

EXPLANATORY DOCUMENT: METHODS OF THE RURAL DEVELOPMENT PREMIA CALCULATION TO EXCLUDE DOUBLE FUNDING (ART.28-30)

1. THE PRINCIPLE OF NON- DOUBLE FUNDING – AND ITS IMPLICATIONS

Rural development provides for a possibility to pay farmers and other land managers for (voluntary) commitments. The premia paid for taking up these commitments are calculated as a sum of income lost and costs incurred, resulting from the commitment

All three regulations, rural development (RD), direct payments (DP) and horizontal regulation (HZR), as well as draft common provision regulation (CPR) include **provisions forbidding double funding** (see also annex I).

Non-double funding is a general principle of the ESI Funds (Art.65 of the Common Provisions Regulation) and of the CAP (Art.30 of the Horizontal Regulation). For rural development, three articles mention explicitly the obligation to exclude double funding: Articles 28, 29 and 30 of the RD regulation. These articles refer to **agri-environment-climate** (AEC), **organic farming**, and compensation payments for extra cost resulting from **Natura 2000 and the Water Framework Directive (WFD)** respectively.

The non-double funding principle has practical implications for the premia calculated for these three measures. In these calculations the relationship between the nature of commitments associated with the above-mentioned measures and the greening practices required in the 1st pillar is primordial.

There are **three possible types of relationships between these commitments and greening** practices:

- Commitments may have no link to greening obligations
- Commitments may be technically of a similar type as the greening obligations in the 1st pillar (regardless whether the commitments are used as equivalent or not)
- Commitments may be considered as equivalent to greening practices, while being technically different (points 3 and 4 of Section I and point 7 of Section III of Annex IX to DP regulation).

In the case of the commitments referred to in the second and third of the afore-mentioned bullet points, the calculations of the premia must ensure that **the same practices are not paid twice under the 1st and 2nd pillar**. In other words, these calculations can only cover commitments which go beyond the relevant greening practices and beyond all relevant mandatory requirements.

2. HOW TO MAKE PREMIUM CALCULATIONS TO AVOID DOUBLE FUNDING

2.1. Principles of calculations to respond to non-double funding

With respect to the afore-mentioned three different types of relationships between the relevant commitments and greening practices, the following considerations concerning double funding apply:

Case 1: The commitments (AEC, WFD, or Natura 2000) have **no direct link to the greening practices** of the 1st pillar:

- *There is no risk of double funding. Member States calculate the premia as usual:* they shall identify the income loss and additional costs linked to the specific practices included under commitments.

Case 2: The commitments (AEC, WFD, or Natura 2000) are of a **similar nature** as the greening practices but **not** used for the purpose of equivalence or the commitment concerns organic farming:

- *There is a risk of double funding. Therefore, the **premia calculation** related to the commitments in the 2nd pillar **must cover only those income losses and additional costs** which correspond to the activities under the commitments **which go beyond the compulsory greening practices**.*

Case 3: The commitments (under rural development measure of agri-environment-climate) which are used for the purpose of **equivalence** and for replacing the greening obligations. Among these commitments two categories have to be considered:

a) Commitments of a nature similar to the greening practices in the 1st pillar (mentioned in Annex IX of the DP regulation with no asterisk):

- *There is a risk of double funding. To avoid double funding, the **premia calculation** related to the commitments in the 2nd Pillar **must identify only those income losses and additional costs** which correspond to the activities under the commitments **which go beyond the compulsory greening practices**.*

b) Commitments of a nature different from the greening practices in pillar I (commitments marked by an asterisk in Annex IX and any further equivalent practices added in the future to that Annex):

- *There is a risk of double funding. However, as direct comparability is difficult, **double funding is to be avoided through application of a lump sum** reduction corresponding to a part of the greening payments in the Member States or region for each greening practice, as defined in the framework of the delegated act of Regulation 1307/2013.*

Note: This lump-sum deduction shall only apply on the area necessary for fulfilling the requirement of equivalence for the

green direct payment. In case the area coverage of the commitment goes beyond the equivalent area, the AEC premia on the additional area shall be paid without applying the lump-sum deduction.

If a Member State opts for the implementation of greening by the equivalence approach, individual beneficiaries in a given area can choose to implement greening either by fulfilling greening obligations provided for in the DP Regulation or by carrying out an agri-environment-climate commitment considered equivalent to greening.

In case of AEC commitments marked by an asterisk as provided for in Annex IX of the DP regulation, in a given area two distinct premia may exist for the same asterisk-marked AEC commitment:

- A reduced 2nd pillar premia (due to a lump sum's deduction) for farmers who use the asterisk-marked AEC commitments in order to fulfil their greening obligations under the equivalence approach;
- A full 2nd pillar premia for farmers who carry out the same asterisk-marked AEC commitments as above but who do not opt for equivalence (such farmers implement both the greening obligations as provided for in the DP regulation and the AEC commitments); (a full premium also applies to the areas under AEC commitments which go beyond the area required under the 1st pillar, i.e. EFA obligation).

2.2. Practical aspects related to premia deductions

2.2.1. General approach to premia deduction

The most pragmatic way to premia deduction would be to compare the income and cost situation of a farmer applying greening with the income and cost situation of a farmer carrying out AEC commitments or converting to or maintaining organic farming or being beneficiary of the support under Art.30 of the RD regulation.

In case the actual premia for agri-environment-climate or organic farming commitments is set at the level which compensates beneficiaries only for part of the additional costs and income foregone resulting from the commitments made, the deduction due to the non-double funding principle shall be made at the level of the full calculated payments (i.e. at the full amount calculated as the additional costs and income foregone resulting from the commitments).

The so calculated amount of the maximum possible premia and, if applicable, the actually paid amounts should be indicated in the programme.

2.2.2. Organic farms as beneficiary of AEC support

If the beneficiary of organic farming support in the 2nd pillar also carries out agri-environment-climate commitments under Art.28 of the RD Regulation, such beneficiary shall receive the same premia as any other beneficiary undertaking the same commitments under Art.28 (with exceptions defined in point 3.4 of this document) irrespective of whether the organic farming beneficiary actually applies all greening practices or not. In other words, the AEC-related premia for organic farmers shall only be granted for commitments going beyond the greening practices.

3. SPECIFIC CASES

3.1. Small farmers

Farmers participating in the small farmers scheme under the 1st pillar are exempted from the obligation to observe the greening practices (Art.61(3) of the DP regulation).

These farmers receive payments per farm in a single amount which, according to Art.61(2) of the DP regulation, "*shall replace the payments to be granted pursuant to Titles III and IV*"¹. Therefore, these payments are not directly linked to the greening component of the Direct Payment.

For this reason, payments granted under Art.28, 29 and/or 30 of the RD regulation to farms participating in the small farmers scheme should not be considered as generating double funding. Therefore, such farmers can receive the full premia as calculated under these Articles.

As a farmer can withdraw from the small farmers scheme, the multiannual contracts for AECS and/or organic farming shall include a clause specifying that the principle of non-double funding will be applicable to farmer/beneficiary carrying out AEC and/or organic farming commitments once he/she leaves the small farmers scheme.

Conclusion: Farmers participating in the small farmers scheme are not subject to the non-double funding principle and they may receive the full premia calculated following the rules of income foregone and additional costs without applying any reduction due to greening.

3.2. Farms exempted from certain pillar I greening obligations

There are several categories of farms, others than those under the small farmers scheme, which are exempted from the greening practices of the 1st pillar (e.g. arable land up to 15ha and 10ha in case of EFA and crop diversification respectively) or which are entitled ipso facto to the greening payment (organic farmers).

¹ Basic payment scheme, single area payment scheme and related payments (title III) and coupled support (title IV).

However, these farms, in spite of being exempted from the greening practices, receive full Direct Payments which include the greening component. If such farms receive payments for implementing operations under Art. 28, 29 and 30 of Reg. 1305/2013 the risk of double funding exists.

According to the provisions concerning double funding, payments under Art. 28, 29 and 30 of Reg. 1305/2013 are subject to reductions if they concern commitments similar to the greening practices.

In line with the approach to premia calculations described in section 2, for obligations related to crop diversification or permanent grassland, the exempted farms would receive the same (reduced) premia as the farms subject to the greening obligations.

However, in the case of EFA, the situation is different and more complex. In order to avoid double funding, Member States will have to take into consideration the theoretical EFA obligations on 5% of arable land of the farm in question when implementing operations under AEC measures which are linked to EFAs. The premia for EFAs will have to be reduced like the premia for any other farmer under greening.

Conclusion: Farmers exempted from certain greening obligations in the 1st pillar are subject to the non-double funding principle and the premia related to the commitments in the 2nd pillar must cover only those income losses and additional costs which correspond to the AEC commitments going beyond the compulsory greening practices.

3.3. Beneficiaries of Article 28, 29, and 30 support not eligible for direct payments

Beneficiaries of the support under these articles who are not eligible for direct payments in pillar I (e.g. agricultural areas without entitlements, NGOs), under the EU or national legislation, are not subject to the greening obligations set in pillar I.

This category of beneficiaries is not entitled to receive any support related to greening (neither are they eligible for basic direct payments); therefore, there is no risk of double funding between the green payments and the 2nd pillar payments.

Conclusion: Beneficiaries of the commitments falling under Articles 28, 29, and 30 who are not entitled for direct payments under the 1st pillar may receive the full premia calculated following the rules of income foregone and additional costs without applying any reduction due to greening.

3.4 Specific case of Ecological Focus Area

According to the provision of Art. 46 of Regulation 1307/2013 "*where the arable land of a holding covers more than 15 hectares, the farmer shall ensure that (...) an area corresponding to at least 5% of the arable land of the holding (...) is ecological focus area*".

Annex IX of the above Regulation provides for the list of AEC commitments which might be used as equivalent to the 1st pillar's EFA obligation.

In the case of these or similar types of commitments, there is a risk of double funding and, therefore, the payment reduction to avoid double funding shall apply to payments applied to 5% of the arable land of the holding subject to EFA requirements.

Premia calculation for AEC commitments on EFA must take into consideration the following aspects:

- *Quantitative aspect:* when a relevant AEC commitments is applied on, for instance, 10% of the arable land, the premia for the first 5% is reduced due to the need to avoid double funding) while for the area exceeding 5%, the full premia is paid;
- *Qualitative aspect:* when the content of the commitment goes beyond what is required for equivalence, a payment corresponding to the additional cost and income foregone resulting from this additional level of commitment can be paid in full.

Irrespective of whether a beneficiary of AECM is subject to the EFA obligation in the 1st pillar, as long as this beneficiary receives the "greening" part of direct payments, the AEC payment for commitments of a nature similar to the EFA will be reduced on 5% of the area where these commitments are applied.

4. OTHER RELEVANT ISSUES

4.1. Certification of the calculations

In order to ensure that all the premia respect the principle of non-double funding, the certification of the correctness of the premia calculations for the relevant measures shall include a specific reference confirming that the proposed premia avoids double funding.

4.2. Relevant multi-annual commitments from the programming period 2007 – 2013

Art. 46 of Reg. (EC) No 1974/2006 obliges MS to provide a revision clause for agri-environment commitments undertaken from 2012 onwards and whose implementation extends beyond the end of the current period to allow for adjustment of those commitments to the legal framework of the following (new) programming period. Thereby, such AE commitments are also subject to the principle of non-double funding and they require adjustment to the provisions of non-double funding.

However, the AE commitments signed before 2012 (or before 2011 if a Member State decided to introduce the revision clause as of 2011), even though they are not concerned by the above-mentioned revision clause, they are also subject to the principle of non-double funding as long as these commitments are used for the purpose of equivalence (Art.43(3) of the DP regulation).

Annex I

Principle of non-double funding – legal provisions

The CPR text in Art.65(11) states: "An operation may receive support from one or more ESI (European Structural and Investment) Funds or from one or more programmes and from other Union instruments, provided that the expenditure item included in a request for payment for reimbursement by one of the ESI Funds does not receive support from another Fund or Union instrument, or support from the same Fund under another programme."

The HZR stipulates in Art.30 that "Expenditure financed under the EAFRD shall not be the subject of any other financing under the Union's budget".

When referring to the equivalent practices, the DPR in Art.43(4) states that "the equivalent practices (...) shall not be the subject of double funding".

The RDR stipulates in Art.28(6) – Agri-environment-climate, Art. 29(4) – organic farming and Art. 30(1) – Natura 2000 and Water Framework Directive payments: "When calculating the payments (...) [AEC and organic farming payments] / support under this measure [Natura 2000 and WFD payments], Member States shall deduct the amount necessary in order to exclude double funding of the practices referred to in Article 43 of Regulation (EU) No 1307/2013."

It further specifies, in Art.28(10), Art.29(6) and Art.30(8): "In order to ensure that double funding (...)is excluded, the Commission shall be empowered to adopt delegated acts in accordance with Article 83 laying down the calculation method to be used, including [in case of agri-environment-climate measure] in the case of equivalent measures under Article 43 of Regulation (EU) No 1307/2013."

Annex II

Annex IX of Regulation 1307/2013.

ANNEX IX

LIST OF EQUIVALENT PRACTICES TO GREENING referred to in Article 43(3)

I. Practices equivalent to crop diversification:

1) Crop diversification

Requirement: at least three crops, the main crop covering a maximum of 75% , and any one or more of the following applying:

- there are at least four crops,*
- lower maximum thresholds apply,*
- there is a more appropriate selection of crops, such as, for example, leguminous, protein crops, crops not requiring irrigation or pesticide treatments, as appropriate,*
- regional varieties of old, traditional or endangered crop types are included (on at least 5 % of the rotated area.*

2) Crop rotation

Requirement: at least three crops, the main crop covering a maximum of 75%, and any one or both of the following applying:

- a more environmentally beneficial multiannual sequence of crops and/or fallow is followed,*
- there are at least four crops*

3) Winter soil cover (*)

4) Catch crops (*)

II. Practices equivalent to maintenance of permanent grassland:

1) *Management of meadows or pastures*

Requirement: maintenance of permanent grassland and any one or more of the following:

- *Cutting regime or appropriate mowing (dates, methods, limits),*
- *Maintenance of landscape features on permanent grassland and control of scrub,*
- *Specified grass varieties and/ or seeding regime for renewal depending on the grassland type, with no destruction of high nature value,*
- *Evacuation of forage or hay,*
- *Appropriate management for steep slopes,*
- *Fertiliser regime,*
- *Pesticide restrictions*

2) *Extensive grazing systems*

Requirement: maintenance of permanent grassland and any one or more of the following:

- *Extensive grazing (timing, maximum stocking density),*
- *Shepherding or mountain pastoralism,*
- *Using local or traditional breeds for grazing the permanent grassland.*

III. Practices equivalent with ecological focus area :

Requirement: application of any of the following practices on at least the percentage of the arable land set pursuant to Article 46(1)

1) *Ecological set-aside*

- 2) *Creation of "buffer zones" for high nature value areas, Natura 2000 or other biodiversity protection sites, including along hedgerows and water courses*
 - 3) *Management of uncultivated buffer strips and field margins (cutting regime, local or specified grass varieties and/ or seeding regime, re-seeding with regional varieties, no use of pesticides, no disposal of manure and/or mineral fertilizers, no irrigation, no soil sealing)*
 - 4) *Borders, in-field strips and patches managed for wildlife or specific fauna (herbaceous border, protection of nests, wildflower strips, local seed mix, unharvested crops)*
 - 5) *Management (pruning, trimming, dates, methods, restoration) of landscape features (trees, hedgerows, riparian woody vegetation, stone walls (terraces), ditches, ponds)*
 - 6) *Keeping arable peaty or wet soils under grass (with no use of fertilisers and no use of plant protection products)*
 - 7) *Production on arable land with no use of fertiliser (mineral fertiliser and manure) and/or plant protection products, and not irrigated, not sown with the same crop two years in a row and on a fixed place (*)*
 - 8) *Conversion of arable land into permanent grassland extensively used*
- (*) *Practices subject to the method referred to in point (c) of Article 43(12).*