REPLIES OF THE COMMISSION TO THE SPECIAL REPORT OF THE EUROPEAN COURT OF AUDITORS

"THE EFFECTIVENESS OF THE SINGLE AREA PAYMENT SCHEME AS A TRANSITIONAL SYSTEM FOR SUPPORTING FARMERS IN THE NEW MEMBER STATES"
EXECUTIVE SUMMARY

I. As a transitional scheme, SAPS has been designed along the same principles as SPS but with the absence of entitlements. Originally, the transition period was to end at the end of 2006, but at the new Member States' request it could be extended by two years until the end of 2008 at the latest. In the meantime it was extended until the end of 2013.

SAPS was meant to be a "simplified scheme" to allow the new Member States to manage direct payments with simpler rules.

IV. The Commission is addressing this issue in the legislative proposals on the CAP towards 2020 (a definition of an active farmer).

The SAPS is a decoupled scheme, and hence it entails no production requirement. Any farmer receiving support must however perform an agricultural activity. Following Council Regulation (EC) No 73/2009 this implies that he should at least maintain his land in good agricultural and environmental condition (GAEC). In this context, a farmer should not be considered having no agricultural activity simply because he does not maintain a certain production level.

From 2010, Member States have had the possibility to exclude from the benefit of direct payment natural or legal persons whose agricultural activities form only an insignificant part of their overall economic activities or whose principal business or company objectives do not consist of exercising an agricultural activity.

V. The Commission takes note of the Court's finding on identification of eligible parcels. However, new MS used the best available information at the time of establishing their land parcel identification system (LPIS). With audit missions and Action Plans the Commission supported new MS in their effort to improve the quality of the information in their LPIS. The definition of land eligible for SAPS obliges new MS to exclude from the payment unutilised agricultural land (not farmed for various reasons e.g. economic or social factors).

Whenever Commission audits find ineligible land in the land parcel identification systems, deficiencies found are followed up in the context of clearance of accounts.

VI. As for the SPS, there is no quantified link between SAPS support and costs incurred by farming activity including provision of public goods. SAPS is an area-based flat-rate payment whose main objective is to provide basic income support. Through the obligation to keep land in GAEC, SAPS contributes to the protection of natural resources thus providing the basis for the delivery of public goods through agriculture. This has been noted in particular in the study on public goods of the Institute for European Environmental Policy (IEEP)¹.

There is a highly heterogeneous picture in the EU-12 in what concerns farms' dimensions. Since SAPS is an area based payment it follows that large farms receive higher payments. In addition, specific problems in sensitive sectors and regions were considered by new MS when granting Complementary national direct payments (CNDPs) and specific support respectively.

The legislative proposals on the CAP towards 2020 acknowledge the need to introduce the definition of an active farmer as well as the concept of the redistribution of support between Member States and farmers.

VII. The possibility to regionalise SAPS payments does not exist, as SAPS is a transitory scheme towards SPS regional payments. Hence, in case a Member States would have liked to differentiate the level of payments between regions, it could have done so by introducing the SPS or since 2010 through the specific aid under Article 131 of Regulation 73/2009. Besides, measures under rural development programs (Less-favoured Areas payments) exist to support disadvantaged regions.

VIII. The level of direct payments in the Member States is the result of a political compromise, which was, however, based on clearly defined criteria and historic reference periods. It is the phasing-in of the SAPS payments that has been proposed in view of avoiding distortions between different economic sectors.

The CAP instruments are continuously analysed by the Commission, in particular via policy evaluations. As far as the direct payments are concerned, evaluation of the different impacts has been divided by subject. An evaluation of the income effect of direct support has been published in 2011\(^2\) and an evaluation is now ongoing on the structural effect of direct support. Results are expected for the end of the second semester 2013. SAPS being a derogation to SPS, its effects are assessed together with the SPS in the framework of this evaluation.

IX. The capitalisation of support into land prices in a regional model of SPS or in SAPS may be indeed higher than in a historic model. The functioning of land markets in the EU Member States under the influence of measures applied under the CAP was assessed in a study ordered by the Commission services\(^3\). Nevertheless, among factors influencing land prices, CAP subsidies have a rather modest impact. In addition it does not necessarily mean an increase in capitalisation as compared to former coupled forms of support.

X. Regulation 73/2009 in Article 122(3) established that SAPS must be available until 31 December 2013. It follows that with new CAP, SAPS will cease to exist and new Member States have been aware of this condition already since January 2009 when the regulation was published.

New Member States can decide every year to introduce the standard scheme (SPS) and the Commission held several technical consultations with some interested new Member States on this issue. It is however the responsibility of a Member State to judge advantages and disadvantages of such a decision. The structure of the farming community varies extensively across Member States as well as their administrative capacity.

XI.

- Common reply to indent 1 and 2:

\(^2\) [http://ec.europa.eu/agriculture/eval/reports/income/index_en.htm](http://ec.europa.eu/agriculture/eval/reports/income/index_en.htm)

\(^3\) [http://ec.europa.eu/agriculture/analysis/external/landmarkets/index_en.htm](http://ec.europa.eu/agriculture/analysis/external/landmarkets/index_en.htm)
Criteria such as "concrete and regular agricultural activity" could link the level of support to the performance of the beneficiary of an actual production obligation which would not be compatible neither with the CAP targets for achieving greater market orientation through decoupled direct payments, nor with the WTO "green box" conditions. In addition, diversification of activities is a valuable alternative to limited growth opportunities within the farm sector.

Under the current legislation (Article 2 of Regulation (EC) No 73/2009) any natural or legal person exercising an agricultural activity might receive direct payments. However, Member States have a possibility to restrict access to direct payment by applying Article 28(2) of that Regulation. Besides, it has to be noted that it is Member States obligation to establishing minimum requirement for GAEC.

The issue is addressed in the Commission proposals for the CAP towards 2020 through the definition of an active farmer and agricultural activity.\textsuperscript{4}

- \textit{Reply on indent 3:}

The Commission's legislative proposals aim at a more balanced distribution of aid through several measures such as progressive reduction and capping of direct payments, flexibility between pillars, regional allocation of national ceilings, convergence of the value of payment entitlements and small farmers scheme. Under the new policy, all MS (including current SAPS countries) will have the option to regionalise the payments taking into account agronomic and economic characteristics and their regional agricultural potential.

- \textit{Reply on indent 4:}

The issue has been analysed in a study on the functioning of land markets\textsuperscript{5}, in the CAP Health Check - Impact Assessment\textsuperscript{6}, and a further study on market factors is currently under way in the RTD 7\textsuperscript{th} Framework Programme.\textsuperscript{7}

By providing an effective income insurance and minimum stability of revenue SAPS support helps farmers to mitigate adverse effects of such structural factors.

- \textit{Reply on indent 5:}

It is the responsibility of the Member States to take a decision on implementation of the SPS and to request consultation from the Commission. The Commission services are available for consultations and assistance if there is a need and upon a request from the Member State interested. The

\begin{verbatim}
\textsuperscript{4} Proposal for a Regulation of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy, Article 9 and Article 4 respectively.
\textsuperscript{6} CAP HEALTH CHECK – IMPACT ASSESSMENT NOTE Nº 1 http://ec.europa.eu/agriculture/healthcheck/ia_annex/c1_en.pdf;
\end{verbatim}
Commission has to respect the subsidiarity principle and cannot intervene in the Member States' competences.

**INTRODUCTION**

7. According to the Treaty of Accession, the SAPS was available for the new MS until the end of 2006 with the possibility of renewal twice by one year (till the end of 2008) at the new MS request.

**OBSERVATIONS**

20. Only farmers within the definition laid down in Council Regulation (EC) No 73/2009 (persons exercising an agricultural activity) qualify for the support. The definition reflects the decoupled nature of the scheme and the objective of promoting farmers' market orientation while ensuring compliance with the WTO "green box" conditions. Production obligations or links to production factors may not be imposed as eligibility criteria.

Nonetheless, landowners without agricultural activity and non-farmers are not eligible for the payments.

In this context, situations of farmers who only fulfil the GAEC thus having only limited agricultural activity can arise. However, it has to be reminded that MS are obliged to establish minimum requirements for GAEC.

This issue has been addressed in the Commission legislative proposals on the CAP towards 2020 by proposing the definition of an active farmer.

Whenever Commission audits find ineligible land in the land parcel identification systems, deficiencies found are followed up in the context of the clearance of accounts.

21. Member States must assess whether the characteristics of the land use do not prevent agricultural use.

The mentioned examples of beneficiaries are considered according to current EU legislation (Article 2(a) of Regulation 73/2009) to be farmers as long as they exercise an agricultural activity. These farmers are entitled to SAPS payment if the eligibility conditions are fulfilled.

Nevertheless, according to Article 28(2) of Regulation 73/2009 Member States have the option to exclude farmers marginally involved in farming from SAPS benefits.

Whenever Commission audits find ineligible land in the land parcel identification systems, deficiencies found are followed up in the context of the clearance of accounts.

22. The definition of agricultural activity reflects the objective of promoting farmers' market orientation while ensuring compliance with the World Trade Organisation (WTO) "green box" rules. The SAPS is decoupled from production and compliant with the WTO "green box" rules, therefore production obligations or links to production factors may not be imposed as eligibility criteria. In this context farmers may decide to "maintain the land in GAEC" instead of producing agricultural products.

The main objective of decoupling is market orientation and in general, farmers, as entrepreneurs, are actively farming in order to generate an income from the selling of their products and possibly
other activities. The decision not to produce is also a market-oriented behaviour if variable production costs are not covered.

The Commission is however of the opinion that the majority of the agricultural land under SAPS is used for production and the beneficiaries with limited activities represent only a small percentage of the total SAPS area.

See also the Commission reply to §20.

Box 1

The Commission is addressing further this issue in its legislative proposals on the CAP towards 2020 by providing a definition of an active farmer.

Under the current legislation (Article 2 of Regulation (EC) No 73/2009) any natural or legal person exercising an agricultural activity might receive direct payments. However, Member States have a possibility to restrict access to direct payment by applying Article 28(2) of that Regulation. Besides, it has to be noted that it is Member States obligation to establishing minimum requirement for GAEC.

Whenever Commission audits find ineligible land in the land parcel identification systems, deficiencies found are followed up in the context of the clearance of accounts.

23. When discussing further targeting of direct support during the Health Check, the Council considered that flexibility should be given to Member States to consider, in accordance with the principle of subsidiarity and according to their specific economic realities, which are the right parameters to be taken into account for the application of this possibility (to exclude from direct payments “natural or legal persons whose agricultural activities form only an insignificant part of their overall economic activities or whose principal business or company objects do not consist of exercising an agricultural activity”). This is further addressed in the Commission legislative proposals on the CAP towards 2020 through the definition of an active farmer.

24. Utilised agricultural area shall mean total area taken by arable land, permanent grassland, permanent crops and kitchen gardens as established by the Commission for its statistical purposes. Following this definition, if agricultural land is no longer farmed for any (economic, social) reason, it shall be included within the category "other land" as not eligible for SAPS. It is the MS responsibility to assess whether the characteristics of the land do not prevent an agricultural use.

Whenever Commission audits find ineligible land in the land parcel identification systems, deficiencies found are followed up in the context of the clearance of accounts.

28. For Bulgaria and Romania the historical reference to the land which was in "good agricultural condition" was dropped due to the specific structure of agricultural sectors before the accession. Due to various reasons (fragmented parcels, unclear ownership and lack of capital), large areas of agricultural land were still not cultivated at the date of accession. Therefore, it was decided to apply the condition of land in GAC on an annual basis.

30-32. Common reply to §30-32:

New Member States used the best available information at the time of establishing their land parcel identification systems (LPIS). The Commission audits carried out in 2004 concluded that the LPIS systems were generally operational in Slovakia, Poland and Hungary. The information on eligible
agricultural areas recorded in the LPIS was not always fully accurate but with the audit missions and Action Plans in Bulgaria and Romania the Commission supported the new MS in their effort to improve the quality of the information in their land parcel identification systems.

33. The agricultural area for SAPS as approved by the Commission is the one the new MS have estimated (using objective criteria) before the accession as the potential eligible area that will be claimed. In LPIS, the total agricultural area is recorded; however, not all this area is finally claimed by the farmers (due to various reasons e.g. process of land restitution, fragmented parcels, access to the land etc.). Therefore, the area approved by the Commission may be lower than the total agricultural area recorded in the LPIS.

34. The difference between agricultural area under SAPS as established in Annex VIII of Regulation (EC) 1121/2009 and the maximum eligible area for SAPS recorded in the LPIS can be explained. Therefore, the Commission did not consider it necessary to request the MS to analyse this discrepancy.

See also reply to § 33

35. Common reply to (a) and (b):

The concept of application of a reduction coefficient is a standard mechanism to avoid that the budgetary ceilings are exceeded. There is no uncertainty since Member States can communicate to the farmers well in advance the maximum amount of SAPS payment per hectare they will be entitled to (= the division of the budgetary allocation available and the agricultural area under SAPS as established in Annex VIII of Regulation (EC) 1121/2009) as well as the estimated possible reduction on the basis of the data from aid applications.

38. Each request for the revision of utilised agricultural area has been analysed by the Commission taking into account the existence of objective criteria (e.g. size of agricultural holdings, experience from aid applications over the previous years, update of LPIS system etc.). Long term experience from aid applications is considered as one of the objective criteria.

In 2005 the Slovak Republic authorities requested amendment of utilised agricultural area (UAA) on the basis of aid application for SAPS in 2004 only (one year data). The Commission did not find the request sufficiently justified due to the specific situation in the Slovak Republic in that period (disputes of land-ownership) and limited experience with SAPS. However, in November 2008 the Slovak Republic re-submitted the request to adjust utilised agricultural area on the basis of already 4 years experience with SAPS aid applications, which was accepted by the Commission.

39. Abandoned land is one of the reasons for ineligibility of land. The Commission audits find regularly ineligible land in the land parcel identification systems and deficiencies found are followed up in the context of the clearance of accounts.

40. Deficiencies found during audits are followed up in the context of the clearance of accounts.

41. Commission audits in Hungary have confirmed that the quality of the LPIS has improved over the past years.

For Romania, the Commission decided in 2012, on the basis of its audits carried out in 2011, to lift its reservation concerning IACS on the grounds that the Romanian action plan was completed, properly implemented and the system was operational of sufficient quality for claim year 2011. An
audit of the implementation of the revised IACS system will be carried out as part of the normal audit programme in 2012.

For Bulgaria, a detailed IACS action plan was developed and was completed in November 2011 as planned. However, while audits carried out (end of 2011, beginning of 2012) considered the work done to be appropriate, the Commission had not yet sufficient assurance that the application of the new elements in the handling of the 2012 claims would work properly. As a consequence, the reservation was not lifted.8

42. Any deficiencies found are followed up in the context of the clearance of accounts.

43. There may be specific cases in which eligibility of land for direct payments is not so obvious. To address this issue, the Commission prepared a questionnaire and a discussion paper which reflected the exchange of views with MS. The discussion paper (DS/2010/04 rev1) concluded (from the questionnaires and the discussion) that the eligibility of areas is "undoubtful in the vast majority of cases and the assessment is without problem for neither controllers nor farmers".

The decision of the farmer to continue agricultural production on the eligible hectares or simply maintain the area in GAEC should be a result of the conditions of the market and not of the support. The definition of national standards by Member States does not necessarily entail that an activity aiming at maintaining or increasing the agricultural production is expected from the farmer. The Eurostat definition excludes the abandoned land from being part of utilised agricultural area. In the Commission legislative proposals on the CAP towards 2020 through the definition of the active farmer better targeting of the aid shall be achieved.

Box 2

According to Article 143b (4) of R.1782/2003 (Article 124 of R73/2009) the agricultural area under the SAPS shall be the part of its utilised agricultural area which is maintained in good agricultural condition, whether in production or not, where appropriate adjusted in accordance with the objective criteria to be set by Bulgaria or Romania after approval by the Commission." For Bulgaria the national GAC criteria for pasture land was whether the land is suitable for grazing. Therefore any land being in good agricultural condition is eligible for SAPS payments in Bulgaria.

Romanian authorities have set up guidelines to classify the abandoned land. Furthermore, in the framework of the Romanian Action Plan they checked more than 11,000 reference parcels that were considered potentially abandoned to verify its eligibility conditions.

The Commission audits find regularly ineligible land in the land parcel identification systems and deficiencies found are followed up in the context of the clearance of accounts.

44. SAPS is an area-based flat-rate payment whose main objective is to provide basic income support.

46. The increase per AWU, besides higher prices and public support, came also from a reduction in the work force during the period.

47. To fully describe the situation, also market revenues should be taken into account in assessing the role of SAPS payments.

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48. In 2004, when SAPS was introduced, net value added increased in the EU-10, but also in the EU-15. Later net value added varied without a clear link to SAPS implementation.

49. SAPS has been designed as an area aid without a need to declare farmers income. The financial amount corresponds to the eligible hectares. In addition, new Member States can target specific groups of farmers/sectors via CNDPs (and specific support). The income situation of small farmers is addressed in the legislative proposals on the CAP towards 2020.

The Commission's legislative proposals on the CAP towards 2020 include an element of progressive reduction and capping of the direct payments which will allow a limitation of the payments made to farmers.

50. In a decoupled support system set up to encourage farmers towards more market orientation to adjust the support level to e.g. income level of the farmers would be detrimental to the objective. Also as income level is closely linked to production level and type, World Trade Organisation (WTO) "green box" rules would certainly not be met.

However, The Commission acknowledges that distribution of support between farmers needs to be more targeted and it is therefore a core issue of the Commissions' legislative proposals for the CAP towards 2020, pointing for instance young farmers, small farmers, areas with natural constraints, etc.

51. There is a highly heterogeneous picture in the EU-12. Since SAPS is an area payment, it follows that farms that are large in terms of hectares receive higher payments which are not necessarily accompanied with high production.

The redistributive effect is apparent even under SPS where\(^9\) decoupled aids are granted to 82% of beneficiaries receiving less than 10 000 euro but represent only 24% of the total value of payments.

Often the 0.2% includes large cooperatives composed of many smaller farms.

It was agreed by the Council that the concept of modulation (progressive reduction of direct payments) is applicable for new MS only when the level of direct payments is at least equal to that level in other Member States.

The issue of appropriate distribution pattern of aid among holdings of different sizes is addressed in the Commission's legislative proposals on the CAP towards 2020 through progressive reduction and capping of the payment and specific scheme for small farmers.

52. In order to preserve the simplicity of the scheme, SAPS does not allow regionalisation of the scheme. However, new Member States are allowed to grant CNDPs on sectoral bases as a compensation for phasing-in. This tool together with the support under Article 131 (specific support) allows for addressing specific needs of the farmers in sensitive sectors (e.g. animal producers without agricultural areas). In addition to SAPS, support under the rural development programmes exists to target farmers in disadvantaged areas (LFA payments).

53. SAPS is a decoupled scheme, and hence there is no production requirement. In this context, a farmer should not be considered having no agricultural activity simply because he does not maintain a certain production level. However, any farmer receiving support must perform an agricultural activity which means that he should at least maintain his land in GAEC.

\(^{9}\) CATS 2010 data
Even if the land is only kept in GAEC, SAPS contributes to the protection of natural resources thus providing the basis for the delivery of public goods through agriculture. It is irrelevant to introduce agricultural production as a criterion since it would be against the decoupled nature of the payments and it would not be compatible with the WTO "green box" conditions.

The issue was addressed in the Health-Check by introducing Article 28(2) of Regulation 73/2009. By this, MS may exclude beneficiaries whose agricultural activities form only an insignificant part of their overall economic activities or who do not exercise any agricultural activity at all. This is further addressed in the Commission legislative proposals on the CAP towards 2020 through the definition of an active farmer.

54. New Member States are allowed to grant CNDPs on sectoral bases as a compensation for phasing-in. This tool together with the support under Article 131 (specific support) allows addressing specific needs of the farmers in sensitive sectors (e.g. animal producers without agricultural areas).

55. The DG AGRI Evaluation Plan foresees that Article 68 measures will be evaluated in 2013/2014. This will give the Commission a full set of implementing data, including the report to be provided by the Member States by 1 October 2012, and allow to address the modifications introduced by the Member States on 1 August 2011.

The Commission reminds that Article 68 also allows Member States to use part of their SAPS envelope to grant specific support by implementing 8 other categories of measures.

57. The CAP instruments are continuously analysed by the Commission, in particular via evaluations of policy tools. As far as the direct payments are concerned, evaluation of the different impacts has been divided by issue.

An evaluation of the income effect of direct support have been published in 2011 and the Commission is currently undertaking an external evaluation on the structural effects of the direct support which will examine the effect of direct support schemes, including SAPS, on different aspects of farm structure. The evaluation is planned to be completed in autumn 2013.

SAPS being a transitional scheme to SPS, its effects are assessed together with the SPS in the framework of those evaluations.

58. In addition, other CAP instruments such as rural development support and farm advisory system are available to farmers to help tackling most of the issues mentioned by the Court. Those measures are designed and chosen by the Member States among a wide range of possibilities to fit their needs in terms of farm modernisation, training of employees, etc. On the land policy itself, ownerships and fragmentation, the action of the Commission is reduced as it is not in its field of competencies.

By providing an effective income insurance and minimum stability of revenue SAPS support helps farmers to mitigate adverse effects of such structural factors.

59. The Commission does not fully share the Court's view. The external study on land markets indicates the level of the capitalization varies among countries and regions as a result of differences

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10 In particular, the evaluation should examine the impacts of direct support on farm structures (size, number, land use, livestock numbers), maintenance of farming in marginal areas, impacts on labour force, capital and farm business strategies.
in their land market structure. Since the "subsidy" effect influences not only input but also the output prices, impacts on the profitability of farming is not uniform and difficult to assess.

If SAPS are capitalised in the value of land, and the farmer is a land owner, any capitalisation of the SAPS directly increases the value of his/her assets. On the other hand, if a farmer rents the land, SAPS payments would compensate for any capitalisation on land rentals and at most be neutral compared to a situation without SAPS. Furthermore, it should be recalled that many operators who rent out their land are themselves farmers.

60. The Commission has analysed the impact of the support on land prices (just to mentioned few – Impact assessment under the Health check, impact assessment for CAP 2020 proposals and an external study on land market in EU has been commissioned at the Commission's initiative).

The capitalisation of support into land prices in a regional model of SPS or in SAPS may be indeed higher than in a historic model. This has been in particular assessed in a study ordered by Commission services\(^\text{11}\). Nevertheless, among factors influencing land prices, CAP subsidies have a rather modest impact. Indeed, developments in land prices are the result of a complex interplay of a variety of influencing factors, and the agricultural support system is only one among them. In addition it does not necessarily mean an increase in capitalisation as compared to former coupled forms of support. Caution is therefore needed when drawing conclusions of the exact effect of the SAPS system on the price of agricultural land.

Box 3

Land policy is not EU competency. Furthermore, the Commission has no right to intervene on private arrangements resulting from negotiations between farmers and owners.

61. The extension of SAPS was a result of the request of the new Member States on the political level.

According to the Treaty of Accession, the SAPS was available for the new Member States until the end of 2006 with the possibility of renewal twice by one year (until the end of 2008) at the request of the new Member States on the political level.

Regulation 73/2009 in Article 122(3) established that SAPS must be available until 31 December 2013. It follows that with new CAP SAPS will cease to exist and new Member States have been aware of this condition already since January 2009 when the regulation was published.

64. SAPS has never been presented as a permanent scheme but as a derogation from the EU scheme available to the new Member States before their transfer to the SPS.

New Member States have every year the option to terminate application of SAPS and introduce the standard EU scheme. Discussions and several technical consultations were held between the Commission and authorities of new Member States who had considered the introduction of SPS in the past. It is however the responsibility of the new MS to judge advantages and disadvantages of such a decision to terminate SAPS and to set-up appropriate administrative structures according to the EU legislation.

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Regulation 73/2009 in Article 122(3) established that SAPS must be available until 31 December 2013. It follows that with the new CAP, SAPS will cease to exist and new Member States have been aware of this condition already since January 2009 when the regulation was published.

65. It is the responsibility of Member States to take a timely decision on the implementation of the SPS.

See also reply to § 64

67. The distribution of SAPS among farmers does reflect farm structural characteristics - and it is proportional to farmers' contribution to the maintenance of area in GAEC, thus contributes to the protection of natural resources and therefore provides the basis for the delivery of public goods through agriculture.

As for the SPS, there is no quantified link between SAPS support and costs incurred by farming activity including provision of public goods.

Member States, who wanted to differentiate the level of payments between regions, could have done so by introducing the SPS or since 2010 through the specific aid. Besides, measures under rural development programs (Less-favoured Areas payments) exist to support disadvantaged regions.

By providing an effective income insurance and minimum stability of revenue SAPS support helps farmers to mitigate adverse effects of such structural factors.

An evaluation of the income effect of direct support have been published in 2011 and the Commission is currently undertaking an external evaluation on the structural effects of the direct support which will examine the effect of direct support schemes, including SAPS, on different aspects of farm structure.

New Member States can decide every year to introduce the standard scheme (SPS) and the Commission held several technical consultations with some interested new Member States on this issue. The Commission services are available for consultations and assistance if there is a need and upon a request from the Member State interested.

68. The definition of agricultural activity reflects the objective of promoting farmers' market orientation while ensuring compliance with the WTO "green box" rules. The SAPS is decoupled from production and compliant with the WTO "green box" rules, therefore production obligations or links to production factors may not be imposed as eligibility criteria. In this context farmers may decide to "maintain the land in GAEC" instead of producing agricultural products.

The main objective of decoupling is market orientation and in general, farmers, as entrepreneurs, are actively farming in order to generate an income from the selling of their products and possibly other activities. The decision not to produce is also a market-oriented behaviour if variable production costs are not covered.

The Commission is however of the opinion that the majority of the agricultural land under SAPS is used for production and the beneficiaries with limited activities represent only a small percentage of the total SAPS area.

When discussing further targeting of direct support, during the Health Check the Council considered that flexibility should be given to Member States to consider, in accordance with the
principle of subsidiarity and according to their specific economic realities, which are the right parameters to be taken into account for the application of the possibility to exclude from direct payments “natural or legal persons whose agricultural activities form only an insignificant part of their overall economic activities or whose principal business or company objects do not consist of exercising an agricultural activity”. This is further addressed in the Commission legislative proposals on the CAP towards 2020 through the definition of an active farmer.

69. The Commission audits find regularly ineligible land in the land parcel identification systems and deficiencies found are followed up in the context of the clearance of accounts.

*Common reply to recommendation 1 and 2:*

Criteria such as "concrete and regular agricultural activity" could link the level of support to the performance of the beneficiary of an actual production obligation which would not be compatible neither with the CAP targets for achieving greater market orientation through decoupled direct payments, nor with the WTO "green box" conditions. In addition, diversification of activities is a valuable alternative to limited growth opportunities within the farm sector.

Under the current legislation (Article 2 of Regulation (EC) No 73/2009) any natural or legal person exercising an agricultural activity might receive direct payments. However, Member States have a possibility to restrict access to direct payment by applying Article 28(2) of that Regulation. Besides, it has to be noted that it is Member States obligation to establishing minimum requirement for GAEC.

The issue is addressed in the Commission proposals for the CAP towards 2020 through the definition of an active farmer and of agricultural activity.

70. The possibility to regionalise SAPS payments does not exist as SAPS is a transitory scheme towards SPS regional payments. Hence, in case a Member States would have liked to differentiate the level of payments between regions, it could have done so by introducing the SPS or since 2010 through the specific aid under Article 131 of Regulation 73/2009. Besides, measures under rural development programs (LFA payments) exist to support disadvantaged regions.

71. See reply to recommendation 3.

*Recommendation 3*

The Commission's legislative proposals aim at a more balanced distribution of aid through several measures such as progressive reduction and capping of direct payments, flexibility between pillars, regional allocation of national ceilings, convergence of the value of payment entitlements and small farmers scheme. Under the new policy, all Member States (including current SAPS countries) will have the option to regionalise the payments taking into account agronomic and economic characteristics and their regional agricultural potential.

72. An evaluation of the income effect of direct support has been published in 2011 and the Commission is currently undertaking an external evaluation on the structural effects of the direct support which will examine the effect of direct support schemes, including SAPS, on different aspects of farm structure.\(^\text{12}\) The evaluation is planned to be completed in autumn 2013.

\(^{12}\) In particular, the evaluation should examine the impacts of direct support on farm structures (size, number, land use, livestock numbers), maintenance of farming in marginal areas, impacts on labour force, capital and farm business strategies.
73. By providing an effective income insurance and minimum stability of revenue SAPS support helps farmers to mitigate adverse effects of such structural factors.

74. If SAPS are capitalised in the value of land, and the farmer is a land owner, any capitalisation of the SAPS directly increases the value of his/her assets. On the other hand, if a farmer rents the land, SAPS payments would compensate for any capitalisation on land rentals and at most be neutral compared to a situation without SAPS. Furthermore, it should be recalled that many operators who rent out their land are themselves farmers.

**Recommendation 4**

The issue of land prices has been analysed in a study on the functioning of land markets, in the CAP Health Check – Impact Assessment, and a further study on market factors is currently under way in the RTD 7th Framework Programme. Besides, an evaluation by the Commission is ongoing as regards the impact of direct support on farm structures.

As regards the tools offered, SAPS support helps farmers to mitigate adverse effects of the structural weaknesses by providing an effective income insurance and minimum stability of revenue. In addition, other CAP instruments such as rural development support and farm advisory system are available to farmers to help tackling most of the issues mentioned by the Court. Those measures are designed and chosen by the Member States among a wide range of possibilities to fit their needs in terms of farm modernisation, training of employees, etc.

SAPS support helps farmers to mitigate adverse effects of such structural factors.

75. It is the responsibility of Member States to take a decision on implementation of the SPS and to request consultation from the Commission. The Commission services are available for consultations and assistance if there is a need and upon a request from the Member State interested. The Commission has to respect the subsidiarity principle and cannot intervene in the Member States’ competences.

See also reply to recommendation 5.

**Recommendation 5**

It is the responsibility of Member States to take a decision on implementation of the SPS and to request consultation from the Commission. The Commission services are available for consultations and assistance if there is a need and upon a request from the Member State interested. The Commission has to respect the subsidiarity principle and cannot intervene in the Member States’ competences.

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14 CAP HEALTH CHECK – IMPACT ASSESSMENT NOTE N° 1 [http://ec.europa.eu/agriculture/healthcheck/ia_annex/c1_en.pdf](http://ec.europa.eu/agriculture/healthcheck/ia_annex/c1_en.pdf);