

## Chapter 9

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Department of Agriculture, Fisheries and  
Food

## 9.1 Consolidation of Single Payment Entitlements

The 2005 Annual Report<sup>33</sup> considered the processes and procedures adopted by the Department of Agriculture, Fisheries and Food (the Department) to manage the introduction of the Single Payment Scheme (SPS). My Office's review in 2006 found that the Department faced major challenges in determining farmers' entitlements, complying with complex EU regulations and meeting regulatory deadlines. Evidence available at that stage suggested that the Department had planned its approach to these tasks in a strategic manner and had implemented them in a pragmatic and generally satisfactory way.

Subsequently, the European Court of Auditors (ECA), as part of its mandate to audit and report on the accounts of the European Commission, undertook a number of audit missions to Ireland to examine the implementation and operation of the SPS. A representative of my Office accompanied the ECA auditors on two of these audit missions.

The ECA audit found that the Department of Agriculture, Fisheries and Food had, in its view, contravened the provisions of the governing legislation with regard to the specific requirements for consolidation of entitlements of farmers applying for the SPS.

### **Consolidation of Entitlements**

In order to qualify under the SPS farmers must first obtain "entitlements". To determine these, Member States opt for one of the models provided for under EU legislation. Under the fully decoupled historical model opted for by Ireland each farmer is granted entitlements based on the average amount of aid received and area farmed during the reference period 2000 to 2002. Entitlements are stated at a monetary rate per hectare. Once entitlements are determined, a farmer must apply each year for payment declaring all hectares in use in that year and identifying the hectares attracting SPS entitlements.

Consolidation of entitlements arises where a farmer is allowed to claim the same overall amount in respect of a reduced number of hectares. The Department allows consolidation where the reduction in land available results from

- compulsory purchase orders by public authorities
- lands afforested by the farmer applicant
- unavailability of lands which were previously leased-in or rented.

The EU legislation governing the SPS<sup>34</sup> recognises the exceptional circumstances of those farming in areas subject to 'restructuring and/or development programmes relating to public intervention' (Compulsory Purchase Orders). The legislation provides that where a farmer has lost land in this way since the reference period on which his SPS entitlement is calculated and is therefore no longer able to avail of all entitlements in the normal way, they may be consolidated, *i.e.* exchanged for a smaller number with a higher value. The stated purpose of this provision is to avoid the abandonment of land and/or to compensate for specific disadvantages for farmers in those areas.

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<sup>33</sup> Comptroller and Auditor General Annual Report 2005.

<sup>34</sup> Council Regulation (EC) No 1782/2003 of 29 September 2003 provides for the establishment of the SPS and lays down common rules for other direct support schemes under the Common Agricultural Policy (CAP) Commission Regulation (EC) No. 795/2004 of 21 April 2004 sets out the detailed rules for its implementation.

## 2006 Report of the European Court of Auditors

The ECA noted that consolidation of entitlements was granted, upon application, where a farmer used land which was leased or rented during the reference period but was no longer available to the farmer in the first year of application because the lease/rental agreement had expired by 16 May 2005.

The ECA view was that this type of consolidation was not covered by the regulations and that only land lost through Compulsory Purchase Orders (CPO) should be consolidated. This would mean that only land declared in 2005 (unless subject to CPO) could be used in the calculation of payment entitlements.

According to the ECA Report, in Ireland 11,677 cases were approved for consolidation in 2005 involving approximately 150,000 hectares, the vast bulk of which related to discontinued leases. It was the ECA view that the effect of allowing this type of consolidation was that an equivalent area was no longer needed to activate entitlements and there was a risk that it could be used for other still coupled aid schemes or abandoned and no longer covered by any obligation to be maintained in good agricultural condition.

The ECA criticised four countries, including Ireland, regarding their implementation of the consolidation provisions

*'Some Member States/countries (Austria, Ireland, Wales and Scotland) did not comply with EU legislation. They extended this provision to all cases where a farmer in 2005 had fewer hectares than entitlements. Consolidation was granted in order to have the farmer's reference amount concentrated on a number of entitlements equal to the number of hectares held, and consequently to allow the farmer to activate all his entitlements. Wales and Scotland applied this irregular type of consolidation only in the first year of SPS whereas it continues in Austria and Ireland. In 2005, more than 200,000 hectares were consolidated in this way. The impact is estimated at €60 million per year.'*

The criticism of Ireland is potentially the most serious given that Ireland accounts for 75% (150,000 of 200,000) hectares affected by the provision in dispute. The ECA Report concludes that

*'...some Member States have failed to correctly apply certain key elements of the SPS: Austria, Ireland and the United Kingdom extended consolidation of entitlements beyond the provisions of the regulation.'*

The response of the European Commission to these findings, which is incorporated in the Report says

*'The Commission is aware of these practices and shares the view of the Court. Any possible risk to the Fund will be taken into account through the conformity procedures<sup>35</sup>.'*

The ECA Report also noted that the treatment of consolidated entitlements was an issue for other member states including Scotland, Wales and Austria who took the same approach as Ireland initially but Scotland and Wales have since changed their position. This was in contrast to Belgium who interpreted Article 42(5) as applying to land lost through CPOs only.

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<sup>35</sup> Conformity procedures involve formal discussions and correspondence between the Commission and Member States forming part of the accounts clearance process, the purpose of which is to exclude from Community financing expenditure which has not been effected in compliance with Community rules.

### **Audit Concerns**

Although the Department maintains that it has acted in accordance with the Regulations, there appears to be a risk that it will be found to have been in contravention of the specific provisions regarding consolidation and that the State may be exposed to substantial financial penalties. I sought the views of the Accounting Officer on how the Department is managing the potential financial exposure in the light of the Commission's current stance.

### **Department's Response**

The Accounting Officer stated that the Department remains strongly of the view that its implementation of the Programme for the Consolidation of Entitlements was in accordance with the provisions of Council Regulation (EC) No 1782/2003 and Commission Regulation (EC) No 795/2004. It disagrees with the ECA findings and points out that the Commission's response (as recorded in the ECA Report) was at odds with the Department's records of discussions it had had with the Commission before and after the introduction of the SPS.

He stated that it would not be appropriate to speculate on any potential disallowance especially given the fact that the Department was strongly defending its position. Any such speculation could, in fact, prejudice the Departments ongoing negotiations with the Commission and any appellate body in the event that the Department failed to reach agreement with the Commission on the outcome.

In the meantime, the Department has had a high level bilateral meeting with Commission officials and is cooperating fully with the Commission's further enquiries into the matter.

### **Conclusions**

It is acknowledged that in formulating its approach to consolidation the Department took the precaution of consulting with EU Commission officials. However, in view of the Commission's stance as recorded in the ECA Report, there is a contingent liability of an undetermined amount depending on the outcome of the EU conformity procedures and any subsequent litigation. The State is contesting any such liability.