

Verifiability and controllability of measures:

Assessment of risks of errors

Article 69 of Council Regulation EAFRD/[...]

This fiche is based on the Commission's proposal for a regulation of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)" (COM(2011) 627/3) and, where relevant, on the Commission proposal laying down common provisions on the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund (CF), the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF) covered by the Common Strategic Framework (COM(2011) 615 final).

*Since both proposals mentioned above are currently under discussion with the European Parliament and the European Council, this fiche provides **preliminary guidance**, which will only be finalised after the formal approval of the relevant legal framework.*

1. INTRODUCTION

Under Article 69 of the Rural Development Regulation for the new programming period (2014-2020) Member States have to ensure that all the rural development measures they intend to implement are verifiable and controllable. For the first time, the *ex-ante* assessment must be undertaken jointly by Managing Authorities and Paying Agencies. This will increase awareness of the feasibility of implementing certain measures and their impact on errors.

From a programming perspective and taken into account the obligatory ex ante assessment, some guidance is provided in the following sections which will allow Member States to improve the verifiability and controllability of the measures included in the new RDP.

2. WHAT'S NEW

By Article 48(1) of Reg. 1974/2006 Member States are already required to ensure verifiability and controllability of the rural development measures, although it is left to MS to define control arrangements.

For 2014-2020 period, Article 69 introduces the obligation to conduct a joint ex ante assessment by the managing authority and the paying agency in order to establish the verifiability and controllability of each of the rural development measures included in the RDP.

3. THE ERROR RATES AND AUDIT FINDINGS

The Commission Staff Working Document on the assessment of root causes of errors in the implementation of rural development policy and corrective actions (SWD 2013(244)F), identified as one of the main sources of errors the lack of controllability and verifiability assessment of certain measures. In particular, the existence of eligibility conditions and/or commitments which are unclear and which pose difficulties to be measured and controlled and may lead to a higher risk of errors.

In the implementation, most quantifiable errors are attributable to investment measures, although area-related ones are also prone to errors. The main causes identified are eligibility errors and within them, agri-environment requirements and land eligibility.

Assurance of the capacity of MA and PA to control and verify conditions and commitments is an outstanding issue in order to reduce error rates in the rural development policy.

4. KEY ISSUES ON VERIFIABILITY AND CONTROLLABILITY

4.1. Private investments

Tendering procedures for private beneficiaries

EU and national rules on public procurement must be enforced and adequate procedures established. Tendering practices should guarantee real concurrence, transparency and publicity, in order to assure sound financial management and best value for money.

Final recipients of EU Funds are not always informed about their commitments and obligations when managing public money, mainly the need of open and transparent procedures to select providers. Therefore, Managing Authorities are encouraged to deliver quality and precise information about these tendering good practices, providing the necessary training, assessment and ex-ante surveillance.

Guidance on public procurement in the use of ESI Funds is being developed with the aim of supporting Managing Authorities in the task of better inform and communicate final recipients the concrete steps and formal requirements that should be met when managing public money.

Reasonability of costs

The achievement of the Best Value for Money principle requires information about available technologies, product or service features and market prices.

Simplified costs options (flat rate financing, standard scale of unit costs and lump sums) require an ex-ante assessment on the calculation method, which should be carried out thoroughly, and will be valid for any cost falling under the selected category. This method should guarantee that costs incurred and declared are reasonable and within market standards.

The application of simplified costs also reduces the administrative burden on beneficiaries and management bodies. This makes it easier to deploy the funds more efficiently and correctly.

This method should be used whenever appropriate to facilitate the implementation and checking of measures and expenditure.

The Commission is drafting guidance on simplified costs for ESI Funds. This will be published once the CPR Regulation is approved. It clearly explains different methods, how to apply them correctly, and provides concrete examples.

In the case of not using simplified costs options, the Managing Authority should ensure that final recipients are informed about the procedures.

Adequate check and control systems

The prevention and detection of practices in funds management that could lead to reimbursement of payments and increased error rates should be encouraged at the earliest stages, preferably during grant application phase. Main causes of errors in private investments are public procurement misconduct which usually is connected to increased costs and ineligibility of costs. Therefore, Managing Authorities are encouraged to envisage checks and control issues on these critical topics from the very beginning of the project cycle.

Related measures

Most related measures as regards risks associated with these key issues are the ones dealing with investments, notably: Article 18 "Investments in physical assets", Article 19 "Restoring agricultural production", Article 20 "Farm and business development", Article 22 "Investments in forest area development and improvement of the viability of forests", Article 26 "Investments improving the resilience and environmental value of forest ecosystems", Article 27 "Investments in forestry technologies" and Articles 42 and 44 "Leader".

4.2. Small Infrastructure and Public investments

Public procurement

Public bodies, mainly local entities, being final recipients of an EAFRD co-financed grant, shall comply with EU and national laws on public procurement. Audit findings have shown that in some cases public bodies do not respect their legal obligations when selecting providers. Therefore, a special emphasis must be given by Managing Authorities to inform about public procurement aspects in the framework of infrastructure projects.

Good practices have been identified, such as: checklists for final recipients on public procurement, validation by Managing Authorities of the procedure before the bidder or the tenderer is appointed, specific training or guidance, dedicated webpage for public procurement announcements, etc.

Related measures

Most related measures as regards risks associated with small infrastructure and public infrastructure are those dealing with public bodies as final beneficiaries, notably: Article 21 "Basic services and village renewal in rural areas", Article 23 "Afforestation and creation of woodlands", Article 25 "Prevention and restoration of damage to forest", Article 26 "Investments improving the resilience and environmental value of forest ecosystems", and Articles 42 and 44 "Leader".

4.3. Area and Animal related measures

Commitments difficult to verify and/or control

It can be difficult to verify/control certain types of commitments, even though they are important from an environmental viewpoint. In discussions with Member States, the following examples were identified as sometimes presenting additional challenges for verification and control:

- Conditions linked to minimum/maximum livestock densities (approach to verify fulfilment, possibly averaging over the whole year)
- Actions which must be fulfilled by a certain date or not before a certain date, where the beneficiary should notify the timing of the activity
- Commitments which must be fulfilled at a particular moment that cannot be precisely defined in advance (e.g. "before harvest")
- Reductions in applications of fertilisers and plant protection products (it needs to be considered to what extent a partial reduction – vs. a total reduction – can be checked reliably. Or a whole-farm approach (farm gate balance calculations) vs. commitment covering only a part of the farm). In this context, it has to be analysed whether a "part-of-the-farm" approach could be an option, on a case by case basis.

This means that, when these types of commitments are programmed, additional care will be needed to ensure a satisfactory level of verification/control. The Managing Authority should establish an appropriate system of verification and information of beneficiaries in order to address the higher risks. Given the environmental and agricultural importance of measures of this type in many circumstances, Member States should find solutions to the control/verifiability issues.

Pre-conditions as eligibility conditions

General "entry" conditions (e.g. minimum livestock density) which are not part of the calculation for agri-environmental support should not be introduced in agri-environment measures. They have to be considered as eligibility conditions for the whole agri-environmental commitment, so that if a beneficiary does not comply with them, their support is withdrawn in its entirety. It is not possible to impose a partial reduction even if the beneficiary complied with the other commitments made in the agri-environmental contract.

As far as possible, eligibility conditions must not include any general "entry" condition. Conditions that should be maintained during the whole programming period should be included only on justified grounds. This is a "yes-no" issue and therefore, in case of non-compliance, the correspondent reduction is 100%. Some eligibility conditions which are set by national authorities may lead to difficulties as regards their controllability and verifiability. However, MS could introduce those commitments in the premia calculation in order to allow proportionate reduction. The following examples may help to better understand the issue:

- Some MS have linked the natural handicap payment to a certain livestock density and made it an eligibility condition which inevitably increases the likely error rate. If livestock density requirements are really necessary to achieve environmental objectives they should be set on an average level, in order to allow normal variation and to limit the risk of errors.
- Some MS established minimum tree density as an eligibility condition. When for example an absolute minimum density of 60 trees is fixed and there are only 59 trees, the non-respect of this eligibility condition leads to 100% sanction.
- Some MS have set as eligibility condition a requirement that the production needs to be sold as an organic product. As the sales are not always possible (for example lack of specialised

distribution channels so the product has to be sold as conventional), this increases the error rate.

- Some MS require that only part of a farm be certified as organic in order to be eligible for rural development support for organic farming. Although EU legislation on organic farming allows such "partial" certification, this approach creates control problems when applied to rural development policy. In case of "partial" approach, the boundaries between organic and non organic farming must be clearly and justifiable established, allowing easy delimitations when audits are carried out.

Related measures

Most related articles as regards risks associated with area and animal related measures are those that define payments linked to surface or other unitary costs, notably: Article 29 " Agri-environment – climate", Article 30 " Organic farming", Article 31 " Natura 2000 and WFD payments", Article 32 "Payments of areas facing natural and other specific constraints", Article 34 "Animal welfare" and Article 35 " Forest-environmental and climate services and forest conservation".

4.4. General issues which apply to all measures

Selection of beneficiaries

The Management authority is obliged to define selection criteria following consultation with the Monitoring committee. There should be ensured equal treatment of applicants, better use of financial resources and targeting of measures in accordance with the Union priorities for rural development.

The Selection process for beneficiaries' selection must be organised under transparent and well documented procedures, except for measures under Articles 29 to 32, 34 to 35 and 37 to 40.

Specific Guidelines on eligibility conditions and selection criteria have been already been drafted and presented to the RDC.

Payment claims

The incorrect payment claim by beneficiaries and deficient subsequent treatment by managing Authorities has been identified as a main cause of error, thus jeopardizing the results achieved by the implementation of the measure.

Therefore, it is highly recommendable as a general issue to envisage the most appropriate procedure for handling payment claims which allows preventing and detecting possible irregularities or mistakes. In this sense, the use of IT tools is very much encouraged.

IT systems to reduce errors

Adequate IT systems are important to minimise risks and improve the controllability and verifiability of the measures. They can support any stage of the grant cycle, both beneficiaries and public

administrations and may serve for different purposes: information, payment claims, documents submission, alert systems, checks and controls and so on.

Therefore, the implementation of measures should be backed by adequate and dedicated IT tools which will help Managing Authorities to exercise their verification and control tasks in the best way possible.

5. PROGRAMMING AND ARTICLE 69

Article 69 of the RD Regulation provides with the legal basis to conduct the assessment on verifiability and controllability of measures, both at the programming and the implementation stages. Managing Authority and the Paying Agency of each rural development programme shall provide an ex ante assessment of the verifiability and controllability of the measures to be included in the rural development programme. Ex ante assessment shall take into account the results of controls in the previous programming period. Where the assessment reveals that the requirements of verifiability and controllability are not met, the measures concerned shall be adjusted accordingly.

In the case of using standard costs or additional costs and income foregone within a measure, Member States shall ensure that the relevant calculations are adequate and accurate and established in advance on the basis of a fair, equitable and verifiable calculation. To this end, a body that is functionally independent from the authorities responsible for the programme implementation and possesses the appropriate expertise shall perform the calculations or confirm the adequacy and accuracy of the calculations. A statement confirming the adequacy and accuracy of the calculations shall be included in the rural development programme.

Guidance on standard costs is also being drafted jointly by all ESI Funds, in order to facilitate its use in the programmes.

These two requirements are set so Member States take all the necessary steps and to put in place adequate provisions to ensure that their rural development measures are verifiable and controllable and put in place adequate provisions.

6. MONITORING OF THE VERIFIABILITY AND CONTROLLABILITY

As indicated above, Managing Authorities must also assess the verifiability and controllability of the measures during the implementation of the rural development programme. This assessment should take into account the result of controls in the previous and current period.

There is no indication in the legal texts on the frequency of such assessments during the implementation. The assessment may e.g. be triggered by audit findings, practices and experiences observed by other authorities or in preparation of the annual meeting with the Commission. Anyhow, if a measure is modified or introduced during the programming period, a new assessment should be updated or carried out.

7. ROOT CAUSES OF ERRORS AT MEASURE LEVEL

In Table I, it has been selected the most important root causes of errors linked to the concrete measures envisaged in the programming period 2014-2020. The main purpose is to help with the identification of possible risks when programming the measures in the RDP and should be understood as a complement to the document on the assessment of root causes of errors in the implementation of rural development policy and corrective actions (SWD 2013(244)F).

In Table II, there is a description of the content that should be included in the Rural Development Programme at measure level. This will also be part of the SFC.

Table I: Verifiability and Controllability of measures: assessment of risks of errors

R1: Tendering procedures for private beneficiaries

R2: Reasonability of costs

R3: Adequate check and control systems

R4: Public procurement

R5: Commitments difficult to verify and/or control

R6: Pre-conditions as eligibility conditions

R7: Selection of beneficiaries

R8: IT systems

R9: Payment claims

Measures	R1	R2	R3	R4	R5	R6	R7	R8	R9
Article 15: Knowledge transfer and information actions									
Article 16: Advisory services, farm management and farm relief services									
Article 17: Quality schemes for agricultural products and foodstuffs									
Article 18: Investments in physical assets									
Article 19: Restoring agricultural production damaged by natural disasters and catastrophic events									
Article 20: Farm and business development									
Article 21: Basic services and village reveal in rural areas									
Article 23: Afforestation and creation of woodlands									
Article 24: Establishment of agro-forestry systems									
Article 25: Prevention and restoration of damage to forest fires and natural disasters and catastrophic events									
Article 26: Investments improving the resilience and environmental value of forest ecosystems									
Article 27: Investments in forestry technologies and in processing, in mobilising and in the marketing of forest products									
Article 28: Setting up of producer groups									
Article 29: Agri-environment -climate									
Article 30: Organic farming									
Article 31: Natura 2000 and WFD payments									
Article 32: Payments of areas facing natural and other specific constraints									
Article 34: Animal welfare									
Article 35: Forest-environmental and climate services and forest conservation									
Article 36: Co-operation									
Article 38: Crop, animal, and plant insurance									
Article 39: Mutual funds for animal and plant diseases and environmental incidents									
Article 40: Income stabilisation tool									
Article 42: LEADER local action groups									
Article 44: LEADER co-operation activities									

Table II: Template on verifiability and controllability of measures

Measures	Risks in the implementation of the measure (verifiability and controllability)	Mitigating Actions	Overall assessment
<i>Knowledge transfer and information actions</i>			
<i>Advisory services, farm management and farm relief services</i>			
<i>Quality schemes for agricultural products and foodstuffs</i>			
<i>Investments in physical assets</i>			
<i>Restoring agricultural production damaged by natural disasters and catastrophic events</i>			
<i>Farm and business development</i>			
<i>Basic services and village reveal in rural areas</i>			
<i>Afforestation and creation of woodlands</i>			
<i>Establishment of agro-forestry systems</i>			
<i>Prevention and restoration of damage to forest fires and natural disasters and catastrophic events</i>			
<i>Investments improving the resilience and environmental value of forest ecosystems</i>			
<i>Investments in forestry technologies and in processing, in mobilising and in the marketing of forest products</i>			
<i>Setting up of producer groups</i>			
<i>Agri-environment -climate</i>			
<i>Organic farming</i>			
<i>Natura 2000 and WFD payments</i>			
<i>Payments of areas facing natural and other specific constraints</i>			
<i>Animal welfare</i>			
<i>Forest-environmental and climate services and forest conservation</i>			
<i>Co-operation</i>			
<i>Crop, animal, and plant insurance</i>			
<i>Mutual funds for animal and plant diseases and environmental incidents</i>			
<i>Income stabilisation tool</i>			
<i>LEADER local action groups</i>			
<i>Article 44: LEADER co-operation activities</i>			