of this cost. In many cases they are not proportionate to the seriousness of the farmer's breach of cross-compliance obligations. This was already observed by the Court in special report No 8/2008. In this respect the Court again draws attention to the weaknesses noted in paragraphs 40 to 43 regarding the application of cross-compliance. Therefore, at the moment, as it is currently applied, cross-compliance can provide a useful but only partial response to the polluter pays principle.

### 65

A significant number of payments under rural development are not tied to cross-compliance<sup>9</sup>. As a result, a farmer who pollutes will continue to receive these payments without any reduction. At present, no mechanism exists which proportionately takes into account the costs of preventing or cleaning up the pollution that a farmer causes and which reduces the rural development payments accordingly.

54 Margaret Rosso Grossman, *Agriculture and the Polluter Pays Principle*, vol. 11.3 *Electronic Journal of Comparative Law*, December 2007, <http://www.ejcl.org/113/article113-15.pdf>.

55 Article 191(2) of the Treaty on the Functioning of the European Union.

56 Directive 2004/35/EC of the European Parliament and of the Council (OJ L 143, 30.4.2004, p. 56), amended by Directive 2006/21/EC (OJ L 102, 11.4.2006, p. 15) and Directive 2009/31/EC (OJ L 140, 5.6.2009, p. 114).

## Observations

### Monitoring and evaluation systems do not give the whole picture

#### 66

A number of years have passed since the EU's water policy was strengthened and CAP instruments with the potential to address water concerns were put in place:

- (i) cross-compliance was introduced in 2003 and has been compulsory for all farmers receiving direct payments since 2005;
- (ii) rural development was included in the CAP in 2000; and
- (iii) the Water Framework Directive entered into force in 2000, with the requirement for Member States to have monitoring programmes operational by the end of 2006.

#### 67

In their present form, monitoring systems do not deliver a comprehensive overview of the pressures of agriculture on water. Information in this regard is partial, fragmented and sometimes arrives late. Reasons for this are that

- (i) CAP monitoring and evaluation systems are of limited use as regards water-related information,
- (ii) water policy monitoring arrangements were set up late and are incomplete and
- (iii) no other existing information system is capable of providing the data needed to link water quality and quantity with agricultural practices.

### CAP monitoring and evaluation systems are of limited value in measuring progress towards the water objectives set out in the CAP regulations

#### 68

EU law<sup>57</sup> requires Member States to submit an annual report to the Commission containing 'the results of the controls relating to cross-compliance'. Those results relate to the number of checks carried out and infringements of the various cross-compliance requirements. They do not include information about the impact of cross-compliance on water quality or water quantity, and were never intended to do so.

#### 69

The Commission monitors and evaluates all rural development actions for the 2007-2013 programming period through the Common Monitoring and Evaluation Framework (CMEF). The CMEF uses indicators to measure progress towards the rural development objectives, as well as evaluations by independent evaluators.

<sup>57</sup> Article 84(1)(e) of Regulation (EC) No 1122/2009.

## 70

Where water is concerned, the CMEF lays down five baseline indicators<sup>58</sup>, one result indicator ('area under successful land management contributing to water quality') and one impact indicator ('improvement in water quality'). The audit found that the result indicator is not sufficiently precise as it does not specify what is meant by 'successful land management', the impact indicator on water quality refers only to nitrates and phosphorus, and there is no water quantity indicator. Moreover, reporting by Member States for all of the CMEF indicators is often outdated or incomplete. In many cases, Member States have not set targets.

## 71

A CMEF guidance document<sup>59</sup> sets out five evaluation questions related to water. Some good examples were found of mid-term evaluations in which the evaluators were able to quantify the impact of certain (sub) measures on water quality using models, beneficiary surveys and qualitative research (see **Box 14**). However, this is not a generalised approach and there are clear deficits as regards the systematic quantification of results and impacts, data completeness, reliability and consistency. Several mid-term evaluations draw attention to the lack of targets in RDPs, which makes it difficult to assess progress towards the water objectives.

58 Water quality (gross nutrient balances), water quality (pollution by nitrates and pesticides), water quality (% territory designated as nitrate-vulnerable zone), water use (% irrigated utilised agricultural land), protective forests concerning primarily soil and water.

59 Handbook on Common Monitoring and Evaluation Framework. Guidance document, DG Agriculture and Rural Development, September 2006.

### Box 14

#### A good example of quantifying impact in a mid-term evaluation

Italy (Lombardy) – For measure 214 (agri-environment payments), the evaluator used models to calculate, at parcel level, the nitrogen surplus and exposure toxicity ratio measured in groundwater as a consequence of the use of pesticides. At regional level, the overall reduction in nitrogen surplus due to measure 214 was 2,6 kg/ha, and there was a 3,9 % reduction in the exposure toxicity ratio. The effect was more pronounced in areas where uptake of the measure had been more successful.

#### Water policy monitoring arrangements are incomplete

## 72

Article 8 WFD requires Member States to establish 'programmes for the monitoring of water status in order to establish a coherent and comprehensive overview of water status within each river basin district'.

Monitoring programmes were supposed to be operational by 2006 and to consist of a surveillance monitoring programme (covering the entire district) and an operational monitoring programme (more frequent and denser monitoring geared to identify problem areas). Member States may also choose to establish programmes of investigative monitoring (e.g. for specific substances).

## 73

Following an assessment of the Member States' monitoring programmes in 2012, the EEA reported: 'There are examples of very good high-quality reporting. However, there are also cases where reporting contains gaps or contradictions'<sup>60</sup>. In another report, the Commission states: 'A clear gap in monitoring emerges from the information reported to the Commission. [...] In some Member States ecological and chemical water status is unknown for more than 50 % of the water bodies'<sup>61</sup>. In some Member States, monitoring networks were set up late and/or have methodological weaknesses.

The audit found that, in some Member States, monitoring focuses on collecting information on the status of water bodies, with little concern for monitoring the pressures on water (see **Box 15**). At local level, there have been some scientific studies or experimental networks linking agricultural practices with water quality (see **Box 16**).

60 EEA Report No 8/2012 'European waters – assessment of status and pressures'.

61 COM(2012) 670 final. Report from the Commission to the European Parliament and the Council on the Implementation of the Water Framework Directive (2000/60/EC). River Basin Management Plans.

### Box 15

#### An example of weaknesses in a monitoring network

France – The RBMP scoreboard does not contain specific indicators for monitoring agricultural pressures alone. One of the indicators supplied relates to the cumulative impact of household, industrial and farming activities on water status. The same is true of an indicator on exceeding quantitative targets at nodal points.

Still in France, an indicator on the volume of water drawn from groundwater and surface water bodies by different sectors of activity quantifies the water used for irrigation, but this indicator (i) has no quantified objective and (ii) does not allow abstracted volumes to be compared with what is sustainable at times of water scarcity.

### Box 16

#### Good examples of monitoring networks

The Netherlands has two specific monitoring grids linking agriculture with water. The first network assesses concentrations of a number of substances on agricultural holdings and links these with a database containing information about management type, manure and substances used, etc. The other network uses existing testing points in agricultural areas to assess the influence of agriculture on water quality (phosphorus and nitrogen content).

Denmark has a monitoring programme aimed at documenting the effect of national aquatic environment plans and other agricultural sector programmes on the leaching of nutrients into the aquatic environment. Six representative catchment areas are monitored through direct measurements, interviews with farmers about their farming practices and modelling of the relationship between agriculture and the loss of nutrients into the environment.

## 74

Monitoring under the WFD has thus increased knowledge about the status of European waters and the pressures affecting them, but it is still incomplete and results must be interpreted with care owing to data gaps and methodological shortcomings. In most cases, there is no monitoring by Member States of the individual measures in RBMP programmes (see **Table 2**).

## 75

As regards monitoring the nitrate content of surface water and groundwater, the Nitrates Directive<sup>62</sup> requires Member States to 'draw up and implement suitable monitoring programmes to assess the effectiveness of action programmes'. Every four years they are required to report on nitrate concentrations in groundwater and surface water, the eutrophication of surface water, the impact of action programmes on water quality and agricultural practices, revisions of nitrate-vulnerable zones and action programmes and anticipated future trends in water quality<sup>63</sup>. These reports by the Member States are used as the basis for a summary report by the European Commission on the implementation of the Directive. However, there have been delays in the Member States' reporting under the Nitrates Directive. The summary EU report for 2008-2011 was not published until 4 October 2013<sup>64</sup>.

## 76

The individual Member States' reports for 2008-2011 show differences in quality and approach. In its summary report, the Commission states: 'There was a large variety in both the format and the quality of the report content among Member States, with consequent challenges in developing a consistent aggregate synthesis at the EU level. Likewise, in a number of cases, digital data provided together with the written reports by Member States, presented inconsistencies and difficulties of interpretation, which required clarifications from Member States'. Not only are data not always available for all Member States, in some cases there is no data comparability between Member States.

62 Article 5(6) of the Nitrates Directive (91/676/EEC).

63 <http://ec.europa.eu/environment/water/water-nitrates/>

64 Commission staff working document SWD(2013) 405 final accompanying the Report from the Commission to the Council and the European Parliament on the implementation of Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources based on Member State reports for the period 2008-2011.

## Observations

### WISE, the 'gateway to European water information', needs to be further improved

#### 77

The Water Information System for Europe (WISE) was created in 2003 as both a reporting tool for Member States and an online portal giving access to water information at EU level. WISE is fed by a variety of data flows coming both from mandatory data collected by the Commission's DG Environment as part of its obligations under the Water Framework, Urban Wastewater, Bathing Water and Drinking Water Directives, and from voluntary data collected by the EEA on a yearly basis<sup>65</sup>. WISE does not contain data reported by the Member States under the Nitrates Directive<sup>66</sup> or data collected by DG Agriculture through the CMEF. From 2003 to 2011, the data collected and collated by WISE focused on water quality rather than water quantity or the risk of water scarcity<sup>4</sup>.

#### 78

Despite its potential to provide comprehensive information about water in Europe, WISE is experiencing some difficulties. Not all the data flows in WISE are fully integrated. Due to data confidentiality issues and differences in scale, data frequency (e.g. yearly averages versus four-yearly averages) and data processing by Member States (some countries provide aggregated data), it is not always possible to collate the data so as to exploit them fully.

### The Commission's efforts to develop indicators linking water quality and quantity with agricultural practices have not yet been successful

#### 79

Since 2002, the Commission has been working on the development of a set of agri-environmental indicators (AEIs) to track the integration of environmental concerns into the CAP at EU, Member State and regional levels<sup>67</sup>. In practice, data availability is a problem for most of these indicators (see **Table 5**). None of the AEIs make the link with individual agricultural practices.

65 EEA indicators related to agriculture and water are: gross nutrient balance; use of freshwater resources; oxygen-consuming substances in rivers; nutrients in freshwater; nutrients in transitional, coastal and marine waters; chlorophyll in transitional, coastal and marine waters; pesticides in groundwater (EEA Environmental Indicator Report 2012).

66 Where nitrates are concerned, the EEA and DG Environment have worked in recent years towards streamlining data from the State of the Environment reports and collected under the Nitrates Directive and the WFD. The aim is to reduce the burden of reporting for Member States while improving the comparability and consistency of data from different sources. This work is currently suspended.

67 [http://epp.eurostat.ec.europa.eu/portal/page/portal/agri\\_environmental\\_indicators/introduction](http://epp.eurostat.ec.europa.eu/portal/page/portal/agri_environmental_indicators/introduction).

Table 5

## Overview of AElS identifying major pressures on water quality and water quantity

AEI indicator heading	Main indicator/sub-indicator	Responsible body	Problems encountered
Gross nitrogen balance	Potential surplus of nitrogen on agricultural land (kg/ha/year)	Eurostat	Methods for calculating gross nitrogen balance are not consistent across countries, data are not comparable between countries.
Risk of pollution by phosphorus	Potential surplus of phosphorus on agricultural land (kg/ha/year) Vulnerability to phosphorus leaching/run-off	Eurostat DG Environment	Methods for calculating gross phosphorus balance are not consistent across countries, data are not comparable between countries.  Not yet ready, due to limited data availability and methodological difficulties.
Water quality – nitrate pollution	Rivers and groundwater with nitrate concentrations above 50 mg NO <sub>3</sub> /l Nitrate concentrations above 25 mg NO <sub>3</sub> /l are a warning threshold	Eurostat	Available data not detailed enough to establish whether the trend is different in areas that benefit from CAP measures versus areas that do not. No differentiation based on region, soil type, etc., although this would be useful in order to determine the causes of these trends.
Water quality – pesticide pollution		EEA	Limited information available. Lack of reliable data on pesticides in groundwater.
Irrigation	Share (%) of irrigable area in utilised agricultural area (UAA) (and its trend)	Eurostat	No information on water metering in order to measure efficiency. Information is not reported at river basin level. No link to water use (water abstraction and state of water in the area).
Water abstraction	Annual water abstraction by source and sector Water use by supply category and user	EEA/Eurostat	Data is only available for between half and two-thirds of the Member States.
Pesticide risk	Index of risk of damage from pesticide toxicity and exposure	DG SANCO / Eurostat	No data available for this indicator. Data on sales of pesticides were to be made available from 2013, and data on pesticide use in 2015.

*Note:* A number of other AElS have indirect links with water. These include mineral fertiliser consumption in agriculture, consumption of pesticides, cropping patterns, livestock patterns, soil cover, manure management, specialisation of farms, and intensification/extension of farms.



## 80

The Commission and the Member States have set ambitious policy targets for improving water management in the EU in the medium to long term. Agriculture, as one of the major users and polluters of water, has a key role to play in this. This was recognised both in the drafting of the Water Framework Directive and in the more recent political agreement on the future of the common agricultural policy (CAP).

## 81

In order to meet these ambitious targets, the CAP must be implemented in such a way as to encourage the most effective and efficient use of water in agriculture and discourage wasteful use, pollution etc. Most EU funding and farm payments have been made conditional on certain good practices in relation to water (as part of the cross-compliance regime). Significant funding has also been made available, through rural development measures, for specific water-related projects.

## 82

The audit examined whether the EU's water policy objectives have been successfully integrated into the CAP. The Court concludes that the Commission and the Member States have only been partially successful in doing so. This is due to a mismatch between the ambition of the policy objectives and the ability of the instruments used to effect change. The instruments currently used by the CAP to address water concerns have not so far managed to achieve sufficient progress towards the ambitious policy targets set as regards water. The audit highlights weaknesses both in the design and application of cross-compliance and in the use of rural development funding and points out delays and weaknesses in the implementation of the WFD.

## 83

As regards cross-compliance the audit highlighted that a number of important water-related issues are not yet covered by cross-compliance requirements (paragraphs 35 to 37) and that the Commission has not ensured that GAEC (good agricultural and environmental conditions) standards in relation to water are appropriate at Member State level or formulated in such a way that they promote good farming practices (paragraphs 38 and 44 to 48). Besides this, as currently applied, cross-compliance can provide a useful but only partial response to the polluter pays principle and cross-compliance penalties are not calculated on the basis of the cost of the damage caused and thus, may represent only a portion of this cost (paragraphs 62 to 65).

## 84

In the context of the CAP reform, the new period (2014-2020) sets even more ambitious goals with respect to the integration of water policy objectives into the CAP. For this new period, the Commission aims to increase the scope of cross-compliance. Bearing in mind the Court's past observations on the functioning of cross-compliance, the Court recommends:

### Recommendation 1

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At the policy level, the Commission should propose to the EU legislator the necessary modifications to the current instruments (cross-compliance and rural development) or, where appropriate, new instruments capable of meeting the more ambitious goals with respect to the integration of water policy objectives into the CAP.

### 85

At Member State level the Court concludes, given that cross-compliance and rural development are the main instruments for integrating water concerns into the CAP, that there are weaknesses in the application of cross-compliance (paragraphs 40 to 43) and that the potential of Member States' rural development programmes to address water concerns has not yet been fully exploited (paragraphs 49 to 61). The Court therefore recommends:

#### Recommendation 2

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Member States should:

- address the weaknesses identified by the audit in their performance of cross-compliance checks;
- impose the appropriate penalties in cases of infringement;
- put increased emphasis on identifying water-related problems in their RDPs and ensuring they are consistent with RBMPs;
- devise and rigorously implement safeguard mechanisms to avoid negative side-effects on water of activities financed by rural development;
- more actively consider and appropriately promote the use of the funds earmarked for water-related issues, in a way that is consistent with sound financial management.

### 86

Given the relevance of the WFD in the context of EU water policy, and noting that there is a recognised need to integrate water management concerns into other policy areas, such as agriculture, the Court concludes that the delays and weaknesses affecting implementation of the WFD have hindered integration of the water policy objectives into the CAP (paragraphs 21 to 32 and 72 to 76). Acknowledging that EU water policy is effectively implemented through funds from other policies (such as the CAP) and pursuing consistency between EU water and agricultural policies the Court therefore recommends:

#### Recommendation 3

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The Commission should propose appropriate mechanisms that can effectively exercise a positive influence on the quality of Member States' WFD programming documents and avoid departing from the timeframe set by the WFD. To this end, minimum conditions as regards the implementation of the WFD could be ensured before committing rural development funds.

Member States should urgently speed up the process of implementing the WFD and for the next management cycle (2015) improve the quality of their RBMPs by describing individual measures (e.g. in terms of scope, timeframe, targets and costs) and making them sufficiently clear and concrete at an operational level.

## Conclusions and recommendations

**87**

The Court also concludes that there is insufficient knowledge, at European level and in the Member States, about the pressures placed on water by agricultural activities and how those pressures are evolving (paragraphs 66 to 79). We found the following weaknesses at Commission and Member State level:

- the CAP monitoring and evaluation systems are of limited value in measuring progress towards the water objectives set out in the CAP regulations;
- the Water Information System for Europe (WISE) is incomplete;
- the Commission's efforts to develop indicators linking water quality and quantity with agricultural practices have not yet been successful.

The Court therefore recommends:

### Recommendation 4

The Commission should strengthen its knowledge of the link between water quality/quantity and agricultural practices by improving its existing monitoring systems and ensuring that they are capable at least of measuring the evolution of the pressures placed on water by agricultural practices; this would help with identifying the areas in which CAP funds are most needed.

Given that the quality of the information about water for the EU as a whole depends on the quality of the information Member States provide and that the availability of this information is a prerequisite for taking sound policy decisions, Member States are encouraged to improve the timeliness, reliability and consistency of the data they provide to the Commission and the EEA.

This Report was adopted by Chamber I, headed by Mrs Rasa BUDBERGYTĖ, Member of the Court of Auditors, in Luxembourg at its meeting of 26 March 2014.

*For the Court of Auditors*



Vítor Manuel da SILVA CALDEIRA  
President

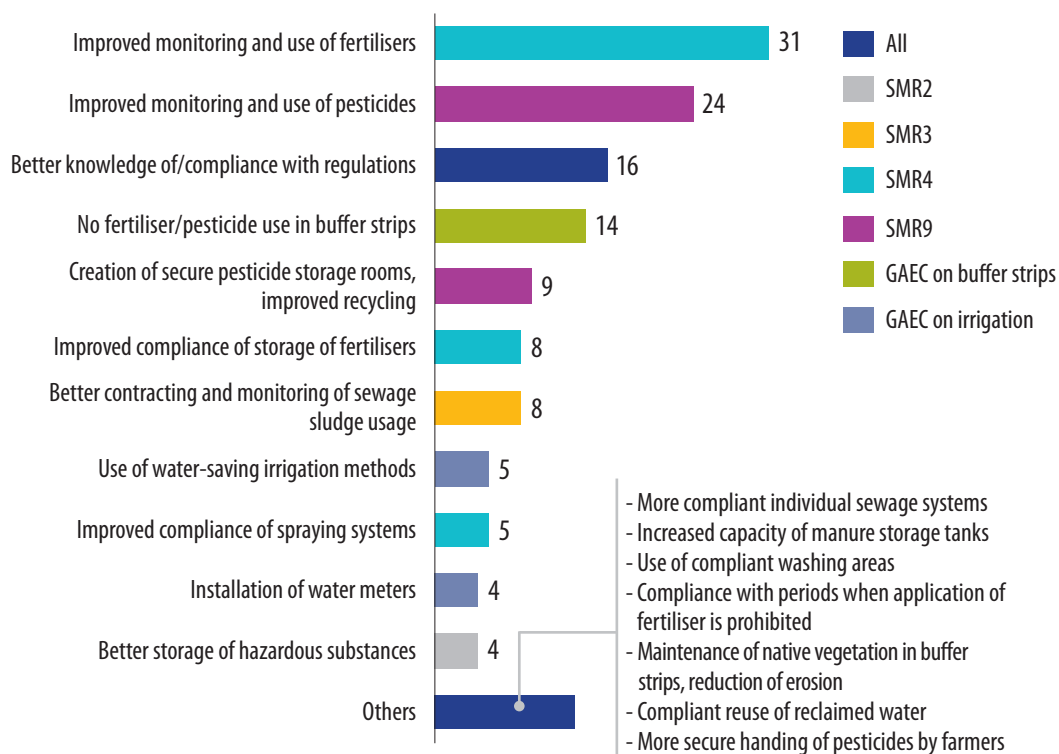
### Audit questions and criteria used for the audit



## Survey results: Main changes reported by farm advisory bodies following the introduction of cross-compliance

Please provide examples of changes in farm practices that you have observed, if any, since the introduction of cross-compliance

Number of quotes



## Examples of water-related issues not covered by cross-compliance

	Phosphorus use in agriculture	Application of pesticides in the immediate vicinity of water bodies
Use in agriculture	Phosphorus is supplied to agricultural land through mineral and organic fertilisers (e.g. NPK mixtures or animal manure/slurry) and is used in animal feed.	Pesticides protect crops from damage caused by weeds, diseases and insects.
Impact on water	Phosphorus can migrate into surface waters and cause water quality problems such as eutrophication.	Aerial spraying of pesticides has the potential to cause significant adverse impacts on human health and the environment, in particular from spray drift <sup>1</sup> .  It has been estimated that only 0,1 % of applied pesticides reach the target pests, leaving the bulk of the pesticides (99,9 %) to impact the environment <sup>2</sup> (e.g. water bodies).
Current status	The contribution made by agriculture to phosphorus loads in surface waters is estimated by the EEA to be anything between 20 % and more than 50 % <sup>3</sup> .  Recent reports from the Commission show that good status for phosphorus may not be reached by 2015 but only by 2027 (twelve years after the deadline given in the WFD).	According to the EEA, there is limited overall information available on Europe and a lack of reliable data on pesticides in groundwater.  In its report No 9/2012 the EEA states that pesticides are widespread causes of poor chemical status in rivers.
How is it currently addressed?	Indirectly, the requirements related to nitrates (SMR4) are likely to have an impact on phosphorus levels. Farmers in nitrate-vulnerable zones must adhere to nitrogen limits, which involves monitoring the level and timing of slurry and manure use. Doing this incidentally limits the application of phosphorus.  Some Member States, such as the Netherlands, have taken the opportunity to address diffuse phosphorus pollution explicitly in their nitrates action programmes by establishing phosphate application standards for farmers.	Some Member States, such as France and Spain (Andalusia), have included restrictions on the use of pesticides in the GAEC on buffer strips by prohibiting the use of these substances within a fixed distance from water bodies.  In the other five Member States/regions visited during the audit, restrictions on buffer strips concern fertilisers but not pesticides (see <b>Table 3</b> ).

1 Directive 2009/128/EC.

2 Horrigan, L., Lawrence, R. S., & Walker, P., 'How sustainable agriculture can address the environmental and human health harms of industrial agriculture', Environmental Health Perspectives, 2002, Vol.110, No 5.  
<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1240832/pdf/ehp0110-000445.pdf>.

3 Addressing phosphorus-related problems in farm practice, Final report to the European Commission. Soil Service of Belgium, November 2005.  
<http://ec.europa.eu/environment/natres/pdf/phosphorus/AgriPhosphorusReport%20final.pdf>.

### Additional Health Check and Recovery funds allocated and used by Member States for water management

Member State <sup>1</sup>	EAFRD funds in million euro		Implementation rate (%)
	HC and EERP funds allocated <sup>2</sup> to the 'new challenge' of water management (data for 2010)	Expenditure <sup>3</sup> (to end of 2012)	
Belgium	21,6	20,1	92,9
Bulgaria	19,0	8,7	45,9
Czech Republic	7,0	2,4	34,4
Denmark	61,0	7,6	12,5
Germany	166,0	78,0	47,0
Ireland	26,0	0,4	1,6
Greece	70,0	0,0	0,0
Spain	188,6	47,2	25,0
France	460,5	3,4	0,7
Italy	88,5	20,4	23,0
Netherlands	21,0	1,1	5,2
Poland	34,0	0,0	0,0
Romania	22,0	0,0	0,0
Slovenia	1,0	0,2	17,7
Finland	31,0	2,3	7,3
Sweden	-	35,4	-
United Kingdom	104,0	5,7	5,4
<b>EU27</b>	<b>1 332,0</b>	<b>232,9</b>	<b>17,5</b>

1 Member States that had not allocated any HC or EERP funds to water management are not included in this list.

2 According to COM press releases IP 09/1568, IP 09/1813, IP 09/1945 and IP/10/102.

3 Data provided by the Commission from the cumulative monitoring data for the EU27 for 2010, 2011 and 2012.

## Executive summary

### Common reply to V and VI

The Commission wishes to underline that cross-compliance has increased farmers' awareness and improved their practices on water issues. The Commission notes, however, that the implementation of cross-compliance by Member States still presents certain weaknesses.

Important water-related EU legislation, in particular regarding nitrates and pesticides, is already included into the scope of cross-compliance. Remaining water related issues should be addressed by the Member States in fulfilling the obligations of the Water Framework Directive (WFD). Programmes of measures should address all of the mandatory requirements set out in Article 11.3. The relevant measures under the WFD will be introduced in due course into the scope of cross-compliance when the obligation at farm level is sufficiently clear. In the meantime water related Good Agricultural and Environmental Condition (GAEC) standards have been set in order to cover certain basic requirements already existing in national legislation so as to make a link with CAP payments.

As for rural development, the Commission is of the opinion that in the period 2014-2020 improvements will come about as a result of:

- the presence of explicitly water-related 'focus areas' (sub-priorities) within the new Rural Development Regulation itself – with corresponding indicators, against which Member States will set targets within their RDPs;
- the obligation, within the new Rural Development Regulation, to spend a minimum of 30 % of the total contribution from the EAFRD to each RDP on climate change mitigation and adaptation and environmental issues through certain measures;

- Member States' greater familiarity with the analytical framework of rural development policy and the process of composing River basin management plans -RBMPs- (in the framework of the WFD);
- particular conditions in the new Rural Development Regulation concerning support for investments in irrigation.

### VII

The Commission recognises that there have been delays in the implementation of agricultural measures under the WFD and is committed to working with Member States to resolve this issue. Where this cannot be achieved through consent it will be accelerated through infringement action.

### IX

In the context of the CAP reform, the Commission has proposed and the co-legislators have agreed in a joint statement<sup>1</sup> that the WFD as well as the Sustainable Use of pesticides Directive (SUD) will be part of cross-compliance when these Directives will have been implemented in all Member States and the obligations directly applicable to farmers have been identified.

Pending this introduction into cross-compliance, co-legislators have also agreed that these two directives will be part of the compulsory scope of the Farm Advisory System so that all farmers concerned have access to the relevant advice. The main elements of EU water policy will therefore be included into the CAP in due course.

As for rural development policy, the necessary tools and mechanisms are provided for the period 2014-2020 through the new Rural Development Regulation (RDR) – Regulation (EU) No 1305/2013 of the European Parliament and of the Council – and through related legislation.

<sup>1</sup> Joint statement by the European Parliament and the Council on cross compliance attached to Regulation (EU) No 1306/2013.



## Reply of the Commission

Within the RDR (i.e. within the key legislation itself), 'improving water management' and 'increasing efficiency in water use by agriculture' are explicit elements of the 'priorities' against which Member States / regions must programme spending within their RDPs.

A range of measures is available to help fulfil these priorities – support for training, use of advice, investments, multi-annual land management practices and experimental development (including within the European Innovation Partnership for Agricultural Productivity and Sustainability).

The Commission has had a programme of work to communicate such opportunities to Member States in the context of various fora, and in particular within the WFD Common Implementation Strategy working group on agriculture. Finally, it should be borne in mind that rural development policy must address a range of priorities and financial resources are limited.

### X

The Commission assessed all reported RBMPs and will have held meetings with all Member States before autumn 2014 to discuss the implementation issues with the first cycle RBMPs and agree an action programme with the Member States to address serious gaps. The gaps on effective agricultural measures have been discussed with all Member States, and they have been given time to voluntarily come into compliance on this issue, after which further action will be pursued by the Commission.

The Commission will also continue to work with Member States in the WFD Common Implementation Strategy (CIS) working group on agriculture where good practice examples are identified and promoted to Member States.

### XI

As regards the newly introduced system for monitoring and evaluating the CAP, linking water quality and quantity with agricultural practices is very complex, given the wide variety of agricultural practices and agronomic circumstances across the EU, the pressures from non-agricultural sources which also have a significant impact on water quality and availability, and the challenges in attributing causal linkages. Therefore, the costs and administrative burden related to the monitoring and evaluation systems need to be carefully balanced against the benefits related to improved management and policy making.

Lessons learnt from the 2007-2013 Common Monitoring and Evaluation Framework (CMEF) showed that it was very difficult to set accurate targets for impact indicators such as water quality due to the numerous external factors involved. Guidance documents have been provided to Member States to support them in the measurement of these impact indicators which are expected in the ex-post evaluations.

As regards the result indicators, it is acknowledged that there were some difficulties in correctly recording data for result indicator regarding 'area under successful land management'.

Under the WFD, Member States have to identify significant pressures and report these in the RBMPs and into the Water Information System for Europe (WISE). It is recognised that the level at which information was being reported was not useful for analysis and so, through the WFD CIS process, changes to be made to reporting requirements have been discussed, that allow for better tracking of pressures and the degree to which measures being implemented are having effect.

Please see also reply to paragraph VIII.

### The Audit

#### 19

With regard to Special Report No. 7/2011, although the Commission admitted that improvements could be made in certain respects, it also underlined the strengths of the agri-environment measures as implemented in the period 2007-2013.

### Observations

#### 21

The mandatory components to be included in an RBMP are defined in the directive. The Commission has conducted a quality check on the RBMPs. The findings were published in Member State reports and bilateral meetings have been held to discuss the improvements that must be made in future RBMPs.

23 guidance documents were prepared through the WFD Common Implementation Strategy process to help Member States prepare good quality RBMPs.

Adherence to these guidance documents remains a priority for the Commission and Member States.

#### 24

The Commission is aware of the lack of progress on making agricultural measures operational at the farm level and will use the Court's evidence together with its own (reporting on programmes of measures) to follow this up bilaterally with Member States to improve action on this in the second cycle RBMPs.

#### 25

Member States develop RBMP at the level of the river basin district and then set objectives at water body level. The Commission will pursue the possible lack of such objectives with recommendations and, where necessary, infringement procedures will be addressed to the Member States.

However, in the absence of a clear definition of such objectives, the task of drawing up RDPs with due regard to the criteria of EU water policy will not become completely impossible and must still be carried out through the detailed analyses of strengths, weaknesses, opportunities and threats (SWOT) and of 'needs' – which form part of every RDP. Nevertheless, the absence of an adequate RBMP and objectives will indeed make this task much more difficult.

#### 33

The Commission shares the Court's conclusion that cross-compliance has increased awareness among farmers and has triggered some changes in farming practices in relation to water.

The Commission would also like to underline that important EU legislation regarding the protection of EU waters from agricultural pollutions, such as the Nitrates Directive or the Pesticides Regulation, has been part of cross-compliance from the beginning of this system.

The Commission shares the Court's conclusion that weaknesses are found in the application of cross-compliance in the Member States, but would like to underline that identified weaknesses are dealt with under the clearance of accounts procedure. This procedure is an effective incentive to improve the implementation of cross-compliance by Member States.

#### 35

The Commission considers that the pollution by phosphorus and pesticides is covered in some Member States by the Statutory Management Requirements (SMRs) in relation to the EU legislation as currently implemented. In some Member States, the Action Programmes in the context of the Nitrates Directive indeed includes also requirements on phosphorus and this directive is part of the rules on cross-compliance. The provisions of the Pesticides Regulation on the authorisation of Plant Protection Products are also part of the scope of cross-compliance.

## Reply of the Commission

Moreover, some Member States have complemented this legislation by certain GAEC standards.

### 37

The timing of implementation of the WFD and the SUD, including at farm level, is laid down in the texts themselves. If this timing is not respected by Member States, they may face infringement procedures.

### 38

The GAEC standard on use of water for irrigation is based on existing national legislation and aims at making a link between these national rules and CAP payments. Water abstraction prior authorisation is a requirement under art.11e) of the WFD which differs from water use, so it was not added to the GAEC on water use. Where the national law is not explicit on meters and reporting of water use, this will also be absent from the GAEC. The national legislation must in principle take into account the national, regional or local needs as regards water use. These needs are very different from one location to another and having the same requirements throughout the EU territory would not be relevant.

However, the Commission notes that, in the programming period 2014-2020, EAFRD support for investments in irrigation will be granted only if water metering is already in place at the level of the investment or is put in place as part of the investment. Various other conditions will also have to be met – many of them related to the status of water bodies affected by irrigation projects.

### 39

The relevant EU instrument to improve in a planned and coherent way the management of waters in the EU is the WFD, which will be proposed to be introduced into cross-compliance in due course when the obligations directly applicable to farmers will have been identified.

Member States should have included in their RBMPs measures to control abstraction and water pricing policies that allow for quantitative status consistent with 'good' status as required under the WFD. Where such controls are absent or deemed insufficient for the purposes of achieving the objectives of the WFD, the Commission is following this up with Member States.

### 42

The difficulty of checking certain requirements is not specific to cross-compliance but originates in the obligation itself. While it is true that the annual cross-compliance control campaign cannot be adapted to all types of requirements, findings made at other occasions can also be followed under cross-compliance.

### 43

When weaknesses are found during Commission's audits, financial corrections may be decided until the shortcomings are addressed.

### 46

The diversity of buffer strips is linked to the specific provisions of the Nitrates Directive. Buffer strips shall take into account the environmental conditions in the relevant regions of the Member State concerned (art 5 (3) (b)). It means that buffer strips can vary, provided that the design of the buffer strips together with the other measures present in the Action Program are sufficient to reduce water pollution caused by Nitrates (art 5 (5)).

The Commission has no formal role in the adoption of the Nitrates Action programmes where the measures, including buffer strips, are defined. However infringement procedures open show that the Commission does challenge the appropriateness of the measures in terms of meeting water quality objectives.

## 48

The Commission is aware of irregularities in controlling abstraction in the agricultural sector and is following this up bilaterally with Member States, pursuant to the RBMP assessment to ensure that effective legislation is in place.

See also reply to point 39.

## 49

Recital (6) does not single out EU water policy for a particular mention, but this policy is of course included in the phrase 'other Community policies'.

## 51

The Commission agrees that analysis of water-related pressures should be thorough, there should be a good level of consistency between RDPs and RBMPs, negative side-effects of water-related support should be avoided and programmed funding should either be spent efficiently or, if necessary, appropriately reallocated (with sound justification).

Performance in these areas could be improved in some cases for the period 2014-2020. The Commission believes that improvements will come about as a result of:

- the presence of explicitly water-related 'focus areas' (sub-priorities) within the new Rural Development Regulation itself – with corresponding indicators, against which Member States will set targets within their RDPs;
- the obligation, within the new Rural Development Regulation, to spend a minimum of 30 % of the total contribution from the EAFRD to each RDP on climate change mitigation and adaptation and environmental issues through certain measures;
- Member States' greater familiarity with the analytical framework of rural development policy and the process of composing River basin management plans -RBMPs- (in the framework of the WFD);

- particular conditions in the new Rural Development Regulation concerning support for investments in irrigation.

## Box 11

- Despite the focus of the DK Strategic Environmental Assessment on the water quality, the measure 121 (Farm Investment), also includes specific support for reducing water usage in the horticulture sector, thereby directly targeting water abstraction.
- Water abstraction can also be dealt with through basic measures to address water use efficiency, in line with the Polluters Pay Principle. These will not need to be financed with the RDP.
- The RDP includes training actions under measure 111 in order to increase the knowledge of farmers about environmental legislation. Advisory actions are also supported under measure 115 in order to promote a more sustainable use of water.
- In Slovakia, the RBMP were adopted and reported by March 2010 long after the environmental assessment of the RDP was carried out (the Slovak RDP itself was approved in 4 December 2007). This is why these measures identified in the RBMP were not addressed in the RDP's environmental analysis. Better consistency should be possible in future as the first RBMPs have now been notified.
- In Greece, the RBMPs were adopted long after the approval of the RDP. The negative environmental and economic impact of boreholes was nevertheless identified in the environmental assessment of the RDP. As a result, measure 125 co-finances projects that deal with the collection and exploitation of surface runoff waters, the modernization and improvement of conditions of irrigation, drainage, access and also infrastructure which helps monitoring and recording the impact of hydro-morphological pressure on aquifers.

## Reply of the Commission

### 53

The Commission agrees that for many Member States much better defined programmes of measures for the agricultural sector are necessary in the second cycle RBMPs and are pursuing this actively with Member States.

### 54

The new Rural Development Regulation for the programming period 2014-2020 contains particular safeguards with regard to support for investments in irrigation – linking it to water metering, to the submission of a RBMP with relevant measures to the agricultural sector, and to the status of water bodies.

Furthermore, various legislative acts, especially the Environmental Impact Assessment Directive, require that certain investments be preceded by an environmental assessment (this point is recalled by Art. 45(1) of the RDR).

Finally, the implementation of GAEC, minimum requirements for fertilisers and plant protection products, and water pricing are *ex ante* conditionalities for EAFRD funding (see Annex V of the RDR).

### Box 12

In general, an extension of irrigated area and / or increase in overall water consumption would have 'negative side-effects' only if insufficient water is available to comfortably cover these changes while ensuring the maintenance or achievement of good water status.

While under measure 125 in the Spanish RDPs the investments leading to the extension of the irrigated area or to an increase in the overall water consumption are not eligible, the risk of increasing the irrigated area through investments under measure 121 is mitigated. This is because the water infrastructures/pipelines which are located outside the holding and which bring the water to the holding could not be eligible under measure 125 if they led to an increase of the irrigated area.

### 58

Article 38 was activated in 2010 immediately after the deadline for the presentation of the RBMP. The new obligations became mandatory for farmers by the end of 2012, when the Rural Development Programmes were near to be closed in 2013. Thus, this measure was applied just by few Member States.

Apart from this it must be taken into account that the compensation payment can help to advance implementation. However, as Art. 38 concerns compensating costs, it does not add any environmental requirement. Accordingly, Member States may well pursue an ambitious implementation without using the possibilities under Article 38.

### 59

Although the reasons cited by the Court for low use of measure 213 provide valid explanation, two further points should be understood.

Firstly, in general, some rural development measures are more widely used than others.

Secondly, measure 213 is a somewhat unusual measure in that it offers compensation for disadvantages arising from mandatory requirements in particular areas. Most measures operate on a different basis (i.e. payments for investments made / practices undertaken voluntarily). This distinctive feature of measure 213 may make some Member States cautious about implementing it until they have seen others do so successfully.

In any case, the Commission expects greater use of the measure covering WF D payments in the period 2014-2020, given that RBMPs are now in place.

**64**

See reply to point 83.

**65**

Rural development measures mentioned by the Court which are not subject to cross-compliance are primarily investment measures.

The 2014-2020 rural development legislation contains provisions to help ensure that support is granted only to investments which are environmentally sustainable. In this respect, the provisions related to investments in irrigation are especially detailed.

The related administrative burden of the inclusion of investment measures into cross-compliance would be high because the management of these measures is multi-annual. Moreover, the impact would be very limited since most farmers who receive support for investments through rural development policy are already affected by cross-compliance through the Pillar I direct payments schemes and through area-related rural development measures.

**67**

For the new programming period 2014-2020 a new system for monitoring and evaluating the CAP as a whole against its objectives has been introduced in Regulation 1306/2013. This system also contains information on quantity of water used and water quality. However, linking water quality and quantity with agricultural practices is very complex, given the wide variety of agricultural practices and agronomic circumstances across the EU, the pressures from non-agricultural sources which also have a significant impact on water quality and availability, and the challenges in attributing causal linkages. Therefore, the costs and administrative burden related to the monitoring and evaluation systems need to be carefully balanced against the benefits related to improved management and policy making.

For multi-annual programmes such as the Rural Development Programmes, certain results, such as impacts on water quality can only be properly assessed well into the programming period, and afterwards. Such effects can only be measured after sufficient time since implementation has passed.

**68**

Controls cannot provide information about the impact of a policy. The measurement of an impact requires a carefully designed evaluation which allows separating the effects of a policy such as cross-compliance from other intervening factors.

**69**

In the context of the CMEF, a number of indicators are defined that help to measure progress towards objectives. These are a source of information used by the evaluators during their work.

**70**

Since 2014, the new monitoring and evaluation framework contains also information on water quantity. Overall, it should be noted that collecting information involves practical difficulties and a financial cost. Therefore there is a limit to what information can be collected as well as on the frequency of data collection.

Lessons learnt from the 2007-2013 CMEF showed that it was very difficult to set accurate targets for impact indicators such as water quality due to the numerous external factors involved. Guidance documents have been provided to Member States to support them in the measurement of these impact indicators which are expected in the ex-post evaluations.

As regards the result indicators, it is acknowledged that there were some difficulties in correctly recording data for result indicator regarding 'area under successful land management'.



**71**

Overall, the mid-term evaluations came too early in the programs to be able to generate reliable data on impacts and results, since in most cases it was too early in the programme for the results/impacts of the policy to materialise.

For this reason, the mid-term evaluations have been abolished in the new programming period.

For multi-annual programmes such as the Rural Development Programmes, certain results, such as impacts on water quality can only be properly assessed well into the programming period, and afterwards. Such effects can only be measured after sufficient time since implementation has passed. For most interventions, this was not yet the case at the moment of the mid-term evaluation (2010).

**74**

Through the WFD Common Implementation Strategy working group on reporting, efforts are being made to change reporting so that a clearer link can be made between pressures, measures and response. Moreover, the Commission will take the necessary action to ensure that WFD monitoring requirements are fulfilled.

**78**

The Commission together with the European Environment Agency (EEA) are working with Member States to improve WISE.

**79**

Agri-environment indicators are under continuous improvements and some of them include farming practices, such as AEI 15 (Gross Nutrient Balance), AEI 12 (intensification/extensification, AEI 11 (farm management practices), AEI 7 (irrigation). In the future, it is acknowledged that better synergies between CMEF, Integrated Administration and Control System data and the Farm Structure Survey should be encouraged, in line with Article 17 of the Inspire Directive on the sharing of spatial data sets.

## Conclusions and recommendations

**82**

See reply to paragraph V.

**83**

Important water-related EU legislation is already included into the scope of cross-compliance. In addition, water-related issues are dealt with under the Water Framework Directive, which will be proposed for introduction in due course into the scope of cross-compliance when the directive will have been implemented in all Member States and the obligations directly applicable to farmers will have been identified. In the meantime water-related GAEC standards have been set in order to cover certain basic requirements already existing in national legislation so as to make a link with CAP payments.

Cross-compliance contributes to the objectives of the polluter pays principle but is not designed to compensate for the cost of environmental damages. The principle for the calculation of the cross-compliance reductions is indeed based on a percentage of all concerned CAP payments received by the farmer. It is the percentage itself, not the absolute amounts, which reflects the seriousness of the farmer's breach of EU rules, according to the proportionality principle.

### Recommendation 1

The Commission considers that this recommendation has been partly implemented and will be fully implemented when certain conditions are fulfilled.

The Commission has proposed for the CAP post 2014 that the Water Framework Directive (WFD) as well as the Sustainable Use of pesticides Directive (SUD) will be part of cross-compliance when these directives will have been implemented in all Member States and the obligations directly applicable to farmers have been identified. The European Parliament and the Council have agreed to this approach and made a joint statement in this respect at the occasion of the adoption of the CAP reform.

In 2012, the European Water Directors<sup>2</sup> took note of the recommendations from the Strategic Coordination Group and the Commission. Water Directors recognised that the list of basic measures proposed should be considered for inclusion in cross-compliance if a decision to add WFD provisions in cross-compliance is reached in the European Parliament and the Council in the CAP discussions.

Pending this introduction into cross-compliance, co-legislators have also agreed that these two directives will be part of the compulsory scope of the Farm Advisory System so that all farmers concerned have access to the relevant advice. The main elements of EU water policy could therefore be included into the CAP in due course.

As for the rural development policy, the necessary tools and mechanisms are provided for the period 2014-2020 through the new Rural Development Regulation (RDR) – Regulation (EU) No 1305/2013 of the European Parliament and of the Council – and through related legislation.

Within the RDR (i.e. within the key legislation itself), ‘improving water management’ and ‘increasing efficiency in water use by agriculture’ are explicit elements of the ‘priorities’ against which Member States / regions must programme spending within their RDPs.

A range of measures is available to help fulfil these priorities – support for training, use of advice, investments, multi-annual land management practices and experimental development (including within the European Innovation Partnership for Agricultural Productivity and Sustainability).

Finally, it should be borne in mind that rural development policy must address a range of priorities and financial resources are limited.

## Recommendation 2

This recommendation is addressed to the Member States.

<sup>2</sup> <https://circabc.europa.eu/w/browse/25d8b24a-c247-4275-9a56-9676a75a90f6>

## 86

EU water policy is implemented partly with the support of ‘funds’, but partly without (in fulfilment of the polluter pays principle). Non-funded legal requirements play a very important role, in the whole package of measures necessary to address agriculture’s impact on water.

## Recommendation 3

### Reply to the first paragraph of recommendation 3:

The Commission considers that this recommendation has been partially implemented.

On the basis of the Water Blueprint adopted in 2012, the Commission will continue the well regarded WFD Common Implementation Strategy (CIS) process that has produced 23 guidance documents so far in detailing how the WFD should be implemented. The mandate of the CIS working groups is firmly focussed on improving the quality of RBMPs and improving the status of EU waters by delivering on the proposals listed in the Blueprint.

The Commission is following up on significant gaps in the measures needed to implement the WFD with Member States bilaterally with the aim to resolve the issues in time for the second RBMPs in 2015. In some cases infringements will be opened if appropriate.

In 2016, Member States will report to the Commission their updated RBMPs. The Commission will assess them and, inter alia on that basis, will accomplish a review of the WFD and propose any necessary amendments to it by 2019 at the latest, and/or put forward other initiatives.

With regard to the RDP, one of the basic measures – article 9, water pricing policy is an ex ante conditionality for the RDP and as such Member States will have to ensure that this requirement is fulfilled to ensure that they can draw down RDP funds in certain cases.

### Reply to the second paragraph of recommendation 3:

This part of the recommendation is addressed to the Member States.



## Reply of the Commission

### 87 Second indent

The Commission together with the EEA are working with Member States to improve WISE.

### 87 Third indent

The correct and effective implementation of the agri-environmental indicators depends on the data and information supply of Member States. Without this information the indicators cannot function correctly. This problem of insufficient information is particularly affecting water indicators.

### Recommendation 4

#### Reply to the first paragraph of recommendation 4:

The Commission considers that this recommendation is currently being implemented.

For the new programming period 2014-2020, a new system for monitoring and evaluating the CAP as a whole against its objectives was introduced in Regulation 1306/2013. This system also contains information on quantity of water used and water quality. However, linking water quality and quantity with agricultural practices is very complex, given the wide variety of agricultural practices and agronomic circumstances across the EU. Therefore, the costs and administrative burden related to the monitoring and evaluation systems need to be carefully balanced against the benefits related to improved management and policy making.

For multi-annual programmes such as the Rural Development Programmes, certain results, such as impacts on water quality can only be properly assessed well into the programming period, and afterwards. Such effects can only be measured after sufficient time since implementation has passed.

Lessons learnt from the 2007-2013 CMEF showed that it was very difficult to set accurate targets for impact indicators such as water quality due to the numerous external factors involved. Guidance documents have been provided to Member States to support them in the measurement of these impact indicators which are expected in the ex-post evaluations.

As regards the result indicators, it is acknowledged that there were some difficulties in correctly recording data for result indicator regarding 'area under successful land management'.

Under the WFD, Member States have to identify significant pressures and report these in the RBMPs and into the WISE system. The Commission recognises that the level at which information was being reported was not useful for analysis and so, through the WFD CIS process, changes to be made to reporting requirements have been discussed, that allow for better tracking of pressures and the degree to which measures being implemented are having effect.

#### Reply to the second paragraph of recommendation 4:

This part of the recommendation is for the Member States.



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Protecting the quality of Europe's water resources has been a priority for the EU since the late-1970s. Agriculture, as one of the main users and polluters of water, has a major role to play in the sustainable management of water. The EU has repeatedly acknowledged that its different policies need to be coherent and therefore recognises the need to ensure that its environmental policies, including in relation to water, are supported by the Common Agricultural Policy. This audit examined whether the EU's water policy objectives have been successfully integrated into the CAP and found this to be only partially the case.



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