

Measure fiche

Payments to areas facing natural or other specific constraints

Measure 13

Articles 31 and 32 of Regulation of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) N° [...]

Article XX of Commission Regulation [...]

This fiche is based on the text of Regulation (EU) 1305/2013 [EAFRD] and, when relevant, on Regulation (EU) 1303/2013 [CPR], Regulation (EU) 1306/2013 (HZR), Regulation (EU) 1307/2013 (DPR) and 1310/2013 (Transitional rules). Since Implementing Acts supplementing these regulations have not yet been adopted, some modifications to this fiche might be needed after their adoption.

This guidance does not represent a binding legal interpretation of Regulation (EU) 1305/2013. It is therefore essentially non-binding in nature and complements the related legal acts.

1. RATIONALE OF THE MEASURE

Payments in mountain areas or in other areas facing natural or other specific constraints aim at compensating farmers in total or partially for disadvantages to which the agricultural production is exposed due to natural or other specific constraints in their area of activity. Such compensation shall allow farmers to continue the use of agricultural land, maintenance of the countryside as well as maintaining and promoting sustainable farming systems in the areas concerned in order to prevent land abandonment and loss of biodiversity.

In order to ensure the efficient use of Union funds and equal treatment for farmers across the Union, mountain areas and areas facing natural or other specific constraints should be determined in accordance with objective criteria. These criteria should be clearly quantified and clear evidence for their relevance and persistence should be provided.

As the payment calculation is based on the principle of income foregone and costs incurred compared to agricultural production not suffering from natural or specific constraints, support to farmers can only be granted in areas where additional costs/income foregone and a clear risk of land abandonment has been identified.

For further reflection, the following text is extracted from the WTO Marrakesh Agreement and it covers payments to areas with constraints:

13. Payments under regional assistance programmes

(a) Eligibility for such payments shall be limited to producers in disadvantaged regions. Each such region must be a clearly designated contiguous geographical area with a definable economic and

administrative identity, considered as disadvantaged on the basis of neutral and objective criteria clearly spelt out in law or regulation and indicating that the region's difficulties arise out of more than temporary circumstances.

(b) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the base period other than to reduce that production.

(c) The amount of such payments in any given year shall not be related to, or based on, the prices, domestic or international, applying to any production undertaken in any year after the base period.

(d) Payments shall be available only to producers in eligible regions, but generally available to all producers within such regions.

(e) Where related to production factors, payments shall be made at a degressive rate above a threshold level of the factor concerned.

(f) The payments shall be limited to the extra costs or loss of income involved in undertaking agricultural production in the prescribed area.

2. WHAT'S NEW IN COMPARISON TO THE PERIOD 2007-2013

The areas facing natural or other specific constraints, in past referred as "*Less-Favoured Areas (LFAs)*" are subject to changes in delimitation and other requirements in comparison to the programming period 2007-2013.

The three categories of these payments "*mountain areas*", "*areas affected by significant natural handicaps*" and "*areas affected by specific handicaps*" remain also during the period 2014-2020. The novelties introduced in the Rural Development Regulation for the period 2014-2020 result from a long debate and policy process between the Commission and the Member States. Apart from the political will of the co-legislators to change the policy, some of the adaptations have also become inevitable due to the commitments of the European Union in the World Trade Organisation (WTO).

In 2003, the European Court of Auditors concluded that the delimitation of the intermediate less-favoured areas could involve unequal treatment because it was based on some 140 national criteria, all very different from each other. However, the revision of the system was delayed due to several factors. Finally, in 2011, the Commission communicated to the Member States eight biophysical criteria as a way of delimitation of intermediate areas. This delimitation is credible, transparent, objective and comparable across all Member States. The method is based on scientific evidence and has been elaborated by the European Commission's Joint Research Centre.

Meanwhile, some policy changes were already introduced in the Regulation 1698/2005, as concerns the Programming period 2007-2013: payments were made degressive above a threshold level of area per holding, the calculation of the payments was based on income loss and additional costs, etc., however, the entry into force of these new provisions was delayed until the new parameters of the delimitation were agreed on. Effectively, this step did not take place during the 2007 – 2013

programming period and the legal provisions of the 2000 – 2006 programming therefore remained in force.

- **Maximum and minimum compensations**

Now, in the period 2014-2014, the maximum amount of payment has been increased from € 250 to € 450 per hectare in mountain areas and from € 150 to € 250 per hectare in areas of other natural or specific constraints. These amounts can be increased in case of specific circumstances, and have to be justified in the Rural Development Programme.

The minimum amount of € 25 per hectare remains the same also during the new period 2014-2020.

- **Active farmers concept**

In the period 2014-2020 the beneficiaries must comply with the definition of "active farmer", as defined in article 9 of Regulation (EU) No 1307/2013 [DP].¹

- **Payments under the 1st pillar**

The new period 2014-2020 brings along also a possibility for an additional income support to farmers in constrained areas in the form of a decoupled area-based payment as a complement to basic payment under Pillar I. This is a voluntary payment (up to 5% of annual national ceiling) for farmers in areas facing natural constraints, as delimited in the Rural Development Regulation covering all three categories of constrained areas. However, Member States may decide to restrict this payment to some of these areas on the basis of objective and non-discriminatory criteria. Member States may also apply the payment at regional level, provided that they identified the regions concerned in accordance with objective and non-discriminatory criteria and, in particular, their natural constraint characteristics, and their agronomic conditions.

The new payment for farms in areas with natural constraints in Pillar I should not be a duplication of the scheme in rural development. The main purpose of the new Pillar I scheme for areas with natural constraints is to allow Member States to achieve a more equitable distribution of income throughout their agricultural area by targeting a part of income support to farmers whose farming activity and the income derived from it is permanently limited by natural constraints.

The support scheme is optional in both pillars. The interaction between the pillars is secured by the condition that any payment for natural constraints received in the first pillar is taken into account in the payment in the second pillar.

- **New delimitation method for areas facing natural constraints**

A new, credible, transparent and objective delimitation of areas with significant constraints (previously called intermediate LFAs) is put in place. This new delimitation is based on eight biophysical criteria, covering climate, poor soil productivity and steep slopes. Each (sub)criterion has

¹ The active farmer provisions under the Pillar II start being applicable from the moment they are applicable under Pillar I (1 January 2015), as provided in the Regulation 1307/2013. Member State may, however, anticipate the definition of the active farmer term in order to bring it in place from the beginning of the period.

a predefined threshold, e.g. slopes with a gradient of 15% (or more) which identifies the trigger for the area to be considered as severely constrained from the agricultural production point of view. A methodology for measuring is also available to Member States².

The constraint(s) is measured at local administrative unit 2 (which corresponds to a municipality level in most Member States) or at the level of clearly delineated local unit. This economic area shall have a definable economic and administrative identity. The definition says that all agricultural area in the respective local unit can be considered as constrained, if one or more constraints are present on at least 60 %³ of the local unit's agricultural area.

- **Fine-tuning**

Those areas in which a constraint has been documented but it has been overcome by investments (e.g. irrigation in dry areas) or by economic activity (e.g. wine production on stony soils) should be excluded from the support under the ANCs. This exercise is called fine-tuning and the Member States are free to develop their own approach so that the final delimitation is as accurate as possible.

Due to technical progress and human intervention, the natural handicaps have been managed to overcome successfully and profitable agriculture can be carried out in areas where the natural conditions were at the origin quite unfavourable. In such cases, the intrinsic natural characteristics of the area remain unchanged, so on the pure basis of the biophysical criteria the area would be designated as severely constrained for agriculture. However, the handicap has been offset by human intervention and technological progress and does not impact on agricultural productivity. Therefore, there is no justification for classifying the area as affected by natural handicaps.

- **Additional delimitation possibilities for areas under other specific constraints**

The delimitation criteria for the areas under other specific constraints are not restricted to certain specific criteria following the principle of the Programming period 2007-2013. The Member States continue to have a certain degree of flexibility in defining these areas. Nevertheless, the Rural Development Regulation for the period 2014-2020 stipulates that areas with specific constraints are "where land management should be continued in order to conserve or improve the environment, maintain the countryside and preserve the tourist potential of the area or in order to protect the coastline." The extent of these areas is limited by a ceiling of 10% of the total area of the respective Member States.

Member States have a good degree of flexibility in delimiting these areas. However, in order to follow the principle of credible delimitation of areas with constraints in general (provided by a transparent delimitation of mountain areas and the use of biophysical criteria for the intermediate areas), there must be clarity on how the areas with specific constraints have been delimited and how the payments have been established.

The Member States may also use the delimitation criteria for the areas with specific constraints by following the "cumulative" criteria, as stipulated in Article 33 (4) of the Rural Development

²JRC Scientific and Technical Reports: Updated common bio-physical criteria to define natural constraints for agriculture in Europe: <http://agrienv.jrc.ec.europa.eu/Updated%20Common%20Criteria%20Fact%20sheets.pdf>

³ Member State may choose to apply a higher percentage, only the minimum of 60 % is regulated by the Rural Development Regulation.

Regulation. According to this rule, the areas may be considered as areas facing specific constraints if at least two of the "biophysical criteria" as used in defining the areas facing natural constraints within a margin of 20 % are met in a given local unit covering at least 60 % of the agricultural area. This means that each of these criteria may vary from the threshold up to 20 %. The presence of such cumulation and existence of additional costs/income foregone allows an area to enter directly into this category of specific constraints.

- **Phasing out Transitional scheme for areas losing the status of being constraint**

Those areas eligible under the LFA-payments during the period 2007-2013 but excluded from the ANC payments in 2014-2020 due to the new delimitation criteria or fine-tuning may be granted "phasing out" support. The Member State may choose this arrangement in order to facilitate the adaptation of farmers in given areas to the new situation. Article 31 (5) of the new Rural Development Regulation foresees that "...Member States may grant payments under this measure between 2014 and 2020 to beneficiaries in areas which were eligible under Article 36(a)(ii) of Regulation (EC) No 1698/2005 during the 2007-2013 programming period". The sentence under Article 31(5) concerns the fact that Member States may continue to pay for farmers in areas under the "old" delimitation" until the new delimitation comes into force (at latest 2018). Once the new delimitation is in force, the Member States may then continue to pay to farmers who operate in areas that are confirmed as being under constraint by the new delimitation method. For the farmers in areas which can no longer be considered as under constraint according to the new delimitation method a "phasing out period" starts at the latest in 2018. For these farmers, payments may also continue for a maximum 4-year period⁴. However, these payments have to be degressive as stipulated in Article 31(5).

As regards a question on granting ANC phasing out payments to farmers in areas delimited as facing specific constraints during the period 2007-2013, it should be taken into account that Article 31(5) of the new RD Regulation refers to beneficiaries in areas who were eligible for support under 36(a)(ii) of the RD Regulation 1698/2005 but are no longer eligible following the new delimitation referred to in Article 32(3) of the RD regulation 1305/2013. The article 32(3) concerns only natural constraints - as specific constraints are dealt with in 32(4). Given that a farmer who was eligible under 36(a)(ii) 1698/2005 as being located in an area with specific constraints is not concerned by the new delimitation required by Article 32(3). Therefore, the phasing out period does not apply to farmers in that area, and it is not possible to apply the phasing out provisions of Article 31(5) of 1305/2013 to farmers in areas with specific constraints where the Member State opts to amend the relevant delimitation.

~~In case Member States applied additional eligibility criteria during the period 2007-2013, which had the effect of excluding certain groups of farmers from payments, they may continue applying these criteria until the new delimitation is in place.~~

Start and duration of the phasing-out

The phasing-out period starts when the new delimitation and fine-tuning exercises have been completed. However, the Member State may start phasing out the payments also after this date but

⁴ The payments must end, however, at latest in 2020.

not later than in 2018. The phasing-out period may not be longer than 4 years. The period shall finish at latest in 2020. However, Member State may fix a shorter period of phasing-out or not to apply any phasing out period, at all.

Premium during the phasing-out period

The Rural Development Regulation reads "...payments shall be degressive..." Degressivity applies in order to facilitate the situation of the farming community in the given area. The starting level of the payment shall be maximum of 80 % of the average payment fixed in the Rural Development Programme for the period 2007-2013. Therefore, the payment is not calculated on basis of the amounts actually paid to the beneficiaries but on basis of the fixed level in the Programme for the period 2007-2013. The premium shall not exceed 20 % of the fixed amount in 2020.

The Member State may choose not to apply degressivity but to pay already from the beginning the "final" amount/ or the minimum amount of € 25 per hectare.

Conditions of payments

The obligation to pursue farming for five years after the first payment has been abandoned for the period 2014 – 2020. Nevertheless, payments can only be granted to those farmers who undertake to pursue their farming activity in the delimited area (this payment aims to prevent land abandonment). Farmer must be identified as active farmer.

3. CONTRIBUTION TO FOCUS AREAS AND CROSS-CUTTING OBJECTIVES

These payments contribute to the fourth priority - *restoring, preserving and enhancing ecosystems dependent on agriculture and forestry.*

Focus Area 4a: Restoring and preserving biodiversity, including in Natura 2000 areas and high nature value farming, and the state of European landscapes.

4. SCOPE, TYPE AND LEVEL OF SUPPORT

4.1. Types of operation/support

Annual payments per hectare of agricultural area.

Area-based payment

The regulation foresees minimum and maximum amounts of support. The minimum amount defined shall ensure that the constraint is significant and that the support amount paid justifies the administrative costs linked to the grant. The maximum amounts are different for mountain areas and other areas. Payments can be higher if the calculated amount in a region clearly exceeds the maximum amount and the payment is duly justified, i. e. is needed to avoid land abandonment.

Differentiation of payment levels

It is possible to have different levels of payments, expressing a different degree of the constraint and different farming systems. This is particularly the case for mountain areas where different altitudes represent a different impact on agriculture.

Minimum payment

The sum of income loss and additional cost must be at least € 25 per hectare. If it is lower, the payment cannot take place (as the administrative burden would be disproportionate to the benefit, as well as any amount lower than € 25 is unlikely to make a difference). Nevertheless, this amount indicates the minimum average payment per hectare per year of the beneficiary receiving support. In practice this means that a farmer with two hectares can receive € 35 for the first hectare and € 15 for the other hectare, as the average payment per this beneficiary is not lower than 25€/ha.

Payment under 1st pillar

If the farmer benefits from the payment under Article 34 of the direct payments regulation (top-up for farmers in NC areas), the latter has to be taken into account in the second pillar payment in order to prevent overcompensation. Naturally, the easiest approach to "taking into account" is deducting the first pillar payment from the second pillar payment in cases where the sum of the first pillar payment and the second pillar payment exceeds the sum of income loss and additional cost. Where, for example, the sum of income loss and additional costs equals to € 150, the first pillar payment is 15 €/ha, the second pillar payment is 80 €/ha, no deduction needs to be made. The deduction is necessary in order to prevent overcompensation in the CAP's second pillar.

N.B: It has to be borne in mind that if the resulting amount (after the deduction) is lower than 25 €/ha, no payment can be granted in the second pillar [bearing in mind what is written above as regards the average payment per hectare].

Partial compensation

From the example above it is also clear that the second pillar payment does not have to cover all additional costs and income losses. Member State may justify a partial compensation, however, always bearing in mind the risk of land abandonment. The justification for a partial compensation should therefore provide reasons for the threshold selected (e.g. 80% of the sum of income loss and additional costs) as well as a conclusion that even at this reduced level, the land in question will not be abandoned. Inevitably, this conclusion should be based on a sound analysis.

Annex I of the Rural Development Regulation gives the maximum for the payment. That is 450 €/ha in mountain areas and 250 €/ha in the other two categories. These amounts can be increased in exceptional cases and the justification must be provided in the rural development programmes. Such justification should be documented by the (certified) calculation of income loss and additional cost and it should also be demonstrated that the area is at a genuine risk of land abandonment.

Degressivity at holding level payments

The payment shall be degressive above a threshold level of area per holding, unless the payment is fixed at 25 €/ha already from the beginning⁵, in order to be compliant with the WTO requirements

⁵ In all cases when the starting level of payment exceeds 25 €/ha, degressivity must be applied.

(Point 13 e) of Annex II of the WTO Agreement for Agriculture). The most logical example which is already used by a number of Member States, is that 100% of the payment is granted on the first 0 - X hectares in the holding, 80% of the payment is granted on the next X - Y hectares, 50% is granted on Y – Z hectares and no payment is granted on the remainder of the holding's area. The payment must not drop under 25 €/ha.

As regards the thresholds (X, Y and Z – or more or fewer), they should be set up by Member States and their choice should be justified and backed by evidence. The threshold should be set in a way that overcompensation is prevented. To take an example of a steep slope which requires a special tractor – the additional costs will consist of 1/ the difference of retail price between a standard tractor and this special tractor, recalculated per hectare, 2/ the difference in fuel consumption per hectare, 3/ difference in labour costs per hectare. It is clear that point 2 (and most likely also point 3) remains constant. However, point 1 needs to be properly reflected upon as the additional costs will be considerably different if this special tractor is used on 2 hectares or on 50 hectares.

Derogation to degressivity: Degressivity is applied at the level of a natural person, legal person or group of natural or legal persons⁶. However, in some cases, even if a farmer belongs to an organisation (legal person), or a group of natural or legal persons (meaning that degressivity would normally be applied at the level of this organisation and not at the level of the individual farmer) it is possible to apply degressivity at the level of the individual farmer. However, this is possible only if the national law provides for the individual farmers to assume rights and obligations comparable to those of individual farmers who have the status of head of holding. These obligations and rights are normally spelt out in their economic, social and tax status. This also requires that these farmers have contributed to strengthening the agricultural structures of the legal persons of groups concerned. If all these conditions are fulfilled, degressivity may be applied at the level of individual farmer.

4.2. Beneficiaries

Active farmers, according to the article 9 of Regulation (EU) No 1307/2013 [DP] in delimited areas.

4.3. Eligible cost and conditions

Eligible costs: The payment reflects the sum of the income loss and the additional cost due to the constraint, as required by the commitments of the European Union in the WTO. The quantification should be made in comparison to the non-constrained area. Those Member States which are delimited as constrained on their entire territory may use estimating studies instead or they can use a larger (homogenous) region as a reference. In order to improve the verifiability of these calculations, they must be certified by a body independent of the authorities and the certificate needs to be provided with the rural development programme (article 62 of the Rural Development Regulation).

Eligibility conditions: It is obvious that only areas which are a part of the delimitation can benefit from a payment.

In the programming period 2007-2013, about 56% of UAA in EU27 has been identified as constrained but only about a half of the delimited area receives some payment (related to constraints). This is

⁶ Beneficiary must always comply with the requirement of active farmer as described in this document.

because Member States often apply eligibility criteria by which they e.g. exclude certain types of areas and/or beneficiaries.

From a WTO perspective, in order to ensure Green Box compliance of this measure, it is necessary to respect point 13 of Annex 2 to the WTO Agreement for Agriculture. Point d) stipulates that "*payments shall be available only to producers in eligible regions, but generally available to all producers within such regions*". However, point f) stipulates that "*the payments shall be limited to the extra costs or loss of income involved in undertaking agricultural production in the prescribed area.*" This means that once an area is delimited as constrained, the Member State has to pay the additional cost and income loss to all farmers within the delimited area.

On one hand, the Member State has to pay to all producers within a delimited region. On the other hand, overcompensation must be avoided. In order to avoid overcompensation the Member State may apply Article 31(1) of the Regulation 1305/2013, which allows differentiating the premium according to farming systems, as different farming systems can record different results in calculations of additional costs and income foregone. However, Article 31(1) provides for such a possibility only in duly justified cases. Therefore, Member States may set a specific minimum payment at a level below which they consider that the farming system(s)⁷ incurring lower additional costs and income foregone than this amount do not face significant natural constraints. Thus, no support is paid to farms operating such farming system(s).

The primary way to exclude from support farming systems for which no significant additional costs/income losses are identified is the fine-tuning exercise, as referred in Article 32(3) of the Regulation 1305/2013. If the majority of the agricultural area within a delimited area falls under this category, the whole area has to be excluded from the delimitation in the fine-tuning process. The application of farming system as additional criterion for identifying risks of overcompensation and thus allowing the exclusion of farming system incurring losses under a certain threshold, applies only when the specific farming system is not predominant in the area concerned, and therefore it is not possible to exclude the whole area in the fine-tuning process. The exclusion concerns always an entire farm; it is not possible to exclude only a certain farming system from ANC- support within a farm practicing several systems. Furthermore, it is not possible to apply farming system as exclusion criteria in order to exclude, e.g. arable farms on basis of not having livestock. The exclusion must be related only to the threshold of calculated income losses.

According to paragraph 13⁸ of Annex 2 to the WTO Agreement on Agriculture which sets the rules for Green Box compatibility of payments under regional assistance programs, the amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the base period [except to reduce that production, which is not the case for the EU's regional assistance programs]. Whatever additional eligibility criterion is chosen by the Member State, in order to allow the measure to be

⁷ Farming system refers to the predominant activity of an agricultural holding. Therefore, the holdings may be differentiated by the following farming systems, i.e. "cropping" or "livestock". As basis for different farm typologies the Member States may use the Community typology for agricultural holdings.

⁸ To be noted that paragraph 6 of Annex 2 of the WTO Agreement on Agriculture on decoupled income support (including the decoupled pillar 1 payment for areas with natural constraints) provides for an explicit condition that 'No production shall be required in order to receive such payments', which is not the case under paragraph 13 of the same Annex.

notified as falling under the Green Box, the conditions of Annex 2 to the WTO Agreement on Agriculture must be respected. Therefore the use of criteria that may be seen as linked to production, such as livestock density, must be approached with special caution and the preference would be to use other indicators in order to determine whether farming takes place.

However, in order to comply with the requirement of Article 31(2) of the Regulation 1305/2013 to "undertake to pursue farming activity" it may occur that the Member State considers grazing-based activity requirement necessary in order to determine whether farming takes place, thus ensuring the maintenance of permanent grassland. In this case, the Member State may set minimum activity requirements such as grazing livestock (in form of low livestock density requirement).

4.4. Principles with regard to the setting of selection criteria and the selection of beneficiaries.

N/A – excluded from selection criteria by Article 49 of the Rural Development Regulation.

4.5. Links to other legislation

The obligation to comply with cross compliance is embedded in Article 92 in the Regulation 1306/2013.

As regards the ANC-support under the first pillar: Articles 48, 49 and 65 of the Regulation 1307/2013.

4.6. . Aid intensity/amount of support

The maximum support rate is € 250 per hectare in delimited areas and € 450 per hectare in mountain areas. The support may be increased in duly substantiated cases taking into account specific circumstances. These circumstances shall be justified in the Rural Development Programme.

4.7. Co-financing rate(s)⁹

This measure is among the measures which contribute to the compliance with the requirement stipulated in Article 59(6) of Regulation 1305/2013 and which requires that at least 30% of the total EAFRD contribution to the rural development programme shall be reserved for measures contributing to climate change mitigation and adaptation as well as environmental issues.

Furthermore, this measure can also benefit from a higher co-financing rate (75%) as it contributes to the objectives of environment and climate change mitigation and adaptation (Article 59(4)(b) of the RD Regulation). In case of the less developed regions, in the outermost regions and in the smaller Aegean islands this co-financing rate can be even higher (85% of the eligible public expenditure) as stipulated in Article 59(3)(a).

⁹ Subject to final MFF decision.

4.8. Focus on specific issues

Delimitation of mountain areas

Very few changes can be expected for the mountain areas as the delimitation criteria will remain the same. However, Member State may proceed to a revision of the delimitation in cases where e.g. better data are available. In practice, this means that a commune can be added (or excluded) to the existing delimitation as long as evidence shows that the commune meets the criteria (of shorter growing period and/or slope).

Should a Member State decide to change the parameters of the delimitation for mountain areas, new negotiations can be launched. However, any new approach by Member States could only be based on an intention to come to a more efficient use of funds. This would mean that either new data on shorter growing period and/or steep slopes would be presented or that a Member State would decide to apply more constraint criteria compared to the past.

Delimitation of areas with natural constraints other than mountain areas

Unlike in the previous programming periods, Member States do not have to "build a case" for delimiting these areas. The criteria for the delimitation are clearly spelt out in Annex II of the Regulation and the methodology is available here: <http://agrienv.jrc.ec.europa.eu/Updated%20Common%20Criteria%20Fact%20sheets.pdf>. As the delimitation of these areas can be costly, Member States have the possibility to use technical assistance to finance the related works. This possibility is also extended to the period 2014-2020.

The delimitation gives a theoretical access to the payment for constraints in both pillars of the CAP (this payment is optional in both pillars). There is no other mechanism of adding areas and there is no possibility of homogenization (including areas which have not been delimited but are surrounded by areas which are affected by constraints).

The difference shall be made between the areas that are staying in the delimited areas of areas with natural constraints other than mountain areas, and those areas that will be phased out. The "phasing out" areas will no longer be subject to the payments following the new delimitation criteria, or the fine-tuning exercise concluding that the natural constraints have been overcome.

The Member States shall apply the new delimitation at latest in 2018. In the "phasing out" areas the payments shall be degressive from the moment of completion of the new delimitation. The degressive payment shall not exceed 80 % of the average payment fixed in the Rural Development Programme for the period 2007-2013. The payments in "phasing out" areas shall end at latest in 2020 when the granted premia shall not exceed 20 % of the above mentioned calculated amount.

The Regulation also foresees the mechanism of fine-tuning, i.e. excluding areas where a constraint has been documented but it has been overcome. A guidance document has been prepared and discussed with experts from the Member States. The fine-tuning approach should be a part of the Rural Development Programme and it will be scrutinized by the Commission services.

As regards the choice of the administrative unit, the Regulation is compliant with the WTO Marrakesh Agreement, i.e. the delimitation must be based on an administrative unit with a definable economic and administrative identity. These are ideally LAU2s, or other units fulfilling the definition. The delimitation cannot be based on farms, plots, and other units, such as national parks, valleys, etc. If the delimitation is based on other units than LAU2, Member States should provide evidence, based on a legal analysis that the chosen administrative unit complies with the requirement of the Regulation.

Delimitation of areas facing specific constraints

The extent of this category is limited by a maximum 10% of the entire territory of the Member State in question¹⁰. It is irrelevant whether the Member State in question uses a single RDP or regional RDPs, the 10% is always calculated from the entire territory of the respective Member State. Overseas territories should be included in the reference value as long as they administratively belong to the Member State (this should be verified by both Member State and the responsible geographical desk). Finally, the reference value is the entire territory of the Member State, including cities, rivers, etc., it is not 10% of the agricultural area. Obviously, the delimitation of areas with constraints is limited to agricultural areas. Therefore, a Member State with the total territory of 1 million square kilometres, which includes 200,000 square kilometres of agricultural area, can delimit up to 100,000 square kilometres of agricultural area in this category, i.e. a half of its total agricultural areas.

The Regulation stipulates that this category of areas with constraints shall comprise farming areas where the natural production conditions are similar. The delimitation of these areas is left up to Member States as, by definition, the constraints will be specific. The delimitation of these areas must be, however, based on clear criteria which lay ground to a quantification of income loss and/or additional cost, resulting from the constraint (which will have been certified as foreseen in Article 69). It also needs to be reminded that socio-economic criteria, such as low population density, distance to market, average age of farmers, etc. do not meet the conditions of Article 33(4).

Combination of criteria in areas facing specific constraints

The Rural Development Regulation envisages a possibility for applying "cumulative" criteria in defining the areas facing specific constraints. The Commission DG AGRI services together with the Joint Research Centre will provide more detailed guidance on this matter. While experts' analysis will be provided, Member States may think of various combinations which indeed lead to a constraint in a combination with each other. There are some combinations which are not meeting such requirement – for example, some combinations of texture and drainage will not be acceptable as certain constraints in texture automatically lead to constraints in drainage. Such combination is therefore not a combination of two constraints, it is de facto one constraint. The chosen combinations should be used throughout the area covered by the RDP in order to secure transparency. Therefore, it is not possible to use different combinations in different areas.

The delimitation must be based on administrative units in order to ensure compliance with the WTO Marrakesh Agreement.

¹⁰ The Member States where the entire territory has been considered as an area facing specific handicap under regulations 1698/2005 and 1257/1999 may continue to be defined as an area facing specific handicap (the entire territory).

Programming

The methodology for delimiting the areas eligible for ANC payments should be defined in the Rural Development Programme as a part of the measure description. A supporting document has not to be submitted, but should be identified in the Programme.

In case the new delimitation criteria¹¹ are not applied from the moment of the Programme approval (Member State continues with the previous delimitations until the new delimitations enter in force) a cross-reference should be made to a clearly identifiable document indicating the previous delimitations.

Mountain areas

The methodology for delimiting the mountain areas should be included in the measure description of the Rural Development Programme from the moment of the Programme approval, as mountain areas are not subject to phasing-out period, nor to new, common, delimitation methodology.

Areas facing natural constraints

The compliance of the Member State's methodology is assessed by the Commission outside the Rural Development Programme approval procedure¹² if the new delimitation is not known at the moment of the Programme approval. However, it is self-evident that payments can only be provided if the application of the delimitation mechanism by the Member State is considered as being in compliance with the legislation. In case the Member State does not apply the new delimitation from the date of approval of the new Rural Development Programme, the methodological approach for delimitation should be included in a separate modification of the Programme before starting the application of the new delimitation.

Areas facing specific constraints

The Rural Development Programme should contain information on methodology for delimiting the areas with specific constraints, clearly indicating the delimitation criteria basis for the quantification of the income loss and additional cost.

In case the Member State does not apply the new delimitation from the date of approval of the new Rural Development Programme, the methodological approach for delimitation should be included in a separate modification of the Programme before starting the application of the new delimitation.

5. OUTPUT INDICATORS

See working document on monitoring tables.

¹¹ As regards the areas facing natural or specific constraints

¹² The Member States should send the documentation concerning the new delimitation to the Commission. The DG AGRI services process together with the Joint Research Centre the documentation sent by the Member States.

6. VERIFIABILITY AND CONTROLLABILITY

The calculation of income loss and additional costs must be certified, as foreseen by Article 69.

7. TRANSITIONAL ARRANGEMENTS

According to Regulation (EU) No 1310/2013, with regard to commitments undertaken under Axis 1 and 2 measures, Member States may continue to undertake new legal commitments to beneficiaries in 2014 pursuant to the rural development programmes adopted on the basis of Regulation (EC) No 1698/2005 even after the financial resources of the 2007-2013 programming period have been used up, until the adoption of the respective rural development programme for the 2014-2020 programming period. This means that in 2014 payments as in place under the programme for the period 2007-2013 can be made for all three categories of support areas under the measure. The Member State may also choose to apply the legal provisions of the new rural development Regulation (EU) No 1305/2013, including the new support rates, already in 2014, using the funds from the budget 2014-2020. In this case, the new legal provisions must be fully respected.

As soon as commitments start being undertaken under the new rural development programme and financed from the budget resources 2014-2020, the new rules for the period 2014-2020 apply to all three categories of constraint areas: payments have to be based on the calculation of additional costs incurred/ income foregone; they have to be degressive and the (new) minimum and maximum amounts have to be respected.

As regards the 5-year obligation to continue farming the following should be taken into consideration: if the commitments are undertaken in 2014 (under old or new rulesfunds) the beneficiary is exempted from this obligation according to Article 1(2) of Regulation (EU) No 1310/2013. However, only beneficiaries entering the scheme for the very first time in 2014 are exempted from the 5-years rule. In case a beneficiary has received the very first payment before 2014, the fact that the Member State enters into a new legal commitment in relation to the beneficiary (as it is the case given the annuality of the measure) in 2014, does not mean that the 5-year period expires earlier. Therefore, the obligation has to continue till the end of 5-year period. Finally, in 2015, in case of the use of "old" budget (funds for the period 2007-2013), the 5-year requirement has to be applied again, following the provisions of Regulation 1257/1999.

As regards specific eligibility conditions which are in place under the old delimitation, they may continue to apply until the new delimitation comes in place. Therefore, new areas or new beneficiaries who were not eligible during the period 2007-2013 do not need to be included until the new delimitation comes into force.

8. BEST PRACTISES

See the Commission discussion paper "Fine-tuning in areas with significant natural constraints".