ADDENDUM TO THE QUESTIONS AND ANSWERS
ON THE PROVISIONS OF CHECKS BY MONITORING INTRODUCED TO REGULATION (EU) NO 809/2014 BY REGULATION (EU) 2018/746 AND REGULATION (EU) 2019/1804

This document is referred to as "addendum to the Q&A on monitoring for claim years 2018-2020"

The purpose of this document is to provide additional clarifications to Member States (MS) on the legal provisions related to Article 40a Checks by monitoring of Regulation (EU) No 809/2014 as amended by Commission Implementing Regulation (EU) 2018/746 and Commission Implementing Regulation (EU) 2019/1804. It is applicable to claim years 2018-2020.

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N.B. The numbering in this addendum is a continuation of the numbering in the first Q&A on monitoring for claim years 2018 and 2019 (Ares(2018)4341814).

Phasing-in and flexibilities in applying checks by monitoring (cf. Article 40a(3))

Q45. In 2019, our Member State/region wants to start phasing-in checks by monitoring of areas covered by a VCS scheme. For reasons of management and coherence, we believe that it would be better to implement checks by monitoring for these beneficiaries globally, i.e. monitor other area-based direct payment schemes (on top of the VCS). Does this mean that phasing-in will be activated for those area-based direct payment schemes?

Yes (cf. second subparagraph of Article 40a(3) of Regulation (EU) No 809/2014) if the decision on payment for those beneficiaries is made on the basis of checks by monitoring. Conversely, if Copernicus Sentinels satellite data are used as “other relevant evidence” in the context of the traditional OTSC for the other area-based schemes and the beneficiaries are part of the so-called “5% sample” for those schemes, then the second subparagraph of Article 40a(3) of the abovementioned Regulation does not apply.
Q46. Our MS/ region plans to check by monitoring SAPS, the redistributive payment and the beneficiaries exempt from greening (cf. Article 31(1)(b) of Regulation (EU) No 809/2014). Our MS/ region also implements the young farmer scheme and the payment for areas with natural constraints (Pillar 2), for which we do not control any specific requirements other than ones for SAPS. Can we implement checks by monitoring only for SAPS, the redistributive payment and the beneficiaries exempt from greening and not carry out the OTSC for the 5% sample for the young farmer scheme and the payment for areas with natural constraints since we do not control different requirements than the ones for SAPS? Shall we then sum-up the impact on payment of these two schemes to the calculated impact on payment of SAPS, the redistributive payment and the greening payment?

Each scheme or measure has to be subject either to checks by monitoring or the traditional sample-based OTSC. It follows that unless a scheme or measure is checked by monitoring, it has to be subject to the control rates laid down in Articles 30, 31 and 32. In the example above, where the ANC payment and the young farmer scheme are not to be checked by monitoring, the OTSC have to be carried out accordingly.

However, Article 40a of Regulation (EU) No 809/2014 gives the possibility to choose which schemes or measures will be covered by checks by monitoring. Competent authorities may therefore decide to also apply checks by monitoring to the young farmer scheme and the ANC payment under Pillar 2. In that case, to calculate the overall impact on payment and apply the thresholds referred to in Q9 in view of the follow-up of inconclusive cases, indeed, the impact on payment for the young farmer scheme and the ANC payment under Pillar 2 should be added to the calculated impact on payment for SAPS, the redistributive payment and the greening payment.

Q47. Is it possible to control a scheme/ measure/ type of operation by checks-by-monitoring if some conditions are monitorable and the rest are not?

Yes, it is possible. Article 40a of Regulation (EU) No 809/2014 acknowledges that within a scheme/ measure/ type of operation subject to checks by monitoring there may be non-monitorable eligibility criteria, commitments and other obligations and indicates how to deal with them (cf. Article 40a(1)(c)).

Follow-up of ineligible features revealed by the automated procedure referred to in Article 40a(1)(a)

Q48. Our Member State/ region decided to apply checks by monitoring for BPS/ SAPS. The automated monitoring analysis (cf. procedure laid down in Article 40a(1)(a)) will reveal new ineligible features, e.g. houses, roads, etc. In the current system, any finding revealed during OTSC has to be taken into account before payment. That may not be feasible when applying checks by monitoring, especially in the first year of implementation, as it could cause significant administrative burden and an increase in field visits (Sentinels data reveal there is a new house or road but since Sentinels images cannot be used for area measurement, a visit to the field or measurement on VHR images is necessary). What should be done with these findings? Can they be taken into account in the next LPIS update when the ineligible feature will be measured?

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Where the automated procedure referred to in Article 40a(1)(a) reveals new ineligible features (e.g. roads, houses), changes to eligible areas for BPS/SAPS have to be dealt with by an update of the relevant LPIS layer(s). Two options are possible.

**Option 1.** Information on the non-eligible feature triggers an LPIS update in the year when the non-eligible feature is discovered (year of the finding).

Penalties have to be applied if the beneficiary did not amend his/her BPS/SAPS application for that year. Amendments to the application are possible in accordance with Article 15 of Regulation (EU) No 809/2014.

The authorities could also assess whether such a case may be recognised as an obvious error on the basis of an overall assessment of the particular case and provided that the beneficiary acted in good faith (cf. Article 4 of Regulation (EU) No 809/2014). In this case, aid applications and payment claims may be corrected and adjusted (cf. Article 59(6) of Regulation (EU) No 1306/2013).

**Option 2.** Information on the non-eligible feature is processed in the year following the year of the finding or, at the latest, the year of the next LPIS update for the feature in question.

Since the payment has already been made and the application/ claim cannot be amended retroactively, reductions and, where applicable, penalties have to be applied for the year(s) when undue payment was made.

**Determination of eligibility and non-compliances where checks by monitoring and sample-based OTSC are applied simultaneously**

**Q49.** How to deal with dossiers of beneficiaries who are at the same time checked by monitoring for some schemes or measures and selected for traditional OTSC for other schemes or measures where the traditional OTSC reveals a non-eligible area relevant for the schemes or measures checked by monitoring? In the ‘pre-monitoring’ period, the OTSC finding would be taken into account for all other schemes or measures. Should the same principle apply when checks by monitoring coexist with the traditional OTSC?

If the traditional OTSC of schemes or measures not checked by monitoring reveal findings that are relevant for the schemes or measures checked by monitoring, findings have to be taken into account when establishing eligibility for schemes/ measures checked by monitoring (cf. Articles 27 and 38(9) of Regulation (EU) No 809/2014).

**Q50.** Our Member State/region decides to phase-in checks by monitoring for BPS and the Young Farmers Scheme. Many beneficiaries, who will be checked by monitoring for Pillar I, apply also for Pillar II measures (one combined application for Pillar I and II). What should be done if a non-eligibility is discovered in Pillar I which has also consequences for Pillar II? For example, a parcel contains maize instead of the declared nitrogen fixing crops. Regarding nitrogen-fixing crops, the farmer requested support for the Pillar II as agri-environment-climate measure and is not ‘part’ of the traditional ‘5% sample’ for this measure. What should be done with these findings resulting from monitoring Pillar I measures that are relevant for Pillar II measures?

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1 See also reply to LT (Ares(2018)5775471) published on Circabc.
Findings stemming from checks by monitoring which are relevant for schemes/measures not checked by monitoring should be taken into account when determining compliance with eligibility requirements, commitments and other obligations of the non-monitored schemes/measures. However, as set out in Article 40a(4) of Regulation (EU) No 809/2014, in the first three years of implementation of checks by monitoring, competent authorities have been given the choice to take into account the findings stemming from the automated monitoring procedure (cf. Article 40a(1)(a)) only in respect to those beneficiaries that have been selected for OTSC. In your example, concerning rural development measures, these would be all beneficiaries selected in accordance with Article 32. In other words, the findings might lead to determined non-compliances only for the beneficiaries selected for OTSC.

Please note that where a competent authority chooses to apply the option described in the previous paragraph, findings revealed by checks by monitoring in year N have to be taken into account in the risk analysis when selecting the sample to be checked in year N+1 (cf. Article 34(2) and 34(3) as amended by Regulation (EU) 2019/1804).

Checks by monitoring – general questions

Q51. In our MS, a region can autonomously decide to start applying checks by monitoring. How to proceed with the processing of information when a beneficiary has agricultural areas in other regions that are not applying checks by monitoring? Currently, when one region selects a beneficiary for an OTSC, it asks other regions’ paying agencies to carry out checks of the agricultural parcels in that region. Results are then combined. This does not work with checks by monitoring. The question is to determine what to do with those parcels farmed by a beneficiary in areas outside the region where checks by monitoring are applied. Should the affected farmers also be included in the 5% traditional OTSC sample as a sort of virtual holding which includes only the parcels located in other regions?

In the absence of information quantifying the possible risk for the Fund, DG AGRI assumes the risk may be significant and sees the following possibilities to address the scenario described.

Option 1. Parcels outside of the competence of Paying Agency 1, i.e. the paying agency that is implementing checks by monitoring, are monitored by Paying Agency 1. This would require Paying Agency 2 to share LPIS and GSAA data with Paying Agency 1 and agree on a way of working together to carry out, where necessary, the follow-up of inconclusive cases.

Option 2. Parcels outside of the competence of Paying Agency 1 are considered inconclusive upfront (“yellow”). Parcels are not monitored but may be selected for follow-up in line with the rules set out in Article 40a of Regulation (EU) No 809/2014, the Q&A document on monitoring for claim years 2018 and 2019 (Ares(2018)4341814) and this addendum as well as the approach adopted by Paying Agency 1. This would also require the two paying agencies to agree on a way of working together to carry out, where necessary, the follow-up of inconclusive cases.

Option 3. DG AGRI can also accept the solution proposed (affected beneficiaries are included in the 5% traditional OTSC sample as a sort of virtual holding which includes only the unmonitored parcels located in other region(s)). This possibility is limited to the phasing-in
period only, i.e. the period in which Paying Agency 1 implements checks by monitoring while Paying Agency 2 maintains the standard 5% OTSC rate for a certain scheme/measure.

Follow-up of inconclusive cases (cf. Article 40a(1)(b))

Q52. When applying the monetary thresholds set out in the reply to Q9 of the Q&A on monitoring for claim years 2018 and 2019 (Ares(2018)4341814), can beneficiaries be “transferred” to another category while sorting out yellow parcels (inconclusive parcels)? For example, a beneficiary has 2 inconclusive parcels and the impact on payment of the total ‘unresolved’ area is calculated at 280 euros. The impact on payment of the first parcel is 40 euros and of 240 euros for the second one. Scenario 1: If we reach a conclusion (red/ green) for the 40 euro parcel, the beneficiary is "transferred" to the 50-250 category. Can it stay there provided that the 5% requirement of follow-up of inconclusive parcels is respected? Scenario 2: If we reach a conclusion (red/ green) for the 240 euros parcel, the beneficiary is "transferred" to the <50 category. Can we stop the follow-up for this beneficiary?

In view of allowing Member States as much flexibility as possible in 2019, the answer to both scenarios is affirmative. Please note, however, that the checks by monitoring approach was proposed with a view to increasing cost-efficiency in controls of IACS area-based measures, especially by decreasing the number of field inspections, without compromising the integrated system’s performance in delivering the required level of assurance. It would therefore appear obvious to choose scenario 2, i.e. follow-up of the parcel with the highest impact on the payment, or follow-up both parcels where there is no significant additional work to be done compared to the follow-up work for one parcel.

Q53. Concerning the answer to Q52, could you please clarify which steps have to be applied to reach a conclusion on payment for the 240 euro parcel? Is it correct to assume that a follow-up to conclude on eligibility for the aid or support requested will be done only if the parcel was selected for follow-up in the group of 5% of all inconclusive parcels? In all other cases, this parcel would be considered eligible for payment (green) for that year.

As stated in the reply to Q54 of this document, the rules for the intermediate threshold (>50 and ≤ 250 euros) and the highest threshold (>250 euros) apply at beneficiary (holding) level. The thresholds apply at beneficiary level for all schemes/ measures/ type of operations that are checked by monitoring. In Q52, the impact on payment for the beneficiary (holding) is 280 euros. Hence, as stated in the reply to Q9 of the Q&A on monitoring for claim years 2018 and 2019 (Ares(2018)4341814), since the total impact on payment is higher than 250 euros, the application(s)/ claim(s) have to be followed-up.

However, and with reference to Q52 of this document, should a decision on eligibility for the aid or support requested for the 40 euros parcel have been reached, the impact on payment at beneficiary (holding) level would correspond to 240 euros which would mean that, indeed, follow-up of this parcel would be necessary only if the parcel was selected in the sample of 5% of inconclusive parcels. In that case your assumption would be correct.

Q54. Our MS/ region plans to check by monitoring more than one scheme/measure. Specifically, we plan to check by monitoring three schemes/ measures/ type of operations. The follow-up rules in Q9 of the Q&A on monitoring for claim years 2018
and 2019 (Ares(2018)4341814) say that the monetary thresholds apply at beneficiary (holding) level. Such an approach is likely to lead to an increase in burden because it is highly likely that the impact on payment for 3 schemes/ measures/ types of operation checked by monitoring will easily overrun the thresholds. This is especially the case for the 50 euro threshold, i.e. the threshold giving the rule that no follow up is needed. Would it be possible to modify the approach and apply the thresholds per each scheme/ measure/ type of operation? If the answer is no, can it at least be considered to apply the 50 euro threshold per scheme/ measure/ type of operation?

DG AGRI assessed the proposal and it is not possible to apply all thresholds per scheme/ measure. It is however acceptable to apply the < 50 euros threshold at the level of the individual scheme/ measure/ type of operation. However, wherever the combined impact on payment exceeds 250 euros, the application(s)/ claim(s) have to be followed-up. In other words, two conditions have to be met in order to apply this additional flexibility: the impact on payment in each of the monitored schemes/ measures/ types of operation is below 50 euros and the sum of these amounts does not exceed 250 euros.

The rules for the intermediate threshold (>50 and ≤ 250 euros) and the highest threshold (>250 euros) continue to apply at beneficiary (holding) level.

**Q55. Concerning the answer to Q54, is it correct to assume that if checks by monitoring are applied, for example, to the BPS and two types of operation (e.g. AECM Eco and AECM cutting time) and with respect to just one type of operation (e.g. AECM cutting time) the 50 euro threshold is exceeded, follow-up measures (5% sample) are thus only necessary for this type of operation of the holding, provided that the 250 euro threshold is not exceeded?**

To clarify the reply to Q54, several examples have been developed using the elements raised in your question.

<table>
<thead>
<tr>
<th></th>
<th>BPS</th>
<th>AECM Eco</th>
<th>AECM cutting time</th>
<th>Impact on payment at beneficiary level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beneficiary A</td>
<td>45</td>
<td>45</td>
<td>70</td>
<td>160</td>
</tr>
<tr>
<td>Beneficiary B</td>
<td>45</td>
<td>45</td>
<td>45</td>
<td>135</td>
</tr>
<tr>
<td>Beneficiary C</td>
<td>200</td>
<td>45</td>
<td>45</td>
<td>290</td>
</tr>
<tr>
<td>Beneficiary D</td>
<td>270</td>
<td>45</td>
<td>60</td>
<td>375</td>
</tr>
</tbody>
</table>

Your question suggests that, for beneficiary A, only a follow-up of inconclusive parcels for the type of operation AECM cutting time is necessary. That would not be correct. Namely, the thresholds apply at beneficiary (holding) level for all schemes/ measures/ types of operations that are checked by monitoring. Hence, since the impact on payment at beneficiary level for beneficiary A is 160 euros, the beneficiary should be assigned to the intermediate threshold category (>50 and ≤ 250 euros). At this point, however, to finalise the dossier for this beneficiary, the competent authority can choose to:

- carry out follow-up activities to conclude on eligibility for payment for the 70 euro parcel(s) of the AECM cutting time and stop any follow-up for the AECM Eco parcel(s) since the impact of payment is now below 50 euros, or
- leave the beneficiary in the intermediate threshold category since the impact of payment at beneficiary level is 160 euros. Follow-up of parcels is necessary if these are selected for the 5% sample of inconclusive parcels.
The additional flexibility described in the reply to Q54 of this document can be clarified using the example of beneficiary B. Given that the impact on payment in each of the monitored schemes/ measures/ types of operation is below 50 euros and the sum of these amounts does not exceed 250 euros, no follow-up of inconclusive areas is necessary. If the additional flexibility was not available, this beneficiary would have had to be assigned to the intermediate threshold category (>50 and ≤ 250 euros) because the overall impact of payment is 135 euros.

Finally, the inconclusive parcels of beneficiaries C and D have to be followed up since the impact on payment at beneficiary (holding) level for all monitored schemes/measures/ types of operation is above 250 euros.

In the example of beneficiary C, assuming that a decision on eligibility is reached for BPS, the overall impact on payment will drop to 90 euros. According to the reply to Q9 of the Q&A on monitoring for claim years 2018 and 2019 (Ares(2018)4341814), the beneficiary should be assigned to the intermediate threshold category (>50 and ≤ 250 euros). However, due to the additional flexibility described in the reply to Q54 of this document, no further follow-up is necessary since the impact on payment in each of the monitored types of operation is below 50 euros and the overall impact on payment does not exceed 250 euros.

In the example of beneficiary D, however, further follow-up activities are needed: even if a decision on eligibility would be reached for BPS, the beneficiary should be assigned to the intermediate threshold category because the impact on payment for AECM cutting time is above 50 euros and the overall impact on payment 105 euros. As explained above, however, to finalise the dossier for this beneficiary, the competent authority can choose to:

- carry out follow-up activities to conclude on eligibility for payment for the 60 euro parcel(s) of the AECM cutting time and stop any follow-up for the AECM Eco parcel(s) since the impact of payment is below 50 euros, or
- leave the beneficiary in the intermediate threshold category since the impact of payment at beneficiary level is 105 euros. Follow-up of parcels is necessary if these are selected for the 5% sample of inconclusive parcels.

Q56. When checks by monitoring are planned for six schemes/measures, if the sum of the calculated impact for payment for a beneficiary exceeds 250 euro but one individual impact on payment is less than 50 euro while others are in the range of 50-250 euro, which parcels /schemes should be selected for follow up activities? The scenario is described in the table below.

<table>
<thead>
<tr>
<th>Parcel no.</th>
<th>Scheme/measure</th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
<th>Financial impact (euro)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parcel 1</td>
<td></td>
<td>5</td>
<td>49</td>
<td>49</td>
<td>49</td>
<td>49</td>
<td>49</td>
<td></td>
</tr>
<tr>
<td>Parcel 2</td>
<td></td>
<td>6</td>
<td>20</td>
<td>15</td>
<td>90</td>
<td>30</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>Parcel 3</td>
<td></td>
<td>8</td>
<td>30</td>
<td>30</td>
<td>70</td>
<td>50</td>
<td>278</td>
<td></td>
</tr>
<tr>
<td>Parcel 4</td>
<td></td>
<td>4</td>
<td>10</td>
<td>9</td>
<td>50</td>
<td>40</td>
<td>60</td>
<td></td>
</tr>
<tr>
<td>Parcel 5</td>
<td></td>
<td>7</td>
<td>67</td>
<td>53</td>
<td>260</td>
<td>58</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td>Parcel 6</td>
<td></td>
<td>2</td>
<td>18</td>
<td>20</td>
<td>15</td>
<td>10</td>
<td>155</td>
<td></td>
</tr>
<tr>
<td>Parcel 7</td>
<td></td>
<td>7</td>
<td>60</td>
<td>18</td>
<td>78</td>
<td>15</td>
<td>20</td>
<td></td>
</tr>
</tbody>
</table>
In your example, the impact on payment at beneficiary level is 2 200 euros. Follow-up of all applications/ claims (inconclusive areas declared for the applications/ schemes A-F) is necessary. Follow-up can be discontinued when the impact on payment at beneficiary level drops to < 50 euros at scheme/ measure level provided that the overall impact on payment at beneficiary level does not exceed 250 euros, or a sample-based follow-up is necessary when the overall impact on payment at beneficiary level falls in the intermediate threshold category (>50 and ≤ 250 euros).

For further clarifications, please consult the reply to Q55.

Q57. Regarding the impact on payment for the interval > 50 and < 250 euros, Q9 of the Q&A on monitoring for claim years 2018 and 2019 (Ares(2018)4341814) establishes that at least 5% of inconclusive parcels have to be followed up. One possibility would be to select the 5% of parcels directly from the universe of inconclusive parcels, regardless of the dossier they belong to. Another option would be to randomly select dossiers one by one until the 5% of parcels is reached. Which option should be taken?

It is up to the Member States to choose the option it will implement. Both options are compatible with the 5% requirement for follow-up of inconclusive parcels.

Please note that the method of selection of the 5% of inconclusive parcels is not prescribed; the competent authority may choose the approach it considers appropriate.

Q58. Regarding the answer to Q57, we ask for further clarifications. During an implementation support mission focused on preparing for introducing checks by monitoring, it was understood that MS should select 5% of inconclusive parcels which have the biggest risk to the Fund. Could you please confirm that MS can perform a random selection of beneficiaries having inconclusive parcels instead of concentrating on the parcels which have the highest impact on the Funds?

Competent authorities may choose how to select the sample of 5% of inconclusive parcels. A random selection of beneficiaries is compatible with the requirement as long as the threshold of 5% of inconclusive parcels is reached (N.B. the requirement is not expressed in percentage of beneficiaries). A risk-based selection that would focus on parcels with the highest impact on the Funds is also compatible with the requirement as long as the 5% threshold of inconclusive parcels is reached. Other selection methods could also be compatible with the requirement as long as the 5% threshold is reached.

Q59. In cases where beneficiaries submit applications that contain winter and spring-summer crops, the financial impact study at beneficiary (holding) level of the inconclusive parcels (Q9 of the Q&A on monitoring for claim years 2018 and 2019 (Ares(2018)4341814), would have to be carried out late in the season. As parcels affected by follow-up actions are only known after conducting the mentioned study, the winter crops might have been harvested by the time field visits are performed. In this context, it
would be convenient to set up a procedure in the Q&A on monitoring that would allow for an earlier estimation for the winter crops, so that follow-up actions and final field visits would be performed on time. This way, follow-up actions on winter crops could start before monitoring results for spring-summer crops are obtained.

It is up to the Member States to design the checks by monitoring procedure, including the timing of follow-up of inconclusive cases.

Q60. In order to calculate the impact on payment of inconclusive (yellow) parcels, the exact value of payment entitlements for every beneficiary concerned should be known. However, the exact value of each payment entitlement is established only at the end of the year when payments to beneficiary are made. This is not helpful in reducing the control burden linked to the follow-up of inconclusive cases. Would it be in line with the rules to calculate the impact on payment during the year using (i) the area declared by the farmer (yellow parcels area) and (ii) the average of the payment entitlements that a beneficiary has at the time of the calculation of the impact on payment?

A formula that could be used to assess the impact on payment for BPS/SAPS has been provided in Q9 of the Q&A on monitoring for CY 2018 and 2019 (Ares(2018)4341814):

\[
\text{Unresolved area in ha } \times \text{ average value of declared payment entitlements by the beneficiary (BPS countries)}
\]

The formula does not make reference to the final values of payment entitlements in a certain year; hence, using the average value of declared payment entitlements according to the above formula is possible.

Q61. Section 3.2 ‘Inconclusive assessments: intervention and manual follow-up’ of the JRC technical report ‘Second discussion document on the introduction of monitoring to substitute OTSC: rules for processing applications in 2018-2019’ (DS/CDP/2018/18) places the ‘assessment of the impact on payment’ after the ‘request for evidence’ from the farmer. If applied, such an approach would increase administrative burden for farmers and administrations since farmers would be required to provide evidence on inconclusive parcels even in cases where the overall risk for the Fund is below the threshold(s) indicated in the reply to Q9. We ask the Commission to confirm whether the calculation of the impact on payment could be done before requesting farmers to provide evidence for inconclusive (yellow) parcels as the impact on payment even in the worse case scenario is within the thresholds set out in Q9.

The calculation of the impact on payment on inclusive parcels can be carried out before carrying out the appropriate follow-up activities referred to in Article 40a(1)(b), in order to avoid excessive administrative burden.

Please note that the assessment of impact on payment may be done multiple times during the year.
Modification of aid applications and payment claims

Q62. Withdrawal of parcels. Are MS allowed to set a final date for the withdrawal of parcels? This would be needed to stabilise the system in time to calculate the (advance) payments.

Although Article 3(1) of Regulation (EU) No 809/2014 states that an aid application or payment claim may be totally or partially withdrawn at any time in writing, in the view of DG AGRI this is to be read “at any time before payment”. Indeed, in the absence of a final date for withdrawals, the paying agency may not be in a position to process on time the withdrawal information. Hence, Member States may set a final date for the withdrawal of parcels which allows the paying agency to adjust the calculations of the payments accordingly. With a view to ensuring equal treatment of farmers, this date should not be set before information on the automated analysis of Sentinels data (green, yellow and red parcels) has been presented to all beneficiaries subject to checks by monitoring.

Q63. Beneficiaries have the obligation to declare all agricultural parcels as well as non-agricultural area for which support is claimed. But later they can withdraw parcels when checks by monitoring are applied. Is this compatible with EU legislation? What about greening? How does this impact the greening payment/obligations?

Article 72(1)(a) of Regulation (EU) No 1306/2013 requires beneficiaries to declare all agricultural parcels on the holding as well as non-agricultural area for which support is claimed. According to Article 3 of Regulation (EU) No 809/2014, aid applications or payment claims can indeed be withdrawn partially or totally. Hence, the possibility to (partially) withdraw applications/claims is clearly in line with EU legislation.

Where an application for SAPS/BPS is (partially) withdrawn and checks by monitoring is applied, it is expected that this is done because the areas in question are not eligible. In such a scenario, greening is affected insofar as the basis for calculating the greening obligations changes. Namely, the greening obligations apply to all eligible hectares (cf. Article 43(1) of Regulation (EU) No 1307/2013).

Please note that when (partially) withdrawing aid applications or payment claims, information on the parcels initially claimed should be kept in the databases of the competent authority so that information is available for possible checks of cross-compliance requirements.

Q64. Our Member State/region decides to phase-in checks by monitoring for BPS and the Young Farmers Scheme. Many beneficiaries who will be checked by monitoring for Pillar I apply also for Pillar II measures (one combined application for Pillar I and II). For example, a farmer requests support for BPS support (Pillar I) and mechanical weed treatment (Pillar II) in one combined application procedure. Checks by monitoring will be implemented for BPS. Monitoring shows that the parcel contains fir trees. Fir trees are not eligible and the farmer is given the possibility to modify his BPS application for that year (withdraw the aid application regarding the parcel but not completely deleting it). Regarding BPS, his application may be adjusted by the beneficiary without penalties. What is the consequence for Pillar II regarding the change of use (as it is one combined application) as controlling is done for Pillar II by the traditional ‘5% sample’? May a beneficiary change his request for Pillar II without penalties? What if monitoring and an inspection in the field show that the parcel contains fir trees?
Article 15(1b) of Regulation (EU) No 809/2014 states clearly that beneficiaries may amend the single application or payment claim regarding adjustment or use of individual agricultural parcels checked by monitoring. In your example, the agricultural parcels declared for the purpose of the Pillar 2 measure are not checked by monitoring, hence the beneficiary cannot amend his/her application under Article 15(1b). However, this does not prevent the beneficiary from amending its application under Article 15(1) or 15(1a) as long as he respects the corresponding deadlines and requirements.

As regards the application of reductions and penalties, in case the beneficiary could not amend his application for the purposes of the Pillar II measures under Article 15(1) or 15(1a), the non-compliance should be determined as regards the Pillar II measure and may result into reductions or penalties. However, as set out in Article 40a(4) of Regulation (EU) No 809/2014, in the first three years of implementation of checks by monitoring, competent authorities have the choice to take into account the findings stemming from the automated monitoring procedure (cf. Article 40a(1)(a)) only in respect to those beneficiaries that have been selected in accordance with Article 32 for on-the-spot checks of rural development measures. In other words, if the Member State has taken this option, the findings will be treated as determined non-compliance only for the beneficiaries selected for OTSC.

Please note that where a competent authority chooses to apply the option described in the previous paragraph, findings revealed by checks by monitoring in year N have to be taken into account in the risk analysis when selecting the sample to be checked in year N+1 (cf. Article 34(2) and 34(3) as amended by Regulation (EU) 2019/xxx).

Q65. A beneficiary can modify his/her application/ claim in line with the results of the preliminary checks (cf. Article 15(1a) and (1b) of Regulation (EU) No 809/2014) and checks by monitoring (cf. Article 15(1b) and (2b) of the same Regulation). Beneficiaries may also amend their applications or claims in accordance with Article 15(1) and 15(2) of the same Regulation. The Commission should regulate how to proceed when amendments or modifications of the application or claim of the schemes or measure not checked by monitoring affect the area taken into account for the schemes or measures checked by monitoring.

If the amendment or modification related to the schemes or measures not checked by monitoring reveal changes that are relevant for the schemes or measures checked by monitoring, this has to be taken into account when establishing eligibility for schemes/ measures checked by monitoring.

Q66. Checks by monitoring may reveal cases where the planted area of a crop does not follow the pattern as declared in the GSAA. In this case, the farmer will have the possibility to modify the declared land use. This amendment can result in an increase in the area declared at parcel and application level as shown in the figure below.
Figure 1. a) As declared in the GSAA, b) As planted on site – note inconsistency between the GSAA declaration and the crops as cultivated in the field, c) New GSAA declaration leading to an increase in VCS area compared to the initial GSAA declaration.

Given the legal provisions specified in paragraph 1b of Article 15 of Regulation (EU) No 809/2014, can this change in land use be accepted and can it eventually lead to a payment of 1.5 ha instead of 1 ha for VCS Tomato?

Article 15(1b) as amended by Commission Implementing Regulation (EU) 2019/1804 stipulates that beneficiaries may amend individual agricultural parcels checked by monitoring regarding their use and adjustment (polygons declared in the GSAA). Hence, the payment of 1.5 ha under the VCS Tomato scheme following the amendment of agricultural parcels as described in your example can be accepted provided that the requirements under the VCS Tomato scheme are respected. As the new GSAA declaration for VCS Tomato replaces the previous one, the new area declared can be used to calculate payments for VCS Tomato.

Q67. What should be done if a beneficiary has declared a parcel with a non-eligible crop but checks by monitoring show that the parcel is eligible for BPS? Can the beneficiary get the BPS payment after modifying his/her request? S/he also has some inactivated payment entitlements. Can s/he activate them? And is there a deadline for modifying the application?

Article 15(1b) as amended by Commission Implementing Regulation (EU) 2019/1804 stipulates that beneficiaries may amend individual agricultural parcels checked by monitoring regarding their use and adjustments. It also sets out that payment entitlements may be added in cases where such amendments led to an increase of the area declared. Hence, referring to your example, the beneficiary may amend the use of the parcel found eligible for BPS/SAPS. Furthermore, for beneficiaries in BPS countries, additional payment entitlements can be activated. The deadlines for such amendments are set out in Article 15(2b) of Regulation (EU) No 809/2014. When these amendments have been done, and if all other BPS/SAPS requirements have been respected (all necessary checks have to be carried out on the ‘new’ parcels), the beneficiary can receive the BPS/SAPS payment.

Q68. Concerning Article 15(3), are modifications permitted only for parcels on which there is a finding from the results of checks by monitoring or can a farmer adjust any parcels declared in the aid application or payment claim?

Amendments of applications or payment claims carried out under paragraphs 1, 1a and 1b of Article 15 should all respect the condition of paragraph 3 of the same provision i.e. *Where the competent authority has already informed the beneficiary of any case of non-compliance in the single application or payment claim or where it has given notice to the beneficiary of its intention to carry out an on-the-spot check or where an on-the-spot check reveals any non-compliance, amendments in accordance with paragraph 1 shall not be authorised in respect*
of the agricultural parcels affected by the non-compliance. However, as the second subparagraph of paragraph 3 clarifies, the communication of the provisional results resulting from checks by monitoring does not prevent the amendment of an application or payment claim. Therefore, amendments of applications and payment claims should not be prevented by the communication of provisional results to the beneficiary, even amendments concerning schemes, measures, types of operations or parcels not subject to checks by monitoring. In such cases, the communication of the provisional results to the beneficiary would be simply irrelevant and the amendment should be allowed as long as the conditions and deadlines defined under Article 15(1) and (2) or Article 15(1a) and (2a) are respected.

Q69. Does Article 15(1b) prevail over the third subparagraph of Article 15(2) where it is stipulated that beneficiaries may modify the single application or payment claim as regards the use of parcels declared for the greening payment and the Natura 2000 and Water Framework Directive payments made in accordance with Article 30 of Regulation (EU) No 1305/2013 provided that this does not put them in a more favourable position with regard to the fulfilment of the obligations based on the initial application?

Changes to single applications or payment claims in accordance with Article 15(1b) are possible only when a certain scheme or measure or type of operation is checked by monitoring; these changes do not require a specific authorization of MS authorities. Changes to single applications or payment claims in accordance with the third subparagraph of Article 15(2) concern specifically the use of agricultural parcels with regard to payments for agricultural practices beneficial for the climate and the environment in accordance with Chapter 3 of Title III of Regulation (EU) No 1307/2013 and the Natura 2000 and Water Framework Directive payments, which are possible as well for schemes or measures not subject to checks by monitoring, provided that the Member State has authorized the beneficiary to modify the single application or payment claim. They therefore do not prevail over Article 15(1b) but may coexist.

Q70. Article 15(2b) provides that amendments of applications or payment claims made in accordance with paragraph 1b of the same Article shall be notified to the competent authority by a date to be fixed by that authority and which shall be at least 15 calendar days before the date when the payment of the first instalment or the advanced payment is to be made. Can this date be fixed at beneficiary level or for certain sub-groups of beneficiaries or is it only allowed to fix a single date for all beneficiaries checked by monitoring within a certain scheme or measure?

Article 15(2b) as amended by Regulation (EU) 2019/1804 refers specifically to the date fixed by that competent authority at the level of the aid scheme or support measure or type of operation. Therefore, competent authorities cannot fix a different date for each individual beneficiary but have to fix the date at the level of groups or sub-groups of beneficiaries e.g. for all beneficiaries under a certain scheme, for all beneficiaries under a certain measure or for all beneficiaries under a certain type of operation, as they find most appropriate.

Cross-compliance

Q71. Our Member State/region decides to implement checks by monitoring for the greening payment, more specifically beneficiaries required to observe the agricultural practices beneficial for the climate and the environment (cf. Article 31(1)(a) of Regulation (EU) No 809/2014). The monitoring procedure may reveal non-compliances...
relevant for cross-compliance. Since for cross-compliance EU legislation requires a minimum control rate of 1%, is it possible to use monitoring results to establish non-compliances only for the population of farms corresponding to the minimum control rate of 1%?

As set out in Article 40a(4) of Regulation (EU) No 809/2014, in the first three years of implementation of checks by monitoring, competent authorities have the choice to take into account the findings stemming from the automated monitoring procedure (cf. Article 40a(1)(a)) only in respect to those beneficiaries that have been selected in accordance with Article 68 for on-the-spot checks of requirements and/or standards not checked by monitoring. In other words, the findings can indeed be used to establish non-compliances only for the beneficiaries selected for OTSC.

Please note that where a competent authority chooses to apply this option, findings revealed by checks by monitoring in year N have to be taken into account in the risk analysis when selecting the sample to be checked in year N+1 (cf. Article 69(1) as amended by Regulation (EU) 2019/xxx).

**Checks of non-monitorable requirements (cf. Article 40a(1)(c))**

**Q72.** Checking of non-monitorable requirements can be limited to a sample of at least 50% of the applicant's parcels. Does that refer to at least 50% of the applicant's parcels with non-monitorable requirements or all parcels declared by a beneficiary?

As stated in recital (6), the control rate set in Article 40a(1)(c) has the purpose of ensuring that checks on compliance with the eligibility conditions, requirements and other obligations are satisfactory in circumstances where data provided by Copernicus Sentinels satellites are not relevant (eligibility conditions cannot be monitored). Hence, the scope of checks of non-monitorable requirements should be limited only to parcels with non-monitorable requirements and subject to checks by monitoring.

**Q73.** For parcels with rural development commitments, our Member States checks 5% of the activities, not 5% of the beneficiaries (cf. Article 32(2a) of Regulation (EU) No 809/2014 on collective claims). How should the requirements provided in Article 40a(1)(c) be viewed in that light?

According to Article 14a of Regulation (EU) No 809/2014, the collective is the beneficiary of the support and, according to Article 32(2a), the control sample is composed of at least 5% of all collectives submitting a collective claim, covering at least 5% of the total area declared in the collective claim and 5% of the commitments notified.

With respect to the checks by monitoring, the consequences of non-monitorable eligibility conditions should be addressed to the collective. In other words, given 100 collectives submitting a collective claim, if 40 of them reveal non-monitorable eligibility conditions, 5% of these 40, i.e. 2 collectives, should be checked according to Article 40a(1)(c).

**Q74.** In article 40a(1) a new third subparagraph is added. According to this "... checks of eligibility criteria, commitments and other obligations which cannot be monitored by Copernicus Sentinels satellite data or other data with at least equivalent value may be
limited to a sample of at least 50% of the agricultural parcels declared by a beneficiary. The competent authority may select this sample randomly or on the basis of other criteria. Where the sample of agricultural parcels is selected randomly and the checks reveal any non-compliance, the competent authority shall extrapolate the conclusions from the sample or shall check all agricultural parcels.”

Due to the multi-annual character of commitments in Pillar II the regulation requires Member States to apply withdrawals in amounts paid in previous years for the same operation, cf. Article 35(4) in Regulation (EU) No 640/2014. Therefore, in case of the use of monitoring with a randomly selected 50% sample for checks of eligibility criteria, commitments and other obligations which cannot be monitored, it must be clarified that the extrapolation of the financial conclusion of penalties based on Article 35 only affects the payment in the year of the finding. This would imply that Member States do not have to apply withdrawals in amounts paid in previous years based on extrapolations since this would be a disproportional penalty. Such an explanation would clarify the conditions for the introduction of monitoring in Pillar II.

In principle, withdrawal of support decided in the year of the finding shall also apply to the amounts already paid in the previous years for the same operation in case of multiannual commitments. Nonetheless, based on Article 64, paragraph 5, of Regulation (EU) No 1306/2013, the administrative penalties shall be proportionate and graduated according to the severity, extent, duration and reoccurrence of the non-compliance found. This means that if the policy aim pursued by the support measure is not compromised and the level of non-compliance (checked against the criteria defined in paragraph 3 of Article 35 of Regulation (EU) No 640/2014) is different in previous years than in the year of the finding, Member States can decide to impose a lower level of withdrawals or not applying them at all to the previous years. This shall be based on a case-by-case assessment, and only when it is duly justifiable in order to ensure an equal treatment of beneficiaries.

Q75. Should we consider as non-monitorable those conditions which have to be checked in the field or also those which are checked on the basis of administrative registers?

A clarification of what is a monitorable requirement is provided in the reply to Q6 of the Q&A on monitoring for claim years 2018 and 2019 (Ares(2018)4341814).

Please note that checks by monitoring do not replace administrative checks and cross-checks carried out on all applications/claims. Eligibility criteria, commitments and other obligations subject to administrative checks for all beneficiaries when traditional OTSC apply should continue to be checked administratively for all beneficiaries when checks by monitoring apply.

Q76. The findings from checks of non-monitorable conditions ought to be listed in the provisional results? Should the beneficiary get an opportunity to modify the declaration?

Article 40a(1)(d) as amended by Regulation (EU) 2019/1804, states that beneficiaries should be informed about, inter alia, the ‘provisional results [...] of the procedure set up in accordance with point (a) of this subparagraph. Hence, only provisional results stemming
from the procedure of regular and systematic observation, tracking and assessment of all eligibility criteria, commitments and other obligations which can be monitored by Copernicus Sentinels satellite data or other data with at least equivalent value have to be communicated to beneficiaries. The results of checks for non-monitorable requirements carried out in line with Article 40a(1)(c) should however be part of the control report (cf. Article 41 of Regulation (EU) No 809/2014; please note the specific provision on checks by monitoring in the third subparagraph of Article 41(2)).

Amendments of aid applications or payment claims are not possible for findings stemming from the sample-based checks of non-monitorable requirements carried out in line with Article 40a(1)(c).

**Area determination / Payment to beneficiaries**

Q77. Which area should be paid when the farmer cultivated the crop on substantial portion of the declared GSAA parcel (see figure 2 below), as can be demonstrated on current VHR imagery, but does not amend the application according to Article 15 of Regulation (EU) No 809/2014? The example illustrated in figure 2 shows a potential case where the monitoring process has identified a mean vegetation index lower than that expected. This scenario assumes that current year VHR imagery is available and that the presence of the tomato crop was confirmed but is smaller than the declared GSAA parcel.

**Figure 2** – Scenario where the farmer does not amend the land use declared in the GSAA
The area to be paid is the area confirmed as cultivated with the tomato crop, as established by the follow-up of the inconclusive parcel. Namely, in your example, it appears that the automated monitoring procedure lead to an inconclusive results (yellow parcel). To follow-up on the inconclusive parcel, you chose to use expert assessment based on current year VHR imagery.

In your example, the area of 6.8 ha shall be considered determined. Reductions and penalties for VCS over-declaration have to be applied in accordance with Regulation (EU) No 640/2014.

Q78. We have an additional question based on the example described in Q65. Before the application of checks by monitoring, the IACS system is set up on different layers; GSAA for the area declaration while the LPIS is used to determine the area measured. The outcome would then be estimated by comparing the areas derived from both layers. In the case of Figure 2, if it is permissible to calculate the reductions/penalties based on the area measured during the follow up by VHR imagery, how should the area not found be deducted from the GSAA declaration?

The area used as a basis for the calculation of the aid or support shall be established by the spatial intersection of the digitised area declared in the geo-spatial aid application form and the identification system for agricultural parcels provided that the results of checks by monitoring carried out in accordance with paragraph 1 of Article 40a indicate compliance with the eligibility criteria, commitments and other obligations for the scheme or measure concerned. In the context of a follow-up of inconclusive parcels area measurement is carried out, in continuation of the current approach, the spatial intersection of that area and the identification system for agricultural parcels should be taken into account as a basis for the calculation of the payment.

Q79. When checks by monitoring are applied, does the second subparagraph of Article 18(6) of Regulation (EU) No 640/2014, specifically the 0,1 hectare provision, apply?

Yes, the rules on calculations on payments and penalties for over-declaration remain applicable regardless of whether classical OTSC or checks by monitoring are applied.

Communication with beneficiaries (cf. Article 40a(1)(d))

Q80. Would the Commission insist on warning alerts as an obligatory activity?

Yes, warning alerts to farmers are a required component of checks by monitoring, as provided for Article 40a(1)(d).

As stated in recital (7) of Regulation (EU) 2018/746, the results of the automated analysis of Copernicus Sentinels satellites data or similar data can be a tool to assist beneficiaries in respecting requirements. Warning alerts about possible non-compliance should thus be communicated to beneficiaries and national authorities should set up appropriate tools for that purpose.
**Other issues**

Q81. Traditional OTSC will be performed for schemes or measures that are not checked by monitoring. Is it allowed to use the information gathered during traditional OTSC as ‘ground truth data’ for monitoring?

In the absence of specific legal provisions regulating the method of collection of data from the field necessary to carry out the quality control of the monitoring system described in the technical JRC guidance (DS/CDP/2018/18, section 3.5), it is possible to use data gathered during traditional OTSC in claim year 2019.

Q82. Different types of data are available when carrying out checks by monitoring. On the one hand, the original satellite data are available. On the other, time-series are also available. Which of these data need to be kept for the purpose of future audits?

In claim year 2019, competent authorities are expected to store at least the time-series of the signals per parcel, the final results at parcel level of the procedure set-up in accordance with Article 40a(1)(a) of Regulation (EU) No 809/2014 and the control report issued to the beneficiary.