



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

**DRAFT GUIDELINES ON ELIGIBILITY CONDITIONS AND SELECTION CRITERIA FOR THE
PROGRAMMING PERIOD 2014 – 2020**

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Foreword:

This guidelines is based on the text of Regulation (EU) No 1305/2013 [EAFRD] and, when relevant, on Regulation (EU) No 1306/2013 [HRZ] and Regulation (EU) No 1303/2013 [CPR]. Since the Delegated and Implementing Acts supplementing these regulations have not yet been adopted, some modifications to this guidance fiche might be needed after their adoption.

This guidance does not represent a binding legal interpretation of Regulation (EU) No 1305/2013. It is therefore essentially non-binding in nature and complements the related legal acts.

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DRAFT GUIDELINES ON ELIGIBILITY CONDITIONS AND SELECTION CRITERIA FOR THE PROGRAMMING PERIOD 2014 – 2020

1. INTRODUCTION

The objective of this document is to provide guidance to Member States with respect to the eligibility conditions and selection criteria for programming and implementation of the rural development programmes (RDPs) 2014-2020 that will contribute to reach the objectives of the EU Strategy 2020. These guidelines complement and develop the general guidelines on rural development strategic programming for the same period. The guidelines do not cover the selection of LAGs, the selection of EIP operational groups or the selection of projects under LEADER. It does not cover eligibility of expenditure¹.

The guidance document is based on the legal provisions of the EAFRD Regulation (RDR),(Regulation (EU) No 1305/2013) and the relevant articles of the Common Provisions Regulation (CPR) (Regulation (EU) No 1303/2013) as well as the Horizontal Regulation (HZR) (Regulation (EU) No 1306/2013). It also takes into account the experience gained in the implementation of the policy in the current and previous programming periods as well as observations and recommendations on that matter made by Commission auditors and the European Court of Auditors (ECA).

2. THE CONCEPT

Eligibility conditions and selection criteria serve as a basis for identifying and prioritizing the projects, operations and beneficiaries supported under each RDP that best meet the objectives to which the measures contribute. MS are free to define ways in which they can target the support as long as these rules are in line with the EU legislation e.g. different aid intensities.

Eligibility conditions cover the eligibility criteria, commitments and other obligations relating to the conditions for the granting of support, as referred to in Article 63 of the Horizontal Regulation (HZR) and as defined in Article 36(1) and (2) of Commission Delegated Regulation supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy. This guideline specially focuses on eligibility criteria and makes reference to commitments and other obligations when needed.

Eligibility and selection criteria must be clear, relevant and objective, and have to be applied in a transparent and consistent way throughout the whole programming period.

Based on the application of these conditions and criteria the highest value-added projects/operations are selected for support under the RDP.

¹ See article 16 of DA.

3. ROLE AND RESPONSIBILITIES OF THE MANAGING AUTHORITY, THE PAYING AGENCY AND OTHER BODIES AS REGARDS THE SELECTION OF PROJECTS

3.1. Major management and control principles

Member States shall be responsible for the management and control of programmes (CPR Art. 74(1)) and shall designate, for each rural development programme, the Managing Authority (MA), the Paying Agency (PA) and the certification body (RDR Art. 65(2)).

The Managing Authority, the Paying Agency and other bodies involved in the implementation of the RDP shall conduct selection according to the specific rules laid down in the RDR, the CPR and the HZR.

RDR Article 65(4) further stipulates that "Member States shall clearly define the tasks of the MA, the PA and the LAG under LEADER as regards to the application of eligibility and selection criteria and the project selection procedure".

The CPR and the RDR further allow the delegation of management and implementation tasks that are as a matter of principle attributed to the MA and/or the PA. Then, MS or the MA may designate one or more intermediate bodies to carry out the management and implementation of rural development operations. However, the MA shall retain full responsibility for the efficiency and correctness of the management and implementation of those tasks (RDR Art. 66(2)).

3.2. Managing Authority

The Managing Authority is responsible for the definition of selection criteria (RDR Art. 49(1)) and shall ensure that the PA receives all necessary information, in particular on the procedures operated and any controls carried out in relation to operations selected for funding (RDR Art. 66(1.h)).

MA may delegate part of its task to another body but keeping all the responsibility for it (RDR Art. 66(2)).

3.3. Paying Agency

The PA shall manage and ensure control of the operations linked to public intervention for which they are responsible and they shall retain overall responsibility in that field.

According to Article 7 from the HZR, the PA can delegate all its tasks with the exception of the payments. The PA remains ultimately responsible to ensure the correctness of the respective processes.

4. ELIGIBILITY CRITERIA LINKED TO AN APPLICANT OR APPLICATION

4.1. Definition and major principles

In the context of the EAFRD, the eligibility criteria that are linked to an applicant or an application are requirements which have to be met completely in order that the applicant

and the application are eligible for support under the RDP. The fulfilment of an eligibility criterion is a "yes/no" issue: either the criterion is met or it is not.

The eligibility criteria can take the form of inclusion or exclusion. Inclusion criteria are characteristics that the potential beneficiaries must have if they are to benefit from the measure concerned. Exclusion criteria are those characteristics that disqualify potential beneficiaries from benefitting from support. These eligibility criteria have various forms and could be linked to type of activity, type and size of an enterprise or investments, age of the beneficiary, the presence of certain documents such as business plans, etc.

The failure of an applicant to meet an eligibility criterion should result in the rejection of his/her application for support. If some of the information provided by the applicant is ambiguous and does not clearly show compliance with an eligibility criterion, the Member State shall act in accordance with the established rules and procedures for handling the applications and could either request additional clarifying information from the applicant or reject his/her application without further investigation. In any case the selection body has to inform the applicant of the reasons for rejecting his/her application.

4.2. Establishment of eligibility criteria

Some eligibility criteria are set by the EU legislation, but Member States can set additional national/regional eligibility criteria. This is a practice in the current period. In certain cases, MS are, in fact, obliged to further define such eligibility criteria or clarify the EU-level eligibility criteria from national/regional perspective.

By the EU legislation

In the field of rural development, minimum eligibility criteria related to an applicant or an application are defined at a measure level in the RDR and/or in the corresponding Delegated and Implementing Acts, and are different for each measure or type of operation.²

By the Member State

In addition to the eligibility criteria already defined by the EU legislation, each MA could define further conditions to restrict the eligibility under a given measure in order to better target the RDP support, to avoid double funding or because of needs related to the sound financial management. These national/regional eligibility criteria are just as binding as the EU rules. They should be transparent, clear, relevant and comprehensible avoiding unnecessary complexity.

The MA should explain in the RDP the reason for the establishment of the additional eligibility criteria, for example, based on, or linked with, the SWOT analysis and/or the strategy chosen.³ In order to ensure an appropriate definition and application of eligibility

² The RDR defines further the eligibility of the investments or area, while the CPR the eligibility linked to expenditure and grants.

³ For example in cases when national/regional eligibility rules limit the support to a certain territory or rural area, or to a certain type of beneficiary or economic sector. One would expect that the SWOT provides sufficient understanding on why such targeting of the support is needed.

and selection criteria, close exchange and cooperation between the Managing Authority and the Paying Agency is needed.

The setting up of additional national/regional eligibility criteria could narrow down the scope of the EAFRD support options. Moreover, any additional eligibility criterion set, as an example, at national/regional level, increases the administrative burden for the selection body (incl. Paying Agency). Therefore, MS and regions are well advised to be reticent with the introduction of additional eligibility criteria.

4.3. Modifications of eligibility criteria

Set in the EU legislation

The Commission can introduce changes to eligibility criteria already defined in the EU legislation by proposing amendments of the correspondent legislation (e.g. RDR, its Delegated or Implementing Acts). If such amendments are adopted, they should be correctly introduced into the rules and procedures applied by the Member States, and when necessary RDPs should be modified.

Additionally set by Member States

Member States can introduce changes in the nationally/regionally introduced additional eligibility criteria through an amendment of the RDP in accordance with Article 11(b)(ii) of the RDR. Such requests for amendments are subject to the Commission's approval.

As a matter of a general principle, amendments of the eligibility criteria set in the RDP requested by the MA should be first discussed with the Monitoring Committee. Member States should avoid frequent changes of eligibility criteria because they may discourage potential beneficiaries from applying for support and because they may create unequal treatment between the various application cycles, respectively applications/beneficiaries taking part in them. Besides, eligibility criteria should not be changed in the course of an on-going call for proposals as it will lead to an unfair treatment of applicants/applications.

4.4. Eligibility of an applicant

A non-compliance of an applicant with at least one eligibility criterion should result in refusal/rejection of his/her application.

The Member State has the right to define specific procedures for requesting the applicant to provide additional or missed evidence proving its compliance with the eligibility criteria. If such a procedure exists, it has to be clearly defined before launching the calls for proposals in order to avoid arbitrariness and it must be applicable to all applicants within a given call for proposals.

4.5. Eligibility conditions linked to the content of an application

In specific cases, the RDR and its DA/IA set eligibility criteria linked to the content of the application. For example, in the context of Article 19 applicants for a start-up aid

must submit a business plan the content of which is defined by the RDR and could be further elaborated by national/regional requirements (like it is already currently the case).

The PA must verify the fulfilment of the eligibility criteria linked to the content before proceeding with the selection process. Any in compliance with the eligibility criteria linked to the content of an application results directly in a refusal of the application unless the MA/PA has established a procedure for re-submission/improvement of the applications.

MA with the support of the PA are advised to provide potential applicants with clear information on what exactly is required when applying for support under each rural development measure and what makes an applicant and an application eligible for selection. This could take the form of guidance, instructions or any other relevant type of document and information provision (e.g. on-line instructions).

4.6. The risk of error rate

Past practice has shown that eligibility conditions, depending on their definition, number and/or complexity, could be a source of an error in the expenditure made under the EAFRD. In order such errors to be reduced to the minimum or to be eliminated, and in line with Article 62 of the RDR, MA and PA shall ensure, during the design of the measures, that the eligibility conditions are verifiable and controllable and that they do not cause undue errors. When and where necessary, both bodies should undertake appropriate preventive actions.

Following the event that took place on 29 April 2013 where the Commission discussed with MA and PA the error rate subject, the Commission has drafted a Staff Working Document (SWD), which addresses all root causes for errors at all levels (administrative/beneficiary) and the respective prevention actions that needs to be undertaken. The Commission organized another event on 17th October 2013 and will hold another one on 19th March 2014 to encourage prevention actions to reduce error rate..

4.7. Withdrawals, reductions and exclusions of aid linked to eligibility conditions

Article 63 of the HZR defines the cases where refusals or withdrawals of support should happen. According to its provisions where it is found that a beneficiary does not comply with the eligibility criteria, commitments or other obligations relating to the conditions for granting the support as provided for in the sectoral agricultural legislation and in the provisions of Part Two of CPRinsofar as it applies to the EAFRD, the support shall be withdrawn in full or in part. The amounts concerned by the withdrawal shall be recovered without prejudice to Article 64(2) of the HZR that lists cases in which MS may decide not to pursue recovery.

Delegated act supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy lays down in its Article 36 specific provisions for the refusals, withdrawals and penalties for non-compliances with the eligibility criteria other than the

size of area or number of animals, commitments and other obligations. Non-compliances are classified under three categories which have different effects on the refusals and withdrawals:

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1. The support claimed shall not be paid or shall be withdrawn in full where the eligibility criteria are not complied with.

2. The support claimed shall not be paid or shall be withdrawn in full or in part where the following commitments and other obligations are not complied with.

(a) commitments established in the rural development programme; or

(b) where relevant, other obligations of the operation established by Union or national law or established in the rural development programme, in particular public procurement, State aid and other obligatory standards and requirements.

When deciding on the rate of withdrawal or refusal of payment following the non-compliance with the commitments or other obligations referred to in paragraph 2, the Member State shall take account of the severity, extent, duration and reoccurrence of such non-compliance.

- The severity of the non-compliance shall depend, in particular, on the importance of the consequences of the non-compliance, taking into account the objectives of the criteria, commitments or obligations that were not met.
- The extent of the non-compliance shall depend, in particular, on its effect on the operation as a whole.
- The duration shall depend, in particular, on the length of time for which the effect lasts or the possibility of terminating this effect by reasonable means.
- The reoccurrence shall depend on whether similar non-compliances have been found earlier during the last four years or during the whole programming period 2014-2020 in case of the same beneficiary and the same measure [or type of operation] or in the case of the programming period 2007-2013, the similar measure.

The Paying Agency shall ensure before the payment that the eligibility conditions have been respected. The PA shall ensure this also where the task to check eligibility conditions is delegated to another body.

MS should set clear procedures as regards the recovery of payments in case of non-compliance. According to Article 3 of the delegated act, MS have the right to set (additional) sanctions if national law so provides.

4.8. Eligibility conditions to be set at national/regional level

In the context of the programmes' preparation Member States will have to define all eligibility conditions linked to a measure or type of operation within a measure. MS shall clearly distinguish commitments from eligibility criteria because the consequences of a non-fulfilment are different. The RDR requires MS to define or clarify the eligible applicants, supported activities or content of applications below as example:

- Eligibility of an applicant:
 - o Farmers, forest holders, land managers and SMEs [e.g. definitions at national/regional level].
 - o Young farmers: age under 40, occupational skills and competence, setting up for the first time and as a sole head of the holding [e.g. further conditions]
 - o Producer groups [e.g. definitions at national/regional level].
 - o Service provider [of training, advice, etc.].
- Eligibility of an application:
 - o Submission of a business plan for the farm showing economic viability and compliance with minimum standards regarding environment, etc.
 - o Thresholds related to farm sizes [young farmers, development of small farms]
 - o Submission of a business plan for a start-up aid;
 - o Conditions related to the area such as classification as LFA or Natura 2000; possession of a certificate for organic farming, etc.

4.9. Record keeping of eligibility checks

Paying Agencies, being responsible for the control of eligibility conditions, are obliged to keep records of the eligibility checks of all applications submitted and must have electronic record keeping systems for monitoring and evaluation purposes as requested by Articles 66(1) and 70 of the RDR. A record keeping procedure and system that allow a quick and efficient reference for every single eligibility check must be put in place.

5. SELECTION CRITERIA

In the current programming period 2007-2013 the application of selection criteria according to Article 71(2) of Council Regulation (EC) No 1698/2005 is a condition to accept related expenditure as eligible. This principle is extended to the new programming period 2014-2020 in the light of Article 49 of the RDR.

According to Article 49(1) from the RDR the Managing Authority shall define selection criteria for operations under all measures⁴ following a consultation with the Monitoring Committee. The selection criteria shall aim to ensure equal treatment of applicants, better use of financial resources and targeting of measures in accordance with the Union priorities for rural development.

Selection criteria are established and apply for each rural development measure and for all submitted eligible projects (Article 49(2) from the RDR). As a matter of principle, for the purpose of sound financial management and for ensuring a value-added from the EAFRD support, selection criteria should be applied in a compulsory manner even in cases when the budget available for the measure/call for proposals is higher than the demand for funding.⁵ This does not apply to the measures referred to in Articles 28 to 31, 33 to 34 and 36 to 39.

The RDR allows beneficiaries to be selected also on the basis of calls for proposals, applying criteria of economic and environmental efficiency, but only where this is appropriate (Article 49(3) RDR).

The lack of selection criteria and respectively the lack of their application under the relevant Articles may be considered as a weakness in the management and control system. It may result in a refusal from EU financing of the expenditure concerned.

5.1. Definition and major principles

Selection criteria are conditions that Managing Authorities should establish for the ranking of the applications to ensure the prioritization of support to those projects that best meet the needs identified in the SWOT analysis and the objectives established in the rural development programme.

Selection criteria have to be clearly defined prior to the beginning of the application process to provide for equal treatment of all the potential applicants. In general, each selection criterion should be given points and application's total score should be the sum of the points for all selection criteria that it satisfies. A certain minimum threshold of points to be reached by an application in order to qualify for support should be set.

Member States should avoid the use of administratively complex selection criteria that could become a root cause of an error, that are difficult to be checked or that are ambiguously defined and are non-transparent towards the applicants.

The set of selection criteria should ensure:

- Prioritization of the support in accordance with the Union and the national/regional priorities for rural development;

⁴ With the exception of operations under Articles 28 to 31, 33 to 34 and 36 to 39, as referred to in Art. 49(2).

⁵ In cases when there is almost no demand for funding, the respective measure/operation should normally be closed, especially if such lack of demand is noticed to be continuous (e.g. covering several consecutive calls for proposals).

- Better use of financial resources - best value for money (e.g. in relation to the proposed investment);
- Equal treatment of all (eligible) applicants;
- Proportionality to the size of the operation, as requested for example by Article 49(1) of the RDR.

5.2. Setting up of selection criteria and changes of already defined selection criteria

Selection criteria shall be defined by the Managing Authority and consulted with the Monitoring Committee⁶, within four months of the decision approving the programme, as requested by Article 74(1)(a) from the RDR. The Monitoring Committee should issue an opinion. The selection criteria can be revised according to the programming needs.

Although the selection criteria are not part of the RDP submitted to the Commission for approval, the general principles and rules for such criteria have to be explained in the RDPs as requested by Article 8 (1)(n)(iv). According to the general guidance on programming, each RDP shall include under point 8 "Description of each of the measures selected", paragraph 2c, the principles that will be applied to the establishment of selection criteria for projects and local development strategies, which should be clearly described, taking into account relevant targets. The principles for setting the selection criteria shall be included in this section because they are measure/type of operation specific. As part of simplification, it is not requested to include this information again at the programme level in the section "Programme implementing arrangements".

Selection criteria, being compulsory according to Article 49(1), should also be defined in the cases when stringent eligibility criteria are present due to the fact that the two are not interchangeable.

In order to accelerate the start of the implementation of the RDPs, the Member State (or the MA) can consult the Monitoring Committee on selection criteria before the RDP is approved. In such case a provisional Monitoring Committee has to be in place, which structure and decisions are later on confirmed (following the official adoption of the RDP). By that time, any decision taken by that Committee remains provisional.

A set of selection criteria should be defined for each measure and their relevance for the assessment of the proposals has to be ensured. Selection criteria that could be technically easily met by all applications should be avoided. The nature of the measures or the operations should be taken into account when setting up the relevant selection criteria. The adopted selection criteria shall be introduced in the national rules for application and guidelines.

The Managing Authority could amend or introduce new selection criteria within the programming period following the previously described procedure (including the consultation of the Monitoring Committee). However, such changes cannot enter into

⁶ The responsibilities of the Monitoring Committee are defined in Article 43 from the CPR and Article 81 from the RDR.

force in the course of an on-going call for proposals as it will create unequal treatment among applicants.

5.3. Scoring and weighting of selection criteria

Once the selection criteria have been established they should normally be given a score (and/or be weighted) in order to express their relative importance. This is a crucial step for the assessment of the project proposals.

The Managing Authority should decide on the score for each of the criteria before consulting the Monitoring Committee. As a matter of principle, a score of 0 (zero points) should be given to an application that does not fulfil one particular selection criterion. Depending on the type of the selection criterion, different score levels could also be defined for that criterion within its minimum and maximum score levels.⁷ Only those applications that reach the minimum threshold should be supported.

5.4. Proportionality to the size of the operation

Article 49(1) from the RDR stipulates that MA shall take into account the principle of proportionality in relation to the size of the operation in defining and applying selection criteria. This means that the MA can decide on introducing a simplified set of selection criteria in relation to grants of small amounts (e.g. up to 10-12,000 euro; to be decided by the MA following a consultation with the MC).

Another aspect of the principle of proportionality, but in relation to the attribution of points for a certain selection criterion, is discussed with a practical example in sub-section 5.10.1.

5.5. Attribution of points and ranking of proposals

The attribution of points and the ranking of the eligible proposals are, in general, carried out after an eligibility check for the application(s) has been carried out. The Member State authority responsible for selection of operations, in the assessment of the eligible proposals, should attribute points according to the degree of accomplishment of each selection criteria.

In applying the scoring system, the final score of a proposal would be the sum of the points attributed to each criterion. Applications should be ranked according to their total score and those with a total score that is below a certain minimum threshold level should be excluded from support as they do not bring sufficient value added. Even in the case of a single application, it shall be rejected if it does not reach the minimum threshold levels (or level to be passed in case of an answer type of selection criteria). Therefore, the score attributed to each selection criterion (or its weight) are of an extreme importance.

The Member State authority responsible for selection of operations shall keep record of the reasons and motivations to attribute points to the projects in the process of evaluation. Operations should be selected according to a transparent and well documented procedure as requested by Article 49(2) from the RDR. The method for attributing the points must be clearly defined. Information to justify the decisions taken should be available for control and audit purposes. During Commission audits, the Member State authority

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For example, different support rate as laid down in Annex II of Regulation (EU) No 1305/2013.

responsible for selection of operations could be asked to provide further information and documentation to explain the score assigned to supported/selected projects.

How to proceed in cases when the submitted applications go beyond the capacity of the selection body to evaluate?

The current practices show that under some investment measures demand is so high that submitted applications are of a huge number (e.g. up to 60,000 per call for proposals). This is especially relevant for national RDPs that cover large territories as programme areas. In such cases, it is possible that the selection body first ranks proposals based on the selection criteria and eliminates those that do not score enough. Then comes the eligibility check and applications that are not eligible are also eliminated. Thus, a limited set of applications remain selected for support in accordance with the eligibility and selection criteria.

5.6. Selection criteria for area and animal-related measures

Following Article 49(2) of the new proposal, the application of the selection criteria is not obligatory for area and animal-related measures as well as for risk management support. This approach is based on the assumption that all operations under these measures are based on precisely defined commitments. It is also assumed that the implementation of these commitments leads to the same environmental or animal welfare benefit and thus do not really differ as regards their outcome. Therefore, all operations are expected to represent the same value and ranking is not necessary. However, if different environmental or animal welfare benefit is expected according to the region/area where the operation is carried out, preference could be given to the higher value area (added?) identified in the context of the SWOT analysis.

For better understanding the difference between a selection criterion, baseline⁸ and a commitment⁹, a reference should be made to the Guidelines on agri-environment and climate measures.

5.7. Selection criteria and the Managing Authority/Region as a sole beneficiary

It is possible that the Managing Authority or a national/regional body/authority is a direct (and/or only) beneficiary of a certain measure or an activity supported by the EAFRD¹⁰. Even in these cases the project proposed for support by that authority has to be subject to a selection process based on clearly defined selection criteria.

⁸ Baseline refers to a situation that is considered to be an initial situation relevant to the applicant allowing further comparisons and establishment of commitments, which commitments to be undertaken by that applicant.

⁹ Commitments refer to obligations undertaken by a beneficiary against which he/she receives a support, or based on which the support is conditional (for example, commitments on agricultural land as part of operations which farmers have to carry out, defined by Article 28 from the RDR; see also the guidance document on agri-environmental measures).

¹⁰ For example, in forest related measures when the region is the owner of the forest.

5.8. Examples of inadequate selection systems

In situations when the demand is higher than the available budget, Member States try to eliminate some of the submitted applications in a pre-selection procedure for the purpose of narrowing down the potential beneficiaries as much as possible to the available budget under the call for proposals, without carrying out a real selection procedure assessing the value-added of all submitted and eligible applications, this is considered as inappropriate. If the elimination of submitted applications is done based on political decisions by the selection committees it is also considered as inappropriate.

Pre-selection procedures that do not ensure that the best proposals are selected in accordance with the existing selection criteria are considered to be not in conformity with the Union law and shall not be applied in practice. Two examples could be given:

5.8.1. The Lottery system

Under this system, the administration (national and/or regional) selects randomly the projects which would benefit from EAFRD support. Each submitted application gets a unique number and after the call for proposals is closed, a random selection follows. Based on the random selection, some applications are directly rejected. Only the selected applications are then assessed against the selection criteria. In this way, the national/regional authorities eliminate significant number of applications, many of which could bear a high-value added and even higher than the one of the selected applications. Thus, the lottery system jeopardizes the implementation of the policy as it does not give priority to those projects which are the best with regard to the fulfilment of the objectives of the rural development policy and the expected measures' outcomes.

5.8.2. First come – first serve principle

The first come – first serve principle was considered in the past as an easy way to match the number of supported applications with the available budget. It is used also in cases when there is a generally low demand for support under a given measure. However, the application of this method does not ensure that the support goes to projects that have the highest value-added, because projects are not compared to each other (through selection). Therefore, projects with low or no value-added could receive support just because they have been sent earlier, or in the cases of low demand beneficiaries are given support only because they have filled in an application for support and have complied with the eligibility conditions. The system, applied in this way, does not give a priority to the best projects.¹¹

5.9. Examples of unsatisfactory selection systems and way to improve them

5.9.1. Permanently open calls for proposals

There are cases when calls for proposals are kept open for a very long period, if not the whole programming period, and until the budget under the measure in question is

¹¹ In cases when there is a low demand for support under a given measure or there are extreme difficulties in finding potential beneficiaries, Managing Authorities should consider modifying the eligibility conditions or closing down the measure and re-directing the available budget towards other measures for serving other programme's objectives. A low number of applications does not mean that no selection should be done.

consumed. In this way, every submitted application which is considered eligible immediately classifies as selected (as budget is higher than the demand) and the selection criteria established for that measure are never used in practice (i.e. first come – first serve principle). This undermines significantly the role that the selection criteria play; in fact it nullifies their impact.¹² As a result, there is a significant risk that ordinary projects that do not need public funding and/or have no value-added receive access to the EAFRD funding.

To reduce the risk and to bring the procedure in full conformity with the Union law, Member States shall, if they wish to use a permanently open call for proposals, work in a "block procedure". In this case they shall collect incoming applications over a reasonably defined period of time¹³, which is well communicated to the potential applicants. When defining the period of time, Member States can also take into account its administrative capacity for processing the received applications. Submitted applications within this defined period of time, shall be scored and ranked against the applicable selection criteria, as well as checked for eligibility conformity, and the best projects shall be selected for support. When a period of time ends, MS can immediately open the next one (while evaluating the applications submitted in the previous). This procedure shall be repeated over the period of the permanently open call for proposals. Thus, Member States have to define the duration of each "block procedure", the cutting dates and the budget allocated for each block. Unsuccessful applications may be improved and re-submitted for another evaluation within the calls to follow if the rules and procedures by the MS allow for that. It is also possible to define an annual budget if it is ensured that there will be budget available for the last years of the programming period and also that selection criteria linked to the quality of the project are applied.

5.9.2. Selected applications and waiting lists

The current practice shows that there are cases when applications fulfilling the eligibility conditions and the selection criteria (above the minimum thresholds) cannot be funded, because the available budget under the call for proposals is insufficient to cover the existing demand. These projects are then kept on a waiting list and selected for funding in case that a supported project ranked above them cannot be realised in practice. However, the responsible programme authorities could launch another call for proposals within the same measure and for the same type of operations. In such cases, the following principles shall apply:

- If there is still budget available under the second call for proposals after all eligible and selected applications under that second call have been funded, the Managing Authority can fund projects from the waiting list of the previous call, provided that the selection criteria for both calls have been identical. Preference should be given to the projects with the highest scores on the waiting list;
- If there is budget available under the second call for proposals after all eligible and selected applications under that second call have been funded, but different selection criteria have been applied for that second call, no funding from the

¹² This is also similar to the previously discussed "first come – first serve" principle.

¹³ It is questionable whether a period of more than 6 months for submitting of applications is efficient and reasonable.

second call can be directed to the waiting list from the previous call, i.e. applications on the waiting list from the previous call can only replace unrealised projects approved for support from the same call;

- If under the second call for proposals no budget has been left available, and there are also selected applications that could not be funded, the responsible programme authorities can establish a second waiting list. Applications on these two waiting lists can only replace unrealised projects from the same call for proposals. If the same selection criteria have been used for both calls, then the preference for replacement should be given to the highest ranked application from the both calls taken together. If different selection criteria have been used in the calls, the replacement could only cover applications within the same call.

If a Managing Authority has changed the selection criteria between consecutive calls for proposals (for the same measure or type of operations) it should inform applicants from the waiting list(s) about the changes and it could allow these applicants to submit the missing information in relation to the new selection criteria. The responsible for the selection body can then re-evaluate their applications under the conditions of the new call and in accordance with the new selection criteria.

The same principle should apply in cases when eligibility conditions change between two consecutive calls.

5.10. Examples of poorly applied selection criteria

The selection criteria related to a given measure or a type of operation should allow for consideration of the quality and the content of the eligible application and should not constitute only criteria of administrative character that could be easily met by all potential eligible applicants.

This sub-section gives several examples that have been seen in practice and the difficulties encountered with their application. Many of these selection criteria are relevant, but there is a need for improving their application in practice.

5.10.1. Proportionality to the size of the operation

Proportionality is a general issue that should be taken into consideration for all relevant selection criteria. In the setting up of selection criteria it should be a proportion between the score attributed to the selection criteria and the amount of money that it represents in the total budget of the project. The granting of the maximum score for a criterion without paying attention on the related costs ensuring the compliance with it is a weakness that leads to inadequate selection, because it allows potential applicants to easily influence the selection of their projects by including a proportional small investment in the overall project, or it hides the risk of helping those potential beneficiaries who are best informed on how selection is applied (or who have the best informed consultant). One way for avoiding such situations is the presence of a weighted system or a split in the points that a criterion gives depending on the proportionality of the costs. Problematic cases could also be avoided if the content and the costs of the investment proposals are analysed during the selection process. As an example we mentioned two cases:

a) Selection criterion "Meeting EU standards"

The current practice has revealed that in certain cases the fulfilment of that criterion could be done with a small amount which represents an insignificant share of the total eligible costs of the project (e.g. as low as 0.2% of total eligible expenditure). Despite this, a project could potentially be granted the maximum score related to that selection criterion.

b) Selection criterion "Water savings and efficiency"

Depending on how this selection criterion is set, it could be met with insignificant part of the costs of the eligible investment. For example, an investment project (e.g. rural hotel) that foresees the use of water saving taps for the sinks and the showers should not be given the maximum points for that criterion due to the proportionality in the costs for its fulfilment. On the contrary, and as an example, if a maximum score is given to a project that foresees a replacement of the whole water distributing system in a building with a new, more efficient one, then this is an adequate score attribution.

5.10.2. Examples of specific selection criteria and encountered difficulties related to their application

a) "Project of the special interest for the region"

This is a selection criterion that could be extremely complex and could burden a lot the transparency of the selection process. The current practice shows that it could hide a lot of additional sub-categories (and even different attributes for each one) depending on the understanding of the Managing Authority or the selection committee. Some examples include: (i) project located in an area with development difficulties; (ii) project strategic to maintain the enterprise economic activity in the region; (iii) project makes use of resources and raw materials from the region; (iv) project of special economic and social importance; etc.

This criterion and its potential sub-categories give significant room for interpretation and often there is a lack of clear rules or guidance on how it should be understood by the potential beneficiary. As a consequence, the awarding procedure is not based on an objective and a transparent approach. Furthermore, it has been observed in the practice that the evaluation under that criterion penalises smaller investments compared to larger investments even if both are having in principle the same qualitative importance at regional level. Further possible weaknesses could be due to qualitative assessments that could differ from one call to another, or even within a given call, or due to lack or insufficient records proving the discussions and the justifications behind the awarding decision, and hence the possible unequal treatment between evaluated applications.

If such criterion is to be introduced it must therefore have a clear and concrete structure that could allow every beneficiary to see whether his/her application fulfils the expectations of the Managing Authority and/or the selection committee.

b) "Agriculture as a main activity" measured at income level (% of total income)

This criterion is often being used by Member States for ensuring that funding goes to actively operating farmers. It is also used quite often as an eligibility criterion (e.g., eligible applicants are farmers which income from agriculture is at least a certain percentage from their total income). Normally, the calculations cover the last income year or the last 2-3 income years.

It is recommendable to MS when using this criterion (for eligibility or selection reasons) that they can ensure that information regarding the sources of income is available and that this information allows the sufficient and complete check of the overall financial condition of the applicant.¹⁴ Such information should be possible to be obtained in practice in an easy and a trustful manner. It is also recommendable to consider that other conditions (e.g., such as bad harvest when specialised farms are concerned) can easily shift income's proportion and have an impact on the eligibility/selection process.

The introduction of such income-share related condition/criterion can penalise farmers with successful diversification activity, thus a careful assessment on the threshold (i.e. percentage) levels has to be made.

c) "Applicant's offices located in the same municipality as the activity/investment"

By using this criterion Managing Authorities try to stimulate the economic activity in a given region or municipality. The major aim is to ensure that local businesses invest in the same territory and in this way stimulate local growth and employment. However, the current experience shows that such criterion can easily be fulfilled by any applicant with an existing enterprise by registering a "new" branch of its already existing company in that region/municipality, and use that registration to comply with the selection criterion. While this seems to be a normal practice, selection committees tend not to check whether the newly registered company (i.e. the branch in our example) is part of an existing and already running business or not, thus granting the maximum points based on the "new" registration.

Thus, a more thorough check of the ownership has to be carried out when this selection criterion is used in practice to avoid tolerating shielded or artificially created companies.

d) "In the past, the applicant never benefited from EU support"

This is a standard selection criterion that aims at achieving a larger coverage of supported beneficiaries, thus avoiding situations where a potential beneficiary gets used in knowing on how to apply successfully for various grants. This criterion could also be used for preventing beneficiaries from splitting their investment project into consecutive stages as a way of circumventing the maximum support levels set for the investment support (if such is defined by the programme)¹⁵.

¹⁴ The current practice shows that selection committees rely in such cases on information stated in different national registers. Additional verification could cover relevant aspects of the farmers' balance sheets and information submitted by the applicant such as agricultural activities, assets and land owned/rented. The latter, however, does not allow the respective authorities to compare with the incomes and time spent by the farmer on non-agricultural activities.

¹⁵ The general "de minimis" state aid rule limits that option for a period of 3 years for an amount of 200,000 euro per beneficiary. However, such limitations are not present for agriculture or forestry.

The practice shows that the duration of the non-benefiting period covers not just few years before the date of submission of the application, but rather whole programming period(s), i.e. it can go back to 7 or 14 years, or even more. The criterion can also penalise potential beneficiaries for their previous investment decisions and for being proactive and showing entrepreneurship. However, by setting up a new legal entity, a potential beneficiary already supported by the EAFRD may try to circumvent that criterion and score the maximum points.

Therefore, the type of investment previously being subject to support should be taken into consideration when applying this criterion, and a reasonable time period for non-benefitting from EAFRD support should be set (contrary to the "never" option).¹⁶

e) "Newly established enterprise"

This criterion aims at stimulating the business environment and economic diversity in a given territory. However, examples showing how existing businesses (respectively their managers) are setting up new enterprises as shielded companies with the only aim to comply with the criterion were found in the current period.

Therefore, when this criterion is used in practice, it is important to be checked the business situation of the owner of the enterprise.

f) "Women as entrepreneurs"

The entry of women into the labour market and the stimulation of their entrepreneurship is one of the aims in rural development policy. Because of this, women often receive additional points for their applications. The current practice shows, however, that there are cases where the gender aspect is hidden behind the legal status of the enterprise applying for support, i.e. it is not visible. Therefore, it is recommendable to establish clear procedures allowing the selection committee to evaluate the managerial/ownership status of the legal entity applying for support, and respectively the fulfilment of the gender criterion by the applicant.

5.11. Complaints concerning the selection

According to Article 74(3) from the CPR Member States shall establish and implement a procedure for the independent examination and resolution of complaints concerning the selection or implementation of operations co-financed by the ESI Funds. Member States shall report the results of such examinations to the Commission upon request.

6. CONCLUSIONS

Eligibility conditions and selection criteria are key elements to ensure the targeting of support of the EAFRD to those projects and operations that most contribute to the objectives of the rural development policy and represent the best value for money.

MS and MA shall ensure a clear, relevant and objective setting up of both types of conditions and criteria as well as a fair and transparent application. Besides, MS and MA

¹⁶ The value-added of the current project proposal represented by its content, costs and quantitative contribution to the measures' outputs could also be taken into consideration.

shall keep record of the documentation related to the setting up and the application of eligibility and selection for the purpose of conducting checks and control systems. In this way it is possible to identify the most suitable projects and operations to be supported by the EAFRD.