



Principles of Double Funding

Briefing for the UK Land Use Policy Group¹

1.1 Introduction

It is a fundamental principle underpinning the rules for public expenditure in the EU that no costs for the same activity be funded twice from the EU budget². This is known as double funding and is not permitted under any circumstances. However, the current CAP proposals have led to some confusion and debate around the double funding issue. The debate relates specifically to the interface between the green direct payments and payments under land management schemes in Pillar 2, particularly those under the agri-environment-climate measure (AECM). However, double funding is not a principle unique to the greening debate and has more general application to the implementation of all CAP funding measures.

This briefing seeks to articulate clearly the rules surrounding double funding in relation to CAP payments and considers the Commission's reform proposals and amendments proposed in light of this. It concludes by reflecting on the implications of any weakening of these rules, both legally and environmentally.

1.2 Definition of double funding

Before considering the CAP proposals in detail, it is important to be clear by what is meant by double funding. Double funding occurs where the same costs for the same activity are funded twice through the use of public funds. For the costs to be the same, the rationale for the payments under different measures must be the same. For example, paying for a 6 metre grass buffer strip to be created under the greening measures in Pillar 1 and the same width buffer strip in the same location under the agri-environment-climate measure would be double funding. This principle is well established already in the operation of the CAP. For example in the past, agri-environment payments on land managed for environmental purposes under set-aside had to be for actions that were additional to the management required under set-aside. Equally, payment for a grass margin alongside a field boundary

¹ LUPG supports the work of Scottish Natural Heritage, the Scottish Environment Protection Agency, the Countryside Council for Wales, Natural England, the Environment Agency and the Northern Ireland Environment Agency as a mechanism for commissioning research and providing advice to government.

² See Article 111 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248, 16.9.2002).

cannot be received twice, even if the gross margin can be used for different purposes (i.e. as a footpath and as a buffer to an environmental feature).

This is not to say that multiple payments cannot be provided on the same piece of land as long as the payments are for different activities, the rationale for the payment is different and therefore related to different costs. So, for example, the co-occurrence of the Pillar 1 basic payments and Pillar 2 environmental payments on the same parcel of land does not technically constitute double funding. This means that decoupled direct payments, LFA payments (compensating for the income foregone and additional costs resulting from constraints on production due to various biophysical characteristics of delimited areas) and agri-environment payments (payments for the income foregone and additional costs related to carrying out specific environmentally beneficial management) are all separate payments for different purposes and do not constitute double funding in a technical sense.

Of course, in reality, the distinction is less clear cut, particularly when the rationale behind different measures evolves or indirectly outcomes are achieved that are not the main focus of the payment. This can be seen with the LFA payments (now called Areas of Natural Constraints). Despite the fact that in many parts of the UK, there is more of an effort to ensure that payments deliver environmental outcomes, the rationale for the measure is to provide compensation for the natural handicaps or constraints experienced. Although the outcomes achieved may be environmentally beneficial in many places, often this is an indirect result of payments which have allowed farming activity in the area concerned to be maintained. Technically, therefore the delivery of the environmental outcome is not part of the rationale behind the measure or the associated payment calculation. Indeed, the payments are even notified under different green box headings within the WTO Agriculture agreement, with the payment for Areas of Natural Constraint notified as 'payments under regional assistance programmes' (paragraph 13 of Annex 2), whereas agri-environment payments are notified as 'payments under environmental programmes' (paragraph 12 of Annex 2).

When thinking about double funding, therefore, it is important to be clear about the purpose of the payment/measure in question. The outcome can be the same (i.e. extensive grazing in upland areas), but if the payment rationale is different, and therefore the purpose and nature of the activity that is being paid for is different, then this is not technically double funding.

It is also important not to conflate the concepts of double funding and additionality or added value. Although both double funding and a lack of additionality demonstrate an inefficient use of public money, they are distinct concepts. In contrast to double funding, additionality involves achieving additional (environmental) benefits through the use of funding over and above that which would have been achieved without the funding being in place. This might be demonstrated through an increase in environmental outcomes, i.e. an increase in bird numbers, improved water quality or it might involve maintaining the environmental benefits already in place where there is a threat that these might otherwise be lost (i.e. maintaining semi-natural grassland). Clarity about the counterfactual is important for assessing additionality and is a key element in assessing the need for intervention and the use of public funds.

1.3 Issues of double funding in relation to current CAP proposals

1.3.1 Background and Context

Under the Commission's original proposals, it was clear that in the future, all activities funded under the agri-environment-climate measure (AECM) would need to be additional to the three compulsory greening measures under Pillar 1. In other words, the greening measures form a new environmental baseline for the application of the AECM under Pillar 2.

These proposals, however, have come under a great deal of criticism, both from Member States and the European Parliament as well as stakeholders. A number of counter proposals have been put forward which seek to introduce alternative approaches to address greening and/or revise the current proposals to make them far more flexible. These include, for example the introduction of a menu of green measures from which Member States or farmers can choose as well as by extending the list of the types of activities that could be defined as 'green by definition' alongside organic farmers (who are exempt from greening under the Commission's original proposal).

The Commission responded to some of these counter proposals in its concept note on greening of May 2012 and makes it clear that double funding is not permitted, and this has been backed up by the EP rapporteur on the Direct Payment and Rural Development Regulations. However, others have not been so adamant that double funding should be avoided, with some even suggesting that double funding should be allowed, most notably Copa-Cogeca, many Member States and the EP rapporteur on the Horizontal Regulations. This has led to concerns that the Commission may cede their strong stance on this issue to date during the negotiations.

The Commission have sought to clarify the situation in relation to double funding in a working document on the topic ('fiche 17: Linkages between Pillar I and Pillar II and new baseline for agri-environmental-climate measures'), which was circulated in April³. Despite this, however, confusion remains.

The ongoing debate and concerns are borne, to a large extent, from a lack of clarity on two aspects – firstly the precise environmental goals of the greening measures and hence on the environmental baseline set by the green direct payments and secondly the measures in Pillar 2 to which this baseline applies (i.e. those whose rationale/intervention logic concerns the direct provision of environmental public goods). Much of the confusion relates to the situation in relation to land registered as organic. This land is deemed to be *de facto* 'green by definition' and because of this it does not have to demonstrate any 'equivalence' with the Pillar 1 green measures. Because of the different rationales behind the organic measure as the agri-environment-climate measures in Pillar 2, the automatic receipt of the green direct payments by organic farmers is not considered to raise double funding issues in relation to funding under the organic measure under Pillar 2. However, this would be

³ CAP-REFORM Fiche No 17, Linkages between Pillar I and Pillar II and new baseline for agri-environmental-climate measures, Brussels, 25 April 2012 – <http://register.consilium.europa.eu/pdf/en/12/st09/st09206.en12.pdf>

considered double funding in relation to the AECM, because the rationale for the measures is in both cases environmental. This means that organic farmers who wanted to receive funding under the AECM could only do so for actions that go beyond the new environmental baseline actions required under the Pillar 1 green measures.

1.3.2 Bringing clarity to the confusion?

It is clear that the CAP proposals should not contravene the EU Financial Regulations in relation to double funding as explained above. Cases of breach by Member States ultimately could result in disallowance of payments or perhaps fines. There are a number of places where the requirement to avoid double funding is stipulated in the proposed Regulations and associated working documents.

For example, Article 29 of the *Horizontal Regulations*⁴, entitled 'No double funding' states that '*Without prejudice to the eligibility for support under Article 30(2) [the organic farming measure] of Regulation (EU) No RD/xxx, expenditure financed under the EAFRD shall not be subject of any other financing under the EU budget.*'

However, the main detailed references to double funding relate to the relationship between the green direct payments in Pillar 1 and payments under **the agri-environment-climate measure** which are contained in the Commission's concept paper⁵ and the working document Fiche 17⁶. This is important as different arguments are made for organic farmland being 'green by definition' and payments under the Pillar 2 **organic measure** (see below).

The Commission are clear in their concept paper that double funding of the same measures under the Pillar 1 greening and agri-environment schemes in Pillar 2 is not permissible. This states that, '*the greening measures ... raise the baseline, thereby increasing the environmental ambition for more targeted Rural Development measures*'. It continues that:

'the conditions which the agri-environment-climate commitments or the environmental certification scheme would have to comply with concern:

- *.... an environmental ambition level that goes beyond the ambition level of greening...'*

This is also made clear in the Commission's 'fiche 17' which explains the relationship between Pillar 1 and Pillar 2 measures and the new environmental baseline:

'Reinforced cross compliance and the greening practices of 1st pillar will be part of a new and higher baseline for the more targeted agri-environment-climate measures (AECM) under Pillar II. This baseline is key for ensuring the overall consistency

⁴ COM(2011) 628 final/2 - Proposal for a Regulation of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy, 19 October 2011

⁵ http://ec.europa.eu/agriculture/cap-post-2013/legal-proposals/concept-paper-on-greening_en.pdf

⁶ CAP-REFORM Fiche No 17, Linkages between Pillar I and Pillar II and new baseline for agri-environmental-climate measures, Brussels, 25 April 2012 –

<http://register.consilium.europa.eu/pdf/en/12/st09/st09206.en12.pdf>

between the various "green" elements of the CAP. Payments for future AECM shall not cover any income foregone and cost incurred related to the greening requirements under the 1st Pillar. If the relevant greening requirements are not respected, the green payment of 1st Pillar will be reduced and the level of the AECM payment of 2nd Pillar will also be affected'.

Some illustrative examples are provided to demonstrate how the interrelationship between the Pillar 1 green measures and the agri-environment-climate measure might work in practice (without prejudice to the content of future Rural Development programmes). These are set out in Annex 1.

This would appear fairly clear and straightforward in theory. The practice of course is much more complex, especially when it comes to determining which activities under agri-environment-climate agreements might be deemed to be 'equivalent' to the Pillar 1 greening measures and therefore excluded from an agri-environment payment so as not to be paid twice for the same action. The simplest approach here would be only to permit 'direct equivalence'. This would be defined where the agri-environment-climate action is exactly the same as the greening measure. However, there are few, if any, agri-environment schemes currently that contain replica measures to those proposed for Pillar 1 greening, so this may not be feasible in practice. Some sort of equivalence table / matrix will no doubt need to be constructed for each agri-environment-climate scheme to demonstrate which actions/options over which area of land are considered 'equivalent' and revised payment calculations put in place for these to take account of the Pillar 1 payment.

The Organic Question: The situation in relation to Organic Farming is genuinely difficult. However the issue becomes clearer, at least in a theoretical sense, when a closer look is taken at the purpose/intervention logic of the Pillar 2 measures with which the issue of double funding arises.

The Commission has deemed it appropriate that farmers that comply with requirements of organic farming legislation will be entitled *ipso facto* to the greening payment under Pillar 1. It should be noted that this rule relates only to the area of land that is managed in accordance with organic regulations. If a holding were to have some organic and some conventionally farmed land, then the latter would be subject to compliance with the green Pillar 1 measures in order to receive their green direct payments⁷.

There is not considered to be any issue of double funding with the receipt of the green direct payments and the receipt of payments under the organic measure under Pillar 2, as made clear in Article 29 of the proposed Horizontal Regulations. The rationale (or intervention logic) of the Pillar 2 organic payment is to provide compensation for the loss of income and additional costs incurred from switching to organic farming production methods during the transitional period as well as the ongoing differential between organic and conventional production beyond this period, where this exists. The Pillar 2 measure's logic, and therefore payments are not technically for the delivery of environmental benefits, even if ultimately the reason public money is used to support organic farming methods is because the evidence suggests they are more environmentally benign.

⁷ CAP-REFORM Fiche No 17: <http://register.consilium.europa.eu/pdf/en/12/st09/st09206.en12.pdf>

However, for those organic farmers who are also in receipt of payments under the agri-environment-climate measure, the same considerations apply regarding double funding as those for non-organic farmers. In other words, here the Pillar 1 greening measures do form part of the environmental baseline for payments under the AECM. This is because the rationale of the two payments is the same – payments for providing environmental goods. The Commission states that *‘if a beneficiary of organic farming support under Pillar II is also a beneficiary of an AECM ... the payment level linked to the AECM will be calculated on the basis of a reference level which includes the relevant greening provisions. If the relevant greening requirements are not respected, the level of the AECM payment will be affected.’*⁸

The situation for Natura 2000: A similar argument is put forward for farmers in Natura 2000 areas in terms of their ability to receive the green payments under Pillar 1 as well as the compensation payments under the Natura 2000 measure (Article 31) under Pillar 2. Farmers in Natura 2000 areas have to respect the Pillar 1 greening measures to be eligible for the green proportion of direct payments unless these practices are incompatible with the objectives of the Birds and Habitats Directives and the management requirements put in place for the site. However, as with organic farming, the Commission do not consider there to be an issue of double funding between the green direct payments and the Pillar 2 Natura 2000 measure because the intervention logic of the Pillar 2 Natura 2000 measure is to compensate the income foregone and costs incurred from the disadvantages caused by Natura 2000 restrictions in the areas concerned, not to pay directly for environmental management. As a result the environmental baseline for payments is cross-compliance (GAEC) and not the Pillar 1 greening measures.

However, because the Natura 2000 restrictions or requirements which are compensated for under the Pillar 2 N2K measure are environmental in nature, there may be situations where these overlap partly with the greening measures. This is only thought to occur ‘in a limited number of cases’ and despite this, the Commission suggest that *‘the cost incurred and income foregone calculation of the Natura 2000 support will not take the greening provisions into account. This is justified by the higher risk of land abandonment in Natura 2000 areas, which cannot be sufficiently addressed by the payment under 1st pillar including the greening component’*⁹. The fiche elaborates with an example: if there is a ban on input use in a Natura 2000 area and, as a consequence, farmers most likely are able only to grow grass or have land left fallow, those farmers concerned may be compensated for this restriction by Natura 2000 support under Pillar 2 and may also receive the green payment which is linked to the greening practices under EFA (among which is land left fallow) and maintaining permanent grassland.

However, if a farmer in a Natura 2000 area also wished to claim payments under the AECM, then the Pillar 1 greening measures do form part of the environmental baseline for payments under the AECM. This is because the rationale of the two payments is the same – payments for providing environmental goods. This is clarified in fiche 17, where the Commission states that *‘... if a beneficiary of Natura 2000 support under Pillar II is also a beneficiary of an AECM ... the payment level linked to the AECM will be calculated on the basis of a reference level which includes the relevant greening provisions’*.

⁸ CAP-REFORM Fiche No 17: <http://register.consilium.europa.eu/pdf/en/12/st09/st09206.en12.pdf>

⁹ CAP-REFORM Fiche No 17: <http://register.consilium.europa.eu/pdf/en/12/st09/st09206.en12.pdf>

Areas of Natural Constraint: The avoidance of double funding is much clearer when it comes to the new measures for farmers in areas of Natural Constraint in Pillar 1 and Pillar 2. Here the Commission have stated that *'If the farmer benefits from the payment under Article 34 of the direct payments regulation (top-up for farmers within ANC's), the latter has to be deducted from the second pillar payment. It has to be borne in mind that if the resulting amount (after the deduction) is lower than 25 €/ha [the minimum payment in Pillar 2], no payment can be granted in the second pillar'*¹⁰.

1.4 Commentary and implications

It would seem to be an obvious statement that, if double funding for environmental measures were to be permitted under the future CAP, this would be a significant infringement of the underlying principle and rules concerning the use of public money.

However, a new CAP structure as part of the CAP reforms inevitably leads to new relationships between the different measures and hence new eligibility rules to avoid double funding. There are legitimate reasons why there should be transitional arrangements in certain situations, for example honouring those agri-environment agreements that were entered into by farmers before the new proposals were announced, with no requirement for changes in payment rates or the exclusion of certain activities until the agreement renewal date is reached. This would mean that a small element of double funding would be permitted over a short fixed period to avoid undue administrative burden in revising all agri-environment agreements as well as to avoid the risk of damaging the goodwill and commitment of farmers to the environment that has been built up over the years.

The Commission, backed up by the EP reports on the direct payments and rural development regulations, have attempted to reinforce the principle of no double funding in the draft legislative texts, the concept paper and the unpublished 'fiches' on different aspects of the proposals. However, other stakeholders, some Member States and the EP rapporteur on the horizontal regulations seem to be less concerned with avoiding such double funding.

Indeed, unlike the rapporteur on direct payments (Capoulas Santos) the rapporteur on the Common Rules Regulation (La Via) proposed that the double funding of the green payments in Pillar 1 and the agri-environment-climate payment under Pillar 2 should be permitted¹¹. Other stakeholders, particularly Copa-Cogeca, have also called for those in receipt of agri-environment payments to be treated in the same way as organic farmers and be *de facto* eligible for the Pillar 1 green payments on top of their existing agri-environment payments. Despite this, however, the NFU, in a recent briefing on the EP rapporteur reports, are aware that calling for double funding is unlikely to be successful in the long run, acknowledging

¹⁰ CAP-REFROM Fiche No 21, Areas with constraints, Brussels, 11 May 2012

¹¹ See amendment 39 of Giovanni La Via's DRAFT REPORT on the proposal for a regulation of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural Policy (COM(2011)0628 – C7-0341/2011 – 2011/0288(COD)), Committee on Agriculture and Rural Development, 30.05.2012

that it is unlikely to be a credible option given Commission opposition¹² and that no double funding is a principle which is well established in European law¹³.

Such calls, however, would seem to misinterpret the intervention logic/rationale of the different measures in question. As highlighted above, if the intervention logic for each measure is different, then the payments made are technically for different purposes, with the result that no double funding occurs. This is why the Pillar 1 green measures do form a new environmental baseline, and impact as a result upon the cost calculations for activities under the agri-environment-climate measure, but do not impinge upon payments under the new organic farming measure or the Natura 2000 measure, as the Commission has outlined.

These technical arguments are not necessarily as clear cut or as obvious as they might be, not least because the intervention logics of certain measures, particularly the Pillar 1 basic payment and the green direct payments are not yet articulated sufficiently clearly. There is also no economic justification provided about the level of per hectare payments provided to farmers under the basic payment and the 30 per cent allocation of the Pillar 1 national ceilings for green direct payments. As a result the per-hectare payment is purely a symbolic number, not based on any estimates of the cost of the action required to meet particular environmental outcomes. If the arguments about double funding are to be robust then the intervention logic needs to be much clearer.

Permitting double funding could, it has been argued, also endanger WTO green box status because the 'income forgone and additional cost' calculation underpinning environmental payments in Pillar 2 (Article 12 of the Agriculture Agreement) effectively would be cross subsidised by the Pillar 1 greening payment. Indeed, it is difficult to see how the payment calculation for a particular Pillar 2 agri-environment action could not be affected by the same activity already being required, implemented and paid for under Pillar 1. As a separate issue, of course, double funding also leads to a reduction in the level of environmental benefit that can be purchased through the use of the CAP budget as it ties up more money in purchasing the same benefit, or in other words provides no more environmental benefit that is provided under the current system.

Although the Commission have already sought to provide clarity on the principles of double funding, there continues to be a need for these arguments to be articulated strongly as part of the CAP negotiations, so that calls for double funding to be permitted can be quashed. It is important to ensure that this principle remains central to all funding under the CAP so that the introduction of green direct payments does not duplicate support that is already provided under the agri-environment-climate measure, but rather provide a basic level of environmental management on which the agri-environment-climate measure can build.

Kaley Hart, 5 October 2012

¹² <http://www.nfuonline.com/Our-work/Economics-and-International/CAP/State-of-play---CAP-reform-negotiations-June-2012/>

¹³ <http://www.nfuonline.com/Our-work/Economics-and-International/CAP/Santos%e2%80%99-draft-CAP-and-rural-development-reports--What-s-in-them-/>

ANNEX 1

Box 1: Working Examples of the interaction between Pillar 1 green measures and the agri-environment-climate measure in Pillar 2 included in Fiche 17

Ecological Focus Areas:

Some existing agri-environmental measures concern the maintenance and the management of natural features, the establishment and management of buffer strips (beyond what is required by specific legislation), field margins, fallow land, set-aside and ecological infrastructures. In the future, AECM which relate to the same type of features counted as EFA, should be defined in such a way that the effort and the environmental benefits go beyond relevant cross compliance requirements and the EFA requirement in the 1st pillar. There are for instance two not mutually exclusive ways of defining AECM accordingly: 1. quantitatively: AECM could compensate for additional EFA on the holding (e.g. 3% extra EFA, bringing the EFA overall to 10% of the holding); 2. qualitatively: AECM could compensate for management requirements on the 7% EFA (e.g. appropriate cutting of hedges, mowing dates, ecological optimisation of what grows on the EFA, farm management plan, etc.

Crop Diversification:

The future AECM of a similar nature should be designed in such a way that the required effort goes beyond the greening practices quantitatively and/ or qualitatively and add environmental value. For instance, AECM could be a crop diversification commitment with e.g. at least 3 crops, the main crop covering not more than 50% of the arable area and the 2 minor crops with at least a share of 10% of the arable land each. Another crop diversification-related commitment within AECM could include additional requirements such as specific seeds for birds/ bees, inclusion of specific environmentally beneficial types of crops, catch crops, etc. AECM could also include a crop rotation commitment over 5 years with, e.g. at least 3 crops, the main crop covering not more than 60% of the arable area and the 2 minor crops covering each at least 10% of the arable land.

Permanent Grassland

Existing agri-environmental measures on permanent grassland cover a wide number of issues, from the maintenance of grassland and extensive grazing practices through conversion of arable land to grassland to specific practices linked to management of semi-natural habitats related to permanent grassland. The future AECM of a similar nature should be designed in such a way that the required effort goes beyond relevant cross compliance requirements and the greening practices and add environmental value. For instance, AECM could compensate for additional management requirements e.g. appropriate mowing dates, reduced or no use of fertiliser, and/or no reseeding, etc.

Source: CAP-REFORM Fiche No 17: <http://register.consilium.europa.eu/pdf/en/12/st09/st09206.en12.pdf>