


DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT
BUDGETARY AFFAIRS **D**

Budgets

Budgetary Control



'Gold-plating' in the EAFRD
To what extent do national
rules unnecessarily add to
complexity and, as a result,
increase the risk of errors?

STUDY



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Abstract

'Gold-plating' refers to obligations that go beyond EU requirements: an excess of norms, guidelines and procedures accumulated at national, regional and local levels interfering with the expected policy goals. A broad range of gold-plating issues have been identified in the EAFRD, related above all to eligibility and agri-environmental commitments, but also to payment issues, controls and procurement rules set at the RDPs level. Gold-plating and related errors can be addressed by capacity building, coordination and cooperation between all actors involved.

This document was requested by the European Parliament's Committee on Budgetary Control. It designated Mr Jens Geier to follow the study.

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LINGUISTIC VERSIONS

Original: EN
Translation of the executive summary: FR and DE

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Manuscript completed in February 2014.
Brussels, © European Union, 2014.
This document is available on the Internet at:
<http://www.europarl.europa.eu/studies>

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LIST OF ABBREVIATIONS

CA	Certifying Authorities
CAP	Common Agricultural Policy
DG AGRI	Directorate General for Agriculture and Rural Development
EC	European Commission
ECA	European Court of Auditors
EAFRD	European Agricultural Fund for Rural Development
IB	Intermediate Body
OP	Operational Programme
RDP	Rural Development Programme
GAEC	Good agricultural and environmental condition
MA	Managing Authority
MS	Member State
PA	Paying Agency

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EXECUTIVE SUMMARY

INTRODUCTION

This study aims overall to assess to what extent national rules unnecessarily add complexity and, as a result, increase the risk of errors in the EAFRD. The specific objectives are threefold, to:

- a. Identify and present a detailed description of 'gold-plating', covering overly complex national legal norms, guidelines and implementing procedures in relation to the basic regulations governing the EAFRD;
- b. Provide analyses, evaluations and comparisons of the (potential) effects of such additional rules with regard to the risk of errors (potentially) deriving from them and in relation to the objectives to be achieved; and
- c. Identify best practices in the design of national rules with a view to the design of national rules for the EAFRD for the period 2014 - 2020.

Overregulation resulting from the process of implementing EU funds' regulations by Member States in Rural Development Policy may be one reason for the high number of errors found in the implementation of the EAFRD. 'Gold-plating' is a broad concept that refers to obligations that go beyond EU requirements. It includes administrative norms, guidelines and implementation procedures in EU rural development policies. In operational terms, we consider gold-plating as an excess of norms, guidelines and procedures accumulated at national, regional and local levels, which interfere with the expected policy goals to be achieved by such regulation.

In this study we rely on the measurement of error rates as provided by the European Commission (DG AGRI). Advantages of using this source (compared to other sources such as the European Court of Auditors and Member States) include the larger sample drawn across all Member States, greater comparability due to harmonised results across the EU, and a specific focus on EAFRD measures.

The review of gold-plating has been carried out via desk research in eight Member States, supported by strategic interviews held in each Member State, with relevant stakeholders both at the local and EU level, including officials from Managing and Paying Authorities, associations of beneficiaries as well as EU desk officers in charge of the EAFRD in DG AGRI. The assessment part of the study has focused on the analyses, evaluations and comparisons of the (potential) effects of gold-plating by case study analysis in five countries: Austria, Bulgaria, Italy (Liguria, Veneto), Portugal and Spain (Catalonia). The synthesis of findings, conclusions and recommendations has been developed through a thorough team analysis.

The number of Member States studied is limited, and therefore extreme care should be taken with extrapolation to the EU28. The study makes extensive use of examples, however these cannot be generalised.

OVERVIEW OF RURAL DEVELOPMENT PROGRAMMES

The EAFRD consists of 94 regional and national rural development programmes (RDPs) across all Member States, with a budget of EUR 96.2 billion for the Programming Period 2007 - 2013. The EAFRD support is to be implemented through a close partnership between the Commission and the Member States. Implementation can occur through a centralised governance structure, a federal structure, or a combination of the two.

According to the EU subsidiarity principle¹, the EAFRD Rural Development Programmes (RDPs) are designed and implemented by Member States and Regional Governments. Programmes focus on three thematic Axes: Axis 1 - Increasing the competitiveness of the agricultural and forestry sector; Axis 2 - Supporting land management and improving the environment; Axis 3 - Improving the quality of life in rural areas and encouraging diversification of economic activities. These thematic Axes are complemented by a 'methodological' Axis dedicated to the LEADER approach (Axis 4 - LEADER Axis). Rural development measures are set up in the regulation as building blocks for each thematic Axis amongst which the Managing Authorities in each Member State can select those, which are most relevant in light of the specific strategy chosen and which are expected to create the highest value-added when taking the EU's objectives into account.

Almost half the funds (45 %) are allocated to Axis 2, and within this Axis about half is allocated to measure 214 – Agri-environment payments. Axis 1 receives 33 % of the funds, with the Modernisation of agricultural holdings being the most important measure (121).

The European Court of Auditors (ECA) describes the EU spending on 'rural development, environment, fisheries and health'² for the financial year 2012³ as the 'most error prone'⁴ amongst all EU policies (error rate of 7.9 %). When it comes to the EAFRD specifically, DG AGRI reports⁵ an average error rate of 2.1 % for the financial years 2009, 2010, 2011. High error rates in the EAFRD are shown in countries as diverse as Portugal, Latvia, Bulgaria, Sweden and Austria, and similarly no clear pattern is shown amongst countries with low error rates (i.e. the Czech Republic, Lithuania, Luxembourg, Slovakia and Cyprus). The European Commission (EC) in collaboration with Member States has provided an overview⁶ of root causes for error rates, which has been considered in the analysis of this study.

A REVIEW OF GOLD-PLATING PRACTICES

A number of gold-plating issues can occur at different stages of the EAFRD Programming cycle. Many of them occur at the Programme elaboration stage, in the early phases of design of measures, and in the implementation stage involving the processing of applications, and selection of projects. Another set of gold-plating issues occurs during Payment and Control stages.

¹ http://europa.eu/legislation_summaries/agriculture/general_framework/l60032_en.htm

² http://www.eca.europa.eu/Lists/ECADocuments/PRAR12/a13_36.EN.pdf

³ http://www.eca.europa.eu/Lists/ECADocuments/AR12/AR12_EN.pdf

⁴ As mentioned by the ECA Press Release (ECA/13/36) 'Looking at the EU budget as a whole, the ECA's estimate of the error rate for spending is 4.8 % for the 2012 financial year (3.9 % in 2011). [...] Typical errors include payments for beneficiaries or projects that were ineligible or for purchases of services, goods or investments without proper application of public purchasing rules. [...] Rural development, environment, fisheries and health remains the most error prone spending area with an estimated error rate of 7.9 %, followed by regional policy, energy and transport with an estimated error rate of 6.8 %.'

⁵ http://ec.europa.eu/atwork/synthesis/aar/doc/agri_aar_2012.pdf

⁶ [http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/swd/2013/0244/COM_SWD\(2013\)0244_EN.pdf](http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/swd/2013/0244/COM_SWD(2013)0244_EN.pdf)

*Gold-plating issues related to eligibility conditions*⁷ have emerged across EAFRD Axes and measures and, although not frequent, they show clear impact on rates of errors. Additional issues related to eligibility requirements which can be assessed as 'atypical types' of gold-plating are the cases where incomplete rules and ambiguous or vague requirements can lead to different interpretations by beneficiaries and/or public bodies involved in the Programming cycle. Also, in some cases multi-years requirements (e.g. the requirement to maintain through time the exact size of the land for which funding was provided) might have been too challenging for beneficiaries. This results in a higher than expected level of irregularities across measures and consequently high error rates. Other gold-plating issues concerning eligibility requirements include extremely detailed requirements for applicants, excessive documentation requests, which generate higher-than-expected irregularities across EAFRD measures and Axes.

*Gold-plating issues related to agri-environmental commitments (beyond CAP cross-compliance basic standards)*⁸ include ambitious targets (e.g. rules establishing buffer strips and levels of excretion of nitrogen), which seem to pose a dilemma both in their design and implementation/control. Managing Authorities are in fact challenged to implement ambitious policies, by considering a variety of different rules and directives at the EU and national level (e.g. environmental sustainability, food quality, and animal health), so to assure the maximum impact from RDPs. And still, the process may result in too challenging commitments, which are legitimate in principle but may be difficult to achieve by beneficiaries in practice (and may pose challenges to authorities in charge of their control)⁹. Additionally, as cross-compliance is a relatively new development for agricultural policy¹⁰, unclear commitments introduced by inexperienced MAs may generate misunderstandings amongst stakeholders: both in terms of what is to be achieved, and how to control such achievements. All these factors might have concurred in generating high number of irregularities, and therefore high error rates.

Gold-plating issues related to procurement rules are less widespread, and relate to the extension of procurement rules to private entities and the rigidity of the '3 quote' rule, especially in the case of small investments.

Finally, gold-plating issues related to payments have become more important in times of economic and financial crisis: finding the necessary co-financing, extreme rigidity in the application of procedures

⁷ In the context of the EAFRD, the eligibility conditions/criteria that are linked to an applicant or an application are requirements which have to be met completely in order for the applicant and the application to be eligible for support under the RDP measure(s) in question. These eligibility conditions are set by the EU legislation (Basic act and respective Delegated and Implementing Acts), but additional national rules could also be set by the Managing Authorities (as revealed by the current practice). The fulfilment of an eligibility condition is a 'yes/no' issue: either the condition is met or it is not. The failure of an applicant in meeting the eligibility conditions should result in rejection of his application for support (EU Commission DG Agri, TL/NN D (2013)), Draft working document on eligibility conditions and selection criteria for the programming period 2014 - 2020, p. 2).

⁸ Cross-compliance is a CAP requirement that links direct payments to compliance by farmers with basic standards concerning the environment, food safety, animal and plant health and animal welfare, as well as the requirement of maintaining land in good agricultural and environmental condition. It includes two elements: Statutory Management Requirements (SMR) and Good Agricultural and Environmental Conditions (GAEC). Agri-environment measures within the EAFRD require beneficiaries to agree to certain commitments that go beyond such basic standards. See: http://ec.europa.eu/agriculture/envir/cross-compliance/index_en.htm

⁹ Although MAs are expected to set up and deliver high-standard and accurate controls, these have often been difficult to implement, due to lack of adequate baseline statistics and, in some cases, limited capacity of local administrations.

¹⁰ This was particularly the case in the Programming Period 2007 - 2013.

and unnecessary requirements prevent timely payment. These can also lead to errors as well as excessive controls.

When compared to different measures and Axes across the EAFRD, gold-plating practices have emerged as follows:

- Axis 1 is mostly affected by excess in 'administrative' or 'procurement' rules which in some cases can be related to eligibility criteria set by EU regulations (e.g. the submission of a business plan for investment measures) but being implemented through too strict or ambiguous requirements by MAs and therefore potentially generating errors;
- Axis 2 is mostly affected by agri-environmental commitments - the accurate regulation of Good Agriculture and Environment Conditions, as well as that of Statutory Management Requirements. Also the multiplicity and variability of conditions and requirements make agri-environment measures largely dependent on existing environmental norms at the national/regional level and the policy ambitions of MAs might be more stringent than what is generally required by EU rules; and
- Axis 3 and Axis 4 (Leader) recorded less evidence which points to gold-plating.

ASSESSMENT OF REASONS AND IMPACTS

The relation between gold-plating and errors is not linear. That can be concluded from in-depth Case Studies carried out in Austria, Bulgaria, Italy (Liguria, Veneto), Portugal and Spain (Catalonia). Indeed, gold-plating practices contribute to high error rates within specific measures. In some instances, addressing such issues can lead to a dramatic reduction in error rates. For example, error rates in Portugal for the measure 214 alone dropped from 33 % to about 7.7 % after adjustment of National Programme requirements.

The Case Study analysis has pointed to the fact that even minor adjustments of implementing rules can lead to a reduction of error rates, for example by introducing proportionality in requirements related to documentary evidence such as business plans (Portugal, Catalonia). Another example is the conditional approval of projects in Bulgaria, while certificates of environmental impact assessment are still pending.

Also, a large number of errors can be generated by ambiguous and vague regulation, a type of gold-plating which is unusual in the literature but which has emerged in practice, also in some recent analysis for other EU funds. It leads to subjective interpretation, and exposes the EU regulations to a potentially wide range of diverging understanding amongst Managing Authorities, Paying Agencies, Intermediate bodies and beneficiaries. This raises the bar in terms of coordination and cooperation requirements – a recourse required to prevent errors.

Having said this, the evidence generated does not point to gold-plating being the main cause of all errors. High error rates are also generated by mistakes and incomplete submissions of relevant documentation by beneficiaries, for example due to beneficiaries lacking adequate skills and experience in applying for EU funds. Even after unnecessary national and regional regulation is removed, a relatively high level of error rates might still remain, simply, as a consequence of beneficiaries forgetting their commitments through time, submitting incomplete information, or even facing severe restructuring of their business (which makes impossible to stick to the agreed long-term commitments throughout the programming period).

GOOD PRACTICES, CONCLUSIONS AND RECOMMENDATIONS

Although there are forms of over-regulation which are perfectly legitimate and justified, the study has pointed to some practices of gold-plating (therefore norms, guidelines and procedures which appear to be disproportionate to the policy objectives to be achieved) which had an impact on error rates. These need to be addressed, even though this will only partially reduce the overall rate of errors in the EAFRD.

A main conclusion is that gold-plating (as well as related errors) can be addressed by capacity building, coordination and cooperation between all actors involved. Capacity building implies clarity about structures and responsibilities; quality and stability of administrative staff. The staff can be supported by training, allowing some discretion in the decision-making of MA and PA staff, and through the effective provision of information and IT tools. Cooperation and coordination between all those involved in RDP management is equally crucial, between MA, IBs, PAs and Certification authorities, but also between national and regional actors within the same institution.

A number of good practices in the form of 'quick wins' related to Programme implementation have been presented. They address actions to address ambitious requirements and commitments, such as the identification of areas of overregulation, and greater exchange of information regarding the non-observance of contractual commitments and requirements. Good practices can also address problematic administrative and procedural requirements, including those curbing excessive documentation requirements, limiting procurement obligations and lightening business plan requirements. Ambiguous and unclear requirements can be addressed by stepping up communication between MAs and beneficiaries.

More structural gold-plating issues can be addressed by strengthening existing knowledge-sharing platforms amongst MAs and PAs across the EU – and facilitated by DG AGRI. This would allow EAFRD-specific bodies across the EU to learn by example when discussing areas of ambiguity, as well as to address jointly policy challenges posed by ambitious EU requirements. The aims would be to promote and facilitate exchange of good practices amongst MAs and PAs in areas related to gold-plating. Other recommendations include a benchmark of performance amongst best regulatory requirements in terms of errors generated and mandatory needs assessment to justify additional requirements.

ZUSAMMENFASSUNG

EINLEITUNG

Mit dieser Studie soll bewertet werden, inwieweit nationale Vorschriften im Rahmen des ELER die Komplexität unnötig steigern und dadurch die Gefahr von Fehlern erhöhen. Im Besonderen werden die folgenden drei Ziele verfolgt:

- a. Entwicklung und Darlegung einer genauen Beschreibung des Begriffs der Überregulierung („Gold-Plating“), die übermäßig komplexe nationale Rechtsnormen, Leitlinien und Durchführungsverfahren in Bezug auf die Grundbestimmungen des ELER umfasst;
- b. Bereitstellung von Analysen, Bewertungen und Vergleichen zu den (möglichen) Auswirkungen solcher Zusatzbestimmungen bezüglich der Gefahr von Fehlern, die sich (potenziell) aus ihnen ergeben, und im Vergleich zu den angestrebten Zielen und
- c. Benennung bewährter Verfahren für die Ausgestaltung nationaler Vorschriften im Hinblick auf die nationalen Vorschriften zum ELER für den Zeitraum 2014 - 2020.

Überregulierungen im Rahmen der Umsetzung von EU-Fondsverordnungen durch die Mitgliedstaaten im Bereich der Politik zur Entwicklung des ländlichen Raums könnten eine der Ursachen für die bei der Durchführung des ELER festgestellte hohe Fehlerquote sein. Das sogenannte „Gold-Plating“ ist ein weit gefasster Begriff und bezieht sich auf Verpflichtungen, mit denen über die von der EU festgelegten Anforderungen hinausgegangen wird. Betroffen sind Verwaltungsvorschriften, Leitlinien und Durchführungsverfahren in der EU-Politik zur Entwicklung des ländlichen Raums. Auf operativer Ebene lässt sich die Überregulierung als ein Übermaß an Vorschriften, Leitlinien und Verfahren beschreiben, die auf nationaler, regionaler und kommunaler Ebene bestehen und die mit den EU-Bestimmungen verfolgten politischen Ziele behindern.

Im Rahmen der Studie werden die von der Europäischen Kommission (GD AGRI) ermittelten Fehlerquoten zugrunde gelegt. Der Rückgriff auf diese Quelle bietet mehrere Vorteile (im Vergleich zu anderen Quellen wie dem Europäischen Rechnungshof und den Mitgliedstaaten), darunter den größeren, alle Mitgliedstaaten erfassenden Stichprobenumfang, eine bessere Vergleichbarkeit aufgrund EU-weit harmonisierter Ergebnisse und einen spezifischen Schwerpunkt auf den Maßnahmen des ELER.

Die Untersuchung zur Überregulierung wurde in acht Mitgliedstaaten mittels Sekundärforschung durchgeführt und durch strategische Befragungen, an denen wichtige Interessenträger auf lokaler und EU-Ebene teilnahmen, darunter Amtspersonen der Verwaltungsbehörden und Zahlstellen, die Vereinigungen der Beihilfeempfänger sowie EU-Sachbearbeiter in der GD AGRI mit Zuständigkeit für den ELER, in jedem der Mitgliedstaaten ergänzt. Der Bewertungsteil der Studie befasst sich vorrangig mit Analysen, Bewertungen und Vergleichen zu den (möglichen) Auswirkungen der Überregulierung, wobei die Analyse von Fallstudien fünf Länder – Österreich, Bulgarien, Italien (Ligurien, Venetien), Portugal und Spanien (Katalonien) – umfasst. Die Synthese der Ergebnisse, Schlussfolgerungen und Empfehlungen wurde durch eine gründliche und gemeinsam durchgeführte Analyse entwickelt.

Da nur eine beschränkte Anzahl an Fallstudien aus den Mitgliedstaaten vorliegt, ist bei der Übertragung der Ergebnisse auf die EU-28 äußerste Vorsicht geboten. Im Rahmen der Studie wird eine Vielzahl von Beispielen angeführt, die jedoch nicht verallgemeinert werden können.

ÜBERBLICK ÜBER DIE PROGRAMME ZUR ENTWICKLUNG DES LÄNDLICHEN RAUMS

Der ELER besteht aus 94 regionalen und nationalen Programmen zur Entwicklung des ländlichen Raums in allen Mitgliedstaaten und war im Programmplanungszeitraum 2007 - 2013 mit 96,2 Milliarden EUR ausgestattet. Die Förderung im Rahmen des ELER soll durch eine enge Partnerschaft zwischen der Kommission und den Mitgliedstaaten umgesetzt werden. Die Umsetzung kann über eine zentralisierte Lenkungsstruktur, eine föderale Struktur oder eine Kombination aus beidem erfolgen.

Im Einklang mit dem Subsidiaritätsprinzip der EU¹¹ werden die Programme für die Entwicklung des ländlichen Raums im Rahmen des ELER von den Mitgliedstaaten und regionalen Gebietskörperschaften umgesetzt. Bei den Programmen stehen drei thematische Schwerpunkte im Vordergrund: Schwerpunkt 1 – Verbesserung der Wettbewerbsfähigkeit von Land- und Forstwirtschaft; Schwerpunkt 2 – Förderung von Landbewirtschaftungsmaßnahmen und Verbesserung der Umwelt; Schwerpunkt 3 – Verbesserung der Lebensqualität im ländlichen Raum und Förderung der Diversifizierung der ländlichen Wirtschaft. Diese thematischen Schwerpunkte werden ergänzt durch einen „methodologischen“ Schwerpunkt, der sich mit dem LEADER-Konzept befasst (Schwerpunkt 4 – LEADER). In der Verordnung werden für jeden thematischen Schwerpunkt als Hauptbausteine Maßnahmen zur Entwicklung des ländlichen Raums aufgeführt, von denen die Verwaltungsbehörden der einzelnen Mitgliedstaaten diejenigen auswählen können, die vor dem Hintergrund ihrer jeweils gewählten Strategie am zweckdienlichsten sind und mit Blick auf die Zielsetzungen der EU voraussichtlich den größten Zusatznutzen erbringen.

Knapp die Hälfte der Mittel (45 %) fließt in den Schwerpunkt 2 und davon wiederum etwa die Hälfte in die Maßnahme 214 – Zahlungen für Agrarumweltmaßnahmen. Der Schwerpunkt 1 erhält etwa 33 % der Mittel, wobei die Modernisierung landwirtschaftlicher Betriebe die wichtigste Maßnahme (121) darstellt.

Nach Auffassung des Europäischen Rechnungshofs (EuRH) ist der EU-Ausgabenbereich „Entwicklung des ländlichen Raums, Umwelt, Fischerei und Gesundheit“¹² für das Haushaltsjahr 2012¹³ unter allen politischen Maßnahmen der EU „der fehlerträchtigste Ausgabenbereich“¹⁴ (Fehlerquote: 7,9 %). Für den ELER im Speziellen meldet die GD AGRI¹⁵ eine durchschnittliche Fehlerquote von 2,1 % in den Haushaltsjahren 2009, 2010 und 2011. Hohe Fehlerquoten im ELER treten in ganz unterschiedlichen Ländern auf, darunter Portugal, Lettland, Bulgarien, Schweden und Österreich. Auch bei den Ländern mit niedrigen Fehlerquoten (Tschechische Republik, Litauen, Luxemburg, Slowakei, Zypern) ist kein klares Muster zu erkennen. Die Europäische Kommission (EK) hat in Zusammenarbeit mit den

¹¹ http://europa.eu/legislation_summaries/agriculture/general_framework/l60032_de.htm

¹² http://www.eca.europa.eu/Lists/ECADocuments/PRAR12/a13_36.DE.pdf

¹³ http://www.eca.europa.eu/Lists/ECADocuments/AR12/AR12_DE.pdf

¹⁴ In der Pressemitteilung ECA/13/36 des EuRH heißt es dazu: „Die vom EuRH geschätzte Fehlerquote für die Ausgaben aus dem EU-Haushalt als Ganzes betrug im Haushaltsjahr 2012 4,8 % (3,9 % im Jahr 2011). [...] Zu den typischen Fehlern zählen Zahlungen zugunsten von Begünstigten oder Projekten, die für eine Förderung nicht in Betracht kamen, oder Zahlungen für Anschaffungen von Dienstleistungen, Gütern oder Investitionen, bei denen die Vorschriften für die Vergabe öffentlicher Aufträge nicht ordnungsgemäß angewandt wurden. [...] Der Ausgabenbereich Entwicklung des ländlichen Raums, Umwelt, Fischerei und Gesundheit ist mit einer geschätzten Fehlerquote von 7,9 % nach wie vor der fehlerträchtigste Ausgabenbereich, gefolgt vom Ausgabenbereich Regionalpolitik, Energie und Verkehr mit einer geschätzten Fehlerquote von 6,8 %.“

¹⁵ http://ec.europa.eu/atwork/synthesis/aar/doc/agri_aar_2012.pdf

Mitgliedstaaten einen Überblick¹⁶ über die Grundursachen der Fehlerquoten erarbeitet, der in der Datenanalyse der vorliegenden Studie Berücksichtigung findet.

DARSTELLUNG DER ÜBERREGULIERUNGSPRAKTIKEN

Einige Überregulierungsprobleme können in unterschiedlichen Phasen des Programmplanungszyklus des ELER auftreten. Viele davon treten in der Ausarbeitungsphase des Programms, in den Frühphasen der Ausgestaltung der Maßnahmen und in der Umsetzungsphase einschließlich der Bearbeitung der Anträge und der Projektauswahl auf. Eine Reihe anderer Schwierigkeiten in Verbindung mit „Gold-Plating“ zeigt sich in den Phasen der Auszahlung und Kontrolle.

Überregulierungsprobleme im Zusammenhang mit den Förderbedingungen¹⁷ wurden für alle ELER-Schwerpunkte und -Maßnahmen festgestellt und sind, auch wenn sie nicht sehr häufig vorkommen, mit konkreten Auswirkungen auf die Fehlerquoten verbunden. Zusätzliche Schwierigkeiten im Zusammenhang mit den Förderbedingungen, die als „atypische Formen“ der Überregulierung eingestuft werden können, sind Fälle, in denen unvollständige Bestimmungen und zweideutige oder vage Anforderungen gegebenenfalls dazu führen, dass die Bedingungen von den Begünstigten und/oder den am Programmplanungszyklus beteiligten öffentlichen Stellen unterschiedlich ausgelegt werden. Außerdem könnten die für mehrere Jahre geltenden Bedingungen (z. B. die Beibehaltung der genauen Größe der Flächen, für die Fördermittel bereitgestellt wurden, über den betreffenden Zeitraum) in einigen Fällen eine zu große Herausforderung für die Begünstigten gewesen sein. Dies führt höher als erwartet zu Unregelmäßigkeiten quer durch die Maßnahmen und folglich zu höheren Fehlerquoten.

Zu weiteren Überregulierungsproblemen in Verbindung mit den Förderbedingungen zählen die äußerst detailreichen Anforderungen an Bewerber und übermäßige Anforderungen an die einzureichenden Unterlagen, die im Rahmen der ELER-Maßnahmen und -Schwerpunkte mehr Unregelmäßigkeiten hervorrufen als erwartet.

¹⁶[http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/swd/2013/0244/COM_SWD\(2013\)0244_EN.pdf](http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/swd/2013/0244/COM_SWD(2013)0244_EN.pdf)

¹⁷ Im Rahmen des ELER stellen die Förderbedingungen/-kriterien in Verbindung mit einem Antragsteller oder einem Antrag Anforderungen dar, die vollständig erfüllt sein müssen, damit der Antragsteller und der Antrag für Beihilfen im Rahmen der fraglichen Maßnahme(n) in Programmen zur Entwicklung des ländlichen Raums in Betracht kommen. Diese Förderbedingungen werden durch die EU-Gesetzgebung festgelegt (Basisrechtsakt und diesbezügliche delegierte Rechtsakte und Durchführungsrechtsakte), können jedoch von den Verwaltungsbehörden um zusätzliche nationale Vorschriften ergänzt werden (wie die bestehende Praxis zeigt). Die Erfüllung einer Förderbedingung ist eine „Ja/Nein“-Frage: die Bedingung wird entweder erfüllt oder nicht. Werden die Förderbedingungen vom Antragsteller nicht erfüllt, sollte dies zur Ablehnung seines Beihilfeantrags führen (EU-Kommission GD AGRI, TL/NN D(2013), „Draft working document on eligibility conditions and selection criteria for the programming period 2014-2020“ (Entwurf einer Arbeitsunterlage zu Förderbedingungen und Auswahlkriterien für den Programmplanungszeitraum 2014 - 2020), S. 2).

Überregulierungsprobleme im Zusammenhang mit Agrarumweltverpflichtungen (über die Grundanforderungen der Cross-Compliance im Rahmen der GAP hinaus)¹⁸ betreffen ehrgeizige Zielsetzungen (z. B. Regelungen zur Einführung von Pufferstreifen und Grenzwerten für die Stickstoffausscheidung), die sowohl bei der Ausgestaltung als auch bei der Durchsetzung/Kontrolle zu Komplikationen führen können. In der Praxis werden Verwaltungsbehörden herausgefordert, anspruchsvolle politische Vorhaben unter Berücksichtigung von zahlreichen unterschiedlichen Bestimmungen und Richtlinien auf EU- und nationaler Ebene (z. B. ökologische Nachhaltigkeit, Lebensmittelqualität und Tiergesundheit) umzusetzen, damit die Programme zur Entwicklung des ländlichen Raums größtmögliche Wirkung zeigen. Doch auch dann können sich aus dem Verfahren noch zu anspruchsvolle Verpflichtungen ergeben, die zwar grundsätzlich gerechtfertigt sein mögen, aber in der Praxis von den Begünstigten gegebenenfalls nur schwer zu erfüllen sind (und darüber hinaus die für ihre Kontrolle zuständigen Behörden vor Herausforderungen stellen können)¹⁹. Zudem kann aufgrund des Umstandes, dass die Cross-Compliance eine relativ neue Entwicklung im Rahmen der Agrarpolitik darstellt²⁰, die Einführung unklarer Verpflichtungen durch unerfahrene Verwaltungsbehörden zu Missverständnissen unter den Beteiligten führen, und zwar im Hinblick auf die zu erreichenden Ergebnisse ebenso wie auf die Kontrolle dieser Ergebnisse. All diese Faktoren könnten im Zusammenspiel an der hohen Anzahl an Unregelmäßigkeiten und den daraus resultierenden hohen Fehlerquoten beteiligt gewesen sein.

Überregulierungsprobleme im Zusammenhang mit den Vorschriften für die Auftragsvergabe sind weniger verbreitet und betreffen die Ausweitung der Ausschreibungsbestimmungen auf private Einrichtungen sowie den starren Charakter der Bestimmung, die die Einholung von drei Angeboten vorsieht („Three Quote Rule“), vor allem wenn es um kleinere Investitionen geht.

Schließlich haben auch *Überregulierungsprobleme im Zusammenhang mit der Auszahlung* in Zeiten der Wirtschafts- und Finanzkrise an Bedeutung gewonnen. So kann die fristgerechte Auszahlung durch die Suche nach der erforderlichen Kofinanzierung, die äußerst strenge Anwendung der Verfahren und unnötige Anforderungen verhindert werden. Diese Aspekte können ebenfalls zu Fehlern sowie zu übermäßigen Kontrollen führen.

Bei einem Vergleich der unterschiedlichen Maßnahmen und Schwerpunkte im Rahmen des ELER ergibt sich zu den Praktiken der Überregulierung folgendes Bild:

- Schwerpunkt 1 ist hauptsächlich betroffen von einem Übermaß an Verwaltungs- und Vergabevorschriften, die in einigen Fällen mit den durch EU-Bestimmungen festgelegten Förderbedingungen im Zusammenhang stehen (z. B. die Vorlage eines Unternehmensplans für Investitionsmaßnahmen), aber von den Verwaltungsbehörden im Wege zu strenger oder ehrgeiziger Anforderungen umgesetzt werden und daher potenziell zu Fehlern führen können.

¹⁸ Cross-Compliance (Auflagenbindung) ist eine Anforderung der GAP, durch die Direktzahlungen an Landwirte an die Erfüllung grundlegender Normen im Bereich Umweltschutz, Lebensmittelsicherheit, Tier- und Pflanzengesundheit und Tierschutz sowie den Erhalt der landwirtschaftlichen Nutzflächen in gutem Bewirtschaftungs- und Umweltzustand gebunden sind. Die Cross-Compliance umfasst zwei Elemente: Grundanforderungen an die Betriebsführung und Anforderungen an den guten landwirtschaftlichen und ökologischen Zustand (GLÖZ). Agrarökologische Maßnahmen im Rahmen des ELER sind für die Begünstigten mit bestimmten Verpflichtungen verknüpft, die über solche grundlegenden Normen hinausgehen. Siehe: http://ec.europa.eu/agriculture/envir/cross-compliance/index_de.htm

¹⁹ Wenngleich von den Verwaltungsbehörden die Erstellung und Veröffentlichung hochwertiger und genauer Kontrollen erwartet wird, sind diese häufig schwierig durchzuführen, da keine angemessenen Statistiken zu den Grundanforderungen vorliegen und die Kapazitäten der lokalen Verwaltungen in einigen Fällen nicht ausreichen.

²⁰ Dieser Umstand galt insbesondere für den Programmplanungszeitraum 2007 - 2013.

- Schwerpunkt 2 wird vorrangig beeinträchtigt durch Agrarumweltverpflichtungen – die präzise Regelung der Anforderungen für den guten landwirtschaftlichen und ökologischen Zustand (GLÖZ) sowie der Grundanforderungen an die Betriebsführung. Zudem führen die Vielfältigkeit und Variabilität der Bedingungen und Anforderungen dazu, dass Agrarumweltmaßnahmen in hohem Maße von den auf nationaler/regionaler Ebene bestehenden Umweltnormen abhängig sind, wobei die politischen Ambitionen der Verwaltungsbehörden gegebenenfalls über die Grundanforderungen der EU-Bestimmungen hinausgehen können.
- In Schwerpunkt 3 und Schwerpunkt 4 (LEADER) traten weniger Fälle auf, die auf eine Überregulierung hindeuten.

BEWERTUNG DER URSACHEN UND AUSWIRKUNGEN

Das Verhältnis zwischen Überregulierung und Fehlern ist nicht linear. Diese Schlussfolgerung ergibt sich aus den vertieften Fallstudien, die in Österreich, Bulgarien, Italien (Ligurien, Venetien), Portugal und Spanien (Katalonien) durchgeführt wurden. Tatsächlich tragen Überregulierungspraktiken zu hohen Fehlerquoten innerhalb spezifischer Maßnahmen bei. In einigen Fällen kann die Befassung mit solchen Schwierigkeiten zu einer gravierenden Senkung der Fehlerquoten führen. So konnte beispielsweise in Portugal die Fehlerquote allein für die Maßnahme 214 durch eine Anpassung der Anforderungen des nationalen Programms von 33 % auf 7,7 % gesenkt werden.

Die Analyse der Fallstudien lieferte Anhaltspunkte dafür, dass selbst kleinere Anpassungen der Durchführungsbestimmungen eine Senkung der Fehlerraten bewirken können, beispielsweise durch die Einführung der Verhältnismäßigkeit bei den Dokumentationsanforderungen etwa zu Unternehmensplänen (Portugal, Spanien (Katalonien)). Ein weiteres Beispiel ist die bedingte Genehmigung von Projekten in Bulgarien, solange Bescheinigungen über Umweltverträglichkeitsprüfungen noch nicht vorliegen.

Eine Vielzahl von Fehlern kann auch durch zweideutige und vage Bestimmungen hervorgerufen werden. Auch wenn diese Form des „Gold-Plating“ in der Fachliteratur nur selten Erwähnung findet, tritt sie in der Praxis durchaus auf, wie auch in jüngeren Untersuchungen zu anderen EU-Fonds aufgezeigt wird. Sie führt zur subjektiven Auslegung und somit dazu, dass bei den Verwaltungsbehörden, Zahlstellen, zwischengeschalteten Stellen und Begünstigten weit auseinandergehende Auffassungen zum Inhalt der EU-Vorschriften bestehen. Dies weist auf Handlungsbedarf bei der Koordinierung und Zusammenarbeit als Mittel zur Fehlervermeidung hin.

Auch vor diesem Hintergrund deuten die erbrachten Nachweise nicht darauf hin, dass die Überregulierung die allgemeine Hauptfehlerquelle ist. Hohe Fehlerquoten kommen ebenso dadurch zustande, dass die Begünstigten Fehler machen oder die einschlägigen Unterlagen unvollständig einreichen, etwa weil sie nicht über die notwendigen Kenntnisse und Erfahrungswerte für die Beantragung von EU-Mitteln verfügen. Selbst nach der Aufhebung unnötiger nationaler und regionaler Bestimmungen können vergleichsweise hohe Fehlerquoten einfach deshalb fortbestehen, weil sich Begünstigte im Laufe der Zeit nicht mehr an ihre Verpflichtungen erinnern, unvollständige Angaben machen oder aber mit gravierenden Umstrukturierungsmaßnahmen in ihren Unternehmen konfrontiert sind (die es unmöglich machen, sich an die für den gesamten Programmplanungszeitraum vereinbarten Langzeitverpflichtungen zu halten).

BEWÄHRTE VERFAHREN, SCHLUSSFOLGERUNGEN UND EMPFEHLUNGEN

Auch wenn es völlig legitime und gerechtfertigte Formen der Überregulierung gibt, werden im Rahmen der Studie einige „Gold-Plating“-Praktiken (d.h. Normen, Leitlinien und Verfahren, die offensichtlich nicht im Verhältnis zu den angestrebten Zielen stehen) aufgeführt, die mit Auswirkungen auf die Fehlerquoten verbunden waren. Bei diesen Praktiken besteht Handlungsbedarf, auch wenn dadurch die Gesamtfehlerquote im Rahmen des ELER nur zum Teil gesenkt werden kann.

Eine der wichtigsten Schlussfolgerungen besteht darin, dass eine Auseinandersetzung mit der Überregulierung (und den mit ihr zusammenhängenden Fehlern) durch den Kapazitätsaufbau sowie die Koordinierung und Zusammenarbeit zwischen allen Beteiligten erfolgen kann. Kapazitätsaufbau bedeutet Klarheit im Hinblick auf Strukturen und Zuständigkeiten sowie Qualität und Stabilität in der personellen Ausstattung der Verwaltung. Die Mitarbeiter der Verwaltungsbehörden und Zahlstellen können durch Schulungen, durch die Einräumung eines gewissen Ermessensspielraums bei Entscheidungen, sowie durch die effektive Bereitstellung von Informationen und IT-Werkzeugen unterstützt werden. Ebenso entscheidend ist die Zusammenarbeit und Koordinierung zwischen allen Akteuren, die an der Verwaltung der Programme zur Entwicklung des ländlichen Raums beteiligt sind, und zwar sowohl zwischen Verwaltungsbehörden, zwischengeschalteten Stellen, Zahlstellen und bescheinigenden Stellen als auch zwischen nationalen und regionalen Akteuren der gleichen Einrichtung.

Es wird eine Reihe von bewährten Verfahren vorgestellt, die bei der Umsetzung der Programme bereits kurzfristig zu Erfolgen führen („Quick Wins“). Sie betreffen Maßnahmen, mit denen die Probleme zu anspruchsvoller Anforderungen und Verpflichtungen angegangen werden können, etwa die Feststellung der Bereiche, in denen Überregulierung stattfindet, und den Ausbau des Informationsaustauschs im Zusammenhang mit der Nichteinhaltung vertraglicher Verpflichtungen und Bedingungen. Bewährte Verfahren können auch auf problematische verwaltungs- und verfahrenstechnische Anforderungen abzielen, etwa indem sie ein Übermaß an Dokumentationsanforderungen eindämmen, die Ausschreibungsvorschriften einschränken oder die Anforderungen an den Unternehmensplan verringern. Gegen zweideutige und unklare Anforderungen kann durch eine Intensivierung der Kommunikation zwischen Verwaltungsbehörden und Begünstigten vorgegangen werden.

Überregulierungsprobleme eher struktureller Natur können durch den EU-weiten Ausbau der bestehenden Plattformen zum Wissensaustausch zwischen Verwaltungsbehörden und Zahlstellen mit Unterstützung der GD AGRI gelöst werden. Dies würde es den ELER-spezifischen Einrichtungen in der EU ermöglichen, beim Austausch über unklare Bereiche anhand von Beispielen zu lernen und sich gemeinsam den strategischen Herausforderungen im Zusammenhang mit den ehrgeizigen EU-Anforderungen zu stellen. Die Zielsetzungen würden darin bestehen, den Austausch bewährter Verfahren zwischen Verwaltungsbehörden und Zahlstellen in Bereichen zu fördern und zu erleichtern, in denen Überregulierung auftritt. Empfohlen werden weiterhin ein Leistungsstandard, orientiert am Rechtsrahmen, der die geringste Anzahl an Fehlern generiert, sowie eine vorgeschriebene Bedarfsanalyse zur Begründung zusätzlicher Anforderungen.

SYNTHÈSE

INTRODUCTION

La présente étude a pour objectif global d'évaluer dans quelle mesure la réglementation nationale ajoute inutilement à la complexité et accroît, par là même, le risque d'erreurs dans le cadre du Feader. Les objectifs spécifiques sont au nombre de trois, à savoir:

- d. Identifier et présenter une description détaillée de la surréglementation, couvrant des normes juridiques nationales ainsi que des lignes directrices et des procédures de mise en œuvre excessivement complexes par rapport à la réglementation de base régissant le Feader;
- e. Fournir des analyses, des évaluations et des comparaisons entre les effets (potentiels) de cette réglementation supplémentaire en ce qui concerne le risque d'erreurs qui en découlent (potentiellement) et par rapport aux objectifs à atteindre; et
- f. Identifier les meilleures pratiques dans l'élaboration de la réglementation nationale en vue de l'élaboration de la réglementation nationale relative au Feader pour la période 2014 - 2020.

Une surréglementation résultant du processus de mise en œuvre de la réglementation des fonds de l'Union par les États membres dans le cadre de la politique de développement rural pourrait être l'une des raisons du nombre élevé d'erreurs constatées dans la mise en œuvre du Feader. La surréglementation ('Gold-plating') est une notion large qui se réfère aux obligations allant au-delà des exigences de l'Union européenne, comprenant les normes administratives, les lignes directrices et les procédures de mise en œuvre des politiques de développement rural de l'Union. En termes opérationnels, la surréglementation tient selon nous à un dépassement des normes, des lignes directrices et des procédures qui se cumulent aux niveaux national, régional et local, lesquelles interfèrent avec les objectifs politiques que ladite réglementation cherche à atteindre.

Dans la présente étude, nous nous basons sur la mesure des taux d'erreurs fournie par la Commission européenne (DG AGRI). Au rang des avantages de l'utilisation de cette source (par rapport à d'autres sources, telles que celles de la Cour des comptes européenne et des États membres), figurent le plus grand échantillon prélevé dans tous les États membres, une plus grande comparabilité en raison de résultats harmonisés dans l'ensemble de l'Union et un accent particulier accordé aux mesures relevant du Feader.

L'examen de la surréglementation a été réalisé au moyen d'une recherche documentaire dans huit États membres, à l'aide d'entretiens menés, dans chaque État membre, avec les parties prenantes concernées, à la fois au niveau local et au niveau de l'Union, y compris avec des fonctionnaires des autorités de gestion et de paiement, des associations des bénéficiaires ainsi que des agents administratifs de l'Union chargés du Feader au sein de la DG AGRI. La partie de l'étude ayant trait à l'évaluation est axée sur les analyses, les évaluations et les comparaisons entre les effets (potentiels) du phénomène de surréglementation par une analyse de cas dans cinq pays: Autriche, Bulgarie, Italie (Ligurie, Vénétie), Portugal et Espagne (Catalogne). La synthèse des résultats, des conclusions et des recommandations a été élaborée sur la base d'une analyse d'équipe approfondie.

Le nombre d'États membres étudiés est limité, raison pour laquelle il convient d'être extrêmement prudent à l'extrapolation à l'ensemble des 28 États membres de l'Union. L'étude fait largement appel à des exemples, qui ne peuvent toutefois être érigés en généralités.

APERÇU DES PROGRAMMES DE DÉVELOPPEMENT RURAL

Le Feader est composé de 94 programmes de développement rural (PDR) régionaux et nationaux dans tous les États membres, dotés d'un budget de 96,2 milliards d'Euros pour la période de programmation 2007 - 2013. L'aide du Feader est mise en œuvre au moyen d'un partenariat étroit entre la Commission et les États membres. La mise en œuvre peut s'opérer au travers d'une structure de gouvernance centralisée, d'une structure fédérale ou bien encore d'une combinaison des deux.

Selon le principe de subsidiarité²¹ de l'Union, les programmes de développement rural (PDR) du Feader sont conçus et mis en œuvre par les États membres et les gouvernements régionaux. Les programmes se concentrent sur trois axes thématiques: Axe 1: amélioration de la compétitivité des secteurs agricole et forestier; Axe 2: amélioration de l'environnement et de l'espace rural; Axe 3: qualité de la vie en milieu rural et diversification de l'économie rurale. Ces axes thématiques sont complétés par un axe "méthodologique" propre à l'approche du programme Leader (axe 4 - Axe Leader). Les mesures de développement rural sont établies dans le règlement comme étant les principaux éléments des axes thématiques parmi lesquels les autorités de gestion de chaque État membre peuvent sélectionner ceux qui sont les plus pertinents à la lumière de la stratégie retenue, et qui sont susceptibles d'apporter la plus haute valeur ajoutée au regard des objectifs de l'Union.

Près de la moitié des fonds (45 %) sont alloués à l'axe 2 et au sein même de cet axe, la moitié environ est allouée à la mesure 214 - paiements agroenvironnementaux. L'axe 1 est destinataire de 33 % des fonds, la modernisation des exploitations agricoles (121) étant la mesure la plus importante.

La Cour des comptes européenne décrit les dépenses de l'Union dans le domaine 'Développement rural, environnement, pêche et santé'²² pour l'exercice 2012²³ comme étant celui qui, de toutes les politiques de l'Union, 'reste le plus exposé aux erreurs'²⁴ (taux d'erreur de 7,9 %). Pour ce qui est du Feader précisément, la DG AGRI fait état²⁵ d'un taux d'erreur moyen de 2,1 % pour les exercices financiers 2009, 2010 et 2011. Les taux d'erreur élevés constatés dans le cadre du Feader sont mis en évidence dans des pays aussi divers que le Portugal, la Lettonie, la Bulgarie, la Suède et l'Autriche, et de la même manière, aucune tendance claire ne peut être mise en évidence parmi les pays à faible taux d'erreur (à savoir la République tchèque, la Lituanie, le Luxembourg, la Slovaquie et Chypre). La Commission européenne, en collaboration avec les États membres, a fourni une vue d'ensemble²⁶ des causes fondamentales des taux d'erreur, qui a été prise en considération dans l'analyse de la présente étude.

²¹ http://europa.eu/legislation_summaries/agriculture/general_framework/l60032_fr.htm

²² http://www.eca.europa.eu/Lists/ECADocuments/PRAR12/a13_36.FR.pdf

²³ http://www.eca.europa.eu/Lists/ECADocuments/AR12/AR12_FR.pdf

²⁴ Comme l'indique le communiqué de presse (ECA/13/36) de la Cour des comptes, "si l'on considère le budget de l'UE dans son ensemble, le taux d'erreur estimé par la Cour pour les dépenses s'élève à 4,8 % pour l'exercice 2012 (contre 3,9 % en 2011). [...] Les erreurs concernent généralement des paiements effectués en faveur de bénéficiaires ou au titre de projets inéligibles, ou pour des achats de services, de biens ou des investissements réalisés sans que les règles de passation de marchés publics aient été respectées. [...] Le domaine de dépenses Développement rural, environnement, pêche et santé reste le plus exposé aux erreurs, avec un taux d'erreur estimé à 7,9 %. Il est suivi par le domaine de dépenses Politique régionale, énergie et transports, avec un taux d'erreur estimé à 6,8 %."

²⁵ http://ec.europa.eu/atwork/synthesis/aar/doc/agri_aar_2012.pdf (en anglais)

²⁶ [http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/swd/2013/0244/COM_SWD\(2013\)0244_EN.pdf](http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/swd/2013/0244/COM_SWD(2013)0244_EN.pdf)

UN EXAMEN DU PHÉNOMÈNE DES PRATIQUES DE SURRÈGLEMENTATION

Un certain nombre de problèmes de surréglementation peuvent survenir à différents stades du cycle de programmation du Feader. Un grand nombre d'entre eux surviennent lors de l'élaboration du programme, dans les premières phases de conception des mesures ainsi que lors de la mise en œuvre, tout comme du traitement des demandes et de la sélection des projets. Un autre ensemble de problèmes de surréglementation surviennent au cours des étapes de paiement et de contrôle.

*Les problèmes de surréglementation liés au contrôle des conditions d'éligibilité*²⁷ surviennent dans l'ensemble des axes et mesures du Feader et, bien que peu fréquents, ils ont des répercussions évidentes sur les taux d'erreur. D'autres problèmes relatifs aux conditions d'éligibilité peuvent être considérés comme étant 'atypiques' eu égard au phénomène de surréglementation dans les cas où un règlement incomplet ou bien des exigences vagues et ambiguës peuvent donner lieu à des interprétations différentes par les bénéficiaires et/ou organismes publics intervenant dans le cycle de programmation. De même, dans certains cas, des exigences qui s'étendent sur plusieurs exercices (par exemple l'obligation de maintenir, au fil du temps, la taille exacte des terres pour lesquelles un financement a été octroyé) pourraient s'être avérées trop ardues pour les bénéficiaires. Il en résulte pour l'ensemble des mesures un niveau d'irrégularités plus élevé que prévu et, par conséquent, des taux d'erreur élevés. Au rang des autres problèmes de surréglementation en matière de conditions d'éligibilité, figurent les exigences extrêmement détaillées à l'attention des candidats, les demandes excessives en matière de pièces justificatives, qui génèrent des irrégularités plus importantes que prévu, et ce pour l'ensemble des mesures et des axes du Feader.

*Les problèmes de surréglementation liés aux engagements agroenvironnementaux (allant au-delà des normes fondamentales de conditionnalité de la PAC)*²⁸ comprennent des objectifs ambitieux (par exemple la réglementation en matière de bandes tampons et de niveaux d'excrétion d'azote), qui semblent présenter un dilemme tant dans leur conception qu'à l'égard de la mise en œuvre/du contrôle. Les autorités de gestion se trouvent confrontées à la difficulté de mettre en œuvre des politiques ambitieuses, en tenant compte des différentes réglementations et directives au niveau de l'Union et au niveau national (notamment de durabilité environnementale, de qualité des denrées alimentaires et de santé animale), afin de garantir l'effet maximal des PDR. Et encore, le processus peut se traduire par des engagements trop ardues, qui sont en principe légitimes, mais qui peuvent être difficiles à réaliser par les bénéficiaires dans la pratique (et peuvent poser des problèmes aux

²⁷ Dans le cadre du Feader, les conditions/critères d'éligibilité qui ont trait à un candidat ou à une demande sont des exigences qui doivent être entièrement satisfaites pour que le candidat et que la demande puissent bénéficier d'une aide au titre de la (des) mesure(s) du PDR en question. Ces conditions d'éligibilité sont fixées par la législation de l'Union (acte de base et actes délégués ainsi que d'exécution), mais des règles nationales supplémentaires pourraient également être établies par les autorités de gestion (comme l'a révélé la pratique actuelle). Le respect d'une des conditions d'éligibilité est un critère 'oui/non': soit la condition est respectée, soit elle ne l'est pas. Si un candidat ne respecte pas les conditions d'admissibilité, sa demande d'aide devrait alors être rejetée (Commission européenne, DG AGRI, TL/NN D(2013), projet de document de travail sur les conditions d'éligibilité et les critères de sélection pour la période de programmation 2014 - 2020, p. 2).

²⁸ La conditionnalité est une exigence de la PAC qui subordonne les paiements directs au respect par les agriculteurs de normes de base concernant l'environnement, la sécurité alimentaire, la santé animale et végétale, le bien-être des animaux et le maintien des terres dans de bonnes conditions agricoles et environnementales. Elle comprend deux volets: les 'exigences réglementaires en matière de gestion' (ERMG) et les 'bonnes conditions agricoles et environnementales' (BCAE). Les mesures agroenvironnementales dans le cadre du Feader exigent des bénéficiaires qu'ils prennent certains engagements allant au-delà de telles normes fondamentales. Voir: http://ec.europa.eu/agriculture/envir/cross-compliance/index_fr.htm

autorités chargées de leur contrôle)²⁹. En outre, étant donné que la conditionnalité est un concept relativement nouveau pour la politique agricole³⁰, le manque de clarté des engagements dû à l'inexpérience des autorités de gestion peut donner lieu à des malentendus entre les parties prenantes, tant en termes de résultats à atteindre que des modalités de contrôle de ces résultats. Tous ces facteurs pourraient avoir entraîné la survenue d'un nombre élevé d'irrégularités, et par conséquent, de taux d'erreur élevés.

Les problèmes de surréglementation liés aux règles de passation des marchés ne sont pas aussi répandus et ont trait à l'extension des règles de passation de marchés à des entités privées et à la rigidité de la règle 'des trois offres' ('Three Quote Rule'), en particulier dans le cas des petits investissements.

Enfin, les problèmes de surréglementation liés aux paiements ont gagné en importance en cette période de crise économique et financière: la recherche du cofinancement nécessaire, la rigidité dans l'application des procédures et les exigences superflues empêchent un paiement en temps voulu. Des erreurs ainsi que des contrôles excessifs peuvent également s'en suivre.

Si l'on compare différentes mesures et axes du programme Feader, les pratiques de surréglementation sont apparues comme exposé ci-dessous:

- L'axe 1 est essentiellement affecté par la surréglementation dans les domaines 'administratif' ou en matière de 'passation des marchés', laquelle, dans certains cas, est liée aux critères d'éligibilité fixés par la réglementation de l'Union (tels que la présentation d'un plan d'entreprise pour les mesures d'investissement), mais mis en œuvre, par les autorités de gestion, à l'aide d'exigences trop strictes ou ambiguës et donc potentiellement sources d'erreurs;
- L'axe 2 est essentiellement affecté par des engagements agroenvironnementaux - la régulation précise des bonnes conditions agricoles et environnementales ainsi que les exigences réglementaires en matière de gestion. Du reste, la multiplicité et la variabilité des conditions et exigences rendent les mesures agroenvironnementales en grande partie dépendantes des normes existantes en matière environnementale à l'échelon national/régional, et les objectifs stratégiques des autorités de gestion pourraient être plus stricts que ce qui est généralement requis par la législation de l'Union; et
- L'axe 3 et l'axe 4 (Leader) laissent apparaître moins d'éléments traduisant une surréglementation.

ÉVALUATION DES RAISONS ET CONSÉQUENCES

La relation entre la surréglementation et les erreurs n'est pas linéaire, ce qui ressort des études de cas approfondies réalisées en Autriche, en Bulgarie, en Italie (Ligurie, Vénétie), au Portugal et en Espagne (Catalogne). En effet, les pratiques de surréglementation contribuent à des taux d'erreur élevés dans le cadre de mesures spécifiques. Dans certains cas, la résolution de ces problèmes peut conduire à une réduction spectaculaire du taux d'erreur: les taux d'erreur constatés au Portugal pour la mesure 214 uniquement sont par exemple passés de 33 % à environ 7,7 %, après ajustement des exigences du programme national.

L'analyse de l'étude de cas a révélé que même des ajustements mineurs des règles de mise en œuvre pouvaient entraîner une réduction des taux d'erreur, par exemple par l'introduction d'une obligation de proportionnalité dans le cadre des exigences liées aux documents justificatifs tels que des plans

²⁹ Bien que les autorités de gestion soient tenues de mettre en place et de mener des contrôles précis et de haut niveau, ces initiatives se sont souvent avérées difficiles à mettre en œuvre en raison de l'absence de statistiques de base adéquates et, dans certains cas, de la capacité limitée des administrations locales.

³⁰ Cela était tout particulièrement le cas pour la période de programmation 2007 - 2013.

d'entreprise (Portugal, Catalogne). Un autre exemple est celui de l'approbation conditionnelle des projets en Bulgarie, les certificats d'évaluation de l'impact environnemental étant encore en attente d'adoption.

Par ailleurs, un grand nombre d'erreurs peut être généré par une réglementation vague et ambiguë, un type de surréglementation rare dans la littérature mais qui s'est fait jour dans la pratique, comme dans certaines analyses récentes des autres fonds de l'Union. Cela débouche sur une interprétation subjective et expose la réglementation de l'Union à un éventail potentiellement large de divergences d'interprétation entre les autorités de gestion, les organismes payeurs, les organismes intermédiaires et les bénéficiaires. La barre se trouve ainsi placée plus haut du point de vue des exigences de coordination et de coopération - un recours étant nécessaire pour prévenir les erreurs.

Cela étant dit, les preuves produites n'identifient pas la surréglementation comme étant la source principale de l'ensemble des erreurs. Des taux d'erreur élevés sont également dus à des erreurs et à des dossiers incomplets au niveau des pièces justificatives fournies par les bénéficiaires, par exemple en raison de l'absence des qualifications et de l'expérience adéquates chez les bénéficiaires dans le cadre de la demande de fonds de l'Union. Même après l'élimination de la réglementation nationale et régionale superflue, un niveau relativement élevé de taux d'erreur pourrait encore subsister, simplement en raison du fait que les bénéficiaires oublient leurs engagements au fil du temps, présentent des dossiers incomplets ou bien sont confrontés à une forte restructuration de leurs activités (ce qui ne permet pas de s'en tenir aux engagements à long terme tout au long de la période de programmation).

BONNES PRATIQUES, CONCLUSIONS ET RECOMMANDATIONS

Bien qu'il existe des formes parfaitement légitimes et justifiées de réglementation excessive, l'étude a mis en évidence certaines pratiques relevant de la surréglementation (à savoir des normes, lignes directrices et procédures qui semblent disproportionnées par rapport aux objectifs à atteindre) ayant eu une incidence sur les taux d'erreur. Ces problèmes doivent être réglés, même si cela ne réduit que partiellement le taux global d'erreurs dans le cadre du Feader.

Une des principales conclusions est que la surréglementation, ainsi que les erreurs qu'elle entraîne, peuvent être résolues par le renforcement des capacités, la coordination et la coopération entre tous les acteurs concernés. Le renforcement des capacités implique la clarté quant aux structures et aux responsabilités ainsi que la qualité et la stabilité du personnel administratif. Une aide peut être apportée au personnel par la formation, par une certaine marge de manœuvre pour la prise de décision des autorités de gestion et de paiement, et par la fourniture effective d'informations et d'outils informatiques. La coopération et la coordination entre tous les acteurs de la gestion des PDR constituent un élément tout aussi fondamental, non seulement entre les autorités de gestion, les organismes intermédiaires, les organismes payeurs et les organismes de certification, mais aussi entre les acteurs nationaux et régionaux au sein de la même institution.

Un certain nombre de bonnes pratiques ont été présentées sous la forme d'actions 'à gain rapide', liées à la mise en œuvre du programme. Elles concernent des actions visant à faire face à des exigences et des engagements ambitieux, tels que l'identification de domaines sujets à une réglementation excessive, ainsi que l'échange d'informations en ce qui concerne le non-respect des engagements et des exigences contractuels. Les bonnes pratiques peuvent également apporter une réponse aux exigences administratives et de procédure problématiques, restreignant notamment les exigences excessives en matière de pièces justificatives, limitant les obligations dans le cadre de la passation des marchés et allégeant les critères du plan d'entreprise. Il est possible d'apporter une

réponse aux exigences ambiguës et peu claires par une meilleure communication entre les autorités de gestion et les bénéficiaires.

Les problèmes de surréglementation plus structurels peuvent trouver une réponse dans le renforcement des plateformes de partage des connaissances entre les autorités de gestion et les organismes payeurs dans l'ensemble de l'Union - avec l'aide de la DG AGRI. Cela permettrait aux organismes spécifiques du Feader dans l'ensemble de l'Union de tirer des enseignements, par exemple lors de l'examen de certaines zones d'ambiguïté, et de relever conjointement les ambitieux défis politiques posés par les exigences de l'Union. Les objectifs seraient de promouvoir et de faciliter les échanges de bonnes pratiques entre les autorités de gestion et les organismes payeurs dans les domaines sujets à une réglementation excessive. Au rang des autres recommandations, l'on compte notamment un critère de performance en matière de meilleures exigences réglementaires au regard des erreurs survenues ainsi que des obligations d'évaluation des besoins pour justifier les exigences supplémentaires.

1 INTRODUCTION

KEY FINDINGS

- Overregulation resulting from the process of implementing EU funds' regulations by Member States in Rural Development Policy can be one reason for the high number of errors found in the implementation of the EAFRD. 'Gold-plating' is a broad concept that refers to obligations that go beyond EU requirements. It includes administrative norms, guidelines and implementation procedures in EU rural development policies.
- In this study, we rely on the measurement of error rates as provided by the European Commission (DG AGRI). Advantages of this source (compared to other sources such as the European Court of Auditors and Member States) include the larger sample drawn across all Member States, greater comparability due to harmonised results across the EU, and a specific focus on EAFRD measures.
- Building on parallel work regarding gold-plating in the ESF, we consider it useful to relate the costs of regulation (errors, increased administrative burden and costs, discouragement of project promoters) to the benefits or value in terms of policy gains – this shows the potential policy achievement of additional regulation. Put in another way, we consider gold-plating to be similar to an excess of norms, guidelines and procedures at national, regional and local levels with respect to the expected policy goals to be achieved by such regulation. Gold-plating can also be positioned within the Programming cycle, and we will therefore become a 'gold-plating wheel'.
- The inventory has been carried out by desk research in 8 Member States, supported by strategic interviews held in each Member State selected, with relevant stakeholders both at the local and EU level, including officials from MAs and PAs, associations of beneficiaries as well as EU desk officers in charge of the EAFRD in DG AGRI. The assessment part of the study has focused on the analyses, evaluations and comparisons of the reasons for and (potential) effects of gold-plating by Case Study analysis in five countries: Austria, Bulgaria, Italy (Liguria, Veneto), Portugal and Spain (Catalonia). The synthesis of findings, conclusions and recommendations has benefited from team analysis
- The number of Member States studied is limited, and therefore extreme care should be taken to extrapolation to the EU28 as a whole. The study makes extensive use of examples, however these cannot be generalized.

1.1 BACKGROUND AND AIM OF THE STUDY

The management of the EU Structural Funds has to comply with multiple administrative requirements, which are the result of different layers of legal norms, guidelines and procedures. Complexity and overregulation may in principle be found at all institutional levels: EU, national, regional and local level, all of which may have competences delegated to them in the framework of the 'shared competences' governing European Rural Development Programmes (RDPs).

The policy group for 'agriculture, rural development, environment, fisheries and health', which included the European Agricultural Fund for Rural Development (EAFRD), has been reported by the European Court of Auditors (ECA) as one of the '*most prone to errors*³¹, '*because the main risk to regularity is caused by the often complex rules and eligibility conditions*³². Hence, overregulation resulting from the process of implementing EU funds' regulations by Member States in RDPs can be one reason for the high number of errors occurring in the implementation of these funds.

The general objective of the study is to identify to what extent different Member States or autonomous regions unnecessarily added to the regulations governing the use of funds under the EAFRD, and/or where the design of national rules is overly complex, whilst taking due account of the policy objectives to be achieved. There are three specific objectives:

- 1) Identify and present a detailed **description of 'gold-plating'** and/or overly complex national rules and requirements in relation to the basic regulations governing the EAFRD. Where relevant, national rules regarding, for example, public procurement or cross-compliance requirements should be covered;
- 2) Provide analysis, evaluations and comparisons of the **(potential) effects of such additional rules** with regard to the risk of errors (potentially) deriving from them and in relation to the objectives to be achieved; and
- 3) **Identify best practices** in the design of national rules with a view to the design of national rules for the EAFRD for the period 2014 - 2020.

The study team recognises the complexity of the governance arrangements of rural development policy as well as the multiplicity and diversity of objectives pursued by different institutional actors in the design, implementation and assessment of their rural policies. Because this is a policy area in which the competence does not lie exclusively at EU level, but is shared with other institutional levels, gold-plating by national or regional managing authorities may legally occur in many different forms. For example, there are pre-existing norms and procedures, applicable to public expenditure in the MS in different policy areas, with required implementation guidelines and administrative procedures accompanying the design of RDPs. Also, there are established audits and controls intervening at different levels and for different policy areas (environmental, building, agriculture, tourism, infrastructures, etc.) in which RDPs may intervene.

Since the reform of the Structural Funds in 1988, the framework for resolving any problems arising from these rural governance arrangements has been the 'Institutional Partnership' established between the EU and MS, and with the Regulations for each Programming period establishing the division of labour between them. Problems of gold-plating, overregulation and error rates are therefore likely to be best addressed within the spirit of cooperation and negotiation inherent in the partnership principle.

³¹ As mentioned by the ECA Press Release (ECA/13/36) 'Looking at the EU budget as a whole, the ECA's estimate of the error rate for spending is 4.8 % for the 2012 financial year (3.9 % in 2011). [...] Typical errors include payments for beneficiaries or projects that were ineligible or for purchases of services, goods or investments without proper application of public purchasing rules. [...] Rural development, environment, fisheries and health remains the most error prone spending area with an estimated error rate of 7.9 %, followed by regional policy, energy and transport with an estimated error rate of 6.8 %.'

³² Court of Auditors (2011) Annual Report, paragraph 4.5, and similarly reported in the following years.

1.2 DEFINITION OF KEY CONCEPTS

This section defines the essential terms and concepts, such as 'gold-plating' and 'errors', which are at the core of the analysis and necessary, in order to avoid misunderstandings due to the different meaning these concepts may have depending on the context in which they are used.

1.2.1 'Gold-plating'

The European Commission defines 'gold-plating' in the context of Smart Regulation, by referring to the '[...] *transposition of EU legislation, which goes beyond what is required by that legislation, while staying within legality. Member States have large discretion when implementing EC directives. They may increase reporting obligations, add procedural requirements, or apply more rigorous penalty regimes. If not illegal, 'gold-plating' is usually presented as a bad practice because it imposes costs that could have been avoided*

³³.

The concept has been broadened by the EU Parliament, and by several studies which refer to the term when pointing out that '*national rules [which] render Union legislation on budget management unnecessarily complicated*'³⁴ with respect to the policy objectives set by the Managing Authorities for each RDP and the specific EU regulations and requirements.

In this respect, and based on the specificities of the EAFRD regulation, this study goes a step further in broadening the concept of gold-plating by extending it to all norms, guidelines and implementing procedures (and in general administrative requirements³⁵) which can be deemed unnecessary with respect to the policy objectives set by Managing Authorities.

Furthermore, gold-plating may emerge not only at the national level, but also at the sub-national levels and particularly at the regional level (if this level is competent for rural policy) as well as at the local level (e.g. for certain measures, such as those involved in the Leader approach which may be delegated for implementation to the local level).

Gold-plating and overregulation are considered negative features of programming, since they generate higher transaction costs and inefficiencies in the public administration. This is true also for beneficiaries, since these practices are perceived as disproportionate in some cases, to the achieved or expected benefits of the support received. This latter aspect, however even if important, remains outside the mandate of this study.

1.2.2 Cross-compliance and agri-environmental commitments

'*Cross-compliance is a mechanism that links direct payments to compliance by farmers with basic standards concerning the environment, food safety, animal and plant health and animal welfare, as well as the requirement of maintaining land in good agricultural and environmental condition*'³⁶. The relevant legal basis lies with the Council Regulation 73/2009 and Commission Regulation 1122/2009 and as such the definition applies to several measures offered under the EAFRD³⁷.

³³DG ENTR, European Commission, http://ec.europa.eu/enterprise/policies/smart-regulation/glossary/index_en.htm 23.07.2013

³⁴ See P7_TA prov (2013) 0122 of 17 April 2013, paragraph 1 h

³⁵ As defined in the EU Standard Cost Model (http://ec.europa.eu/dgs/secretariat_general/admin_burden/eu_scm/eu_scm_en.htm).

³⁶ http://ec.europa.eu/agriculture/envir/cross-compliance/index_en.htm

³⁷ EU Commission Directorate General Agriculture, Summary of EAFRD regulation (Axis 2) http://europa.eu/legislation_summaries/agriculture/general_framework/l60032_en.htm

Cross-compliance includes two elements:

- Statutory Management **Requirements**: introduced by EU regulation to ensure that Rural Development Programmes comply with EU Directives in a variety of relevant policy areas including the respect of environment, food safety, animal and plant health and animal welfare³⁸. The actual content of such requirements depends therefore on how EU Directives have been transposed into national regulations by each Member State; and
- Good Agricultural and Environmental **Conditions** (GAEC), which refer to a range of standards related to soil protection, maintenance of soil organic matter and structure, avoiding the deterioration of habitats and water management³⁹. Conditions are defined in general terms and additional specification is demanded to Managing Authorities in line with the subsidiarity principle.

Cross-compliance conditions generally refer to compulsory requirements for receiving direct payments under the First Pillar of the CAP. **Additional agri-environmental commitments** exceeding such basic requirements and conditions may be supported through the Second Pillar of the CAP (Rural Development), with one or more of the EAFRD measures contained in RDP. This means that a farmer receiving direct payments is obliged to comply with these basic requirements, while they may also choose to provide additional environmental commitments in exchange for additional payments. Basic requirements for direct payments have been established by competent national authorities and may therefore be different for each MS. Additional environmental payments under rural development measures may also be quite different from one programme to another, even within the same State, if it has decentralized competences. MAs and PAs have therefore to ensure and verify that the beneficiary has not only complied with the basic GAEC conditions, but also respected the additional commitments.

Within such a regulatory framework, EAFRD provides support for:

- Actions related to commitments that go beyond the corresponding obligatory standards when it comes to land-related measures⁴⁰; and
- Non-productive investments linked to the achievement of specific objectives⁴¹.

Furthermore, MAs *'shall establish a control system that ensures that all necessary checks are carried out for effective verification of compliance with the terms under which support is granted'*⁴². Controls are basically of two types, defined as 'administrative' and 'on-the-spot' checks. EU regulation also makes clear that *'no payment for any measure [...] shall be made before the checks of that measure or set of operations with regard to eligibility criteria [...] have been finalised. However, MS may decide, taking into account the risk of overpayment, to pay up to 75 % of the aid after completion of the administrative checks [...]. The percentage of payment shall be the same for all beneficiaries of the measure or set of operations [and] any undue payments shall be recovered'*⁴³.

³⁸ http://ec.europa.eu/agriculture/envir/cross-compliance/index_en.htm

³⁹ http://ec.europa.eu/agriculture/envir/cross-compliance/index_en.htm

⁴⁰ Support for mountain regions with natural handicaps and other disadvantaged areas (defined by the Member States on the basis of common objective criteria) and for agri-environmental or forest-environmental payments,

⁴¹ Agri- or forest-environmental commitments or the achievement of other agri-environmental objectives, as well as measures aimed at improving forestry resources with an environmental objective (support for the first afforestation of agricultural land, establishment of agroforestry systems or restoring forestry potential and preventing natural disasters).

⁴² Commission Regulation (EU) No 65/2011 (Art. 4.1).

⁴³ Commission Regulation (EU) No 65/2011 (Art. 9).

Because respecting the agri-environmental commitments is a pre-requisite for measure-specific disbursements, beneficiaries committing irregularities and failing to respect basic requirements or additional commitments, may lose any right to receive EAFRD funds for such specific measures⁴⁴.

Due to the number of specific requirements, the agri-environmental commitments briefly summarized in its key features above, are therefore an important factor explaining the complexities behind gold-plating in RDPs, particularly for land-related measures.

1.2.3 'Errors'

Another essential concept to be clarified is that of 'errors' for which the relevance of 'gold-plating' as a possible 'root cause' is assessed in this report. The EU Commission defines errors as the record of *'a transaction not carried out in accordance with the legal and regulatory provisions, therefore rendering declared (and reimbursed) expenditure irregular'*⁴⁵.

In order to assure that the payments are legitimate (therefore comply with the regulation set for each RDPs), authorities at the national and regional level are required to enact controls (ex-ante and 'on-the-spot' checks⁴⁶) to certify that objectives and commitments are met by beneficiaries, and that payments are due. Through such controls, 'errors' are identified and recorded by local authorities when objectives and commitments are not fulfilled by individual beneficiaries. Those errors are then assigned different degrees of severity depending on whether beneficiaries did not fulfil eligibility criteria and cross-compliance requirements (discrediting eligibility for all funding required), or additional commitments (blocking funding for specific measures).

Error rates have been assessed and quantified by different actors at the EU and Member States level. There are three sources of data on error rates in the EAFRD, which are published estimates giving a different level of detail:

- **Member States:** Individual Member States quantify the error rates of EAFRD programmes within their own control systems, based on detailed methodologies to be reported to EU institutions. Nonetheless, although national statistics are the roots of error rates calculations at the EU level, Member States statistics about error rates cannot immediately be used in a cross-country assessment, because they might follow different methodologies depending on the procedures and systems implemented at the country levels. Also they cannot be immediately compared as some adjustments might be required;
- **The European Court of Auditors:** The ECA relies on a random sample⁴⁷ of transactions for the analysis provided in its annual reports⁴⁸. In doing so, although it provides statistics and data which are more robust and allow greater comparability if compared with individual statistics provided by each Member State, it is less complete and specific for our purpose than

⁴⁴ This is a main difference with eligibility rules which, if not respected throughout the period subjected to funding, can make beneficiaries ineligible for the entire amount of funding received throughout the programming period.

⁴⁵ <http://www.europarl.europa.eu/document/activities/cont/201110/20111025ATT30248/20111025ATT30248EN.pdf> (p.6)

⁴⁶ The total number of « on-the-spot » checks on payment claims presented during each calendar year shall cover at least 5 % of all beneficiaries falling within the scope of this Title. However, for the measure set out in Article 36(a)(iv) of Regulation (EC) No 1698/2005 the 5 % rate shall be achieved at measure level (Art. 12.1, Commission Regulation (EU) No 65/2011 of 27 January 2011)

⁴⁷ http://europa.eu/rapid/press-release_ECA-13-36_en.htm

⁴⁸ http://europa.eu/rapid/press-release_IP-13-1028_en.htm

MS reports as it does not primarily focus on Rural Development⁴⁹. The ECA also included cross-compliance infringements only recently, with limited chances for comparisons through time; and

- **DG AGRI, European Commission:** DG AGRI receives statistical information from Member States on a yearly basis based on checks carried out at the local level (administrative and on-the-spot), covering the resulting error rates and financial consequences. Using this large dataset, provided by Paying Agencies in the Member States, DG AGRI calculates a residual error rate and amount of error specific to the EAFRD by country and by Axis⁵⁰. Weaknesses in the Member States control systems are not reflected in the DG AGRI methodology, as error rates provided by DG AGRI considers the *'risk of errors which remains after the Paying Agency has performed all its controls (administrative and on-the-spot) and has corrected the errors detected [...]'. It is an extrapolation of the error rate resulting from the population checked on-the-spot, where available, to the entire population*⁵¹. An important limitation of the DG AGRI approach is that it does not include cross-compliance infringements. And yet the approach by DG AGRI is the most complete and appropriate for the analysis of this study, particularly as it focuses on Rural Development measures across all measures implemented by Member States.

Given all elements provided above, and the specific focus of this study on EAFRD and cross-country comparability of error rate statistics, the statistical information used for comparing Member States performances, as well as the definition of 'errors' and 'error rates' adopted in this report, are based on DG AGRI reports.

1.2.4 Necessary or unnecessary? Costs and benefits of regulation

The study aims to assess to what extent national rules *unnecessarily* add to complexity and, as a result, increase the risk of errors in the EAFRD. The operationalisation of the term 'unnecessarily' proves to be difficult, however, as it includes elements of subjectivity and difficulty to reconcile with the concept of subsidiarity. After all, Member States have under the shared management framework a degree of freedom to implement the EAFRD in line with national and regional policy objectives, and in accordance with specific socio-economic and environmental circumstances.

Building on parallel work regarding gold-plating in the ESF⁵², we consider it useful to relate the costs of regulation (errors, increased administrative burden and costs, discouragement of project promoters) to the benefits or value in terms of policy gains - potential policy achievement of additional regulation. In that context we consider gold-plating to be similar to excess of norms, guidelines and procedures at national, regional and local levels with respect to the expected policy goals to be achieved by such regulation.

⁴⁹ The European Court of Auditors (ECA) in fact describes the EU spending on 'policy groups', and the one involving the EAFRD includes 'rural development, environment, fisheries and health' (DG AGRI, European Commission, AAR 2012 p.68)

⁵⁰ Within this regulatory framework rural development policy is structured around three thematic axes: Axis 1 - Increasing the competitiveness of the agricultural and forestry sector; Axis 2 - Supporting land management and improving the environment; Axis 3 - Improving the quality of life in rural areas and encouraging diversification of economic activities.

⁵¹ DG AGRI, European Commission, AAR 2012 p.48

⁵² EC DG EMPL (2013) 'Simplification and Gold-plating the European Social Fund: State of play and proposed actions'. Report sent to EP Budgetary Control Committee.

This 'cost-benefit thinking' allows for three possible situations:

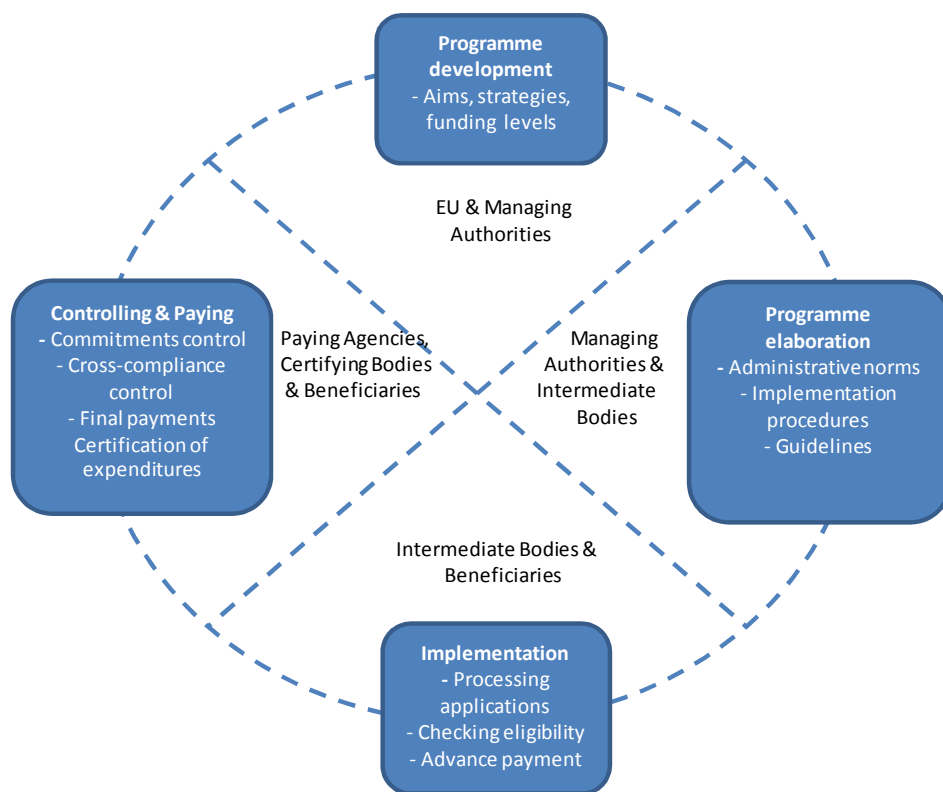
- a) Benefits outweigh or equal the costs; regulation is justified;
- b) 'Legitimate but too costly': regulation is justified but related costs outweigh the benefits. Regulation can be the cause of errors/burdens which exceed the potential policy benefits; and
- c) 'Not strictly needed': regulation causes costs while providing minimal benefits – which cannot be really justified by policy-makers ('unnecessary').

It must be anticipated that the latter case (c) has encountered only to a limited extent in the research, and that the majority of 'gold-plating' issues identified have been of the case (b) above: legitimate attempts to achieve policy goals. That resulted in over-complex requirements which are ultimately difficult to respect for beneficiaries.

1.3 THE 'GOLD-PLATING WHEEL'

Gold-plating can be positioned in the Programming cycle, and we will therefore introduce thereto the 'gold-plating wheel'. The figure below illustrates the main phases of EAFRD's implementation once the EU regulations for a specific programming period have been approved. It includes:

- **Programme development** – a preliminary phase where strategies, objectives and priorities, individual measures with their eligibility rules and targets, as well as funding allocations per Axis and measure of RDPs are discussed and agreed between the EU and the competent Programme Authorities;
- **Programme elaboration** – a key phase where the Programme Authorities (Managing, but also Paying, Certifying and Controlling) are set up and where they establish the norms, guidelines and procedures that will regulate the implementation of RDPs. This involves the organisation of responsibilities, monitoring and evaluation systems, the preparation of calls for proposals and their timing, the addition of more specific eligibility rules, selection procedures for applications, setting up shared information systems, coordination and exchanges between authorities, organising payments and co-financing, different types of controls and certification. This phase can take place at different institutional levels according to which Authorities are competent for rural policy in a particular MS: in centralised countries at national level, in decentralised countries at regional level. The focus is here on how it can be assessed whether the implementation system established in a particular case has worked efficiently and effectively, without adding unnecessary burdens.

Figure 1: The EAFRD Programming cycle: a 'gold-plating wheel'

Source: Ecorys

- **Implementation (measure level applications)** – this phase involves the processing of applications received for measures or sub-measures, checking their eligibility and compliance with the implementation system that has been set up, and, if they do, select the beneficiaries according to the priorities established by the MAs. Beneficiaries may also be affected by additional eligibility criteria and procedural requirements accompanying applications, including procurement rules or regarding advance payments; and
- **Controlling and Paying (measure level applications)** – a phase where correct realisation of the commitments undertaken by the beneficiary is controlled and the final payment of approved projects takes place. This is the phase where 'on-the-spot checks' take place in the case of 'area measures' which need to comply with direct payments conditionality. Certification of expenditure can also be considered part of this phase.

Gold-plating issues do emerge at different stages of the EAFRD Programming cycle, hence we will return to this framework throughout the study.

1.4 METHODS AND LIMITATIONS OF THE STUDY

The following methods have been applied in this study.

The description of 'gold-plating' in relation to the basic regulations governing the EAFRD (the first specific objective) has been executed primarily by **desk research in 8 Member States**, selected from those with high and low rate of errors as reported by DG AGRI (Chapter 2.2).

The Member States studied are: Austria, Bulgaria, Czech Republic, Germany, Italy, Poland, Portugal and Spain. When selecting these countries, due consideration was given also to the following aspects:

- Amount of funding for the country; inclusion of both smaller and larger amounts of funding;
- Member State size: both larger and smaller Member States have been covered;
- Centralisation/decentralisation of MS: with particular attention to the single versus multiple paying agencies within one Member State; and
- Geographic balance, including Member States across the EU territory.

The rationale for this selection has been to provide an overview of the diversity of problems behind gold-plating and its link to error rates, emphasising where such errors take place in the implementation process, rather than attempting to provide generalisations at EU level, a process that would require more time and resources than were available for this study.

The analysis builds on an initial **review of publicly available documents** at the EU and Member States level on the main roots of errors, focusing on the system of norms, guidelines and implementation procedures within the selected Member States.

- At the EU level, findings build on the publicly available reports and working documents published by DG AGRI and other sources, and notably the most updated assessment by DG AGRI and Member States on root causes of errors in the implementation of rural development policy and corrective actions⁵³; and
- Additionally, national regulations such as Rural Development Plans (RDPs), as well as additional implementation rules and terms of references for specific measures of concerns are reviewed.

Due to the complexity and large amount of documentation to be surveyed, the desk review has been supported by **strategic interviews** held in each Member State selected, involving relevant stakeholders both at the local and EU level, including officials from Managing Authorities and Paying Agencies, associations of beneficiaries, as well as EU desk officers in charge of the EAFRD in DG AGRI. Such interviews have been instrumental in further identifying local regulations, and available secondary sources, for the identification and analysis of possible gold-plating practices and regulatory issues across the 8 countries selected.

The second part of the study focused on the analyses, evaluations and comparisons of the (potential) effects of such additional rules, with regard to the risk of errors (potentially) deriving from them and in relation to the objectives to be achieved as well as best practices in the design of national rules (second and third objective of the study). This has been done by a **case study analysis** in 5 amongst the 8 previously selected countries: Austria, Bulgaria, Italy, Portugal and Spain. The countries have been selected on the basis of the relevance of gold-plating issues emerging from the desk review, as well as the level of accessibility to additional sources and local stakeholders to be interviewed.

The case study analysis is based on face-to-face interviews within the Member States, with a focus on those gold-plating issues which have an impact on error rates. Both desk research and case study analysis have benefited from the systematic use of matrices, allowing for the systematic comparison of gold-plating issues. The synthesis of findings, conclusions and recommendations has benefited from interviews with local stakeholders and in-house expert meetings including both core team members and country correspondents.

⁵³ Brussels, 27.6.2013, SWD(2013) 244 final

Limitations of this study are as follows:

- The number of Member States studied is limited, and therefore it is not feasible to extrapolate to the EU28 as a whole;
- Although the study team has benefited greatly from support of both DG AGRI and Member States officials, it has not been provided access to all documents: for example the Member State-specific Action Plans to combat Error rates in the EAFRD which were under preparation during the implementation of the study;
- Willingness to participate in the study and active cooperation has been common to all actors, both at EC and Country levels, however it has been difficult to collect very detailed statistics on error rates, due to the relative novelty of this investigation (therefore only in few cases disaggregated trends where available, and mainly for some measures where the majority of spending was concentrated); this poses limits to the quantitative assessment of errors generated.

1.5 STRUCTURE OF THIS REPORT

The following chapters of this report address the main requirements for this study, notably:

- Chapter 2 – Sets the scene for this study with an overview of the Rural development programme and its error rates;
- Chapter 3 – Presents the relevant gold-plating issues based on the review of main documentation and across a sample of Member States;
- Chapter 4 – Provides an assessment of the benefits (policy goals) in relation to costs (notably error rates) of such regulation across the Programming cycle (e.g. error rates statistics and other local studies) amongst the Member States sample and the case studies; and
- Chapter 5 – Reflects on the main conclusions, good practices and feasible recommendations as emerging from the whole study.

Annex I presents the case studies for Austria, Bulgaria, Italy (Liguria, Veneto), Portugal and Spain (Catalonia).

2 OVERVIEW OF RURAL DEVELOPMENT PROGRAMMES

KEY FINDINGS

- According to the ECA annual report concerning the financial year 2012, the policy group for 'rural development, environment, fisheries and health in the financial year' was, at 7.9 %, the most error-prone. In comparison in the ECA annual report concerning the financial year 2011, the error rate for spending in the rural development, environment, fisheries and health policy group was 7.7 %. However, ECA data are not specific to rural development and do not allow comparisons through time, as the sample used tends to vary each year.
- Data from DG AGRI on error rates have the advantage to specifically refer to the EAFRD. It also allows comparing across EU28 countries. And therefore is most helpful for the purpose of our analysis. The average error rate based on DG AGRI data across the EU28, for the financial years 2009, 2010, and 2011, is 2.1 %.
- High error rates occur across the EU –DG AGRI data show the highest rates in countries as diverse as Portugal, Latvia, Bulgaria, Sweden and Austria. Also, there is an understandable pattern amongst the countries with low error rates: the Czech Republic, Lithuania, Luxembourg, Slovakia and Cyprus. Axis 2 is confronted with high error rates in most countries, in some cases affecting the high total error rate for the entire Programme.
- EC and Member States have established an analysis of the root causes for high error rates. A priori, all of the root causes mentioned below can be considered relevant in understanding gold-plating practices – and are therefore the object of this analysis.
- Error rates by measure and country provide a useful point of entry into possible gold-plating linkages; these, however, need to be further explored with case studies in order to find potential links between errors and gold-plating which are specific to certain administrative practices and norms for some measures more than others.

2.1 EU RURAL POLICY AND THE EAFRD

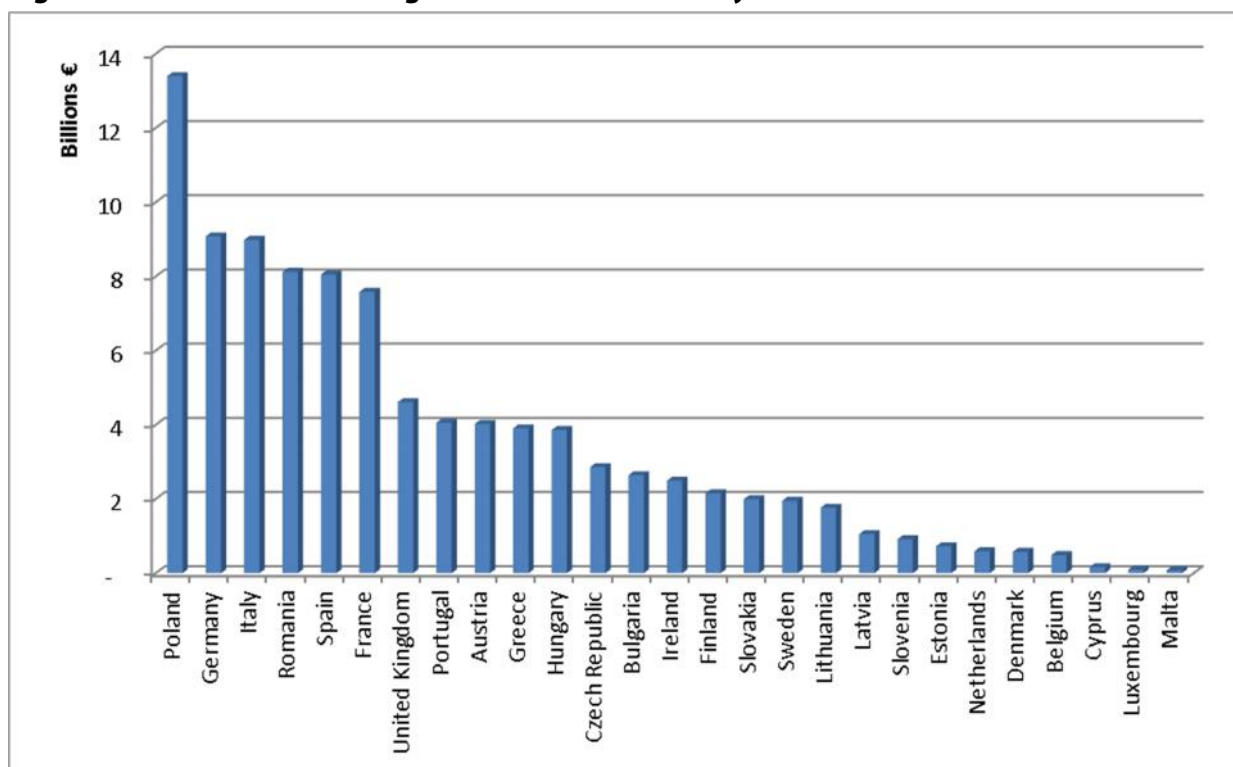
Rural development policy was introduced gradually within the framework of the CAP in the second half of the 1970s with the Less Favoured Areas measure, and has grown in importance with the 1988 reform of the Structural Funds and the Commission Communication 'The Future of Rural Society' in the same year. It has become the 'Second Pillar' of the CAP from 2000, accompanying the reform of the 'First Pillar' of the CAP (market support) and expanding its wider rural development features.

More recently, the CAP reform of 2003 has responded to growing concerns about the competitiveness of agricultural production, food quality, environmental protection and animal welfare, as well as local development. It has done so by strengthening rural development policy through transferring funds from the first pillar (modulation of direct payments) to the second pillar (supporting agriculture as a provider of public goods in its environmental concerns, as well as the wider rural economy and quality of life).

The EAFRD consists of 94 regional and national rural development programmes (RDPs) across all Member States with a budget of EUR 96.2 billion for the Programming Period 2007 - 2013. The EAFRD support is to be implemented through a close partnership between the Commission and the Member States. Whether the national partners have a centralised governance, or a federal institutional setup,

depends on a decision of the individual Member State⁵⁴. Nevertheless, some centralised countries can have more RDPs depending on their internal governance arrangements. More than one RDP has been implemented in Portugal and France even though they are centralised. However, in some decentralised countries like Italy, RDPs are implemented at the regional level, but some Italian regions, particularly in the South, delegate the central government to act as Paying Agency. This implies that MS have some degree of flexibility in defining in practice their centralised, decentralised or mixed management arrangements for rural development. The amounts of funding allocated in the EAFRD Programming Period 2007 - 2013 for each Member State are illustrated in Figure 2.

Figure 2: Amount of EU funding in EAFRD 2007 – 2013 by Member State in EUR billion



Source: European Commission, DG AGRI (2012), Rural Development in the EU - Statistical and Economic Information Report 2012, p.288

The **main EU Regulations** governing the EAFRD and rural development policy, as well as the common menu of measures available to Member States and regions for the period 2007 to 2013, are set out in Council Regulation (EC) No. 1698/2005⁵⁵ (the 'basic' regulation), the Commission Regulation (EC) No 1974/2006⁵⁶ (the 'implementing' regulation) and the Council Regulation (EC) No 1290/2005⁵⁷ (the 'financial' regulation).

⁵⁴ Council Regulation (EC) No 1698/2005, Article 6

⁵⁵ Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)

⁵⁶ Commission Regulation (EC) No 1974/2006 of 15 December 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)

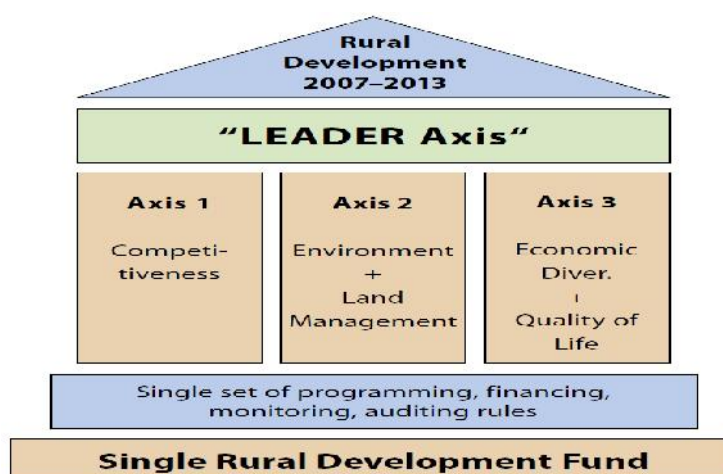
⁵⁷ Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy

According to the **EU subsidiarity principle**, the EU regulations framing the EAFRD⁵⁸ are designed and implemented by Member States and Regional Governments, which are asked to define their own Rural Development Programmes. Within this regulatory framework rural development policy is structured around three thematic Axes (Figure 3):

- Axis 1 - Increasing the competitiveness of the agricultural and forestry sector;
- Axis 2 - Supporting land management and improving the environment; and
- Axis 3 - Improving the quality of life in rural areas and encouraging diversification of economic activities.

These thematic Axes are complemented by a 'methodological' Axis (Axis 4) dedicated to the Leader approach (Leader Axis). In order to ensure an overall balance in the Programmes⁵⁹, a minimum threshold of funding allocated for each Axis is compulsory: this is 10 % for Axis 1; 25 % for Axis 2; 10 % for Axis 3; 5 % for the Leader Axis; and 2.5 % for the new Member States⁶⁰.

Figure 3: Rural development Axes



Source: EU Rural Development Fact Sheet 2007-2013

Rural development measures⁶¹ are set up in the regulation as building blocks for each thematic Axis. Managing Authorities in each Member State can select those, which are most relevant in light of the specific strategy chosen and which are expected to create the highest value-added taking the EU's objectives into account⁶². The approach by Axis was introduced to allow both greater visibility of the orientations taken by the Member States, and also to ensure a coherent approach within a strategy. The following rules apply:

- Competitiveness measures apply to all farm holders. They may have a minimum of 10 % and a maximum of 50/75 %⁶³ of the total funding;

⁵⁸ Council Regulation (EC) No. 1698/2005, Commission Regulation (EC) N° 1974/2006, Council Regulation (EC) No 1290/2005 (the 'financial' regulation).

⁵⁹ Title IV of Council Regulation (EC) No 1698/2005

⁶⁰ Fact sheet: Rural Development Policy (p. 8) http://ec.europa.eu/agriculture/publi/fact/rurdev2007/2007_en.pdf

⁶¹ Title IV of Council Regulation (EC) No 1698/2005

⁶² Fact sheet: Rural Development Policy (p. 8) http://ec.europa.eu/agriculture/publi/fact/rurdev2007/2007_en.pdf

⁶³ Fact sheet: Rural Development Policy (p. 17) http://ec.europa.eu/agriculture/publi/fact/rurdev2007/2007_en.pdf

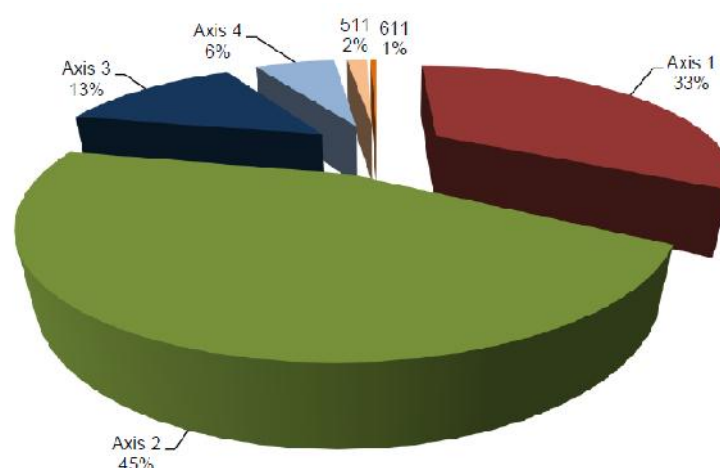
- Land management measures in the environmental Axis (second Axis) apply to all farm holders and are subject to cross-compliance requirements⁶⁴. They have a minimum of 25 % and a maximum of 55/80 %⁶⁵ of funding share;
- Wider rural development measures, in the third Axis, apply to all rural areas, and have a minimum of 10 % and a maximum of 50/75 % of funding share; and
- The Leader approach (4th transversal Axis) consists of a specific method for implementing local development strategies and may be applied in all rural areas. This method is based on specific features which are: to be area-based, form local public-private partnerships, adopt a bottom-up approach, implement multi-sector and integrated actions, and engage in networking and transnational cooperation. Their interventions may include, but are not limited to, the menu of measures contained in each of the Axes.

Some measures are also referred as land or area-related⁶⁶ measures or not:

- Area-related measures, which include the agri-environmental measures in Axis 2, require the definition of an area in which a specific measure or sub-measure applies. This is relevant because these measures are subject to cross-compliance conditions as indicated in the previous chapter; and
- Non-area-related measures, referring to measures not related to land, but to investments, services, diversification of the rural economy, and therefore largely under Axis 1, 3 and 4 of RDPs.

In the figures 4 and 5 the allocation of EAFRD funding by Axis and measure is shown.

Figure 4: Relative importance of Axes and measures 511, 611 within the total EAFRD allocations for the 2007 - 2013 programming period - EU-27



Source: DG AGRI, European Commission (2012), Rural Development in the EU, Statistical and Economic Information Report 2012, p.291

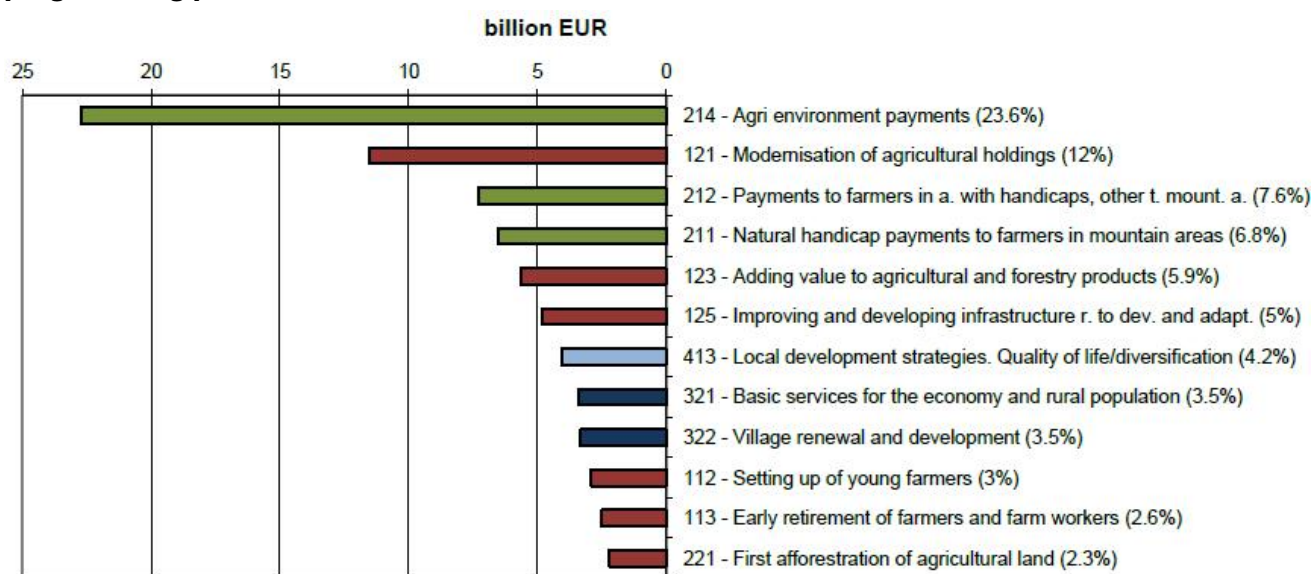
⁶⁴ Fact sheet: Rural Development Policy (p. 17) http://ec.europa.eu/agriculture/publi/fact/rurdev2007/2007_en.pdf

⁶⁵ Fact sheet: Rural Development Policy (p. 17) http://ec.europa.eu/agriculture/publi/fact/rurdev2007/2007_en.pdf

⁶⁶ EU Commission Working Document: Assessment of root causes of errors in the implementation of EAFRD (2013)

Almost half the Funds (45 %) are allocated to Axis 2, and within this Axis about half is allocated to measure 214 (Agro-environment payments). Axis 1 receives 33 % of the Funds, with the Modernisation of agricultural holdings (121) being the most important measure.

Figure 5: Most relevant measures in terms of EAFRD allocation for the 2007 - 2013 programming period - EU-27



Source: DG AGRI, European Commission (2012), Rural Development in the EU, Statistical and Economic Information Report 2012, p.294

2.2 ERROR RATES

Due to the relevance of its budget and the importance of the objectives of rural policy within the CAP, the EAFRD as part of a larger policy group is constantly scrutinised by the Court of Auditors. It does so by using the Most Likely Error (MLE)⁶⁷ for its statement of assurance. In recent years, a growing concern is that '[...] frequency and impact of errors in payments are not distributed evenly across all the policy areas. [Furthermore, already in 2009 and 2010] the Court notes that Rural Development expenditure is particularly prone to error'⁶⁸. This concern is shared by the Commission⁶⁹.

The ECA published separate error rates referring to the financial year 2012⁷⁰ for 'agriculture: market and direct support', 'rural development, environment, fisheries and health', 'regional policy, energy and transport', 'employment and social affairs', 'external relations, aid and enlargement', 'research and other internal policies' and 'administrative and other expenditure'. The most likely error rate (MLE) for 'rural development, environment, fisheries and health' for the financial year 2012 is 7.9 % (7.7 % for the

⁶⁷ 'Quantifiable errors identified during the audits of representative samples are the basis for the extrapolation of the (most likely) error rate. Extrapolation will consist of multiplying the cumulative total level of errors detected in the sample by the value corresponding to the sampling interval, which, in principle, means applying to the entire population the rate of error found in the sample examined'. See: <http://eca.europa.eu/portal/pls/portal/docs/1/17586744.PDF>

⁶⁸ Par. 4.12, Court Annual Report (2012) <http://eca.europa.eu/portal/pls/portal/docs/1/18320745.PDF>

⁶⁹ Par. 3.18, Court Annual Report (2011) <http://eca.europa.eu/portal/pls/portal/docs/1/9766724.PDF>

⁷⁰ ECA(2013): Annual Reports concerning the financial year 2012, p. 20, http://www.eca.europa.eu/Lists/ECADocuments/AR12/AR12_EN.pdf

financial year 2011) and this not only is substantially higher than the 2 % threshold considered as a normal level, but also exceeds the MLE for 'agriculture: market and direct support' of about 3.8 %⁷¹. In comparison, in 'regional policy, energy and transport' the error rate published by the Court of Auditors is 6.8 % and 3.2 % in 'employment and social affairs'⁷². The Court therefore renewed its worries with respect to high error rates in 'rural development, environment, fisheries and health':

'Rural development, environment, fisheries and health [...] [are] remaining the most error-prone policy group'⁷³. Already in its annual report for the financial year 2011, the ECA stated that: '[...] often complex rules and eligibility conditions [which, lead to the fact that] some programmes have low implementation rates [and expose to the risk], especially towards the end of the programming period, that ineligible expenditure is declared to avoid de-commitments'⁷⁴. This is strengthened in its annual report for the financial year 2012, where the ECA stated that: 'The main risk to regularity for the policy group as a whole is that expenditure is ineligible, due to non-compliance with often complex rules and eligibility conditions. For rural development this risk is further increased for some programmes with low implementation rates, where ineligible expenditure may be declared to avoid Member States losing EU funding'⁷⁵.

2.2.1 Comparing error rates

Error rates published by DG AGRI in its Annual Activity Reports are shown in amounts and percentages as well as overall (all Axes), and by Axes (axes 1 and 3, and 4) are combined, Axis 2 is shown separately). Figure 6 shows the average error rate for all measures for the years 2009, 2010 and 2011 reported by DG AGRI. Countries are listed from left to right according to their average error rate for all axes from high error rates to low ones.

⁷¹ ECA(2013): Annual Reports concerning the financial year 2012, p. 18, http://www.eca.europa.eu/Lists/ECADocuments/AR12/AR12_EN.pdf

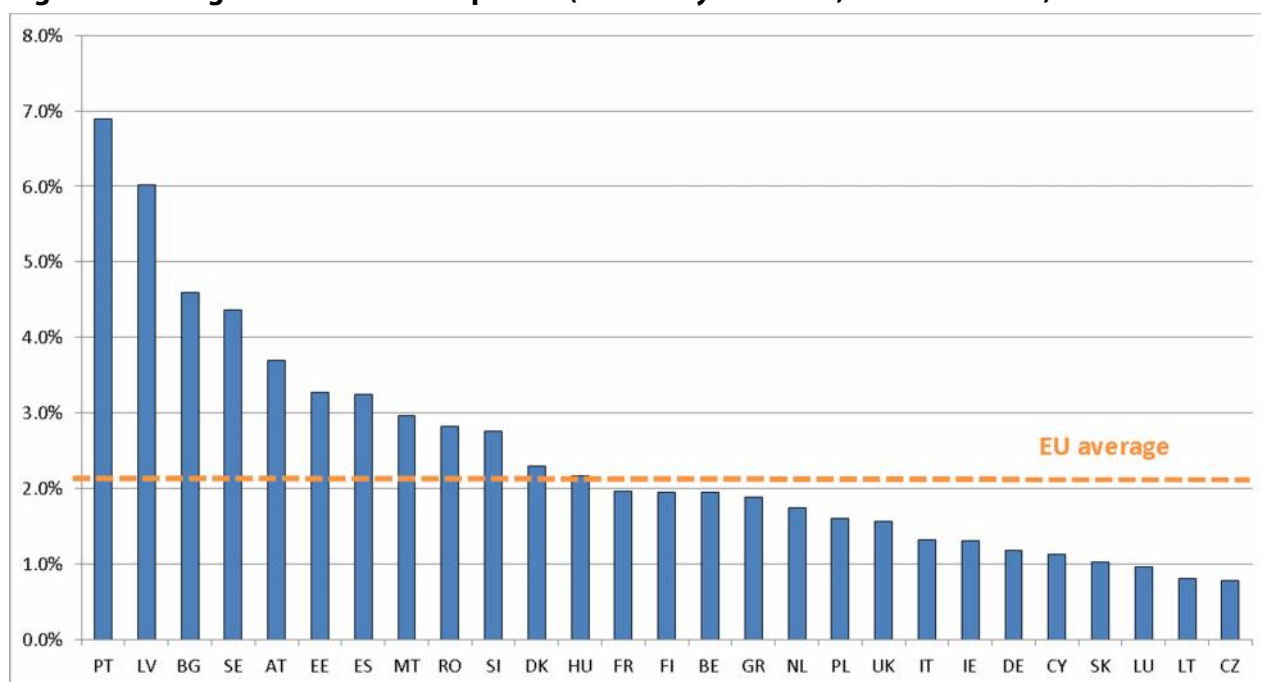
⁷² ECA(2013): Annual Reports concerning the financial year 2012, p. 18, http://www.eca.europa.eu/Lists/ECADocuments/AR12/AR12_EN.pdf

⁷³ ECA(2013): Annual Reports concerning the financial year 2012, p. 20, http://www.eca.europa.eu/Lists/ECADocuments/AR12/AR12_EN.pdf

⁷⁴ Par. 3.18, Court Annual Report (2011) <http://eca.europa.eu/portal/pls/portal/docs/1/9766724.PDF>

⁷⁵ ECA(2013): Annual Reports concerning the financial year 2012, p. 110, http://www.eca.europa.eu/Lists/ECADocuments/AR12/AR12_EN.pdf

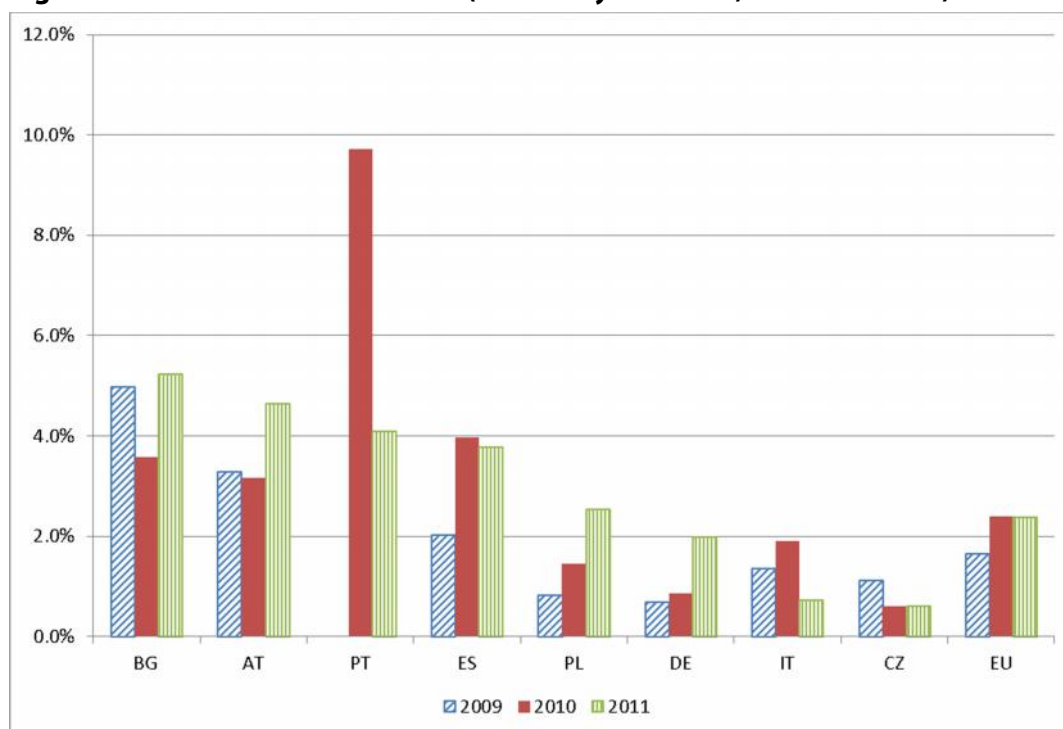
Figure 6: Average EAFRD error rate per MS (financial years 2009, 2010 and 2011)



Source: Ecorys based on AGRI AARs published in 2010, 2011, 2012

Error rates by measure and country provide a useful point of entry into possible gold-plating linkages. They point however to patterns that are difficult to interpret at first sight. About 10 Member States exceed the EU-wide three-year average error rate of 2.1 %. High error rates occur across the EU, and the highest include countries as diverse as Portugal, Latvia, Bulgaria, Sweden and Austria. There is not a clear (geographic) pattern amongst the countries with low error rates: the Czech Republic, Lithuania, Luxembourg, Slovakia and Cyprus. Clearly, these patterns deserve to be further explored with case studies in order to find potential links between errors and gold-plating which are specific to certain administrative practices and norms for some measures more than others.

Figure 7 shows the development of average error rates over time for the eight selected countries included in our desk review as compared to the EU as a whole.

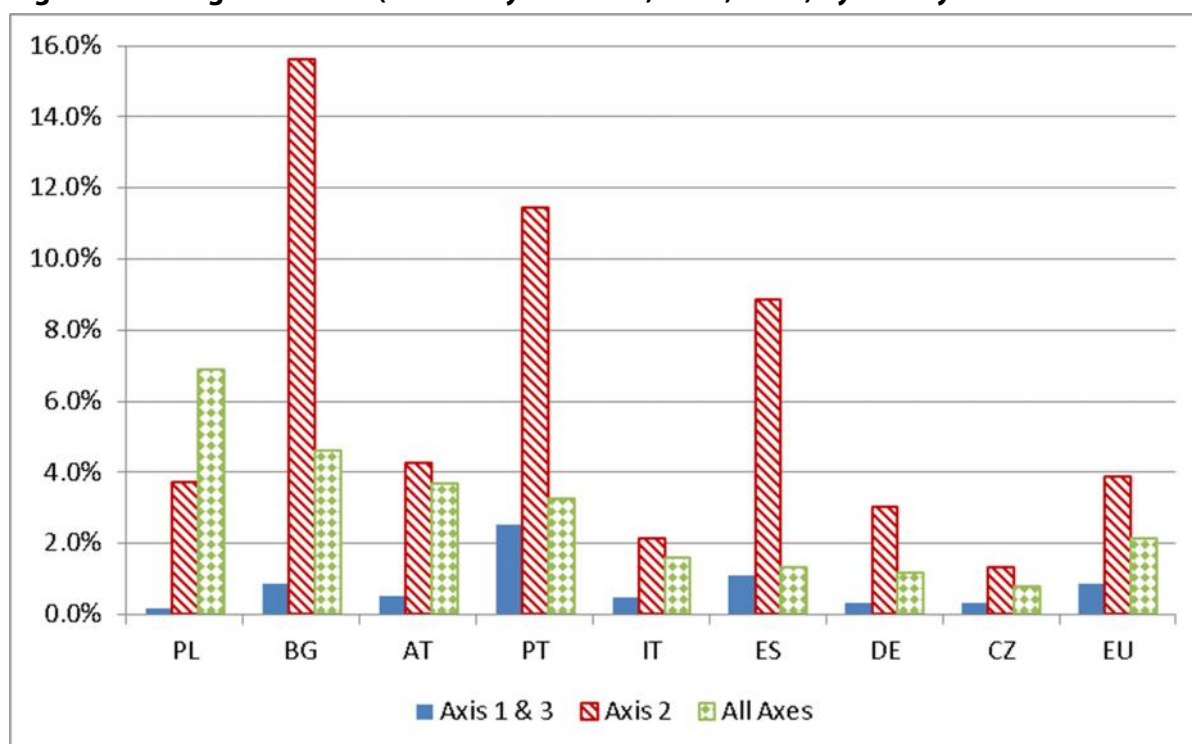
Figure 7: Error rates in selected MS (financial years 2009, 2010 and 2011)

Source: Ecorys based on AGRI AARs published in 2010, 2011, 2012

Although no data are available for 2009, within our sample Portugal is the country with the highest error rates in 2010, and had a sharp reduction in error rates in 2011. No clear trend over time can be discerned. Both Poland and Germany face increasing error rates over time. However, Bulgaria and Austria had lower error rates in 2010, and higher ones in 2011. Italy faced an increase in 2010 and again a decrease in 2011. The Czech Republic decreased its error rates in 2010 and kept them rather stable in the following year.

Across the Axes (Figure 8), Axis 2 shows high error rates in most countries, in some cases affecting the total error rate for the entire Programme.

Figure 8: Average error rate (financial years 2009, 2010, 2011) by Axis by MS



Source: Ecorys based on AGRI AARs published in 2010, 2011, 2012

2.2.2 Root causes of Errors

As shown above, several sources point to different error rates, which seem to fluctuate over time, and which do not immediately disclose clear patterns, other than the consistently poorer performance of Axis 2 over other axes.

In its annual report concerning the financial year 2010 the ECA recognised that '[...] compared to measures under the first pillar of the CAP financed by the EAGF, the relatively higher error rate for rural development is mainly due to the fact that support under several of the rural development measures; for example agri-environment measures under Axis 2, is subject to numerous and/or complex conditions (eligibility criteria, verifiable commitments by the beneficiary, cross-compliance). This multiplies the sources of errors [...]'⁷⁶.

In 2012 the Commission responded to the ECA on its assessment of the financial year 2011, by stating that '[...] the relatively higher error rates for rural development must also be seen in context of the rural development policy objectives, which can only be achieved by the more complex rules and eligibility conditions referred to by the Court'⁷⁷. Furthermore, the Commission acknowledged the Court's findings, '[...] although they do not always coincide with the control statistics from the Member States'⁷⁸.

⁷⁶ EU Commission, 2011 Annual Activity Report Directorate General for Agriculture and rural Development (p. 79) http://ec.europa.eu/atwork/synthesis/aar/doc/agri_aar_2011.pdf

⁷⁷ ECA (2012): Annual Reports concerning the financial year 2011, p. 97, <http://eca.europa.eu/portal/pls/portal/docs/1/18320745.PDF>

⁷⁸ ECA (2012): Annual Reports concerning the financial year 2011, p. 100, <http://eca.europa.eu/portal/pls/portal/docs/1/18320745.PDF>

Responding to the ECA views on the 'policy group' including rural development, environment, fisheries and health on the financial year 2012, the European Commission pointed out that '[...] *the complex rules and eligibility conditions referred to by the Court, [...] are, to a certain extent, a consequence of the ambitious objectives of rural development policy*'⁷⁹.

Following the debate on causes of higher error rates in the EAFRD, a more recent working document on the 'Assessment of root causes of errors in the implementation of rural development policy and corrective actions'⁸⁰ has been produced by the EU Commission together with Member States. The exercise aimed at pointing out the main causes behind identified errors. The document is based on Member States analysis and statistics collected across the EU and aggregated in a general analysis. As a result 'root causes' for errors have been identified.

The complete list of identified 'roots' for EAFRD errors is illustrated in Box 1.

Box 1. Root Causes for EAFRD Errors – As identified by Member States

In consultation with Paying Agencies of EU Member States, the EU Commission has identified a list of 'roots' which have caused EAFRD errors in the Programming period 2007/2013. The causes have been classified in relation to the subject committing errors, (the administrative procedures, beneficiaries) and type of measures (area-related - Axis 2), no-area-related (Axes 1, 3, 4). The full list of 'root causes' identified by the EU Commission is provided below (the number of Member States that identified a particular root cause is shown in brackets).

A. Area-related Measures (Axis 2)

Regarding administrative procedures, the root causes of error that the Commission and Member States identified are the following:

- Root Cause 1: The system for the reduction of support in cases of non-compliance with agro-environmental commitments was not proportionate (14 Member States);
- Root Cause 2: Beneficiaries are sometimes not duly informed and do not take into account the changes caused by the update of the Land Parcel Information System (LPIS) or other legal changes (8 Member States);
- Root Cause 3: Lack of exchange of information between authorities involved in implementing the measure (7 Member States);
- Root Cause 4: Pre-conditions to enter agro-environmental schemes have been established as eligibility conditions (e.g. minimum livestock density) in the programme and therefore they substantially raise complexity and as a result the likelihood of errors (7 Member States);
- Root cause 5: Commitments in the contract are not linked to the environmental objective of the measure (8 Member States); and
- Root cause 6: Commitments are difficult to implement and verify (7 Member States).

For beneficiaries, the following root errors causes have been identified:

- Root cause 7: Beneficiaries provide incorrect area declarations (13 Member States); and
- Root cause 8: Beneficiaries do not respect commitments (13 Member States);

B. Non Area-related Measures (Axes 1, 3, 4)

For administrative procedures, the Commission and Member States have identified the following root causes of errors:

- Root Cause 9: Deficiencies in procedures to process beneficiaries' payment request (5 Member States);

⁷⁹ ECA(2013): Annual Reports concerning the financial year 2012, p. 110, http://www.eca.europa.eu/Lists/ECADocuments/AR12/AR12_EN.pdf

⁸⁰ Brussels, 27.6.2013, SWD(2013) 244 final

- Root Cause 10: Weaknesses in checking the reasonableness of costs or eligibility conditions (7 Member States);
- Root Cause 11: Application of public procurement rules and private tender procedures (5 Member States); and
- Root Cause 12: Incorrect system of checks and deficient administrative procedures (7 Member States).

For beneficiaries, within the non-area-related measures, the following root errors causes have been identified:

- Root Cause 13: Inadequate tendering procedures applied by private beneficiaries (4 Member States);
- Root Cause 14: Non-eligible expenditure and the system of reduction applied (6 Member States); and
- Root Cause 15: Handling of the payment claims by beneficiaries (6 Member States).

Source: EC SWD(2013) 244 final on the assessment of root causes of errors in the implementation of rural development policy and corrective actions

All of the above root causes may be *a priori* of relevance to gold-plating, although some more than others. An important clue comes though from the ECA report analysing the financial year 2012, which states that, when it comes to rural development⁸¹, errors are mainly attributable to non-area related measures (65 %). Within the sample of investment projects, 26 % were affected by error. Furthermore, 26 % of the farmers in the sample had not respected the agri-environmental commitments.⁸² The following chapters aim at investigating further which areas of EAFRD regulation are the most prone to gold-plating (Chapter 3), and how far gold-plating practices impact on error rates for the fund (Chapter 4). They do so on the basis of secondary sources, as well as interviews with a range of stakeholders at the EU level, and in selected EU Member States.

⁸¹ It is important to note the fact that the analysis was based on a limited sample of '160 transactions [of which], 80 area-related and 80 non-area-related'.

⁸² ECA(2013): Annual Reports concerning the financial year 2012, p. 112,113, http://www.eca.europa.eu/Lists/ECADocuments/AR12/AR12_EN.pdf

3 A REVIEW OF GOLD-PLATING PRACTICES

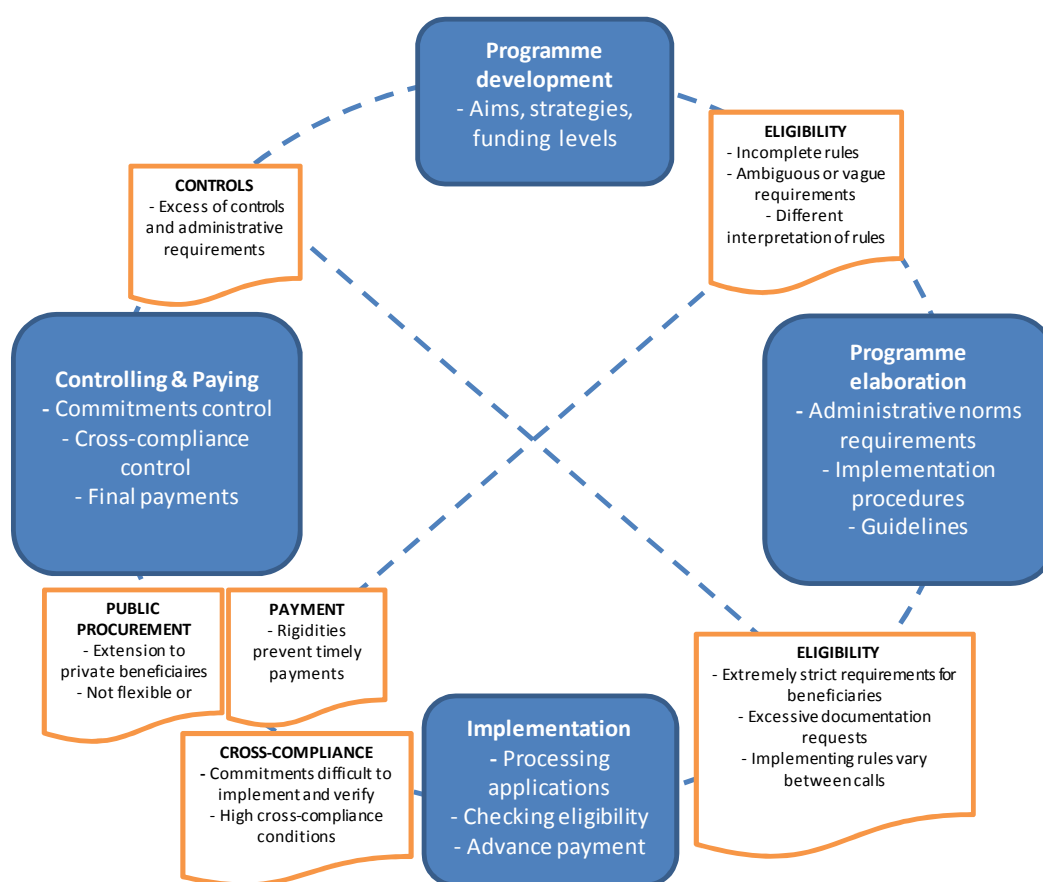
KEY FINDINGS

- A number of gold-plating issues can occur at different stages of the EAFRD Programming cycle. Many of them surface often around the Programme elaboration stage, in the early phases of design of measures, and in the Implementation stage, during the processing of applications as well as selection of projects. Another set of gold-plating issues occurs during Payments and Controls stages.
- Eligibility issues are numerous – and they provide (necessary or unnecessary) barriers to approval of applications. A range of eligibility requirements can be associated with gold-plating: incomplete rules and ambiguous or vague requirements can lead to different interpretations. Other issues include extremely detailed requirements for applicants, and excessive documentation requests, variation of implementation rules between Calls.
- Challenging agri-environmental commitments have been found amongst the most relevant factors in explaining gold-plating practices in land-related measures. These include high and disproportionate commitments, which are the consequence of legitimate ambitions, but which in practice appear too difficult to respect by beneficiaries, therefore resulting in high number of irregularities. Some commitments that are difficult to implement or verify are e.g. regional rules establishing buffer strips and double rules on excretion of nitrogen.
- Procurement issues are less widespread, but relate to the extension of procurement rules to private entities and the rigidity of the '3 quote' rule, especially in the case of small investments.
- Payment issues have become more important in times of economic and financial crisis: finding the necessary co-financing, extreme rigidity in the application of procedures and unnecessary requirements prevent timely payment – and can also lead to errors as well as excessive controls.
- Axis 1 is mostly affected by excess in 'administrative' or 'procurement' rules, particularly when eligibility criteria (e.g. the submission of a Business Plan for investment measures) have been implemented in RDPs through too strict or ambiguous requirements by MAs and therefore have potentially generated irregularities and errors.
- Axis 2 is mostly affected by tight agri-environmental commitments which may be legitimately more stringent and complex than what is generally required by EU rules. However, they have sometimes been difficult to respect by beneficiaries, with the consequence of a high rate of errors. In some cases the number of errors generated went beyond what is justified by the policy objectives of regulators).
- Axis 3 and Axis 4 (Leader) recorded less evidence of gold-plating practices.

3.1 OVERVIEW OF TYPES OF GOLD-PLATING

This chapter provides an overview of the gold-plating types by presenting a series of concrete examples which emerged through the desk review phase of the study, based on the selected sample of 8 countries (Chapter 1.4): Austria, Bulgaria, Italy, Poland, Portugal, and Spain. It does so by building on the 'root causes' for errors in the EAFRD that have been identified by DG AGRI in collaboration with Member States (Chapter 2.2.2). We have identified different types of gold-plating issues in RDPs regulations, which can occur at different stages of the Programming cycle and can be positioned across the 'gold-plating wheel' (Chapter 1.3).

Figure 9: Gold-plating issues across 'the wheel'



Source: Ecorys

The main types of gold-plating practices and issues are illustrated in Figure 9, and are further detailed in the following sections. They offer a basis for further analysis (Chapter 4) of the policy rationale behind each issue emerged, as well as their actual impact on error rates for the RDPs assessed.

Gold-plating practices and issues have emerged from our desk research at different stages across the gold-plating wheel:

- *Gold-plating practices related to eligibility requirements (as further described in Chapter 3.2)* can be traced to Programme development and elaboration, and surface through incomplete rules and different interpretation of rules which may lead to stricter-than-needed requirements. As a consequence, during the Implementation stage, the difficulty for beneficiaries to respect tight or vague eligibility requirements (e.g. including extremely strict requirements for beneficiaries, excessive documentation requests and variation of implementing rules between calls) leads to more irregularities which, when considered disproportionate, may have an impact on even higher error rates;
- *Gold-plating practices related to agri-environmental commitments, beyond cross-compliance basic standards (as further described in Chapter 3.3),* emerge at the Programme development

stage through requirements and commitments which are either ambiguous and give room for different interpretations amongst involved stakeholders, or are too strict to be actually respected by beneficiaries. As a result, they generate high errors during 'on-the-spot' checks in the Implementation stage or are even too difficult to be properly evaluated by public authorities in charge of the Controlling & Paying stage. This may result in high errors generated (as well as distorted error figures due to lack of accurate controls), and delays in final payments;

- *Gold-plating practices related to procurement rules (as further described in Chapter 3.4)* occur during the Implementation stage, but often surface only at the Controlling & Paying stage. They include either unnecessary extension of procurement rules to private beneficiaries, or too inflexible and tight criteria in their application, possibly resulting in higher-than-needed irregularities with a consequent impact on error rates;
- *Gold-plating practices related to payments procedures (as further described in Chapter 3.5)* refer mostly to rigidities in the Payment stage. They are related both to advanced payments and to final payments, therefore possibly impacting on errors throughout the implementation of financed projects; and
- *Finally, gold-plating practices are also related to control issues (as further described in Chapter 3.6)* and focus on an excess of controls and 'ex post' administrative requirements, which can impact error rates.

In the following chapters, the various types of gold-plating are further identified and described, by including illustrative examples of their occurrence as emerging from desk review of selected regulations (i.e. RDPs, as well as implementing rules as pointed out by strategic interviews held with key stakeholders).

3.2 ELIGIBILITY REQUIREMENTS

The analysis confirms the assessment of DG AGRI⁸³ – Root Cause 4 – for which '*[...] pre-conditions to enter agro-environmental schemes have been established as eligibility conditions in the programme: General 'entry' conditions (e.g. minimum livestock density) which are not part of the calculation for agro-environmental support have been introduced in agro-environment measures. They have to be considered as eligibility conditions for the whole agro-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 complies with the other commitments made in the agro-environmental contract*' (page 4). This root cause can be associated to gold-plating practices, and have consequences throughout the gold-plating wheel. And yet these are not the only types of gold-plating to be associated with eligibility requirements, as presented below.

A typical issue emerging in the Programme development is the fact that a range of actors are involved, often entering the process with a different understanding of EU regulations and different policy priorities. As a consequence, the Programming stage can be characterised by **ambiguous or vague requirements**, resulting in different interpretations of such rules. Divergence of interpretation by different bodies (e.g. Managing Authorities and Paying Agencies), might confuse beneficiaries in their understanding of the actual requirements/commitments they should respect. Such lack of clarity might therefore cause irregularities and errors throughout the implementation of financed projects.

⁸³ EU Commission, based on Member States assessment (July 2013)

Box 2. Examples of cases with ambiguous or vague requirements

- **Lack of clear national frameworks leads to applications submitted by non-entitled entries**

PL – The national Regulation of the Ministry of Agriculture of 17 October 2007, which covers the Council Regulation (EC) No 1698/2005 of 20 September 2005, does not specify the whole Article 3 (4) of Annex of Commission Recommendation 2003/361/EC of 6 May 2003. As a consequence, it was not clear whether SMEs with 25 % or more capital controlled by public bodies could be eligible or not. The lack of clarity in the EAFRD regulations on entitled entities, have caused a higher rate of submitted applications which have been rejected.

- **Different interpretations of rules by a variety of actors involved generate lack of clarity**

PL – EU⁸⁴ and National⁸⁵ Regulations, laying down specific hygiene rules for direct supply of small quantities of primary products to final consumers, allows specific regimes for micro-enterprises, which can be eligible suppliers of limited quantities of primary products (measure 123) even if their have few years of existence. And yet in some cases this exception was not considered by the Paying Agency, which Paying Agency rejected some micro and small meat producers' applications. This was the result of different interpretation of existing rules when it comes to eligible costs.

IT – A highly decentralised governance setting leaves room for different interpretation of requirements amongst different bodies involved in the EAFRD regulation and control at the national and regional levels. Such complexity may result in over-complicated RDP rules in regions with a limited experience in cooperation amongst local administrations involved (e.g. regional departments in charge of regulating relevant policy areas for agri-environmental commitments, Managing Authorities, Paying Agencies and other local bodies responsible for the control of such commitments). Regional RDPs can therefore result in lengthy and unclear requirements (e.g. measures described for several pages, remaining at a too general level, and without clear identification of the actual requirements and eligibility criteria to be respected by beneficiaries), as a consequence of the mediation between different priorities of involved authorities. Such ambiguity might generate misunderstandings by beneficiaries and cause high levels of irregularities.

Sources: EAFRD RDPs, RDPs Evaluations and implementing regulations

A wide range of gold-plating issues can emerge in the Implementation stage. Our analysis identified cases of **extremely strict requirements for the eligibility of beneficiaries** for receiving support, introduced by MAs beyond what is required by EU regulations. These requirements might be legitimate in theory, as they are often introduced to assure ambitious policy goals or efficient selection procedures, but can in practice be disproportionate to the actual possibility and capability of beneficiaries, possibly resulting in high numbers of irregularities and errors. And yet, the boundary between ambitious regulation and gold-plating is tight, as some cases Box 3 suggest.

⁸⁴ Commission Regulations (EC) No 852/2004 and No 853/2004 of 29 April 2004.

⁸⁵ National Regulations of Ministry of Agriculture of 15 December 2006 and of 29 December 2006.

Box 3. Examples of extremely strict eligibility requirements

- **Excessive stocking density restriction for farms, or minimum and maximum number of grazing livestock**

PT – National rules concerning the support for agro-environment and agro-forestry areas (measures 214/225), as well as disadvantaged areas (measures 211 and 212), defining the quantified requirements regarding livestock have resulted in too demanding requirements for the capability of local beneficiaries. To be eligible for measure 211, in fact, farms must comply with fixed amounts of stocking density conditions to be respected (instead of the more flexible 'ranges' set by the EU regulation): 3 units per hectare (ha) of agricultural agroforestry land in the case of farms with a size equal to or less than 2 ha; 2 units per ha of agricultural and agroforestry in the case of holdings in mountain areas with more than 2 ha; 2 units per ha of forage, in the case of holdings in other disadvantaged areas and with more than 2 ha. Such criteria have proven difficult to comply with by beneficiaries, and during the Implementation stage have been recognised as unnecessarily ambitious by the Managing Authority and costly in terms of the high impact on errors generated.

DE – tight commitments are not necessarily gold-plating though. For example, several German programmes provide legitimate ambitious regulations aimed at focusing support on operations. They aim for higher added value in terms of environmental protection standards going beyond the legal minimum requirements, and therefore introduce legitimate barriers for eligibility for EAFRD funding. The mid-term evaluators for the Bavarian programme for example recommend the use of ambitious criteria, so to ensure that available funding in the area of quality systems (measure 123) focuses on the most promising interventions⁸⁶.

- **Extreme rigidity in the conditions to be maintained throughout the project implementation**

PT – Intervention for the afforestation of agricultural land (measure 221) suffers from inflexible obligations with respect to the maintenance through time of the surface area to be supported by the EAFRD interventions. In order to be eligible for EAFRD funding beneficiaries are obliged to maintain the exact square meters of surface throughout the whole project implementation. The eligibility criteria are perceived by beneficiaries as too inflexible and rigid, and are applied irrespective of their business opportunities for selling or acquiring land, as any change in dimension would negatively affect eligibility. A degree of tolerance in assessing the irregularities, and re-negotiating the amount of funds to be received yearly proportionally to the surface actually eligible, has been introduced more recently by the MA to allow some flexibility and reduce the impact on errors.

- **Different minimum size thresholds across regions**

AT – In some cases, within the single national measure, regions have the rights to decide independently on higher criteria to be respected by local beneficiaries. Under measure 121 (modernisation of agricultural holdings), Länder have the *right to raise the eligibility criteria*. For example, projects which request funding generally need to be of a minimum size of EUR 10 000. Some regions decide that the threshold needs to be higher to reduce the number of beneficiaries. Even though this does not cause problems per se as beneficiaries usually are informed about the level in their region, it causes unequal treatment as well as problems for beneficiaries who have properties in different Länder. The right to raise eligibility criteria by regions will no longer exist in the Programming Period 2014 - 2020.

Sources: Based on EAFRD RDPs, RDPs Evaluations and implementing regulations

⁸⁶ 'Hier erscheint eine Anpassung der Zielformulierung „über das gesetzlich geforderte Maß hinaus“ angebracht.' 'Im Bereich Qualitätssysteme sollte die Zielformulierung geschärft werden, um ein Niveau, das deutlich über den gängigen Standards läge, in den Fokus der Förderung zu rücken.'

Excessive documentation requests in the implementation stage are an additional element of gold-plating which emerges clearly through the assessment of rules and implementing procedures across the country sample. This may be a common problem to all measures as pre-qualification documentation is sometimes requested in annexes to the Terms of Reference for all measures, but it is certainly an issue for investment measures in Axis 1 (e.g. 112, 121, and 221). A too strict formal pre-selection on the basis of administrative requirements, which is not proportional to the actual relevance of the irregularities (e.g. the relevance of the missing information and/or the documentation not provided), might cause high error rates which are not necessarily a significant proxy for the misbehaviour of beneficiaries. It may indicate lack of minor information provided by beneficiaries, without major consequences for the actual quality of the funded projects.

Box 4. Examples of excessive documentation requests set as eligibility criteria

- **Unnecessary supporting documentation required by the MA**

BG - Beneficiaries are required to provide a Balance sheet and a Statement of Fixed Assets for the previous and current financial years, and the Statement of Profit and Loss Accounts (also for the previous and current financial years). The policy rationale for this requirement is not clear, as information required does not concern the equipment purchased and its availability at the beneficiary's premises.

IT – All beneficiaries are requested to fulfill and maintain an on-line file ("fascicolo aziendale") with information on the status of their business and the supported land/animals/households (e.g. dimension of the eligible surface, number of animals, and type of cultures). The beneficiaries are required by the Italian Agency for Agricultural Payments (AGEA), in its capacity as National Paying Agency for grants on the European EAFRD for certain regions, to maintain an on-line file tracking changes in their business and an annual crops/animal plan. This operation must be performed by using the procedures of the National Agricultural Information System, and must be maintained and updated thoroughly in order to be eligible for all measures funded by the EAFRD. A wide range of information is required and in some cases amendments must be inserted no later than 3 days after the status of the beneficiary has changed. Although this practice is in principle aimed at supporting transparency and efficiency in the communication between beneficiaries and public authorities, it is often considered burdensome - a disproportionate effort in relation to the amount of funding granted – and might ingenerate irregularities due to tight timelines to upload necessary information (3 days only).

- **Business plan requirements not proportionate to the fund required and the capacity of applicants**

IT - To be eligible for some measures (e.g. 112), the submission of a business plan is required by Article 22(1) (c) of Regulation (EC) No 1698/2005. The business plan needs to describe at least the initial situation of the agricultural holding, specific milestones and targets for the development of the activities of the new holding and the details of investments, training, advice or any other action required. In many cases, Regional Authorities further specify such requirements in an Annex to the Calls for Applications for a specific measure, which unnecessarily extend the length of guidelines and the actual information required. The aim of such requirements is to understand how support will positively affect the performance of the beneficiaries. Although such request is perfectly legitimate, the perception is that it is disproportionate to the actual amount requested and the capability of applicants (often micro-enterprise or individuals).

- **Axis 1, Measures 121/123 – Disproportionate pre-selection requirements lead to rejection of even good quality projects**

PL - Documents required for being eligible to EAFRD funding are listed by the Paying Agency as part of the application procedure. If not provided, the Agency irrevocably does not grant assistance regardless of the quality of the project. Documents required include among others: a copy of identity card of the applicant or a fulfilment of submitted application in all required positions. The above pre-selection rules pose a very rigorous penalty regime which, if solely based on formal checks of compliance to eligibility requirements, may be irrespective to the actual quality of the application and might increase the risk of errors⁸⁷.

Sources: Based on EAFRD RDPs, RDPs Evaluations and implementing regulations

⁸⁷ When there are stricter and more criteria in place the probability to submit incorrect applications is higher than when the criteria are general and simple.

Additionally, **eligibility criteria might not be stable through time, as implementing rules may vary from call to call**. This can create uncertainty among beneficiaries who cannot plan in advance in order to collect all the necessary documentation (e.g. for the investment measures) and are either excluded from application or have high changes to commit administrative irregularities impacting error rates. The volatility of requirements through time, coupled with the high level of formal documentation requested, can also be a source of errors when it comes to formal controls undertaken by Paying Agencies regarding the applications. However, experience (i.e. Case Study in Spain) shows that greater flexibility may be a strength as it allows to focus on actual priorities, but it also requires the existence of good communication between MAs and beneficiaries.

Box 5. Example of changes in eligibility requirements throughout the programming period

ES - The Global Farm Contract (GCE) was introduced in Catalonia's RDP 07-13 as an innovative management tool. The GCE aims to help farmers develop business projects for 5 years with a view to adopt a more entrepreneurial approach to farming and achieve sustainable development. A GCE, addressed to individual farmers, may include a combination of measures, mostly from Axis 1 and 2, and one from Axis 3. This contract receives some 50 % of total funds in Catalonia. The selection criterion for individual measures has been quite often adjusted in calls for proposals. During the preparation of the call for proposals, the MA sends the draft documents (including modifications with regard to the last call) to advisory services so that these can discuss them with potential beneficiaries and provide feedback to the MA. And this practice has been indeed appreciated by beneficiaries (see Chapter 4). Furthermore, the MA uses an information system to estimate the number of applicants per measure, a figure later-on used to set the funding availability for each call for proposal. The MA may change the eligibility criteria over the years in order to meet targets and thresholds. Despite the fact that the administrative burden has decreased over the years, advisory services and associations argue that the whole application process is still too complex and involves too many requirements.

Sources: Based on EAFRD RDPs, RDPs Evaluations and implementing regulations

Finally, it is a legitimate common practice to exclude some possible beneficiaries by **targeting funding** to selected areas, sectors and beneficiaries that are expected to maximise the impact of expenditure and achieve strategic aims. These are strict regulatory practices which may be challenged as gold-plating by some beneficiaries, but generally do not impact error rates, as they simply reduce the chance for some potentially interested beneficiaries to access EAFRD funding. As such they are not further addressed in this study.

Examples of such practice include:

- The Czech Republic, where national agricultural goals lead to specific targeting of some sectors which leads to excluding others potentially interested;
- Italy, where EAFRD funding may be granted only to firms in particular rural areas, despite the presence of many potential beneficiaries in other 'grey areas'⁸⁸, which are currently classified as 'non-rural', but might be reconsidered as areas eligible for EAFRD support.

⁸⁸ Geographic areas which territories are possibly a mix of rural/non-rural areas - therefore difficult to identify.

3.3 AGRI-ENVIRONMENTAL COMMITMENTS (BEYOND BASIC CROSS-COMPLIANCE STANDARDS)

The analysis confirms the assessment of DG AGRI⁸⁹ – Root Cause 5 – that *'[...] commitments in the contract are not linked to the environmental objective of the measure: the agri-environment contract includes commitments (e.g. to market the products through the organic distribution chain) which can be seen as adding unnecessary complexity to the system as the beneficiary may not be able to meet them and they are not specifically linked to the environmental objective of the contract' (page7).*

These **tight and disproportionate agri-environmental commitments** (Box 6), although often based on legitimate policy objectives in principle, are certainly an issue for beneficiaries who in practice cannot respect them, and as a consequence tend to commit irregularities impacting error rates. In the assessment done by DG AGRI, eight Member States presented such issues and these were confirmed in the analysis for this study in several countries.

Box 6. Examples of issues related to additional commitments to basic environmental conditions

- **Axis 2, Measure 214 – Additional requirements are too strict and therefore problematic to achieve**

ES - The RDP of Castilla-La Mancha included the sub-measure 214.3 'Organic livestock' with a view to boost the organic sector in the region. One of the conditions required farmers to justify that at least 20 % of the production was marketed as organic. Despite its original good intentions to boost the sector and add value to the final consumer, stakeholders highlight the counterproductive effects of this requirement. It has allowed intermediate operators to take advantage of farmers' obligation to market at least 20 % as organic, by pushing them to reduce sales prices. At present, authorities consulted indicate a relaxation on this type of measures, which has led to a reduction in error rates. For instance, if the beneficiary complies with all conditions of measure 214.3 but justifies out of time, there is nowadays a penalisation of only 5 %, as compared to 100 % at the beginning of the Programme. In this sense the Action Plan produced by Spanish regions to reduce error rates (2002) proposed pre-assessment of measures followed by information and training, as well as the establishment and monitoring of feasible requirements better adapted to the reality.

- **Ambiguity on the criteria to consider when assessing excretion of nitrogen amongst animals**

AT - Under measure 214 there are two criteria which are in place to achieve the same objective of limiting excretion of nitrogen. In fact, the Austrian Managing Authority wanted to introduce as a criterion the amount of nitrogen extracted by hectare instead of the indicator depending on 'Großvieheinheiten' (GVE = Big animal units) per hectare which has been used so far. In the negotiations with the European Commission, the Commission requested to re-introduce the GVE/per hectare. However, this criterion leads to high error rates under this measure in Austria as beneficiaries have to control the amount of certain animal types. The problem as seen by Austrian stakeholders is that the amount of excretion depends a lot on the type and not mainly the weight of an animal. Many farmers in Austria are struggling with respecting this indicator. Therefore, the Austrian authorities are convinced that the newly introduced indicator (which was intended to replace GVE/ha) is more suitable to achieve the policy aim of limiting the amount of nitrogen excretion per hectare. Consequence of the disagreement between different stakeholders on the preferred indicator is that two measures exist in the current planning period which have essentially the same aim.

IT – Agro-environment requirements related to buffer strips vary amongst regions in Italy. In some cases they are stricter than in other EU Member States (a minimum requirement of 5 metres against 2 metres in other countries), whilst in other instances they are much more permissive. These criteria may be based on ambitious and legitimate environmental objectives, and yet can be perceived as unjustified by local beneficiaries whom find it difficult to respect them (due to limited capability or simply because the criteria are actually too

⁸⁹ EU Commission, based on Member States assessment (July 2013)

ambitious to be achieved). Also, the practice may be inconsistent across regional RDPs – as it is subjected to different geological characteristics across territories – and may generate confusion amongst beneficiaries applying in different neighbouring regions. As a result, such requirement – although legitimate in principle – might generate high level of irregularities and errors by beneficiaries who struggle to respect them. It is possible that a better communication, and a greater degree of trust, amongst involved stakeholders may improve the quality of RDPs regulation and the identification of more adequate criteria to be respected across regions.

Sources: Based on EAFRD RDPs, RDPs Evaluations and implementing regulations

The analysis also confirms the assessment of DG AGRI⁹⁰ – Root Cause 6 – stating that **commitments are difficult to implement and verify**: *'It is difficult to implement and verify some commitments, even though they potentially provide environmental benefits. In discussions with Member States, the following examples were identified: i) certain conditions linked to minimum/maximum livestock densities; ii) certain actions to be undertaken at a given moment in time; iii) reductions in applications of fertilisers and plant protection products'* (page 6). As a consequence, beneficiaries are charged with additional and sometimes unnecessary administrative duties, so to prove the actual achievement of agri-environmental commitments: for example, through certification by control authorities, or expert opinions of academics and other professionals. These tensions appear to affect EAFRD error rates across the EU.

As a common element across the majority of selected countries, respecting the GAEC (Good Agricultural and Environmental Conditions)⁹¹ – as well as SMR (Statutory Management Requirements)⁹² – is certainly a major issue for Managing Authorities. This difficulty often results in either too tight or too vague requirements, which are difficult to respect by beneficiaries and consequently may generate irregularities with a high impact on error rates across many Member States. The problem here is that the valuable and ambitious policy goals for the whole EAFRD to be achieved, which are fully legitimate in theory, turn out to be very complex to be implemented and respected in practice by beneficiaries. They are also reportedly difficult to correctly monitor and control for MAs and PAs. Also, the lack of proportionate procedures in assessing irregularities might have an impact on higher-than-necessary errors generated.

⁹⁰ EU Commission, based on Member States assessment (July 2013)

⁹¹ Council Regulation (EC) No 73/2009 [Chapt. I, Annex III, Art. 6]

⁹² Council Regulation (EC) No 73/2009 [Chapt. I, Annex II, Art. 4 & 5]

Box 7. Example of commitments which are difficult to implement and verify

- **Regional rules are difficult to control**

PT – The Agro-environment and agro-forestry measures (214/225) suffer from excessive demands in terms of commitment to negotiation. The commitment in question is the compulsory sale of a minimum amount of⁹³: *'production aimed at direct or indirect human consumption [...], directly to the final consumer or operators' and to ' [...] sell the production obtained under the control of a Certification Body' (subject to minimum quantity reference)*. This requirement is intended as a means to force the placing on the market of products of outstanding quality, in particular organic farming. Practical issues of control can however arise. For example, no such proof of selling 'under the control of a Certification Body' can be provided if no certification body is actually available in markets where products are actually sold (e.g. small organic fairs where products are sold to individual buyers) or when the production remains in storage or in stock for long period before being sold (e.g. production stocked in large suppliers deposits for long periods of time before being actually sold and therefore achieving any certification).

Such problems are due to the difficulty in the organisation of many commercial producers, and the fact that the timetable for implementation of yearly control visits is hardly compatible with the longer periods required for the marketing of some agricultural products may have a negative impact for farmers. In fact the failure to provide such proof leads to a penalty of 100 % of the value of the assistance each year. Such a commitment has therefore proven to be hard to monitor on a yearly basis by the MAs and PAs, and it has no necessary direct impact on the organic farming policy objectives, because a product that is not marketed as 'biological' does not necessarily reduce the organic characteristics of such product. The commitment has therefore been considered disproportionate given the objective in question and has been withdrawn by the Managing Authority during the RDPs implementation phase.

Sources: EAFRD RDPs, RDPs Evaluations and implementing regulations

Undoubtedly, agri-environmental commitments are a challenge for local authorities when they are confronted with a dilemma between the request of pursuing ambitious targets for the EAFRD land-related measures, and the need for accuracy in measuring the actual accomplishment of such targets. In fact it can be a challenge for Managing and Paying Authorities to set ambitious policy goals and ensure the maximum impact with the greater respect of environment, health and involved animals, goals which need to be judged as achievable by local beneficiaries. Also, it may be difficult for local MAs and PAs to meet the high standards in the accuracy and quality of controls to assess the actual achievement of such commitments, as the specific skills and capabilities required for such controls may not always be available. MAs and PA might therefore struggle in understanding whether ambitious commitments set are indeed too challenging to be achieved, or if beneficiaries are simply trying to bargain for easier targets for receiving EAFRD funding.

The complexity of implementing procedures, whose management is attributed to a variety of bodies at different institutional levels, therefore requires a high level of capability and skills for Managing Authorities and beneficiaries alike. Achieving a good compromise amongst ambitious and feasible agri-environmental commitments is particularly a challenge for those territories where local beneficiaries lack the capacity and skills to fulfill the policy obligations. For example, the target might

⁹³ Commitments action 2.2.1 - Changing modes of agricultural production, p. 193)

simply be too ambitious to be achieved, therefore posing severe limits to the actual EAFRD impact in the end. In addition, as the policy domains affected by cross-compliance lie in a variety of different territorial administrations and these may pose a challenge for Managing Authorities which are not used to coordinate with other relevant local institutions involved in the definition of agri-environmental commitments (e.g. environmental policy, health and food policy).

The result may be a major challenge for all involved stakeholders. Authorities try to balance commitments and objectives with control capacity, often with limited results. Beneficiaries try to obtain lower-level commitments that are more feasible to comply with. In the end commitments might result in challenging and unjustified, or unclear, requirements, which are difficult to achieve by beneficiaries and result in high levels of irregularities. This explains why error rates are typically higher in Axis 2 than elsewhere, as has emerged from our Case Studies findings, based on local interviews and further discussed in Chapter 4.

3.4 PROCUREMENT RULES AND PRIVATE TENDER PROCEDURES

Our analysis confirms the assessment of DG AGRI⁹⁴ - Root Cause 11 - Application of public procurement rules and private tender procedures (5 Member States): *'the checks did not detect deficient public procurement and private tender procedures that did not comply with national laws; for example, insufficient documentation provided regarding the selection of contractors'* (page 8). Public procurement provisions may be found in Directive 2004/18/EC, Directive 2004/17/EC, Directive 2007/66/EC and Directive 2009/81/EC and transposed to national legislation, e.g. through Public Procurement Acts. Our findings point to a number of specific public procurement issues that could be related to gold-plating.

- A first gold-plating issue is the fact that **public procurement rules are extended to private beneficiaries**. In general, all central, regional and local authorities, as well as state institutions and certain public companies should select contractors, suppliers and service providers in accordance with the rules and procedures laid down therein. Private beneficiaries of EAFRD support are not always required to comply with these rules. Nevertheless, implementation rules for RDPs sometimes extend into this area; and
- A second issue (Box 8) relates to the fact that the **rule of three quotations⁹⁵ is not flexible and not always geared towards realities on the ground**. The lack of proportionality in controls and assessment of irregularities seem to be a general concern when it comes to gold-plating across all Axes and measures, with consequent impact on higher-than-necessary rates of errors generated. This aspect also applies to the application and control of procurement rules in the RDPs assessed for this study.

⁹⁴ EU Commission, based on Member States assessment (July 2013)

⁹⁵ In order to ensure that all purchases are made at the most advantageous cost consistent with required quality, fair competition shall prevail, and purchasers shall further ensure that value for money is obtained by one of the following: i) for purchases above 200,000 Euro an EU tender is required; ii) purchases of 25,000 Euro and 200,000 Euro require inviting formal tenders within the procedure laid down in EU Directives for EU Tendering Procedures; iii) purchases between 5,000 Euro and 25,000 Euro require inviting written quotations within the procedure laid down in Procurement Policies and Procedures; iv) for other purchases under 5,000 Euro written quotations are not required.

Box 8. Examples of private tender procedures

- **The rule of three quotes is not flexible to local realities – e.g. there are not always 3 providers available**

AT – Private tender procedures, requiring to provide three written quotations in case of spending over a certain threshold, are sometimes too demanding for particular types of services, which have been traditionally provided by trusted local suppliers. The beneficiaries are not used to such procedures and tend to find them too burdensome. Often do not understand why they should check for new suppliers if they trust the price and quality of the ones they already deal with. Although not necessarily a gold-plating practice, a lack of flexibility in certain countries in identifying alternative legal means to assess legitimacy of expenditures (e.g. by referring to certain range of price per items) may result in burdensome requirements for beneficiaries. As a consequence irregularities may occur.

BG - In general, national procurement rules and private tender procedures are not in conflict with EAFRD regulations. And yet complexity arises from the requirement for beneficiaries (e.g. NGOs, private companies, associations) to select suppliers/providers before approval of their projects. These could lead to more expensive investments (in case machine or equipment prices decline), respectively to inefficient spending of the EAFRD funds. Ordinance No. 8 (article 26(10) and (11)) and Ordinance No. 25 (article 23(4) and (5)) require applicants for support under measure 121 and measure 321, respectively, who do not fall under the provisions of the Public Procurement Act, along with the application, to provide at least three offers. The rule applies to offers where the planned expenditures amount to EUR 15,000 or more or where these are part of goods or services which would be delivered by a single supplier/provider at the price of EUR 15,000 or more. In practice this means that applicants have to already submit three offers when applying for funding even though these offers might not be beneficial (in price or quality terms) when the application has been approved (this takes usually about 10 – 12 month).

Sources: EAFRD RDPs, RDPs Evaluations and implementing regulations

3.5 PAYMENT ISSUES

In times of economic and financial crisis, liquidity and cash have become extremely important for beneficiaries – whether public or private. Some elements seem to emerge as critical, particularly in relation to requirements for advance payments and payment in general. **Extreme rigidity and unnecessary requirements also prevent timely payment – and can also lead to errors.**

Box 9. Examples of extreme rigidity and unnecessary requirements that prevent timely payment

- **Non-observance of the deadlines for processing of applications and payment claims**

BG - The Ordinances stipulate that no later than 2 months, and in case of construction works no later than 3 months from the date of acceptance of the application form, the Paying Agency should process it and should approve it or reasonably refuse to provide support. In practice, it takes more than 8 months, sometimes a year for processing the application and taking the payment decision. This delay can involve a change in the project timetable, and in some cases the investments could simply become unnecessary. Although this case is not strictly speaking a gold-plating issue, inefficiencies in payments are creating problems for beneficiaries to respect the implementation of actions planned, and consequently may imply difficulties in achieving the actual commitments/results they have agreed upon. Also, if beneficiaries fail to notify the Paying Agency for the need of amendment of the Grant Contract (because of the delay), or do not buy the equipment or machine provided in their application forms (because it is not necessary anymore or is more expensive than newer ones or is not produced any more), they may face the rejection of payment claims. That can lead to high rates of error.

- **Paying Agency refused to re-fund raw materials costs – despite these being eligible**

PL - Article 54 of Regulation 1974/2006 states that costs of raw materials are eligible expenditures. Despite this provision, the Paying Agency refused to co-finance the raw material costs of the Forest Districts – a public body beneficiary of the measure 226 – as eligible expenditures. The beneficiary was conscious that its costs were eligible but then were not refunded. Similar cases have a negative influence on the beneficiaries' confidence in the programme implementation. From a Paying Agency perspective, the refusal to re-fund raw materials could be seen as an error.

- **Some requirements to certify expenditures are considered unnecessary by beneficiaries**

IT – In order to approve the expenditures incurred in the various RDPs, some Paying Agencies require a full bank statement from the beneficiaries, not just for those expenses which have to be refunded, but also for all other expenditures by the beneficiary during the years of eligibility. This practice is considered superfluous and far too intrusive by beneficiaries, and a certification of the actual expenditures to be refunded might be sufficient. Reluctance of beneficiaries to provide unnecessary information might result in high irregularity levels.

Sources: EAFRD RDPs, RDPs Evaluations and implementing regulations

3.6 UNPROPORTIONAL ASSESSMENTS OF IRREGULARITIES

A problematic element to be considered, which has emerged across all types of gold-plating addressed so far, is the unnecessary practice in terms of **unproportionate formal controls**. Controls might imply requests for information which are not proportional to the actual requirements (e.g. excessive documentation or too detailed level of information required) and may go beyond what is strictly necessary. Moreover, controls may be mostly related to formal aspects (e.g. lack of basic information, or some specific certificates) which are not necessarily related to the actual quality of the projects implemented. As a consequence, high levels of irregularities might be generated by minor formal mistakes, giving a distorted view of the real meaning of high error rates in the fund. A more proportionate assessment of the relevance of irregularities, coupled with a proactive communication between MAs/PAs and beneficiaries to solve minor negligences, might be a 'quick win' in reducing the amount of errors generated throughout the implementation of RDPs. This aspect will be further addressed in Chapter 4.

3.7 COMPARISON OF FINDINGS

The above overview demonstrates that a number of issues create obstacles to a smooth implementation of the RDPs and might have an impact on error rates by causing irregularities due to unnecessary requirements. Gold-plating practices surface often around the implementation process, in the early phases of design of measures as well as during the processing of applications, selection of projects, making payments and controls. Eligibility issues are numerous, and they impact on irregularities in the phase of approval of applications, as well as throughout the implementation phase. A further set of issues emerge which may prevent the timely or accurate progress in the implementation stage, and these include cross-compliance and additional commitments, procurement and payment issues linked to controls. Moreover, due to disproportional assessment of the irregularities generated, they may have an impact on error rates.

If gold-plating types are assessed across the Axes and measures in the EAFRD, some common patterns emerge as follows:

- Axis 1 is mostly affected by excess in 'administrative' or 'procurement' rules (Section 3.3), which in some cases can be related to eligibility criteria set by EU Regulations (e.g. the submission of a Business Plan for investment measures) implemented through too strict or ambiguous requirements by MAs, which are often too challenging to be fully respected by beneficiaries, and therefore potentially causing high rates of errors. This is particularly in case of un-proportional assessments of irregularities emerging through 'administrative' and 'on-the-spot' controls;
- Axis 2 is mostly affected by the definition of agri-environmental commitments with respect to Good Agriculture and Environment Conditions or Statutory Management Requirements, whose impact in terms of irregularities generated occurs throughout the EAFRD Programming Cycle. Ambitious commitments make agri-environmental measures particularly challenging to implement by local beneficiaries and in some cases such commitments are too strict to be fully respected. Extremely challenging commitments possibly result in higher level of irregularities and (as emerging from our findings, and further described in Chapter 4) consequently a high rates of errors (a negative impact which may result in unexpected 'externality' of legitimate policy ambitions of regulators); and
- Axis 3 and Axis 4 (Leader) recorded less evidence regarding gold-plating.

To allow a cross-country analysis, the different gold-plating issues emerging by Axis, measure and Member State are compared in ANNEX 1, with greater details available for the 5 countries where Case Studies have been provided (see separate Case Studies Report). For a full review of such issues the reader is invited to consult the individual Case Studies.

4 ASSESSMENT OF REASONS AND IMPACTS

KEY FINDINGS

- The relation between gold-plating and errors is not linear. That can be concluded from in-depth Case Studies carried out in Austria, Bulgaria, Italy (Liguria, Veneto), Portugal and Spain (Catalonia). Indeed, gold-plating practices contribute to high error rates within specific measures. In some instances, addressing such issues can lead to a drastic reduction in error rates. For example, error rates in Portugal for the measure 214 alone dropped from 33 % to about 7.7 % after adjustment of the National Programme requirements.
- The Case Study analysis has pointed to the fact that even minor adjustments of implementing rules can lead to a reduction of error rates, for example by introducing proportionality in requirements related to documentary evidence such as business plans (Portugal, Catalonia).
- A large amount of errors can be generated by ambiguous and vague regulation, a type of gold-plating which is unusual in the literature but which has emerged in practice, also in some recent analysis for other EU funds⁹⁶. It leads to subjective interpretation and exposes the EU regulations to a potentially wide range of diverging understanding amongst Managing Authorities, Paying Agencies, Intermediate bodies and beneficiaries. This raises the bar in terms of coordination and cooperation requirements – a recourse required to prevent errors.
- Having said this, the evidence gathered does not point to gold-plating being the main cause of errors. High error rates are also generated by mistakes and incomplete submissions of relevant documentation by beneficiaries, for example due to beneficiaries lacking adequate skills and experience. In fact, error rates are often generated by all partners involved, because of difficulties in clearly assessing the parameters upon which funded projects have to be monitored and evaluated.
- EU policy makers therefore may need to accept that a relatively high level of error rates might remain even after unnecessary national and regional regulation is removed, simply, as a consequence of the high complexity of requirements for beneficiaries (particularly with regards to agri-environmental commitments in Axis 2). Policy makers at all levels may also need to recognise that ambitious policy objectives, which then prove to be unrealistic or difficult to achieve by beneficiaries for a series of reasons, tend to contribute to error rates too.

4.1 PROGRAMME DEVELOPMENT AND ELABORATION

A finding emerging from the analysis under this study is that 'yes, gold-plating at the country level generates higher error rates for the RDPs'. When the issues identified as 'gold-plating' practices in our initial assessment (Chapter 3) are confronted with errors they generate, it is clear that they have had an impact on error rates throughout the Programming cycle for the specific Axes and measures they refer to. This finding has been generally confirmed, if not suggested, by Programme authorities and other stakeholders interviewed in Case Studies and as such can be considered as generally acceptable. However, the precise impact is not always clearly identifiable due to limited access to error rate trends and as the impact of gold-plating on errors is not based on linear causal chains.

⁹⁶ See for example Gold-plating analysis in the ESF (DG Employment, 2012)

And yet it would be too simplistic, and conceptually wrong to blame Managing Authorities (MAs) for bad regulation and as the main responsible for high error rates in the EAFRD. What has also clearly emerged from all the interviews and analysis was the fact that strict rules intentionally introduced by MAs at the national or regional levels were aimed at achieving ambitious policy goals in line with the EU requirements. As emerging from Case Studies, stricter eligibility requirements or commitments, onerous administrative requests and tight procurement rules introduced by MAs at the RDPs level – if compared with EU minimum requirements – had often the purpose of implementing the EU regulation in the most efficient and effective way. However, in practice they proved to be unrealistic and too challenging for the actual capacity of beneficiaries.

What emerges from this study is the difficulty for Managing Authorities to identify a 'trade-off' between the somewhat conflicting needs to: a) set ambitious targets (i.e. eligibility rules and commitments), so to achieve their policy objectives (potential benefits); and b) minimise the amount of errors generated (actual costs) throughout the RDPs implementation. The more challenging the targets, the higher the chance for beneficiaries to miss them and generate irregularities.

Finally, ambiguous regulations (i.e. regulations which are unclear in specifying the targets to be respected) are possibly to be considered a type gold-plating emerging in some cases⁹⁷ as a practice which may result in high error rates (Box 10). Ambiguity might not just be due to unclear rules, but also be caused by differences in interpretation of existing regulation amongst Managing Authorities (in charge of writing the rules) and Paying Agencies (in charge of verifying whether such rules have been respected). Negative consequences of ambiguity in RDPs rules therefore deserves ample attention from DG AGRI, and an active push towards greater simplicity of national rules and coherence of interpretation of the EAFRD regulation across EU Member States should be a priority for EU institutions.

Some examples emerging from the analysis provided in this study are:

- Different interpretations amongst MAs and PAs of specific regulations (PT);
- Stricter requirements in national rules with respect to EU regulation (AT, PT, IT); and
- Additional actors involved can generate further complexity (ES, AT).

⁹⁷ DG Employment (2012) ESF Gold-plating and Administrative Burdens Report

Box 10. Reasons and impact of ambiguous requirements

AT/ES/BG – A large number of sub-measures have been introduced in some cases under measure 214, therefore increasing complexity and ambiguity of requirements for beneficiaries and possibly causing irregularities and errors - although the actual cause-effect relation was difficult to identify and assess. As the budget for the Austrian programme is very large, the MA chose to offer a broad range of measures. This as a consequence creates a high level of complexity. The large number of measures implies a large number of criteria to respect and therefore creates further complexity. For example, this is reflected under measure 214 agri-environment with its many sub-measures (29). This is also the case for Catalonia (ES) and Bulgaria (BG), where a large number of measures may in practice result in greater confusion for beneficiaries, whose misunderstanding of the actual requirements in each measure may result in higher rates of errors due to irregularities committed throughout the measures' implementation.

IT/PT - In Italy and Portugal, beneficiaries suggested that agri-environmental commitments might in some cases not be clearly formulated, therefore leaving room for misinterpretation, irregularities and errors. Moreover, there are examples of divergences in opinion on how to interpret RDP rules or even EU regulation when it comes to address irregularities, and this results in high errors due to beneficiaries failing to fully understand, and comply with, actual requirements. These aspects have emerged in interviews with different stakeholders, although a clear assessment of the relevant impact of such gold-plating in terms of errors generated is difficult. Similar ambiguity may also emerge for eligibility requirements. In Portugal, for example, some issues emerged in the requirement for the eligibility for Integrated Territorial Interventions (ITI), which aggregate measures 214 and 225. The requirement in fact refers to the support of "traditional cultures", which may cover a variety of activities and means of production depending on possible interpretations amongst beneficiaries. Beneficiaries partially avoided applying for such measures, as they could not clearly understand which were the exact criteria for eligibility, but irregularities may also have been generated by those applying for activities and sectors which were not considered "traditional" by Managing Authorities. The target was subsequently clarified by specifying the eligibility criteria based on the age of olive trees to be cultivated (i.e. a minimum of 30 years of average age, for at least 80 % of the trees per parcel, in the surface eligible for funding).

ES/AT – A further element of complexity, in the interpretation of rules at the national and regional level, derives from the fact that in some cases roles and functions of Programme authorities have been outsourced to local bodies. This is the case in Spain for example, where additional "Cooperating Entities" have been introduced at the regional level to support beneficiaries, as well as in Austria where the Länder have assumed some of the Paying Agency functions. In both cases the intention was to support beneficiaries through greater proximity to Programme authorities, but in practice these additional structures have introduced additional procedures which have generated confusion to beneficiaries or have introduced additional differences in the interpretation of RDP regulations (as it has been reported for Austria). In both cases additional structures introduced by MAs have generated misunderstanding and possible additional irregularities resulting in greater (and unnecessary) errors registered for the whole....?. Additional structures per se are not necessarily a problem, as they may help in setting up direct channels of communications with local beneficiaries, and yet it is important to consider the possible backlashes of such practice, in order to prevent negative externalities for a potentially good approach.

Sources: Interviews with Managing Authorities, Paying Agencies and Association of Beneficiaries

Ambiguity in requirements is due to structural reasons, and as such they have to be addressed (see Chapter 5).

4.2 IMPLEMENTATION ISSUES

Tight eligibility and cross-compliance requirements or commitments constitute an element of gold-plating with high impact on error rates. These requirements and commitments are often introduced through exaggerated policy requirements (benefits) set by Managing Authorities, which are ultimately difficult to reach and achieve by beneficiaries and therefore cause errors (costs) once 'on-the-spot' checks are enacted.

Cases for such 'gold-plating' types as illustrated in Chapter 3 are:

- Definition for eligible farmers (AT/PT);
- Requirements in livestock/crop density (AT/PT);
- Time of maintenance for surface dimension (ES/IT/AT);
- Strict national requirements linked to cross-compliance (AT/PT); and
- Additional commitments for agro-investment measures (PT).

Evidence suggests that such gold-plating practices have had an impact on error rates within specific measures. Amongst the various 'types' of gold-plating, tight eligibility and cross-compliance requirements have the highest negative impact in terms of errors directly generated, with related measures reaching error rates of up to 24 % (ES) and 33 % (PT). These errors are typically addressed by removing the requirement if deemed not 'strictly necessary', or by moving the requirement from the eligibility requirements to selection commitments. This reduces impact in terms of errors generated - error rates for the measures affected decrease dramatically (e.g. error rates in Portugal for measure 214 alone dropped from 33 % to about 7.7 % following adjustments to National Programme requirements) with some effects for error rates at the Axis level (e.g. in the Portugal case the rate for the whole Axis 2 was reduced by half).

Drawing on the Case Studies, the Box 11 illustrates gold-plating issues related to the demanding implementation requirements set at the programme level.

Box 11. Policy rationale and impact of strict eligibility or commitments

AT/PT - Measures 112 'Setting up of young farmers' and 121 'Modernisation of agricultural holdings' were developed on the basis of a strict definition of 'farmers'. Therefore only those beneficiaries who do not exceed a certain income outside agriculture were eligible for funding. The MA explicitly introduced this requirement to ensure that available funding only benefited applicants with a clear engagement in agricultural activity. The decision aimed at maximising the benefit achievable for the resources at disposal. Unfortunately, once the measures were implemented it became obvious that the eligibility ceiling, although legitimate in principle, was too strict in practice and as such generated many irregularities and affected the error rate for the measure – a relevant one for the RDP. As a consequence, the requirements were then made less strict so to balance costs and benefits for this measure.

ES/IT/AT - Measure 221 'Aids for first forestation of agricultural land' in the Catalan RDP 2007 - 2013 is limited to compensatory premiums for beneficiaries that undertook commitments in the Programming period (2000 - 2006). As the measure does not support new forestation initiatives, the total amount of aid is not very significant, and it is addressed to a small number of beneficiaries (125). One of the commitments of the measure involved the maintenance of forestation initiatives for a period of 20 years. The commitment was introduced by the MA with the aim of assuring long-term results for this area, considered politically relevant for the ambitious goal of the RDP. However, during the implementation this requirement turned problematic when a large number of beneficiaries that had made this commitment during the previous period did not maintain the surface to be covered with forest as initially declared (as the overall surface has changed through time for a series of legitimate reasons), with consequent important irregularities detected, resulting in an error rate of 28 %. A dialogue between the MA and the beneficiaries led to adjustments (matching declared surfaces and

amounts requested, the proposed payments and the amounts finally paid, resulting in an error rate for this Measure in 2013 equal to zero. A similar case emerged in our analysis for the Veneto Region (IT) and to a lesser extent in Austria (AT).

PT- Measure 214 'Agri-environment support' includes a commitment for beneficiaries to assure the commercialisation of a minimum amount of production as organic products, with the MA intending to assure more substantial results in the promotion of biological production for Portuguese farmers. This was also a relevant measure for the RDP in Portugal and was involving a relevant share of the overall budget and beneficiaries for the RDP. Unfortunately, throughout the implementation of the financed projects it became clear that the commitments were difficult to monitor and assess (a producer benefitting from a broader distribution could not track back in time the actual selling of products as biological in time for the annual check, whilst small and micro producers selling to local markets could not provide actual formal certification to assure they sold their production as biological). As a result the measure generated a very high number of irregularities resulting in an extremely high error rate (33 %), which also largely impacted the whole error rate for Axis 2 (over 15 %) and the entire RDP (about 10 %).

AT/PT - Measure 211 'Payments to agricultural producers of mountain areas' requires the respect of minimum and maximum stocks for plants and animals. The requirement is implemented in the Austrian case through a fixed rate of density per hectare (GVE), a requirement causing difficulties for the beneficiaries as such ratios tend to fluctuate over time, therefore generating irregularities and errors. Similarly, the level fixed by the Portuguese MA in this measure for permanent plantation, although legitimate in principle, turned out problematic in practice, because beneficiaries failed to comply with the requirements. This led to irregularities, causing relatively high error rates for the measure. In both cases the rules proved to be too demanding for beneficiaries, with costs resulting from errors generated surpassing expected benefits in terms of policy goals and programming efficiency.

AT/PT - Measure 215 'Animal welfare' and measure 214 'Agri-environment payments' are affected by strict animal and plant protection laws in Austria, if compared to EU regulation, generating stricter commitments for beneficiaries, and consequent irregularities affecting error rates. The reasons for such strict criteria is the fact that, due to strong national political priorities on animal and plant protection, EAFRD commitments had to set even more challenging requirements for beneficiaries. Similarly measure 223 'First afforestation of non-agricultural land' in Portugal is regulated through strict national requirements, making impossible for beneficiaries to feed livestock in afforested areas. Because the national rule is somehow contradicted in practice by some beneficiaries, such illegal practice generated irregularities, and consequent errors, when spotted out during in-site controls. Even in this case there seem to be little possibility to change the requirements within the RDP as regulations seem to be legitimate by existing national rules. These are anyhow specific national rules impacting RDPs regulation and being causes of high errors.

Sources: Interviews with Managing Authorities, Paying Agencies and Association of Beneficiaries

The examples in the box above show that whilst gold-plating is causing high error rates for specific measures, the problem can be resolved by removing the specific requirements, aligning the rules with the actual beneficiary capacities and other 'quick wins'. However, more 'structural changes' might also be required (Chapter 5).

4.3 CONTROL AND PAYMENT

Another relevant group of gold-plating issues negatively impacting error rates are those related to 'administrative' requirements - which might have limited relevance for the actual achievement of policy objectives (benefits), but count as relevant errors if not assessed proportionately (costs).

These 'gold-plating' types include, as previously illustrated in this report (Chapter 3):

- Excess of requirements in business plans for some measures (IT/PT);

- Time-frames for collecting the required documentation and presenting applications for funding (IT/BG); and
- Strict payment rules and eligibility requirements (BG).

For these types of gold-plating, the impact in terms of errors is difficult to clearly assess, as it is generally spread through different measures and sometimes various Axes. However, the demanding administrative requirements clearly generate irregularities and errors (costs) which in most cases fail to be proportional to the actual policy objectives (benefits).

And yet, irregularities generated might be assessed more proportionally and more sophisticated methodologies to define what constitutes an error could be further developed. This could be done for example by introducing multi-criteria methods which consider the actual gravity of the administrative error in the light of the amount requested, the capability of beneficiaries as well as the possibility of correcting such errors without impacting on the quality of the project approved and its expected impact. The 'gold-plating' element of these types of issues lies in the "unnecessary" gravity attributed to the irregularities generated by these regulations, and their consequent impact in terms of high errors generated.

Drawing on the Case Studies, the Box 12 illustrates gold-plating issues related to demanding administrative requirements set at the programme level.

Box 12. Policy rationale and impact of challenging administrative requirements

PT/IT – Measure 112 'Setting up of young farmers' requires, according to EU regulation⁹⁸, a business plan which 'shall describe at least the initial situation of the agricultural holding and specific milestones and targets for the development of the activities of the new holding, as well as details of investments, training, advice or any other action required for the development of the activities of the agricultural holding'⁹⁹. Although the requirement is in principle legitimate and necessary to address the potential costs and benefits of proposed project, in practice the way in which such requirements are described in specific RDPs poses some problems to beneficiaries. Not only the required information is sometimes perceived as unnecessary by beneficiaries, but also there is a perception of a too bureaucratic practice in assessing such information. The assessment of irregularities does not always seem to reflect proportional considerations in terms of the actual relevance of information missing (there seem to be a lack of prioritisation of information required, based on its relevance for the assessment of the project's quality). Interviews with MAs, Paying Agencies and beneficiaries associations, suggest that a lack of proportionality by Managing Authorities in addressing the business plans received, a too complex/lengthy descriptions of what is actually required and limited information and support for beneficiaries to clarify their doubts, can result in high error rates. A more transparent request of what information is actually needed and an on-going channel of communication aimed at clarifying possible doubts, may help in reducing irregularities and errors.

BG/IT – The time period for submitting applications in Bulgaria, as well as in Veneto (IT), are considered too short by beneficiaries. Beneficiaries claim that in many cases they do not have sufficient time to prepare their projects and to obtain the necessary supporting documents (i.e. certificates, permits, etc.), therefore resulting in irregularities in submitted projects. This is particularly the case for public beneficiaries who cannot respond in time due to bureaucratic length of the administration. From the MAs' perspective though, this practice is essential in assuring a quick response in the identification of the best projects, which can receive an approval by the end of the first year of programming. Both the MA and the Paying Agency are aware of this problem, and in order to address it they consider to publish prior information notices with indicative periods for application intakes at least two to three months before the opening date and try to strengthen the collaboration with

⁹⁸ Article 22(1)(c) of Regulation (EC) No 1698/2005

⁹⁹ Article 13 of Regulation (EC) No 1974/2006

beneficiary associations and Intermediary bodies, to allow applicants enough time to prepare their applications. In some cases (e.g. Liguria in Italy) extreme approaches have been introduced, by setting separate budget lines for 'most innovative projects' and other projects so that the best projects could be presented and financed throughout the Programming period. It is difficult though to assess the impact of such gold-plating issues in terms of the actual errors generated.

BG - In compliance with Commission Regulation (EC) No 1974/2006, a guarantee must be established covering 110 % of the amount requested. National rules provide that instead of a bank guarantee, beneficiaries may provide a 'contract of guarantee' with at least two guarantors. Each guarantor should be responsible before the Paying Agency for fulfilling the obligation under the advance payment of the debtor-beneficiary for the amount of 110 % of the advance payment¹⁰⁰. The claimed advance payment should be above a certain threshold, (i.e. 1500 or 2000 euros) and should be requested within a certain period (i.e. 3 or 6 months after the Grant Contract is signed). Also, bank and guarantee fees are ineligible for reimbursement, as MAs consider that the EAFRD funds should be focused on investments and activities rather than on covering administrative costs. In practice, these conditions not only go beyond the EU rules but beneficiaries find it difficult to secure guarantors that meet these requirements.

Sources: Interviews with Managing Authorities, Paying Agencies and Association of Beneficiaries

The gold-plating types exemplified in the box above, may have an impact on the error rate across measures and Axes (although no clear quantification of such impact has been possible in our study), due to the impact on error rates of the administrative irregularities identified. Most of these are not affecting the quality and result of the proposed projects, and could therefore be addressed via other implementation measures. Even for such types of gold-plating, therefore, 'quick wins' are possible to reduce the errors generated. This could include more accurate criteria to translate such irregularities into different degrees of errors, or a certain degree of support in possible standard costs and achievements to be reflected upon in beneficiaries' applications, but also some "structural changes" can be suggested (Chapter 5).

4.4 RELEVANT FACTORS OF ERROR NOT RELATED TO GOLD-PLATING

Gold-plating, although in some cases being a clear cause of errors is neither the sole, nor the main source of errors for the EAFRD. The case study analysis (based on interviews with a variety of stakeholders in selected countries) confirms that some 'structural' level of errors is due to additional factors, such as the beneficiaries having difficulty to fully reach the agreed objectives (for Axis 1 and 2), their limited skills and knowledge to fully understand the actual requirements and commitments they have agreed, and the fact that beneficiaries might simply forget to stick to such commitments and requirements throughout the Programming period – particularly in case of limited resources and long-terms requirements.

Moreover, errors can be generated because the information available (both to Managing Authorities and beneficiaries) at the submission stage may be inaccurate and differ largely from what is reported during on-the-spot checks. This is the case for example of land dimensions, which in some cases (e.g. PT, BG) was based on inaccurate data of local administration and has generated a large number of

¹⁰⁰ In addition, each grantor should met the following criteria: 1) be registered and perform commercial activity at least three years prior to submission of the advance payment claim; 2) 25 % of the grantor's equity, recorded in the financial statements for the last closed financial year and/or for the last closed quarter prior submission of the advance payment claim, should be equal to or higher than 110 % of the amount requested; and 3) 20 % of the grantor's revenues for the last financial year should be equal to, or higher, than 110 % of the advance requested.

errors once the actual land dimension has been controlled. This is an issue that has been solved by renovating the measurement through more sophisticated and accurate maps produced by local authorities.

Finally, it has proven very difficult for beneficiaries to stick to their commitments for a longer period of time (e.g. more than one or two years), due to the impact of the economic crisis on the economic performance of EAFRD beneficiaries and the resulting need to access to financial resources by selling some of their livestock, or crops, or even redefine the size of their land. In short, sticking to the same requirements and commitments for five years might be problematic for beneficiaries. Those changes in initial conditions had an impact on irregularities with respect to eligibility conditions, which could have resulted in the withdrawal of the whole financial support for all previous years.

Nonetheless, although errors in the EAFRD are mainly generated by causes which cannot be identified as gold-plating, a strong need emerges to make RDPs regulation more simple, clear and flexible to the needs of beneficiaries – possibly by improving the quality of existing communication amongst all stakeholders throughout the programmes implementation. This is certainly a general principle which is emerging from this study.

5 GOOD PRACTICES, CONCLUSIONS AND RECOMMENDATIONS

KEY FINDINGS

- Although there are forms of gold-plating where benefits outweigh the costs and where regulation is justified ('good' gold-plating), the study has pointed to numerous practices of gold-plating, where norms, guidelines and procedures have been introduced which appear to be disproportionate and where costs outweigh the benefits. These are 'bad' gold-plating practices. It is these forms that need to be addressed, even though this will only partially address error rates.
- A main conclusion is that gold-plating (as well as related errors) can be addressed by capacity building, coordination and cooperation between all actors involved. Capacity building implies clarity about: structures and responsibilities; quality and stability of administrative staff supported by training; allowing some discretion in the decision-making of MA and PA staff; and ample provision of information and IT tools. Cooperation and coordination between all those involved in RDP management is equally crucial, between MA, IBs, PAs and Certification Authorities; but also between national and regional actors within the same institution.
- A number of good practices in the form of 'quick wins' related to Programme implementation have been presented. They consist of actions to address ambitious requirements and commitments, such as the identification of areas of overregulation, and greater exchange of information regarding the cause for non-observance of contractual commitments and requirements. Good practices can also address problematic administrative and procedural requirements, including those curbing of excessive documentation requirements, limiting procurement obligations and lightening business plan requirements. Ambiguous and unclear requirements can be addressed by stepping up communication between MAs and beneficiaries.
- More structural gold-plating issues can be addressed by building on existing knowledge-sharing platforms amongst MAs and PAs across the EU – facilitated by DG AGRI. This would allow EAFRD-specific bodies across the EU to learn by example when discussing areas of ambiguity, as well as to address jointly policy challenges posed by complex EU requirements. We could envisage the 'ad-hoc' Working Group on Guidance on Private and Public Procurement, established by DG AGRI in 2012, to become structural and extend its areas of discussion. Its aims would be to promote and facilitate exchange of good practices amongst MAs and PAs in areas related to gold-plating. Other recommendations include a benchmark of performance amongst best regulatory requirements in terms of errors generated, as well as request for needs assessments to justify additional requirements.

5.1 MAIN CONCLUSIONS

Gold-plating by MAs within RDPs implementation is an inherent requirement of the shared competence that characterises rural policy in the EU. MAs must establish specific procedures to better target their measures, and are expected to have a high level of ambition in designing their own measures and rules (based on EU regulation). Therefore, 'challenging regulation' is a necessary side-product of ambitious and legitimate policy goals that are set at national and regional levels. These are therefore challenging regulations which are entirely justified. For example selective procedures to target interventions, even if disliked by beneficiaries and potentially adding to gold-plating, should not be considered in negative terms since they increase the effectiveness of scarce financial resources

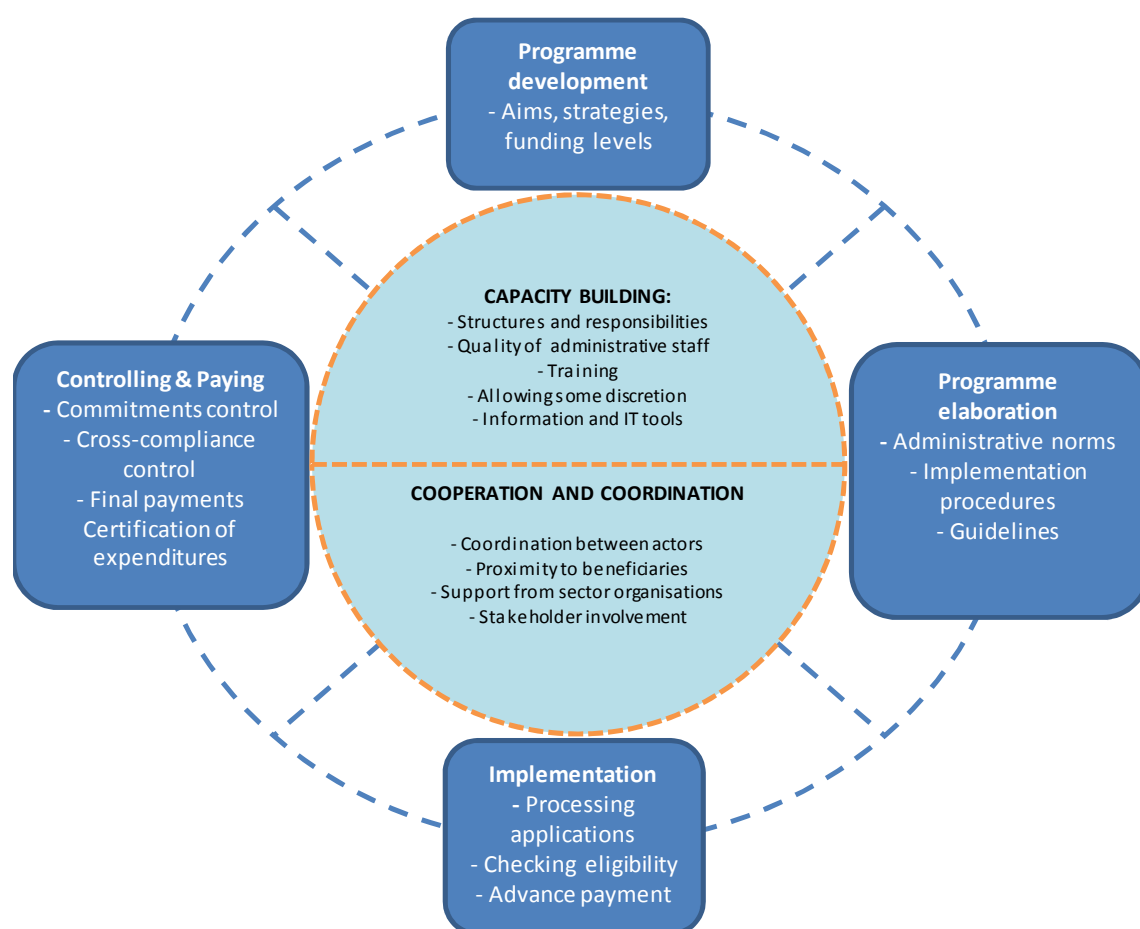
where they are most needed. Administrators need to learn how to be selective while keeping procedures simple. A key task for MAs is to add intelligently what cannot be done at EU level.

The study has however pointed to existing practices where norms, guidelines and procedures have been introduced which appear to be disproportionate as the actual levels of errors generated (costs) outweigh the expected policy benefits. These are indeed gold-plating practices with high impact on errors generated, although often introduced with 'good policy intentions'.

Gold-plating therefore can cause error rates, to an extent that costs (errors by beneficiaries) outweigh benefits (policy achievements). And as such the practice needs to be addressed. However, when doing so, it needs to be reiterated that the reverse of the causal link is not true: there are errors which have no relation with gold-plating but which are simply related to procedural mistakes and beneficiaries' mistakes – and attributable to a range of factors. And indeed the latter appear to be the majority of errors.

The above key findings allow us to draw the main conclusion, underpinned by the conceptual framework of the gold-plating wheel (Figure 10) and supported by the evidence gathered throughout this study, namely: that such gold-plating can be addressed by capacity building, coordination and cooperation between all actors involved.

Figure 10: Gold-plating wheel: Factors



Source: Ecorys

Capacity building of all those involved in RDP management becomes a key factor:

- Clarity about structures and responsibilities, both within and between institutions involved. The EAFRD involves multiple institutional levels and each has its own and legitimate role to play. It is important that these actors approach the issues not only from their own perspective, but are open and recognise those of the other institutional actors as well;
- Quality of administrative staff; we have come across large numbers of capable and committed staff, often very knowledgeable about the various implementation aspects of the EAFRD. Such people are better able to draft or redraft rules, guidance notes and to make procedural improvements. Staff stability was also found to be of high importance, since it helps the capitalization of knowledge and expertise;
- Training can make a lot of difference, both for administrative staff and of beneficiaries;
- Allowing some discretion in the decision-making of MA and PA staff. Some administrative systems provide more margins for resolving problematic issues in a pragmatic way to their staff than others, allowing for elements of proportionality. The complexity of EAFRD implementation requires capable staff who have a minimum of autonomy to agree on implementation issues; and
- Information and IT tools. A lot can be gained by accessible E-government tools which can limit administrative burden for beneficiaries, as well as promoting consistency and information sharing between the various actors in the system.

Cooperation and coordination is equally crucial, for all those involved in RDP management. It is important to maintain and strengthen the spirit of institutional partnership that has so far informed the management of the Structural Funds. Coordination is required between various actors in the system, such as between the European Commission, Managing Authorities, Intermediary Bodies, Paying Agencies and Certification Authorities. Also national and regional actors within the same Member State should better cooperate so as to come to a shared view on the interpretation of EU regulations and national/regional norms, guidelines and implementing procedures:

- Proximity to beneficiaries helps to obtain guidance and advisory services, not only through formal but also through informal channels. Such proximity is not only important for MAs but also for PAs, as a regional presence (ES, IT, AT) allows a better understanding of beneficiaries' concerns with administrative burden – even when achieved through the role of intermediaries at the local/provincial level;
- Support from sector organisations helps in simplifying complex regulations (PT, IT), as stakeholders' associations can assist beneficiaries in the complex rules and regulations and in overcoming hurdles in application, implementation and finalisation of project support; and
- Involvement of stakeholders in the process of changing requirements (IT, ES) allows for useful user feedback and will help the improvement and understanding of procedures. All implementation rules should be subject to regulatory impact assessment including calculation of administrative cost or burden.

The working staff document published on June 2013 by DG AGRI (as mentioned in Chapter 2.2.2), which addresses the 'root causes' for errors in EFARD and includes possible gold-plating issues causing high error rates in the fund, has also a list of possible 'Corrective and Preventive Actions' to be implemented in the Programming Period 2014 - 2020. Such actions, illustrated in Box 13, also touch upon some of the conclusions emerging from this study.

Box 13. Reducing EAFRD Errors: Corrective and Preventive Actions identified by DG AGRI and MSs

In consultation with Paying Agencies MS, the Commission has identified a list of 'corrective and preventive actions' which will be implemented to limit EAFRD errors in the Programming period 2014 - 2020. The actions, in the right direction to address most of the challenges and issues emerging in our conclusions, and are:

- Action 1 – training for staff. Specific training for administration staff on sensitive issues that may be highly prone to errors will be conducted in Member States;
- Action 2 – training and advice for beneficiaries. Specific training for beneficiaries will be improved for different aspects of implementing projects and measures. For more complex measures, authorities could consider compulsory training and advice;
- Action 3 – information campaigns. Member States will improve communication and guidance, both for administration and beneficiaries, to make available better information on various aspects of programme implementation;
- Action 4 – improvement of IT tools. Member States intend to improve their IT systems, tools and features to improve the availability of information for beneficiaries and to prevent errors;
- Action 5 – programme simplification. Some Member States have already modified or are about to initiate programme modifications in order to simplify the measures and increase their controllability and verifiability (in some cases, this drive may involve modifying contracts); these corrective and preventive actions should tackle errors under the current programming period (2007 - 2013) and contracts prolonged until the end of 2014 and they should be considered for new contracts for the next programming period (2014 - 2020);
- Action 6 – simplified costs. The Commission is drafting guidance on simplified costs for ESI Funds, to be published once the CPR Regulation is approved and will clearly explain different methods, how to apply them correctly, and provides concrete examples; the Commission will also actively promote and support the use of simplified costs options by the management bodies, through targeted actions of awareness-raising and dedicated technical seminars;
- Action 7 – improving internal procedures. Better internal procedures and efficient coordination have to be undertaken as a key means of preventing errors. Member States have identified several internal deficiencies to be addressed; and
- Action 8 – apply proportionate penalties. Member States will progressively modify their national rules to make reductions more proportionate in cases of partial non-compliance. The modifications will be fully operational for the next programming period.

Source: EC SWD(2013) 244 final on the assessment of root causes of errors in the implementation of rural development policy and corrective actions

This research has identified by building upon the widely appreciated work done by DG AGRI and by interviewing Managing Authorities, Paying Agencies and beneficiaries across selected MS, some good practices in tackling gold-plating issues promoted at the national and regional levels throughout the Programming period 2007 - 2013. The Case Study research has in fact pointed to a range of existing good practices, including some 'quick wins' (section 5.2) as well as more structural changes (section 5.3).

5.2 GOOD PRACTICES: 'QUICK WINS' TO REDUCE ERRORS BY ADDRESSING GOLD-PLATING

Quick wins (See Box 14) have been successfully implemented by the MAs in the various countries assessed for this study and such good practices could be further disseminated across MS - as some of the relevant gold-plating issues often emerge in other MS as well.

- **Ambitious requirements and commitments**

A main area of gold-plating identified in this study is the introduction of additional rules aimed at achieving ambitious and legitimate policy goals, but resulting in requirements and/or commitments which are difficult if not impossible to respect for local beneficiaries. When introducing such ambitious targets it is essential to assess the potential costs¹⁰¹ (in terms of errors generated) together with the expected policy benefits of the additional requirements/commitments introduced. Examples gathered in the Case Studies suggest that, in some cases, additional regulation has generated more errors than policy achievements and therefore have been withdrawn (PT/ES). In other cases, MAs and PAs understood that they would have benefitted from more proportional techniques in assessing irregularities, so to limit the magnitude of errors generated (AT/PT). In other cases, specific measures have been introduced targeting less-performing beneficiaries (e.g. micro-enterprises), so to assure proportional requirements to the actual capacity of beneficiaries (AT).

Box 14. Quick-wins: Good practices in reducing errors generated by ambitious requirements

Forced by the urgency of reducing errors generated, MAs, autonomously and in collaboration with DG AGRI, have mapped the types of issues related to overregulation to **identify areas of excessive regulation and possible simplification or re-negotiation of requirements**. In some cases (PT) these have provided immediate results through the abolition of the unnecessary requirements, as well as the shift of some excessive requirements towards less stringent commitments therefore reducing tangibly the amount of errors generated, whilst maintaining the policy benefits through more adequate and proportionate incentives for beneficiaries. Other Authorities (ES) proposed to reduce the current strict penalties, to assess the reasons for non-compliance, and ultimately, reduce the initial duration of the commitment in order to support the local agricultural sector (facing increasing unsteadiness in the recent years, due to the severe and enduring economic downturn). Others (AT) have introduced new simplified measures to address the issues faced by beneficiaries.

In order to address non-observance of contractual commitments and requirements, authorities have introduced **greater exchange of information and support for beneficiaries**. In some cases (BG) an annex to grant contracts has been introduced under measures 311 'Diversification into Non-Agricultural Activities' and 312 'Support for the Creation and Development of Micro-Enterprises' with the approved indicators including types, quantities and prices of works and supplies. This helps beneficiaries in preparing their reports and payment claims, makes control procedures easier and should lead to a decrease in error rates. Other MAs (IT) have tried to be more pro-active in their interaction with beneficiaries, particularly in the case of long-term commitments and requirements, and they send yearly communications to the beneficiaries with detailed information and pre-compiled forms so to make clear what information is needed and how performance can be assured.

Sources: Interviews with Managing Authorities, Paying Agencies and Association of Beneficiaries

¹⁰¹ An element which is now introduced by the new Article 62 of the EAFRD regulation.

- **Problematic administrative and procedural requirements**

It is crucial to assess costs and benefits of additional requirements at all times (see Box 15). The Case Study research has pointed to the need to introduce multi-criteria methodologies to assess irregularities proportionally (PT). Also, the need has been demonstrated to introduce simple and clear standard formats for basic administrative requirements (AT, ES). And a clear need is seen to make the selection criteria more flexible, and to allow beneficiaries to present some less stringent information at a later stage in the programme cycle (BG).

Box 15. Quick-wins: Good practices in reducing errors generated by administrative requirements

Regarding the **excessive documentation** requirements, the Catalan (ES) authorities no longer ask for additional documentation as to what is required by the EU regulations prior to payments with regards to cross-compliance requirements. The authorities indicate that they are working on the simplification of procedures and have reduced significantly the documentation required from the beneficiaries. For instance, some documents have been replaced by declarations of responsibility, or the MA obtains them from public registers or other institutional databases (e.g. Social Security, Tax Administration National Agency). The goal of the MA is to free the beneficiaries from excessive administrative burden. Beneficiaries consider it useful to establish thresholds to determine the need for more or less documentation according to the amount of funding awarded to the projects. Beneficiaries are also familiarising themselves with e-Government procedures, and they consider that its use would improve the efficiency and flexibility of the EAFRD management at all stages, from application to payment certification.

With regard to **procurement obligations**, such as that to present three offers from suppliers and service providers, some of the interviewed authorities (ES, PT) consider that this requirement is not too burdensome for beneficiaries. However, they have simplified the procedure by trying to be proactive in assessing the feasibility of the proposed budget by comparing similar requests received (PT) and preparing themselves estimations of the reliability of the proposed amounts. In case there are not enough suppliers or service providers in the area (due to the special characteristics of the supply or service), the three offers request can be replaced by a one-page suitability report (ES) or by an ad-hoc assessment by the MAs (PT).

When it comes to **simpler business plan requirements**, some MAs (AT/IT) are increasing their active support to beneficiaries, including greater information, introduction of simplified and standard forms, as well as (IT) provision of reference figures to be used (e.g. possible costs and impacts to be achieved depending on size and type of intervention), based on previous programmes and interventions, when completing the business plan. In other cases (PT) Paying Agencies are trying to introduce more proportionate and flexible methods for calculating errors with respect to the type of irregularities identified, as well as other parameters (e.g. type of information missing, amount of funding required, type of beneficiary involved).

Sources: Interviews with Managing Authorities, Paying Agencies and Association of Beneficiaries

- **Ambiguous and unclear requirements**

While respecting the specific (and not necessarily impartial role) of beneficiaries, it is important to open up and step up communication channels with beneficiaries to address their doubts and clarify the aims and objectives of less clear regulations (Box 16). When unclear or ambiguous regulations have been produced (IT, PT, ES), evidence collected suggests a chance of higher errors being generated.

Box 16. Quick-wins: Good practices in reducing errors generated by unclear requirements

To improve clarity and avoid misunderstandings, **strengthening communication** between Managing Authorities and beneficiaries has been frequently recommended. Some MAs (ES) encourage beneficiaries to provide feedback on the calls for proposals, and increase capacity-building activities towards beneficiaries by providing them training, information and advice during the Programming cycle (before and after the project approval). Others (BG) increase their requests or inquiries to beneficiaries via electronic mail (in general, official communication is paper-based), have established office hours dedicated to receive and support beneficiaries, and a dedicated call centre, where experts from the responsible Departments respond to beneficiary inquiries.

Sources: Interviews with Managing Authorities, Paying Agencies and Association of Beneficiaries

5.3 GOOD PRACTICES: STRUCTURAL CHANGES IMPLYING 'LONG-TERM' SOLUTIONS

During the design and implementation of RDPs, it is important to check the design of measures¹⁰², and in particular the eligibility criteria avoiding eligibility requirements, which have not been already tried and tested. Refinement of requirements should take place over time, learning by doing and then transposing learning into simple procedures and guidelines, providing adequate support for capacity building especially in new areas of interventions, such as environmental measures and indicators. Targets should be introduced only after a period of 'pilot' where the actual difficulties of beneficiaries in achieving such targets have been tested.

As emerging from good practices collected in the Case Studies, as well as recommendations from stakeholders, a series of structural changes in the current organisation of the EAFRD is considered key to fully support MAs and PAs in better regulating RDPs across the EU. These 'structural' actions are in line with the actions identified by DG AGRI, although what has clearly emerged through the ground-work is the great potential benefit for local actors (particularly MAs and PAs) of a stronger role of the EU institutions in actively supporting greater capacity building, as well as cooperation and coordination across EU Member States. Although it is clear that each territory, and therefore each programme, has its own specificities (which have to be respected), it is also obvious how actors facing a common set of EU regulations are usually confronted with similar issues and might benefit from ideas and cross-fertilisation throughout the Programme cycle.

A clearer role of EU Institutions in avoiding national (or even regional) 'regulatory silos' and, in full respect of the subsidiarity principle, pushing for greater exchanges across MAs and PAs is welcome. With this in mind, a set of ideas and recommendations emerging from the ground-work of this study is provided hereafter, for EU Institutions to be further implemented to support some of the structural challenges emerging from this study.

¹⁰² An element which is now introduced by the new Article 62 of the EAFRD regulation.

- **Support capacity building**

Open up a **permanent knowledge-sharing platform** amongst MAs and PAs across the EU, facilitated by DG AGRI, so that EAFRD-specific bodies across the EU can learn by practical examples when discussing areas of ambiguity, as well as addressing jointly policy challenges posed by complex EU requirements, particularly when it comes to cross-compliance requirements, and controls to be implemented.

We could envisage the 'ad-hoc' Working Group on Guidance and Public Procurement, established by DG AGRI in 2012, to become 'structural' and extend its areas of discussion to other possible regulatory problems and solutions emerging throughout the Programming cycle. Its aim would be to **promote and facilitate exchange of good practices** amongst MA and PAs, and identify areas for specific capacity building and training. Similarly, it would promote such exchanges between members of the European Network for Rural Development and the Working Group of MAs/PAs, so to make a further step ahead from the already valuable 'Guidance Documents for Member States' (already planned by DG AGRI) towards an even **greater support in learning-by-doing** through an on-going exchange of problems and solution between stakeholders across the EU.

- **Improve cooperation and coordination**

Introduce **benchmarks of performances amongst best regulatory requirements in terms of errors generated** to identify best solutions, including standard templates and suggestions for possible costs and achievements depending on the type of initiative, the location and other parameters. Regularly monitor errors generated and address common issues and administrative requirements which can be simplified. Support training activities and continuous dialogue/support for beneficiaries as well as Managing Authorities and Paying Agencies.

Introduce **mandatory need assessment for the programmes** to justify the additional measures and requirements introduced in national and regional programmes, by establishing the assessment of benefits (policy goals expected) and costs (errors possibly generated) as part of the ex-ante assessment which must be undertaken jointly by Managing Authorities and Paying Agencies for the Programming 2014 - 2020 - i.e. making mandatory to pilot/test the requirements through costs-benefits analysis with a limited sample of beneficiaries.

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LIST OF INTERVIEWED STAKEHOLDERS

The following list provides an overview (alphabetical order) of stakeholders interviewed throughout the study.

ORGANISATION
AgrarmarktAustria (Paying Agency), Austria
ARCA - Associació d'Iniciatives Rurals de Catalunya (Beneficiary Association)
Confederation of Agriculture (Confagricoltura) – Liguria
Confederation of Agriculture (Confagricoltura) – Rome, Puglia, Calabria, Lombardy
Departament d'Agricultura, Ramaderia, Pesca, Alimentació i Medi Natural, DG de Desarrollo Rural (Managing Authority), Spain
Departament d'Agricultura, Ramaderia, Pesca, Alimentació i Medi Natural, Secretaría General (Paying Agency), Spain
European Commission, DG AGRI, Unit - Audit of rural development expenditure and IPARD
European Commission, DG AGRI, Unit - Austria, Germany, Slovenia
European Commission, DG AGRI, Unit - Bulgaria, Croatia, Denmark, Poland
European Commission, DG AGRI, Unit - Consistency of rural development
European Commission, DG Agri, Unit - Czech Republic, Romania, Slovakia
European Commission, DG AGRI, Unit - Hungary, Italy, Malta
European Commission, DG AGRI, Unit - Spain and Portugal
Financing Institute for Fishing and Agriculture in Portugal (IFAP)
Italian Confederation of Agriculture (CIA) – Agrofood Department
Landwirtschaftskammer Österreich (Beneficiary Association), Austria
Lebensministerium (Managing Authority), Austria
Managing Authority - Liguria Region
Managing Authority - Veneto Region
Managing Authority Portugal RDP (PRODER, PRRN)

ORGANISATION

Ministry for Agriculture, Food and Forestry Policy (MiPAAF)

Ministry of Agriculture and Food, Bulgaria

National Grain Producers Association, Bulgaria

National Information System for Agriculture (SIN)

State Fund Agriculture (Paying Agency), Bulgaria

Státní zemědělský intervenční fond (Paying Agency)

Voca Consult, Bulgaria

ANNEX I – INDICATIVE COMPARISON OF REGULATORY ISSUES

The table hereafter compares regulatory issues across the sample of countries assessed in this study:

- General regulatory issues are initially provided, although not all necessarily identifiable as gold-plating issues;
- Specific gold-plating practices are then listed, for the relevant Axes and measures.

Note: the extent to which the gold-plating practices identified in this table (as well as chapter 3) negatively affect error rates, as well as the policy rationale beyond the introduction of such regulations, are assessed in the Final Report (Chapter 4) as emerging from the Case Studies developed for this study (Case Studies Report). As the phrasing of the example has an illustrative purpose, the text excerpts below are simplified descriptions only. The reader is strongly invited to consult the individual Case Studies for a full understanding of each example in the table. It is also important to remind the reader of the fact that those listed in the table are regulatory issues which may not necessarily be labelled as gold-plating. Furthermore, the list is not necessarily complete, as it serves for illustrative purposes only.

Table 1: Indicative comparison of regulatory issues across assessed countries - by Axis and (main) measures

	Case Studies					Desk Review
	Austria	Spain	Bulgaria	Portugal	Italy	DE, CZ, PL
General Issues (not necessarily gold-plating)						
	<p>The rule of three offers is not considered flexible enough by local beneficiaries – e.g. there are not always 3 providers available.</p>		<p>Private beneficiaries need to submit at least 3 offers for supplies/services and select 1 – as part of the application – can lead to inflexibility and are considered burdensome.</p> <p>Beneficiaries need to submit 30-40 support documents – including Statement of Profit and Loss, which is considered excessive by local beneficiaries.</p>	<p>Applicants are required to document their position in a registry with excess of administrative burden for micro-enterprises, and the information required is considered excessive by local beneficiaries.</p> <p>Integrated measures have an unclear definition of 'traditional' type of activities to be funded and therefore created confusion for beneficiaries.</p>	<p>Applicants are required to document their position in a registry with excess of administrative burden for micro-enterprises and the information required is considered excessive by local beneficiaries.</p> <p>Overregulation and ambiguities of eligibility criteria – arising from the programme's preparation stage</p> <p>Time periods for submitting applications is shorter than average EU.</p>	<p>Overregulation and ambiguities of eligibility criteria – arising from the programme's preparation stage (PL).</p> <p>National agricultural goals may lead to specific targeting of sectors – which leads to excluding others (CZ).</p> <p>The rule of three offers is considered not flexible enough by local beneficiaries – e.g. there are not always 3 providers available (CZ).</p> <p>Criteria in the pre-selection of applications may leads to rejection of even good quality projects (PL) and are therefore questioned by local beneficiaries.</p> <p>North Rhine-Westphalia strategic use of gold-plating to focus the targeting of support: to ensure EAFRD added value (DE).</p>

'Gold-plating' in the EAFRD: To what extent do national rules unnecessarily add to complexity and, as a result, increase the risk of errors?

	Case Studies					Desk Review
	Austria	Spain	Bulgaria	Portugal	Italy	DE, CZ, PL
Axis 1						
M 112/221				Business plan requirements are considered by beneficiaries as not proportionate to the funding required and the capacity of applicants	Business plan requirements are considered by beneficiaries as not proportionate to the funding required and the capacity of applicants	
M 121	Differentiation in minimum funding threshold across regions/Länder		Advance payments require bank guarantees or other guarantors which are restrictive (3 years of guarantee for the amount received and/or 20/25% of the amount to be assured through asset of the company and/or turnover)			Brandenburg-Berlin application procedures are considered by beneficiaries as too lengthy and complicated (DE)
M 123						Incompleteness of eligibility requirements may lead to problems in the selection of applications submitted (PL)

	Case Studies					Desk Review
	Austria	Spain	Bulgaria	Portugal	Italy	DE, CZ, PL
Axis 2						
Across measures		Excessive changes in eligibility requirements throughout the programming period creates lack of clarity on existing rules	Different interpretations of rules by a variety of actors involved can generate lack of clarity and additional burdens for applicants		Different interpretations of rules by a variety of actors involved can generate lack of clarity and additional burdens for applicants	Different interpretations of rules by a variety of actors involved and incompatibility of Rural Funds and national regulations can generate lack of clarity and additional burdens for applicants (PL) The area codes at times do not correspond to the LPIS leading to over declaring (CZ)
M 211	Minimum and maximum number of livestock – boundaries lead to errors	Minimum and maximum number of livestock – boundaries lead to errors			Minimum and maximum number of livestock – boundaries lead to errors	
M 211/212	Rigid method for initial measurement of approved surface, to be maintained throughout the duration of the funded intervention, may be too challenging for beneficiaries.			Rigid method for initial measurement of approved surface to be maintained throughout the duration of the funded intervention, and lack of proportionality in the possibility for dimension to vary through time) may be perceived as too challenging requirements for		

'Gold-plating' in the EAFRD: To what extent do national rules unnecessarily add to complexity and, as a result, increase the risk of errors?

	Case Studies					Desk Review
	Austria	Spain	Bulgaria	Portugal	Italy	DE, CZ, PL
				beneficiaries Excessive stocking density restriction might be too challenging for local beneficiaries		
M 211/212, 214	The presence of strict and complex eligibility requirements may induce beneficiaries to error e.g. Minimum standards concerning fertilization and plant protection					
M 214	Large number of sub-measures (29) may create complexity Two criteria in place to limit excretion of nitrogen	Additional requirements (20 % organic) are perceived by local beneficiaries as excessive (ES, Castilla & Mancha)		Buffer strip requirements along water courses – may be difficult to respect for local beneficiaries Large number of sub-measures Excessive trading commitments which may be unnecessary	Buffer strip requirements along water courses – may be too strict and difficult to respect for local beneficiaries	
M 226						Lack of clarity in eligibility rules may generate problems in the approval of expenditures to be refunded (PL)

	Case Studies					Desk Review
	Austria	Spain	Bulgaria	Portugal	Italy	DE, CZ, PL
Axis 3						
M 311		Excessive requirements which are perceived as unnecessary by local beneficiaries				Unclear contract clauses allowed for different interpretation of the same statements (PL)
Leader						
		Leader projects are limited to micro-enterprises				

'Gold-plating' in the EAFRD

To what extent do national rules unnecessarily add to complexity and, as a result, increase the risk of errors?

CASE STUDIES REPORT

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In this annex we present the five Case Studies conducted throughout our research. The Case Studies were conducted in five different Member States at the level of RDPs. In three countries (i.e. Austria, Bulgaria, Portugal) national programmes have been assessed, while in those countries with highly decentralised programmes (i.e. Italy, Spain) certain regions have been selected based on findings emerging from the desk research and some strategic interviews held during the initial stage of the study.

The selected cases are presented in alphabetical order (according to the Member State):

- I. Austria;
- II. Bulgaria;
- III. Italy – Liguria/Veneto;
- IV. Portugal;
- V. Spain – Catalonia.

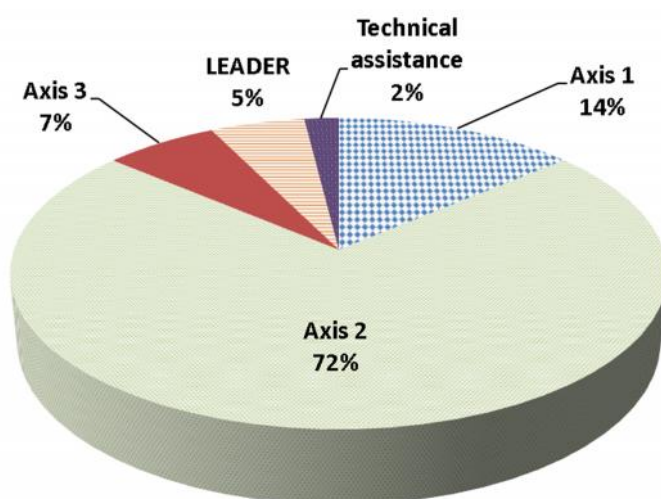
CASE STUDY: AUSTRIA

1 INTRODUCTION OF THE PROGRAMME

The programme „Österreichisches Programm für die Entwicklung des Ländlichen Raums 2007 - 2013“, was accepted by the European Commission on the 25th of October 2007 and since then amended seven times. According to Art. 15 (2) of (EC) No 1698/2005 it covers an area of 83,858 km² and therefore the whole federal territory (and its nine Länder) of Austria. The total amount of the programme is 7.8 bln Euros with 50 % covered by the EAFRD and 50 % by Austrian co-financing¹. The national co-finance is further split between the federal state (60 %) and the Länder (40 %).

Furthermore, the Austrian programme has a clear focus on Axis 2 with an allocation of 72 % of available resources. Second most important is Axis 1 with 14 % of funding.

Figure 1 : Share of total available funding per priority axis



Source: Ecorys based on http://europa.eu/rapid/press-release_MEMO-07-370_en.htm

One country – one programme – one managing authority – one paying agency

From the outside perspective, the Austrian implementation of the EAFRD is structured in a very simple manner. Despite the federal governance structure of the country, the Austrian authorities decided to submit one single programme for the whole country, which is managed by one Managing Authority (MA) and one Paying Agency (PA).

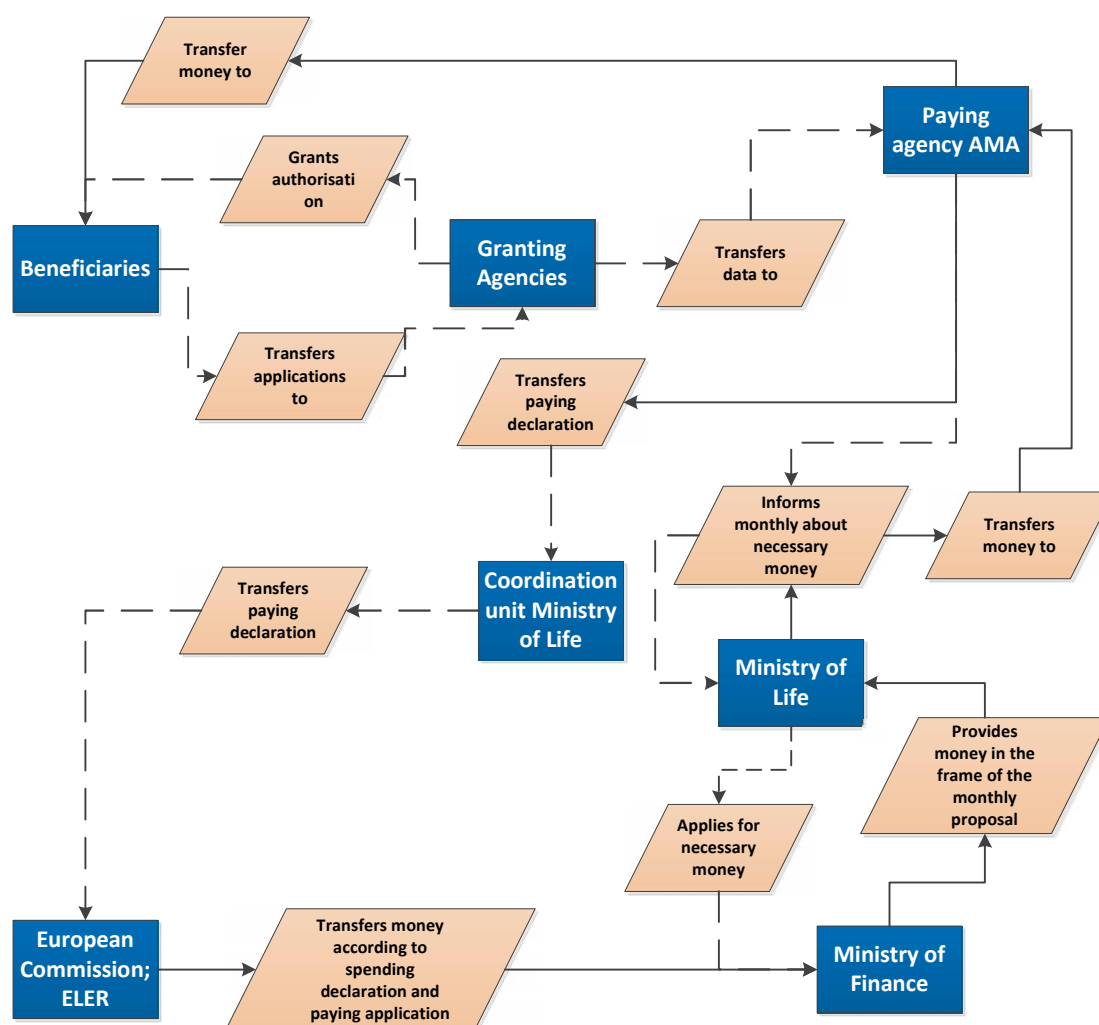
- MA: The MA is the Ministry of Life (= Ministry for Agriculture, Forestry, Environment and Water). It was responsible for negotiations with the European Commission (EC) on the programme and manages its implementation;
- PA: The PA is the Agrarmarkt Austria (AMA). Within the AMA the work is split into three departments. One is dealing with measures 211 and 212, the second with measure 214, and

¹ http://europa.eu/rapid/press-release_MEMO-07-370_en.htm

the third with all other measures covered by the Austrian programme. For the actual payment and direct contact with the beneficiaries the Paying Agency decides measure by measure if it deals centrally with the applications or subcontracts responsibility to local institutions. Such sub-contractors can be manifold; in some cases they are regional Ministries (Salzburg), in others regional Chambers of Agriculture (e.g. Niederösterreich).

The following figure shows the information and money flows in the Austrian implementation of the EAFRD for the period 2007 - 2013:

Figure 2 : Information and money flows in the Austrian implementation of the EAFRD for the period 2007 - 2013



Source: Ecorys translation of figure in National Programme

Moreover, the Austrian programme is framed in so-called 'Sonderrichtlinien'. The 'Sonderrichtlinien', can be adopted by the Ministry without consulting the Parliament and basically cover all legislation and requirements necessary to know for the beneficiaries. The seven 'Sonderrichtlinien' are:

- Sonderrichtlinie Österreichisches Programm für umweltgerechte Landwirtschaft (ÖPUL) which provides the basis for measure 214;
- Sonderrichtlinie sonstige Maßnahmen (other measures);

-
- Sonderrichtlinie Ausgleichszulage (AZ) which covers measures 211 and 212;
 - Sonderrichtlinie Natura 2000;
 - Sonderrichtlinie Wald und Wasser (forest and water);
 - Sonderrichtlinie Leader;
 - Sonderrichtlinie Legehennen (poultry).

Even though most legislation concerning the EAFRD is established at national level, there are also regional laws which need to be respected.

In comparison with programmes from other Member States, the Austrian programme has three main specificities:

1. EAFRD overly important in comparison with production support (Pillar I)

In the majority of Member States Pillar I of the CAP is of much higher importance than Pillar II and so are funding levels. This leads to a total of about 75 % of CAP funding in the EU for Pillar I and only 25 % for Pillar II. In Austria the picture is reverse: about two thirds of funding is allocated to Pillar II while only one third is allocated to Pillar I. As a consequence, the political focus on rural development is stronger. Moreover, 72 % of the funding within Pillar II is allocated to Axis 2 - which is in general of higher complexity than others. In addition, Austria sets itself high basic standards for environmental protection. As only additional efforts to the basic standards are eligible for further funding, this further raises the bar for beneficiaries.

2. Broad range of measures

To allow for a high absorption of available funding from the EAFRD Axis 2 and to follow national policy objectives, the Austrian MA chose to offer a very broad range of measures. The idea was to provide sufficient options for potential beneficiaries while achieving different objectives. However, a large number of different measures leads to a larger programme including many requirements and therefore a higher complexity of the programme as well as its implementation.

3. Importance of regions (= Länder)

Austria makes extensive use of the possibility for co-funding, and amounts paid through the EAFRD are doubled by national authorities. However, as mentioned above, the costs of national funding are split between the federal and the regional governments on a 60 % / 40 % basis. In return for their financial contribution, the Länder insist on a certain influence on the programme as well. This leads for example to different eligibility rules in some measures. For example in Salzburg, the working time of a beneficiary is accepted as contribution, while in the neighbouring Upper Austria it is not.

2 ASSESSING TRENDS IN ERRORS AND CONSEQUENCE OF GOLD-PLATING

This section provides an overview of the most relevant gold-plating factors for the RDP Austria 2007 - 2013. First error rates in the MS are assessed and then identified gold-plating issues elaborated.

2.1 OVERALL TRENDS IN ERRORS ACROSS AXES AND MEASURES

The average error rate in Austria is higher than the EU average, which is especially a consequence of high error rates in Axis 2. The following table shows data on the last three years available.

Table 1 : Error rates in Austria by axis (for financial years 2009, 2010 and 2011)

Axis	2009	2010	2011
Axis 1 and 3	0.54 %	0.49 %	4.43 %
Axis 2 all measures	4.1 %	3.9 %	4.7 %
All Axes	3.3 %	3.2 %	4.6 %

Source: DG AGRI AAR 2010, 2011, 2012

Error rates in Axis 2 are consistently higher than in other Axes. Furthermore, error rates have the tendency to increase. In Axis 1 and 3 the increase may be partially due to the inclusion of LEADER in the 2011 data only. LEADER projects are very specific one time projects which are a 'learning by doing process' of all involved actors.

According to the Paying Agency, the main reason for the increase of errors in 2011 is due to higher sanctions over the period for beneficiaries which have already a track record of committing irregularities. The PA has more detailed error rates for each measure available and even though we have not been able to receive these data ourselves, the PA stated that errors in 2012 are decreasing again. This would be mainly due to a revised sanction regime, where sanctions were lowered.

2.2 IDENTIFIED GOLD-PLATING ISSUES AND ERRORS GENERATED AS WELL AS OTHER REASONS FOR COMPLEXITY AND ERRORS

In the Austrian programme, we identified that gold-plating seems to cause higher complexity and therefore most likely errors. In the following we describe which forms of gold-plating lead to higher errors, which other reasons increase complexity and what other factors lead to higher error rates.

2.2.1 Gold-plating leading to increasing complexity and/or errors

Under measure 214 there are *two criteria* which are in place *to achieve the same objective* of limiting excretion of nitrogen. In fact, the Austrian MA intended to introduce as a criterion the amount of nitrogen extracted by hectare instead of the indicator depending on 'Großvieheinheiten' (GVE = Big animal units) per hectare which has been used so far. In the negotiations with the EC, the Commission requested to re-introduce the GVE/per hectare. However, this criterion leads to high error rates under

this measure in Austria as beneficiaries have to control the amount of certain animal types. The problem as seen by Austrian stakeholders is that the amount of excretion depends a lot on the type and not mainly the weight of an animal. Many farmers in Austria are struggling with respecting this indicator. Therefore, the Austrian authorities are convinced that the newly introduced indicator (which was intended to replace GVE/ha) is more suitable to achieve the policy aim of limiting the amount of nitrogen excretion per hectare. Consequence of the disagreement between different stakeholders on the preferred indicator is that two measures exist in the current planning period which has essentially the same aim.

Under measures 112 and 121 only farmers are eligible for EAFRD funding who do not exceed a certain *income outside their agricultural profession*. This is an additional requirement which is based on a purely Austrian decision. Its political aim is to avoid that persons with a sufficient income from other professions (e.g. lawyers) who are also cultivating land are also receiving public money for their secondary profession.

In the regulation for measure 214 a *commitment period* of five to seven years is required. Austria has decided to make use of the seven years threshold. Thus errors in the sixth and seventh year of the period (causing the loss of all funding) are relevant even though they are not requested directly by EU legislation. For example, beneficiaries apply every requirement for a period of five years, but then sell parts of their land in the sixth year. As a consequence they lose all funding (also for the first five years). The reason behind the Austrian decision to require seven and not five years of commitment period arises from the aim to simplify the Programme, and to align the commitment period with the whole Programming period.

The Austrian *animal protection law* from 2005 goes far beyond EU requirements due to national policy priorities in the area of animal protection. These high requirements are part of the basic requirements under measure 215. To receive funding, beneficiaries need to fulfil the basic requirements and additional commitments which go beyond the basic requirements. Thus Austrian beneficiaries are facing higher standards and therefore higher complexity under measure 215 than beneficiaries from other Member States. As a consequence, higher error rates are observed under this measure.

Plant protection laws are an example of *regional competence* in the Austrian governance structure. Due to political priorities, some Länder make extensive use of their right to increase legal obligations concerning plant protection while others don't. This leads to differences between cross-compliance basic requirements and additional agri-environmental commitments across Länder under measure 214 and thereby increased complexity. This may then cause higher error rates in Länder with higher standards.

Under measure 214 there are smaller *extra requirements* which may be defined not per se necessary (e.g. use of special coverage for greenhouses). In contrast to other countries where extra organic production standards like packaging and marketing are set very high (e.g. Portugal), these requirements are fixed at levels which are considered feasible – this is underlined by data from the PA which do not show substantially higher error rates caused by these extra requirements.

Within Axis 2, the compliance with rules is checked by the PA (= AMA) itself. In other instances, this task is *subcontracted to regional stakeholders*. The rationale for subcontracting lies in the intention to perform these checks as close as possible to the beneficiaries. Subcontracted bodies can be either regional Ministries or regional Chambers of Agriculture. However, their interpretation of compliance with requirements as well as their qualification and training may differ among each other, which can lead to insecurity and unequal treatment.

2.2.2 Other reasons increasing complexity

Under measure 121 of the current Programming period (Modernisation of agricultural holdings), Länder have the *right to raise the eligibility criteria*. E.g., in general projects which request funding need to be of a minimum size of EUR 10,000. Some regions decide that the threshold needs to be higher to reduce the number of beneficiaries. Even though this does not cause problems per se as beneficiaries usually are informed about the level in their region, it causes unequal treatment as well as problems for beneficiaries active in different Länder. The right to raise eligibility criteria by regions will no longer exist in the new Programming period.

The relative novelty in the period 2007 - 2013 of agri-environmental commitments has ingenerated complexity for all involved stakeholders, not only beneficiaries but also for the MAs and PAs. It is though assumed that the next Programming Period may benefit from a better understanding of this practice by all stakeholders.

As the budget for the Austrian programme is very large, the MA opted for offering a *broad range of measures* - which creates however a high level of complexity. Moreover, the Austrian focus on environmental measures (which are by nature of higher complexity) leads to a general increase of complexity.

The large amount of measures also implies a large number of criteria to respect and therefore creating complexity. This is e.g. reflected under measure 214 agro-environmental measures with its many sub-measures (29 in the programme), which further increases the complexity of measure 214.

In general all requirements should be *covered by the Austrian 'Sonderrichtlinien'*, but this is *misleading* and causes problems. The 'Sonderrichtlinien' do not include the Commission Regulation (EC) No 1975/2006 of 7 December 2006 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 basic requirements in respect of rural development support measures. In this case it is the responsibility of the national authorities (Managing Authority/Paying Agency) to inform beneficiaries about rule changes. This has been seen as cause of error in the past.

Furthermore under measure 211 we observe an example for a *very strict criterion*. A minimum and maximum stock of animals is fixed by EU requirement. In the Austrian case it is implemented with a fixed rate of GVE. However, holding the same GVE over a long period of time is not always easy as animals may die, be born, be sold or bought. As a consequence many errors are caused by this criterion.

2.2.3 Other reasons for error rates

The main reason for the increase of error rates as described by the AMA is not considered gold-plating, but rather the sanctioning system of the biggest part of the (national) programme - the ÖPUL. In particular in measure 214, *sanctions are increasing over time* of the commitment period, because beneficiaries who have a record of errors are sanctioned higher. As beneficiaries tend to repeat errors through time, and authorities are required to increase proportionally the sanctions on the basis of recurrence of errors, rates may increase exponentially over time. This is particularly relevant in Austria when it comes to Measure 214.

Private *tender procedures*, requiring to provide *three written quotations* in case of spending over a certain threshold, are sometimes too demanding for particular types of services, which have been traditionally provided by trusted local suppliers. The beneficiaries are not used to such procedures and tend to find them too burdensome. Often do not understand why they should check for new suppliers if they trust the price and quality of the ones they already deal with. Although not

necessarily a gold-plating practice, a lack of flexibility in certain countries in identifying alternative legal means to assess legitimacy of expenditures (e.g. by referring to certain range of price per items) may result in burdensome requirements for beneficiaries. As a consequence irregularities may occur.

One reason why procurement principles are often hard to understand for farmers is that they only receive partial funding. Farmers then argue that if they are spending their own money, they should be allowed to decide themselves on what to purchase.

Inexperience in bigger, more complex and one-off projects of all involved stakeholders *leads to more errors*. In projects which have repeated applications, it can be observed that over the period controls get stricter and more detailed as also the controllers become more experienced and are often pushed by different stakeholders to become more strict.

LEADER projects are complicated and can be considered *special cases*. It is therefore difficult to come to a standardised accounting. This leads to a situation where throughout the process it is a "learning by doing" exercise for beneficiaries, but also for controllers.

The same is valid for one-off applications like projects under e.g. measure 133 - Art. 33(EC) No 1698/2005 - Information and promotion activities. For measure 133 beneficiaries only fill in a form once for a single project. Therefore there is no experience with the procedures which may increase the risk of errors.

M 211/212 – Art. 37 (EC) No 1698/2005 - Natural handicap payments in mountain areas and payments in other areas with handicaps: The problems in this area are related to the fact that farmers tend to *declare less than they have* to be sure *not to overdeclare*. This was a common habit in the past in Austria as it is often difficult for small farmers in mountain areas to be precise in their declarations. Now they are obliged to exactly declare on what is there. As farmers tend to stick to the habit of underdeclaring, they declare often for smaller areas. But this falls under the rule of 'overdeclaration' and needs to be sanctioned.

3 ASSESSING POSSIBLE GOOD PRACTICES TO BE ADOPTED IN OTHER COUNTRIES

3.1 JUDGMENT OF GOLD-PLATING ISSUES EMERGING IN OTHER COUNTRIES/REGIONS

Austria is facing problems in similar measures as others, but also faces its own specific problems. In some cases where other countries are facing problems, Austria can serve as a good practice example in how to overcome these issues. In the following we describe where similar issues exist or existed and how the authorities in Austria are tackling them.

In general, Austria is facing *administrative burden*, general *complexity* and a *lack of understanding of public procurement rules* as has also been observed in other countries. To overcome these problems and to help beneficiaries comply with short time deadlines, the Austrian Managing Authority has launched a broad information campaign. This is expected to reduce errors occurring from these general factors.

Under *Axis 1*, the *business plan* requirement for measures 112 (also 221) causes difficulties among beneficiaries in other countries, such as Italy. To avoid such struggles, in Austria the business plan is supposed to be submitted through a *standardized IT form*. This does not lead to many errors and can be seen as an exemplary solution for other countries.

Errors related to advance payments under measure 121 do not exist in Austria, as the country *does not offer advance payments*. Therefore errors due to advance payments do not exist. However, the non-existence of such advance payments is a problem for non-farmers. The Austrian authorities expect farmers to be able to access finance and therefore pre-finance their expenditures as they own land. Some beneficiary associations are often struggling with the not existing advance payments option.

Under Axis 2, *excessive changes* of eligibility requirements are not happening in Austria and if more important changes are planned, the authorities *communicate* these *well in advance* to avoid errors related to them.

The boundaries of *minimum and maximum number of livestock* under measure 211 cause problems not only in Austria but also in Italy and Spain. The problem has not been solved yet. The first attempt for *immediate help* is a *detailed information campaign* as well as a website (www.eama.at), a website where beneficiaries can make simulations on the basis of their own data.

Measures 211/212/221 cause problems in Portugal and Austria. The problem as described above is the extended *commitment period* which has been set for seven years.

Under measure 226, it is *not always clear what is eligible* to be re-funded and what is not. In the Polish case this causes errors. Also in Austria it often depends on the specific interpretation of the responsible person at the Paying Agency. An example is the purchase of a hammer which can be eligible or not depending on its use. Information campaigns as well as well experience and training help to avoid misinterpretations.

4 LOOKING AHEAD

4.1 IDENTIFIED PROBLEMS AND POSSIBLE SOLUTIONS

Numerous issues with possible solutions have been identified and are presented in the following:

In the Austrian case of general high complexity of a big programme, the Austrian authorities see a *need for strong information campaigns* to improve the situation in the short run. As a reaction to high error rates, the Austrian authorities have started such a big campaign for further information of beneficiaries.

Austrian interviewees also see a possibility of *coordination at the EC level*. It can happen that one part of the EC negotiates a Programme with the MS, but another one later on criticises aspects of its implementation and asks for further adaptations. This is seen as a factor which increases complexity over time. A more common understanding of the rules from the beginning can avoid adaptations and discussions afterwards.

Furthermore, there is a tendency to *'be on the safe side'*. Paying Agencies prefer to have stricter rules not to be blamed for being too flexible afterwards. Every person in the system acts in such a manner so that with each layer the complexity increases.

Due to the negotiation process including all Member States, certain articles in the *regulations* can be *phrased in a too vague way*. However, the EC requests detailed implementation rules. This leads to confusion in the system and maybe to unnecessary complexity. Clearer rules at EU-level can lead to more direct implementation in the MS.

While other countries (e.g. Italy) are facing the challenge of decentralised programming, Austria is *decentralising within its Programme*. The subcontracting practice as well as the involvement of the Länder in the implementation process of the Austrian Programme leads to increasing complexity.

Even though it is good to involve parties as close as possible to the beneficiaries, the subcontracting practice of the Austrian Paying Agency may be questioned.

Especially in innovative projects, the controlling body needs *room for flexibility* when interpreting what is eligible. After all, the attempts towards standardisation of rules raise the complexity of the whole system.

The decentralised structures can lead to insufficient *trained staff on the ground*. It is questionable how much of the information and learning from the trained staff is handed down to others.

The Chambers of Agriculture are representing and defending farmers. Furthermore, they are acting in some cases as subcontractor of the Paying Agency. Even though legally speaking the two areas of work are clearly distinguished, a risk of *conflict of interest* always remains.

4.2 GOOD PRACTICES AND EXTREME DIFFICULTIES

To avoid problems with the business plan requirement, the Austrian Paying Agency set up an *IT tool* where beneficiaries have to fill in a standard business plan. This helps to avoid errors due to insufficient experience with such a requirement.

Furthermore, the *network for rural development* is working well in Austria and provides beneficiaries with extensive support.

As a reaction to high error rates in the Programme, the Austrian authorities started a *big information campaign*. This was based on a two step approach:

1. General information: the Managing Authority published further detailed information on deadlines via different channels, including what concrete actions need to be taken under which measure.
2. EAMA.AT: The Paying Agency provides individual information. Online, beneficiaries can login into a secured area where they can access their submitted data. Furthermore, they can simulate effects of e.g. a change of animal stock on their received funding.

The Paying Agency uses an IT system which performs *general quality checks of applications* prior to submission. This avoids basic mistakes (e.g. typos, impossible numbers ...).

The Paying Agency uses a *central database* to which all staff working on applications has access. Repeated applicants therefore only need to adapt former submitted documents and not redo the whole application.

4.3 SUGGESTIONS AND RECOMMENDATIONS

Suggestions collected throughout interviews refer to the planning, the information, and the complexity of measures and the different treatment of amounts of funding.

Concerns have been expressed that the extension year 2014, which has been announced very late, will not be enough for boosting the commitment rates. *Early planning* and information on the further process can help to *avoid difficulties* at the end and the beginning of an EAFRD Programming cycle.

The *big information campaign* shows *positive results* in Austria and is suggested to be copied also in other countries.

For the future, a *lower complexity of the programme* is desired by different actors.

Moreover, beneficiaries would like to see a distinction between applications with low and high amounts of funding. They propose to make use of lump sums (as was common in the past) for smaller amounts of funding. This could facilitate applications for small projects.

CASE STUDY – BULGARIA

1 INTRODUCTION OF THE PROGRAMME

The Rural Development Programme 2007 - 2013² of Bulgaria was officially approved on 19 February 2008 by Commission Decision COM (2008)755 and the additional package under the European Economic Recovery Plan - with Commission Decision COM (2010)1223 of 4 March 2010. The total budget of the Programme over the period 2007 - 2013 amounts to EUR 3.279 billion, of which EUR 2.642 billion EU and 0.637 billion Euro national contribution. The RDP is managed and implemented centrally, i.e. the regional offices of the Paying Agency are not empowered to set out regional rules and conditions.

The Rural Development Directorate at the Ministry of Agriculture and Food is the RDP Managing Authority (MA), assigned by Bulgarian authorities in line with the provisions set out in Art 74(2) of Council Regulation (EC) 1698/2005³. Pursuant to Article 75 of the latter, the Managing Authority is responsible for the efficient, effective and correct management and implementation of the RDP. In particular, it ensures that:

- operations are selected for funding in accordance with the criteria applicable to the RDP;
- the establishment and maintenance of a system to record and maintain data for monitoring and evaluation in computerized form;
- that beneficiaries and other bodies involved know their obligations and maintain a separate accounting system or use adequate accounting codes for all transactions funded under the Programme, and are aware of requirements concerning provision of data to the MA and recording of outputs and results;
- programme evaluations are carried out within the required time limits and conform to the Common Monitoring and Evaluation Framework;
- publicity of the National Strategy Plan for Rural Development and RDP in compliance with Community publicity requirements; and
- appropriate flow of information to the Paying Agency (incl. information on procedures and controls⁴) to provide for efficient programme implementation.

State Fund Agriculture, the accredited Paying Agency (PA) for the Bulgarian RDP, is responsible for the financial management and disbursement of funds under the Programme. The Paying Agency, in respect of payments made by it and as regards communicating and keeping information, is responsible to provide sufficient guarantees that:

- the eligibility of requests and, in the framework of rural development, the procedure for allocating aid, as well as their compliance with Community rules are checked before payment is authorised;

² The Rural Development Program 2007 - 2013 of Bulgaria, after the 8th amendment, is available at http://prsr.government.bg/Admin/upload/Media_file_bg_1338861626.zip.

³ 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. 1–40.

⁴ The Paying Agency performs the control on beneficiaries with the exception of the LEADER measures where the control is shared between the Paying Agency and the Managing Authorities.

-
- accurate and exhaustive accounts are kept of the payments made;
 - the checks laid down by Community legislation are made;
 - the requisite documents are presented within the time limits and in the form stipulated by Community rules;
 - the documents are accessible and kept in a manner which ensures their completeness, validity and legibility over time, including with regard to electronic documents within the meaning of Community rules.

The tasks of the Paying Agency are divided into three core functions:

- Authorization and control of payments - establishes that the amounts to be paid to a claimant are in conformity with the Community rules, including through administrative control and control on-the-spot;
- Execution of payments - pays the authorized amount to the claimant (or his assignee), or in case of rural development, the Community and national co-financing part;
- Accounting for payment – records all payments in the Agency's separate accounts for EAGF and EAFRD expenditure in the form of an information system, and preparation of periodic summaries of expenditure, including monthly, quarterly (for the EAFRD) and annual declarations to the European Commission.

With regard to the implementation of the rural development measures, the Paying Agency performs project assessment, approval, definition of commitment levels and contracting. The organisational structure of the Paying Agency's departments ensures internal separation of responsibilities, namely project approval & contracting and authorisation of payments. At *central level*, the Department for Contracting the implementation of the measures of the RDP within the Paying Agency is responsible for the implementation of measures. It is in charge for processing application forms, i.e. if they are in conformity with Community rules and practices, as well as with the national legislation. The processing of applications involves: administrative checks for conformity with the eligibility and financial criteria; evaluation of projects; ranking; definition of commitment levels and budgetary conformity; contracting; and archiving. The Department for Authorisation for implementation of the measures of the RDP is in charge of providing an exact evaluation of the expenditures made in conformity with the Community Regulations, as well as with the requirements of the Bulgarian legislation, in order to guarantee the financial interests of the Community. The evaluation of the expenditure includes: assessment of payment claims for conformity with the financing criteria; calculation of investment expenditures; definition of reality of the expenditure and conformity of the costs incurred with the approved operations; authorization of payments; archiving; and ex-post project monitoring and control. At *regional level*, these functions are charged to 28 PA Regional Offices and 11 PA District Offices, respectively.

The *Certifying Body* confirms the truthfulness, completeness and accuracy of the accounts and assures the security of IT systems of the PA in accordance with Commission Regulation (EC) No 885/2006⁵. The Certifying Body draws up an annual report with its findings to confirm that:

- the Paying Agency and its procedures are followed and are in accordance with the accreditation criteria;
- accuracy, truthfulness and completeness of annual accounts;

⁵ Commission Regulation (EC) No 885/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the accreditation of paying agencies and other bodies and the clearance of the accounts of the EAGF and of the EAFRD, OJ L 171, 23.6.2006, p. 90–110.

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- the financial interests of the European Community are protected; and
 - recommendations for improvement have been followed up. Initially, Grant Thornton Ltd. – Bulgaria (representative of Grant Thornton International) was selected to perform the functions of a Certifying Body within the meaning of Article 7 of Council Regulation (EC) No 1290/2005. Since August 2008, following a public procurement procedure, 'Deloitte Bulgaria' OOD has been designated a Certifying body for two consecutive three-year periods.

By the end of 2012, nine official proposals for RDP amendment have been notified to the Commission, eight of which have been approved and one is still pending. The Bulgarian RDP objectives are addressed by 30 measures. The implementation of the programme started with 23 measures and, at a later stage, was supplemented by another 7.

Bulgaria is one of the Member States which has relatively high RDP error rates. According to the European Commission's data, the overall average error rate for the period between 2009 and 2011 was 4.6 %, which is twice as high as the materiality threshold considered as normal. For the same period only Portugal and Latvia had a higher rate – 6.9 % and 6.0 % respectively. The errors in the Bulgarian RDP in 2009 amounted to 5.0 % of all allocated funds. The relative average error rate in 2010 dropped to 3.6 % whereas the amounts to be paid to beneficiaries grew 3 times (from 98.5 to 276.8 million Euros). In 2011 both the value of rejected expenditures and their relative share went up to 10.88 million Euros (from 9.9 million in 2010) and to 5.2 % (from 3.6 % in the previous year).

As regards Axes 1 and 3, the error rates in Bulgaria were relatively low in 2009 (0.31 %) compared to those for Axis 2 (18.3 %), and to the errors recorded for the same axes in most Member States. However, by the end of 2010 the contracted amount under Axes 1 and 3 increased by threefold - as did the error rate (1.39 %). In the year after, although the former figure shrinks by 50 %, the non-reimbursed expenditures rose to 4.55 million Euros, which increased the error rate to 2.85 %.

Bulgaria recorded the highest error rates in Axis 2 in all three years. In 2009, it was 18.3 %; by 2010 the relative share of unrecovered expenditures fell to 16.4 % and by 2011 – to 13.6 %. Although the RDP rate of errors went down in two consecutive years, it is still the highest in the EU. The closest average figures to that in Bulgaria are those of Latvia (10.1 %) and Portugal (11.4 %).

2 ASSESSING TRENDS IN ERRORS AND CONSEQUENCE OF GOLD-PLATING

2.1 OVERALL TRENDS IN ERRORS ACROSS AXES AND MEASURES

Both the Managing Authority and the Paying Agency have statistics on the error rates. Every year they prepare a report on the error rates and submit it to the European Commission. However, during the interviews, official statistics were not provided neither on the level of error rates across axes nor across measures. Nevertheless, it was confirmed that there is an overall trend of decline in the error rates across all axes. Measures most prone to errors in Axis 1 are 111 'Training, Information and Diffusion of Knowledge', 112 'Setting up of Young Farmers', the investment measures 121 'Modernisation of Agricultural Holdings' and 123 'Adding Value to Agricultural and Forestry Products'. An Axis 2 measure, which displays relatively high error rate, is 214 'Agri-environmental Payments'. As regards Axis 3, somewhat more errors are observed in measures 321 'Basic Services for the Economy and Rural Population' and 322 'Village Renewal and Development'.

The reasons behind errors are manifold and in most cases depend on the project objectives and activities, on the one hand, and on beneficiaries' capacity, on the other. Concerning measure 111, the most common type of 'errors' is non-attainment of project results (i.e. number of people trained) and non-observance of financial rules regarding transport costs. For instance, a project envisages training of 1 000 persons and upon its completion a beneficiary claims the whole project amount whilst only 850 people have been trained. In such cases the Paying Agency reimburses only the expenditures paid for actually trained participants. As a whole, around 24 % of the errors in measure 111 could be attributed to these two causes.

Projects funded under measure 112 'Setting up of Young Farmers' are also prone to higher error rate. The most common reason is beneficiaries' *inexperience with EU/EAFRD funded projects*. Here, two of the identified gold-plating cases – non-eligibility of expenditures paid in cash and eligibility of costs for purchase of immovable property up to its tax valuation – play a role. Although both requirements are explicitly and clearly stipulated in Article 8, paragraph 2, p. 2 and p. 6 of Ordinance No. 9 of 3 April 2008⁶, they quite often are a reason for declaring expenditures ineligible.

As regards measures 121 and 123, as well as any other RDP measure, the most common reason the Paying Agency to deny reimbursement, is the *purchase of equipment or construction works*, which are not approved in the grant contract. All Ordinances, which regulate the implementation of RDP measures in Bulgaria, contain provisions on the procedure, which beneficiaries should follow if they want to modify their contracts. In practice, however, beneficiaries often fail to notify the Paying Agency for intended modifications. In such circumstances, the PA financial control officers are not allowed to reimburse expenditures for equipment and works, if they are not part of the grant contract.

An important reason for the high error rates in Axis 2, where payments are area-related and eligibility requirements are more complex, does not stem from gold-plating or overregulation, but is related to *contracts regarding land ownership and land use*. In the mid-1990s, Bulgaria began a process of restitution of agricultural lands. As a result, many people – either former owners or inheritors – acquired small parcels of land (less than 0.1 ha). For this reason, if they rely only on their own property, they wouldn't qualify for agri-environmental payments due to insufficient agricultural land. If such land-owners want to receive financial support for agri-environmental activities, they should rent a land either from private owners or from a municipality. In practice, private owners are not inclined to enter in long-term contractual obligations and usually lend their lands for a year or two. As regards municipal land, Article 24a of the Law on Ownership and Use of Agricultural Land provides undersized state or municipal estates (up to 1 ha) to be rented for a period of up to one year (without an auction or a tender procedure). Larger state or municipal agricultural land could be rented for a period of up to 10 years after an auction or a tender procedure. According to article 37и, paragraph 1 of the same law, the Minister of Agriculture and Food could lend municipalities pastures for livestock rearing in order to maintain the land in good agricultural and environmental conditions. The rent or lease contracts should not exceed 5 years. In practice, both beneficiaries and state institutions admit that such contracts are concluded for a year, and in many cases beneficiaries of agri-environmental payments are unable to observe their commitments due to failure to secure land for a longer period.

Another reason for errors in measure 214 is the *imperfectness of the digital orthophoto map* of Bulgaria, which was created in 2011. There are still cases when beneficiary's parcels are approved for support

⁶ Ordinance No. 9 of 3 April 2008 on the conditions and procedure for providing grant support under measure 'Setting up of Young Farmers' of the RDP 2007 - 2013; Promulgated State Gazette No.42, 25.04.2008; Last amendment: State Gazette No. 44, 17.05.2013.

but when checked in the map, there are discrepancies between the actual size and boundaries of the land and those recorded in the map, which leads to rejection of payments. Both the Managing Authority and the Paying Agency are aware of this problem and are working to solve it.

The inherent complexity is another feature of measure 214. Due to the larger number of sub-measures (5) and headings within them (total 10), *applicants often fail to choose the right field for support*. In order to avoid exclusion due to administrative reasons, since 2012 the regional offices of the Paying Agency are required to notify beneficiaries for technical omissions or mistakes; the latter could submit corrected form until the final date for submission of applications.

The causes for errors in measures 321 and 322 are similar to those in measures 121 and 123. Both Ordinances that regulate measures' implementation⁷ contain special provisions (art. 43 and art. 41) regarding amendment of contracts. Beneficiaries may propose amendments if these do not affect the main project objective and activity, do not alter investment purpose, and do not lead to increase in the already approved grant amount. Beneficiaries, along with a *Modification request*, are required to justify the proposed change. In most cases, beneficiaries of measures 321 and 322 do not stick to the approved project. It is considered that the main underlying reason for these omissions is poor communication between the Paying Agency and beneficiaries, as well as the numerous and sometimes complex rules and requirements.

In general, private beneficiaries in Bulgaria do not have sufficient financial resources, which is a significant problem for implementation of the RDP in Bulgaria. In most cases, recourse is taken to bank loans, which after 2009 became hardly accessible and more expensive. For this reason, around 30 % of the errors recorded in Axes 1 and 3 are related to grant contracts, which are terminated on beneficiary's request due to the *lack of own financial resources*.

2.2 REASONS FOR THE IDENTIFIED GOLD-PLATING ISSUES AND ERRORS GENERATED

In general, the stricter rules in Bulgaria are introduced due to the willingness of the Managing Authority and the Paying Agency to secure and guarantee proper implementation of the RDP, and to avoid irregularities with and misappropriation of EU/EAFRD funds. This is also the main reason for existence of provisions that go beyond the EU requirements. However, data on the relative share of the errors occurred due to gold-plated provisions are not provided.

The rules on *eligibility of the transport costs* are stipulated in Ordinance No. 23 of 14.07.2008.⁸ According to Article 22, paragraph 1, point 2, letters '6' and '3', transport costs of trainers and trainees are eligible up to BGN 18.00 (EUR 9.20) per 100 km, or up to BGN 250.00 (EUR 128.00) per 100 km for organized transport, or up to the value of the public transport ticket. These requirements are introduced as an upper threshold for travel costs. Their policy objective is prevention of fraud and irregularities, as well as avoidance of reimbursement of unjustified expenditures.

According to Article 11 of Ordinance No. 23 of 2008 on the implementation of measure 111, the total grant amount is calculated on the basis of the *number of trained persons* within an activity. The maximum amount per person depends on the form and duration of each training and is stipulated in

⁷ Ordinance No. 25 of 29th July, 2008, Promulgated State Gazette No.72, 15.08.2008; Last amendment: State Gazette No. 75, 27.08.2013; Ordinance No. 24 of 29th July, 2008, Promulgated State Gazette No.71, 12.08.2008; Last amendment: State Gazette No. 75, 27.08.2013.

⁸ Ordinance No. 23 of 14th July, 2008 on the conditions and procedure for provision of grants under measure 'Training, Information and Diffusion of Knowledge' of the RDP 2007-2013; Promulgated State Gazette No.69, 05.08.2008; Last amendment: State Gazette No. 79, 16.10.2012.

the same legal provision. The reason for introduction of this rule is reimbursement of expenditures only for attained results. If such a rule doesn't exist, beneficiaries could claim payments for outputs or results which are not fully achieved.

In Bulgaria, RDP beneficiaries could not claim reimbursement of expenditures *paid in cash*. This requirement not only goes beyond the EU rules but also contradicts the Bulgarian Law on restrictions on cash payments⁹, which forbids transactions in cash if the amount exceeds BGN 15 000 (EUR 7 670) or if the transactions are part of a contract of value equal to or above BGN 15 000. This restriction is introduced for two reasons. Firstly, it aims to avoid difficulties related to tracking whether a payment was really made. Secondly, it serves as a preventive measure against reporting expenditures with counterfeited documents. The overall policy objective for non-eligibility of expenditures paid in cash is proper spending of the EAFRD funds and prevention of fraud and irregularities. Also, the restriction of cash transactions in agriculture indirectly contributes for reducing the hidden economy in Bulgaria, which is the highest in the EU. Agriculture is one of the economic sectors most prone to shadow activities and the money in cash is one of the factors that fuel the hidden economy.

Although the EU regulations do not contain explicit restrictions on the *value of the land purchased* save the provision of the Article 71(3) of the Council Regulation (EC) No 1698/2005, Bulgarian RDP Ordinances specify that the eligible expenditures for purchase of land, buildings and other immovable property may not exceed their tax valuation at the date of acquisition or at the date of submission of the grant application, whichever of the two valuations is lower. The aim of this restriction is avoidance of speculative increase in land and immovable property prices. Its overall policy objective is balancing the EAFRD support and targeting aid at modernisation and development rather than acquisition of land and buildings.

The other identified causes for errors do not stem from gold-plated provisions. Agricultural producers, as a whole face difficulties both in applying for support under measure 214 and in observing agri-environmental commitments. The Paying Agency considered how to make this measure more attractive and in 2013 produced a guide to potential applicants and beneficiaries titled 'AGRO-ECOLOGY - Guide to application process and implementation'¹⁰. Due to the high number of incorrectly completed application forms (for first and subsequent claims for support), the PA regional offices notify beneficiaries since 2012 for technical mistakes or omissions in them. The latter may submit corrected forms until the deadline for approval/rejection of applications. As was mentioned in the previous part, a substantial share of the errors in measure 214 occur due to the small size of own agricultural land and beneficiaries hardly could secure rented parcels for longer period. With regard to errors caused by the imperfect digital orthophoto map, there are discrepancies between land's size and boundaries as entered in the map, and those recorded in beneficiaries' deeds and ownership documents. Both the Managing Authority and the Paying Agency are aware of this problem, and constantly work on the map's improvement.

In order to address the most common reason for errors – non-observance of contractual commitments and/or failure in notifying the Paying Agency for any modification – State Fund Agriculture introduced an annex to grant contracts under measures 311 'Diversification into Non-Agricultural Activities' and 312 'Support for the Creation and Development of Micro-Enterprises'. The annex contains the approved quantitative value account, including types, quantities and prices of works and supplies. This facilitates beneficiaries in preparing their reports and payment claims, makes

⁹ Promulgated State Gazette No.16, 22.02.2011.

¹⁰ Програма за развитие на селските райони 2007 - 2013. "Агроекология: Ръководство за кандидатстване и прилагане 2013"; available at http://www.dfz.bg/assets/4682/Brochura_Agroecology_NEW.pdf.

control procedures easier and should lead to decrease in error rates. In recent months, communication between the PA regional and district offices on the one hand, and applicants/beneficiaries, on the other, has improved. Now the latter may send their requests or inquiries via electronic mail (in general, official communication is paper based); the Central administration of the Paying Agency has office hours for beneficiaries. It also maintains a call centre, where experts from the Department for Contracting for the implementation of the measures of the RDP and the Department for Authorization for implementation of the measures of the RDP respond to beneficiaries' inquiries.

2.3 ADDITIONAL POSSIBLE GOLD-PLATING ISSUES AND ERRORS GENERATED

Interviewed beneficiaries and MA officials confirmed that the presented below gold-plated provisions are not cause of errors, although some of them are deemed too onerous and burdensome. In general, they are introduced either for better programme management and implementation, or for better protection of the EU financial interests.

In Bulgaria, *bank and guarantee fees* are ineligible for reimbursement. This rule is introduced because it is believed that the EAFRD funds should be focused on investments and activities rather than on covering petty administrative costs. Almost all Ordinances on the conditions and procedure for implementation of the RDP measures provide for *minimum and maximum amounts per project*. In general, the purpose of this rule is provision of balanced support to projects in the same field. The objective of both provisions (ineligibility of bank and guarantee fees and lower and upper threshold) is increasing effectiveness of the EAFRD support.

Another gold-plating example concerns *advance payment guarantees*. In order to receive an advance payment, a beneficiary should provide a bank guarantee to the benefit of the Paying Agency. In compliance with Commission Regulation (EC) No 1974/2006, the guarantee should cover 110 % of the amount requested. National rules provide that instead of a bank guarantee, beneficiaries may provide a Contract of guarantee with at least two guarantors. Each guarantor should undertake to be responsible before the Paying Agency for fulfilling the obligation under the advance payment of the debtor-beneficiary for the amount of 110 % of the advance payment. In addition, each grantor should be 1) registered and perform commercial activity at least 3 years prior submission of the advance payment claim; 2) 25 % of the owner's equity, recorded in the financial statements for the last closed financial year and/or for the last closed quarter prior submission of the advance payment claim should be equal to or higher than 110 % of the amount requested; and 3) 20 % of its revenues for the last financial year should be equal to or higher than 110 % of the advance requested. In practice, these conditions not only go beyond the EU rules but beneficiaries hardly could secure grantors that meet these requirements. The reason for introduction of these requirements is protecting the EU financial interests. If a beneficiary is unable to complete the project or if the latter is not implemented in compliance with the EAFRD rules, the Managing Authority / Paying Agency have a reliable guarantee that the money paid in advance will be recovered. The Managing Authority is aware that these conditions are quite onerous and in practice difficult to be met. However, having in mind Bulgaria's experience with the SAPARD Programme, and in order to avoid irregularities and to protect the EU financial interests, for the time being stricter rules prevail over flexible ones.

There are other *advance payment rules*, which exceed the EU ones, too. For instance, the claimed advance payment should be above a certain threshold. The reason behind this requirement is the willingness of the Paying Agency to avoid payments of too small amounts. Also, in accordance with

the national legal provisions, the advance payments could be claimed within a certain period after project approval. The latter rule is introduced for better planning of financial resources. The objective of both requirements is reducing administrative burdens and paper work for beneficiaries and PA financial officers and efficient programme management.

Procurement rules for EAFRD funded projects in Bulgaria are quite rigorous. The RDP does not contain specific rules on procurement procedures which fall outside the realm of the Public Procurement Act (PPA)¹¹. Regarding administrative checks on applications, in accordance with article 24(2) of Commission Regulation (EU) No 65/2011¹², the Managing Authority verifies the compliance of the operation for which support is requested with the applicable national and Community rules on [...] public procurement [rules] [...] established by national legislation or established in the RDP. In this regard, the Paying Agency has adopted Internal rules on ex-ante and ex-post control (applicable to contracting authorities governed by the PPA) over procedures for public contracts for approved investment costs, fully or partially funded by the EAFRD¹³.

Ordinances for RDP measures' implementation provide private applicants, who do not fall under the provisions of the PPA, along with the application form to submit at least 3 offers if the planned expenditures amount to EUR 15 000 or more or are part of goods or services, which would be delivered by a single supplier/provider at the price of EUR 15 000 or more. The applicant should indicate the selected supplier/provider in his/her application form. This requirement is considered both irritating and unnecessary because the time elapsed between the date of application (and offers) and the date of project approval usually is more than 10 – 12 months (although the Ordinances stipulate up to 2 or 3 months) and the prices could either increase or decrease. In the meantime, the model or type of machine or equipment specified in the offer might cease to be produced, or new – more advanced, efficient, and cheaper machines/equipment might be released to the market. Thus it is considered that the 3 offers and the selection of suppliers/providers at the time of application is not an instrument that guarantees reasonable prices and modern equipment. However, the Paying Agency is of the opinion that beneficiaries can request a modification at any moment of the grant contract, including those related to the selected provider/supplier and/or machine/equipment/materials – as long as a reasonable justification for it can be provided.

The requirement for provision of 3 offers and selection of a supplier/provider prior project approval stems from an obligation stipulated in the Bulgarian Rural Development Programme. According to heading Control Procedures of point 11 Designation of Competent Authorities and Bodies Responsible, p. 11.3 Accredited Paying Agency, 'Administrative checks on applications for support include verification of [...] the reasonableness of the costs proposed, which shall be evaluated using a suitable evaluation system, such as reference costs, a comparison of different offers or an evaluation committee'. This procedure reflects the provision of Article 24, paragraph 2, letter 'd' of Commission Regulation (EU) No 65/2011, which says that 'Administrative checks on applications for support shall in particular include verification of [...] the reasonableness of the costs submitted, which shall be evaluated using a suitable evaluation system, such as reference costs, a comparison of different offers

¹¹ Promulgated State Gazette No.28, 06.04.2004; Last amendment: State Gazette No. 15, 15.2.2013.

¹² 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 in respect of rural development support measures, OJ L 25, 28.1.2011, p. 8.

¹³ Държавен фонд 'Земеделие', 'Процедура за осъществяване на предварителна проверка и последващ контрол върху процедури за обществени поръчки за одобрени инвестиционни разходи, финансирани изцяло или частично със средства от Европейския земеделски фонд за развитие на селските райони', март 2013 г.; available at: http://www.prsr.bg/attachment/nb_docs/file_bg_61.doc; last retrieved on 10th December, 2013.

or an evaluation committee'. Although the latter is not gold-plated in the RDP 2007 - 2013, the Ordinances for implementation of the different measures require applicants to choose the supplies/provider before approval of the project, which goes beyond the EU requirements. The policy goal of this requirement is application of strict control over beneficiaries' expenditures for avoidance of irregularities, excessive or unreasonably high prices, and in general – efficient spending of the EU funds and protection of the Union's financial interests.

3 ASSESSING POSSIBLE GOOD PRACTICES TO BE ADOPTED IN OTHER COUNTRIES

3.1 JUDGMENT OF GOLD-PLATING ISSUES EMERGING IN OTHER COUNTRIES/REGIONS

Some of the difficulties identified in other countries emerged in Bulgaria, too. Most of them, however, do not stem from gold-plating and, in general, do not cause errors. To address them, the Managing Authority and the Paying Agency adopted approaches, which take into account the source of complexity and its effects on the application and/or implementation process.

It is considered that the periods for *submitting applications in Bulgaria are too short, as in Italy*. Beneficiaries say that in many cases they do not have sufficient time to prepare their projects and to obtain the necessary supporting documents (i.e. certificates, permits, etc.). Both the Managing Authority and the Paying Agency are aware of this problem and in order to address it they consider to publish prior information notices with indicative periods for application intakes at least 2 – 3 months before the opening date so as applicants to have enough time to prepare their application packages.

In Bulgaria, as in the Czech Republic, imbalanced support by the RDP led to *targeting some sectors and to excluding others*. Up to 2013, grain producers received a considerable part of the grant support at the expense of vegetable producers and livestock breeders. Although the measures are not specifically designed to benefit a certain group (i.e. grain producers), in order to adjust this imbalance, the Paying Agency allocated funds and announced targeted intakes and 'guaranteed budgets' for vegetable producers and livestock breeders.

In order to avoid *rejection of good quality projects during the pre-selection stage* (which is the case in Poland), the Paying Agency's regional offices check application forms at the time of their reception. Also, if it is established during the administrative checks that the application form is incomplete or incorrect, or any document is not attached to it, the Paying Agency notifies the applicant and gives him/her 10 days to fix the omission or the mistake. In addition, if applicants under measures 121 and 123 at the time of submission of application are unable to provide a certificate of environmental impact assessment (which is an obligatory for larger infrastructure and construction projects) because the assessment itself and the issuance of the certificate take longer time, the Paying Agency may approve a project conditionally. The applicants, however, should provide a document with the 'incoming number' of their application for carrying out environmental impact assessment. In such cases beneficiaries are required to submit the certificate later, upon its issuance.

In Bulgaria, measure 214 has 5 sub-measures, each of which is having 1, 2 or 3 headings (out of a total of 10 headings). Although much less so than in Austria, the *larger number of sub-measures and headings within them creates complexity* and confusion among applicants, and an incorrectly submitted application is often a reason for its rejection. In order to address this situation and to make the measure more attractive, the Paying Agency produced in 2013 a guide to potential applicants and beneficiaries titled 'AGRO-ECOLOGY. Guide to application process and implementation'. Also, due

to the high number of repeatedly wrongly completed application forms, the PA regional offices notify beneficiaries for technical mistakes or omissions in them since 2012. The latter may submit corrected forms until the deadline for approval/rejection of applications.

4 LOOKING AHEAD

4.1 IDENTIFIED PROBLEMS AND POSSIBLE SOLUTIONS

The main factor that generates the discussed gold-plating issues is the willingness of the Managing Authority and of the Paying Agency to manage and implement the RDP in full compliance with the EU rules and to avoid irregularities and fraud. As was mentioned above, there are not so many gold-plated provisions in the Bulgarian national legislation, and those identified are not the most common or significant cause for errors. In general, errors occur mainly due to complex and strict requirements, poor communication between authorities and beneficiaries, and the latter's insufficient experience with EAFRD funded projects in the first years of RDP implementation. As regards Axis 2, errors originate not from gold-plating but from national socio-economic characteristics such as small own parcels and imperfect digital orthophotomaps.

The lack of good communication and coordination between the Managing Authority and the Paying Agency, which was established by the National Audit Office in its Audit Reports¹⁴, leads to ineffective allocation of resources and planning of application intakes. The staff turnover, which is relatively high in the Paying Agency, is a key factor limiting administrative capacity, and contributing to delays in processing applications and inconsistent interpretation of rules and requirements. The poor communication between authorities and beneficiaries, and the latter's inexperience lead to errors, too.

Possible solutions to these factors include targeted information campaigns about the main objectives and rules for RDP funded projects and elaboration of specific Guides and Manuals on application and implementation under each measure. Other possible solutions include procedural improvements such as using IT tools and web-based application for official checks of the applicants/beneficiaries' status in various public registers such as those of the agricultural producers, the trade register, etc., as well as for permits and certificates, issued by public bodies.

4.2 GOOD PRACTICES AND EXTREME DIFFICULTIES

A good practice that emerged in Bulgaria is the solution to the onerous requirements as to the application package, which often led to rejection of good quality projects at the pre-selection stage. This situation has improved now that, if it is established during the administrative checks that the application is incomplete or incorrect or any document is not attached to it, the Paying Agency notifies the applicant and gives him/her 10 days to fix the omission or the mistake. In addition, if applicants under measures 121 and 123 at the time of submission of the application are unable to

¹⁴ The insufficient administrative capacity, ineffective communication between the Managing Authority and the Paying Agency, and imperfect control procedures are identified by the National Audit Office in Audit Reports for Measures 121 and 321; for additional information see: 1. "Одитен доклад за извършен одит на Мярка 121 „Модернизиране на земеделските стопанства“ по Програмата за развитие на селските райони 2007 - 2013 г. за периода от 01.07.2009 г. до 30.06.2010 г." available at http://www.bulnao.government.bg/files/_bg/Doklad_m121_PRSR_0612.doc; last retrieved on 11.12.2013; 2. "Одитен доклад за извършен одит на Мярка 321 „Основни услуги за икономиката и населението на селските райони“ по Програмата за развитие на селските райони 2007 - 2013 г. за периода от 01.01.2009 г. до 31.12.2009 г.;" available at http://www.bulnao.government.bg/files/_bg/doklad_celcki_raioni-06-2011.doc; last retrieved on 11.12.2013.

provide a certificate of environmental impact assessment because issuing one takes longer, the Paying Agency may approve a project conditionally. In such cases beneficiaries are required to submit the certificate later, upon its issuance. Similarly, due to the high number of repeatedly wrongly completed application forms under measure 214, which is a cause for errors, the PA regional offices notify beneficiaries for technical mistakes or omissions in them since 2012. The latter may submit corrected forms until the deadline for approval/rejection of applications. For addressing similar problems, this practice might be replicated in other EU Member States.

A gold-plated provision, which causes difficulties to beneficiaries, and sometimes is a prerequisite for termination of the grant contract, i.e. a source of errors, is the requirements to the guarantors, when beneficiaries are not able to provide a bank guarantee against advance payment claim. Some of the EAFRD funded projects are implemented in small villages in less developed regions and it is hard for beneficiaries to secure two guarantors that meet the necessary conditions: each grantor should be registered and perform commercial activity at least 3 years prior submission of the advance payment claim; 25 % of the owner's equity, recorded in the financial statements for the last closed financial year and/or for the last closed quarter prior submission of the advance payment claim should be equal to or higher than 110 % of the amount requested; and 20 % of its revenues for the last financial year should be equal to or higher than 110 % of the advance requested. A solution to this problem has not been found so far.

4.3 SUGGESTIONS AND RECOMMENDATIONS

The identified gold-plated provisions in Bulgaria are not the main sources of errors. Most of them are introduced for effective and efficient programme management and implementation (e.g. the minimum amount of the advance payment; period within which advance payment could be claimed; non-eligibility of bank and guarantee fees; limits on transport costs). Other provisions aim to avoid irregularities and misappropriation of the EAFRD funds (e.g. the requirement for 3 offers; conditions that should be met by guarantors; ineligibility of expenditures paid in cash). A possible solution for avoiding excessive requirements and overregulation, simultaneously with applying strict control procedures, is maintaining constant communication and cooperation between the Managing Authority and the Paying Agency on the one hand, and between authorities and beneficiaries on the other hand.

CASE STUDY – ITALY (LIGURIA/ VENETO)

1 INTRODUCTION OF THE PROGRAMME

The EAFRD in Italy, given the specific policy roles at the central and regional level as defined in Title V of the Italian Constitution, is composed of specific Rural Development Programmes (RDPs) established at the level of Regions and Autonomous Provinces across the country. Managing Authorities (MA) at the territorial level therefore have full responsibility in articulating rural regional plans, the content of their measures, as well as requirements of eligibility (on the basis of existing EU, national, regional regulation) and commitments.

Paying Agencies (PA) are set up at the regional level in some¹⁵ Regions, whilst for the majority of regions - including all RDPs for southern Italy - the management of controls and payments is competence of the Agency for Agricultural Disbursements (AGEA¹⁶) acting at the national level. A process of decentralisation of this role in all regions has started but at this stage there is no uniformity in the structure. It is believed, as emerging from strategic interviews, that the quality of programming and regulation improves in the presence of greater collaboration between Managing and Paying Authorities. And yet, the overall governance of the EAFRD in Italy is somehow jeopardised, with difficulties in overall coordination and access to homogeneous statistics and trends.

The EAFRD in Italy consists of 21 RDPs independently designed and implemented by Regional and Provincial Managing Authorities, with the overall support of the Ministry of Agricultural, Food and Forestry Policy (MiPAAF¹⁷) at the Central Level, also having a role in the exchanges and coordination with the EU institutions and particularly the EU Commission (DG AGRI). The overall budget¹⁸ allocated for the EAFRD in Italy is 17.661 billion Euros, with a EU contribution of EUR 8.985 billion¹⁹. Of those, EUR 10.245 billion are allocated to the 16 Regions and Autonomous Provinces of the Competitiveness Objective in the centre-north of Italy, whilst EUR 7.333 billions are allocated to the Convergence Regions in the southern territories of the country.

General regulation is provided at the national level on cross-compliance basic requirements, as well as the coordination and harmonisation of the regulatory activities of the 19 Regions and 2 autonomous Provinces in Italy by Decree n° 30125 of 22 December 2009, as amended by Decree n°10346 of 13 May 2011 on the 'Rules of the system of compliance pursuant to Regulation (EC) no 73/2009 and reductions and exclusions for breach of beneficiaries of direct payments and rural development programmes'.

Moreover, the main national regulation for payment and procurement is defined at the national level, which also provides guidelines for regional administration on the main payment requirements, based on transposition of EU Directives (e.g. those relevant for cross-compliance basic requirements): additional national regulation, amongst which the law No 136 of 13 August 2010 entitled 'Extraordinary Plan against the Mafia' (Art. 3) concerning the financial traceability of funds.

¹⁵ These are the Regions of Tuscany, Emilia-Romagna, Veneto, Calabria, Piedmont, Lombardy, as well as Autonomous Provinces of Bolzano and Trento.

¹⁶ <http://www.agea.gov.it/portal/page/portal/AGEAPageGroup/HomeAGEA/ChiSiamo>

¹⁷ <http://www.politicheagricole.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/305>

¹⁸ <http://www.reterurale.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/13219>

¹⁹ Including the additional resources for Health Check and Recovery Plan, as formalised in the Commission Decision 2009/545/CE of July 7th 2009.

In addition, a national Regulation (Decree N° 30125 22/12/2009) defines general guidelines for agri-environmental commitments to be respected by Managing Authorities, (Art. 22). For the purposes referred to in Articles 4, 5 and 6 and Annexes II and III to the EU Regulation 73/2009, the Regions and Autonomous Provinces can autonomously specify their own commitments. Regions and Autonomous Provinces then transmit their specific commitments to the Central Government (MiPAAF).

The RDPs in Italian Regions follow the overall structure of axes and measures²⁰ as listed in the EU regulations. In some cases though, additional integrated measures are introduced²¹. The overall EAFRD budget²² in Italy is largely allocated to Axis 2 (about 46 %) and Axis 1 (about 37 %), with the remaining budget (about 17 %) distributed amongst Axes 3 and 4 (15 %) and technical assistance (about 2 %).

As a national average, Italy has a relatively low EAFRD error rate (less than 1.5 %) for the period 2010 - 2012 according to official data from the European Commission (EC)²³, if compared to the EU error rate of 2 %. Through time, the Italian error rate has grown from 2009 (over 1.5 %) to 2010 (about 2 %) to then decrease again in 2011 (below 1.5 %). This case study investigates the dynamics and patterns of error rates related to gold-plating issues in Liguria (a programme consisting of a Regional Managing Authority but with a centralised Paying Agency) and Veneto (a fully decentralised programme both for Managing Authorities and Paying Agency). This is based on regional level interviews as well as interviews held with professionals at the central level (MiPAAF and AGEA). Furthermore, representatives from beneficiary associations in several regions across the country have been interviewed.

²⁰ A visual synopsis of Regions and Measures introduced is provided by the Rural Network (<http://www.reterurale.it/flex/FixedPages/IT/QuadroSinottico.php/L/IT>)

²¹ *Measures most common in Axis 1:* Measure 111 'Vocational training, information activities, innovation', 112 'Setting up young farmers', 114 'Use of advisory services', 121 'Modernisation of agricultural holdings', 122 'Increasing the economic value of forests', 123 'Increasing the value of agricultural and forestry products', 124 'Cooperation for the development of new products, processes and technologies in the agricultural and food-industry sector and forestry', 125 'Improvement and development of infrastructure related to the development and modernisation of agriculture and forestry', 132 'Support of agricultural producers participating in food quality systems', 133 'Support of producer groups in the field of information and promotional activities pertaining to products, which belong to the framework of food-quality systems'. *Measures most common in Axis 2:* Measure 211 'Support for mountain regions with natural handicaps', 214 'Agri-environmental payments', 216 'Support for non-productive investments', 221 'First afforestation of agricultural land', 226 'Restoring forestry potentials and introducing preventive actions', 227 'Support for non-productive investments'. For Axis 3, these are: 311 'Diversification of non-agricultural activities', 313 'Promotion of tourism activities', 321 'Basic services for the rural economy and population', 323 'Conservation and sustainable development of rural heritage', Axis 4 - 410 'Implementing local strategies'.

²² <http://www.reterurale.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/13090>

²³ Official statistics in the Annual Reports of the EU Commission Directorate General for Agriculture

2 ASSESSING TRENDS IN ERRORS AND CONSEQUENCE OF GOLD-PLATING

2.1 OVERALL TRENDS IN ERRORS ACROSS AXIS AND MEASURES

In Italy²⁴ Axes 1 and 3 reported extremely low rates of errors, with an average rate below 1 % for all RDPs. Axis 2 instead is the main cause for the majority of errors, and still the overall rate (about 2 %) is far below the EU average (about 4 %). Nonetheless, some exceptions exist, with a high error rate of 4.89 % in 2011 for animal-related measures in Axis 2 in all RDPs involving the national Paying Agency (AGEA), therefore mainly southern regions. High error rates have also been recorded for Axis 2 measures in Lombardy (4.57 % in 2012) and the Autonomous Province of Bolzano (2.64 % in 2011), as well as for non-land related Measures in Piedmont (3.27 % in 2012).

An official breakdown of such rates across measures is unfortunately not publicly available, and it was not possible to obtain detailed statistics for this case study. Still, some elements of interest emerged from interviews amongst the public bodies involved - Managing Authorities and Paying Agencies – both at territorial and central levels, as well as beneficiary associations across Italy. As emerged from interviews with Paying Agencies and Managing Authorities at the central and territorial levels, gold-plating practices seem to have a minor impact on rates of errors. Some high rates of errors (Measure 211 and Measure 214) have been caused by discrepancies between initial statistics used to assess the dimension of supported land, and then generating inconsistencies and therefore irregularities and errors during 'on-the-spot' checks. An additional issue, when it comes to high error rates, is the tendency of beneficiaries (particularly small and micro enterprises or individual farmers) not to maintain their commitments and multiple-year requirements over time. This was particularly true for the previous programming period, when commitments had to be respected for quite long periods of time (well over 5 years).

In this respect, some official reports (e.g. Bolzano) suggest a lack of proportionality in the assessment of irregularities and the consequent error generated, as well as reduction of payments allocated, or a limited support to beneficiaries (e.g. Piedmont) for further explaining their duties and the actual requirements they must meet²⁵. Furthermore, some commitments have been judged 'inherently difficult to implement and control'²⁶, with criteria set up for some commitments not clearly defined. The lack of clear criteria for monitoring and control might be considered an 'atypical' form of gold-plating, as it allows greater errors by introducing unclear requirements and loose criteria for assessment of the measures' correct implementation.

As a conclusion, error rates in Italy are generally below the EU average, but some evidence suggests that gold-plating practices (although limited) might have some impact in generating high error rates. Although it is clear that that gold-plating is not the main cause of errors in Italy, a more proportionate assessment system and a clearer set of requirements for beneficiaries would further reduce chances of errors across regional RDPs in the country and allow greater absorption of funds allocated²⁷.

²⁴ Analysis based on internal statistics provided by the Paying Agency (IFAP)

²⁵ Action plans agreed with the EU Commission by each Regions and Autonomous Province.

²⁶ Ibidem

²⁷ Absorption capacity of EU funds is still an issue for some regions in Italy, particularly in the south (<http://www.reterurale.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/13090>).

2.2 REASONS FOR THE IDENTIFIED GOLD-PLATING ISSUES AND ERRORS GENERATED

The eligibility requirements for Measure 112 'Support insertion of young farmers', as well as Measure 121 'Modernisation of agricultural holding', are often perceived by beneficiaries as too strict and detailed and not realistic for the type of beneficiaries interested in applying for the funding (often SMEs). Particularly, *the business plan requirements* are often very meticulous and call for a level of analytical detail, which can be considered disproportionate to the volume of Funds and the capability of beneficiaries. Although the requirements are in line with EU regulations²⁸, an excess of details in the information requested seem to affect irregularities in the completion of business plans. As a consequence, not complying with business plan requirement may generate irregularities and therefore errors. However, the lack of proportionate assessment of the actual type of information lacking might impact error rates disproportionately to the relevance of the information missing. Unfortunately, the lack of detailed information on error rates at the measure levels prevents us from assessing the potential relevance of the errors generated – which are anyhow not considered statistically relevant by Managing Authorities and Paying Agencies.

From a sample analysis across a few regions, it has emerged that sometimes *too strict requirements are set for land-related measures* and in general measures under Axis II (e.g. Measure 211, 214)²⁹. This is an issue which somehow relates to the fact, as confirmed by the strategic interviews, that the fruit and vegetable sector is not well regulated in the national laws and this is a circumstance which might generate differences across programmes and in some cases higher error rates due to the difficulty of beneficiaries to stick to the requirements, or even difficulty in fully understanding the requirements in case of unclear rules. Again, un-proportional assessment of irregularities in this area might impact the error rates, an aspect which seems to have relevance in some Provinces (e.g. Bolzano) and possibly some regions (e.g. Piedmont). In other cases no clear requirements are specified which result in difficulties by beneficiaries to clearly understand what they have committed to (e.g. Veneto). All these aspects can be attributed to gold-plating (although more in terms of inadequate rather than unnecessary regulation) and are identified by local Authorities as administrative causes of errors.

Beyond specific measures, the *absence of a clear proportionality principle* in the assessment of different errors for different types of beneficiaries has been highlighted as a problem for the RDPs in general in various regions, as minor unintentional errors by SMEs lacking capacity are considered at the same level as more relevant ones. Minor (formal) irregularities are treated at the same level of more relevant (substantial) ones with high impact on the errors generated. Also, differences in rules and requirements from region to region across the country pose problems for beneficiaries in areas adjacent to two or more regions and those applying to different regions, causing confusion and therefore generating errors.

Administrative information required to be eligible for EAFRD funding is often very demanding for beneficiaries which have to fulfil a very detailed company on-line file ('fascicolo aziendale') which has to be maintained through time by the beneficiaries and modified for any additional request or any change in its assets, performance, or other characteristics. Beneficiaries might forget to amend this information resulting in irregularities and errors in case of 'on-the-spot' checks. Irregularities in this respect may also be un-proportionally assessed and generate high error rates than necessary.

²⁸ Council and Commission regulations specify the need of business plans aimed at providing certain information necessary to justify allocations for the measure.

²⁹ For example strict requirements when it comes to the amounts of livestock and fruits to be supported (with paradoxical results in the set-up of instruments to count the actual number of products in fruit-tree cultivation).

Finally, in some regions (e.g. Veneto) a very limited period of time available for submission of proposals, shorter than what usually required for EU funding (i.e. 60 days) or national funds (i.e. 45 days), which might not allow beneficiaries to provide all required information – which can generate errors during administrative checks. In such cases, Managing Authorities admit that a limited time for submission is essential for them to assure timely approval of the best projects and a quick implementation of the funding. Some authorities explicitly prefer to implement strict rules in the project selection stage, so to be more efficient in the execution. This practice of course might generate high errors if beneficiaries cannot stick to the agreed commitments and requirements.

2.3 ADDITIONAL POSSIBLE GOLD-PLATING ISSUES AND ERRORS GENERATED

Agri-environmental commitments and eligibility requirements in general are sometimes perceived by beneficiaries as too lengthy and lacking clarity, therefore providing excess of information creating confusion in what is actually required to beneficiaries - and as a consequence may generate several errors. This is an element, which has been highlighted in Axis II (e.g. measures 215, 212, 216). This is also the case in some regions for Axis I, for measures with relevant resources available (e.g. measure 112).

Integrated projects are promoted in some regions specifically with the aim of maximizing synergies and achieving greater impact. They require more demanding conditions for acceding the Funds (i.e. the presence of a variety of local stakeholders) which are perceived as too demanding for the actual local capacity of beneficiaries and might become impossible or very complex to achieve in deprived or poor areas, therefore generating irregularities impacting on higher rates of errors.

3 ASSESSING POSSIBLE GOOD PRACTICES TO BE ADOPTED IN OTHER COUNTRIES

3.1 JUDGMENT OF GOLD-PLATING ISSUES EMERGING IN OTHER COUNTRIES/REGIONS

Although many of the specific issues and challenges emerged in other Case Studies were not identified in Italy, some general principles and some specific suggestions have emerged through interviews which could be beneficial for other RDPs.

An element with great impact on errors, mainly in Axis 2, is the *tendency of beneficiaries not to comply with multi-annual requirements*. This is also an issue emerging in other countries (e.g. Spain, Portugal), and in Italy there is a growing attempt by some Managing Authorities to be pro-active in submitting pre-complied forms to beneficiaries each year, to remind them of the actual commitments and requirements they have agreed upon and prevent irregularities and errors generated by forgetfulness. In the words of interviewees, this practice has been effective in reducing errors through time. Also, in case of multi-annual commitments exceeding the programming period (e.g. those from measures from the previous period), authorities have negotiated some simplification.

Some RDPs (e.g. Veneto) are also introducing standardised *business plans*, similar to those developed in Austria, but they seem to be more advanced than other European good practices emerging from the Case Studies. Indeed, they not only provide simplified and standardised forms (which include specific fields where to insert clear information for certain well defined criteria), but bring suggestions for possible reference costs and values to be used in each field required, based on type of activities and performance from previous years. The tool is under pilot trial and could be extended in the future – not by introducing 'standard costs' but more pragmatically through the provision of a possible

range of values to be considered in case of certain type of actions, in specific territories and for certain commitments to respect through time. This tool, together with other good practices related to the proportional assessment of irregularities in the completion of business plans (i.e. Portugal), might be beneficial for simplifying business plan requirements in all EU RDPs.

Finally other authorities (e.g. Liguria) have improved their capacity to assess the feasibility of their regulatory requirements, by successfully introducing the practice of *'testing' any critical requirement with a sample of beneficiaries*, so to test the potential costs for the beneficiary, as well as the chances of generating irregularities resulting in higher error rates. Such an approach could be promoted across all countries and RDPs to assure the feasibility of the rules introduced in each RDP, to avoid gold-plating practices and ultimately reduce risks of errors. Notably the practice could be a promising approach to make agri-environmental commitments more proportional and flexible enough to be respected by all beneficiaries interested.

4 LOOKING AHEAD

4.1 IDENTIFIED PROBLEMS AND POSSIBLE SOLUTIONS

Some general issues have emerged from the interviews held, such as the following:

- *Define simple and feasible requirements for EAFRD regulation has been a challenge for all actors involved. Excess of administrative requirements and unclear and un-proportional assessment of irregularities* might have had an impact on errors – although the actual relevance has been difficult to assess, also given a very low rate of errors across RDPs in Italy.
- Due to the specificity of institutional governance, as regulated in the Title V of the Italian Constitution, national regulators could provide guidelines for implementation, but regional authorities have full responsibility in defining and implementing specific rules in their RDPs. This situation has generated *difficulties in sharing existing good practices emerging across regions*, as well as identifying opportunities for collaboration and simplification across regional authorities. The result is a large degree of difference amongst regional programmes with limited possibility of comparison and of statistical comparable data for benchmarking of regional performances.
- *Capacity of beneficiaries in respecting of EAFRD requirements has been generally limited.* Partially because regulatory conditions in general are perceived as too costly if compared to the actual finance available, therefore providing an obstacle to full interest and commitment (up to the point which sometimes beneficiaries simply forgot the actual commitment taken). To some extent the technical level of requirements and their specificity might be too complex to be fully understood and therefore might generate confusion resulting in irregularities and high rates of errors.
- *The cooperation amongst the various levels of governance* in such a decentralised context has been an additional factor of complexity for a mutually advantageous exchange of practices and advices between the EU, national bodies and territorial authorities – resulting in limited room for learning from experience on how to simplify rules in order to reduce error rates.

More specifically, some areas of improvement have been identified, also in collaboration with the EC, and most of those have been implemented in the recent years:

- Quality of controls and administrative procedures (all measures) can be improved through intensified exchange of information between MAs, PAs and other regional actors involved in

the management of the RDP, so to improve the reliability of error rates, as well as reduce the levels of errors over time by means of a better support to beneficiaries;

- Control mode for some commitments are not clearly defined and not always timely (all measures) and would benefit from improved manuals and capacity building support for all intermediary bodies involved at the regional and provincial levels;
- Methodologies adopted to assess irregularities across measures (particularly in relation to administrative requirements such as business plan information and maintenance of company files ('fascicoli aziendali'), should be made more proportional, allowing less capable beneficiaries to correct information provided, particularly in areas not essential to the assessment of requirements and commitments on which depend financial disbursements.

The impact of gold-plating on error rates seems relatively limited in Italy, although the lack of detailed publicly accessible - and comparable – statistics on error rates by measures across the RDPs has constrained the assessment. Rates of errors in Italy are relatively low and in line with, or even below, average EU trends.

4.2 GOOD PRACTICES AND EXTREME DIFFICULTIES

Some good practices have emerged such as the use of a *standardised business plan* with the suggestion for possible economic values to use, based on previous experiences collected throughout the programming period and other existing databases at the local and national levels. The practice is being tested in Veneto and will be introduced in the new Programming Period, as part of a general push towards standard costs and administrative simplifications for beneficiaries.

Some Managing Authorities have introduced the practice of *'testing' tight commitments and requirements* with a limited sample of stakeholders, so to assess their feasibility and proportionality and ultimately fine-tune these to the actual capability of beneficiaries. This is a good practice which has been adopted in Liguria and could be further improved and spread amongst all Managing Authorities, as part of a greater call by EU regulation for a clear *contextual analysis and a feasibility test* for the measures introduced, to be provided in each RDPs – here though is important to balance the additional requirements so to avoid excessive burdens to EAFRD regulators.

As a good practice, the good level of *involvement of intermediary bodies* (e.g. agriculture associations) in the support to individual beneficiaries and as intermediary bodies for regulators is generally seen as a strength, although the capacity of beneficiaries and clear understanding of the requirements and commitments they must follow appears still limited. Also the role of sub-regional bodies has been important in some regions (e.g. Liguria) to have a capillary check at the local level of beneficiaries' responses to - and understanding of – RDPs requirements.

Some critical elements have emerged, which are not directly related to gold-plating issues or errors generated, but rather to some more 'structural' factors of complexity in the EAFRD management for Italy, e.g. weak financial control due to capacity constraints, lack of integrated databases and systems amongst different administrations and different levels of governance, as well as weaknesses in control practices put in place by some local administrations. Finally, some dilemmas seem to emerge in terms of how to balance – in such a complex and diversified governance structure - the needs for: introducing a limited set of administrative requirements; improving auditing accuracy and assessment of results and outcomes as requested by the EC and the Court of Auditors whilst promoting simplification in information requirements for beneficiaries; promoting harmonisation and coherence of regulation in a complex governance structure.

Also, in some regions beneficiaries seem to be increasingly sceptical to apply for funding under Axis 2 measures, due to the high complexity of agri-environmental commitments, and tend to prefer other measures where they believe benefits to be more balanced to the administrative costs required. This element might also be an explanation of the lower rate of errors in Italy: beneficiaries simply select measures where requirements are less complex and that are therefore easier to implement without generating many irregularities. On the other hand the Managing Authorities are also focusing on fewer measures which are perceived as less complex to monitor and control, resulting in a majority of actions funded under Axis 1 and very limited measures under Axis 2 being considered (see Chapter 1).

4.3 SUGGESTIONS AND RECOMMENDATIONS

Greater support in knowledge sharing throughout the programming cycle – both across regional RDPs and between national and international practices – would surely be advantageous in identifying possible gold-plating practices and simplify possible causes of errors. In terms of good examples emerging from Italy, a better use of standard and simplified forms can help in reducing errors when it comes to Business Plan requirements, and similarly further investigating how to test strict regulation with beneficiaries before implementing the programme can be instrumental in spreading good regulatory practices.

A greater role might be played by the European Rural Network and EU Working Groups in sharing practices, as well as strengthening the collection of statistical data on errors, which can be compared amongst regions, so to identify good performers from which to learn. In general it seems that the issues emerged in Italy can be tackled by greater access to international good practices, as well as good national examples. Standardised processes could also be piloted across EU Member States, so to address which rules are less costly for beneficiaries and which are producing lower rates of errors, as a basis for a greater sharing of good practices and knowledge.

As a final remark and recommendation, it must be stressed the fact that adequate and effective “on-the-spot” checks seem to be a challenge for some authorities, particularly in regions with limited capabilities at the local level³⁰. Moreover, reporting on the overall national performance in such a diverse and fragmented governance structure is also very challenging. As a result, a main area of improvement for the EAFRD in Italy could be to strengthen the reliability and quality of checks and consequent error rates reported at the national level. No comparable statistics are available.

³⁰ Particularly in relation to land-measure, some issues emerging on the EAFRD related to the difficulty of verification of commitments, as well as the quality of controls and administrative procedures.

CASE STUDY – PORTUGAL

1 INTRODUCTION OF THE PROGRAMME

Rural Development policy in Portugal is under the responsibility of the Ministry of Agriculture, Rural Development and Fisheries for Mainland Portugal, the Regional Directorate of Community Affairs in the field of Agriculture (DRACA) for the Azores and the Regional Secretariat of Environment and Natural Resources (SRA) for Madeira³¹. One National Strategy Plan (NSP) and three separate Rural Development Programmes (RDPs), for Portugal Mainland, Azores and Madeira, have been developed.

At national level, the Office of Planning and Policies (GPP) is responsible for the definition of strategic guidelines, priorities and objectives for the policy of the Ministry. As such, it co-ordinates, monitors and evaluates the implementation of the EAFRD³². The EAFRD in Portugal consists of 3 Programmes. The main one in terms of number of beneficiaries and overall budget is the programme for the mainland (PRODER), which covers the majority of Portugal's territories and EU funds, approved by EC Decision C (2007) 6159 on 4 December 2007. The two other Programmes are one for the island of Madeira and one for the Azores. Given the de-centralised governance structure in Portugal, each programme defines specific measures, terms of references and requirements under each sub-programme and measure. Each individual programme is managed by a specific Managing Authority, whilst the Paying Authority is centralised at the Institute for Financing of Agriculture and Fishing I.P. (IFAP,I.P.).

This analysis focuses on the main programme (PRODER) consisting of a total budget of 4.282 billion Euros³³ over the period 2007 - 2013, of which about 84 % is contributed by the EAFRD. The total amount is mainly allocated to Axes 1 and 2 (covering about 43 % of total budget each), followed by Axis 4 (about 10 %), whilst Axis 3 and technical assistance together count for just 3 % of the total budget. PRODER is defined by the relevant following regulations, such as:

- Decree-Law No. 37-A/2008, DR # 46 Series I (Supplement) of 2008/03/05, Ministry of Agriculture, Rural Development and Fisheries, General rules for the implementation of rural development programs (RDP) funded by the European Agricultural Fund for Rural Development (EAFRD) and approved in accordance with Regulation (EC) No. 1698/2005 of the Council of 20 September for the period 2007 - 2013 (Amended by Decree - Law No. 66/2009 of 20 March);
- Council of Ministers Resolution No. 2/2008, Official Gazette No. 4, Series I of 07.01.2008, Presidency of the Council of Ministers, Creates the mission structure for the Rural Development Programme of the Continent (RDP) (repeals Resolution of the Council of Ministers No. 112/2007 of 21 August) (amended by Resolution of the Council of Ministers No. 30/2009 of 2 April);
- Decree - Law No. 2/2008, Official Gazette No. 3, Series I of 04.01.2008, Ministry of Agriculture, Rural Development and Fisheries, Defines the model of governance instruments of rural development programming for 2007 - 2013, financed by the EAFRD, and establishes the organizational structure on the performance of the functions of management, monitoring,

³¹ http://enrd.ec.europa.eu/country/portugal/en/portugal_en.cfm

³² <http://www.gpp.pt/en/>

³³ PRODER (p.359), Revision 8, 2011 (<http://www.proder.pt/conteudo.aspx?menuid=329&eid=263>)

reporting, monitoring and evaluation of these instruments (Amended by Decree - Law No. 66/2009 of 20 March).

The Managing Authority for PRODER is the Cabinet of Planning for Agro-food Policy (GPP)³⁴, a central service supporting the Ministry in agro-alimentary, forestry, rural development and fishing policies, whilst the Paying Agency is the Financing Institute for Agriculture and Fishery (IFAP)³⁵.

PRODER³⁶ is composed of three Sub-programmes plus a fourth Sub-programme supporting innovation and capacity-building, and as such it mirrors the structure in the EU regulation for the fund³⁷:

- Sub-programme 1 covers mostly Axis 1 in the EU regulation, by focusing on support to competitiveness, and is the most important in financial terms;
- Sub-programme 2 covers Measures in Axis 2 and Axis 3 of the EU regulation and focuses on support for the maintenance of activities in less favoured areas and mountain regions, organic farming and integrated production and targeted measures in the forestry sector. It also includes a specificity for Portugal: Integrated Territorial Interventions (ITI) which are combined actions based on different EAFRD measures (214 Agri-environment payments, 216 Support for non-productive investments, 225 Forest environment payments, 227 Support for non-productive investments, 323 Conservation and upgrading of the rural heritage) and basically has been introduced as a substitute for Natura 2000 measures, as by the time the Programme was defined, Portugal still had no clear approach to those areas. It is the second in importance in financial terms;
- Sub-programme 3, with less relevant financial resources, focuses on EAFRD measures related to rural areas (mostly Axis 3 measures) and gives preference to LEADER;
- Sub-programme 4 supports qualifications and development of human resources.

Portugal is the Member State with the highest rate of error registered in the period 2010 - 2012, according to official data from the EC³⁸, with an average EAFRD error rate of about 7 % (comparing to the EU average of about 2 %). A closer look, though, reveals that Portugal's performance was particularly poor in 2010, when error rates reported by the EC for all Axes were almost 10 %, and then came down in 2011, when error rates reached 4 %. Due to the substantial weight of PRODER in EAFRD, we assume here that these trends are mainly influenced by, and mainly reflect, the mainland programme (PRODER), which has been the focus of our analysis.

³⁴ http://www.gpp.pt/o_gpp.html

³⁵ http://www.ifap.min-agricultura.pt/portal/page/portal/ifap_publico/GC_oifap

³⁶ <http://www.proder.pt/conteudo.aspx?menuid=329&eid=263>

³⁷ http://www.rudi-europe.net/uploads/media/Portugal_WP2_Report_01.pdf

³⁸ Official statistics in the Annual Reports of the EU Commission Directorate General for Agriculture

2 ASSESSING TRENDS IN ERRORS AND CONSEQUENCE OF GOLD-PLATING

2.1 OVERALL TRENDS IN ERRORS ACROSS AXES AND MEASURES

When it comes to specific Axis and Measures³⁹, Axis 2 was clearly the area where problems emerged – therefore resulting in an error rate of over 15 % in 2010, then reduced to about 7.5 % in 2011. Measure 214 alone reached an error rate of 33 % in 2010, and then came down to 8 % in 2011. The second relevant set of measures for errors generated included measures 211 and 212, with a relatively stable rate of about 7.5 % and slightly decreasing from 2010 to 2011. Error rates have over time been relatively low in Axes 1 and 3, with 5 % in 2010 and about 2.5 % in 2011. A breakdown of the main measures influencing overall rates of error by Axis is provided in the table below.

Table 2 : Evolution of EAFRD error rate in Portugal (for the financial years 2010-2011)

Axis / Measure	2010	2011
All Axes	9.71	5.14
Axis 2 (Land Measures)	15.70	7.60
- Measure 214 "Agro-environmental Payments"	33.00	7.70
- Measures 211/212 "Rural and Handicapped Areas"	7.53	7.45
Axes 1 and 3	5.04	2.42

Source: IFAP internal statistics, 2013. * Error rates calculated on data obtained from random controls.

Portugal is the country where gold-plating has been identified as the root-cause for high error rates in a few specific measures, as further described in the next chapters. Nonetheless, interviews held locally have clearly pointed to the fact that the high error rates in the whole programme has several causes beyond gold-plating (e.g. lack of clear understanding by beneficiaries of the commitments they had agreed upon resulting in irregularities over time, problems with the available territorial statistics which have caused irregularities during 'on-the-spot' checks, difficulties for beneficiaries to respect eligibility criteria over time due to external factors).

2.2 REASONS FOR THE IDENTIFIED GOLD-PLATING ISSUES AND ERRORS GENERATED

Agro-environmental and agro-forestry payments (Measures 214/225) suffer from *excessive requirements in terms of trading commitment*, a regulation which has been explicitly introduced by the Managing Authority and that goes beyond EU regulations. Such requirement made it mandatory to market and sell as bio-products a percentage of the total production supported through these

³⁹ Analysis based on internal statistics provided by the Paying Agency (IFAP)

measures. The requirement was intended to assure that the policy objective of increasing biological production in the country was achieved. Nonetheless, through the implementation of the measures, it was clear that such commitments were difficult to monitor and assess. Producers benefitting from a broader distribution could not track back in time the actual selling of their products as biological in time for the annual check. At the same time, small and micro producers selling to local markets could not provide actual formal certification to assure they sold their production as biological. Beneficiaries also struggled to respect the minimum/maximum amount of crops density to be maintained over time, when it comes to permanent cultures funded by the EAFRD. Although legitimate, the requirements appeared to be too strict to be respected by local beneficiaries who might have acquired/sold their land throughout the years of funding and therefore might have values changed causing irregularities, which could have resulted in withdrawal of the whole funding for the area. As such, the requirement has been re-negotiated and made less stringent by the Managing Authorities. By 2010, the measure generated a very high amount of irregularities resulting in an extremely high error rate (33 %) for Measure 214 alone, which also largely impacted the whole error rate for Axis 2 (over 15 %) and the entire RDP (about 10 %). As a result of simplification in commitments and more flexibility in the assessment of irregularities, the error rate for Measure 214 in 2011 decreased dramatically to about 7 %, demonstrating how the reduction of too strict requirements can reduce excessively high error rates. Overall, difficulties of beneficiaries to stick to initial commitments and achieve expected goals, in a framework of complex requirements seem to be a structural problem causing errors for the measure.

Support to handicap areas (Measures 211/212) suffered from a too strict requirement related to livestock density and minimum/maximum requirements, particularly as beneficiaries tended to change the number of livestock (or eligible surface dimension) throughout the years irrespective of the requirements of a certain amount to be maintained over time. As a consequence, they took the risk of having the EAFRD financing withdrawn for the whole programming period. Although the regulatory requirement is legitimate, actual practice has proven that a more flexible approach can be more appropriate. The association of beneficiaries suggests for example to have a more flexible approach to the requirements, by introducing a greater 'tolerance value' for possible changes and variation over time. The error rate has been about 7.5 % both for 2010 and 2011, therefore remaining high and stable over time. It is expected that error rates could go down by better taking into account the actual needs and possibilities of beneficiaries.

One other factor for the errors generated was the lack of *updated and precise land measurement* for those areas in Portugal once the programme was launched, resulting in high differences of land dimension once the on-the-spot checks were implemented. Since then, the Managing Authority has promoted a re-mapping of the whole territory with up-to-date geo-referential photo-interpretation. The exercise was concluded in 2012, and is expected to reduce sensibly the error rate for future years and programmes.

Afforestation of agricultural land (Measure 221) suffers from a too inflexible duration requirement and disproportional requirements in terms of surface to be supported and minimum densities required. In fact, although the requirement of maintaining a certain density of plants per hectare and the overall surface to be re-forested constant through time was legitimate, in practice some beneficiaries have experienced concrete problems in achieving the forestation results expected - i.e. with only a portion of implanted trees growing as expected. Alternatively, some have experienced economic challenges and therefore have changed the initial surface (such as for Measures 211/212). Moreover, an additional requirement denying access and maintenance of livestock in afforested areas – based on

national regulation and a deliberate policy choice of the Managing Authority going beyond EU requirements, is causing problems as the majority of on-the-spot checks have registered irregularities in this respect – therefore impacting the error rate for the measure. As a consequence the measure suffers from an error rate of almost 7 %, which seems to be mainly caused by strict national regulations, which at this stage are still largely unresolved. This holds true particularly for the case of ineligibility of afforested lands with livestock. The measure also suffered from inaccuracies of initial land measures (as described for Measures 211 and 212). A more flexible approach for the measurement of density and dimension of land to be respected over time is being introduced.

The *administrative requirements to be eligible* for the measure aimed at *setting up young farmers* (Measure 112) were too strict for many beneficiaries and particularly individual farmers and micro enterprises could not properly complete the required business plan information or even tended to forget to fulfil such obligations (e.g. they could not complete the whole information required). Although the business plan is a requirement according to EU regulation, and is essential in addressing the return of investments required, the Managing Authority and Paying Agency acknowledged that the errors generated have been excessive in terms of the potential benefits of such requirement. As such, the Paying Agency is now developing a more balanced and proportionate (multi-criteria) methodology for assessing irregularities and therefore generating lower errors, as well as unblocking funding in case of minor irregularities encountered. Although the error rate assessed for this measure is the second highest (after the agri-environmental measures), the impact in generating errors of strict business plan requirements is certainly not the main cause for such high level of errors. Still, an improvement of methodologies aimed at assessing irregularities in business plan information might improve the performance of the measure.

2.3 ADDITIONAL POSSIBLE GOLD-PLATING ISSUES AND ERRORS GENERATED

Integrated Territorial Interventions (ITIs) have reportedly suffered from ambiguity (measures 214, 216, 225 and 227), which might generate misunderstanding in the applications and possible errors generated throughout the implementation of funded activities. For example an *ambiguous definition of the aim of the ITIs* – support of 'traditional culture' – has prevented beneficiaries to apply for such measures in the absence of a clear understanding of which activities were funded. It is also expected to have generated high errors due to irregularities for those presenting projects under such measures. All in all, the error rate for measure 225, for example, registered an error rate of around 10 %, which are related to issues due to ambiguous requirements for the ITIs.

Another example of the ambiguous operationalisation of 'traditional culture' lies in the national specific requirement in *age of olive trees* – a minimum of 30 years on average for at least 80 % of the trees per area as a criterion to be funded by such measure. This tight requirement – in itself justified by the policy goal – has contributed to high error rates under this measure as well.

Measure 221 'Afforestation of rural areas' was set up in Portugal on the basis of a strict *definition of 'farmers'*. Therefore only those beneficiaries who do not exceed a certain income outside agriculture were eligible for funding. This requirement was explicitly introduced by the Managing Authority to avoid those who had farming as a minor profession to access support, therefore avoiding that those most interested could benefit from the limited funds available. The decision was therefore fully political and aimed at maximising the benefit achievable for the resources at disposal. Once the measures were implemented it appeared obvious that the ceiling set to be eligible, although legitimate in principle, was too strict in practice and as such generated many irregularities and

affected the error rate for the measure – a relevant one for the RDP. As a consequence, the requirements were made less strict so to balance costs and benefits for this measure.

3 ASSESSING POSSIBLE GOOD PRACTICES TO BE ADOPTED IN OTHER COUNTRIES

3.1 JUDGMENT OF GOLD-PLATING ISSUES EMERGING IN OTHER COUNTRIES/REGIONS

Amongst the various issues emerged across other countries, Portugal encountered some common issues. Mentioned in the previous section of this report are the issues in *excessively strict assessment of irregularities* when it came to commitments to be maintained over time (e.g. livestock/crop density and min/max requirements, as well as the requirement for the dimension supported through EAFRD interventions to remain unchanged throughout the years of support). Although those were all legitimate requests, based on EU regulations, the way they have been implemented in Portugal has been strict and has required amendments to avoid that the irregularities generated would have resulted in the withdrawal of funding.

Also, *requirements in business plans* have proven to be too ambitious for the capability and skills of local beneficiaries and a multi-criteria method is now under development by the Paying Agency so to assure greater proportionality in assessing irregularities and decreasing errors caused. The methodology is to be built on different parameters (e.g. amount for funds required, type of beneficiary and possible capability, relevance of information missed) but a final version is not yet available for broader dissemination.

A way of solving *procurement issues*, related to the *lack of additional offers* to justify amounts required for required investments, has been introduced by the Managing Authorities. It does so by – even in the absence of evidence for a specific request – comparing the amount required with average amount requests by other applicants in similar situations and in the same geographical area. This approach cannot be applicable as a rule, but according to the interviewees it has helped to speed up the applications in case of requests where the amount required was deemed justifiable.

A *general plea for simplification, clarity and greater flexibility* in the required criteria for eligibility and commitments has emerged from beneficiaries, suggesting a shift from the current “sanctioning” approach where Managing Authorities set ambitious targets and Paying Agencies verify the compliance with such targets, towards a more open and trustful dialogue between regulators and beneficiaries. Such an approach is instrumental in assessing whether the requirements and conditions set are adequate, and whether they leave sufficient room to beneficiaries while adhering to overall policy objectives. This is a key element of change suggested, particularly considering that beneficiaries also invest their increasingly scarce resources in the agreed projects and have no interest in funding unproductive initiatives. In this context, beneficiaries called for a general request to avoid integrated and overly complex measures.

4 LOOKING AHEAD

4.1 IDENTIFIED PROBLEMS AND POSSIBLE SOLUTIONS

A key element of difficulty is the limited understanding and knowledge of beneficiaries in relation to what they are asked to implement. This is particularly an issue for multi-annual commitments which tend to be ignored or forgotten over time thus generating high errors. Also, the strict application of the EU regulation when it comes to multi-annual requirements and commitments has been problematic to meet for beneficiaries and has often generated high error rates. For example, requirements to maintain a certain surface of land over time to be eligible for funding has been often ignored by beneficiaries, particularly in the case of long multiannual commitments. This practice is not necessarily a case of gold-plating, but certainly a common example of ambitious regulatory requirements resulting in high error rates. Tighter national requirements may therefore benefit from clearer information and on-going dialogue between public bodies and beneficiaries, possibly reinforcing the role of intermediary agents, as well as a proactive role of regulators in reminding and alerting beneficiaries of the agreement they have to respect each year.

A greater exchange between Managing Authorities and Paying Agency would surely improve the quality of programming and assessment of irregularities in a more flexible and adaptive way. In some cases, it was suggested through interviews that opinions on how to interpret national and EU regulation might have converged more amongst involved bodies, therefore reducing confusion for beneficiaries and reducing the rate of errors – also once on-the-spot checks are delivered. Better consensus amongst involved bodies would certainly help in increasing clarity of regulations and requirements and decrease chances of errors throughout the programme implementation.

A more down-to-earth approach for Managing Authorities in setting requirements and commitments, which can actually be respected by beneficiaries, might also be a step ahead in reducing errors. A similar approach may result in higher achievements through time and lower errors generated throughout the programming period. This aspect should also imply greater tolerance by EU bodies when it comes to stringent objectives by national and regional bodies - which are often a response to pressure from (other) EU bodies and. A better dialogue between each level of governance in the fund might result in simpler and more attainable requirements at the RDP level.

4.2 GOOD PRACTICES AND EXTREME DIFFICULTIES

Portugal is the country – amongst those reviewed in the Case Studies – which demonstrates how too *ambitious (although legitimate) requirements (i.e. gold-plating) clearly backlashed* on the programme implementation by generating extremely high rates of errors for specific measures and negatively impacted the performance for the whole Axis of reference. Once the gold-plating requirement has been removed, as it was considered unnecessary to achieve the policy objectives for the programme, the error rate for the specific measure dropped from about 30 % to 7 %.

And yet, it is also clear how gold-plating is not the main cause of errors, as difficulties in achieving agreed commitments over time can be a great challenge for beneficiaries, particularly in a period of economic turbulence and financial crisis – with limited if no assurance of access to banking guarantees to sustain EAFRD co-funding over time might negatively affect the expected achievements.

Portugal is also currently trying to introduce good practices in terms of more proportionate techniques (e.g. multi-criteria assessments) to address administrative irregularities, particularly related to the business plan. This is an area where errors have emerged in other countries and a more

proportional tool could widely benefit the EAFRD implementation in other programmes across EU Member States. Unfortunately the tool is still under testing at the time of our interviews, and consequently it could not be fully described and broadly circulated within this Case Study.

This Case Study suggests that a proper coordination between Managing Authorities (MAs) and Paying Agency (PAs), at the country level, and the EU Institutions (i.e. DG Agri), can be very effective and efficient in addressing the main gold-plating issue for EAFRD. The current exchanges amongst Portuguese institutions and the EU, triggered by the need to respond to the Court of Auditor request for clarification on the root causes of high error rates in the EAFRD, has in fact allowed a prompt identification of the main regulatory issues for the programme and a provision of a concrete action plan to address such issues, which builds upon the past years of experience of MAs and PAs in simplifying unnecessary requirements and support beneficiaries.

4.3 SUGGESTIONS AND RECOMMENDATIONS

Portugal has recorded the highest rate of error across EU countries, particularly in the period 2010 and 2011, and is now relatively successfully decreasing the overall error rate for the programme. Still, some elements of recommendations have emerged from the interviews held in this Case Studies, which could be helpful for other countries:

- Try to involve beneficiaries when defining challenging requirements which, although fully legitimate in principle, in practice might simply back-clash on the project implementation by generating high error rates and proving to be not strictly necessary;
- Avoid too strict requirements, and particularly un-proportional assessment of administrative requirements; this has been especially the case for the business plan required for investments measures, and a more proportional methodology is currently under development (and might be of benefit and interest for other MAs in the future programming period);
- Respect beneficiaries' capability and try to be proactive in explaining their annual requirements, rather than expecting them to be fully aware of what they have agreed upon;
- Avoid complex integrated measures and try to be simple and clear in what is required – more complex measures have not necessarily resulted in greater error rates but certainly have confused beneficiaries which have simply rejected such measures;
- Be more flexible in accepting a certain degree of inconsistency in beneficiaries' information over time, and particularly in the first years of funding, as the information needed to fully comply with strict requirements and commitments of EAFRD measures is not always in the possession of small beneficiaries;
- Beneficiary associations consulted have specifically stressed the need for few simple measures with clear policy objectives and a greater degree of freedom for them to identify the best ways to achieve such objectives. Due to the high level of specific rules to respect when implementing EAFRD Rural Development Plans this request might remain unheard, but the liberty in designing national programmes given by the EU regulation should allow a greater degree of involvement of beneficiaries and their association in the design of specific measures, so to avoid requirement which are too complex and difficult to understand for them.

CASE STUDY – SPAIN (CATALONIA)

1 INTRODUCTION OF THE PROGRAMME

The National Strategic Plan (NSP), the National Framework of Rural Development, the National Rural Network Program and the regional Rural Development Programmes (RDPs) define the architecture of the EAFRD 2013 - 2017 for Spain. The NSP sets up the objectives and priorities of the rural development policy in the programming period 2007 - 2013, in consistency with the Community Strategic Guidelines⁴⁰. The interventions foreseen in the NSP are implemented through the regional RDPs. The National Framework of Rural Development defines several cross-measures and common elements to all regional RDPs, with a view to ensure the coherence of the Spanish rural development policy throughout the national territory. All regional RDPs must include these cross-measures - adding supplementary measures and conditions as required - as well as set specific measures addressing regional specificities.

The EAFRD governance arrangements in Spain follow a decentralised approach consisting of 17 RDPs, one for each region, and a central level National Rural Network Programme. The central level establishes general regulations and coordination, whilst the regions are the actual responsible for further development of the regulations and the implementation of the programmes.

The RDP 2007 - 2013 for Catalonia (hereafter, the RDP) is structured in three thematic axes and one methodological axis (LEADER). Each axis is broken down into a wide set of measures for the implementation of the rural development policy.⁴¹ The allocated budget for the Programme is EUR 1,061,973,125⁴², and establishes the following priorities: i) Increasing competitiveness in the agricultural and forestry sectors; ii) Enhancing the rural environment; iii) Enhancing life quality in rural areas and promotion of a diversified rural economy; iv) Development of the local capacity for diversification and employment creation; v) Ensuring coherence in programming and complementarity between the different community instruments.

The Department of Agriculture, Food and Rural Action⁴³ elaborated the RDP in cooperation with all the other Departments of the regional government⁴⁴, especially the Department of Environment and Housing, and in consensus with the agricultural and cooperative sectors and the economic and social agents of the rural environment.

At national level, the main actors include the DG of Rural Development and Forestry Policy of the Ministry of Agriculture, Food and Environment (MAGRAMA), which acts as the Managing Authority (MA) of the National Rural Network Programme and as the coordinator of all the regional MAs. In addition to this, the Spanish Agricultural Guarantee Fund (FEGA) is the coordinating body of the regional Paying Agencies (PA).

In Catalonia, the main actors include the Regional Minister of Agriculture, Food and Rural Action⁴⁵ acting as the Competent Authority (CA); the Direction General of Rural Development, attached to the

⁴⁰ The NSP was created by the former Ministry of Environment, Rural and Marine Policy, in 2007

⁴¹ The RDP was approved by the Government of the Generalitat on 22 May 2007, and by the EC Rural Development Committee on 19 December 2007.

⁴² Source: Generalitat de Catalunya, D. d'Agricultura, Ramaderia, Pesca, Alimentació i Medi Natural

⁴³ Departament d'Agricultura, Alimentació i Acció Rural

⁴⁴ Generalitat de Catalunya

⁴⁵ Conseller d'Agricultura, Alimentació i Acció Rural

Department of Agriculture, Food and Rural Action of the regional government acting as the MA; the Secretary General of the Department of Agriculture, Food and Rural Action, acting as the PA; and the Audit Office of the regional government assuming the functions of the Certification Body⁴⁶. This body certifies the integrity, accuracy and truthfulness of the accounts. It also certifies the satisfactory functioning of the internal control procedures established by the PA.⁴⁷

EAFRD error rates are very low in Catalonia. They are lower than 2 % for the Integrated Administration and Control System-based measures (IACS) and show an important decrease for the period 2011 - 2013. They are just above 2 % for non-IACS based measures for the same period (0.26 % in 2013)⁴⁸. The highest error rates were identified in 2012 in relation to measure 221 'Aids for first forestation of agricultural land'. The problem was detected and solved and the error rate of this measure in 2013 was reduced to zero. This issue will be further developed in the following section.

2 ASSESSING TRENDS IN ERRORS AND CONSEQUENCE OF GOLD-PLATING

This section provides an overview of the most relevant gold-plating factors for the RDP Catalonia 2007 - 2013. Section 2.1 presents the distribution of errors across axes and measures, section 2.2 describes the reasons for the identified gold-plating issues and errors generated, and section 2.3 presents additional gold-plating issues.

2.1 OVERALL TRENDS IN ERRORS ACROSS AXES AND MEASURES

Every year, the MA of the RDP Catalonia publishes statistics on the EAFRD error rates. For the period 2011 - 2013, the error rate was below 2 % in most of the cases. Table 1 below shows further details on the distribution of errors by axes and measures.

It can be observed from the table below that the error rate has decreased since 2011, with the higher error rate falling under Axis 2 - IACS based measures. With the exception of M 221 for the year 2012, the measure M 214 (agro-environmental) shows the highest rate, although below 2 % for 2012 and 2013. On the other hand, Axes 3 and 4 present the lowest error rates.

⁴⁶ Decree 393/2006, of 17 October, which constitutes and regulates the organisation and functioning of the Paying Agency of EAGF and EAFRD aids (DOGC n° 4743, 19 October 2006).

⁴⁷ Source: Generalitat de Catalunya, RDP Cataluña 2007 - 2013, p. 435-445.

⁴⁸ IACS applies to direct support schemes as well as to rural development measures that are granted based on the number of hectares or animals held by the farmer. (European Commission, Agriculture and Rural Development, Direct Support, IACS, http://ec.europa.eu/agriculture/direct-support/iacs/index_en.htm)

Table 3 : Evolution of EAFRD error rate in Catalonia (for financial years 2011-2013)

Axis / Measure	ERROR RATE (%)*		
	2011	2012	2013
Axes 1, 3 and 4-LEADER (EAFRD, non-IACS based)	0.03	0.05	0.26
Axis 2. Areas (EAFRD, IACS based)	3.73	1.85	1.82
Agro-environmental IACS, M 214	3.96	1.98	1.91
Handicapped areas, M 212 / 213	1.89	0.40	1.50
Natura 2000, M 223 / 224	--	--	--
Forestation IACS, M 221	3.41	28.25	0.00

Source: DAAM, 2013. * Error rates calculated on data obtained from random controls.

According to stakeholders consulted and literature reviewed, there are several reasons that explain the reductions of aid granted, namely, irregularities detected during the administrative controls (e.g. declaration of a surfaces that do no match SIGPAC)⁴⁹; the declaration of a bigger surface than certified by the authorities⁵⁰; or lack of compliance with the commitment to organise training activities. Whilst the declaration of bigger than real surface is the most frequent case noncompliance, stakeholders indicate that, generally, the surface deviations are minimal.

The case of measure 221 during the year 2012

In 2012, the measure 221 'Aids for first forestation of agricultural land' accounted for 28 % of all errors detected. In the RDP 2007 - 2013 this measure is limited to the payment of compensatory premiums to beneficiaries that undertook commitments in the programming period (2000 - 2006). The measure does not support new forestation initiatives, the total amount of aid is not very significant, and it is addressed to a small number of beneficiaries (125).

One of the commitments of the measure involved the maintenance of forestation initiatives for a period of 20 years. However, this turned problematic when a large number of beneficiaries that had made this commitment during the previous period did not maintain the surface initially declared. Following important irregularities detected in three of the dossiers assessed, the MA ceased payments to all beneficiaries and set up an action plan that included the following measures: 1. Modification of payment criteria; 2. Revision of the entire sample through 'in situ' controls; 3. Include the results in the statistics for 2012; 4. Elaboration of reports for each recipient of aid; 5. Provision of an application model to the beneficiaries so that they ratify their application and commitments annually; 6. Establishment of payment amounts according to the technical reports results and the applications received.

The action plan was shared and approved by the beneficiaries. The adjustments led to an actual match between declared surfaces and amount requested, and the proposed payments and the amounts finally paid. And this explains why the statistics in 2013 show a zero error rate.

⁴⁹ SIGPAC: Sistema de Información Geográfica de Parcelas Agrícolas (Geographical Information System for Agricultural Areas).

⁵⁰ By the Catalan Council of Organic Production or by the Catalan Council of Integrated Production.

2.2 REASONS FOR THE IDENTIFIED GOLD-PLATING ISSUES AND ERRORS GENERATED

According to literature reviewed, one of the issues identified in the management of the RDP in Catalonia is the *variation of eligibility requirements and/or eligible measures between calls*. Whilst this is not a direct cause of gold-plating, it has been included in this study as a potential problem. In other words, frequent changes in programming strategies and eligibility requirements might generate high level of errors, as beneficiaries do not have enough time to prepare from one call to another. However, both the MA and PA in Catalonia do not consider this to be a particular cause of errors in the EAFRD management. They justify the modifications of the RDP in the context of the current financial crisis, which involves limitations and restrictions in some eligible measures and, consequently, variations in the eligibility criteria, especially in relation to the LEADER approach. Based on the annual document of eligibility criteria approved by the MA and on the financial and physical evaluation of the financial and material progress in the EAFRD management, the MA continuously modifies the RDP with a view to achieve the policy goals. This results in the modification of eligibility criteria throughout the different annual calls for proposals⁵¹.

Furthermore, beneficiaries of LEADER measures seem to be happy with the evolution of the eligibility criteria between calls. At the beginning of the programming period, when the first calls for LEADER were launched (2009), the calls established strict requirements not contemplated in the EU regulations, or in the national and regional rules. E.g. the first calls for under measures M 311 – 'Diversification to non-agricultural activities', and M 313 – 'Promotion of tourism activities', required that rural hotels had capacity for at least 100 people. This requirement did not complicate the management of the aid; however, it excluded beneficiaries who could not reach that threshold, or obliged them to invest further in their installations. The beneficiaries' representatives communicated this issue to the MA, which has resulted in more flexible and lighter requirements in subsequent calls. E.g. nowadays, tourism installations with smaller hosting capacity are also eligible. According to beneficiaries' feedback, this relaxation is due to the current economic situation and the regional government's will to support micro-enterprises. In the beneficiaries' opinion, the aim of the original requirement (more than 100 people capacity) was not to exclude some beneficiaries, but to reward the best quality projects, a goal that goes beyond what is required by the rules.⁵²

The MA indicates that the last modification of the RDP responds to the current economic situation. The aim is to ensure the undertaken commitments, compliance with the n+2 rule, the EC control mechanism of expenses, and the achievement of the established objectives and strategy. The only way to address these issues is by increasing the EAFRD co-financing rates in Axes 2 and 4 and the re-distribution of budget across the different measures.⁵³

Finally, the MA and PA, considering the current trend, expect a greater stability in the programming and in the eligibility criteria.

⁵¹ Source: Interview with the MA and PA of the RDP for Catalonia, 5 December 2013.

⁵² Source: Interview with ARCA (Asociación de Iniciativas Rurales de Cataluña), 10 December 2013.

⁵³ Source: ARCA, news, 'El Programa de Desarrollo Rural de Cataluña 2007 - 2013 ya ha alcanzado el 69,91% de ejecución', 25 June 2013, <http://www.desenvolupamentrural.cat/es/noticias/el-programa-de-desenvolupament-rural-de-catalunya-2007-2013-ja-ha-assolit-el-69-91-d-execucio>, accessed on 9 December 2013.

2.3 ADDITIONAL POSSIBLE GOLD-PLATING ISSUES AND ERRORS GENERATED

As set out in the previous section, the changes in programming and in eligibility criteria between calls are not considered a direct cause of gold-plating, and according to stakeholders consulted, there is no proof that this issue leads to higher error rates. However, other aspects have been identified as possible causes of gold-plating in Catalonia as follows:

Most problematic issues detected relate to the *high number of agro-environmental sub-measures* (14) included under measure M 214⁵⁴. This adds complexity and generates confusion among beneficiaries, who sometimes do not know which is the most appropriate sub-measure they should apply for. In order to facilitate the application procedure to the beneficiaries, the MA website provides a set of guidelines for each sub-measure, as well as a FAQ section, to provide as much information as possible to beneficiaries. These guidelines are updated on an annual basis, to reflect modifications in the requirements and clarify possible doubts raised by beneficiaries. Despite the fact that the high number of sub-measures remained, error rates related to this measure were contained, resulting in a rate below 2 % for the financial years 2012 and 2013.

The beneficiaries' application for agro-environmental measures is managed by cooperating entities that deal directly with the beneficiaries offering them advisory services. The MA provides annual training to the cooperating entities with a view to prevent the most frequent cases of non-compliance and addressing the identified weaknesses and changes. However, beneficiaries perceive that the number of these cooperating entities is excessive, and they can be confused about which entity to turn to for advice⁵⁵. Furthermore, these entities also establish a cost for the advisory service provided. Beneficiaries view that these advisory services should be offered free of charge, and beneficiaries are sometimes reluctant to request the services of these entities.

Looking ahead, the MA foresees a reduction in the number of sub-measures under M 214. Some of these sub-measures have had a limited demand in this programming period and they will be eliminated or simplified⁵⁶.

A problematic issue related to the way in which errors are considered emerged in the interviews with local MA/PAs. Although the issue is not strictly related to 'gold-plating' or over-regulation, we present it here as it refers to the way in which irregularities are currently considered and how they could be better assessed in the future Programming Period. Currently, in fact, errors detected during the administrative controls and the 'in situ' controls are equally treated, so that a distinction is made between the two sources of errors. This view is based on the EC Guideline n° 4 that only refers to '*control system in place*', not mentioning administrative controls⁵⁷. This issue, also raised by other Spanish regions, has been already communicated to the EC through the national PA (FEGA)⁵⁸.

⁵⁴ The goal of M 214, as specified in the RDP is '*Supporting sustainable development and rural areas and meet the growing social demand for environmental services. The introduction or continuity in the application of agricultural production methods compatible with the protection and enhancement of the environment, the landscape and its characteristics, the natural resources, land and genetic diversity*'.

⁵⁵ Source: Interview with ARCA (Asociación de Iniciativas Rurales de Cataluña), 10 December 2013.

⁵⁶ Source: Interview with the MA and PA of the RDP for Catalonia, 5 December 2013.

⁵⁷ EC, DG AGRI, Guideline N° 4 on the statement of assurance to be provided by the Director of a Paying Agency pursuant to Article 8(1)(c)(iii) of Council Regulation (EC) N° 1290/2005, Point 2: '*(...) The SoA shall be based on an effective supervision of the management and control system in place throughout the year*'.

⁵⁸ Source: Interview with the MA and PA of the RDP for Catalonia, 5 December 2013.

3 ASSESSING POSSIBLE GOOD PRACTICES TO BE ADOPTED IN OTHER COUNTRIES

This section presents the situation in Catalonia with regard to the gold-plating issues emerged in other countries. The analysis shows the approach in Catalonia to these areas of regulation; the difficulties faced by the authorities; the reasons for error rates in those areas; and when possible, the identification of good practices in the implementation of the concerned measures. The ultimate goal is to learn from others' experience and contribute to reduce complexity and possible errors in the future.

3.1 JUDGMENT OF GOLD-PLATING ISSUES EMERGING IN OTHER COUNTRIES/REGIONS

This section describes the approach taken by the Catalan authorities with regard to some gold-plating issues emerged in other countries (see Table 2), which have been detected in Catalonia too.

General Issues Emerging – Not gold-plating

Regarding the excessive *documentation requirements* (AT, BG, IT), the Catalan authorities consider not to ask for additional documentation to what is required by the EU regulations prior to payments with regards to cross-compliance requirements. The authorities indicate that they are working on the simplification of procedures and have reduced significantly the documentation requested to the beneficiaries. For instance, some documents have been replaced by declarations of responsibility, and for some others the MA get them from public registers or other institutional databases (e.g. Social Security, Tax Administration National Agency). The goal of the MA is to free the beneficiaries from excessive administrative burden.

The beneficiaries' opinion, however, differs from the MA. They consider that the authorities ask for too many documents, especially in relation to the measures for setting-up of young farmers and modernisation of agricultural holdings. Sometimes the requested certifications or documents cannot be obtained from a public register since the law does not oblige to register these. Therefore, they have to provide a notary statement or similar document, with the subsequent economic cost.

Beneficiaries propose to reduce and simplify the documentation requested. They consider useful to establish thresholds to determine the need for more or less documentation according to the amount of funding awarded to the projects. Beneficiaries are also familiarising themselves with e-Government procedures, and they consider that its use would improve the efficiency and flexibility of the EAFRD management at all stages, from application to payment certification.

With regard to the beneficiaries' obligation to present *three offers* from suppliers / service providers (AT, CZ), a similar issue is also present in the management of the RDP in Catalonia. In fact, the national legislation establishes this requirement whenever the co-financed amount is higher than the limits established in the Law of Public Procurement for smaller contracts⁵⁹. However, based on their experience, the authorities consider that this requirement is not too burdensome for beneficiaries and beneficiaries' views are aligned. In case there are not enough suppliers / service providers in the territory (due to the special characteristics of the supply / service), the three offers request can be replaced by a one-page suitability report.

⁵⁹ Ley 38/2003, de 17 de noviembre, General de Subvenciones (General Law of Public Grants), Article 31.3; Ley 30/2007, de 30 de octubre, de Contratos del Sector Público (Law of Public Procurement).

With regard to the *periods for submission of applications*, which in other countries are considered too short (IT), in Catalonia, beneficiaries have four months for the submission of the Unique Agricultural Declaration (DUN), which is the main instrument to apply for a considerable number of measures, and one month for the remaining measures. This period is considered enough by the MA and PA.

Axis 1

M112 / 221 - Setting up young farmers / First forestation of agricultural land

In relation to M112, in some countries (PT, IT) beneficiaries complain about the requirement to produce a *business plan* to justify the EAFRD aid, as in some cases it is considered not proportionate to the fund and their capacity. In Catalonia, the measures managed through the Global Farming Contract also require a business plan. The authorities indicate this requirement is needed in order to guarantee the feasibility of the project. In any case, the documentation requirements are as simplified as much as possible and the administration provides advice to farmers.

With regard to M 221, in Catalonia this presented a very high error rate in 2012 (see Section 2.1). As a consequence of that, the MA set up an action plan that included the revision of all the dossiers. The plan implementation resulted in a zero error rate in 2013.

M 121 – Modernisation of agricultural holdings

Whilst in Bulgaria advance payments require *bank guarantees or other guarantors*, this is not the case in Catalonia. The Catalan authorities do not ask for this kind of guarantees, as they do not make advance payments.

Axis 2

Across measures

Section 2.2 analysed the *excessive changes in eligibility requirements* in Catalonia throughout the programming period, an issue that might have led to lack of clarity on existing rules. However, feedback from the MA and PA indicates that these changes are in line with the RDP policy goals, and they try to adapt to the current financial situation to achieve the goals with the limited budgetary resources available. In any case, a more stable programming is foreseen for the period 2014 - 2020. Furthermore, beneficiaries do not consider these changes to be problematic. In fact, they are happy with the evolution of the requirements, which in general terms have tended towards higher relaxation and flexibility – particularly for LEADER calls.

Some countries (BG, PL) highlight the *different interpretations* of rules by a variety of actors involved, which can lead to lack of clarity and additional burdens for applicants. This issue is not a cause of gold-plating in the case of Catalonia, according to the MA and PA. The effort of authorities to provide information and training to all actors involved (beneficiaries, officers from the Department of Agriculture and from the territorial offices, and cooperating entities) has contributed to the uniform interpretation of the rules by all. However, the beneficiaries consulted indicate some ambiguity on EC regulations, which leads to different interpretations of the rules. In the case of Catalonia, beneficiaries consider that the national / regional interpretation is excessively cautious and beneficiaries are suspected of non-compliance from the beginning. This interpretation, which could be motivated to prevent ambiguity and further non-compliance, is considered counter-productive as it limits the performance capacity of beneficiaries and can result in higher error rates.

M 211 – Natural handicap payments to farmers in mountain areas

The PDR for Catalonia does not establish a *minimum / maximum number of livestock*; therefore, this is not a cause of gold-plating in Catalonia.

M 211 / 212 / 221 - Natural handicap payments to farmers in mountain areas / Payments to farmers in areas with handicaps, other than mountain areas / First forestation of agricultural lands

One of the gold-plating issues detected in relation to these measures is the *excessive stocking density restriction* for farms, which might be too challenging for local practices (PT). In Catalonia, the RDP establishes wider stocking density limits, in order to facilitate compliance with this requirement.

M 214 – Agri-environment measures

The RDP for Catalonia does not establish a limit of 20 % of the agricultural production to be *marketed as organic*, as it is the case of the region of Castilla-La Mancha (ES).

As for the *large number of sub-measures*, which adds complexity to the management (AT, PT), the authorities of Catalonia foresee a reduction of the current number of sub-measures (14) under M 214 for the following programming period. Also, they expect a simplification of the remaining measures. The MA plans to eliminate or re-formulate those sub-measures that have not achieved the policy goals and targets in the current programming period. E.g. M 21408 – Preservation and improvement of native plant varieties; and M 21410 – Sustainable management of fertilisation.

Axis 3

The MA and PA of Catalonia do not identify any gold-plating issue in this axis.

LEADER

In the opinion of the beneficiaries, the LEADER measures should be enlarged. Currently only micro-enterprises (less than 10 employees) can apply for these aids. In the rural sector there are bigger enterprises which are creating employment, thus contributing to the development of rural areas, and whose projects could fit well into these interventions. However, they cannot apply for LEADER calls, as they exceed the number of employees. Representatives of Local Action Groups consider that this restriction should be changed. In fact, feedback obtained indicates that the authorities are working to enlarge the measures covered by LEADER, based on the existing demand.

4 LOOKING AHEAD

4.1 IDENTIFIED PROBLEMS AND POSSIBLE SOLUTIONS

One of the main elements of this case study was the analysis of the variation on the eligibility requirements between calls, to see whether this had an impact on the error rates or not. Stakeholders consulted have refused to confirm such a connection. Instead, they point to the scarcity of financial resources as one of the main factors behind the variation of eligibility requirements. Moreover, they argue, the current economic situation is also having an impact on the training activities provided by the MA. Whilst beneficiaries are satisfied with the quality of the training, the offer has been reduced in the light of current budgetary constraints.

Another recurrent problem highlighted by most stakeholders is the lack of a single and uniform IT application for the management of the Fund. At present, there are different applications depending on the measure. This adds complexity to the management and to the further exploitation of the data (e.g. crossing data between different databases). The MA reports on-going work for the implementation of a single IT system for the management of all the EAFRD measures.

4.2 GOOD PRACTICES AND EXTREME DIFFICULTIES

The agricultural sector is facing increasing unsteadiness in the recent years in Catalonia. As a consequence, beneficiaries who undertook long-term commitments (e.g. 4-5 years) prior to the economic downturn are now struggling to stick to their obligations and suffering the corresponding penalties established by the EC regulation if failing to do so. For this reason, the PA of Catalonia proposes to reduce the current strict penalties, to assess the reasons for non-compliance, and ultimately, reduce the initial duration of the commitment. Furthermore, the PA remarks the importance of better explaining the rules and concepts to the beneficiaries⁶⁰.

Stakeholders consulted regard the decentralisation of the EAFRD management as a very positive factor that provides a more effective way of dealing with the actual needs of the region. In this context, and despite the decentralisation, the fluent communication between all actors involved is fundamental, namely, between the regional and the national level, and amongst regional actors. In this sense, the fact that both the regional MA and the PA belong to the same Department⁶¹ is key. Also, the MA is continuously monitoring and providing training to the cooperation entities. And with regard to the beneficiaries, the MA encourages them to provide feedback on the calls for proposals whilst providing them training, information and advice during the process. Overall, beneficiaries are happy with this support, as they believe that EU regulations are often too ambiguous and may lead to errors. Finally, the MA has opted for a simplification of the management procedures and the required documentation⁶². However, the authorities report the difficulty to reduce the number of control procedures, as the EU is getting stricter with regard to this aspect.

4.3 SUGGESTIONS AND RECOMMENDATIONS

With a view to reduce the risks of gold-plating / error rates in the new programming period the RDP's authorities consulted proposed the following initiatives:

- *Change the table model provided by the EC* so that there is a differentiation between payment reductions due to administrative controls and those due to 'in situ' controls.
- *Raise the error rate limit of 2 %*. This threshold is considered inappropriate in the context of rural development policy. The PA proposes to increase it up to 5 % since the control procedures of the rural development policy are stricter and more complex than for others,

⁶⁰ This is in line with one of the recommendations of the mid-term evaluation of the RDP Catalonia 2007 - 2013 that proposed to 'focus on the task of informing and explaining potential beneficiaries so that they understand the meaning and focus of the proposed actions with a view to setting priorities'. GAP Recursos, 'Evaluación Intermedia del Programa de Desarrollo Rural de Catalunya 2007 - 2013', October 2010,

⁶¹ Department of Agriculture, Livestock, Fisheries, Food and Environment

⁶² The mid-term evaluation of the RDP Catalonia 2007 - 2013 already proposed to 'continue work to simplify the administrative process within the narrow margins already detected and consolidate the great progress that has already been made with the establishment of the DUN and the Global Operating Agreement'. GAP Recursos, 'Evaluación Intermedia del Programa de Desarrollo Rural de Catalunya 2007 - 2013', October 2010,

such as those for direct aids. Also, it is argued that the large number of controls leads to higher error rates.

- *Differentiate between non-compliance depending on the weight of the measure. It is argued that cases of non-compliance for small measures (i.e. low budget and number of beneficiaries) have the same impact in the overall error rate as those cases of bigger measures (i.e. high volume of funding and / or large number of beneficiaries).*
- *Reduce the number of requirements / commitments and establish more adjusted non-compliance scales. The maintenance of five-year commitments in the context of the current economic situation has become a challenge for the beneficiaries (e.g. beneficiaries may have sold land or reduced the amount of livestock in order to survive the crisis, with the consequence of change in size and density of livestock from what initially declared), resulting in higher error rates.*
- *Extend the deadline for the submission of statistics to the EC. The authorities explain that the data collected by 15 July is not complete / fully reliable, as some procedures are not finished by then.*

With regards to beneficiaries, the following initiatives are proposed:

- *Set up a single IT system for the management of the EAFRD in Catalonia that includes all measures.*
- *Establish proportionate documentation requirements that take into account the volume and complexity of the project's investment.*
- *Promote e-Government to increase the effectiveness / efficiency of the EAFRD management.*



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ISBN 978-92-823-5434-6
doi: 10.2861/53972