



BirdLife International's response to the Commission public consultation on the Issues Addressed in the "Health Check" Communication

January 2008

1 Taking stock of the implementation and simplifying the Single Payment Scheme

1.1 Simplifying the Single Payment Scheme

- With respect to which rules could the SPS be further simplified without negatively affecting the functioning of the system?
- Do you agree that Member States should be allowed to adjust their SPS model towards a more flat rate of support, at national or regional level?
- What type of impacts would you expect with the introduction of flatter rates of support for farmers?

BirdLife believes that all public payments should eventually be clearly linked to the delivery of specific public goods. BirdLife does not believe that current pillar I payments can be seen as a viable solution in the long term (for our Vision on the future of the CAP, see <http://www.birdlife.org/eu/pdfs/CAP%20Brochure.pdf>). However, within the current budget period, every measure should be taken to correct the most egregious distortions of the direct payments system.

Although decoupling has been advocated by BirdLife for many years as a necessary step in the process of CAP reform, we have been advocating from the start against the historical basis for allocating the Single Farm Payments. High payments based on historic income are still benefiting the most intensive farmers, the majority of which have been responsible for the widespread loss of farmland wildlife. Farmers with historically low income, such as most farmers in High Nature Value systems are, on the other hand, penalised. The historical allocation approach also leads to the widely criticised perverse outcome by which organic farmers receive on average less public support than conventional farmers, despite their better environmental record and widespread public opinion support. BirdLife believes that all direct payments should be paid on

the basis of national or regional flat rate area payments across all agriculture land, transparently linked to cross compliance conditions delivering higher standards than those already imposed through legislation. Implementing such a system in all EU countries within the current period could pave the way for a future system whereby payments are clearly linked to land stewardship. Retaining the wide disparity in payments based on past production until 2013 would be very damaging for the image of the CAP. All the more so, when high prices of cereals and other commodities transform into an unsatisfactory system of payments still justified as compensation for past price reductions. The transition from historic to flat rate payments entails a redistribution of subsidies. In most cases, this redistribution would be away from intensive farmers that tend to be more environmentally harmful and more competitive, toward more extensive and less competitive farmers. Such farmers are in greater need of support and, in many cases, deliver substantial and often non-rewarded public goods. However, it is appreciated that some incidental problems may arise, and measures must be put in place to manage these. For example, the incentive to declare wooded pastures or old orchards as agricultural land could lead to their damage due to obligations to keep land under GAEC. Another problem may arise when flat rate (non-tradable) payments make it more expensive to secure land for habitat and ecosystem restoration. For example, authorities face the risk of having to compensate the value of subsidies when seeking to use agricultural land for floodplain and coastal restoration (important climate change adaptation measures that will need to become much more common in the future).

1.2 Cross-Compliance:

- What would be the potential outcome of maintaining the cross-compliance at its existing standards?
- What impacts do you see emerging with the possible addition/deletion of certain legal requirements or GAEC standards?

Cross compliance has the potential to increase compliance with EU legislation and improve basic environmental practices. In doing so, it increases the legitimacy of public payments for farmers, although the high level of subsidies received is disproportionate to the level of requirements. Currently, cross compliance standards are failing to deliver on several key concerns¹, and they need to be improved so they can play a role in addressing the environmental challenges that European agriculture faces, including biodiversity loss, water management, and climate change.

¹ Farmer and Swales (2004), *The development and implementation of cross compliance in the EU15: an analysis*, IEEP report for the RSPB.

There are a number of requirements in cross compliance that relate directly to the environment, but that are performing poorly and need to be improved. The process for implementing and complying with cross compliance standards is also responsible for the failure in achieving their objectives. The following points propose concrete ways of improving cross compliance, both on the content and process side. It is important to note that DG Agriculture's own studies² have shown that current cross compliance standards are creating a very marginal burden on farmers, which is largely attributed to sanitary regulations only. Environmental rules are currently so weak, and control levels so low, that any suggestion of 'watering down' the requirements will risk making cross compliance meaningless. On the other hand, the following proposals would be workable, unbureaucratic and deliver much greater environmental benefits than the cost of implementing them.

- ***Protect permanent grassland***

Permanent grassland is one of the most important farmed habitats in the EU for biodiversity, and an important carbon sink³. Cross compliance currently requires Member States to monitor the area covered by permanent pasture and ensure that the overall area does not decline by more than 10%. These rules are completely inadequate. They allow for a 10% reduction in grassland area at the national level, which can result in the virtual elimination of grassland cover from the most vulnerable areas (fertile lowlands where most of the landscape has already been converted to arable). It also allows for the destruction of ancient, carbon-rich and biodiversity valuable grasslands, as long as an equivalent arable area is planted with artificial grass cover. From both a biodiversity and climate perspective, there is absolutely no equivalence between these two land uses. Cross compliance should therefore be amended to strictly protect (from conversion to arable or permanent crops) all permanent grasslands at the farm level. This rule would be aimed at truly permanent grassland, not at grassland that is part of normal crop rotation systems. To this end, we suggest defining permanent grassland as grassland that has been undisturbed for 10 years or more. However, appropriate derogations should be allowed to permit environmentally beneficial conversion of low-biodiversity grassland to create arable

² Directorate-General for Agriculture and Rural Development (2007), *Study to assess the administrative burden on farms arising from the CAP*

³ JRC & EEA (2006). *Proceedings of the expert consultation "Sustainable bioenergy cropping systems for the Mediterranean"*. Madrid, 9-10 February 2006.

Vellinga, V; A. van den Pol-van Dasselaar and P.J. Kuikman (2005). *The impact of grassland ploughing on CO₂ and N₂O emissions in the Netherlands*. *Nutrient Cycling in Agroecosystems* 70: 33 – 45.

Freibauer, A; M.D.A. Rounsevell, P. Smith, A. Verhagen, *Carbon sequestration in European agricultural soils*, *Soil Science Review*, 2004

pockets where this would be environmentally beneficial, for example in areas where the main land use is grassland and where the creation of arable pockets would help diversify the area at a landscape level.

- ***Protect landscape features***

One of the key GAEC requirements is to avoid destruction of important landscape features. However, very few Member States have implemented this properly⁴, because the wording of the requirement is too vague. The loss of landscape features, such as hedgerows, bushes and small wet areas, is an important cause of biodiversity decline and greatly damages the aesthetic quality of the landscape. Such features are also a traditional component of the cultural heritage in many countries and should therefore be protected. The Regulation should be amended to include a list of landscape features that must be protected. Member States would then be free to add but not delete elements from the list, although there will inevitably be some features that will not exist in certain countries. The list should include, as a minimum, wooded patches, hedgerows, tree lines, isolated trees/bushes, wetlands and ponds, main ditches and watercourses, stone walls, and pockets of native vegetation/scrub. Member States should also be required to undertake specific controls, using remote sensing, on the actual maintenance of landscape elements.

- ***Remove unnecessary management requirements with perverse outcomes***

Decoupling may release some land from intensive production that could deliver very important environmental benefits. However, these benefits are being jeopardised by unnecessary cross-compliance requirements that have a negative impact on biodiversity and are often onerous for farmers⁵. In particular, many Member States require farmers to control vegetation growth during the spring breeding season for birds, causing unnecessary destruction of nests.

The Regulation needs to address this by clarifying that the conservation of biodiversity linked to open habitats, landscape features and unfarmed (abandoned) fields is a key objective of GAEC. Wildlife habitat

⁴ Farmer and Swales (2004), *The development and implementation of cross compliance in the EU15: an analysis*, IEEP report for the RSPB.

⁵ Moravec and Zemeckis (2007) *Cross Compliance and Land Abandonment*. A Research Paper of the Cross Compliance Network, Deliverable 17.

restoration should always be permitted and encouraged on land no longer cultivated. We suggest the following key amendments:

- Spraying and ploughing of un-cropped land should be prohibited as a rule. Minimum tillage and other methods should be permitted only where it can be shown to bring further environmental benefits.
 - Mowing to be undertaken outside the breeding season and at the minimal frequency necessary to maintain habitat quality and prevent scrub encroachment.
 - Management of landscape features, such as hedgerows and ditches, as well as other un-cropped land, should be undertaken outside the breeding season, at minimal frequency using mechanical rather than chemical means.
- ***Introduce binding guidelines for the implementation of the Birds and Habitats Directives***

Compliance with the Birds and Habitats Directives is required by cross-compliance, but most of the Directives' requirements are meaningless to farmers in the absence of specific guidance. Even Natura 2000 management plans, in many cases, do not contain management prescriptions relevant to farming. This means that the objectives of the Directives are not met and that farmers are left uncertain as to whether they are in compliance⁶. Clear guidance is needed from the Commission, explaining exactly what type of rules should be defined by the authorities in charge of Natura 2000 management in Member States, including, for example, requirements to introduce mowing exclusion dates to ensure the breeding season is avoided, the protection of designated habitats, and prevention of over-stocking. Member States would implement the Directives through setting prescriptions at the national and site level, ensuring they meet the guidelines set by the Commission. Member State agriculture authorities should be required to ensure farmers are informed of these prescriptions at the point they apply for Single Payment titles and kept informed on a regular basis. There should also be a mechanism for monitoring the implementation of prescriptions.

⁶ Swales (2007) *The Likely Effects of Cross Compliance on the Environment* A Research Paper of the Cross Compliance Network

- *A programming approach for GAEC⁷*

Many of the problems with cross-compliance have arisen with implementation of GAEC at the Member State level. These could be addressed through introducing a programming approach similar to that applied under the Rural Development Regulation. This would entail the Commission producing guidelines, with Member States then submitting an implementation plan for Commission approval. Amongst other issues, the plan would need to include details of initiatives to monitor the impacts of cross compliance. Programming would also need to be done in full consultation with stakeholders including farmers, environmental NGOs and environmental authorities. Any derogations from the general rules should be duly justified and reported to the Commission on an annual basis.

- *Improving the control system⁸*

The current control system is based on a very small number of random visits to farms, which in many areas amount to an individual inspection rate of once in a century. This cannot deliver compliance with many of the rules relevant to biodiversity, particularly those where compliance can only be monitored in a particular season or with the aid of reference maps that might not be available. A risk-based control system with specific control criteria relating to the environmental standards in cross compliance would be much more appropriate. For certain issues, such as landscape elements and permanent pasture, the use of remote sensing for compliance checks could reduce farm visits whilst efficiently increasing control rates.

- *More effective penalties*

Under the current system, penalties are small, temporary and are unlikely to deter farmers from committing infractions that lead to substantial economic benefits. Following the detection of infringements, farmers should be required to reverse the damage caused where possible. For example, ploughed grassland would need to be restored, and controls and penalties apply until this happens. In the case of permanent damage, such as the destruction of ancient limestone dry

⁷ Farmer and Swales (2007) *Future Policy Options for Cross Compliance* A Research Paper of the Cross Compliance Network, Deliverable 23

⁸ As above.

grasslands through rock grinding, the subsidy reduction would be permanent.

- *Evaluation and continuous improvement*⁹

No rules can be perfect from the onset and a system that allows for continuous improvement is in the interest of both the environment and farmers. Member States should be required to set up an evaluation system, based on targeted research, to determine the effectiveness of cross compliance and feed the results back into the rules. The effectiveness of cross compliance standards should be periodically assessed, with the involvement of the Commission and civil society. This would result in both better delivery and the possible relaxation of unnecessarily strict rules.

- *Water and Climate protection*

See section 3.2

1.3 Partially coupled support

- Should decoupling be applied in full extent to all sectors? Would there be specific impacts with this option?
- Should decoupling be applied in full extension but negative impacts mitigated by alternative flanking measures? In this case, what kind of measures?
- Are there any sectors where targeted, partially coupled support should remain and which problems do you consider this support to mitigate?

Birdlife International has strongly supported decoupling of CAP payments since before the Agenda 2000 reforms. Full decoupling is in line with the original motivation for CAP reform, i.e.: to achieve a less trade distorting, less bureaucratic, and greener CAP. Coupled payments are a very inefficient way of pursuing environmental or social policy objectives. We believe that the smooth introduction of fully decoupled payments in many EU countries leaves no doubt that partial coupling is an outdated tool that should be done away with.

However, the issue of full decoupling cannot be considered in isolation. Allowing European agriculture to become more market-led brings benefits, but also exposes most of Europe's countryside to economic forces that do not recognise environmental values. BirdLife believes that the role of public policy

9

should be to ensure that agriculture continues to provide those goods that society needs and expects, but which consumers are unwilling or not easily able to pay for. This can either be in the form of regulation against pollution and degradation, or by creating a market for public goods through the Rural Development Regulation. We believe that further decoupling is positive, but must be accompanied by a consolidation of cross compliance (see section 1.2) and by targeting substantial support at those High Nature Value farming systems that deliver important public goods, but are likely to be uncompetitive on a free market and are thus threatened with widespread abandonment. We believe that a thorough revision of the “Article 69” mechanism could provide a partial solution to the latter concern.

Article 69 of the Horizontal Regulation of September 2003 (EC 1782/2003) authorises the creation of a National Envelope, using up to 10% of funds from a certain sector, to be redistributed within that sector and paid on an annual basis. The Regulation states that “The additional payment shall be granted for specific types of farming which are important for the protection of the environment or for improving the quality and marketing of agricultural products...”.

Very few countries have applied Article 69, however, partly because of the restrictive conditions attached to its use. In its current form, this tool’s effectiveness is also hampered by the need to move funding strictly within sectors. It means that there is no way of shifting funds toward sectors that need and merit special support because of their outstanding environmental delivery or severe competitive disadvantage.

The use of Article 69 provisions in Scotland since January 2005 highlights the need to refine and improve these provisions, if they are to deliver for the environment. In Scotland, a national envelope has operated for the beef sector since January 2005, in the form of the Scottish Beef Calf Scheme. The accelerating loss of beef cattle from the North and West of the country is a cause of concern in economic and social terms, but also in environmental terms, since conservation grazing and mixed livestock systems are essential in maintaining habitat for some important species, including corncrake (*Crex crex*). An envelope was created whereby 10% of Single Farm Payments from the beef sector are re-distributed, with payments made on all beef-bred calves born. Higher payments are made on the first 10 beef calves in a herd, as a crude means of targeting payments towards smaller producers. However, the Scottish beef envelope does not seem to be adequately addressing its environmental objectives of retaining beef cattle in important areas, partly because it was created with the dual objective of maintaining the overall quality of the Scottish beef herd nationally. The main problem, however, is that the provisions were too restrictive to allow targeting at sub-sectors of the beef sector, geographically within the country, or specifically to achieve environmental objectives.

Increasing the flexibility of Article 69 would allow a more useful beef envelope to be created, properly addressing the environmental problems that can result from loss of cattle from economically and environmentally marginal areas.

Given the lack of funding under Rural Development Programmes during this programming period, Article 69 could be a very important tool for addressing key environmental challenges, increasing the amount of CAP support that is clearly targeted at the delivery of public goods and rebalancing some of the distortions of current spending patterns.

BirdLife believe that a modified “Article 69” mechanism could play a key role in the Health Check and deliver a real contribution to improving the CAP in the short-term. In particular, it seems particularly useful tool for supporting High Nature Value farming systems that are otherwise in serious decline, driving loss of biodiversity, landscape quality and other public goods.

Article 69 cannot, as currently designed, be used as an effective means of addressing environmental challenges, since the permissible amount of funds that can be used is too small and the conditions attached to its use too restrictive. For example, a beef envelope to support High Nature Value grazing systems would not be possible as a result of these conditions.

BirdLife recommends that Article 69 be amended as follows:

- Allow the creation of envelopes with up to 30% of pillar I payments (both Single Farm Payment funds and still coupled sector payments) in a Member State.
- Restrict the use of envelopes to addressing the new environmental challenges as described in the CAP Health Check Green Paper, while allowing MS to define eligibility criteria on the basis of land management (extensive grazing, dryland cultivation etc) relying on the definition of High Nature Value (HNV) farming.
- Allow the targeting of national envelopes at specific challenges, even where this results in a redistribution of funds.

BirdLife understands that there is concern over the voluntary nature of Article 69, which may result in uneven use across the EU. We do not believe that this fear should prevent Member States and the EU from addressing the very real and urgent challenges of biodiversity loss, water scarcity and pollution, and climate change. The best option would be an agreed EU-wide percentage and clear guidelines ensuring that funding is indeed directed everywhere toward addressing the same key challenges, while allowing Member States the flexibility to address localised differences. BirdLife believes that the High Nature Value (HNV) concept, developed by the Commission in cooperation

with Member States, offers the best tool for targeting funds without risking accusations of the “re-coupling” of subsidies to production. Linking the re-targeted payments to eligibility based on the environmental value of land management, rather than on type of production, would also make the tool more robust vis-à-vis the WTO Green box definition.

1.4 Upper and lower limits in support levels

- How effective do you think capping will be in addressing the problem of the uneven distribution of payments between the farmers?
- What would be in your opinion the advantages and disadvantages between the application of an absolute or progressive way in the introduction upper thresholds in payments?
- In the context that a large number of farmers receive significantly low amount of payments, in many cases even below the administrative costs, what potential impacts do you see in the option of adopting a minimum level in payments?

The debate around the capping of higher subsidies stems from the confusion over the role of direct payments. In the future, BirdLife would like to see most public payments to farmers clearly linked to environmental delivery. Such payments would reward farmers for the positive delivery of public goods and would thus be highly legitimate use of public funds. The level of such payments would have to be related to the level of public goods delivery and there would be no rationale in capping them. We believe there will be a role for limited and targeted additional support in the case of High Nature Value farming systems that are uncompetitive on a free market, and where the risk of outright abandonment means that society might lose the main provider of public goods in certain regions. Such targeted support, ideally delivered through a reformed Less Favoured Areas (LFAs) scheme might require a certain level of capping, since very large landowners might not require large support.

In the short term, the Commission and Council should make clear the aim of pillar I payments and act accordingly. Current payments cannot be credibly seen as rewarding land stewardship, as there is no connection between the amount paid and quality of land management. As income support, this raises the question of the legitimacy of using taxpayers’ money to supplement the income of some of the EU wealthiest citizens and corporations.

On this basis, BirdLife International sees capping of subsidies principally as a complement to Modulation, i.e. as a way to transfer funds from untargeted and mostly wasteful direct payments to more targeted and efficient Rural Development schemes.

It must be noted that the largest farm holdings are likely to avoid payment reductions by dividing their farms, something that, according to anecdotal evidence, many are already doing. This means that the real way to increase the effectiveness of the current CAP is through a combination of strong modulation, retargeting of Pillar I payments toward High Nature Value farming systems and a transition to flat rate payments. The capping debate should not be used as a 'smoke screen' to avoid an honest debate on the purpose and efficiency of direct payments.

Finally, the proposal to eliminate payments to the smallest beneficiaries is likely to further the situation whereby millions of small semi-subsistence or part time farmers, especially in the new Member States, are excluded from all CAP support. It must be noted that in many cases, it is precisely these farmers who are responsible for biodiversity and landscape conservation, and they are the ones progressively being pushed off the land by market liberalisation, social change and competition from intensive farmers. Rather than eliminating small payments on bureaucratic grounds, the Commission should come up with a credible strategy for supporting the maintenance of small, part-time and semi-subsistence High Nature Value farmers.

2 Grasping new opportunities and improving market orientation

2.1 Cereals Intervention

- What do you think is the best way to maintain the safety-net role of intervention for cereals?
- What would be the impacts of the extension of the "maize" model to the other feed grains?
- What kind of impacts do you see with the creation of an intervention system available only to high quality bread wheat?

BirdLife International has no pertinent comments to offer on this point.

2.2 Cereals set-aside

- Do you consider that abolition of set-aside in the current context of market and policy developments is appropriate?
- What measures do you consider appropriate in order to maintain environmental benefits associated with set-aside?

The European Commission first introduced set-aside into the CAP in 1988 as a supply control mechanism in response to the over production of cereals and

increased public sector expenditure on these surpluses during the 1980s. The set-aside rate has recently been reduced to 0% for 2008 and the instrument itself will be abolished as part of the CAP Health Check. However, the Commission has pledged to examine new tools for delivering the benefits of set-aside in the future.

Whilst the loss of set-aside would lead to significant negative impacts on biodiversity, further pressure is building due to high cereal prices and increased bioenergy production. Without adequate measures, the entire EU is likely to witness a new wave of agriculture intensification in the coming years, triggering further biodiversity loss.

The following paragraphs provide a brief review of the environmental benefits of set-aside and propose a replacement for set-aside that would retain its benefits and help address the environmental challenges that Europe's rural areas face, such as climate change, water management and biodiversity loss.

- ***The environmental benefits of set-aside***

- *Farmland birds and biodiversity*

Set-aside land is known to provide important feeding and nesting resources for many farmland bird species that are otherwise in severe decline across Europe¹⁰. In the breeding season, set-aside supports relatively high densities of many bird species, compared to other arable land-use types¹¹. It also provides important nesting opportunities for species of high conservation concern, such as the little bustard in France¹², which is critically dependent on sympathetically managed set-aside. In the UK, research has identified a correlation between the level of the Farmland Bird Index, an indicator that reflects the health of farmland biodiversity, used by the European Commission as an indicator of sustainable development, and the level of set-aside¹³. A meta-analysis¹⁴ of

¹⁰ Evans et al. (1997) *Set-aside: conservation by accident...and design?* RSPB Conservation Review 11: 59-66. Sandy, UK: RSPB; Donald et al. (2001) *Stoat & Parish (2001) Crops grown on set-aside land bring wild birds back to the fields - Monitoring is under way, and results so far are promising.* Nature 414: 687-687.

¹¹ Henderson, I.G., Cooper, J., Fuller, R.J. & Vickery, J.A. (2000a). *The relative abundance of birds on set-aside and neighbouring fields in summer.* Journal of Applied Ecology 37: 335-347; Henderson, I.G., Vickery, J.A. & Fuller, R.J. (2000b).

¹² Attié (2007) *Importance des jachères PAC pour la conservation de l'Outarde canepetière, Tetrax tetrax*

¹³ Natural England and the RSPB (2007, awaiting publication) *Effects of variation in the availability of set-aside on populations of set-aside*

studies from across the EU and the US confirms that set-aside is, in general, better for all types of farmland biodiversity. It found that unfarmed land within the farmed landscape had significantly higher numbers of birds, insects, spiders and plants.

➤ *Water*

Set-aside has resulted in a reduction of inputs to farmland and consequently reduced pollution from pesticides and fertilisers. Besides knock-on benefits for biodiversity and climate change, where set-aside is situated along watercourses, it can greatly reduce water pollution from nutrients and pesticides¹⁵. The loss of set-aside therefore threatens our ability to meet the Water Framework Directive's targets. In England, for example, 88% of set-aside is located in areas that are already at risk of failing water quality objectives because of nitrate and phosphate pollution. Furthermore, there are numerous studies (e.g. from the UK) of the benefits of a more diverse riparian vegetation structure for aquatic biodiversity, given the increased input of organic matter, terrestrial insects, etc to the water environment. This helps agriculture policy to contribute to biodiversity and WFD objectives.

➤ *Soils*

Set-aside has been effectively used to reduce soil erosion, particularly in Mediterranean countries, where soil protection has been incorporated into set-aside under national laws¹⁶. In many cases, the current set-aside fields are situated in areas with soils most prone to erosion and that are less productive (e.g. slopes, sandy areas).

• *Why set-aside needs to be replaced*

A healthy farmland environment requires a minimum amount of land to remain out of intensive production and to be managed positively for the environment.

Half of Europe's land area is farmed, and the importance of providing wildlife habitats throughout this area will become even more important with climate change. Species will need to adapt to new climatic conditions, which will mostly be achieved by moving with their climatic envelopes. To do this, they must be

¹⁴ Buskirk & Willi (2004) *Enhancement of farmland biodiversity within set-aside land* Conservation Biology 987-944, 18, 4

¹⁵ Cumulus Consultants (2007) *Retaining the environmental benefits of set-aside*. Report for LUPG.

¹⁶ Cumulus Consultants (2007) *Retaining the environmental benefits of set-aside*. Report for LUPG.

able to move, requiring the availability of suitable habitat throughout the farmed landscape. New studies suggest that for many species, survival will depend on the ability to significantly shift their distribution to the north and east¹⁷. In regions where intensive agriculture dominates with little habitat available, the ability to adapt successfully will be greatly reduced.

A wide range of the EU's environmental ambitions would benefit from and may even depend on such an instrument, including the Göteborg commitment to halting biodiversity loss by 2010, commitments made under the Water Framework Directive and the forthcoming Soils Directive, and the aspirations outlined in the Green Paper on climate change adaptation.

- *Environmental Priority Areas – the BirdLife proposal*

BirdLife International is calling for a new instrument to be introduced that would require all farmers to dedicate a minimum percentage of their land for environmental management. We suggest that these 'Environmental Priority Areas' be made compulsory across the farmed landscape and that they cover all areas of high value to wildlife and the environment. This would ensure that farms that already have high levels of habitats are treated fairly. The actual level of the EPA should be based on an estimate of need and of current provision, but an accurate estimate is not possible so we suggest that the initial requirement be 10% and that this be adjusted in response to whether it is meeting its environmental goals or not.

The specific management of EPAs could be left to Member State discretion, although firm guidance would be needed from the Commission to ensure it is properly used to provide habitats and protect natural resources. This guidance should include the following principles:

EPAs should, by definition, be managed primarily for environmental purposes, i.e. biodiversity, soil, water and climate change. Examples of eligible land uses would include:

- Vegetated non cropped field margins, beetle banks and buffer strips;
- Hedgerows, tree lines and small woods;
- Extensively managed semi-natural grassland;
- Permanent or rotational vegetated fallow (including "game crops");

¹⁷ Huntley, Green, Collingham and Willis (2007) *A climatic atlas of European breeding birds*. Durham University, RSPB and Lynx editions, Barcelona.

- Wet features (ponds, vegetated ditches etc);
- Pockets of extensive arable plots within intensive grassland farms;
- Pockets of natural vegetation
- Wood pastures/grazed woodlands (“dehesas”)

Flexibility in terms of defining eligible land use at the Member State and regional level should be provided for, but clear environmental benefits must be demonstrated. Farmers would be free to choose how to reach the minimum EPA requirement. More sophisticated targeting and optimal combination of elements could be pursued by way of voluntary agri-environment schemes.

Whilst environmental outcomes are the priority of EPAs, the most appropriate management may involve extensive grazing or mowing. In this case, the biomass could be used for feed or energy production.

Vegetation control, as a rule, should be undertaken only by mowing or grazing outside of the breeding season to avoid negative impacts on wildlife. Minimum tillage and other methods should be permitted only as a derogation, where it can be shown to deliver further environmental benefits.

Agri-environment schemes and cross-compliance will inevitably overlap with the EPA requirement, but this should be seen as positive as these schemes would facilitate compliance with the EPAs obligation.

- *Why is a mandatory instrument needed?*

The Commission has acknowledged the benefits of set-aside and the need to retain them once set-aside is abolished, but have proposed that this is achieved through voluntary Rural Development measures. We do not believe that this would adequately retain the benefits of set-aside, or address the environmental challenges identified in this paper and by the Commission, for the following reasons:

- Voluntary measures are unlikely to be adopted in the most productive areas of Europe, where landscape features and pockets of wildlife habitat are most needed, particularly given the current high cereal prices.
- There is insufficient funding for Rural Development to provide a set-aside scheme that would include sufficient numbers of farms, particularly given the inadequate modulation proposal in the CAP Health Check.
- The Rural Development approach depends on all Member States developing a scheme and making it available to farmers, which would not necessarily happen as some of the cost would have to be shouldered by the

Member State via co-funding and because a successful scheme would require significant bureaucratic investment.

- Under Rural Development Programmes, set-aside would constitute one of the many measures and may therefore not be as attractive to farmers as other less demanding but less efficient measures. Taking into account the outstanding value of the set-aside approach for biodiversity, water and climate change, EPAs should be spread across the countryside.

EPAs could be delivered as a stand-alone instrument or as part of GAEC cross compliance requirements.

2.3 Dairy Quota

- In the light of new market opportunities, do you consider that the quota system is still fulfilling its stated objectives?
- What benefits and what risks do you see from doing nothing and simply letting the quota regime expire in 2015??
- What kind of effects do you see emerging in the case of a gradual phasing-out of quotas through increasing their annual level? What would you propose as an alternative or accompanying transition measure?

BirdLife International agrees that milk quotas are an ineffective and outdated tool that should be phased out. However, it must be recognised that further liberalisation of the dairy sector will lead to increased pressure on the most extensive producers. Dairy production is vital for the maintenance of many High Nature Value systems, including those in disadvantaged areas such as mountainous or boreal regions. If simply left to the market, dairy farming is likely to disappear from some areas and, in many cases, this would have significant harmful impacts on the environment. This problem should be acknowledged and dealt with upfront, by channelling specific support to extensive systems whose maintenance is important for environmental reasons. We believe the High Nature Value concept and a reformed “Article 69” mechanism could provide such a solution (see section 1.3).

2.4 Other measures of Supply Control

- What would be in your opinion the implications from the application of decoupling in those sectors?
- Are there any cases where you consider coupled support essential in order to retain regional or economic benefits? If so, how can it be made more efficient and better targeted?

BirdLife International believes that coupled support is an outdated and ineffective tool that should be phased out. The environmental benefits of preventing abandonment of certain farming types should be captured upfront by targeting support at High Nature Value systems (see section 1.3).

3 Responding to New Challenges

3.1 Managing risk

- Do you consider that currently available policy instruments provide adequate coverage to manage price risks? Do you see the need for additional measures you envisage, and if so which ones?
- Do you consider that currently available policy instruments provide adequate coverage to manage weather-related or disease-related risks? Do you see the need for additional measures you envisage, and if so which ones?
- Do you see scope for the application of EU-wide measures to better address price and production related risks, or should such measures be applied more at the MS and regional level?

Risk management should not become a new way of providing hidden production support, pushing farmers toward unsustainable production patterns. Weather related insurance is a case in point. Extensive evidence from the US¹⁸ shows that when farmers can rely on a public compensation system in the case of harvest loss, they tend to expand cultivation of the most valuable crops (e.g. maize) into regions where climatic conditions are not suitable for such crops. Providing a guarantee against drought damage will inevitably lead farmers to grow more water-demanding crops in arid regions, exacerbating chronic water stress and increasing the impact of droughts. Insurance mechanisms against weather related crop failure should be limited to the most extreme cases of freak weather events, for example, events with a historical return time greater than 50 years (i.e. return time in the 20th century, not updated as extreme events become more frequent). More ordinary extreme events should be foreseen and built into farmers cropping choices. For example, it will be increasingly difficult to justify water-demanding maize cultivation in the increasingly arid conditions predicted for Mediterranean Europe under climate change predictions, but if a farmer can claim insurance against drought, he may pursue such an approach and even expand their cultivation in response to increasing prices.

¹⁸ Environmental Working Group (2007) “A Disaster Waiting To Happen...Forever”

Price insurance mechanisms would be even more damaging as they would be tantamount to returning to the times of guaranteed prices and would inevitably lead to repeating all the perverse effects witnessed by the CAP in the 1970s and 1980s (overproduction, stock accumulation, dumping on foreign markets, uncontrolled spending and widespread environmental damage).

Farming as such is based on adaptive management, and over-reliance on such risk support can negatively influence farmers' attitudes. In times of rapid climatic change, this can be dangerous by supporting status quo behaviour.

Therefore, publicly funded risk management measures should be strictly limited to risks that cannot be foreseen and where farmers' production choices have no relevance to the risk. This could be the case for certain outbreaks of disease or for preventive action taken by governments for sanitary concerns.

3.2 Climate change, bio-energy, water management and biodiversity

- Do you consider that existing instruments under both pillars of the CAP are sufficient to respond to these challenges?
- If you consider that strengthening Rural Development instruments is needed, what would be your proposal in better addressing these new challenges?

Widespread evidence shows that, despite having been substantially reformed, the CAP is still failing to address the environmental crisis. Current cross compliance rules and Rural Development schemes are insufficient to address the important new challenges of water management and climate change, alongside the ongoing challenge of halting the decline of biodiversity.

Biodiversity decline is continuing at an unprecedented rate worldwide, with extinction rates now 1,000 times higher than their historic norm. In Europe, this crisis has seen the decline of EU farmland birds by over 40% in the past 25 years.

Nutrient pollution from agriculture is a key factor in the eutrophication of freshwater and coastal marine habitats. Twice as much nitrogen and three times as much phosphorus is present in natural systems as compared to 1963. Besides polluting drinking water, this is causing serious damage to habitats and species and imposing increasing costs on drinking water supply. Europe is under increasing water stress, with 18% of the population affected by water stress or severe water stress. Agriculture is one of the primary users of water in Europe, and the area under irrigation continues to grow even in the regions suffering most from water scarcity. As a recent European Court case shows (Segarra-

Garrigues, Catalonia Region, Spain) irrigation projects can also cause serious damage to important habitats and species.

Soil erosion is the key underlying process behind land degradation and desertification, threatening our long-term productive capacity. In the EU, 9% of the total land area is subject to soil erosion due to agricultural practices, and this is expected to increase in the future.

Climate change is the greatest challenge people and wildlife face, and avoiding dangerous levels of change will require a reduction in emissions of CO₂ by 80% by 2050 (based on 1990 levels). Some climate change is unavoidable, and agriculture must adapt to this, both as a business sector and as part of society's mechanism for managing the impacts of climate change on wildlife and people.

Agriculture is responsible for an estimated 9% of greenhouse gas (GHG) emissions in the EU. Sustainable management of land can, however, make a major contribution to climate change mitigation and adaptation. Much of the GHG emissions from farming are linked to unsustainable, intensive practices, such as the excessive application of artificial fertilisers. For example, in the life-cycle of biofuel production from oilseed rape, 51% of emissions are associated with the manufacture and use of nitrogen fertiliser²⁰. Every sector has to reduce its GHG emissions if we are to avoid dangerous levels of climate change and achieve an 80% reduction by 2050. As a result, reducing agriculture's contribution to climate change should be an explicit aim of land management policy, but it should be delivered in a way that maximises synergies with other environmental goals, such as reducing diffuse pollution and conserving biodiversity, and should never undermine them.

Climate change will also pose significant adaptation challenges to agriculture, and it is likely that we will see shifting cropping and agricultural practices as new climatic conditions evolve. Wildlife will be forced to adapt rapidly to a changing climate by coping with new climatic conditions and the need to shift location to stay within climatically suitable conditions¹⁹. This will require the provision of corridors and transitional habitats within farmland to facilitate adaptation. Key wildlife sites will also need to be enlarged and buffered through sympathetic management of adjacent farmland. Strengthening ecosystem resilience in this way is key to adapting to climate change, and reducing other human stress factors to species and habitats is even more important in the face of the strain to biodiversity caused by a rapidly changing climate.

¹⁹ Huntley, Green, Collingham and Willis (2007) *A climatic atlas of European breeding birds*. Durham University, RSPB and Lynx editions, Barcelona.

Extreme weather events and decreased water availability throughout Europe, but particularly in southern Member States, will place particular stress on farming and wildlife. Sensitive adaptation, through minimising water abstraction, efficient irrigation practices and ensuring land-uses are appropriate to local conditions and biodiversity, will be essential, as will avoiding investments that increase our vulnerability to climate change, such as increasing the area under irrigation.

The pressure on land in Europe and globally is increasing rapidly as agriculture is relied upon not only to feed a growing and increasingly affluent global population, but also to produce fuel, heat and power. This could accelerate agricultural intensification and expansion, to the detriment of wildlife and the environment, and long-term sustainability of land-based production.

It is clear that in order to face all these challenges, a much stronger Rural Development Policy is needed; in particular, substantial funds should be transferred to agri-environment schemes (see section 3.3). However, voluntary measures alone are not likely to be sufficient. The very modest modulation rate suggested by the Commission would barely allow Rural Development to deliver on its current objectives and recover the potential lost due to budget cuts agreed in December 2005. Even if all proposed modulation funds are channelled towards environmental schemes, this would not be sufficient to address the abovementioned challenges. While voluntary schemes can deliver much, many of the actions needed for climate change, water and biodiversity conservation need to happen across the farmed landscape. With massive pressure for further intensification driven by high commodity prices and public incentives for biofuel production, voluntary environmental schemes are not likely to compete with market production, at least in the most productive regions. Any serious attempt to address environmental challenges will have to rely on actions under both pillars of the CAP. Whilst sophisticated and targeted measures within Pillar II can provide part of the answer, simple rules for the majority of farmers throughout Europe must be implemented through cross compliance (see sections 1.2 and 3.3).

BirdLife supports the proposal that cross compliance is expanded to include the Water Framework Directive, and reducing GHG emissions and improving adaptation to climate change. This expansion of cross compliance must, however, bring maximum environmental benefits whilst minimising the burden on farmers and authorities. This means that rules should be introduced that are simple, easy to implement, and can be rolled out uniformly across Member States, whilst leaving space to allow for regional 'fine-tuning'. Simply expanding the Statutory Management Requirements (SMRs), before the Directives are fully implemented, could result in a lack of clarity and poor implementation, as seen with the Birds and Habitats Directives. More effective,

on the short term, would be expanding GAEC to deliver for these objectives. In the case of water, GAEC rules could serve as a bridge toward the full inclusion of the Water Framework Directive within the scope of SMRs.

Possible GAEC rules to address water and climate change concerns include:

- *Complete protection of permanent grassland (as above)*

See 3.1

- *Appropriate management of peat*

Peat soils are an extremely important carbon stock in the EU. Their drainage, conversion to arable land and other inappropriate uses lead to the release of very significant GHG emissions. On the other hand, re-wetting of peatlands, or their conversion from arable to grassland retains their stored carbon and may generate carbon sinks. In most cases, such climate mitigation measures would also improve water quality and watershed management. Member States should therefore be required to map peat soil areas and require specific management for their protection.

- *Nutrient management plans*

The application of nitrogen fertiliser is one of the principle sources of GHG emissions from agriculture and of nutrient pollution of groundwater and watercourses. Treating nitrate pollution in drinking water is, in itself, an energy intensive process. In addition, pathogens associated with human and animal wastes applied as manures can pose a significant risk to bathing water quality and drinking water supply.

Ensuring fertiliser applications do not exceed optimal levels and are timed appropriately can reduce these problems significantly and benefit the farmer through saving money. Farmers should therefore be required to produce nutrient management plans. The smallest producers could be excluded from this requirement through an appropriate size threshold. This measure is also essential in order to protect drinking water and improve ecological water quality (see below in context of compliance with the Water Framework Directive).

- *Installation of water meters for irrigation and proof of licensed origin*

Water scarcity is a growing problem in many areas of the EU and will continue to get worse. Irrigation for agriculture is one of the main users of water, and in many areas illegal abstraction undermines attempts to manage water sustainably. There are already proposals to expand the irrigated area in several Mediterranean arid regions, and further demands can be

anticipated in light of predicted increases in drought severity and frequency. As has already been indicated in our response, in some Member States (e.g. Spain) irrigation policy breaches EU conservation legislation. At the strategic level, BirdLife considers that there is an urgent need to address these issues through a better integration of irrigation plans, drought plans, and WFD River Basin Plans. Introducing a requirement for irrigation water use to be metered and authorised in compliance with domestic legislation would allow quantification of water use and help discourage illegal abstractions. These are key steps toward sustainable water use and would be building blocks for River Basin management. The concept of 'Best Available Technology' is well accepted in other areas of EU policy (e.g. pollution control legislation) and BirdLife suggests that, to encourage efficient water use, a new requirement is introduced to adopt recognised water-efficient techniques of distribution and crop application. However, it will be important to safeguard traditional irrigation systems, which in any case tend to use limited quantities of water, and are the basis of some long-established High Nature Value farming systems and their associated landscape features (e.g. Las Alpujarras, Andalucía Region, Spain).

- *Buffer strips along water courses*

In order to meet WFD objectives, farmers will be required to put in place widespread controls on nutrient, pesticide and pathogen pollution of surface waters. Requiring six metre buffer strips to be left alongside permanent and temporary surface waters, within arable or permanent crops, would help address this and, if they are managed appropriately (e.g. sowing native species), could also deliver benefits for biodiversity. Recreating an ecological network based on viable habitat corridors along watercourses is also an essential climate change adaptation strategy, as it would help ensure that species can move across the landscape with changing climatic conditions. Buffer strips are also easy to check for compliance. Such buffer strips would of course also count toward the Environmental Priority Areas obligation proposed in section 2.2.

- *Compliance with the Water Framework Directive*

The Water Framework Directive represents one of the EU's key environmental legislative tools and it is clear that it should be introduced under cross compliance as part of Statutory Management Requirements. However, this should be done gradually, ensuring that it results in practical rules for farmers that are easy to follow and for authorities to enforce. A simple, immediate addition of the WFD to the SMR list could result in confusion and problematic implementation, as much of the detail of setting of objectives and measures is devolved to a River Basin Planning process.

On the other hand, water problems are so pressing, and the time lag between action and effect so long, we cannot afford to wait for the Directive to be fully implemented before requiring farmers to take even simple steps to protect water resources. BirdLife proposes an approach based on the immediate expansion of GAEC to cover key water-related issues, as an interim step towards the full introduction of the WFD as an SMR, which should be earmarked for 2012 when the Programmes of Measures must be made operational. This would require:

- All abstractions and impoundments to be authorised in accordance with Article 11, 3(e) of the Water Framework Directive, with irrigation systems following BAT (with certain exceptions – see above)
- All farmers, must comply with fertilizer and pesticide regulations, and those above a certain size threshold must have, and implement, nutrient management plans to cover the use of organic and inorganic sources of nitrates and phosphorous. (See above)
- Six metre buffer strips covered by natural vegetation should be managed along all surface waters, within arable or permanent crop areas (i.e. all agricultural land with the exclusion of grasslands). These buffer strips should not be subject to any management other than mechanical mowing or trimming, undertaken outside the breeding season. As far as possible, such buffer strips should be used to restore natural riparian vegetation.

Once River basin Management Plans are in force, land will have to be managed in accordance with measures and objectives set out in River Basin Management Plans or sub-plans thereof. These will include measures to control the input of pollutants from point and diffuse sources, as required under Articles 11.3(g) and 11.3(h) of the Water Framework Directive.

Bioenergy does represent a new challenge, but it should not be seen as an end to itself, nor should it be seen as a strategic objective of policy - unlike halting biodiversity decline, ensuring water quality and availability and mitigating and adapting to climate change. Bioenergy represents an important economic and environmental opportunity for farmers and land managers, allowing agriculture and forestry to help reduce emissions in other sectors through providing bioenergy, i.e. heat, power and fuels from organic feedstocks, such as arable crops and wood. It is evident that bioenergy could play a very worthwhile role in reducing EU greenhouse gas emissions, but the size of the contribution it can make will be constrained by the limited land resource available to the EU and the multitude of demands we make of that land. Achieving an appropriate balance between using our land for bioenergy and using it for other purposes, including food production and nature conservation,

is essential: our energy and fuel needs are so great that bioenergy represents an enormous new pressure on our land resource. The aim of public policy must therefore be to optimise the production of food and fuel whilst preserving natural and semi-natural habitats and moving towards a low-carbon, sustainable agricultural system. The real challenge posed by the booming bioenergy sector to the CAP is how to mitigate its impacts on the environment and how to ensure that bioenergy does not end up aggravating rather than alleviating our global sustainability crisis. The proposals included in sections 1.2, 2.2, 3.2 and 3.3 of the present document offer concrete ways to achieve this.

The second problem presented by bioenergy, is the variability in GHG savings according to different production pathways. In particular, most current biofuels offer such marginal greenhouse gas savings that supporting them represents an unacceptable waste of public funds. In the worst cases, their production can actually accelerate environmental crises, including climate change. Any support for bioenergy should therefore be contingent on both delivering significant and quantified GHG savings and meeting minimum sustainability standards that ensure unacceptable damage to biodiversity and the environment is not caused. Bioenergy policy must also ensure that its development contributes to the EU's environmental goals, such as its commitment to halt biodiversity decline by 2010, and does not work against them. We believe that the EU energy policy should urgently act along these lines, but this goes beyond the scope of the current consultation. As to the CAP, no funds should be channelled toward bioenergy production unless full sustainability is ensured and significant GHG savings can be guaranteed.

3.3 Strengthening rural development

- Do you think the proposed increase in modulation will help in achieving RD objectives, especially those linked to new challenges?
- How do you think the extra funds should be allocated to better respond to those new challenges?

The CAP's so called second pillar, Rural Development Policy, is the most sophisticated and modern part of the CAP. It delivers targeted funding for the achievement of specific policy goals, such as increasing farming competitiveness, improving environmental quality and diversifying the rural economy. Rural development should be seen as the part of the CAP most able to serve as a basis for a future sustainable land management and rural development policy. Modulation is the main instrument for strengthening Pillar II, that is, building the financial basis for a sustainable rural development policy. The current CAP is based on a modulation rate of 5% from 2007 onwards. This low rate stands in sharp contrast to the Commission's original mid-term review proposal (in 2002) of 20%.

The modulation rate of 5% is clearly insufficient to counteract the budget cuts suffered in December 2005. In fact, rural development is being weakened considerably during the current budget period. The limitations in the 2007-2013 rural development budget will therefore seriously jeopardise the EU's ability to meet its biodiversity commitments. The funding needs of the existing Natura 2000 network and the number of sites that are currently not adequately protected, but nonetheless important for biodiversity conservation, mean that a much larger resource will be required to ensure that biodiversity commitments are met.

In its Health check Communication, Commissioner Fischer-Boel suggested that the rate of compulsory modulation should increase by 2% every year from 2009 onwards, thus rising to 13% in 2013. This proposal represents an important step forward, but falls short of what is needed, even just to meet the current objectives of Rural Development Policy. In order to generate sufficient funds to meet these objectives, it will be necessary to further increase the modulation rate. BirdLife requests that the compulsory modulation rate be set at 20% from 2009 onwards.

In order to ensure that modulation funding is used to maximum effect, Member States should be required to allocate the new Rural Development funding to schemes that clearly target the achievement of key EU environmental objectives: halting biodiversity decline, improving watershed management and tackling climate change. Such a clear earmarking would also serve to dissipate the concerns that Rural Development funds could be diverted away from land management to cover investments that are better pursued, for example by regional funds or that can be covered by the private sector.

The CAP Health Check should be used to start a serious debate about the long-term use of public money for sustainable agriculture. A substantially increased modulation rate should be seen as an interim step towards a single programming and funding instrument for agriculture and rural development, which is conditional on the clear delivery of public benefits after 2013. BirdLife believes that without a clear and swift move toward rewarding the delivery of public goods, the CAP will be highly vulnerable to budget cuts during the upcoming EU Budget Review debate. A significant increase in modulation is one key tool to ensure that the CAP can deliver tangible results in key areas such as reaching the EU's 2010 biodiversity target, implementing the Water Framework Directive and contributing to tackling climate change. It would also make the CAP much more robust in the face of mounting criticism and allow for a strong argument in favour of its retention beyond 2013.

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